



# CHAPTER 3.14

## Body-Worn Camera Program

DOE OIG Office of Investigations

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## CHAPTER 3.14

### BODY-WORN CAMERA PROGRAM

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#### 3.14.1 SCOPE OF CHAPTER

The purpose of this chapter is to issue policy, guidance, and procedures for Special Agents (SA) of the Department of Energy, Office of Inspector General (OIG), Office of Investigations (OI) regarding its Body-Worn Camera (BWC) program.

#### 3.14.2 POLICY

The BWC program is intended to promote public trust, transparency, and accountability during law enforcement operations. All SAs engaged in planned law enforcement operations must follow the BWC guidelines set forth in this chapter.

**Note:** This policy will take effect upon approval of the BWC policy and Authority to Operate, and after any pilot and training programs have occurred.

#### 3.14.3 SCOPE

OI SAs do not engage in general policing or public patrol and do not routinely engage with the general public in response to emergency calls. Therefore, this policy focuses on the deployment of BWCs in planned law enforcement operations, such as the execution of a search warrant or arrest. While BWC recordings may enhance OI's ability to obtain evidence for investigative and prosecutorial purposes, it should be noted that the recordings may depict things that the SA did not see or hear and/or the SA may have heard or seen things that were not recorded by the BWC. While the recordings depict visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently from how the camera records them. This policy does not supersede existing policies in this OI Manual, such as those governing the use of force (see Chapter 3.9), conducting interviews (see Chapter 9.2), collecting evidence (see Chapter 10.4), and engaging in undercover operations (see Chapter 10.6).

#### 3.14.4 RESPONSIBILITIES

##### 3.14.4.1 *Assistant Inspector General for Investigations (AIGI)*

The AIGI<sup>1</sup> has overall responsibility for developing and implementing guidelines for the BWC program.

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<sup>1</sup> The AIGI may delegate these responsibilities to the Deputy AIGI.

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#### **3.14.4.2 *Office of Counsel to the Inspector General (OIG Counsel)***

OIG Counsel is responsible for providing general legal opinion and guidance on matters impacting the BWC program.

#### **3.14.4.3 *BWC Program Manager (PM)***

The BWC PM is appointed by the AIGI and is responsible for overall BWC program management, including the selection, maintenance, administration, and deployment of BWCs to OI SAs as required. The BWC PM is also responsible for periodic auditing of BWC equipment and recordings to evaluate the quality of the recorded audio and video to ensure SAs are properly operating BWCs in the manner intended by the program. The BWC PM serves as the BWC system administrator.

#### **3.14.4.4 *Special Agents-in-Charge (SAC) and Assistant Special Agents-in-Charge (ASAC)***

SACs and ASACs, in coordination with the BWC PM, are responsible for ensuring SAs comply with the OIG's BWC policy and procedures.

#### **3.14.4.5 *Law Enforcement Training Program (LETP) Law Enforcement Instructors (LEI)***

LETP LEIs, in coordination with the BWC PM, are responsible for ensuring that all SAs are properly trained in the use of BWCs in accordance with the policy in this chapter. LETP LEIs also serve as alternate BWC system administrators.

#### **3.14.4.6 *Regional Firearms Instructors (RFI) and Control Tactics Instructors (CTI)***

RFIs and CTIs, in coordination with LETP and the BWC PM, are responsible for ensuring SAs are properly trained in the use of BWCs in accordance with the policy in this chapter.

#### **3.14.4.7 *Special Agents***

SAs are responsible for following the BWC policy in this chapter.

### **3.14.5 DEPLOYMENT**

SAs participating in the execution of a planned law enforcement operation will wear and activate OIG-issued BWCs during the tactical portion of the operation. For the purposes of this policy, planned law enforcement operations include the execution of search warrants and arrests and arrestee transport. A BWC may also be used to record an interview with an arrestee or detainee that occurs during a law enforcement operation.

SAs may request approval from their ASAC, in coordination with the BWC PM, to deploy BWCs in other circumstances if doing so would be prudent (e.g., interview of a subject or witness who has a criminal history or history of violence).

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*Note:* BWCs should not be deployed solely for the recording of a controlled interview when other means of recording are available.

SAs operating in an undercover or discreet capacity are exempt from utilizing a BWC if such use would disclose their identity or expose the operation to increased risk.

### **3.14.5.1 Pre-Operation Planning and Briefing**

Prior to conducting a planned law enforcement operation, the team leader for the operation will conduct a briefing of the Operational Plan that includes the planned use of BWCs. All OI team members participating in the operation must receive this briefing.

### **3.14.5.2 Joint Operations**

OI team members will comply with the OIG's BWC policy when conducting a law enforcement operation with a partner law enforcement agency. This section applies to both OI-led and partner agency-led law enforcement operations.

