



Body-worn or Dash Camera Footage

By Anthony L. Schumann,
Chevon A. Brooks,
and Porsha Winters

Respond to requests for footage first by investigating public records laws and exceptions, then by determining whether a law enforcement agency has internal policies regarding the use of cameras and the release of the recordings created by them.

When Must Law Enforcement Agencies Release Video Footage?

During the U.S. Department of Justice’s announcement of \$20 million in awards to state, city, tribal, and municipal law enforcement agencies to implement and enhance body-worn camera programs, Attorney General Loretta Lynch stated:

As we strive to support local leaders and law enforcement officials in their work to protect their communities, we are mindful that effective public safety requires more than arrests and prosecutions. It also requires winning—and keeping—the trust and confidence of the citizens we serve. These grants will help more than 100 law enforcement agencies promote transparency and ensure accountability, clearing the way for the closer cooperation between residents and officers that is so vital to public safety.

Press Release, U.S. Department of Justice, *Department of Justice Awards Over \$20 Million to Law Enforcement Body-Worn Camera Program* (Sept. 26, 2016), available at <https://www.justice.gov>.

Although transparency is honorable, a department that implements a body-worn camera policy creates a reasonable expectation that the recordings will be reviewable by the public and news media, with certain limited exceptions. At the federal level, the Freedom of Information Act grants the public access to records from any federal agency. 5 U.S.C. §552. Each state has a Freedom of Information Act equivalent that makes any document created and maintained by a public agency presumably susceptible to public release. Similar to the federal act, state laws also create exceptions to required disclosures.

Public records requests are a serious concern for law enforcement agencies that have implemented body-worn cameras for

■ Anthony L. Schumann is a partner of Quintairo Prieto Wood & Boyer (QPWB) in the firm’s Chicago office and Chevon A. Brooks is a partner in the firm’s Atlanta and New York City offices. Mr. Schumann focuses his practice in the areas of governmental liability, employment law, commercial litigation, and governmental enforcement. Mr. Brooks focuses his practice in the areas of civil litigation, including insurance coverage governmental liability, and labor and employment law. Porsha Winters is a former extern in the QPWB Chicago Office and is a third-year law student at Valparaiso University Law School. Dominko C. Rumph, an associate in the QPWB Atlanta office, assisted in the research and preparation of this article.



privacy reasons. State public disclosure laws, also known as freedom of information laws, govern when the footage from body-worn cameras and dash cameras are subject to public release. Most states have carved out exceptions from release during ongoing investigations, exceptions related to public safety, and exceptions related to the best interest of the state. However, law enforcement agencies should apply these exceptions judiciously to promote transparency and accountability. For this reason, it is important that legislatures adopt laws and policies requiring the articulation of reasons for not releasing video-camera footage.

Once video footage is created, it may be a public record susceptible to disclosure, depending on a state's statute. Some law enforcement agencies have created recording policies that give police officers broad discretion in determining when and which interactions to record. For example, an officer in Salt Lake City can deactivate a body-worn camera when speaking to a victim of a crime, a witness to a crime, or an undercover officer. Salt Lake City Police Department, *Salt Lake City Police Department Policies and Procedures Manual* (July 7, 2016), available at <http://www.slcdocs.com>. Dallas requires officers to have body-worn cameras recording while they perform all on-duty activity, while Baltimore requires an officer to record only specific on-duty activities, such as traffic stops or calls. Brennan Center for Justice, New York School of Law, *Police Body Camera Policies: Recording Circumstances*, Brennan Center for Justice (Aug. 3, 2016), available at <https://www.brennancenter.org>.

