



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Anthony Mata  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** August 23, 2022

Approved

Date

8/31/2022

**SUBJECT: RECOMMENDATION ON A PROCESS FOR RANDOM AUDITS OF OFFICER-WORN BODY CAMERA FOOTAGE**

## RECOMMENDATION

- (a) Accept the report regarding audits of body-worn camera (BWC) footage from San José Police Department Officers as part of the Police Reforms Work Plan.
- (b) Direct the City Manager to implement random audits of BWC footage through the addition of 1.0 Senior Analyst position in the Police Department, with first year funding provided by the existing Police Reforms Work Plan appropriation and future year funding included as part of the 2023-2024 General Fund Base Budget.

## OUTCOME

Approval of this recommendation will implement compliance audits of BWC footage that was directed as part of the Police Reforms Work Plan. Through compliance audits, the San José Police Department (Department) will ensure officers are activating their BWCs and correctly identifying, tagging, and uploading all BWC videos. The Department will continue to evaluate options for random performance audits of BWC videos, taking into account evolving technology that may reduce the resources required to implement the audits.

## BACKGROUND

On June 11, 2020, Councilmember Sylvia Arenas and Councilmember Maya Esparza each authored a memorandum to the Mayor and City Council regarding discussion and actions related to police use of force and crowd control measures. In their memoranda, Councilmembers Arenas and Esparza recommended the City Manager be directed to return with a recommendation on a process for random audits of officer BWC footage. This recommendation was discussed and approved at the City Council meeting on June 12, 2020.<sup>1</sup> As such, the City Council's direction on this topic became

<sup>1</sup> Materials for this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=793506&GUID=59DC20C3-92F5-49DC-BDA0-9B3391ED9C78>

item #17 on the Police Reforms Work Plan. This memorandum sets forward recommendations in response to that direction.

### **Current BWC System**

The Department currently uses the Body 3 BWC system made by Axon<sup>2</sup>. This system records high-definition video and audio that is uploaded to Axon's proprietary file and data management system, Evidence.com. When a video is uploaded from a Body 3 camera to Evidence.com, certain data accompanies that video, including who was assigned the camera at the time of the recording, the recording date and time, geolocation of the event, and the uploading date and time. That data is merged with data from the Department's Computer-Aided Dispatch (CAD) system. In doing so, the video file may be automatically associated with an event number and an event category, such as felony assault or robbery, based on the event type in the CAD.

Sometimes, the automatic syncing between a video and the associated event number does not link. In these cases, they are called "orphan files." These files need to be manually associated with the correct event number, or they will not appear as evidence when the case is searched based on the event number. It is currently the responsibility of the uploading officer to associate orphan files with appropriate event numbers.

Video files may also be tagged with custom metadata, including associated case numbers, additional categories (e.g., case retention information, secondary investigative units, or arrest type), or self-input information (e.g., suspect interview, witness statement, or an unassociated question from a bystander).

Axon also maintains a suite of related products, including auditing software titled "Performance." Performance was included in the Department's recent five-year contract renewal with Axon for the 2021-2026 fiscal years. As such, there is no cost to acquire Axon Performance. The Department's recommendations for compliance and performance auditing, outlined in the Analysis section below, would make use of the Axon Performance software.

### **Compliance vs. Performance**

There are two distinct methods of auditing BWC footage: compliance and performance. Compliance auditing looks at whether the BWCs are being used, including when cameras are being turned on and off (referred to as "power cycling"), whether the videos are being uploaded, whether the files are associated with the correct event numbers, and whether the files are tagged with the correct event type.

In performance auditing, a supervisor watches the video, or a portion thereof, and evaluates what they see. In performance auditing, the Department would be able to see the officers' actions and hear the officers' interactions with the public. Performance auditing allows for additional tagging in pre-defined review categories. For example, a reviewing supervisor could tag a video with "good performance, late activation, technical issue, or conduct concern identified." This tag may then be further explained in a free-text field attached to the video.

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<sup>2</sup> Axon Body 3 information website <https://www.axon.com/products/axon-body-3>

Performance auditing also has three key outcomes: training, wellness, and accountability.

*Training:* In every public contact and every event in which law enforcement responds, there are behaviors or actions that should be repeated and some that may be improved upon. Performance auditing would provide supervisors the opportunity to examine these from a post hoc perspective, analyzing and developing opportunities to improve the Department's response to the needs of the public.

*Wellness:* As described by the California Commission on Peace Officer Standards and Training (POST), "Peace officers have above-average divorce rates, chronic physical ailments, and can suffer, often unaware, from debilitating mental health conditions. With the extreme emotional and physical demands of the profession, irregular shift work, and regular exposure to vicarious trauma, officers' relationships with their friends, families, agencies, and the public they serve are adversely affected. Regular physical pain, anxiety, PTSD, and depression are common among law enforcement."<sup>3</sup> Having the opportunity to view an officer's interactions with their teammates, the public, and while alone on an event would provide supervisors a "fly-on-the-wall" ability to observe and detect potential officer wellness issues.

*Accountability:* A culture of accountability in law enforcement builds trust and transparency with the community. It ensures all ranks of the Department act ethically and with the highest standards. When reviewing officers' performance in BWC footage, the following observations would trigger the request for a department-initiated investigation.

- Bias-based policing
- Excessive force
- Egregious actions that likely rise to the level of significant discipline (above a documented oral counseling)

There are four important implementation factors to be considered for performance auditing: quantity, frequency, length, and span-of-control.

*Quantity:* Quantity refers to the number of videos reviewed for each officer. Will the supervisor review one video per officer or several? Will the video that is being reviewed capture any behavior of concern? Will a pattern of behavior be able to be established by watching a small number of videos?

*Frequency:* Frequency refers to how often the videos are to be reviewed. Should BWC footage be reviewed once per shift (annually), every six months, or quarterly? Similar to the quantity above, can a pattern be established by infrequent viewing or watching the videos once a year?

*Length:* Length refers to the minimum and maximum duration of the video to be reviewed. This may be pre-set into the randomization algorithm to ensure uniformity of the length, thereby preventing the random assignment of a five-minute video in one instance and a four-hour video in another. Similar to quantity above, will the video being reviewed be long enough to capture any behavior of

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concern? Will that snapshot in time capture enough of the event to ensure a clear picture is established of what occurred, what was done well, and what could be done differently or better in the future?

*Span-of-Control:* Span-of-control refers to how many people are overseen by a single supervisor. As span-of-control increases and a supervisor is responsible for overseeing more and more officers, the time to review videos at any given quantity, frequency, and length will increase.

## **Current Practice**

The Department has implemented a limited form of compliance auditing. With the launch of the BWC program in 2016, the Chief of Police established performance metrics for the use of BWCs. These metrics are reported on a quarterly basis to the Department's executive staff in the form of the BWC Data Review report. This report is compiled manually by staff who review a certain percentage of CAD events and then confirm if there is a matching BWC video. The report takes approximately one week to complete.

