

DRAFT

Body Worn Camera (BWC) Policy

335.1 PURPOSE

The primary purpose of using a Body Worn Camera (BWC) is to capture evidence arising from peace officer-citizen encounters. This policy reflects a balance between the desire to establish exacting and detailed requirements and the reality that deputies must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain, and rapidly evolving. This policy also sets forth rules governing access to and retention of BWC data.

335.2 POLICY

It is the policy of the Rice County Sheriff's Office (Office) to authorize and require the use of Office-issued BWC's as set forth below, and to administer access to BWC data as provided by law.

335.3 SCOPE

This policy governs the use of BWC's in the course of official duties. It does not apply to the use of squad-based recording systems (Minn. Stat. §13.825, subd. 1(b)). The Sheriff or the Sheriff's designee may supersede or modify this policy by providing specific instructions for the use of BWC's to individual deputies assigned to certain events or classes of events, including but not limited to political rallies and demonstrations, and to deputies assigned to specialized details.

The Sheriff or the Sheriff's designee may provide specific instructions for BWC use to deputies that are Brady-Giglio impaired. The Sheriff or the Sheriff's designee also may provide specific instructions for BWC use to deputies assigned to conduct daily courthouse functions such as providing security during court proceedings.

335.4 DEFINITIONS

Body Worn Camera (BWC) means a device worn by a deputy that is capable of both video and audio recording of the deputy's activities and interactions with others and collecting digital multimedia evidence as part of an investigation.

BWC Administrator means designated Office personnel certified or trained in the operational use of BWC's, data storage and retrieval methods, and procedures that assign, track, and maintain BWC equipment. BWC Administrator(s) may also oversee needed repairs or replacement through the BWC vendor, control rights and access, and act as a liaison with the vendor. BWC Administrator(s) may also be responsible for the training of deputies on the BWC operation.

MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act,

Minn. Stat. Ch. 13.01 et seq.

Records Retention Schedule refers to the General Records Retention Schedule provided in Minnesota Statutes and Records Division Policy.

Law Enforcement Related Information means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

Evidentiary Value means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer. A “related civil or administrative proceeding” can and may include an Implied Consent hearing or forfeiture actions arising from an arrest or prosecution.

General Citizen Contact means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event did not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in the community.

Adversarial means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward another, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

Unintentionally Recorded Footage is a BWC recording that results from a deputy’s inadvertence or neglect in operating the deputy’s BWC provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in locker rooms, restrooms, and recordings made while deputies were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

Official Duties, for purposes of this policy, means that the deputy is on duty and performing authorized law enforcement services on behalf of the Rice County Sheriff’s Office.

335.5 USE AND DOCUMENTATION

Deputies may use only agency issued BWC’s in the performance of their official duties for the agency or when otherwise performing authorized law enforcement services as an employee of the Rice County Sheriff’s Office (MINN. STAT. §13.825, subd. 6)).

Deputies who have been issued BWC's shall operate and use them consistent with this policy and the manufacturer's instructions. Deputies shall test their issued BWC's at the beginning of each shift to make sure the devices are functioning properly. The procedure for testing the BWC shall be as found within the manufacturer's instructions. Deputies noting a malfunction during the testing or at any other time shall report the malfunction to the deputy's supervisor and shall document the report in writing (Minn. Stat. § 626.8473, subd. 3 (b) (3)). "In Writing" can and may include an email to the BWC Administrator, a note to the BWC Administrator, or other writing that the agency maintains to show compliance with the above listed statute.

Deputies should wear their issued BWC's at the location on their body and in the manner specified in training.

Licensed deputies that are not assigned to the Patrol Division and their daily work clothing is non-uniformed, need not have the BWC on their person during their normal working shift. The BWC must be readily accessible to the member in case the need arises to take immediate enforcement action. Additionally, the member is still required under this policy to use the BWC for the purposes of capturing law enforcement related information, information that contains evidentiary value, and/ or when engaged in an adversarial encounter.

