

# CHARLOTTESVILLE POLICE DEPARTMENT



Note: This directive is for internal use only and does not enlarge an officer’s liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Charlottesville Police Department and then only in a non-judicial administrative setting.

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| Type of Directive: GENERAL ORDER                      | Number: 112-18               |
| <b>Mobile Recording Systems</b>                       | Date: October 9, 2019        |
| VLEPSC Number: OPR 01.11                              | Manual Number: 541.10        |
|   | Effective Date: Oct. 9, 2019 |
| Authorization: Chief R.M. Brackney <i>Rm Brackney</i> | Review Date: As Needed       |

## I. POLICY

It is the policy of the Charlottesville Police Department that officers shall use and operate body worn cameras (BWC) and In-Car Mobile Video Cameras (MVR) consistent with this General Order (“Policy”).

## II. PURPOSE

The purpose of this Policy is to enhance confidence in law enforcement operations, by making use of audio and video equipment to accurately record law enforcement activities and to capture evidence for investigations and court proceedings. Use of BWC and MVR may assist in reducing the number of complaints and lawsuits against the Charlottesville Police Department and its officers. This Policy also sets forth guidelines for the management, storage, release, and retrieval of recordings from use of BWC and MVR.

This policy does not govern the use of covert recording devices used in undercover operations, or other recording devices used for or in connection with criminal investigations.

## III. DEFINITIONS

Body Worn Camera (BWC): A video and audio recording device(s) worn “on the body” of a police officer

In-Car Mobile Video Recorder (MVR): A video and audio recording device(s) that is physically mounted inside a law enforcement vehicle.

Law Enforcement Activity: For the purpose of this General Order, the phrase means actions taken by a law enforcement officer, involving in-person engagement with any member(s) of the public, including, without limitation: consensual stops and encounters; investigative stops and searches; responses to calls-for-service; responses to emergency

incidents; crowd control; traffic control and enforcement; response to a crime committed in an officer's presence; pursuit of a suspect; arrests; etc.

The following activities are EXCLUDED from the definition of Law Enforcement Activity, and from the coverage of this General Order: performance by an officer of duties of employment *other than* law enforcement activities (for example, report-writing at a desk within the Department; conversations between officers which take place within a Department office, restroom, or locker room; off-duty employment activities *other than* those involving a Law Enforcement Activity)

Chief of Police: For purposes of this Policy, the term Chief of Police shall mean the Chief of Police and a lieutenant or captain within an officer's chain of command who is carrying out an instruction or order given by the Chief of Police or authorizing an activity on behalf of the Chief of Police.

#### IV. PROCEDURE

##### A. Training; preservation of recordings

1. Officers who are assigned a BWC, or who are assigned a vehicle equipped with an MVR, shall complete a Department approved training program to ensure proper use and operation before utilizing the equipment. Additional training, as determined by the Chief of Police, may be required at periodic intervals to ensure the continued effective use and operation of equipment, and to incorporate changes, updates, or other revisions in department policy and equipment.
2. Officers will utilize a BWC and MVR in accordance with the Department-approved training program.

##### B. Equipment

1. Department-issued BWC and MVR shall be used only for and in connection with performance of an officer's law enforcement duties for the City of Charlottesville (which may include extra-duty employment in which an officer will be in a City uniform). BWC and MVR shall not be used for non-work related or personal activities.
2. Officers shall use only those BWC and MVR issued by the Department. The wearing or use of BWC or MVR owned by an individual officer, or other non-City-issued audio/video recording equipment, is prohibited. For the purpose of this paragraph cell phones, smart phones, computer tablets and laptop computers are not considered to be "audio/video recording equipment".
3. Each BWC is issued and assigned to an individual law enforcement officer. No officer shall use or wear a BWC issued to another officer—except under exigent circumstances, or when such use has been approved in advance by the Chief of Police.

4. Each MVR is issued for a specific fleet vehicle. To activate an MVR an officer assigned to the vehicle must log in with their own credentials. No officer shall operate the MVR within a vehicle using log in credentials of another officer—except under exigent circumstances, or when such use has been approved in advance by the Chief of Police.