The report solely examines whether or not there was a BWC file attached to an event. A copy of the report covering April 2021 through June 2021 is included in Attachment 1. While this report is similar to the compliance audit described in the previous section, it does not include all of the metrics of a full compliance audit, such as data on power cycling or monitoring whether videos are tagged correctly. Furthermore, this report merely shows whether or not there is a single BWC file for each event. There may have been four officers responding to the event, and only three turned on their BWCs. In this case, the existing report would show there was BWC compliance, even though that compliance was only held by 75 percent of the officers on scene. As opposed to the existing quarterly report, a compliance report based in Axon Performance would be able to show that there was, in fact, an officer who did not turn on their BWC.

Currently, supervisors in the field use BWC footage to monitor officer performance. Supervisors routinely review BWC footage for pursuits, use of force investigations, in-field complaints or concerns, and to monitor recruits in the Field Training Program. In addition, BWC files are routinely reviewed by the Internal Affairs Unit when a complaint or concern is received. As such, officers' performance is assessed and evaluated, even though it is not on a prescribed schedule as would happen with a standardized system of BWC performance auditing.

## **ANALYSIS**

### **Research**

To better understand how other agencies are using Axon Performance, the Department reached out to the following agencies:

- Chicago Police Department, Chicago, IL (CPD)
- Dallas Police Department, Dallas, TX (DPD)
- Hillsborough County Sheriff's Office, Hillsborough County, FL (HCSO)
- Lafayette Police Department, Lafayette, IN (LPD)

- Lexington County Sheriff’s Office, Lexington County, SC (LCSO)
- Los Angeles Police Department, Los Angeles, CA (LAPD)
- Orange County Sheriff’s Office, Orange County, FL (OCSO)

The research included evaluations of the following criteria:

- Department size and structure
- Level of audit implementation
- Implementation process
- Number and purpose of assigned personnel

The following table illustrates the results of the research.

<b>Agency</b>	<b>Size</b>	<b>Compliance Auditing</b>	<b>Performance Auditing</b>	<b>Number of Personnel Assigned</b>
CPD	12,000	✓	None	18
DPD	3,100	✓	None	41
HCSO	1,000	✓	2 videos / officer / month	7
LPD	150	✓	2 videos / officer / month	5
LCSO	350	✓	5 videos / team / month	6
LAPD	9,200	✓	1 video / officer / quarter	75
OCSO	1,600	✓	Testing phase only	6

The agencies ranged in size from 150 sworn personnel to 12,000 sworn personnel. Some were local police departments, and some were county offices. All the agencies had a similar command structure to the San José Police Department with a Chief or Sheriff, structured ranks, and specialized assignments.

All the agencies implemented compliance auditing. All but two agencies were implementing or had implemented performance auditing. Two agencies said they would not be implementing performance auditing due to the potential workload and overtime it would accrue.

Compliance auditing was similar for each agency. They received regular automated reports from Axon Performance in which compliance rates were listed and graphed. Command and executive staff were notified at regular intervals of their subordinates’ activation rates, power cycling, and tagging. Supervisors were notified of orphan files, and officers were required to apply the appropriate event numbers and tags.

Performance auditing frequency varied greatly. The number of videos to be audited and the length of those videos varied as well. None of the agencies noted a marked increase in overtime as a result of the audits, but they all noted the additional requirement for the supervisory personnel to be in an office and not in the field to complete the audits.

The research discovered several benefits of performance auditing. First, tactics could be standardized. One agency noticed their personnel had several different handcuffing techniques; some

of these techniques led to officer safety issues. They were able to identify this deficiency and develop and implement training to normalize best practice handcuffing procedures. Another benefit is the ability to affect officer wellness. One agency noted that supervisors see when their officers are getting stressed or frustrated in the field. As such, they are able to intervene and/or refer them to Employee Assistance Programs, thereby mitigating potential issues from the officers' tension. A third observed benefit of auditing is the ability to use the videos as a training tool. One agency required their supervisors to bring two videos to weekly meetings. One of the videos must show something that was done well, and the other showing something that may be improved upon. Personnel were then able to see their actions and evaluate practices they either want to continue or change, respectively.

Finally, the research discovered several challenges. Compliance auditing is the production and analysis of predetermined metrics. It is not interactive and requires minimal staffing to complete the audit. Once the requisite metrics are identified, the system will automatically provide them to the appropriate personnel at the designated intervals. However, performance auditing is much more complicated. It takes time to watch a video, evaluate performance, and tag the video with the reviewer's observations. It takes significantly more time to plan and execute any training based on what was observed in the video. There were four significant considerations faced by each of the researched agencies:

- Quantity (how many videos need to be reviewed for each officer)
- Frequency (how often the videos need to be reviewed)
- Length (how long the video is that needs to be reviewed, both maximum and minimum time)
- Span-of-control (how many officers work for the reviewer)

The Department policies specific to BWCs fall under Duty Manual section L 4400 – Collection of Physical Evidence. This Duty Manual section is included as Attachment 2.

### **Compliance Auditing Implementation**

The Department recommends immediate implementation of compliance auditing, with the goal of ensuring that all officers are activating and deactivating their BWCs when appropriate. Compliance audits will ensure the files are being uploaded in a timely manner, that the correct event numbers are associated with those files, and that they are tagged with the proper event type. These audits will result in increased oversight, resulting in an increase in BWC usage. The number of orphan files will decrease, and evidence will be more readily accessible.

Supervisors will receive weekly reports on their officers' metrics, as outlined above. Likewise, lieutenants will receive monthly reports on their officers and sergeants. Captains will receive monthly reports on their divisions' compliance, while the bureau chiefs will receive similar bureau-wide reports. In all instances, they will be able to discern where improvements may be made, establish compliance patterns, and provide training or direction where necessary.

### *Staffing*

Compliance auditing implementation will require the addition of one senior analyst position to administer the Axon Performance system, including its development and configuration, develop supervisor training, conduct compliance audits, produce Department compliance reports, troubleshoot technical issues, and ensure appropriate logging is completed. The approximate cost for this position in fiscal year 2022 -2023 is estimated to be \$153,500. Staff is recommending immediate implementation of this option using funding from the existing Police Reforms Work Plan appropriation. If approved, the position would be added to the General Fund Base Budget for 2023-2024 to continue compliance auditing into the future.

### **Performance Auditing**

The Department has analyzed three policy alternatives to implement performance auditing, which are outlined in detail in the Policy Alternatives section of this memorandum. The Department is not recommending proceeding with any of these alternatives at this time. In the case of Alternative #1, the Video Auditing Unit (which bears ongoing costs of \$966,361) and Alternative #2, Supervisor Auditing (with ongoing costs of \$2,141,397), the Department does not recommend proceeding immediately due to the high implementation costs. Notwithstanding the cost, the Department does believe that Alternative #1, the Video Auditing Unit, is a viable model for performance auditing, and could be considered for funding through a future budget process in the context of the City's overall fiscal condition and other departmental and City priorities.

