

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.)	
)	
CITY OF CLEVELAND,)	
)	<u>MOTION REGARDING CLEVELAND</u>
Defendant.)	<u>DIVISION OF POLICE PROPOSED</u>
)	<u>WEARABLE CAMERA SYSTEM</u>
)	<u>POLICY</u>

Pursuant to Paragraphs 337 to 340 of the Consent Decree, a number of the Decree’s other substantive requirements, and the Updated First-Year Monitoring Plan in the above-captioned matter, the Monitor has reviewed a proposed revised policy submitted by the City of Cleveland (the “City”) for the Cleveland Police Department (“CPD” or “CDP”) on “wearable camera systems” (“WCS”), also referred to herein as “body cameras” or “body-worn cameras,” attached hereto as Exhibit A (the “Proposed Policy”). Pursuant to the Consent Decree, “[i]f CDP chooses to use body worn cameras, CDP will provide clear guidance and training on

their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals.” Dkt. 7-1 ¶ 337.

As the Monitor has previously indicated, the CPD has recently joined numerous other police departments in using body cameras in some capacity. Dkt. 65 at 64 (“All CPD patrol officers are equipped with body cameras, with specialty units (such as personnel working at the Cleveland Hopkins International Airport) slated to be equipped with units in the near future.”) Accordingly, because the CPD has undertaken this commendable effort, the Consent Decree requires that the Monitoring Team review the policy in order “to confirm that the body-worn camera policy appropriately incorporates community comment, conforms to the Decree’s specific requirements, and sufficiently promotes the Decree’s other objectives.” *Id.* at 65.

As described in greater detail below, the CPD crafted their body-worn camera policy in mid-2015, resulting in General Police Order 3.2.20. The Department of Justice and Monitoring Team have reviewed that policy and provided multiple rounds of feedback, and the Division has subsequently provided revisions of the policy, responding to the concerns, to the Department of Justice. Substantial progress has been made in many areas in the revisions to the Proposed Policy, and there are a number of components that are consistent with the Consent Decree and the policies of forward-looking police organizations.

There are, however, three provisions of the policy that, for the reasons summarized below, cannot receive the Monitor’s approval at this time. First, the Monitor cannot endorse the Division’s refusal to mandate that officers be required to use body-worn cameras and be subject to the Proposed Policy when they are engaging in secondary employment. Second, with respect

to provisions relating to officers viewing body-worn camera footage, the Monitor defers approval or disapproval pending the City's subsequent work on policies and manuals relating to use of force investigations. Third, with respect to provisions relating to camera footage being provided to the public, the Monitoring Team finds that the provisions are better suited for a more comprehensive policy relating to the transparency of CPD information and data.

The Monitor recommends that the Court approve the Proposed Policy with the exceptions of Section V in its entirety, Section I-G, and Section VII-G. The Monitor requests that the Court convene a status conference to address the issue of officers wearing and using cameras while employed in law-enforcement-related secondary employment positions. The Monitor suggests that the Court direct that those at the CPD with expertise in the technology of the WCS, as well as in related storage and cost issues, be required to attend the conference. The Monitor requests that the Court defer approval or disapproval of Section I-G until policies and manuals relating to force and internal investigations are completed. Finally, the Monitor requests that the Court direct CPD and the City to draft a separate, standalone policy relating to public access to and disclosure of CPD data and information – encompassing but not limited to captured body camera footage – for its review and approval.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING BODY-WORN CAMERAS

CPD has elected to join the more than 6,000 estimated police departments across the United States that are using body cameras.¹ Agencies are continuing to adopt the technology

¹ Katie DeLong, *One-third of United States police departments using body cameras: They're expensive, so are they worth it?*, FOX6NOW.COM (Mar. 2, 2015), <http://fox6now.com/2015/03/02/one-third-of-united-states-police-departments-using-body-cameras-theyre-expensive-so-are-they-worth-it/> (last visited Dec.19. 2016).

because it promotes officer safety, public safety, and police accountability. In San Diego, for instance, the use of body cameras led complaints to fall by 40.5 percent and officer use of “personal body” force – or officers going “hands-on” with subjects, which are circumstances that typically lead to a higher rate of injuries to officers – to fall by some 46.5 percent.² Similarly, in Mesa, Arizona, officers using body cameras had 65 percent fewer complaints than non-users – and saw a 60 percent decline in their own number of complaints as compared to the year before beginning to use the cameras.³ Many other jurisdictions report similar benefits.

The “use of body worn cameras is not required” by the Consent Decree. Dkt 7-1 ¶ 337. However, “[i]f CPD chooses to use body worn cameras,” a number of requirements are activated. First, the Decree requires that the Division “provide clear guidance and training on their use . . . to foster transparency, increase accountability, and build trust” *Id.* The Division must likewise implement protocols for “testing equipment,” *id.* ¶¶ 337, 339 and preserving recordings, ¶ 337. The Decree outlines CPD supervisor responsibilities for viewing recorded incidents and “conduct[ing] adequate random and directed audits of body-worn camera recordings. . . to confirm compliance with C[PD] policy.” *Id.* ¶¶ 338-39. The CPD must also ensure that officers are “subject to the disciplinary process for intentional or otherwise unjustified failure to activate” cameras in accordance with CPD policy. *Id.* ¶ 340.

² Tony Perry, *San Diego police body camera report: Fewer complaints, less use of force*, L.A. TIMES Mar. 18, 2015, <http://www.latimes.com/local/lanow/la-me-ln-body-cameras-20150318-story.html>.

³ Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CENTER, U.S. DEP’T. OF JUSTICE, 21 (2014) <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (summarizing Mesa Police Department’s 2013 On-Officer Body Camera System: Program Evaluation and Recommendations).

