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# Body-Worn Cameras & Dashboard Cameras

Policy Review and Recommendations



OFFICE OF  
POLICE OVERSIGHT

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# Introduction

In June 2020, the Austin City Council passed a series of resolutions aimed at restricting the use of force by law enforcement and reimagining public safety in Austin.<sup>1</sup> These resolutions included:

- Resolution 20200611-050 (Resolution 50);
- Resolution 20200611-095 (Resolution 95); and
- Resolution 20200611-096 (Resolution 96).<sup>2</sup>

These resolutions are at the center of Reimagining Public Safety (RPS), which is the City of Austin's multi-faceted approach for improving all aspects of public safety in Austin.<sup>3</sup> RPS addresses issues like budget allocation, racial disparities in policing, use-of-force policies, and mental health response.<sup>4</sup>

As part of those resolutions, the City Manager directed OPO to facilitate a rewrite of the Austin Police Department (APD) policy manual, known as the General Orders.<sup>5</sup> This rewrite covers all policies within the General Orders, including those surrounding issues like search and seizure, body-worn cameras, dashboard cameras, mental health response, discipline, bias, language, and courtesy.<sup>6</sup>

This report begins with a brief policy overview highlighting OPO's main concerns with APD's existing policy language for body-worn cameras and dashboard cameras. Here, body-worn cameras are defined as cameras attached to a police officer's body. Dashboard cameras are defined as cameras attached to a police vehicle.

Next, this report provides background information on body-worn camera and dashboard camera technology, including the purpose and prevalence of each. Finally, this report discusses OPO's research findings and preliminary recommendations on how to proceed in re-writing APD's body-worn camera and dashboard camera policies.

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## OPO's Three-Phase Approach

OPO utilizes a three-phase approach to facilitate the rewrite of APD's General Orders. In accordance with Resolutions 95 and 96, OPO approaches this rewrite through an open process, seeking feedback and input from the community.<sup>7</sup> This report represents Phase I of OPO's three-phase approach as it relates to body-worn cameras and dashboard cameras.

In Phase I, OPO conducts a preliminary analysis of APD's current policy language on specific topics. All analyses will be made available on [atxpoliceoversight.org](http://atxpoliceoversight.org).

In Phase II, OPO works with community partners and stakeholders to gather input from the public about proposed changes to policies. This outreach effort includes events, surveys, and other forms of community engagement.

In Phase III, OPO submits policy recommendations and community feedback to APD. APD, in consultation with the City Manager's Office, will review the recommendations before incorporating them into the General Orders. APD will bring the proposed modified General Orders to City Council for feedback before implementing them.<sup>8</sup>



# Policy Overview

To comply with directives from the City Manager, OPO conducted research related to body-worn cameras and dashboard cameras to align with the City of Austin's efforts to reimagine public safety.<sup>9</sup> As part of this research, OPO reviewed best practices and conducted a comparative analysis of policies on body-worn cameras and dashboard cameras from police departments around the country.

OPO also reviewed APD's existing policies for body-worn cameras and dashboard cameras, using guidance from the Austin City Council. City Council "supports policies that reduce the unnecessary use of force by police,[...] expand civilian oversight of the Austin Police Department, and improve relations between police and those they serve."<sup>10</sup>

OPO's research revealed that APD's policies in these areas require revision to align with the City of Austin's efforts to reimagine public safety and comply with state law passed in 2021.<sup>11</sup> Importantly, General Order 303.7 provides for these sorts of revisions, stating that the body-worn camera policies will be reviewed for continuous effectiveness and adherence to local, state, and federal laws.<sup>12</sup>

## **OPO's main concerns with APD's existing policy language on body-worn cameras and dashboard cameras are as follows:**

### **Reliance on policies from Lexipol leads to vague guidelines and removes community from the policymaking process.**

- APD's policies are developed by a private corporation called Lexipol.<sup>13</sup> Lexipol's policies prioritize managing risk from police misconduct lawsuits through policies that comply with case law, federal law, and state law.<sup>14</sup>
- This approach leads to a system of vague rules that make it difficult to hold officers accountable when violations occur.
- Lexipol does not prioritize community input as part of its policymaking review process.<sup>15</sup>

### **Current purpose statements governing body-worn cameras and dashboard cameras do not align with the City of Austin's Reimagining Public Safety initiative.**

- The current purpose statement for body-worn cameras is unfocused and does not include a purpose that prioritizes the use of body-worn cameras to further the City of Austin's goals of eliminating racial bias, reducing unnecessary use of force by the police and improving the relationship between officers and the community.<sup>16</sup>
- The current purpose statement for dashboard cameras does not include a purposeful statement on how an unbiased record of an incident will "improve relations between police and those they serve."<sup>17</sup>

### **APD policy needs to be revised to align with recent state legislation and provide more clarity where state law is lacking.**

- In 2021, the Texas Legislature passed House Bill 929, also known as the Botham Jean Act or "Bo's Law."<sup>18</sup> House Bill 929 amended sections of the Texas Occupations Code governing the use of body-worn cameras by peace officers.<sup>19</sup> The new law took effect on September 1, 2021.<sup>20</sup> As of the date that this report was published, APD's policy related to body-worn camera deactivation has not been updated to align with this new law.
- In addition to updating its policies to align with state law, APD should revise its body-worn camera policies to define pertinent terms that are not defined by statute, and address the weaknesses of the new statutory language.

## **Currently, various concepts and definitions related to body-worn cameras and dashboard cameras are unclear.**

- The current General Orders lack clarity in key concepts and definitions related to the recording requirements of body-worn cameras.
- The current General Orders permit officers to deactivate dashboard camera and body-worn camera audio for “administrative reasons,” but the situations that constitute “administrative reasons” do not appear administrative in nature.<sup>21</sup>
- The current General Orders do not provide guidance for supervisors in authorizing deactivation of dashboard camera and body-worn camera audio.<sup>22</sup>

## **The current General Orders give officers too much discretion in determining when to activate and deactivate body-worn cameras.**

- The current General Orders lack sufficient guidance regarding the activation and deactivation of body-worn cameras.
- The amount of officer discretion permitted in the current General Orders can increase the likelihood that body-worn cameras will not be activated at the start of an interaction or will be deactivated before the completion of the interaction.

## **Current General Orders do not require officers to document their use of body-worn cameras or dashboard cameras in an incident report or case file.**

- The General Orders do not appear to comply with a Texas law [Texas Occupations Code Section 1701.657(c)] requiring officers to document a reason for not recording with their body-worn cameras when recording was required.<sup>23</sup>

## **The title "Advisement & Consent" for General Order 303.3.2 does not reflect its content.**

- The current policy suggests that officers “inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.”<sup>24</sup>
- The current policy does not discuss consent and does not provide guidance on when or how officers should advise a member of the community that an interaction is being recorded.<sup>25</sup>

**The current General Orders do not require supervisors to conduct inspections of dashboard camera recordings to ensure that officers are testing the equipment at the beginning of their shifts.**

- The General Orders require supervisors to conduct periodic inspections of officers' body-worn camera recordings.<sup>26</sup> Among other things, these inspections are meant to determine whether officers are testing their body-worn camera equipment before starting their shifts.<sup>27</sup>
- The General Orders also require officers to test their dashboard camera equipment.<sup>28</sup> However, the General Orders do not currently require supervisors to conduct inspections of dashboard camera recordings.<sup>29</sup>

**The current General Orders do not support consistency or transparency in enforcement and discipline.**

- APD has applied the current Discipline Matrix inconsistently. APD routinely classifies violations as Supervisor Referral-Minor Policy Violations (SR-MPVs), which is not currently part of the classification and investigative assignment process section of the General Orders.

# Background on Mobile Audio Video Recordings

Body-worn cameras and dashboard cameras produce media that the APD General Orders classify as Mobile Audio Video recordings.<sup>30</sup> This section provides historical background on the use and development of body-worn camera and dashboard camera technology and discusses the similarities and differences between the two devices.

## **What are dashboard cameras?**

Dashboard cameras are cameras installed in police vehicles likely to be used for functions like patrol and traffic enforcement.<sup>31</sup> The General Orders refers to dashboard cameras as “Digital Mobile Audio Video” devices.<sup>32</sup> Because they are attached to vehicles, dashboard cameras capture footage of public spaces. However, dashboard cameras do not just capture video. Rather, they can also capture other information like GPS location data.<sup>33</sup> Dashboard cameras activate automatically; for instance, they can activate when the system detects the vehicle's sirens, emergency lights, or travel beyond a certain speed.<sup>34</sup>

## **How long have dashboard cameras been used?**

The use of dashboard cameras in policing is now common. In the 1990s, dashboard cameras became valuable tools for generating evidence in criminal cases regarding drunk or impaired driving and drug trafficking.<sup>35</sup> By 1999, dashboard camera footage was being used to address racial bias and officer safety because it captured situations in real-time from an objective point of view.<sup>36</sup>

In 2000, federal funding to state agencies caused an increase in the use of dashboard cameras by police departments across the country, making it more affordable for police departments to purchase this equipment.<sup>37</sup> By 2016, nearly 70% of all law enforcement agencies across the country used dashboard cameras.<sup>38</sup>

Over time, dashboard cameras have gotten smaller and more affordable. They have also changed in their functionality.<sup>39</sup> For example, in the 1990s, police officers refused to activate dashboard cameras.<sup>40</sup> In response, manufacturers programmed dashboard cameras to activate automatically.<sup>41</sup>

## **What are body-worn cameras?**

Body-worn cameras are small cameras worn by officers to capture what the officers see and hear.<sup>42</sup> Body-worn cameras are often attached to the chest area on the outermost layer of an officer's uniform.<sup>43</sup> However, they can also be attached to other areas of the uniform such as an officer's helmet, hat, or glasses.<sup>44</sup> Unlike dashboard cameras, automated activation technology for body-worn cameras is still developing.<sup>45</sup> As a result, many departments' body-worn cameras do not have the ability to activate automatically; officers must activate them manually.<sup>46</sup>

