



October 27, 2015

Mayor Stephanie Rawlings-Blake
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100 N. Holliday St.
Baltimore, MD 21202

Commissioner Kevin Davis
Baltimore Police Department
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Dear Mayor Rawlings-Blake and Commissioner Davis

I write on behalf of the American Civil Liberties Union of Maryland in connection with newly adopted Policy 824, governing the Baltimore Police Department's (BPD's) use of Body-Worn Cameras (BWC's) during an initial pilot phase. I am gratified to see that the operational policy largely tracks the recommendations of the Mayor's Working Group on the Use and Implementation of Body-Worn Cameras, which, after months of intensive work, review, consultation, and discussion, issued its draft report on February 18, 2015, and its final report on April 3, 2015. However, I am extremely disappointed and surprised to see that in several key areas, Policy 824 totally ignores and contradicts the Mayor's Working Group recommendations, and, in other areas, is unclear.

I fully understand that the Working Group recommendations are not legally or otherwise binding on the City or BPD. However, given the intensive work and discussion that went into those recommendations, with input from many diverse constituencies; given that the overwhelming majority of members of the Working Group were representatives of the Baltimore Police Department, Baltimore City Law Department, the Police Department Office of Legal Affairs, other City agencies, and the FOP; given the universal consensus behind every recommendation save one (which was opposed *only* by the FOP); and given the universal endorsement that those recommendations have received, it is perplexing, at best, that the operational policies now ignore the work and consensus embodied in those recommendations. My detailed concerns follow.

Inconsistencies With the Mayor's Working Group Recommendations

1. Policy 824 states (in ¶ 4 on p.5) that "[m]embers who are the subject of an administrative investigation may view their BWC recording prior to completing and submitting any required reports and being interviewed by the appropriate investigative unit." The Policy also states (in ¶ 3 on p. 5) that "[m]embers who are involved in a serious use of force, in-custody death, or are the subject of a criminal investigation may view their BWC recording related to the incident prior to completing and submitting any required reports and being interviewed by the appropriate investigative unit" under two conditions: 1) the prosecuting authority has declined to prosecute; or 2) the member has been compelled to make a statement and the appropriate *Garrity* warning has been issued.

These provisions directly contradict Recommendation 29 in the Working Group report. That recommendation said “When the BPD’s Units assigned to perform the duties currently performed by Internal Affairs Division, the Force Investigation Team or the Homicide Division (or their equivalents) are called to investigate, and/or for categorical uses of force, an officer should be required to make a statement concerning an incident without first reviewing his or her camera footage of the incident.” This recommendation was discussed at great length, was the only recommendation on which there was any disagreement, was opposed *only* by the FOP, and reflected the consensus of every other member of the group. And the recommendation is critical to maintaining public faith in the integrity, fairness, accuracy, and completeness of the BPD’s internal and criminal investigations into its own members’ conduct. There literally is no other circumstance in which the BPD, or any other investigative body, in trying to ascertain the veracity, accuracy, and credibility of a person’s statements about an incident, would allow that person to review extrinsic evidence about the incident prior to being interviewed. Doing so fundamentally undermines the integrity of the interview, makes it impossible to judge whether the person is being truthful, makes it impossible to know whether the person’s recollections are accurate and should be credited, and makes it possible (even likely) that the person’s statement will be guided by what the evidence shows, rather than their own recollections. An officer, like anyone else, will have ample opportunity to explain why their statement may, or may not, be at odds with extrinsic evidence after having made the statement. But an investigation that omits that step is not a fair, meaningful, or accurate investigation. This policy should be changed to reflect the Mayor’s Working Group recommendation.

2. Policy 824 states on p.5 “[r]ecordings shall not be routinely or randomly viewed by members for the sole purpose of enforcing policy violations observed in the recordings.” This provision directly contradicts Recommendation 32, which states “[t]o ensure effective administrative and training support, it is recommended that Captains and other commanders randomly conduct audits of recorded activities of members under their direct command, especially of probationary employees. Further, Recommendation 33 specifically recommended that BPD “designate a unit or division to periodically conduct random review of camera footage to monitor compliance with the program, identify training and policy issues, and assess overall officer performance.” The ability to conduct such random reviews is one of the primary benefits of BWC’s, which offer an unprecedented and objective window into the many hundreds of thousands of interactions Baltimore police officers have with members of the public every year. Indeed, there is no better way to monitor whether officers are acting in accordance with BPD rules than through such random audits. And there has certainly been no time when the need to conduct such audits, and publicize their results, has been greater.

3. Policy 824 states on p.3 that members are, in all instances, “responsible for uploading all BWC recordings by the conclusion of the member’s tour of duty.” This provision is inconsistent with Recommendation 23 (which is itself intended to enforce Recommendation 29, referenced above), which states “[a]ny time the Force Investigation Team (FIT) team, or its equivalent, is activated to investigate an incident, any time there is a reportable use of force, or any other time in the discretion of a commanding officer not involved in the incident, it is recommended that a non-involved supervisor take possession of the officer’s camera and be responsible for downloading its data and tagging it as directed by anticipated GOs.” In other words, if an officer is always responsible for tagging his or her own footage, there is no way to avoid having officers review their own footage prior to making a statement, in violation of Recommendation 29.

4. In contradiction to Recommendation 8, the policies governing “mandatory activation” of BWCs on p. 2 do not impose on members any obligation to document any failure to activate a BWC in violation of the mandatory activation policy. Documenting, reviewing, and meaningfully addressing (including through the disciplinary process, if necessary) such failures is

imperative if the public is to have faith that officers won't simply fail to record when engaged in misconduct.

Ambiguities in Policy 824

1. Policy 824 requires activation of the BWC "at the initiation of a call for service or other activity that is investigative or enforcement in nature." However, Recommendation 7 sought to provide additional and necessary clarity on what "initiation" means in a particularly important context. Specifically, the recommendation stated "[i]n order to film the basis for a stop or on-sight arrest, an officer should turn on his or her camera as soon as he or she observes activity that might justify a stop or arrest." This recommendation, and the associated other provisions in Recommendation 7, should be incorporated into the Policy.

2. Policy 824 appropriately requires members to test the BWC equipment prior to their shift. However the policy is ambiguous on what should happen if the equipment is found to be malfunctioning. Recommendation 21 made clear that officers should exchange inoperable equipment for functioning BWC's right away, barring some emergency. It is not clear whether, under Policy 824, members will engage in patrol despite having inoperable BWCs, or whether BPD will, as recommended, have a location where inoperable BWC equipment may be exchanged 24 hours per day/7 days per week.

I welcome the chance to discuss any of these issues with appropriate BPD officials as soon as possible.

Sincerely,

David Rocah
Senior Staff Attorney