

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY**



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PUBLIC OVERSIGHT ROUNDTABLE

**FIVE YEARS OF THE METROPOLITAN POLICE DEPARTMENT'S
BODY-WORN CAMERA PROGRAM: REFLECTIONS AND NEXT STEPS**

**Testimony of Niquelle M. Allen, Esq.
Director of Open Government
Board of Ethics and Government Accountability**

**Monday, October 21, 2019
10:00am
John A. Wilson Building
1350 Pennsylvania Avenue NW
Room 412
Washington, D.C. 20004**

Good morning, Chairman Allen and Members of the Committee on the Judiciary and Public Safety. I am Johnnie Barton, the Attorney Advisor for the Office of Open Government. The Director of Open Government, Niquelle Allen regrets that she cannot be here to testify, but I will read her testimony as written. The Office of Open Government, an office within the Board of Ethics and Government Accountability, facilitates District of Columbia Government agency compliance with the Freedom of Information Act (FOIA) and advocates for a fair and efficient FOIA process. The Office of Open Government also encourages the D.C. government to implement transparency policies that will make the government more responsive and accountable to the community it serves.

INTRODUCTION

In order to promote more accountability among law enforcement, the District of Columbia Metropolitan Police Department (MPD) has utilized body-worn cameras (BWCs) for the past five years. These video recordings of police and civilian interactions are intended to deter officer misconduct and eliminate ambiguity in excessive force cases. To that end, BWCs have been a means to improve evidence collection, performance, and accountability. The MPD's BWC program has also received widespread support from the community. I am presenting this testimony today to offer suggestions regarding how this technology can and should advance overall government transparency and foster greater public trust of law enforcement.

BODY WORN CAMERAS AND DC FOIA

The effectiveness of the District's use of BWCs must be viewed through the lens of the FOIA . The videos taken with BWC's are public records that are created and maintained by MPD and the public may request access to those records under FOIA. While citizens have access to BWC footage under FOIA, its release and availability are often limited due to FOIA exemptions. The limited release of BWC footage could call into question the utility of BWCs in providing the public with a timely, relevant, and clear view of MPD officers' actions. There is also a financial barrier to obtaining this information because the cost of producing BWC footage may be passed on to FOIA requesters.

MPD's BWC policies must also take into consideration privacy protections of law enforcement personnel and the public; access protocols; the retention of non-evidentiary video versus video that may be used in the litigation of criminal and civil matters; cost of video storage and the collection of metadata; and the monetary and human capital costs inherent to the review and editing of video pursuant to public access laws.¹ It is a balancing of internal controls and external access that must be weighed within the context of the purpose of FOIA and the public policy of the District that all

¹ Police Executive Research Forum (PERF), *Implementing a Body-Worn Camera Program Recommendations and Lessons Learned* (<http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>).

persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.²

FOIA Exemptions

Although the public can request access to BWC footage, that does not necessarily imply release of records. MPD may reasonably and legally rely upon several exemptions that prevent those public records from disclosure.³ Namely, the investigatory records exemption and the personal privacy exemptions may cause much of the footage to require redaction.⁴

In my meetings with government transparency groups, I have learned that MPD sometimes releases BWC videos that have been redacted beyond recognition — that is, videos with all faces, all voices, all street names, badge numbers, every car tag in sight, and the like redacted. While the redactions based on the law enforcement FOIA exemptions may be valid, if the BWC camera footage that is released is unrecognizable, how does that make MPD transparent? Does it build public trust? I argue that it may have the opposite impact. If BWC footage is released to the public in extremely redacted form, the public does not get the full story and it may appear as if the government has something to hide.

In determining, how to redact BWC footage in response to a request, FOIA law directs MPD to balance justifications for and against withholding records. While maintaining the public's privacy and protecting witness identity are significant justifications for redacting videos, MPD must communicate its redaction policies more clearly and consider the utility of releasing video footage that is clearly of no value because of the redactions. Releasing these excessively redacted videos is not in the public's interest and creates a higher level of mistrust of police operations.

MPD should counter this negative impact with thoughtful, clear policies that inform the public — in plain language — of when it will release BWC footage and under what conditions. Moreover, MPD should inform requesters that they may receive severely redacted videos prior to releasing them. MPD's articulation of clear, well-reasoned policies about the release of BWC footage in response to FOIA requests will bolster the long-term success of the BWC program.

² D.C. Official Code § 2-531

³ D.C. Official Code § 2-532 affords to any person the “...*right to inspect...and to copy any public record of a public body*” except as expressly provided in the enumerated exemptions under D.C. Official Code § 2-534.

⁴ D.C. Official Code § 2-534(a)(3)(A-F) exempts investigatory records compiled for law enforcement purposes if release would interfere with enforcement proceedings; Council investigations; Office of Police Complaint investigations; deprive a person of due process; constitute and unwarranted invasion of personal privacy; disclose a confidential source; disclose investigative techniques; endanger law enforcement personnel. D.C. Official Code § 2-534(a)(2) exempts from disclosure information of such a personal nature that release would constitute an unwarranted invasion of personal privacy.

Video Editing and Redaction

Another recurring issue related to requests for BWC footage is the cost of producing the records. MPD should release to the public, in the form of policy or regulation, redaction guidance that explains the cost of the act of redaction in actual work hours (cost per hour). MPD should also provide guidance on expected acceptable time frames for completing the video editing and redaction. Promulgating regulations or policies respecting cost per hour for production and guidelines for redacting would serve the public interest by clarifying the video production process.

MPD currently uses an outside contractor to perform redactions. I also encourage MPD to consider internal resources to edit its BWC video. Having government personnel perform video redactions could reduce costs to the public to receive BWC footage. The FY 2021 budget should assist MPD to expand the BWC program by hiring additional staff to assist in handling video requests from the public, and requests from other law enforcement, prosecuting agencies, courts and defense attorneys. Moreover, the District should consider utilizing the Office of Cable Television, Film, Music, and Entertainment (OCTFME) to assist with this process. OCTFME has state-of-the-art video editing capability. MPD should consider partnering with this agency to edit its BWC footage. Using internal resources could result in a cost savings and decrease the amount of time it takes to turn over footage.

CONCLUSION

Thank you, Chairman Allen, for the opportunity to testify. I am happy to answer any questions from the Committee.