## **How long have body-worn cameras been used?**

Compared to dashboard cameras, body-worn cameras are relatively new. In the United States, testing of body-worn cameras for law enforcement use began in 2012.<sup>47</sup> The technology received immediate attention from the law enforcement community. The Police Executive Research Forum (PERF) and the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS) held a conference on the technology in September 2013.<sup>48</sup>

After the 2014 police shooting of Michael Brown in Ferguson, Missouri, the Obama Administration developed a grant program to help law enforcement agencies cover costs associated with implementing body-worn cameras.<sup>49</sup> The federal government began awarding those grants in 2015, which made it possible for the rapid purchase of body-worn cameras by law enforcement agencies across the United States.<sup>50</sup> By 2016, nearly half of all local law enforcement agencies in the country had acquired body-worn cameras.<sup>51</sup> APD began using body-worn cameras in 2015.<sup>52</sup>

In October 2020, the United States Department of Justice issued a memorandum permitting the use of body-worn cameras by state and local law enforcement officers assigned to work on federal task forces.<sup>53</sup> Prior to this change in policy, state and local law enforcement officers assigned to federal task forces were not permitted to wear body-worn cameras.<sup>54</sup> In September 2021, federal law enforcement agencies like the U.S. Marshals Service, Federal Bureau of Investigation, and the Drug Enforcement Administration began the first phase of their body-worn camera programs.<sup>55</sup> The use of body-worn cameras may increase at the federal level if H.R. 7120, the George Floyd Justice in Policing Act, passes in the United States Senate.<sup>56</sup> Among other things, the George Floyd Justice in Policing Act would require that all federal law enforcement agents wear body-worn cameras.<sup>57</sup>



# Findings

This section discusses findings from OPO's analysis of the APD General Orders related to body-worn cameras and dashboard cameras. Body-worn cameras are discussed in General Order 303.<sup>58</sup>

Dashboard cameras are discussed in General Order 304.<sup>59</sup>

# 1

## *Reliance on policies from Lexipol leads to vague, lenient guidelines and removes community from the policymaking process.*

APD's General Orders are, by and large, created by a private company called Lexipol.<sup>60</sup> Lexipol markets itself as a time-saver for police departments to outsource their policy development.<sup>61</sup> The company claims that its policies are customizable for any police department across the country.<sup>62</sup>

Lexipol advertises that its policies and procedures are up to date with the latest court cases and legislation.<sup>63</sup> In other words, Lexipol has advertised itself as a way for police departments to decrease liability in police misconduct lawsuits because its policies, at a minimum, square with current case law and legislation.<sup>64</sup> This advertising has been relatively successful, as Lexipol has reportedly provided policies, training, or services to 8,100 public safety agencies.<sup>65</sup> In one study, Lexipol was described as "the dominant force in police policymaking across the country."<sup>66</sup> In practice, Lexipol creates uniform state templates which it then uses to craft local policy without community input.<sup>67</sup>

Lexipol's risk management approach prioritizes protecting police departments from liability and does not prioritize accountability.<sup>68</sup> The result of policymaking that prioritizes risk management over accountability is a series of vague, ambiguous, and permissive rules that offer so much discretion to an officer that there can be little to no accountability internally within a police department or externally by the community.<sup>69</sup> Court cases and state and federal laws guiding police conduct are vague and flexible because they are intended to be one-size-fits-all: one rule must apply to different law enforcement agencies across the country or across the state.<sup>70</sup> This leaves state and local law enforcement agencies with the task of working within the confines of the law to create policies that fit the needs of their community and hold officers to account.

Lexipol claims that its policies are informed by best practices and can be customized to meet the needs of any of its contracting law enforcement agencies.<sup>71</sup> However, Lexipol has been outspoken about the need for flexibility in police policies. Over the years, Lexipol has repeatedly expressed a desire to give officers as much discretion as possible.<sup>72</sup> It has explained that policies "need to be flexible," and its "secret sauce" in shielding law enforcement agencies from liability lies in the fact that its policies rarely use the term "shall."<sup>73</sup>

Additionally, while Lexipol claims to be informed by best practices, it has taken stances against commonsense reforms endorsed by leading voices in policing when those reforms restricted officer discretion.<sup>74</sup> For example, in 2020, the International Association of Chiefs of Police (IACP) published the National Consensus Policy and Discussion Paper on Use of Force, “a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States,” which recommended mandatory use of de-escalation techniques.<sup>75</sup> Lexipol advised law enforcement agencies against changing its policies to align with the IACP because the IACP’s policy made de-escalation techniques mandatory rather than optional.<sup>76</sup> In addition, Lexipol has cautioned against utilizing policies that provide additional clarification about the factors an officer must consider in determining whether use of force is “objectively reasonable.”<sup>77</sup> Lexipol has also cautioned agencies against adopting policies that prohibit shooting at moving vehicles.<sup>78</sup>

Emphasizing de-escalation and restricting use of force is a cornerstone of Austin’s Reimagining Public Safety initiative.<sup>79</sup> Additionally, the Austin City Council has directed that the rewrite of the General Orders be done transparently and with community engagement so that the General Orders reflect the community’s values.<sup>80</sup>

By relying on policies and procedures produced by Lexipol, the General Orders fail to provide clear rules and guidelines and tend to prioritize conduct that manages the risk of liability rather than prioritizing accountability. The lack of clear guidance allows for inconsistent and potentially unequal application of the policies and promotes unnecessary resistance against the City’s efforts to create a culture of accountability within APD.

Additionally, because the General Orders make it difficult to know what is expected of officers, community members are also hindered from holding police accountable. Further, because Lexipol’s policies and procedures are uniform state templates with some level of customization to APD, community input is not a priority. According to Lexipol, “...agencies should not become more restrictive than what officers have learned to function under as dictated by the Supreme Court.”<sup>81</sup> In other words, Lexipol is not interested in customizations that go beyond what the courts and state legislatures have to say concerning police conduct because doing so may create more restrictive policies. Lexipol has rejected mainstream policing reforms, including reforms on use of force, that favor community input on policymaking over risk management.<sup>82</sup> Community input, therefore, is secondary to Lexipol’s desire to mitigate risk to police departments. However, the use of vague and ambiguous policies to mitigate risk to police departments does not mitigate the risk of harm to the public.

# 1

## Recommendation

To improve the General Orders, APD’s primary focus should be on transparent and community-informed policymaking. By emphasizing transparent and community-informed policymaking, APD can work toward the citywide goal of eliminating racial disparities and increasing equity in its policing.<sup>83</sup>

Experts on police reform say that policymaking should engage community members because community-informed policies lead to policies that are more transparent and clear.<sup>84</sup> Further, the City of Austin “supports policies that reduce the unnecessary use of force by police,[...]expand civilian oversight of the Austin Police Department, and improve relations between police and those they serve.”<sup>85</sup> Prioritizing accountability with a primary focus on community-informed policymaking is necessary to align with the Reimagining Public Safety resolutions passed by City Council.<sup>86</sup>

## 2

### *The current purpose statements governing body-worn cameras and dashboard cameras need to be revised to align with the City of Austin's Reimagining Public Safety initiative.*

Each of the current General Orders provides a "purpose and scope" statement. General Order 303.1 describes the purpose and scope of APD's body-worn camera policies and states, in part, as follows:

"The [body-worn camera] system provides an unbiased audio/video recording of events that employees encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. [Body-worn camera] systems can improve community relations and deter inappropriate conduct by both the members of the public and the police department."<sup>87</sup>

This is less a statement of APD's purpose for using body-worn cameras and more a list of potential uses. A purpose statement sets the tone for a policy. An unfocused purpose statement results in confusing and contradictory policies. By not providing a focused purpose, the current General Orders do not have a "why" to guide how body-worn cameras are used. The result is unclear guidelines. The current purpose statement for body-worn camera systems needs to be revised in order to align with the City of Austin's goals to reduce the unnecessary use of force by police and eliminate racial bias in policing.<sup>88</sup>

APD's purpose statement for dashboard cameras appears in General Order 304.1.<sup>89</sup>

General Order 304.1 states, in part, as follows:

"The [dashboard camera system] is designed to assist and complement employees in the performance of their duties. The [dashboard camera system] is used to record certain activities by providing a visual and/or audio record. Recordings are intended to provide an unbiased record of the incident and to supplement the employee's report."<sup>90</sup>

The purpose statement for dashboard cameras differs from the purpose statement for body-worn cameras in that it focuses solely on the benefits to officers.<sup>91</sup> This purpose needs to be revised in order to align with the Reimagining Public Safety resolutions and prioritize "reduc[ing] the unnecessary use of force by police[...]and improv[ing] relations between police and those they serve."<sup>92</sup>

Here, dashboard cameras are described as a tool to help officers perform their duties.<sup>93</sup> Although General Order 304.1 acknowledges that the recording is unbiased, it lacks any purposeful statement on what an unbiased record of an incident might mean for accountability and safety for officers and the community.<sup>94</sup> The broader purpose for rewriting APD's General Orders is to "improve relations between police and those they serve."<sup>95</sup> The purpose statement for dashboard cameras does not support this goal.



## 2

# Recommendation

The General Orders should include a clear and focused purpose statement for body-worn cameras that aligns with citywide initiatives to reimagine public safety. Such a purpose should be focused on improving community relations and prioritize increasing transparency with the community, eliminating racial disparities in policing, and reducing use-of-force incidents.

