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| CHATHAM BOROUGH POLICE DEPARTMENT | | | |  | |
| POLICY & PROCEDURES | | | | | |
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I. PURPOSE:

A. The purpose of this Policy is to maintain guidelines for the use, management, storage, retention, and release of audio-visual media recorded by body-worn cameras (BWCs).

II. POLICY:

A. Body-Worn Camera (BWC) footage provides objective evidence of what occurred and plays a crucial role in the public discourse around police accountability. BWCs also serve as a powerful deterrent to misconduct by both the police and members of the public interacting with police. As such, BWCs have gained wide support among public and law enforcement, alike. The policies and standards established in this Policy are designed to help the Chatham Borough Police Department achieve an optimal balance between potentially competing interests. For example, it is necessary to balance the need to promote police accountability and transparency on the one hand, against the need to respect the privacy interests of persons whose images and home interiors will be captured in a BWC recording on the other. So too, it is necessary to balance the benefits achieved by electronically recording evidence that might help to solve a crime and successfully prosecute an offender against the costs incurred if a BWC were to chill a victim or witness from providing a BWC-equipped officer with information necessary to solve a crime and convict the offender.

New Jersey requires the Chatham Borough Police Department to employ BWCs in their daily law enforcement functions. While N.J.S.A. 40A:14-118.3 through -118.5 provides the basic framework for BWC use, this Policy seeks to provide additional guidance for the requirements. The Chatham Borough Police Department is authorized to impose additional requirements beyond – but not inconsistent with – those established in the Attorney General Directive or Morris County Prosecutor’s Office Directive V2 C22. In this way, Chatham Borough Police Department is afforded an opportunity to tailor our BWC policy and procedures to address local concerns and needs.

Although the chief of police is afforded some flexibility in developing departmental policies and practices that address local needs and community concerns, our policy must limit the discretion of individual officers in the field. The decision to activate a BWC must be based on objective criteria (e.g., the initiation of a specified type of police action, such as a consensual field inquiry, or the start of an officer’s duty shift). Furthermore, in any circumstance where an officer is afforded discretion in deciding whether to deactivate a BWC, the reasons for exercising that discretion must be documented to permit supervisory review.

III. DEFINITIONS:

A. Activate – means to actuate (put into operation) the recording mode/function of a BWC.

B. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation, or interaction with a civilian for the specific purpose of informing the civilian that the communication or conversation is being recorded.

C. 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).

D. 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.

E. Constructive authority – involves the use of an officer’s authority to exert control over a subject (see *this agency’s Policy 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 (e.g., “...show me your

hands," "...get out of the vehicle", etc.), or directed against any person if the officer has unholstered a firearm or conducted energy device (e.g., "...move out of the way", "...get down", etc.).

F. Equipped with a BWC – an officer wearing a BWC at the time in question, as opposed to simply receiving the BWC equipment from their agency.

G. Force – has the same meanings as defined in this agency's Policy on *Use of Force*. The term "force" shall include physical, mechanical, enhanced mechanical, and deadly force.

H. Investigation of a criminal offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, petty disorderly offense, driving while intoxicated offense 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, is being, or is about to be 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.

I. Law enforcement incident – as defined in *New Jersey Attorney General Directive 2019-4*:

1. Any use of force by a law enforcement officer resulting in death or serious bodily injury.
2. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
3. The death of any civilian during an encounter with a law enforcement officer; and
4. The death of any civilian while in the custody of law enforcement.

J. 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 anonymous.

K. School – means a public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through twelve, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.

L. 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. Serious bodily injury and serious bodily harm have the same definition for purposes of this Policy. See N.J.S.A. 2C:11-1(b); N.J.S.A. 2C:3-11(d).

M. 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. See N.J.S.A. 2C:11-1(d).

N. 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.

O. Substantive report – means a report that includes a detailed accounting of the incident. It does not include a report, for example, which simply refers to other reports or to the existence of BWC or other camera recordings.

P. 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.

Q. Tagging (also known as labeling) – an action in the BWC software that categorizes recordings on the server.

R. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, group homes, residential facilities, etc.

IV. DEPOLOYMENT AND USE OF BWC'S:

A. Prior to the deployment of BWCs, our Policy must first comply with the orders found within the AG Directive and MCPO Directive V2-C22 (Body-worn Cameras and Body-worn Camera Recordings).

B. Officers may only use a BWC system that has been issued and approved by this agency.

C. An officer equipped with a BWC must comply at all times with the requirements established in the AG Directive and in this Policy issued pursuant to the AG Directive or by law.

D. A BWC shall be used only in performance of official police duties and not for personal purposes.

E. No BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the agency except for an official purpose specified in the AG Directive, this Policy, or by law.