5. If an officer has been issued a BWC, or a vehicle equipped with an MVR, the officer shall utilize that equipment to record law enforcement activity. If the BWC or MVR is not functioning properly, or in circumstance where an officer believes that supplemental audio or video recording(s) will further the purposes of this Policy, then the officer may utilize recording devices or applications on cell phones, smart phones, computer tablets or laptop computers issued by the City to police officers.

- a. When a recording is made by or stored on cell phones, smart phones, computer tablets, laptop computers or similar devices that are City-issued during the performance of law enforcement duties for the City of Charlottesville, the recording is a “public record” which must be preserved by an officer.
- b. Officers are PROHIBITED from using their personally-owned devices to create recordings during the performance of law enforcement duties.**
- c. The following is the priority of use that officers shall follow:
  - i. City-issued BWC or MVR will be utilized for recording performance of law enforcement activities, when such equipment has been issued to an officer and is functioning properly;
  - ii. city-issued phones or computer devices may be utilized to supplement BWC or MVR recordings, or in place of BWC or MVR, if BWC or MVR equipment has not been issued to an officer or is not functioning properly; and
  - iii. if a city-issued phone or recording device is used, then the officer shall download the evidence by the end of their tour of duty to the Charlottesville Police Department’s (J) Drive file and/or a hard copy created and placed into evidence. Officers must articulate within their case report the creation of such recording(s) and that the recordings have been stored on the J Drive and/or placed into evidence.

### **C. Officer Responsibility and Use of BWC**

1. Prior to beginning a shift (including extra-duty assignments), an officer shall power on the assigned BWC device and conduct an operational inspection. If the

BWC passes the operational inspection, the officer shall wear the BWC and will keep the device powered on until conclusion of the officer's shift.

2. If a BWC does not pass operational inspection or if, while an officer is wearing the BWC, the officer becomes aware of a malfunction, then the officer will immediately document the problem and notify a supervisor of the problem as soon as practical.
3. Officers shall activate the "record" function of the BWC when engaged in law enforcement activity. Officers may also activate BWC recording when they are in circumstances that cause them to reasonably fear for their own safety, or the safety of any other person(s).
4. Activation shall occur at the commencement of law enforcement activity, or as soon thereafter as is practical and safe under the circumstances. An officer is not required to activate the BWC if activation would jeopardize the safety of himself or any other person(s).
5. Once the BWC is activated, an officer shall not intentionally de-activate the video/audio recording of an incident, except that an officer may stop the BWC recording when:
  - a. the officer is directing traffic or assisting in some other type of traffic control;
  - b. The officer is parked behind a disabled vehicle or waiting for a wrecker following an accident investigation;
  - c. the officer concludes the law enforcement activity that required the recording function of the BWC to be activated;
  - d. there is no safety interest to be served by continued recording;
  - e. continuing recording would jeopardize the safety of the officer or any other person(s).
6. Where practical, and when doing so does not interfere with officer safety, an officer will monitor the position of the BWC to ensure the BWC is capturing evidentiary-quality footage (as opposed to non-evidentiary-quality footage: e.g., ground, sky, officer's arm or feet, etc.).
7. It is the responsibility of each officer to ensure that their BWC is recording during performance of law enforcement activities. (Activation of an MVR will usually also activate an officer's BWC; however, it is the responsibility of the officer to verify that the BWC recording has been activated).
8. Officers shall note in incident, arrest, and related reports when video recordings were made. BWC recordings **are not** a substitute for written reports.
9. If an officer fails to activate the BWC, fails to record the entire law enforcement activity, or interrupts/mutes a recording, the officer shall document that within written reports (e.g., incident, arrest and related reports) with an explanation.

10. Officers shall not intentionally edit, alter, or erase any BWC recordings. No officer will duplicate, copy, share, or disseminate a BWC recording to any person except in accordance with this Policy or as specifically authorized in advance by the Chief of Police.

11. At the end of each shift, before docking the BWC, an officer shall classify each recording as a categorized file. If applicable, the officer will also assign a report number. Each categorized file shall contain the date, the BWC identifier, (*i.e., the series of numbers and/or letters assigned to each BWC to distinguish one piece of BWC equipment from another*), and the name of the assigned officer. If for any reason an officer cannot complete these tasks before going off-duty, the officer shall contact their supervisor for instructions.

