



Statement of the ACLU of Minnesota
Regarding the Use of Body Cameras by Police
Legislative Commission on Data Practices and Personal Data Privacy
October 10, 2014

The ACLU of Minnesota is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have 8,500 members throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

The ACLU of Minnesota generally supports the use of body cameras as a tool to reestablish public trust in our peace officers. The reason we need body cameras is to provide the community with transparency, which law enforcement needs to restore the community trust. We understand that the potential exists for misuse of this technology, and while we are cautiously hopeful that body cameras will be used appropriately, law enforcement needs to know that spying on the community will only work to defeat this purpose and further erode the public trust.

Body cameras have the potential to enhance police oversight and accountability and deter police misconduct, such as the excessive use of force. However, body cameras can only be effective for these purposes if utilized under a framework of strong policies to ensure that they protect the public without becoming yet another broad surveillance tool. For this reason, such policies must include adequate safeguards for personal privacy.

Body cameras have more of a potential to invade privacy than traditional video surveillance of public places. Police officers often enter individual's homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations. Accordingly, the challenge with a body camera policy is finding a balance between their potential to invade privacy and their strong benefit in promoting police accountability.

The ACLU has identified a number of important safeguards to consider in implementing a body camera policy. These safeguards include: limiting officer discretion in recording, providing notice to civilians that they are being recorded, establishing an appropriate data retention period, and limiting disclosure of the data.

First, the ideal policy for body camera operation would be for continuous recording throughout a peace officer's shift. This would remove officer discretion and eliminate any possibility that an officer could evade the recording of abuses committed on duty by editing on the fly. If body camera operation is ultimately left under officer control, policies should be in place to limit the officer's ability to choose which encounters to record by mandating that officers turn on recording during every interaction with the public.

Second, if peace officers are equipped with a body camera, they should inform persons in the vicinity of the recording as soon as reasonably possible. Due to the intrusive nature of police recordings made inside private homes, officers should be especially careful to provide clear notice of the camera when entering a home.

Third, recorded data should be retained no longer than necessary for the purpose for which it was collected. Regardless of an established retention period, specific recordings should be automatically retained as “flagged” for any incident that: (1) involves a use of force; (2) leads to detention or arrest; or (3) where either a formal or informal complaint has been registered.

Any subject of a recording should be able to flag the recording, even if not filing a complaint or opening an investigation. In addition, the department and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime.

Similarly, the subject of recordings should have access to, and the right to make copies of, those recordings. This should also apply to disclosure to a third party with the consent of the subject, or to criminal defense lawyers seeking relevant evidence.

Finally, the data collected by body cameras should be viewed as a tool for accountability, not citizen surveillance. Accordingly, this data should not be used alone or matched with other databases for criminal intelligence purposes without a warrant. The data should also not be collected or analyzed in a way that impinges on the First Amendment, associational, free speech, and religious rights of Minnesotans.

The primary reason we are in support of this technology is that we need to restore the community’s faith in our peace officers.

The ACLU of Minnesota appreciates the Commission’s timely attention to this issue, and looks forward to working with legislators and stakeholders on these and other issues in the upcoming legislative session.