BODY WORN CAMERA POLICY

Note: This policy will take effect upon the purchase of body worn camera equipment and the full implementation of the Office of Investigations body worn camera program, including pilot and training programs.

I. BACKGROUND

A. This policy addresses the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Investigations (OI) body worn camera (BWC) program that is currently in development.

B. Use of Body Worn Cameras

1. BWCs provide an additional layer of safety for OI special agents (SAs) and can improve public trust, transparency, and accountability in circumstances where the use of force may reasonably be anticipated during planned law enforcement operations.

2. BWCs allow for accurate documentation of contacts between SAs and the public.

3. BWCs will be used only for planned law enforcement operations, such as the planned execution of a search warrant or arrest.

4. BWCs will not be used for evidence collection purposes or recording interviews.
5. BWCs will be programmed to record for a specified period prior to activation and after deactivation (buffering period). This footage will be preserved along with the recording after activation occurs.

II. BODY WORN CAMERA DEPLOYMENT

A. OI SAs will wear and activate BWC recording equipment for purposes of recording their actions during the tactical portion of enforcement operations where the use of force may reasonably be anticipated, such as the planned execution of a search warrant or arrest.

B. Other Instances where BWCs may be Deployed

1. OI SAs will deploy BWCs during other enforcement operations when such use is appropriate for the proper performance of their official duties and where recording is consistent with OI policy and the law.

2. SAs may request approval from an Assistant Special Agent in Charge (ASAC) to deploy BWCs in other instances where it may be prudent to record the interactions.

C. Activation of Body Worn Cameras

1. On-site team leaders will inform all personnel participating in an enforcement operation and equipped with a BWC when to activate their BWCs, which will generally be when approaching subjects or premises related to OI pre-planned arrests or searches.
2. In addition, if while wearing a BWC pursuant to this policy, an OI SA encounters an individual who is uncooperative, violent, assaultive, or is discussing criminal conduct which, in the OI SA’s judgement, based on the SA’s training and experience, could lead to use of physical or deadly force, the OI SA should activate and record the encounter using the BWC as soon as it is safe and practical to do so.

3. To ensure the integrity of the recording, BWCs must remain activated until the activity is completed unless the contact moves into an area restricted by this policy.

D. Deactivation of Body Worn Cameras

1. SAs will deactivate their BWCs only at the direction of the on-site team leader, which will generally be when the team leader believes the site is safe and under law enforcement control. Prior to deactivating the BWC, the SA will verbally state the date, time, and reason for the BWC’s deactivation.

2. Exceptions
   a. If the enforcement operation is of such a duration that the BWC should be deactivated to conserve power and/or storage, the team leader may authorize deactivation.
   b. An OI SA may deactivate the BWC at any time the SA needs to obtain emergency medical attention or needs to attend to a personal matter that takes the SA away from a planned operation, such as using the restroom.

E. Restrictions on Use
1. SAs equipped with BWCs should be mindful of locations where recording may be considered insensitive, inappropriate, or prohibited. BWCs will be used only in conjunction with official law enforcement duties and not personal activities.

2. BWCs will not be used to record the following types of activities, unless the SA obtains express written permission from an Assistant Inspector General for Investigations (AIGI):

   • undercover operations, including pre-planned arrests or search warrants involving undercover employees or other covert personnel;

   • execution of search warrants or orders for records or data (in electronic format or otherwise) for which the execution of the warrant or order does not involve the entry of a physical location;

   • searches of property lawfully in government custody or control;

   • OI workplaces (i.e., regional offices, field offices, and any other OI-operated facilities); and

   • locations where individuals have a reasonable expectation of privacy, such as a restroom or locker room.

III. JOINT OPERATIONS

A. When conducting enforcement operations with another law enforcement agency that will deploy BWCs during the operation, OI SAs will comply with OI policy, regardless of which agency is the lead.
B. If an AIGI determines that the use of BWCs during a joint enforcement operation is not prudent, the AIGI will authorize, in writing, the OI enforcement team to not deploy them. Any deviation from OI’s policy to deploy BWCs during an enforcement operation will be documented in writing (email or OI-3a) and placed in the appropriate OI case file.