II. PROCEDURAL HISTORY

The Court-approved First-Year Monitoring Plan provided that the Monitor would “review and assess CPD’s current body-worn camera policies and practices,” which would “include the collection of input from” a host of community stakeholders “about CPD’s current body-worn camera policies and practices.” Dkt. 44-1 at 53. In March and April 2016, the Monitoring Team met with police officers, received input from community organizations such as the American Civil Liberties Union (ACLU), and talked with residents who were knowledgeable about the Division’s prior process for developing the body-worn camera policy. On April 11, 2016, the Monitoring Team circulated a memorandum to CPD and the City regarding the Division’s Body-Worn Camera (Wearable Camera System) Policy, General Police Order Number 3.2.20. Stakeholder focus subsequently shifted to work on new policies related to force, new policies and protocols for crisis intervention, operational manuals for the Office of Professional Standards and Police Review Board, and on the City’s preparation for the Republican National Convention in July 2016.

Pursuant to revised deadlines in the Updated First-Year Monitoring Plan, Dkt. 80-1 at 19, CPD and the Parties continued work on revising the body-worn camera policy in October 2016. The Monitoring Team affirmed its original comments and recommendations, from its April 11 memorandum, on October 18, 2016. The Department of Justice provided detailed comments on October 19, 2016. CPD provided a revised version of the policy on November 1, 2016. The Monitoring Team circulated specific edits and comments, along with the Team’s prior memorandum of recommendations, to CPD on November 2, 2016. The Division circulated another draft on November 23, 2016. Between November 23, 2016 and December 16, 2016, the

Parties, CPD, and Monitoring Team discussed potential further refinements of the policy. The deadline for the Monitor to “recommend[] approval or disapproval of the Final Draft Body Worn Cameras Policy to the Court, either in whole or in part” is, with the Parties and Monitor agreeing that a seven-day extension of the deadline was “warranted and acceptable,” December 19, 2016. Dkt. 80-1 at 3, 19.

III. STANDARD OF REVIEW

“As an agent of the Court,” the Monitoring Team must “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 ¶ 351; *accord id.* ¶ 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitor here is to determine whether the most recent revised proposed policy on body-worn cameras dated December 16, 2016 complies with the Consent Decree’s requirements. *Id.* ¶¶ 337-340. “[I]n some instances, the evaluation of whether the policies include what the Decree requires is relatively mechanical.” Dkt. 83 at 14. The Monitor needs to determine, for example, whether the policy complies with the fairly specific requirements laid out in the Decree for supervisor review of recordings and random audits, *id.* ¶ 339, and whether the policy provides for adequate discipline for failure to activate a camera consistent with the policy, *id.* ¶ 340.

“However, in other instances, the [policies] must comply with more general provisions or provide more significant detail than the Consent Decree provides.” Dkt. 83 at 14. Because the provisions of the Consent Decree regarding the body-worn camera are not necessarily as comprehensive or detailed as other provisions in the Decree, the review of the body-worn camera policy falls broadly within this type of analysis. Accordingly, “the task of the Monitor is to

determine whether this additional material is consistent with the Consent Decree's overriding guidelines, requirements, and principles." *Id.* at 14. As always, the Monitoring Team's assessment of these elements is informed substantially by the policies of other police departments across the country that have implemented body-worn camera technology; the resources and work of national organizations including the Department of Justice's Community Oriented Policing Services (COPS) Office and the Police Executive Research Forum (PERF); and the experience and technical backgrounds of Monitoring Team experts.

As the Monitor has noted previously, the Decree requires that all policies are not only developed but also are effectively implemented. Dkt. 83 at 13; Dkt 7-1 ¶ 351. Policies "must exist not simply on paper but in practice such that" officers are "affirmatively comply[ing] with them, day in and day out." Dkt. 83 at 13. Here, the Monitoring Team observes that CPD's prior Wearable Camera System policy, General Police Order 3.2.20, "has been in effect since February 2, 2015." Cleveland Division of Police Divisional Notice Number 16-372 (Dec. 1, 2016). However, it has only been since December 1, 2016 – 22 months after being initially published – that "members found to be in violation" of the camera policy "shall be subject to disciplinary action." *Id.* Thus, it is not clear whether any policy related to body cameras could fairly be considered effective in practice within CPD at this time.

III. ANALYSIS OF THE POLICY ON WEARABLE CAMERA SYSTEMS

This section summarizes the main provisions of the proposed policy on wearable camera systems, including describing various provisions which have been revised to comply with the Monitor's recommendations and which the Monitor now deems sufficient. It then addresses the

specific problems with regard to the Policy's continued failure to require that officers use body-worn cameras while engaging in secondary employment.

A. Summary of Proposed Body-Worn Camera Policy

The Proposed Policy “establish[es] guidelines for the use, management, storage, retrieval, and supervision regarding the [WCS].” Ex. A at 1. It sets forth that the policy of the Department is that “WCS shall be deployed to ensure transparency and foster trust in our community.” *Id.* at 1. It then sets forth clear and straightforward guidance regarding when the WCS must be activated, *id.* ¶ I-A – that is, placed into “event mode” from “buffering mode,” in which ongoing footage is captured but “recorded over” in a security-camera-style recording loop of approximately thirty seconds or so. The Proposed Policy provides that, if placing the camera in “event mode” is “not feasible due to an immediate risk to the safety” to the officer or others, the officer shall activate it “as soon as the immediate threat has been addressed.” *Id.* ¶ I-B. The Proposed Policy then gives a non-exhaustive list of examples for when the camera must be deployed, *id.* ¶ II-B-1-a, and sets forth those circumstances in which the camera can be returned to buffering mode, primarily to protect citizens’ privacy or in situations where consent is needed to record and is not given. *Id.* ¶ II-C. This is a substantial improvement on earlier versions of the Proposed Policy which contained convoluted and unnecessarily confusing language governing when to place the BWC unit into event mode. The Proposed Policy prohibits officers from editing, deleting, or altering the recordings, *id.* ¶ I-C, has a number of other provisions regarding officers’ responsibilities for handling their cameras, *id.* ¶¶ I-C, I-E, I-F, and also requires comprehensive and continuous training, *id.* ¶ IX. Although the Monitoring Team still believes that the exceptions to the “default rule” regarding when cameras must be activated could

be further streamlined and structured, it finds that, overall, the Proposed Policy succeeds in “provid[ing] clear guidance and training on their use,” as required by the Consent Decree. Dkt. 7-1 ¶ 337.

