

# Application for Temporary Classification of Government Data

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**Submission.** Government entities can submit this application by mail or email to:

Commissioner of Administration  
c/o Information Policy Analysis Division (IPAD)  
201 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

[info.ipad@state.mn.us](mailto:info.ipad@state.mn.us)

**Not public data.** Once the Commissioner receives your application, the data are no longer public.

**Public data.** The application itself is public.

**Commissioner's decision.** The Commissioner has 45 calendar days to decide whether to grant the temporary classification. The Commissioner has 90 calendar days to make a decision if you request that the temporary classification apply to both your government entity and similar government entities, or the Commissioner decides the classification has statewide implications.

**NAME AND TITLE OF RESPONSIBLE AUTHORITY**

**David Montgomery, Chief Administrative Officer**

*Minnesota Statutes, section 13.06, subdivision 1, requires a government entity's responsible authority to authorize submission of the application.*

**REQUESTING GOVERNMENT ENTITY'S NAME AND ADDRESS**

**City of Duluth**

411 W. 1st Street, Room 410

Duluth, MN 55802

**ADDITIONAL CONTACT INFORMATION**

*If entity staff or legal counsel helps prepare the application, please include that person's contact information.*

**NAME:** M. Alison Lutterman, Deputy City Attorney

**PHONE NUMBER:** 218-730-5281

**EMAIL ADDRESS:** alutterman@duluthmn.gov

**TYPE OF APPLICATION**

New Application

Amended Application

**REQUESTED CLASSIFICATION**

Private or nonpublic

Confidential or protected nonpublic

**CLASSIFICATION WILL APPLY TO (check one)**

Only the requesting government entity

All similar government entities

*If applying on behalf of similar entities, identify all entities. You must provide documentation that the other entities agree to participate in the application and to be bound by the classification.*

## DESCRIBE DATA TO BE CLASSIFIED AS NOT PUBLIC

Describe the data you would like to be classified as not public. Be as specific as possible. Listing each data element is not necessarily required, but try to avoid general descriptions, such as "all files" or "all records maintained by this entity." It may be helpful to submit data collection forms. You should also identify data elements or types of data that are excluded from the temporary classification. If any of the data will become public at some point, describe the circumstances and/or timing. *(Please attach description.)*

## CURRENT CLASSIFICATION

Is there a Minnesota statute or federal law that currently classifies these data as not public?

No

Yes *(If you are able to cite a state statute or federal law, there is no need to submit this application.)*

Is there a Minnesota statute or federal law that could be interpreted to forbid classification of these data as not public?

No

Yes

If yes, cite the statute or law and discuss your interpretation. *(Please attach interpretation.)*

## DATA SHARING

Will you be legally required to share the data described in this application with persons outside of your entity during the time of the temporary classification?

No

Yes

If yes, describe the required sharing, including statutory authority. *(Please attach description.)*

## JUSTIFICATION

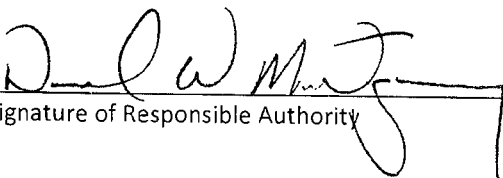
You must clearly establish that a compelling need exists for immediate temporary classification of the data as not public, which if not granted could adversely affect the public's health, safety or welfare, or the data subject's well-being or reputation. If relevant, include any past instances where release of the data had an adverse effect on the public or data subject. *(Please attach compelling need justification.)*

In addition to the compelling need justification, you must describe one or more of the following.

1. Establish that data similar to that which the temporary classification is sought are currently classified as not public. Include the Minnesota statute citation to the similar data's current classification. Discuss similarities in the data, in the functions of the entities which maintain similar data, and in the programs/purposes for which the data are collected and used. *(Please attach similar data argument.)*
2. Establish that making the data available to the public would render unworkable a program authorized by law. Describe the program and cite the statute or federal law that authorizes it. If relevant, include past instances where release of the data rendered a program unworkable. *(Please attach render a program unworkable argument.)*

I affirm that all of the above statements are true to the best of my knowledge.

I am aware that a temporary classification expires August 1<sup>st</sup> of the year following its submission to the Legislature pursuant to Minnesota Statutes, section 13.06, subdivision 7, unless the Legislature takes action on the classification.

  
Signature of Responsible Authority

12-16-14  
Date

## CITY OF DULUTH

### Attachment to Application for Temporary Classification of Government Data

#### I. Describe Data to be Classified as Not Public:

In June of 2014, the Duluth Police Department began utilizing mobile video recorders (“body cams”) that are worn by licensed peace officers while on duty. This is a new form of technology. The cameras are about the size of a pager and are capable of capturing both video and audio recordings of activities. The body cams are attached to the front of the officer’s outer uniform. Officers are to activate the body cams in numerous situations, including crimes in progress, priority responses, arrests, physical or verbal confrontations and when interviewing witnesses or victims. When activating the body cams in some of these situations, officers may be physically located in a public place, such as on a public sidewalk or in a local retail store. In other situations, officers may be physically located in a victim’s home, in a child’s bedroom, in a bathroom or locker room, in an elementary school or in a hospital room.

The video data captured by each body cam is uploaded onto a server at the end of the officer’s shift. The data is then labeled, stored and retained in compliance with Duluth Police Department policy and the city’s established records retention schedule.

The City is requesting a temporary classification for the following data obtained through the use of the body cams:

- (1) Inactive criminal investigative data collected by a body camera worn by an officer while within private places and spaces protected by the Fourth Amendment of the United States Constitution;
- (2) Inactive criminal investigative data collected by a body camera worn by an officer and which data documents a police response to a domestic assault, sexual assault, or a mental health crisis;
- (3) Inactive criminal investigative data collected by a body camera worn by an officer and which data documents statements or activities of minors;
- (4) Inactive criminal investigative data collected by a body camera worn by an officer while at a hospital or similar health care facility;
- (5) Inactive criminal investigative data collected by a body camera worn by an officer while at an elementary or secondary school;
- (6) Inactive criminal investigative data collected by a body camera worn by an officer while investigating an act or alleged act of juvenile delinquency;
- (7) Bulk, blanket or standing video record requests for inactive criminal investigative data collected by a body camera worn by an officer; and
- (8) Inactive criminal investigative data collected by a body worn camera worn by an officer and which data documents information or a “tip” provided to law enforcement.