Federal Position on Body Cameras

Currently, there is no federal law addressing the production of body-worn camera footage. It is especially interesting that most federal law enforcement agencies do not require their agents and officers to be outfitted with body-worn cameras. Recently, the U.S. Customs and Border Protection decided against requiring its officers to wear body cameras, upsetting critics who say that the technology is needed to hold the nation's largest law enforcement agency accountable. The U.S. Customs and Border Protection employs about 60,000 people, including 21,000 agents on the southern

border and 24,000 officers at ports of entry. Molly Hennessy-Fiske, *Customs and Border Protection Rules out Body Cameras for Officers, at Least for Now*, L.A. Times (Nov. 12, 2015), available at <http://www.latimes.com>. Police body-camera policies vary considerably across a range of important topics such as footage retention, officer discretion, and access to footage. According to Matthew Feeney, a policy analyst at the Cato Institute, if the federal government will be involved in funding body-camera programs, it must outline conditions and not hand out money to departments with poor policies. Matthew Feeney, *Where Does the Fed Stand on Body Cams?*, Forbes (Dec. 3, 2015), available at <https://www.forbes.com>. The recent grants for body cameras to local law enforcement agencies by the U.S. Department of Justice (DOJ), combined with its own unwillingness to outfit federal agents with body cameras, suggests that the federal government's attitude toward body cameras needs clarification. *Id.*

Coast-to-Coast Positions on Production of Body-Worn Camera Footage

A national sampling of public records statutes as they apply to law enforcement, body-worn camera footage shows that the state legislatures have taken different approaches to deciding how and when agencies need to produce such law enforcement records. The only common thread among the various states appears to be that each legislature has intended to provide law enforcement agencies with the opportunity to attempt to withhold, or outright to deny, access to records, based upon various exceptions for law-enforcement-related purposes.

Illinois

Illinois law does not specifically address the production of body-worn camera footage, but the legislature's position as it applies to dash-cam footage, as stated in 20 Ill. Comp. Stat. 2610/30(g), which regulates patrol vehicles with in-car, video-recording cameras, audio, or video recordings. As specified in this section, recordings shall be available under the applicable provisions of the Illinois Freedom of Information Act. Only recorded

portions of the audio recording or video recording medium applicable to the request will be available for inspection or copying. 20 Ill. Comp. Stat. 2610/30(g).

Laquan McDonald, a Chicago, Illinois, teen was shot 16 times by Police Officer Jason Van Dyke on October 20, 2014. Information about dashboard camera video of the event prompted a local news reporter,

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Brandon Smith, to request access to the department's recording under the Illinois Freedom of Information Act. Steve Bogira, *Emanuel Blows Off Another FOIA Request for Video of a Fatal Police Shooting*, Chicago Reader (Dec. 14, 2015), available at <http://www.chicagoreader.com>. The Chicago Police Department declined to release the footage, and Smith filed a lawsuit against the department for violating the act. The city argued that the video was exempt from disclosure based on sections 7(1)(d)(i), 7(1)(d)(ii), and 7(1)(d)(vii) of the act. Mem. Op. and Order, at 4, *Smith v. Chicago Police Dep't*, No. 2015 CH 11780 (order granting motion for summary judgment). Section 7(1)(d) lists law enforcement exemptions for release that would interfere with an ongoing criminal, administrative enforcement investigation and pending or actually and reasonably contemplated law enforce-



ment proceedings by the agency that is the recipient of the request. 5 Ill. Comp. Stat. 140/7(1)(d)(i)-(vii). Cook County Judge Franklin Valderrama rejected the department's arguments because "rather than point to any investigation or proceeding being conducted or actually and reasonably contemplated by the department, itself, the department relies on the investigation

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by Independent Police Review Authority, the joint investigation by the State Attorney's Office and the FBI, and the pending federal grand jury proceedings." Judge Franklin Valderrama, *Smith v. Chicago Police Department in the Circuit Court of Cook County, Chancery Division, General Chancery Section*, Loevy & Loevy Law Firm (Nov. 19, 2015), available at <https://www.loevy.com>.

