

## Discussion

**Background:** In February 2015 Council requested the police department to explore a body-worn camera program. Since that time the police department has examined law enforcement best practices, model policies, state statutes, the technology advancements of the hardware and software systems and received community input. In November 2017, staff recommended to Council that our police department implement a body-worn camera program to assist in collecting evidence, writing accurate reports and providing greater transparency and accountability. At the council's direction, policy development, evaluation and testing of body-worn camera hardware and software equipment began in January 2018.

To develop a comprehensive policy on the appropriate use of body cameras that would meet the community's expectations, an internal work group was formed to evaluate best practices, model policies and state statutes regarding use of body-worn cameras. The resulting draft policy was shared with the city's police advisory and human rights commissions and multi-cultural advisory committee; with the St. Louis Park School District; and with Benilde St. Margaret's School and other local private schools. Feedback from each of the groups was evaluated carefully, with a number of recommendations incorporated into the draft body-worn camera policy

On July 30, the draft policy was made available on the city's website, and the community was invited to review the draft and provide comments online. Additionally, the community was invited to attend a public hearing as part of the St. Louis Park City Council meeting Monday, August 20,. At this public hearing 4 community members provided comments to the city council regarding the draft policy. Additionally, all the comments received online have been provided to the city council and entered into the public record. All comments have been carefully reviewed and evaluated to ensure the body-worn camera policy meets the needs of our community. Since the completion of the August 13, 2018 study session and the August 20, 2018 public hearing, updates have been made to the original draft policy presented to council. For example, staff heard from council that there were concerns on the clarity of the policy when the officers are required to turn the cameras on and off.

There have been three topics that have been carefully considered as we developed the draft policy and were discussed as part of the community input process. First, when the cameras are turned on and off; second if and when officers are allowed to view their videos prior to writing a report or providing a statement; and third, what data is considered public, private, and confidential. The following is a discussion of these three points.

### **When the Cameras are turned on and off?**

The revised draft policy states, "Officers shall activate their BWCs when anticipating that they will be involved in, become involved in, or witness other officers of this agency involved in a pursuit, Terry frisks, a traffic stop of a motorist, an investigative stop of a pedestrian, searches, seizures, arrests, response to resistance incidents, any encounter that becomes in any way hostile or confrontational (also known as) adversarial contact, and during other activities likely to yield information having evidentiary value. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and

Documentation guidelines, part (E)(2) (above)". The policy states that officers only have discretion to activate their camera during general citizen contacts. General citizen contacts are defined as, "an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood".

Careful consideration and review was given by our draft policy workgroup when deciding when to require officers to record citizen encounters. Staff believes that the requirements of when recording is mandatory provides the greatest opportunity to have video recordings of encounters that potentially could involve adversarial contacts, response to resistance or result in allegations of misconduct. We believe that this policy balances the need for body-worn cameras to assist with gathering evidence, accurate report writing and allowing for transparency and accountability with the need to protect the privacy of the community we serve.

### **If and when officers are allowed to view their videos**

The draft policy states, "Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident. Officers shall not use the fact that a recording was made as a reason to write a less detailed report".

Careful consideration and review was given by our draft policy workgroup when deciding if this policy would allow officers to view their video prior to preparing a report, giving a statement, or providing testimony about an incident. Nationally recognized as a best practice think tank for police executives, the Police Executive Research Forum (PERF) recommends that officers be allowed to watch their video. PERF notes that officers will be able to report and testify more accurately when they are provided access to "all possible evidence of the event". PERF indicated that, "withholding video evidence from an officer until after he or she testifies can unfairly undermine the officer's credibility". PERF and Department of Justice report on body worn cameras sites that police executives believe that allowing officers to review body-worn camera footage prior to making a statement or writing a report about an incident in which they were involved provides the best evidence of what actually occurred. PERF agreed with the statement and believes the best practice is to allow officers access to their video. The International Association of Chiefs of Police suggests the decision should be locally based on discussion between the agency leaders, union representatives, and other relevant stakeholders such as prosecutors.

The police department has also consulted with the Hennepin County Sheriff's Office and the MN Bureau of Criminal Apprehension, who are the two entities most likely to be asked to investigate a critical incident involving a SLP officer. Both entities have stated officers watching the video will not undermine their investigation. Both entities stated the fact that an officer watched video would be reflected in their investigative report. Union counsel that represent police officers and legal defense attorneys for police officers have recommended an officer

involved in a critical incident be provided the opportunity to have their attorney view the video. The attorney would then consult with the officer before making their decision to watch the video prior to providing a statement. A possible unintended consequence of creating a policy which does not allow an officer to view their video prior to providing a statement regarding a critical incident is the officer electing not to provide a statement. The department has also consulted with Colich and Associates and Campbell and Knutson law firms who represent the City as our prosecuting attorneys and as our civil attorneys. Both law firms are in support of our officers being afforded the opportunity to view their videos prior to writing a report or providing a statement.

### **What data is considered public, private, and confidential?**

In accordance with the Minnesota Data Practices Act, 13.825 Portable Recording Systems, the policy states:

- A. BWC data is presumptively private. BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
  - 1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
  - 2. Some BWC data is classified as confidential (see C. below).
  - 3. Some BWC data is classified as public (see D. below).
- C. Confidential data. BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the “private” classification listed above and the “public” classifications listed below.
- D. Public data. The following BWC data is public:
  - 1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
  - 2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
  - 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted [if practicable]. In addition, any data on undercover officers must be redacted.
  - 4. Data that documents the final disposition of a disciplinary action against a public employee.

A second internal work group has been evaluating the available body-worn camera hardware and software to identify the appropriate equipment that will meet the needs of the St. Louis Park Police Department. Field testing of equipment from two vendors will take place this fall. Following evaluation and testing, equipment will be purchased from the selected vendor. Once the body-worn camera policy has been finalized and equipment has been selected, officers will receive comprehensive training on the equipment and its appropriate use. Our goal is that by March 31, 2019, all St. Louis Park police officers will be using body-worn cameras.

**Next steps:** Assuming the draft policy is acceptable to the city council, on September 4, council will be asked to take action to approve the implementation of a body-worn camera program.