F. Any sworn officer or civilian employee of this agency who knowingly violates the requirements of AG Directive, this Policy, or applicable laws, shall be subject to discipline.

G. Officers Required to Wear BWCs.

1. The following officers shall be required to be equipped with BWCs and adhere to the provisions of this Policy when performing their duties:

a) All uniformed patrol officers while acting in the performance of official duties, as required by N.J.S.A. 40A:14-118.3 (P.L. 2020, c. 128). This shall include uniformed officers assigned to traffic law enforcement, as well as Class II Special Law Enforcement Officers (SLEO IIs) assigned to patrol or traffic law enforcement duties.

b) Officers assigned to “extra duty” or “off duty” assignments.

c) Officers assigned to duties at schools or youth facilities only when working security or crowd-control functions at special events such as athletic competitions, graduations, or similar public events.

d) All officers assigned to tactical teams as defined in this Policy. Tactical Teams shall include S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), Entry Teams, Rapid Deployment (RDT), Fugitive, or similar units.

e) All officers assigned to proactive enforcement teams as defined in this Policy.

f) All officers assigned to canine units.

g) All officers whose assigned duties include regular interaction with members of the public which reasonably may give rise to an arrest situation or use of force.

h) All officers assigned to “front desk” duty whose duties include interaction with members of the public, who enter police stations to report incidents, or request assistance or information.

i) All officers assigned to a pre-planned search warrant execution or a pre-planned arrest. This shall include pre-planned searches and arrests performed pursuant to statutory authority, such as parolee searches.

j) All uniformed officers assigned to duties at demonstrations or potential civil disturbances.

H. Officers Not Required to Wear BWCs.

1. Notwithstanding the provisions of [IV.G](#), this Policy does not require the following officers to be equipped with BWCs:

- a) Officers engaged in undercover assignments.
- b) Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
- c) Officers assigned to the following administrative positions and performing administrative functions:
 - (1) Chief of Police
 - (2) Executive Officer
 - (3) Division Commander/s
 - (4) Support Services Sergeant
 - (5) Detectives
- d) Officers meeting with confidential sources or recruiting potential confidential sources.
- e) Officers engaged in union representation of a member of the collective bargaining unit.
- f) Officers assigned to duties within schools or youth facilities as part of the normal daily educational environment, such as School Resource Officers (SROs) and Class II or III Special Law Enforcement Officers (SLEO II or IIIs).
 - (1) As indicated above, when a SLEO, SRO, or any officer works a security or crowd-control function at special events such as athletic competitions, graduations, or similar public events
- g) Non-uniformed officers assigned to investigative, non-enforcement duties, when authorized by the Chief of Police.
- h) Officers engaged in crime-scene processing duties.
- i) Officers engaged in duties as bomb or explosives technicians.
- j) Officers 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.
- k) Officers conducting searches of cellphones, tablets, computers, or other electronic devices that are suspected to contain images of child sexual exploitation.

I. Special Circumstances

1. Exemptions from the requirements in [Section IV.G](#) are permitted only when approved by the Director of Division of Criminal Justice or the County Prosecutor and only under such special circumstances that warrant an exemption. The reasons for the exemption must be documented and demonstrate a special need. Such requests for exemption shall be made in advance and approved in writing.

J. Placement of BWC

1. A BWC used by officers shall be placed so that it maximizes the camera's ability to capture video footage of the officer's activities. This may include placement on helmets, vests, or other

such location so long as the device is secured properly and will maximize the device's recordation function.

K. Duty to Inspect and Report Malfunction

1. An officer equipped with a BWC shall be responsible for determining that the device is fully functional and that its battery is adequately charged at the start of the officer's duty shift and before going into the field. If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field. If the BWC malfunctions while out in the field, the malfunction, upon its discovery, shall be reported to the shift supervisor as soon as it is safe and practicable to do so.

L. Applicability of and Compliance with Attorney General Directive No. 2005-1

1. The decision to activate or de-activate a BWC is a police action subject to the rule established in AG Directive 2005-1, which strictly prohibits any form of racially influenced policing.

M. Training

1. This agency shall designate one or more training officers and shall establish a training program to ensure that officers equipped with BWCs and officers and civilian employees who access or handle BWC recordings are familiar with the provisions of this Policy and all applicable laws of the State.