The Proposed Policy further sets forth that officers “shall be subject to the disciplinary process for intentional, repeated or otherwise unjustified failure to activate their WCS in violation” of the policy, ¶ I.I, consistent with the Consent Decree’s requirement that “[o]fficers will be subject to the disciplinary process for intentional or otherwise unjustified failure to activate body worn cameras in violation of CDP policy.” Dkt. 7-1 ¶ 340. It properly requires documentation of the reason that the camera “has been returned to buffering mode” from event mode. Ex. A, ¶ II-B-h. It also delineates the responsibilities of supervisors, satisfying the Consent Decree’s requirements that supervisors “review recordings” in various situations, Dkt. 7-1 ¶ 338, Ex. A ¶ III-A-5, and “conduct adequate random and directed audits” of recordings. Dkt 7-1 ¶ 339; Ex. A ¶ IV. Finally, the Proposed Policy sets forth various rules regarding the retention and storage of the recordings. Ex. A ¶ VIII.

Collectively, the Monitoring Team concludes that, with the exceptions of Sections I-G, V, and VII-G, the provisions and requirements of the Proposed Policy represent substantial progress toward meeting the Consent Decree’s requirement that, having chosen to use body-worn cameras, CPD “will provide clear guidance and training on their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals.” Dkt. 7-1, ¶ 337.

B. The Proposed Secondary Employment Provision Does Not Satisfy the Consent Decree.

Section V of the Proposed Policy fails to satisfy the Consent Decree because it does not require that officers engaged in secondary employment use WCS consistent with the Proposed Policy. Under the Proposed Policy, the “[u]se of WCS while working authorized secondary employment is recommended but not required.” Ex. A ¶ V. “Secondary employment” means “any occupation, vocation, profession, trade or business (other than Division employment) for which wages or anything of value is received.” *Id.* at 2. Thus, the Proposed Policy sets up two different sets of rules: one for officers wearing the uniform and carrying City-issued equipment when they are working a City shift and another for officers wearing the uniform and carrying City-issued equipment when they are working for private employers.

There are a number of reasons that it is necessary – and indeed essential – that officers engaged in law-enforcement-related secondary employment be required to wear body-worn cameras consistent with the requirements of any consistent and transparent body-worn camera policy. First of all, the Department mandates that “[t]he rules and regulations of the Division govern its members when engaged in secondary employment,” and Division personnel are required to “carry their Division issued” equipment when working secondary employment. *See* GPO 1.1.25 at 1. Even though they are not directly working for the CPD, officers engaged in secondary employment – for example, serving as security at sporting events or in other public venues – are subject to the same rules regarding carrying firearms and wearing their uniforms as they would be when serving as officers. There is no logical reason to carve out the use of something as important as WCS from these requirements.

Second, a system where one set of rules applies to officers working a City shift while another set of rules applies to officers working for a private employer fosters confusion, not confidence, among the Cleveland community. To members of the public, it is not apparent whether the officer is serving in his or her capacity as an officer employed by the CPD, or is an officer of the CPD engaged in secondary employment. Indeed, the Monitoring Team suspects that relatively few Cleveland residents know that the officers wearing their CPD uniforms and carrying their CPD-issued equipment at Cavaliers and Browns games are typically being paid by those organizations – not the City.

Moreover, when engaged in secondary employment, officers are often called upon to exercise their law enforcement responsibilities – including exercising the use of force as appropriate. Indeed, that ability to demonstrate, and if necessary exercise, the authority of law enforcement is a significant reason that private employers want to hire officers. Under the Division’s Proposed Policy, uses of force, “investigative or enforcement contacts with the public,” or “other contact[s] . . . that may or do[] become adversarial” are required to be filmed by body cameras. *Id.* ¶ I-A. The public is not able to differentiate between an officer serving as an officer and an officer engaged in secondary employment. If an officer engaged in secondary employment were to, for example, use force (as has happened on occasion), the public would not be aware that that officer – in uniform, carrying a Department-issued firearm – was actually not serving as an officer but was in fact off the job and engaged in secondary employment. The failure of that officer to be using a body-worn camera in such circumstances and the absence of such footage would foster confusion and ultimately detract from the goals of transparency, accountability and trust that are at the heart of the Proposed Policy and the Consent Decree. *Ex.*

A at 1; Dkt. 7-1 ¶ 337. Given that the line between an officer acting as an officer or acting in secondary employment is blurry at best to the public, it is simply not possible to draw a line between the two with regard to policies regarding the use of body-worn cameras, at least not if the purpose of the body-worn cameras is to “foster transparency, increase accountability, and build trust while protecting the privacy rights of individuals.” Dkt 7-1, ¶ 337.

