



GENERAL ORDER

DURHAM POLICE DEPARTMENT
DURHAM, NC

NUMBER:

4083

BODY-WORN CAMERAS

Effective Date: Draft

Revision Dates:

INTRODUCTION

In an effort to enhance its services to the community, the Durham Police Department utilizes body-worn cameras. The goals are to enhance both officer and citizen accountability, and strengthen public trust, by preserving factual representations of officer-citizen interactions, protect civil liberties and privacy interests, enhance evidence collection and training efforts, and provide an additional means of documentation for administrative and public interest purposes. This policy establishes guidelines for the use and maintenance of departmentally owned and operated body-worn camera systems, hereinafter referred to as “body-worn cameras,” as well as the dissemination, retrieval and storage of recordings produced by these cameras.

DEFINITIONS

Body-Worn Camera - An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.

Body-Worn Camera Program Manager - The overall management of the body-worn camera program will reside with the Department’s Information Technology (IT) Manager, within the Administrative Services Bureau. The IT Manager, or his/her designee, is responsible for handling or directing administrative and management matters related to the department’s body-worn camera program as outlined in this policy or as further directed.

Disclose or Disclosure – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Durham Police Department. This term does not include the release of a recording.

IT Division Staff Members – Refers to any employees assigned to the Information Technology Division.

Officers – Refers to any sworn police officer working for the City of Durham Police Department.

Personal Representative – A parent, court appointed guardian, spouse or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney; or the parent or guardian of a surviving minor child of the deceased.

Recording – A visual, audio, or visual and audio recording captured by a body-worn camera operated by or on behalf of the Durham Police Department or its law enforcement personnel when carrying out law enforcement responsibilities. For purposes of disclosure and release, this term does not include video or audio recordings of interviews regarding agency internal investigations, or interviews of suspects or witnesses.

Release – To provide a copy of a recording.

USE AND REQUIRED ACTIVATION OF THE BODY-WORN CAMERA

The assigned body-worn camera will be affixed upon the officer's uniform, on the torso between the beltline and the shoulders, at the beginning of the shift in accordance with departmental training. While some discretion with regards to placement is allowed, officers are responsible for ensuring that the specific location utilized does not obstruct the camera's recording capabilities. Police Training Officers are required to wear their body-worn camera during the plain clothes phase of recruit training. The body-worn camera will be worn for the entire work shift as well as Secondary Employment jobs. Although all sworn officers may be assigned a body-worn camera, the following police units shall wear their assigned body-worn camera while on-duty as a part of their standard duty equipment:

- Uniform Patrol Officers
- H.E.A.T. Officers
- Traffic Services Officers
- Bicycle Officers
- Violent Incident Response Team Officers
- Warrant Squad Officers

It is understood that not all situations will clearly start out as requiring recording nor will all recorded incidents have a clear ending for when recording is no longer required. Officers are expected to follow departmental policy utilizing ethical and legal discretion when activating and deactivating their body-worn camera.

Officers will begin recording with their body-worn camera in the following situations¹:

- prior to any officer initiated field contacts involving actual or potential violations of the law including traffic stops, and pedestrian or vehicle contacts;
- upon being dispatched to, and/or when responding to assist on, any and all calls for service, the exception being a call handled via telephone;
- when engaged with a citizen for the purpose of investigating or assisting in the investigation of suspected criminal activity; and
- while executing searches of individuals, personal property, vehicles, and premises. The body-worn camera will be used to record a request for consent to search and the granting or denial of that consent. **This recording shall not replace the use of the Consent to Search Form as required by policy.**
- at designated checking stations, the body-worn camera may be off initially. Once an officer determines there is reasonable suspicion or probable cause to take enforcement action or detain the driver, the officer shall begin recording with their body-worn camera.

¹ 41.3.8B
General Order 4083

While taking statements from subjects, victims and witnesses, officers shall have the discretion to deactivate a recording at the request of a non-suspect. The citizen's request should be captured on the body-worn camera recording prior to deactivation.

If not already activated, and whenever reasonable, the body-worn camera will be activated to record any encounter that becomes adversarial or in any situation that the officer believes the use of the body-worn camera would be appropriate or would provide useful documentation.

