



**Stephanie Rawlings-Blake**  
Mayor

# BALTIMORE POLICE DEPARTMENT



**Kevin Davis**  
Police Commissioner

October 29, 2015

Mr. David Rocah  
Senior Staff Attorney  
American Civil Liberties Union Foundation of Maryland  
3600 Clipper Mill Road  
Suite 350  
Baltimore, Maryland 21211

Dear Mr. Rocah:

The Baltimore Police Department ("BPD," or "the Department") and Mayor Rawlings-Blake are in receipt of your letter dated October 27, 2015 regarding Policy 824 - Body Worn Camera ("BWC") Pilot Program (the "Pilot Policy"). The Mayor and I have reviewed and discussed your letter and she has asked me to respond on her behalf. As you point out, the policy largely tracks the recommendations of the Mayor's Working Group on the Use and Implementation of Body-Worn Cameras (the "Working Group"). With very limited exceptions, the Pilot Policy incorporates the vast majority of the 40 recommendations made by the Working Group. Additionally, the BPD made every effort to adopt the recommendations of the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (the "State Commission") that were issued on September 16, 2015. The findings and recommendations of the State Commission, on which you served as the representative of the ACLU, will serve as the basis of regulations to be issued by the Maryland Police Training Commission (MPTC) on December 31, 2015. These regulations will be binding on all jurisdictions in the State.

It is important to bear in mind that the Department's BWC program is still in the pilot phase and is an active procurement for the duration of the pilot. During this pilot, the Department is testing BWC products and technology from three different vendors. In several notable areas, the capabilities of the hardware and software provided by each vendor vary. In some instances, including several in which you highlight, the Pilot Policy is left intentionally vague to accommodate these differences. The Pilot Policy reflects an attempt to balance the necessity of having standards and guidelines to govern the use of BWC's with the realities of simultaneously piloting three different vendors. When a contract award is made to a single vendor early next year, the Pilot Policy will be modified and updated based on a variety of factors, including specific tailoring to the BWC model selected, lessons learning during the pilot, and further consideration of best practices for BWC use.

The BPD and the ACLU are in agreement that BWCs are an essential component of modern policing. The BPD believes that BWCs have the ability to improve interactions between the police and the public, as well improve transparency, accountability, and public safety in general. Because wide-scale implementation of BWCs in large jurisdictions is still in its infancy, agencies across the country are still examining the various implications of policies and procedures. As such, the "right answer" on certain aspects of BWC use may not be known for some time. However, be assured that the BPD is committed to staying at the forefront of best

c/o 242 West 29<sup>th</sup> Street • Baltimore, Maryland 21211-2908

practices and will update policies and procedures as necessary to ensure that the public interest is being best-served.

I will address each of the concerns raised in your letter individually as follows.

### **Inconsistencies With the Mayor's Working Group Recommendations**

1. The Department stands by the language in paragraphs 3 and 4 on page 5 of the Pilot Policy regarding when an officer is permitted to review their own BWC footage. It is important to note that these sections are not applicable when an officer is facing criminal charges, rather, they apply when an officer is facing an administrative investigation. For example, if an officer is facing criminal charges as a result of a police-involved shooting, the officer would not be permitted to review his or her BWC footage prior to making a statement. Although the majority of the Working Group reached a different conclusion, the Pilot Policy is consistent with current best practices across the country. As stated in the Police Executive Research Forum (PERF) report commissioned by the U.S. Department of Justice, Community Oriented Policing Services, "the majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved."<sup>1</sup> The public interest is served by uncovering the truth in these instances, and allowing an officer to access all possible evidence will help an officer remember the event more clearly. BWC footage will provide a more accurate record of events than an officer's recollection, which can be impacted in the high stress situations they regularly face. It is important to remember that if an officer's BWC footage reveals wrongdoing by an officer, the officer will still have to answer for that behavior.
2. The Department agrees with your concern, and will clarify the Pilot Policy to be consistent with Working Group Recommendations 32 and 33. The "Review of Recordings" section on pages 4 and 5 of the Pilot Policy states that review of recordings is permitted for "a supervisor in reviewing the performance of a subordinate or other member for the purpose of: conducting an investigation, monitoring a subordinate's professional conduct/performance, training, or when deemed to be in the best interest of the public, the BPD or the member." Furthermore, consistent with Recommendation 33, the BPD has established a "BWC Unit" that will be responsible for this type of review, as well as other matters pertaining to coordination of the BWC program. The Department believes that the availability of BWC footage presents an enormous opportunity to monitor and improve the performance of our officers and to tailor training to address those issues. While the Department does not intend to mine BWC footage for the specific purpose of enforcing policy violations, certain behavior may be revealed that must be addressed through the disciplinary process. To the extent that supervisory review of BWC footage reveals disciplinary concerns, those violations will be handled in precisely the same way any other policy violation would be handled. Because we agree that the language you identified may create confusion about the purpose of supervisory review of BWC footage, the "Note" you identified on page 5 of the Pilot Policy will be eliminated.
3. The Department already contemplates incorporating Working Group Recommendation 23 in the enforcement of the Pilot Policy, and will add specific language to that effect. The Department has discussed and considered the quandary presented by an officer uploading his or her BWC data after an incident in which they are barred from viewing their recordings. While the Department has discussed how it will prevent these situations, we agree that such practices should be clearly spelled out in the Pilot Policy.
4. The Department agrees that officers should be required to document any failure to activate a BWC. As stated under "Exceptions" on page 2, "Members may deactivate a BWC in certain situations. In the event that a member disables the recording function of the BWC, the member shall state orally into the

<sup>1</sup> <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>, at p.45

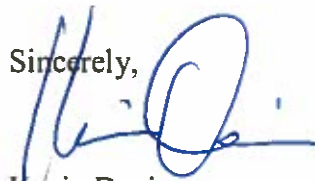
BWC, the reason for disabling the device.” The section goes on to emphasize, “When in doubt, record the interaction.” This section requires an officer to record why he or she did not activate a BWC in discretionary situations when activation may not be required. The Department agrees that officers should also record, in writing, when he or she does not activate a BWC in a situation where activation is mandatory. While officers have already been trained on the sections of the Pilot Policy governing mandatory activation, this concept will be incorporated into the policy as the Department moves to full implementation early next year.

#### **Ambiguities in Policy 824**

1. The Department largely mirrored the State Commission language in this section, which if adopted by the MPTC, will be binding on all jurisdictions on December 31, 2015. Therefore, pending the regulations of the MPTC, the Department’s ability to change this language may be limited. However, the Department is in agreement with Working Group Recommendation 7 and intends for mandatory activation to be expansive. Additionally, all three vendors being piloted support the buffering capability recommended in Recommendation 7. The Department will monitor the sufficiency of this language throughout the course of the pilot, and will make adjustments as necessary and as permitted by State law.
2. The Department agrees with and has made plans to adopt Working Group Recommendation 21. As stated on page 2 of the Pilot Policy, “Prior to beginning each shift, each member shall perform a function test of their BWC in accordance with the manufacturer’s recommendations.” The Pilot Policy also states “Upon discovering a BWC malfunction, members shall immediately report the malfunction to a supervisor. Supervisors shall notify the BWC Coordinator immediately to ensure the repair/replacement of the malfunctioning BWC unit.” Consistent with Recommendation 21, the Department’s plans include the ability to replace malfunctioning cameras BWCs immediately, both in the pilot and upon full implementation. Therefore, it will be very rare that an officer ordinarily required to wear a BWC will be in the field without a functioning BWC. However, in the event such a situation transpires for any reason, emergency or otherwise, the Department will not prevent by policy an officer from performing their tour of duty.

I hope this information is helpful. I would be happy to meet and discuss these issues further at your convenience.

Sincerely,



Kevin Davis  
Police Commissioner