

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Public Hearing on

**B21-351, the “Body-Worn Camera Program Regulations
Amendment Act of 2015”**

**B21-356, the “Public Access to Body-Worn Camera Video
Amendment Act of 2015”**

&

**PR21-327, the “Metropolitan Police Department Body-Worn
Cameras Approval Resolution of 2015”**

Testimony of

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Deputy City Administrator

Deputy Mayor for Public Safety and Justice

Cathy Lanier

Chief of Police

Committee on the Judiciary
Kenyan R. McDuffie, Chairperson

October 21, 2015

Room 412

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning Chairperson McDuffie, members and staff of the Committee on the Judiciary. I am Kevin Donahue, the Deputy City Administrator and Deputy Mayor for Public Safety and Justice. Joining me today is Cathy Lanier, Chief of the Metropolitan Police Department. I appreciate the opportunity to come before you today to discuss Mayor Bowser's proposal on providing access to body-worn camera footage recorded by the Metropolitan Police Department.

Our proposal is the result of extensive research, input from subject matter experts, and several meetings with members of the body camera advisory group. We strongly believe the use of body-worn camera (BWC) footage will benefit the District by improving police services, increasing accountability for individual interactions, and strengthening police-community relations. We urge this Committee to move quickly on our legislative proposal so that the BWC program can be deployed to all eight wards and benefit all our residents.

Overview of the District's BWC Program

As you know, in October 2014, MPD launched the initial phase of the BWC program, focusing on the selection of the best camera model for officers to use. After evaluating five different models, MPD selected models from Taser which allow officers to annotate the footage in the field without taking those officers off the streets.

The second phase of the BWC program was launched on June 29, 2015 with the deployment of 400 BWCs to officers in the Fifth and Seventh Police Districts. This deployment was designed by a team of national researchers who will analyze the impact of the BWCs on issues such as citizen complaints and use of force. The lessons and findings of this research will benefit our residents, our police force, and law enforcement agencies in other jurisdictions that are also considering the use of BWCs.

We anticipate the third phase of the BWC program to launch in 2016, with the goal of deploying BWCs to the remaining police districts throughout the year. As you know, Mayor Bowser strongly supports the BWC program. In her FY 2016 budget submission, she proposed funding the purchase of 2,400 additional BWCs so that every MPD patrol officer would be outfitted with a camera. The Mayor identified the necessary funding in her FY16 Supplemental Budget submission which Council approved on September 23. This funding will allow MPD to purchase the additional 2,400 BWCs and cover the cost that the Office of the Chief Financial Officer estimated for Freedom of Information Act requests for BWC footage.

Because by law we can deploy those additional 2,400 BWCs to the remaining police districts only after Council approves legislation on access to BWC footage, it is imperative that Council move expeditiously on these bills. At community meetings Mayor Bowser, Chief Lanier, and I have attended, residents have made clear their strong support for the deployment of BWCs in their police districts. We want to ensure all eight wards of our city are benefiting from the BWC program and we urge Council to quickly move forward on our legislative proposal.

Additionally, we are excited that the U.S. Department of Justice recently awarded the Metropolitan Police Department \$1 million to support the expansion of its BWC program. This will fund approximately 500 additional BWCs in the District and is part of President Obama's

proposal to purchase 50,000 BWCs over the next three years for law enforcement agencies throughout the country.

Bowser Administration Proposal on Access to BWC Footage

The proposal we submitted to Council regarding access and privacy policy was the result of many hours of discussion, research, and thought. It reflects an effort to create one of the most transparent systems in the country, while protecting basic personal privacy rights and expectations.

As a result, we drafted a proposal with the following principles in mind:

1. Prosecutors and independent agencies that can investigate police misconduct should have access to body camera video;
2. Individuals who are the subjects of body camera video should, as often as possible, have access to that video at no cost to themselves;
3. A person's home should be clearly identified as a private space, protected from broad public viewing;
4. Members of the public, who are not part of a video recording, should be able to access body camera video with as little redaction as necessary; and
5. Victims of assaults, sexual assaults, stalking, or domestic violence should be protected from having their traumatic events viewed by the public, unless they themselves obtain the video and make the decision to share it.

Our proposal ensures prosecutors in the Office of the Attorney General and the U.S. Attorney's Office, as well as the Office of Police Complaints, an independent agency which investigates complaints of officer misconduct, have full access to BWC footage. Other entities, such as defense attorneys, the Office of the Inspector General, and the D.C. Auditor, will have access to BWC footage as they do all other police records.