It is understood that there may be certain instances where officers operating in a proactive (non-dispatched) capacity may become involved in a situation requiring immediate action to prevent injury, make an arrest, and/or prevent the destruction of evidence or escape. If the immediate activation of the body-worn camera is not reasonable due to the circumstances, the officer will activate their body-worn camera at the first available opportunity after the immediate threat has been addressed. Supervisors will closely review documentation of such incidents to ensure exigent circumstances did in fact exist.

All officers shall note in incident and/or supplemental reports when recordings were made during the incident. To enhance the services provided to the community, officers may use video captured by their assigned body-worn camera to assist with investigations and evidence collection, and to improve and or enhance the accuracy of officer reports and courtroom testimony. **Recordings may not capture everything during an incident and, therefore, are not a replacement for written reports. Officers are prohibited from relying totally on body-worn camera recordings to complete reports.** Officers shall not use statements such as, "refer to video", etc. as a substitute for a thoroughly detailed reporting of an incident. The recording of an incident should serve as a visual support or enhancement of the written report.

In a manner consistent with officer safety, officers should make every reasonable effort to inform individuals that they are being recorded. If a citizen inquires as to whether a body-worn camera is in use or whether a recording is being made, officers shall provide a prompt and truthful response.

Officers who have inadvertently activated the body-worn camera during non-law enforcement related activities (i.e. meal/restroom breaks, etc.) shall make an email request to IT staff, via the PD-Help Desk, to have the recording deleted and shall include the reason(s) for the request. This email request should explain the circumstances surrounding the inadvertent recording. Prior to deletion, the video in question will undergo a second level of review by the IT Manager to ensure that the device only captured a non-law enforcement related recording. The original email and subsequent approval will be retained by the IT manager for 180 days. The IT Manager is expressly prohibited from disseminating or discussing such videos outside of the officer's chain of command.

If an officer fails to activate his/her body-worn camera as required, the officer shall document said failure in his/her report, and shall make an email notification to his/her supervisor outlining the circumstances surrounding the oversight.

DEACTIVATION AND RESTRICTED USE OF THE BODY-WORN CAMERA²

Once an officer starts recording with their body-worn camera, recording should not be stopped until the initial incident that required the recording has stabilized and transitioned to an orderly investigation or concluded, or the officer's involvement in the incident has concluded. An incident may be considered stabilized when the initial police response or exchange of communication related to police enforcement activities has transitioned to a controlled and orderly investigation by the primary officer. Officers who respond in a secondary or assisting capacity may stop recording once the incident has stabilized or upon leaving the scene.

² **41.3.8B**
General Order 4083

Body-worn camera recordings may be stopped at the request of a non-suspect. Should the officer choose to honor such a request, said request shall be captured on the officer's body-worn camera prior to doing so. The officer shall maintain the discretion to resume recording at any time during the encounter should he/she deem it necessary. Additionally, the officer shall have the discretion to deny such a request if he/she deems it appropriate.

The body-worn camera may be deactivated in the following situations:

- If an officer is on a perimeter or assigned to a static post where he/she is not in contact with citizens or actively participating in the investigation. The body-worn camera will be reactivated if either of these conditions ceases to exist.
- If it is necessary to discuss issues or concerns regarding an individual's mental or physical health. As soon as the private conversation is completed, the body-worn camera shall be returned to record mode if the situation continues to fall under the definition of required use.
- Prior to discussing a case on-scene with other officers or during on-scene tactical planning.
- When interviewing victims of sexual assault. The officer shall inform the victim that he/she is being recorded, ask if the victim would prefer not to be recorded, and honor that request.

Officers will document the reason that the body-worn camera has been deactivated in the form of a recorded announcement on the body-worn camera prior to deactivation.

Use of the body-worn camera is prohibited in the following situations:

- To record conversations involving Department employees that are not required to be captured pursuant to this policy.
- In places where a heightened expectation of personal privacy exists, such as locker-rooms, dressing rooms, or restrooms unless the recording is for the purpose of official law enforcement activities and no uninvolved parties are captured in the recording.
- To record confidential informants or undercover officers.
- To record strip searches, however, officers may video the location of the search immediately prior to beginning. While officers may not video the search itself, the camera may remain recording, but be turned away from the suspect so that an audio recording of the event may be captured.
- In patient care areas of a healthcare facility, officers should not record patients during medical or psychological treatment or evaluations other than to document injuries, or obtain statements, for official law enforcement purposes. Officers should take special care to record only the parties involved in the incident being investigated.
- To record judicial proceedings in courtrooms and the Magistrate's Office unless express permission is given beforehand by the presiding judicial official.
- To record communications between a defendant and his/her attorney.
- To record activities which are not official law enforcement functions.

Recordings of matters related to the investigation of suspected criminal activity which are either not required, or are restricted from recording by this policy but which nonetheless have been created, shall be retained as part of the criminal investigative file.

DATA MANAGEMENT AND RETENTION³

With the exception of those recordings not needed for administrative or court purposes, officers will label or tag each body-worn camera recording with the assigned Incident Report (IR) number and one or more of the call type categories available within the video management system (DWI, Felony, Infraction, etc.).

Upon going off-duty for that particular shift, officers should upload all recordings from their assigned body-worn camera, if reasonably feasible. If the officer has a secondary employment job prior to the next regularly scheduled shift, the officer may keep the camera in the officer's possession rather than docking it for upload at the end of shift. In these instances, it is the responsibility of the officer to ensure that the camera's battery gets sufficiently recharged to last through the expected duration of the next usage, whether it be for secondary employment or a regular shift. All cameras with recordings, including those captured on-duty and during secondary employment, must be docked for upload no later than the end of the officers' next working day. If an officer has recorded an incident that an officer should reasonably believe may be relevant to a citizen's complaint, involves a use of force or significant arrest, or any other similar incident, the officer shall upload said recording before going off-duty if feasible, or by docking the camera immediately upon going off duty. If the incident was captured during a secondary employment assignment, the camera should be connected for upload by the end of the officer's next working day or within 24 hours of the end of the secondary employment assignment, whichever occurs first.

Recordings are transferred from a body-worn camera onto storage arrays through one of two methods:

- Physically connecting the camera to a docking station designated for this purpose or an internet-connected computer.
- Wireless uploads via Department authorized wireless methods

Recordings are stored for a minimum of 180 days. By selecting an event type other than the default event type for a specific recording, the minimum retention of the recording can be increased. Recordings will be automatically deleted when their retention time has expired. The retention time frames for each event type are as follows:

- 180 days (6 months) – Default
- 180 days (6 months) – Infractions
- 1095 days (3 years) – DWIs
- 1095 days (3 years) – Misdemeanor cases
- 2555 days (7 years) – Accidents involving City of Durham vehicles
- 7300 days (20 years) – Felony cases
- Indefinite hold – Professional Standards (includes citizen complaints, uses of force, etc.)

Officers who fail to select an event type and label a recording prior to uploading can go to a computer upload/viewing station, find their recording, and label it at that time.

When an incident arises that requires the immediate retrieval of body-worn camera recordings for chain of custody purposes including, but not limited to, serious crime scenes or critical incidents such as officer involved shootings, a supervisor will respond to the scene and ensure that the body-worn camera remains affixed to the officer(s) in the manner it was found and that the body-worn camera data remains uncompromised. Through direct and uninterrupted supervision/observation, the supervisor or his/her designee is responsible for the care

³ 41.3.8D
General Order 4083

and custody of the body-worn camera(s) until it has been removed and secured by the lead investigator, Forensic personnel, or Professional Standards personnel.

Employees shall not make any efforts or attempts to destroy, delete, alter, or edit body-worn camera recordings except as explicitly authorized by this General Order, and then only by authority of the Chief of Police or his/her designee, or as required by law.

SUPERVISOR REVIEW

District and Division Commanders with direct reports utilizing body-worn cameras are responsible for ensuring that a minimum of two body-worn camera recordings of their direct reports are reviewed each month. Reviews may be conducted at random or as a result of a complaint and will be documented on the Monthly Camera Footage Review form. If a system error (or other issue) occurs that prevents a review from taking place, this will be documented on the form and the PDHelpdesk should be notified as soon as the error becomes known.

DISCLOSURE AND RELEASE⁴

All video and/or audio captured by body-worn cameras are the property of the Department.

Any interviews regarding agency internal investigations, or interviews of suspects or witnesses, captured by a body-worn camera constitute personnel or criminal investigation records respectively, and are not public records, pursuant to N.C.G.S. §160A-168 and §132-1.4. Such records are open to inspection, copying, and dissemination in accordance with these statutes or as otherwise required by law.

