

## **Vehicle Camera Policy**

### **I. Purpose**

- A. The purpose of equipping patrol vehicles with video and audio recording devices/Vehicle Cameras is to:
  1. Document Buffalo Police interactions with the public;
  2. Capture and maintain records of crimes in progress for evidence in court;
  3. Document officers' responses during the discovery of evidence, investigation into crimes, and calls for service by the public;
  4. Improve community relations and transparency;
  5. Mitigate potentially confrontational interactions between officers and the public through the presence of Vehicle Cameras;
  6. Prevent and better resolve complaints made against officers; and
  7. Serve as an aid in Buffalo Police training.
- B. Through Vehicle Cameras, the BPD hopes to foster a relationship of mutual respect between BPD officers and the communities where they serve. The BPD understands that this technology does not solve all challenges that law enforcement and the Buffalo community face, but this Program is designed to continue to build upon trust within the Buffalo community.

### **II. Definitions**

- A. Agency Administrator: The Agency Administrator shall be one of the current Commissioner's office exempt positions chosen by the Commissioner of Police and who has full access to, and user rights within, the Vehicle Camera data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, conduct audits and quality control reviews, and act as a liaison between the BPD and the manufacturer(s).
- B. The Vehicle Cameras are mounted on the front windshield facing forward and in the center of the rear vehicle compartment facing the rear passengers.
- C. Footage/Video/Recording: Footage, Video, and Recording are all-encompassing terms to include audio, video, images, data, and metadata recorded by Vehicle Cameras.
- D. For purposes of this agreement "officers" shall mean any sworn members of the Police Department of any rank.

- E. For purposes of this agreement, “equipped vehicle” or “vehicle” shall mean any vehicle—patrol or otherwise—which the Commissioner has determined should be outfitted with Vehicle Cameras.
- F. For purposes of this Agreement, “responses during the discovery of evidence, investigation into crimes, and calls for service by the public” (or related phrases, e.g., “responding to a call”) shall mean:
  - (1) The time immediately following when an officer, or other ranking employee, begins to respond and proceed *en route* to a call, regardless of whether they have acknowledged that they are officially responding to dispatch, and regardless of whether lights and/or sirens have been activated (sometimes referred to as “self-dispatch”), and/or
  - (2) The time immediately following when an officer or higher-ranking member progresses from routine patrolling to engaging in investigation or looking into suspicious activity.
- G. For purposes of this agreement, ‘discussing tactics or strategy’ (or variants of that phrase, e.g., “tactical discussion”) shall be construed to mean discussions between sworn members, including discussions between lower ranking sworn members and sworn supervisors, which are not meant to be heard by the public, and which have the expectation of privacy, and which:
  - (1) Are necessary to plan, coordinate, or brief the apprehension, containment or setting of perimeters for suspect(s); and/or
  - (2) Are necessary to plan, coordinate, or brief the execution of an order, and/or
  - (3) Are necessary to plan, coordinate, or brief the execution of a warrant; and/or
  - (4) Are necessary to review standard operational procedures, intelligence, or officer safety information which is not related to public interaction, and which is used in apprehending a suspect; and/or
  - (5) Are necessary to review standard operational procedures, intelligence, or officer safety information which is not related to public interaction, and which is used in executing an order; and/or
  - (6) Are necessary to review standard operational procedures, intelligence, or officer safety information which is not related to public interaction, and which is used in executing a warrant; and/or
  - (7) Are administrative directives between supervisory sworn members and lower ranking sworn members which are not relevant to a public encounter.
- H. For purposes of this agreement, “create a tactical disadvantage” shall be narrowly construed, and shall involve situations where operating a Vehicle Camera would possibly expose sworn members’ plans on how to apprehend a suspect, execute an order, and/or execute a warrant, or expose standard operational procedures used in apprehending a suspect, executing an order, and/or executing a warrant.