There are also no legitimate policy reasons *not* to include secondary employment in the Proposed Policy. As noted above, most of the Division’s other rules and regulations typically apply to officers engaged in secondary employment, for good reason – since they are offered such employment precisely because they are law enforcement. Numerous other departments require their officers to comply with their body-worn camera policies while engaged in secondary employment.⁴ The City argues that, in at least some of the jurisdictions where officers must wear and use body cameras when engaged in law-enforcement-related secondary employment, the secondary employment programs are centralized, administered, and overseen by the department or city itself. Accordingly, the City says that a requirement to wear and use cameras during secondary employment is not feasible because the City has no relationship with the secondary employer. However, the Monitoring Team understands that the Cleveland Police Patrolmen’s Association has been supportive of a system of administering secondary employment more centrally, along the lines of how secondary employment works within the

⁴ These departments include, but are not limited to: Louisville, Kentucky; Mount Rainier, Maryland; Prince George’s County, Maryland; Queen Anne County, Maryland; Minneapolis, Minnesota; Asheville, North Carolina; Concord, North Carolina; Durham, North Carolina; Greensboro, North Carolina; Oklahoma, City, Oklahoma; Pittsburgh, Pennsylvania; Murphy, Texas; and Suffolk, Virginia.

Columbus Division of Police.⁵ Thus, if the centralization or lack of centralization of secondary employment is a significant enough issue to impose a barrier on implementing a body camera requirement – which the Monitoring Team does not believe – the City, CPD, its officers, and secondary employers desiring the skills of CPD personnel might make changes in the way that secondary employment works within the Division. Further, although the Division’s secondary employment is not centrally administered or overseen, the Chief of Police and Director of Public Safety have ultimate oversight, as they are able both to authorize original secondary employment requests and “revoke authorization to work secondary employment based upon the operational needs of the Division.” GPO 1.1.25 at 1. Thus, the Chief and Public Safety Director can put secondary employers, and CPD officers, on notice that body camera use while working such jobs is now a practical, community, and operational need of CPD.

Importantly, the use of body-worn cameras in secondary employment does not present any serious logistical complications. The main concerns with regard to mandating the use of cameras on secondary employment that the City and CPD have identified are: (1) the possibility that the officer may have to spend time categorizing, tagging, and uploading the video from the secondary employment shift and ensuring that the camera is sufficiently charged and powered up before the officer is required to use the camera on a shift with the Department, and (2) the need to provide storage space for that video. The City and the CPD do not want to be responsible for compensating the officer for time taken to do these activities in connection with the video from the secondary employment or for absorbing the costs of storage.

⁵ See COLUMBUS POLICE DIVISION DIRECTIVE 9.15, (2015), <http://www.columbuspolice.org/FormsPublications/Directives/Directives/DirectivesNew2015/9.15.pdf>.

These granular logistical and extremely limited budgetary implications, while important, are not so critical as to justify creating a gap in the use of body-worn cameras that will impede the transparency, accountability and trust that the Proposed Policy, and the Consent Decree, are designed to foster. First, there is no indication that time and costs will be prohibitive. The filming, tagging, and uploading of video will not be required after every secondary employment stint but, instead, only when the camera had to be activated pursuant to the Proposed Policy – or, in other words, in connection with “investigative or enforcement contacts with the public, or other contact with the public that may or does become adversarial after the initial contact.” Ex. A ¶ I-A. It is not clear how often such circumstances occur, but none of the CPD, City, Department of Justice, or Monitoring Team have reason to think that they happen on every or even on most secondary employment jobs. More importantly, and regardless of how often they happen, these are circumstances in which the officer is expressly pivoting to law enforcement activity – and which could result in potential use of force, which is unambiguously the subject of the Consent Decree. These are, as well, the exact situations in which the public will view the officer, though engaged in secondary employment, as in fact a law enforcement officer. In turn, these are the exact circumstances in which body-worn cameras are essential to ensuring public trust and accountability in the CPD. The Monitoring Team believes that, although the uniform use of cameras during secondary employment shifts would be a change from past practice within CPD, the City of Cleveland and the Division should explore proactive and creative ways to address the logistical issues that they say make a secondary employment BWC requirement impossible. The Monitor suspects that it may be possible, for instance, for the City and CPD to assist its members in ensuring that secondary employers get the skills and experience of CPD

officers while minimizing any potential costs to the City. Because private employers derive tremendous benefits from hiring CPD officers, hire them precisely because they are CPD officers, and have to be approved by the CPD to do so, the Monitoring Team suspects that many secondary employers will believe it eminently sensible to absorb the minimal costs associated with time for officers to tag and log incidents captured during their shift.

In short, the Monitoring Team believes that the same rules must apply to officers engaged in secondary employment as on their regular shifts with the CPD with regard to using body-worn cameras. Such uniformity will minimize public confusion and mistrust when officers engaged in secondary employment exercise law enforcement authority or use force. The availability of video regardless of the nature of the officer's employment will ensure that the CPD's body-worn camera policy is employed to maximize public trust, accountability, and transparency – and that use of force and other critical incidents will be captured on video, regardless of what employer is paying a CPD officer for their services.

The Monitoring Team must emphasize here that it is expressly not attempting to make it more challenging or problematic for officers to work jobs outside of CPD. Indeed, the Team is aware that the current salaries and wages paid to CPD personnel – which is lower than the compensation of most nearby police departments and of similarly-situated urban police departments nationally – make it necessary for many officers to work second jobs to provide for themselves and families. Nothing about the opportunity for CPD personnel to work second jobs, given those opportunities are vetted and approved by the Division to ensure against conflicts of interest or job duties that would conflict with the Division's rules, is inherently problematic. G.P.O. 1.1.25 at 1 (requiring “written permission by the Chief of Police and the Director of

Public safety” to “engage in secondary employment if the work does not interfere with Division employment and there is no conflict of interest between the work and the Division”); *see* Richard B. Weinblatt, “*Managing Off-Duty Jobs: A Clear Policy Is the Key to Success*,” 47 LAW & ORDER 84 (1999) (“Given that police officers view off-duty employment as essential, particularly in locales where officer pay is low, law enforcement managers are responsible for ensuring that clear policies and guidelines for such employment are in place.”). Instead, the Monitor only contends that CPD’s officers should be able to benefit from the same technology, tools, and standardized understanding that the Division’s rules apply to them regardless of who is paying them or under what circumstances they are wearing the uniform.

