

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>NOTICE TO THE COURT</u>
CITY OF CLEVELAND,)	<u>CONCERNING THE CITY OF</u>
)	<u>CLEVELAND'S PILOT PROGRAM</u>
Defendant.)	<u>EFFORTS TO ADDRESS USE OF</u>
)	<u>WEARABLE CAMERAS DURING</u>
)	<u>SECONDARY EMPLOYMENT</u>

INTRODUCTION AND PROCEDURAL BACKGROUND

In its Motion Regarding Cleveland Division of Police Proposed Wearable Camera Policy, the Monitor disagreed with portions of the Wearable Camera Policy proposed by the Cleveland Division of Police (CDP) because the policy, which addresses the use of cameras by on-duty officers, does not mandate the use of body-worn cameras while officers are working secondary employment for a private employer. (Dkt. 92) The portion of the policy addressing secondary employment, Section V, provides that the use of cameras while working secondary employment is recommended but not required. (Dkt. 92-1) The policy further provides that if an officer chooses to wear the camera on secondary employment, the officer must return the camera to the docking unit, known as the ETM, as soon as practical to upload any recorded video; tag, or identify, the video; and ensure that the camera is charged for the next tour of duty. (Dkt. 92-1)

The officers are advised that no overtime shall accrue as a result of these activities as the Division is not requiring the use of the camera. (Dkt. 92-1)

The City responded to the Monitor's motion (Dkt. 92) noting that Paragraph 337 of the Settlement Agreement (Dkt. 7-1) does not require the use of body-worn cameras, thus the mandatory expansion of the program into secondary employment is beyond the terms of the Settlement Agreement. (Dkt. 96) The City further stated that there are significant administrative and financial considerations involved in the use of cameras during secondary employment.

At a status conference on January 6, 2017, the Court "approved the policy submitted by the City regarding the use of wearable camera systems, with the exception of sections related to officer access to camera footage (section 1-G), use of camera systems in secondary employment (Section V), and public access to camera footage (Section VII-G)." (Dkt. 101) The Court ordered the City to provide supplemental briefing on this subject within thirty days of the status conference, which would mean a deadline of February 6, 2017. (Dkt. 101) Soon after the status conference, the Parties and the Monitor began meeting to talk about the issues associated with mandatory wearable cameras during secondary employment. Because of these meetings, described by the Monitor as "useful and collaborative discussions," the Monitor moved the Court to extend the deadline for supplementary information to March 6, 2017. (Dkt. 107) The Court granted that motion.

The Parties and the Monitor continued their discussions and the Monitor again requested an extension of the March 6, 2017 deadline. (Dkt. 116) In a filing on March 13, 2017, the Monitor informed the Court, "The Parties and Monitoring Team have now reached an agreement in principle to construct and implement a pilot program for the use of body-worn cameras during secondary employment work. A detailed, written project plan for that pilot program will be

provided to the Court not later than April 28, 2017, and deadlines related to the pilot program will be included in the forthcoming Second Year Monitoring Plan.” (Dkt. 119) The Second Year Monitoring Plan included the April 28 date. (Dkt. 120) On April 27, 2017, the Monitor notified the Court that the deadline for the pilot program description was extended to May 5, 2017.

DISCUSSION OF CAMERA USE DURING SECONDARY EMPLOYMENT

A. SCOPE AND TYPES OF SECONDARY EMPLOYMENT

At the end of 2016, there were 1437 sworn personnel in the Division of Police. Currently, there are 630 officers approved to work secondary employment. Five hundred and eight are patrol officers and 122 are supervisors. These officers either are hired directly by a specific employer to provide security for that employer or are hired by an entity that provides security services either at one location or at different locations for different clients. Officers engaged in secondary employment work at about 238 different locations within the City. Beyond approving or disapproving secondary employment for officers, the City does not administer secondary employment engagements for its officers. The officers seek their own secondary employment. The City provides no benefits or compensation for the officers in conjunction with their secondary employment. Each officer seeking secondary employment approval must provide documentation of Workers’ Compensation coverage.