The Duluth Police Department uses the body cam data to document statements and events during the course of an incident, to preserve visual and audio data for use in court or other

The Duluth Police Department uses the body cam data to document statements and events during the course of an incident, to preserve visual and audio data for use in court or other investigations, to provide a tool for training and evaluation of officers, and to enhance officer safety and public safety.

Justification:

There is a compelling need for immediate temporary classification of the data described above as not public, which if not granted, could adversely affect the health, safety, or welfare of the public, or the data subject's well-being or reputation. The Commissioner of the Minnesota Department of Administration has not specifically issued advisory opinions related to body cam data.

The purpose of the Minnesota Government Data Practices Act ("Act") is "to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing." *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 786-7 (Minn. 2011), citing *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 307 (Minn. 1990). Also, the Act attempts "to balance these competing rights within a context of effective government operation." *Id.* Pursuant to Minnesota Statutes, section 13.03, subdivision 1, all government data are presumed to be public unless otherwise classified by statute, federal law, or temporary classification.

Data that law enforcement agencies collect, create, or maintain are classified under section 13.82. This section provides that certain law enforcement data are always public, certain law enforcement data are never public, and certain law enforcement data may become public depending on the occurrence of certain events.

Those data falling within subdivisions 2, 3, and 6 of section 13.82 are always classified as public. Certain law enforcement data are never public, such as the identities of undercover law enforcement officers. See §13.82, subd. 17. Other law enforcement data, such as active criminal investigative data, are not public while an investigation is active. §13.82, subd. 7. Once the investigation becomes inactive, criminal investigative data, with certain exceptions, are classified as public.

Body cameras provide a useful tool for law enforcement. One of the primary uses of this new technology is to capture and preserve evidence for use in criminal investigations and court proceedings. However, the technology is advancing faster than the law. As a result, there are compelling concerns regarding citizen privacy.

Body-worn cameras raise privacy concerns that have not yet been addressed by the legislature. Unlike other surveillance tools, body cameras can simultaneously record both audio and video and capture clear, close-up images. Body cam data is not necessarily a single type, or classification, of data. A ten-minute video can theoretically contain law enforcement data, protected victim identity data, juvenile delinquency data, and so on. It may or may not be administratively feasible to segregate the public data from the non-public data.

More importantly, body cams will be accompanying officers, and collecting data, inside homes and other private spaces protected by the Fourth Amendment of the United States Constitution, as well as non-private places retaining some level of privacy protection, such as schools, health care facilities and public locker rooms and bathrooms. This technology presents privacy concerns of a nature not previously anticipated or foreseen. As such, existing law is inadequate to balance the competing interests or to protect data subjects against unwarranted intrusion into their private lives homes and private lives. The public's right to have access to data about the government needs to be balanced against the individual's constitutionally protected right to privacy. This balancing test begs the question: Does it serve the applicable public purpose to allow unfettered public access to body cam data showing a victim in distress, under traumatic stress or in a vulnerable state due to the sensitive nature or circumstances of the crime? If the answer is "yes", then does the victim's constitutionally-protected right to privacy outweigh the public's right to access the body cam data? How is this right asserted by victims as it relates to body cam data within the context of data requests under Chapter 13?

For example, victims of domestic abuse, criminal sexual assault and other crimes involving sensitive issues may be reluctant to provide statements on camera for fear of retaliation or some other potential negative consequence. Body-worn cameras capture in real time and the subjects are often people in the midst of traumatic circumstances. Body cam data may reveal personal, intimate details of victims in a vulnerable state. Emotions may be intense and the experience may be very personal to the individual involved. The possibility that the body cam data may be disclosed to the general public and published over the internet for the entire world to see can negatively impact the welfare of the data subject. We live in a world where video clips can "go viral" in a matter of minutes or hours. The rapid and wide-spread dissemination of this data could result in the re-victimization of the victim, and damage the victim's mental and/or physical health. In addition, public disclosure of this data has the potential impact of chilling victim cooperation with law enforcement. It may even discourage the request for law enforcement assistance from victims of certain types of crime. This would be detrimental to the safety of the individuals involved as well as the general public, as criminal behavior would go unpunished.

If the body cam data are classified as public, the general public would be able to gain "virtual" entry into the homes of victims and witnesses. This could undermine the safety of victims and witnesses. For example, this virtual entry may enable domestic abusers to locate their victims and cause them additional harm. It may also enable suspects to locate and intimidate witnesses, thereby discouraging witness cooperation with the criminal prosecution function.

Further, by gaining access to this data, criminals may be able to target homeowners who are elderly or vulnerable. This data may also reveal valuables or firearms located in a home, which may put that home at risk of being burglarized.

The same negative consequences could result where the body cam captures a person involved in a medical or mental health emergency, be it a heart attack, drug overdose, or attempted suicide. The privacy interests under these circumstances should prevail over the public's hunger for sensationalism or gossip. This privacy interest is recognized to a limited degree by section 13.82, subd. 17(f), which classifies as not public the data that would reveal the identity of a person or subscriber who placed a call to a 911 system and the object of the call is to receive help

in a mental health emergency. However, this provision protects only the identity of the person placing the call. It does not protect the data revealing the identity or other circumstances of the person needing help in a mental health emergency or other medical emergency.

Balancing individual privacy interests with the presumptively public classification of government data under chapter 13 is proving challenging under the best of circumstances, and may be fertile ground for lawsuits from proponents on both sides of the spectrum. On the one hand, data subjects may bring an action against the government, claiming invasion of privacy. And, on the other hand, members of the public denied access to the data may bring an action against the same government, claiming a violation of chapter 13 amid allegations of police misconduct or cover-up. In addition, chapter 13 sets forth powerful civil remedies for violations, including money damages, injunctive relief, civil penalties and criminal charges. *See* Minn. Stat. §§13.08, 13.09. Additional guidance from the legislature is needed regarding the competing constitutionally-protected and other interests at stake.