In the case of Alternative #3, Automated Software Auditing, the Department does not believe that the automated auditing software has sufficient technical capability at this point to serve as a viable option. The Department will monitor the market for potential software solutions in the future. If one arises that will expedite reviews or increase efficiency, the Administration will likely bring it forward through a future budget process, as appropriate.

### **CONCLUSION**

The Department recommends immediate implementation of compliance auditing. One senior analyst position is needed to implement this option. The Department proposes to pay for the first year of this position from the existing Police Reforms Workplan appropriation. If approved, the position would be added to the General Fund Base Budget for 2023-2024 to continue compliance auditing into the future.

The Department has evaluated three options for implementation of performance auditing, discussed in detail in the Policy Alternatives section below. While Alternatives #1, Video Auditing Unit, and Alternative #2, Supervisor Auditing, are not recommended for immediate implementation due to their considerable cost, the Department does believe Alternative #1 is a viable performance auditing model which could be implemented in the future, budgetary resources permitting. Alternative #3, Automated Software Auditing, is not yet technically viable, but the Department will continue to monitor this option as the technology improves.

## **EVALUATION AND FOLLOW UP**

The Department will report back to the Public Safety, Finance, and Strategic Support Committee with the results of the compliance auditing, at minimum, one year after implementation.

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

### ***Alternative #1: Video Auditing Unit***

This option creates a unit within the Department responsible for conducting the random video audits. It would be staffed by one sergeant, two officers, and a police forensic analyst. The sworn personnel would be responsible for conducting the audits based on their knowledge of Department policy and the law. The analyst would be responsible for administering the random audits, troubleshooting technical issues, and ensuring appropriate logging and reporting are completed. The supervisor will be responsible for oversight, supervision, and requesting any applicable Department-initiated investigations. By placing the responsibility with an isolated unit, field supervisors would be able to perform their supervisory duties unhindered by the need to take themselves out of service to watch video files. In addition, having neutral oversight ensures an unbiased evaluation of a subject's performance.

### ***Implementation Costs***

Increasing the quantity (one video), frequency (every six months), or length (two hours) will increase the personnel required to implement this option. Span-of-control in Patrol is irrelevant in this option as the Body-Worn Camera Video Analysis Unit will be responsible for BWC video review for the entire Department. This option includes the addition of one sergeant, two officers, and one police forensic analyst position. Non-personal/equipment costs include supplies and equipment needs for the positions as well as funding to build out office space. The approximate annual cost for this option would be as follows:

**Alternative #1: Implementation Costs**

Position	Y1 Cost	Ongoing Cost
Sergeant (1)	\$ 311,531	\$ 320,877
Officers (2)	\$ 449,097	\$ 462,570
Police Forensic Analyst (1)	\$ 161,408	\$ 166,251
Non-Personal /Equipment	\$ 76,073	\$ 13,663
<b>Total</b>	<b>\$ 998,109</b>	<b>\$ 966,361</b>

**Pros:**

- Neutrality – Unbiased review of BWC footage.
- Supervision – Allows supervisors to focus on their assigned duties and being present and engaged with their team.

**Cons:**

- Cost – The Department would need to hire one sergeant, two officers, and a police forensic analyst.

**Reason for not recommending:**

The Department is not recommending this option due to its high cost. However, the Department does believe this alternative is a viable performance auditing model which could be implemented in the future, budgetary resources permitting.

**Alternative #2: Supervisor Auditing**

Rather than a dedicated BWC Auditing Unit, supervisor auditing would require each supervisor to review their assigned officers’ BWC videos. Higher quantities, frequencies, or video lengths would increase the time necessary to keep supervisors out of the field. This would increase in-field span-of-control and diminish in-field oversight for the amount of time necessary to complete the performance audits.

In the Analysis section above, four key factors were identified particularly related to supervisor auditing: quantity, frequency, length, and span-of-control. To best understand these four factors, consider the following example. San José Police Department District “William” on first watch has one sergeant and four officers; a span-of-control of 1-to-4. Conversely, the District “Charles” and District “Paul” teams on second watch are both supervised by a single sergeant; a span-of-control of 1-to-15. If we require sergeants to review two videos (quantity) per month (frequency), and each video must be two hours long (length), the District “William” sergeant would be watching videos for 16 hours per month. Conversely, the District “Charles and Paul” sergeant would be watching videos for 60 hours per month. The District “William” sergeant would need to be off the street, not supervising

their officers in the field, for about a day-and-a-half per month, while the District “Charles and Paul” sergeant would need to be off the street for a week-and-a-half per month.

Along with the span-of-control, it is important to note the duties currently required of a patrol supervisor. Sergeants are expected to actively supervise and participate in events occurring throughout the City; they engage in community policing and conflict resolution; and they are expected to practice open, transparent communication both up and down the chain of command, with their peers, and with the community. In addition, supervisors are expected to perform several collateral duties and assignments, including the development and implementation of informal training, report review, roll call preparation, and shift briefing. Any additional performance auditing responsibilities would take time away to accomplish these essential functions.

### *Staffing*

This option would require one senior analyst to administer the random audits program. The senior analyst would be responsible for ensuring random audits are being performed by supervisory staff, extracting audit metrics on compliance for Command Staff and City Council, handling Public Records Act requests on the Performance program, troubleshooting technical issues, and ensuring appropriate logging is completed.

In addition, to ensure sergeants can complete performance reviews along with all their other duties, this option would require full sergeant staffing in Patrol to reduce the span-of-control. There are 90 authorized sergeant positions to cover 96 patrol teams. Typically, each patrol team would have a dedicated sergeant assigned to manage day-to-day operations and administrative duties. In order to implement the sergeant BWC audit review, which will take each sergeant offline for extended periods of time, each patrol team should have a fully staffed sergeant; ensuring a proper span-of-control in Patrol to be able to perform the additional required video auditing functions. Without proper supervisor staffing, the Department would be unable to maintain proper supervision and oversight in Patrol while implementing the video auditing requirements. In order to implement this properly, six additional sergeant positions would need to be added to the patrol structure, and all sergeant vacancies would need to be filled.

It should be noted that hiring officers and promoting sergeants takes a significant period of time. Based on attrition projections and ongoing funding available for the hire ahead program, the Department anticipates having zero operational vacancies, meaning fully trained, street-ready officers equivalent to authorized staffing levels, sometime around spring of 2024.

As an alternative, the Department assessed utilizing overtime for sergeants to conduct the BWC audits until full supervisory staffing levels can be achieved. The cost of overtime for the sergeant to conduct an audit (or backfill the sergeant) to review two videos per officer annually is estimated to be \$492,104. However, this overtime model would only be a temporary solution until full supervisory staffing can be achieved and additional sergeants are added to the patrol structure to allow more time to conduct this work. While overtime is a necessary part of public safety operations, it cannot be the solution to every new problem,

especially when establishing ongoing protocols and new duties. As such, the Department recommends adding sufficient ongoing resources to address these new tasks, rather than relying on additional overtime if this alternative was to be pursued.

