



Suggested Body Camera Policy Standards and Principles (2016)

Introduction

The ACLU of Minnesota is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have over 15,000 supporters throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

The ACLU of Minnesota supports the use of body cameras as a tool to reestablish public trust in the police. We believe that with good policies in place, recording of police-civilian encounters will promote police accountability, deter officer and civilian misconduct, and provide objective evidence to help resolve civilian complaints against officers without significantly infringing on privacy.

We understand that the potential exists for misuse of this technology, and while we are cautiously hopeful that body cameras will be used appropriately, law enforcement needs to know that spying on the community will only work to defeat the primary purpose of body cameras and further erode the public trust. Body cameras could do more harm than good if they are primarily used as a police surveillance tool.

Opposition to SF 498

The challenge with a body camera policy is finding a balance between their potential to invade privacy and their strong benefit in promoting police accountability. The ACLU-MN opposes SF 498, the current proposal working its way through the Minnesota Legislature, because it does not strike the appropriate balance.¹ Unfortunately, this bill is being rushed through the legislative process in the final days of the session and is likely to become law due to strong support from the law enforcement lobby.

Most significantly, SF 498 classifies nearly all body camera footage as private data, which will not be accessible to the broader community. This data classification undermines the value of body cameras to improve transparency and accountability. Rather than limiting public access to data subjects and incidents where an officer's use of force results in substantial bodily harm (an extremely high threshold that would not include the use of a taser), we believe that, at minimum, any recorded encounter should be classified as public if it (1) involves a use of force, (2) leads to arrest, or (3) involves an encounter about which a formal or informal complaint has been registered.

¹ A number of other organizations share our concerns and have testified in opposition to SF 498 including but not limited to the Minneapolis and St. Paul Chapters of the NAACP, Communities Against Police Brutality, the Minnesota Public Interest Research Group (MPIRG), and the Minnesota Coalition on Government Information (MNCOGI).



We do not support shielding large classes of body camera footage from disclosure under the pretext of protecting privacy. Allowing police to release footage when it is in their interest, but not allowing public access to those videos showing officers engaging in inappropriate and/or unlawful conduct has the potential to further erode the public trust in our peace officers.

Though the bill denies public access to most body camera videos, it explicitly allows officers to review body cameras footage prior to completing any required initial reports, statements, and interviews regarding the recorded event. We oppose this provision because allowing officers to view body cameras footage before writing initial reports could undermine the legitimacy of their investigations. This is especially problematic when there are complaints of excessive use of force and in any officer-involved shootings.

We believe that, if enacted, SF 498 will diminish the potential value of body cameras to restore the public's trust in law enforcement. Instead, this bill establishes body cameras as yet another surveillance tool for the benefit of law enforcement rather than a tool of accountability and transparency.

Increased Importance of City and Department Policies

The ACLU-MN also opposes SF 498 because it focuses almost exclusively on data classification and access while leaving officer use and operation of body cameras to the policy of each department. For this reason, public involvement in community listening sessions and input from groups like the PCOC will be essential in holding police departments accountable regarding their own internal policies and practices.

The ACLU-MN suggests that statewide or department-based policies should be implemented based on the following standards and principles, including specific comments on the current MPD Draft Policy:

(1) Limiting officer discretion on when to activate and deactivate cameras:

Police should activate their body cameras at the inception of every law enforcement encounter with a member of the public, and turn them off only at the conclusion of the entire encounter. These police-civilian encounters include stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions, and any encounter that becomes in any way hostile or confrontational. If police officers are given discretion over when to activate their body cameras, their value will be severely undermined.

The MPD Draft Policy lists a long and specific list of occasions when an officer is required to activate their body camera, and allows for permissive use where the officer feels that a recording is appropriate. We believe that while this list attempts to be comprehensive, it may allow for the exclusion videos that would be rightfully captured under a policy that instructs officers to simply



activate their cameras at the inception of every law enforcement encounter with a member of the public.

While the Draft Policy generally requires officers to wait until the conclusion of the event to deactivate the camera, it is problematic that the Policy allows for substantial officer discretion to deactivate their cameras in a long list of circumstances.

(2) Prohibition on recording generalized activity:

Police body cameras should only be used to capture specific police-citizen encounters and *not* generalized activity. Body cameras should not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

The MPD Draft Policy makes an attempt at addressing this issue by stating that cameras “shall not be activated for the purpose of surveillance of legally protected activities,” such as First Amendment assemblies. However, the Policy still allows for officer discretion to film other generalized activity.

(3) Prohibition on recording in schools:

As a general policy, body cameras should not be used in elementary or secondary schools, except when responding to an imminent threat to life or health.

The MPD Draft Policy is silent on the issue of using a body camera to record in schools.

(4) Privacy considerations:

Body cameras have more of a potential to invade privacy than traditional video surveillance of public places. Police officers often enter individual’s homes and encounter bystanders, suspects and victims in a wide variety of sometimes stressful and extreme situations. Accordingly, there should be exceptions to the recording policy for legitimate privacy concerns. A policy should contain specific sections to address: (1) giving individuals the option to discontinue recording in a private residence, and (2) providing the option to discontinue use with those who are reporting a crime, providing information about an ongoing criminal investigation, or an apparent crime victim.

The MPD Draft Policy addresses these issues by giving the officer discretion to deactivate their cameras in a wide range of circumstances. This approach leaves too much discretion and does not ensure that the officer will respect a request for deactivation under the privacy considerations listed above.



(5) Notification of recording:

Citizens must be provided with notification that the camera is recording the encounter. Without notice, citizens will not know that video of their police encounter, which may be of value to them, has been captured. Moreover, providing notice will increase the possibility that recording will deter bad behavior by both citizens and police. An officer should notify the subject(s) of the recording that they are being recorded by a body cameras as close to the inception of the encounter as is reasonably possible.

The MPD Draft Policy states that “[w]hen feasible, officers are *encouraged* to inform members of the public that they are being recorded” (emphasis added). We believe that this language is much too permissive and will allow officers to avoid notification at their own discretion.

(6) Disciplinary procedures for officers who violate body camera policies:

Three types of actions should be required when a police officer assigned to wear a body camera fails to record or otherwise interferes with camera video: (1) direct disciplinary action against the individual officer; (2) the adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or destroyed; and (3) the adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct.

The MPD Draft Policy states that “[d]isabling BWC equipment, intentionally interfering with audio/video recording capabilities and/or altering, duplicating, deleting or destroying BWC recordings is prohibited, except by authorized personnel.” Despite the egregious nature of such violations, the Policy does not provide for any specific discipline for officers who violate these or any other regulations within the Policy.

(7) Audits:

Retained body camera footage should be periodically audited by the department to determine whether: (1) cameras are activated and deactivated according to the policy; (2) proper notification of recording is provided to civilians; (3) civilian requests that the camera be turned off are handled appropriately; and (4) cameras are fully operational, including whether the audio and visual components are functioning properly.

The MPD Draft Policy does not provide for any required audits of retained body camera footage.