



May 15, 2023

MEMORANDUM

TO: All OIG Staff

FROM: Nick Novak *Nicholas J. Novak*
Inspector General

SUBJECT: Interim Body Worn Camera Policy for Office of Investigations

As required by Presidential Executive Order 14074, *Advancing Effective Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, dated May 25, 2022, this memorandum establishes an interim policy for use of Body Worn Camera (BWC) recording equipment by our federal law enforcement officers. Once the BWCs are delivered by the vendor, we will use them to increase transparency and accountability in circumstances where the use of force may be reasonably anticipated. This interim policy has been added to our Office of Investigations Handbook and is provided as Attachment 1 to this memorandum.

Interim Body Worn Camera Policy

Purpose

Pursuant to the Presidential Executive Order 14074 on *Advancing Effective Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, dated May 25, 2022, the heads of all Federal Law Enforcement Agencies must establish policy for the use of Body Worn Camera (BWC) recording equipment. The Pension Benefit Guaranty Corporation (PBGC), Office of Inspector General (OIG) intends to use BWCs to increase transparency and accountability in circumstances where the use of force may be reasonably anticipated during planned law enforcement operations.

Scope

BWCs can build public trust by providing transparency and accountability in circumstances where the use of force may be reasonably anticipated during planned law enforcement operations. 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 be reasonably anticipated, such as planned field interviews, and the execution of search and arrest warrants.

BWC recordings may enhance the Office of Investigation's ability to obtain evidence for investigative and prosecutorial purposes; however, the recordings may depict things the OIG agent did not see or hear and the agent may have heard or seen things that were not recorded by the BWC. Although the recordings depict visual information from the scene, the human eye and brain may perceive things in stressful situations differently than how the camera records them.

Applicability

This policy applies to all PBGC OIG Special Agents and focuses on the deployment of BWCs in planned law enforcement operations; specifically, the execution of subject and witness interviews, arrest warrants, search warrants, and armed transports, where the use of force may be reasonably anticipated. The PBGC OIG Assistant Inspector General for Investigations (AIGI) is the senior official with responsibility for implementation and oversight of this interim policy.

Interim Policy

Law Enforcement Operations

When conducting planned law enforcement operations where the use of force may be reasonably anticipated, OIG agents will deploy BWCs. The purpose of the BWCs is to record actions and statements.

Operation Planning

Prior to a law enforcement operation, the OIG agent and AIGI will ensure that BWCs will be on-site and activated during the operation. Also, prior to a law enforcement operation requiring the use of BWCs, the AIGI or designee will resolve conflicts with any partner law enforcement agency regarding BWC deployment. Conflicts must be resolved prior to PBGC OIG participation in the operation. Any deviation from the PBGC OIG BWC policy must be approved, in writing, by the AIGI or designee, in consultation with the Inspector General, prior to the operation. Under exigent circumstances, a verbal authorization may be given by the AIGI or designee, but must be subsequently documented in writing.

Deployment of BWCs for Law Enforcement Operations

OIG agents shall wear and activate PBGC OIG-issued BWCs during law enforcement operations where the use of force may be reasonably anticipated, including planned interviews, and execution of search and arrest warrants.

Notice of Recordings

OIG agents will verbally notify individuals that they are being recorded if (or as soon as) it is operationally feasible. This notice should not be construed as a requirement for OIG agents to obtain consent from the subjects being recorded. BWCs will be positioned in obvious places on OIG agents, such as on their outerwear, or on the chest, which will allow the public to visually determine if the OIG agent is using a BWC.

In locations where individuals have a reasonable expectation of privacy, such as a residence, they may decline to be recorded unless the recording is being made pursuant to an arrest or search of a residence or individuals.

Placement of BWC

If a tactical ballistic vest is worn, the BWC will be worn on the outside/front of the tactical ballistic vest. The tactical ballistic vest will be worn over the OIG agent's clothing.

In the event a BWC is deployed when a tactical ballistic vest is not worn, the BWC will be secured to the OIG agent's outer clothing, lanyard, or belt. OIG agents should ensure the BWC is not obstructed by clothing or other objects on the agent's person.

Note: OIG agents should not alter tactically-sound principles to accommodate the BWC's visual recording. OIG agents should remember to seek cover and concealment and use proper tactics to ensure their safety while wearing the BWC, even if doing so obstructs the BWC's coverage.

BWC Activation

Upon the direction of the AIGI or designee, BWCs shall be activated by all participating OIG agents upon approaching a subject or premises during an enforcement operation. If, while wearing a BWC, an OIG agent encounters an individual who is uncooperative, violent, assaultive, or discussing criminal conduct that, in the OIG agent's judgement and consistent with his or her training and experience, could lead to use of physical or deadly force or be relevant to the investigation, the OIG agent should activate and his or her BWC as soon as it is safe and practicable to do so.

BWC Deactivation

BWCs shall be deactivated by OIG agents when the scene is secure, the tactical portion of an enforcement operation has concluded, or the OIG agent has safely left the operation location, e.g., field interview. For purposes of this policy, the term "secured" means that the scene is safe and under law enforcement control. Exceptions:

- The AIGI or designee, may authorize OIG agents to deactivate their BWCs if the enforcement operation is of such a duration that BWCs need to be deactivated to conserve power and/or for temporary storage.
- An OIG agent may deactivate his or her BWC at any time the agent needs to obtain emergency medical attention or needs to attend to a personal matter that takes him or her away from a planned operation, such as using the restroom.

Documenting Use

After a law enforcement operation, the OIG agent will document the use of a BWC in a Memorandum of Activity (MOA).

Malfunction of BWC

If a device malfunction, operator error, or other circumstance that disrupted the recording of the BWC is discovered, the OIG agent will document the issue in the MOA and address the following circumstances:

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

Use of BWCs by Other Law Enforcement Officers

PBGC OIG will take no actions to prevent or discourage any member of a task force or any law enforcement officer at an operation from utilizing a BWC.

Request for BWC Recordings in PBGC OIG Led Operations

PBGC OIG may make a request for BWC recordings from a partner agent, pursuant to the policy of the other agency. If received, copies of the partner agent's BWC recordings will be uploaded to the PBGC OIG Case Management System (or the case materials overflow folder on the F: drive) as part of the official case file and maintained according to PBGC OIG records retention policies.

Storage of BWC Recordings

BWC original recordings will be uploaded as soon as possible, usually within 48 hours, and stored in a PBGC OIG-controlled hardware system. Access to the recordings will be controlled by the AIGI. Each file will contain all relevant metadata, such as the date and time of the recording, the name of the OIG agent who recorded it, and whenever possible, the case name and number. An audit log will be maintained that sets forth the history of each recording, the date and time each recording is reviewed, and the name of each reviewer. Copies of recordings may be uploaded into the case file in the PBGC OIG Case Management System (or the case materials overflow folder on the F: drive).

Records Retention

BWC recordings will be securely stored according to PBGC OIG-mandated procedures.

- BWC recordings not associated with complaints or allegations made against OIG agents and not containing information pertinent to the case being investigated, will be deleted five (5) years following case closure, unless a request is provided in writing to the AIGI or their designee. These recordings will be maintained in a PBGC OIG-controlled hardware system where they were initially uploaded.
- BWC recordings associated with information pertinent to the case being investigated, e.g., a statement of a subject, witness, or law enforcement officer, will be kept with the case file in accordance with PBGC OIG's case records retention policy and federal law.
- BWC recordings associated with use of force incidents involving OIG agents, complaints or allegations made against OIG agents, or any other investigations of OIG agents, will be retained as directed by the AIGI or their designee, in consultation with the PBGC OIG Chief Counsel.

Restrictions on Use

OIG agents equipped with BWCs should be mindful of locations where recording may be considered insensitive, inappropriate, or prohibited by privacy policies. BWCs shall be used only in conjunction with official law enforcement duties and not personal activities.

- Prohibited Use of BWCs. Absent approval from the AIGI, the Deputy Inspector General, or the Inspector General, in consultation with any assigned prosecutor or the Chief Counsel, BWC shall not be used to record:
 - in a detention facility, if the law enforcement operation is not taking place in the facility; and
 - personnel conducting activities involving classified information.
- Redacting BWC Recordings. In any situation where BWCs record content that otherwise should not be shared because of the above restrictions or any other law enforcement sensitivities or privacy concerns, which could include recordings of confidential sources, sensitive investigative techniques or

equipment, minors, injured or incapacitated individuals, or sensitive locations such as restrooms, locker rooms, or medical facilities, the AIGI, in consultation with the Chief Counsel, may use redaction software to blur images or portions of images, or minimize audio content, when making copies of BWC recordings for disclosure.

Access and Review of BWC Recordings

Access to stored BWC recordings will be password protected. The AIGI will periodically conduct an audit to ensure that only authorized users access the recordings and associated data for legitimate purposes. All logins, video access, and other actions taken in the system software will be documented in an audit trail log that is reviewable by the AIGI. This information may be discoverable and could be requested by the prosecution or the defense during court proceedings.

