



# Berlin Police Department

## GENERAL ORDER

TITLE:

**Body Worn Cameras (BWC)**

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*Chief Millard Wilkinson*

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X

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MANUAL

OTHER

X

ACCREDITATION  
STANDARDS

### OBLIGATION TO REVIEW POLICY AND SEEK ASSISTANCE AS NEEDED

It is the policy of the Berlin Police Department that all officers and applicable employees will thoroughly review and fully familiarize themselves with the attached policy and will adhere to the procedures as described in this policy. Any employee shall request assisting from their supervisor if they should be in need of further explanation or training regarding this policy.

### CONTINGENCIES AND UNFORESEEN CIRCUMSTANCES

Officers are occasionally confronted with situations where no written guideline exists and supervisor advice is not readily available. As it would be impossible to address all possible situations with written guidelines, considerable discretion is given to the officer handling the situation.

Faced with the need to make decisions or take an action where no guidelines exist, officers should rely on their experience and training, and the following resources:

1. Attorney General guidelines, memorandums, and directives
2. Departmental General Order, Special Orders, and Training Bulletins
3. New Jersey Title 39 and 2C
4. Current Search and Seizure directives

The written directives developed by the Police Department are for internal use only, and do not enlarge an officer's civil or criminal liability in any way. They should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of written directives can only be the basis of a complaint by this department, and then only in an administrative disciplinary setting.

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## I. Purpose

To establish a directive that is in accordance with the guidelines set forth by the New Jersey Attorney General's Office for the proper and lawful operation of the body worn audio/video camera systems worn by authorized Berlin Police Department personnel, and to define the tagging, access regulations, media storage, public disclosure, and retention system for the events recorded by the devices.

## II. Policy

Body Worn Cameras (hereinafter BWC) will be deployed to sworn Berlin Police Department personnel in a manner consistent with the provisions outlined in this written directive and under the authority of the Chief of Police.

BWCs are viewed as valuable assets intended to assist Berlin Police Department members in solving crimes and successfully prosecuting offenders by augmenting an officer's testimony with a video/audio record of the incident. BWC recordings preserve accurate visual depictions of physical evidence and also document how physical evidence was found, thereby helping to establish the facts that must be presented in Fourth Amendment suppression hearings. BWCs also record the physical appearance of suspects and crime victims, preserving evidence of any apparent injuries. The audio portion of BWC recordings will document witness and suspect statements. This preserves not only the substantive content of those statements, but may also show whether officers have legal requirements. Additionally, this equipment will enable department administrators to conduct periodic reviews of officer- citizen contacts for quality control purposes and aid in the investigation of citizen complaints.

BWC promote police accountability and transparency. A BWC recording of a police-involved shooting or other use of force incident can often provide objective evidence of what occurred. The practical utility of BWCs discourages officers and civilians from engaging in inappropriate conduct. These devices also discourage both law enforcement and civilian witnesses from providing false information about the circumstances of the encounter; a BWC recording not only can vindicate an officer who is falsely accused of misconduct, but also discourage a person from making false allegations against the officer in the first place.

## III. Procedure

### A. Definitions

1. Body Worn Camera (BWC) – A device worn by a law enforcement officer that makes an electronic audio/video recording of activities that are governed by this policy. The term does not include a mobile vision recording device when mounted inside a police vehicle (i.e. dash cam). The term also does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity. Nor does the term include an electronic recording device when used to comply with the requirements of Rule 3:17 (electronic recording of station house custodial interrogations).

2. Constructive Authority – Same meaning as defined in the Attorney General’s Use of Force Policy, except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g. “show me your hands”, “get out of the vehicle,” etc.), or directed against any person if the officer has un-holstered a firearm or a conducted energy device (e.g., “move out of the way,” “get down,” etc.).
3. Force – Same meaning as defined in the Attorney General’s Use of Force Policy. The term “force” shall include physical, mechanical, enhanced mechanical and deadly force.
4. Investigation of a criminal offense – Any police activity pertaining to the investigation of a indictable crime, disorderly persons offense, or petty disorderly persons offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness of a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.
5. Law Enforcement Agency, Agency, or Department – Means a law enforcement agency operating under the authority of the laws of the State of New Jersey.
6. Law Enforcement Officer or “Officer” – Means a sworn officer employed by a law enforcement agency. For the purpose of this directive, the term shall also apply to Class II Special Law Enforcement Officers.
7. School – Means an elementary or secondary school.
8. Youth Facility – Means a facility where children assemble under adult supervision for educational or recreational purposes, such as day care centers, youth camps, etc.

#### B. General

1. A law enforcement officer employed by the Berlin Police Department may only use a BWC system that has been issued and approved by the Chief of Police or his designee.
2. An officer equipped with a BWC must comply at all times with the requirements established in this directive.
3. A BWC shall be used only in performance of official police duties and for the purpose of recording incidents, investigations and police-citizen encounters involving those law enforcement activities specified in this directive. A BWC shall not be utilized to record activities while an officer is on break or otherwise is not actively performing law enforcement functions (e.g., while eating meals, while in a restroom). In these instances the device may be powered down.
4. The decision to activate or deactivate a BWC is a police action subject to the rule established in New Jersey Attorney General Law Enforcement Directive No. 2015-1,

which strictly prohibits any form of racially-influenced policing.

5. No BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the Berlin Police Department except for an official purpose specified in this directive.

6. Any sworn officer or civilian employee of the Berlin Police Department who knowingly violates the requirements of this directive shall be subject to discipline.

7. Any willful or repetitive violation of this directive shall be reported to the Camden County Prosecutor and to the Director of the Division of Criminal Justice. The Camden County Prosecutor and Director are authorized to take such actions as are reasonable and necessary to ensure compliance with this directive and to prevent further violations.

8. A BWC shall not be activated or used by an officer for personal purposes, or when engaged in police union business. Nor shall a BWC be used to record conversations involving counseling, guidance sessions, personal evaluations, or any similar supervisory interaction.