2. The Chief of Police or his/her designee shall maintain a training program on the lawful and proper use of BWC equipment. Only officers who have received training in the use of BWC are permitted to use these systems and must demonstrate a satisfactory degree of familiarity and efficiency in the use of these systems.

a) Officers shall receive initial training during their field training phase or as otherwise directed by the Chief of Police.

b) The Chief of Police or his/her designee shall cause supplemental training to any officer who has demonstrated a lack of knowledge of the proper use of BWC or as part of a performance improvement or disciplinary matter.

c) If any officer is unclear with this Policy or the operation of a BWC, he/she should contact their supervisor to arrange for additional training.

V. NOTICE THAT BWC'S ARE DEPLOYED AND ACTIVATED:

A. Public Notice

1. This agency shall take reasonable steps to inform the citizenry of the agency's use of this technology. This department shall publish a statement that it deploys BWCs on its internet website. The County Prosecutor may assist departments in providing general public notice of their deployment of BWCs pursuant to this section. The website posting shall include a picture showing what the device looks like, and how it is to be worn by uniformed officers or plainclothes detectives so that citizens will be able to determine whether an officer is equipped with the device. Notwithstanding the above general public notice requirement, officers wearing BWCs must comply with all relevant laws regarding notice to any subject of a BWC recording, pursuant to P.L. 2020, c. 129, section 1d-e, discussed in section below.

B. Specific Notice to Certain Individuals During an Encounter.

1. A law enforcement officer who is wearing a BWC shall notify the subject of the recording that the subject is being recorded by the BWC, unless it is unsafe or infeasible to provide such notification.

2. Such notification shall be made as close to the inception of the encounter as is reasonably possible. If the officer does not provide the required notification because it is unsafe or infeasible to do so, the officer shall document the reasons for that decision in a report or by narrating the reasons on the BWC recording, or both.
 3. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence (see AG Directive 2021-5).
- C. Truthful Response to Specific Inquiries.
1. 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 County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, has expressly authorized the officer to make a covert electronic recording.
 2. Nothing in this Section shall be construed to establish a basis for suppressing a statement or other evidence.
- D. Notice When Using BWCs Inside a Private Residence.
1. Prior to entering a private residence, a law enforcement officer shall notify the occupant that the occupant is being recorded by the BWC and if the occupant requests the officer to discontinue use of the officer's 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.
 2. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section, and the response to the request, shall be recorded by the BWC prior to discontinuing use of the recording system.
- E. Notice When Using BWCs with an Apparent Crime Victim.
1. When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded by the BWC and if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC.
 2. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section, and the response to the request, shall be recorded by the BWC prior to discontinuing use of the recording system.
- F. Notice When Using BWCs with a Person Seeking to Remain Anonymous.
1. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall notify the person that they are wearing a BWC and, if the person requests that the officer discontinue use of the BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.
 2. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section, and the response to the request, shall be recorded by the recording system prior to discontinuing use of the recording system.

VI. STANDARDS GOVERNING THE ACTIVATION OF BWC'S:

- A. BWCs Used Only in Performance of Official Duties.
1. 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 Policy.

2. A BWC shall not be activated while the officer is on break or otherwise is not actively performing law enforcement functions (e.g., while eating meals, while in a restroom, etc.).
3. A BWC shall not be activated or used by an officer for personal purposes or when engaged in police union business.
4. Nor shall a BWC be used to record conversations involving Internal Affairs interviews, counseling, guidance sessions, personnel evaluations, or any similar supervisory interaction.
5. Any recordings from a BWC recorded in contravention of this Policy or any other applicable law shall be immediately brought to the attention of agency command staff and immediately destroyed by command staff following consultation and approval by the County Prosecutor or Director of the Office of Public Integrity and Accountability. Such footage 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.

B. Circumstances When BWC Activation is Generally Required.

1. Except as otherwise expressly provided in this Policy, or by law, an officer equipped with a BWC shall be required to activate the device whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, to include but not limited to any of the following, unless there exists an immediate threat to the officer's life or safety that makes such activation impossible or dangerous. In such situations, the officer must activate the camera at the first reasonable opportunity to do so and it shall remain activated until the encounter has fully concluded and the officer leaves the scene:
 - a) The officer initiates an investigative detention (e.g., a *Delaware v. Prouse* traffic stop, a *Terry v. Ohio* criminal suspicion stop, or a checkpoint or roadblock stop).
 - b) The officer is responding to a call for service and is at or near the location to which the officer has been dispatched.
 - c) The officer is conducting a motorist aid or community caretaking check.
 - d) The officer is interviewing a witness in the course of investigating a criminal offense.
 - e) The officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of station house interrogations).
 - f) The officer is making an arrest.
 - g) The officer is conducting a protective frisk for weapons.
 - h) The officer is conducting any kind of search (consensual or otherwise), including the execution of a search warrant.
 - i) The officer is engaged in a police response to any type of civil disorder in circumstances where the 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.
 - j) The officer uses constructive authority or force, 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 that are documented by narration on the recording and/or in any investigation or incident report.

