

NUTLEY POLICE DEPARTMENT				
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SUBJECT: BODY WORN CAMERAS				
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BY THE ORDER OF: Chief Thomas J. Strumolo		11/03/2022 10/16/2024	All 5	
SUPERSEDES ORDER #: All previous orders and policies				

PURPOSE The purpose of this directive is to maintain procedures for the use, management, storage, and release of audio-visual media recorded by body worn video/audio cameras (BWC). BWC is intended to enhance officer safety, produce effective materials for training and to produce an additional method of collecting evidence to prosecute those who violate the law. This directive is intended to provide officers with instructions on when and how to use BWCs so that officers may reliably record their contacts with the public in accordance with the law.

A further purpose is to establish standards concerning how this department explains its BWC directive to the public, when officers are required to activate their BWCs, when officers are permitted to turn off BWCs during an ongoing police-civilian encounter, and when and for what purposes officers are authorized to access, view, copy, or disseminate stored BWC recordings.

POLICY It is the policy of the Nutley Police Department to utilize body worn video/audio cameras (BWC) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

All personnel (sworn and civilian) shall use (including accessing recordings) this equipment consistent with manufacturer's guidelines, applicable laws and statutes, this directive, and those policies or guidelines issued by the New Jersey Attorney General and the Essex County Prosecutor's Office. Failure to use this technology in accordance with this directive, applicable laws and statutes, and those policies or guidelines issued by the New Jersey Attorney General and the Essex County Prosecutor's Office can result in disciplinary sanctions. Any willful or repetitive violations of this directive shall be promptly reported to the Essex County Prosecutor's Office.

PROCEDURES

I. DEFINITIONS

A. For purposes of this directive, the following terms are defined:

1. Activate – means to actuate (put into operation) the recording mode/function of a BWC.
2. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation, or interaction with the public for the specific purpose of informing the public that the communication or conversation is being recorded.
3. Body worn audio/video recorder (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term 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 Court Rule R. 3:17 (electronic recording of station house custodial interrogations).
4. Consent – Consent to record shall be considered obtained when the recording party (officer) has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that the communication or conversation is being recorded. This announcement itself to the other parties must also be recorded.
5. Constructive authority – involves the use of an officer's authority to exert control over a subject (see this department's directive *on Use of Force*), except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest or directed against any person if the officer has unholstered a firearm or CED.
6. Deactivate – means to shut off the recording mode of a BWC.
7. Equipped with a BWC – means that an officer is wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from the agency.
8. Force – has the same meanings as defined in this department's directive *on Use of Force*.
9. Investigation of a criminal offense – means any law enforcement activity pertaining to the investigation of an indictable crime, disorderly persons offense, petty disorderly offense, or driving while intoxicated 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 that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.

10. Law enforcement agency, agency, or department – means a law enforcement agency operating under the authority of the laws of the State of New Jersey.
11. Law enforcement officer or officer – means a sworn officer employed by a law enforcement agency.
12. Proactive enforcement team – includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime and/or any other targeted enforcement. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing these activities (e.g., street crime unit, crime suppression unit, etc.). The nature of their work may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain.
13. School – means a public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.
14. Serious bodily injury – means bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. for purposes of this directive, serious bodily injury and serious bodily harm have the same meaning.
15. Significant bodily injury – means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.
16. Stand-by mode - When the BWC is powered on and buffering but, is not in Event Mode (recording).
17. Subject of the video footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.
18. Substantive report – means a report that includes a detailed accounting of the incident. It does not include a report which simply refers to other reports or to the existence of BWC or other camera recordings.
19. Tactical team – is a group of officers who are specially selected, trained, and equipped to handle high-risk incidents including, but not limited to, those involving snipers, barricaded persons, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership.
20. Tagging – is the electronic labeling of a video/audio file captured by a BWC.

21. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day care centers, and day treatment centers.