### **III. Policy and Procedures**

#### **A. Use of Devices by Officers**

1. If an assigned vehicle is equipped with Vehicle Cameras, said cameras shall be used in accordance with this policy.
2. Officers shall not use any personal video recording devices during their shift.
3. All Officers shall sign off on the training bulletin informing them how to utilize the Vehicle Camera prior to use.
4. Vehicle Cameras should be used with reasonable care to ensure functionality. Equipment malfunctions or missing equipment should be brought to the attention of an officer's supervisor as soon as possible. Officers shall inspect and test their Vehicle Camera's functionality prior to the beginning of each shift.
5. Officers shall ensure that they login to the 'Fleet 3' dashboard on the MCT at the beginning of each shift and log out at the end of each shift.
6. When an officer discovers that their Vehicle Camera is inoperable or missing, he or she must:
  - a. Notify their chain of command, ensuring the Deputy Commissioner of Operations is notified.
  - b. Submit a P-1385 to the Agency Administrator by the end of the officer's shift.

#### **B. Recording Procedures**

1. Activation: Officers who are driving a vehicle equipped with a front-facing Vehicle Camera shall ensure the Vehicle Camera is activated in the following situations:
  - a. When responding to, servicing, and clearing any call for service;
  - b. When conducting any traffic stop;
  - c. When executing a search or arrest warrant—
    - Interviews or debriefings of individuals or suspects present during the execution of a search warrant shall be recorded until such time as the search has been completed, and the individual or witness has been separated away from the scene of the search, as well as separated from other individuals and witnesses who were present at that scene, and has indicated a desire to talk confidentially with an officer;
  - d. When conducting any other arrest or custodial stop;

- e. When conducting investigatory activities, including any search of a person, vehicle or real property;
  - f. When engaged in a vehicle pursuit;
  - g. When assigned to any protest, demonstration, or crowd control duties;
  - h. When engaged in any confrontational or adversarial contact with a citizen;
  - i. When requested to do so by any citizen during an encounter with said citizen; or
  - j. When in any other situation as pre-determined by the Commissioner or the Agency Administrator.
2. Deactivation: Once a Vehicle Camera is activated, it should not be deactivated until the initial incident that required the Vehicle Camera to be activated has been stabilized, or a supervisor has ordered that it be deactivated. An incident is stabilized when it has concluded, a victim or witness has left the scene, all persons stopped have been released, or a person arrested has been transferred to a detention facility or police station and is completely in the custody of another officer. When it is safe to do so, an officer deactivating a Vehicle Camera should record a statement on their Body Worn Camera indicating the reason for the deactivation before deactivating their Vehicle Camera.
3. Auto Activation: The Vehicle Cameras are designed with an auto activation feature that will immediately begin recording in certain circumstances. These include the following:
- a. When an equipped vehicle exceeds a speed of sixty (60) mph;
  - b. When an equipped vehicle is involved in a collision;
  - c. When the rear door to an equipped vehicle is opened;
  - d. When emergency lights/siren are activated in an equipped vehicle.
4. Non-Recording:
- a. During any of the situations outlined in Section III(B)(1) above, an officer is not required to activate their Vehicle Camera if:
    - i. The officer or another person is in immediate danger and activating the Vehicle Camera is unsafe;
    - ii. Activating the Vehicle Camera would be impractical, or would create a tactical disadvantage to the officer;
    - iii. Activating the Vehicle Camera would delay an officer's response to the safety needs of a citizen or fellow officer;
- NOTE: if an officer's Vehicle Camera malfunctions, he/she will *de facto* be unable to activate the Vehicle Camera.
- In any of these above situations, an officer shall activate the Vehicle Camera at the first reasonably safe opportunity to do so, and shall explain through recording if possible, why the officer failed to activate the Vehicle Camera, and always

document the reason for failing to activate the Vehicle Camera on a P-1385; provided however, that if the sworn officer has stated either on Body Worn Camera or Vehicle Camera the reason for failure to activate the Vehicle Camera, or the reason he/she deactivated the Vehicle Camera, said officer may state on the P-1385 that the statement required on the P-1385 can be found on the Body Worn Camera or Vehicle Camera footage.”