- k) The officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility.
- l) The officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.

C. Continuous Recording Pending Completion of Encounter.

1. To ensure that the entire encounter/event/episode is recorded, in accordance with this Policy and the law, a BWC should be activated before a uniformed officer arrives at the scene of a dispatched call for service or other police activity listed above.

- a) However, the officer need not begin recording at the moment he or she receives instructions from a dispatcher to respond to a call for service. Rather, the officer may delay activation until they are near the destination.

D. Except as otherwise expressly provided by any other provision of this Policy, when a BWC is required to be activated by an officer pursuant to this Policy, the device must remain activated throughout the entire encounter/event/episode and shall not be de-activated until it is concluded (e.g., the BWC-equipped officer has left the scene; all civilians involved in the encounter have left the scene; the officer has informed the dispatcher or a supervisor that the event has concluded; the event is “closed” on the department’s computer-aided dispatch (“CAD”) system, etc.).

E. When a BWC is activated for the transport of arrestee, whether by an officer in uniform or in plain clothes, 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 holding 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.

- 1. BWCs may be deactivated in a hospital/medical/mental health facility setting. However, in situations where 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.

F. Special Provisions Governing the Use of BWCs when Investigating Underage Alcohol and Marijuana Use.

- 1. Consistent with the provisions of N.J.S.A. 2C:33-15a(4), the video and audio recording functions of an officer’s BWC shall be activated whenever the officer is responding to a call for service related to an underage person who is suspected of violating the law with respect to possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that provision. The BWC shall remain activated until the encounter has fully concluded and the officer leaves the scene and shall not be deactivated based on a request by a person who is the subject of the call for service related to a violation of N.J.S.A. 2C:33-15, or for any other reason.

G. Special Activation Rules Governing Certain Use-of-Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where Officers Are in Danger.

- 1. Notwithstanding any other provision of this Policy, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of a “Law Enforcement Incident” as defined in AG Directive 2019-4, the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of this Policy, an officer while at the scene of a “Law Enforcement Incident” shall not de-activate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident pursuant to AG Directive 2019-4, or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, assistant, or deputy attorney general, or designee supervising the investigation.

VII. STANDARDS GOVERNING THE DE-ACTIVATION OF BWC'S:

- A. BWC's may be de-activated upon the Request of a Civilian, when discussing investigation strategy or planning, or on instruction of a prosecutor.
- B. De-Activation at the Request of a Civilian Providing Information/Cooperation.
 - 1. Notwithstanding the section on Continuous Recording Pending Completion of Encounter, an officer may de-activate a BWC when a civilian speaking 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.
- C. The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (e.g., evidence relevant to a criminal investigation will not be recorded). In deciding whether to de-activate the BWC, the officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.
- D. De-Activation at the Request of a Person Seeking *Emergency Medical Assistance*.
 - 1. Notwithstanding the section on Continuous Recording Pending Completion of Encounter, an officer may de-activate 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 de-activated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.
- E. Procedures for De-Activation Upon a Civilian's Request.
 - 1. When an officer de-activates a BWC pursuant to the above section, the following procedures shall be followed:
 - a) The discussion between the officer and the civilian concerning the request for de-activation shall be electronically recorded.
 - b) The officer before de-activating the BWC shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC as per the victim's request.").
 - c) The officer shall report the circumstances concerning the de-activation to his or her superior as soon as is practicable.
 - d) The officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation. See also [Section X.A](#) (notations (i.e., "tagging") to indicate BWC recordings that raise special privacy or other issues).
- F. Decision to Decline a Civilian's De-Activation Request.
 - 1. If an officer declines a request to de-activate a BWC pursuant to the above section, 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 documented and shall be reported to the officer's supervisor as soon as it is safe and practicable to do so.
- G. If the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision.
 - 1. An officer shall be prohibited from misleading the person making the de-activation request into believing that the BWC has been turned off when in fact it is operating unless the County

Prosecutor or designee or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording.

- a) Note that pursuant to [Section V.E](#), an officer may not decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.

H. De-Activation During Criminal Investigation Strategy/Planning Discussions.

1. Notwithstanding any special circumstances in the above sections, a BWC-equipped officer may de-activate 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 (i.e., under circumstances where a civilian might overhear the strategy discussion), 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 de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC to discuss investigative strategy with my supervisor.").

I. De-Activation on Instruction from Prosecutor.

1. Notwithstanding Continuous Recording Pending Completion of Encounter, an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general. When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation (e.g., "I am now turning off my BWC as per the instruction of assistant prosecutor (insert name).").