B. Equipment:

1. Only Watch Guard Vista V300 body worn camera units are authorized for use by members of this department. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Essex County Prosecutor's Office, or the New Jersey Division of Criminal Justice.
2. The BWC equipment and all data, images, video, audio, and metadata captured, recorded, or otherwise produced by the equipment is the sole intellectual property of the Nutley Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this directive without the expressed written consent of the Chief of Police
3. All references to BWC includes the Watch Guard Vista V300 camera wireless device, which houses a video camera, audio/video recording hardware, and a port for charging the device and downloading events.
4. Recordings are exported using the evidence library program.

C. Public notice:

1. The Chief of Police or his/her designee shall publish a statement that it deploys BWCs on the Nutley Police Departments website and provide an image of one.

D. Training:

1. An officer shall not wear a BWC unless he/she:
 - a. Has been authorized to do so by the Chief of Police; and
 - b. Has received training on the proper care and use of the device.
 - c. The proper use of a BWC is considered an essential job function.
2. The Chief of Police shall designate one or more training officers and shall establish a training program to ensure that officers equipped with BWCs as well as officers and civilian employees who access or handle BWC recordings are familiar with the provisions of this directive.
3. All officers who are assigned BWCs must complete the agency provided training program to ensure proper use and operations. Officers will complete training and complete the Watch Guard Vista Camera online training. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration, performance, and to incorporate changes, updates, or other revisions in policies and equipment.

E. Operation:

1. BWC equipment is the responsibility of individual officers and shall be used with reasonable care to ensure proper functioning. Equipment malfunctions shall be immediately brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be procured.
2. Officers wearing a jacket or other outer garment shall not cover or obstruct the view of their BWC.
3. Patrol officers shall wear and use BWCs during their tour of duty as a component of the uniform of the day.
 - a. Detectives, administrative positions, and internal affairs investigators shall wear and use BWCs consistent with the requirements and restrictions in this directive while engaged in field duties, pre-planned search and arrest warrant executions, etc.
 - b. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint, or other similar related functions. NOTE: officers are not required to have BWCs remain in continuous operation when officers are not in the presence of a complaint/victim.
 - c. Officers shall wear and use a BWC consistent with the requirements and restrictions in this directive when:
 - 1) On aggressive driving, DWI interdiction assignments, or other proactive enforcement team.
 - 2) When assigned to front desk assignments and interacting with the public on a law enforcement matter.
 - 3) When assigned to or assisting any tactical team in the field.
 - 4) When assigned to duties at demonstrations or potential civil disturbances.
 - 5) Assigned to court security function subject to the restrictions in section II this directive.
4. Officers/detectives on loan to any outside agency, tactical team, proactive enforcement team, or task force shall use the agency issued BWC consistent with this policy, including restrictions.
 - a. Any guidelines issued by the outside agency or task force which conflict with this policy shall supersede this policy as agreed upon in the *Task Force Agreement*.
 - b. Officers/detectives on loan shall upload these recordings as soon as reasonably practicable.
5. When not in use, BWCs shall be stored in their charging cradles when not in use.

F. Inspections and malfunctions:

1. Officers are responsible for determining that their assigned BWC is fully functional and that its battery is adequately charged at the start of his/her duty shift and before going to their detail.
2. If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field.
3. If the BWC malfunctions while out in the field, officers shall report such malfunction upon its discovery to his/her supervisor as soon as it is safe and practicable to do so.
4. When a malfunction or breakage occurs to a BWC unit or any of its mounting brackets, officers should advise their supervisor as soon as it is safe and possible to do so and request communications to create a *BWC Malfunction* CAD entry.
 - a. This will include all malfunctions, including dead battery issues. If the officer is currently on a call when a malfunction occurs, he/she shall also request communications to time stamp the current call documenting the malfunction.
 - b. The officer shall complete the narrative section of the *BWC Malfunction* CAD entry, documenting the issue with his/her camera. After completion, it shall be forwarded to the support services commander or his/her designee for review.

G. Violations:

1. Any willful or repetitive violations of this directive shall be reported promptly through the chain of command to the Chief of Police.
2. When necessary, the Chief of Police shall report willful and repeated violations to the Essex County Prosecutor's Office.
3. The Essex County Prosecutor is authorized to take such actions as are reasonable and necessary to ensure compliance and to prevent future violations.

