Abstract

Police departments across the country have begun to equip their officers with body cameras in an attempt to curb abuses of power and increase transparency between law enforcement and citizens. While these cameras have the ability to capture crucial footage in high profile cases, the guidelines for the release of this footage seem contradictory to the original objective of the cameras. Not only do the policies governing police body cameras place impractical restrictions on the release of footage, law enforcement personnel themselves often oppose any form of release.

In an ongoing case in New York City, the Patrolman’s Benevolent Association has sued the NYPD for their “illegal and arbitrary release” of body cam video, yet they have released very few videos of crucial incidents. The Department encourages the release of footage to maintain public morale but has been doing so without a court order (which is not illegal). It has been stated in this lawsuit that the NYPD has been “trading officer safety for political gain.” The officers claim that the release of the video, which depicted scenes that may suggest disciplinary action against officers, is a threat to their safety. They argue that New York State law protects officer’s personnel records but nowhere is it clearly stated that this includes video footage or that video is included in the definition of personnel records. Although the officers have a right to privacy, the citizens have the right to access crucial information about the individuals given the power to police them.

The Freedom of Information Act (FOIA), along with state level Freedom of Information Laws (FOIL), explain what classifies as a public record and the circumstances under which it may be released. In most cases, states list numerous exemptions regarding when body camera footage may be released, often limiting access to the recordings that are of most public concern. In other areas, police bodycam footage is not considered public record at all. Two core categories of exemption hinder the release of footage most frequently; privacy rights and interference with law enforcement investigations. On one end of the spectrum, there is concern for the privacy of those depicted and closely effected by the footage. On the other end, there is a heightened regard for the legitimate purposes of delaying release until an investigation is complete. Body camera footage has been released despite the wishes of those closely effected but it has also been released prior to the completion of an investigation.

While states are attempting to find a balance between privacy and transparency, the lack of uniformity highlights the need for reform. This presentation is based on a review of statutory provisions, how they interact with one another, and the effect this has on citizens as the issue becomes more apparent. It includes a state-by-state comparison of public record law in relation to body cameras, revealing the inconsistencies by jurisdiction. Additionally, it will provide an analysis of the aforementioned New York City case and the implications of overlapping law cited by each party. The officer’s right to safety could outweigh the intent of the Freedom of Information Act, setting a precedent for a closed-door style of policing. Conclusions include suggestions for a universal policy governing the release of footage and how officer accountability is diluted when citizens do not have access to these records.