All other body-worn camera recordings are governed by N.C.G.S. §132-1.4A. These recordings may only be disclosed or released in accordance with the below provisions.

Internal Disclosure and Release

A recording shall be disclosed or released to the City Manager and/or Deputy City Manager(s), and attorneys assigned to the City Attorney's Office, as requested by such individuals for administrative purposes.

Officers may upload and view/listen to their own body-worn camera recordings for law enforcement purposes only. Members may not upload or view/listen to recordings from body-worn cameras assigned to other members unless necessary for the performance of a supervisory function or administrative duty/assignment, mandatory or supervisor approved training, or as otherwise required by law.

Recordings may only be released to members when necessary for administrative, training or law enforcement purposes. Recordings shall not be used to create a database to be used as fillers in photo arrays or be searched using facial recognition software.

Members shall send requests for the release of a recording via email or telephone to the PD Help Desk, which will then forward them to appropriate IT Division personnel for processing. Due to the amount of time it may take to locate recordings, these requests should be made as far in advance as possible and, to the extent it is reasonably known or available, the following information should be included:

- Requesting member's name and contact information (typically, a recording will only be released to the lead officer/investigator for that particular incident)
- Reason for request (evidence for court, wreck investigation, training, etc.)

⁴ 41.3.8c
General Order 4083

- The number of copies needed (for court purposes, normally two copies are provided – one for the officer’s case file, and one for the District Attorney’s office).
- Date copies are needed by
- Approximate date/time of the recorded incident
- Brief incident description (suspect or vehicle description, location, action to look for, etc.)

Members to which recordings are released shall not further disclose or release the recording beyond the extent necessary for the purpose for which it was provided, unless such disclosure or release is specifically authorized by this policy or required by law.

Disclosure and Release to a District Attorney or Law Enforcement Agency

A recording must be disclosed or released to a district attorney:

- For review of potential criminal charges;
- In order to comply with discovery requirements in a criminal prosecution;
- For use in criminal proceedings in district court; or
- Any other law enforcement purpose.

A recording may be disclosed or released to another law enforcement agency for law enforcement purposes.

Disclosure Pursuant to a Written Request

Besides those disclosures mandated or permitted above, any other disclosure of recordings must be pursuant to a written request made to the Chief of Police. The written request may, but is not required to be, on a form provided by the Department. All written requests must include the date and approximate time of the activity captured in the recording, or other identification of the activity with reasonable particularity to sufficiently identify the recording to which the request refers.

Only the following persons are authorized to receive disclosure of a recording pursuant to a written request:

- A person whose image or voice is in the recording;
- A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure;
- A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording;
- A personal representative of a deceased person whose image or voice is in the recording; or
- A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

Due to the short period of time in which the Department must respond to such requests, any member receiving a written request shall immediately deliver the request by personal delivery or email to the Professional Standards Division. The Commander of the Professional Standards Division or his/her designee will immediately request access to the recording from the Information Technology Division (IT) staff. The IT staff will provide access to the recording as soon as possible, but absent extenuating circumstances communicated to the Professional Standards Division Commander, no later than one business day after receiving the request from the Professional Standards Division. The recording will be reviewed by the Professional Standards Commander or his/her

designee within the Professional Standards Division, along with the affected officer(s)' Assistant Chief, Deputy Chiefs, and/or Chief of Police, who will determine if disclosure to the requesting party will be allowed or denied and, if allowed, whether any redactions will occur. The following factors may be considered in making this decision:

- Whether the person requesting disclosure of the recording is a person authorized to receive disclosure;
- Whether the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law;
- Whether disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Whether disclosure may harm the reputation or jeopardize the safety of a person;
- Whether disclosure would create a serious threat to the fair, impartial, and orderly administration of justice; and
- Whether confidentiality is necessary to protect either an active, inactive, or potential, internal or criminal investigation.

Unless otherwise agreed to by the requesting party, within 3 business days of the Department's receipt of a written request for disclosure, the Commander of the Professional Standards Division or, in his/her absence, his/her designee, must either disclose the recording or notify the requesting party of the Department's decision not to disclose the recording and the reason(s) for such denial.

If a written request for disclosure is granted, only those portions of the recording relevant to the person's request may be disclosed. A person who receives disclosure is prohibited from recording or copying the recording.

