



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT**

Transmitted via electronic mail

April 14, 2015

Melissa C. Tucker
Associate Director, Mayor's Office of Legal Counsel (MOLC)
1350 Pennsylvania Avenue, N.W.
Suite 419
Washington, D.C. 20004

Re: FOIA Appeal (Marshall-2015-00055)

Dear Ms. Tucker:

This is in response to the appeal submitted by Adam Marshall on behalf of the Reporters Committee for Freedom of the Press (Reporters Committee). The Reporters Committee appeals the Department's partial denial of its Freedom of Information Act (FOIA) request for the following: (1) all BWC (Body Worn Camera) recordings that have been designated "Retain" or "Requires Supervisory Review; (2) all BWC recordings that have been used for training; (3) all records indicating which officers have been issued BWCs including but not limited to narratives in field reports, arrest reports, violation citations and notices of infraction; (4) all BWCs that have been provided to the Office of Police Complaints (OPC); (5) all BWC recordings that have been admitted as evidence or used in any civil or criminal proceeding; and (6) all BWC recordings that have been offered or admitted as evidence in connection with any arbitration or mediation proceeding.

On March 19, 2015, the Department advised the Reporters Committee via electronic mail that it had partially granted its FOIA request. Specifically, the Department withheld: all BWC recordings that were designated "Retained" or "Requires Supervisory Review"; all recordings that have been used for training; all recordings that have been provided to the OPC; and all recordings that are related to pending criminal cases. As of February 9, 2015, there were 1,027 videos categorized as "Retain," 28 videos categorized as "Requires Supervisory Review," and 94 videos used for training purposes.

The Department released a listing of all officers who have been issued BWCs between October 1, 2014, and January 23, 2015. The Department advised that it was in the process of determining how to produce responsive documents related to closed criminal cases. The Reporters Committee was informed that prosecutors from the Office of the Attorney General for the

District of Columbia and the United States Attorney's Office District of Columbia are responsible for offering recordings as evidence in court and not the Department. The Reporters Committee was also informed that the Department has not offered any videos as evidence in any arbitration or mediation proceeding.

The Department reaffirms its position with respect to its response to the Reporters Committee FOIA request. This is the third request from the Reporters Committee for BWC recordings. On October 2, 2014, the Reporters Committee submitted a request for all BWC videos that were created on October 1, 2014, the first day of the Department's pilot program. On that same date, another request was submitted for BWC recordings that were created by officers of the Second Police District. The requests were later modified for all BWC videos created on October 1 and 2, 2014. At that time, the Department orally advised the Reporters Committee that it would be withholding all videos that were part of an active investigation or ongoing prosecution. The Reporters Committee was also informed that it would take some time to produce redacted copies of non-exempt videos. In its later written response, the Department told the Reporters Committee that there were 128 video recordings located from the first two days of the Body Worn Camera Pilot Program and that any of these videos depicting arrests and/or active criminal investigations were exempt from disclosure pursuant to D.C. Official Code §§ 2-534(a)(3)(i). Additionally, the Department stated that:

Moreover, individuals subject to arrest, suspects in the commission of crimes, and victims of and/or witnesses to crimes clearly have personal privacy interests in their names and other identifying information. To determine whether such information may be released, the individuals' privacy interests must be weighed against the statutory purpose of FOIA, i.e. to shed light on MPD's performance of its duties. On balance, the individuals' privacy interests prevail as the release of their identities will not contribute anything to public understanding of the operations or the performance of MPD. Therefore, the faces, names, and other identifying information regarding arrestees, suspects, victims, and witnesses are exempt from disclosure as unwarranted invasions of personal privacy under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) and must be redacted from the requested body-worn camera recordings.

Unfortunately, MPD cannot at this time make the necessary audio and visual redactions to protect the privacy of the individuals captured in the body-worn camera recordings. We must therefore deny your request. However, we will preserve the recordings responsive to your request until such time as we are able to produce them in redacted form to you.

The Reporters Committee appealed the Department's denial to the Mayor in which it essentially argued that contrary to the Department's assertions, the Department does have the capability to redact exempt portions of videos. In Freedom of Information Act Appeal 2015-12, the Department's decision was upheld and the appeal was dismissed.

The Reporters Committee is making the same declaratory statements in the instant appeal that were made and rejected in the previous appeal. However, the Department's lack of technical ability to redact video recordings remains the same. It is still seeking to develop a request for proposal for redaction services, but the task is complicated by the fact that there is no industry standard or set unit price and the videos vary in length from 5 minutes to over an hour. And although the Department has purchased subscriptions to Adobe Premiere and computers meeting the specifications for Adobe Premiere and provided training to a limited number of employees on Adobe Premiere, these internal resources are not sufficient to make the necessary redactions to the responsive videos.

Redacting video is a highly technical skill and time-consuming task. Some video editing applications, including Adobe Premiere, advertise the ability to track faces and objects in motion to be masked or redacted. However, BWC footage, which often involves an officer and a citizen or citizens walking or moving, contains too much motion for the masks to remain on the faces or objects. As a result, the footage must be broken into its individual frames and a mask placed on the face or object in each frame. There are 30 frames per second. A 10-minute video would therefore have 18,000 frames. Assuming that a face or object appears throughout the entire video, a mask must be placed individually on the face or object in each of the 18,000 frames. Moreover, each face or object in the video must be redacted separately. For example, a BWC video of a mother, with a child, involved in a verbal altercation with the father would require three separate frame-by-frame redactions for a total of 54,000 frames reviewed and redacted.

The Reporters Committee makes reference to videos that have been redacted and posted online by the Department. However, the videos that were posted were not redacted by the Department. The videos were redacted by a vendor who determined that its charge to redact the videos was vastly underestimated given the Department's requirements for complete and thorough redactions and the limitations of the software that was used. Moreover, the videos were specifically selected because they were short in duration and would require little redactions. In Freedom of Information Act Appeal 2015-12 the Office of the Mayor stated that in relation to software that the Department could use to redact audiotape, "... "DC FOIA provides no warrant to second-guess the management practices of an agency *in the technologies or equipment which it acquires and maintains* . . . [emphasis added]." The Department has not as yet identified a vendor or the optimum software to handle redactions in a manner required to protect the privacy of persons captured by BWC videos.

The Department has determined that with respect to the Reporters Committee request for documents indicating officers' use of BWCs, it will take staff, working exclusively on this single FOIA request, a minimum of one month to identify and retrieve responsive documents. In addition, any responsive documents would then have to be reviewed and redacted to protect the privacy of arrestees, victims, suspects, and witnesses. Due to the extent of manpower that will have to be expended to produce responsive documents, the Department is not waiving applicable fees. Upon receipt of a communication from the Reporters Committee that it still seeks these documents, the Department will commence

identifying and gathering responsive document and reviewing them for appropriate redactions.


The Reporters Committee argues that the Department must release any videos shown or used in connection with any civil or criminal proceeding. The Department indicated in its initial response to this request that it does not know what videos have been introduced as evidence in civil or criminal proceedings. The federal and local prosecutors have independent access to the BWC recordings. The Department does not know or have any control over what is offered as evidence in court proceedings.

The Reporters Committee asserts that the Department must release all videos that were used for training purposes. Government employees do not relinquish all of their rights when they commence working for the government. Training records are considered a part of an employee's personnel file which is not open to public inspection. Reporters Committee has not set forth any overriding public interest that would outweigh an employee's right to privacy concerning his or her personnel file. The release of an employee's facial image does not inform the public on the workings of an agency.

The Reporters Committee contends that the videos the Department has provided to OPC will not have any impact on any OPC investigation and thus must be released. It is not difficult to comprehend that the release of the videos would interfere with an OPC investigation by possibly giving officers, witnesses or complainants an opportunity to conform their statements or testimony to what is captured by the recordings. Additionally, the Reporters Committee has not proffered a public interest that outweighs the privacy of persons captured in the videos.

As indicated previously, the Department does not presently have the technical and personnel needs for video editing. The Department is continually consulting with police Departments nationwide to ascertain best practices. The Mayor's Office should uphold the Department's partial denial of the Reporters Committee FOIA request.

Sincerely,



Ronald B. Harris
Deputy General Counsel

Teresa Quon, Esq.
Acting FOIA Officer