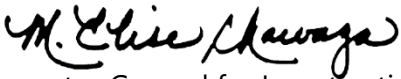




Memorandum

Date: August 23, 2022

Subject: ACTION: Policy Update—PPM Chapter 3008: Body Worn Cameras

From: M. Elise Chawaga 
Principal Assistant Inspector General for Investigations, JI-1

To: All Office of Investigations Employees

POLICY UPDATE: Effective immediately, pursuant to Executive Order 14074 on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, dated: May 25, 2022, this memorandum creates PPM Chapter 3008 Body Worn Cameras.

Note: This policy will take effect upon the purchase of body worn camera equipment and the full implementation of the Office of Investigations body worn camera program, and after any pilot and training programs have occurred.

1. Purpose

This AIGI Memo outlines the policies and procedures governing the U.S. Department of Transportation (DOT), Office of Inspector General (OIG), Office of Investigations (JI), Body Worn Cameras (BWC) program that is currently in development. This policy has been posted to the DOT OIG's public website in accordance with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety."

2. Body Worn Cameras

BWCs provide an additional layer of safety for the special agent (SA) and can build public trust by providing transparency and accountability in circumstances where the use of force may reasonably be anticipated during planned law enforcement operations. BWCs allow for accurate documentation of contacts between SAs and the public.

BWCs will be programmed to record for a specified period prior to activation and after deactivation (buffering period). This footage will be preserved along with the recording after activation occurs.

OIG agents do not engage in general policing or public patrol and do not routinely engage with the general public in response to emergency calls. Therefore, this policy focuses on the deployment of BWCs in planned law enforcement operations, where the use of force may reasonably be anticipated: such as the planned execution of a search warrant or arrest. While BWC recordings may enhance the Office of Investigation's ability to obtain evidence for investigative and prosecutorial purposes, it should be noted that the recordings may depict things that the OIG agent did not see or hear, and/or the OIG agent may have heard or seen things that were not recorded by the BWC. While the recordings depict visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently than how the camera records them. This policy does not supersede existing OIG policies or practices for the collection of evidence, conducting interviews, or the use of surreptitious recording devices.

3. Body Worn Camera Program Coordinator

The Principal Assistant Inspector General for Investigations (PAIGI) administers (or oversees) the BWC Program through the BWC Program Coordinator. The BWC Program Coordinator is responsible for the daily management of the program. The BWC Program Coordinator will periodically review a sample of BWC recordings to evaluate the quality of the audio and video recorded to ensure that OIG agents are properly operating BWCs in the manner intended by this program.

4. Joint Operations

When conducting enforcement operations with another law enforcement agency, OIG agents will comply with OIG's BWC policy, regardless of which agency is the lead.

The Assistant Special Agent in Charge (ASAC) overseeing the enforcement operation shall discuss the use of BWCs with the other agency's team leader prior to the enforcement operation. The case agent will document these discussions.

Prior to an operation using BWCs, the ASAC, through the SAC, shall notify the Principal Assistant Inspector General for Investigations (PAIGI) or their designee of any unresolved conflicts with any partner law enforcement agency regarding BWC deployment during the operation.

Any planned deviation from the OIG BWC policy must be documented and approved by the PAIGI or their designee. Under exigent circumstances, an oral authorization may be given by the PAIGI or their designee, but must be subsequently documented.

The BWC Program Coordinator may share recordings related to joint law enforcement operations with the other participating agencies and may request that the other agencies share their recordings as well. When sharing OIG recordings with other agencies, the BWC Program Coordinator will inform that agency that it may not share the OIG recording with anyone outside of that agency without the OIG's express written permission.

5. Pre-Operation Planning and Briefing

5.1 OIG-Led Enforcement Operations. Prior to conducting an enforcement operation, the ASAC, Senior Special Agent, or other designee (hereinafter referred to collectively as "OIG on-site team leader") will conduct a briefing regarding the planned use of BWCs. The briefing shall include a discussion of any steps that can be taken to avoid recording undercover personnel or confidential informants or sources. All OIG agents who are issued BWCs and who are expected to activate them during an operation must receive the operation briefing.