The department failed to meet its burden to prove by clear and convincing evidence that it, as the recipient of the request, was conducting, or actually and reasonably contemplating, a law enforcement proceeding, was conducting an active administrative enforcement proceeding, or was conducting an ongoing criminal investigation, which disclosure of the dashboard

camera videos would interfere with or obstruct. None of the department's cited exemptions extend to public bodies cooperating with a law enforcement proceeding.

North Carolina

Keith Lamont Scott, a Charlotte, North Carolina, resident, was shot by Officer Brently Vinsons on September 20, 2016. The Charlotte Municipal Police Department decided to release its official dash-camera video after receiving assurances by the State Bureau of Investigation that releasing the footage would not harm the integrity of the bureau's probe. Joe Marusak, *CMPD Releases Full Video of Fatal Keith Lamont Scott Shooting*, Charlotte Observer (Oct. 4, 2016), available at <http://www.charlotteobserver.com>. After Scott's shooting, protests led to National Guard and State Highway Patrol officers being called into Charlotte. Consequently, Governor Pat McCrory subsequently signed into law new limits on public access to videos. Emanuella Grinberg, *North Carolina Law Blocks Release of Police Recordings*, CNN Politics (July 13, 2016), available at <http://www.cnn.com>.

Under the amended North Carolina Public Records Law, police recordings are not public records that have mandatory disclosure requirements. However, the amending made the footage permissibly releasable at the law enforcement agency's discretion, but according to statutory guidelines. N.C. Gen. Stat. §132-1.4A(b). People captured in the police camera footage and their personal representatives may request permission from a police agency to view the footage. N.C. Gen. Stat. §132-1.4A(c). The law enforcement agency may grant or may deny access based on a number of grounds. N.C. Gen. Stat. §132-1.4A(d). Eligible persons may always seek an order of a court when a law enforcement agency denies a release request. N.C. Gen. Stat. §132-1.4A(f). Any member of the public that is not involved in the particular incident must get a court order to have footage released. N.C. Gen. Stat. §132-1.4A(g).

Since the North Carolina law passed, a Mecklenburg County Superior Court judge signed an order for the release of police body-and-dash-camera recordings in the shooting of Rodney Smith. WFAE, *Judge to Order Smith Shooting Video Release*

Under New Law, WFAE 90.7 (Jan. 13, 2017), <http://wfae.org>. WFAE, Charlotte's NPR news source, made the request after the two police officers on the scene were cleared of any wrongdoing. WFAE's previous request was denied because the district attorney had not decided whether to charge the police officers criminally. Fred Clasen-Kelly & Mark Washburn, *City Releases Dramatic Video of Officers Shooting Bus Gunman in 2016*, Charlotte Observer (Jan. 26, 2017), available at <http://www.charlotteobserver.com>.

California

California law does not require the disclosure of any of the following records:

Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

Cal. Gov't Code §6254 (f).

California's lack of legislative muster on body-worn cameras has led to widespread division, inconsistency, and widely varying policies, which differ from department to department. Liam Dillon of the *Los Angeles Times* recently detailed division among California state legislators in their attempts to create a statute to enforce uniformity among the state's various law enforcement agencies:

Over the past two years, police departments up and down California have outfitted their patrol officers with body-worn cameras in an effort to boost community trust in law enforcement. At the same time, state lawmakers have tried and failed to pass a half-dozen major bills to address a range of issues including when officers turn the cameras on and off and when the public might see the video.... Without state action, local police departments have developed policies of their own, perhaps leading to declining interest among lawmakers to take on an issue that has been difficult to

resolve. Last year, Democratic lawmakers proposed four major body-camera bills with conflicting aims to increase public access to the footage or further restrict it. None of them reached the governor's desk after law enforcement and civil liberties groups mobilized to defeat the legislation they were against.

Liam Dillon, *Rules for Body Cameras are Left to Local Police Departments as Lawmakers Struggle to Pass Statewide Regulations*, L. A. Times (Jan. 13, 2017), available at <http://www.latimes.com>.