The recent appearance of body camera use by law enforcement personnel is not unique to Minnesota. Law enforcement agencies in other states are also examining whether to utilize body-worn cameras. Those that have invested in this new technology are confronted with balancing the benefits of utilizing the technology with the privacy interests at stake. Indeed, the question of whether or not body cameras should be utilized by law enforcement has generated a national debate. *See, e.g.*, article in November 25, 2014 issue of Government Technology entitled “Anonymous ‘Requester’ Turns Police Body Camera Programs Upside Down;” and article in November 10, 2014 issue of Komo News entitled, “Influx of Records Requests may Force Police to Drop Body Cams”. Copies of both of these articles are attached.

Public opinion appears to be heated and divided on the issue of whether body cam data should be accessible to anyone upon request.

Scott Greenwood, attorney with the American Civil Liberties Union, has expressed concern regarding video recordings taken while officers are inside a person’s home:

An officer might be allowed to go into the residence and record, but that does not mean that everything inside ought to be public record. The warrant is an exception to the Fourth Amendment, not a waiver. We do not want this to show up on YouTube. My next-door neighbor should never be able to view something that happened inside my house without my permission.

Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum 2014, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Washington, D.C., Office of Community Oriented Policing Services, p. 15.

The Duluth Police Department Chief of Police, Gordon Ramsay, has been actively trying to address these issues with the involved stakeholders. He has reached out to the legislature and testified in October before the Legislative Commission on Data Practices. In addition, the Minnesota Chiefs of Police Association, of which Chief Ramsay is the current President, has been working to address these issues. The important competing interests at stake merit a state-



wide discussion and resolution. Therefore, it's imperative that the body cam data at issue be protected by a temporary private or non-public classification to provide the legislature with an opportunity to appropriately address the issues within the legislative process.

II. Establish that data similar to that which the temporary classification is sought are currently classified as not public. Include the Minnesota statute citation to the similar **data's current classification. Discuss similarities in the data, in the functions** of the entities which maintain similar data, and in the programs/purposes for which the data are collected and used.

A. Under Minnesota Statutes, section 13.82, subd. 17(b), the identity of a victim or alleged victim of criminal sexual conduct is protected and law enforcement agencies shall withhold public access to such data. Likewise, body cam data of such a victim being assisted or questioned by law enforcement responding to the scene of the crime should be protected from public access. For instance, even if the victim's face is pixelated on the body cam video and the voice is disguised, the body cam data could contain information from which the victim's identity could be ascertained, whether it be something that identifies where the victim lives or perhaps even the vehicle the victim drives. What particular piece of data included within the body cam video could be a clue to the victim's identity is likely beyond human capability to recognize and redact. Something as inconsequential as a unique piece of furniture or a family photograph inadvertently caught within the frame of the camera lens could be used to identify the victim.

The privacy and safety concerns surrounding body cam data of the victim that don't necessarily disclose the victim's identity, are equally if not more compelling, than the concerns justifying the withholding of the victim's identity. If the video of a victim's narrative regarding the details of the assault were publicly disclosed, each re-play of the video, whether by the media or others, would re-victimize the victim. The victim would be helpless to stop the video from being aired on television, shared on social networking sites, or uploaded onto any number of other public sites on the internet, whether "YouTube" or a similar site. Once data is in cyberspace, it is effectively there forever.

B. Under Minnesota Statutes section 13.822, sexual assault communication data are classified as private data on individuals. This section protects all persons who consult with a sexual assault counselor. Again, the underlying policy is to protect victims of sexual assault. Consistent with this policy is section 13.823, which exempts from the scope of chapter 13 a "program that provides shelter or support services to victims of domestic abuse or a sexual attack". And, personal history information collected, used, or maintained by a designated shelter facility is private data on individuals. *See* Minn. Stat. §611A.371(3). Finally, personal history information and other information collected, used, and maintained by an Office of Justice Programs in the Department of Public Safety or a grantee thereof, from which the identity and location of any victim may be determined, are private data. *See* Minn. Stat. §611A.46.

Classifying body cam data as not public is consistent with the public policy supporting these statutes.

C. Under Minnesota Statutes, section 13.821, subd. (a), an individual subject of data may not obtain a copy of a videotape in which a child victim or alleged victim is alleging, explaining, denying, or describing an act of physical or sexual abuse without a court order under section 13.03, subdivision 6, or section 611A.90. Section 611A.90 provides that a custodian of a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the videotape without a court order. The city of Duluth has had experience invoking this statutory protection with regard to a data request for a videotape of a child alleging sexual abuse, called a First Witness Interview Recording. (The recording was not requested in connection with a criminal prosecution, nor was it requested in connection with a civil action involving the city). The city declined to provide a copy of the recording, relying at least in part, on this statute. (The city also relied on Minn. Stat. §260B.171, which protects data involving juveniles and designates any violation of that section as a misdemeanor). The party requesting the data served the city with a subpoena, demanding the recording. The city timely objected to the subpoena in accordance with the Minnesota Rules of Civil Procedure, again declined to release the recording, and urged the requesting party to seek a court order. *See* Minn. Stat. §13.03, subd. 6. It was a time-consuming and difficult process, especially in light of the sensitive nature of the data. The city, acting in good faith, was concerned with complying with the various statutes and rules. The requesting party ultimately filed a motion with the court, but the requester felt strongly that the city was interfering with access to data.

Additionally, body cameras may capture data falling within the protections of section 13.821, whether or not the officer is aware at the time that the child is likely to describe an event of abuse. A child might blurt out something unexpectantly while the officer is in the home interviewing an adult on an unrelated matter. Or, it could develop through a casual encounter with an officer on a public sidewalk. Regardless, the body cam data involving the child should be afforded the same protection as videotape data specifically collected within the parameters of section 13.821. The fact that the officer did not intend to capture videotape of the child for the purposes contemplated by section 13.821 should not result in the data being unprotected.

