



2015 SEP 21 AM 9:55
OFFICE OF THE
MAYOR

MURIEL BOWSER
MAYOR

SEP 21 2015

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave., NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is the "Public Access to Body-Worn Camera Video Amendment Act of 2015."

The legislation amends the Freedom of Information Act provisions within Title II of the District of Columbia Administrative Procedures Act to allow public access to certain body-worn camera (BWC) footage recorded by the Metropolitan Police Department. It is the result of numerous meetings we held with law enforcement officials, legal experts, researchers, and advocates from privacy, victims rights, and open government organizations.

The bill ensures that a person's privacy rights are protected for any BWC footage recorded inside their private residence or any other place a person has a heightened expectation of privacy. In order to protect victims of highly personal crimes – as well as not deterring any future victims or witnesses from contacting the police – the bill ensures the privacy of BWC footage involving domestic violence, sexual assaults, stalking, and assaults.

I urge prompt consideration and approval of this bill, which will put the District of Columbia at the national forefront of BWC programs and implement my proposal to equip 2,800 MPD patrol officers with BWCs.

If you have any questions on this matter, please contact Deputy Mayor Kevin Donahue at (202) 286-5028.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser". The signature is stylized with a large, flowing "M" and "B".

Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Administrative Procedure Act to allow public access to certain body-worn video footage recorded by the Metropolitan Police Department.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public Access to Body-Worn Camera Video Amendments Act of 2015."

Sec. 2. Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 2-532) is amended as follows:

(1) Subsection (a-2) is amended to read as follows:

"(a-2)(1) In responding to a request for records pursuant to this section, a public body shall make reasonable efforts to search for the records in electronic form or format, except when the efforts would significantly interfere with the operation of the public body's automated information system.

1 “(2) Requests involving video footage recorded by the Metropolitan Police
2 Department shall identify with specificity the location, date, and approximate time of the
3 incident or event that may have been recorded.”.

4 (2) Subsection (c) is amended to read as follows:

5 “(c)(1) A public body, upon request reasonably describing any public record, with
6 the exception of video footage recorded by the Metropolitan Police Department, shall within 15
7 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request
8 either make the requested public record accessible or notify the person making such request of its
9 determination not to make the requested public record or any part thereof accessible and the
10 reasons therefor.

11 “(2) A public body, upon receiving a request that reasonably describes video
12 footage recorded by the Metropolitan Police Department shall, within 45 days (except Saturdays,
13 Sundays, and legal public holidays) of the receipt of any such request, either make the requested
14 video footage accessible or notify the person making the request of the public body’s
15 determination not to make the requested video footage or any part thereof accessible and the
16 reasons therefor.”.

17 (3) Subsection (d) is amended to read as follows:

18 “(d) In unusual circumstances, the time limits prescribed in subsections (c)(1)
19 and (2) of this section may be extended by written notice to the person making such request
20 setting forth the reasons for extension and expected date for determination. An extension shall
21 not exceed 10 days (except Saturdays, Sundays, and legal public holidays) for records covered
22 under subsection (c)(1) of this section and 30 days (except Saturdays, Sundays, and legal public
23 holidays) for records covered under subsection (c)(2) of this section. For the purposes of this

subsection, and only to the extent necessary for processing of the particular request, “unusual circumstances” are limited to:

“(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

“(2) The need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest in the determination of the request or among 2 or more components of a public body having substantial subject-matter interest therein;

“(3) The need to review a voluminous amount of separate and distinct video footage which are demanded in a single request or to review a single lengthy video recording demanded in a request; or

“(4) For video footage covered by subsection (c)(2) of this section, the inability to procure a vendor to perform the redactions within the original 45 days.”.

(4) Subsection (f)(1A) is amended to read as follows:

“(1A) “Request” means a single demand for any number of documents made at one time to an individual public body; provided, that in the case of a request for video footage recorded by the Metropolitan Police Department, the demand shall identify with specificity the location, date and approximate time of the incident or event that may have been recorded.”.

(b) Section 204 (D.C. Official Code § 2-534) is amended as follows:

(1) Subsection (a)(2) is amended to read as follows:

“(2A) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, including any video footage recorded by the Metropolitan Police Department:

1 “(A) Inside a personal residence or other place where a person would have
2 a heightened expectation of privacy; or

3 “(B) Related to an incident involving domestic violence, stalking, sexual
4 assault or assault.

5 “(2B) An individual’s name, home address, personal health information, or other
6 personally identifiable information found in video footage recorded by the Metropolitan Police
7 Department that is released subject to the provisions of this subchapter.”.

