

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title II of the District of Columbia Administrative Procedure Act to allow public access to certain body-worn camera recordings recorded by the Metropolitan Police Department; to amend the Fiscal Year 2016 Budget Support Act of 2015 to require the Mayor to collect additional data; to establish the Metropolitan Police Department Body-Worn Camera Fund; and to adopt regulations governing the Metropolitan Police Department's Body-Worn Camera Program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Body-Worn Camera Program Amendment Act of 2015".

Sec. 2. Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 2-532) is amended as follows:

(1) Subsection (b) is amended by striking the phrase "A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, and making copies of records." and inserting the phrase "A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, redacting, and making copies of records." in its place.

(2) Subsection (c) is amended as follows:

(A) The existing text is designated as paragraph (1).

(B) The newly designated paragraph (1) is amended by striking the phrase "A public body" and inserting the phrase "Except as provided in paragraph (2) of this subsection, a public body" in its place.

(C) A new paragraph (2) is added to read as follows:

"(2)(A) If the public record requested is a body-worn camera recording recorded by the Metropolitan Police Department, the Metropolitan Police Department, upon request reasonably describing the recording, shall within 25 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested recording accessible or notify the person making such request of its determination not to make the requested recording or any part thereof accessible and the reasons therefor.

"(B) A request for a body-worn camera recording may only be submitted to the Metropolitan Police Department."

(3) Subsection (d) is amended to read as follows:

“(d)(1) In unusual circumstances, the time limits prescribed in subsection (c)(1) and (c)(2) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays, and legal public holidays) for records requested under subsection (c)(1) of this section and 15 days (except Saturdays, Sundays, and legal public holidays) for records requested under subsection (c)(2) of this section.

“(2) For the purposes of this subsection, and only to the extent necessary for processing of the particular request, “unusual circumstances” are limited to:

“(A) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;

“(B) The need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest in the determination of the request or among 2 or more components of a public body having substantial subject-matter interest therein; or

“(C) For body-worn camera recordings covered by subsection (c)(2) of this section, the inability to procure a vendor that is able to perform the redactions within the 25-day time period provided under subsection (c)(2) of this section.”.

(b) Section 204(a) (D.C. Official Code § 2-534(a)) is amended by adding a new paragraph (2A) to read as follows:

“(2A) Any body-worn camera recordings recorded by the Metropolitan Police Department:

“(A) Inside a personal residence; or

“(B) Related to an incident involving domestic violence as defined in section 3032(1) of the Domestic Violence Hotline Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 4-551(1)), stalking as defined in section 503 of the Omnibus Public Safety and Justice Amendment Act of 2009, effective December 10, 2009 (D.C. Law 18-88; D.C. Official Code § 22-3133), or sexual assault as defined in D.C. Official Code § 23-1907(a)(7).”.

Sec. 3. Section 3004(a) of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is amended as follows:

(a) Paragraph (6) is amended by striking the word “and” at the end.

(b) Paragraph (7) is amended to read as follows:

“(7) How many Freedom of Information Act requests the Metropolitan Police Department received for body-worn camera recordings during the reporting period, the outcome of each request, including any reasons for denial, and the cost to the department for complying with each request, including redaction; and”.

(c) A new paragraph (8) is added to read as follows:

“(8) How many recordings were assigned to each body-worn camera recording category.”.

Sec. 4. Metropolitan Police Department Body-Worn Camera Fund.

(a) There is established as a special fund the Metropolitan Police Department Body-Worn Camera Fund (“Fund”), which shall be administered by the Metropolitan Police Department.

(b) Funds from the following sources shall be deposited into the Fund:

(1) All fees that are paid as part of Freedom of Information Act requests for body-worn camera recordings recorded by the Metropolitan Police Department;

(2) All monies appropriated to the Fund;

(3) Federal grants to the Fund; and

(4) Private monies donated to the Fund.

(c) Money in the Fund shall be used for the purpose of procuring a vendor to perform any necessary redactions of body-worn camera recordings.

(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

Sec. 5. Title 24 of the District of Columbia Municipal Regulations is amended by adding a new Chapter 39 to read as follows:

“3900 GENERAL PROVISIONS

“3900.1. The purposes of this chapter are to establish rules for the Metropolitan Police Department’s Body-Worn Camera Program (“BWC Program”) and to implement section 3003 of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905).

“3900.2. The intent of the BWC Program is to promote accountability and transparency, foster improved police-community relations, and ensure the safety of both MPD members (“members”) and the public.

“3900.3. In addition to these regulations, the Chief of Police of MPD may issue policy directives to members; those policy directives shall be published on the Department’s website at <http://mpdc.dc.gov/page/written-directives-general-orders>.

“3900.4. Members shall successfully complete MPD-offered or approved BWC training before being issued a BWC.

“3900.5. When practicable, members shall inform contact subjects that they are being recorded at the beginning of the contact and shall provide language access services to all limited and non-English proficient persons in a timely and effective manner.

“3900.6. Members may record First Amendment assemblies for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of law enforcement units, and for training purposes; provided, that recording First Amendment assemblies shall not be conducted for the purpose of identifying and recording the presence of participants who are engaged in lawful conduct.

“3900.7. Members shall not create BWC recordings when they are at a school and are engaged in non-critical contacts with students or mediating minor incidents involving students.

For the purposes of this subsection, “school” means a facility devoted to primary or secondary education.

“3900.8. When reviewing BWC recordings, members shall immediately notify Department officials upon observing, or becoming aware of, an alleged violation of Department policies, laws, rules, regulations, or directives.

“3900.9. Members may review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing, except in cases involving a police shooting.