II. INCIDENTS TO RECORD

- A. When assigned to an officer for duty, the BWC will remain in standby mode ready to be activated at any time. When an officer activates the recording mode / function, the device will record from the moment the record start / stop button is pressed. Activation should occur before arriving at the scene, when feasible.
- B. Except when otherwise restricted in this directive, officers shall video and audio record all law enforcement activity including any interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:

1. Anytime a CED or handgun is drawn from its holster.
2. During all calls for service (involving those to which the officer is dispatched or volunteers for such a call).
3. Prior to civilian engagement and/or immediately upon observing circumstances supporting constitutional justification regarding self-initiated events.
4. Conducting motor vehicle stops from the time of the stop until the stop is concluded, to include conducting field sobriety tests.
5. Aiding or backing up an officer on a call for service, on a motor vehicle stop, or with a civilian contact.
6. Any call for service related to a violation or suspected violation of possessing or consuming alcohol, marijuana, hashish, or cannabis item.
7. During motor vehicle and/or foot pursuits.
8. During stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, extra duty assignments at ABC establishments where alcohol is consumed (ABC establishments, festivals, etc.) when police-civilian contact initiated.
9. Investigation of crash scenes, including interviews on the scene.
10. Investigation of crime scenes except for crime scene processing.
11. Interviewing a witness while investigating a criminal offense.
12. Investigating criminal violations (not to include undercover investigations or related surveillance activities).
13. Conducting domestic violence investigations.
14. Investigating an arson for witness and/or suspect identification.
15. Custodial interrogation of a suspect unless the interrogation is being recorded in accordance with *Court Rule 3:17 (Electronic Recordation of Station House Interrogations)*.
16. Out-of-court identifications (i.e., show ups, lineups).
17. Investigative detentions or officer-initiated pedestrian stops.
18. Conducting warrantless searches (all types, including protective frisks, consent, etc., but not strip or body cavity searches).
19. Motor vehicle assistance calls.
20. Conducting arrests.
21. Drug recognition expert evaluations.

22. Emotionally disturbed person investigations / encounters.
 23. Pre-planned search warrant and arrest warrant service.
 24. During arrestee/prisoner transports to police station, county jail or other place of confinement, as well as hospitals or other medical care facilities and mental health facilities.
 25. Crowd control, unruly crowds, strikes, picket lines, demonstrations or incidents requiring activation of the all-hazards or emergency operations plan.
 26. When an officer uses force or constructive authority, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution (must be documented by narration on the recording and/or in any investigation report).
 27. During police response to any type of civil disorder in circumstances where 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.
 28. Conducting welfare checks of residents and motorists (motorist aid) / community caretaking function.
 29. An officer reasonably believes that any other officer on the scene has undertaken, or is engaged, in any of the foregoing police actions/activities.
- C. Officers assigned to court security shall wear BWCs. Officers shall activate their BWCs when taking a law enforcement action including, but not limited to:
1. Any use of force, including constructive authority.
 2. Arrests.
 3. Warrantless searches (all types, including frisks).
 4. Dealing with unruly persons.
 5. When requested or ordered by the sitting municipal court judge.
 6. In any situation not listed above that he/she feels is necessary if it does not violate the specific requirements of when not to activate the BWC listed in this directive.
- D. Officers assigned to Council meeting security shall wear BWCs. Officers shall activate their BWCs when taking a law enforcement action including, but not limited to:
1. Any use of force, including constructive authority.
 2. Arrests.