J. Re-activation When Reason for De-Activation No Longer Exists.

1. In any instance where a BWC was de-activated, the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exist (e.g., the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (e.g., where the officer proceeds to other investigative activities that are required to be recorded pursuant to this Policy).

K. Re-Activation When Actual Law Enforcement Force is Authorized.

1. Notwithstanding any other provision of this Policy, in any instance where a BWC was de-activated pursuant to Sections Governing the Deactivation of a BWC, or de-activated pursuant to any state or county policy, standing operating procedure, directive, or order issued by this department, in situations where 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.

VIII. CIRCUMSTANCES WHEN BWC ACTIVATION/USE IS SUBJECT TO SPECIAL CONDITIONS OR RESTRICTIONS:

A. Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.

1. Except as otherwise required by the above sections, unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force, the officer shall not activate a BWC, or shall de-activate a BWC that has been activated, while the officer:

- a) Is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC.
- b) Is in a patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC; or
- c) Is in a place of worship under circumstances where worshipers would be in view of the BWC. See also [Section X.A](#) (notation (i.e., “tagging”) of certain events/encounters raising privacy or other special issues).

B. If an officer is required to de-activate the BWC in accordance with the provisions of this Section, the officer shall narrate the reason for de-activation (e.g., “I am entering a school building where children are present.”). The BWC shall be re-activated as soon as it is safe and practicable to do so if the circumstances requiring de-activation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).

C. **Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.**

1. Except as otherwise required by the above sections, an officer shall not activate a BWC, or shall de-activate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would risk revealing the identity 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 or her supervisor that the recording risks revealing the identity of an individual as an undercover officer or confidential informant. See also [Section X.A](#) (notation or “tagging” to indicate a BWC recording that raises special issues); [Section XI.C.1](#) (prosecutor’s authority to seek protective order when complying with discovery obligations).
2. Notwithstanding the foregoing general rule prohibiting the recording of an undercover officer or confidential informant, in the event of a planned arrest/search warrant execution where it is expected that an undercover officer or confidential informant would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover), the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instruction to any BWC-equipped officers participating in the operation on whether to activate their devices.
3. The BWC shall be activated/re-activated as soon as it is safe and practicable to do so if the risk of capturing the image of an undercover officer or confidential informant no longer exists.

D. **Special Precautions When a BWC Recording May Reveal Tactical Operations Information.**

1. In the event that a BWC worn during the execution of tactical operations (e.g., “Special Operations” or “SWAT” operations, execution of arrest and/or search warrant, etc.) records 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, techniques to convince persons to open doors, etc.), the recording shall be “tagged” in accordance with [Section X.A](#). See N.J.S.A. 47:1A- (exempting from disclosure under the Open Public Records Act “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons”); N.J.A.C. 13:1E-3.2 (2) (exempting records that may reveal “surveillance, security, tactical, investigative, or operational techniques”); see also [Section XI.C.1](#) (prosecutor’s authority to seek protective orders when complying with discovery obligations).

E. **Special Restrictions on Recording in Courtrooms.**

1. An officer shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority.
- F. De-Activation/Removal of BWC From Alcohol Breath Testing Area.
1. In order to eliminate any argument that radio frequency interference from a BWC affected an electronic alcohol breath test, BWCs shall be deactivated, turned off and removed from the area of the breath test instrument before an electronic breath test is conducted. 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 breath-testing area while the electronic breath testing device is being operated. If this provision requires de-activation of a BWC, the officer shall narrate the reasons for de-activation (e.g., "I am de-activating the BWC because the suspect is about to take a breath test."), and the BWC shall be re-activated when safe and practicable to do so following the completion of the breath testing operation.
- G. Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities.
1. Subject to the provisions of Section XIV of this Policy, a BWC with enhanced audio/video capabilities that allow it to record an image or conversation that could not be seen or heard by the officer wearing the device (e.g., infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remote distance), that feature/capability shall not be used without the express approval of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, in accordance with any applicable legal requirements.
- H. Restrictions on Using BWCs Surreptitiously or to Gather Intelligence Information on First Amendment Protected Activity.
1. A BWC shall not be used surreptitiously or in a clandestine manner. Additionally, a BWC shall not be used to gather intelligence information based on First 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, provided that nothing in this subsection shall be construed to prohibit activation of video and audio recording functions of a BWC as authorized under the law or this Policy.

