

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



March 6, 2018

202.747.1904 direct  
ddouglass@sheppardmullin.com

File Number: 37PA-191555

Deputy Superintendent Danny Murphy  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor (“OCDM”) has reviewed and provided comments on the amended Chapter 41.3.2 – Body-Worn Camera Inadvertent Misuse and Non-Use. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 41.3.2 – Body-Worn Camera Inadvertent Misuse and Non-Use, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD’s obligation to review this policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 8.

We appreciate your team’s effort, cooperation, and responsiveness throughout this process.  
Very truly

Very truly yours,

David L. Douglass  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
2099 PENNSYLVANIA AVE., N.W., SUITE 100  
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



## NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

### CHAPTER: 41.3.2

#### TITLE: BODY-WORN CAMERA (“BWC”) INADVERTENT MISUSE AND NON-USE

EFFECTIVE: 05/15/2016

REVISED:

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#### PURPOSE

This Chapter provides non-disciplinary measures to correct unintentional failures by members to comply with **Chapter 41.3.10 – Body-Worn Camera**. To promote full compliance with the BWC policy, supervisors may use documented non-disciplinary counseling to correct non-compliance when discipline is otherwise not appropriate.

#### POLICY STATEMENT

1. The New Orleans Police Department recognizes that activating BWCs timely and obtaining complete audio and video recordings of members' contacts with the public can sometimes be challenging, especially in high-stress situations that require immediate action to preserve and promote public safety. For that reason, discipline may not be appropriate for unintentional failures to activate BWCs as required by **Chapter 41.3.10**.
2. This Chapter applies only to inadvertent (i.e., unintentional) misuse or non-use of BWCs, and it applies only to incidents that do not involve uses of force, criminal allegations, or public complaints. All allegations of intentional misuse or non-use of BWCs, and all incidents in which a use of force or criminal activity is alleged, or in which a public complaint has been lodged, shall not be eligible for documented non-disciplinary counseling and must be subject to a formal disciplinary investigation.

#### DEFINITIONS

**Body-Worn Camera (“BWC”)**—Equipment worn by a Department member that captures audio/video signals and includes, at a minimum, a camera, microphone, and recorder.

**District/Division System Administrator (“DSA”)**—Supervisor assigned to the district or division who is responsible for inventory control and operational maintenance of the body-worn camera system equipment at a District/Division level.

**Exigent circumstances**—A compelling urgency or true emergency that an officer can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary to prevent injury to themselves or others.

**Non-disciplinary counseling**—A non-punitive process used to correct a subordinate's behavior that is not fully compliant with Department rules, regulations, Chapters, or policies but is not sufficiently egregious to elevate the action to formal discipline. A supervisor must meet with the non-compliant member, explain the manner in which his or her actions are not compliant, and review the relevant policy (or Chapter, rule, or regulation) with him or her. The non-disciplinary counseling shall be documented in the Supervisor Feedback Log.

**Supervisor Feedback Log (SFL)**—A web-based application utilized by Department supervisors to document close and effective supervision actions such as redirection, counseling, and support. SFL is available to supervisors on NOPD Web Apps under Applications.

### **GENERAL—ELIGIBILITY**

3. Supervisors who become aware of an alleged BWC policy violation shall determine whether the alleged violation is eligible for documented non-disciplinary counseling under the terms of this policy. An alleged BWC violation is not eligible for non-disciplinary counseling if it is associated with:
  - (a) Any alleged use of force (see **Chapter 1.3 – Use of Force**);
  - (b) Any alleged criminal act on the part of the officer;
  - (c) Any other violation of NOPD rules, regulations, or policies; or
  - (d) Any public complaint (see **Chapter 52.1.1 – Misconduct Complaint Intake and Investigation**).
  
4. An alleged BWC violation is not eligible for non-disciplinary counseling if the misuse or non-use of a BWC is intentional. The supervisor must interview the allegedly non-compliant member and assess whether the alleged violation was intentional, considering all factors, including but not limited to:
  - (a) The member's statement and credibility;
  - (b) The member's history of compliance with, or violations of, see **Chapter 41.3.10 – Body-Worn Camera**;
  - (c) The member's disciplinary history in general;
  - (d) The member's experience, i.e. length of service with the Department;
  - (e) The existence of exigent circumstances;
  - (f) The likelihood of equipment malfunction or non-operation (allegations of equipment failure may require inspection of the equipment, review of any repair requests, and/or consultation with the DSA); and
  - (g) The nature of the event or encounter that was not recorded.
  