“3900.10. The Mayor may, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney’s Office for the District of Columbia, and the Office of the Attorney General, release BWC recordings that would otherwise not be releasable pursuant to a FOIA request. Examples of matters of significant public interest include officer-involved shootings, serious use of force by an officer, and assaults on an officer requiring hospitalization.

“3901 RETENTION OF BODY-WORN CAMERA RECORDINGS

“3901.1. Unless subject to the requirements of § 3901.2, a BWC recording shall be retained by the Department for not more than ninety (90) calendar days from the date the recording was created. All metadata shall be retained by the Department for not less than five (5) years.

“3901.2. The Department shall, through a policy directive, establish and make available on its website retention schedules for BWC recordings that contain the following:

“(a) Recordings related to a criminal investigation;

“(b) Recordings involving conduct by a member or civilian employee that is under investigation or the subject of a complaint;

“(c) Recordings related to a death investigation;

“(d) Recordings that the Department has actual or constructive knowledge may be:

“(1) Subject to a civil litigation hold;

“(2) Subject to a FOIA request; or

“(3) Used for training purposes by the Department; and

“(e) Any other category of recordings that the Chief of Police determines should be retained.

“3902. ACCESS TO BODY-WORN CAMERA VIDEO.

“3902.1. The Department shall make unredacted BWC recordings available to the United States Attorney’s Office for the District of Columbia, the Office of the Attorney General, and the Office of Police Complaints.

“3902.2. The Department shall make BWC recordings available to law enforcement or investigatory agencies, such as the Office of the Inspector General and the Office of the District of Columbia Auditor, pursuant to the officers’ or agencies’ official duties. Nothing in this subsection shall be construed to limit those entities’ authority under existing law. The cost of any required redactions shall be borne by the Department.

“3902.3. A FOIA request for a BWC recording shall only be submitted to MPD.

“3902.4. The Department shall make unredacted BWC recordings available to the appropriate oversight committee or committees of the Council of the District of Columbia upon

request of the committee or committees. BWC recordings in the possession of the Council shall not be publicly disclosed.

“3902.5. (a) Pursuant to policy directives adopted under the authority of § 3900.3, the Department shall schedule a time for any subject of a BWC recording, the subject’s legal representative, and the subject’s parent or legal guardian if the subject is a minor, to view the BWC recording at the police station in the police district where the incident occurred; provided, that:

“(1) Neither the subject, the subject’s legal representative, nor the subject’s parent or legal guardian if the subject is a minor shall make a copy of the BWC recording;

“(2) Access to the unredacted BWC recording would not violate the individual privacy rights of any other subject; and

“(3) Access to the unredacted BWC recording would not jeopardize the safety of any other subject.

“(b)(1) To receive a copy of a BWC recording viewed pursuant to paragraph (a) of this subsection, an individual shall file a FOIA request with the Department; provided, that there shall be no cost to the individual for the production of the BWC recording.

“(2) Upon receipt of the copy of the BWC recording, the individual may further copy or distribute the BWC recording.

“3902.6. An individual seeking to obtain a copy of a BWC recording not covered by § 3902.5 may submit a FOIA request to the Department for a copy of the BWC recording.

“3902.7. The Department shall engage academic institutions and organizations to analyze the BWC Program; provided, that any such relationships shall require the protection of any information or unredacted BWC recordings.

“3902.8. The Department shall, through a policy directive, develop procedures to implement this section and District law.

“3903 BODY-WORN CAMERA AUDITS AND DATA PROTECTION

“3903.1. The Department shall conduct audits of the BWC Program to assess the following, at a minimum:

“(a) Member compliance with these regulations and any policy directives issued by the Department;

“(b) The impact of the BWC Program on reports submitted by members;

“(c) Member training and equipment needs;

“(d) The proper protection of individuals’ privacy rights;

“(e) The impact of BWCs on the number and type of citizen complaints filed with the Department;

“(f) The impact of BWCs on the number of use-of-force incidents;

“(g) The total number of contacts between members and the public; and

“(h) The maintenance of proper and secure access to shared or retained BWC recordings.

“3903.2. The Department shall regularly monitor the business practices of any third-party entity providing services to the BWC Program to ensure that individuals’ privacy rights are protected.

“3903.3. The Department may enter into agreements with other government agencies to provide access to BWC recordings; provided, that any such agreements shall require the other agencies to adhere to the individual privacy protections contained in these regulations or any policy directives issued by the Department.

“3903.4. The Department shall strictly control access to BWC recordings and shall identify each member who accesses BWC recordings. The Department shall perform quarterly audits of member access to BWC recordings.

“3903.5. A member who makes a BWC recording shall not have access to delete that recording.

“3903.6. The deletion of any BWC recording shall be tightly restricted and shall require written justification for the deletion.

“3903.7. If it is discovered through review, audit, or inspection that a member did not record a required event, the Department shall require the member to provide written justification for the failure to record.

“3903.8. The Department shall regularly monitor its BWC recordings data protection policies.

“3999. DEFINITIONS.

“3999.1. When used in this chapter, the following terms and phrases shall have the meanings ascribed:

“Body-worn camera or “BWC” – means a camera system with secured internal memory for storage of recorded audio and video that is designed to be worn on the clothing of or otherwise secured to a person.

“Department” or “MPD” – means the Metropolitan Police Department.

“FOIA” – means Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

“Metadata – means descriptors that identify the time, date, location, badge number linked to the creation of the record, and officer interaction/offense categorization of BWC recordings.

“Subject – means an individual who is not an on-duty law enforcement officer at the time of the BWC recording and who has been recorded by a BWC.

“Use of force – means any physical contact used to effect, influence, or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing or hand control procedures that do not result in injury.”.

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia