



COLCHESTER POLICE DEPARTMENT

08a

MEMORANDUM

TO: COLCHESTER SELECTBOARD
FROM: CHIEF DOUGLAS ALLEN
DATE: AUGUST 20, 2021
SUBJECT: BODY WORN CAMERAS

It is widely recognized that the use of body worn cameras (BWC) by police increase public trust in law enforcement. Their use, while not a panacea for all trust or accountability issues, can add a layer of documentation of the totality of any given circumstance faced by police. The video and audio recordings provided by these cameras will enhance what has been captured by Colchester Police Department (CPD) Mobile Video Recorders (MVR) installed in marked police vehicles for the past fifteen years.

Procurement/Cost

CPD has purposely waited for acquisition of BWC, allowing other departments to attempt to navigate some of the technical and policy issues surrounding implementation of BWCs. Among the larger Chittenden County communities, Burlington, South Burlington, Winooski, Essex and some Vermont State Police personnel are utilizing BWCs.

There are two vendors that supply BWC to police; Motorola/WatchGuard, and Axon. We have experience with both companies and chose Motorola/WatchGuard as they currently supply our MVRs and have been more cost effective in our price process. We now are proceeding with acquiring and implementing this technology.

- Cost
 - Equipment: Lease contract for 25 body cameras, docking stations, transfer station, data storage, server, stand-alone PC, and viewing/redaction software. \$19,788.00 annually for five years. Software updates and hardware replacements included in contract. This is funded initially through the seized asset fund but will need to be budgeted in the future as noted to the Selectboard in the 5/25/2021 Selectboard packet information al items.
 - Data: Increased internet bandwidth to accommodate above \$2,400 annually

- Staff and contracted attorney cost: The cost of system management, public records response, video review, documentation, retention, and redaction will grow over time. Given we have more information potentially subject to public records request, more staff and contracted attorney time will be spent on this function. These costs are not well documented, and we will have to increase budgets to accommodate for these costs in the future.

Policy/Redacting

The issues of retention periods for any given recording as well as requirements for what is recorded and when were the focus of our policy deliberations. CPD and Town administrations have been looking into these issues for the last five years and have formulated the attached policy with legal review. Vermont's Department of Public Safety (DPS) formulated a model policy that included input from many divergent opinions from different stakeholders. These debated issues included what situations should be recorded by the police, what recordings are subject to public release, and how long the recordings will be held. Our policy, while developed in advance and independently of the DPS model policy conforms with DPS recommendations.

Some highlights of CPD General Order 35 –

- The order combined all routinely recorded material either on BWCs or MVRs.
- BWCs are not intended to be used surreptitiously. Announcement of the use of a BWC in places and circumstances that a person would expect privacy is required.
- Use of BWC is required during the vast majority of contact between officers and the public.
- An officer may stop or not start a recording under very limited circumstances.
- Use of BWCs are prohibited in schools except when responding to a criminal act or a use of force is anticipated. Their use is also prohibited as a sole use of gathering intelligence on activities protected by the First Amendment.
- Retention and release guidelines are contained in the order.

Implementation: We have ordered the cameras and equipment, expanded our data transfer capacity, and developed the required policy. We will be training officers for the use and operation of this system which will be completed 30 days after receiving the equipment. Once training is complete, the attached policy will be immediately implemented and the BWC program will become operational.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

COLCHESTER POLICE DEPARTMENT

		SUBJECT: Video/Audio Recordings	
EFFECTIVE DATE:	NUMBER: General Order # 35		
REFERENCE: Replaces GO # 35 of 12/23/15 Compliant with VT LEAB			
REEVALUATION DATE: As needed	APPROVED:	NO. PAGES 10	

I. Purpose/Statement of Meaning

- a. The purpose of this policy is to ensure proper use and management of audio/visual equipment and recordings by Colchester Police Department employees. The proper use of both Body Worn Cameras (BWC) and Mobile Audio/visual Recording (MVR) equipment enhances this department's ability to collect evidence, provides feedback for officer evaluation and training, and provides accurate documentation of police and citizen interaction.
- b. Objectives:
 - i. To enhance officer safety.
 - ii. To document statements and events as they are occurring including traffic related events and operation of police vehicles.
 - iii. To document scenes involving criminal activity or other investigations.
 - iv. To enhance an officer's ability to document and review statements and actions.
 - v. To serve as a tool for officer training.
 - vi. To enhance public trust through greater transparency.

II. Definitions

- a. **Body Worn Camera (BWC):** An electronic device capable of capturing audio and visual recording worn on an officer's body.
- b. **Officer:** A sworn Colchester Police Department law enforcement officer.
- c. **Mobile Audio/Visual Recording (MVR):** An electronic device capable of capturing audio and visual recordings mounted in a Colchester Police Department vehicle.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

- d. **Subject of the audio/video recording:** Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the BWC/MVR recording, and shall not include people who only incidentally appear on the recording.
- e. **Use of force:** Any action beyond verbal commands and compliant handcuffing by a law enforcement officer that is intended to control, restrain or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.
- f. **Video footage or file:** Any images and/or audio and metadata recorded by a BWC/MVR.
- g. **Tagging:** Procedure used by officer to add metadata to video recording that identifies, categorizes, and assists in directing preservation of the recording.