8 Sec. 3. Establishment of Metropolitan Police Department Body-Worn Camera Fund.

9 (a) There is established the Metropolitan Police Department Body-Worn Camera Fund
10 (“Fund”) which shall be classified as a proprietary fund and a type of enterprise fund for the
11 purposes of § 47-373(1). The Fund shall be credited with all fees that are paid as part of Freedom
12 of Information Act requests for video footage recorded by the Metropolitan Police Department,
13 all monies appropriated to the Fund, federal grants to the Fund, or private monies donated to the
14 Fund.

15 (b) Revenue credited to the Fund shall be expended by the Metropolitan Police
16 Department as designated by an appropriations act of Congress, for the purposes of procuring a
17 vendor to perform any necessary redactions of the video footage.

18 Sec. 4. Fiscal impact statement.

19 The Council adopts the fiscal impact statement in the committee report as the fiscal
20 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
21 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

22 Sec.5. Effective date.

1 This act shall take effect following approval by the Mayor (or in the event of veto by the
2 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
3 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
4 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
5 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: September 11, 2015

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Public Access to Body-Worn Camera Video Amendment Act of 2015"
(AE-15-581)

This is to Certify that this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in cursive script, appearing to read "JMR/c. Robins", is written over a horizontal line.

Janet M. Robins

OFFICE OF THE CITY ADMINISTRATOR

NOTICE OF PROPOSED RULEMAKING

The City Administrator, on behalf of the Mayor, pursuant to the authority under section 3003 of the Fiscal Year 2016 Budget Support Emergency Act of 2015, effective July 27, 2015 (D.C. Act 21-127; 62 DCR 10201 (July 31, 2015)) (the Act), and Mayor's Order 2015-36, dated January 9, 2015, hereby gives notice of the intent to adopt a new Chapter 39 (Metropolitan Police Department Body-Worn Cameras) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

This rulemaking provides standards for public access to the Metropolitan Police Department (MPD) body-worn camera (BWC) recordings; policies for retaining BWC recordings; procedures for auditing the BWC program; and policies for protecting the security and integrity of the BWC data. In addition to this rulemaking, the MPD has issued a policy directive to its members with requirements on their usage of body-worn cameras. The MPD General Order 302.13 (Body-Worn Camera Program) is publicly available at: <http://mpdc.dc.gov/page/written-directives-general-orders>. Legislation will be submitted by the Mayor to the Council of the District of Columbia to further supplement this rulemaking's provisions related to public access to BWC recordings.

Pursuant to section 3003(c) of the Act, the proposed rulemaking will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the D.C. Register or Council approval of the amendment.

A new Chapter 39 (METROPOLITAN POLICE DEPARTMENT BODY-WORN CAMERAS) is added to Title 24 (PUBLIC SPACE AND SAFETY) of the DCMR to read as follows:

CHAPTER 39 METROPOLITAN POLICE DEPARTMENT BODY-WORN CAMERAS

Sec.	Title
3900	General Provisions
3901	Retention of Body-Worn Camera Video
3902	Access to Body-Worn Camera Video
3903	Body-Worn Camera Audits and Data Protection
3999	Definitions

3900 GENERAL PROVISIONS

3900.1 The purpose of this chapter is to implement section 3003 of the Fiscal Year 2016 Budget Support Emergency Act of 2015, effective July 27, 2015 (D.C. Act 21-127; 62 DCR 10201 (July 31, 2015)), regarding the Metropolitan Police Department's body-worn camera (BWC) program.

- 3900.2 The intent of the BWC program is to promote the public trust, enhance service to the community by accurately documenting events and any interactions and statements made during encounters between MPD officers and the public, and ensure the safety of both MPD officers and the public.
- 3900.3 In addition to these regulations, the Chief of Police of the Metropolitan Police Department (Department) may issue policy directives to members; those policy directives can be found on the Department website: <http://mpdc.dc.gov/page/written-directives-general-orders>.
- 3900.4 MPD officers may record First Amendment assemblies for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of law enforcement units, and for training purposes; provided, that recording First Amendment assemblies shall not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.
- 3900.5 MPD officers shall not create BWC recordings when they are at or in close proximity to a school and are engaged in non-critical contacts with students or mediating minor incidents involving students.
- 3900.6 The Mayor may, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police and the U.S. Attorney's Office, release BWC recordings that would otherwise not be releasable pursuant to a FOIA request. Examples of matters of significant public interest include, but are not limited to, MPD officer-involved shootings, significant use of force by an MPD officer, and assaults on an officer requiring hospitalization.