C. The BWC Program Coordinator will share recordings related to joint law enforcement operations with the other participating agencies and will request that the other agencies share their recordings as well. When sharing OI recordings with other agencies, the BWC Program Coordinator will inform that agency that it may not share the OI recording with anyone outside of that agency without OI’s express written permission.

IV. DOCUMENTING USE OF BODY WORN CAMERAS

A. Upon the conclusion of the enforcement activity or operation, the case agent will document in an OI-3a that BWCs were deployed and provide a summary of the activity.

B. The summary should include the following information and may be part of the overall OI-3a documenting law enforcement activity: the names of the team members participating in the activity or operation; whether or not all SAs were wearing BWCs during the activity or operation; whether or not all BWCs were activated prior to the activity or operation; if any BWCs malfunctioned or were inoperable during the activity or operation; if any BWCs were not activated prior to, or during, the activity or operation; if any BWCs were turned off during the activity or operation; and if any BWC recording was interrupted or terminated during the activity or operation.

C. Failure to Activate Body Worn Camera
1. If an SA fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the SA will document in an OI-3a why the recording was not made, interrupted, and/or terminated.

2. A failure to activate the BWC as directed or the unauthorized termination of a BWC recording may result in disciplinary action.

D. Download and Storage of Body Worn Camera Recordings

All BWC recordings will be downloaded to a server for storage. Each file will contain the date and time of the recording, BWC identifier, and assigned SA.

E. Records Retention

1. BWC recordings will be securely stored on a server.

2. BWC recordings that are not associated with complaints or allegations made against OI employees will be deleted five years following case closure unless a request is provided in writing to the BWC Program Coordinator through the AIGI or a designee.

3. BWC recordings associated with use of force incidents involving OI employees, complaints or allegations made against OI employees, or any other investigations of OI employees, will be retained as directed by the AIGI or a Federal or state prosecutor or other investigating agency, in consultation with the Office of Counsel to the Inspector General (OCIG).
4. BWC recordings associated with normal training exercises where no injuries occurred will be deleted after the appropriate instructor reviews the recordings for teachable scenarios and confirms that it is appropriate to delete the recording.

V. BODY WORN CAMERA EQUIPMENT

A. OI SAs will only use BWCs issued by OI. SAs should exercise reasonable care when using BWCs to ensure they are properly functioning. SAs should ensure that the BWC is fully charged before deployment.

B. SAs will notify the BWC Program Coordinator of any equipment malfunctions as soon as possible.

C. Loss or Theft of Equipment

All SAs will report the loss or theft of a BWC to their immediate supervisor within 24 hours of the discovery of the loss or theft. The immediate supervisor will notify the SAC and the BWC Program Coordinator.

VI. BODY WORN CAMERA RECORDINGS

A. OI’s BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment are the sole property of OI. SAs will not edit, alter, erase, duplicate, copy, share, or otherwise release, disclose or distribute in any manner, any BWC recording.

B. Viewing of BWC recordings at the scene of an incident is prohibited.

C. Deleting Recordings
1. Any request to delete a portion or portions of the recordings (e.g., an accidental recording) must be submitted in writing, stating the reason for the request, and must be approved by the appropriate AIGI.

2. The AIGI will complete a memorandum explaining the reason(s) the AIGI has approved, or not approved, the request for deletion.

3. The BWC Program Coordinator may delete the recording only after receiving the approved memorandum from the AIGI.

4. The written request and approval documentation will be filed in the appropriate OI case file.

D. Access and Review of Body Worn Camera Recordings

1. All instances where access to a recording is granted will be audited to ensure that only authorized users are accessing the data for legitimate and authorized purposes.

2. Any requests to review BWC recordings must be made in a memorandum to the AIGI. The memorandum must state the reason(s) for the request to review the recording.

3. Permitted Reviews of Body Worn Camera Recordings

   a. An OI SA will be entitled to access the audio and video data derived from the BWC equipment issued to the SA when reasonable and necessary for the SA to perform the essential functions of the job, including but not limited to such review necessary to draft and review an OI-3a describing an operation.
b. An OI SA may also access BWC recordings when necessary to respond to allegations of administrative or criminal misconduct relating to the recorded enforcement activity, subject to the limitations of subsections c and d, immediately below.

c. At an appropriate time, OI SAs who are the subject of an administrative investigation relating to the recorded enforcement activity may review the SA’s own BWC recording prior to being interviewed by any OI or non-OIG personnel investigating allegations about the OI SA’s conduct. The OI SA may review the SA’s own BWC recording with an attorney or other representative. The OI SA and/or the SA’s attorney or other representative will not be permitted to make or take a copy of the recording.

d. Following an incident involving a firearms discharge or use of force incident related to an OI SA, the involved OI SA will be given the opportunity to view the SA’s own BWC recording prior to giving a formal statement. SAs who are witnesses to the agent-involved shooting or use of force incident will also be allowed to view their own BWC recording prior to giving a formal statement.

e. The Special Investigations Branch (SIB) may review BWC recordings in connection with an official SIB investigation. Requests to review an OI SA’s BWC recordings for the purpose of this subsection will be made in a memorandum to the appropriate AIGI. The memorandum will state the reason(s) for the request and will be filed in the appropriate SIB case file.
f. BWC recordings may be used for training purposes. Access to those recordings will be coordinated through the BWC Program Coordinator. When necessary, the BWC Program Coordinator, in consultation with OCIG, will obtain the written permission of any OI personnel whose recordings or images are depicted in any training videos.

E. Prohibited Reviews of Body Worn Camera Recordings

1. OI supervisors may not review BWC recordings solely for the purpose of evaluating an SA’s performance during an operation or for conducting performance appraisals.

2. However, supervisors may view BWC recordings to conduct “after action debriefs” and for training purposes. Requests to review an OI SA’s BWC recordings for the purposes described in this subsection will be made in a memorandum to the AIGI, which will state the reason(s) for the request.

VII. DISCLOSURE OF BWC RECORDINGS

A. All requests for disclosure of BWC recordings or related information will be forwarded the BWC Program Coordinator, with a cc to the appropriate AIGI.

B. The BWC Program Coordinator will prioritize and expedite the review of all requests for BWC recordings that involve the serious bodily injury or death of any individual, including but not limited to deaths in custody.

C. Requests for Release of BWC Recordings

1. BWCs are the sole property of OI.
2. Depending on the circumstances, BWC recordings may be considered law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with enforcement proceedings.

3. BWC recordings may also be considered potential evidence in a Federal investigation and therefore subject to appropriate redaction prior to disclosure.

4. OI employees receiving requests from the public for BWC recordings or related information will refer such individuals to the OIG FOIA Office (See subsection D, below).

D. Freedom of Information Act Requests

1. Recordings from BWCs may be subject to release pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

2. Any FOIA requests for the release of BWC recordings submitted to the OIG FOIA Office will be forwarded to the BWC Program Coordinator.

3. The BWC Program Coordinator will coordinate with the OIG FOIA Office to release recordings in an expeditious manner, taking into account any applicable FOIA exemptions set forth in 5 U.S.C. § 552(b).

E. Privacy Act Referrals

1. The Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act), provides safeguards for individuals against an invasion of personal privacy through the misuse of records by Federal agencies. The Privacy Act balances the individual’s personal privacy interest against the Government’s need to maintain information about individuals.
2. All Privacy Act Referrals will be forwarded to the OIG FOIA Office. If the OIG FOIA Office determines there is legal authority to provide BWC recordings pursuant to a Privacy Act referral, taking into account any exemptions noted in the Privacy Act, it will be forwarded to the BWC Program Coordinator.

F. Redactions

The BWC Program Coordinator will review all video footage that is proposed for release and specify which parts of the video may be released and which parts need to be redacted (e.g., to protect the identity of any individuals or to protect law enforcement sensitive information), after consulting with OCIG and the OIG FOIA Office, as appropriate. The BWC Program Coordinator will use appropriate redaction software to redact the video.

VIII. BWC TRAINING

All SAs will complete initial and recurring training to establish and maintain proficiency and knowledge related to BWC deployment, use and operation, as well as compliance with privacy and civil liberties laws.