



Communities United Against Police Brutality™

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ANALYSIS OF MPD BODY WORN CAMERA DRAFT POLICY

The Minneapolis Police Department released their draft Body Worn Camera Policy on March 1, 2016, just two days after receiving funding to purchase these devices. While it is good that the community is finally able to see the policy, we are concerned that very little of the input gathered from the community through the Police Conduct Oversight Committee or directly submitted by Communities United Against Police Brutality, Color of Change, and other organizations was included in the policy.

Key Issue 1: Purpose of Body Worn Cameras

In promoting the purchase of body worn cameras, city officials and others cited the Rialto, California study showing a reduction in police misconduct complaints and claimed that a key purpose of these devices is to **increase transparency and accountability**. However, the draft policy makes it clear that these devices **cannot fulfill this promise**. The policy specifically states “The BWC equipment is not to be used for the purpose of surveillance of officers.” In this context, the term surveillance refers to routine monitoring of police conduct, as the policy explains that any evidence of misconduct that is captured by the devices MAY only be used in relationship to a complaint or as part of a use of force review (which is only triggered if the officer completes a use of force report). Otherwise, there will be no periodic monitoring of the footage, making the device useless as an accountability tool. There must be periodic monitoring of the footage to ensure that policy is being followed. The International Association of Chiefs of Police (IACP) considers periodic monitoring a best practice and includes it in their model policy.

Key Issue 2: Activation and Deactivation

Provisions in the draft policy on activation and deactivation seem appropriate with two exceptions. In locations in which there is an expectation of privacy, the BWC should be deactivated on request, with only narrow exceptions (see Key Issue 3). Secondly, the draft policy states “Officers *may* [emphasis ours] activate the BWC in the following circumstances: General citizen contacts where the officer feels that a recording is appropriate.” Body worn cameras should be activated during ALL encounters with members of the community, unless the individual is in a private area and requests the BWC to be deactivated.

Key Issue 3: Notification and Consent

The policy does not require consent or even notification that a recording is being made in a private residence or other location where people have the expectation of privacy. Instead, officers are encouraged to inform people that they are being recorded. We believe strongly that individuals should have right to decide if they want to have a camera recording them in private locations and should have the right to ask that the recording stop, except under very narrow circumstances.

Key Issue 4: Data Retention

The policy requires data to be retained for at least a year but under certain classifications for at least six years, the statute of limitations for most civil claims. This provision is appropriate and should be adopted in the final policy.

Key Issue 5: Data Release

There is little in the policy regarding data release, except for a reference to releases required for various law enforcement and litigation functions or under the Minnesota Government Data Practices Act. This isn't problematic *per se* as data release policies and procedures fall under the City Clerk's office. Nonetheless, there will need to be changes to the city's data practices policy and procedures and those changes have not yet been released for review by the public. We encourage adoption of the Internal Auditor's recommendations.

Key Issue 6: Use in Surveillance of First Amendment Protected Activities

The draft policy states, "The BWC shall not be activated for the purpose of surveillance of legally protected activities." This provision is appropriate and should be adopted in the final policy.

Key Issue 7: Review of Footage Prior to Writing Reports

The draft policy not only permits viewing of footage prior to writing police reports but encourages it by stating, "to ensure the accuracy of reports," officers "should review audio and video data before making a report or statement." This provision is highly problematic for a number of reasons. Police reports should reflect the probable cause and other information known to the officer at the time the officer made decisions related to stops, detentions, arrests or other encounters with community members. Further, both the police report and the BWC recording should have separate evidentiary value, which will no longer be possible if the police officer views the recording before completing the police report. Finally, this provision implies that police reports may not be accurate unless they are accompanied by BWC footage. Any lack of footage implies that the report lacks credibility—a position that is untenable for prosecutions and litigation. Sam Walker, emeritus professor of criminal justice at the University of Nebraska, Omaha, notes in an article "if an officer is planning to lie, video is a good guide to what kind of lie he can get away with."

Key Issue 8: Off Duty Use

The draft policy mandates use of BWC during off duty work. This provision is appropriate and should be adopted in the final policy.

Key Issue 9: Right of Public to Document Police Conduct

The draft policy has a slight reference to the First Amendment protected right to document police conduct, "The BWC shall not be used for the purpose of intimidating or discouraging an individual from observing police activity..." However, while the MPD now has a draft policy allowing them to film the community, they have no such policy protecting the right of the community to film the police. The US Department of Justice requires all police departments to have an explicit policy regarding the rights of people to film police.