C. The Proposed Policy’s Treatment of When Officers May and May Not View Captured Video Is Premature.

Section I-G of the Proposed Policy outlines rules and regulations relating to when officers may and may not view video. That issue is important. However, because the Consent Decree process has only just begun to focus on policies and manuals relating to use of force incidents and internal investigations, any definitive conclusions about how video and force investigations simply cannot be definitive at the current juncture. Consequently, the Monitoring Team neither approves nor disapproves of Section I-G of the Proposed Policy at this time, pending approval by this Court of policies and manuals relating to force investigations and internal investigations.

D. The Proposed Policy’s Treatment of Public Access and Disclosure Issues Is Better Suited for a More Specific and Comprehensive Policy on Public Disclosure Of, and Access To, CPD Information and Data.

Section VII-G of the Proposed Policy addresses how the Cleveland community may be able to view incidents captured on body-worn cameras. The Monitoring Team finds the uniform

mechanism of a public disclosure request to be overly formal, time-consuming, inefficient, onerous, and insufficiently consistent with the Consent Decree's express objective of "increas[ing] transparency." Dkt. 7-1 at 1. The Monitoring Team observes that other departments and other cities have extensive, standalone policies and protocols governing the release to the media, individuals, and the general public of captured video. Although the Monitoring Team agrees that public access and disclosure issues must be addressed by CPD and City policy, the Monitoring Team concludes that the provisions are better suited for a more specific, comprehensive policy relating to the transparency of CPD information and data. Consequently, the Monitoring Team recommends approval of the Proposed Policy without the inclusion of Section VII-G.

VII. CONCLUSION

The task of the Monitor was to duly consider whether the City's submitted proposed policy on WCS satisfies the terms of the Consent Decree. The Monitoring Team concludes that, with three exceptions, it does.

First, because it does not mandate the use of body-worn cameras pursuant to the Proposed Policy while officers are engaged in secondary employment, Section V of the Proposed Policy does not meet the Consent Decree's requirements of fostering transparency, accountability, and trust. The Monitoring Team requests that this Court convene a public

hearing to explore this deficiency and determine a specific process and timetable for the City to comply with the terms of the Decree.

Second, because work on policies and manuals relating to force and internal investigations needs to be completed before parameters as to when officers may and may not view video may be definitively determined, the Monitoring Team neither approves nor disapproves of Section I-G of the Proposed Policy at this time – but expects that the Proposed Policy will be revised in light of the proposed policies and manuals on force and internal investigations. The Monitor recommends that the Court neither approve nor disapprove of Section I-G until it can consider those policies and manuals.

Finally, because CPD and the City of Cleveland's protocols on public access and disclosure to captured video must be substantially more comprehensive, the Monitoring Team recommends approval of the Proposed Policy without the inclusion of Section VII-G and requests that the Court direct the City and CPD to develop a separate, standalone policy on public access to, and disclosure of, CPD information and data – including but not limited to body camera footage – for its approval.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2016, I served the foregoing document entitled Motion Regarding Cleveland Division of Police Wearable Camera System Proposed Policy via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE

EXHIBIT A



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 12-16-16	NO. PAGES: 1 OF 10	NUMBER:
SUBJECT: WEARABLE CAMERA SYSTEM			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

This General Police Order has been revised in its entirety

PURPOSE: To establish guidelines for the use, management, storage, retrieval, and supervision regarding the Wearable Camera System (WCS). To provide officers with clear guidance on the use of the WCS and preservation of recordings to foster transparency, increase accountability, build trust, and protect the privacy rights of individuals.

POLICY: The WCS shall be deployed to ensure transparency and foster trust in our community. It shall be the responsibility of each officer to deploy their WCS in accordance with this order.

DEFINITIONS:

Wearable Camera System: A body worn digital recording device with secured internal memory for storage of recorded video and audio. This camera system operates in two modes (Buffering and Event). Cleveland Division of Police currently uses Taser Axon Wearable Cameras.

Buffering Mode: After the WCS is powered on, it continuously loops 30 seconds of VIDEO ONLY.

Event Mode: Activated when the WCS is in buffering mode and the event button is pressed two times within one second. The indicator light will begin blinking red giving users a visible indicator that the WCS is now actively recording video and audio. 30 seconds of pre-event video (no audio) recording will be captured from buffering mode. An audible tone will also alert officers that the WCS is activated.

Evidence.com: The online web-based digital storage medium facility. This virtual warehouse stores the digitally encrypted data in a highly secure environment accessible to personnel based on their security clearance.

Evidence Sync: Desktop or Mobile Data Computer (MDC) application that allows WCS users to view captured media from their WCS via a standard USB cable. Officers may also tag, categorize, add notes, and/or incident report numbers to captured media and will allow for upload to their Evidence.Com account.

Evidence Transfer Manager (ETM): The docking unit used to recharge the WCS and upload the encrypted captured media (video and audio). The ETM then transfers the encrypted data digitally to Evidence.com.

