

**LAW ENFORCEMENT USE OF “BODY CAM” RECORDERS:
Overview of classification and operational issues**

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Background

Mobile “body cam” systems are compact, camera/recording or camera/transmission devices that can be attached to clothing, glasses, or other worn garments or accessories.

Police in several Minnesota municipalities - including Duluth - have adopted such devices for use by their police departments. At present, the city of Minneapolis is on the cusp of a body cam pilot program to help develop protocols for larger-scale implementation. The cameras are largely being adopted to enable the capture of video documentation to help resolve disputes over police conduct and/or use of force incidents.

Two types of commercially available body cam systems are being used by law enforcement agencies:

1. Systems that record to the worn device when triggered by a user;
2. Systems that are connected to a remote server through wireless connectivity, and record on a continuous basis.

Current data classification

At present, information gathered by police body cams is generally treated as presumptively “public” data under Chapter 13. One exception to this public presumption involves the use of body cam data in active criminal investigations. When such an investigation is opened, body cam data pertinent to the matter can be maintained as “not public” data for the duration of the active investigation, after which it reverts to its former, public status. This is similar to the way that squad car video is currently treated.

Issues raised by body cam data

Body cam video holds the possibility of clarifying questions about police use of force incidents, creating accountability for the public. Body cam data may also help to prevent unfounded claims of police misconduct from being sustained. At the same time, the mobility and pervasiveness of the video recording offered by body cams raises questions around privacy that complicate the discussion over camera operation and data classification. For instance:

1. Should video recorded in public areas and video recorded in private domiciles or workplaces be classified in the same way?
2. Should police have to provide notice to persons they encounter that body cams are in operation? In what circumstances would such notice be appropriate?

3. Would continuous transmission of body cam data over wireless networks be susceptible to hacking or interception, and therefore trigger invasions of privacy or breaches of potentially sensitive data?
4. Would some forms of body cam technology raise more difficult classification, use, or privacy questions than others?

MNCOGI's proposed framework

MNCOGI continues to explore issues surrounding police body cam data, but offers the following framework to help guide the discussion surrounding the implementation of the technology, and the classification of the resulting data.

1. Video should be presumptively public; arrest video public “at all times”.

A public classification for body cam data offers oversight benefits to the public. Public availability of the data serves the classic oversight purpose of documenting the conduct of public officials for later review.

Public access to body cam data also permits the public to review how and where the government is collecting video material. Access to the data allows the public a means of measuring the appropriateness of video collection and use.

MNCOGI generally urges a “public” classification for body cam data, with most data remaining presumptively public, and other data expressly classified as being public “at all times” under Minn. Stat. 13.82, Subd. 2. As the primary purpose of gathering the video is to provide transparent documentation of the actions of officers, some form of public status would be the best match for the data.

Actions that are most relevant to an oversight purpose should be public at all times - arrest data, for instance. Currently, Minn. Stat. 13.82 Subd. 2 includes a specific list of types of data relevant to arrests that are always public, and thus not subject to being withheld as criminal investigative data at any point. Body cam documentation of arrests should be added to that list, or otherwise specified elsewhere in Minn. Stat. 13.82. Other, specific forms of video recording might also be considered for classification as being public “at all times” under Minn. Stat. 13.82.

Other body cam data could remain unclassified, and thus presumptively public data.

2. Privacy should be addressed through the regulation of video collection.

While body cam data could play a potentially positive oversight role, it could also greatly expand the ability of police to create a long-term surveillance record of a community, raising privacy and accountability concerns. Much like license plate reader (LPR) technology, long-term retention of indiscriminate body cam data could vest the government with an archive of the movements and associations of individuals, or even the interiors layouts of locations that police visit for calls for service and other incidents.

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Continuous, indiscriminate recording could also raise questions about whether individuals who might require police attention for welfare checks or similar services would be reluctant to call, due to hesitations about having their interactions recorded.

Such privacy issues *could* be addressed through a statutory scheme under which certain body cam data would be classified as “public”, while other data would be classified as “private”. However, MNCOGI believes that this matter would be better addressed through the regulation of camera use, rather than by creating multiple categories of private body cam data.

Departmental rules, municipal ordinances, or state laws could be written to address when, where, or how body cam data could be collected in order to address questions of privacy. For instance, are there situations in which notice should be required prior to recording? Welfare checks could be one set of circumstances. The recordings of arrests, on the other hand, could be regulated so as not require such notice.

The regulation of body cam recording would also ensure that the technology is used for a narrow, oversight purpose, without expanding into a more broad-based video surveillance platform.