



The League of Minnesota Cities Insurance Trust thanks the following organizations that comprised the working group to develop and review the model policy: Minnesota Counties Intergovernmental Trust, Minnesota Chiefs of Police Association, Minnesota Association of City Attorneys, Minnesota County Attorneys Association, Minneapolis Police Department, St. Paul Police Department, Cannon Falls Police Department, Burnsville Police Department, and Columbia Heights Police Department. Their participation does not necessarily signify agency endorsement of the model policy by the individual's employing agency.

## INFORMATION MEMO

# Use of Body-Worn Cameras

*State law offers significant guidance on policies governing law enforcement use of body-worn cameras (BWC) and the resulting data. This discussion and the linked model policy are intended to help cities administer BWC programs and data soundly and in accordance with law.*

### RELEVANT LINKS:

See, Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program, May 1, 2015, (last viewed June 29, 2016).

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 2.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3.

## I. Program considerations

Body-worn cameras (BWCs) are a relatively new addition to the law enforcement toolkit. According to the United States Department of Justice, they hold “tremendous promise” for improving public safety and increasing transparency and accountability. In addition, BWCs provide a means of capturing more convincing proof for use in criminal cases and protecting officers against false claims of wrongdoing. However, communities considering a move toward body cameras should also take stock of the costs involved in setting up and maintaining a BWC program. These will include purchasing the necessary hardware and software, arranging and paying for data storage, responding to requests for access, preparing data for release, and paying for independent biennial audits of the BWC program.

## II. Transparency, reporting, and external oversight

Minnesota's new laws mandate that communities moving forward with a BWC program receive public comments at three junctures in the process. First, enforcement agencies must provide an opportunity for public comment before purchasing or implementing a BWC system. Minimally, the agency must receive comments by mail and email, but may certainly hold public meetings and forums if desired. Second, the council or board with budget oversight for the agency needs to allow public comment at one of its regular

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**RELEVANT LINKS:**

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 10.

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 10.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3.

PERF Policy.

meetings. Third, agencies must allow for public comment and input when developing their BWC policies.

Next, the legislation appears to be forward looking in that it anticipates further evolution of BWC technologies. It requires agencies that obtain BWC equipment with capabilities that go beyond recording video and audio to notify the BCA of these acquisitions within 10 days. In turn, these notifications will be accessible to the public and must be posted on the BCA's website.

Finally, the new legislation imposes independent audit requirements on agencies that operate BWC programs. Agencies will be required to arrange for an independent biennial audit to determine whether they are classifying data as required by law, how the data is being used, and whether the data is being purged and destroyed as required by statute. The audits must also examine whether personnel have obtained unauthorized access to BWC data or inappropriately shared data with other agencies. The audit results are public with few exceptions, and must be reviewed by the governing body. In turn, the law mandates the governing body to order the suspension of a BWC program if the audit shows a pattern of substantial noncompliance with legal requirements. Summaries of the audit results must be provided to the Legislative Commission on Data Practices and Personal Data Privacy within 60 days following completion of the audit.

### **III. Policy requirements**

Minnesota's new legislation mandates that agencies have a written policy to govern their BWC programs. Professional organizations, including the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF) have released model policies in the past to aid agencies in developing their own guidelines. While these may be useful references, Minnesota law now lists a number of areas that must be covered by the policy, including state-specific rules on the administration and retention of BWC data. The 2016 state law identifies the following as mandatory policy elements:

## RELEVANT LINKS:

Body-worn cameras, LMC Model Policy.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3(b)(4).

Body-worn cameras, LMC Model Policy.

- Data classifications, access procedures, and retention policies.
- Procedures for testing the recording equipment, documenting malfunction reports, and addressing malfunctions.
- Circumstances under which recording is mandatory, prohibited, or is left to officer discretion.
- Circumstances under which officers must tell people they are being recorded.
- Guidelines for when a recording may be ended.
- Procedures for the secure storage of data and the creation of backup copies.
- Procedures to ensure compliance with the policy and to address violations.

