



NEW YORK STATE ASSEMBLY
COMMITTEE ON CODES JOINTLY WITH THE COMMITTEE ON JUDICIARY AND THE
COMMITTEE ON GOVERNMENTAL OPERATIONS

TESTIMONY OF PHILIP K. EURE
INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD
NEW YORK CITY DEPARTMENT OF INVESTIGATION

EXAMINING THE USE OF BODY-WORN CAMERAS BY POLICE OFFICERS AND
OTHER LAW ENFORCEMENT OFFICIALS

DECEMBER 8, 2015

Good morning Chair Lentol and members of the Committee on Codes, Chair Weinstein and members of the Committee on Judiciary, and Chair Peoples-Stokes and members of the Committee on Governmental Operations. I'm Philip Eure, Inspector General of the Department of Investigation's Office of the Inspector General for the New York City Police Department (OIG-NYPD). The Office was established in 2013 after the passage of Local Law 70, which empowered DOI Commissioner Mark G. Peters to appoint an individual to investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices of NYPD. Our mission is to enhance the effectiveness of the police department, increase public safety, protect civil liberties and civil rights, and increase the public's confidence in the police force, thereby building stronger police-community relations.

Today I'm pleased to present testimony on the critically important topic of body-worn camera use by police officers: The issues it raises and the protections it may provide. To date, there is a lack of sufficient research and consensus among the law enforcement community on whether to even implement body camera programs. However, existing research and anecdotal evidence from many departments –including NYPD—has demonstrated the mere presence of a body camera can preserve both officer and public safety, by calming tense encounters and defusing volatile situations before they deteriorate. The footage captured can also aid in swift prosecution of crimes and assessment of allegations of officer misconduct, thereby increasing the public's confidence in the police. As we move forward, it's important we recognize crucial areas that should be addressed to ensure the successful development and implementation of a body-camera program. My testimony will highlight some of these key areas.

In July of this year, our office issued a comprehensive report on the use of body cameras by NYPD officers, focusing on the Department’s small-scale volunteer pilot and Operations Order 48, which was drafted to govern it. As part of its review, our team also looked at the body camera policies of over 20 police departments across the country and the policy recommendations of advocacy groups and other government agencies, to create an informed and broad-based analysis. Most importantly, we solicited input from and conducted numerous interviews with local stakeholders, including all five New York City district attorneys’ offices, the New York City Civilian Complaint Review Board, the Patrolman’s Benevolent Association, various civil rights organizations and a group of the NYPD officers participating in the program. As a result, we made 23 recommendations for improving Operations Order 48 and the use of body cameras as NYPD transitions from the current small-scale pilot to an anticipated broader rollout. While our recommendations were intended specifically for NYPD’s current program and policies, they inform many of the nuanced questions central to any body camera program and may be applicable to any police department seeking to establish one.

Determining how and whether body cameras should be used by police officers isn’t simple – law enforcement agencies must consider numerous, challenging policy questions.

Perhaps most importantly:

- How much discretion should be given to officers in choosing when to activate and deactivate their body cameras;
- When and for what purposes should officers, police supervisors, citizen complainants, and members of the public have access to body camera videos;
- And for how long should police departments retain those videos.

In crafting a body camera policy, these questions raise unique and often conflicting issues regarding the balance between transparency and the privacy and safety of both officers and the public. We believe that if these and other issues are carefully considered, the use of body cameras by law enforcement can help to improve police-community relations, ensure accountability of police departments, and benefit both the public and the officers who serve it. I'd like to begin with activation.

The Activation of Body Cameras: Balancing Transparency and Privacy

When attempting to strike a balance between transparency and privacy, police departments should first consider when officers should start and stop body camera recordings, and how much discretion an officer should be given in deciding when to do so. Policies must allow body cameras to capture a wide range of officer encounters with the public, while still taking into account the privacy and safety of both officers and citizens.

Body camera policies across the country run the gamut on this issue, ranging from departments like Albuquerque, which previously removed all discretion and mandated officers record every encounter with citizens, to those like Aberdeen, South Dakota, which allow officers full discretion.

In seeking middle ground, our office supports what is called a "limited discretion" model, currently used by NYPD and several other agencies. This model lays out certain situations and standards for when a body camera must be activated or deactivated, while still allowing officers some latitude in judging whether capturing an encounter might benefit the department or a citizen.

While our office supports this general model, the specific “reasonable suspicion” standard used by NYPD for determining when officers must activate their cameras, in our view, is impractical for use by officers, and too restrictive to capture the full range of potentially unsafe police-citizen interactions.

To remedy this, our office recommends that NYPD broaden its standard for activation to include all “investigative encounters.” This adjustment would include all encounters where there is any potential of criminal activity, not only those where there’s reasonable suspicion a crime has been committed or is in progress.

NYPD officers we interviewed acknowledged they’ve used different standards themselves for activation. For instance, some reported recording every encounter with a citizen, while others frequently didn’t activate their cameras until placing a suspect in handcuffs. These officers recognized as a result of this often delayed activation, they were sometimes unable to capture encounters that suddenly became confrontational.