Ricardo Diaz-Zefernio was shot and killed by city of Gardena, California, Police Officers Christopher Mendez, Christopher Sanderson, and Matthew Toda on June 2, 2013. In *Mendez et al. v. City of Gardena*, No. 15-56090, 2017 WL 563145, at *1 (9th Cir. Feb. 13, 2017), the court released video footage that at the time was sealed under a confidential protective order in a federal civil rights lawsuit, alleging excessive use of deadly force, which settled for \$4.7 million. Victoria Kim, *How Much Is a Life Worth? Calculations Behind Gardena's \$4.7 Million Police Shooting Settlement*, L. A. Times (Jul. 16, 2013), available at <http://www.latimes.com>.

The Associated Press, the *Los Angeles Times*, and *Bloomberg* filed a nonparty media limited intervention on First Amendment grounds to unseal the footage. U.S. District Judge Stephan Wilson granted their request for the release of the footage and denied a stay of execution until an appeal. *Eutiquio Acevedo Mendez, et al., v. City of Gardena*, No. 2:13-cv-09042-SVW-AJW, at 1 (C.D. Cal. Jul. 14, 2015). Since the original matter was filed in federal court, Judge Wilson retained jurisdiction. He retained it despite the city of Gardena's argument that the court should decline jurisdiction because the nonparty media intervention motion raised issues under the California Public Records Act, which exempts from disclosure "investigative files." *Id.* at 8.

The Ninth Circuit recognizes the general right to inspect and copy judicial records and documents, including the "right of access to public records and proceedings which is necessary for the enjoyment of the right to free speech." *See id.* at 6-7 (citing *Courthouse News Serv. v. Planent*, 750 F.3d 776, 786-787 (9th Cir. 2014)). The Ninth Circuit also recognizes the media's right

to intervene to protect the public's right to access court records. *See id.* at 7 (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Court-N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999)). Therefore, a nonparty may seek permissive intervention to challenge a protective order under Federal Rule of Civil Procedure 24(b)(2). *Id.* at 1100-01. The right to access judicial records is not absolute, but absent a showing that the requested records have "traditionally been kept secret for important policy reasons[,] a court should begin at a strong presumption favoring access." *Eutiquio Acevedo Mendez*, No. 2:13-cv-09042-SVW-AJW, at 10 (citing *Kamakana v. City of Cnty. of Honolulu*, 447 F.3d at 1172, 1178(9th Cir. 2006)).

The city of Gardena claimed that the video should remain sealed according to the terms of the \$4.7 million settlement agreement. However, the court did not find that argument persuasive because "parties cannot contractually agree to deprive the public of its strong First Amendment interest in accessing the videos." *Id.* at 12. The video recordings were a judicial record under a confidential seal, and the Associated Press and its two cohorts were able to prevail with the federal First Amendment nonparty intervention claim and have the recording unsealed and released.

Oklahoma

Michael Vance was in a deadly shootout with the Oklahoma Highway Patrol after leading law enforcement on a week-long manhunt. Video from police dashboard cameras and helicopter footage was released by the Oklahoma Highway Patrol, voluntarily and without objection, while an investigation was pending, the day after Vance's death. Tribune Media Wire, *Graphic Video Shows Deadly Shootout with Oklahoma Fugitive Michael Vance*, WGNTV (Nov. 2, 2016), available at <http://wgntv.com>. According to the Oklahoma Open Records Act, law enforcement agencies may deny access to law enforcement records not listed in the mandatory disclosure listing, except when a court finds that the public interest of an individual outweighs the reason for denial. Okla. Stat. tit. 51 §24A.8(B). Sections A.9 and A.10 require disclosure of audio and video recordings from equipment attached to law enforcement vehicles or on the person of an offi-

cer subject to redaction. Okla. Stat. tit. 51 §24A.8(A)9, 10. Specifically, before releasing recorded footage, the law enforcement agency may redact or obscure death, severe violence, or great bodily injury. Okla. Stat. tit. 51 §24A.8(A)(9)(a),(d),(e). When a recording is requested, the statute's permissible redaction reasons may help limit the substance of the released footage.

