

CUAPB Body Camera Position Paper

Published September 8, 2015

Communities United Against Police Brutality, Minneapolis, MN

POSITION

It is the carefully considered position of Communities United Against Police Brutality that Minneapolis should NOT buy and implement body cameras for the Minneapolis Police Department at this time.

INTRODUCTION

CUAPB is an all-volunteer, grass roots organization which has been working for 15 years in the Twin Cities area to reduce police brutality, misconduct and abuse of authority, to support and advocate for survivors of police brutality, and to educate the community about their rights. We are familiar with the filming of police activities: we have had an ongoing copwatch program, and we teach and assist others who wish to document police conduct. We have years of experience with the policy and practices of the Minneapolis Police Department. This history informs the perspectives in this paper; we draw also from the excellent work of many national organizations which have studied and written about this topic. We particularly appreciate the hard work and good recommendations from the local PCOC (Police Conduct Oversight Commission).

As body cameras entered the national consciousness over a year ago, we took the same position as most organizations advocating for police accountability: Adopt the use of body cameras, but ONLY with proper policies, developed with public input, to collect and protect evidence, to protect privacy, and to ensure access of the public to the video needed for better transparency and police accountability. That remains the position of most organizations, and it is a reasonable recommendation. But we can't responsibly recommend body cameras in Minneapolis without considering whether the conditions in that recommendation will, or even can, be met in Minneapolis at this time. Much of this position paper will be an evaluation of the current situation in Minneapolis, and whether body cameras can be used responsibly and beneficially with the current state of the Minneapolis Police Department and its supervision and oversight.

Minneapolis police often don't tolerate public filming of their actions; they confiscate phones, erase data, and even arrest or physically abuse those who attempt to exercise their First Amendment right to record police. We hear many accounts of this, yet no officer receives any consequence or discipline. Why would we expect the Police Department or its officers to encourage real accountability through the video that they control?

Body cameras offer significant potential benefits, which we list below. But there are serious risks and costs, also listed below. We weigh these based on the likelihood of the benefits being realized in our city, versus the risks of harm which could occur in Minneapolis. In other cities, those with better policing to begin with, the balance of benefits and risks may be different. But it appears to us that in most large cities, body camera implementation will be detrimental to the community.

We urge accountability activists in other cities to consider their recommendations in the light of their own particular circumstances, which they know best. Just days ago, the ACLU called upon the LAPD to scrap their body camera program, claiming it will do more harm than good, and they are urging the federal government to withhold funding for the program, a program which they initially called for and supported. The LAPD had adopted a policy that essentially denied public access to the videos.

We recognize that the purchase of body cameras is a done deal in Minneapolis. Given this, we also include in this paper some recommendations for policy and implementation that may, if accepted, make

body cameras more useful to the community, and mitigate potential harm. We do not believe that these policies alone would be sufficient, given the unlikelihood of them being enforced.

This paper assumes the selection of Taser as the vendor of body cameras. Some policies on storage and viewing would be different with Viewu, the alternate vendor tested in the pilot program. This paper remains a work in progress, and will be modified as necessary as we gain more information and experience, and as we monitor the actual implementation.

POTENTIAL BENEFITS

We recognize the significant potential benefits from body camera video of most police interactions with the public. In general, more information is better than less. The wave of promotion of body cameras has raised great hope in the community for better police behavior and better police accountability. People who spoke passionately at public hearings about their personal experiences are often strong believers in the potential of body cameras to help others in similar situations. The widespread enthusiasm among police departments, the federal government, and community advocates has raised hope for what the ACLU has described as a “win for all”.

Given the feeling of hope in the community, it is with some reluctance that we “rain on the parade” by stating our opposition. We do not take lightly the current community sentiment in favor of body cameras.

We see these potential benefits:

- Information to support plaintiffs in lawsuits against the police. Even if public access to video is severely restricted, it is likely that lawyers will be able to gain access. This is likely the greatest benefit because the only significant accountability currently available is through lawsuits. Lawsuits are also the only accountability that can result in financial compensation for someone who has been harmed.
- Information to evaluate community complaints against the police, to confirm the valid complaints or quickly eliminate those which are clearly not valid, thus freeing investigatory efforts for the other cases.
- Information that could be used for internal disciplinary processes.
- Information that could be used for random monitoring of officers – or more frequent monitoring of known problem officers.
- Videos of positive interactions could be used for training.
- Promote the civility of both officers and the civilians they interact with. People tend to behave better when they know they are being filmed. Interactions may be less likely to escalate. This may also deter both assaults on the public and assaults on officers.
- Assist in the investigation, solution, and prosecution of crimes. The great majority of video will have no relevance to police accountability or discipline. Most interactions do not involve police misconduct. We support information for accurate and unbiased police work.