9. An Officer's BWC shall be powered on at the start of their shift or overtime assignment and only powered off at the end of the shift, overtime assignment or in accordance with sections III.B.3 or IX.Q of this policy.

#### **IV. Authorization to Wear/Use BWCs**

A. The Chief of Police shall determine which officers will be equipped with BWCs and shall determine the type(s) of duty assignments (e.g., uniformed patrol, plainclothes detectives, special/tactical operations deployments, etc.) and when those officers will wear BWCs. Appendix A of this policy details which officers are equipped with a BWC and under which duty assignments they shall be utilized.

B. In the case of a task force, team, or unit composed of officers from more than one law enforcement agency, the chief law enforcement officer of the agency overseeing the task force, team, or unit (e.g. the Camden County Prosecutor in the case of a countywide task force) shall determine whether and in what circumstances officers assigned to the task force, team, or unit will wear BWCs.

C. An officer shall not wear a BWC unless he or she has been authorized to do so by the Chief of Police of the Berlin Police Department, or by the chief law enforcement officer of the agency overseeing a multi- agency task force, team, or unit.

D. An officer shall not wear a BWC unless he or she has received training on the proper care and use of the device in accordance with the requirements of this directive.

E. The following officers shall be required to be equipped with BWCs and adhere to the provisions of this Policy when performing their duties:

1. All uniformed patrol officers while acting in the performance of official duties, as required by N.J.S.A. 40A:14-118.3 (P.L. 2020, c. 128). This shall include uniformed

- officers assigned to traffic law enforcement, as well as Class II Special Law Enforcement Officers (SLEO IIs) assigned to patrol or traffic law enforcement duties.
2. All officers assigned to tactical teams as defined in this Policy. Tactical Teams shall include S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), Entry Teams, Rapid Deployment, Fugitive or similar units.
  3. All officers assigned to proactive enforcement teams as defined in this Policy.
  4. All officers assigned to canine units.
  5. All officers whose assigned duties include regular interaction with members of the public, which reasonably may give rise to an arrest situation or use of force.
  6. All officers assigned to “front desk” duty in law enforcement agencies, whose duties include interaction with members of the public who enter police stations to report incidents or request assistance or information.
  7. All officers assigned to a pre-planned search warrant execution or a pre-planned arrest.
  8. All uniformed officers assigned to duties at demonstrations or potential civil disturbances.
- F. Officers Not Required to Wear BWCs; Notwithstanding the provisions of IVF(1), the following officers are not required by this Policy to be equipped with BWCs:
1. Officers engaged in undercover assignments.
  2. Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
  3. Officers assigned to administrative positions within the law enforcement agency. This provision shall not exclude officers assigned to “front desk” duty, as defined in Section 3.2(f), from the requirement to be equipped with BWCs.
  4. Officers meeting with confidential sources or recruiting potential confidential sources.
  5. Officers engaged in union representation of a member of the collective bargaining unit.
  6. Officers assigned to duties within schools or youth facilities as part of the normal daily educational environment, such as School Resource Officers (SROs) and Class III Special Law Enforcement Officers (SLEO IIIs). Officers assigned to duties at schools or youth facilities working security or crowd-control functions at special events such as athletic competitions, graduations or similar public events shall be equipped with BWCs.
  7. Non-uniformed officers assigned to investigative, non-enforcement duties, when authorized by the agency’s law enforcement executive.
  8. Officers engaged in crime-scene processing duties.

## V. **Training**

A. The Berlin Police Department shall establish a training program to ensure that all officers equipped with BWCs, including supervisors and command staff members, along with officers and civilian employees who access or handle BWC recordings, are familiar with the equipment/software and provisions of this directive.

1. The training programs shall include instruction on the proper use and operations of the unit and the companion software program.
2. Additional training may be required at periodic intervals to ensure the continued

effective use and operation of the equipment, proper calibrations and performance, and to incorporate changes, updates or other revisions to policy and/or equipment. The Training Unit shall prepare a remedial training course for those officers who require additional training.

## **VI. Equipment**

A. The Berlin Police Department has purchased AXON Body 3 audio/video recording units. These shall be the only BWC authorized for use by Berlin Police Department personnel. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the Berlin Police Department.

1. References to BWC shall include the AXON Body 3 wireless device, which houses a video camera, audio/video recording hardware, and a port for charging the device and downloading events.

B. For uniformed officers, who are required to wear a BWC, there are several mounting options. The camera shall be worn center of mass on the officer's body. The BWC shall be affixed on the officer's uniform in the chest/sternum area.

1. Officers authorized to wear exterior vest covers shall mount the BWC center mass of the garment utilizing the mounts provided. This shall include the wearing of the BWC on the outer carrier of the tactical rifle plates and tactical out vest and carriers whenever possible.

2. Officers wearing a jacket or other outer garment shall not cover or obstruct the view of their BWC, and shall mount the BWC to the jacket or outer most garments when wearing a jacket. This shall be done as soon as safely possible when an officer utilizes an outer garment.

3. In order to reduce audio and/or video interference with the unit, the officer's portable radio microphone shall not be affixed to the buttoned placket or breast pockets of the member's uniform shirt or positioned near the BWC on any exterior garment.

A. Each BWC has a unique serial number and has been assigned an internal tracking identification number (same as officer's badge number).

B. Officers may while preparing for, or during a significant tactical operation and upon approval of the officer's supervisor, deactivate the function and operation LED lights on their body worn camera by placing it in stealth mode. While in stealth mode, no function lights or haptic response to activating/deactivating the recording mode will function. At the end of the operation, the camera shall be returned to standard mode.

## **VII. Inspection and Maintenance - Storage**

A. Each officer shall be responsible for determining that their device is fully functional and that its battery is adequately charged at the start of his or her

duty shift and before going into the field.