The secondary employment job duties vary. Generally, officers provide security at large venues such as Quicken Loans Arena, Progressive Field, First Energy Stadium, Tower City Center, and the Jack Casino downtown, as well as at grocery and other retail stores, banks, small and large entertainment venues, the premises outside of liquor establishments, construction sites, schools, hospitals, homeless shelters, parking garages, apartment complexes, and office buildings. Many of the secondary employment locations have their own fixed camera

surveillance systems, some of which are sophisticated and comprehensive. Because officers working secondary employment are allowed to wear their CPD uniforms, they provide a visible deterrent to illegal activity. Additionally, as Cleveland Police Officers they are able to exercise their police powers to arrest in Cleveland if necessary, although the officers then call on-duty officers to respond to the scene.

B. LOGISTICS INVOLVED IN WEARABLE CAMERA USE

If video is recorded on a wearable camera, the camera device must be placed in a docking station device to upload the video, tag the video with identifiers, and charge the camera unit. Docking stations are located at the various Police District buildings. The time for performing these functions varies depending on the amount of video footage captured by the camera. For an officer's usual eight-hour tour of duty, it takes about 45 minutes to tag the video, which is the function for which the officer must be present. After placing the camera in a docking station, the officer need not be present to upload and charge. The cameras have a finite capacity for recorded video. Uploading video takes it off the camera thus allowing capacity for further recording. If cameras were required during secondary employment, in addition to tagging the video, the officer would have to ensure that the camera is charged and has sufficient recording capacity for use before the next tour of duty. Docking stations cost approximately \$250 per unit. However, using the docking station to upload with a home computer may take longer because home computer speed may not match the speed available at the District building. Additionally, uploading may prohibit other uses of the home computer system while the uploading was occurring.

SECONDARY EMPLOYMENT PILOT CAMERA PROGRAM

In order to evaluate better the time, potential costs, administrative demands, interference with both City employment and secondary employment, and benefit vs. cost of requiring the use of cameras during secondary employment, the Parties and the Monitor agreed to implement a pilot program using volunteers from the Police Division. Attached Exhibit A provides an operational outline for the pilot program. That Operational Outline provides that the City would capture information that would assist it to evaluate the interruptions to secondary employment, the time to upload and tag video from secondary employment, battery life and charging needs, the amount of activity during secondary employment requiring the use of the camera, how secondary employment use affects camera capacity, and the availability of other video at the secondary employment work site. Attached Exhibit B is the Divisional Notice issued to the City's police officers seeking volunteers. In developing this pilot program, the City anticipated that it would have a sufficient number of volunteers to make it meaningful. However, to date, no officers have volunteered for the program.

CONCLUSION

The pilot program developed by the City to further explore the issues related to mandatory use of the cameras while on secondary employment currently is not feasible without volunteers. Thus, the City requests that the Court approve the proposed Section V of the policy filed with the Court at Docket 92-1 providing that use during secondary employment is recommended but not required. Further, the City will continue to monitor technology changes that will diminish the logistical and cost burdens associated with mandatory use during

secondary employment. As technology develops, these burdens may not be the impediment that they are now.

Respectfully submitted,

Barbara A. Langhenry (0038838)
Director of Law

By: Gary S. Singletary
Gary S. Singletary (0037329)
Chief Counsel
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
Tel: (216) 664-2800 Fax:(216) 664-2663
E-mail: blanghenry@city.cleveland.oh.us
gsingletary@city.cleveland.oh.us

Counsel for the City of Cleveland

CERTIFICATE OF SERVICE

The undersigned certifies that the Notice to the Court Concerning the City of Cleveland's Pilot Program Efforts to Address Use of Wearable Cameras During Secondary Employment was filed electronically on May 5, 2017. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Pursuant to the requirements of the Consent Decree the Monitor has been delivered a copy of this filing.

/s/ Gary S. Singletary
Gary S. Singletary (0037329)
Counsel for the City of Cleveland

EXHIBIT A

- Volunteer officers will submit their secondary employment schedules to Project Coordinator for tracking purposes.
- Volunteer officers will wear their assigned Wearable Camera System (WCS) when working secondary employment.
- Volunteer officers will follow the draft WCS policy with some possible amendments, outlined in a DN, during the pilot program (with the agreement of the selected secondary employers).