- b. Certain situations should not be recorded by Vehicle Camera due to their sensitive or confidential nature. These include the following:
  - i. Conversations with Confidential Informants unless they become targets of a law enforcement investigation;
  - ii. Conversations with undercover officers;
  - iii. Conversations with law enforcement personnel discussing tactics or strategy;
  - vi. When not otherwise engaged in actions laid out in Section III (B);
  - vii. Conversations with potential witnesses who ask to remain anonymous or confidential;
  - viii. Conversations with a victim or witness who requests that they not be recorded;
  - ix. When explosives may be present;
  - x. When working with sexual assault survivors; or
  - xi. When working with juvenile victims or juvenile witnesses and the juvenile witness or juvenile victim requests the officer stop recording.
- c. Reporting of a Non-Recorded Situation:
  - i. If an officer fails to activate their Vehicle Camera, chooses to terminate a Vehicle Camera recording, or experiences a malfunction of their Vehicle Camera, that officer must complete a P-1385 form articulating the reason(s) why the officer failed to activate their Vehicle Camera, why the Vehicle Camera recording was interrupted, why the Vehicle Camera recording was terminated, or explaining the malfunction of their Vehicle Camera; provided however, that if the officer has stated the reason for any of the above on Vehicle Camera or Body Worn Camera, he/she may so state on the P-1385.
  - ii. This P-1385 form must be filled out prior to the end of the officer's shift and submitted to their supervisor. Their supervisor shall then review all such P-1385 forms and forward them to the Agency Administrator.

5. All Vehicle Camera data relating to a criminal incident shall be treated as evidence and will be handled pursuant to procedures created and published by the Agency Administrator.
6. An officer may request that recordings of an incident be retained for a longer period of time than that called for by the procedures created and published by the Agency Administrator (see, Section IV [E], below) by submitting a request to the Agency Administrator in a P-1385 form. The Agency Administrator is authorized to approve or deny such a request for retention beyond five (5) years.
7. All data recorded by a Vehicle Camera is the property of the BPD. Officers may not copy, publish, share, or disseminate any audio, video, image, data, or metadata to anyone.
8. Neither officers nor the PBA President or his/her designee shall have access to edit, delete, or alter any video or audio recorded by a Vehicle Camera. Logs of any attempt to view, edit, delete, or alter any recording(s) shall be kept and maintained by the Agency Administrator and shall be available to the PBA President upon request.

C. Buffering

Vehicle Camera buffering mode must be activated upon an officer's entry into his/her patrol vehicle, and the Vehicle Camera shall remain in buffering mode for the remainder of the shift until the Vehicle Camera is activated or placed in non-recording mode or mute mode; provided however, that Vehicle Cameras shall then be again placed in buffering mode when activation, non-recording, or mute mode usage has ended pursuant to the terms set forth in this policy. It is agreed that the period of pre-activation captured Vehicle Camera footage while in buffering mode shall not exceed thirty (30) seconds.

IV. Vehicle Camera Video Retention

- A. Vehicle Camera recordings shall be retained by the BPD or an authorized agent thereof pursuant to the terms and conditions set forth by the Agency Administrator for at least six (6) months from the making thereof.
- B. If a Vehicle Camera recording is determined to be evidentiary in nature by the Agency Administrator, Commissioner, or a BPD officer in a criminal matter, or is deemed to be evidentiary in a civil matter by the Law Department or the Agency Administrator, or is needed in the grievance, Injured on Duty, or discipline procedure of the Collective Bargaining Agreement or subsequent MOAs, and is needed to be kept for longer than six (6) months, that file shall be retained until either the prosecutorial authority or the Law Department authorizes the removal of that recording from the BPD storage system by the Agency Administrator.

- C. A Vehicle Camera recording that relates to an Internal Affairs Division investigation, an investigation or inquiry from a federal, state, or local agency with investigative or prosecutorial authority, including federal, state, and local courts, or a recording that has the potential to be the subject of future litigation, or is the subject of a litigation hold order, shall be retained indefinitely. At the conclusion of the investigation or litigation to which it is related, such recording may be removed from the BPD storage system by the Agency Administrator, except where a request to preserve is made pursuant to this policy.
- D. Notwithstanding the provisions of Section IV (B) or (C), above, concerning the removal of Vehicle Camera recordings related to an Internal Affairs Division investigation upon its conclusion, any recording which is the subject of a civilian complaint to the Internal Affairs Division shall be kept for up to six (6) months following the resolution of that complaint, or for five (5) years, whichever is longer.
- E. Any Vehicle Camera recording requested to be kept by an officer shall be kept for five (5) years from the date of the incident.
- F. Any Vehicle Camera recording that relates to an Axon Standards Report shall be kept for up to five (5) years from the date of the incident.

