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Body Cameras for the Buffalo Police: Best Practices for Policy Creation

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Body Cameras for the Buffalo Police: Best Practices for Policy Creation

Abstract

This policy brief was drafted by Sarah Wooton, policy analyst at Partnership for the Public Good. It recommends that the Buffalo Police Department adopt policies governing the use of body cameras with a focus on six areas: activation, pre-report viewing, footage retention, footage protection, public disclosure of footage, and public input. Research suggests that simply adding body cameras may not improve policing without strong policies in each of these six areas.



PARTNERSHIP FOR THE PUBLIC GOOD

This policy brief was drafted by Sarah Wooton, policy analyst at Partnership for the Public Good. It recommends that the Buffalo Police Department adopt policies governing the use of body cameras with a focus on six areas: activation, pre-report viewing, footage retention, footage protection, public disclosure of footage, and public input. Research suggests that simply adding body cameras may not improve policing without strong policies in each of these six areas.

More information on policing in Buffalo is available in the following PPG publications:

- “The City of Buffalo Police Department,” Fact Sheet (December 2017; available [here](#).)
- “Advancing Racial Equity and Public Health: Smarter Marijuana Laws in Western New York” (November 2017; available [here](#).)
- “Better Policing for the City of Buffalo: Toward Community, Transparency, and Justice” (September 2017; available [here](#).)
- “Collaboration, Communication and Community-Building: A New Model of Policing for 21st Century Buffalo” (November 2016; available [here](#).)
- “Alarming Disparities: The Disproportionate Number of African American and Hispanic People in Erie County Criminal Justice System” (November 2013; available [here](#).)

Policy Brief

Body Cameras for the Buffalo Police: Best Practices for Policy Creation

DECEMBER 2017

Since the August 2014 shooting of Michael Brown in Ferguson, Missouri, many law enforcement agencies have begun outfitting their officers with body-worn cameras. These cameras are thought to improve police transparency, increase community trust of police, and decrease use of force.

The research on the effectiveness of body cameras in law enforcement, however, has demonstrated mixed results. Some studies have shown body cameras to be effective in reducing the number of use of force incidents and citizen complaints against officers by up to half.¹ However, a more recent study of the Washington, DC, police found that body cameras had no impact on use of force or citizen complaints.² Notably, other studies show that the *policies* governing body cameras are crucial to their impact.³

In the meantime, body cameras are becoming the new norm. In a 2015 survey of 70 U.S. police agencies, 96 percent reported that they were moving forward with body cameras or had already fully implemented them.⁴

In July, the Buffalo Police Department (BPD) followed suit by announcing a pilot body camera program. This pilot will determine whether the BPD purchases 550 body cameras for its entire patrol force. In the pilot, the BPD will outfit 20 to 30 officers in the B-District with Viewu body cameras. The BPD has not announced when the program will begin.⁵ It has created a draft policy for the pilot program but has not made the document public.⁶ When PPG asked for a copy to inform this brief, the BPD did not provide it. The department has not yet announced community forums or plans to engage citizens in the creation of the final policy.

While the BPD’s pilot program is a promising step in the right direction, the policies that govern this technology will be crucial to its success. A body camera policy should facilitate

transparency and accountability while also respecting privacy interests. In this brief, we outline six considerations and recommendations for Buffalo's body camera policy, including full citizen engagement in its creation.

1. Activation

One major consideration for body camera policies is when officers will be required to activate the cameras. Body cameras only capture footage when they are turned on, but agencies run the risk of compromising civilian privacy and community trust if the cameras run constantly. For instance, should an officer record when inside someone's private home? Should he or she record when interviewing a child, a victim of sexual abuse, or an informant who fears retaliation? Recording in these situations may breach individual privacy and make crime victims less likely to come forward. Should an officer record casual conversation with members of the public while doing community policing work? Some police chiefs feel that members of the public are less likely to interact with the police if they know that even the most offhand conversation will be recorded.⁷

Researchers suggest that in order to protect privacy interests, there should be some degree of officer discretion. For instance, some agencies give officers discretion when it comes to recording the following: children; victims of sexual assault, abuse or other sensitive crimes; individuals who are partially or completely unclothed; informants who fear retaliation; and people inside their homes.