- Policy Highlights

- Volunteer officers will need to have their city issued portables at secondary employment to request CAD numbers and approvals from supervisors for instances when the WCS needs to be turned off due to “Exceptions to Recording”.
- The WCS will need to be in buffering mode and turned to Event mode in accordance with the draft WCS policy (during all investigative or enforcement contacts with the public, or other contact with the public that may or does become adversarial after the initial contact).
- Volunteer officers will need to track relevant information for the post Pilot program analysis: Examples:
 - Whether secondary employment is immediately prior to or immediately after Division shift
 - Length of secondary employment shift
 - Notation of battery life, from a fully charged state, when does the battery fail and how are participants handling battery life management (charging the WCS)
 - The number of times participants need to contact an on-duty supervisor. We are still working on a way to track the amount of time the supervisor is away from on duty tasks
 - The number of times participants need to contact an on-duty dispatcher. We are still working on a way to track the amount of time the amount of time the dispatcher is away from on duty tasks
 - Amount of time taken to “Tag” secondary employment video
 - Any arrests during the secondary employment shift
 - Any uses of force during the secondary employment shift
 - Is there other (employer) video available of the arrest/use of force
- The reporting instrument for data tracking has not been determined
- Volunteer officers will maintain their WCS until their next tour of duty and the camera will be docked for uploading of all video (May include the previous tour video, any video from secondary employment and a second tour of video). Volunteer officers will not upload video during their tour, the WCS should be docked at the end of a tour.
- During the Pilot program volunteer officers will “Tag” their secondary employment video while on duty in a manner that does not interfere with their on duty requirements.
- During the Pilot program, the program coordinator will complete review of secondary employment video to ensure video is in the proper category.

EXHIBIT B



CLEVELAND DIVISION OF POLICE DIVISIONAL NOTICE



DATE OF ISSUE: April 14, 2017	DISTRIBUTION: ADMINISTRATIVE UNITS	NUMBER: 17-106
SUBJECT: WEARABLE CAMERA SYSTEM (WCS) PILOT PROJECT – SECONDARY EMPLOYMENT		NO. PAGES: 1 of 1
CLASSIFICATION:	CHIEF OF POLICE: <i>Calvin D. Williams, Chief</i>	

The Cleveland Division of Police, in collaboration with the federal Monitoring Team, are seeking volunteers for a pilot project to test the feasibility of using the Wearable Camera System (WCS) while engaged in secondary employment in the manner which officers already use other City-issued equipment during secondary employment.

The Division is seeking officer and supervisor volunteers who work secondary employment and are assigned a WCS, preferably the Taser Axon II model. Officer volunteers will utilize their assigned WCS while working at their secondary employment, maintained in Buffer Mode, placing the WCS into Event Mode to record encounters in compliance with a Division policy.

Officer volunteers participating in the pilot project shall also utilize their Division assigned portable radio to contact dispatchers and supervisors as required by Division policy during utilization of the WCS during secondary employment. Officer volunteers will be asked to track identified data needed to evaluate the feasibility of fielding the WCS while engaged in secondary employment.

Officer volunteers during the pilot project shall upload video recorded at secondary employment at the end of a Division tour of duty, in a manner that will not create overtime. Officer volunteers during the pilot project shall be permitted and given the opportunity to “tag” video recorded at secondary employment and complete the data tracking requirement during their tour of duty.

During the pilot project, officers will not be disciplined for misconduct arising from the review of recorded video unless the nature of the misconduct rises to the level of criminal misconduct.

Officers interested in volunteering shall submit a Form-1, including their name, badge number, contact/cell phone number, assignment, WCS model and serial number, secondary employer location(s), and average secondary employment hours worked per week. Form-1s do not require a supervisor’s signature and shall be forwarded to the Policy Unit, Attention: Captain Simon by Friday, April 28, 2017.

CDW/rcs
Bureau of Integrity Control