1. Equipment malfunctions shall be immediately brought to the attention of a supervisor before going into the field so that a replacement unit may be procured.
2. The officer will then obtain a spare BWC and the shift supervisor will assign it to the officer utilizing the AXON Sync program for AXON Body 3, prior to departing headquarters. Officer will also be responsible for determining if the spare BWC is fully functional prior to departing.
3. If the BWC malfunctions while out in the field, the malfunction, upon its discovery, shall be reported to the officer's supervisor as soon as it is safe and practicable to do so. The officer will then obtain a spare BWC and the shift supervisor will assign it to the officer utilizing the AXON Sync program for AXON Body 3, prior to departing headquarters. Officers will also be responsible for determining if the spare BWC is fully functional prior to departing.
4. Officers are prohibited from changing any settings through AXON Sync or AXON View XL.
5. All employees are prohibited from tampering with any BWC unit, including but not limited to, attempting to take the unit apart, disable, alter or repair a component in any way.
6. Officers utilizing the BWC shall, no later than the end of each shift, upload the contents of the unit by placing the unit in one of the designated docking/charging stations. Each event file uploaded will contain information related to the date, BWC identifier, and assigned officer for the incident.
7. BWCs may be stored in designated docking/charging stations in the designated area or kept in an officer's vehicle if the vehicle is permanently assigned to him/her, at home when off duty or in other approved in HQ such as an employee's personally assigned desk or office. The docking stations allow for the units to be charged and for the upload of events to Evidence.com. After events are completely uploaded, Officers may charge BWC at home.

#### **VIII. Notice that BWC's are Deployed / Activated**

- A. The Berlin Police Department has recognized that it is appropriate to provide some form of notice to citizens so that they understand that anything said to a BWC-equipped officer may be electronically recorded, and that the images and sounds of the police-civilian interaction will be stored and accessible for future law enforcement use in accordance with the provisions of this directive.
- B. Such notice to the public that BWCs are in use will help to achieve the benefits of discouraging persons from engaging in conduct that might provoke the use of law enforcement force, and discouraging persons from filing false complaints against police.

C. The Berlin Police Department shall take the reasonable steps to inform the citizenry of the agency's decision to deploy BWCs. The Berlin Police Department shall publish a statement on the department's website that it deploys BWCs. The website posting shall include a picture showing what the device looks like, and how it is to be generally worn by officers so that citizens will be able to determine whether an officer is equipped with the device.

1. When an officer equipped with a BWC activates the device during an encounter; 1) with a civilian occurring inside the person's residence, or 2) with a person reasonably believed to be a victim of a criminal offense, the officer shall verbally notify the person(s) with whom the officer is conversing that the BWC has been activated UNLESS IT IS UNSAFE OR INFEASIBLE TO PROVIDE SUCH NOTIFICATION.
2. Notice When Using BWCs with an Apparent Crime Victim. When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded by the BWC and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recording system prior to discontinuing use of the recording system.
3. Notice When Using BWCs with a Person Seeking to Remain Anonymous. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall notify the person that they are wearing a BWC and, if the person requests that the officer discontinue use of the BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recording system prior to discontinuing use of the recording system.
4. If the officer decides not to provide notification of BWC activation because it is unsafe or infeasible to do so, the officer shall document the reasons for that decision by narrating the same on the BWC recording before the officer stops recording and if the officer was unable to do so due to an emergent situation the officer shall narrate the reason when recording resumes.
5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statements or evidence.

D. If a civilian inquires of an officer whether the officer is equipped with a BWC, or inquires whether the device is activated, the officer shall answer truthfully unless the Camden County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, has expressly authorized the officer to make a covert electronic recording.

1. This directive does not apply to officers while operating in an undercover capacity or while conducting/participating in a station house custodial interrogation electronically recorded in accordance with Rule 3:17.



2. Nothing in this section shall be construed to establish a basis for suppressing a statement or other evidence.

## IX. Activation Requirements

- A. BWCs shall be utilized to record contacts with citizens in the performance of official duties. BWC's shall be activated upon being dispatched to, or initiating a call for service, or as soon as it is safe and practical to do so. Examples of such contacts include, but are not limited to:
  1. The officer has contact with a citizen as a result of a call for service or request for police assistance, including walk-in complaints at Berlin Police HQ. The officer shall activate the BWC as soon as he/she realizes that the interaction will result in the initiation of a case number. The terms "request for assistance" and "call for service" shall mean when an officer is assigned or initiates a case number.
  2. The officer initiates contact that requires the initiation of a case number.
  3. The officer initiates an investigative detention, such as a traffic stop, criminal suspicion stop (Terry Stop), checkpoint, or roadblock stop.
  4. The officer responds to or is dispatched to a call for service.
  5. The officer is conducting a motorist aid or community caretaking check that also requires the officer to initiate a case number.
  6. The officer is interviewing a witness in the course of investigating a criminal offense.
  7. The officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Court Rule 3:17 (electronic recordation of station house interrogation).
  8. The officer is making an arrest.
  9. The officer is conducting a protective frisk for weapons except when conducting such action of a prisoner or subject at BERLIN PD HQ.
  10. The officer is conducting any kind of search (consensual or otherwise) except when conducting such action of a prisoner or subject person at BERLIN PD HQ.
  11. The officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians, and the officer or any other officer on the scene may be required to employ constructive authority or force.
  12. The officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this section based on specific and articulable facts warranting heightened caution that are documented by narration on the recording and/or in any investigation

or incident report.

13. The officer is transporting an arrestee to a police station, county jail, or otherwise place of confinement, or a hospital or other medical care or mental health facility.

14. The officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.

15. The officer is investigating a violation or suspected violation of NJSA 2C:33-15, underage (under 21) possession or consumption of alcohol, marijuana, hashish or cannabis. The BWC shall not be deactivated for any reason until the encounter is complete.

