



*Enhancing access to government information
Ensuring transparency of government operations
Promoting civic engagement*

Published on *D.C. Open Government Coalition* (<http://www.dcohc.org>)

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Coalition presents state-by-state police body cam research

The move around the country to use body-worn cameras as a tool to increase police accountability has been prolific and controversial. Transparency advocates, including the D.C. Open Government Coalition, support use of the cameras with maximum possible public access to the resulting videos. A variety of non-governmental organizations worry about privacy implications associated with use of body cameras and public access to the videos. State and municipal government officials have expressed concern about the costs associated with balancing privacy and disclosure under public records laws.

This was certainly the case in the District of Columbia after Mayor Muriel E. Bowser in February submitted to the D.C. Council a proposed budget for Fiscal Year 2016. One provision would expand a test begun in October 2014 with 400 cameras into a \$5 million permanent, city-wide program to equip 2,400 patrol officers with body cameras. Another provision would have designated body-worn camera video as non-public records not subject to disclosure under the District's Freedom of Information Act.

The DCOGC and many others strongly and vocally opposed this FOIA exclusion. The Council took heed, and Judiciary Committee Chairman Kenyan McDuffie held a hearing on this issue in May 2015. Kevin M. Goldberg, Coalition president, testified against the proposed exemption, and in preparing his testimony asked Ropes & Gray, LLP, the Coalition's pro bono counsel, for help assessing the legislative, statutory and regulatory landscape in states and major cities nationwide.

The resulting research was everything we would have expected from our fabulous lawyers – and more. The team at Ropes & Gray examined every state and 15 major cities, cataloguing pending legislation; policies governing when body cameras should be recording and when they should not; how long recorded videos should be retained and the types of actions that might postpone erasure; whether BWC videos are subject to public records laws; and how police dashboard camera videos are treated under public records laws.

We realized we had something good on our hands that we wanted to share with others interested in these issues, especially transparency advocates. We worked with Ropes & Gray to refine and consolidate the research, and we're presenting it here.

We have significantly streamlined the state-by-state and city-by-city research and are presenting it via [this link](#). The information as originally posted is accurate as of June 12, 2015. However, this information will quickly fall out of date. We have chosen to present it in a Github format and welcome updates from those around the country tracking these issues. If you have never used Github before, don't worry, you'll find instructions at the bottom of the page designed to make it as easy as possible to participate.

For those of you who still wish to view all of the research data, you can download it as a [PDF file](#). But that file will not be updated.

In reviewing the results, we noticed trends. An Executive Summary provides a quick "lay of the land" on all the issues we researched.

We hope you find this research informative and put it to good use if you are working on these issues. **But you should not take it as legal advice**; and always confirm, correct and update what you read here before citing it in documents or speeches (or otherwise relying on it as current and accurate authority).

Please contact us if you have questions about this project.

Executive Summary

Seattle police released this video of a street incident.

The issue of whether police should wear body cameras recording their actions has become an increasingly active area of public debate following the tragic shooting of Michael Brown in Ferguson, Missouri, as well as the videotaped chokehold death of Eric Garner in New York City. Advocates for body camera usage suggest that requiring officers to wear cameras will serve as a check on police violence and also increase openness and transparency in state and local government more generally. Most opponents of body camera usage suggest that the requirement would hinder law enforcement officers in the performance of their duties and provide unreliable evidence. Some privacy advocates also have suggested that police body cameras might be a back door towards allowing heightened government surveillance. The issue is contentious, cuts across typical political lines, and is ripe for policy-making across the country.

The D.C. Open Government Coalition has an interest in enhancing the public's access to government information and ensuring the transparency of government operations. Accordingly, the Coalition, in conjunction with Ropes & Gray LLP, has surveyed 50 states and 15 major cities to prepare an analysis of the current state of laws and proposals governing police body camera recordings. This information is current as of June 12, 2015, and was obtained through a combination of outreach to state and local governments and research into legislative and media

sources.

The Coalition is hopeful that its work will be helpful to state and local legislators seeking to understand the choices their peers across the country have made and spurring those legislators to action. More importantly, the Coalition is hopeful that this work will energize transparency advocates across the country to understand not just what the law is, but what it could be. By providing this resource, the Coalition ultimately hopes to further its ultimate goal of producing open government in our democratic society.

Elements of Body Camera Proposals

At the outset of this analysis, the Coalition focused on four areas relevant to the handling and availability of police body camera recordings:

- Collection of police body camera footage;
- Retention of police body camera footage;
- Applicability of existing Freedom of Information Act (FOIA) laws and exemptions; and
- Related police dashcam footage rules.

Legislative initiatives address some or all of these elements, the latter considered comprehensive proposals.

State Policies

Overview

- Eleven states have passed some form of legislation addressing police body cam footage
 - Nine states have enacted laws[1]
 - Two states have passed legislation that is awaiting signature by the governor[2]
- Fourteen states have not proposed any police body cam legislation at the state level[3],
 - Of those fourteen states, one has had a proposal enacted by a state administrative body[4]
- The remaining twenty-five states have introduced legislation addressing police body cam footage, which either is under consideration[5] or has been debated and rejected in the legislative process.[6]

Collection

Approximately half of states have at least proposed legislation regarding the collection of police body camera footage. There are a range of proposals on this issue:

- On one end of the spectrum, eight states have laws or proposals that would delegate the drafting of collection policies to a third party. This would generally be a law enforcement agency that is likely to craft policies more favorable to law enforcement interests than civil liberty considerations.[7]
- On the other end of the spectrum, several states have proposed legislation that broadly requires police to record in nearly all circumstances.[8]

- Many states are coming down in between these extremes, requiring recording but enumerating exceptions where recording can be stopped, such as allowing that cameras may be turned off when
 - the officer is inside a patrol car
 - a victim or witness requests the camera be turned off
 - the officer is interacting with a confidential informant
 - the officer is engaging in community caretaking functions or
 - a resident of a home requests the camera be turned off when an officer enters the home under non-exigent circumstances.

Retention

Nearly half of states have at least proposed legislation regarding the retention of police body camera footage. As with collection, there are a wide range of approaches:

- Several states have enacted or proposed rules that delegate to local police the authority to craft retention requirements, which tend to result in police-friendly provisions^[9]
- Most states, however, have enacted laws that set specific retention timelines, such as
 - Recordings are retained for periods ranging from 7 days in some proposals to 180 days in the most transparency-minded suggestions, with 30 and 90 days as the most frequent periods
 - Most states allow for a longer retention period of up to 2 or 3 years for special circumstances, including when—
 - a complaint has been filed associated with the recording
 - an officer discharged a firearm or used excessive force
 - death or great bodily harm resulted from the officer's conduct
 - the recording led to detention or arrest
 - the officer is subject to an investigation
 - the recording has evidentiary value or
 - the officer requests that the video be retained for the longer period.

FOIA Applicability

Over half of states have addressed the question of whether body camera footage is covered under existing FOIA laws (and exemptions) or whether the footage requires a specifically enumerated exception.

- Five states have issued blanket prohibitions on accessing police body camera footage under FOIA^[10]
- Some states have proposals that explicitly seek to include body camera footage within the purview of state open record laws^[11]
- Most states that have addressed the FOIA exemption question have suggested that police body camera footage is explicitly excluded in instances where privacy concerns enter the picture
- States have proposed a number of specific circumstances where body cam footage would be exempt from disclosure, such as where footage

- relates to law enforcement investigations
- displays
 - death or serious injury
 - nudity
 - minors under the age of 16
 - detention for mental health or drug treatment purposes
 - personal information
 - the identity of a sex crime or domestic violence victim
 - confidential informants
 - information, including the identity of an officer, that would compromise a pending investigation.

Dashcam Policy

Most dashcam footage policies, by contrast to proposed body camera policies, treat that footage as covered by general FOIA exemptions. For example, Nebraska and Oklahoma currently withhold dashcam footage if it constitutes part of an investigation, and proposals in Missouri and Rhode Island would do the same. However, states appear more comfortable with the public accessing records of dashcams than they are at the present time with public access to the broader range of footage that is collected by police body cameras.

City Policies

While crafting open-record and right-to-know laws has largely been handled on the state level, decisions regarding whether or not to purchase body cameras—and if so, in what quantity—as well as implementation policies, are vested in various city and county legislative bodies. Of the 15 major U.S. cities the Coalition surveyed,

- Twelve cities have implemented a pilot program to test different body camera offerings and develop workable policies for wider implementation^[12]
- Five cities have approved the large-scale purchase of body cameras, with procurements ranging from five hundred to one thousand cameras^[13]
- An additional three cities have a proposed budget item for body cameras currently pending before the city's governing board^[14]
- Only Boston has proved completely unwilling to consider the implementation of body camera systems.

Many municipalities find themselves in the position of purchasing body camera equipment while simultaneously developing appropriate policies to accompany its use. In the ongoing conversation between elected officials, police leaders, civil libertarians, and community representatives, questions of when to record and who can have access to the recordings have proven difficult to resolve. While the majority of cities with clearly defined policies prohibit recording interviews with sexual assault and domestic violence victims, or in areas with an expectation of privacy, the overwhelming response has been to err on the side of recording more, rather than less, police-citizen interaction. Access policies differ widely, ranging from Seattle, which releases all videos (after redaction) on its YouTube page, to San Diego, which treats all videos as evidence and therefore does not release them. The most common standard for length

of retention is ninety days for non-evidentiary recordings.

While state-level policies likely are going to control the conversation going forward, decisions occurring at the local level are distinct for two reasons. First, many municipal proposals and policies are being developed and enacted at a much faster pace than their state counterparts. Second, the interplay between local and state officials on this issue has created an environment where some cities have attempted to craft a model policy to anticipate and guide statewide debate.

Endnotes

[1] AZ, CO, FL, GA, MD, NV, ND, OK, and SC.

[2] IL and TX.

[3] AL, AK, AR, DE, ID, KY, ME, NB, NM, OH, SD, WV, WS, and WY.

[4] KY

[5] CA, CT, HI, IN, IA, KS, LA, MA, MI, MN, MO, NH, NJ, NY, NC, OR, PA, RI, TN, and UT.

[6] MS, MT, UT, and VA.

[7] CT, LA, MD, MN, NV, NH, SC, and VA.

[8] PA, TN, and WA.

[9] CA, CT, LA, MD, NV, NC, SC, and VA.

[10] KS, MA, MO, NH, and SC.

[11] MO, NV, NJ, and NY.

[12] Chicago, Dallas, Detroit, Houston, Miami, Minneapolis, New York, Philadelphia, Phoenix, San Diego, San Francisco, Seattle.

[13] Dallas, Los Angeles, Miami, New York, San Diego.

[14] Atlanta, Philadelphia, San Francisco.