New York

New York provides each individual agency with wide latitude to develop its own rules governing the production of, and access to, public records. New York Public Officers Law §87(1)(b)(i)-(iii) states:

- (b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:
- i. the times and places such records are available;
 - ii. the persons from whom such records may be obtained; and
 - iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute.

New York Public Officers Law §87(1)(b)(i)-(iii).

New York Public Officers Law §87(2)(e)(i)-(iv) provides exceptions to production for records compiled for law enforcement purposes, which, if disclosed, would (1) interfere with law enforcement investigations or judicial proceedings; (2) deprive a person of a right to a fair trial or impartial adjudication; (3) identify a confidential source or disclose confidential information relating to a criminal investigation; or



(4) reveal criminal investigative techniques or procedures, except routine techniques and procedures.

In New York, neither the New York City Council nor the New York Legislature has passed laws specific to police policies relating to body-camera footage. The New York Police Department circulated a 10-page draft policy in the summer of 2016 for

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feedback. New York Police Department, *Operations Order* (June 29, 2016), <https://policingproject.org>. There remains a great deal of uncertainty about whether the footage will be made available to the public, particularly after police shootings. The policy states that there will be a “presumption of access” to the video. Joseph Goldstein, *What Would New York Police Body Cameras Record?* (Oct. 17, 2017), available at <https://www.nytimes.com>.

Washington D.C.

According to D.C. Code §2-532(c)(2)(A), if a body-worn camera-recording recorded by the Metropolitan Police Department is requested by a member of the public, the Metropolitan Police Department, upon request reasonably describing the recording, shall within 25 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested recording accessible or notify the person making such request of its determination not to make the requested recording or any part thereof accessible and the reasons therefor.

D.C. Code §2-532(c)(2)(A).

Georgia

Georgia does not specifically address the release of body-camera footage. According to Ga. Code Ann. §50-18-71(a), “All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.” These exemptions include:

[r]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution....

Ga. Code Ann. §50-18-72(a)(4).

Texas

According to Tex. Occ. Code Ann. §1701.661(c)-(e),

- (c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.
- (d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.
- (e) A law enforcement agency may:
 - (1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301, Government Code;
 - (2) assert any exceptions to disclosure in Chapter 552, Government Code, or other law; or
 - (3) release information requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.

Tex. Occ. Code Ann. §1701.661(c)-(e).

Although Texas state law could prompt production of body-camera footage, some law enforcement agencies may not adequately preserve the footage to begin with. For example, Houston’s Police Department came under fire for its numerous failures to preserve body-camera footage adequately. Then, “Houston’s Chief of Police, Art Acevedo, pledged to make some changes to the department’s body-camera program after a KHOU investigation revealed it has fallen short of its promises.” Jeremy Rogalski, *New Houston Police Chief Hopes to Make Changes to Body-Camera Program*, KHOU 11 News (Dec. 1, 2016), available at <http://www.khou.com>. Houston news station KHOU 11 “discovered several problems in the early months of Houston Police Department’s body-camera program. The Harris County District Attorney’s office identified more than 700 cases with missing or unaccounted body-camera video. Houston Police Department also failed to audit videos as outlined in department policy.” *Id.*

Reasons Not to Release Video Recordings

In 2015, the DOJ awarded \$23 million in funding for body-worn camera pilot programs to support law enforcement agencies. Press Release, U.S. Department of Justice, *Justice Department Awards over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States* (Sept. 21, 2015), available at <https://www.justice.gov>. The Bureau of Justice Statistics has been collecting data on body-worn camera usage through surveys of law enforcement agencies, as well as providing a comprehensive online toolkit that consolidates research, statistics, and model policies to address issues surrounding body-worn cameras. The toolkit resources tab has a map of all 50 states, the current status of legislation, and published guidelines issued by interests groups such as the ACLU. Bureau of Justice Assistance, *Body Worn Camera Toolkit*, Resources, available at <https://www.bja.gov>.