Our proposal also ensures that a person recorded on BWC footage who isn't facing any criminal charges – for example, a motorist stopped by an MPD officer for a traffic violation – will be able to view, at no cost, the BWC footage of the interaction by simply going to the police station in the police district where the interaction occurred. If the person wants a copy of the BWC footage, they can submit a FOIA request and it will be provided to them – with redactions of anyone else's personal information – at no cost. This ensures that the person who most needs access to the BWC footage will receive it.

If, after viewing their BWC footage at the police station, an individual decides they want to file a complaint about how they were treated by the MPD officer during the interaction, they can do so immediately. This provides the public both with an easy way to view their BWC footage, as well as allowing people to hold officers accountable on those few occasions where their interactions do not meet the MPD standards of professionalism.

Access to BWC Footage by Uninvolved Third Parties

Regarding public access to video, there is no broad, national consensus on whether and how to release BWC footage. In some places, such as New York and Los Angeles, none of the footage is subject to release. On the opposite end of the policy spectrum, Seattle has a small number of officers equipped with BWCs and the footage is posted on YouTube; however, the footage has no audio and is blurred to such an extent that it is nearly impossible to discern what is occurring in the interaction.

We believe our proposal strikes a proper balance between broad public access and protecting basic privacy rights. For events recorded in public space and that are not part of a criminal investigation, we propose those recordings be releasable under FOIA with minimal redactions. The releasable footage would include interactions between MPD officers and individuals occurring in public, including traffic stops, and in privately owned places to which the public is invited, such as restaurants and other commercial establishments. In none of these scenarios would a person have an expectation of privacy that would preclude the release of the BWC footage.

However, we have to be mindful that when police officers enter someone's home, the residents have an assurance that video from inside of their home is not accessible to the general public. So, for interactions recorded in either private residences or other places where a person has a heightened expectation of privacy, we believe in providing maximum protection to those individuals' privacy by not releasing that BWC footage to a non-involved party. This would not affect the release of that footage to the person recorded on it, or to prosecutors, defense attorneys, or attorneys in a civil case.

But even though we want to maximize the protection of individuals' privacy, we certainly recognize that in some situations of great public interest, the public's right to know supersedes an individual's right to privacy. That is why our proposal would allow the Mayor to release BWC recordings that otherwise would not be subject to release under FOIA. The inclusion of this provision would allow for the public release of BWC footage, for example, of an officer-involved shooting, significant use of force by an MPD officer, or an assault on a police officer requiring hospitalization.

We also believe that victims of certain types of highly personal crimes merit protection from FOIA disclosure due to the nature of the crime and the potential of deterring future victims from coming forward. That is why our proposal seeks to exempt any BWC footage related to assaults, sexual assaults, domestic violence, and stalking from being publicly released to non-involved parties pursuant to a FOIA request.

For victims of these types of crimes, there is a real and persistent fear of revictimization and retaliation. Retaliation is a significant feature on the landscape of modern crime. We need to do everything we can to protect those who come forward and specifically limiting access to any footage related to these victims is a significant step in that direction. It will allow law enforcement and advocates to reassure victims of these types of violent crime that they are

specifically protected in interacting with the police about these incidents, without having to explain how they might otherwise be protected by various provisions in the law.

Let me emphasize that the victims of such crimes will be able to obtain their BWC footage and make their own decision on whether to make that footage publicly available. We believe this decision should remain solely with the victims of these crimes.

Third Party Redactions of BWC Footage

Finally, while we believe our BWC proposal will serve as a model for other jurisdictions, we are mindful that there are currently very few private sector options for providing the redacting services necessary before MPD can release footage as part of a FOIA request, which may require significant time for redactions. That is why our proposal increases the allowable time for MPD to complete a FOIA request for BWC footage from 15 days to 45 days. We anticipate using a private sector vendor to do the redactions required under FOIA and any other District privacy laws. MPD will then use its staff to do quality control reviews of the redacted videos before releasing them to the FOIA requestor.

At this time, we do not propose changing who will be charged for FOIA requests. Broadly speaking, the District has long held that taxpayer funds will be used to subsidize media access to public records in order to support transparency. However, other parties that currently pay for FOIA requests should also pay for BWC redactions.¹ The fees collected for BWC FOIA requests would go into a special purpose revenue fund to pay for the private sector vendors.

Chairperson McDuffie, thank you for the opportunity to present the Administration's testimony on its body-worn camera legislative proposal. Chief Lanier and I are available to answer any questions you may have.

¹ Our introduced legislation inadvertently left off a sentence to allow MPD to recover the search, review, redaction, and duplication costs of FOIA requests for BWC footage. We respectfully recommend amending D.C. Official Code § 2-532(b-1) to include the following new language: "Fees schedules adopted for requests involving video footage recorded by the Metropolitan Police Department may be for the direct costs of search, review, redaction, and duplication."