*Implementation Costs*

This option includes the addition of six sergeants (six months), one senior analyst, and overtime funding for sergeant-level staffing over a six-month period to support this workload prior to the hiring of the six sergeant positions. Non-personal/equipment costs include supplies and equipment needs for the positions as well as funding to build out office space. The approximate cost for this option would be as follows:

**Alternative #2: Implementation Costs**

Position	Y1 Cost	Ongoing Cost
Sergeant (6)	\$ 934,594	\$ 1,925,263
Senior Analyst	\$ 184,280	\$ 189,808
Onetime Overtime	\$ 492,104	
Non-Personal /Equipment	\$ 302,146	\$ 26,326
<b>Total</b>	<b>\$ 1,913,124</b>	<b>\$ 2,141,397</b>

The following table shows details on the assumptions used to calculate overtime costs to review two videos per year per officer. Overtime would be utilized as a temporary solution until additional sergeant staffing noted above was in place.

Overtime rate for a top-step sergeant:	\$137 per hour
Example number of hours of video to review, per audit:	2
Example number of videos to audit per year, per officer:	2
Annual cost of auditing one officer’s BWC video:	\$548
Number of authorized officer positions:	898
Cost of auditing BWCs on overtime:	\$492,104

**Pros:**

- Knowledge – Each supervisor would be reviewing their assigned employees, making them aware of their subordinates’ actions and interactions.

**Cons:**

- Supervision – This would remove sergeants from the streets for extended periods of time, causing a breakdown in presence and supervision.
- Cost – The Department would need to hire six more sergeants.
- Relationships – The supervisors will have a relationship with everyone they are reviewing, possibly allowing for personal biases to influence their review.

***Reason for not recommending:***

The Department is not recommending this option due to the time it will take supervisors away from their other responsibilities. Supervisors should be present, engaged, and actively participating with their teams. In addition, this option would require hiring six additional sergeants, at a high cost, and there is a potential for personal biases that could influence supervisor review.

***Alternative #3: Automated Software Auditing***

Several companies make software solutions used to audit BWC footage. Typically, these systems perform the following functions:

- Compliance auditing in which the software reviews power cycling, timing of uploads, video tagging, event numbers, identical to the compliance auditing model recommended in this memorandum.
- Create the random selection of footage for supervisors to review, based on predetermined criteria.
- Provide the supervisor with a form to complete when evaluating the footage, based on predetermined criteria.

Axon Performance, owned by the Department, is one such software solution. However, there are also some software solutions that will “view” the footage by running it through an algorithm that “listens” for certain words. For example, the software may be able to “listen” for expletives. When it identifies an expletive, the software will tag that video for review by a supervisor.

***Pros:***

- The software would identify video files that contain verbiage possibly indicating unprofessionalism.

***Cons:***

- When “listening” for expletives, the software would not know who said the expletive. It could have been anyone in the recording. As a result, videos may be tagged for review by a supervisor when it was not the officer who used the expletive but may have been the suspect or a bystander. This would create unnecessary work to review the video for professionalism when the actions of the officer were not in question.

***Reason for not recommending:***

The Department is not recommending this option because the bulk of the benefits are already owned by the Department in the Axon Performance program. The technology for automated “viewing” of video is not yet at a level where the benefits outweigh the time necessary to review the tagged video. The Department will monitor the market for potential software solutions in the future.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s Council Agenda website for the September 13, 2022 City Council meeting.

**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office, City Manager’s Office of Employee Relations, and the City Manager’s Budget Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**COST SUMMARY/IMPLICATIONS**

Compliance Auditing Implementation Costs

Implementation of compliance auditing will require the addition of one senior analyst position to administer the Axon Performance system, including its development and configuration, implement supervisor training, conduct compliance audits, produce Department compliance reports, troubleshoot technical issues, and ensure appropriate logging is completed. The approximate first-year cost for this position is estimated to be \$154,500. The first-year costs will be funded through the Police Reforms Work Plan appropriation. Ongoing costs after the first year would be included in the 2022-2023 General Fund Base Budget.

**Compliance Auditing - Implementation Costs**

<b>Position</b>	<b>Y1 Cost</b>	<b>Ongoing Cost</b>
Senior Analyst	\$ 153,566	\$ 189,808
Non-Personal	\$ 1,000	\$ 1,000
<b>Total</b>	<b>\$ 154,566</b>	<b>\$ 190,808</b>

**BUDGET REFERENCE**

The table below identifies the fund and appropriation recommended to support the actions contained in this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn.	Recommended Budget Action	2022-2023 Proposed Budget Page*	Last Budget Action (Date, Ord. No.)
001	214A	Police Reform Workplan	\$640,800	N/A	N/A	6/21/2022 Ord. No. 30790

\*The 2022-2023 Adopted Operating Budget was approved on June 14, 2022 and adopted on June 21, 2022 by the City Council.

**CEQA**

Not a Project, File No. PP17-008, General Procedure and Policy Making, resulting in no changes to the physical environment.

/s/  
ANTHONY MATA  
Chief of Police

  
Jim Shannon  
Budget Director

AM:SD

Attachments:

Attachment 1: Body Worn Camera Data Review Report Q4 April - June 2021

Attachment 2: Body Worn Camera Duty Manual Sections

For questions, please contact Lieutenant Stephen Donohue, Research & Development Unit, San José Police Department, at (408) 390-5810.

Attachment 1: Body-Worn Camera Data Review Report Q4 April - June 2021



## BWC Audit – Calls for Service

### DATA PARAMETERS

Time Period: 04/01/2021 – 06/30/2021

Calls for Service – Priority 1 & 2

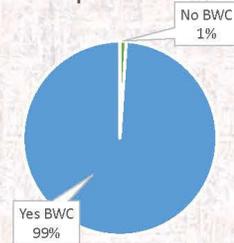
Exclude Dispositions:

- DUP
- CAN
- DUPNCAN
- NR
- ADV
- G
- T
- U

### SELECT CALL TYPES:

- 1056 – Attempted Suicide
- 1179 – Veh Accident Amb Dispatched
- 20001 – Felony Hit & Run
- 211A – Armed Robbery
- 211SA – Strong Arm Robbery
- 215 – Carjacking
- 242 – Battery
- 245 – Assault with Deadly Weapon
- 246 – Shooting Into Occp Veh/Dwell
- 261 – Rape
- 273.5 – Domestic Violence
- 415A – Disturbance, Fight
- 415F – Disturbance, Family
- 415W – Disturbance, Weapon
- 6F – Felony Want