On the other hand, officer discretion must be limited. If officers can turn cameras on

and off whenever they please, body cameras no longer serve their function of accountability. There have been several high-profile incidents involving the death of a civilian during encounters with officers who were equipped with body cameras, but whose cameras were off during the incident.⁸ Instances like this undermine police transparency and defeat the purpose of instituting a body camera program.

Research also demonstrates the importance of limited discretion. In a study of eight police departments, where officers did not use discretion (e.g. had the camera on during every encounter), use of force decreased by 37%. In departments where officers chose when to turn the cameras on and off, use of force rates were 70% *higher* than when those same officers did not use cameras at all.⁹



KEY QUESTIONS

- When will the cameras be on?
- In what situations should an officer have discretion to turn the camera off?
- What is the disciplinary protocol if an officer fails to record when policy requires them to do so?
- How will officers let civilians know that they are recording?

Best Practices

Both the Police Executive Research Forum (PERF) and the American Civil Liberties Union (ACLU) suggest that officers should be required to activate body cameras when responding to all calls for service and for all other law-enforcement related encounters between an officer and a member of the public. This would include traffic stops, arrests, searches, interrogations, and pursuits.¹⁰ Once a camera has been turned on, it should be left on until the encounter is over (e.g. until an arrestee arrives at the police station).¹¹

Officers should be required to get on-camera consent to record from all crime victims and from people inside of homes.¹² If consent is not given, the denial of consent should also be recorded on camera before the camera is turned off.

If the BPD allows for any discretion when it comes to certain situations (e.g. partially or fully unclothed subjects, informants who fear retaliation), these situations should be listed clearly in the policy. If officers use their discretion and decide to turn the camera off, they should be required to state their reason—on camera.¹³

The policy should state that, when in doubt, an officer should record.¹⁴ Officers should also be required to turn on cameras when a casual encounter with the public suddenly becomes adversarial.¹⁵

Regardless of what the BPD decides in terms of activation, all mandated recording situations should be *expressly stated in a written policy*.¹⁶ In the case of an officer who fails to record when mandated to do so, the policy should also state what sort of disciplinary measures will be taken.¹⁷

In Daytona Beach, Florida, if officers turn their cameras off when they are not supposed to, they are let go from their position.¹⁸

Civilians should know when they are being recorded. This is accomplished easily if cameras have a light that blinks when on, but officers can also wear a visible pin or sticker saying that the camera is on.¹⁹ Officers should also be required to give verbal notification that a subject is being recorded.²⁰

2. Pre-Report Viewing

One of the most disputed issues in the nationwide body camera conversation is whether officers should be able to view footage of an incident before writing a police report.

On one hand, part of an officer's job is to give precise documentation of an encounter in a police report. Reviewing footage captured on a body camera during the incident can help officers refresh their memory so that they can provide a more accurate and detailed description than what they might otherwise recollect. On the other hand, some people worry that officers might rework their telling of incidents based on what they see in the video.



KEY QUESTIONS

- Can officers view body camera footage before writing a police report?
- What are the circumstances under which an officer can view body camera footage?

Best Practices

To ensure that body cameras protect civil rights, the BPD policy should prohibit officers from viewing body camera footage before writing a police report in cases of use of force. The legality of use of force is largely based on an officer's perception of danger during the incident.²¹ If police can view body camera footage before writing a report of the incident, the record of the officer's actual perception and memory of the encounter may be lost.²²

Some law enforcement officials worry that this policy will undermine officers' credibility; if there are inconsistencies between an incident report and the camera footage, the public might question an officer's intentions. However, the same could be said for a civilian's written recollection in a use of force complaint.²³ The human memory is imperfect, especially in high stress situations.²⁴

As noted later in this brief, public engagement should play a significant role in the creation of body camera policies. A discussion of the unavoidable role of occasional human error in this process should be included.

