



Image courtesy: WOLFCOM®, manufacturer of law enforcement body-worn cameras



FAQ: Body-Worn Cameras

PUBLIC SECTOR SERVICES

In December 2014, President Obama called for \$263 million in federal funding for police training – of which \$75 million was specifically earmarked for the purchase of body-worn cameras. The cameras are intended to provide a definitive record of police activities. Here are several key questions and responses to help understand the impact of this emerging issue.

Q: What is a body-worn camera (BWC)?

A: A BWC generally consists of a closed-circuit video recording device worn by law enforcement personnel. It typically attaches to the front of an officer's shirt or collar, but can also attach to an officer's hat or glasses. The types of cameras, methods of activation and storage requirements can differ greatly. The BWC stores digital files that, once recorded, can be protected from deletion or editing. BWCs typically have a unique identifier, and time- and date-stamped recordings.

Q: Where are the recordings stored?

A: Digital video recordings from BWCs can be stored on in-house servers that can be managed by the agency, reduced to digital media (CDs and DVDs) and placed in an evidence file and/or online cloud databases and archives that are managed by third-party vendors. The decision on how/where the recordings are stored will vary by agency.

Q: Are BWC devices going to replace squad car cameras?

A: No. Agencies will most likely continue to use car-mounted cameras even if their officers are equipped with BWCs. BWCs can potentially capture information and videos that the mounted device cannot, thus providing the potential for a more complete picture of the interaction between the officer and third party, as well as other facts and details that may be important to an investigation.

Q: What are the legal issues surrounding the use of such recordings?

A: The use of BWCs is still relatively new, at least in the context of the development of law. As for the admissibility of video evidence, state and federal courts generally permit video for consideration when it meets certain criteria, such as: the recording device was functioning properly; the recording is authentic, no edits were made; the recording has been preserved appropriately; the operator was competent to operate the device; the person(s) recorded can be identified; and the activity elicited was voluntary and in good faith with no inducements.

Open public records laws generally require agencies to release video/audio recordings taped in public places. Requests for the release of video/audio recordings can create significant burdens for local governments that do not have the personnel to dedicate to review the materials to ensure privacy/investigation matters are protected, nor do they have the financial resources to respond to these high-volume requests from the media, advocate groups and other third parties. Future and developing legislation may ultimately place limits on the nature and type of disclosures of sensitive data.

The issue of right to privacy is also a consideration for the use of BWCs and may vary from state to state. For example, in some jurisdictions law enforcement may be permitted to record video in public places, but audio recordings may be prohibited. Wiretap laws developed prior to the use of BWCs may provide an obstacle to use because they may prevent audio recordings, and thus the use of BWCs recording video and audio without the consent of both parties. This right to privacy may also impede use of BWCs when a law enforcement officer enters a person's home when two-party consent is required for the use of video records. If a resident is conducting illegal activities within his home, consent is unlikely.

Q: What happens with the recordings, and how long does the agency keep them?

A: Regulations (federal, state, local or law agency imposed) may require records to be retained for a certain amount of time. Other factors that may come into play regarding the length an agency will store recordings: cost of recording storage, server capacity, technology upgrades and vendor changes. The law agency and its legal counsel may want to consider establishing a written procedure for purging recordings based on the type of evidence or interactions captured. For example, if an officer assists a citizen or handles a minor traffic matter, the recording may be retained for a short period of time (e.g., 30-90 days), whereas the recording of a Taser incident, shooting or crime scene may be kept much longer, particularly if it is part of an ongoing investigation and/or legal proceeding.

Q: Should the law agency develop a body-worn camera policy?

A: Yes, a written BWC policy should be developed to address training, device usage, and access and security. To best address specific legal concerns, an agency should consult with legal counsel regarding these issues.

These policies may include requirements that officers should receive training in all necessary technical aspects of the specific equipment and its use, in addition to training on elements such as:

- Legal implications of BWC use
- Practical use issues
- Evidential continuity
- Professional standards (custody/control)

Some of the specific policies to consider may include:

- Identify and train officers
- Written BWC guidelines
- Pre-post BWC activation procedures
- Maintenance of video/audio recordings
- Security protocols for storage
- Records retention policies
- Protocols for information sharing
- Internal audit processes
- Equipment maintenance procedures

Q: Where would an agency go to get assistance with developing BWC policies/procedures?

A: First stop should be the law agency’s in-house or privately-contracted legal counsel to commence discussions about applicable regulations regarding privacy and record retention policies. Other outside sources may include vendors who specialize in law enforcement support services. Travelers Risk Control makes sample police policies and procedures available to policyholders through our vendor, Operational Support Services, Inc. (OSS). Some of the OSS recommendations include information related to BWC use, such as two-party consent requirements (if applicable), BWC in plain view, establishing officer discretion policies for recording, records retention and recording protocols.

Q: Where can I find more information on this topic?

A: Various organizations have studied BWCs and offer findings, reports and white papers on the matter. Here are a few documents which may be of interest:

- [U.S. Department of Justice Body-Worn Camera Pilot Implementation Program FY 2015 Competitive Grant Announcement](#)
- [COPS: E-Newsletter on Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#)
- [OJP Diagnostic Center Police Officer Body-Worn Cameras: Assessing the Evidence](#)



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