

Addendum to Task Force Agreements Pertaining to Body Worn Cameras

This addendum supplements the agreement between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Oakland Police Department, dated [Insert date of current Task Force Agreement], establishing the [Insert name of Task Force, if applicable]. Pursuant to the “Department of Justice Policy – Use of Body-Worn Cameras (BWC) by Federally Deputized Task Force Officers,” dated October 29, 2020, the Oakland Police Department has advised ATF that it will require its deputized officers participating in the Task Force to use Body Worn Cameras (BWCs). This addendum governs that use.

The parties hereby agree to the following:

- I. TFOs will adhere to the DOJ Policy, ATF’s Standard Operating Procedures for Task Force Officer Body Camera Program, and other applicable ATF policies and procedures.
- II. The Oakland Police Department confirms that prior to executing this agreement it has provided to ATF details regarding the BWC system and cameras, including the details of any system protections, and any state or local policies or laws applicable to the TFO’s use of BWCs, including any retention policies as detailed in Attachment 1 – Agency Checklist.
- III. Use of BWCs During ATF Federal Task Force Operations:
 - A. Deputized Task Force Officers (TFO) through the Joint Law Enforcement Operations (JLEO) Program will be allowed to wear and activate their recording equipment with BWCs for the purposes of recording their actions only during:
 1. A planned attempt to serve an arrest warrant or other planned arrest; or
 2. The execution of a search warrant.
 - B. TFOs are authorized to activate their BWCs upon approaching a premises or a subject, and must deactivate their BWCs when the scene is secured as determined by the federal supervisor on the scene as designated by the ATF.
 1. For purposes of this agreement, the term “secured” means that the scene is safe and under law enforcement control.
 2. In the event circumstances arise requiring additional law enforcement assistance to secure the scene, the TFO will end BWC recording when relieved from the scene by another law enforcement agency.
 3. 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, TFO’s 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.

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4. For the execution of a search warrant, BWCs should not be used for searches of property lawfully in government custody or control, or a search to obtain digital or electronic records executed by a third party, such as an electronic service provider or custodian of electronic records.
- C. TFOs will follow the provisions set forth in this agreement for use of BWCs, and if the provisions of this agreement conflict with provision in the agency's policy for TFOs while serving on the ATF Federal Task Force, personnel will be subject to the laws, regulations, polices, and personnel rules applicable to their respective agencies. TFOs duties and assignment can be modified as needed during an operation, investigation, or activities of the Task Force to ensure the TFO is in compliance with federal, state, and local requirements.
 - D. TFOs may use BWCs in accordance with this policy anywhere they are authorized to act as a police or peace officer under state, local, territorial or tribal law.
 - E. TFOs may use only agency-issued and agency-owned BWCs. TFOs will not be allowed to use any privately owned BWC or other recording device of any kind.
 - F. In the event a TFO's BWC is not working or inoperable due to a technical problem or cannot be used due to physical damage, and, in the judgement of the Task Force supervisor, delaying the operation to repair or obtain a replacement BWC is not practical or would impair the operation, the TFO may participate in the operation without using a BWC.
 - G. Even when BWC use would be permissible in the circumstances set forth in Section III A above, TFOs are prohibited from recording:
 1. Undercover personnel;
 2. Confidential informants or confidential sources;
 3. On-scene witness interviews prior to or after the operation;
 4. Personnel using specialized investigative techniques or equipment; or
 5. Actions by any non-law enforcement persons at the scene who are assisting law enforcement personnel prior to or after the operation.
 - H. Even when BWC use would be permissible in the circumstances set forth in Section III A above, TFOs are prohibited from activating their BWC if in the judgment of the ATF the cases involve:
 1. National security (including international and domestic terrorism investigations or cases involving classified information);
 2. Public corruption;
 3. Medical facilities; or
 5. Other sensitive investigations as determined by ATF.

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- I. Even when BWC use would be permissible in the circumstances set forth in Section III A above, TFOs shall not use BWCs to record any activities related to:
 1. Specialized or sensitive investigative techniques;
 2. In a sensitive area; or
 3. An undercover or covert status on behalf of the ATF Federal Task Force.

- IV. The Oakland Police Department Internal Controls:
 - A. [Insert Name of a high-ranking agency command official] will serve as a point-of-contact (POC) for ATF on BWC matters.
 - B. The Oakland Police Department will notify ATF of any change in state or local law that will modify how ATF TFOs must use BWCs or will affect release or redaction of BWC recordings from TFO BWCs made while working under federal authority on behalf of ATF (“TFO BWC recordings”).
 - C. The Oakland Police Department will notify ATF of any change in agency policy that will affect the storage, release, or redaction of TFO BWC recordings.
 - D. The Oakland Police Department will familiarize ATF Task Force personnel on the BWCs, specifically concerning their capabilities and operation during task force activities.

