



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives



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September 27, 2022

FOIA Request: 2021-0948

FOIA Litigation: 22-cv-00149

VIA EMAIL: liheanachor@citizensforethics.org

Ms. Laura Iheanachor
Citizens for Responsibility and Ethics in Washington
1331 F St. NW, Suite 900
Washington, D.C. 20004

Dear Ms. Iheanachor:

This responds to your Freedom of Information Act (FOIA)/Privacy Act request dated September 13, 2021, in which you requested the following records:

1. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) body-worn camera (BWC) policy and phased implementation plans, as required by the June 7, 2021 memorandum from Deputy Attorney General Lisa Monaco (June 2021 DAG Memo).
2. Records sufficient to identify the designated senior official with responsibility for implementation and oversight of ATF's BWC policy, per the June 2021 DAG Memo.
3. Any related communications between ATF and DOJ concerning the following items and their inclusion in the ATF BWC policy:
 - a. The responsibilities for ATF agents to carry, operate, maintain, and secure equipment, including when to activate and deactivate BWCs.
 - b. The type(s) of BWC equipment authorized for use.
 - c. The duration of time and scope of the BWC footage preserved prior to its activation in the "buffering period."
 - d. Procedures governing the collection, storage, access, retention, use, and dissemination of ATF BWC recordings.
 - e. Procedures governing the use of BWCs by all members of ATF-sponsored task forces.
 - f. Procedures for expedited public release of recordings in cases involving serious bodily injury or death
4. The Privacy Impact Assessment and plan for annual privacy reviews relating to the use of BWCs and associated equipment, as required by the June 2021 DAG Memo.

5. All communications reflecting any consultation by ATF with the Office of Records Management for the purpose of ensuring that the ATF BWC policy is fully compliant with all recordkeeping laws, regulations, rules, policies, and guidance.
6. All communications between ATF and the Justice Management Division concerning resources required for full implementation of ATF's BWC policy.
7. All records reflecting ATF efforts to design evaluation metrics to measure the impact of its BWC policy.
8. All communications between ATF and any state or local task-force partners, alerting said task-force partners about the creation or implementation of its BWC policy.

This is **Release ONE** of a rolling production. In response to your request, we are releasing the recently superseded body worn camera policies for agents and task force officers. We are releasing eight pages in full or in part. Of the eight pages, we are releasing seven pages in full and one page in part. Individual redactions identify the exemption pursuant to which the redacted material was withheld.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. This response is the final production under this FOIA request.

If you have any questions or concerns about the information provided, please contact Antonia Konkoly at Antonia.Konkoly@usdoj.gov.

Sincerely,



Adam C. Siple
Chief, Disclosure Division

Order

ATF O 3020.3

SUBJECT: Special Agent Body-Worn Cameras

DATE: August 31, 2021
RECERTIFICATION
DATE: August 31, 2026
OPI: 701200

TO: ALL FIELD OPERATIONS PERSONNEL

1. **PURPOSE.** This order establishes direction on the use of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-owned body-worn cameras (BWCs) by ATF special agents during properly authorized investigations and activities. For purposes of this policy, the term “BWC recordings,” refers to audio and video recordings and associated metadata recorded on ATF-owned BWCs while the agent is engaged in federal law enforcement operations to include the investigation of fugitives sought on state and local warrants adopted by a federal agency. This policy does not apply to digital or electronic media recordings from vehicle dash cameras, digital cameras, closed-circuit television, unmanned aerial systems, telecommunications devices, or any other camera sensor device. ATF special agents are prohibited from using non-ATF-owned recording devices (*e.g.*, personal digital cameras, smartphone cameras) for documenting law enforcement activities, including the documentation of evidence. Finally, this policy applies only to ATF special agents in the designated “Phase I” sites and only after receiving BWC training.