3. Warrantless searches (all types, including frisks).
 4. Dealing with unruly persons.
 5. When requested by the Council President.
 6. In any situation not listed above that he/she feels is necessary if it does not violate the specific requirements of when not to activate the BWC listed in this directive.
- E. **NOTE:** At no time is an officer expected to jeopardize his/her safety or the safety of another person to immediately activate his/her BWC into event mode. Any BWC not immediately activated into event mode due to the safety of an officer or another person being presently jeopardized shall be placed into event mode unless impracticable.
- F. Notwithstanding any other provision of this directive, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that police deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC before arriving at the scene, unless impracticable.
- G. Notwithstanding any other provision of this directive, an officer while at the scene of a police deadly-force event, pursuit resulting in a death, in-custody death, or the on-scene investigation of such events shall not deactivate his/her 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 2019-4*. The assistant prosecutor, deputy attorney general, or his/her designee supervising the investigation may provide such instruction telephonically.
1. Officers can deactivate their BWCs once they leave the scene of the incident.
 2. BWCs do not need to remain activated while officers are receiving medical evaluation, medical treatment, or have returned to headquarters.
 3. Once officers deactivate their BWCs in these instances, they shall surrender their BWCs to a supervisor, who shall submit them as evidence in accordance with this agency's directive on *Evidence and Property*.
- H. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible.
1. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the investigation report of the incident and/or by narrating the reasons on the BWC recording.
 2. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.

- I. Prior to entering a private residence or place of abode (e.g., hotel/motel rooms, boarding houses, etc.), officers shall notify the occupant that the occupant is being recorded and, if the occupant requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force.
- J. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC.
- K. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.
- L. BWC shall remain activated for the entire duration of a civilian contact required in this section until the officer has departed the scene and the officer has notified communications that the event is completed, and the incident is closed in CAD.
 - 1. Unless impracticable, BWCs should be activated immediately upon receiving a call for service requiring activation.
 - 2. When a BWC is activated to transport an arrestee/prisoner, it shall remain activated at all times while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in the processing room or a cell, 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.
- M. A BWC shall be activated only while in performance of official police duties and for the purpose of recording incidents, investigations, and police-civilian encounters involving those law enforcement activities specified in this directive.
 - 1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWC.
 - 2. BWC shall be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:
 - a. Encounters with undercover officers or confidential informants.
 - b. Strip and body cavity searches.
 - c. When on break or otherwise engaged in personal activities.
 - d. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
 - e. When engaged in police union business.

- f. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction, except internal affairs interviews.
 - g. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section II.A of this directive.
 - h. While discussing criminal investigation strategies.
 - i. When investigating or searching for potential explosive or incendiary devices (e.g., electrostatic interference might trigger explosive devices).
 - 3. Officers are not required to wear and use a BWC:
 - a. When engaged in hostage negotiations.
 - b. When processing crime scenes.
 - c. When conducting searches of cellphones, tablets, computers, or other electronic devices pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure.
 - d. When conducting searches of cellphones, tablets, computers, or other electronic devices that are suspected to contain images of child sexual exploitation.
 - 4. BWCs shall not be used surreptitiously.
 - 5. BWCs shall not be used to gather intelligence information based on 1st Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public, except in accordance with any applicable guidelines or directives promulgated by the New Jersey Attorney General.
 - 6. This department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identify, gender expression, transgender status, sexual orientation, religion, economic status, age, culture, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWC.
 - 7. Accidental and inadvertent activations that occur outside the scope of an officer's performance of official duties shall be immediately reported to a supervisor.
- N. 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 Essex County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the officer to make a covert electronic recording.

1. Officers may deactivate 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 (e.g., prior to providing such information, the person indicates that he/she will only provide such information if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded).
 - a. Officers shall not suggest to the person that the BWC should be deactivated; nor shall the officer ask the person whether he or she would prefer that the BWC be deactivated. Rather, the request for deactivation must be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
 - b. In deciding whether to deactivate the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation, yet is not critical, to require recording.
2. Officers may deactivate 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 deactivated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance. However, in situations when an officer reasonably believes that the officer or another person is likely to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.
3. When an officer deactivates a BWC:
 - a. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded.
 - b. The officer before deactivating the BWC shall narrate the circumstances of the deactivation (e.g., "*...I am now turning off my BWC as per the victim's request.*").
 - c. The officer shall report the circumstances concerning the deactivation to his/her supervisor as soon as is practicable.
 - d. The officer shall document the circumstances of the deactivation in any investigation report concerning the incident under investigation, including the time of activation and/or deactivation.
4. If an officer declines a request to deactivate a BWC, 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 memorialized on the recording and documented and shall be reported to his/her supervisor as soon as it is safe and practicable to do so.