B. The use of BWCs allow for a clearly documented, first hand, and completely objective account of an incident from beginning to end. Therefore, officers shall activate their BWC prior to arriving at a call for service and in the performance of a proactive event as soon as safely possible. This will allow the maximum amount of information regarding the incident to be captured.

C. BWCs shall remain activated for the entire duration of an event/encounter/episode and shall not be deactivated until it is concluded (e.g., the BWC equipped officer has left the scene; all the civilians involved in the encounter have left the scene; the officer has informed the dispatcher or a supervisor that the event has concluded; the event is “closed” on the computer-aided dispatch system, etc.). This includes any subsequent transport of a subject (regardless of custody status). See Section IX – Circumstances When Activation/Use is Subject to Special Conditions/Restrictions for authorized exceptions.

D. When an officer, whether in uniform, is transporting an arrestee to a police station, county jail, or otherwise place of confinement, or a hospital or other medical care or mental health facility, the BWC shall remain activated at all times while the officer is in the presence of the arrestee and until the arrestee is secured in a holding cell or secured to a prisoner bench in the Processing Room, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee.

1. When the arrestee is secured in the Processing Room as noted in Section D above, the officer shall deactivate the camera.

2. When the arrestee is transported to a medical facility, the officer shall deactivate the camera once treatment begins on the patient and resume if/when the arrestee is escorted from the hospital for police transport.

a. If the arrestee engages the officer in dialogue, causes a disturbance, or the officer believes constructive authority or force may be necessary, the BWC shall be immediately reactivated.

3. When transporting a prisoner to the Camden County Jail, the officer shall deactivate the BWC when the officer reaches the doorway threshold of the entrance to the jail while in the sally port.

E. If a civilian request that an officer deactivate a BWC during a contact, the officer has no obligation to stop recording if the recording is pursuant to an investigation, arrest, lawful search, or the circumstances clearly dictate that continued recording is necessary.

1. When a civilian conversing with an officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected, the officer may deactivate the BWC. Such request for deactivation must be self-initiated by the civilian.

2. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when it is, in fact operating.

3. Additionally, if a civilian requests a BWC be deactivated in the course of making an Internal Affairs complaint against an officer or employee of the agency, the officer accepting the complaint shall comply with the request and narrate that a request was made to deactivate the BWC in relation to an Internal Affairs complaint.

4. In this circumstance, the officer shall notify a supervisor of the request and document the action on the Internal Affairs Complaint Form.

5. The officer shall not suggest to the person that the BWC should be deactivated, nor should the officer ask the person whether he or she would prefer that the BWC be deactivated. Rather, the request for the deactivation must be self-initiated by the civilian making the complaint.

6. An officer may mute a BWC, except as noted in subsection (a) below, while participating in a discussion pertaining to criminal investigation strategy and planning, provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian, and further provided that the BWC equipped officer is not actively engaged in the collection of evidence. When an officer mutes a BWC pursuant to this section, the officer shall narrate the circumstances of the muting.

7. Officers shall not mute their BWC while at the scene of a police deadly-force event or the on-scene investigation of an event.

8. Any time a BWC is going to be deactivated or muted pursuant to any of the approved reasons listed above, the officer shall narrate the reason for deactivation or muting before performing the function.

9. Any time a BWC has been deactivated pursuant to any of the approved reasons listed above, upon reactivation or, the officer shall narrate that the recording has resumed.

10. Any time an officer is investigating a violation or suspected violation of NJSA 2C:33-15, underage (under 21) possession or consumption of alcohol, marijuana, hashish or cannabis. The BWC shall not be deactivated for any reason until the encounter is complete.

F. Any officer providing assistance or back up to an officer on a call for service or citizen contact is required to have their BWC activated in accordance with this directive until the assignment is cleared or their assistance is no longer needed.

G. Officers on extra-duty or off duty overtime assignments shall deploy their BWC during their assigned traffic and/or security details. The camera shall be powered on but officers shall activate the BWC in accordance with the procedures set forth in this directive if they are required to undertake official police actions during the course of their assignment as noted in Section IX.

H. When BWC is activated, members are encouraged to provide narration where practical and appropriate in an effort to augment the value of the recording and to provide clarity for the viewer. Officers may also mark significant events while recording and provide details of the marked segments.

I. Officers may, if possible, narrate the circumstances at the start of the encounter audibly so that the recordings on the BWC will be easier to locate if review of the video is necessary at a later time (e.g. an officer arriving at the scene of a serious motor vehicle accident may narrate the recording by stating as the BWC is activated, "Officer Smith arriving at the scene of a serious motor vehicle accident at the corner of State street and Dudley avenue").

J. Officers shall include in the narrative report that BWC footage is available for the incident by typing/writing the letters BWC in all capital letters at the end of the report or by documenting it in sentence form.

K. If a member fails to activate the BWC when required, fails to record the entire event contact, or interrupts the recording, the member shall document in the applicable incident or case report, and notify a supervisor why a recording was not made, was interrupted, or was terminated. If no incident report is required for the case, the officer shall document the reasons in the case disposition notes section when they close out the case.

L. Members shall note in incident and case reports when BWC recordings were made during the incident in question. However, BWC recordings are not a replacement for written reports.

M. BWC recordings shall not be utilized as a replacement for written reports. Officers shall not simply refer to the recording in lieu of submission of a narrative portion of the offense report.

N. Despite an incident being captured by the BWC, the officer shall document in all applicable reports a sufficient summary for the reader of the report to have an understanding of the events that occurred.

O. Clarification – Activation Requirements

1. Officers who are "on assignment" and listed on a call for service shall not activate their BWC solely because they are assigned to a "Case #". Section IX(A)(1-2)

lists that an officer shall activate a BWC when initiating a CFS; however this section does not apply when an officer is “on assignment” for “blanket case numbers” such as CRB Events, SRT Operations, or patrol activities) such as Directed Patrols, Neighborhood Patrols Traffic Action Notices, etc. unless there is contact with a civilian and a trigger under Section IX that would require BWC activation.