III. Policy

- a. Use of Body Worn Cameras (BWC):
 - i. Only sworn officers and others permitted by the Chief of Police (Community Service Officer, Animal Control etc.) shall be permitted to wear a BWC. BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities.
 - ii. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless so authorized by a judicial order.
 - iii. Both the video and audio recording functions of the body camera shall be activated in any of the following situations:
 - 1. Whenever an officer arrives on scene at a call for service.
 - 2. At the beginning of any other investigative or enforcement encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous. The officer shall activate the camera at the first reasonable opportunity to do so.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

3. During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
 4. During administration of Miranda warnings and any response when in the field.
 5. At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.
- iv. Except as noted in section (c)(i) & (c)(iii) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.
- b. Mobile Video/Audio Recordings
- i. All applicable aspects of this order that pertain to the use, retention and release of footage captured by BWCs also apply to footage captured by MVRs.
 1. Members assigned to patrol vehicles equipped with MVR equipment shall ensure that all required pre-operational checks are performed in accordance with the manufacturer's recommendations including updating metadata information (Officer/Vehicle).
 - a. Malfunctioning MVR equipment will be reported to a supervisor as soon as possible and another police vehicle used if available.
 2. Members using MVR equipment shall record the following
 - a. Criminal investigation situations/scenes whenever possible:
 - b. Motor vehicle and criminal enforcement stops
 - c. Police pursuits
 - d. In progress motor vehicle or criminal statute violations
 - e. Traffic collisions involving department vehicles, and/or collisions resulting in injury or death.
 - f. Any situations where the member, because of experience or training, determines that the incident shall be documented
 - g. All searches involving motor vehicles
 - h. The Colchester Police Department shall maintain an MVR media storage system in a secure location.
 - i. No personnel shall alter, delete, tamper with or remove MVR media from either the police vehicle or the storage area except in accordance with this policy.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

- c. Notwithstanding the requirements of subsection (a.) above:
 - i. Prior to entering a private residence without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the BWC and ask if continued use is acceptable. If the occupant says no, the sworn officer shall immediately discontinue use of the body camera.
 - ii. If entering a private residence pursuant to a search warrant or in exigent circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.
 - iii. When interacting with an apparent crime victim, an officer shall, as soon as practical, notify the apparent crime victim of body camera usage and ask if continued use is acceptable. If the apparent crime victim says no, the officer shall immediately discontinue use of the body worn camera.
 - iv. Unless the encounter occurs in a location where there is an expectation of privacy, an officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individuals requests the recording to be stopped.
- d. In instances where the individual requests the officer to discontinue the use of a body camera made pursuant to subsection (b), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.
- e. Discontinuing or not starting a recording:
 - i. There are occasions where an officer should not initiate a recording; or, if an audiovisual recording has been initiated, the officer may determine it necessary to pause or stop the recording prior to the conclusion of the event. If the officer pauses or stops a recording, he/she shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:
 - 1. During on-scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
 - 2. Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
 - 3. Encounters with undercover officers or confidential informants.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

4. If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
 5. During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
 6. Officers are expected to be respectful of an individual's dignity and use sound judgments as to when and how the device will be used. Officers will try to avoid recording persons who are nude or have genitalia exposed, and officers will refrain from activating recordings in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, rest rooms and similar unless such recording is necessary for a legitimate law enforcement purpose.
 7. Recordings shall not be made to record personal activities such as meal breaks or conversations with other officers, supervisors or staff outside of the scope of ongoing field activities.
 8. Recordings are not expected during innocuous activities such as taking telephone complaints, foot patrols, security assignments, providing directions, non-enforcement roadside assistance, humane destruction of a wounded animal, traffic control, providing unlocks and similar.
 9. See subsections (b.i.) and (b.iii.) above regarding recording inside residences or other places where citizens have a reasonable expectation of privacy. Recording should resume as soon as one of the above reasons no longer exists.
- f. Prohibitions on the use of BWC:
- i. Officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated. This prohibition does not prevent officers from using BWCs as a recording device as part of an investigatory interview in a private setting within a school or medical environment.
 - ii. Officers shall avoid using body cameras to record, for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. This shall not be construed to limit lawful use of body cameras to record investigative

**Colchester Police Department
General Order #35 Video/Audio Recordings**

encounters between an officer and a member of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.

- iii. Officers shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of comparison to any other source.
- iv. Officers shall only use BWC for law enforcement purposes.

g. Review of recordings:

- i. Except as otherwise prohibited (Section iii. below), an officer may review BWC recordings prior to writing reports about incidents or arrests.
- ii. In situations that result in an officer involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the officer shall not review any recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.
- iii. See General Order 35A for procedures following a lethal force incident.