Deputies whose normal work assignment requires them to be uniformed will have the BWC in the "on-duty" function while conducting their work assignment unless private, personal affairs such as using the restroom, discussing your work performance with a supervisor, or taking a break at the deputy's residence.

Deputies must document BWC use and non-use as follows:

Whenever a deputy makes a recording, the existence of the recording shall be documented in the deputy's written narrative report or incident notes on the CAD.

Whenever a deputy fails to record an activity that is required to be recorded under this policy or captures only part of the activity, the deputy must document the circumstances and reasons for not recording in a written narrative report or incident notes in the Aegis Mobile software. Deputies shall inform their immediate supervisor of the failure to record. Supervisors shall inform the BWC Administrators of the failure to record and review the narrative report or incident notes. Supervisors shall initiate any corrective action deemed necessary as soon as practicable. Corrective action may be initiated and imposed consistently with the current collective bargaining agreement and the Minnesota Peace Officer Discipline Procedure Act (Minn. Stat. §626.89)

The Rice County Sheriff's Office will maintain the following records and documents

relating to BWC use, which are classified as public data (Minn. Stat. §13.825, subd. 5):

The total number of BWC's owned by the Sheriff's Office.

A daily record of the total number of BWC's actually deployed and used by deputies in their assigned patrol areas.

The total amount of recorded BWC data collected and maintained. This policy, together with the Records Retention Schedule.

335.6 GENERAL GUIDELINES FOR RECORDING

Deputies shall activate their BWC when anticipating that they will be involved in, become involved in, or witness other deputies of this agency involved in a pursuit, Terry stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value. (Minn. Stat. §626.8473, subd. 3(b) (4)). However, deputies need not activate their BWC when it would be unsafe, impossible, or impractical to do so. Such instances of not recording when otherwise required must be documented as specified above in the section entitled, "Use and Documentation". (Minn. Stat. §626.8473, subd. 3(b) (4)).

Deputies have the discretion to record or not to record general citizen contacts. (Minn. Stat. §626.8473, subd. 3(b) (4)).

Deputies have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded (Minn. Stat. §626.8473, subd. 3(b) (4)).

Nothing in this policy or guidelines prevents a deputy from informing an individual that the encounter is being recorded. Deputies may find it useful to inform an individual that the encounter is being recorded in order to have a civilizing effect during an incident.

Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The deputy having charge of a scene may direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. Deputies shall state the reasons for ceasing the recording on camera before deactivating their BWC's.

If circumstances change to those circumstances as outlined within this policy which require recording, deputies shall reactivate their BWC's. (Minn. Stat. §626.8473, subd. 3(b) (6)).

Deputies shall not intentionally block the BWC audio or visual recording functionality to

defeat the purpose of this policy. (Minn. Stat. §626.8473, subd. (3)(b)(6)).

Intentional interference with the recording functionality of the BWC without sufficient justification to do so may constitute grounds for corrective action.

This policy does allow for momentary blocking of the BWC in the following circumstances: undressed bystander within a private residence, images of a mobile computer screen displaying private or confidential data, audio of deputies conferring about an arrest decision or tactical situation.

Notwithstanding any other provision in this policy, deputies shall not use their BWC's to record other agency personnel during non-law enforcement related activities, such as during pre-and post-shift briefings, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation. (Minn. Stat. §626.8473, subd. 3(b) (4)).

335.7 SPECIAL GUIDELINES FOR RECORDING

Deputies may, in the exercise of sound discretion, determine (Minn. Stat. §626.8473, subd. 3(b) (4)):

To use their BWC's to record any police-citizen encounter if there is a reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.

To use their BWC's to take recorded statements from persons believed to be victims of and witnesses to a crime, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.

In addition,

Deputies need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value.

Deputies shall activate their BWC's when dealing with individuals believed to be experiencing a mental health crisis or event. BWC's shall be activated as necessary to document any use of force and the basis for that use of force and any other information having evidentiary value.