As officers must always consider their own safety over activation of a camera, expanding the standard beyond reasonable suspicion helps to ensure cameras are running early enough to capture an incident should a seemingly peaceful encounter rapidly deteriorate. A broader activation standard may assist in providing valuable evidence to oversight investigators, both to substantiate allegations of officer misconduct when warranted and to quickly exonerate officers when frivolous complaints are filed.

Our office also recommends the Department add protections to Operations Order 48 to prohibit or limit the recording of vulnerable populations, including victims of sex crimes, undercover officers, and witnesses requesting anonymity. Such exceptions, if carefully

documented, may assist officers and prosecutors in performing their duties, as well as protect victims of crimes.

Beyond these requirements, officers should be permitted discretion to determine whether recording would be to their benefit, that of a citizen, or in the interest of justice.

For any police department, the adopted standards of activation and officer discretion must balance transparency against legitimate privacy concerns of both officers and the public to ensure as many investigative encounters as possible are captured.

Viewing the Videos: Access by the Officers, Complainants, and the Public

Negotiating access to footage also poses complex challenges to police departments. A successful body camera policy should attempt to maintain fairness between these many competing stakeholder interests, while preserving the privacy of those captured on video.

When officers should be permitted to access their own body camera footage presents perhaps the most controversial aspect of the policy, raising significant questions regarding accountability and police oversight. Nevertheless, the majority of law enforcement agencies across the country, including NYPD, either allow or even require officers to view footage of an incident of alleged misconduct prior to giving an official statement to the department or external oversight agency conducting an investigation. We disagree with this position.

While allowing officers to view body camera footage before making an official statement may result in a more objectively accurate recounting of the incident, equally important in many internal and oversight investigations is an officer's recollection of why he or she chose a particular course of action. Substantial psychological research suggests that viewing body camera

recordings of an incident may inadvertently alter an officer's honest recollection of events. In particular, footage may capture events that officers didn't see or couldn't reasonably recall. Upon viewing, these events may enter into and alter an officer's statement. While officers should be permitted to amend their statements without penalty after viewing footage, their independent recollection must be preserved to faithfully assess their motives for taking particular actions. For these reasons, we strongly recommend against allowing officers to view video of an incident in which they've been named a subject or witness, until after making an official statement to investigators.

This is not, as suggested by many police departments, including NYPD, an attempt to trap officers or make them appear dishonest. Introducing previously unknown information into officers' statements could, in fact, cause them to appear less credible during the course of an investigation or legal proceeding. And while it's important to be able to detect deception if it arises, officers should not be disciplined for discrepancies between their statements and body camera video without clear evidence they intentionally obscured the truth. Moreover, NYPD makes a comparison between memo book entries, often used to refresh an officer's recollection prior to an official interview, and body camera footage.

But body camera footage is not the same as a memo book entry. Unlike video footage, a memo book entry is a reflection of the officer's independent recollection of an incident – in their own words, penned by the officer – and is unlikely to introduce new information the officer could not have known at the time of the incident.

Likewise, a citizen filing a complaint should not have access to a video prior to making an official statement. In both cases, a “clean statement” must first be taken to preserve an individual’s recollection of an incident under investigation.

Equally important, while supervisors should maintain general access to footage, it is important for there to be restrictions in place to safeguard the rights of subordinate officers in the workplace.

This was a primary concern raised to our investigators by officers, who feared retaliation or harassment by their commanders for minor infractions. We believe supervisors should not be allowed to review footage for the sole purpose of seeking out trivial violations, like those for dress code.

Retention of Video Footage

Finally, a complete body camera policy must set a schedule for retention of video. Such a policy should make footage available for use in a wide range of potential proceedings, while also considering the privacy implications for both citizens and officers, of retaining that footage for extended periods. We acknowledge striking this balance also means navigating the high costs associated with video storage.

Regardless, departments must set a minimum retention period for all footage. In assessing NYPD’s policy, our office found its minimum period of 12 months to be insufficient, because it doesn’t encompass the 18-month statute of limitations on filing disciplinary charges against an officer. A department’s policies must ensure that video is available for the entire life of an administrative complaint to assist in thorough, objective oversight investigations.

Beyond the minimum retention period, police departments must also take into consideration policies for purging footage archived for an arrest or legal proceeding once these proceedings end, to avoid privacy concerns for citizens and officers. Our report discusses this topic at length.

Conclusion

The use of body cameras is not an uncomplicated task. In developing well-reasoned policies, law enforcement agencies should carefully consider the issues we've raised today— of camera activation, access to videos, and the retention of footage—to ensure maximum effectiveness without impinging on the privacy rights of officers or the communities they serve. With the right safeguards in place, body cameras have the potential to increase accountability and strengthen police-community relations. As new body camera programs continue to develop around the country and in New York City, we look forward to participating in an ongoing reassessment of these policies.

Thank you. I'm happy to answer any questions you may have.