The OI team leader for the law enforcement operation will coordinate with the partner agency team leader(s) before the operation. Conflicts of policy amongst partner agencies will be resolved by the OI team leader and the ASAC/SAC, in coordination with the BWC PM. Any resolution that results in a deviation from this policy must be pre-approved in writing by the AIGI or designee (see section 3.14.7 of this chapter). If any unresolved conflict remains, the SAC overseeing the operation shall notify the AIGI or designee prior to the operation.

### **3.14.5.3 Activation**

At the direction of the onsite OI operational team leader, SAs participating in a law enforcement operation shall activate their BWCs upon approaching a subject or premises. If, while wearing a BWC pursuant to this policy, an SA encounters a situation that, consistent with their training and experience, could lead to a use of force or is relevant to the investigation, the SA should activate and record with their BWC as soon as it is safe and practical to do so.

If a BWC is deployed in other circumstances (e.g., interview of a subject or witness who has a criminal history or history of violence), the BWC shall be activated upon approaching a premises and/or prior to making contact with the interviewee.

### **3.14.5.4 Deactivation**

BWCs will remain active until the tactical portion of the law enforcement operation is completed, such as the securing of a search scene or the securing and search of subjects. In most circumstances, BWCs will only be deactivated at the direction of the onsite OI operational team leader. When executing a search warrant, the onsite OI operational team

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leader may authorize SAs to deactivate their BWCs once the location to be searched has been secured and all subjects have been searched. The onsite OI operational team leader will use their discretion to determine when OI team members conducting perimeter security during the execution of the warrant may stop recording.

When executing an arrest warrant or arresting an individual during the execution of a search warrant, SAs assigned to the arrestee and/or performing arrestee transport must keep their BWCs activated until the arrestee is escorted into the detention facility. The onsite OI operational team leader may authorize the deactivation of the remaining BWCs once they determine the scene is secure and the arrestee has been transported from the scene.

If an OI SA activates their BWC in accordance with this policy when no onsite OI operational team leader is present, the SA may deactivate their BWC when it is safe and practical to do so.

An SA may deactivate their BWC at any time they need to obtain emergency medical attention or attend to a personal matter that takes them away from the planned law enforcement operation, such as using the restroom.

#### **3.14.6 RESTRICTIONS ON USE**

BWCs shall be used only in conjunction with official law enforcement duties. In determining whether a deviation is appropriate, SAs should be mindful of locations where recording may be considered insensitive, inappropriate, or prohibited by law or privacy policies.

Absent approval from the AIGI or designee, in consultation with any assigned prosecutor, BWCs shall not be used to record:

- inside a detention facility or courthouse, if the law enforcement operation is not taking place at that location;
- inside locations where video-recording is prohibited, such as a restricted area, Limited Area, or Sensitive Compartmented Information Facility;
- personnel conducting activities involving classified information;
- undercover operations; or
- inside locations where individuals have a reasonable expectation of privacy, such as restrooms or locker rooms.

#### **3.14.7 DEVIATIONS**

A deviation occurs when either (1) a recording was not made when it should have been made or (2) a recording was made when it should not have been made. Deviations from this BWC policy will be handled based on their categorization as either pre-approved or unplanned.

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### **3.14.7.1 *Pre-Approved Deviations***

Any pre-approved deviation from this BWC policy must be approved in writing by the AIGI or designee and, if applicable, be documented in the Operational Plan. The deviation must be requested via an internal OIG memorandum (see Chapter 5.9 of this OI Manual) to the AIGI or designee through the SAC overseeing the operation.

### **3.14.7.2 *Unplanned Deviations***

Any unplanned deviation from this policy related to BWC activation or deactivation due to device malfunction, operator error, restricted use (see section 3.14.6 of this chapter), or other circumstances shall be documented in an internal OIG memorandum from the involved SA to the AIGI through the SAC overseeing the operation. The memorandum shall address the circumstances of the deviation, including but not limited to:

- Why the recording was or was not made;
- Why the recording was interrupted; and/or
- Why the recording was terminated.

## **3.14.8 BWC EQUIPMENT**

SAs shall use BWCs issued only by the OIG. SAs should exercise reasonable care when using BWCs to ensure they are fully charged and functioning before and during deployment.

SAs will notify the BWC PM of any technical or equipment issues as soon as possible.

### **3.14.8.1 *Placement***

The BWC should be worn on the outside of an SA's ballistic vest or outermost garment to ensure the best field of view. SAs should reasonably ensure the BWC is not obstructed (e.g., by clothing, lanyards, accessories); however, SAs should not alter tactically sound principles to accommodate the BWC's visual recording. SAs should seek cover and concealment and use proper tactics to ensure their safety while wearing the BWC, even if doing so may obstruct the BWC's field of view.