April 2021



Totals

Select Call Types: 1,213

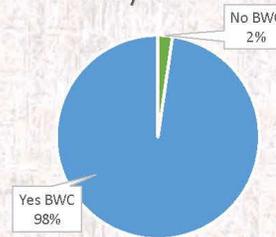
Random Sample: 292

Calls with BWC: 288 - 99%

Calls with No BWC: 4 - 1%

CIRC/UTL: 2 of 4

May 2021



Totals

Select Call Types: 1,391

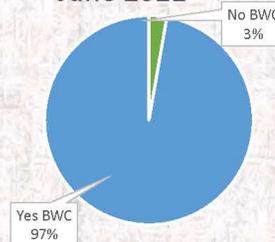
Random Sample: 302

Calls with BWC: 296 - 98%

Calls with No BWC: 6 - 2%

CIRC/UTL: 5 of 6

June 2021



Totals

Select Call Types: 1,228

Random Sample: 293

Calls with BWC: 285 - 97%

Calls with No BWC: 8 - 3%

CIRC/UTL: 5 of 8

2

### April 2021

Final Call Type Description	BWC	No BWC	Total
1056A-ATTEMPTED SUICIDE	1	0	1
1179-VEHICLE ACCIDENT, AMB DISPATCHED	10	1	11
20001-FELONY HIT AND RUN	5	0	5
211A-ARMED ROBBERY	6	0	6
211SA-STRONG ARM ROBBERY	5	0	5
215-CARJACKING	0	0	0
242-BATTERY	7	1	8
245-ASSAULT WITH DEADLY WEAPON	22	0	22
246-SHOOTING INTO OCCP VEH OR DWELLING	1	0	1
261-RAPE	0	0	0
273.5-DOMESTIC VIOLENCE	31	0	31
415A-DISTURBANCE, FIGHT	11	1	12
415F-DISTURBANCE, FAMILY	145	1	146
415W-DISTURBANCE, WEAPON	25	0	25
6F-FELONY WANT	19	0	19
<b>Grand Total</b>	<b>288</b>	<b>4</b>	<b>292</b>

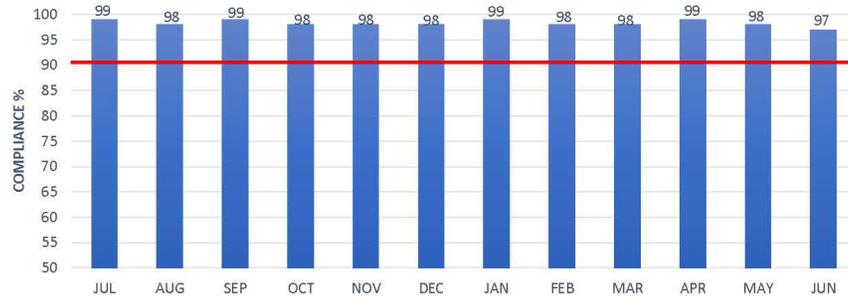
### May 2021

Final Call Type Description	BWC	No BWC	Total
1056A-ATTEMPTED SUICIDE	1	0	1
1179-VEHICLE ACCIDENT, AMB DISPATCHED	11	0	11
20001-FELONY HIT AND RUN	10	0	10
211A-ARMED ROBBERY	6	0	6
211SA-STRONG ARM ROBBERY	3	0	3
215-CARJACKING	3	0	3
242-BATTERY	26	0	26
245-ASSAULT WITH DEADLY WEAPON	19	0	19
246-SHOOTING INTO OCCP VEH OR DWELLING	2	0	2
261-RAPE	2	0	2
273.5-DOMESTIC VIOLENCE	21	0	21
415A-DISTURBANCE, FIGHT	10	3	13
415F-DISTURBANCE, FAMILY	140	1	141
415W-DISTURBANCE, WEAPON	24	2	26
6F-FELONY WANT	18	0	18
<b>Grand Total</b>	<b>296</b>	<b>6</b>	<b>302</b>

### June 2021

Final Call Type Description	BWC	No BWC	Total
1056A-ATTEMPTED SUICIDE	3	0	3
1179-VEHICLE ACCIDENT, AMB DISPATCHED	8	0	8
20001-FELONY HIT AND RUN	9	0	9
211A-ARMED ROBBERY	7	0	7
211SA-STRONG ARM ROBBERY	2	0	2
215-CARJACKING	5	0	5
242-BATTERY	20	1	21
245-ASSAULT WITH DEADLY WEAPON	12	0	12
246-SHOOTING INTO OCCP VEH OR DWELLING	2	0	2
261-RAPE	3	0	3
273.5-DOMESTIC VIOLENCE	28	0	28
415A-DISTURBANCE, FIGHT	16	2	18
415F-DISTURBANCE, FAMILY	119	3	122
415W-DISTURBANCE, WEAPON	31	2	33
6F-FELONY WANT	20	0	20
<b>Grand Total</b>	<b>285</b>	<b>8</b>	<b>293</b>

Select Calls for Service - Compliance %  
Jul 2020 – Jun 2021



#### Methodology:

- Select data set by applying random sample formula – 95% Confidence with +/- 5% error rate.
- Determine if event numbers from sample set have corresponding BWC files in Evidence.com.
- Compliance is defined as having at least one BWC file with the same event number as the calls for service event.

## BWC Audit – Person/Vehicle Stops

### DATA PARAMETERS

Time Period: 04/01/2021 – 06/30/2021

Calls for Service – Priority 5 & 6

Exclude Dispositions:

- DUP
- CAN
- DUPNCAN
- NR
- ADV
- G
- T
- U

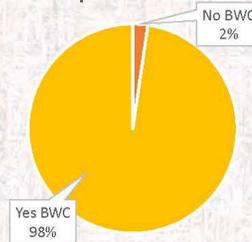
### PERSON/VEHICLE STOPS:

- 1095 – PEDESTRIAN STOP
- 1095X – PEDESTRIAN STOP ON A FEMALE
- 1195 – VEHICLE STOP
- 1195X – VEHICLE STOP ON A FEMALE

Data Limitations/Considerations:

- BWC Orphan Files – No CAD Integration
- BWC Compliance – Event Number vs Officer Badge
- CAD Calls – Units Attached/Not Logged On
- CAD Calls – Unit 1098's and Attached to New Call

April 2021



Totals:

1095s/1195s: 3,342

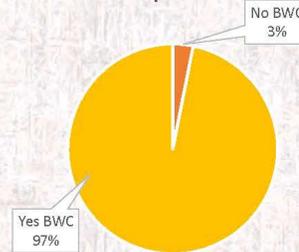
Random Sample: 345

Events with BWC: 337 - 98%

Events with No BWC: 8 - 2%

Veh Fled: 3 of 8

May 2021



Totals:

1095s/1195s: 3,694

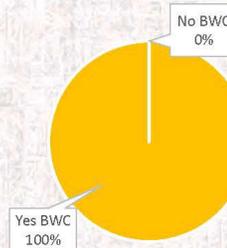
Random Sample: 349

Events with BWC: 338 - 97%

Events with No BWC: 11 - 3%

Veh Fled: 4 of 11

June 2021



Totals:

1095s/1195s: 3,902

Random Sample: 350

Events with BWC: 350 - 100%

Events with No BWC: 0 - 0%

Veh Fled: 0 of 0

### April 2021

Final Call Type Description	BWC	No BWC	Total
1095-PEDESTRIAN STOP	30	0	30
1095X-PEDESTRIAN STOP ON FEMALE	0	0	0
1195-VEHICLE STOP	269	8	277
1195X-VEHICLE STOP ON FEMALE	38	0	38
<b>Grand Total</b>	<b>337</b>	<b>8</b>	<b>345</b>