P. BWC Powering Down at HQ

1. The BWC shall be powered off at any time when an officer is in the secure area of HQ except when:
  - a. An officer is initially bringing a prisoner into HQ and he/she hasn't yet secured the prisoner in the Processing Room/Squad Room as noted in Section IX(D).
  - b. An officer is testing the BWC or downloading recorded video.
  - c. When the officer is handling an incident at the Berlin Police HQ in accordance with Section IX(A)(1)
  - d. “Secure areas of HQ” shall include: All areas and offices of Police HQ.
  - e. “Secure areas of HQ” are not municipal building hallways, municipal court, and all other areas and offices of the municipal building.

Q. Circumstances When BWC Activation/Use are Subject to Special Conditions or Restrictions

A. Unless an officer is actively investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force, or is investigating a violation or suspected violation of NJSA 2C:33-15, underage (under 21) possession or consumption of alcohol, marijuana, hashish or cannabis, the officer shall not activate a BWC, or shall de-activate a BWC that has been activated, while the officer:

1. Is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC;
2. Is in a patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC; or
3. Is in a place of worship under circumstances where worshippers would be in view of the BWC.

B. In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the officer who recorded the incident on his/her BWC shall complete a memo his/her supervisor who shall forward it via chain of command who shall notify the Camden County Prosecutor or designee shall be notified to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information.

1. The recording shall not be accessed without the permission of the Camden County Prosecutor or designee.
  2. Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.
- C. In order to prevent the recording of events unrelated to the call for service, officers at police headquarters addressing walk-in complaints are authorized to deactivate their BWC when not in the presence of the citizen. Examples include the typing of complaints or other follow-up activities conducted in the Headquarters area. The officer shall narrate on the BWC the reason for the deactivation and immediately reactivate the unit each time contact with the citizen is re-established.
- D. An officer shall not activate a BWC, or shall deactivate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or confidential informant or otherwise would pose risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer (e.g., active shooter, actual use of force, officer in distress, etc.) require that the encounter/incident be recorded or unless an officer is investigating a violation or suspected violation of NJSA 2C:33-15, underage (under 21) possession or consumption of alcohol, marijuana, hashish or cannabis, in which event the officer shall inform his or her supervisor that the image of an undercover officer or confidential informant was recorded.
1. In the event of a planned arrest/search warrant execution where it is expected that an undercover officer or confidential informant would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover), the Camden County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instructions to any BWC-equipped officers participating in the operation on whether to activate their devices.
  2. The BWC shall be activated/reactivated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
- E. In the event that a BWC worn during the execution of tactical operations (e.g., Special Response Team, or SWAT operations, execution of arrest and/or search warrants, etc.) records confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.), the recording shall be tagged in accordance with the procedures set forth in Section XI.
- F. An officer shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless such activation is expressly authorized by the judge.
- G. BWCs shall be deactivated, turned off and removed from DWI Processing Room

booking area by all officer's present while processing a subject for driving while intoxicated as to not inhibit the Alcotest or similar alcohol testing device or machine.

H. An officer may deactivate a BWC when specifically authorized to do so by an Assistant Prosecutor or Deputy Attorney General for good and sufficient cause as determined by the assistant prosecutor or deputy attorney general. When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation indicating the assistant prosecutor or deputy attorney general who authorized the deactivation (e.g., "I am turning off my BWC as per the instruction of Assistant Prosecutor (insert name).").

I. An officer, while at the scene of a police deadly-force event or the on-scene investigation of an event, shall not deactivate the BWC unless instructed to do so by the assistant prosecutor or deputy attorney general supervising the investigation of the deadly-force incident pursuant to Attorney General Law Enforcement Directive No. 2006-5, or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, or deputy general, or designee supervising the investigation.

J. If a BWC is deactivated in accordance with the provisions outlined in this directive and circumstances develop so that an officer is authorized to use force, the BWC shall be reactivated as soon as it is safe and practical to do so.

R. Secure Storage, Retention, Evidentiary Process, and Accessibility of BWC Recordings

A. Contents downloaded from BWCs shall be stored on Evidence.com. All recordings are maintained within the BWC system and are authenticated by an internal audit program with the BWC system. All images and sounds recorded by the BWC are the exclusive property of the Berlin Police Department.

1. Officers shall categorize their videos daily. This is done through evidence.com, AXON View, AXON Capture or AXON Sync programs.

2. Officers shall access Evidence.com at least one time during their tour of regular duty to ensure that their BWC footage has been properly assigned the correct categories for the retention schedule.

3. If when checking evidence.com, officers find that their BWC recordings from their prior tour are not categorized correctly, they shall notify their immediate supervisor to coordinate doing so.

4. Officers shall notify their immediate supervisor of any BWC recording that is subject to special conditions set forth in section X.B so that they can be categorized and uploaded to evidence.com prior to the end of their assigned work shift. Officers may utilize the evidence sync program on their MDT, desk top work station or the BWC docking station. Officers shall verify that the video is uploaded and categorized correctly in evidence.com.

5. Uploaded events are stored on the system by incident. Each incident can be searched by date/time and officer. In addition, events can be searched by supplemental

information keyed in by the officer at the time of upload, such as categories and case number.

B. The Chief of Police shall designate a supervisor to oversee the departments BWC program. The supervisor shall set permissions, authorization levels and tagging/retention categories in the program and coordinate the maintenance and repairs to the BWC units. Only that supervisor shall have access to edit and/or delete video/audio segments. The supervisor shall immediately notify the Chief of Police if the system or footage is compromised or accessed without proper authorization.