If SAs are unable to wear their BWCs in a manner that avoids recording the identity of an undercover agent, confidential informant (CI), or confidential source (CS) participating in a law enforcement operation, the OI team leader will inform the BWC PM and note the occurrence in the Memorandum of Investigative Activity (MOIA) memorializing the operation. The BWC PM will coordinate with OIG Counsel on what steps should be taken to redact any images and voice recordings of the undercover agent, CI, or CS (see section 3.14.11 of this chapter).

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### **3.14.8.2 *Loss or Theft***

SAs will report the loss or theft of assigned BWC equipment to their immediate supervisor as soon as possible, but no later than 24 hours after the discovery of the loss or theft. The SA's immediate supervisor shall notify the BWC PM and the SAC.

### **3.14.9 RECORDINGS**

The BWC equipment and all data, images, video, audio, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the OIG. Other than the BWC PM and designated LETP LEIs, no OIG personnel shall edit, alter, erase, duplicate, copy, share, or otherwise release, disclose, or distribute in any manner any BWC recordings without prior written authorization from the AIGI or designee, in consultation with OIG Counsel. SAs may review their own BWC recordings, subject to the restrictions in this policy, but may not share their recordings with others outside of OI without prior written authorization.

BWC recordings will be uploaded as soon as possible, usually within 24 hours, to and stored in an OIG-controlled cloud storage service that logs all access. Access to the recordings will be controlled by the BWC PM. Each file will contain all relevant metadata, such as the date and time of the recording, the name of the SA who created it, and the case name and number. An audit log will automatically be created and maintained that sets forth the history of each recording, the date and time each recording is reviewed, and the name of each reviewer.

#### **3.14.9.1 *Requests for Disclosure***

All requests for disclosure of BWC information, including Freedom of Information Act requests, shall be coordinated through the BWC PM, in consultation with OIG Counsel and the AIGI. The BWC PM will review all responsive BWC recordings with OIG Counsel to determine if the recording or portions of the recording may be released. The BWC PM will also coordinate with the cognizant prosecutor and case agent for this determination. The BWC PM will then make redactions in coordination with OIG Counsel and/or the cognizant prosecutor (see section 3.14.11 of this chapter).

#### **3.14.9.2 *Treatment of Recordings***

In all circumstances, BWC recordings shall be treated as law enforcement sensitive information and Controlled Unclassified Information, the premature disclosure of which could reasonably be expected to interfere with law enforcement investigations and proceedings. BWC recordings will also be treated as potential evidence in a federal investigation subject to applicable federal laws, rules, and policies concerning any such disclosure and are therefore deemed privileged absent appropriate redaction prior to disclosure. All case-related BWC recordings are treated as evidence and managed by the BWC PM in the OIG-controlled cloud storage service.

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### 3.14.9.3 *Deleting Recordings*

Any request to delete a portion(s) of a non-training or non-case-related BWC recording (such as an accidental recording) must be submitted via an internal OIG memorandum from the SA to the AIGI or designee, through the SA's ASAC and SAC. The memorandum must state the reason(s) for the requested deletion. The request must be approved in writing by the AIGI or designee, in consultation with OIG Counsel and the cognizant prosecutor if applicable. The BWC PM may delete the recording only after receiving the request memorandum and associated written approval.

The BWC PM will maintain all deletion request memoranda and associated written approval in accordance with applicable records retention policies.

### 3.14.9.4 *Access and Review*

Access to stored BWC recordings will be password protected, logged automatically by the system software, and audited in accordance with OI policy by the BWC PM or designated LETP LEIs to ensure that only authorized users access the recordings and associated data for legitimate and authorized purposes. All logins, video access, and other actions taken in the system software are placed into an audit log that is reviewable by the BWC PM and designated LETP LEIs. Information in the audit log may be discoverable and could be requested by the prosecution or the defense during court proceedings.

- SA Reviews. An SA may access BWC recordings when necessary to perform the essential functions of their job, including but not limited to such review necessary to draft and review a MOIA memorializing the law enforcement operation.

An SA who is the subject of an administrative investigation relating to the recorded law enforcement operation may review their own BWC recording prior to being interviewed by any personnel conducting the investigation. The SA may review their BWC recording with their attorney or other representative with prior approval from the AIGI or designee. The SA will not be permitted to create or retain a copy of the recording without written approval from the AIGI or designee.