3901 RETENTION OF BODY-WORN CAMERA VIDEO

- 3901.1 Unless subject to the requirements of § 3901.2, a BWC recording shall be retained by the Department for not more than ninety (90) calendar days from the date the recording was created.
- 3901.2 The Department shall, through a policy directive, establish retention schedules for a BWC recording that contains the following types of footage:
- (a) Criminal investigations;
 - (b) Conduct by an MPD officer or civilian employee that is under investigation;
 - (c) Death investigations;
 - (d) Other categories of footage that the Chief of Police believes should be retained; and
 - (e) BWC recordings that the Department has actual or constructive knowledge may be:

- (1) Subject to civil litigation;
- (2) Subject to a Freedom of Information Act request; or
- (3) Used for training purposes by the Department.

3902 ACCESS TO BODY-WORN CAMERA VIDEO

- 3902.1 The Department shall make unredacted BWC recordings available to the United States Attorney's Office, the Office of the Attorney General, and the Office of Police Complaints.
- 3902.2 The Department shall make BWC recordings available to law enforcement officers or investigatory agencies, such as the Office of the Inspector General and the Office of the District of Columbia Auditor, when necessary for the discharge of the officers' or agencies' current official duties; provided, that the cost of any redactions required to protect an individual's privacy, ongoing criminal investigations, or law enforcement sources and methods shall be borne by the Department.
- 3902.3 The Department shall make BWC recordings available for viewing at a District police station in the following situations:
- (a) A person alleging non-criminal misconduct related to an interaction with an MPD officer, such as rudeness or unprofessionalism on the part of the officer, shall be able to schedule a time to view unredacted BWC footage of the incident at the police station in the police district where the alleged misconduct occurred; provided, that:
 - (1) The person shall not make a copy of the BWC recording; and
 - (2) The unredacted BWC recording would not violate the individual privacy rights of any other subject(s) of the recording.
 - (b) A person who is the subject of a BWC recording in a non-criminal case shall be able to schedule a time to view unredacted BWC footage of the incident at the police station in the police district where the incident occurred; provided, that:
 - (1) The person shall not make a copy of the BWC recording; and
 - (2) The unredacted BWC recording would not violate the individual privacy rights of any other subject(s) of the recording.
 - (c) To receive a copy of the BWC recording, a person under subsections (a) or (b) of this section shall file a FOIA request with the Department; provided, that there shall be no cost to the person for the production of the FOIA request footage. Upon receipt of the copy of the BWC recording, the person may further copy or distribute the BWC recording.

- 3902.4 The Department shall, through a policy directive, develop procedures to implement this chapter and District law.
- 3902.5 An individual seeking to obtain a copy of BWC footage not covered by the provisions of §§ 3902.1, 3902.2, or 3902.3, may submit a FOIA request to the Department for a copy of the footage, which may be provided in redacted form in accordance with applicable law and regulation.
- 3902.6 The Department may form research partnerships with academic institutions and organizations to examine the impact of the BWC program on community-law enforcement interactions; provided, that any such partnerships shall require the protection of any information or unredacted BWC recordings received by the researchers.

3903 BODY-WORN CAMERA AUDITS AND DATA PROTECTION

- 3903.1 The Department shall conduct audits of the BWC program to assess the following:
- (a) Officer compliance with these regulations and any policy directives issued by the Department;
 - (b) Impact of the BWC program on reports submitted by officers;
 - (c) Officer training and equipment needs;
 - (d) Individuals' privacy rights are being properly protected; and
 - (e) Proper and secure access is being maintained to the shared or retained BWC recordings.
- 3903.2 The Department shall regularly monitor the business practices of any third-party entity providing services to the BWC program to ensure individuals' privacy rights are protected.
- 3903.3 The Department may enter into agreements with other government agencies to provide access to the BWC recordings; provided, that any such agreement shall require the other agency to adhere to the individual privacy protections contained in these regulations or any policy directives issued by the Department.
- 3903.4 The Department shall strictly control access to the BWC recordings and shall use technology that logs the identity of each user who accesses the BWC recordings.
- 3903.5 The individual who makes a BWC recording shall not have access to delete the recording.
- 3903.6 The deletion of any BWC recording shall be tightly restricted and shall require justification for the deletion.

3903.7 The Department shall regularly monitor its BWC recordings data protection policies.

3999 DEFINITIONS

3999.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

BWC – means the Metropolitan Police Department’s body-worn camera program.

Department – means the Metropolitan Police Department.

FOIA – means Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 *et seq.*).

All persons interested in commenting on this proposed rulemaking action may submit comments in writing to Helder Gil, Office of the City Administrator, 1350 Pennsylvania Avenue, NW, Suite 513, Washington, DC 20004, or via e-mail at Helder.Gil@dc.gov. Comments must be received no later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. Copies of this proposal may be obtained, at cost, by writing to the above address.