

# Footage Release Policies for the Buffalo Police Department

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## Executive Summary

To be effective accountability tools, police body cameras must be accompanied by good policies governing their usage and giving the public access to footage. Otherwise, exemptions in state freedom of information laws can be used to limit the disclosure of critical evidence of misconduct. The City of Buffalo should pass legislation requiring:

- immediate, proactive release of footage for critical incidents, such as when a civilian dies in an incident involving the police;
- upon request, prompt and free release of footage in any case involving use of force or alleged police misconduct;
- affordable fees for other footage released upon request;
- use of redaction software to protect civilian privacy in released footage;
- a prohibition on police editing of footage except where necessary to protect civilian privacy;

In addition, the City should explore the possibility of having body camera footage maintained by an independent third party, rather than the police themselves.

## Introduction

In 2016, PPG published a report with 33 recommendations for policing in the City of Buffalo, including the use of body cameras. In 2017, we published an overview of best practices for body cameras. Since then, the Buffalo Police Department (BPD) has equipped hundreds of its officers with body cameras, and its camera policy is now [publicly available](#) on the BPD's website. However, this new technology has not been the critical accountability tool advocates had hoped for. In several high-profile incidents, Buffalo police have severely injured civilians, yet body camera footage from those incidents has not been released publicly.<sup>1</sup>

The City of Buffalo needs to make numerous changes to its body camera policy to make it a more effective tool for transparency and police accountability. In this brief we examine one of those changes: footage release policy.

This policy brief was drafted by Sarah Wooton, Community Researcher at Partnership for the Public Good, as a follow-up to the 2017 brief, "[Body Cameras for the Buffalo Police: Best Practices for Policy Creation.](#)"

The current brief analyzes best practices for body camera footage release. It recommends several policies, including guaranteed access to footage involving death, use of force, or misconduct.

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## Current BPD Policy

The Buffalo Police Department’s (BPD’s) policy on body cameras states that all requests for footage must be submitted through the New York State Freedom of Information Law (FOIL) process.<sup>2</sup> While FOIL is a critical tool for obtaining public documents, there are many exemptions through which government entities can deny records requests. In fact, there is a set of exemptions specifically for law enforcement agencies:

- “...agency may deny access to records or portions thereof that... are compiled for law enforcement purposes and which, if disclosed, would:
- i. interfere with law enforcement investigations or judicial proceedings;
  - ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative technique or procedure, except routine techniques and procedures.”<sup>3</sup>

The BPD makes full use of these exemptions when it comes to requests for body camera footage. Most often, the BPD states that the footage is part of an ongoing investigation and is therefore exempt from FOIL release.<sup>4</sup> (See side panel on the following page for a discussion of these exemptions.<sup>5</sup>)

Buffalonians may be familiar with several high-profile clips of body camera footage that *were* released publicly, such as the cases of Quentin Suttles and Nicholas Belsito. In both cases, *The Buffalo News* obtained footage through the victims’ attorneys—not through a direct FOIL request from the *News*.<sup>6</sup> The same is true of the footage from the Daniel Prude case in Rochester, New York.<sup>7</sup> While FOIL is often an effective tool for other forms of government transparency, it has not often been effective for the public in securing body camera footage.

## Recommendations

### PROACTIVE AND EXPEDITED RELEASE OF RELEVANT FOOTAGE

To ensure that the BPD cannot use FOIL exemptions to deny footage requests, the City should pass legislation requiring proactive and expedited release of footage under certain circumstances. The American Civil Liberties Union (ACLU) recommends two policies:<sup>8</sup>

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- Proactive, voluntary, and expedited release of footage when a critical incident occurs. The BPD should guarantee release of footage within five days when footage involves a civilian who is killed, shot by firearm, or otherwise grievously injured.
- Guaranteed, free release of footage upon public request when the footage involves police use of force<sup>9</sup> or alleged police misconduct.

The City's law should require BPD to make these releases even in cases that would qualify for a FOIL exemption, such as the exemption for open investigations.