- V. Handling of BWC Recordings Made During Task Force Operations:
 - A. For purposes of this agreement, the term “TFO BWC recordings” refers to audio and video recordings, and associated metadata, from TFO BWCs made while the TFO is working under federal authority.
 - B. In accordance with current agency policy and practice, the Oakland Police Department will provide full, un-redacted copies of TFO BWC recordings to ATF within 72 hours unless approved in writing by the ATF SAC.
 - C. TFOs will document BWC use and the existence of BWC recordings in the Report of Investigation (ROI). The TFO will include in the ATF ROI a statement attesting that the data provided is a fair and accurate copy of the data recorded by the BWC.
 - D. All TFO BWC recordings made during ATF Federal Task Force operations, including such recordings retained by the Oakland Police Department and/or in the possession of any third party engaged by the Oakland Police Department to store or process BWC recordings, shall be deemed federal records of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (DOJ/ ATF) pursuant to the Federal Records Act.

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E. Internal Dissemination:

The TFO's parent agency is authorized to use TFO BWC recordings for internal investigations of its personnel consistent with the parent agency's policies and procedures, not involving dissemination outside the parent agency or public release. The parent agency shall provide written notification to ATF prior to any internal review.

F. Expedited Public Release:

All TFO BWC recordings made during ATF Federal Task Force operations are federal records and shall be retained and disseminated in accordance with all applicable federal laws, policies and procedures including the Federal Records Act, Freedom of Information Act, and/or the Privacy Act. All TFO BWC recordings made during ATF Federal Task Force operations will be provided to ATF. The Department will work to expedite the public release of BWC recordings depicting conduct resulting in serious bodily injury or death of another consistent with DOJ policies and subject to any redactions as appropriate. If a TFO parent agency plans to release TFO BWC recording(s) from a BWC issued by the parent agency that depict conduct committed solely by a TFO resulting in serious bodily injury or death of another, the TFO's parent agency shall notify ATF, providing as much advance notice as possible as to the time and manner of its release. Following the notification, the TFO's parent agency may release such recording(s), subject to any redactions as appropriate.

If a TFO parent agency plans to release TFO BWC recording(s) from a BWC issued by the parent agency that depict conduct committed solely by an ATF agent resulting in serious bodily injury or death of another, the TFO's parent agency shall notify and coordinate the release with ATF, providing as much advance notice as possible as to the time and manner of its release. Following the notification, the TFO's parent agency may release such recording(s), subject to any redactions as appropriate.

G. In all circumstances, TFO BWC recordings shall be treated as law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with enforcement proceedings, and as potential evidence in a federal investigation, subject to applicable federal laws, rules, and policy concerning disclosure or dissemination (including but not limited to 28 C.F.R. Ch. 1, Pt. 16, Subpart B, "Touhy", absent appropriate redaction prior to disclosure or dissemination). Accordingly, these recordings are deemed privileged absent appropriate redaction prior to disclosure and may be entirely exempt from public release under federal laws, rules and policies.

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- H. If a TFO BWC recording involves a use of force incident to include: a shooting incident, any incident involving serious bodily injury or death, or where any enforcement action by ATF resulted in the use of force or deadly force; physical assault or attempted physical assault on a Law Enforcement Officer; intentional damage to any facility, conveyance or any property owned by ATF, or involves another time-sensitive or urgent situation, the Oakland Police Department will provide ATF copies on an expedited basis, including during non-business hours. For purposes of this provision, use of force incidents include, but are not limited to, incidents utilizing intermediate weapons, i.e., TASERs, expandable batons, kinetic energy projectiles, emergency/improvised intermediate impact weapons, such as, a flashlight or radio; any use of force resulting in serious injury or death; canine bites resulting in penetration of human skin; and all shooting incidents.
- I. The Oakland Police Department will provide witnesses as needed to authenticate TFO recordings in ATF cases.
- J. The Oakland Police Department will inform ATF of the length of time TFO BWC recordings will be retained by the agency before deletion. The Oakland Police Department will honor any request by ATF to retain the TFO BWC recordings for a longer period of time.
- K. The Oakland Police Department will notify ATF immediately of any unauthorized access to TFO recordings discovered by the agency.
- L. The Oakland Police Department will cooperate fully with ATF in the investigation of any unauthorized access to or disclosure of TFO recordings, including providing ATF the name(s) of any agency personnel determined by the agency to be involved in unauthorized access, copying, or disclosure.
- M. The Oakland Police Department failure to comply with any part of this addendum may result in immediate termination of the Task Force Memorandum of Understanding.
- N. The Oakland Police Department will notify ATF as soon as possible regarding any request or demand for release or disclosure of TFO recordings, including but not limited to subpoenas, discovery demands or motions, open record/freedom of information requests, media requests, or union or other professional association requests.

Signature of Special Agent in Charge Date

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Signature of Department Official

Date