The Urban Institute opened a policy debate forum dedicated specifically to evaluating the effect of police body-worn cameras after the indictment of Cincinnati Police Officer Ray Tensing for the murder of unarmed Samuel DuBose in 2015. Nancy

La Vinge, *Evaluating Police Body Cameras*, Urban Institute Elevate the Debate (Aug. 5, 2015), available at <http://www.urban.org>. Samuel DuBose was pulled over for a missing license plate and was shot in the head by University of Cincinnati police officer Ray Tensing. Charles M. Blow, N.Y. Times, *The Shooting of Samuel DuBose* (July 29, 2015), available at <https://www.nytimes.com>. The discussion in the Urban Institute debate memorialized law enforcement and policy director concerns surrounding public access to police body-camera recordings. Among those concerns, almost unanimously, the issues revolved around the balancing of the constitutional rights of police officers and citizens and the public's right to know.

Body-worn camera footage contains the very early stages of a law enforcement investigation, including unsubstantiated allegations and the most vulnerable moments immediately after victimization. Although the ACLU encourages body-worn camera programs, it encourages law enforcement to initiate policies that protect audibly and visually recognizable civilians on recordings. ACLU, *Suggested Guidelines on Use of Body Cameras by Police*, ACLU of Illinois (Sept. 8, 2014), available at <http://www.aclu-il.org>. Because it believes that the creation of the data spurs a desire for access to the footage, the ACLU encourages very limited police-civilian records. The ACLU believes that recordings that are not flagged for law enforcement purposes should never be disclosed to the public and deleted according to the department's data-retention policy.

Law enforcement agencies have concerns for the privacy rights and safety of police officers. Footage from police-civilian encounters has inflamed the public and made law enforcement the target of revenge during times of heightened public criticism of police. Between twenty-five and thirty thousand protesters poured into New York City to protest the grand jury decision not to indict the police officer who killed the unarmed Eric Garner. Nicole Fuller, *'Millions March on NYC,' Protesting Grand Jury Decision in Eric Garner Death, Ends in Manhattan*, Newsday (Dec. 13, 2014), available at <http://www.newsday.com>. Although this specific incident was captured on a cellular phone, the visual

of the fatal chokehold ignited public backlash. As explained elsewhere, "Without the video of his final struggle, Mr. Garner's death may have attracted little notice or uproar. Without seeing it, the world would not have known exactly how he died." Al Baker, David Goodman, and Benjamin Mueller, *Beyond the Chokehold: The Path to Eric Garner's Death*, N.Y. Times (Jun. 13, 2015), available at <https://www.nytimes.com>. The vivid imagery of a Chicago Police Department officer's shooting and killing unarmed Paul O'Neal, shown face down with his hands behind his back, allegedly provoked gang members to threaten the life of Chicago law enforcement officers. Carly Hoilman, *Report: Chicago Gangs Plotting to Kill Police Officers After Release of Controversial Paul O'Neal Shooting Video*, theblaze (Aug. 9, 2016), available at <http://www.theblaze.com>. The shooting of O'Neal was partially captured on the police officer's body-worn camera.

Another reason to limit the footage released to the public is that body-worn camera footage often cannot stand alone as complete or convincing evidence due to its limited perspective. Without context, any officer's recorded encounter with a suspect can easily be manipulated to resemble a case of police brutality. For example, two police officers involved in a fatal shooting in Palestine, Texas, were both wearing body cameras. From one officer's angle, the suspect's weapon is clearly visible. From the other officer's angle, the gun is only briefly visible. Doyle Murphy, *Video Shows Texas Cops Kill Suspect Outside Applebee's After He Pulls BB Gun*, N.Y. Daily News (July 2, 2015), available at <http://www.nydailynews.com>. Law enforcement agencies and police officer unions maintain that discrepancies such as this support denying the public access to law enforcement-made recordings.

