

New York State Defenders Association



BWC Audit Trails Fall Within Automatic Discovery



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Body-worn camera (BWC) audit trails are:

- Automatically created by BWC systems to document camera activity, ensure proper operation, and preserve a verifiable record of each file's authenticity and completeness. They are designed for easy disclosure and transparency, allowing third parties to verify the integrity of video evidence.
- Audit trails capture interactions with the camera (Device Audit Trail), recorded videos and photos (Evidence Audit Trail), and users (User or Case Audit Trail). Common data points include camera power on and off, recording start and stop, audio on or off, photos, total number of recordings, GPS, battery level, officer notes and tags, deletions, downloads, views, and other metadata.
- Axon, a major manufacturer of BWC equipment, publishes a fair amount of information about their system and audit trails. While formats vary across manufacturers, all BWC systems generate records and metadata for the same core purpose: to verify the integrity of digital evidence.
- Without audit trail data, it may be impossible to know whether an officer's camera was never activated but still captured recoverable video.
([wikipedia.org/wiki/Killing_of_Robert_Brooks](https://www.wikipedia.org/wiki/Killing_of_Robert_Brooks))

How they are relevant to and relate to the subject matter of the case:

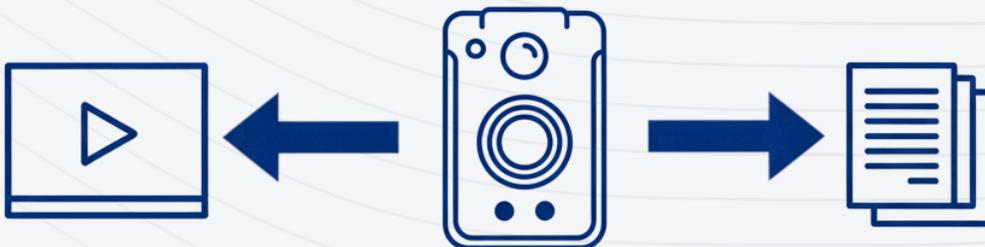
- ***Authenticity:*** Audit trails verify that BWC recordings are complete and unaltered. Without them, defendants lack essential information to challenge whether recordings are admissible.
- ***Credibility:*** The data shows how officers used, or failed to use, their cameras. It is the only way to determine if they followed department BWC policies, bearing directly on their credibility.
- ***Impeachment:*** Notes, tags, edits, and other metadata, entered by the officer or system, can contradict testimony or police reports, and provide useful material for cross-examination.
- ***Completeness:*** Audit trails contain data not visible in the video itself, such as timestamps, GPS locations, and change history. Even blank or missing entries may be useful to the defense.
- ***Relevance:*** Even if no video was saved, the officer's camera recorded data during the encounter, directly connecting it to the facts and subject matter of the case.

Where audit trails fit in CPL § 245:

- ***§ 245.20(1)(e) - Written or recorded statements.***
Audit trails contain officer-created notes, tags, and other annotations that reflect their observations and case-related actions.
- ***§ 245.20(1)(u)(i)(B) - Electronically created or stored information.*** Audit trails are system-generated law enforcement records automatically created and stored within BWC systems.
- ***§ 245.20(1)(k) - Information tending to impeach.*** They record timestamps, user logins, edits, downloads, and views that can contradict police reports, testimony, or chains of custody.
- ***§ 245.20(1)(v) - Other relevant material.*** They capture camera activity, detailed metadata, and file history reflecting what occurred during the incident and how evidence has been handled.
- ***Bottom line:*** Even though CPL 245 does not mention BWC audit trails by name, multiple provisions plainly cover them. If an officer wore a camera, it produced data falling within automatic discovery.

Audit trails are in the prosecution's constructive possession:

- Under CPL § 245.20(1), materials held by police agencies are deemed to be in the possession of the prosecution, even if not physically in the District Attorney's office. That includes law enforcement records created or stored in BWC systems.
- Audit trails are automatically generated, easily exported, and directly associated with body-worn cameras. They are standard law enforcement records created for documentation and disclosure.
- Because they are generated by systems controlled by the police and prosecution, the prosecution cannot claim ignorance of their existence. Audit trail functions are well documented by manufacturers and repeatedly discussed in New York decisions.



Conferring and documenting non-disclosure of audit trails:

- 1.** Determine which officers may have been wearing a body-worn camera.
- 2.** Request all audit trails, for each officer's camera, covering a reasonable timeframe surrounding the encounter. Put the request in writing, reference specific dates or case numbers, and keep a record of the request and any response (or lack thereof) so you can later affirm your good-faith efforts to confer if a motion becomes necessary.
- 3.** If the issue remains unresolved, and the prosecution file a Certificate of Compliance without producing audit trails, file a motion to invalidate the COC. Argue under CPL §§ 245.20, 245.50, and 30.30 that the COC was filed without due diligence or good faith, making readiness illusory and failing to stop the 30.30 clock.
- 4.** File the motion within 35 days of service of the COC unless the court extends the deadline for good cause.

Motion language to strike Certificate of Compliance and dismiss under CPL § 30.30:

Audit trails are subject to automatic discovery under CPL § 245.20(1)(e), (k), (u)(i)(B), and (v). They are deemed to be in the prosecution's possession under § 245.20(1), and the prosecution must exercise due diligence before certifying compliance. Courts that carefully examined the issue have held body-worn camera audit trails are discoverable, including *People v. Ballard* (82 Misc 3d 403), *People v. Champion* (81 Misc 3d 292), *People v. Torres* (79 Misc 3d 1204[A]), *People v. Bresnan* (85 Misc 3d 280), *People v. St. Marc* (85 Misc 3d 1235[A]), *People v. Robert K.* (83 Misc 3d 1229[A]), *People v. Cumbe* (82 Misc 3d 1242[A]), *People v. Budhu* (83 Misc 3d 1273[A]), *People v. Rollerson* (82 Misc 3d 1212[A]), *People v. Shar* (82 Misc 3d 1251[A]), *People v. Lyte* (83 Misc 3d 1204[A]), and *People v. Gourdine* (83 Misc 3d 1264[A]). Audit trails contain written statements and electronically stored information relevant to the subject matter of the case.

The prosecution filed a Certificate of Compliance without producing these materials and without exercising due diligence or good faith. Under *People v. Bay* (41 N.Y.3d 200), such a filing renders the certificate invalid and any declaration of readiness illusory. Pursuant to CPL § 245.50(5)(b), defense counsel affirms that reasonable, good-faith efforts were made to confer with the prosecution regarding this specific discovery deficiency, that those efforts were unsuccessful, and that no agreement could be reached. The defense therefore moves for an order striking the Certificate of Compliance, deeming the prosecution not ready under CPL § 30.30, and dismissing the accusatory instrument if chargeable time has expired.