### May 2021

Final Call Type Description	BWC	No BWC	Total
1095-PEDESTRIAN STOP	27	0	27
1095X-PEDESTRIAN STOP ON FEMALE	0	0	0
1195-VEHICLE STOP	265	11	276
1195X-VEHICLE STOP ON FEMALE	46	0	46
<b>Grand Total</b>	<b>338</b>	<b>11</b>	<b>349</b>

### June 2021

Final Call Type Description	BWC	No BWC	Total
1095-PEDESTRIAN STOP	30	0	30
1095X-PEDESTRIAN STOP ON FEMALE	0	0	0
1195-VEHICLE STOP	249	0	249
1195X-VEHICLE STOP ON FEMALE	71	0	71
<b>Grand Total</b>	<b>350</b>	<b>0</b>	<b>350</b>



#### Methodology:

- Select data set by applying random sample formula – 95% Confidence with +/- 5% error rate.
- Determine if event numbers from sample set have corresponding BWC files in Evidence.com.
- Compliance is defined as having at least one BWC file with the same event number as the calls for service event.

## Attachment 2: Body Worn Camera Duty Manual Sections

### **L 4430**      **BODY WORN CAMERAS- DEFINED:**

*Added 05-25-16*

A Body Worn Camera (BWC) is a camera worn on an individual officer's person that records and stores audio and video. The use of the body worn camera system provides documentary evidence for criminal investigations, internal or administrative investigations, and civil litigation.

### **L 4431**      **BODY WORN CAMERAS-GENERAL PROVISIONS:**

The Department adopts the use of BWC's to record specific categories of interactions between officers and the public. Officers shall utilize body worn cameras in accordance with the provisions of this policy (Duty Manual Sections L 4430 – 4446).

### **L 4432**      **USER TRAINING:**

*Added 05-25-16*

The Department shall ensure that each officer is trained in the use of the body worn camera prior to issuance and deployment. The training shall include:

1. Training on operation (including when to activate and deactivate), maintenance and care;
2. Training on mandatory, discretionary and non-permissible uses of body worn cameras;
3. Periodic training on significant changes in the law pertaining to body worn cameras;
4. Additional training at periodic intervals to ensure continued effective use of the body worn camera equipment, performance, and to incorporate changes, updates or other revisions in policies and equipment.

### **L 4433**      **OFFICER RESPONSIBILITIES:**

*Revised 06-25-20*

Every officer assigned a body worn camera working a uniformed or plain-clothes assignment in the City of San Jose, to include secondary employment and the Main Lobby, is responsible for ensuring that they are equipped with a Department-issued body worn camera and that the camera is fully charged and in good working order at the beginning of their shift. If a device is in need of repair, members will notify their supervisor and turn the body worn camera into Central Supply for repair or replacement. Actual time spent testing or reporting damage to a body worn camera shall be regarded as time worked.

Note: This section is inclusive of all uniform types (i.e. school resource officer, bicycle patrol, secondary employment, etc.), but is not meant to include Bureau of Investigation detectives, other Bureaus, or secondary employment where officers are not in uniform, unless otherwise engaged in the service of a search or arrest warrant (see Duty Manual Section L 4435, item #6.)

Uniformed officers will wear the body worn camera on their uniform at a location that will facilitate an optimum recording field of view. This location may vary from officer to officer based upon his/her specific uniform and body composition.

Officers will 'power on' the body worn camera before going into service and keep it powered on for the remainder of his/her shift, with the exception of bathroom breaks or those times when an officer is entering a Department locker room. The officer will only 'power off' his/her body worn camera at the conclusion of his/her shift prior to placing it in a camera dock to upload.

Note: An exception to this rule are Officer-Involved Incidents, as outlined in Duty Manual Section L 4446.

Officers shall not deliberately remove, dismantle or tamper with any hardware, video evidence, and/or the evidence management software component of the body worn camera.

Each officer is responsible for ensuring that their assigned body worn camera is uploaded during their shift as needed or at the completion of their shift, or at any time the device's memory is deemed to be full. Actual time spent uploading the body worn camera files at the completion of an officer's shift shall be considered booking evidence and regarded as time worked.

Exception: If an officer is working a uniformed secondary employment (i.e. school pay job, airport pay job, traffic control, etc.) on a regularly-scheduled day off, he/she will upload the video evidence at the earliest opportunity on their first day back to work. In the interim, the officer will ensure the safety of the camera and its contents until such time it can be uploaded. A supervisor may direct an officer to upload sooner should the event or investigation require the video evidence sooner. In these situations, the officer will ensure his/her video evidence is uploaded in accordance with the supervisor's instruction.

Media captured via the body worn camera shall only be uploaded to Department-approved secure storage. Since the content of the recording may be considered evidence, and are considered Department records of investigation, officers will comply with all sections in the Duty Manual regarding the handling of evidence and official Department records.

#### **L 4434**

#### **SUPERVISOR RESPONSIBILITIES:**

*Revised 06-25-20*

Supervisors shall utilize their body worn camera and ensure that officers utilize their body worn cameras according to these policy guidelines. Refer to Section L 4444.

Supervisors shall ensure videos related to Officer-Involved Incidents, as defined in Duty Manual Section L 4446, are uploaded as soon as possible following the event or as requested by a supervisor.

Supervisors completing a Use of Force investigation where a body worn camera was used should review the video and follow procedures set forth in Duty Manual Section L 2605 (Supervisor's Responsibilities).

Supervisors may have the ability to immediately address citizen concerns by viewing video captured by the officer's body worn camera prior to contacting the citizen. At no time, except at the direction of the Chief or designee, shall the supervisor allow the citizen to view the file footage.

In those circumstances where a concern is addressed with no further action required, supervisors shall make notes in the CAD event. This allowance is independent of the complaint process, and supervisors are reminded to abide by Duty Manual Section C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

Supervisors should also utilize body worn camera files when handling a Supervisory Referral as outlined in Duty Manual Section C 1707.5 (Supervisory Referral Complaint Defined).

**L 4435**

**WHEN TO ACTIVATE:**

*Revised 06-25-20*

There are many situations when to activate the body worn camera, however, this policy is not intended to describe every possible circumstance.

The safety of officers and members of the public is the highest priority, and the Department acknowledges there may be situations in which operation of the device is impractical or may be an impediment to public and officer safety. Additionally, the Department recognizes human performance limitations during particularly stressful, critical situations. As such, officers shall activate their body worn camera while enroute, and prior to arrival, to a call for service. This will ensure the entire event is captured on the body worn camera.

Officers shall make every effort to record non-enforcement contacts should they become confrontational, assaultive or enforcement-oriented. In addition to the required conditions, personnel may activate the system any time they feel its use would be appropriate and/or valuable to document an incident. Also, officers shall not be required to activate or deactivate their body worn camera based solely on the requests or demands of a citizen, but rather rely on their training and this policy to direct their use of the body worn camera.

During their shift, officers shall activate the body worn camera prior to initiating, or due to officer safety reasons, as soon as practical after initiating, the following police actions:

1. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity. This includes, but is not limited to:
  - a) Detentions, vehicle stops, pedestrian stops and consensual encounters
  - b) Probation, parole, post-release community supervision, mandatory supervision or consent searches.
2. Taking or attempting to take a person into custody (e.g., arrests, foot pursuits, protective custody of mentally disturbed person, etc.).
3. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.
4. All incidents involving a use of force.
5. All public interaction, regardless of context, that escalates and becomes adversarial.
6. Service of search or arrest warrants (regardless of assignment).
7. Suspect statements.
8. Witness/Victim statements (refer to L 4439 Victim and Witness Statements).
9. Code 3 driving and vehicle pursuits.
10. Response to calls for service (regardless if the suspect, victim, or witness is present at the scene).

11. Assist visitors and members of the public while assigned to the Main Lobby (regardless if the contact occurs inside or outside the Lobby).

**L 4436**

**WHEN TO DEACTIVATE:**

*Added 06-25-20*

Body worn camera recordings shall not be intentionally terminated until the conclusion of the encounter.

**Exception:** Officers may deactivate while still assigned to a call or investigation as long as he/she has cleared the scene; is no longer involved in the care and/or custody of a prisoner or another person; or no longer actively involved in an investigation, including collecting physical evidence.

Anytime the recording is terminated prior to the end of the encounter, the reason(s) shall be documented on the body worn camera recording before deactivation or in the subsequent police report. If the reasons are not documented on the BWC and no police report is filed for the recorded encounter, then the reason(s) for the early termination shall be recorded on the citation, CAD event or Street Check.

**L 4437**

**ADVISEMENTS AND CONSENT:**

*Revised 06-25-20*

Generally, officers are not required to advise or obtain consent to utilize the body worn camera from a private person when:

1. In a public place; or
2. In a location where there is an expectation of privacy (e.g., inside a building or dwelling) but the officer is lawfully present.

However, when initiating a police action as described in Duty Manual Section L 4435 (When to Activate), officers shall make a reasonable effort to advise persons they are being recorded with the body worn camera, unless the officer has reason to believe that doing so will endanger the safety of the officer, another officer, a member of the public or will interfere with the conduct of an investigation.

When an officer's legal grounds for a search of a residence is based solely on consent, they are required to both advise and obtain consent to record with a body worn camera from the person, with legal standing, who is being recorded and/or searched. This does not apply to crimes in progress or other circumstances that would allow the officer to be lawfully present without a warrant.

**L 4438**

**WHEN NOT TO ACTIVATE:**

*Revised 06-25-20*

Personnel are not required to activate the camera system during routine, incidental contact with a citizen, (i.e. giving directions or lunch breaks).

Officers will not knowingly activate the body worn camera in the following circumstances:

1. A potential witness who requests to speak to an officer confidentially or desires anonymity (See Duty Manual Section L 4439, Victim and Witness Statements).

2. A victim or witness who requests that he or she not be recorded and the situation is not confrontational (See Duty Manual Section L 4439, Victim and Witness Statements).
3. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation (See Duty Manual Section L 4439, Victim and Witness Statements).
4. During tactical briefings, or the discussion of safety and security procedures that occur away from the scene of an investigation or enforcement encounter (e.g. a nearby staging location or Command Post).
5. Undercover or plain clothes officers, except while serving arrest or search warrant(s), Duty Manual Section L 4435 Subsection 6.
6. Strip Searches.
7. Public or private locker rooms, changing rooms, restrooms, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
8. Doctor's or lawyer's offices, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
9. Medical or hospital facilities, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
10. Other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
11. To surreptitiously record any Department member without their consent, a court order, or unless lawfully authorized by the Chief of Police or designee for the purposes of a criminal investigation. (Duty Manual Section L 4513, Recording of Statements).
12. The monitoring of 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 and California Constitutions, or because of the content or viewpoint of the person's protected speech is prohibited.
13. While officers are engaged in conversations with individuals with whom the officer is in a privileged relationship (e.g. spouse, attorney, police peer counselor, labor representative, minister, etc.).

Note: A privileged conversation does not include a conversation with another officer or supervisor while still actively engaged in a call for service, investigation, or enforcement encounter.

14. When entering the Santa Clara County Main Jail's main facility.
15. Surveillance operations until the point where enforcement will be taken (i.e. covert surveillance of suspect prior to arrest.)

**L 4438.1**

**WHEN NOT TO ACTIVATE AT A BOMB-RELATED INCIDENT:**

*Added 03-07-21*

Bomb Detail Personnel are not required to activate their body worn camera during the performance of render safe procedures.

Other officers at the scene, who are not directly involved in performing render safe procedures, will avoid knowingly recording Bomb Detail personnel who are performing render safe procedures. This exception shall not apply when officers are engaged in interactions with the public, or as otherwise required to record events with their body

worn camera, under the enumerated police actions set out in paragraphs 1 through 7 of section L 4435.

**L 4439**

**VICTIM AND WITNESS STATEMENTS:**

*Revised 06-25-20*

When conducting an investigation, the officer 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 complements an investigation. While evidence collection is important, the Department also recognizes it is important for officers to maintain credibility with people wanting to share information with law enforcement.

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

Should the officer use discretion and not record the crime victim or witness statement with the body worn camera, the officer shall document the reason for not fully recording the statement with the body worn camera. In these instances, officers shall record with an audio recorder as outlined in Duty Manual Section L 4513 (Recording of Statements).

**L 4440**

**UNAUTHORIZED ACCESS AND USE:**

*Revised 06-25-20*

All body worn camera recordings shall remain the property of the Department and constitute official records of investigation of the Department.

Unauthorized access to, use, duplication, and/or distribution of body worn camera files is prohibited. Personnel shall not make copies of any Body Worn Camera file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record body worn camera files.

The body worn camera shall not be used to record:

1. Encounters not directly related to official activities in the proper performance of police duties.
2. Performance of non-enforcement functions or administrative duties within a Department facility.

Personally owned body worn cameras shall not be used while on duty.

Note: All activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

**L 4441**

**ACCIDENTAL RECORDINGS:**

*Revised 06-25-20*

In the event of an accidental activation of the body worn camera, the recording officer may request that the video file be deleted. The officer will submit a request for deletion

via email, with sufficient information to locate the body worn camera file, to their direct supervisor.

The email will be forwarded through the officer's chain of command to their Lieutenant. The receiving Lieutenant shall review the file and approve or deny the request. The Lieutenant will ensure the file is not associated with a police contact or CAD event. No files associated with an official police contact, CAD event, or any pending litigation or complaint is eligible for deletion. Should the Lieutenant approve the request, he/she will send an email to the Body Worn Camera Admin Unit with enough information to locate the file(s). Only members of the Body Worn Camera Admin Unit with Administrative privileges shall delete the file(s). The reason for the deletion, including the authorizing authority, will be documented in the notes of the videos. These notes are retained by the evidence management system's audit trail. Deletions and requests for deletion are tracked by the Body Worn Camera Administrative Unit.