Prior to the execution of a search warrant or arrest warrant, the OIG on-site team leader will also brief all members of the search or arrest team.

5.1.1 OIG-Led Joint Enforcement Operations. When conducting an OIG-led enforcement operation with a partner law enforcement agency, the OIG on-site team leader shall discuss BWC deployment during the joint operation with the partner agency's team leader and/or team members, prior to the enforcement operation. The discussions shall include briefing the partner agency on the OIG BWC policy and reviewing the partner agency's BWC policy, if applicable. Special care should be taken to resolve any issues related to undercover agents. The OIG case agent will document these discussions.

5.1.2 Other Agency-Led Joint Enforcement Operations. When the OIG is not the lead on an enforcement operation with a partner law enforcement agency, the OIG on-site team leader will brief the partner agency's team leader and/or team members of the OIG BWC policy, prior to the enforcement operation. Special care should be taken to resolve any issues related to undercover agents involved with the enforcement operation. The OIG case agent will document these discussions.

The ASAC overseeing the operation shall be notified immediately of any unresolved conflicts with any partner agency related to BWC deployment. If the ASAC or SAC is

unable to resolve the conflicts, the PAIGI or their designee should be notified immediately.

6. Deployment for Enforcement Operations

Special agents shall wear and activate BWC recording equipment when such use is appropriate for the proper performance of their official duties and where recording is consistent with OIG BWC policy and the law.

Special agents will wear and activate BWC recording equipment for purposes of recording their actions during the tactical portion of enforcement operations where the use of force may reasonably be anticipated, such as the planned execution of a search warrant or arrest.

BWCs will be deployed for enforcement operations. All OIG agents participating in the enforcement operation will be equipped with BWCs. OIG agents will activate their BWCs to record contacts with individuals during enforcement operations.

For purposes of this section, enforcement operations include arrests, search warrants, and armed escort.

6.1 **BWC Activation.** Special agents will activate their BWC at the direction of the on-site team leader of the enforcement operation. The team leader will determine when to activate the BWCs and will ensure that each member of the enforcement team has activated the BWC prior to beginning the enforcement action. The SA will verbally state, "body camera activated" and their name, the date, and time.

6.2 **BWC Deactivation.** Special agents will deactivate their BWCs only upon the direction of the OIG on-site team leader when the team leader determines, at their discretion, the scene is secured. For purposes of this policy, the term "secured" means that the scene is safe and under law enforcement control. Prior to deactivating the BWC, the SA will verbally state the date, time, and reason for the BWC's deactivation.

7. Recording During the Enforcement Operation

Whenever possible, SAs should inform individuals at the beginning of the contact that they are being recorded (e.g., "I am advising you that our interaction is being recorded.") If the BWC must be deactivated during an operation, the SA should verbally state that the BWC is being deactivated and state the date, time, and reason for the deactivation.

In locations where individuals have a reasonable expectation of privacy such as a residence, and only during non-enforcement activities, individuals may decline to be

recorded unless the recording is being made pursuant to an arrest or search of the residence or individuals.

8. Documenting Use of Body Worn Camera

Upon the conclusion of the enforcement operation or activity the case agent will document in the Case Management System that a recording was made and provide a brief summary of the Activity.

The summary should include the following information and may be part of the overall memorandum documenting the law enforcement activity:

- The names of the team members participating in the activity or operation;
- Whether or not all SAs were wearing BWCs during the activity or operation;
- Whether or not all BWCs were activated prior to the activity or operation;
- If any BWCs malfunctioned or were inoperable during the activity or operation;
- If any BWCs were not activated prior to, or during, the activity or operation;
- If any BWCs were turned off during the activity or operation; and
- If any BWC recording was interrupted or terminated during the activity or operation.