It is important to note that section 13.821(a) precludes the ability to “obtain a copy of a videotape”. It does not limit “other rights of access to data”. *See* Minn. Stat. §13.821(b).

D. Under Minnesota Statutes, section 13.82, subdivision 8, active or inactive investigative data that identify a victim of child abuse or neglect reported under section 626.556 are private data on individuals. Section 626.556 governs the reporting of maltreatment of minors. All records of the local welfare agency responsible for investigating the report of maltreatment are classified as private data. *See* Minn. Stat. §626.556, subd. 11.

Subdivision 1 of section 626.556 states that, “The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.” Classifying body cam data relating to child abuse or neglect as private or nonpublic is consistent with this public policy.

Further, under section 13.82, subd. 9, investigative child abuse data that become inactive because either the agency or prosecuting authority decide not to pursue the case or the statute of

limitations expires, are classified as private data. However, such protection does not appear to apply where criminal charges are brought. In such a case, sensitive body cam data could end up in the public eye with devastating and harmful effects upon the minor child. Again, because video can be shared with the entire world in a matter of seconds, its negative impact upon the victim can be devastating and incapable of retraction. Such video is a favorite of cyberbullies. This is in sharp contrast to live testimony in a courtroom, where the public is invited, but typically does not attend, absent some relationship to the parties or connection with the proceeding. A child's classmates are likely to be unaware of a domestic abuse matter being heard in court. However, sensitive body cam video relating to such domestic abuse can be easily and quickly shared among classmates on any number of electronic devices, whether a high-tech telephone, tablet, or similar gadget. The potential harm that could result from publicizing victim and witness testimony or statements is recognized by the Minnesota court rules, which prohibit the photographic or electronic recording and reproduction of criminal proceedings absent the consent of all parties. *See* Minnesota General Rules of Practice for the District Courts, Rules 4.01-4.04. As a result, cameras and microphones are rarely allowed in Minnesota trial courts.

E. Under Minnesota Statutes, section 13.82, subd. 17(b), the identity of a minor who has engaged in a sexual performance or pornographic work is protected from public access. *See, also*, Minn. Stat. §617.246, subd. 2. For the reasons articulated above, body cam video that reveals either the identity of the minor or other sensitive details regarding the behavior should be classified as not public.

F. Under Minnesota Statutes, section 13.82, subd. 17(f), a limited privacy interest is recognized with regard to data that would reveal the identity of a person or subscriber who places a call to a 911 system and the object of the call is to receive help in a mental health emergency. However, this provision protects only the identity of the person placing the call. It does not protect the data revealing the identity or other circumstances of the person needing help in a mental health emergency or other medical emergency. Additional protection is needed for data subjects where the body cam captures a subject involved in a medical or mental health emergency, be it a heart attack, drug overdose, or attempted suicide. The privacy interests of the subject under these circumstances should prevail over the public's hunger for sensationalism or gossip.

G. Under Minnesota Statutes, section 13.37, data on volunteers who participate in community crime prevention programs, including the lists of volunteers, their home addresses and telephone numbers are protected data. Also, under section 13.82, subd. 17(c), data that reveal the identity of a paid or unpaid informant being used by the agency if the agency reasonably determines that revealing the identity of the informant would threaten the personal safety of the informant. Additionally, under Minnesota Statutes, section 13.82, subd. 4, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement agency is private data on individuals with respect to the individual making the call. Moreover, section 13.82, subds. 8, protects the identity of reporters of child abuse or neglect. Finally, the law protects the identity of reports of maltreatment of vulnerable adults. *See* Minn. Stat. §§ 13.82, subd. 8, 10; Minn. Stat. §626.557. Clearly, these statutory provisions are designed to protect the anonymity of interested citizens willing to alert police to potential criminal activity, whether or not criminal charges are forthcoming. They also serve to encourage

the reporting of crime, cultivate community participation in the battle against crime, and foster strong community relationships. All of these interests serve public safety. Likewise, similar types of data captured by a body cam should be classified as not public.

- III. Establish that making the data available to the public would render unworkable a program authorized by law. Describe the program and cite the statute or federal law that authorizes it. If relevant, include past instances where release of the data rendered a program unworkable.

The Duluth Police Department is utilizing the body-worn cameras as a tool for law enforcement functions. Use of the body cam data can be valuable for investigating and prosecuting criminal behavior. This, in turn, promotes public safety. However, unfettered public access to the body cam data may have detrimental and severe consequences for certain victims and witnesses, which in turn could hamper victim and witness cooperation with law enforcement. Also, access to the data could unintentionally aid future criminal behavior. Finally, public access to the data could result in Fourth Amendment privacy violations, thereby subjecting law enforcement agencies and political bodies to lawsuits.

Body cameras have been receiving a lot of interest and media attention recently. According to Chuck Wexler, executive director of the Police Executive Research Forum, the “recent emergence of body-worn cameras has already had an impact on policing and this impact will only increase as more agencies adopt this technology.” Johnson, Kevin. “Police Body Cameras Offer Benefits, Require Training.” USA Today, September 12, 2014. State lawmakers have become involved in the discussion. For example, in New Jersey lawmakers are studying whether police officers throughout their state should be required to wear body cameras. To assist in this process, they will be introducing a bill to establish a task force to study the implementation of body cameras for law enforcement. Warner, Joe. “Lawmakers Want to Study Requiring Police to Wear Body Cameras.” South Jersey Times, December 11, 2014. Opponents of this technology fear unintended consequences and have voiced concerns such as whether all of the footage will be available to public-records requests and the deterrent impact upon witnesses and victims. The discussion and debate over this subject has extended beyond the local and state levels, reaching the federal level. Early this month, President Obama announced that he favors more police utilizing body-worn cameras. To help bring this to fruition, he proposed a three-year, \$263 million spending package to increase the use of body-worn cameras, among other objectives. Pickler, Nedra. “Obama Wants More Police Wearing Body Cameras”. Associated Press, December 1, 2014.