THE REALITY OF POLICING IN MINNEAPOLIS

We can't evaluate body cameras in a vacuum. There are real and ongoing problems in Minneapolis that are likely, if not certain, to reduce the hoped for benefits of body cameras and amplify the dangers.

- To offer timely public input, we are having to make our recommendation on purchase of body cameras before any policies are finalized. Similarly, members of the public were polled on the question of adopting body cameras without knowing the policies which would govern their use.

- Similarly, the City Council will probably take a vote on the purchase of body cameras before knowing whether policies will be adopted that make them an effective tool for accountability. At the very least, the City Council should require specific policies (perhaps the recommendations of the PCOC) in exchange for approving the purchase.
- Perhaps the most important policy – on releasing videos to the public – is out of the control of the city. The classification of data (including video footage) as private or public is a matter of state law: the Data Practice Act. The legislature and governor have complete control in this area. In the last session, the legislature considered but did not act on possible amendments to the Data Practice Act specific to body cameras. We expect they will act in the coming session next year, but no one can predict what action, if any, they will take. We won't know whether the public can view any video until after the cameras are purchased and deployed. Minneapolis should at least wait until the Legislature has acted. Even then, the rules can change later. We should not trust the Legislature to be motivated by police accountability.
- We expect that the city and the Police Federation will be lobbying the Legislature to restrict public access. Based just on the logistical difficulties of fulfilling public requests (see below), the city may find itself with strong budgetary motivation for lobbying to restrict public access.
- So we do not know whether good policies will be adopted by the MPD, nor do we know the extent of public access to videos that will be possible.
- Even if good policy were adopted, it will be frequently ignored if there are no consequences for violating the policy. The officers most in need of being filmed are exactly the ones most likely to violate policy, for example by not turning the camera on. We hear frequent cases, here and nationally, where officers tell bystanders they may not film the officer. In many cases, the innocent bystander, doing the important work of witnessing a police action, is physically abused or arrested. If an officer refuses to be filmed, why would we expect him to turn on his own camera during that incident?
- We know that there will be no consequences for violating body camera policy due to the lack of any discipline for officers who violate any other policies. CUAPB has documented that in the first 2-1/2 years of the OPCR (Office of Police Conduct Review – the supposed “civilian” oversight that replaced the Civilian Review Authority) only one officer has been disciplined in response to over 900 civilian complaints. He received two weeks of unpaid time off. See the link for “OPCR Statistics”¹ on the cuapb.org website.
- Video evidence will be of little or no use for those members of the public filing complaints against police officers. Complaints to the OPCR lead to no discipline, regardless of available evidence, as documented above. CUAPB doesn't recommend filing complaints with the agency.
- Video will be of more help in the case of lawsuits or criminal charges against police officers – but not much. We have seen – here and in other cities – that clear video evidence is often ignored or misinterpreted. The Eric Garner case is a tragic example. And officers in Minneapolis have never been charged, let alone convicted, of criminal acts while on duty.
- Minneapolis does not have the capability of releasing body camera video to the public in a timely manner. Police investigators, court officials and lawyers will also be requesting access, and the public will have the lowest priority. The police records unit is already struggling to keep up with other requests. CUAPB finds it can take months to obtain paper records, even those that require little or no research or redacting. Seattle, less than twice the size of Minneapolis, has approximately 35 full-time employees handling video requests. Minneapolis currently has two video experts handling squad car videos. They work in the Crime Lab, and have many other duties. The mayor's budget proposal has just two new positions for body camera redaction and release, whereas Seattle's experience indicates the need for 20 or so.

Based on the above, Minneapolis is neither ready, willing, nor able to implement body cameras in a way that will benefit the community as a tool for police accountability. For body camera benefits to outweigh the risks, listed below, the city must first establish good policies, it must lobby the legislature for the right of the public to access video with appropriate controls for privacy, it must wait to see what action the legislature will take next year, it must not ask for temporary exemption from Data Practice Act requirements, as some cities are doing, it must show that it will impose discipline for violations of police policy, it must show that video evidence of misconduct will lead to consequences for officers, and it must commit to providing and budgeting for the necessary employees and infrastructure for handling public requests for videos. Our experience leads CUAPB to predict that few if any of these conditions will be met.

