



August 10, 2016

Harry Black, City Manager, City of Cincinnati
Cincinnati City Hall
801 Plum Street
Cincinnati, Ohio 45202

Eliot Isaac, Police Chief, City of Cincinnati
Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214

SENT VIA U.S. MAIL

RE: Body Worn Camera Policy/Procedure 12.540

Dear City Manager Black and Chief Isaac:

The ACLU of Ohio is aware of the recent release of Procedure 12.540 to govern body worn camera systems for the Cincinnati Police Department. This letter is in response to the request for public comment on the policy and provides the ACLU of Ohio's opinions and recommendations regarding Procedure 12.540.

The ACLU of Ohio has closely followed the emergence of body worn cameras as a new tool for law enforcement. Their use affects a wide range of civil liberties interests including police accountability, personal privacy (for both residents and officers), mass surveillance, open records, and government transparency. The ACLU of Ohio believes body cameras can be an important tool with many positive benefits but only if proper procedures and policies are in place to regulate their use and ensure positive benefits for all stakeholders.

Below are the ACLU of Ohio's specific concerns regarding Procedure 12.540:

Notification of recording

On Page 2, in the 3rd paragraph under "Information," the policy states "officers are not required to inform citizens they are being recorded with the BWC" and goes on to explain "the personal contact between an individual and an officer does not constitute an environment where there is a reasonable expectation of privacy."

Whether or not such an event should fall under a "reasonable expectation of privacy" should not be the defining factor in these situations. The ACLU of Ohio urges a different approach to this matter for two reasons.

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First, there are situations where people may wish to make a police report after witnessing of a crime or being a crime victim. However, many will refuse to do so if they know they are being recorded. You are certainly aware of current challenges in getting witnesses and victims to step forward with valuable information for law enforcement when they are *not* being recorded.

If people willingly disclose valuable information to police, only to later discover their revelations were unknowingly recorded and possibly available to the general public, the fallout could reasonably lead to far fewer people cooperating with law enforcement and increased suspicion of body worn cameras.

Second, it is well-established many people will behave differently if they know they are being recorded. This benefits law enforcement because false accusations, unruly behavior, and related actions can be expected to decrease as a result of full disclosure someone is being recorded.

Informing everyone that they are subject to recording by body worn cameras would also require two other changes in the policy:

Amending the restriction found on Page 3 under "Procedure" at 4(a) -- "Officers will not use the BWC to record the following: Confidential informants or undercover officers" -- by adding language such as or similar to "all people reporting a crime, their witness of a crime, or their being a victim of a crime" to the list of prohibited BWC recordings.

As well as language found on Page 4 "Procure" at 2(i) -- "officers are not required to initiate or cease recording an event solely at the request of a citizen."

Such changes will benefit both the community and police and increase public acceptance of body worn cameras.

Retention of Recordings

Currently, Procedure 12.540 mentions only two specific time periods for recordings to be kept. On Page 1, there is reference to a 90-day retention period for "recordings not categorized for retention." On Page 2, it is explained "recorded events necessary for the investigation of administrative incidents (e.g., Use of Force, Citizen Complaints)" will be kept for two years or until the administrative investigation is complete, whichever is greater. Otherwise, the policy makes no mention of how long other recordings will be retained.

It is the ACLU of Ohio's recommendation that a full retention schedule be included in Procedure 12.540 in order to provide greater transparency regarding body worn cameras in Cincinnati. In addition, we urge you to adopt a retention schedule that allows for longer retention periods dependent upon the seriousness of the matter.

For example, retention should be measured in years, if not unlimited, for recordings of incidents that lead to death-eligible convictions and sentences. Other matters, such as allegations of police misconduct or civil rights abuses should be retained for at least three years, as the timeframe to file a lawsuit in federal court for such cases is two years.

For matters of no interest to the public or law enforcement, the ACLU of Ohio is appreciative of the policy's current 90-day retention period for the privacy protections it provides.

Officer Viewing of Recordings

On Page 5 (Procedure (B)(3)) the policy anticipates officers will view footage. The ACLU of Ohio advises against permitting officers to review recordings prior to completing incident reports. Unfortunately, sometimes controversial situations arise that reflect poorly on an officer or department and are only partially captured, or sometimes not at all, by body worn cameras. When that happens, there is sometimes temptation to not disclose all the facts of the incident on a report. Regrettably, we know of occurrences of this type with regard to both dash cameras and body worn cameras.

Such an addition would help reassure the public body worn cameras work to provide police accountability instead of hampering it.

Prohibited Uses

The ACLU of Ohio recommends two additional situations under (A)(4) when the use of body worn cameras should be forbidden:

First, we recommend a prohibition against the use of body worn cameras to provide ongoing surveillance of constitutionally-protected activities such as political and religious rallies, protests, and gatherings. Second, not allowing body worn cameras in public or private schools. Naturally, language from the current policy can be copied to clarify "except during an active incident" with regard to both suggestions.

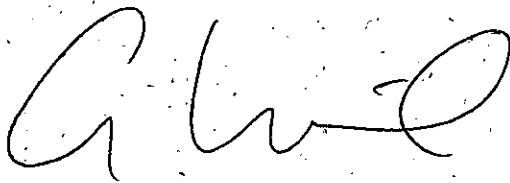
Again, these prohibitions will give the public confidence body worn cameras are used to improve policing and not spy on peaceful activities or record students.

OVI Offenses

Under Section (E)(3)(b), the policy states "OVI recorded events will only be released with the approval of the prosecutor." Simply put, giving prosecutors unfettered discretion to release or not release these records is in direct contradiction to Ohio's public records laws and has no place in Procedure 12.540 or any other policy governing police body cameras.

In closing, the ACLU of Ohio hopes these concerns and recommendations prove helpful as you continue to evaluate Policy 12.540. I am available at your convenience for further conversation and input, if desired.

Sincerely,



Gary Daniels
Chief Lobbyist

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