12. No officer may review or categorize BWC recordings for another officer.

13. At the end of each shift, after categorizing each recording, each officer shall conduct an operability inspection and report any issues to his or her supervisor. After this inspection, BWC shall be placed in its dock.

#### **D. Officer Responsibility and Use of MVR**

1. Each officer assigned to a fleet vehicle equipped with a MVR will, prior to beginning a shift, turn the MVR power on and log into the MVR system using his or her log-in credentials. The officer shall conduct an operational inspection and then will leave the MVR powered on throughout the duration of their shift.

2. If an MVR does not pass an operational inspection, or if an MVR malfunctions during an officer's shift, the officer shall immediately document the problem and a supervisor will be notified of the problem as soon as practical.

3. Each MVR is designed to automatically commence recording at the time a vehicle's emergency lights or siren are activated. An officer may also manually commence recording by touching the "record" button on the MVR. An officer shall ensure that the MVR recording function is activated through one of these means during performance of law enforcement activities. The officer shall ensure that the MVR recording continues for the duration of the law enforcement activity. An officer may also activate MVR recording in circumstances that cause them to reasonably fear for their own safety, or the safety of any other person(s).

4. The officer shall ensure that the video camera is positioned and adjusted properly to maximize the scene and the area to be recorded. Where practical and when doing so does not interfere with safety of the officer or the public, officers shall monitor the position of the MVR to ensure the MVR is capturing evidentiary-quality footage.

5. If an officer logs into and activates an MVR using another officer's log in credentials, in exigent circumstances permitted by this Policy, then the officer must notify a supervisor of that log in as soon as practical after the exigent circumstances subside, and the officer's supervisor must document the

circumstances within a written report submitted to the supervisor's Field Operations Commander.

6. Officers shall not stop the MVR recording of a law enforcement activity once recording has been activated. However, an officer may stop the MVR recording:
  - a. While the officer is directing traffic or assisting in some other type of traffic control;
  - b. While the officer is parked behind a disabled vehicle or waiting for a wrecker following an accident investigation;
  - c. While the officer is providing a funeral escort; or
  - d. Performance of law enforcement tasks is concluded, and there is no safety interest to be served by continued recording.

#### **E. Supervisor Responsibility**

1. Supervisors shall:
  - a. Ensure officers wear and utilize BWC and MVR in accordance with Department-approved training and in accordance with this Policy;
  - b. Review BWC and MVR recordings, to:
    - i. Audit officers' compliance with this Policy;
    - ii. Audit officers' proficiency in using the BWC or MVR;
    - iii. Audit officers' performance of law enforcement activity;
    - iv. Correct clerical errors of officers under their supervision,
    - v. Change the categorization of a record, to ensure that a recording will be retained indefinitely, if criminal charges or civil litigation are foreseeable, or the supervisor has reason to believe that matters documented within the recording may generate a complaint.
2. Supervisors may limit an officer's access to BWC or MVR recordings, and may prohibit an officer from viewing any recording(s), if the officer is a party to an officer-involved shooting, is involved in an incident where there has been a serious use of force, or other circumstances that require review by the commonwealth's attorney, the city attorney, or the Department's Office of Professional Standards.
3. Supervisors shall periodically audit records showing officers' access to the computerized BWC or MVR storage system, to ensure that officers are accessing and utilizing recordings only as permitted by this Policy.

#### **F. Privacy and Restricted Use**

1. Officers will inform individuals that they are being recorded, when practical and when verbal notice can be given without risk of harm to the officer or any other person(s).
2. An individual may decline to be recorded in circumstances where that individual has a reasonable expectation of privacy (such as within the

individual's residence), but not when recording is being conducted during execution of a search warrant, execution of an arrest warrant, or incident to an arrest (and related searches)—even if those activities are conducted within an individual's residence.

3. The BWC , MVR, or any other authorized recording device function should generally not to be activated, or once activated the recording function may be deactivated, during the following:

- a. Communications with other law enforcement personnel, in circumstances approved by the Chief of Police;
- b. Communications in which specific tactical plans, safety plans, or operational plans are discussed between or among law enforcement officers;
- c. Encounters with undercover officers and confidential informants;
- d. While conducting strip searches;
- e. While conducting a Lethality Screen;
- f. When a community member is reporting a crime and the the community member requests to remain anonymous;
- g. While appearing before a magistrate;
- h. When officers are on break or otherwise engaged in personal activities (such as while officers are using restrooms or locker rooms);

4. Officers shall comply with individual federal, state, and local courthouse policies regarding the wearing of BWC within a courthouse or courtroom.

