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SENT VIA U.S. MAIL AND EMAIL

RE: City of Cleveland Division of Police Policy Regarding Wearable Camera Systems

This letter is in response to the recent public request from the Cleveland Police Monitoring Team for comments regarding the use of body worn cameras by members of the City of Cleveland Division of Police.

It should be noted police use of wearable body cameras is a complex issue involving multiple interests including police practices, government surveillance, personal privacy, transparency and public records. With the right policies and laws in place, the ACLU of Ohio believes this technology can promote police accountability, deter officer and civilian misconduct, and provide objective evidence to help resolve civilian complaints against police without significantly infringing on privacy.

While the current policy contains important constructive provisions that should be part of any police body camera policy, it also has several areas in need of improvement. In no particular order, these concerns appear below:

1) Who is required to wear the cameras?

The policy gives no indication who is to wear cameras other than the oft-repeated term "members". Does this include all officers? SWAT team members? Plainclothes officers? Undercover officers? Others? Perhaps "members" is an internal term with a specific definition. If so, it is not obvious and must be clarified so all are clear who wears these devices.

The ACLU of Ohio recommends only officers with the authority to conduct searches and make arrests be permitted to wear body cameras.

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2) Activation and deactivation of cameras

The policy includes an enumerated list of twelve situations when cameras should be activated from Buffering Mode to Event Mode by users "prior to taking any police related action". This includes a catch-all category "any situation that a member believes captured media may be of use".

Rather than using a confusing combination of specific situations and broad language, the ACLU of Ohio's recommendation is to provide officers with as little discretion as possible. Simply put, the policy should establish cameras by default are in Event Mode, and only in limited circumstances be returned to Buffering Mode.

The policy does provide a list of circumstances when users are permitted to return cameras to Buffering Mode. However, that list is not expansive enough as it does not prevent the possibility or appearance of cameras used for surreptitiously gathering information on protected First Amendment activity. For that reason, the ACLU of Ohio recommends the policy be amended to prevent the recording of activities such as protests, rallies, and religious gatherings and observances – except that recording should be activated when citing or making an arrest of an individual or conducting a search.

Finally, the ACLU of Ohio recommends a prohibition be added against activating body cameras while on the grounds of or inside any public or private pre, primary, or secondary schools except when responding to an imminent threat of life or health.

3) Officer access to recordings

The policy mentions an officer's ability to view recordings might and can be limited or restricted "based on the circumstances surrounding the incident" but offers no guidelines as to when such restrictions might be relevant and warranted.

This particular aspect of any body camera policy is of particular importance to the ACLU of Ohio. When officers are permitted to view and listen to recordings for the purpose of completing their incident reports or other paperwork, there exists the possibility certain actions unfavorable to the officer or department will be left out of reports if those actions are not clearly evident on camera.

Such concerns are not theoretical, as evidenced by the recent high-profile example in Chicago, where it was revealed that an astonishing 80% of police dash camera videos lacked audio recordings because of errors and deliberate damage by officers. Of course, this is a far larger problem than an officer taking liberties with a report. But, it is one of many examples from around the country where officers have deliberately undermined attempts to record their actions and encounters with the public.

Accordingly, the ACLU of Ohio recommends users be required to complete reports and similar activities without the opportunity to view the recordings so the public can maintain confidence body worn cameras are being utilized as intended.

4) **Public records**

In one section, the policy explains dissemination of recordings is not to occur “without prior authorization from the Chief of Police.” Along the same lines, the following section states recordings shall not be disseminated outside of law enforcement “unless otherwise directed by the Chief of Police.”

Perhaps these provisions are intended to mean the chief of police is to respond to requests as required under Ohio’s public records laws. However, the policy does not reflect that and, instead, gives the appearance any and all requests are subject to the unfettered discretion of the chief of police.

If the former is true, the ACLU of Ohio recommends this be made abundantly clear in the policy. If the latter is the case, such a policy is obviously unacceptable under state law and must be changed.

Finally, if a recording is subject to open records laws, the identities of individuals who are recorded but who have no bearing as a matter of public concern on the matter recorded should be redacted or concealed. Victims of crimes or possible crimes should also be allowed to request their identity be concealed or redacted, if at all possible.

5) **Secondary employment**

The policy anticipates possible use of body cameras while “working authorized secondary employment” and states their use is “recommended but not required”. We are grateful the policy makes clear its various regulations and restrictions apply to secondary employment the same as all other times. However, we think officers should be required to wear these devices during authorized secondary employment instead of making it an option or choice.

6) **Retention**

The policy establishes a process for identifying or “flagging” recordings to be retained for a variety of purposes. However, the policy makes zero mention of what is to be done with recordings that serve no law enforcement or societal purposes. That is, those recordings which capture routine actions by officers and interactions with the public that do not result in arrests, searches, citations, and so on.

Perhaps the policy anticipates this with its references to “citizen encounters where none of the other category criteria apply” (XVII (D)(2)) and/or “captured media that does not fall into any of the above circumstances”(XVII (E)(2). But, if that is the case, why is that language found under the respective headings of “Traffic Stops and Citations” and “Possible Complaints?”

If the intention is to address these recordings of mundane activity in this way, the ACLU of Ohio recommends this be made clear in the policy with a separate and distinct section, not couched in sections having to do with actual law enforcement activity. Otherwise, if that language is not an

attempt to address these recordings, we recommend the policy clearly address what the retention period is for recordings of mundane activity..

In addition, the ACLU of Ohio would, and many times does, advocate for deleting such recordings as these at the earliest opportunity due to privacy and surveillance concerns. However, police body cameras are a new and unproven technology, and only time and experience will reveal their flaws and the ability of Cleveland police to use them as intended. We therefore advocate for keeping all recordings for one year until their effectiveness and the Cleveland Police Department's use of them can be further evaluated. Should a one-year retention schedule be adopted and this policy prove effective, it is entirely possible the ACLU of Ohio will then recommend, in the future, much earlier deletion of "unflagged" recordings.

7) No penalties for misuse or abuse

The policy mentions potential, undefined discipline for releasing recordings without chief of police approval. However, it is totally silent on discipline for all other violation(s) of policy. This is a glaring omission and needs to be addressed with specific penalties. The public will have no confidence in these cameras if police are not held accountable for misuse and abuse of them.

In conclusion, the ACLU of Ohio believes the aforementioned concerns and recommendations should be incorporated into the Cleveland police department's policy on wearable camera systems. Our staff is available to provide further information, assistance and comment, if needed or desired.

We anticipate this will not be the final time we share our opinions on this policy and we look forward to additional opportunities to make this policy the best it can be for residents, police and others in the city of Cleveland.

Sincerely,



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cc: Craig Boise, Rhonda Williams, Mario Clopton