The Buffalo Police Advisory Board (an independent advisory committee created by the Buffalo Common Council) calls for a similar footage release provision in the BPD policy.<sup>10</sup> Several other cities have already instituted such voluntary release policies for "critical incidents:"<sup>11</sup>

- Chicago: Within 60 calendar days after a critical incident, all video and audio recordings related to the incident (including body camera footage, dash cam footage, 9-1-1 calls, and security camera footage) will be released publicly.<sup>12</sup>
- Los Angeles and the State of California: Within 45 days after a critical incident, all video recordings will be released publicly.<sup>13</sup> This policy was first enacted by the City of Los Angeles, then used as the basis for the California law.<sup>14</sup>
- New York City: Within 30 days after a critical incident, all video and audio recordings will be released publicly.<sup>15</sup>

When creating a voluntary release policy like this, it is important to limit the discretion of police departments in choosing which videos to release and which videos to withhold from the public. As the ACLU and others have pointed out, police departments have a vested interest in protecting themselves. If they are left with the discretion to choose which videos are released, they are more likely to release only video footage that *clears* an officer of wrongdoing and less likely to release footage that *suggests* potential officer wrongdoing.<sup>16</sup> Therefore, conditions for video release should be spelled out in minute detail.

The platform for footage release of critical incidents varies from city to city. Some departments upload the videos to their Vimeo page or YouTube page (San Francisco and Baltimore, respectively).<sup>17</sup> Chicago, on the other hand, created a [searchable case portal](#) to host these videos, making it easy to quickly find incidents by type or date.<sup>18</sup> Buffalo should include an easily searchable portal in its policies and legislation.

In "[Why 'Active Investigations' Don't Justify Keeping Police Video Secret](#)," the American Civil Liberties Union (ACLU) points out the inadequacy of FOIA & FOIL exemptions for body camera footage. Some of their arguments include:

1. FOIA regulations were designed long before body camera footage existed, and therefore weren't created with body camera footage in mind.
2. In police shootings, the police officer effectively becomes the suspect. The shooting officers know that they will be investigated, and they will see the footage. Therefore, investigative privilege arguments do not hold in these cases.
3. Privacy concerns can be dealt with using redaction technology.
4. The courts have dealt with viral public bystander videos and have been able to provide a fair trial despite this. Therefore, "right to a fair trial" is not sufficient justification for denying the release of police body camera footage.

The BPD should add these changes immediately to its written body camera policy. But as police leadership changes over time, departmental policy is easily changed. Therefore, the City should legislate these new footage release policies to ensure long-term accountability.

### THIRD-PARTY CONTROL OF FOOTAGE

Alex S. Vitale, director of the Policing and Social Justice Project at Brooklyn College, has argued that law enforcement agencies should not be in control of body camera footage. Rather, he says, footage should be held and released (when applicable) by an independent civilian agency.<sup>19</sup>

Vitale's proposal aims to limit the invasion of privacy concerns associated with law enforcement control of millions of hours' worth of footage. Third-party control is likely to improve footage release policies as well.<sup>20</sup> An independent group tasked with evaluating the public's interest in footage release would likely be more objective than law enforcement executives. Further, it is a feasible switch. A spokesperson from Axon—a company that sells cloud storage to police departments for body camera footage—has said that handing over the “digital keys” to an independent entity is possible; there would not be technical difficulties to do so.<sup>21</sup>

While this seems to be a promising concept, it has not been tried before.<sup>22</sup> The Buffalo Common Council should commission a study to examine third party control of footage.

## Other Considerations in the Footage Release Process

### PRIVACY AND REDACTION

One major consideration should be the privacy of civilians in the video. The BPD's body camera policy already outlines situations in which cameras will not be used due to privacy considerations—such as when working with sexual assault survivors and when speaking with confidential informants. This serves as a privacy filter on the front end of footage collection.

However, the BPD will also need to examine privacy considerations on the back end, in the process of footage release. Civilian identities, personal identifying information (e.g. license plate and driver's license numbers), and private spaces (e.g. the interior of residential homes) are all examples where redaction should be considered before releasing footage. The BPD's policy should spell out when footage will be redacted and what will be redacted. Redaction should not impair viewers' ability to understand the events occurring in the video footage.

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## TECHNOLOGY

The BPD should acquire affordable commercial software to efficiently or automatically complete necessary redactions, including blurring faces or license plates. Open source, low-cost redaction software is readily available. This would decrease the administrative burden on the BPD and would protect the privacy of individuals who encounter the police.