9. Failure to Activate Body Worn Camera

Failure to Activate BWC. If a special agent fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the SA will document in a memorandum why the recording was not made, interrupted, and/or terminated. Any deviation from policy related to BWC activation or deactivation due to device malfunction, operator error, or other circumstances, shall also be documented in a memorandum from the case agent to the appropriate SAC through the OIG on-site team leader. The memorandum shall address:

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

A failure to activate the BWC as directed or the unauthorized termination of a BWC recording may result in disciplinary action.

10. Deployment in Other Instances

The deployment of BWCs is not intended to replace existing OIG policy regarding interviews or other evidence collection.

11. Download and Storage of Body Worn Camera Recordings

All BWC recordings will be uploaded as soon as possible, usually within two business days, and stored in an OIG-controlled server. Access to the recordings will be controlled by the BWC Program Coordinator. Each file will contain all relevant metadata, such as the date and time of the recording, the name of the SA who recorded it, and whenever possible the case name and number. An audit log will automatically be created and maintained that sets forth the history of each recording, the date and time each recording is reviewed, and the name of each reviewer.

12. Records Retention

BWC recordings will be securely stored according to the OIG-mandated procedures. BWC recordings will be securely stored on a server. All recordings are agency records and should be disposed of according to OIG's records retention policy.

For BWC recordings deemed as evidence, the SAs will adhere to the OIG evidence policy.

13. Body Worn Camera Equipment

Special agents shall only use BWCs issued by the OIG and should exercise reasonable care when using BWCs to ensure their proper functioning. Special agents should ensure that the BWC is fully charged before and during its deployment.

Special agents will notify the BWC Program Coordinator of any equipment malfunctions as soon as possible.

14. Loss or Theft of Equipment

All SAs will report the loss or theft of a BWC to their immediate supervisor as soon as possible, but no later than 24 hours after the discovery of the loss or theft. The immediate supervisor shall notify the BWC Program Coordinator and the SAC.

15. Treatment of Body Worn Camera Recordings and Requests for Release

In all circumstances, BWC recordings shall be treated as law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with enforcement proceedings. BWC recordings will also be treated as potential evidence in a federal investigation subject to applicable federal laws, rules, and policies concerning any such disclosure; and therefore, deemed privileged absent appropriate redaction prior to disclosure. All requests for OIG BWC recordings unrelated to a pending OIG criminal investigation or case will be forwarded to the Office of Chief Counsel, which is responsible for processing and responding to such requests. Nothing in this policy shall be deemed to provide a right of public access to BWC recordings. OIG BWC recordings are controlled by, and the property of, the OIG and will be retained and managed by the OIG.

16. Supervisory Responsibilities

Supervisors shall ensure that all SAs receive the required training on the use of BWCs in accordance with the OIG policies and procedures.

17. Training

To ensure the proper use and operation of BWCs, as well as maintain compliance with privacy and civil liberties laws, SAs must establish and maintain proficiency and knowledge related to BWC deployment. Prior to deployment of BWCs, all SAs will complete initial and recurring BWC training. The BWC Program Coordinator will also receive periodic training on privacy and civil liberties laws.

18. Disclosure of Body Worn Camera Recordings

All requests for disclosure of BWC recordings or related information will be forwarded to the BWC Program Coordinator, with a copy to the PAIGI. Special agents must obtain written approval from the BWC Program Coordinator prior to any disclosure of information (i.e., audio or video recording, etc.) recorded by the BWC.

19. Expedited Public Release of OIG Body Worn Camera Recordings

If BWC recordings depict conduct resulting in serious bodily injury or death of another, the OIG shall notify the United States Attorney as early as possible if it desires to publicly release the BWC recordings. The OIG and the United States Attorney will expeditiously review the recordings and provide official concurrence with public release as soon as practical, unless there are specific and compelling circumstances justifying an objection to public release that cannot be resolved by redaction or other means. Upon official concurrence, the OIG may immediately release recordings with any agreed-upon redactions, giving as much advance notice as possible to the United States Attorney as to the time and manner of its release.