V. Vehicle Camera Access

- A. Permitted Review of Vehicle Camera Recordings
  - 1. Officers shall be permitted to review only the Vehicle Camera footage of an incident in which they were involved, and only for the purposes of:
    - a. Conducting a criminal investigation;
    - b. Preparing for courtroom testimony, or a conference with the City of Buffalo Law Department, the Erie County District Attorney's Office, the New York State Attorney General's Office, or the U.S. Attorney's Office;
    - c. Providing testimony pursuant to an administrative inquiry; or
    - d. Providing testimony pursuant to an Internal Affairs Division investigation.
  - 2. In addition to the permitted access listed above, supervisors may also review Vehicle Camera recordings as they pertain to:
    - a. Investigating reports of alleged misconduct when directed to do so by Internal Affairs, or of meritorious conduct;
    - b. The preparation of Axon Standards Reports; or
    - c. The use of Vehicle Camera recordings as a training tool for officers based on observations that occurred during an arrest or other permitted review of the recording.
  - 3. The City of Buffalo Law Department or counsel retained by the Law

Department and federal, state, or local agencies with prosecutorial power shall be permitted to review Vehicle Camera footage as it pertains to a criminal investigation, police discipline or grievances, Injured on Duty Claims, or ongoing or potential civil litigation.

4. The President of the PBA or his/her designee shall be provided with access to the Vehicle Camera storage system for the purpose of reviewing Vehicle Camera footage of PBA members.

**B. Non-Permitted Use of Vehicle Camera Recordings**

1. Officers are prohibited from copying or releasing Vehicle Camera footage unless given express written consent to do so by the Commissioner or the Agency Administrator.
2. No Vehicle Camera footage shall be reviewed by anyone except as permitted in this policy or except as may be required under Freedom of Information Laws or discovery laws.
3. Audio and/or video recordings from Vehicle Cameras which are triggered due to autoactivation related to exceeding the speed limit set forth above in Section III (B) (3), shall not be used in disciplinary proceedings if the speed activation was triggered during the course of regular patrol duty; however, if the Vehicle Camera is auto-activated due to the above-referenced speed limits in relation to “responding to a call”, as contemplated in Section II (“Definitions”) above, then such audio and/or video recordings may be used in disciplinary proceedings.
4. No BPD officer, employee, or agent shall be subjected to any discipline based upon a recording made in violation of the terms of this policy.

**C. Public Disclosure of Data**

1. Any and all disclosure of Vehicle Camera recordings or data must be consistent with existing record release policies and applicable statutes. All requests for data must be sent to the BPD's FOIL Officer.
2. When Vehicle Camera recordings or data are disseminated outside of the BPD, the reason for such dissemination, identity of the authorized requesting person or agency, and the rationale utilized for determining why the recordings or data are, or are not released, shall be documented by the Commissioner.
3. The Commissioner has the discretion to release a Vehicle Camera recording when he or she deems it appropriate. The Commissioner shall notify the PBA President and/or the officers involved in the Vehicle Camera footage that he intends to release said footage prior to the release of the footage, when practicable.

4. Civilians shall be allowed to review any Vehicle Camera recordings consistent with appropriate FOIL request procedures, and the Vehicle Camera recordings shall be made available for internal review of a complaint in compliance with existing FOIL rules and regulations.
5. Civilians, or civilians accompanied by their legal representatives, and who are the subject of a Vehicle Camera recording will have the right to review the footage unless it is a part of an ongoing criminal or Internal Affairs Division investigation or proceeding. These recordings shall be made available for internal review of a complaint in compliance with existing FOIL rules and regulations.
6. Notwithstanding any of the above restrictions concerning the release of Vehicle Camera recordings or data, the President of the PBA shall have the right to disclose and disseminate Vehicle Camera recordings or data relating to meritorious conduct on the part of PBA members, upon written request to the Commissioner, and subject to the approval of the Commissioner. The Commissioner's approval, if granted, shall be given in writing within ten (10) days of the initial request and shall not be unreasonably withheld. In the event the Commissioner denies such request, it shall be documented in writing and given to the President of the PBA.