PAGE: 2 of 10	SUBJECT: WEARABLE CAMERA SYSTEM (WCS)	GPO NUMBER:
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PROCEDURES:

I. General Guidelines

- A. All officers assigned a WCS, while in the field, shall activate their camera immediately upon initiating a response to a call for service, 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. Officers shall understand there are exceptions and prohibited times to record set forth in sections IV and V.
- B. If placing the WCS in event mode is not feasible due to an immediate risk to the safety of the officer or others, the officer shall place the WCS in event mode as soon as the immediate threat has been addressed.
- C. Officers shall not edit, delete, or alter captured media. The security features of Evidence.com ensure compliance and track all access to captured media.
- D. The existence of captured media shall not replace a thorough, accurate, and complete incident report or Form-1.
- E. Officers shall be responsible for all WCS equipment assigned to them. An officer who's issued WCS is damaged, lost, stolen, or malfunctioning shall immediately notify a supervisor and *as necessary* complete a Form-1 and/or an incident report, and contact the Mobile Support Unit to receive a replacement camera.
- F. Officers shall surrender their WCS to the officer-in-charge (or designee) of the Force Investigation Team (FIT), Accident Investigation Unit (AIU), Internal Affairs Unit, or any supervisor upon request.
- G. The Division reserves the right to limit or restrict an officer's ability to view captured media based on the circumstances surrounding the incident.
 1. Officers are authorized to access their own WCS recording for a legitimate law enforcement purpose, including but not limited to completion of reports.
 - a. Officers shall only view their WCS recording after a use of force that requires a FIT response when authorized by the FIT OIC.
 - b. Officers may view their own or another officer's WCS recording, if a FIT response is not required, as necessary to complete required reports or complete a supervisory investigative/administrative function.
- H. Officers shall detail in a Form-1 successful court challenges to the use or appropriateness of captured media and shall forward it to the Chief's Office and the Mobile Support Unit. The Form-1 shall include a summary of the ruling as well as a description of any restriction or sanction resulting from the ruling.
- I. Officers shall be subject to the disciplinary process for intentional, repeated or otherwise unjustified failure to activate their WCS in violation of the Division policy.

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- J. Officers shall only use Division issued recording devices (WCS, video/audio recorders) while on duty. The use of personal recording devices (video and/or audio) while on duty is prohibited.

II. Camera Deployment

A. Beginning of Their Tour of Duty - Officers shall:

1. Inspect the WCS and related equipment to ensure there are no visible or obvious signs of damage.
2. Place the WCS, with the camera in the upright position, in a location that will most closely capture the officer's field of view.
3. Turn on the WCS, press the activation button twice, and listen for the audible signal to verify the unit is receiving power and functioning properly. (Refer to Section I.D. above)
4. Activate and leave the camera in buffering mode, for the duration of their tour of duty, so the WCS can be easily placed into event mode when required.
5. Log the WCS unit serial number on their Daily Duty Report.
6. Conduct a 360 degree walk around inspection of their assigned police vehicle recording and verbally noting any fresh damage discovered and report same to their immediate supervisor as per the General Police Order (GPO) 8.1.01, Section V.I.2. The 360 degree walk around inspection shall include an inspection of the interior, back seat, and trunk.

B. During Their Tour of Duty – Requirements for Recording

1. Officers shall:
 - a. Immediately upon initiating a response to a call for service and during all investigative or enforcement contacts with the public, place their WCS into event mode, including but not limited to:
 - i. Calls for service
 - ii. Traffic stops
 - iii. Arrests
 - iv. Searches
 - v. Interviews
 - vi. Pursuits
 - vii. Prisoner/Citizen transports
 - viii. Any situation an officer believes captured media may be of use.
 - b. Place their WCS into event mode during other contacts with the public that may or does become adversarial.
 - c. Record events in accordance with this GPO.
 - d. Unless impracticable due to officer safety issues, advise citizens that a camera is on and recording audio and video.
 - e. Keep the WCS in event mode until the contact has concluded or when ordered by a Cleveland Division of Police supervisor.
 - f. Document the existence of captured WCS media when completing incident reports and on any documents (MM, UTT, PIN) and include the incident number on any citation.

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- g. Record an inspection of the backseat of a zone car after any incident when a person is detained or transported.
- h. Document the reason that a WCS unit has been returned to buffering mode. Documentation shall take the form of making a recorded announcement on the WCS. Examples include;
 - i. Contact complete
 - ii. Incident complete
 - iii. Ordered by supervisor (name) to end recording
 - 1) Exceptions to recording (*II. C. 1. a-j*)
 - 2) Prohibited recording (*II. D. 1. a-d*)
- 2. Notify a supervisor when a WCS was not placed into event mode in compliance with this order as soon as practical.

C. Event Mode: Exceptions to Recording

- 1. The WCS may be returned to buffering mode for the following circumstances, after obtaining approval from their immediate supervisor or the sector/unit supervisor:
 - a. Entering a private home or building where consent of the owner or person with authority to consent to the entrance is required and that person expressly declines to permit video and/or audio recording inside the home or building. This will not apply to an entrance where consent is not required or no longer required once inside the home/building, including entrances related to a search warrant, arrest warrant, domestic violence calls, and emergency or exigent circumstances. If possible, officers shall request that the citizen step outside or, depending on the circumstances and with supervisory approval, return the WCS to buffering mode.
 - b. When interacting with a victim or witness who refuses to cooperate if the WCS is in event mode. If practicable and reasonable, record the victim or witness requesting the WCS be turned off.
 - c. When interacting with a juvenile victim or witness, a parent or legal guardian may refuse to allow the juvenile to cooperate while the WCS is in event mode. If practical and reasonable, record the parent or guardian requesting the WCS be turned off.
 - d. When requested by a victim of domestic violence or sexual assault, if practicable and reasonable, record the victim's request that the WCS be turned off.
 - e. When officers are visiting, or otherwise present at, a school and are not responding to a call for service, not engaging in investigative or enforcement contact, or not engaging in some other contact that may or does become adversarial after the initial contact.
 - f. The incident or event is of such duration that deactivating the WCS is necessary to conserve available recording time and there would be no loss of critical documentary information.
 - g. Investigative personnel arrive on scene and begin the formal investigative process.
 - h. When officers are involved in a traumatic incident and need some personal space or one-on-one contact with family members, friends, and/or co-workers to decompress and manage any emotional stress created by the incident.
 - h. Divisional administrative investigations without the express consent of the commanding officer of the involved district/bureau/section/unit.
 - i. Protected health information and treatment when requested by the patient, medical facility staff, Emergency Medical Service personnel, or Division of Fire personnel.

