

Portable Audio/Video Recorders

422.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of audio/video recording devices including, "Body Worn Cameras" (BWC), by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held, or integrated into portable/stationary equipment. This policy shall also regulate the use of department issued devices capable of solely audio recording.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes.

422.2 POLICY

The Fountain Valley Police Department sworn officers and select civilian employees will be provided with BWC devices for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

While recordings obtained from BWC provide a perspective of events, it is understood video recordings captured by a BWC (or any other recording device) do not necessarily reflect the experience or state of mind of the individual employee(s) in a given incident. Moreover, the video recording has limitations and may depict events differently than the events recalled by the involved employee. Video has a limited field of view and may not capture events normally seen by the human eye. Moreover, video captures two-dimensional images, which may be different from a person's three-dimensional observations about depth, distance, and positional location. Also, lighting as seen in a video may be different than what is seen by the human eye, and different angles of view may contribute to different perceptions. Accordingly, it is specifically, understood the BWC may capture information that may not have been heard and/or observed by the involved employee.

422.3 MEMBER PRIVACY EXPECTATION

All recordings made pursuant to this policy shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

Exceptions to this policy shall apply in situations where a reasonable expectation of privacy exists. For example: while using restroom facilities, locker/changing rooms, and during conversations pertaining to private confidential information. This is not an all inclusive list and the reasonableness of an employee's privacy expectations shall be evaluated on a case-by-case basis.

In the event a Department member inadvertently creates a recording capturing an incident deemed to warrant an exception to this policy, a review of the footage and potential redaction shall be completed by an approved Department administrator

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422.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a properly charged BWC issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable.

Uniformed members shall wear the recorder in a conspicuous manner and in a position minimizing recording obstructions. The BWC shall be affixed to the uniformed member's outermost garment upon the "chest area" in a forward facing manner. The chest area is defined as above the waist and below the collarbone.

Non-uniformed operators may carry a BWC at any time the member believes that such a device may assist in their official duties as an employee of the City of Fountain Valley. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should utilize the same BWC positioning criteria as uniformed members.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

422.5 SUPERVISOR RESPONSIBILITIES

Supervisors may conduct reviews of recorded media in furtherance of a criminal investigation, administrative necessity, or audit.

Supervisors are designated to ensure the proper downloading of audio/video devices in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident.

422.6 AUDIO RECORDERS

Some members of the Fountain Valley Police Department will be issued devices capable of solely audio recording. These devices may be used to capture events when video recording is not possible or required, such as telephone conversations.

422.7 ACTIVATION OF THE PORTABLE RECORDER

All contacts by uniformed operators regarding enforcement, investigation, and calls for service shall be recorded. The BWC should be activated as soon as practical upon being dispatched to a call for service, unless when dispatched that employee is in a position of privacy outlined in Member Privacy Expectations, then it shall be activated as soon as practical thereafter. This policy is not intended to describe every possible situation in which the portable recorder should be used. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder shall be activated by uniformed operators in any of the following situations:

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- (a) All enforcement contacts including field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify Dispatch/Communications Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

BWC shall be set to buffer 30 seconds prior to activation. Buffering captures video recording content only. Buffering does not capture audio recording content.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

If a member responds to an incident from his/her residence, or other location that reasonably requires anonymity, that member may reasonably delay activating the BWC to prevent disclosure of the location.

Simply being in the presence of, or speaking with the public, does not automatically necessitate the activation of the BWC. Activities with the public, such as a citizen asking for directions, speaking to a citizen while on a meal break, and similar situations do not require the activation of the BWC. However, routine encounters can rapidly evolve into a situation that requires the activation of the BWC under this policy. Once a contact escalates into a situation that requires activation of the BWC, the BWC shall be activated as soon as practicable.

422.7.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department may surreptitiously record any conversation during the course of a lawful criminal investigation (Penal Code 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

422.7.2 CESSATION OF RECORDING OR MUTING

Once activated, the BWC should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident such as discussing, developing, or

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planning strategies or tactics. At no time shall a recording be terminated while effecting an arrest, conducting a search or other enforcement action, or if the situation is confrontational or adversarial.

When a member ceases a recording for any of the listed exceptions, the intent to cease the recording should be verbally indicated prior to cessation the recording.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

The BWC has a mute function. This enables the operator to disable the audio while still video recording. Circumstances when the BWC recording may be muted include, but are not limited to, employees discussing, developing, or planning strategies or tactics. When an employee believes it is necessary to mute a recording, the employee should verbally indicate the intent and reason on the recording prior to muting the recording. The mute function shall be disengaged once the need dissipates or contact is re-established with a member of the public.

422.7.3 EXPLOSIVES AND SWAT EXCEPTIONS

Many portable recorders, including body worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device is likely present.

Officers assigned to the Special Weapons and Tactics (SWAT) Team are permitted to wear assigned BWC while conducting SWAT operations.

422.8 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making unauthorized personal copies of recordings.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on duty without the express consent of the Chief of Police. Any member who uses a personally owned recorder for related activities shall comply with the provisions of this policy, including retention and release requirements, and should notify the on-duty supervisor of such use as soon as reasonably practicable.

Recordings shall not be used by any member for the purpose of embarrassment, harassment, or ridicule.

Agency personnel are explicitly prohibited from accessing recorded data for personal use and from uploading recorded data onto public and social media Internet Web sites. Sanctions may be brought against personnel for violation of this section PC 832.018(b)(8).

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422.8.1 PROHIBITED USE OF BIOMETRIC SURVEILLANCE SYSTEM

The installation, activation, or use of biometric surveillance systems, including facial recognition, in connection with portable recorders is prohibited (Penal Code § 832.19).

422.9 UPLOADING, IDENTIFICATION AND PRESERVATION OF RECORDINGS

The Fountain Valley Police Department BWC system has enabled the "Autotagging" feature which will assist in the identification and labeling of recordings. Autotagging works with integration of the BWC and CAD systems. BWC videos are uploaded to a website, Evidence.com, from dock charger stations. It is the BWC operator's responsibility to verify their calls in CAD are properly dispositioned in order for autotagging to work efficiently. It is the operator's responsibility to verify that their recordings are properly labeled in Evidence.com. To assist with identifying and preserving data and recordings, members shall upload and tag all recordings prior to the end of each shift. Employees who respond directly to the field from home, such as Traffic Officers and K9 Officers, may dock their BWC less frequently, but never less than one time per week. Supervisors may request a BWC operator to dock and upload their BWC at any time in order to expedite the transfer of a recording(s) for investigative or administrative purposes.

Department members shall not edit, alter, erase, duplicate, copy, share, records or otherwise distribute BWC images or recordings without the approval of the Chief of Police or designee. Using secondary devices, such as a cellular phone, to record or capture BWC data or files is prohibited.

422.10 REVIEW OF RECORDED MEDIA FILES

Members are permitted to view their own recordings, as well as recordings by other members, to ensure accuracy for report writing, court testimony, and when providing official statements. Members shall not retain personal copies of recordings. Members should not write less detailed reports due to a reliance on BWC recordings.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's

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privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

422.11 RETENTION OF RECORDINGS

Recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

422.11.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.