3. Footage Retention

In many departments that have body camera programs, hundreds of officers are recording multiple hours of footage each day. This footage can add up very quickly—both in volume and cost. A law enforcement agency must have a method of differentiating between footage that has evidentiary value and that which does not. Storing footage without evidentiary value for long periods of time can compromise individuals' privacy interests. Conversely, deleting footage too quickly can harm accountability.



KEY QUESTIONS

- How long will footage be held?
- How will evidentiary footage be differentiated from non-evidentiary footage?

Best Practices

To determine how long footage should be stored, the BPD should adopt a flagging system as outlined by the ACLU.²⁵ Flagged footage will be retained longer (for instance, a certain number of years), while unflagged footage will be automatically deleted within a certain number of days or weeks. Footage should be flagged if the

incident involved use of force, detention, arrest, or if a civilian filed a complaint regarding the incident. A third party should also be able to flag footage if they have some basis to believe that the incident involved police misconduct. Any footage that remains unflagged after a certain period should be automatically deleted. The retention time for flagged and unflagged footage should be stated clearly in the BPD policy and on its website.

4. Footage Protection

Policymakers must assure that footage is kept safe from tampering, deletion and unauthorized downloading. If footage of an officer's questionable behavior can be edited or deleted by that individual officer, that footage will be useless. Further, if individual officers are able to download footage and use it for their own purposes—such as uploading an embarrassing clip of a civilian to YouTube—civilians' privacy will be compromised.



KEY QUESTIONS

- Where will the footage be held?
- How will the agency assure that footage is not tampered with?
- How will the agency assure that footage is not downloaded by individual officers?
- Who will have access to the footage?

Best Practices

Many of these security concerns will be solved if the storage software has certain functionalities. For example, the storage software should prevent individual officers from deleting footage or making rogue copies of footage.²⁶ It should also include immutable audit logs.²⁷ These logs should identify which administrator accessed a given file, what action they took, and when that file was accessed.

Generally, law enforcement agencies choose either to store footage on an in-house server or on a cloud managed by a third party. If the BPD chooses to store footage on a cloud, the BPD should confirm that the cloud has end-to-end encryption. Otherwise, the third party managing the system will be able to access the footage.²⁸ The BPD's written policy should also address footage security. The policy should outline the process for officers to upload footage, including when they should upload—such as immediately following each shift. It should also clearly state that officers are prohibited from tampering with or deleting footage. In the case of an officer who claims that their camera malfunctioned during an incident, the department should have a written procedure for conducting forensic reviews of the officer's camera equipment.²⁹ The policy should also state who *is* authorized to access footage once it is uploaded to the storage location.

In many law enforcement agencies, if an officer is involved in a civilian death, policy dictates that the officer's supervisor is required to physically take custody of the officer's body camera at the scene of the incident.³⁰ The supervisor then assumes responsibility for uploading the footage.

PPG recommends that the BPD adopt this policy as it adds one extra level of protection when high-stress situations occur.

5. Public Disclosure of Footage

In creating a body camera policy, agencies must decide how and when members of the public will be able to access body camera footage. This requires balancing two sometimes conflicting values: transparency of government and privacy of civilians. Though we may want footage to be as accessible as possible, where is the line? Should a nosy neighbor be able to request the footage recorded inside an individual's home? Should the public have access to footage of an interview with an informant who fears retaliation? Law enforcement agencies must have a standard by which to evaluate these requests from the public.



KEY QUESTIONS

- What footage will be accessible to the public?
- What footage will be accessible to the subject of the recording?
- What is the process for members of the public or subjects of recordings to obtain footage?

Best Practices

Best practices are simple when it comes to disclosing footage to the subject of the recording: individuals who are recorded by the police should have access to those recordings for as long as they are stored by a government entity. This right should extend to the individual's attorney and next of kin.³¹

Policy recommendations get more complicated, however, when it comes to access for other members of the public. Building on the ACLU's flagging system, the CATO Institute provides a helpful framework for evaluating these requests.³² They suggest that footage should be categorized based on where it was filmed. If footage was recorded in a space where the expectation of privacy is high, such as a residential home, the footage should not be accessible to anyone except the subject and the subject's attorney. On the other hand, if the footage was taken in a space where the expectation of privacy is low, such as in a public restaurant, flagged footage should be accessible to the public. Flagged footage is that which involves arrest, detention, use of force, a civilian complaint, or potential police misconduct.