Deputies that have made an arrest of a person based upon their active criminal investigation shall use their BWC and squad-based audio-visual recording systems to record the transport and physical transfer of the person in their custody. Deputies shall turn off the BWC, after narrating why they are stopping the recording, when the person is no longer in their custody and/or the active criminal

investigation had concluded.

Deputies transporting detainees to another facility where they are not actively investigating an incident involving the person in custody, shall activate their BWC when placing the person into handcuffs, leg irons, or other detainee control devices. Once the person is secured in the deputy's squad-car, the deputy may turn off the BWC and record the transport of the person via their squad based audio-visual recording systems. Another facility can include, but is not limited to, hospitals, detoxification, mental health, treatment, juvenile detention, and adult detention facilities. If the final destination of the transport does not have visible cameras at the physical transfer point, deputies shall use their BWC to record the physical transfer of the person.

Deputies assigned to the guarding of a detainee or other person, in a facility listed above, need not activate their BWC unless the deputy anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use of force incident.

Deputies assigned to the Transport/Courthouse/Civil Division of the Rice County Sheriff's Office, shall activate their BWC when placing the person into handcuffs, leg irons, or other detainee control devices. Deputies assigned to the Transport/Courthouse/Civil Division need not continue the recording of the transport unless the deputy anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use of force incident.

Deputies assigned to the Transport/Courthouse/Civil Division of the Rice County Sheriff's Office shall be mindful of discovery issues when transporting detainees who are currently involved in criminal proceedings. Transport Deputies shall advise the detainees that the detainees are not to discuss their current or pending criminal proceedings while in transport. Transport deputies are not required to activate their BWC's unless they foresee an adversarial encounter, use of force incident, or witness criminal activity during the transport.

In circumstances where the donning of (ANSI) Class II high-visibility vests, to increase the visibility of office members who may be exposed to hazards presented by passing traffic, maneuvering or operating vehicles, machinery and equipment (23 CFR 655.601; Minn. R. 5205.0030). Although intended primarily for use while performing traffic-related assignments, high-visibility vests should be worn at any time increased visibility would improve the safety or efficiency of the member, the deputy shall don the high-visibility vests knowing that their BWC video will be diminished or not at all present.

In circumstances where the donning of Personal Protective Equipment (PPE),

such as responding to a call for service where a communicable disease is likely present, the deputy shall don the PPE knowing that their BWC video will be diminished or not at all present.

If possible, the deputy should articulate to the BWC and audience, that the donning of the PPE or high-visibility vest will cover or interfere with BWC video. As an example, a deputy could state, 'The high-visibility vest or PPE will be covering the BWC'. Deputies shall document in a written narrative report (if a report is deemed necessary) and/or in the notes of the incident in the CAD software that their issued high-visibility vest or PPE covered or diminished the BWC video.

335.8 DOWNLOADING AND LABELING DATA

Each deputy using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her BWC to Portable Recording System Server at the end of his or her shift. However, if the deputy is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the deputy's BWC and assume responsibility for transferring the data from it. Deputies shall not go on scheduled days off without first transferring the BWC data.

The Rice County Sheriff's Office has invested in Computer Aided Dispatch-Records Management System (CAD-RMS) Integration in order to greatly reduce the time investment of labeling each BWC video (data) that is uploaded to the Portable Recording System Server. Each deputy is responsible for ensuring that all BWC videos (data) is correctly labeled after being uploaded. If changes to BWC video (data) labeling is required, the deputy shall make the needed changes. If a deputy wishes to retain a BWC video (data) longer than its scheduled retention period, that deputy should contact their respective supervisor or a BWC Administrator.

335.9 ADMINISTERING ACCESS TO BWC DATA

Data Subjects. Under Minnesota law, the following are considered data subjects for the purposes of administering access to BWC data:

Any person or entity whose image or voice is documented in the data (Minn. Stat. §13.825, subd. 4(a)).