## NO EDITING

Other than necessary redaction, law enforcement agencies should not be able to edit video footage before releasing it to the public. This should be included in the BPD policy and legislation. In some cases, police departments have heavily edited video footage such that key scenes are missing or unclear.<sup>23</sup>

## AFFORDABILITY

Under our recommendations, footage of incidents that do not involve death, use of force, or allegations of misconduct would fall under the usual FOIL regulations; they would not be released freely. The City's legislation should include an affordable fee schedule for this sort of footage disclosure. Redaction can be costly, and some law enforcement agencies have been passing on that cost—sometimes in the thousands of dollars—to the person or entity that requested the video.<sup>24</sup>

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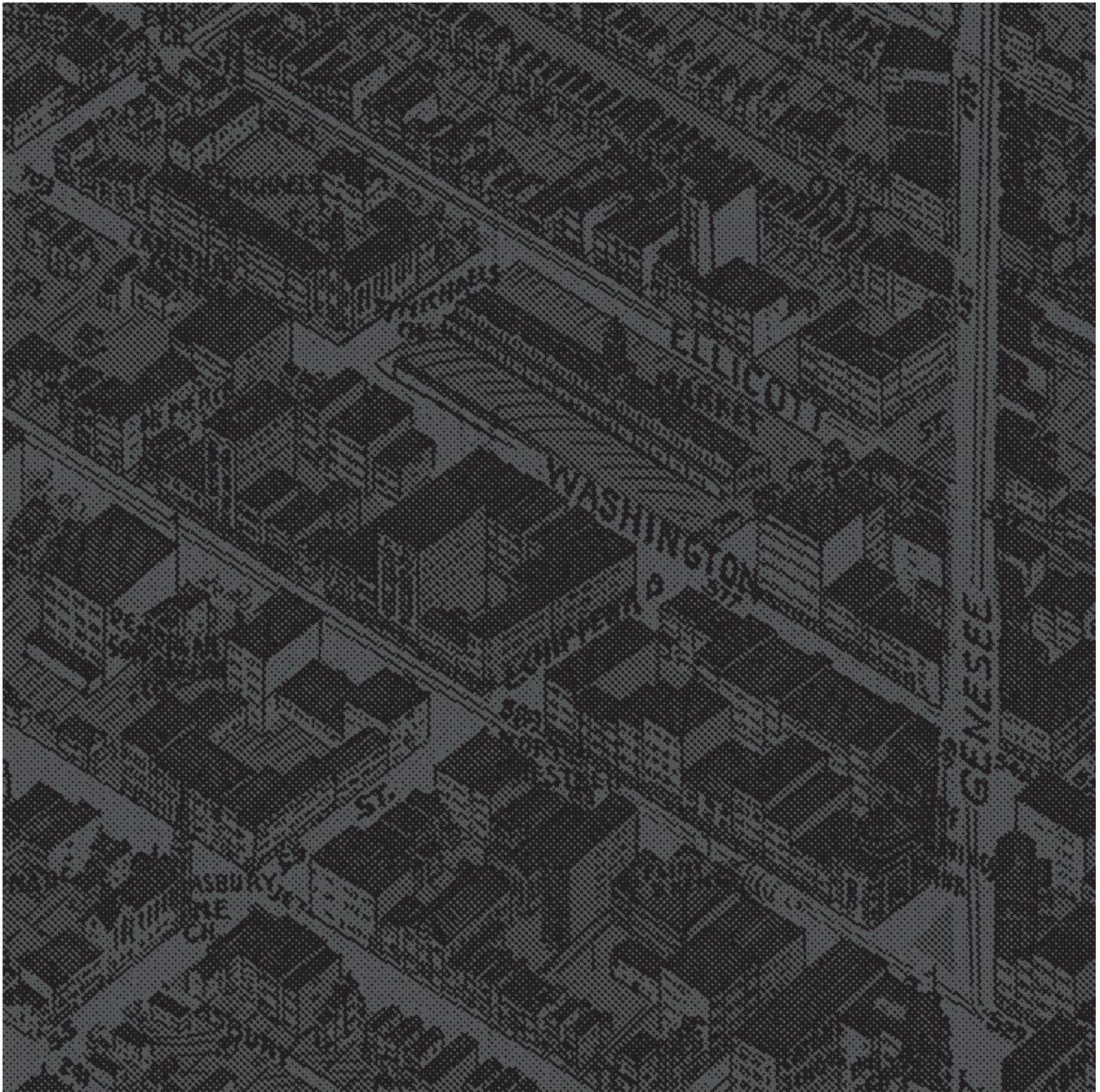


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