IV. Equipment and Training

a. Responsibilities of Officers

- i. Prior to the start of each shift, officers are responsible for checking their body camera equipment to be sure it is operational, fully charged, and free of any defects. Officers shall report any malfunctioning equipment to a supervisor, see if a replacement is available, and send an email to the Operations Lieutenant detailing the date and time the equipment malfunction was discovered.
 - 1. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly.
- ii. In the event a body camera either fails to activate and being recording or fails to cease recording, the officer will describe this, along with any additional relevant details in a written report.
- iii. Officers are responsible for “tagging” each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally “mis-tagging” will result in appropriate disciplinary action.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

- iv. Data from the BWC will automatically be downloaded to the CPD video storage. Officers that experience problems with downloading data shall report the situation to a supervisor immediately.
- v. Under no circumstances shall an officer erase, edit, alter, duplicate, share or otherwise distribute any recordings on their device except as allowed by this policy. Only a system administrator is authorized to delete or edit files pursuant to Section V of this of this General Order. Only staff designated by the Chief of Police are authorized to duplicate and distribute copies of recordings pursuant to Section V of this General Order.
- vi. Should any officer or employee fail to adhere to the recording requirements contained in this order, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body worn camera during or after its operation, appropriate disciplinary action shall be taken.

b. Responsibilities of Department

- i. CPD will ensure that proper training on the use of equipment described in this order including the contents of this policy, instruction on operation of the BWC, how data is transferred to storage, and proper identification and "tagging" of recordings.
- ii. CPD shall provide instruction to officers on how to report and replace malfunctioning equipment.
- iii. Supervisors may review recordings for the purpose of ensuring compliance with established policies, verifying the proper functioning of equipment, identify any areas in which additional training or guidance is required.
- iv. The Chief of Police is responsible for ensuring that all BWCs are equipped with a "buffering" feature that is set to record at least the most recent 30 seconds of video and audio prior to an officer's activation of the BWC and that "buffering" feature is activated.
- v. The Chief of Police is responsible to ensure that the retention schedule listed in Section V below is followed.

V. Storage, Retention and Release

a. Storage

- i. This department will ensure the secure storage of all recordings made by employees. All recordings and associated data are the property of Colchester Police Department and shall only be used for official purposes.

**Colchester Police Department
General Order #35 Video/Audio Recordings**

b. Retention and Release

- i. At a minimum, all recordings shall be held in accordance with the Vermont Access to Public Records Act. When appropriate and not exempt under 1 VSA § 317, recordings shall be released, or released with redaction, if redaction is appropriate in the circumstances.
- ii. Should any employee fail to adhere to the retention requirements contained in this order, appropriate disciplinary action shall be taken, with consideration as to whether the failure is intentional or inadvertent.
- iii. Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- iv. Any approved vendor such as a technician, IT staff, etc. shall not be allowed to access, view, copy, alter or delete footage unless in accordance with this policy and at the express direction of the Chief of Police or his/her designee.
- v. Retention Schedule –The following retention guidelines are enacted:
 1. When a BWC/MVR fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other recording as described in this order.
 2. 14 (fourteen) days - In instances where a BWC/MVR is activated mistakenly or as a test and records no discernable human activity, such footage may be permanently deleted after 14 days. The time, date, length of recording, assigned BWC/MVR designator, and a brief summary of the image depicted shall be documented.
 3. 90 (ninety) days - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:
 - a. Response to calls for service where no enforcement action occurs.
 - b. Traffic stops with no enforcement action taken beyond a written warning.
 - c. Traffic stops with enforcement action taken shall be kept until the civil case is closed.
 - d. Police-citizen interactions that do not involve enforcement action, a search or seizure.
 4. 3 (three) years - Recordings shall be retained for no less than three (3) years if:

**Colchester Police Department
General Order #35 Video/Audio Recordings**

- a. The recording captures an interaction or event involving:
 - i. Any use of force.
 - ii. Any incident in which a member of the public has made a complaint against an agency employee.
 - iii. Recordings used in disciplinary action against an employee shall be held for a minimum of three years from the completion of the disciplinary action.
 - iv. Is requested by the officer whose body camera recorded the video footage or their supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably asserts the video footage has evidentiary or exculpatory value.
 - v. Recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject of a recording. (4.)
- b. 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:
 - i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame)
- c. Recording related to the following will be retained indefinitely and require manual deletion only with approval of the Chief of Police :
 - i. Use of force incidents resulting in injury or allegation of injury.
 - ii. Officer involved shootings.
 - iii. Major incidents such as mass arrests.
 - iv. Serious felony offenses.
 - v. Homicide cases or any criminal death investigation.
 - vi. Active missing persons cases.
- vi. Lethal Force/Criminal Investigation Recording
 - 1. Whenever an officer equipped with a BWC/MVR is involved in, a witness to, or within audio or sight range

**Colchester Police Department
General Order #35 Video/Audio Recordings**

of a police use of force that results in a death or serious bodily injury including discharge of a firearm for other than humane destruction of an animal, or when any officer's conduct becomes the subject of a criminal investigation:

- a. Such officer's BWC and/or MVR shall be immediately seized by CPD supervisory or command level personnel, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence in Vermont state criminal and civil proceedings.
 - b. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence in Vermont state criminal and civil proceedings.
 - c. Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person.
- vii. This General Order is publicly available on the CPD website or by contacting CPD.
 - viii. Nothing in this General Order shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

XX