**Red typeface** in the League's model policy indicates that the language is included to satisfy a requirement for guidance on that particular topic. While this language is recommended, agencies may certainly have other options for addressing mandatory elements.

## IV. Deciding what to record

The new legislation does not establish mandatory rules for when officers are required to record or are prohibited from recording. Agencies must instead cover these topics in their written policies, along with specifying when decisions to record are left to the discretion of officers in the field.

Developing guidelines on when to record involves tradeoffs, and as of now, there is no recognized consensus as to best practices. If the agency's goal for having BWCs is to maximize accountability, then the most logical policy choice might be to have officers turn on their cameras whenever they respond to a call for service or interact with someone in the community. On the other hand, if the agency's goal is just to gather better proof for use in criminal cases, then it might make sense to have officers treat body cameras like any other evidence-gathering tool, and exercise their professional judgment in deciding when to record.

Most all agree that officers should turn on their cameras when they anticipate making an arrest, using force, or finding themselves in conflict situations with members of the public. The model acknowledges these differing schools of thought and also the areas of common agreement. Option 1 under "General guidelines for recording" requires the activation of cameras during all responses to calls for service and law enforcement-related activities. Option 2 more narrowly defines the class of events subject to mandatory recording, and then relies on officer judgment to identify and record other circumstances likely to yield relevant evidence. Both options require recording in situations such as arrests, uses of force, and public contacts that involve conflict.

## RELEVANT LINKS:

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825.

Body-worn cameras, LMC Model Policy.

Practical and economic considerations, as well as philosophical ones, come to bear on deciding which option to choose and how much (i.e., when) to record. Once video data is recorded, it must be administered and retained in accordance with legal requirements. Agencies should expect that data storage costs and the time it takes to administer data will increase commensurately with the amount of data they choose to collect and store. Desires for accountability and transparency may weigh in favor of mandatory, broad, and encompassing recording requirements. But considerations of cost and practicality may point toward less mandatory recording and more reliance on officer judgment.

Deciding which approach is best involves weighing these competing factors in the context of the prevailing social, political, and economic considerations within each community. This is a determination particularly suited to elected officials acting on input from law enforcement professionals. Agencies should consult with their city councils or county boards to develop a community-specific approach.

## V. Data administration issues

Part of the new legislation treats data collected through the use of BWCs differently than most other forms of data. While most government data is presumptively public, BWC data is presumptively private. A specific provision, applicable only to BWC data, delineates who is a subject of the data. The new laws also establish unique access rights to BWC data. The model policy contains a multi-page section under the heading of “Administering access to BWC data” to address these issues. There are ambiguities in the new law, and agencies are encouraged to consult with their city attorneys or legal advisors for guidance.

### A. Labeling data for retention purposes

Administering BWC data under both the Minnesota Government Data Practices Act and the Records Retention Schedule is complicated. In very general terms, the Records Retention Schedule indicates how long entities need to keep data, and the Data Practices Act describes who is to have access. But BWC data is unlike other kinds of law enforcement data because retention is governed both by the Data Practices Act and the city’s or county’s records retention schedule.

## RELEVANT LINKS:

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 3(a).

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 3(b).

General Records Retention Schedule for Minnesota Cities.

General Records Retention Schedule for Minnesota Counties.

Under the 2016 Data Practices amendments, all BWC data must be maintained for a period of 90 days and then be destroyed according to the agency's retention schedule. Some specific kinds of BWC data must be maintained for one year and then be destroyed under the records retention schedule, such as data documenting duty-related firearms discharges, certain uses of force, and cases in which a formal complaint is made against an officer. But the expiration of these minimum retention periods under Data Practices does not necessarily mean that the data can or must be destroyed.