Similarly, the General Orders should include a purpose statement for dashboard cameras that aligns with citywide initiatives to reimagine public safety. It should emphasize that the purpose for using dashboard cameras is to decrease racial disparities in policing, deter the use-of-force, and reduce racial bias.<sup>96</sup>

### **3** *APD policy needs to be revised to align with recent state legislation and provide more clarity where state law is lacking.*

In 2021, the Texas Legislature passed House Bill 929, also known as the Botham Jean Act or “Bo’s Law.”<sup>97</sup> House Bill 929 amended sections of the Texas Occupations Code governing the use of body-worn cameras by peace officers.<sup>98</sup> The new law took effect on September 1, 2021.<sup>99</sup>

As a result of House Bill 929, officers actively participating in an investigation must “keep the [body-worn] camera activated for the entirety of the officer’s active participation in the investigation unless the camera has been deactivated in compliance with [the police department’s] policy.”<sup>100</sup> Additionally, officers are no longer permitted to discontinue recording with their body-worn cameras based on whether they are in a “nonconfrontational encounter.” Rather, officers “may choose to discontinue a recording...for any encounter with a person that is not related to an investigation.”<sup>101</sup> House Bill 929 does not define these phrases, and OPO found no definitions for them in other relevant laws.

As of the publishing date of this report, APD’s policy related to body-worn camera deactivation has not been updated to align with this new law.

### 3

## Recommendation

In addition to updating its policies to align with state law, APD should revise its body-worn camera policies to define pertinent terms that are not defined by statute. In particular, APD policy should define terms including, but not limited to, “active participation” and “investigation.”

Any revisions made by APD should also remedy the weaknesses of the statute created by its cyclical nature. While state law now states that officers who are actively participating in an investigation must keep their body-worn cameras activated for the entirety of their active participation, it seems to create a loophole by creating an exception when “the camera has been deactivated in compliance with [department] policy.”<sup>102</sup> This wording essentially allows each police department to determine the parameters of its policy, and thus its effectiveness. APD policy must be drafted with clearer parameters in order to remedy the issues within state law and be truly effective.

## 4

### *The current concepts and definitions related to body-worn cameras and dashboard cameras are unclear.*

A widespread issue with the current General Orders is a lack of clarity in concepts and definitions.

#### **The current General Orders lack clarity in key concepts and definitions related to the recording function of body-worn cameras.**

Currently, the General Orders do not clearly articulate the circumstances under which an officer must utilize the recording function of a body-worn camera. The terms “activation,” “deactivation,” “power on,” “power off,” and “discontinue” are all used, but are undefined.<sup>103</sup> It is unclear whether these terms all refer to the body-worn camera’s recording function or something else. This makes it very difficult for members of the community to know when recording is required. Additionally, the current General Orders use phrases like “consensual contact” and “best interest of the community,” when discussing body-worn camera usage, but fail to define them.<sup>104</sup> This is problematic because these concepts are crucial to understanding which interactions with community members must be recorded. For example, General Order 303.3.1 requires officers to record during “consensual contacts” with members of the public when doing so would be in the “best interest of the community.”<sup>105</sup> The lack of definitions makes it unclear what constitutes a “consensual contact” or “the best interest of the community.”

To understand these concepts, OPO looked to Texas law. Importantly, House Bill 929 does not define these phrases and OPO found no definitions for them in other relevant laws. If these terms are not defined in Texas law, APD can clarify their meaning. Without clear definitions, officers cannot know what is required of them, which does not further the goals of officer safety, accountability, or transparency with the community. This leads to members of the community being beholden to an individual officer’s interpretation in each interaction, leaving open the opportunity for disparities in treatment.

**The current General Orders do not provide guidance to supervisors in authorizing deactivation of dashboard camera and body-worn camera audio for an “administrative reason.”**

General Order 304.3.3 governs dashboard cameras and permits deactivation of audio for “administrative reasons only.”<sup>106</sup> The same is true for General Order 303.3.3 governing body-worn cameras.<sup>107</sup>

“Administrative reasons” under General Order 304.3.3 are defined as “personal conversations unrelated to an event,” “the conclusion of an incident” or “any other reason authorized by a supervisor.”<sup>108</sup>

Under General Order 303.3.3, “administrative reasons” are defined as “personal conversations unrelated to the event,” “employee to employee training,” or “any other reason authorized by a supervisor.”<sup>109</sup> In both instances, examples of “administrative reasons” do not actually appear administrative in nature.<sup>110</sup> Moreover, the policies fail to provide any details on the factors that a supervisor would consider in determining whether a valid administrative reason exists.<sup>111</sup> As a result, this definition essentially creates circumstances in which any reason could be justified as an administrative reason.

# 4

## Recommendation

The General Orders should define terms crucial to understanding when recording with body-worn cameras and dashboard cameras is required. This includes clearly communicating when an officer is required to “turn on” their body-worn camera and when it is permissible to “turn off” their body-worn camera. Additionally, the General Orders must better define the term “administrative reason” and specify the permissible reasons a supervisor may authorize a body-worn camera or dashboard camera to be deactivated. Doing so will increase accountability and transparency. It will increase accountability by providing clear parameters that officers can use to guide their conduct. It will increase transparency by providing clear guidelines that the public can use to understand how APD uses these cameras.

## 5

## *The current General Orders allow too much officer discretion in activating and deactivating body-worn cameras.*

The current General Orders allow officers too much discretion in deciding when to activate or deactivate their body-worn cameras. In General Order 303.3.1(a)(5), it is left to officers to determine whether an encounter is “consensual” and whether they “[believe] activation of the [body-worn camera] would be in the best interest of the community.”<sup>112</sup> General Order 303.3.1(a)(5) offers no definition for “consensual” and no guidance to help officers to determine what type of situation should be recorded for “the best interest of the community.”<sup>113</sup> Similarly, General Order 303.3.1(b)(6) leaves it to officers to determine when a contact becomes adversarial such that they must activate their body-worn cameras.<sup>114</sup>

A similar pattern can be found in the General Order 303.3.3, which dictates the circumstances under which officers can deactivate their body-worn cameras.<sup>115</sup> General Order 303.3.3 requires that once a body-worn camera is activated “it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.”<sup>116</sup> Subsection (a) of this same policy defines the “conclusion of an incident” as a period when “all arrests have been made and arrestees have been transported,” and when it is determined “no further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive).”<sup>117</sup> Here, it is largely left to the officer to decide whether the conclusion of the incident occurred, especially in cases where no arrests are made.<sup>118</sup>

Research has shown that there is a correlation between an increase in use-of-force incidents and policies that give officers discretion in determining when to activate their body-worn cameras.<sup>119</sup> Research shows that officers are less likely to record when they have discretion in determining when to activate or deactivate their body-worn cameras.<sup>120</sup> By giving officers so much discretion in determining when to activate or deactivate their cameras, the current General Orders create an environment in which the cameras may not be recording in the appropriate circumstances and at the appropriate times.

In 2019, the City Auditor conducted an audit of APD's use of body-worn cameras.<sup>121</sup> The audit found the following two problems related to activation and deactivation:

- APD officers were not activating their cameras before the start of an incident; and
- APD officers were deactivating their cameras before an incident had ended.<sup>122</sup>

Although the sample size of the study was small (about 200 recordings) and there were a small percentage of issues found within that sample size, the Auditor found as follows:

“[T]he issues identified demonstrate that incorrect body-worn camera operation can have a significant impact on the quality of the evidence being recorded and may reduce transparency and accountability for officer interactions with the public. More importantly [...] issues relating to officer interactions with the public may continue to go undetected and uncorrected, compromising the effectiveness of APD's body-worn camera program and relationship with the public.”<sup>123</sup>

It is the stated goal of the City of Austin to “support policies that reduce the unnecessary use of force by police, enhance implicit-bias and de-escalation training, expand oversight of the Austin Police Department, and improve relations between police and those they serve,” all while working to eliminate deaths by APD officers and racial disparity by 2023.<sup>124</sup> Body-worn cameras can be an effective tool in working toward these goals. However, the General Orders allow officers too much discretion in deciding when to record with body-worn cameras, which makes it unlikely that body-worn cameras will be used in a way that will help achieve the City's goals.



## 5

# Recommendation

The General Orders should be revised to limit officer discretion in activating and deactivating body-worn cameras. Additionally, the General Orders should require officers to activate body-worn cameras prior to every law enforcement interaction unless a specific exception applies (e.g., it would contradict state law). Current research supports the potential for body-worn cameras to help reduce the unnecessary use of force by police, reduce racial bias in policing, and improve relations between police and the community. However, whether the City of Austin achieves these goals will depend on the existence and enforcement of clear policies.

## 6

### *Officers are not required to document their use of body-worn cameras in an incident report or case file.*

The current General Orders do not require officers to document their use of body-worn cameras or dashboard cameras. Prior versions of the General Orders included policies that required officers to document in a report any incident recorded with a body-worn camera or dashboard camera system, but APD removed these policies in September 2020.<sup>125</sup>

A policy that requires officers to document the use of body-worn camera and dashboard camera systems ensures that supervisors, investigators, prosecutors, courts, oversight entities, and other stakeholders will be aware that footage of a particular incident exists, which helps create efficiency and accountability.<sup>126</sup>

The current General Orders also do not require officers to document instances when they fail to use body-worn camera or dashboard camera systems when recording is required.<sup>127</sup> Texas law states that an officer “who does not activate a body worn camera in response to a call for assistance must include in the officer’s incident report or otherwise note in the case file or record the reason for not activating the camera.”<sup>128</sup> Under the General Order 303.3.1(e), officers must articulate the reasoning for a “delayed activation” of their body-worn camera in an offense report, supplement, or other form of Department-approved documentation.”<sup>129</sup> To truly reflect the intent of this law, the General Orders should explicitly require officers to not just document delays in their recording, but also those instances in which they do not record at all.



## 6

# Recommendation

The General Orders should be revised to require officers to document the use of body-worn cameras or dashboard cameras. The General Orders should also require officers to document and articulate reasons for delays in recording, failures to record, and deactivations or reactivations by the officer at any point during a situation that requires recording.

