

**MNCOGI comments on Minneapolis Police body camera procedures**  
**Legislative Commission on Data Practices**  
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Minneapolis and Duluth are among the first Minnesota cities to have adopted body camera ("body cam") technology for their police departments, and are also among the first to have articulated operating procedures for that technology. MNCOGI has reviewed the Minneapolis Standard Operating Procedure (SOP) document governing body cams, and has some feedback related to the document - particularly in regards to how the SOP might inform other policy-making.

MNCOGI believes that there are several positive aspects to the Minneapolis SOP, but also notes that there are areas for improvement. At minimum, the SOP provides a helpful baseline for further discussion.

**1. Minneapolis SOP does not require continuous recording**

The Minneapolis SOP does not require officers to record body cam data on a continuous basis during their shift, but permits the officer discretion about when to record. Throughout the SOP, several circumstances are noted where recording is not permitted - such as in court, during interactions "solely among department employees," or for "personal reasons," among others.

As MNCOGI has previously noted, we believe that limiting the collection of body cam footage is a realistic and workable way to deal with the data complexities raised by body cam technology. MNCOGI also believes that user-triggered body cam recording is preferable to a continuous recording protocol, since the indiscriminate collection and aggregation of body cam data would raise multiple privacy and data classification issues that would be difficult to deal with. While officer-triggered recording may result in relevant footage being lost in certain circumstances (due to malfunctions, operator error, or otherwise), MNCOGI feels that this is a lesser problem than the privacy and policy challenges posed by continuous recording. (As noted elsewhere, the legislature may wish to examine certain specific situations in which cameras may be turned on or off.)

The Minneapolis SOP sets out circumstances in which it is appropriate for officers to record body cam footage, including during traffic stops, arrests,

the taking of statements, physical confrontations, and others. MNCOGI notes that virtually all of the circumstances identified in the “activation” section of the SOP are useful for oversight purposes, as well as for law enforcement purposes. However, the SOP also specifically prohibits the recording of body cam data during SWAT operations. We feel that this is a particular shortcoming of the policy, as SWAT raids constitute some of the most contentious uses of law enforcement authority, and potentially require the greatest oversight. If oversight and accountability are key foundations of body cam use, then SWAT operations are the kinds of events that should be recorded.

Ultimately, under the general premise that body cam collection should be limited, departments will have some discretion in delineating what should be recorded by officers. However, citizens should have input into determining what those situations are, in order to address the particular oversight needs of their communities.

## **2. Minneapolis SOP appears to indicate public data presumption**

While the Minneapolis SOP does not specifically address the classification of body cam data under Chapter 13, it discusses procedures for the release of data to requesters, and otherwise appears to indicate that body cam data is presumptively public. If that is the intention of the document, that intention is correct, since body cam data is currently presumptively public data available to citizen requesters. MNCOGI has previously urged that some body cam data (such as arrest data) be specifically classified as being public data "at all times" in state law (as it is analogous to other arrest and incident data), and that the rest be left “as is” - presumptively public.

The SOP also notes that prior to the release of body cam footage, the Minneapolis Records Information Unit must check to ensure that the video is not part of an active criminal or internal investigation, as the existence of such investigations would make the data temporarily “not public.” This, again, is correct, as the body cam data that now exists may be covered by the “criminal investigative” or “personnel data” sections of the Data Practices Act in certain circumstances.

Since the implementation of body cam technology in Minneapolis, data requests have been made for some of the footage. MNCOGI recommends that the commission hear from individual requesters such as Rich Neumeister about experiences accessing body cam footage, to ensure that

the public presumption is being adhered to in data releases.

### **3. Minneapolis SOP calls for 1-6 year data retention**

MNCOGI notes that the SOP calls for data retention between 1-6 years, depending on the nature of the recorded data. As the SOP does not contain much information about which kinds of data will be retained for how long, MNCOGI has not yet formulated an opinion on the overall retention policy. However, we would note that the longer retention periods described in the SOP are generally appropriate for data of this type - data that will potentially attract much user interest. MNCOGI would also urge that the city's retention schedule be modified to include the retention details set out in the SOP. MNCOGI also urges the legislature to examine where body cam footage is actually maintained, to see if third-party vendors are maintaining such footage.

### **4. Issues raised by Minneapolis Video Advisory**

The SOP requires that all public requesters receive a "Video Advisory" upon the receipt of body cam footage. The advisory contains language which states that body cam footage does not capture all possible aspects of a given encounter, and may not represent the totality of the relevant circumstances. It also provides an excerpt from a United States Supreme Court case that defines the use of "reasonable force."

In general, the language in the advisory delivers some truisms. Video has technical and other limitations, and only captures one aspect or angle of a given situation. However, MNCOGI wishes to ensure that such advisories do not become a requirement for receiving public data.

The SOP states that requesters must be presented with the Video Advisory when they receive body cam data. It does *not* state that the receipt of public data is contingent upon the acceptance of the advisory. MNCOGI wishes to ensure that no such connection is made when department staff interpret the SOP document. There is no similar requirement in state law, and as a general rule MNCOGI believes that no public requester should have to proactively acknowledge anything as a condition of receiving public data. The legislature also may wish to express its views on this matter.

### **5. Minneapolis SOP raises issues about regulating collection**

As described earlier, the Minneapolis SOP includes several prohibitions on the use of body cam data, such as requiring that cameras not be "used for the

purpose of surveilling officers.” Many of the SOP prohibitions relate directly to officer privacy. MNCOGI acknowledges the existence of privacy concerns with regard to the use of body cam technology - both on the part of officers, and on the part of the public. The existence of these concerns is part of why MNCOGI believes that a continuous-recording protocol for body cams would be difficult to formulate and implement.

In regard to recording parameters, the legislature has the discretion to address whether recording may be prohibited in certain circumstances, or whether notice of recording must be provided in certain situations.

At a previous Commission meeting, questions were raised about the ability to regulate body cam recording in private homes. As background, police recording practices are governed by several factors, including relevant Fourth Amendment doctrine.

In the home entry context, police entry hinges upon whether the entry is facilitated through individual consent, or via a warrant or other legal means. Absent a warrant or “exigent circumstances,” police need consent to enter a private home. In such consent-based situations, an individual can refuse to allow police to enter their home if they so choose. Generally, if an individual does not permit police to enter their home, police cannot then use technology (body cam or otherwise) to defeat that person’s reasonable expectation of privacy without a warrant or a recognized exception.

It is a determination for the legislature to make whether or not to enact policies about the recording of body cam footage during consent-based encounters in a home (such as during welfare checks). Such policies could include whether to provide notice of recording, or whether to bar recording altogether. In crafting any such policies, the legislature will have to take into account well-established Fourth Amendment case law on “plain view” evidence collection. Such case law governs when officers may seize evidence based on items found in “plain view,” even in the absence of a warrant. It follows that evidence gathering may extend to the video recording of evidence found in plain view.