- a. If the officer declines a deactivation request, the officer immediately shall inform the person making the request of that decision.
 - b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating unless the Essex County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, expressly has authorized covert recording.
5. Officers may deactivate/mute 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 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 deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation (e.g., *"...I am now turning off my BWC to discuss investigative strategy with my supervisor"*).
6. In any instance when a BWC was deactivated/muted pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWC.
7. Officers shall not activate a BWC, and 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 a 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 police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event the officer shall inform his/her supervisor that the image of an undercover officer or confidential informant was recorded. The BWC shall be activated/reactivated as soon as it is safe and practicable to do so when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
8. BWC shall be deactivated or removed while in the ALCOTEST area when the ALCOTEST device is being used. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. If this provision requires deactivation of a BWC, the officer shall narrate the reasons for deactivation (e.g., *"...I am deactivating the BWC because the suspect is about to take a breath test"*), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.

- O. Officers shall ensure that arrest reports, incident reports, investigation reports, operation reports, etc. indicate whether the incident or investigative activity described in the report was electronically recorded by a BWC. At the bottom of the narrative section, these reports shall indicate whether BWC video footage is available (e.g., “*BWC footage is available for this case*”).
- P. Officers shall tag their recordings following completion of the incident being recorded, but no later than the end of their shift. Choose the most serious offense/incident when one incident turns into something else unless it is an arrest under that specific category. (Example: a motor vehicle stop turns into a warrant arrest; the ARREST label should be chosen).
- Q. The following incidents shall be tagged as ‘CONFIDENTIAL’. If an officer inadvertently forgets to tag the event as ‘CONFIDENTIAL’ after the completion of the recording, he/she must bring this to the attention of their immediate supervisor so that the supervisor can properly tag the recording as ‘CONFIDENTIAL’ during the uploading procedures.
 - 1. Captured a law enforcement incident, as defined by *New Jersey Attorney General Directive 2019-4*:
 - a. Any use of force by a law enforcement officer resulting in death or serious bodily injury.
 - b. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
 - c. The death of any civilian during an encounter with a law enforcement officer.
 - d. The death of any civilian while in the custody of law enforcement.
 - 2. Captures the image of a victim of a criminal offense.
 - 3. Captures the image of a juvenile.
 - 4. Captures a conversation with a person whose request to deactivate the BWC was declined.
 - 5. Were made in a residence (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.
 - 6. 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 direction 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.
 - 7. Captures the image of an undercover officer or confidential informant.

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

III. SUPERVISORY RESPONSIBILITY

- A. Supervisors shall:
 1. Ensure that all officers follow procedures for proper use of BWCs as outlined in this directive; and
 2. Ensure that the BWC equipment is operated in accordance with this directive; and
 3. Ensure that requests for repairs and replacement of damaged or non-functioning equipment is documented and forwarded to the support services commander; and
 4. Identify material or incidents that may be appropriate for training.
- B. Supervisors shall encourage and assist officers in using BWC recordings as a training aid.
- C. Supervisors shall conduct random reviews of the BWC recordings of their squad members of at least one recording per subordinate per calendar month to assist in the following:
 1. Review of officer safety techniques on car stops/incidents.
 2. Periodic assessment of officers' performance.
 3. Determination if the BWC equipment is being used in accordance with departmental policies.
 4. Identify training needs.
- D. Such reviews shall be documented on a *Supervisory Review of Digital Video/Audio Recordings Form*. The *Supervisory Review of Digital Video/Audio Recordings Forms* shall be forwarded to the patrol commander.
- E. Supervisors must understand that minor infractions (not criminal in nature) discovered while reviewing the recorded material should be viewed as training opportunities and not as routine disciplinary actions.
 1. Such minor infractions should be logged as an early warning record with the corrective action noted.
 2. Should the behavior or action become habitual after being informally addressed the appropriate disciplinary or corrective action shall be taken.