## ***“The Advisement & Consent” title for General Order 303.3.2 is misleading.***

General Order 303.3.2 is titled Advisement and Consent.<sup>130</sup> This title is misleading because the policy does not mention anything about consent and does not require advisement.<sup>131</sup> Rather, General Order 303.3.2 contains one sentence stating that officers “should inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.”<sup>132</sup> Calls for service often involve multiple individuals in emotionally-charged situations. This may make it impractical for an officer to gain consent prior to recording with a body-worn camera. However, advising individuals that they are being recorded does not involve the same difficulty and can provide transparency in the encounter.

The General Orders do not actually require officers to advise individuals that they’re being recorded by a body-worn camera; the General Orders only state that officers “should” do so.<sup>133</sup> Under General Order 106.2.3(4) (b), use of the word “should” is advisory rather than mandatory.<sup>134</sup> Also, there is a lack of guidance regarding when and how officers should inform someone that the interaction is being recorded with a body-worn camera. Being told by an officer that an encounter is being recorded could make a community member feel intimidated or threatened. This makes the tone and delivery of such a notification important.

# 7

## Recommendation

The title of a policy should accurately represent its content. For General Order 303.3.2, that means removing the word “consent,” since there is no mention of consent in the policy. Additionally, if officers are required to deliver a notification that an interaction is being recorded, the General Orders should require that it be given in a way that provides transparency and is delivered with respect and courtesy. This means the notification should be given at the beginning of an interaction, ideally as part of an officer’s introduction, and the General Orders should provide recommended language.

*The current General Orders do not require supervisors to conduct inspections of dashboard camera recordings to ensure that officers are testing the equipment at the beginning of their shifts.*

General Order 303.4.1 governs supervisor responsibilities related to inspections of body-worn cameras.<sup>135</sup> It requires supervisors to conduct inspections of body-worn camera recordings in conjunction with personnel inspections.<sup>136</sup> General Order 801.8 discusses personnel inspections and describes how often supervisors must conduct said inspections.<sup>137</sup> In addition to inspecting body-worn camera recordings to observe officer conduct, General Order 303.4.1 requires that supervisors also inspect “[o]ne randomly selected recording to ensure compliance with “10-41” video check.”<sup>138</sup> A “10- 41” video check occurs when officers test their body-worn camera equipment and dashboard camera equipment at the beginning of their shift.<sup>139</sup>

The current General Orders do not have a policy requiring supervisors to inspect dashboard camera recordings even though officers are required to conduct testing of this equipment, including 10-41 video checks.<sup>140</sup>



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## Recommendation

The General Orders should be revised to include a policy requiring that supervisors inspect officers' dashboard camera recordings in the same way that they inspect body-worn camera recordings. This would enhance accountability and help ensure that dashboard camera equipment is regularly tested.

## *The current General Orders do not support consistency or transparency in enforcement and discipline.*

The efficacy of a policy is partially dependent on the consistency and transparency of the discipline administered. As it relates to body-worn camera and dashboard camera violations, APD has applied its Discipline Matrix inconsistently and frequently classifies body-worn camera and dashboard camera violations as Supervisor Referral-Minor Policy Violations (SR-MPVs), which do not trigger an investigation into the incident and are not part of the complaint classification and investigative assignment process under General Order 902.3.<sup>141</sup>

### **Discipline**

General Order 903 governs discipline for policy violations. Body-worn camera and dashboard camera violations are split into two categories: intentional and unintentional.<sup>142</sup> Intentional violations are further divided into two subcategories: an intentional violation at a criminal incident and an intentional violation at a non-criminal incident.<sup>143</sup>

At the first occurrence of an unintentional violation, officers receive a conduct counseling memorandum.<sup>144</sup> At the second occurrence, officers receive an oral reprimand.<sup>145</sup> A third occurrence results in a range of discipline between a written reprimand to 1-3 days suspension.<sup>146</sup> An intentional violation is treated more severely, carrying a discipline level of four to fifteen days suspension for a first occurrence and indefinite suspension on the second occurrence.<sup>147</sup> An intentional violation at a criminal incident results in an indefinite suspension on the first occurrence.<sup>148</sup> Importantly, proving or disproving whether an officer did or did not intend to violate the policy is difficult at best and, depending on the circumstances, can be impossible.

### **SR-MPVs**

Additionally, APD routinely classifies violations of body-worn camera and dashboard camera policies as SR-MPVs. This classification is not mentioned as part of APD's complaint classification and investigative assignment process under General Order 902.3.<sup>149</sup> There, the General Orders provide an assignment table with detailed guidance on assessing each classification but make no mention of SR-MPVs.<sup>150</sup>

# 9

## *The current General Orders do not support consistency or transparency in enforcement and discipline.*

General Order 902.3 does, however, refer to a classification called "Supervisor Referral," which is defined as follows:

"A complaint:

- that is a minor policy violation which may result informal discipline, or
- where no formal complaint affidavit has been received by IA, however the complainant requests that the issue be brought to the attention of the supervisor, or
- where there is no policy violation."

"These informal complaints can either be made directly to IA, an officer's supervisor, and/or OPO and are most appropriately handled through other departmental processes (e.g., grievance, Conduct Counseling Memorandum, Employee Success Plan, or training)."

"If IA/OPO receives this informal complaint from a citizen, it will be forwarded to the appropriate supervisor and chain-of-command for its follow-up and response. Supervisor Referrals are entered into the IA tracking system for documentation purposes only and not for disciplinary purposes."

Supervisor Referrals are not the same as SR-MPVs. In fact, they are significantly different in three ways. First, an SR-MPV is only used when there is a policy violation. Minor policy violations are defined as "[v]iolations that may not normally result in formal discipline, including, but not limited to, tobacco use, operation of police vehicles, equipment violations, language use, etc."<sup>151</sup> On the other hand, a Supervisor Referral can be used when there is no policy violation.<sup>152</sup> Second, Supervisor Referrals require an officer's supervisor to attempt to make contact with the complainant to address any concerns. In contrast, there is no such requirement for SR-MPVs. Third, Supervisor Referrals do not involve discipline progression even if they are used to address a minor policy violation.

OPO objected to APD's revisions to General Order 902 in January 2020.<sup>153</sup>

Specifically, OPO objected to changes that made the administrative investigation classification process less transparent, as it created a new category that would handle minor policy violations differently than what was outlined in APD policy.<sup>154</sup>

In the time since, it has become increasingly common for body-worn camera and dashboard camera policy violations to be handled through SR-MPVs, without the same kind of oversight and the same process outlined in APD policy. The Discipline Matrix is a system of progressive discipline that is no longer used for many dashboard camera and body-worn camera violations. This undercuts APD's stated commitment to progressive discipline, and it undermines any overtures toward consistency in compliance with its policies.



# 9

## Recommendation

OPO recommends that the General Orders be revised to create a culture of consistent enforcement through use of the Discipline Matrix for policy violations. This will increase transparency and accountability. Similarly, APD should create and employ policies that require investigations into body-worn camera and dashboard camera violations.

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131. See Austin Police Department, “303.3.2 Advisement and Consent.”
132. Austin Police Department, “303.3.2 Advisement and Consent.”
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134. Austin Police Department, “106.2.3(4)(b) Grammatical Construction of Manuals,” Austin Police Department General Orders, Jul. 6, 2021, accessed Oct. 1, 2021, <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>.
135. See Austin Police Department, “304.3.1 Required DMAV Testing.”
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137. Austin Police Department, “801.8 Personnel and Equipment Inspections,” Austin Police Department General Orders, Jul. 6, 2021, accessed Oct. 1, 2021, <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>.
138. Austin Police Department, “304.3.1 Required DMAV Testing.”
139. See Austin Police Department, “303.3(e) Department Issued Body Worn Camera.”
140. See Austin Police Department, “304 Digital Mobile Audio Video Recording.”

# Endnotes

141. See Austin Police Department, “902.3 Complaint Classification and Investigative Assignment Process,” Austin Police Department General Orders, Jul. 6, 2021, accessed Oct. 1, 2021, <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>.
142. Austin Police Department, “903.1 Purpose and Scope,” Austin Police Department General Orders, Jul. 6, 2021, accessed Oct. 1, 2021, <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>.
143. Austin Police Department, “903.1 Purpose and Scope.”
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146. Austin Police Department, “903.1 Purpose and Scope.”
147. See Austin Police Department, “903.1 Purpose and Scope.”
148. Austin Police Department, “903.1 Purpose and Scope.”
149. See Austin Police Department, “902.3 Complaint Classification and Investigative Assignment Process.”
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151. Austin Police Department, “902.1.2(u) Definitions,” Austin Police Department General Orders, Jul. 6, 2021, accessed Oct. 1, 2021, <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>.
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153. Office of Police Oversight. “Formal Objection: Revisions to General Orders.” Office of Police Oversight, 13 March 2020, [https://joplin3-austin-govstatic.s3.amazonaws.com/production/media/documents/OPO\\_objection\\_03132020pdf.pdf](https://joplin3-austin-govstatic.s3.amazonaws.com/production/media/documents/OPO_objection_03132020pdf.pdf).
154. Office of Police Oversight. “Formal Objection: Revisions to General Orders.”

## Supplement:

# How comparable police departments address the issues identified in OPO's analysis of APD's body-worn camera and dashboard camera policies

### Methodology in identifying comparable police departments

As part of its research into APD's current body-worn camera and dashboard camera policies, OPO reviewed police department policy manuals from 15 cities across the country. The departments examined represent the following cities: Atlanta, Baltimore, Charlotte, Dallas, Denver, Fort Worth, Houston, Memphis, New Orleans, Portland, San Antonio, San Diego, San Francisco, San Jose, and Seattle. Factors that OPO considered in selecting these cities included: region; whether the cities or their police departments were of comparable size and/or budget to Austin; and whether the cities' police departments recently demonstrated a significant shift in policy, either voluntarily or as the result of a federal consent decree.

