



King County OLEO

Office of Law Enforcement Oversight

NOVEMBER 9, 2022
Sent Via Email

Metropolitan King County Council
RE: Body-Worn Camera Policy

Dear Councilmembers:

We are writing to share the Office of Law Enforcement Oversight (OLEO)'s position on the policy adopted by the King County Sheriff's Office applying to Body-Worn Camera (BWC) and In-Car Video (ICV or dashcam) recordings.

The Sheriff's Office consulted OLEO during the drafting and negotiation of the policy; however, due to outstanding issues, OLEO recommends changes to the policy and does not endorse it as-is. There are two primary drivers behind OLEO's inability to endorse the policy.

The first primary issue involves the timing of when deputies may view their recordings, depending on the type of incident. For serious force incidents, the policy requires a deputy to submit an initial statement, after which the deputy may view recordings and then submit an additional written statement if they wish. For all other incidents, the policy allows deputies to "view their own BWC/ICV recordings, and the recordings of other law enforcement officers involved in the incident, in the course of preparing their incident report or other documents." While the policy requires a deputy to identify "what is being documented from their independent recollection and what is being documented as a result of viewing the recordings," it does not provide a mechanism for doing so. OLEO disagrees with these requirements and recommends the following:

- *For serious force incidents, cases where a member of the community has alleged an injury, or cases where a deputy has been informed that a member of the community has filed or is planning to file a complaint:* a deputy must not watch recordings until after they have been *interviewed* by the appropriate investigative personnel; in these matters, a prepared written statement is not enough, and an interview cannot test a deputy's independent recollection if they have already watched a recording. At the conclusion of the interview, an investigator should show the deputy the recordings and ask follow-up questions as well as give the deputy an opportunity to make any additional statements.
- *For all other incidents:* OLEO agrees that a report or statement is enough, but such a statement must still be completed before a deputy may watch recordings. After the statement is documented, a deputy may watch a recording and append or amend their statement through the completion of a separate supplemental report. This is the only practical way to achieve the desired stated policy of "separately identify[ing] what is being documented from their independent recollection and what is being documented as a result of viewing the recordings."

The second primary issue involves instances where deputies may have discretion over whether or not to record an incident. Generally speaking, OLEO agrees with the parts of the policy that mandate recording in certain instances. OLEO also agrees with certain exceptions, such as when an individual has cultural or religious objections to being recorded. However, the list and breadth of the exceptions in the policy are dangerously close to swallowing the rule. The biggest culprit is the provision giving deputies discretion when “there is an articulable exigent circumstance that would justify a member’s decision to record or not record.” Such an expansive and ambiguous exception severely undermines other provisions requiring recording.

Another example allowing for discretionary recording is when an incident is taking place “where individuals have a reasonable expectation of privacy” unless they are there to arrest someone or serve a warrant. The policy gives the example of a bathroom or locker room, but obviously community members also have a reasonable expectation of privacy in their homes—this gives discretion to stop recording inside someone’s home, which is often essential to establishing an accurate account of what happened. Similarly, making an exception where “the respect for an individual’s privacy or dignity outweighs the need to record and event” once again gives too much discretion.

By way of example, such exceptions, if available, could have been used in the case of Anjanette Young in Chicago, a social worker who was left standing naked and handcuffed for 40 minutes while the officers were mistakenly executing a search warrant in her home¹. In that case, officers could have easily used the privacy or dignity exceptions to stop recording, and we would not have been privy to what happened or how long the officers subjected Ms. Young to standing naked in the middle of her apartment despite her pleas to let her put some clothes on.

The fact of the matter is, there will be some instances where recording should not occur. But a deputy cannot possibly know what *will develop* in any given situation. That is why the right place to exercise discretion is during the review, retention, redaction, and release stages. A recording can always be redacted or purged after its retention period—there will be chances to address all these issues. But a decision by a deputy in the field not to record is one that leaves no recourse.

There are two additional issues that OLEO would like to see resolved. First, OLEO recommends inserting language in the appropriate section that, when a deputy realizes their camera is not functioning and they document it, they should pick up another camera and use it if one is available. Under the policy as written, a deputy only needs to document the malfunction and submit the camera for repair or replacement by the end of their work week. Second, OLEO recommends inserting language necessitating annual refresher training, instead of “as directed by the department,” the latter leaving room for significant gaps in training and subsequent misuse of equipment or misunderstanding of policy.

Finally, OLEO would like to also bring to the attention of the Council that the Sheriff’s Office will need to adopt a video-release policy. OLEO has already **recommended** to the Sheriff’s Office that it adopt a policy requiring release of video of critical incidents within 72 hours, with some enumerated exceptions. This is a benchmark that is being discussed and has already been implemented in multiple jurisdictions such as Dallas, Texas.

Respectfully,
Tamer Abouzeid
Director

¹<https://www.cbsnews.com/news/anjanette-young-chicago-police-department-raid/>.