5. Officers shall comply with medical facility policies pertaining to video and audio recording.

## **G. Control and Access**

1. The BWC, MVR, and all other department authorized recording equipment and all data, images, sounds, video, and metadata captured, recorded, or otherwise produced by the equipment are the exclusive property of the Charlottesville Police Department.

2. Access to BWC , MVR, and all other department authorized recording equipment recordings must be specifically authorized by this Policy, or by the Chief of Police. The following access is authorized by this Policy:

- a. An officer may access recordings made by their assigned BWC, MVR or other department approved recording equipment for which an officer has his or her own log-in credentials. An officer is permitted to access and review recordings of an incident in which they were involved, prior to preparing a report or making a statement about the incident, unless the officer's supervisor notifies the officer that access has been temporarily restricted or prohibited.

b. Additionally, BWC, MVR, and all other department authorized recording equipment recordings may be viewed by, and copies provided to: law enforcement officers conducting criminal investigations; members of an officer's chain of command (up to and including the Chief of Police); attorneys within the Office of the Commonwealth's Attorney and the Office of the City Attorney; individuals conducting administrative investigations at the request of the Chief of Police or the City Manager; or other individuals, as required by law or as authorized by the Chief of Police.

3. The Chief of Police, and supervisors, may access video recordings to perform duties or obligations imposed on supervisors by this Policy, and to create copies of recordings for use in a criminal or administrative investigations, civil or criminal trials, or for mandatory or discretionary releases required by law or authorized by the Chief of Police.

4. Officers tasked by the Chief of Police with performing accreditation activities may access recordings and make copies for accreditation proofs.

5. Requests from individuals outside the Department seeking to view recordings, and requests for copies of recordings, shall be submitted to the Chief of Police for consideration and approval.

a. When a criminal prosecution is pending, the Chief of Police may authorize a recording to be made available to the Commonwealth's Attorney for use as evidence within the criminal proceedings. Thereafter, the Commonwealth's Attorney shall use the recording, or disseminate copies of the recording, in accordance with applicable law and the Rules of Criminal Procedure.

b. BWC, MVR, and all other department authorized recording equipment recordings are criminal investigative files and are not subject to mandatory public disclosure. However, a recording, or a portion of a recording, may be disclosed by the Chief of Police in their discretion ("discretionary release").

c. If the Chief of Police is requested to approve a discretionary release of a recording, the Chief may request the person to whom the release will be given to enter into a written agreement restricting the use and further dissemination of the recording, or agreeing to the use of redaction techniques to protect private or sensitive information. Such agreements are appropriate mechanisms for protecting individuals' personal identifying information.

## **H. Retention of Recordings**

1. BWC, MVR, and all other department authorized recording equipment recordings will be securely stored in accordance with applicable record retention



schedules published by the Library of Virginia and in accordance with requirements of the Virginia Public Records Act.

2. Once a recording is made, no officer shall edit, alter, delete or erase the recording or any portion of the recording and the original recording shall be retained, as made, for the duration of the applicable record retention schedule.

3. Officers may submit to the Chief of Police a written request that copies of a BWC, MVR and all other department authorized recording equipment recordings be made and edited, altered, or redacted to protect matters that are not within the definition of a “public record”, or matters that are not subject to public disclosure (e.g., accidental recording of an officer’s personal information, not related in any way to the performance of work duties; accidental recording of a conversation with a confidential informant, etc.). Prior to granting any such request the Chief of Police shall consult with the City Attorney’s office, and will review records and retention schedules issued by the Library of Virginia to determine the retention period that would apply to the redacted recording. All such requests, and the Chief’s decisions, shall be kept on file concurrently with the edited, altered or redacted recording. Edits, alterations and redactions shall be made by an independent contractor engaged by the Chief of Police for that purpose.

4. Upon receipt of notice of possible litigation involving the action(s) which are the subject of any BWC, MVR and all other department authorized recording equipment recording(s), the Chief of Police shall direct appropriate staff to categorize the recording(s) so that they will be retained indefinitely until the threat of litigation has been resolved, or actual litigation has been completed.