POTENTIAL DANGERS OF BODY CAMERAS

If there were no risks or costs associated with the purchase and use of body cameras, CUAPB might approve of their use, for the limited benefits that may be possible in spite of the city's weaknesses listed above. We might feel that any video information, no matter how limited, is better than no information. However, as with any technology, benefits must be weighed against risks. Once the cameras are purchased, it would be very hard to reverse any decision to use body cameras. Some risks would continue to apply to footage already recorded. We have the following concerns:

- Body cameras could become a tool of surveillance, as many groups have warned. With policing concentrated in communities of color, this could add to already existing disparities in policing and prosecutions.
- It is now possible, and contemplated by some, that facial recognition or other biometric software could be applied to body camera video. This would greatly add to police surveillance and tracking of legal activities, particularly in communities of color and against activists. This technology could also be applied to video already recorded and stored.
- Body cameras document an encounter entirely from the officer's point of view. Unless there are multiple body cameras activated during an incident, we see the actions of the member of the public, but not directly those of the officer. Experiments have shown that people tend to identify with the person through whose eyes they view an incident, so body cameras have an inherent bias. In most cases though, we view the incident not through the officer's eyes, but from the height of the officer's chest, making the civilian look taller and more dangerous or menacing.
- There are major privacy concerns particular to body camera video. Squad car cameras do not enter people's homes or most private areas. This makes redacting and release of body camera video much more difficult and time consuming.
- Until the officer's body camera is docked at the end of the day, when the video is uploaded and erased from the camera, the officer has access to view that day's video (though not to erase or modify it). The video can be viewed on personal as well as MPD equipment, such as smart phones or laptops. During this time, video could be copied by the officer for personal use or enjoyment, or the images could be shared with other officers or members of the public. This could lead to juvenile behavior and embarrassment of the subjects of the video. Recall that MPD as well as other departments have already had a problem of officers looking up driver's license information for their own amusement. Private situations caught on body cameras are far more titillating than driver's license photos.
- If officers view video before writing the police report, the independent evidentiary value of the officer's report could be compromised. Also, the officer may choose to add or omit some information in the report, based on what is shown or not shown in the video. There are a few cases however when there is a valid reason for an officer to view the video before the end of his

shift when the video is uploaded and erased from his/her camera. Even if all other viewing were prohibited, it would be extremely difficult to prevent given the proliferation of personal devices on which the video could be displayed.

- After uploading, all video will be stored and controlled by Taser International, Inc, a private company not known for its commitment to police accountability! Access to the video would only be through the proprietary tools on Taser's website, evidence.com. Redaction capabilities would be limited to those provided by Taser.
- With all that video stored in the cloud, it may be tempting for the federal government to subpoena the metadata, or even the actual video data, as it has subpoenaed cell phone records from the telecommunications companies. The city could not prevent that use of its data, nor would it control the encryption of the data.
- Some cities are already contemplating getting rid of squad car video, claiming that body cameras duplicate the value of that video. Squad car video has important independent value, particularly because it is turned on automatically with the lights and siren, and because it portrays the entire scene, not just what is shown from the officer's chest.
- Of course there is the cost: \$1.2 million just for purchase and training. Ongoing costs for storage and for redacting and releasing video may be even higher. It does not appear that the city has a good estimate of those costs, or at least is not releasing that information to the public. All cost information is redacted in the reports on the pilot study obtained by CUAPB in response to a data request.
- The money spent on body cameras could be better spent on other means for police accountability to the community, such as more investigators for an actual civilian review system.

DONE DEAL

In spite of our recommendation and concerns above, we know that the decision has already been made to purchase and implement body cameras in Minneapolis. Approval by the City Council and Mayor is a foregone conclusion, months before there is any vote. Throughout the nation, this train is unstoppable. The President, the DOJ, most police and police unions, and many police accountability advocacy groups are on board this train. Body cameras are not a panacea, nor even a major step toward accountability in the hands of most police departments. But they are excellent public relations, and are considered a big contribution to better "police community relations", which is considered by most governmental officials to be much more important than actual improvements in police conduct.

Recognizing this, we in CUAPB offer the following recommended policies to at least obtain some benefit from the cameras, and avoid the worst of the risks.

