

# Police Body-Mounted Cameras: With Right Policies in Place, a Win For All

Version 2.0

## Introduction to Version 2.0<sup>1</sup>

Since we published the [first version](#) of this policy white paper in October 2013, interest in police body cameras has exploded. The August 2014 shooting of Michael Brown in Ferguson, Missouri and the subsequent protests focused new public attention on the problem of police violence—and on the possibility that body cameras might be part of the solution. The following December, a grand jury's decision not to indict an officer in the videotaped chokehold death of Eric Garner in New York City further intensified discussion of the technology.

With so much attention being paid to body cameras, we have received a lot of thoughtful feedback on our policy recommendations. Overall, considering how early in the discussion we issued our paper, we believe our recommendations have held up remarkably well. But in this revision of the paper we have seen fit to refine our recommendations in some areas, such as when police should record. And of course, the intersection of technology and human behavior being highly complex and unpredictable, we will continue to watch how the technology plays out in the real world, and will most likely continue to update this paper.

"On-officer recording systems" (also called "body cams" or "cop cams") are small, <all, suggest that

about 25% of the nation's 17,000 police agencies were using them, with fully 80% of agencies evaluating the technology.

Much interest in the technology stems from a growing recognition that the United States has a real problem with police violence. In 2011, [police killed](#) six people in Australia, two in England, six in Germany and, according to an FBI count, 404 in the United States. And that [FBI number](#) counted only “justifiable homicides,” and was comprised of



One possibility is that some form of effective automated trigger could be developed that would allow for minimization of recording while capturing any fraught encounters — based, for example, on detection of raised voices, types of movement, etc. With dashcams, the devices are often configured to record whenever a car's siren or lights are activated, which provides a rough and somewhat (though not entirely) non-discretionary measure of when a police officer is engaged in an encounter that is likely to be a problem. That policy is not applicable to body cams, however, since there is no equivalent to flashing lights. And it's not clear that any artificial intelligence system in the foreseeable future will be smart enough to reliably detect encounters that should be recorded. In any case, it is not an option with today's technology.

Another possibility is that police discretion be minimized by requiring the recording of all encounters with the public. That would allow police to have the cameras off when talking amongst themselves, sitting in a squad care, etc., but through that bright-line rule still allow officers no discretion, and thus no opportunity to circumvent the oversight provided by cameras.

An all-public-encounters policy is what we called for in the first version of this white paper, but (as we first explained [here](#)), we have refined that position. The problem is that

police misconduct. The presumptions should be rebuttable by other, contrary evidence or by proof of exigent circumstances that made compliance impossible.

Evidentiary presumptions against a defendant-officer in a criminal proceeding should not be sought, as they are insufficient for meeting the burden of proof in a criminal case and might lead to false convictions.

### **Limiting the threat to privacy from cop cams**

The great promise of police body cameras is their oversight potential. But equally important are the privacy interests and fair trial rights of individuals who are recorded. Ideally there would be a way to minimize data collection to only what was reasonably needed, but there's currently no technological way to do so.

Police body cameras mean that many instances of entirely innocent behavior (on the part of both officers and the public) will be recorded. Perhaps most troubling is that some recordings will be made inside people's homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls. In the case of dashcams, we have also seen video of particular incidents released for no important public reason, and instead serving only to embarrass individuals. Examples have included [DUI stops of celebrities](#) and ordinary individuals whose [troubled](#) and/or [intoxicated](#) behavior has been widely circulated and now immortalized online. The potential for such merely embarrassing and titillating releases of video is significantly increased by body cams.

Therefore it is vital that any deployment of these cameras be accompanied by good privacy policies so that the benefits of the technology are not outweighed by invasions of privacy. The core elements of such a policy follow.

#### **Notice to citizens**

Most privacy protections will have to come from restrictions on subsequent retention and use of the recordings. There are, however, a few things that can be done at the point of recording.

1. Body cameras should generally be limited to uniformed police officers and marked vehicles, so people know what to expect. Exceptions should be made for non-uniformed officers involved in SWAT raids or in other planned enforcement actions or uses of force.
2. Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dashcams in some states such as Washington). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying "lapel camera in operation" or words to that effect. Cameras might also have blinking red lights when they record, as is standard on most other cameras.

3. It is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion. (If the preceding policies are adopted, this highly

- x If any useful evidence is obtained during an authorized use of a recording (see below), the recording would then be retained in the same manner as any other evidence gathered during an investigation.
- x Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence.

### **Use of Recordings**

The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime. Otherwise, there is no reason that stored footage should even be reviewed by a human being before its retention period ends and it is permanently deleted. Nor should such footage be subject to face recognition searches or other analytics.

### **Subject Access**

People recorded by cop cams should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

### **Public Disclosure**

When should the public have access to cop cam videos held by the authorities? Public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by policymakers. One way to do that is to attempt to minimize invasiveness when possible:

- x Public disclosure of any recording should be allowed with the consent of the subjects, as discussed above.
- x Redaction of video records should be used when feasible — blurring or blacking out of portions of video and/or distortion of audio to obscure the identity of subjects. If recordings are redacted, they should be discloseable.
- x Unredacted, unflagged recordings should not be publicly disclosed without consent of the subject. These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low. States





violence victims hesitating to call the police for help by the prospect of having a camera-wearing police officer in their home, or are they otherwise affected? Are privacy abuses of the technology happening, and if so what kind and how often?