



## ***Communities United Against Police Brutality™***

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### **ANALYSIS OF SPPD BODY WORN CAMERA DRAFT POLICY**

The St. Paul Police Department released their draft Body Worn Camera Policy on October 27, 2016, in preparation for a pilot program starting in the Western district in November. We offer the following analysis of their draft policy.

#### **Key Issue 1: Purpose of Body Worn Cameras**

In the aftermath of a small study of body camera use in Rialto, California that showed a reduction in police misconduct complaints, cities are adopting these devices wholesale, despite later studies showing that the “Rialto effect” is vastly overstated.

St. Paul’s draft policy provides a list of their purposes on p. 5 and transparency and accountability are de-emphasized. Particularly, the portion of the policy related to viewing the footage (p. 15) indicates that the footage is only to be reviewed for police conduct in conjunction with a complaint or for certain other narrow circumstances and is not to be used for surveillance of officers. In this context, the term surveillance refers to routine monitoring of police conduct, as the policy explains that any evidence of misconduct that is captured by the devices MAY only be used in relationship to a complaint or as part of a use of force review (which is only triggered if the officer completes a use of force report). Otherwise, there will be no periodic monitoring of the footage, making the device useless as an accountability tool. Further, there must be periodic monitoring of the footage to ensure that policy is being followed. The International Association of Chiefs of Police (IACP) considers periodic monitoring a best practice and includes it in their model policy.

#### **Key Issue 2: Activation and Deactivation**

The requirements are outlined on p. 6-9 and seem to be well thought out, though best practice is to record all encounters with members of the public (with notification and consent) and not to leave this up to officer discretion.

#### **Key Issue 3: Notification and Consent**

There is no requirement to seek consent (and the draft policy specifically cites the state's one-party law) but states that officers "could" confirm the use of a BWC if asked. This is significant because there is no indicator visible on the cameras that they are turned on. Our position is that officers should notify and seek consent for use of the cameras in routine encounters, especially in people's homes.

#### **Key Issue 4: Data Retention**

The policy outlines a reasonable scheme for data labeling but allows the individual officer to determine and apply that labeling. Since the labeling determines the retention period for the footage, this designation is crucial. It's unclear if there will be a review of the labels applied by officers--especially when officers label the footage as extraneous (having no evidentiary value) because that footage has the shortest retention schedule. Otherwise, the retention schedule is reasonable.

**Key Issue 5: Data Release**

The policy reflects state law under the MN Government Data Practices Act. However, St. Paul has a significant history of delaying the release of data for lengthy periods and it is unclear what effect this will have on the release of BWC footage. We are also concerned about this statement on p. 17 of the policy: "When possible, the department will notify the officer whose device created the data before BWC Data are released to the public." What is the purpose of this provision?

**Key Issue 6: Use in Surveillance of First Amendment Protected Activities**

This is not addressed in the draft policy but should be. Police should not be using these devices to spy on people engaged in lawful First Amendment-protected activities.

**Key Issue 7: Review of Footage Prior to Writing Reports**

Page 14 of the draft policy states "Officers are authorized to access not public (confidential or private) BWC Data for any legitimate law enforcement purpose, including but not limited to report writing. Nothing in this policy restricts an officer from reviewing BWC Data created by the BWC issued to and operated by the officer, excepting department policy 235.20 Administrative Lockdown." This portion of the draft policy is hugely problematic.

Police officers SHOULD NOT review footage prior to writing their reports. Police reports should reflect the probable cause and other information known to the officer at the time the officer made decisions related to stops, detentions, arrests or other encounters with community members. Further, both the police report and the BWC recording should have separate evidentiary value, which will no longer be possible if the police officer views the recording before completing the police report. Sam Walker, emeritus professor of criminal justice at the University of Nebraska, Omaha, notes in an article "if an officer is planning to lie, video is a good guide to what kind of lie he can get away with."

**Key Issue 8: Off Duty Use**

Because this is a pilot, use during off-duty work is not required. It is best practice for officers working off-duty assignments to use their body cameras during that work and we would hope to see this provision in the final policy.

**Key Issue 9: Right of Public to Document Police Conduct**

This is not included in the pilot BWC policy but is covered in the SPPD policy manual under section 424.02 (p. 335-337) and this policy appears to be in compliance with DOJ requirements to codify the right of the community to document police conduct.

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