IX. RETENTION OF BWC RECORDINGS:

- A. Minimum 180-Day Retention Period:
1. A BWC recording shall be retained for a retention period consistent with the provisions of this Section, after which time the recording shall be permanently deleted. A BWC recording shall be retained for not less than 180 days from the date it was recorded but shall be subject to additional retention periods as required in the below sections.
- B. Automatic Three-Year Retention Period:
1. A BWC recording 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.
- C. Three-Year Retention Period Upon Request:
1. Subject to any applicable retention periods established in the below sections, to the extent such retention period is longer, a BWC recording shall be retained for not less than three years if voluntarily requested by:
 - a) Law enforcement officer whose BWC made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value.
 - b) A law enforcement officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value.

- c) Any immediate supervisor of a law enforcement 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.
- d) Any law enforcement officer, if the BWC recording is being retained solely and exclusively for police training purposes.
- e) Any member of the public who is a subject of the BWC recording.
- f) Any parent or legal guardian of a minor who is a subject of the BWC recording.
- g) A deceased subject's next of kin or legally authorized designee.

D. Additional Retention Requirements:

1. Notwithstanding the provisions of the above section of this Policy, a BWC recording shall be subject to the following additional retention requirements:
 - a) When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
 - b) When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording 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.
 - c) When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
 - d) To effectuate subparagraphs [IX.C.1.e-g](#), the member of the public, parent, or legal guardian, or next of kin or designee shall be permitted to review the BWC recording to determine whether to request a three-year retention period, in accordance with the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., to determine whether to request a three-year retention period.

X. STANDARDS TO ENSURE SECURE STORAGE AND ACCESSIBILITY OF BWC RECORDINGS:

A. Officer/User Responsibilities:

1. When not in use, BWCs shall be stored in the designated section within the docking stations. The docking stations allow for the units to be charged and for the upload of events to the cloud-based server.
2. BWCs shall be utilized daily consistent with the requirements and restrictions in this Policy. Officers shall not utilize the BWC of another without the expressed permission of a supervisor.
3. Prior to beginning a shift, officers assigned a BWC will ensure its readiness by conducting an operational inspection. Officers shall also inspect BWCs at the conclusion of each shift to ensure system integrity.
4. When conducting the pre-shift inspection, the officer shall activate the BWC and verbally state the date, including that a test is being performed on the unit.
5. Any malfunctions preventing the use of the unit during the shift will be reported to the shift supervisor and entered into Guardian Tracking under the officer's name and within the *Operation/Care of Equipment* category.

6. Problems that cannot be remedied by contacting the manufacturer will be reported to the executive officer.
 7. Officers shall dock their BWC for download to its docking station upon completion of their shift or during breaks when time permits.
 8. Officers shall report any instance where the BWC stopped recording prior to the completion of the incident to their supervisor directly.
 9. No later than the end of their shift, officers will tag/categorize recordings and type/write the letters *BWC* in all capital letters at the end of the report/disposition notes to signify that video/audio is available for the case. BWC recordings are not a replacement for written reports. Under no circumstances shall officers simply refer to a BWC recording on an investigation report (or supplemental report if responding as a backup) instead of detailing the facts and circumstances of their investigation/observations.
 10. To identify BWC recordings that may raise special privacy or safety issues, officers shall appropriately tag recordings that:
 - a) Captured a law enforcement incident (see definitions), as defined in *New Jersey Attorney General Directive 2019-4*:
 - (1) Any use of force by a law enforcement officer resulting in death.
 - (2) Any use of force by a law enforcement officer resulting in serious bodily injury.
 - (3) Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
 - (4) The death of any civilian during an encounter with a law enforcement officer; and
 - (5) The death of any civilian while in the custody of law enforcement.
 - b) Captured the image of a victim of a criminal offense; or
 - c) Captured the image of a child; or
 - d) 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; or
 - e) Captured a conversation with a person whose request to deactivate the BWC was declined; or
 - f) Captured a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded; or
 - g) Captured the image of an undercover officer or confidential informant; or
 - h) Captured the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
- B. When necessary, the property/evidence custodian will transfer recordings to a CD, DVD, or other portable media and secure it as evidence in accordance with this agency's Policy on *Property and Evidence*.
- C. Supervisory responsibilities:
1. Supervisors shall ensure that officers utilize BWCs in accordance with this Policy.

2. Supervisors shall ensure that BWC recordings are downloaded to the docking station and uploaded to the server in a timely fashion.
3. Subject to the viewing restrictions in this Policy, supervisors shall formally review all instances when a BWC is deactivated prior to the conclusion of an incident and forward the administrative review through the chain of command to the Chief of Police, or his/her designee.
4. Subject to the viewing restrictions in this Policy, supervisors will conduct quarterly random reviews of selected recordings to assess officer performance as well as to flag recordings that may be appropriate for training purposes.
5. Subject to the viewing restrictions in this Policy and as part of the meaningful administrative review process, supervisors shall review all BWC footage involving the below:
 - a) Use of force; and
 - b) Motor vehicle and foot pursuits; and
 - c) Officer involved collisions; and
 - d) Officer involved injuries.
6. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the supervisor will flag the video/audio for indefinite retention.