Permitted Reviews of BWC Recordings

- **Permitted Reviews.** An OIG agent may access BWC recordings associated with a case he or she is assigned to, including his or her own BWC recordings, in order to perform the essential functions of his or her job, including but not limited to such review necessary to draft and review a Memorandum of Interview describing an operation. An OIG agent may also access his or her own BWC recordings when necessary to respond to allegations of administrative or criminal misconduct or poor performance relating to the recorded enforcement activity, subject to the limitations of subsections immediately below.
- **Reviews by Subjects.** An OIG agent who is the subject of an administrative investigation relating to the recorded enforcement activity may review his or her own BWC recording prior to being interviewed by any PBGC OIG or non-OIG personnel investigating allegations about the OIG agent's conduct. The OIG agent may review his or her BWC recording with his or her attorney or other representative, provided the attorney or representative signs a nondisclosure agreement. The OIG agent will not be permitted to make or take a copy of the recording.
- **OIG Agent-Involved Shootings/Uses of Force.** All OIG agent-involved shootings (AIS) or other uses of force (including deadly force) should be treated as being under criminal investigation unless and until the applicable federal, state, and/or local prosecution office(s) has declined prosecution. As

soon as practicable, after any such incident, the involved OIG agent should be informed by the AIGI that he or she should not discuss the incident with anyone during the pendency of any preliminary investigation other than a personal or agency attorney, association representative, or agency investigator until the conclusion of the preliminary investigation. The involved OIG agent(s) and any other OIG agent(s) who witnessed the AIS or use of force should provide their BWCs to the AIGI. If the AIGI is involved or witnessed the AIS or use of force, the BWCs should be provided to the Deputy Inspector General or the Inspector General.

- Internal Investigations. OIG agents conducting internal investigations on PBGC personnel or contractors may review BWC recordings in connection with such investigations.

BWC Recordings

The BWC equipment and all data, images, video, audio, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the PBGC OIG. Other than the AIGI, Chief Counsel, Deputy Inspector General or Inspector General, no OIG personnel shall edit, alter, erase, share, or otherwise release, disclose, or distribute in any manner, any BWC recordings, without prior written authorization from the AIGI, in consultation with the Chief Counsel. OIG agents may review their own BWC recordings and access BWC recordings associated with an assigned case in order to perform the essential functions of his or her job; however, OIG agents may not share their recordings with others, unless approved by the AIGI.

Treatment of BWC Recordings and Requests for Release

In all circumstances, BWC recordings shall be treated as law enforcement sensitive information, and the premature disclosure of it 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 PBGC OIG BWC recordings unrelated to a pending PBGC OIG criminal investigation or case will be forwarded to the Chief Counsel, who 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. PBGC OIG BWC recordings are controlled by, and the property of, the PBGC OIG and will be retained and managed by the PBGC OIG.

In cases involving serious bodily injury or death, the Chief Counsel will work with the U.S. Department of Justice and any applicable PAs to expedite the release of any relevant BWC recording. If it is necessary to make redactions to the BWC footage, they will be made by the AIGI in coordination with the Chief Counsel, prior to disclosure.

Freedom of Information Act Requests

Recordings from BWCs in PBGC OIG's possession used in PBGC OIG operations may be subject to release pursuant to requests made under the Freedom of Information Act (FOIA). All requests to the PBGC OIG made pursuant to FOIA will be forwarded to the Chief Counsel, for processing and responding to such requests, including consultations with and referrals to any partner investigation agency.

Prohibited Uses of BWC Recordings

The AIGI may not use BWC recordings as evidence to support a negative performance appraisal.

BWC Equipment

OIG agents shall use only BWCs issued by the PBGC OIG. OIG agents should exercise reasonable care when using BWCs to ensure their proper functioning. OIG agents should ensure that the BWC is fully charged before and during its deployment. OIG agents will notify the AIGI of any equipment malfunctions as soon as possible.

Loss or Theft of Equipment

OIG agents will report the loss or theft of a BWC to the AIGI as soon as possible, but no later than 24 hours after the discovery of the loss or theft. The AIGI shall, in turn, notify the Inspector General.

BWC Training

The AIGI shall ensure that all OIG agents receive the required training on the use of BWCs in accordance with the policies in this memorandum.

To ensure the proper use and operation of BWCs, as well as maintain compliance with privacy and civil liberties laws, OIG agents must establish and maintain proficiency and knowledge related to BWC deployment.

Training for BWC deployment consists of two modules:

- Prior to deployment of BWCs, each OIG agent must complete a PBGC OIG-approved initial training module to ensure the proper use and operation of the BWC, as well as compliance with privacy and civil liberties laws. Additionally, each OIG agent must complete a practical training exercise utilizing BWCs prior to deployment of the BWC for an operation.
- OIG agents must complete a semi-annual BWC familiarization to maintain proficiency in the use of BWCs and ensure continued functionality of the devices.