The deputy who collected the data. (Minn. Stat. §13.825, subd. 4(a)).

Any other deputy or peace officer whose voice or image is documented in the data, regardless of whether that deputy or peace officer is or can be identified in the recording. (Minn. Stat. §13.825, subd. 4(a)).

BWC data is presumptively private. BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities. (Minn. Stat. §13.825, subd. 2(a)).

However, some BWC data is classified as confidential (see below) and; Some BWC data is classified as public (see below).

335.10 CONFIDENTIAL DATA

BWC data that is collected or created as part of an active criminal investigation is confidential while the investigation remains active. (Minn. Stat. §13.82, subd. 7) This classification takes precedence over the “private” classification listed above and the “public” data classification listed below (Minn. Stat. §13.82, subd. (2)(a)(3)).

335.11 PUBLIC DATA

The following BWC data is public:

Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous. (Minn. Stat. §13.825, subd. 2(a) (1)).

Data that documents the use of force by a peace officer that results in substantial bodily harm. (Minn. Stat. §13.825, subd. 2(a) (1). “Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes the fracture of any bodily member. (Minn. Stat. §609.02, subd. 7).

Data that a data subject requests to be made accessible to the public, is subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover deputies or other undercover peace officers must also be redacted. (Minn. Stat. §13.825, subd. 2(a) (2); Minn. Stat. §13.82, subd. 17(a)).

Data that documents the final disposition of a disciplinary action against a public employee. (Minn. Stat. §13.825, subd. 2(a) (4); Minn. Stat. §13.43, subd. 2(5)).

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. (Minn. Stat. §13.825, subd. 2(a) (5) For instance, data that reveals protected identities under Minn. Stat. §13.82, subd. 17 should not be released even if it would otherwise fit into one of the public categories listed above.

335.12 ACCESS TO BWC DATA BY NON-EMPLOYEES

Deputies shall refer members of the media or public seeking access to BWC data to the Records Division, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

An individual shall be allowed to review recorded BWC data about that person and other data subjects in the recording. (Minn. Stat. §13.825, subd. 4(b)).

Except when,
The data was collected or created, and is being maintained as part of an ongoing, active criminal investigation, (Minn. Stat. §13.82, subd. 7).

And,

Access shall not be granted to portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as the identities of informants, certain witnesses, juvenile offenders, and victims of criminal sexual conduct or sex trafficking. (Minn. Stat. §13.82, subd. 17).

An individual data subject shall be provided with a copy of the recording upon request but subject to the following guidelines on redaction before the copy is provided: (Minn. Stat. §13.825, subd. 4(b)).

Data on other individuals in the recording that do not consent to the release must be redacted.

Data that would identify undercover deputies or other undercover peace officers must be redacted.

Data on other deputies or other peace officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

335.13 ACCESS BY PEACE OFFICERS AND LAW ENFORCEMENT EMPLOYEES

No employee may have access to the agency's BWC data except for legitimate law enforcement or data administration purposes. (Minn. Stat. §13.825, subd. 7(b)).

Therefore, all members of the RCSO and administrative personnel that show a legitimate, business need to access data, that is not public, is hereby granted by the Sheriff and/or their designee. This includes the use of data for report writing, investigative purposes, administrative needs, redaction for release, etc. It should be noted

this list is not all inclusive.

In addition,

Deputies may access and view stored BWC data only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Deputies may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

Agency personnel shall document their reasons for accessing stored BWC data at the time of each access according to the manufacturer's instructions. Agency personnel are prohibited from accessing BWC data for non-business reasons. Agency personnel also are prohibited from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.

Agency personnel seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

Deputies involved in an incident under investigation by an outside law enforcement agency may review BWC data at the discretion of the investigating agency.

335.14 OTHER AUTHORIZED DISCLOSERS OF DATA

Deputies may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. §13.82, subd. 15, as may be amended from time to time. Deputies should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying the video.