However, law enforcement agencies already utilizing this new technology have been faced with suspending or eliminating the use of body cameras due to the exorbitant cost involved with responding to requests for the body cam data. Law enforcement agencies utilizing this technology have been confronted with public data requests for the body cam video that police have described as burdensome, forcing some law enforcement agencies to shelve their body cam projects. Others, like the Poulsbo, Washington Police Department, are waiting for a legislative solution. According to Poulsbo, Washington Police Chief Alan Townsend, “I don’t think other law enforcement agencies in the state are going to go to this technology if there isn’t some

progress made to reduce these ridiculous [public data] requests, because nobody has the staff or the time, and no one wants to give out peoples' private information like that . . . [w]hich is unfortunate, because they're a great tool and we all benefit." *See*, "Anonymous 'Requester' Turns Police Body Camera Programs Upside Down" referenced above and attached hereto.

The Duluth Police Department generates over ten thousand body cam videos per month. Some of these data, such as video of law enforcement activities occurring within a public place, would be classified as public data once the criminal investigation becomes inactive. Other data, however, would be a blend of data classified as public, private and/or confidential. Responding to a data request for such data would require a staff person to view the body cam video, determine its classification, and redact any data classified as private, confidential or not public. The redaction process could involve blocking out sound, blocking out faces or things, etc., while preserving for release that data classified as public. It's a layered process requiring time of staff members, which translates into financial cost for the agency. Further, the agency decision to redact data that the agency classifies as not public is being challenged on an increasing basis, which adds another layer of staff time and expense. As the awareness of body cam video and demand for its release to the public increase, the cost to law enforcement agencies and local government in responding to these requests also increases. As articulated in the attached articles, no local government has the sustainable resources to respond to broad, bulk or blanket data requests for body cam video. Such requests will effectively shut down the body cam programs, rendering this useful and innovative technology unworkable.

#### IV. Data Sharing:

The city of Duluth will be legally required to share some of the data described in this application with persons outside of the city of Duluth during the time of the temporary classification. That data which is relevant to criminal charges will be provided to the defendant or defense counsel pursuant to the discovery obligations under the Minnesota Rules of Criminal Procedure.

# Anonymous 'Requester' Turns Police Body Camera Programs Upside Down

BY: Colin Wood | November 25, 2014

A mass request of police videos has law enforcement agencies around Washington state rethinking their dash- and body-cam programs.

In September, an anonymous Washington state software developer began making public records requests to most police departments in the state, asking for copies of “any and all video” on file. The request was viewed as a burden for most departments, raised questions of privacy and transparency, and led to the cancellation of at least two body-cam programs.

On Nov. 20, the Requester’s persistence also earned him partner status with the Seattle Police Department, which will use his expertise to hone its evolving video collection, retention and distribution policies.

Following the no-indictment ruling of Officer Darren Wilson in the Michael Brown shooting in Ferguson, Mo., racial tensions are high in communities across the nation, and issues around police body cameras are relevant as they’ve ever been.

## Changing the Law

The Requester, who asked for anonymity so strangers wouldn't show up at his house and police wouldn't harass him, said he began this project because he wanted the public disclosure laws and police camera laws to be changed.

In Washington state, public disclosure laws put no limit on the number of records that can be requested, nor do they require that the person requesting have any connection to the information being requested. A Washington State Supreme Court ruling in June required the Seattle Police Department to honor a dash-cam video request made by local news organization Komo. The ruling set a precedent that placed police video requests under the umbrella of the state’s Public Records Act.

“What I would like to have happen is that video cameras be mandated for law enforcement, both in-car and body camera,” he said. “And what I would also like is that the Public Records Act become the publishing act.”

The Requester explained that he would be happy if more police departments routinely published video they collect, a practice few departments have adopted.

Washington state established its public records laws in 1972 to promote transparency of government through sharing of paper documents – video records were not a consideration then. In 2014, police body cameras are growing in popularity among police and the public alike, but fears among Washington police administrators of being unable to fulfill bulk requests like the one made by The Requester are slowing adoption of the technology and forcing another look at the state’s public records policies.

## The 'Fail Mary' of Police Cams

The Requester said he’s gotten varied responses from police departments and, in some cases where departments said they don’t have the resources to review and edit thousands of hours of video, The Requester has settled instead to accept a small collection of videos of the department’s choosing. This was the arrangement made with the Tukwila Police Department and he said that department’s video selection surprised him.

“One [video] I really don’t understand why they picked,” he said. “It was basically a police brutality video.”

This two-minute video, now posted on his YouTube page, shows a man in a car that is pinned against a tree. An officer can be heard shouting at the man to “keep his hands up.” The man in the car puts his hands up briefly and then appears to rummage around in his car. The man then gets out of the car and, after repeated requests to “get on the ground,” he wanders around and reaches into his back pocket, reaches back into his car and either deposits something or grabs something. At one point the officer shouts, “I think you have a gun! Put your hands up!” Sirens of approaching police cars are getting louder as the officer’s

commands continue to go ignored. When back-up arrives, the suspect puts his hands on the back of his car and an officer can be heard saying “Yeah, tase him. He doesn’t listen.” An officer then approaches and tases the man, who stiffens and drops like a felled tree, and then begins screaming as the police handcuff him. That’s where the video ends.

The Tukwila video demonstrates a few of the differences between paper records and video. A written description of the account is less dramatic and less personally invasive for the parties involved. A person might not mind being described in a written account as much as having a video recording available for everyone to see.

Another difference is that a carefully worded description is harder to misinterpret than video footage. The description above attempts impartiality, but also takes a few liberties in narrowing how the reader can interpret the events. Any given police report is sure to do the same, but 100 people could watch the Tukwila video, each departing with a different idea of precisely what happened and who was to blame for things ending as they did.

This limitation is embodied in a 2012 National Football League officiating controversy known as the Fail Mary. The controversy centered around whether the final play of a Seattle Seahawks/Green Bay Packers game should have resulted in a game-winning touchdown or an interception. Even with a stadium of 68,218 spectators, a national TV audience viewing the incident from multiple angles in slow motion and high definition, and a crew of officials who were watching intently for any kind of foul play, what happened that day changes depending on who tells the story. The NFL received more than 70,000 phone messages from disgruntled fans regarding the incident, and despite careful analysis on Wikipedia stating that the officiating decision to award the touchdown was correct, there are many today who would still dispute that call.