- SA-Involved Shooting Incidents/Uses of Force. All SA-involved shooting incidents and other uses of force (including deadly force) should be treated as being under investigation unless and until the applicable federal, state, or local prosecution office(s) has declined prosecution. As soon as practicable after any such incident, the involved SA should be informed by their supervisor that they should not discuss the incident with anyone other than a personal or agency attorney, association representative, or agency investigator until the conclusion of the preliminary investigation (see Chapter 3.12 of this OI Manual). The involved SA(s) and any SAs who witnessed the SA-involved shooting incident or use of force should provide their BWCs to the operational team leader. If the operational team leader was involved in or witnessed the SA-involved shooting incident or use of force, the BWCs should be provided to the next-senior SA on-scene who was not involved in



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or a witness to the incident. The BWC PM or another SA who was not involved in the law enforcement operation will upload the recordings from all collected BWCs to the cloud storage service if said recordings were not automatically uploaded by the BWCs. The involved SAs and any SAs who witnessed the SA-involved shooting incident or use of force shall not be permitted to view their BWC recordings without concurrence from the assigned prosecutor.

- Internal Investigations. Personnel conducting internal investigations may review BWC recordings in connection with such investigations. Requests to review an SA's BWC recordings shall be made via an internal OIG memorandum to the AIGI or designee. The memorandum shall state the reason(s) for the request.
- Training. BWC recordings may be used for training purposes. Access to those recordings will be coordinated through the BWC PM and any SA who created or is identified in the recording. The BWC PM, in consultation with OIG Counsel, will obtain the written permission of any OIG personnel whose images or voice recordings are depicted in any training videos.
- Supervisor Reviews. Supervisors may view BWC recordings to conduct after-action debriefs and for training purposes, as described above. Requests to review an SA's BWC recordings under this subsection shall be made via an internal OIG memorandum to the AIGI or designee, which shall state the reason(s) for the request. Supervisors may not use BWC recordings as evidence to support a negative performance appraisal.

#### **3.14.9.5 Requests for Release**

All requests for OIG BWC recordings unrelated to a pending OIG criminal investigation or case will be forwarded to OIG Counsel, which is responsible for processing and responding to such requests. Nothing in this policy shall be deemed to provide a right of public access to BWC recordings. OIG BWC recordings are controlled by, and the property of, the OIG and will be retained and managed by the OIG.

#### **3.14.10 RETENTION**

BWC recordings will be securely stored in accordance with Department and OIG policy. The BWC PM is responsible for ensuring appropriate storage. The following rules also apply:

- BWC recordings associated with information pertinent to the case being investigated – such as execution of a search warrant or a spontaneous statement of a subject, witness, or law enforcement officer – will be preserved in accordance with OIG policy.
- BWC recordings associated with shooting incidents or other uses of force involving OIG employees, complaints or allegations made against OIG employees, or any other

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investigations of OIG employees will be retained as directed by the AIGI or designee, in consultation with OIG Counsel.

- BWC recordings associated with normal training exercises (i.e., no injuries) will be deleted after the appropriate instructor (e.g., LEI, RFI, CTI) reviews the recordings for teachable scenarios. If a teachable scenario is identified, the instructor will ask the SA(s) who created and/or is identified in the recording if they would like any portion of the recording redacted before being used in future trainings. The BWC PM will perform the redactions as requested and produce a training video for LETP.
- In situations where sensitive law enforcement information or an undercover agent, CI, or CS's identity is recorded with a BWC, the BWC PM will restrict the recordings within the OIG-controlled cloud storage service to prevent unauthorized viewing or release. Any review or release of these recordings must be approved in writing by OIG Counsel.
- BWC recordings that are not associated with complaints or allegations made against OIG employees and that do not contain information pertinent to the case being investigated will be deleted in accordance with Department and OIG policy.

#### **3.14.11 REDACTIONS AND PRESERVATION OF IDENTITY**

Redaction to recordings will only be made by the BWC PM in coordination with the SA who created or is identified in the recording, the AIGI, and OIG Counsel or the cognizant prosecutor (as appropriate). The BWC PM may use redaction software to blur images or portions of images and/or minimize audio content when making copies of BWC recordings for disclosure. Redactions may occur in any situation where BWCs record content that otherwise should not be shared due to the restrictions noted in section 3.14.6 or any other law enforcement sensitivities or privacy concerns, which could include recordings of undercover agents, CIs, CSs, sensitive investigative techniques or equipment, minors, and injured or incapacitated individuals. The BWC PM will ensure the original recording is not altered or deleted during the redaction process.

#### **3.14.12 TRAINING**

OI leadership, in coordination with LETP and the BWC PM, is responsible for establishing and ensuring proper training is conducted for all SAs consistent with this policy. SAs must maintain proficiency and knowledge related to BWC deployment to ensure the proper use and operation of BWCs and to maintain compliance with individuals' rights to privacy and due process. All SAs must complete BWC training before participating in a planned law enforcement operation or other deployment of a BWC.