Unfortunately, under New York State law as it exists today, the BPD may attempt to block access to *all* body camera footage from subjects and members of the public alike. In New York as in most states, freedom of information laws (FOIL) dictate what body camera footage is available to the public upon request. New York, however, is one of only three states with a law specifically exempting police personnel files from FOIL requests.³³

BODY CAMERAS FOR THE BUFFALO POLICE

New York Civil Rights Law §50-a states that all police personnel records “used to evaluate performance toward continued employment or promotion...shall be considered confidential and not subject to inspection or review without the express written consent of such police officer... except as may be mandated by lawful court order.”³⁴ Since body camera footage can arguably be used to evaluate an officer’s performance, police agencies may attempt to deny access to any body camera footage that might suggest officer misconduct.³⁵ This means that when members of the public accuse an officer of misconduct in New York, they may have to litigate and win to get access to the footage of the incident.

Fortunately, the courts have held that “a blanket denial of access to records is inconsistent with the requirements of the Freedom of Information Law.”³⁶ For a document to be exempt from a FOIL request, an agency must articulate a “‘particularized and specific justification’ for not disclosing requested documents.”³⁷ That is, the BPD should not be able to keep an entire subset of files—namely, body camera footage—from the public.

Furthermore, body camera footage is by its nature not a “personnel record.” The footage is created for many purposes, including officer and resident safety, evidence gathering, and public information; it is not created primarily to evaluate performance. In fact, the BPD does not do performance evaluations of its officers, so it would be hard to argue that body camera footage was designed for that purpose.³⁸

Whatever footage release policy the BPD adopts, the department should announce it publicly before instituting body cameras

and recording footage. The NYS Committee on Open Government “strongly recommends” this practice.³⁹

To the extent that the BPD attempts to label body camera footage as personnel files under 50-a, at least one police oversight group will be able to view the footage anyway. There is an exemption in 50-a for “any agency of government which requires the records...in the furtherance of their official functions.”⁴⁰



The City of Buffalo’s Commission on Citizens’ Rights and Community Relations (CCRCR) was created in 2001 to eliminate discrimination and bias in the City. According to the City Charter, the CCRCR has the authority to review, monitor, and report on the relationship between the Buffalo police and community members. This includes the power to review files associated with citizen complaints against the police.⁴¹ Therefore, the CCRCR falls within the exemption listed in 50-a, and it should have automatic access to BPD body camera footage.

As calls for police transparency have amplified across the country, so too have calls for the repeal or amendment of NYS Civil Rights Law 50-a. Among them are the Department of State’s Committee on Open Government, New York City Mayor Bill de

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Blasio, and various state senators and assembly members. State lawmakers have introduced multiple bills to amend or repeal the law, but police unions have exerted significant pushback.⁴² Until 50-a is amended or repealed, it will pose a roadblock to true transparency within New York State law enforcement.



6. Public Input

From Los Angeles to Cincinnati to Albany, many law enforcement agencies have involved the public in their body camera policy development.⁴³ The Albany Police

Department, for example, held multiple open forums, shared draft policies with the public, solicited feedback from community, and then incorporated that feedback into the final draft of the policy.⁴⁴ Involving the community in policy creation improves the policy itself and public support for it.

So far, the BPD has not involved the public in the creation of the draft policy and has kept the policy itself under wraps. The BPD should immediately release its draft policy and organize multiple community forums for civilian feedback. Individuals should also be able to comment online. The BPD should then take this feedback into consideration when revising the draft.

When the final draft of the policy is released, the BPD should make it easily accessible online and available in print upon request. Transparency should not have to wait until the cameras turn on; it should be a conscious effort on the part of law enforcement at every step along the way.

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