The point is that ultimately, video footage of an incident isn’t an antidote for public disagreements – it’s just another tool that police can use. And disclosing video opens the door for discussion and scrutiny of both police and suspect behavior.

### **The Requestor vs. The Police**

The Requester maintains that his intentions are constructive, that he wants to effect change, but many, including some police, are not so sure. In one news article, a journalist who did not interview The Requester suggests that he is attempting to create a business out of the videos he collects, which could be accomplished either through generating ad revenue on YouTube or by adopting the model of mug shot websites, which charge people a flat fee to have photos of their embarrassing incidents removed. The Requester denies he has any intention to profit from the videos, and, in fact, none of his videos are monetized, nor do they have enough views to constitute anything approaching a viable YouTube business.

Taking things one step further, The Requester said he may start a nonprofit dedicated to the examination of public records issues pertaining to emergency services.

“There are civilian review boards, but there isn’t really review by communities as a whole,” he said. “You don’t have thousands and thousands of community members watching videos or looking at police reports and asking tough questions, so I think that possibly could happen because of the work I’m doing and that would be a very interesting outcome.”

As for the police chiefs and sheriffs interviewed for this story, they had varied attitudes toward The Requester. They all gave the impression that they wanted to comply with his request, and they all praised the advantages of body cameras and transparency of police operations in general. But it was clear that some weren’t pleased with The Requester’s approach, because departments with already-limited resources are now strained further as they attempt to avoid the penalties of not complying with the state’s public records laws. In other cases, camera projects have been slowed or even shelved.

### **Video Requests Affect Logistics, Budgets, Privacy**

The city of Poulsbo has more than 1,000 hours of video from six months of recording, and Police Chief Alan Townsend said the department is now waiting to see what the Legislature does before continuing using their cameras. Enforcing the law in a city of 10,000 inhabitants, the Poulsbo PD doesn’t have excess resources to handle The Requester’s full request.

"We figured if the sergeant who's in charge of our video program, if he spent an hour a day, five days a week, we would maybe be able to get this stuff viewed by 2017," Townsend said. "But the reality is that's just real-time viewing. That's not the time it would take to redact the videos, to block the sound out that might be required and also black out faces and so forth."

Logistics problems are a common complaint among police chiefs fielding the bulk request. Another is privacy. "We're taking video of people in their most private moments a lot of times, especially people in their homes, and I take issue with the fact that somebody wants every video and we're just going to allow them out, basically impacting everyone's privacy," Townsend said. "We see the best people on their worst days, and some of these can be mental health issues or domestic incidents."

Even worse, he said, video shot inside someone's home following a burglary could be used as a road map for burglars to commit future crimes. "The laws weren't written for this type of technology," he said, "and we really need to make some changes to make them more effective."

Townsend said he has no problem reviewing, redacting and disclosing select videos for people who are somehow involved with an incident, and their department does so regularly. But requests like The Requester's are disrupting the adoption of what he considers a game-changing technology. "I don't think other law enforcement agencies in the state are going to go to this technology if there isn't some progress made to reduce these ridiculous requests, because nobody has the staff or the time, and no one wants to give out peoples' private information like that," he said. "Which is unfortunate, because they're a great tool, and we all benefit."

Seattle's King County was less impacted by the bulk request because its police have only a few dash cameras and no body cameras. But King County Sheriff John Urquhart said that this request has him second-guessing a possible move to body cameras.

"I couldn't afford to do it right now," Urquhart said. "I've got 400 and some patrol deputies out there, and it's a real simple math problem. If all of them were wearing body cameras eight to 10 hours a day, do the math. ... It's going to kill the body camera program in the state of Washington, and that's a shame because it's a great program. I am 110 percent in favor of body cameras for my deputies."

The King County Sheriff's office regularly posts video online, which The Requester mentioned he likes, but those are helicopter videos, which the chief noted are a world away from body camera videos. "On the helicopter, we're not faced with victims of domestic violence, we're not faced with dead bodies, we're not faced with kids, juveniles, we're not faced with privacy issues, people that don't want to be recorded," Urquhart said. "The helicopter video is not in somebody's house."

A common complaint heard from the public is that the police don't want to be recorded because officers don't want to invite public scrutiny into their workplace. Thomas Zychowski, a reader of local news website KomoNews.com, commented, "Professional liars don't want to be filmed or be filming their lies." Urquhart said police are already scrutinized constantly – it's just part of the job.

"The reality is, we the police have nothing to fear from the public looking over our shoulder," he said. "We are Monday-morning-quarterbacked to death. If you are afraid of being Monday morning quarterbacked, you should not be a police officer, and you certainly shouldn't be a police chief or sheriff. I am unequivocally in support of body cameras for police, but there are logistical and cost aspects of it that have to be worked out first."

In September, the city of Bremerton completed a six-week body camera pilot with a few officers -- who said they can't wait to get the cameras back and use them regularly, said Bremerton Police Chief Steven Strachan. But Strachan also said he didn't know when that time will come now that The Requester has illuminated the conflict between the state's disclosure laws and what law enforcement agencies are capable of providing.

"We were going through our budget process and my full expectation is that this would be fully funded by our council once this is resolved," Strachan said. "But I told them that we're not going to spend tax dollars just to put this on the shelf." So for now, Bremerton will wait.

Like the other officials interviewed for this article, Strachan said his department's experience with body cameras was entirely positive. "People behaved better, their interactions became far less confrontational,



and when you get down to it, that's really the center of our profession," he said. "If you're talking about how to really improve public safety, that's a really significant change."

Despite the challenges around adopting police body cameras in Washington, Strachan took an optimistic viewpoint. "My attitude is good policy and technology should move forward, and there is an element of, 'We'll figure it out,'" he said. "I think we're at that point now where if we're going to figure it out, it's really up to the Legislature to get their arms around the unintended consequences of our public disclosure law."

