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SENT VIA EMAIL TO BWCSTATEWIDEPOLICY@RIAG.RI.GOV AND RULESREGS@RISP.GOV

RE: Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras

August 16, 2022

Dear Office of Attorney General and Dept. of Public Safety,

I'm writing on behalf of the New England First Amendment Coalition, a non-partisan non-profit organization that advocates for journalists and free press rights in Rhode Island. Thank you for the opportunity to follow up on our August 3 testimony with additional comments about your proposed rules and regulations for the use of police-worn body cameras.

As we stated earlier this month and in our Sept. 24, 2021, letter to your offices, the use of body-worn cameras by law enforcement has significant government transparency and First Amendment implications. We're glad to see that some of our previous suggestions were incorporated into the latest draft of rules and regulations. Still, there are several areas where additional improvement can be made to protect the public's right to know and First Amendment freedoms.

Appended to this letter is a list of comments we hope you'll consider when drafting the next version of your rules and regulations. Separate from those comments, however, we would like to flag four specific issues that if not adequately addressed by your offices will impede the public's right to know about government and the ability of the press to inform the communities they serve.

(1) The "substantial completion" standard in § 2.5.13 (D)(3)(b) should be used in combination with a specific time-frame to prevent abuse. Without a deadline to act as a ceiling — we recommend 30 days — law enforcement officials would have the ability to needlessly delay the release of footage showing use of force by police officers. These incidents are of perhaps the greatest public interest. Footage must be released after "substantial completion" *but no longer* than 30 days after the incident occurred.

(2) Section 2.5.10(C) allows an officer to temporarily mute the body-worn camera while consulting with other members of law enforcement. This should not be allowed. Conversations between law enforcement officers can inform us about the officers' intent and motives during an incident. They should be recorded. APRA already allows several exemptions that would allow the content of the conversation to be kept secret if the agency felt such secrecy was necessary. The conversations should be recorded, however, so the public can at least argue for their release.

NEFAC appreciates the support of all its donors and Sustaining Members. In particular, we would like to thank the following Leadership Circle donors and Major Supporters for their contributions: The Rhode Island Foundation, Hearst Connecticut Media Group, The Boston Globe, Paul and Ann Sagan, The Robertson Foundation, Boston University, WBUR-Boston, Academy of New England Journalists, Society of Professional Journalists Foundation, Genie Gannett for the First Amendment Museum, Linda Pizzuti Henry, Connecticut Public and GBH-Boston.

(3) The release of body-worn camera recordings — like all public records — should be made with as little cost to the public as possible. While the recordings are subject to the fees outlined in APRA, history shows their release to often be prohibitively expensive. The only way such fees can be appealed is in Superior Court which is not a feasible option for nearly all citizens and the newsrooms that serve them. The rules and regulations should include a mechanism or fee structure that prevents police departments from excessively charging for body-worn camera recordings or, at the very least, provide an easier and more expeditious way to appeal those costs.

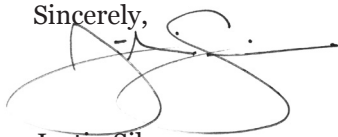
(4) Any video that is captured by a body-worn camera as part of an arrest should be immediately released as part of the arrest report. Your offices should make clear in the rules and regulations that the footage is an extension of the narrative which the Office of the Attorney General has already deemed public under APRA. The requirement will help citizens better understand how arrests are occurring in their communities and set an expectation of transparency within those agencies responding to requests for arrest records.

The use of body-worn cameras can be a benefit to both police officers and the citizens they encounter. The transparency they provide can build trust within communities — but there need to be strong safeguards in place for citizen accessibility and the constitutional rights we all enjoy. Ed Fitzpatrick, a Rhode Island journalist who serves on the NEFAC Board of Directors, described the public interest served by body-worn cameras during a recent appearance on a Lively Experiment:

“It’s providing a glimpse of the truth of the matter. It can help both in cases of police misconduct and to show that police acted appropriately. It shows exactly what happened.”

Thank you again for the opportunity to submit these comments. We welcome the opportunity to discuss them in further detail or to provide additional resources you may find helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Silverman', with a long horizontal stroke extending to the right.

Justin Silverman
Executive Director



ADDITIONAL COMMENTS

2.5.1(D) | This draft policy is considered the “floor” for departments and can be amended or changed pursuant to 2.5.1 (C). The policy that should be posted on department websites is the department’s final policy and not the policy provided by your offices as this section can be understood to require.

2.5.4(A) | Many of the responsibilities described here are required “as soon as practicable.” This time frame is not clearly defined and opens the door for abuse. There should be a specific time frame during which broken equipment is reported and replaced. Without one, officers may go without body-worn cameras until they alone find a convenient time to deal with the issue.

2.5.4(B)(1) | More guidance is needed about the considerations necessary for an extension of time. In other words, what circumstances warrant an extension? Without specificity, there could be arbitrary decisions made not to upload recordings in a timely manner or, worse, extensions given to deliberately delay the ultimate public release of the recordings.

2.5.6(A)(1) | We fear that the word “impracticable” will be interpreted as “inconvenient.” There are already a number of exemptions to camera activation in this draft policy. We suggest that cameras are activated under this section “unless it is unsafe or not possible to do so.”

2.5.6(B)(2)(b) and (c) | Clarify that leaving the scene doesn’t include “fleeing” the scene and reiterate that 2.5.8(A) (3) addresses pursuits. Without clarification, an officer could use this section as justification to turn off the camera before running after an individual who fled and, technically, departed the scene.

2.5.6(B)(3) and (4) | The supervisor ordering an officer’s camera to be deactivated should state a reason on camera for why it must be turned off. If not, the BWC Officer could simply state “because my supervisor ordered me to do so” to comply with the requirement of 2.5.6(B)(4).

2.5.8(B) | The policy addresses First Amendment-protected activity in 2.5.11(A), but clarification is needed. Many protests and demonstrations could be considered “confrontational” just based on the speech being used. If a protester stands close to an officer and calls that officer an offensive term, that incident could be considered confrontational or an escalating action. No law may have been broken. The speech could be protected by the First Amendment. Under this section, however, the camera could be activated to document the situation and potentially chill the speech. Similarly, if a journalist has a camera in the middle of a protester and a police officer, that press presence could be considered an action under this section that is adding tension to the situation or escalating the interaction. We suggest the following language: “If the BWC Officer believes an encounter with a member of the public has escalated and become confrontational; but such actions do not include activity and/or expression protected by the First Amendment.”

2.5.10(A)(2) and (3) | Include “places of peaceful protest” and “newsrooms”.

2.5.10(A)(3)(c) | Presumably, this section is referring to minors who are not involved in the incident requiring police presence. If not clarified, this section could be used as justification to turn the camera off when an officer is interacting with an underage suspect.

2.5.10(A)(3)(f) | The camera should remain activated regardless of whether it is capturing evidence or could further an investigation. If the footage captured would impede an investigation it can be redacted under APRA. This broad justification to turn the camera off seems very likely to be abused. We suggest it be struck or narrowed.