C. The retention period and purging guidelines for BWC recordings shall be in accordance with the guidelines set forth by the New Jersey Division of Archive Management. The retention period shall not be less than 180 days and shall be subject to the following additional retention periods:

1. When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period of evidence in a criminal prosecution.
2. When a BWC records an arrest that did not result in an ongoing prosecution, or records a use of force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or the Berlin Police Department.
3. When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

D. BWC recordings retained for evidentiary purposes, which shall include any recording that captures a use of force, shall be safeguarded in the same manner as other forms of evidence as Property and Evidence. As such, these recordings will:

1. Be retained as evidence on Evidence.com and tagged by the requesting member with the case number of the incident under one of the following categories:
  1. Uncategorized - Until Manually Deleted
  2. IA - Until Manually Deleted
  3. Homicide - NEVER
  4. Sexual Assault - NEVER
  5. Arson - NEVER
  6. Fatal MVC - NEVER
  7. Suicide/Sudden Death - NEVER
  8. Arrest - 75 YEARS
  9. Assist Arrest - Other Agency - 75 YEARS
  10. Bribery - 7 YEARS
  11. DUI Arrest - 6 YEARS
  12. Criminal Investigation - 5 YEARS



13. DP Investigation - 3 YEARS
14. EMS Call - 1 YEAR
15. Pursuit/No Arrest - 1 YEAR
16. Warrant Arrest - 1 YEAR
17. Assist Other Agency - 180 DAYS
18. Call For Service - 180 DAYS
19. Missing Person - 180 DAYS
20. MV Stop - 180 DAYS
21. MV Crash - 180 DAYS
22. MV Stop/Search - 180 DAYS
23. Pedestrian Stop - 180 DAYS
24. Training/Test/Error - 180 DAYS
25. SRT - 180 DAYS
26. Protected Normal - 180 DAYS
27. Protected Mandatory - Until Manually Deleted
28. Pending Review - Until Manually Deleted

E. BWC recordings of arrests that did not result in criminal prosecution shall be retained in Evidence.com and categorized by the requesting member with the case number of the incident along with the appropriate retention schedule selection.

F. Once categorized, only personnel authorized by the Chief of Police shall have permissions set in the software to view such recordings.

G. The Berlin Police Department shall ensure that relevant BWC recordings are provided in discovery in a timely fashion. The Police Records Clerk processing discovery requests shall check the case in the RMS for corresponding investigative report(s) for references to the incident being recorded by a BWC.

1. Copies of BWC recordings made for the purpose of complying with the State's discovery obligations shall be provided in a readily available media format approved by the Director of Criminal Justice in consultation with the Administrative Office of the Court.

2. The Berlin Police Department reserves the right to redact video as applicable by law.

S. Provisions to Identify Recordings that Raise Special Privacy or Safety Issues

A. To identify BWC recordings that may raise special privacy or safety issues, officers shall categorize such a recording as a Protected Mandatory or Protected Normal Video when the recording:

1. Captures the image of a victim of a criminal offense;
2. Captures the image of a child;
3. Was made in a residential premises (e.g. a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical

office, a substance abuse or mental health treatment facility, or a place of worship;

4. Captures a conversation with a person whose request to deactivate the BWC was declined;

5. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information (e.g., verbal codes and hand signals used to give directions to officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded;

6. Captures the image of an undercover officer or confidential informant; or

7. Captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information.

B. Evidence.com allows for a recording to have multiple tags. Therefore, a video may be tagged as a “Protected Video” in addition to one of the classifications listed in Section X above. The retention period for a “Protected Video” shall be 180 days, unless it also has a companion tag that calls for a longer retention.

C. A BWC recording tagged pursuant to this section shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Camden County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.

1. Except for when a BWC captures the image of a patient at a substance abuse treatment facility and subject to the requirements of Section XII Public Disclosure of BWC Recordings, the Camden County Prosecutor or Director of the Division of Criminal Justice may authorize the Chief of Police and one or more superior officers or duty positions identified by the Chief of Police, to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to this section.

D. For the purpose of this directive, the Chief of Police shall seek permission from the Camden County Prosecutor for Officers who are involved in an investigation or incident to view BWC recordings tagged pursuant to this section in order to conduct such activities including, but not limited to, logging evidence, reporting and preparation for legal proceedings.

E. For the purpose of this directive, the Chief of Police shall seek permission from the Camden County Prosecutor for the following duty positions to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to this section in order to conduct such activities including, but not limited to, logging evidence, filing discovery requests, administrative reviews, audits for compliance with directives, and internal affairs investigations:

1. Chief of Police;

2. Captains;

3. Lieutenants;
4. Sergeants;
5. Investigations Bureau Personnel;
6. Police Records Discovery Clerk(s).

F. If a disclosure of a BWC recording as part of the State's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the Camden County Prosecutor or designee, or Director of Criminal Justice or designee in cases prosecuted by the Division, shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or Court Rule to protect the information by disclosure, such as by seeking a protective order from the court.

G. Recorded video that is authorized to be released that captures special privacy or safety issues shall be redacted as follows:

1. The reason for viewing will be noted in the "notes" section as "redaction for OPRA request" or "redaction for discovery request".
2. The redaction program creates a duplicate video for the redaction. The original recorded video remains unaltered.
3. The video copy is then video/audio redacted as per the provisions listed in Section XII A and F.

I. Whenever a video is created under the following conditions:

1. Inadvertent, unintentional or accidental activation of BWC which captures video of a private nature not involving police duties (restroom, home, etc.).
  - a. These video recordings shall be tagged as "Training/Test/Error" in Evidence.com.

T. Restrictions on Access to Use and Dissemination of BWC Recordings

A. All access to downloaded BWC files must be specifically authorized by the Chief of Police or his or her designee, and all access is to be audited to ensure that only authorized users are accessing the data for legitimate and authorized purposes. Under no circumstance shall any officer of this department erase, tamper with, reuse, or alter the recording of BWC.