2. **DISCUSSION/BACKGROUND.** ATF’s law enforcement mission to protect the public is generally investigative and pre-planned rather than patrol-based and reactive. Unlike our state and local partners, ATF special agents do not regularly conduct public patrols and do not routinely engage with the public in response to emergency calls. Notwithstanding this, ATF recognizes the importance of transparency and accountability in circumstances where the use of force may reasonably be anticipated during pre-planned law enforcement operations as set forth in this policy. Therefore, ATF has initiated a program for the use of BWCs in pre-planned law enforcement operations, specifically during the execution of arrests and search or seizure warrants or orders, as these are circumstances where the use of force may reasonably be anticipated. This policy is not intended to replace or alter existing Department of Justice (DOJ or Department) or ATF policies or practices for the collection of evidence, conducting interviews, or operational security. This policy is intended to direct ATF’s special agents on the use of BWCs during the abovementioned circumstances and provide further guidance on the following:
 - a. Use (activation/deactivation) of body-worn cameras by ATF special agents
 - b. Body-worn camera training requirements
 - c. Collection, storage, access, retention, and dissemination of body-worn camera recordings,
 - d. Federal Records Act
 - e. Expedited release

3. **REFERENCES.** The following directives are referenced in this order:
 - a. ATF O 3270.10D The Disclosure, Documentation, and Handling of Investigative information, dated 12/19/2014.
 - b. ATF O 3400.1D, Property Taken into Bureau Custody, dated 5/6/2015

- c. ATF-DEM-SOP- 20-0113.1443, Standard Operating Procedures for Digital Evidence Management
 - d. DOJ Order 0801.04, Electronic Mail and Electronic Messaging Records Retention
4. QUESTIONS. Questions regarding this order should be directed to the Special Operations Division, (b) (2) [@ATF.GOV](mailto:(b) (2)@ATF.GOV).

THOMAS
CHITTUM

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THOMAS CHITTUM
Date: 2021 08 31
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Thomas L. Chittum
Acting Associate Deputy Director

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1. USE OF BODY WORN CAMERAS BY SPECIAL AGENTS.

- a. Unless subject to a specific exception below, ATF will wear and activate BWC recording equipment for purposes of recording their actions **only** during: (1) a pre-planned attempt to serve an arrest warrant or other pre-planned arrest; or (2) the pre-planned execution of a search or seizure warrant or order. ATF special agents will activate their BWCs upon approaching a subject or premises and will deactivate their BWCs when the scene is secured as determined by the federal supervisor on the scene. For purposes of this policy, the term “secured” means that the scene is safe and under law enforcement control.
- b. In the event circumstances arise requiring additional law enforcement assistance to secure the scene, the special agent will end the BWC recording when relieved from the scene by another law enforcement officer.
- c. Special agents are prohibited from intentionally recording: (1) undercover or covert personnel when working in an UC or covert status on behalf of ATF; (2) confidential informants or confidential sources; (3) on-scene witness interviews prior to or after the operation; and (4) on-scene actions by any non-law enforcement persons who are assisting law enforcement personnel prior to or after the operation.
- d. Special agents are prohibited from activating their BWC in a sensitive or secure work areas in an ATF facility as designated by the Special Agent in Charge (SAC) or SAC’s designee.
- e. Special agents, when acting as bomb technicians, will not be required to activate their BWCs to mitigate the risk of causing an unintentional functioning of a device.
- f. If there are unanticipated interactions with the public or other exigent circumstances, such as contentious or violent interactions that could lead to the use of force, special agents will, if and when it is safe to do so, reactivate their BWC either before, during, or after a planned arrest or execution of a search or seizure warrant or order.

2. REDACTION. ATF personnel responsible for redaction of BWC recordings will ensure that sensitive investigative or operational techniques or equipment are redacted, including:

- a. Hand signals (or other non-verbal communication methods) or verbal communication with regard to breaching.
- b. Hand signals (or other non-verbal communication methods) or verbal communication with regard to Forward Observers.
- c. Hand signals (or other non-verbal communication methods) or verbal communication with regard to K9 operations.
- d. Hand signals (or other non-verbal communication methods) or verbal communication with regard to Crisis Negotiator techniques.
- e. Hand signals (or other non-verbal communication methods) or verbal communication with regard to deployment of Noise and Flash Diversionary Devices
- f. Hand signals (or other non-verbal communication methods) or verbal communication with regard to stopping or clearing of a vehicle during a vehicle arrest operation.
- g. Hand signals (or other non-verbal communication methods) or verbal communication with regard to the deployment of less lethal devices.

