Body-Worn Camera Laws in Minnesota

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Agenda

• Data practices overview
• Body camera law overview
• Compliance: audits
• Body camera resources
• Factors to consider in adopting body cameras
Data Practices Overview

Purposes of Data Practices Act

Balancing
• Right of public to know what government is doing
• Privacy of individuals
• Government efficiency
Government data is generally presumed public

(unless state law otherwise classifies)

<table>
<thead>
<tr>
<th>Classification of government data</th>
<th>Meaning of classification</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Available to anyone for any reason</td>
<td>Adult arrest information</td>
</tr>
</tbody>
</table>
| Private/Nonpublic | Available to:  
  • Data subject  
  • Those in the entity whose work assignment requires access  
  • Entities authorized by law  
  • Those authorized by data subject | Peace officer records of children |
| Confidential/Protected nonpublic | Available to:  
  • Those in the entity whose work assignment requires access  
  • Entities authorized by law  
  Not available to the data subject | Active criminal investigative data |
Law enforcement data: what’s public?

Always public (even during an active criminal investigation):
- Arrest data
- Request for service data
- Response or incident data
- Investigation data presented in court

Classified as nonpublic:
- Active criminal investigative data

Data Practices Resources

Data Practices Office (https://mn.gov/admin/data-practices/)
  - Law enforcement data (10 minutes): https://youtu.be/eFnIzXzNq2U
- Presentations: https://mn.gov/admin/data-practices/resources/training-materials/presentations/
Body Camera Law
Overview

Portable recording systems (body cameras)

“Portable recording system”:
• Device worn by a peace officer
• Capable of both video and audio recording
  • Of the officer’s activities and interactions with others or
  • Collecting digital multimedia evidence as part of an investigation

Minn. Stat. § 13.825
## Data classification

<table>
<thead>
<tr>
<th>Overarching</th>
<th>Active criminal investigative data = confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally</td>
<td>Private data</td>
</tr>
</tbody>
</table>

Public data when:
* Discharge of firearm in course of duty
* Use of force resulting in substantial bodily harm
* Subject of data makes data public
* Part of data documenting final disposition of discipline
* Court order

Minn. Stat. § 13.825

### Releasing body-camera data

Even if the law classifies body-camera data as confidential or private...

**Public benefit data:** law enforcement agencies can provide otherwise classified body-camera data if access will:
- Aid in the law enforcement process,
- Promote public safety, or
- Dispel widespread rumor or unrest

Minn. Stat. § 13.82, subd. 15
Not releasing body-camera data

Law enforcement agencies may redact or withhold access to portions of data that are otherwise public, if:

- Those portions are “clearly offensive to common sensibilities”

This type of data is then classified as private or nonpublic

Minn. Stat. § 13.825

Data subjects

“Portable recording system data subject” includes peace officers, other individuals, and entities

- Including if data subjects can be identified by image or voice
- Can have access to the data
- Copy of data: must redact data on other individuals who do not consent
  - BUT can’t redact on-duty peace officers engaged in investigation or response to emergency, incident, or request for service

Minn. Stat. § 13.825
Retention

<table>
<thead>
<tr>
<th>Minimum retention</th>
<th>Type of data</th>
</tr>
</thead>
<tbody>
<tr>
<td>90 days</td>
<td>Not criminal investigative data</td>
</tr>
<tr>
<td>1 year</td>
<td>• Discharge of firearm in course of duty</td>
</tr>
<tr>
<td></td>
<td>• Use of force resulting in substantial bodily harm</td>
</tr>
<tr>
<td></td>
<td>• Formal complaint made against peace officer related to an incident</td>
</tr>
</tbody>
</table>

• Destruction in both situations still governed by record retention schedule
• If a subject of the data gives written request to retain longer for evidentiary or exculpatory use, must retain data for up to additional 180 days (which can be extended)
• Government entities can also retain for as long as reasonably necessary for evidentiary or exculpatory use

Minn. Stat. § 13.825

Public comment

Before purchase/implementation:
• Law enforcement agencies must accept public comments electronically or by mail
• City council (“governing body with jurisdiction over budget of law enforcement agency”) must also provide a public hearing at a regularly scheduled meeting

