

## **CHAPTER 6**

### **BODY WORN CAMERAS**

This chapter outlines the policies and procedures governing the Office of Investigations (OI) body worn camera (BWC) program. This policy does not govern the use of surreptitious recording devices in undercover operations.

#### **6.1 BODY WORN CAMERAS**

BWCs provide an additional layer of safety for special agents (SAs) and can improve public trust, transparency, and accountability. BWCs allow for accurate documentation of contacts between SAs and the public, which can help resolve complaints made against an SA.

BWC recordings can be used as evidence for investigative and prosecutorial purposes in the event an SA is threatened or assaulted during a contact or if there is a use of force or critical incident. It should be noted that recordings may depict things that the SA did not see or hear, and/or the SA may have heard or seen things that were not recorded by the BWC. While the recording depicts visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently than how the camera records them.

#### **6.2 JOINT OPERATIONS**

When conducting enforcement operations with another law enforcement agency, AmeriCorps OIG SAs will comply with OI's BWC policy.

The AmeriCorps OIG case agent and team leader for the enforcement operation shall discuss the use of BWCs with the other agency's case agent and team leader prior to the enforcement operation. The case agent will document these discussions in the case management system.

The case agent shall keep the Assistant United States Attorney (AUSA) informed of any discrepancies in the use of BWCs prior to the start of the enforcement operation.

The SAC shall notify the Assistant Inspector General for Investigations (AIGI) or Deputy Assistant Inspector General for Investigations (DAIGI) if there is an unresolved conflict with the other law enforcement agency regarding AmeriCorps OIG's intent to deploy BWCs during an enforcement operation when AmeriCorps OIG is the lead agency.

#### **6.3 USE OF BODY WORN CAMERAS**

SAs shall wear and activate BWCs for the purposes of recording their actions during the tactical portion of planned enforcement operations where the use of force may reasonably be anticipated, such as a search warrant or arrest. All SAs participating in the enforcement operation will be equipped with BWCs. If a working BWC is not

available to a SA at the time of the enforcement operation, the case agent shall obtain prior AIGI approval for the SA to participate in the operation. BWCs may be used for SA safety in non-enforcement activities, such as the service of subpoenas in high crime areas, if approved by the AIGI.

Case agents shall inform the AUSA of the AmeriCorps OIG policy on BWC prior to any enforcement operations.

The BWC should be worn on the outside of the ballistic vest or outermost garment to ensure the best field of view. SAs should ensure the BWC is not obstructed by clothing, lanyards, accessories, etc.

#### **6.4 ACTIVATION OF CAMERAS**

Upon the direction of the AmeriCorps OIG team leader, BWCs shall be activated by all participating AmeriCorps OIG agents upon approaching a subject or premises during an enforcement operation. In addition, if, while wearing a BWC pursuant to this policy, an AmeriCorps OIG SA encounters an individual who is uncooperative, violent, assaultive, or discussing criminal conduct that in the agent's judgement, consistent with his or her training and experience, could lead to use of physical or deadly force or be relevant to the investigation, the SA should activate and record with his or her BWC as soon as it is safe and practical to do so.

SAs shall record the activities until they are concluded or, if executing a search warrant, until the location to be searched is secured and all subjects have been searched. To ensure the integrity of the recording, the BWC must remain activated until the activity is completed unless the contact moves into an area restricted by this policy.

SAs may also use BWCs to record investigative activity beyond AmeriCorps OIG pre-planned arrests or searches if circumstances develop on-scene that could adversely impact ongoing investigations, such as the destruction of evidence or obtaining of evidence that cannot be preserved by other means.

#### **6.5 DEACTIVATION OF CAMERAS**

SAs will deactivate their BWCs at the end of activities, upon the direction of the AmeriCorps OIG team leader for the enforcement operation or activity. Prior to deactivating the BWC, each SA wearing a BWC will verbally state that the BWC is being deactivated and then state the date, time, and reason for the BWC's deactivation.

When executing a search warrant, the team leader can direct the team to deactivate the BWC once the location to be searched has been secured and all subjects have been searched. The AmeriCorps OIG team leader will use his or her discretion to determine whether team members participating as outside cover during the execution of the warrant should continue to record.

Exceptions:

- A. If the enforcement operation is of such a duration that the BWC should be deactivated to conserve power and/or storage, the AmeriCorps OIG team leader

can authorize deactivation after verbally stating that the BWC is being deactivated and then stating the date, time, and reason for the BWC's deactivation.

- B. An SA may deactivate his or her BWC at any time the SA needs to obtain emergency medical attention or needs to attend to a personal matter that takes him or her away from a planned operation, such as using the restroom. If possible, the SA wearing a BWC should verbally state that the BWC is being deactivated and then state the date, time, and reason for the BWC's deactivation.

## **6.6 RECORDING DURING AN OPERATION**

Whenever possible, SAs should inform individuals at the beginning of the contact that they are being recorded (e.g., "Sir/Ma'am, I am advising you that our interaction is being recorded.") If the BWC must be deactivated during an operation, the SA should verbally state that the BWC is being deactivated and state the date, time, and reason for the deactivation.

In locations where individuals have a reasonable expectation of privacy, such as a residence, and only during non-enforcement activities, individuals may decline to be recorded unless the recording is being made pursuant to an arrest or search of the residence or individuals. In such scenarios, SAs will state that the BWC is being deactivated at the request of the person requesting privacy and state the date and time.

## **6.7 DOCUMENTING THE USE OF CAMERAS**

Upon the conclusion of the enforcement operation or activity (e.g., hazardous interview, surveillance, etc.), the case agent will document in an Agent's Investigative Report that a recording or recordings were made and provide a brief summary of the activity containing the information required below.

The summary must include the following information regarding the use of AmeriCorps OIG issued BWCs and may be part of the overall memorandum documenting the law enforcement activity:

- The names of the participating AmeriCorps OIG team members wearing BWCs in the operation;
- If any BWCs malfunctioned or were inoperable during the activity or operation, if "yes" provide a brief explanation;
- If any BWCs were not activated prior to, or during, the activity or operation, if "yes" provide a brief explanation; and
- If any BWC recording was interrupted or terminated during the activity or operation, if "yes" provide a brief explanation.

## **6.8 FAILURE TO ACTIVATE CAMERAS**

If an SA fails to activate the BWC, fails to record the entire activity, or fails to follow this policy, the SA shall notify the SAC and AIGI in writing of the reason for the failure as soon as practical, but no later than 24 hours after the conclusion of the activity.

An intentional failure to activate the BWC or the unauthorized termination of a BWC recording may result in disciplinary action.

## **6.8 DOWNLOAD AND STORAGE OF CAMERA RECORDINGS**

Upon conclusion of the enforcement operation or activity, the AmeriCorps OIG team leader will collect all BWCs and return them to the AIGI or his/her designee and the AIGI or his/her designee will download all BWC recordings as soon as practicable, no more than five business days following the operation or activity or return from travel associated with the operation or activity. Each file shall contain the date and time of the recording, BWC identifier, and assigned SA. An audit log is automatically created and maintained on the history of every recording.

If the BWC recording is deemed evidence, the AIGI or his/her designee will create an evidence disc containing the recording from the enforcement operation and provide it to the case agent for entry into evidence.

If needed, a working copy of the BWC recording may be provided to the case agent.

## **6.9 RECORDS RETENTION**

BWC recordings will be securely stored on dedicated AmeriCorps OIG servers. All recordings are agency records and should be disposed of according to AmeriCorps OIG's records retention policy.

For BWC recordings deemed as evidence, the SA will adhere to the OI evidence policy.

## **6.10 RESTRICTIONS ON CAMERA USE**

SAs equipped with BWCs should be mindful of locations where recording may be considered insensitive, inappropriate, or prohibited by privacy policies. BWCs shall only be used in conjunction with official law enforcement duties and not personal activities.

BWCs shall not be used to record:

- Undercover operations;
- Communications with other SAs without the written permission of the AIGI or DAIGI; and
- Locations where individuals have a reasonable expectation of privacy such as a restroom or locker room without the permission of the AIGI or DAIGI.

## **6.11 CAMERA EQUIPMENT**

SAs shall only use BWCs issued by OI. SAs should exercise reasonable care when using BWCs to ensure their proper functioning. SAs should ensure that the BWC is fully charged before its deployment.

SAs will notify the AIGI of any equipment malfunctions as soon as possible.

All SAs will report the loss or theft of a BWC to their immediate supervisor as soon as practical but within 24 hours of the discovery of the loss or theft.

## **6.12 RECORDINGS**

The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of AmeriCorps OIG. SAs shall not edit, alter, erase, duplicate, copy, share, or otherwise release, disclose or distribute in any manner, any BWC recording, without prior written authorization from the AIGI.

All requests for disclosure of information should be coordinated through the AmeriCorps OIG Office of Counsel. (See "Freedom of Information Act Requests," below)

Unauthorized accessing, copying, or releasing files is strictly prohibited.

## **6.13 ACCESS AND REVIEW OF CAMERA RECORDINGS**

All accesses will be reviewed to ensure that only authorized users are accessing the data for legitimate and authorized purposes. Any requests to review BWC recordings must be made in writing to the AIGI and must state the reason(s) for the request to review the recording.

An SA shall be entitled to access the audio and video data derived from the BWC equipment issued to him/her to defend against allegations of misconduct or poor performance during a recorded enforcement activity. SAs will not share audio and video data files without an official purpose.

SAs who are the subject of an investigation may review their own BWC recording prior to providing any statements to, or being interviewed by, any internal or external investigative entity. The SA may review the recording with his/her attorney or other representative.

Following a use of force or critical incident, the involved SA shall be given the opportunity to view his or her own BWC recording prior to giving a formal statement. SAs who are witnesses to a use of force or critical incident shall also be allowed to view their own BWC recording prior to giving a formal statement.

BWC recordings may be used to provide information for training purposes with the permission of all AmeriCorps OIG SAs captured by the audio or video.

Supervisors may not review BWC recordings solely for evaluating the SA's performance during the operation or for conducting performance appraisals.

## 6.14 FREEDOM OF INFORMATION ACT REQUESTS

Recordings from BWCs may be subject to release pursuant to the Freedom of Information Act (FOIA). Any request for records made pursuant to FOIA received by an AmeriCorps OIG employee should be forwarded to AmeriCorps OIG's Office of Counsel, which is responsible for processing and responding to the request.

Any requests for the release of BWC recordings will be forwarded to the AIGI or his/her designee. The AIGI or his/her designee will, at a minimum, review all BWC footage that is proposed for release and specify which parts of the footage may be released and which parts need to be redacted, along with the relevant justifications, and provide a complete copy of the BWC recording to the Office of Counsel with the suggested redactions and justifications in writing. The Office of Counsel will review the suggested redactions and justifications and provide its comments and/or concurrence. Upon receiving concurrence from the Office of Counsel, the AIGI or his/her designee will use the appropriate redaction software to redact the BWC recording and provide the redacted recording to the Office of Counsel for response to the FOIA request.

- A. Exclusions: The U.S. Congress has provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as "exclusions." The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings.

The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed.

The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified.

Records falling within a FOIA exclusion are not subject to the requirements of the FOIA.

- B. Exemptions: The U.S. Congress established certain categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called "exemptions" from disclosures. However, even if an exemption applies, agencies may use their discretion to release information when there is no foreseeable harm in doing so and disclosure is not otherwise prohibited by law.

There are nine categories of exempt information. Exemption 7 of FOIA, often referred to as the law enforcement exemption, is the most common exemption used by law enforcement.

## **6.15 PRIVACY ACT REFERRALS**

The Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act or Act), provides safeguards for individuals against an invasion of personal privacy through the misuse of records by Federal agencies. The Act balances the individual's personal privacy interest against the Government's need to maintain information about individuals.

BWC recordings are investigative records protected by the Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act), and maintained in the OIG's Privacy Act System of Records for [Investigative Files](#). If another agency or entity requests AmeriCorps OIG BWC recordings for official purposes, the AIGI will consult with the AmeriCorps OIG Office of Counsel to determine whether disclosure is permitted under the Privacy Act.

Privacy Act referrals of BWC recordings to another law enforcement agency must be reviewed by the AmeriCorps OIG Office of Counsel with the exception of referrals to the Department of Justice or referrals of information concerning a threat of imminent danger, death, or physical injury.

SAs will follow the procedures for Privacy Act referrals as detailed in Chapter 700, Section 70. All external requests for AmeriCorps OIG BWC recordings will be forwarded to the AmeriCorps OIG Office of Counsel, which is responsible for considering requests to publicly release AmeriCorps OIG BWC recordings and for determining legal permissibility under the Privacy Act for any other non-public disclosures to external entities. After AmeriCorps OIG's Office of Counsel determines there is legal authority to refer body camera recordings to another law enforcement agency, the Privacy Act referral will be forwarded to the AIGI or his/her designee to download the BWC recording to a compact disc. The AIGI or his/her designee will, at a minimum, review all video footage that is proposed for release and specify which parts of the video that may be released and which parts that need to be redacted, along with the relevant justifications in writing. The AIGI or his/her designee will use the appropriate redaction software to redact the video.

## **6.16 EXPEDITED PUBLIC RELEASE OF RECORDINGS**

Following incidents involving serious bodily injury or deaths in custody, the AIGI, in consultation with Counsel to the IG, shall endeavor to expedite public release of body worn camera recordings consistent with applicable law, including the Privacy Act of 1974, and shall consider the need to promote transparency and accountability, the duty to protect the privacy rights of persons depicted in the footage, and any need to protect ongoing law enforcement operations.

## **6.17 TREATMENT OF BWC RECORDINGS AND REQUESTS FOR RELEASE**

In all circumstances, BWC recordings will be treated as law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with enforcement proceedings. BWC recordings will also be treated as potential evidence in a federal investigation, subject to applicable federal laws, rules, and policies

concerning any such disclosure. They are, therefore, deemed privileged absent appropriate redaction prior to disclosure.

Nothing in this policy will be deemed to provide a right of public access to BWC recordings. OI BWC recordings are controlled by, and the property of, OIG and will be retained and managed by OI.

## **6.18 TRAINING**

Supervisory personnel shall ensure that all SAs receive the required training on the use of BWCs in accordance with OI policy and procedures. Training will be provided at periodic intervals to ensure the SA's continued proficiency in the use of BWCs.

To ensure operational readiness and proficiency in the use of BWCs, the AIGI or his/her designee will keep abreast of significant changes in technological capabilities by attending training and maintaining liaison and/or working with other Federal law enforcement agencies that use the technology on a regular basis.