- h. Hand signals (or other non-verbal communication methods) or verbal communication with regard to the clearing of rooms and/or structures.
- i. Hand signals (or other non-verbal communication methods) or verbal communication with regard to operational air support.
- j. Hand signals (or other non-verbal communication methods) or verbal communication with regard to medical treatment of uninvolved parties.
- k. Hand signals (or other non-verbal communication methods) or verbal communication with regard to specialized tactical vehicles.
- l. Hand signals (or other non-verbal communication methods) or verbal communication with regard to surreptitious approach techniques.

3. TRAINING.

- a. Prior to the use of BWC in DOJ-authorized investigations and activities, ATF will develop and implement training requirements for the use of BWC that cover, among other things, the operation of the BWC device itself and procedures for uploading and managing BWC recordings.
- b. ATF special agents using a BWC or approved for use of a BWC must also receive training on the relevant legal and policy requirements, including this policy. Only special agents who have completed these training requirements may use a BWC.

4. COLLECTION, STORAGE, ACCESS, RETENTION, AND DISSEMINATION OF BODY WORN CAMERA RECORDINGS.

- a. Consistent with applicable existing laws and requirements, including the E-Government Act of 2002, and to ensure the protection of privacy and civil liberties, ATF will only collect, use, retain, and disseminate information obtained from the BWC for a properly authorized purpose.
- b. The special agent activating a BWC during federal operations pursuant to this policy is responsible for downloading or transferring their BWC recording consistent with any policy or procedure established by ATF, specifically, ATF-DEM-SOP-20-0113.1443.
- c. ATF will maintain policies or procedures to ensure that the BWC recordings are preserved and accessible for use in any applicable and properly authorized investigations and activities consistent with existing DOJ and ATF policies and procedures (e.g., ATF O 3270.10D; ATF O 3400.1D; ATF-DEM-SOP-20-0113.1443).
- d. ATF personnel may only access and view BWC recordings for official ATF duties, including but not limited to:
 - i. Assisting in accurate report writing. **Note:** the purpose of using BWC recordings in writing reports is to maximize the accuracy of the report—not to replace independent recollection and perception of an event.
 - ii. ATF personnel may access and view BWC recordings prior to preparing reports or making statements regarding an administrative or criminal investigation of the special agent pertaining to: 1) reporting of any use of deadly force or any death

or serious bodily injury occurring during operations where BWCs were used, or 2) the use of BWCs when ATF agents, as part of a federal investigation, may be assisting state and local law enforcement partners in pre-planned state search warrants, arrest warrants, or other pre-planned arrest operations.

- e. Data collected by a BWC that is retained must be maintained and safeguarded in accordance with applicable federal laws, Executive Orders, directives, policies, procedures, regulations, rules, standards, and other guidance to ensure that DOJ personnel with access to such data follow practices that are consistent with the protection of privacy and civil liberties.
- f. Retention and dissemination policies will comply with the Federal Records Act, Freedom of Information Act, and/or the Privacy Act. ATF, in coordination with appropriate agency records management officials, will ensure appropriate records retention schedules are in place for records generated through the use of BWCs. Further, in accordance with the DOJ Policy on transitory records—see DOJ Order 0801.04, *Electronic Mail and Electronic Messaging Records Retention*—ATF shall not retain information collected using BWCs that may contain personally identifiable information for more than 180 days, unless the retention of information is determined necessary for an authorized purpose and is maintained in a DOJ or agency Privacy Act system of records.
- g. Additional procedures governing data collection, retention, use of force, and disposal are reflected in the ATF–DEM–SOP–20-0113.1443.
- h. Use of all DOJ information systems, which may include BWC component parts, may be monitored, recorded, and subjected to audit according to DOJ policy.

5. FEDERAL RECORDS.

- a. All BWC recordings made pursuant to this policy, including recordings in the possession of any third party engaged by ATF to store or process BWC recordings, are federal records of the Department and the agency that created the recording pursuant to the Federal Records Act.
- b. BWC recordings shall be treated as law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with law enforcement proceedings.
- c. BWC recordings may also be potential evidence in an ongoing investigation subject to applicable federal laws, rules, and policy concerning any disclosure or dissemination.
- d. All BWC recordings are deemed privileged under applicable DOJ rules, regulations, policies, and procedures and relevant case law, absent appropriate redaction prior to disclosure or dissemination.
- e. Nothing in this policy shall be deemed to provide a right of public access to BWC recordings. BWC recordings are controlled by, and the property of, the Department and will be retained and managed by ATF or the federal agency that created the BWC recording.
- f. The federal agency that created the BWC recording is responsible for considering requests to release BWC recordings, including expedited public release requests, and the BWC recordings may only be released, to include in litigation or publicly, consistent with the Department's and agency's existing rules and policies concerning federal records, including investigative materials.

- g. The release of BWC footage may be governed by the provisions of the Freedom of Information Act and/or Privacy Act.

6. EXPEDITED RELEASE.

- a. The ATF office receiving a request for release of the BWC recording(s) will immediately notify the following personnel and directorates: Special Agent in Charge (SAC) of the division where the event occurred, Deputy Assistant Director-Field Operations, the Office of Chief Counsel (OCC), and the Office of Professional Responsibility and Security Operations (OPRSO).
- b. The aforementioned directorates and personnel must conduct an expedited review of the BWC recording(s) to determine whether public release of such BWC recordings is appropriate and whether redactions are required prior to the release. In making this assessment, the reviewing personnel will consult with the appropriate U.S. Attorney's Office, and any other federal, state, or local law enforcement agency with personnel depicted in the recording.
- c. Upon completion of the review and consultation process, the SAC will approve the request for public release of the recording(s), unless upon review, one of the directorates determines that there are specific and compelling grounds justifying denial of the request that cannot be resolved by redaction, withholding portions of the BWC recording(s), or other means.
- d. The SAC will promptly notify the involved directorates of the decision to approve or deny release. If the request for public release is granted, the SAC will consult and coordinate the timing and manner of release with OPRSO, the U.S. Attorney's Office, the Department, and other involved law enforcement agencies. The SAC will provide the version of the recording(s) that will be released to OPRSO and OCC as needed. The division public information officer will coordinate ATF's response to the public release with the Office of Public and Government Affairs as needed.
- e. If exigent circumstances arise requiring ATF to release the recordings to maintain public safety or preserve the peace, ATF will complete this process at the earliest possible time, and no later than 72 hours from the date of the event, unless the ATF Director (or Acting Director) determines that extenuating circumstances exist and additional time is necessary. In such circumstances, ATF must release the recording no later than 10 days from the date of the event, absent approval from the Deputy Attorney General.

7. DIGITAL EVIDENCE MANAGEMENT STANDARD OPERATING PROCEDURES. ATF Special Operation Division, Standard Operating Procedure ATF-DEM-SOP-20-0113.1443, has established procedures, consistent with this policy providing guidance to ATF special agents for use of BWCs:

- a. The duration of time between when the BWC is activated, and it records.
- b. Circumstances where BWC equipment may fail to operate prior to or during a planned operation.
- c. Type(s) of BWC equipment authorized for use and the responsibilities of special agents and other agency personnel to operate, maintain, and secure the equipment.

- d. Documenting the use of BWCs in reports of investigation or other agency documentation or systems.
- e. Establishing rules governing the viewing of BWC recordings by special agents prior to preparing reports or making statements regarding an administrative or criminal investigation of the special agent.
- f. Reporting of any use of deadly force or any death or serious bodily injury occurring during operations where BWCs were used, including required notification to appropriate ATF headquarters directorates.
- g. The use of BWCs when special agents, as part of a federal investigation, may be assisting state and local law enforcement partners in pre-planned state search warrants, arrest warrants, or other pre-planned arrest operations.

This policy becomes effective on the date of signature and will remain in effect unless modified or rescinded in writing.