

Transcript: Body-Worn Camera Programs— Privacy Perspective

Jay Stanley, Senior Policy Analyst, American Civil Liberties Union (ACLU): The ACLU's position on body-worn cameras is that we support the technology, provided that they are deployed with a good policy framework that, number one, ensures that they'll continue to be effective as an oversight tool, and number two, puts in place some basic privacy protections. You know, we think it's important that there be good privacy protections in how body-worn cameras are deployed. An officer who is entering somebody's house shouldn't be able to turn the camera on in that house without permission unless it's a S.W.A.T. raid or there's a warrant. But any kind of consensual entry into a house, officers should have the discretion to turn the cameras off if they're interviewing a crime victim or children, or they're getting tips about crime from a—
from a citizen who might not want to be on camera. But anytime an officer is involved in a call for service, or a law enforcement action, or any encounter that gets in any way hostile, that camera should be on as a matter of policy, and officers who don't adhere to that policy should be punished. It needs to be enforced. Otherwise, what we have is a tool that allows the police to use it as they want, but will not increase community trust by allowing the public to see what might be difficult encounters. There may be complaints against the police officer, and if the police officer hasn't turned his or her video on, then the public is going to be left guessing about what happened. If this technology is going to be accepted by the community, it needs to serve not just the needs of law enforcement, but it also needs to serve as an oversight tool to help increase community trust over police officers.

One of the controversial questions now is when should body-worn camera video footage be made available to the public, and that's a tricky question that balances the needs of oversight versus privacy. And we're seeing policies right now all over the map. Some places, like Minnesota and Washington State, have very broad public records request laws that basically declare any footage captured by any police body-worn camera is a public record that can be obtained through an open records request. Other police departments and cities are saying, no, none of the footage will be made available to the public. And neither of those, in our view, strikes the right balance. If none of the footage is available to the public, then there will be great suspicion in cases where there's, like, a controversial use of force and the police department refuses to release the video. On the other hand, if all the video is made public, that will invade a lot of people's privacy. So what we've called for is a scheme in which most of the video is not released to the public, but if there's a use of force incident, or a felony arrest, or a complaint against a police officer, that video would be flagged and would be treated differently and would be, presumptively, releasable to the public, with redactions to protect privacy, if possible.

One of the big controversies that we have been dealing with is whether, in a critical incident like a shooting, police officers should be able to review his or her body camera before writing up an initial report. We believe strongly that officers should not be able to do that. No investigator would allow any witness to view video before making their initial statement about a crime. Police officers shouldn't have that right either if there is to be community trust. It might allow an officer who is tempted to lie to tailor his or her story to match what's on the video. But even that, even the best-intentioned officer will inevitably, studies show, have his or her memory changed by watching the video. There may be things that the officer remembers that weren't caught by the video. There may be things on the video that the officer didn't see. And, you know, video is not an objective record of what took place; when it starts, when it stops, camera angle, lighting—those kinds of things can affect how a video portrays a situation. And the officer's own memory is not objective either, but it's a different record of what took place.

The biggest advice that I would give to a police department that's considering adopting body-worn cameras is, number one, don't just slap them on your officers; take the time to develop good, well-thought-out policies. And there are a lot of good models to be found out there. And number two, enforce those policies. We've seen too many departments that have put cameras on their officers with—sometimes with policies in place, but haven't enforced those policies. And so we've seen incidents where officers have not turned on their cameras when they should have, and there's been no consequences for those officers. And that has led to a real decline in trust in those police departments. So those are the

main things. And then I guess the last thing I would say is pay attention to the technology. It's important that the video be secured, be handled well, stored properly, subject to good destruction schedules, and so forth.

From the ACLU's perspective, the biggest issue around body-worn cameras, looking into the future, is whether they will be used right to increase public trust in police officers and balance all the different needs. We at the ACLU, and civil libertarians, and privacy advocates are often unsure how this technology is going to roll out over time and what kind of effects it's going to have. We don't want to see it used as a mass surveillance tool with face recognition used to watch everybody all the time and collect masses of data. We do think that it can be a valuable tool in increasing public trust over police officers, and preserve privacy, and meet some of the needs of law enforcement, and we can balance those things if we put in place good, carefully thought-out policies. There's no reason that we can't reach all those goals.