POLICY RECOMMENDATIONS

We recognize the good work of the PCOC in their report² and do not feel a need to repeat all of their recommendations and the reasoning behind them. We will list a few of the most important, as well as some additional recommendations, and note where we may disagree. Similarly, we note our general agreement with the policy recommendations of the ACLU^{3,4}, Color of Change⁵, the "Civil Rights Principles"⁶ signed by a large number of organizations, the report of the NYPD Inspector General⁷, and the Minneapolis Internal Auditor⁸.

The PCOC and most organizations have concentrated on policies for officers and their supervisors to follow – the sort of policies that are typically included in the Police Policy & Procedure Manual. We note that there are also many important policies for administrators to follow regarding handling, viewing, and release of video data.

We expect that the MPD will not accept many of the recommendations of the PCOC, especially the most important ones, and the ones that differ from the SOP (Standard Operating Procedure)⁹ used for the pilot program. We fear that the public input and the work of the PCOC are merely window dressing, required for public relations and for complying with the conditions of the grant that Minneapolis has applied for.

- Requirement that cameras be turned on for all interactions with the public, except those expressly prohibited (sexual assault victims, confidential informants, locker rooms, etc.)
- Notification that camera is in use. Cameras should be turned off when requested in private locations, for witness statements, etc. When entering a home or private location without permission (warrant, pursuit, exigent circumstances, or SWAT raid), cameras should be turned on. When the situation permits, civilians should be notified and asked for permission to keep filming.
- We agree with the PCOC and most police accountability advocates that officers should not be permitted to view their video before writing a report on an incident. We would add an exception to that rule however: there are exigent circumstances when it is important to view the video immediately. Examples: to get a better description of a suspect who has fled, or to capture a license plate number on the video that was not seen clearly by the officer, or to sort out who did what while multiple people (some innocent, some not) are being detained, or similar cases where the information on the video is of immediate value. In these cases, the viewing of the video must be noted in the officer's report. It should also be acceptable for an officer to view the video after writing the report, in order to add a clearly identified amendment to the report based on that viewing.
- We agree that, if body cameras are used, they should be used by officers working off-duty in uniform as well. However, this may be logistically difficult, as officers would have to return to their precinct before and after to pick up the camera from its docking station and return it. This would require negotiation with the union which is unlikely to agree. That is unfortunate, and it would significantly reduce the value of the body cameras for accountability, because many serious incidents – and large settlements – result from off-duty work for which the city is still legally liable.
- Officers should use the cameras any time they are on duty and likely to interact with the public, whether in uniform or not, with the exception of undercover work.
- Supervisors and/or administrators should view a small random sample of videos for quality and training purposes. Failure to turn on or turn off cameras when required should lead to coaching and training if appropriate, and discipline if warranted. We agree with the PCOC and others that more frequent sampling of videos is appropriate for officers with a history of misconduct or a history of violating body camera policy. Any significant misconduct that is observed should lead to a report to Internal Affairs, as is required (but virtually never done) whenever an officer witnesses misconduct by another officer. The public should also have access to these randomly sampled videos.
- There should be serious consequences, up to termination, for officers found to personally possess, use, share, leak, or distribute unauthorized copies of their body camera videos.
- We agree with the Minneapolis Auditor's recommendations, including those regarding security of videos, the creation of policies and procedures regarding public requests for video, and ongoing monitoring. At the Auditor's presentation to the City Council committee, it was acknowledged that the recommendations were good, but that some may not be feasible due to a lack of resources. This is a concern.

CONCLUSION

We offer these recommendations to the MPD and elected officials:

The City Council should vote to postpone purchase and implementation of body cameras until most or all of these conditions are met:

- The MPD has adopted or committed to good body camera policy, and is committed to enforcing it.
- The legislature has taken action on data practice provisions for body cameras, and has enacted legislation that will guarantee public access similar to existing provisions for squad car videos, with only minor exceptions for privacy concerns specific to body cameras; OR the legislature has made clear that body camera videos will be subject to the current provisions of the Data Practices Act.
- The MPD has shown that it will discipline consistently for violation of police policy of all kinds, including excessive force, language, and biased policing. This will require the overhaul or complete elimination of the OPCR, and the implementation of strong, properly resourced and independent civilian review of civilian complaints against the police.
- The MPD has shown that it will use existing squad cam or civilian video for appropriate discipline or even the filing of criminal charges where warranted. Officers will be disciplined, as per existing policy, for statements that are clearly shown by video to be intentionally false.
- The City Council and Mayor commit to – and budget for – sufficient resources to allow release of body camera video to the public in a timely manner. They should start by providing sufficient staff to process current data requests, and by streamlining the process without lengthy MPD and Attorney’s Office reviews.