XI. RECORDS RETENTION, REVIEW, AND RELEASE:

A. Open public record requests. Only the following BWC recordings shall be exempt from public inspection:

1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to section IX of this Policy 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 section IX of this Policy.
3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to section IX of this Policy.
4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to section IX 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.

B. The Chief of Police or his/her designee shall notify the Morris County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with and releasing it. Such notice shall clearly state the deadline by which a response must be made.

1. Provide an email to the MCPO with the type of police action or activity depicted in the recording, including, but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force (ProsecutorBWC@co.morris.nj.us).
 - a) Type of request (subpoena, court order, OPRA/common law).
 - b) Municipality.
 - c) Location of recording.
 - d) Requestor's identity.

- e) Type of officer interaction.
 - (1) Provide known Complaint, Promis-Gavel, or case number.
 - f) Related to DP conduct, Municipal Ordinance enforcement or a traffic violation.
 - g) Not related to the enforcement of criminal or traffic laws.
 - h) Deadline for the request.
2. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.
3. Chatham Borough shall not release the BWC footage to the requestor for a minimum of two (2) business days following the notification to the MCPO.
- a) Following the passage of two (2) business days:
 - (1) When the requested footage is related to indictable conduct or a MCPO's involved investigation/prosecution, Chatham Borough PD **may not** release the footage until they receive an approval from the MCPO or designee.
 - (2) When the requested footage is not related to indictable conduct or a MCPO's investigation/prosecution, determination regarding the accessibility of the footage may be made by the agency, and if appropriate, after consultation with the appropriate municipal prosecutor and/or municipal attorney.
4. Requests for Mobile/Digital Video Recorder (MVR/DVR) footage are not subject to notification requirements cited in the AG or MCPO BWC directive.
5. Pursuant to the *Open Public Records Act* (N.J.S.A. 47:1A-5c and N.J.S.A. 47:1A-5d), the department will apply service fees for any extraordinary expenditure of time and effort to accommodate a request. The service fees will be based upon the actual direct cost of providing the service or extraordinary time. If the requester objects to the fee, the request is closed and access to the records is not granted.
6. BWC footage requests, requiring a substantial amount of manipulation or programming of information technology, will be assessed a special service fee that shall be reasonable and shall be based on the cost for the labor cost of personnel providing the service, which is actually incurred for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record.
7. The fee will be based at the lowest hourly rate of the personnel authorized to review/redact/approve the request.
8. The records custodian or his/her designee will provide the requestor an estimate before any copies are made.
- C. 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 Morris 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.
- 1. 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 Morris 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.

2. A BWC recording tagged pursuant to section [X.A](#) of this Policy shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee. The Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee may authorize the Chief of Police and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section [X.A](#).

3. A BWC recording tagged as a law enforcement incident subject to *Attorney General Law Enforcement Directive 2019-4* shall not be accessed, viewed, copied, disseminated, or otherwise used **by anyone (including the Chief of Police and his/her designees)** without first obtaining the permission of the independent investigator or his/her designee supervising the investigation.

4. The independent investigator overseeing an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4*, or his/her designee, 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.

D. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or his/her designee and only if a duplicate copy is retained by the department.

1. Duplicate copies shall be maintained as evidence in accordance with this department's property and evidence guidelines.

2. The property/evidence custodian shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.

E. Officers shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc.

F. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Chief of Police.

G. Third-Party Storage and Maintenance.

1. If a law enforcement agency authorizes a third-party to act as its agent in maintaining recordings from a BWC, the agent shall be prohibited from independently accessing, viewing, or altering any recordings, except to delete recordings as required by law or agency retention policies.