### **How Much Is Too Much?**

Strachan's department publishes a weekly newsletter, and he hosts a weekly TV show called BPD Update and runs a Twitter account in the interest of improving police transparency and public outreach -- but the public is still not satisfied, he said.

"There are people who will say, 'I want you to take every second of video, every minute, and put it all on YouTube. That's true transparency.' But what you're doing is just creating voyeurism and invading the privacy of regular residents that call for valid reasons," he said. And if people think that calling the police means that footage of them in their home will soon be visible online, then people will be afraid to call the police, and they don't want that, Strachan added.

"The time has come in our state for us to have this thoughtful dialog in our state, and the question is going to be, 'Can we do that?' without demonizing and making false assumptions about everybody involved," he said. "Let's assume positive intent of everyone involved."

Posting every second of police video to YouTube may sound extreme to some, but it's not far from what the Seattle Police Department (SPD) has in mind. SPD Chief Operating Officer Michael Wagers said SPD is now pursuing technology that would allow the automatic online posting of most police video collected. The department is not waiting for legislative change before proceeding, he said. The Requester, who dropped his request with the department, is now a partner on the city's project.

SPD has had dash cameras installed on all patrol vehicles for several years. The department is sitting on 360 terabytes of video, literal lifetimes of patrol footage. "We burn 7,000 DVDs per month fulfilling public disclosure requests, also providing it to prosecutors, public defense attorneys and courts. That's 1990s technology. If someone gave me a DVD, I don't have a device to play DVD on. So we understand the frustration of a requester," said Wagers. Reviewing and redacting is a manual process delegated to five employees who do nothing but burn DVDs and hand that video to employees who examine the footage frame-by-frame, he explained.

The department is also planning a wearable camera pilot of 12 patrol and bicycle officers. They are still planning to go ahead with the pilot, but The Requester has them wondering if they're ready, Wagers said.

"The policy that we have, I think it's going to be a model policy for the nation," he said, adding that the department has taken input and feedback from the ACLU, the Community Police Commission in Seattle, the Department of Justice, the monitoring team, the unions and the International Association of Chiefs of Police, and it has looked at the best practices guide published by the U.S. Department of Justice's Community Oriented Policing Services and the Police Executive Research Forum.

"So we feel we're on very solid ground when it comes to our policy," he said. "But of course this request makes us reconsider whether we should postpone it until we can handle some of the back-end issues in terms of producing the video and being able to redact the appropriate material."

Wagers admitted that privacy is a consideration, but noted that this video and the demand for it will only increase, so they're looking for ways to engage the public to solve their logistical problems. This winter, he said, the city will host a hackathon in which SPD will provide police video and issue a challenge to those who might have an automated solution for redacting and posting the video.

It's just a matter of time before these videos are released a matter of common practice, Wagers said, so they may as well be ready. Washington state Attorney General Bob Ferguson ruled on Nov. 24 that police would no longer be required to notify people they were being filmed while wearing body cameras, making the use of such technology an expectation among the public rather than an exception to normal police behavior. SPD supports the ruling, Wagers said, because he doesn't want police to be thinking about cameras and logistics issues when they are in the middle of dangerous situations.

And when all is said and done, Wagers said, all this video footage is going to be a good thing for the public, for police and for the public image of police officers. "Police work is messy, and so you'll see that in the video data, as well," he said. "But we're confident that in that world, you're going to see police officers doing things the correct way."

### **Adjusting Technology and Policy**

The Pullman Police Department (PPD) has mandated the use of body cameras for its officers since April 2013. The use of 32 cameras has since generated 2,600 hours of video. "It would take years to comply with this request," Pullman Police Chief Gary Jenkins said.

For Pullman, it might take even longer, because PPD is one of the few departments that has opted to notify every person in every video so they can have an opportunity to petition the court should they not want their images released. They thought that was an important privacy measure, Jenkins said.

"The request is having a very chilling effect on this equipment, which is probably the most significant advancement in accountability and transparency for law enforcement in years," Jenkins said. "So unless we can resolve this legislatively, I think this is going to have the opposite result than what we really want in law enforcement."

While most police interviewed for this story called for a change to legislation, the American Civil Liberties Union of Washington does not. ACLU Technology and Liberty Director Jared Friend said his organization wants stakeholders in the police community to find a technological and policy-driven solution instead.

"The ACLU is a proponent of Washington's system of access to public records," said Friend. "We think it's an important tool for government oversight, and for government transparency, so we don't support limiting the Public Records Act broadly or creating exceptions. It's important that citizens be able to create requests that aren't necessarily specific, so they can gain insight into government activities."

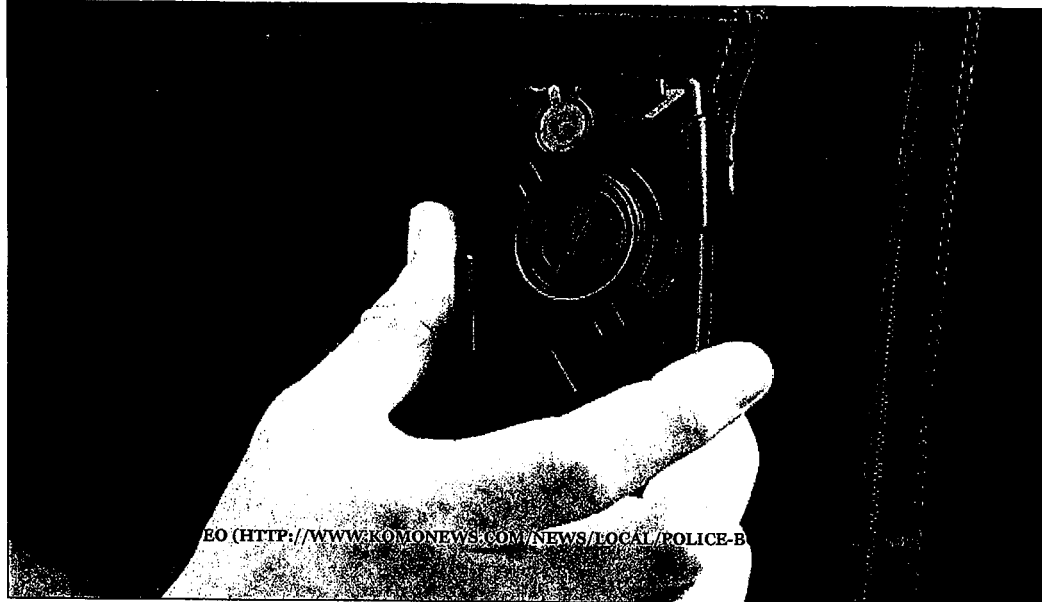
In short, Friend said, privacy is important, but it's up to police to adjust their technology and policies to meet the requirements of the existing law, and not the other way around.