Police officers are also concerned about the effects that footage will have on law enforcement's internal disciplinary process. Law enforcement agencies' body-worn camera policies should state the expectations of privacy that agency personnel have. For example, the Chicago Police Department's Special Order S03-14 plainly states that there is no expectation of privacy whatsoever for department members. Supervisors, members of the

Bureau of Internal Affairs, and Independent Police Review Authority investigations may request to review footage without the department member's permission. Chicago Police Department, *Body-Worn Cameras Policy, Special Order S03-14*, May 2016, available at <http://directives.chicagopolice.org>.

Body-worn camera

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Reasons to Release Video Recordings

In Chicago, video released of Laquan McDonald's shooting ignited the DOJ and U.S. Attorney's Office of the Northern District of Illinois Civil Rights Division's investigation into the Chicago Police Department. The initial report indicates a correlation between longstanding concerns about the Chicago Police Department's excessive use of force and the city's systems for detecting or correcting the unlawful use of force. U.S. Department of Justice, Civil Rights Division and U.S. Attorney's Office, Northern District of Illinois, *Investigation of Chicago Police Department 3* (Jan. 13, 2017). The video-release protocols resulting from this investigation are intended to prevent misconduct while also exonerating officers that are wrongfully accused. *Id.* at 6. In contrast, the decisions of jurisdictions such as Texas, North Carolina, and Oklahoma not to make police recordings public records and only to release recordings at the law enforcement agencies' discretion or under judicial order may only support or



increase the public's negative perception of law enforcement credibility. Peter Bibring and Catherine Wagner, ACLU, *When Policy Body Worn Cameras Aren't the Answer*, Aug. 26, 2016, available at <https://www.aclu.org>. In short, many body-worn camera policies provoke permeating concerns.

In an amicus brief filed by the Ohio Prosecuting Attorneys Association, the issue is framed as the choice between the public's right to know and the public's right to know immediately. Ohio Prosecuting Attorneys Association Br. as Amici Curiae for Resp'ts, *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, No. 2015-0390 (Ohio 2017). In *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, the Enquirer's request for dashboard camera footage was denied repeatedly as confidential law enforcement investigatory records, but the video was finally released when the suspect pleaded guilty in the underlying matter. Ultimately, the court held that the public has a clear interest in police dashboard recordings, and the recordings should have been released upon request because

the entire recording was not investigatory. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, Slip Opinion No. 2016-Ohio-7987, at 14.

Conclusion

Although proponents of body cameras champion the devices as crucial to improving public trust in law enforcement, controversy still exists. Many feel that public confidence in local law enforcement can only be improved through measures such as community-based policing and other methods that allow law enforcement officials to interact directly with members of the community in confrontation-free ways. Many hope that law enforcement is proactive in improving these relationships rather than reactive. Francys Johnson, the NAACP Georgia chapter president, has said, "If we don't fix community-based policing and improve the relationship between police and the community, then all these body cameras will be doing is recording the deaths of more citizens at the hands of police." Craig Schneider, *How Will DeKalb's Police Body Cameras Affect You?*, Atlanta

Journal Constitution (Aug. 23, 2016), available at <http://www.ajc.com>.

Body-worn camera and dash-camera programs are desirable because they create transparency and accountability that many communities believe law enforcement agencies lack. Local media outlets' access to law enforcement-recorded video footage has unveiled instances of questionable police conduct. State public records acts may not be the easiest way to gain access to law enforcement body-worn or dash-camera video footage. Some states provide significant exceptions to production, and some law enforcement agencies have created internal department policies that allow officers to decide when to record.

When responding to any request for body-worn camera or dash-camera video footage, counsel should begin by investigating public records laws and exceptions. Counsel should also determine whether a law enforcement agency has internal policies regarding the use of body-worn and dash cameras and the release of the video recordings created by them. 