### Discussion

#### A. It is unclear whether comparable police departments use Lexipol policies

OPO's analysis found that APD's current policies are developed through a private corporation called Lexipol.<sup>1</sup> Furthermore, Lexipol's policies prioritize managing risk from police misconduct lawsuits through policies that only comply with case law, federal law, and state law.<sup>2</sup> This approach leads to a system of vague rules that make it difficult to hold officers accountable when violations of these policies occur.<sup>3</sup> Further, Lexipol does not prioritize community input as part of its policymaking review process.<sup>4</sup> Ultimately, OPO recommended that policymaking be informed by the community and prioritize department accountability.

Lexipol's client list is not readily available. As a result, it is difficult to confirm whether a police policy manual is Lexipol-produced or, to the extent that Lexipol is involved, whether the specific provision was customized by the police department.<sup>5</sup> Generally, however, a policy manual prepared by Lexipol includes a footer with copyright information, as is the case with the APD General Orders.<sup>6</sup>

As of the date of this report, none of the 15 policy manuals reviewed have the Lexipol copyright stamp.<sup>7</sup> Importantly, OPO did not select comparable police departments based on an affiliation, or lack thereof, with Lexipol. Rather, it was only after the fact that OPO learned these comparable police departments may not be affiliated with Lexipol.

## B. Examples of purpose statements with a focus on community goals

OPO's analysis found that APD's current purpose statements for body-worn cameras and dashboard cameras are unfocused and do not prioritize the use of this technology as a tool to help improve community relations, eliminate racial bias, or reduce unnecessary use of force.<sup>8</sup> To align with the City of Austin's Reimagining Public Safety initiative, the purpose statements should be revised to include a clear, focused purpose emphasizing APD's commitment to using this technology to improve community relations and increase transparency, as these things both contribute to eliminating racial bias and unnecessary use of force, which is the goal of Reimagining Public Safety.<sup>9</sup> Below are APD's current purpose statements for body-worn cameras and dashboard cameras, respectively:<sup>10</sup>

### **303.1 PURPOSE AND SCOPE**

In this order, the word "employees", or variant of, refers to sworn and civilian employees trained and authorized to wear the Body Worn Camera system (BWC). The BWC system provides an unbiased audio/video recording of events that employees encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. BWC systems can improve community relations and deter inappropriate conduct by both the members of the public and the police department.

This order covers the use of the Department issued and personally owned BWC systems. This order does not cover the use of surreptitious recording devices used in undercover operations.

### **304.1 PURPOSE AND SCOPE**

The Austin Police Department has equipped designated police units with a Digital Mobile Audio Video Recording (DMAV) system. This DMAV system is designed to assist and complement employees in the performance of their duties. The DMAV is used to record certain activities by providing a visual and/or audio record. Recordings are intended to provide an unbiased record of the incident and to supplement the employee's report.

This order covers the use of the DMAV system. The VHS MAV system guidelines are outlined in General Order 303 (Body Worn Camera Systems).

An example of a purpose statement focusing on community goals comes from the Houston Police Department. The Houston Police Department's purpose statement for body-worn camera, reads as follows:<sup>11</sup>

The Houston Police Department shall utilize *body worn cameras* to assist the department in efforts to enhance police professionalism, improve transparency, and preserve recordings of officers' interactions with the public. *Body worn cameras* have the potential to improve community relations, strengthen public trust in law enforcement, reduce the number of complaints, resolve allegations of officer misconduct, increase department accountability, and improve officer training and evaluation.

Here, the Houston Police Department's purpose creates an obligation and makes it a priority to enhance professionalism and to improve transparency.<sup>12</sup>

Another police department with a strong purpose statement is the Memphis Police Department. The Memphis Police Department's purpose statement reads as follows:<sup>13</sup>

#### **I. PURPOSE**

It is the goal of the Memphis Police Department to strengthen its services to the community by authorizing the use of Body Worn Cameras (BWC) and In Car Video (ICV) technology. The BWC/ICV program will add further clarity and transparency to the examination of police related events. This examination aids in improvement of prosecution by adding reinforcement and authentication to police casework, methods and evidence. The BWC/ICV program has the potential to improve community relations by providing an objective record that can be used to confirm valid allegations, while providing an unbiased record that may assist in disproving false allegations. Furthermore, the ICV/BWC program improves accountability by providing objective data for review. Supervisors **must** review ICV/BWC prior to finalizing any official documents involving response to resistance/use of force. Finally, the Memphis Police Department will gain valuable training tools which supply the means to examine the effectiveness of training.  
(41.3.8A)

Prior to using a BWC, affected personnel shall receive Department-approved training on its proper operation, care and the department's policy with respect to the use of the BWC/ICV. Additional training shall be provided at periodic intervals to ensure the continued effective use of the equipment and to incorporate changes, updates or other revisions in policies or equipment.  
(41.3.8F)

Here, the Memphis Police Department's purpose similarly emphasizes the importance of utilizing both body-worn camera and dashboard camera technology in policing because it protects the community, increases transparency, and improves accountability.<sup>14</sup>

### **C. Examples of definitions related to the use of body-worn cameras and dashboard cameras**

OPO's analysis found that APD's current body-worn camera and dashboard camera policies lack definitions, clarity in key concepts, and guidance for supervisors in determining whether it would be appropriate to authorize the deactivation of a camera's audio.<sup>15</sup> The General Orders should be revised to define those key concepts. Below are APD's current definitions sections for body-worn cameras and dashboard cameras, respectively:<sup>16</sup>

### 303.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

**Metadata:** Data that provides detailed information unique to each entry in Evidence.com, such as, ID, Category, and Title.

### 304.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

An example of a policy manual with clear definitions comes from the Houston Police Department.<sup>17</sup> The Houston Police Department's General Orders define the various modes of body-worn camera as follows:<sup>18</sup>

**Mode.** Various settings of the BWC as described below:

- a. **Activate Mode.** The *mode* in which the BWC is on, has been activated by the officer, and is actively recording an event. Once the BWC is activated from the *Standby Mode*, up to two minutes of video prior to activation will be captured in addition to video and audio recorded during activation.
- b. **Off Mode.** The mode in which the BWC has been turned off and is no longer recording.
- c. **Standby Mode.** The mode in which the BWC is turned on but not actively recording an event.

**Mute Function.** A function in which the camera will continue to actively record the event without audio.

Below is APD's current policy language related to deactivation of body-worn camera audio:<sup>19</sup>

- (d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:
  1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
  2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.
- (e) For purposes of this section, an "administrative reason" refers to:
  1. Personal conversations unrelated to the incident being recorded;
  2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
  3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

Below is APD's current policy language related to deactivation of dashboard camera audio:<sup>20</sup>

- (b) Employees may deactivate the audio portion by engaging the mute button on the wireless microphone, for administrative reasons only, as follows:
  1. The reason for the audio deactivation must be recorded verbally prior to audio deactivation; and
  2. After the purpose for audio deactivation has concluded, employees will reactivate the audio track.
- (c) For purposes of this section, an "administrative reason" refers to:
  1. Personal conversations unrelated to the incident being recorded.
  2. Officer to Officer training (e.g., when a Field Training Officer or Field Training Supervisor wishes to speak to an officer enrolled in the Field Training Program about a training issue).
  3. The conclusion of an incident.
  4. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall also be stated prior to the audio deactivation.

In contrast, the Houston Police Department permits officers to utilize a camera's mute function as follows:<sup>21</sup>

*The Mute Function shall be used when conferring with a district attorney's office.*

*The Mute Function may be used during conversations with undercover officers or confidential informants, to relay information received from undercover officers or confidential informants, when consulting with a physician at a mental health facility, or when instructed by a supervisor.*

*Prior to activating the Mute Function, officers shall audibly note the reason why the audio is being muted.*

#### D. Examples of policies limiting officer discretion in the use of body-worn cameras

OPO's analysis found that APD's current body-worn camera policies lack sufficient guidance related to activation and deactivation.<sup>22</sup> Instead, officers are given a great deal of discretion, which may mean that body-worn cameras will not be activated or deactivated at appropriate times.<sup>23</sup>

Below are examples of APD's current policy language related to activation and deactivation of body-worn cameras:<sup>24</sup>

#### 303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

- (a) All units responding to a scene shall activate their department issued BWC equipment when they:
  - 1. Arrive on-scene to any call for service;
  - 2. Have detained or arrested a person;
  - 3. Are attempting to detain or arrest a person;
  - 4. By the nature of the call for service, are likely to detain or arrest a person; or
  - 5. Any consensual contact in which the employee or a citizen believes activation of the BWC would be in the best interest of the community.
- (b) Examples of when the department issued BWC system must be activated include, but are not limited to:
  - 1. Traffic stops;
  - 2. Foot pursuits, until completion of enforcement action;
  - 3. DWI investigations including field sobriety tests;
  - 4. Warrant service;
  - 5. Investigatory stops; or
  - 6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
  - 7. While interviewing an employee during a Response to Resistance review.
- (c) Employees that are issued a BWC shall utilize the BWC when engaging in Off-Duty LERE Overtime.
- (d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.
- (e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

#### 303.3.3 WHEN DEPARTMENT ISSUED BWC SYSTEM DEACTIVATION IS AUTHORIZED

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

- (a) For purposes of this section, conclusion of an incident has occurred when:
  - 1. All arrests have been made and arrestees have been transported; and
  - 2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)
- (b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.

The Memphis Police Department's policy manual provides an example of clear guidelines related to the activation of body-worn cameras.<sup>25</sup> First, the policy requires officers to activate their body-worn cameras before arriving to the scene.<sup>26</sup> The policy language reads as follows:<sup>27</sup>

**B. Use of BWC During the Shift**

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.
2. **Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call.** In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.
3. Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.
4. Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").