Rather, the General Records Retention Schedule for Minnesota Cities (and the concordant General Records Retention Schedule for Counties) basically "kicks in" once the statutory retention periods have passed. The model policy includes a series of suggested labels for BWC data files, and envisions that officers will assign those labels to data files at the time of capture or transfer into storage. The labels have been developed to help agencies match up data files with the correct retention periods. For instance, if an officer has a recording from a DUI or disorderly conduct arrest, the model provides for labeling that file as "Evidence—Criminal." This label correlates to the category of "Arrest & Charge," found in the General Records Retention Schedule for Minnesota Cities. The retention schedule directs that this data should be maintained until the disposition of the criminal case, which may take longer than the statutory 90-day retention period. By labeling this data at the time it is captured or moved to storage, the agency is informing itself from the outset that this data has evidentiary value in a criminal case, and should be retained accordingly.

Agencies that choose not to deal with labeling data files at the time of capture or storage are likely deferring, rather than avoiding, the work involved in determining the correct retention period. Various BWC systems may offer different options for labeling data files, and agencies may find it useful to keep their own systems in mind when developing their policy.

## **B. Data access issues and flagging**

The model policy also provides for a system of flagging BWC files to indicate the likely presence of information about individuals whose identities may be legally protected from disclosure to others. Examples of such individuals include undercover officers, victims of criminal sexual conduct, and vulnerable adults who are victims of maltreatment. Whether or not agencies use the flagging process, the categories of protected identities listed in the policy may serve as a useful checklist when responding to requests for access to BWC data. The policy includes the more commonly occurring protected identities, but is not intended to be all-inclusive.

**RELEVANT LINKS:**

Body-worn cameras, LMC  
Model Policy.

### **C. Officer access to video and critical incidents**

PERF notes that officers will be able to report and testify more accurately when they are provided access to “all possible evidence of the event.” It is extremely unlikely that an officer could ever perceive or recall the same amount of information captured by a digital, high-definition recording device, particularly when under stress. The model recommends allowing officers to review BWC video footage before writing reports, giving statements, or providing testimony concerning typical law enforcement events. As PERF counsels, withholding video evidence from an officer until after he or she testifies can “unfairly undermine the officer’s credibility.”

Some agencies and prosecutors have expressed reservations, however, about allowing officers to view BWC and other video footage prior to giving statements about an officer-involved shooting or other critical incident. Because the BWC captures more information than the officer could have possibly perceived at the time, the concern is that viewing the video may taint the officer’s recollection by introducing new information to him or her before a statement is obtained. The model provides two options for addressing this situation, and leaves it to agencies to include restrictions on viewing videos in their policies addressing critical incidents.

Whether or not an agency allows officers to review video footage before being interviewed about a critical incident, PERF’s concern about unreasonably undermining officers’ credibility warrants consideration. BWC footage is likely to bring forward a greater amount of information and more accurate details than a human observer or participant. It follows that comparing an officer’s recollection to the video is not a fair measure of credibility or truthfulness.

### **D. Supervisory review**

Under the new legislation, agency policies must include procedures for making sure that personnel are complying with the policy. One of the obvious measures for ensuring that officers are following the policy is to involve supervisors in monitoring BWC use. Under the heading, “Agency Use of Data,” the model requires that supervisors review BWC “usage” on a monthly basis for the purpose of determining whether officers have used their cameras in accordance with the department’s guidelines. Reviewing “usage” could be limited to a cursory comparison of when officers are making recordings, and how they are labeling them, as compared to other records of the officer’s activities. An alternative position is to have supervisors review actual footage to gain an additional perspective on officer performance in the field.

**RELEVANT LINKS:**

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The IACP's model policy takes the position that supervisors should review random BWC recordings at least monthly to observe officer performance in the field. PERF, however, notes there is ongoing debate over this issue. While random supervisory review may promote accountability, officers may see this practice as an expression of mistrust and become resentful. This is an issue for agencies to consider in light of their own particular circumstances.

## **VI. Further assistance**

The issue of body-worn cameras is a policy area with developing concerns. To discuss latest developments or for assistance with your questions, please contact the League of Minnesota Cities or the Minnesota Counties Intergovernmental Trust.