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- j. Images of confidential informants or undercover officers, unless requested by the undercover officer, their supervisor, or commanding officer.
 2. Officers shall record, while the WCS is in event mode, the reason the WCS is being returned to buffering mode. (*Refer to II. B. 1. h*)
- D. Event Mode: Prohibited Recording
1. Officers shall not record in event mode in the following circumstances/situations:
 - a. Internal non-investigative staff meetings, hearings, and encounters with other officers, supervisors, command staff, or City-employed civilians assisting the Division.
 - b. Conversations of fellow officers or civilian employees without their knowledge during routine, non-enforcement related activities.
 - c. Any place where there is a reasonable expectation of personal privacy (e.g., dressing rooms, restrooms) unless necessary to fulfill a law enforcement objective.
 - d. Conversations of/with citizens and/or officers unrelated to investigative or enforcement contacts (e.g., administrative duties, court, community meetings).
- E. End of Their Tour of Duty - Officers shall:
1. Conduct a 360 degree walk around inspection of their assigned police vehicle recording and verbally noting any fresh damage, not discovered during the tour and report same to their immediate supervisor as per the General Police Order (GPO) 8.1.01, Section V.I.2. The 360 degree walk around inspection shall include an inspection of the interior, back seat, and trunk.
 2. Inspect the WCS and related equipment to ensure there are no visible or obvious signs of damage. If signs of damage are discovered, report the damage to your immediate supervisor.
 3. Categorize their captured video by using their MDT or City-owned computer, using the Evidence Sync/Axon View application. Officers may use a cellular device to categorize their captured media.
 - a. If using Axon View on a cellular device officers **shall not**:
 - i. Use the video for anything other than official use.
 - ii. Transfer the video anywhere other than Evidence.com.
 4. Prior to uploading, categorize, enter an ID (incident report number), and title captured media.
 - a. Log into their Evidence.com account or Evidence Sync account and place all captured media into the appropriate category.
 - b. If multiple categories apply, place the captured media into the category with the longest retention period.
 - c. Add incident report numbers to corresponding captured media as four digit year, dash, and six digit incident number (XXXX-XXXXXX).
 - d. Title the captured media similar to a Daily Duty Report, including the address, nature, and disposition.
 - e. Add notes or mark captured media as needed to assist investigative units with use of the captured media.
 5. Place the WCS into the ETM slot for uploading of captured media and charging of the unit.

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6. Notify their immediate supervisor if they are unable to upload or if the uploading procedure will cause them to accrue overtime.
7. Officers shall not, while on duty, wait for a WCS to upload in order to use the WCS at secondary employment.

III. Supervisor Responsibilities

A. Supervisors shall:

1. Ensure officers assigned a WCS are using the device in compliance with this order and complete an investigation for violations of this order, as appropriate.
2. Document in their Daily Duty Report any incident in which an officer notifies them about an incident in which the WCS should have been activated, but was not.
3. Instruct officers to return their WCS to buffering mode only when the Exceptions to Recording (Section II C.) or Prohibited Recording (Section II.D.) apply.
4. Record on their WCS which Exception to Recording or Prohibited Recording they used to instruct the member to return their WCS to buffering mode or off.
5. Review all captured media recordings related to a complaint, any incident involving a Level 2 use of force, injuries to officers, and incidents resulting in a supervisory investigation.
6. Reference the existence of captured media in a distinct and separate heading in a supervisory investigation, including:
 - a. All captured media reviewed.
 - b. Any discrepancies between the captured media and reports.
7. View captured media using Evidence.com.
8. Complete a supervisory investigation (including involved officers' Form-1s and incident reports) into the damaged, lost, or stolen WCS and forward it through the chain of command via Blue Team.
9. When notified that a officer is unable to complete the categorizing or tagging of captured media, determine if immediate attention is required or if the task can be completed at the start of the officer's next tour of duty. Supervisors shall note on their Daily Duty Report any permission and justification for overtime or delay in tagging or categorizing recorded events.
10. Contact the Mobile Support Unit OIC to arrange for the pick-up or drop-off of a WCS.
11. During random review, move captured media into correct categories if needed, adding notes indicating the reason for moving the captured media.

IV. Supervisor Random Reviews of Captured Media (according to the below schedule)

- #### A. Supervisors shall conduct adequate, random and direct audits of WCS recordings created by officers under their command to confirm compliance with Cleveland Division of Police policy and to identify areas where additional training or guidance is needed.
1. Sergeants shall:
 - a. Audit 25% of officers assigned to them per month, by pulling (2) two Daily Duty Reports for each officer and comparing them to the Evidence.com summary screen for the audited dates, ensuring notations are consistent.
 - b. Complete the Wearable Camera System Cycle Review form (Attachment A) for each officer reviewed.

