



EDWIN M. LEE
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
HEADQUARTERS
1245 3rd STREET
SAN FRANCISCO, CALIFORNIA 94158



GREGORY P. SUHR
CHIEF OF POLICE

San Francisco Police Department Agenda
6th Working Group Meeting
Body Camera Policy
August 11, 2015
12:30 p.m.

Roll Call

- Item 1. Adoption of Minutes from July 28, 2015 Meeting (ACTION)
- Item 2. Discussion of Follow-up Items from July 28, 2015 Meeting
- Item 3. Review of current draft and vote on whether to present current draft to the Police Commission at an upcoming Police Commission Meeting. (ACTION)
- Item 4. Possible Future Meeting Dates
- Item 5. General Public Comment
(The public is now welcome to address the working group regarding items that are within the subject matter jurisdiction of the working group. Speakers shall address their remarks to the working group as a whole and not to individual members of the working group. Working group members are not required to respond to questions by the public but may provide a brief response. Individual working group members should refrain, however, from entering into any debates or discussion with speakers during public comment).
- Item 6. Adjournment (ACTION)

SUPPORTING DOCUMENTATION FOR BODY CAMERA POLICY WORKING GROUP AGENDA ITEMS THAT ARE NOT CONFIDENTIAL AND DOCUMENTATION THAT HAS BEEN DISTRIBUTED TO THE WORKING GROUP AFTER DISTRIBUTION OF THE AGENDA PACKETS ARE AVAILABLE FOR REVIEW AT THE POLICE COMMISSION OFFICE, 1245 3RD STREET, 6TH FLOOR, SAN FRANCISCO, CA 94158, DURING NORMAL BUSINESS HOURS.

END OF AGENDA

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DISABILITY ACCESS

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San Francisco Police Department
Body Camera Policy Working Group
July 28, 2015 Meeting Minutes

The Body Camera Policy Working Group met at the Public Safety Building (PSB), 1245 3rd Street, Room 1025, San Francisco at 12:55 pm.

PRESENT: Deputy Chief Ali, Commander O'Sullivan, Brian Kneuker, Paul Yep, Marc Marquez, Marquita Booth, Johnathan Yank, Teresa Caffese, Joyce Hicks, Martin Gran, Rebecca Young, Yulanda Williams, Cheryl Davis – quorum.

Also present Commission President Suzy Loftus and DCA Alicia Cabrera.

Introductions: All members of the working group introduced themselves.

Item 1: Adoption of Minutes from July 14, 2015, 2015 meeting:

Officer Marquez made a motion to adopt the minutes; second by Officer Kneuker. Director Hicks abstained. All others voted in favor; motion passes.

Item 2: Discussion of Follow-up items from July 14, 2015 meeting:

Commander O'Sullivan discussed the language Director Hicks requested in Section F about OCC's role in administrative or criminal investigations and coordinating the viewing of the video. Director Hicks felt that the proposed language does not adequately cover the OCC's role when interviewing members when video is involved. Commander O'Sullivan mentioned that the OCC could make a request from the Department to obtain the video. Director Hicks felt that OCC would already have the video, and the language could cause delays. Mr. Yank mentioned that this language only applies to internal department interviews, not OCC interviews. DC Ali mentioned that in most cases the officer will have already seen the video by the time OCC schedules an interview (report writing, testifying). Director Hicks felt there needs to be language for the occasions when the officer has not already viewed the video, and there is an OCC complaint. Director Hicks wanted it made clear that in those cases the OCC investigator will coordinate with the member or the member's representative to view the video. Director Hicks is okay with the language as long as it is clear that this section only applies to internal Department investigations.

Ms. Caffese commented that, absent a serious incident, the officer would have already seen the video, prior to an OCC interview. This led to a discussion about assuming officers will be allowed to see the video prior to writing a report, testifying, etc. Ms. Caffese and Director Hicks both mentioned that there is a difference of opinion within the working group on this issue. Director Hicks asked if an officer would be able to view the video at any time, as long as it falls within the acceptable viewable incidents. DC Ali said that members would be able to



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view the video for any legitimate purpose, and there is technology that will allow the Department to track how often the officer access the video.

Director Hicks discussed that the language about OCC in section F could be confusing and mentioned that it could be removed. DC Ali proposed leaving the language for the Commission to review, and add a comment in the margins that the language could be confusing.

Ms. Young felt that the language proposed in the current draft, section F, is much broader than originally proposed. Commander O'Sullivan mentioned that there are restrictions in the policy that limit when an officer views the video – the member must have a right and need to know. Ms. Young mentioned the ACLU's letter and asked why the officer could not write the report first and then view the video. She mentioned that the officer could write a supplemental report if needed after watching the video. Mr. Yank mentioned that there were discussions about this topic at the last meeting that included the concerns about the Department having the most complete report and about officers fearing the report would be inaccurate if they were not able to watch the video prior so the reports would be too generalized. Commander O'Sullivan mentioned that the ACLU letter will be discussed in the next item

Director Hicks brought up section I, 2. C. – why OCC requests for video would be non-routine, which would make the timeframe for the OCC receiving the video 15 days. There was no objection to making the requests “routine.” It's actually the Commission's policy, and the Commission would also need to approve a change in the OCC document protocol policy.

Next item of discussion was regarding the process for departmental and non-departmental requests to obtain copies of the recording – Section I. No comments from the working group about the change in language.

Next item of discussion was regarding the retention time for recordings – Section J. There was discussion about lengthening the retention time to two years. No comments from the working group about the change in language.

Next item of discussion was when members would be allowed to delete recordings. Commander O'Sullivan read the new language that prohibits any member from deleting any recording without authorization from the commanding officer. He also reviewed the language that allows members of the RMO to delete footage in accordance with the Department's retention policy or when directed by the Commanding Officer of the RMO. Ms. Young mentioned that it may be confusing if there is not additional language that mentions that all recordings have to be retained for at least for 2 years. Proposed language “subject to the foregoing limitations, members of the RMO...”

Next item of discussion was section L – Discovery of Misconduct. In the previous meeting, the group felt there was a step missing for how to proceed when misconduct is identified. Mr. Gran questioned whether the superior officer has discretion to determine how if there is actual misconduct. DC Ali said that DGO 1.06 direct superior officers on how to proceed with



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misconduct. Mr. Yank mentioned that the language would be clearer if it read, "the superior officer shall make a determination as to whether to initiate an administrative investigation..." Commander O'Sullivan did say that there should be discretion. Mr. Gran proposed language, "shall initiate an administrative investigation, if called for, pursuant to DGO 1.06...." DC Ali proposed language, "The superior officer shall adhere to the provisions of DGO 1.06...."

Item 3: Discussion of ACLU letter dated July 13, 2015 to Commander Moser:

Ms. Young mentioned the letter's criticisms about the policy development not being an open process, and she disputes that comment. The ACLU mentioned balancing privacy concerns of the public along with the concerns of the police. The issues that Ms. Young addressed and felt would be the two main concerns for the public and other organization would be 1) when does the officer have to turn on the BWC, and 2) when does an officer get to view the recordings. For issue 1, she initially felt that the policy should read that the BWC should be on at all times, but she feels that the draft policy does address all of the incidents that the citizens would like to see recorded without having the BWC on at all times. For issue 2, she believes there are sound public policy opinions about the issue of officers viewing the video prior to writing the report. Ms. Young draws a distinction between BWC and security cameras. Ms. Young stated that if the officer is allowed to view a video, especially when it involves a justification for a detention, there is no way to prevent the content of the recording from influencing what the officer writes in the report. She offered a compromise of having the officer write the report, then watch the recording and then be allowed to write a supplemental report, if necessary.

Ms. Caffese mentioned the BASF task force's ideas on BWC and the topic of identification experts. BASF has discussed the reasons why officers should not be allowed to review the video prior to writing the report.

Officer Booth mentioned item #6 from the ACLU letter – reviewing reports. Officer Booth's interprets the letter as saying the ACLU does not have a problem with viewing recordings of routine incidents. Ms. Young says she can see how that could be interpreted.

Sgt. Williams mentioned that she spoke to officers in southern California – that agency does allow the officer to review video before writing the report for routine incidents. Writing supplemental reports could take away from for officers being out on the street.

Ms. Caffese brought up the time constraints mentioned by Sgt. Williams as leaning toward not viewing the report if there is a timeliness issue. The time issue has never been discussed. She asked what the cost benefit of having officers review if they should be out on the street.

Mr. Yank discussed the benefits to all parties of having the most complete report. Officer Booth mentioned that the video recording will provide the best evidence.

Director Hicks mentioned the ACLU's comments about the process not being transparent and wonders where that believe came from. She mentioned that she does not have anything else to add than what the other members have already mentioned.



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Ms. Young asked about the "carve outs" regarding when the officers cannot review the recordings and the word "immediate" investigation, and how does that modify the phrase "administrative investigation." DC Ali and Commander O'Sullivan read the language from various DGOs about conducting immediate investigations. Ms. Young asked if the language in section F could be changes to "any" from "immediate." Mr. Yank mentioned that would be a broad change. Commander O'Sullivan described a situation that would not allow an officer to view the video if the word were changed to "any."

DC Ali delineated the items that are included in an "immediate" investigation as listed in DGO 2.04. Lt. Yep mentioned a situation that would prevent the officer from viewing the video by changing the word to "any." Mr. Yank mentioned that changing the word to "any" creates confusion. Ms. Caffese suggested to refer to DGO .204

Director Hicks mentioned that the policy should define "an immediate investigation." DGO 2.04 talks only about a civilian complaint. DC Ali mentioned tabling this issue so the Department can research the items that are considered "immediate investigation," and which Department General Orders apply. A more specific listing of situations may be helpful. Ms. Caffese cautioned that if there is a list, then there may be something left off the list unintentionally.

Mr. Gran mentioned that section F, c. "at the discretion of the Chief ..." needs to be reviewed. Ms. Young asked if that item could be removed. DC Ali mentioned that the Chief should have the discretion to prohibit the officer from viewing the video. Discussion continued about the term of "his/her designee" and who fills that role.

Item 4: Future Agenda Items:

Commander O'Sullivan agreed to research the term "immediate investigation."

Item 5: Future Meeting Dates:

Next meeting on Tuesday, August 11, 2015 at 12:30 pm at 1245 3rd Street, San Francisco.

Item 6: General Public Comment:

Commission President Suzy Loftus addressed the working group and thanked the working group. President Loftus mentioned that there will be two public meetings for public comment.

Item 7: Adjournment:

Director Hicks made a motion to adjourn the meeting; second by Ms. Young.
All voted in favor; motion passes.

Digital Recording Devices

DRAFT

08/06/15

I. Purpose:

The use of Body Worn Cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. As such, the San Francisco Police Department is committed to establishing a BWC program that reinforces its responsibility for protecting public and officer safety. The purpose of this Department General Order is to establish the policies and procedures governing the Department's BWC program and to ensure members' effective and rigorous use of BWC and adherence to the program.

Commented [R1K1]: Goals taken from PERE/US DOJ Report: Implementing a Body-Worn Camera Program

Commented [S2]: Suggested by the Public Defenders' Office

The BWC is a small audio-video recorder with the singular purpose of recording audio/visual files, specifically designed to be mounted on a person. The BWC is designed to record audio and video activity to preserve evidence for use in criminal and administrative investigations (including disciplinary cases), civil litigation, officer performance evaluations, and to review police procedures and tactics, as appropriate.

Commented [S3]: Public Defenders Office suggestion is to use the word "peace officer."

II. Policy:

- A. **USE OF EQUIPMENT.** The Department-issued BWC is authorized for use in the course and scope of official police duties as set forth in this Order. Only members authorized by the Chief of Police and trained in the use of BWCs are allowed to wear Department-issued BWCs. The use of non-Department issued BWCs while on-duty is prohibited.
- B. **TRAINING.** The Department will train all members assigned BWCs prior to deployment. Members assigned BWCs shall use the devices in accordance with their training and the provisions outlined in this order.
- C. **PROGRAM ADMINISTRATOR.** The Risk Management Office (RMO) is the BWC's program administrator. The duties of the RMO include, but are not limited to:
 - 1. Tracking and maintaining BWC inventory
 - 2. Issuing and replacing BWCs to authorized members
 - 3. Granting security access to the computer server
 - 4. Monitoring retention timeframes as required by policy and law
 - 5. Complying with Public Record Act (PRA) requests and all other court record requests
 - 6. Conducting periodic and random audits of BWC equipment and the computer server

III. Definitions:

Commented [R1K4]: Commander Moser to relay information from City Attorney's Office

BODY WORN CAMERAS. XXX

HEALTH FACILITY. XXX

IVIII. Procedures:

A. Set Up and Maintenance.

Members shall be responsible for the proper care and use of their assigned BWC and associated equipment.

1. Members shall test the equipment at the beginning of their shift and prior to deploying the BWC equipment to ensure it is working properly and is fully charged.
2. If the member discovers a defect or that the equipment is malfunctioning, the member shall cease its use and shall promptly report the problem to his/her Platoon Commander or Officer in Charge.
3. If the member discovers that the BWC is lost or stolen, the member shall submit a memorandum through the chain of command memorializing the circumstances, in accordance with Department General Order 2.01, Rule 24, Loss or Damage to Department Property.
4. If the member's BWC is damaged, defective, lost or stolen, the member's supervisor shall facilitate a replacement BWC as soon as practical.
5. Members shall attach the BWC in such a way to provide an unobstructed view of officer/citizen contacts. The BWCs shall be considered mounted correctly if it is mounted in one of the Department-approved mounting positions.