IV. RECORDS RETENTION AND REVIEW

- A. All BWC recordings shall be securely stored on a secure server. The server is password protected and only accessible by the Chief of Police or his/her designee.
- B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.
- C. The Watch Guard software complies with all provisions of Section 9.1 of *Law Enforcement Directive 2021-5*. This software will:
 - 1. Ensure that all recordings are uploaded to as secure data storage system in a timely fashion.
 - 2. Prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system.
 - 3. Prevent unauthorized access to stored BWC recordings.
 - 4. Document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted, and
 - 5. Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.
- D. Viewing of BWC recordings is strictly limited to sworn officers of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, the BWC supervisory officer, or consistent with a provision set forth in this directive.
- E. Under no circumstances can an incident that was recorded on a BWC be re-recorded onto another form of electronic recording device (e.g., cell phone, video camera, digital voice recorder, flash card, SD, card, etc.) except in compliance with this directive.
- F. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers shall not instruct another to alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this general order or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a body worn camera's ability to accurately capture audio or video recordings:
 - 1. The officer, employee, or agent shall be subject to appropriate disciplinary action; and
 - 2. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and

3. There shall be a rebuttable presumption that evidence supporting a plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.
 4. Any recordings from a BWC recorded in contravention of this directive or any other applicable law shall be immediately brought to the attention of the command staff and immediately destroyed by the command staff following consultation and approval by the Essex County Prosecutor or Director of the Office of Public Integrity and Accountability. Such recordings shall not be admissible as evidence in any criminal, civil, or administrative proceeding, except as evidence in any proceeding related to the unauthorized use of a BWC.
- G. Recordings are considered investigatory records of this police department and shall be maintained and disposed of in accordance with law, New Jersey Attorney General policies, and New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules, as applicable.
1. Contents downloaded from BWCs will be stored on Evidence.com or other designated storage device(s).
 2. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of at least 180 days.
 3. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
 4. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency.
 5. BWC recordings shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.
 6. BWC recordings shall be retained for not less than three years if requested by:
 - a. The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
 - b. The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
 - c. Any immediate supervisor of an officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or

- d. Any officer, if the BWC recording is being retained solely and exclusively for police training purposes; or
 - e. Any member of the public who is a subject of the BWC recording; or
 - f. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
 - g. A deceased subject's next of kin or legally authorized designee.
 - h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee (above subsections IV.G.6 (e)(f)(g)) shall be permitted to review the body worn camera recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
- 7. Recordings maintained for these purposes can only be erased or destroyed in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
- 8. When a BWC records an incident that is the subject of an administrative internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation, any resulting administrative action and required retention.
- H. The Chief of Police shall designate those individuals authorized to locate and retrieve all recordings associated with a specific incident/event, investigation, case, or criminal charge.
- I. A BWC recording of an event or encounter that involves an investigation of a criminal offense 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 the Chief of Police in consultation with the Essex County Prosecutor or his/her 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.
- J. No law enforcement officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose. Access to, use of, and receiving an account of a stored 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 police misconduct or to determine the existence of a pattern or practice of possible misconduct.

4. To assist the officer whose BWC made the recording in preparing his/her own substantive police report, providing a statement, or submitting to an interview.
 - a. Except:
 - 1) The incident involves the use of force by the officer, when the officer knows or should know that the use of force resulted in significant or serious bodily injury or death; or
 - 2) The incident involved the discharge of a firearm or any use of deadly force by the officer (see this agency's directive on *Use of Force*); or
 - 3) The incident involved the death of a person while in law enforcement custody; or
 - 4) The incident involved the death of a person during an encounter with a law enforcement officer; or
 - 5) An incident the officer knows or has been advised is or will be the subject of an internal affairs or civilian complaint relating to the officer's use of force, bias, or dishonesty.
 - b. Whenever an officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the officer shall acknowledge that prior review or receipt of an accounting of the BWC recording either verbally or in writing within each such report, statement, or interview.
 - 1) The officer shall document each BWC recording that was reviewed and the date of the review.
 - 2) If the officer received an accounting of a BWC recording, the officer shall document the name of each person who provided an accounting of the BWC recording, the date of the accounting, and the specific BWC recording for which an accounting was provided.
 - c. Officers shall only be permitted to review or receive an accounting of such BWC recordings once the investigating entity concludes that (a) the officer has in fact completed the specified incident memorialization and (b) the officer's review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation.
 - 1) In cases subject to *Attorney General Directive 2019-4*, the independent investigator is the investigating entity.
 - 2) In all other cases, the Chief of Police or his/her designee is the investigating entity.