If a written request for disclosure is denied, or if disclosure has not been provided more than 3 business days after a request is made, the person seeking the disclosure may appeal to superior court. The Chief of Police, Department personnel whose image or voice is in the recording, and the District Attorney must be notified of the appeal and given an opportunity to be heard. Any member receiving notice that a petition for disclosure has been filed shall immediately notify the police attorney or, in his/her absence, other staff of the City Attorney's Office. A judge may issue an order for disclosure if the court finds that the Department abused its discretion in denying the request. Any order issued pursuant to this procedure may not direct release of the recording.

Release Pursuant to a Court Order

Besides those releases mandated or permitted as described above, any other release of a recording must be pursuant to a court order. Any person seeking release of a recording, including the Department and its members, must petition the superior court for an order to release a recording. Any member seeking release of a recording pursuant to a court order shall make a request through the member's chain of command to the Chief of Police. The Chief of Police must be given notice and an opportunity to be heard when a petition is filed by a person authorized to receive disclosure for release to such a person. If the petition is filed by a person not authorized to receive disclosure, or seeks release to any person other than a person authorized to receive disclosure, the Chief of Police, Department personnel whose image or voice is in the recording, and the District Attorney must be given notice and an opportunity to be heard. Only portions relevant to the request may be ordered released.

EDITING OR REDACTION OF BODY-WORN CAMERA RECORDINGS

The disclosure or release of body-worn camera recordings may require editing or redaction to limit or prevent dissemination of information that may compromise an ongoing investigation, reveal the identity of juveniles,

victims, witnesses, etc. Any editing or redaction of recordings requires a court order or prior approval by the Chief of Police or his/her designee. At the direction of the Chief of Police or his/her designee, the IT Manager will coordinate the redaction of the required portions of the designated recording.

BODY-WORN CAMERA DISTRIBUTION, MAINTENANCE, INSPECTIONS, AND INVENTORY⁵

Distribution

Distribution shall be coordinated by the IT Manager and will be handled by the designated IT staff.

Maintenance and Inspections

Officers are responsible for the care and maintenance of their assigned body-worn camera. Officers are responsible for charging their assigned body-worn camera between work shifts. Officers shall inspect their assigned body-worn cameras prior to the beginning of each shift or secondary employment assignment to ensure that the camera has no obvious signs of damage, adequate battery life and storage, and that the camera is functioning properly. Officers shall immediately report any damage, malfunction or loss to the PD Help Desk who will, in turn, forward those concerns to appropriate IT Division staff members for resolution.

Officers shall immediately report any issues/problems with body-worn camera equipment to their immediate supervisors via email.

The IT Division's Help Desk tracking system will be used to document reported malfunctions and the solutions to those malfunctions.

Officers shall not:

- Remove, dismantle, or tamper with, or attempt to remove, dismantle, or tamper with, any hardware or software component or part associated with the body-worn cameras.
- Use any electronic device or other means to intentionally interfere with the functioning of the body-worn camera.
- Share or swap assigned body-worn cameras.
- Tamper, or attempt to tamper, with, or gain unauthorized access to, recordings. All access or attempts to access recordings will be tracked and can be audited by the IT staff.

Inventory

The IT staff, under the direction of the IT Manager, will maintain an inventory database of all body-worn cameras to include personally assigned accessories.

If the body-worn camera, or any accessories, are lost or damaged due to violation of policy or carelessness while assigned to a specific officer, that officer may be held financially responsible for any repair or replacement and may be subject to disciplinary action.

⁵ **41.3.8E**
General Order 4083

TRAINING

Officers will not use the body-worn camera until they have successfully completed all required training on the system's equipment and recorded media. IT members, who have responsibilities regarding the body-worn cameras that exceed the training provided for the basic users, will be trained on the procedures that apply to their specific area of responsibility.⁶

Officers having difficulty operating either the body-worn camera or uploading the data will contact the PD Help Desk for troubleshooting and clarification. Additional formal training may be requested through the chain of command. The Body-Worn Camera Program Manager will assess requests and process them appropriately on a case-by-case basis.

The PD Help Desk will refer all requests for additional training to the Body-Worn Camera Program Manager for follow-up.

POLICY VIOLATIONS

Any member who violates the terms of this policy will be subject to disciplinary action.

⁶ **41.3.8F**
General Order 4083