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2. Lieutenants shall:
 - a. Audit each officer (sergeants and patrol officers) under their command once per year. 25% of reviews shall be completed per quarter.
 - b. Review two videos per officer per category 4, 5, and 6 as described in Section XII.B, of this order.
 - c. Complete the Wearable Camera System Cycle Review form (Attachment B) for each officer reviewed.
 - d. For the sergeant audit, ensure officers are equally distributed among the sergeants under their command.
 - e. Review the documentation associated with the sergeant level of review for the sergeants under their command.
3. Captains shall:
 - a. Audit each officer (lieutenants, sergeants, and patrol officers) under their command once per year. 25% of reviews shall be completed per quarter.
 - b. Review two videos per member per category 1, 2, and 3 as described in Section XII.B, of this order.
 - c. Complete the Wearable Camera System Cycle Review form (Attachment C) for each officer reviewed.
 - d. Review the documentation associated with the lieutenant level of review for the lieutenants under their command.

- B. Completed Wearable Camera System Cycle Review shall be submitted on (database???) through the chain of command, to the commander, monthly for review and forwarded to the Inspection Unit for archiving.
- C. Reviews that discover irregularities may not necessarily result in discipline, but may be used as a training opportunity. Misconduct and/or repeated violations or irregularities, which have been previously addressed, shall be forwarded through the chain of command to the respective Deputy Chief with conclusions and recommendations.

V. Secondary Employment

- A. Use of the WCS while working authorized secondary employment is recommended but not required.
- B. Officers choosing to wear their WCS at secondary employment shall:
 1. Return the WCS to the ETM as soon as practical, as the captured media must be uploaded. No overtime shall accrue as a result of categorizing, entering the ID, or entering the title of captured media created at secondary employment.
 2. "Tag" captured media using "Secondary Employment" when uploading.
 3. Ensure the WCS is charged for their next tour of duty.
 4. Adhere to all WCS requirements while working secondary employment.

VI. Media Storage and Access

- A. All captured media shall be uploaded from the ETM and stored at Evidence.com according to the City of Cleveland records retention policy.

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- B. Officers shall not use any recording device to record captured media (still pictures, audio, and/or video) from Evidence.com or Evidence Sync.
- C. Officers shall add notes to captured media stating the reason for each view of captured media (e.g., completing report, court prep, random review, use of force)
- D. Officers are encouraged to note video that they feel may have training value. A Form-1 shall be completed stating the reason, and emailed to the OIC of the Training Section for supervisory review and assessment of training value.

VII. Access and Public Records Request

- A. All captured media is an official record of the Cleveland Division of Police. Officers accessing, copying, or releasing any captured media for any purpose other than law enforcement related is strictly prohibited and shall subject the officer to discipline. All requests to exhibit, display, or demonstrate the WCS to outside parties shall be directed to the Chief's Office.
- B. Captured media obtained in Cleveland Hopkins International Airport shall not be released until reviewed and approved by the Transportation Security Administration and the United States Department of Homeland Security.
- C. The Mobile Support Unit is responsible for reviewing and redacting recording in coordination with the Law Department and pursuant to state public records laws. The Mobile Support Unit shall also screen and forward requests for any law enforcement purpose (e.g., court, case files, and supervisory investigations).
- D. Unusual or exceptional incidents related to law enforcement activities are often the subject of heightened public curiosity and interest. However, officers are strictly prohibited from allowing persons outside of law enforcement to view or listen to any media captured by the WCS or any other Divisional evidence capture system without prior authorization from the Chief.
- E. Unless otherwise directed by the Chief, all video and/or audio recordings recorded on duty shall not be disseminated outside of law enforcement. Officers shall refer all non-Divisional requests for captured media to file a public records request.
- F. The Office of Professional Standards (OPS) shall be provided access to requested video without having to file a public record request. Requests from OPS shall be forwarded to the Mobile Support Unit.
- G. The public may request captured media through a public records request. Release of any captured media will be in accordance with the Ohio Public Records Law.

VIII. Categorizing and Retention of WCS Captured Media

- A. Captured media that officer's suspect needs to be retained longer than the retention period shall be documented in a Form-1 describing the reason and forwarded through the chain of command to the Mobile Support Unit.

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- B. Officers shall use the following categories to assist in maintaining and filing captured WCS media:
1. Homicide/Sex crimes (permanent retention)
 - a. Dead Body Investigations & Crime Scene Video.
 - b. Sexual Assault Investigations & Crime Scene Video.
 - c. Canine contacts.
 - d. Motor Vehicle Crashes with fatalities.
 2. Critical Incidents (retention of 5 years).
 - a. All Motor Vehicle Crashes.
 - b. Any Use of Force incident.
 - c. All arrests
 - d. Complaints.
 - e. Search warrant video.
 - f. Felony crime scene video.
 - g. Investigative detentions.
 - h. Accidents involving city property (Injury to person/City Property).
 - i. Pursuits (vehicle & foot).
 3. Misdemeanors, Traffic Stops, Citations, and Citizen Encounters (retention of 2 years).
 - a. Misdemeanors with identified suspects
 - b. Citations issued without an arrest (UTT & MMC).
 - c. Citizen encounters where none of the other category criteria apply.
 - d. Traffic stops where no citation is issued.
 - e. Captured media that does not fall into any of the above categories.
 - f. Alarms with citizen contact
 4. Administrative and Alarms (retention of 90 days).
 - a. Start of tour vehicle inspection recordings.
 - b. End of tour vehicle inspection recordings.
 - c. Alarms without citizen contact

IX. Training

- A. Officers assigned a WCS shall successfully complete training on all WCS directives and instructions (e.g. inspection, start up, use, shutdown, tagging, and upload), before being equipped with a WCS.
- B. All WCS training shall be conducted by the Mobile Support Unit.
- C. The Mobile Support Unit is responsible for identifying areas related to the WCS where additional training, guidance or potential changes are needed to this order.
- D. Additional and continuous in-service training will be provided to address changes in technology, legal standards, and policies or procedures.