5. Each member is entitled to a maximum of three instances of documented counseling for alleged BWC misuse or non-use in a one-year period (a rolling 12-month period) (see **"Timeline and Allotment"** section below). However, one additional, unintentional BWC violation during the period may be eligible for non-disciplinary counseling if it is reported by the member to his or her supervisor (see **"Safe Harbor"** provision below). The supervisor must review the allegedly non-compliant member's personnel file to determine whether he or she has exceeded his or her maximum allotment.

### **DOCUMENTATION OF NON-DISCIPLINARY COUNSELING**

6. Once a supervisor determines that a BWC violation is eligible for non-disciplinary counseling, he or she must meet with the non-compliant member and explain the violation. The supervisor must explain how the member's actions did not comply with policy, review the relevant policy provisions with the offending member (such as the "Required Activation of the BWC" provision of **Chapter 41.3.10**), and explain how the

member can correct himself or herself in the future.

7. The supervisor must document every instance of non-disciplinary counseling in the Supervisor Feedback Log, using the “BWC: Inadvertent Misuse/Nonuse” option in the drop-down menu under “Occurrence.” The Supervisor Feedback Log entry shall include:
  - (a) The member’s name, rank, and assignment;
  - (b) The date and nature of the violation;
  - (c) A statement explaining how and why the violation was inadvertent, according to the member and supervisor;
  - (d) A statement explaining how the supervisor became aware of the violation (a self-reported violation must be identified as such).
  - (e) The number of previous alleged violations by the member, and the number of previous documented non-disciplinary counselings on his/her behalf; and
  - (f) The date and explanation of the non-disciplinary counseling.

### **TIMELINE AND ALLOTMENT**

8. Every member may be given up to three instances of documented non-disciplinary counseling for BWC violations within one year (a rolling 12-month period), not including a self-reported violation (see “**Safe Harbor**” provision below). The supervisor shall refer to the date of infraction(s) – and not the date of corrective action(s) – when determining whether non-disciplinary counseling is an appropriate response according to the guidelines of this chapter.
9. For example, a member who unintentionally failed to activate his or her BWC on June 1, 2016, might be eligible for his/her first documented non-disciplinary counseling as of that date. A second and third instance could then be eligible anytime before June 1, 2017. However, a fourth instance during that one-year period would automatically be subject to a formal disciplinary investigation (see **Chapter 52.1.1 – Misconduct Complaint Intake and Investigation**).
10. A sustained disposition for an inadvertent misuse or non-use of a BWC is considered one instance of non-disciplinary counseling for the purposes of this Chapter.
11. Once a formal disciplinary investigation of an alleged intentional BWC violation results in a sustained disposition, a member becomes ineligible for non-disciplinary counseling until he or she completes three years of service without a subsequent violation that results in a sustained disposition (see **Chapter 26.2.1**). For example, a member who receives a suspension for a first offense on an intentional BWC misuse or non-use that occurred on January 1, 2016 would be eligible for non-disciplinary counseling again on January 1, 2019 if he or she does not receive a sustained violation for a second or third offense before that date.

### **SELF REPORTING**

12. Members are encouraged to report their own BWC violation(s) to their supervisor(s). A self-reported violation may avoid discipline, provided that the violation is inadvertent and meets the criteria established in this Chapter. One self-reported violation that is eligible for non-disciplinary counseling is not counted against the member’s three allotted instances.
13. When a supervisor documents counseling for a self-reported violation, he or she must specify that the violation was self-reported and therefore is not counted among the three instances of allowable non-disciplinary counseling for BWC violations. For example, if a member has three previous BWC violations for which he or she received documented

non-disciplinary counseling within a one-year period, he or she could be eligible for non-disciplinary counseling if a fourth violation is self-reported.

14. The self-reporting provision applies only once per year (rolling 12-month period). A subsequent self-reported, unintentional BWC violation shall be counted against the member's three allotted instances eligible for non-disciplinary counseling.

#### **RESPONSIBILITIES OF THE PUBLIC INTEGRITY BUREAU (PIB)**

15. PIB is responsible for tracking all documented cases of non-disciplinary counseling for BWC violations and reviewing them. When PIB determines that a member has exceeded his or her allotment of documented non-disciplinary counseling for BWC violations, or that non-disciplinary counseling was not appropriate in a specific case, PIB shall immediately initiate a formal disciplinary investigation and inform the reporting supervisor.
16. PIB shall track repeat BWC violations, compile and analyze data to identify trends, issue monthly Status Conference reports, and make recommendations for policy modifications accordingly.