This article was printed from: <http://www.govtech.com/public-safety/Anonymous-Requester-Turns-Police-Body-Camera-Programs-Upside-Down.html>

KOMO News

## Influx of records requests may force police to drop body cams

By Tracy Vedder (<http://www.komonews.com/people/149134615.html>) | Published: Nov 10, 2014 at 6:03 PM PST (2014-11-11T2:03:29Z) | Last Updated: Nov 10, 2014 at 7:13 PM PST (2014-11-11T3:13:54Z)



POULSBO, Wash. -- A new Youtube account is pushing local police agencies to reconsider their use of body-mounted cameras.

Despite considering officer accountability a top priority, police say records requests from that new website may make the programs too expensive and too invasive.

Poulsbo Police have been wearing body cameras for about a year, and the department says the results have been good.

"It ensures accountability for the officers," said Chief Al Townsend, "but it ensures accountability for the people the officers are encountering, too."

It's the same thing for Bremerton police, who finished a six week pilot project this summer and expect to receive funding to start a regular program in 2015.

"We had a great experience," said Bremerton Police Chief Steve Strachan. "The video that we had was very very good and we would like to go full steam ahead."

But last month reality hit, in the form of a new YouTube user website, set up by someone under the name, "Police Video Requests." The profile says it posts dash and body cam videos received after public records requests to Washington state police departments. There are just a couple of police videos there posted within the past week.

People can set up user accounts and if there are enough subscribers and page views they can make money -- think of crazy animal videos. But in this case, it's videos of people the police have stopped or interacted with

for one reason or another.

It doesn't sit well with local police departments.

"They're just using it to post on the internet," said Chief Townsend, "and I suspect it's for commercial purposes."

In September, "Police Video Requests" anonymously asked Poulsbo PD for every second of body cam video it has ever recorded. The department figures it will take three years to fill that request. And Chief Townsend believes it is a huge privacy concern, as officers often see people on their worst days.

"People with mental illness, people in domestic violence situations; do we really want to have to put that video out on YouTube for people? I think that's pushing it a little bit," he said.

Now the city of Poulsbo says it may have to suspend or even end its police body cam program. Bremerton PD is, at least temporarily, shelving its plans to start up its own body cam program because of the blanket requests received by Poulsbo and other agencies in the state.

"In a perverse way," said Chief Strachan, "this is driving us the opposite direction of where we should be."

Both departments say they have no problem with legitimate video requests from either the media or people with police complaints. But they don't want someone making money by posting police videos that could be an invasion of privacy.

Both departments also plan to ask the state legislature during its upcoming session to amend public records laws to specifically prohibit these types of blanket video records requests.



December 15, 2014

Ms. Stacie Christensen, Director  
Minnesota Department of Administration  
Information Policy Analysis Division  
201 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

Re: City of Duluth Application for Temporary Classification of Body Camera Data

Dear Director Christensen:

Please accept this letter in support of the application by the City of Duluth for data collected through the use of police officer worn body cameras to be temporarily classified as private. Elected officials, the City Attorney, and staff of the City of Maplewood have reviewed the application materials prepared by the City of Duluth and we concur that there is a compelling need for temporary classification of police body camera data as not public.

The City of Maplewood recognizes and is committed to open and transparent government practices. As agents of government who provide service to persons in varying settings, police officers with body cameras are collecting data where privacy expectations are significant and compelling. The need to balance individual privacy concerns with the public's right to access is of critical importance.

Recognizing that Maplewood police officers and officers across Minnesota routinely come into contact with victims of crime in their homes, workplaces, or healthcare facilities, we seek a temporary classification of body camera data to minimize the potential chilling effect public release of these sensitive data might have on victim cooperation and participation in the criminal justice process. Community safety is adversely affected when crime victims do not report crimes perpetrated on them. For the victim of these crimes, fearing the perpetrator is understandably challenging, but the added fears that may come from public dissemination of images of them, their home, or their loved ones or friends, chips away trust in a government who is charged with ensuring its citizens reasonable levels of privacy.

Not long ago a Maplewood police officer made a notification of an unexpected death to the decedent's family at the family home. While the officer making the notification was not part of the department's test group deploying body cameras, the high levels of emotion by family members during notification had a profound impact on the notifying officer. By departmental policy and for the sake of accountability, this is a circumstance wherein an officer would be expected to have the body camera recording. Public release of such video data might make for "good" reality television, but its release would seem a breach of trust.

In recent weeks, police agencies around the United States have come under increased scrutiny. Calls for profession-wide deployment of body camera technology to increase public trust through transparent practice are growing. Maplewood plans for expansion of body camera technology to full-scale utilization in the second quarter of 2015. To that end, we want the departmental and City level procedures for the handling of these sensitive data to be well understood. Essential to this goal is the need for a temporary classification of the data as private.

The City of Maplewood stands in full support of the Duluth application and we urge the Commissioner to grant consideration to the request. Should you or your staff require any information, including first hand review of the technology's capabilities, to assist with your consideration of the request for temporary classification, please do not hesitate to contact the Maplewood Police Department at 651-249-2602 or [paul.schnell@ci.maplewood.mn.us](mailto:paul.schnell@ci.maplewood.mn.us).

Sincerely,



Paul P. Schnell  
Chief of Police  
City of Maplewood

CC: Honorable Nora Slawik, Mayor  
Ms. Melinda Coleman, City Manager  
Mr. H. Alan Kantrud, City Attorney  
Ms. Karen Haag, City Clerk