Before written policy adoption:
• Law enforcement agencies must accept public comments electronically or by mail
  • Can’t use unless agency has adopted policies governing use and operation
  • Written policy posted on agency’s website, if agency has one

Minn. Stat. § 626.8473
Written policies

Must be addressed:
1. Data classifications, access procedures, retention policies, and data security safeguards
2. Testing of portable recording systems
3. System malfunction or failure, including documentation requirements
4. When recording is mandatory, prohibited, or at officer discretion
5. When a subject of the data must be given notice of a recording
6. When a recording may be ended while an investigation, response, or incident is ongoing
7. Secure storage and creation of backup copies of the data
8. Compliance and violations of the policy, which must include supervisory or internal audits and reviews and employee discipline standards for unauthorized access

Minn. Stat. § 626.8473

Compliance: Audits
Audits = biennial (every 2 years) + independent

Body camera audit process

- Independent biennial audits
- If noncompliant, city council may order additional independent audits
- If pattern of substantial noncompliance, city council must order suspension (until reinstatement)

- Suspension in use of body cameras can only happen after the law enforcement agency and public have a reasonable opportunity to respond to audit findings in a public meeting
- Summary report must be provided within 60 days after audit completion to:
  - City council
  - Legislative Commission on Data Practices

Minn. Stat. § 13.825
Audits
The new law requires the Legislative Auditor to review compliance with the requirements in sections 13.825 and 626.8473 and submit the results to the legislature by January 15, 2020.

https://mn.gov/admin/data-practices/data/types/body-camera/

Body Camera Resources
The League of Minnesota Cities Insurance Trust thanks the following organizations that comprised the working group to develop and review the model policy: Minnesota Counties Intergovernmental Trust, Minnesota Chiefs of Police Association, Minnesota Association of City Attorneys, Minnesota County Attorneys Association, Minneapolis Police Department, St. Paul Police Department, Cannon Falls Police Department, Burnsville Police Department, and Columbia Heights Police Department. Their participation does not necessarily signify agency endorsement of the model policy by the individual’s employing agency.

**INFORMATION MEMO**

**Use of Body-Worn Cameras**

State law offers significant guidance on policies governing law enforcement use of body-worn cameras (BWC) and the resulting data. This discussion and the linked model policy are intended to help cities administer BWC programs and data soundly and in accordance with law.

**Body-Worn Cameras, LMC Model Policy**

League models are thoughtfully developed by our staff for a city’s consideration. Models should be customized as appropriate for an individual city’s circumstances in consultation with the city’s attorney. Helpful background information on this model may be found in “Use of Body-Worn Cameras.”

This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.

City of [Redacted], Minnesota
Use of Body-Worn Cameras Policy

Where optional provisions are offered you must choose one of the options, but choosing “option 1,” for example, does not require you to choose “option 1” at every choice point.

*Red* **typface** indicates that the language is included in response to a statutory mandate for guidance on that particular topic. While this language is recommended, agencies may certainly have other options for addressing mandatory policy elements. Change all *typeface* to black when creating your policy.
F. Access by peace officers and law enforcement employees. No employee may have access to the department’s BWC data except for legitimate law enforcement or data administration purposes:

Choose one:

1. [Option 1] Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

See Information Memo, “Use of Body-Worn Cameras”, Section V-C, Officer access to video and critical incidents.

Or,

1. [Option 2] Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Except as provided in the critical incident response policy, officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

Resources

League of Minnesota Cities:
• Use of Body-Worn Cameras Memo
  • http://www.lmc.org/media/document/1/useofbodyworncameras.pdf
• Body Worn Cameras – LMC Model Policy
  • http://www.lmc.org/media/document/1/bodyworncameras.docx

Minnesota Data Practices Office:
• Body Camera Data
  • https://mn.gov/admin/data-practices/data/types/body-camera/

Minnesota Chiefs of Police Association:
• Body-worn camera policy and resource guide
  • https://www.mnchiefs.org/body-camera-resources
Factors to consider in adopting body cameras

Questions?

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