XII. RESTRICTIONS ON ACCESS TO AND USE AND DISSEMINATION OF BWC RECORDINGS:

A. Specified Authorized Purposes for Accessing/Using Stored BWC Recordings. No law enforcement officer or civilian employee of this agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this Section and the law. BWC recordings shall not be divulged or used by this agency for any commercial or other non-law enforcement purpose. Access to and use 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 possible police misconduct or to determine the existence of a pattern or practice of possible misconduct.
 4. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by this agency.
 5. To show to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint.
 6. To comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court.
 7. To comply with any other legal obligation to turn over the recording to a person or entity.
 8. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular 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.
 9. For 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.
 10. To conduct an audit to ensure compliance with this Policy, standing operating procedure, directive, or order promulgated pursuant to this Policy.
 11. 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 County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or
 12. Any other specified official purpose where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
- B. Restriction on Access to BWC Recordings Related to Investigations Conducted Pursuant to AG Directive 2019-4.
1. To ensure the integrity of the investigation of "Law Enforcement Incidents" conducted pursuant to AG Directive 2019-4, and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this Policy, no civilian or law enforcement witness, including the principals of the investigation, shall be given access to, view, or receive an accounting of a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the "Independent Investigator," as that term is defined in AG Directive 2019-4.
- C. Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews.
1. A law enforcement officer shall be permitted to review or receive an accounting of a BWC recording prior to creating any required substantive initial reports, providing a statement, or submitting to an interview regarding the recorded event, except under the following circumstances:
 - a) The incident involves the use of force by the officer, where the officer knows or should know that the use of force resulted in significant or serious bodily injury or death.

- b) The incident involves the discharge of a firearm or any other use of deadly force by the law enforcement officer.
- c) The incident involves the death of a person while in law enforcement custody.
- d) The incident involves the death of a person during an encounter with a law enforcement officer.
- e) An incident that the officer knows or has been advised is or will be the subject of an internal affairs complaint relating to the officer's use of force, bias, or dishonesty; or
- f) An incident that the officer knows or has been advised is or will be the subject of a citizen complaint relating to the officer's use of force, bias, or dishonesty.

D. Whenever a law enforcement officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the law enforcement 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. The law enforcement officer shall document each BWC recording that was reviewed and the date of the review. If the law enforcement officer received an accounting of a BWC recording, the law enforcement 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.

E. Nothing in section [XII.C](#) shall be construed to require a law enforcement officer to review a BWC recording prior to creating any required initial reports, statements, and interviews regarding the recorded event, nor to prevent a law enforcement officer from reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial report, statement, or interview regarding the recorded event.

F. As noted above, an officer is prohibited from reviewing or receiving an accounting of a BWC recording in certain scenarios specified in subsections [XII.C.1.a-f](#) (the "specified scenarios") prior to the officer documenting or otherwise memorializing the officer's recollection of the incident, namely, by creating any required substantive initial report, providing a statement, or submitting to an interview regarding the recorded event ("the specified incident memorialization"). Whenever an officer participates in a specified scenario, then the officer shall only be permitted to review or receive an accounting of a BWC recording once the investigating entity concludes that

- 1. The officer has in fact completed the specified incident memorialization and
- 2. The officer's review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation.

G. In cases subject to Attorney General Directive 2019-4, the investigating entity shall be the Independent Investigator.

H. In all other "specified scenarios" the investigating entity shall be the chief law enforcement executive or designee.

- 1. The investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.

I. Documenting Access to Stored BWC Recordings. This agency shall maintain a record of all access to stored BWC recordings pursuant to this Policy. The department's record keeping system shall document the following information:

- 1. The date and time of access.
- 2. The specific BWC recording(s) that was/were accessed.
- 3. The officer or civilian employee who accessed the stored BWC recording.
- 4. The person who approved access, where applicable; and

5. The reason(s) for access, specifying the purpose or purposes for access authorized pursuant to [Section XII.A](#), and specifying the relevant case/investigation number, where applicable.

XIII. PUBLIC DISCLOSURE OF BWC RECORDINGS:

A. Any agency receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording shall, within one business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the County Prosecutor, or to the Division of Criminal Justice where the recording was made by a state-level law enforcement agency. Such notice shall clearly state the deadline by which a response must be made.

XIV. AUTHORITY OF COUNTY PROSECUTOR TO IMPOSE ADDITIONAL REQUIREMENTS:

A. Nothing in this Policy shall be construed to in any way limit the authority of a County Prosecutor to issue directives or guidelines to the law enforcement agencies subject to his or her supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings, provided that such directives or guidelines do not conflict with any explicit provision of this Policy. For example, a County Prosecutor may: specify additional circumstances when a municipal police department BWC must be activated; impose limits on the authority of a municipal police department to specify additional circumstances when a BWC must be activated; categorically prohibit the use of BWCs with enhanced audio/visual capabilities such as infrared night vision (cf. [Section VIII.G.1](#), which requires prosecutorial approval to use such features); and specify additional circumstances when a BWC recording will be “tagged,” etc.

XV. VIOLATIONS:

A. If an officer fails to adhere to the recording or retention requirements contained in this Policy, intentionally interferes with a BWC’s ability to accurately capture audio or video recordings, or violates any other provision of this Policy, the officer shall be subject to appropriate disciplinary action, in addition to any judicial consequences outlined in the law.