Officers will not request deletion of body worn camera files that are not the result of an accident. Should the officer knowingly or unknowingly record something of a confidential nature (i.e., conversation with a confidential informant, critical intelligence, specific tactics, etc.), the officer will do the following:

- Place an electronic Marker within the video (via the body worn camera's Function Button) or within Evidence.com after uploading the video, AND
- Change the Title of the video file(s) to "SENSITIVE/CONFIDENTIAL." This will indicate to the Body Worn Camera Admin Unit, the Santa Clara County District Attorney's Office, and/or the City Attorney's Office that the file(s) contains something of a sensitive nature that may need to be redacted prior to disclosure should release occur. In these situations, further discussion between the officer and the Body Worn Camera Admin Unit may be required for coordination.
- Officers are also encouraged to provide additional information in Evidence.com as to the sensitive or confidential nature of the video by adding notes within the video file. This will assist the Body Worn Camera Admin Unit with proper identification of the sensitive/confidential evidence.

#### **L 4442**

#### **DOCUMENTING USE OF THE BODY WORN CAMERA:**

*Revised 06-25-20*

Personnel should not substitute a body worn camera recording for a detailed and thorough report. Personnel should continue to prepare reports as outlined in the Duty Manual. Body worn camera video cannot substitute the collection of physical evidence such as fingerprints, documents, photographs, or other important evidentiary items that are considered part of the criminal investigation. These items must be properly collected and booked into evidence.

If an officer is required to write a report or citation, the officer will also document in the report or citation the fact that a BWC was used to record the incident. If the BWC was not activated as per policy, the officer shall document in the report or citation the reason and/or justification for not activating his/her camera.

Exception: Officers involved in an Officer-involved incident. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents).

#### **L 4443**

#### **REVIEW OF BODY WORN CAMERA FILES:**

*Revised 06-25-20*

All file viewing and sharing is for law enforcement use only and subject to a right to know and need to know basis (Refer to Duty Manual Chapter C 2000 (Obtaining Criminal Records/Information), and Chapter C 2100 (Juvenile Records)).

Department personnel may review body worn camera files according to the provisions of this policy and Duty Manual requirements and are reminded that all activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

An officer should review body worn camera files, including those of other officers, in the following instances:

1. For the purposes of completing criminal investigations and preparing accurate official reports with the exception of Officer-Involved Incidents. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents) and R 1108 (Accuracy and Brevity).
2. Prior to courtroom testimony or for courtroom presentations, or as part of preparation by the San Jose City Attorney's Office for litigation in which a police officer is a party or a witness and the City Attorney's Office is representing the City and/or officers who are parties to the litigation.
3. For potential training purposes refer to Duty Manual Section L 4445 (Training with Body Worn Camera Files).
4. For preparation of an Internal Affairs interview, including review with officer representative, outside the presence of any investigator or supervisor.
5. For other reasons as specified with the permission of the Chief of Police.

Exception: Department members identified as Administrative Users may access body worn camera files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

#### **L 4444**

#### **ADMINISTRATIVE REVIEW OF BODY WORN CAMERA FILES:**

*Revised 06-25-20*

It is not the intent of the Department to review body worn camera files, without cause, for the purpose of general performance review of individual officers or to proactively discover policy violations.

Supervisors and Internal Affairs personnel may, however, access body worn camera files for administrative investigations limited to the specific complaint against the officer.

Supervisors should, on a reasonable basis, review body worn camera files to ensure that body worn camera equipment is functioning properly and officers are adhering to the requirements of this policy. Inadvertent discovery of evidence of policy violations during this review shall require the supervisor or Internal Affairs personnel to articulate the reason for expanding the scope of the original audit or investigation.

Supervisors who inadvertently discover policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policies set forth in the Duty Manual C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

Exception: Field Training Officers, Sergeants and the FTO Commander may view body worn camera files to evaluate the performance of recruit officer in the Field Training Program.

**L 4445**

**TRAINING WITH BODY WORN CAMERA FILES:**

*Revised 06-25-20*

A body worn camera file may be utilized as a training tool for individuals, specific units, and the Department as a whole with the involved officers' permission. Department members recommending utilization of a body worn camera file for training purposes will submit the recommendation to their supervisor for approval and contact the Body Worn Camera Admin Unit for assistance as needed.

Exception: Field Training Officers may use body worn camera files to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

**L 4446**

**OFFICER INVOLVED INCIDENTS:**

*Revised 06-25-20*

The Department recognizes that the video images recorded on the body worn camera files are two-dimensional and cannot always capture the entire scene, as seen or heard by the officer, due to a number of limiting factors. However, the body worn camera file(s) are still considered important evidence collected from an Officer-Involved Incident.

An Officer Involved Incident includes:

1. Officer-involved shootings,
2. In-custody deaths, and
3. Any act by an officer, including but not limited to any use of any deadly or dangerous weapon by an officer, which proximately causes injury likely to produce death to another.

Following an Officer-Involved Incident involved officers, herein defined as both involved officers and witness officers to the incident, personnel and their representative(s) shall not view their video, or any video capturing their image or the incident on any device.

In most circumstances, officers shall keep their body worn camera on their uniform following an Officer-Involved Incident. The supervisor assigned to the involved officer will "power off" the involved-officers' body worn camera to safeguard the evidence after the officer has provided the public safety statement at the scene. If the involved officer does not have a supervisor assigned to him/her, the officer will "power off" his/her body worn camera to safeguard the evidence. Prior to deactivation of the body worn camera, the officer shall verbally indicate the reason why he/she is deactivating the camera.

Once the involved officer has been photographed by the Crime Scene Unit, a member of the Crime Scene Unit will collect the officers' body worn camera and ~~upload~~ the video evidence to the Department's secure storage.

The initial interview of an officer involved in an Officer-Involved Incident should occur before the officer has reviewed body worn camera recordings of the incident. Once

an involved officer has provided an initial statement to detectives, which should not be confused with a public safety statement at the scene, he/she will have an opportunity to review body worn camera recordings with his/her representative. The officer shall then be afforded an opportunity to provide a follow-up statement after having reviewed the recording(s).

**Note:** The Chief or designee shall have the discretion to permit officers to review video files prior to the initial interview. In the extraordinary circumstance an officer is allowed to view his/her video file(s) prior to the initial interview, the authorizing authority will first consult with the Santa Clara County District Attorney's Office and document the reason(s) in a police report.

Investigators will be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by the involved officer. When the investigator shows any audio/video recordings to an involved officer **after** the initial interview, the investigator will first admonish the involved officer about the limitations of audio/visual recordings.

The following is an example of an admonishment that would be appropriate in a case involving video evidence that is shown to the involved officer after he/she has provided an initial statement. In these situations, the showing of a body worn camera file to an officer will be documented in the investigator's report:

In this case, there is video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance, or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and recollection.