- 3) The appropriate investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.
5. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.
6. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint. Only the internal affairs supervisor or his/her designee can show such a recording to a civilian.
7. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:
 - a. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.
 - b. Only those portions of the recording pertinent to the request shall be forwarded.
 - c. This agency reserves the right to redact video and audio as applicable by law.
 - 1) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.
 - 2) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
 - d. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.
8. To comply with any other legal obligation to turn over the recording to a person or entity.
9. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes.
 - a. Note: consent is not required from Nutley police officers appearing in the recording.
 - b. BWC recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

10. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, where the Essex County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that 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.
 11. To conduct an audit to ensure compliance with this policy.
 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 Essex County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.
 13. Any other specified official purpose where the Essex County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording
- K. Open public record requests. Only the following body worn camera recordings shall be exempt from public inspection:
1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection IV.G.5 of this directive if the subject of the BWC recording making the complaint requests the body worn camera recording not be made available to the public.
 2. BWC recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection IV.G.6 of this directive.
 3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection IV.G.6(a)(b)(c)(d) of this directive.
 4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection IV.G.6(e)(f)(g) if an officer, parent, or legal guardian, or next of kin or designee requests the body worn camera recording not be made available to the public.
- L. The Chief of Police or his/her designee shall notify the Essex County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with it. Such notice shall clearly state the deadline by which a response must be made.
- M. Approval for access to tagged CONFIDENTIAL BWC recordings:
1. BWC recordings tagged as CONFIDENTIAL shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Essex County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.

2. The Essex 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 to view, copy, disseminate, or otherwise use BWC recordings tagged as CONFIDENTIAL.
- N. If 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 Essex County Prosecutor or his/her designee 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 from disclosure, such as by seeking a protective order from the court.
- O. The independent investigator or his/her designee overseeing an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4*, may in the exercise of sound discretion authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation.
- P. The Watch Guard Evidence Library software maintains a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this directive. Minimally, the record keeping system shall document the following information:
1. The date and time of access.
 2. The specific recording(s) that was/were accessed.
 3. The officer or civilian employee who accessed the stored recording.
 4. The person who approved access, where applicable.
 5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable. These reasons for access shall be documented in a CAD entry.
- Q. When officers access any BWC recordings, in addition to satisfying the requirements of IV.J(4)b, they shall document the access by creating a CAD entry and ensure that the comments field includes all information listed in subsection IV.P (above).
1. BWC Access Civilian Review.
 2. BWC Access County Prosecutor Request.
 3. BWC Access Criminal Investigation.
 4. BWC Access Discovery Obligation.
 5. BWC Access Internal Affairs.

6. BWC Access Intelligence Purposes.
 7. BWC Access Maintenance/Service.
 8. BWC Access Other Legal Obligation.
 9. BWC Access Officer Audit.
 10. BWC Access Officer Review for Report.
 11. BWC Access Policy Compliance.
 12. BWC Access Prosecution/Court.
 13. BWC Access Release – Non LE Entity.
 14. BWC Access Supervisory Review.
 15. BWC Access Training.
- R. Officers are reminded that all recordings are discoverable evidence. Inappropriate profanity, offensive actions or gestures, gratuitous observations, improper usage, and horseplay are prohibited.
- S. Requests to view or copy videos by attorneys, other police agencies, a party appearing on the video and possibly the media (under limited circumstances) will require the permission of the Chief of Police or his/her designee. The viewing can then be scheduled with the evidence custodian. All videos released outside the Nutley Police Department shall be clearly labeled with this agency's logo. Recordings will be released by duplicating the case file copy.