









A Review of Cincinnati PD's March 13, 2016 Draft Policy

From Police Body Worn Cameras: A Policy Scorecard

<https://www.bwccscorecard.org>

Department (by size) \$: DOJ funded	 Policy Available	 Officer Discretion	 Personal Privacy	 Officer Review	 Footage Retention	 Footage Misuse	 Footage Access	 Biometric Use
Cincinnati	✗	✓	○	✗	✓	✓	✓	✓
1 New York	✗	✓	✓	✗	○	○	✗	✗
2 Chicago \$	✓	✓	✓	✗	✗	✗	✗	✗
3 Los Angeles \$	✓	✓	○	✗	✗	○	✗	✗
4 Philadelphia	✗	?	?	?	?	?	?	?
5 Houston	✓	✓	○	✗	✓	✗	✗	✗
6 Washington, DC \$	✓	✓	○	✗	✗	○	○	✗
7 Dallas	✗	✓	○	✗	✓	○	✗	✗
8 Phoenix	✗	○	○	✗	✗	✗	✗	✗
9 Baltimore	✗	○	○	○	✗	✓	✗	✓
10 Miami-Dade \$	✗	✓	○	✗	✗	○	✗	✗
11 Las Vegas \$	✗	✓	✓	✗	✓	✓	✗	✗
12 Detroit \$	✗	?	?	?	?	?	?	?
13 Memphis	✗	✓	○	✗	✗	○	✗	✗
15 Milwaukee	✓	○	○	✗	✗	✗	✗	✗
16 San Antonio \$	✗	?	?	?	?	?	?	?
18 San Francisco	✓	✓	✓	✗	✗	○	✗	✗
21 Atlanta	?	?	?	?	?	?	?	?
26 Austin	○	○	✗	✗	✓	○	✗	✗
31 Cleveland	✗	✓	✓	✗	✗	✓	✗	✗
37 Seattle \$	✓	✓	○	✗	✗	✗	✗	✗
38 New Orleans \$	○	○	○	✗	✗	○	✗	✗
46 Albuquerque \$	✓	○	✗	✗	✗	✗	✗	✗
Oakland	✓	✓	○	○	✗	✓	✗	✗
Ferguson	✗	✗	✗	✗	✗	✗	✗	✗
Parker, CO	✓	✓	✓	○	○	○	✓	✗

Evaluation Criteria



Makes the Department Policy Publicly and Readily Available

- ✔ The department publishes the most recent publicly available version of its policy on its website, in a location that is easy for members of the public to find.
- ⦿ The policy posted on the department's website either is outdated, or is difficult for members of the public to find.
- ✘ The department's policy is not available on its website.



Limits Officer Discretion on When to Record

- ✔ The policy clearly describes when officers must record, and requires officers to provide concrete justifications for failing to record required events.
- ⦿ The policy clearly describes when officers must record, but does not require officers to provide concrete justifications for failing to record required events.
- ✘ The policy does not clearly describe when officers must record.



Addresses Personal Privacy Concerns

- ✔ The policy specifically protects categories of vulnerable individuals (e.g., victims of sex crimes) from being recorded without their informed consent.
- ⦿ The policy mentions the importance of personal privacy, but either offers vague guidance on when not to record, or does not require informed consent from vulnerable individuals.
- ✘ The policy does not address personal privacy concerns.



Prohibits Officer Pre-Report Viewing

- ✔ The policy requires officers to file an initial written report or statement before relevant footage is reviewed, for all incidents.
- ⦿ The policy requires officers to file an initial written report or statement before relevant footage is reviewed, for some incidents.
- ✘ The policy allows — or even encourages — officers to view relevant footage before filing an initial written report or statement.



Limits Retention of Footage

- ✔ The policy requires the department to delete unflagged footage within six months.
- ⦿ The policy requires the department to delete unflagged footage — but after more than six months.
- ✘ The policy does not require the department to delete unflagged footage, or we are unable to determine whether the unflagged footage must be deleted.



Protects Footage Against Tampering and Misuse

- ✔ The policy expressly prohibits both footage tampering and unauthorized access, and indicates that all access to recorded footage will be logged or audited.
- ⦿ The policy expressly prohibits both footage tampering and unauthorized access, but does not indicate that all access to recorded footage will be logged or audited.
- ✘ The policy does not expressly prohibit both footage tampering and unauthorized access.



Makes Footage Available to Individuals Filing Complaints

- ✔ The policy expressly allows individuals who are filing police misconduct complaints to view all relevant footage.
- ⦿ The policy expressly allows individuals who are filing police misconduct complaints to view some relevant footage.
- ✘ The policy does not expressly allow individuals who are filing police misconduct complaints to view relevant footage.



Limits the Use of Biometric Technologies

- ✔ The policy sharply limits the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.
- ⦿ The policy places some limits on the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.
- ✘ The policy places no limits on the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.

Cincinnati Police Department



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- ✗ Makes the Department Policy Publicly and Readily Available
 - ✓ Limits Officer Discretion on When to Record
 - Addresses Personal Privacy Concerns
 - ✗ Prohibits Officer Pre-Report Viewing
 - ✓ Limits Retention of Footage
 - ✓ Protects Footage Against Tampering and Misuse
 - ✓ Makes Footage Available to Individuals Filing Complaints
 - ✓ Limits Biometric Searching of Footage

Last updated: April 15, 2016

✗ **Makes the Department Policy Publicly and Readily Available**

Cincinnati has not published its draft BWC policy on its website. The [most recent publicly available policy](#) — dated March 13, 2016 — was found linked from a [story](#) on the Cincinnati Enquirer website.

✓ **Limits Officer Discretion on When to Record**

Cincinnati PD requires officers to record “all law enforcement-related encounters and activities as defined in the procedure.” (Policy; §A.2.)

Policy:

... Officers are required to activate their BWC system during all law enforcement-related encounters and activities as defined in this procedure...

Procedure:

A. Operating and Utilizing BWC systems

...

2. Officers will use BWC equipment to record **all** of the following incidents:

a. Any non-consensual encounter with a citizen.

1) Including any citizen encounter consistent with a “Terry Stop,” reasonable suspicion, probable cause and detention.

b. When on-scene with persons suspected of being MHRT or MHRT/V.

c. While responding to calls for service in emergency mode.

1) Both the BWC and the DVR will be activated.

2) The BWC may be deactivated after:

a) Clearing the call for service, or

b) The DVR is activated and recording a subject being transported in a police vehicle.

d. During the entirety of traffic or foot pursuits.

- 1) Activate the BWC before initiating a traffic or foot pursuit.
 - a) The BWC may be deactivated after the DVR is activated and recording a subject being transported in the police vehicle.
- 2) Deactivate the BWC when a vehicle or subject cannot be located.
- e. Traffic stops, including the investigation of a vehicle and occupants already stopped or parked.
 - 1) Record traffic stops until the stopped vehicle departs or until officers leave the scene.
 - 2) Officers equipped with the BWC serving as backup for traffic stops will continue to record until the stopped vehicle departs or officers leave the scene.
- f. **All** requests for consent to search without a warrant, including searches of persons, buildings, or vehicles, will be recorded. Both audio and video recordings will be made of the request and consent when practical.
 - 1) Recording is intended to enhance a documented consent; it does not replace a signed Ford 601, Consent to Search Without a Warrant.
- g. Requests for searches and deployments of drug-detection canines involving vehicles, when practical.
- h. Recordings of all persons physically arrested and being transported in any Department vehicle to any location.
 - 1) The BWC may be deactivated after the DVR is activated and recording a subject being transported in the police vehicle.
- i. Officers have the discretion to activate the BWC when they believe an event may have evidentiary value.

When officers fail to record a required event, they must “report the incident to their supervisor,” who must then investigate and document the failure. (Policy; §A.1.c.; §F.1.b.)

Policy:

... Officer safety and public safety take precedence over recording events. Under extenuating circumstances, utilization of the BWC system may not be possible. When this occurs, officers will report the incident to their supervisor. The supervisor will investigate and document the incident on a Form 17.
...

Procedure:

A. Operating and Utilizing BWC systems

- 1. Equipment is the responsibility of the officer assigned and will be operated according to the manufacturer’s recommendations.

...

- c. If an officer fails to activate or deactivate their BWC according to policy, whether intentionally or accidentally, they will report the incident to their supervisor.

- 1) The supervisor will investigate and document the incident on a Form 167, including any disciplinary recommendation.
- 2) A copy of the Form 17 will be forwarded to the BWC program coordinator and the incident will be tracked at the district of occurrence.

...

F. Supervisory Responsibilities

- 1. All supervisors of officers involved in the pilot program will:

...

- b. Supervisors will note in their rounds if an officer assigned to the pilot program is not able to use a BWC during the shift.

- 1) The supervisor will notify the BWC program coordinator if the equipment has malfunctioned.
- 2) Investigate and document on a Form 17 all incidents involving an officer who fails to activate or deactivate the BWC in accordance with procedure, including any disciplinary recommendation.
 - a) A copy of the Form 17 will be forwarded to the BWC program coordinator and the incident will be tracked at the district of occurrence.

Addresses Personal Privacy Concerns

Cincinnati PD prohibits officers from recording where there is “a reasonable expectation of privacy.” (§A.3.c-d.)

A. Operating and Utilizing BWC systems

...

3. Officers will **not** use the BWC to record the following:

...

- c. In any place where there is a reasonable expectation of privacy (e.g., restroom, locker room).
- d. In any detention facility or hospital facility (when confidential patient information may be recorded) **except** during an active incident (e.g, disorderly person).

Officers are not required to inform citizens that they are being recorded. (Policy)

... Officers are not required to inform citizens they are being recorded with the BWC. Unlike the back of a police car or empty police interrogation room, which requires notification recording equipment is in use, the personal contact between an individual and an officer does not constitute an environment where there is a reasonable expectation of privacy. ...

No individuals — and in particular, no victims — can opt out of recording. (§A.2.j.)

A. Operating and Utilizing BWC systems

...

2. Officers will use BWC equipment to record all of the following incidents:

...

- j. Officers are not required to initiate or cease recording an event solely at the request of a citizen.

In addition, officers may record in private homes under certain circumstances. (Policy)

... Officers have the right to use the BWC system inside a private home **as long as** they have a legal right to be there (e.g., call for service, valid search warrant, consent of owner). ...

Prohibits Officer Pre-Report Viewing

Cincinnati PD does not expressly prohibit officers from viewing relevant footage before filing an initial written report or statement. For police-involved shootings, the Homicide supervisor decides when BWC footage may be reviewed. (§B.5.)

B. Viewing, Altering and/or Sharing BWC Recordings

...

5. When an officer is involved in a police intervention shooting, their BWC will be subject to the process outlined in Procedure 12.550, Discharging of Firearms by Police Personnel.

- a. Review of the BWC footage at Criminal Investigations Section (CIS) will be made according to the investigative process and at the discretion of a Homicide supervisor.

Limits Retention of Footage

Cincinnati PD automatically deletes unflagged footage after 90 days (after the end of the pilot program). (Policy)

The Department will work with BWC vendors to preserve video for at least 90 days after the last recorded event during the pilot program. After the 90 day retention period recordings not categorized

for retention are automatically deleted. . . .

✔ **Protects Footage Against Tampering and Misuse**

Cincinnati PD expressly prohibits both footage tampering and unauthorized access. (Policy; §B.2, §B.6.)

Policy:

. . . Video files are the property of the CPD and are not to be duplicated and/or used without authorization from the Police Chief or their designee.

Procedure:

B. Viewing, Altering and/or Sharing BWC Recordings

. . .

2. Officers shall not edit, alter, erase, duplicate, copy, share or otherwise distribute in any manner BWC recordings without prior approval.

a. Requests to delete portions of a BWC recording (e.g., in the event of a personal recording) must be submitted for approval on a Form 17 to the police chief, who will review in accordance with state record retention laws. All request and final decisions shall be kept on file.

. . .

6. Officers shall not use non-agency equipment or devices to record or download video from BWC's.

The policy also requires all access to recorded footage to be logged. (§B.1.)

B. Viewing, Altering and/or Sharing BWC Recordings

1. All access to BWC footage will be automatically logged to create an electronic audit trail.

✔ **Makes Footage Available to Individuals Filing Complaints**

Cincinnati PD expressly allows a recorded individual to view footage during a citizen complaint investigation. This is a promising policy, although the policy lacks detail on how the viewing procedure works, including whether the recorded individual may be accompanied by his or her attorney. (§F.2.d.)

F. Supervisory Responsibilities

. . .

2. Supervisors will ensure disc copies of BWC footage are made and accompany department reports for all incidents involving:

. . .

d. Citizen Complaints

1) Form 648 — Citizen Complaint

a) When applicable, any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee who is subject of video footage, shall be permitted to review that specific video footage during a citizen complaint investigation.

For requesters who are not recorded subjects, the policy relies on existing public records law to make footage available. Oddly, the policy contains an exception for OVI (Operating a Vehicle Under the Influence) incidents, which allows the prosecutor to withhold footage. (§E.3.)

E. Records Requests

. . .

3. Outside requests for video files must be submitted to PRS on a Form 29, Records Unit Public Records Request. The request can be completed online by emailing the Form 29 to

cpdrecords@cincinnati-oh.gov or filling out an online form at <http://cincinnati-oh.gov/noncms/police/records/>.

- a. PRS will follow their SOP for the completion of records requests.
- b. OVI recorded events will only be released with the approval of the prosecutor.
- c. When a request for a video file is made from outside the Department, a second disc copy of the video file will be made by PRS and maintained in a file for one year.

✔ Limits Biometric Searching of Footage

Cincinnati PD sharply limits the use of facial recognition technologies to perform broad searches of recorded footage. An exception is made for analyzing particular incidents using such technologies “when reasonable suspicion exists.” (§G.)

G. Biometric Searches

1. Stored video and audio from a BWC shall not:
 - a. Be used to create a database or pool of mug shots
 - b. Be used as fillers in photo arrays, or
 - c. Be searched using facial recognition software
 - 1) This does not prohibit CPD from using recognition software to analyze the recording of a particular incident when reasonable suspicion exists that a specific subject or person in need of assistance may be a subject of a particular recording.