Further, the Memphis Police Department policy requires that "once a recording event begins, the [body-worn camera] shall remain activated until the event has concluded in order to conserve the integrity of the recording."<sup>28</sup>

Another example of clear guidelines on activating body-worn cameras can be found in the Houston Police Department's General Orders. The Houston Police Department's policies identify the circumstances in which a camera must be activated with brief explanations of each of those circumstances.<sup>29</sup> The policy language reads as follows:<sup>30</sup>

The BWC shall be activated as follows:

- a. **Priority One or Two call for service.** Activate upon being dispatched or when driving to the call regardless of dispatch status.
- b. **Any other call for service.** If a vehicle is being used, activate prior to exiting the vehicle. If a vehicle is not being used, activate prior to arrival.
- c. **Self-initiated law enforcement activity** (e.g., traffic or pedestrian stop) or **On-View Incident** (e.g., being flagged down). Officers shall activate BWCs prior to taking any police action including vehicle and foot pursuits. In all cases, BWCs shall be activated prior to turning on emergency equipment.
- d. **Search or arrest warrant.** Officers equipped with a BWC shall record during the execution of any search or arrest warrant and during all consent searches.

e. **Search or arrest warrant by Plainclothes and Task Force Officers.** Plainclothes and task force officers (TFO) shall obtain and activate BWCs when actively participating or holding a perimeter during a planned attempt to serve an arrest warrant, other planned arrest, or serving a search warrant that requires entry into a business, structure, or dwelling. If federal policy prohibits a TFO from activating a BWC as described above, the TFO shall not hold the perimeter or participate in the actual arrest or entry during the execution of the search warrant. Plainclothes officers and TFOs may deactivate the BWC when a supervisor on the scene determines that the scene is secure.

f. **Prisoner or passenger transports.** Officers equipped with a BWC shall record all prisoner or passenger transports, regardless of the gender of the prisoner or passenger. The entire transport shall be recorded.

Only during transport, officers may elect to have the BWC facing the rear passenger compartment of the vehicle. Other than when actively transporting a suspect, officers shall not remove the BWC from their uniform when policy requires that the BWC be activated. Once officers are in a secured jail facility with surveillance cameras, the BWC may be deactivated.

When a prisoner or passenger is transported by a two-man unit, both officers shall be required to record with the BWC during the transport.

g. **Hostile or contentious interaction.** There may be times when an officer is interacting with the public and the discussion becomes unexpectedly hostile or contentious. As soon as an officer determines that this is likely to occur or is occurring, the officer shall immediately activate the BWC.

When at a location where a law enforcement action is taking place, officers shall continue recording until the law enforcement activity by all officers is completed or until there is a reason, as permitted by this policy, to deactivate the BWC. Officers are not required to cease recording an event, situation, or circumstance solely at the demand of a citizen.

## E. Examples of policies that require officers to document the use of body-worn cameras or dashboard cameras

OPO's analysis found that APD's current policies do not require officers to document their use of body-worn cameras or dashboard cameras during an incident.<sup>31</sup> APD policy also does not explicitly require officers to document a failure to use body-worn cameras during an incident.<sup>32</sup> This appears to conflict with Texas law.<sup>33</sup> The General Orders should require officers to document in a report or case file their use or failure to use body-worn cameras or dashboard cameras during an incident. Below is APD's current policy language on this topic:<sup>34</sup>

- (e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

In contrast, the Houston Police Department and the Dallas Police Department appear to align with Texas law on this issue.<sup>35</sup> As an example, the Houston Police Department's policy language reads as follows:<sup>36</sup>

#### **5 FAILURE TO ACTIVATE BODY WORN CAMERA**

Although the BWC is required to be activated prior to initiating a *law enforcement activity*, there may be circumstances that require officers to act immediately to ensure their safety or the safety of others. In those situations, it may be impractical or unreasonable for the officer to activate the BWC before taking police action. In these instances, the officer shall activate the BWC as soon as it is safe to do so to ensure that the remainder of the incident is properly recorded. An officer's justification for failing to activate the BWC because it is unsafe, unrealistic, or impractical shall be evaluated based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

If the BWC is activated late, the officer shall audibly note the reason or explanation on the BWC.

If an officer is required to and fails to activate the BWC, the officer shall notify the supervisor and document the reason for not activating the BWC in the incident report or call slip.

Additionally, the following language from the Memphis Police Department accurately captures OPO's recommendations:<sup>37</sup>

7. Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

#### **F. Examples of policies that encourage officers to advise community members that they're being recorded**

OPO's analysis found that the title of one of APD's current body-worn camera policies, "Advisement & Consent," is misleading because it does not actually discuss the issue of obtaining consent to record.<sup>38</sup> Further OPO's analysis found that this policy provision does not require officers to advise community members that they are being recorded, nor does it provide guidance on when and how officers should provide this advisement.<sup>39</sup> The word "consent" should be removed from the title of this policy so that the title will accurately reflect the content. Additionally, while OPO did not take a position on whether officers should be required to give an advisement, if an advisement is given, it should be given at the beginning of the officer's interaction with the public. Below is APD's current policy language on this matter:<sup>40</sup>

##### **303.3.2 ADVISEMENT AND CONSENT**

Employees should inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.

In comparison, the Denver Police Department's advisement policy discusses the likelihood that an advisement will diffuse tense situations.<sup>41</sup> It also acknowledges that in some cases the delivery of an advisement could negatively impact lines of communication. The Denver Police Department's advisement policy reads as follows:<sup>42</sup>

- d. Officers are encouraged to notify the public that the BWC is activated and recording. Under most circumstances, notification has shown to diffuse incidents. However, there may be times that this is impractical or that the notification could diminish lines of communication. Officer discretion should be utilized and generally favor notification over non-notification.
  1. Officers should notify crime victims and persons wanting to anonymously report a crime that they are being recorded as soon as it is safe to do so.
  2. Unless use of the BWC is necessary for an officer's safety, the safety of others, or to ensure an accurate account of an event, when a person wants to anonymously report a crime or assist in an ongoing investigation, the officer will ask the person if they want the officer to discontinue use of the BWC. If the person states yes, the officer will immediately announce the reason for the deactivation and turn off the BWC.
  3. When persons who are recorded request anonymity, officers will note this in written reports and make a verbal statement for the BWC.

## G. Examples of policies that require supervisors to inspect dashboard camera recordings

OPO's analysis found that APD's current policies do not require supervisors to inspect dashboard camera recordings.<sup>43</sup> The General Orders should be revised to include a policy requiring supervisors to inspect officers' dashboard camera recordings in the same way that they currently inspect body-worn camera recordings.<sup>44</sup>

The Houston Police Department includes a policy that details the requirement for supervisors to conduct a monthly audit of dashboard camera recordings.<sup>45</sup> The policy language reads as follows:<sup>46</sup>

At the direction of the division commander, a supervisor will conduct an audit of the video log every month. During this review, it will be noted if ESDs are being logged in and out appropriately, and if ESDs assigned to each officer are being returned after an appropriate amount of time. The supervisor will sign and date the log indicating the audit was completed and make a written report to the division commander indicating the findings. Any discrepancies found will be investigated immediately.

An assigned supervisor will also conduct a review of randomly selected videos every other month (60-day audit). A written report to the division commander will include:

- Date of the audit
- Disc or tape number
- Shop number
- Officer being reviewed

The report will document the officer's performance and specify if the *mobile video* equipment is being utilized properly.

## H. Examples of policies that require investigations into body-worn camera and dashboard camera violations

OPO’s analysis found that APD’s current policies do not support consistency or transparency in enforcement or discipline.<sup>47</sup> Specifically, APD regularly classifies violations of body-worn camera and dashboard camera policies as Supervisor Referral-Minor Policy Violations (SR-MPVs), which do not trigger an investigation into what led to the violation.<sup>48</sup> APD should create and employ policies that require investigations into body-worn camera and dashboard camera violations.<sup>49</sup> Additionally, APD should work to increase transparency and accountability through a consistent application of the Discipline Matrix. There is no current policy language within the APD General Orders describing APD’s use of SR-MPVs for body-worn camera and dashboard camera violations.

There is little consistency between police departments’ discipline procedures. As a result, when it comes to discipline, it is more practical to focus on addressing accountability matters within the department at issue.

The APD General Orders describe discipline for body-worn camera and dashboard camera violations as follows:<sup>50</sup>

Electronic Recording (DMAV, BWC) violation	303 & 304-Mobile Audio Video Recording Operation	Conduct Counseling Memorandum	Oral Reprimand	Written Reprimand to 1-3 Days
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		

At a minimum, APD’s policies should be revised to address the following issues:

- The lack of information about the SR-MPV process;
- The frequent use of a non-investigatory process (SR-MPVs) to handle body-worn camera and dashboard camera investigations; and
- The ways in which frequent use of a non-investigatory process to handle body-worn camera and dashboard camera violations impacts the feasibility of determining whether those violations were intentional or unintentional.

## Supplement Endnotes

1. See City of Austin Office of Police Oversight, *Body-Worn Camera and Digital Mobile Audio Video Policy Review and Recommendations*, Jan. 2022.
2. See City of Austin Office of Police Oversight, *Body-Worn Camera and Digital Mobile Audio Video Policy Review and Recommendations*.
3. See City of Austin Office of Police Oversight, *Body-Worn Camera and Digital Mobile Audio Video Policy Review and Recommendations*.
4. See City of Austin Office of Police Oversight, *Body-Worn Camera and Digital Mobile Audio Video Policy Review and Recommendations*.
5. Eagley, Ingrid V., and Joanna C. Schwartz. "Lexipol: The Privatization of Police Policymaking." *Texas Law Review* 96, no. 5 (April 2018): 891-976. <https://texaslawreview.org/lexipol/> (confirming San Diego, San Jose, and San Francisco police departments are independent police departments, meaning they do not rely on Lexipol for policy development).
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# Appendix A: General Order 303

## Body Worn Camera Systems

### 303.1 PURPOSE AND SCOPE

In this order, the word “employees”, or variant of, refers to sworn and civilian employees trained and authorized to wear the Body Worn Camera system (BWC). The BWC system provides an unbiased audio/video recording of events that employees encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. BWC systems can improve community relations and deter inappropriate conduct by both the members of the public and the police department.

