



**Communities United Against Police Brutality™**

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September 24, 2015

Commissioner Matt Massman  
Minnesota Department of Administration  
200 Administration Building  
50 Sherburne Avenue  
Saint Paul, Minnesota 55155

Re: Application for Temporary Data Classification for body camera data, by Maplewood et al.,  
dated September 14, 2015

**URGENT: For consideration before publishing application in State Register**

Dear Commissioner Massman:

We have carefully reviewed the Maplewood et al. application for Temporary Data Classification for body-worn camera footage, and we are convinced that this application deserves to be rejected immediately, **before** the publication and public comment period that would normally be required by MN Statutes 13.06 Subd. 4. The application is incomplete, vague, and defective. Neither the Commissioner nor the public should be expected to consider or provide input on an application which is unclear as to what is actually being applied for.

Because the existence of the application creates a temporary classification of the data while the application is being considered (13.06 Subd. 1(b)), it is important that the application be clear enough so that all parties can know what is expected of them during this time. This application is so vague that it causes body camera data to be in limbo until such time as the application is rejected.

The most important and fatal flaw in this application is the lack of specificity in the description of the data to be classified as not public, as required by the instructions at the top of page 3 of the application form. Page 1 of the "Attachment to Application" is intended to satisfy this requirement.

Much of that page (first paragraph and the "Definition") merely describe body cameras and their usage. The actual "Temporary Classification Request" is contained only in the first clause in the first sentence under that heading, with some modification by the rest of that sentence and the two remaining paragraphs. That clause reads: "Body Camera recording system data which is not active or inactive criminal investigative data is private data on individuals or nonpublic data unless...."

A careful analysis of the semantics of that sentence is required to determine, if possible, what is to be classified as not public.

The critical question is what the word "not" is modifying. Does it apply only to the word "active"? Or does it apply to the phrase, "active or inactive criminal investigative data"?

If one accepts the first interpretation, the data to be classified not public is two types of criminal investigative data: that which is "not active" and that which is "inactive". There is no request for a not public classification of "active" criminal investigative data, which makes sense, because that data is already not public. There are two problems, however, with this reading of the sentence. One is that there is no definition, here or in Statute, of "not active" data, let alone "not active" criminal investigative data. A search of the entire wording of Section 13.82 (law enforcement data) shows no appearance of the term "not active". The more serious problem with this reading is that the request says nothing about any body camera data which is not criminal investigative data. This could be a valid request, but the justifications in the application make it clear that this is not the intent of those who filed the application. Two examples: 1) A discussion of a parent's concern about a child's behavior (top of page 4 of Attachment to Application). This concern clearly is unrelated to criminal investigative data. 2) The expressed concern about the privacy implications of body camera data obtained inside a private home. Much of this also is unrelated to criminal investigative data. Why would the applicants discuss these two situations, and similar ones, in their justification, yet only apply for a not public classification of that data which is related to criminal investigations?

If one accepts the second interpretation, the data to be classified not public is that which is neither "active or inactive criminal investigative data." Therefore there is no request for a change in classification of any active or inactive criminal investigative data – only the remaining types of data are being requested to be made not public. This too could be a valid request, but again the justifications in the application make it clear that this is not the intent of those who filed the application. There is considerable discussion about the expectation of privacy in a private home, locker room, bathroom, or school. Any of these locations could be the site of activities covered by a criminal investigation. Why would the authors of this application care about the privacy of individuals in these locations only if there is no criminal investigation involved?

So we see that one interpretation of what the "not" refers to (the first, above) means that the application applies ONLY to criminal investigative data; the second interpretation means that the application does NOT apply to criminal investigative data. The two are mutually exclusive.

We see that there are two possible interpretations of which data is the subject of this application, and neither possible interpretation conforms to the intent of the applicants, so far as we can surmise that intent. It appears to us that the intent was to classify ALL body camera data as not public, except as limited by the second half of that sentence (data involving a weapon or force). The applicants could have accomplished that intent, if it was their intent, by simply leaving out the phrase "which is not active or inactive criminal investigative data" but they did not. As Commissioner, you can only accept or reject the application as submitted, or possibly grant a portion of what is applied for; you have no statutory authority to grant not public classification to a broader set of data than that requested.

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Due to the defective and ambiguous wording of the application – wording which clearly does not comply with the instructions to be specific – the public and other law enforcement entities which would be bound by the approval of this application will be unable to comment appropriately. **Thus it is useless, or worse, to publish this application in the State Register and invite comment. Instead, the application should be rejected immediately.**

The ambiguous language regarding data to be classified not public is also a nightmare for responsible authorities who will need to decide – right now, and during the pendency of the application – which data they may and must release to the public. There are serious consequences for errors of either type – not releasing public data, or releasing data considered not public. Is the Commissioner prepared and able to provide guidance, despite the ambiguity of the application?

There are other aspects of the application which make it incomplete and defective. For brevity in this urgent appeal, we include just the following:

Another of the instructions in the application form has been ignored, rendering the application incomplete: “If relevant, include any past instances where release of the data had an adverse effect on the public or data subject.” (bottom of page 3 of application form) According to the letter from the MN Chiefs of Police Association, at least 40 MN police departments are using body cameras. Among the applicants, 9 are already using body cameras, 5 of those on a limited basis. Burnsville has fully implemented the cameras for 5 years, Jordan for 2 years, Farmington for 1 year, and Starbuck for 6 years.

Unless the potential problems with public release of body camera footage are vastly overstated – to the point of falsehood – there must have been past instances where release of the data had an adverse effect. Yet none are cited, despite the clear requirement to do so.

By way of this letter, Communities United Against Police Brutality is requesting the immediate rejection of this application due to its defects. We have many objections and concerns regarding the substance of the request (whatever it may be), but those will be detailed in a later submission, if and when an application is published and public comments are solicited. Thank you for your timely consideration of this request.

For justice,

Michelle F. Gross  
President