- B. Restriction on Access to BWC Recordings Related to Investigations Conducted Pursuant to AG Directive 2019-4. To ensure the integrity of the investigation of “Law Enforcement Incidents” conducted pursuant to AG Directive 2019-4, and to avoid possible contamination of a witness’s personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this Policy, no civilian or law enforcement witness, including the principals of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the “Independent Investigator,” as that term is defined in AG Directive 2019-4.
- C. Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews. A law enforcement officer shall not review or receive an accounting of a BWC recording that is subject to a minimum three-year retention period pursuant to Sections in this policy prior to creating any required initial reports, statements, and interviews regarding the recorded event. Subject to the provisions of Sections of this Policy, nothing in this paragraph is intended to prevent the officer from considering, reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial reports, statements, and interviews regarding the recorded event
- D. While information culled from the BWC recording may not be considered in creating an initial required report, statement or interview, after the creation of such initial report, statement or interview, in a case not subject to the provisions of Sections of this Policy, the officer may review the BWC recording and, if appropriate, create additional reports or make additional statements or documentation that revise or supplement the initial report statement or interview that incorporate or reflect any information adduced from a review or accounting of the BWC recording.

1. The secure program has an internal audit trail function that documents by user identification number the following:

- a. The date and time of access;
- b. The specific BWC recording(s) that was/were accessed;
- c. The officer or civilian employee who assessed the stored BWC recordings.
- d. the person who approved access, where applicable; and
- e. the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to Section 10.1, and specifying the relevant case/investigation number, where applicable

2. Officers shall type comments in the notes section when reviewing recorded BWC images to document the reason they are viewing the video. The specific terminology for supervisory and administrative reviews is address in XV. The terminology as noted in

this section (XIII), are for report writing and criminal investigation purposes only and not administrative or supervisory reviews.

B. No law enforcement officer or civilian employee of a law enforcement agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section. Access to and use of a BWC recording is permitted only:

1. When relevant to and in furtherance of a criminal investigation or prosecution;
2. When relevant to and in furtherance of an internal affairs investigation;
3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of police misconduct;
4. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
5. To show a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint;
6. To comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
7. To comply with other legal obligations to turn over the recording to a person or entity;
8. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, where the Camden County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular person / entity or the public is warranted because the person's / entity's / public's need for access outweighs the law enforcement interest in maintaining confidentiality;
9. Officers may inform their supervisors of any recordings that may be of value for training purposes.
10. For training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by the persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes. Attempts must be made to obtain consent of officers depicted prior to any editing of depicted individuals.
11. To conduct an audit to ensure compliance with this directive;
12. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the Camden County

Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or

13. Any other specified official purpose where the Camden County Prosecutor or designee, or Director of Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

C. The Assistant Prosecutor or Deputy Attorney General, or his or her designee, overseeing a police use of force investigation pursuant to Attorney General Directive 2006-5 (use of force incident involving death or serious bodily injury to person, or where deadly force is employed with no injury to a person, or where any injury to a person results from the use of a firearm by an officer) may, in the exercise of sound discretion, authorize a civilian or law enforcement witness to be given access or view a BWC recording of the incident under investigation.

1. To ensure the integrity of investigation of police-involved shootings and other use of force incidents and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, no civilian or law enforcement witness, including the principal(s) of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on- scene investigation of the incident, without the express approval of the Assistant Prosecutor, or Deputy Attorney General, or designee.

#### U. Public Disclosure of BWC Recordings

A. Upon receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording, the Chief of Police or his or her designee, within one business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the Camden County Prosecutor. Such notice shall state clearly the deadlines by which a response must be made.

B. Except as otherwise provided in Section XII. B., a BWC recording of an event or encounter that involves an investigation of a criminal offense as defined in Section I, shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless law enforcement agency in consultation with the Camden County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

C. When BWC recordings are reviewed for the Open Public Records Act, or the common law right to know, the Chief of Police or his/designee shall type "OPRA Request" with the name of the requestor and "Redacted" in the audit trail notes section. i.e.; OPRA Request John Doe-Redacted"

D. It shall be the responsibility of the Director of the Division of Criminal Justice or designee, or the Camden County Prosecutor or designee, to determine on a case by case basis whether and when a deadly-force recording will be made publicly available.

E. When practicable, Officers shall be notified that their BWC recording is being released to the public via Open Public Records Act or departmental release to the media.

**V. Supervisory Responsibilities and Review**

A. Supervisory personnel shall ensure that officers under their command who are equipped with BWC devices utilize them in accordance with policy and procedures defined therein.

B. A supervisor shall take protective custody of the BWC of any officer(s) that is involved in a serious incident to safeguard any footage of the event captured on the unit(s). Such incidents include the use of deadly force, the use of force resulting in serious bodily injury or death, motor vehicle crashes involving an officer and serious bodily injury, any event resulting in significant bodily injury to the officer, or any other event in which the supervisor feels that the immediate custody of the unit is necessary to protect any footage.

C. The transfer of custody shall not take place until the entire encounter / event / episode has concluded and the BWC(s) has been deactivated in accordance with the parameters set forth in this directive.

1. The supervisor that takes custody of the unit shall forward it to the Duty Officer or to Internal Affairs Unit Officers and they will issue the officer a spare unit if one is not available.
2. The Internal Affairs Unit Officer shall download and tag any footage captured of the event accordingly.
3. The unit shall only be placed back in service with approval from the Chief of Police or his designee.

D. The Platoon Supervisor and/or his/her supervisory designee or a Bureau Supervisor and/or his/her supervisory designee are responsible for reviewing BWC recorded events in an effort to ensure the equipment is operating properly, to assess officers' performance and adherence to written directives and established professional standards, and to identify other training needs.

1. The reviewing Supervisor may review BWC recordings under the following circumstances:

- a. During the course of accepting an Internal Affairs complaint and the review of any BWC recordings may be helpful in resolving the concerns of the complaint or assisting the supervisor in reviewing the incident.
- b. Supervisors Review. An Officer's immediate Supervisor may review the BWC recording of an officer under his command if he/she feels the review is necessary to assist in managing an investigation or assisting with individual officer training needs.