This order covers the use of the Department issued and personally owned BWC systems. This order does not cover the use of surreptitious recording devices used in undercover operations.

### 303.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

**Metadata:** Data that provides detailed information unique to each entry in Evidence.com, such as, ID, Category, and Title.

### 303.3 DEPARTMENT ISSUED BODY WORN CAMERA

BWC equipment is to be used primarily by uniformed personnel as authorized per assignment by the Department and must be used unless otherwise authorized by a Commander or above.

(a) The Chief of Police, Assistant Chiefs, and Commanders are exempt from wearing the BWC except when law enforcement action is foreseen or likely to occur, (e.g. working patrol duties, actively participating in a tactical operation or deployment).

(b) Employees assigned to a federal task force will adhere to the latest Department of Justice policies and the respective Memorandums of Understanding and Standard Operating Procedures established between the Department and sponsoring federal agency regarding the use of BWC equipment when conducting task force-specific investigations.

(c) Employees equipped with a Department issued BWC system must be trained in the operation of the equipment prior to its use. BWC equipment will be used in accordance with Department training and the BWC operations manual.

(d) Unless otherwise authorized by the Chief of Police or his/her designee, BWC's will be worn consistent with the training and manufacturer's recommendations, in regards to fields of view and employee safety. Employees will adhere to the following dimensions for placement of the BWC:

1. From the center of the sternum, no more than four inches to the right or left on the outermost layer of clothing such that the camera has an unobstructed view.
2. No higher than four inches below the top button of the uniform shirt and no lower than six inches below the top button of the uniform shirt.
3. Exemptions to the placement of the BWC in accordance with this order will be authorized by a Commander or above. Examples for exemptions may include, but are not limited to, SWAT, OCD, Executive Protection, and Mounted Patrol.

(e) Employees shall ensure that their BWC equipment has adequate battery charge and storage space to complete their regular tour of duty.

1. Employees assigned to the units below are required to power on the device at the beginning of their tour of duty and not power the device off until the end of that tour of duty.

- (a) Patrol,
- (b) DTAC Patrol,
- (c) George District Representatives,
- (d) Mounted Patrol,
- (e) Court Services,
- (f) Park Patrol,
- (g) Lake Patrol,
- (h) Commercial Vehicles,
- (i) DWI,
- (j) Motors,
- (k) Metro Tac,
- (l) Patrol K9.

2. Employees not assigned to the units above are not considered to be "first responders" and are therefore not required to power on their assigned Body Worn Camera at the beginning of their tour of duty. However, if at any time their duties and responsibilities require any type of field work where they could be called upon to take enforcement action, their device will be properly attached and powered on for the entirety of the time they are in that role.

3. Employees not engaged in a law enforcement action shall power the device off or remove it from their body when using a restroom, locker room, changing room, or any other location where the employee has an expectation of privacy. Immediately upon exiting such a facility or room, the employee shall ensure the BWC equipment is powered back on and appropriately placed according to this order.

(f) Employees shall test the BWC equipment at the commencement of their tour of duty and shall categorize the video as '10-41'.

(g) The BWC equipment test shall consist of employees recording the following:

1. Employee name;
2. Employee number; and
3. The current date and time.

(h) Employees shall review the recording to verify the BWC microphone is operational, and the date and time is accurate.

(i) Employees who discover an operational defect with the BWC system shall attempt to correct the system following the received training on the device (i.e., Reseating cables, Cycling the power, etc.). If the BWC is found to have a physical defect or malfunction:

1. Employees shall notify an on-duty supervisor, and write up the device for service describing the events leading up to the failure.
2. Employees shall notify their dispatcher to have a note added to their activity log that their BWC system has failed.
3. Employees shall notate on the device repair form if there is existing video which was unable to be uploaded because of the device's failure.
4. Employees shall complete a supplement to any report in which there is video on the defective camera that was unable to be uploaded to Evidence.com.

(j) Employees shall not:

1. Bypass or attempt to override the equipment;
  2. Erase, alter, or delete any recording produced by the BWC;
- or
3. Use any non-issued chargers, adapters, or cables with the BWC system.

### 303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

(a) All units responding to a scene shall activate their department issued BWC equipment when they:

1. Arrive on-scene to any call for service;
2. Have detained or arrested a person;
3. Are attempting to detain or arrest a person;
4. By the nature of the call for service, are likely to detain or arrest a person; or
5. Any consensual contact in which the employee or a citizen believes activation of the BWC would be in the best interest of the community.

(b) Examples of when the department issued BWC system must be activated include, but are not limited to:

1. Traffic stops;
2. Foot pursuits, until completion of enforcement action;
3. DWI investigations including field sobriety tests;
4. Warrant service; including the execution of a search warrant for a vehicle or physical structure (this includes the entire duration of the search);
5. Investigatory stops; or
6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
7. While interviewing an employee during a Response to Resistance review.

(c) Employees that are issued a BWC shall utilize the BWC when engaging in Off-Duty LERE Overtime.

(d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

(e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

### 303.3.2 ADVISEMENT AND CONSENT

Employees should inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.

### 303.3.3 WHEN DEPARTMENT ISSUED BWC SYSTEM DEACTIVATION IS AUTHORIZED

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

(a) For purposes of this section, conclusion of an incident has occurred when:

1. All arrests have been made and arrestees have been transported; and
2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)

(b) Employees may choose to discontinue a recording currently in progress for any non- confrontational encounter with a person, including an interview of a witness or victim.

(c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).

(d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:

1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.

(e) For purposes of this section, an “administrative reason” refers to:

1. Personal conversations unrelated to the incident being recorded;
2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

### 303.3.4 VICTIM AND WITNESS STATEMENTS

When conducting an investigation, the employee shall attempt to record the crime victim or witness' statement with the body worn camera. The recording may be valuable evidence that contributes to or compliments an investigation. While evidence collection is important, the Department also recognizes it is important for employees to maintain credibility with people wanting to share information with law enforcement.

On occasion, an employee may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the employee should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the employee use discretion and not record the crime victim or witness statement with the body worn camera, the employee shall document the reason for not fully recording the statement with the body worn camera. In these instances, employees may still record with an audio recorder. Employees should work with victim services when possible in determining what type of statement will be taken.

- (a) If a citizen, other than a victim or witness as described in this section requests that an employee turn off the BWC, the employee will explain that APD General Orders requires the camera to be activated and recording until the conclusion of the incident or until there is no further law enforcement action necessary.

### 303.3.5 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS NOT REQUIRED

Activation of the BWC system is not required:

- (a) During break and lunch periods
- (b) When not in service and not on a call
- (c) When in service, but not on a call.
- (d) Employees shall not utilize the body worn camera in the following circumstances:
  1. A potential witness who requests to speak to an employee confidentially or desires anonymity;
  2. A victim or witness who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation;
  3. During tactical briefings, or the discussion of safety and security procedures unless approved by the commander;

4. Public or private locker rooms, changing rooms, restrooms, unless taking police action;
5. Doctor's or lawyer's offices, unless taking police action;
6. Medical or hospital facilities, unless taking police action;
7. At a school, where minor children are present, unless taking police action;
8. To monitor persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition, and assembly under the United States Constitution, or because of the content or viewpoint of the person's protected speech;
9. While in any magistrate's or judge's office or in any courtroom, except under exigent circumstances; i.e. police action being taken;
10. During departmental or supervisory meetings.

### 303.4 REQUIRED ENTRY OF METADATA FOR BWC RECORDINGS

All BWC recordings shall be assigned a category. Doing so determines the length of time the recording is retained in the Evidence.com storage system.

- (a) Employees shall ensure that all BWC recordings are uploaded from the camera to the storage system prior to the completion of their scheduled tour of duty unless approved by a supervisor.
- (b) Employees shall ensure that within two weeks from the recording date all videos are assigned the proper category and the ID field contains the 9-digit incident number (YYJJJ#####), if applicable.
- (c) When possible, all employees "on-scene" or "10-23" should assign the same category to their video as the primary employee (e.g. arresting officer or employee writing initial report).
- (d) Unless involved in a response to resistance, an arrest or directed by a supervisor, employees utilizing a BWC during LERE overtime are permitted to download and categorize their recordings during their next regularly scheduled work day.
- (e) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:
  1. Video where no investigatory stop is made;
  2. Video that does not include any call for service;
  3. Video where no person has been detained or arrested; and
  4. Video where no enforcement action is documented.
- (f) Detectives are responsible for verifying the category assigned to recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for updating the category for recordings when necessary to ensure proper retention.

### 303.4.1 SUPERVISOR RESPONSIBILITIES

(a) In conjunction with personnel inspections, General Order 801.8, supervisors of units listed in 303.3(d) of this order shall conduct inspections of BWC recordings to ensure they are complying with APD General Orders. Supervisors shall ensure all assigned employees are reviewed in a fair and equitable manner. Additionally, supervisors shall ensure employees:

1. Act professionally, treating persons fairly and impartially;
2. Demonstrate the appropriate knowledge, skills, and abilities to manage the interaction; and
3. Comply with laws, ordinances, and APD written directives.

(b) These inspections will be electronically documented on form PD0128 and sent to the lieutenant within the chain-of-command. Each inspection will include:

1. One randomly selected recording to ensure compliance with "10-41" video check;
2. Two randomly selected recordings to ensure compliance with the "eventful video" compliance check; and
3. Two randomly selected recordings from employee-initiated calls to ensure compliance with the Racial or Bias-Based Profiling general order.

(c) In addition to the above inspections, supervisors shall ensure all assigned employees have categorized all videos in accordance with APD General Order 303.4.

(d) Supervisors shall ensure all employees assigned to them are allotted time during their regularly scheduled work week to properly categorize all BWC recordings in Evidence.com.