Commented [rk5]: There was discussion about developing a form to report the malfunction/defect.

Commented [rk6]: Oakland PD

Commented [rk7]: Oakland PD

B. Consent Not Required.

Members are not required to activate or deactivate a BWC upon the request of a citizen.

Commented [S8]: Looking for the Supreme Court case to cite.

C. Authorized Use.

All members equipped with a BWC shall activate their BWC equipment to record in the following circumstances:

Commented [rk9]: Oakland PD

Commented [rk10]: The working group did discuss that some agencies recommend that officers have the BWCs on all the time; the working group is not making that recommendation

1. Detentions and arrests
2. Consensual encounters where the member suspects that the citizen may be involved in criminal activity as a suspect, victim or witness, except as noted in Section III, D.
3. 5150 evaluations
4. Traffic and pedestrian stops
5. When serving a search or arrest warrant
6. Conducting any of the following searches on one's person and/or property:
 - a. Incident to an arrest
 - b. Cursory
 - c. Probable cause
 - d. Probation/parole
 - e. Consent
 - f. Vehicles
7. Transportation of arrestees and detainees

Commented [S11]: Suggestion from Public Defender's Office to add the term "pat search" in parenthesis.

8. During any citizen encounter that becomes hostile
9. In any situation when the recording would be valuable for evidentiary purposes
10. Only in situations that serve a law enforcement purpose.

Commented [rk12]: Suggested by Officer Booth

Commented [S13]: Group suggestion after lengthy discussion.

D. Prohibited Recordings

Members shall not activate the BWC when encountering:

Commented [S14]: As suggested by DC Ali.

Commented [rk15]: Additional language was going to be developed by a member of the group, but to date, not received

1. Sexual assault and child abuse victims during a preliminary investigation
2. Situations that could compromise the identity of confidential informants and undercover operatives
3. Strip searches

However, a member may record in these circumstances if the member can articulate an exigent circumstance that required deviation from the normal rule in these situations.

Members shall not activate the BWC in a manner that is specifically prohibited by DGO 2.01, General Rules of Conduct, Rule 56 – Surreptitious Recordings - and DGO 8.10, Guidelines for First Amendment Activities.

Commented [S16]: As suggested by Commander Moser.

E. Terminations of Recordings

Once the BWC has been activated, members shall continue using the BWC until their involvement in the event has concluded to ensure the integrity of the recording, unless the contact moves into an area restricted by this policy. Members shall deactivate the BWC in the following circumstances:

1. When discussing sensitive tactical or law enforcement information away from the citizen
2. After receiving an order from a higher ranking member
3. After arriving safely at the booking facility
4. When recording at a hospital would compromise patient confidentiality
- 4.5. When gathering information from witnesses or community members, and there is concern that a BWC would inhibit information gathering efforts.

Commented [rk17]: Oakland PD

F. Viewing BWC Recordings

Commented [rk18]: The working group acknowledges that there are two opposing views on this issue: 1) allow officers to view the recording prior to writing an incident report, and 2) not allowing the officers to view prior to writing an incident report.

1. A member may review a BWC recording on his/her assigned device or on an authorized computer for any legitimate investigatory purpose, including but not limited to, preparing an incident report, preparing statements, conducting a follow-up investigation, or providing testimony, except when the member is the subject of the investigation in any of the following circumstances that were captured by the BWC:
 - a. An officer-involved shooting or in-custody death,

Commented [rk19]: There is not consensus in the working group about this issue. Some members feel that officers should not be able to look at the video under any circumstance prior to writing the incident report.

Commented [RKK20]: Ms. Young of the Public Defender's Office suggested a compromise about viewing the video: The officer writes the initial report without viewing the video, then the officer can view the video. The officer can then write a supplemental report, if needed.

- b. A member is the subject of a criminal investigation, ~~or an immediate administrative investigation;~~
- c. At the discretion of the Chief of Police or his/her designee.

For the above listed circumstances, the Department's administrative or criminal investigator will coordinate with the member or the member's legal representative to arrange the viewing of the BWC recording prior to the member's interview. Nothing in this section is intended to limit the Office of Citizens Complaints' (OCC) role in these investigations.

Commented [rk21]: Similar to LAPD

- 2. Members shall not access or view a BWC recording unless doing so involves a legitimate law enforcement purpose.

G. Documentation.

Officers submitting an incident report or completing a written statement shall indicate whether the BWC was activated and whether it captured footage related to the incident.

If a member deactivates a BWC recording prior to the conclusion of an event, the member shall document the reasons for terminating the recording in CAD, the incident report, a written statement or a memorandum.

If a member reactivates the BWC after turning the equipment off, the member shall document the reasons for restarting the recording in CAD, the incident report, a written statement or a memorandum.

If a member determines that officer or public safety would be compromised if a BWC were activated during an incident requiring its use, the member shall document in CAD, an incident report, a written statement or a memorandum the reasons for not using the BWC.

H. Storage and Use of Recordings

Commented [rk22]: The language in this section may have to be changed once the City has purchased the BWCs. At this time, the working group does not know the specific capabilities/limitations of the BWC or the computer storage system.

- 1. A member who has recorded an event shall upload the footage prior to the end of his/her watch unless instructed to do so sooner by an assigned investigator or a superior officer.
- 2. When uploading recordings to the computer server, members shall identify each BWC recording with the incident report number, CAD number or citation number and the appropriate incident category title to ensure the recording is accurately retained and to comply with local, state and federal laws.

I. Duplication and Distribution.

- 1. Departmental Requests

- a. The officer-in-charge or commanding officer of the investigative unit assigned the incident recorded by the BWC, or the commanding officer of the RMO shall have the authority to permit the duplication and distribution of the BWC files.
- b. Any member requesting to duplicate or distribute a BWC recording shall obtain prior approval from the officer-in-charge or the commanding officer of the unit assigned the investigation, or the commanding officer of the RMO.
- c. Duplication and distribution of BWC recordings are limited to those who have a "need to know" and a "right to know" and are for law enforcement purposes only.
- d. When releasing BWC recordings, members shall comply with federal, state and local statutes and Department policy.

2. Non-Departmental Requests

- a. Members ~~(The Department)~~ shall accept and process PRA requests in accordance with the provisions of federal, state and local statutes and Department policy.
- b. Members shall provide discovery requests related to the rebooking process or other court proceedings by transferring the BWC recording to the requesting agency by using the computer server where the BWC recording is stored.
- c. When requested by the OCC, members of the Legal Division shall provide the BWC recordings consistent with the ~~Department's~~ Police Commission's policy on OCC routine requests.

Commented [rk23]: The process of transferring files related to non-departmental requests may have to be revised once the exact type of BWC is known.

Commented [rk24]: There was discussion about whether the terminology here should be "members" or "the Department"

Commented [RKK25]: Confirm with Director Hick's that this is the language she intended.

J. Retention.

The Department shall retain all BWC recordings for a minimum of ~~one two years~~ in adherence with local, state, federal statutes and Department policy.

Commented [rk26]: A majority of the working group is recommending a two year retention period.

A BWC recording may be saved for a longer or indefinite period of time as part of a specific case if deemed relevant to a criminal, civil or administrative matter.

A member may not delete any BWC recording without prior authorization. The member seeking to delete a recording shall submit a memorandum to his/her Commanding Officer requesting to delete footage from a BWC file and shall make an entry of the request in the appropriate case file, if applicable.

The Commanding Officer shall then forward the memorandum to the Commanding Officer of the RMO for evaluation and appropriate action.

Subject to the above limitations, Members of the RMO are authorized to delete BWC recordings in accordance with the Department's established retention policies on BWC recordings or when directed by the Commanding Officer of the RMO.

K. Accidental or Unintentional Recordings.

If a BWC accidentally or inadvertently captures an unintended recording, the member may submit a memorandum through the chain of command specifying the date, time, location and a summary of the unintentionally recorded event. This memorandum shall be forwarded to the Commanding Officer of the RMO evaluation and appropriate action.

L. Discovery of Potential Misconduct during Authorized Review:

Commented [rk27]: From San Diego PD

Members reviewing recordings should remain focused on the incident captured in the BWC and should review only those recordings relevant to the investigative scope. If a member discovers potential misconduct during any review of the BWC, the member shall report the potential misconduct to a superior officer. The superior officer shall adhere to the provisions of Department General Order 1.06, Duties of Superior Officers, Section I.A.4. Nothing in this procedure prohibits addressing Department policy violations.

References:

Los Angeles Police Department's Body Camera Policy
Oakland Police Department's Body Camera Policy
Bart Police Department's Body Camera Policy
San Diego Police Department's Body Camera Policy
PERF/US DOJ Report: Implementing a Body-Worn Camera Program
DGO 1.06, Duties of Superior Officers
DGO 2.01, Rules 23 and 24, Use of Department Property and Loss or Damage to Department Property
DGO 2.01, Rule 56, Surreptitious Recordings
DGO 8.10, Guidelines for First Amendment Activities