## **VI. Agency Administrator Responsibilities**

- A. The Agency Administrator shall ensure that the Vehicle Camera video equipment is functional and properly utilized by officers.
- B. The Agency Administrator shall provide administrative support regarding the Vehicle Camera system, and shall be the contact person for any communication with external companies or services that relate to the Vehicle Camera Program.
- C. The Agency Administrator shall create a system to handle requests for Vehicle Camera recordings by the City of Buffalo Law Department or the federal, state, or local agencies or courts.
- D. The Agency Administrator shall provide technical support for malfunctioning Vehicle Camera equipment, and shall facilitate all Vehicle Camera equipment repairs with the manufacturer or vehicle video vendor.
- E. The Agency Administrator shall ensure compliance with all aspects of this policy.

## **VII. Enforcement**

- A. If any BPD officer, employee, or agent fails to comply with the requirements of this policy or intentionally interferes with a Vehicle Camera's ability to accurately

record an incident, appropriate disciplinary action may be taken against the officer, employee, or agent in accordance with BPD guidelines and disciplinary procedures, unless exigent circumstances made compliance impossible, unsafe, or impractical.

- B. Vehicle Camera footage that is recorded in contravention of this MOA or any other applicable law shall not be retained or used for disciplinary or evidentiary purposes except where preservation is required by law, court order, litigation hold, statutory retention requirement, or where destruction could be reasonably construed to constitute spoliation of evidence in a pending or reasonably foreseeable legal or administrative proceeding.
- C. Nothing in this policy should be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations, criminal prosecutions, civil proceedings, or administrative proceedings.

### **VIII. Officer Protections**

- A. Prohibition Against Random Auditing. The City, BPD, and its agents may not review Vehicle Camera footage randomly for the purpose of discovering policy violations or reviewing individual officer performance outside of what is permitted in this or subsequent agreements. Other than periodic supervisory reviews to ensure that equipment is functioning properly or for any other reason articulated in this policy, the scope of the review of Vehicle Camera footage shall be limited to specific complaints against officers, review of Axon Standards reports, or any other permitted review of the footage as laid out in this policy. Inadvertent discovery of any other allegations or misconduct through review of Vehicle Camera footage shall require the supervisor to articulate the purpose of expanding the scope in writing to the Agency Administrator, the Inspector of Internal Affairs, and the PBA President, and shall require the supervisor to explain the initial scope of their review. It shall be a violation of this policy for a supervisor to review Vehicle Camera footage for reasons outside of this policy and may lead to departmental charges.
- B. Signed Statements. The City, through its Internal Affairs Division, shall make every reasonable effort to obtain a statement signed under penalty of perjury from all complainants relating to officer misconduct. Failure of a complainant to appear to make a statement, or refusal to sign, shall be noted in the Internal Affairs Division file and shall be considered by the Commissioner when determining what action, if any, to take concerning the discipline of the officer.
- C. False and/or Baseless Complaints. In the event that a civilian complaint is made which is accompanied by that civilian's statement, signed under penalty of perjury, and such complaint is provably false and without merit based upon a review of the relevant Vehicle Camera footage and all other relevant facts, the Internal Affairs Division shall refer the case to the Erie County District Attorney's office for criminal prosecution. The PBA President shall also be notified of the provably false complaint.

- D. If the Internal Affairs Division determines that a sworn civilian complaint was not demonstrably false, and/or if the Internal Affairs Division decides not to refer a civilian sworn complaint to the Erie County District Attorney's Office for prosecution, the officer involved in such complaint will not face discipline for referring the case to the Erie County District Attorney's Office for criminal prosecution himself/herself while off duty. Furthermore, an officer may refer a civilian complaint he/she believes is fraudulent to the Erie County District Attorney's Office for criminal prosecution through their own counsel.
- E. Discipline Cards shall include a section that explains the reasons an IAD case was closed, including identifying false complaints, unsubstantiated complaints, complaints where the complainant refused to cooperate or was unable to be found, and other scenarios that may lead to the closing of a case.
- F. In assessing events involving members that are recorded in whole or part by a Vehicle Camera, the City will not rely solely on Vehicle Camera recordings, but will utilize all available evidence and information, including an officer's perceptions and recollections, which may not be captured by the Vehicle Camera recording.