If or when the City Council does approve the purchase of body cameras:

- The MPD should adopt policies similar to those recommended in the PCOC report.
- Police administration should develop and release to the public the procedures for filing data requests and the procedures by which video will be redacted and released. Sufficient resources should be budgeted to make possible the implementation of all of the Internal Auditor’s recommendations for data storage, release, and security.
- The city’s Intergovernmental Relations Department should be directed to lobby the State Legislature for maximum public access to body camera video consistent with legitimate privacy concerns.
- The Mayor should modify her budget proposal to provide sufficient personnel and resources for responding to data requests.

Most importantly: It must be recognized that body cameras are NOT a substitute for community filming of police action, either informally or through formal copwatch programs. In some respects, the two are actually opposite. Copwatch is the community filming the police; body cameras are the police filming us. The prime importance of body cameras is that they may capture incidents where there are no civilian witnesses with cameras.

The City Council and the Police Department MUST FIRST take the step of guaranteeing and facilitating the right of the people to film the police. Very specific policy and training requirements were established by the Department of Justice in 2012¹⁰, to ensure the protection of First and Fourth Amendment rights. Minneapolis has not yet complied. Continued failure to adopt these policies, as well as continued abuses by MPD officers against this right, would show the complete hypocrisy of

Minneapolis in buying body cameras for the supposed purpose of greater police accountability. Protecting community filming of the police is free and it has none of the downsides or risks of body cameras.

It is a telling indication of the low level of community trust in the police, especially in the last year, that body cameras are being “sold” to the public primarily as a tool for accountability. Several years ago, they would have been promoted primarily as a tool to fight crime. That is what the great majority of footage will actually be used for – most encounters do not involve police brutality or misconduct.

There are better solutions: It must be recognized that the intention of “improving police community relations” is far different from the intention of actually improving policing. CUAPB has proposed numerous solutions for improving police conduct in Minneapolis, all much cheaper, easier to implement, and with fewer risks than the use of body cameras. See our website at CUAPB.org, and particularly the link to “CUAPB List of 31 Actions for Improving Minneapolis Police”¹¹. Please also refer to the website for Committee for Professional Policing, insurethepolice.org, for information regarding a proposed ballot initiative in Minneapolis to require police officers to carry professional liability insurance, to create the personal responsibility and accountability that most other licensed professionals have.

This information compiled by Communities United Against Police Brutality. Join us!
We meet at 1:30 every Saturday at 4200 Cedar Avenue South in Minneapolis. For more information or for help with a police brutality incident, call our 24-hour hotline: **612-874-STOP** or website: **www.CUAPB.org**.

¹ Direct link: <http://www.cuapb.org/wp-content/uploads/2012/08/OPCR-Statistics-100112-through-033115-updated.pdf>

² <http://minneapolismn.gov/www/groups/public/@civilrights/documents/webcontent/wcms1p-148199.pdf>

³ National: https://www.aclu.org/sites/default/files/field_document/police_body-mounted_cameras-v2.pdf

⁴ Local: <http://www.ci.minneapolis.mn.us/www/groups/public/@civilrights/documents/webcontent/wcms1p-144768.pdf>

⁵ <http://act.colorofchange.org/sign/demand-body-camera-policies-hold-mpd-accountable/>

⁶ <http://www.civilrights.org/press/2015/body-camera-principles.html>

⁷ <http://www.capitalnewyork.com/sites/default/files/NYPD%20Body%20Camera%20Report%20-%20Final.pdf>

⁸ <http://minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcms1p-147304.pdf>

⁹ <http://www.ci.minneapolis.mn.us/www/groups/public/@civilrights/documents/webcontent/wcms1p-133494.pdf>

¹⁰ http://www.justice.gov/sites/default/files/crt/legacy/2012/05/17/Sharp_ltr_5-14-12.pdf

¹¹ Direct link: <http://www.cuapb.org/wp-content/uploads/2012/12/CUAPB-List-of-31-Actions-for-Minneapolis.pdf>