2. The reviewing Supervisor shall review BWC recordings under the following circumstances:

- a. Whenever an officer has suffered a work related injury.
- b. When reviewing a motor vehicle crash or foot pursuit incident.
- c. Whenever a civilian has suffered an injury as a result of law enforcement action or a civilian has suffered an injury on or in Borough property and it is possible the officers BWC captured a recording of the incident resulting in the injury.
- d. With the exception of a deadly force incident, whenever use of force is used by an officer or officers

3. The reviewing Supervisor shall review BWC recordings under the following circumstances:

a. During the course of the officers' first year of employment:

1. The reviewing Supervisor may review a minimum of 3 videos per month during officers first year of employment when such videos exist. The videos will be determined by reviewing the officer's assigned cases in the records management system.

4. Random Review - The reviewing Supervisor shall review 3 videos per month per officer assigned as BWC unless there are not 3 BWC recordings available to review. Sergeants equipped with a BWC shall be reviewed by their supervisors and Lieutenants/Captains shall be reviewed by their supervisors. The videos will be determined by reviewing the officer's assigned cases in the records management system.

5. Whenever a supervisor reviews a BWC recording relating to this section by utilizing the storage system, the supervisor shall list "Supervisor Review" in the notes field of the audit trail.

A. BWC recordings may be reviewed by personnel assigned by the Chief of Police to conduct Internal Affairs complaints when:

1. BWC recordings may contain information relevant to an Internal Affairs Investigation or the filing of an internal affairs complaint.
2. BWC Recordings shall be reviewed by personnel assigned by the Chief of Police to conduct Internal Affairs investigations or other investigations when:

a. Any BWC recordings that may have information relating to any incident where an officer was injured, suspect or civilian was injured as a result of law enforcement action, or a civilian suffered an injury on or involving Borough property.

b. Any BWC recording of a motor vehicle pursuit.



- c. An incident occurs on Borough property which warrants a review of any available BWC. Such incidents include civilian injuries, equipment failures, etc.
  - d. In accordance with the Berlin Police Pursuit Policy.
  - e. All videos tagged with, "No Case #" prior to deletion as described in section XII.F of this policy.
6. Whenever an Internal Affairs Investigator reviews a BWC recording by utilizing the storage system, the Investigator shall type comments related to the IA complaint in the Audit Trail Notes section.

**VI. Deactivation Standards upon Civilian request/Invest Planning/Pros. Instruction**

- A. De-Activation at the Request of a Civilian Providing Information/Cooperation. Notwithstanding, Sections outlined in this policy, an officer may de-activate a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected. The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (e.g., evidence relevant to a criminal investigation will not be recorded). In deciding whether to de-activate the BWC, the officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.
- B. De-Activation at the Request of a Person Seeking Emergency Medical Assistance. Notwithstanding Sections outlined in this policy, an officer may de-activate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be de-activated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.
- C. Procedures for De-Activation Upon a Civilian's Request. When an officer de-activates a BWC pursuant to Sections in this policy, the following procedures shall be followed: 1) the colloquy between the officer and the civilian concerning the request for de-activation shall be electronically recorded; 2) the officer before de-activating the BWC shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC as per the victim's request."); 3) the officer shall report the circumstances concerning the de-activation to his or her superior as soon as is practicable; and 4) the officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation. (notations (i.e., "tagging") to indicate BWC recordings that raise special privacy or other issues).

*4 Cf. R. 3:17(b)(iv) (explaining that station house custodial interrogations must be electronically recorded unless “a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded”).*

- D. Decision to Decline a Civilian’s De-Activation Request. If an officer declines a request to de-activate a BWC pursuant to Sections outlined in this policy, the reasons for declining the request (e.g., the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be documented and shall be reported to the officer’s superior as soon as it is safe and practicable to do so.
- E. In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision. An officer shall be prohibited from misleading the person making the de-activation request pursuant to Sections in this policy into believing that the BWC has been turned off when in fact it is operating unless the County Prosecutor or designee or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording. Note that pursuant to sections in this policy, an officer may not decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.
- F. De-Activation During Criminal Investigation Strategy/Planning Discussions. Notwithstanding Sections outlined in this policy, and subject to the requirements of Sections in this policy, unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this Section, a BWC-equipped officer may de-activate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian (i.e., under circumstances where a civilian might overhear the strategy discussion), and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation (e.g., “I am now turning off my BWC to discuss investigative strategy with my supervisor.”).
- G. De-Activation on Instruction from Prosecutor. Notwithstanding Sections outlined in this policy, an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general. When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation (e.g., “I am now turning off my BWC as per the instruction of assistant prosecutor

(insert name).”).

- H. Re-activation When Reason for De-Activation No Longer Exists. In any instance where a BWC was de-activated pursuant to sections in this policy, the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exist (e.g., the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (e.g., where the officer proceeds to other investigative activities that are required to be recorded pursuant to this Policy)
- I. Re-Activation When Actual Law Enforcement Force is Authorized. Notwithstanding any other provision of this Policy, in any instance where a BWC was de-activated pursuant to Sections in this policy, or any other provision of this Policy, or de-activated pursuant to any policy, standing operating procedure, directive, or order issued by a department, if the circumstances develop so that an officer is authorized to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.

## **VII. Violations**

If a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this Policy, intentionally interferes with a BWC's ability to accurately capture audio or video recordings, or violates any other provision of this policy, the officer, employee, or agent shall be subject to appropriate disciplinary action, in addition to any judicial consequences outlined in the law.

## **VIII. AXON Respond Livestream**

- A. The AXON Body 3 BWC has the ability livestream video through the evidence.com Respond program. During a livestream, the officer's video, audio and location are able to be watched on the Respond screen.
- B. The use of the livestream function shall never be commonplace and may only be used during critical incidents and with the approval of a supervisor. The officer whose device will be or is being livestreamed, shall when feasible, be advised via radio or in person that the livestream is occurring.