(e) Investigative unit supervisors shall ensure their assigned Detectives have properly categorized all videos in accordance with APD General Order 303.4.

### 303.4.2 COPIES OF BWC SYSTEM RECORDINGS

BWC media recordings shall be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor and approved for release by the Department. Copies of BWC System Recordings will not be provided unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the BWC system. Personnel assigned to Special Investigations and Internal Affairs are authorized to create copies of BWC recordings as needed per their investigative process. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in General Orders.

### 303.4.3 BWC RECORDING RETENTION SCHEDULE

Videos shall be retained for the longest period of time consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/ or the State Local Government Retention Schedules. At a minimum all BWC recordings shall be retained for 181 days.

### 303.4.4 STORAGE AND SECURITY OF BWC SYSTEM RECORDINGS

Employees will upload the media and data contained on their BWC into the Department's official system of record for the storage of BWC information utilizing the approved upload procedures (wireless, docking station, etc.).

(a) The Department's official system of record for BWC media and data will be stored utilizing a secure storage server and backed up for redundancy purposes.

(b) The Department's official system of record will store all BWC media and data utilizing nationally recognized and approved security methods and will be in compliance with State of Texas Occupations Code 1701.655(b)(3).

(c) A maintenance agreement and/or contract for the BWC program shall be in place to ensure the security of all BWC media and data stored in the Department's system of record. This contract will include, but will not be limited to:

1. A service level agreement (SLA);
2. Data protection;
3. Data ownership;
4. Data location;
5. Import and export of data;
6. Right to audit;
7. Security, to include compliance with Chapter 521 of the Texas and Business Commerce Code;
8. Security incident or data breach notification;
9. Change control and advance notice; and
10. Notification of legal requests.

### 303.4.5 REQUESTS FOR BWC RECORDINGS

The Department shall comply with all applicable laws pertaining to the release of BWC recordings. News or other media outlet requests for video will be processed through the Public Information Office (PIO). All other open records requests will be processed through the department coordinator in Central Records.

### 303.5 PERSONALLY OWNED BWC SYSTEMS

Personally owned BWC's are not permitted for use by employees.

### 303.6 REVIEW OF ALL BWC SYSTEM RECORDINGS

(a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:

1. Critical incidents, as defined by General Order 902.1.2;
2. Response to resistance incidents; and
3. Foot and vehicle pursuits.

(b) Recordings may be reviewed:

1. By an employee to make sure the BWC system is operational;
2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
3. By authorized persons for the purpose of reviewing evidence;
4. Upon approval by the Chief of Police, by a person, or the person's authorized representative, who is depicted in a recording of an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer, but who is not a witness to the incident (Tex. Occ. Code § 1701.660);
5. By a supervisor investigating a specific act of employee conduct; or
6. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.

(c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination. Factors for determining whether a video is appropriate for viewing for training include:

1. The likelihood of an internal/external investigation;
2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).

(d) In no event shall any recording be used or shown to ridicule or embarrass any employee.

(e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.

(f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

### **303.7 REVIEW OF BODY WORN CAMERA ORDER**

This order will be reviewed for continuous effectiveness and adherence to local, state, and federal laws by the Department.

## Appendix B: General Order 304

### Digital Mobile Audio Video Recording

#### 304.1 PURPOSE AND SCOPE

The Austin Police Department has equipped designated police units with a Digital Mobile Audio Video Recording (DMAV) system. This DMAV system is designed to assist and complement employees in the performance of their duties. The DMAV is used to record certain activities by providing a visual and/or audio record. Recordings are intended to provide an unbiased record of the incident and to supplement the employee's report.

This order covers the use of the DMAV system. The VHS MAV system guidelines are outlined in General Order 303 (Body Worn Camera Systems).

#### 304.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

#### 304.3 DIGITAL MOBILE AUDIO VIDEO RECORDER OPERATION

(a) The DMAV system is designed to turn on automatically when any of the following are detected:

1. Emergency lights.
2. Siren.
3. Driver's door opening.
4. Crash sensor.
5. Speed in excess of 90 MPH.
6. Activation of a wireless body microphone.
7. Manual activation by pressing the record button on the camera, the mobile data computer, or the Video Processing Unit.

(b) Employees shall turn off the vehicle's AM/FM radio and/or personal music devices while the DMAV is recording and there is a subject sitting in the backseat of the unit.

(c) Employees shall not:

1. Bypass or override the automatic activation of the equipment.
2. Erase, alter, or delete any recording produced by the DMAV.

(d) Absent legal cause or lawful order, no member of the Department may surreptitiously record any other member of the Department without the expressed knowledge and consent of all parties.

### 304.3.1 REQUIRED DMAV TESTING

Employees driving DMAV equipped vehicles during field duty assignments where the required use of the DMAV is likely (e.g., patrol, metro-tactical shifts, traffic enforcement) must be trained in the operation of the equipment prior to its use.

(a) Employees will test the vehicles DMAV equipment:

1. At the commencement of their tour of duty.
2. Anytime they switch cars during a shift.
3. When the DMAV media has been replaced for an approved reason.

(b) Employees will classify the video as '10-41'.

(c) The DMAV equipment test will consist of employees recording the following:

1. Employee name; and
2. Employee number; and
3. The current date and time.

(d) Employees will review the recording to verify the in-car and body microphone is operational, and the date and time is accurate.

(e) Employees discovering a defect with the DMAV will remove that police unit from service and complete a Vehicle and Equipment Repair Form. Vehicles with non-operable DMAV systems will not be used unless an emergency situation exists and a lieutenant approves its use. If this occurs, the unit will be removed from service as soon as the emergency subsides.

### 304.3.2 WHEN DMAV USE IS REQUIRED

This order is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements.

(a) All units responding to a scene shall activate their DMAV equipment when they:

1. Arrive on-scene to any call for service; or
2. Are attempting to detain or arrest a person; or
3. Have detained or arrested a person; or
4. By nature of the incident, are likely to detain or arrest a person.

(b) Examples of when the DMAV system must be activated include, but are not limited to:

1. Traffic stops.
2. Pursuits, until completion of enforcement action.
3. DWI investigations including field sobriety tests.
4. Warrant service.
5. Investigatory stops when the subject is on foot or in a vehicle.
6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.
7. While interviewing an employee during a Response to Resistance review when the BWC recording system is unavailable.

(c) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

### 304.3.3 WHEN DMAV DEACTIVATION IS AUTHORIZED

(a) Once the DMAV system is activated it shall remain on until the incident has concluded.

1. For purposes of this section, conclusion of an incident has occurred when:

- (a) All arrests have been made and arrestees have been transported; and
- (b) All witnesses and victims have been interviewed.

2. Recording may cease if an employee is simply waiting for a tow truck or a family member to arrive, or in other similar situations where no further law enforcement action is likely to occur.

(b) Employees may deactivate the audio portion by engaging the mute button on the wireless microphone, for administrative reasons only, as follows:

1. The reason for the audio deactivation must be recorded verbally prior to audio deactivation; and
2. After the purpose for audio deactivation has concluded, employees will reactivate the audio track.

(c) For purposes of this section, an "administrative reason" refers to:

1. Personal conversations unrelated to the incident being recorded.
2. Officer to Officer training (e.g., when a Field Training Officer or Field Training Supervisor wishes to speak to an officer enrolled in the Field Training Program about a training issue).
3. The conclusion of an incident.
4. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall also be stated prior to the audio deactivation.

#### **304.3.4 WHEN DMAV USE IS NOT REQUIRED**

Activation of the DMAV system is not required unless otherwise specified by this order. Examples of when DMAV use is not required may include:

- (a) During breaks and lunch periods.
- (b) When not in-service and not on a call.
- (c) When in-service but not on a call.

#### **304.4 REQUIRED CLASSIFICATION OF DMAV RECORDINGS**

(a) Employees should ensure that all DMAV recordings are accurately classified upon stopping the recording. All recordings, except those classified as "Non-Event," must also include the 9-digit incident number when available using the following format: YYJJJ#### (e.g., 100711267).

(b) Employees shall ensure that all incident recordings have the required information assigned prior to the completion of their next scheduled tour of duty.

(c) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:

1. Video where no investigatory stop is made;
2. Video that does not include any call for service;
3. Video where no person has been detained or arrested; and
4. Video where no enforcement action is documented.

(d) Employees who do not have the ability to add incident numbers to recordings (e.g. Motors Officers) or who share a common case number across multiple videos (e.g. Officers working STEP) shall ensure that reports and citations reflect the time of recording exactly as shown in the DMAV system.

(e) Detectives are responsible for verifying the classification of recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for reclassifying recordings when necessary to ensure proper retention.

(f) Supervisors, including corporals, are responsible for verifying the classification of recordings made by their officers for all direct filed charges that are a 3rd degree felony or higher.

### 304.5 REVIEW OF DMAV SYSTEM RECORDINGS

(a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:

1. Critical incidents, as defined by General Order 902.1.2;
2. Response to resistance incidents; and
3. Foot and vehicle pursuits.

(b) Recordings may be reviewed:

1. By an employee to make sure the DMAV system is operational;
2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
3. By authorized persons for the purpose of reviewing evidence;
4. By a supervisor investigating a specific act of employee conduct; or
5. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.

(c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination. Factors for determining whether a video is appropriate for viewing for training include:

1. The likelihood of an internal/external investigation;
2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).

(d) In no event shall any recording be used or shown to ridicule or embarrass any employee.

(e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.

(f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

### **304.6 COPIES OF DMAV SYSTEM RECORDINGS**

Copies of a DMAV media recording will be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor. Copies of DMAV System Recordings will not normally be made unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the DMAV system. Personnel assigned to SIU and IA are authorized to create copies of DMAV recordings as needed per their investigative process. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in general orders.

### **304.7 DMAV RECORDING RETENTION SCHEDULE**

All DMAV recordings shall be retained for a period of time that is consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules.