

# How to Police the Police: What Rules Should Govern Police Use of Body Cameras?

NOVEMBER 26, 2014

Consumer Privacy Security & Surveillance



Monday's announcement that Ferguson police officer Darren Wilson will not be indicted for shooting Michael Brown brought even greater attention to the issue of possible police misconduct. A technological solution – body-worn cameras for police officers – is garnering increased attention, with the parents of the slain teen calling for cameras to be placed on all officers across the nation. While some lawmakers and civil rights groups have embraced this technology, the rules governing what should happen to the recorded data have not been settled. The potential benefits of body-worn cameras will be fully realized only if the technology comes with privacy-protecting rules around it.

Video recording has had a substantial impact on interpretations of police misconduct over the past year. A few notable examples include the death of Eric Garner resulting from an NYPD officer putting him in a choke hold and the suspension of a St. Louis officer for pointing a rifle at, and threatening to kill, Ferguson protesters. But the value of recording cops is not just anecdotal: a recent study revealed that police use of body cameras reduced citizen complaints against the police by 88 percent and decreased police use of force by 60 percent.

With such meaningful potential benefits to the public and law enforcement alike, it's no surprise to see police departments considering requiring body cameras in a number of major cities. The concept has also received attention in Congress. This summer Missouri Senator Claire McCaskill suggested that body-worn cameras could be required for the police departments that want access to federal government programs that allow local police forces to obtain military-grade technology. The White House has expressed support for body cameras as well. However, if body-worn cameras are to protect civil liberties, it will be essential to set certain guidelines. In making those guidelines, these are among the questions lawmakers and public should be asking:

### **When will the cameras be required to be on?**

Body cameras can only be effective if they record interactions that could involve misconduct, however, officer and civilian privacy make continuous recording potentially problematic. Research demonstrates that policies that give officers greater discretion about when to turn on a body-worn camera result in a substantial decrease in video records. A policy might be to require that cameras be turned on whenever an officer is interacting with the public, rather than at officers' discretion or merely when engaged in law enforcement operations. An exception for a defined set "private areas" (such as public bathrooms or locker rooms) could exist to protect officer and civilian privacy in sensitive situations unless the officer enters the private area to conduct law enforcement operations (such as a search or arrest). Also, "pre-event video buffers" that automatically record for a short period before a camera is turned on can help ensure that even when an unexpected interaction occurs, it will be recorded.

### **What should the retention policy be?**

A critical issue for privacy and civil liberties is setting a policy on retention. In order for body cameras to be effective, videos containing police interactions with civilians will need to be retained for a period long enough to permit access to the video if a police misconduct complaint is made. However, a blanket indefinite retention policy would raise serious privacy concerns. Defendants' rights must also be taken into consideration – videos being retained for investigations should be retained until an adjudication is made, and longer retention periods might be necessary for serious crimes based on appeals. Current retention policies for evidence used during prosecution of serious crimes may be guiding in this regard. Retention policies should also require that storage include safeguards which ensure the security of databases, as well as an auditing system.

### **Who can get the video?**

One of the most difficult issues is who can obtain the video. An effective balance should be set between allowing video to be obtained for accountability purposes, while also protecting the privacy of those recorded. Should a distinction be drawn between a news network requesting video from police clamping down on a protest, and a tabloid demanding video from a red light district to scan it for public figures? Should journalists have superior access to police body cam video as compared to the rest of the public, and if so, in an age where anyone can set up blog or amass a thousand social media followers, who qualifies as a “journalist?” Restrictions on release of personally identifiable information may provide guidance. Technology already in use can fairly easily blur out faces, or entirely black out video revealing something private (such as the inside of a bedroom). Should the recorded party have any control over the extent of these redactions?

### **Is notification necessary?**

Notification is often a critical protection for privacy rights, and it seems to be a fitting protection here. Should notice at the time of recording also be required so that civilians, including those committing crimes, can adjust their conduct accordingly? Such notice could be given by means of a light attached to the body camera that goes on when the camera is recording.

### **How should officers respond to someone who doesn't want to be recorded?**

Some individuals may not want to be recorded. This pertains not only to people who seek privacy, but also to people who are committing crimes. Should police policies permit a person who does not want to be recorded to compel the police officer to turn off the camera? If so, which people should have this power: any party to an interaction with a police officer? A person who may be committing a crime or resisting an arrest? A witness? Note that if police are engaged in a law enforcement operation, turning off cameras even at the request of an innocent party heightens the risk that misconduct won't be recorded. A standard of notifying a dispatcher or requiring a written report to a supervisor when the camera is going off at an individual's request might provide some accountability of the police officer.

### **What perspective does the camera have?**

One consideration is whether or not it will make a difference that these cameras are pointed at citizens, and not officers. If the only perspective we have is that of the officer, it might be hard to pinpoint these more subtle causes of escalation. Another consideration is the scope. While advanced features such as night vision can give greater information to viewers, using these tools for body cameras can give a distorted sense of whether an officer had appropriate basis for an action under review. Some departments' body cameras replicate the viewpoint of the officer as closely as possible, a consideration worth keeping in mind as cameras are deployed more broadly.

### **How to handle facial recognition?**

Police use of body cameras that incorporate facial recognition technology, or other video search techniques raise additional questions. It would certainly be useful for a police officer to learn, prior to a confrontation with an individual, through facial recognition technology linked to existing data bases, whether the individual was "wanted" or had been convicted of a violent felony. Or, On the other hand, police could take feed from protests, demonstrations and political rallies, cataloging attendees (something the FBI demonstrated capacity to do in a presentation on facial recognition) in a manner eerily reminiscent of J Edgar Hoover, but on a much larger scale. Facial recognition in police body cameras is being implemented in Dubai and the United Kingdom Body cameras may be a means of enhancing civil liberties and weeding out frivolous police misconduct claims,

but facial recognition threatens to make them an incredibly invasive surveillance tool. If facial recognition technology used in combination with body cameras, there must be strong limitations and independent checks on such use.

Body cameras could present a unique opportunity – a recording technology that privacy advocates, civil liberties organizations, and police might all be able to unite behind. As dissatisfaction with law enforcement continues to roil our nation, calls for this technology will only grow, and perhaps rightfully so. But if body cameras are going to come to America's streets, we need to make sure they are a tool for empowering, not harming, our citizens and their rights.