In addition,

BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of disclosure. (Minn. Stat. §13.825, subd. 8 (a)).

BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

BWC data that are classified as confidential or protected nonpublic pursuant to Minn. Stat. §13.82, subd. 7 or as private or nonpublic under Minn. Stat. §13.825

may be accessible to any person, agency, or the public if the agency determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest. (Minn. Stat. §13.82, subd. 15).

335.15 DATA SAFETY SAFEGUARDS

Personally owned devices, including but not limited to, computers and mobile devices, shall not be programmed or used to access or view BWC data.

Access to BWC data from County owned or personally owned and approved devices shall be managed according to established Sheriff's Office and Rice County ITS policies.

Deputies shall not intentionally edit, alter, or delete any BWC recording unless otherwise expressly authorized by the Sheriff and the Sheriff's designee.

As required by Minn. Stat. §13.825, subd. 9, as may be amended from time to time, the Rice County Sheriff's Office shall obtain an independent biennial audit of its BWC program.

335.16 AGENCY USE OF DATA

Supervisors shall ensure that deputies follow established procedures for the use and maintenance of BWC equipment and the completion of BWC documentation. This includes periodic review of BWC recordings to ensure proper procedures are being followed. (Minn. Stat. §626.8473, subd. 3(b) (8)).

Supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about deputy misconduct or performance.

Nothing in this policy limits or prohibits the use of the BWC data as evidence of misconduct or as a basis for discipline.

In incidents that the BWC capture(s) showing the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous or incidents that document the use of force by a peace officer that results in substantial bodily harm, the BWC, itself, should be taken by the first responding supervisor and treated as any other item of evidence. Deputies should contact their respective supervisor to discuss retaining and using BWC footage for training purposes. Deputy objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field Training Deputies may utilize BWC data with trainees for the purpose of providing coaching, mentoring, and feedback on the trainee's performance.

335.17 DATA RETENTION (Minn. Stat. §626.8473, subd. 3(b) (1))

All BWC data shall be retained for a minimum period of 90 days. (Minn. Stat. §13.825,

subd. 3).

Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year. (Minn. Stat. §13.825, subd. 3(b) (1) (i)).

Certain kinds of BWC data must be retained for a minimum period of 7 years:

Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a narrative report or supervisory review. (Minn. Stat. §13.825, subd. 3 (b) (1) (ii))

Data documenting circumstances that have given rise to a formal complaint against a deputy. (Minn. Stat. §13.825, subd. 3 (b) (2)).

Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule or Records Division Policy. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.

Subject to below, all other BWC footage that is classified as non-evidentiary becomes classified as non-evidentiary, or is not maintained for training, shall be destroyed after 90 days. (Minn. Stat. §13.825, subd. 3 (a)).

The subject of the data may request an extension of the record retention as allowed by statute. (Minn. Stat. §13.825, subd. 3 (a)).

The Rice County Sheriff's Office shall maintain an inventory of BWC data having evidentiary value. The inventory shall be maintained in accordance with the manufacturer's instructions or at the direction of the BWC Administrator.

335.18 COMPLIANCE

Supervisors and the BWC Administrator shall perform internal audits and reviews to ensure compliance with this policy. The internal audits and reviews shall be at a frequency deemed appropriate by the Supervisors and the BWC Administrator. Minn. Stat. §626.8473, subd. 3(b) (8).

The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. §13.09, Minn. Stat. §626.8473, subd. (b)(8).

Pursuant to Minn. Stat. §626.8473, subd. 3(b) (8), employee discipline standards for

unauthorized access to data include the following:

(a) Any person who willfully violates the provisions of Minnesota Statute chapter 13 or any rules adopted under Minnesota Statute chapter 13 or whose conduct constitutes the knowing unauthorized acquisition of not public data, as defined in section 13.055, subdivision 1, is guilty of a misdemeanor.

(b) Willful violation of this chapter, including any action subject to a criminal penalty under paragraph (a), by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.