Agenda Item II.C.1.

Society of American Archivists
Council Meeting
May 16–17, 2017
Chicago, Illinois

Issue Brief: Police Mobile Camera Footage as a Public Record
(Prepared by SAA Committee on Public Policy)

BACKGROUND / DISCUSSION

Police mobile camera footage presents unique challenges in the realm of records management and archives. Policies and regulations governing these records have struggled to keep pace with the growth of law enforcement use of mobile cameras, especially the increased use of body-worn cameras (BWC). Likewise, practices vary across the numerous jurisdictions in which mobile camera technology has been implemented. In the last two years, media coverage has exposed the complex issues raised by police mobile camera video as a source of evidence and accountability for police-civilian interactions, especially regarding violence against Black Americans. These issues are at the nexus of SAA's core principles, including the Society's commitment to ensuring transparency and accountability of government at all levels; ensuring the protection of citizens' rights and individual privacy; making accessible evidence of the diverse and complex elements of the human experience; and preserving historical documentation for future generations.

In line with Council-approved Procedures for Suggesting SAA Advocacy Action, SAA members Michelle Caswell and Stacy Wood submitted a request for SAA to develop a position on the issues of police BWCs, specifically encompassing objectives that included 1) affirming the importance of Black lives to SAA members as professional archivists; 2) support for defining police BWC footage as a public record; 3) advocating for standardized practices of maintaining and making accessible police BWC footage; and 4) drafting comprehensive policies for holding accountable all private contractors involved with police BWC and their attendant software. Subsequently SAA's Executive Committee asked the Committee on Public Policy (COPP) to develop an issue brief in line with this submission.

Following initial discussions, COPP decided to develop a brief focused on mobile camera footage as a public record and the attendant records management and archival challenges these pose. As part of its deliberations COPP consulted with, and incorporated comments and suggestions from, the following SAA sections: Archivists and Archives of Color, Government Records, Human Rights Archives, Issues and Advocacy, Local Government Records, Privacy and Confidentiality, and Records Management.

Our group decided that the issues of drafting standardized policies governing private contractors and reaffirming the importance of Black lives were out of scope for this brief. However, the Council may wish to issue a statement reaffirming previous positions on diversity and inclusion specifically related to the importance of Black lives to SAA's membership. The Council also may wish to convene an *ad hoc* working group, made up of individuals with the appropriate expertise, to develop recommended policies for holding accountable private contractors involved in the sale and maintenance of police body-worn cameras and their attendant evidence management software.

RECOMMENDATION

THAT the following issue brief on "Police Mobile Camera Footage as a Public Record" be approved.

Issue Brief: Police Mobile Camera Footage as a Public Record

SAA Position

Footage from police mobile cameras, including body-worn cameras, dash-cams, and unmanned aerial vehicles, are public records with informational and evidentiary value. Footage produced by police-operated cameras should be handled according to local, state, or federal records retention policies; managed in systems that ensure their authenticity; and made available to the public according to government records transparency and privacy laws. Records retention policies for law enforcement agencies should explicitly address camera footage in alignment with these principles.

In accordance with this position, SAA will:

- Support efforts to define police mobile camera footage as a public record under existing public records laws according to local, state, and federal statutes.
- Advocate for standardized practices of recording, processing, storing, and making accessible police mobile camera footage.
- Support comprehensive policies that ensure compliance with government records laws by private contractors that sell or maintain police mobile cameras and their attendant evidence management software.
- Advocate for retention and access policies that, while ensuring government transparency and accountability, protect the personal privacy rights of individuals being filmed, particularly those who are incidental to the investigation or recorded incident.

- Encourage SAA members engaged with law enforcement agencies to ensure that archival and records management best practices are considered when developing policies and procedures related to police mobile cameras.

The Issues

Police mobile camera video—recorded in the course of operations and preserved as evidence—falls under the professionally accepted definition of public records, i.e., any documentary materials, regardless of physical form or characteristics, made or received by a government entity in the conduct of public business and preserved or appropriate for preservation as evidence of the entity's organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein.

A 2016 joint report by the American Civil Liberties Foundation of Massachusetts and the University of California, Berkeley School of Law, notes that body-worn cameras increasingly are used by law enforcement officers to record their encounters with civilians.[1] A 2015 survey by the Associations of Major Cities Chiefs and Major County Sheriffs found that 95% of surveyed law enforcement agencies had already implemented body-worn cameras or were planning such programs.[2] This trend is attributed in large part to the Black Lives Matter movement, which has significantly raised public awareness of police conduct toward Black Americans and other marginalized groups. Mobile camera footage provides important, albeit at times imperfect, documentation of situations that are often high-stress, emotionally charged encounters. By their very nature, such cameras provide evidence of a situation from a single, fixed point of view, one that does not always perfectly replicate what the recording officer actually sees.

The American Civil Liberties Union (ACLU) has advocated for the use of body-worn camera recordings to document and prosecute police misconduct, provide authoritative evidence in the examination of violent encounters between police and civilians, and diminish the need for juries and judges to rely on fallible eyewitness testimony.[3] The ACLU also has recommended that jurors be allowed to consider whether a police department properly preserved body-worn camera footage. In May 2015, the Leadership Conference on Civil and Human Rights published the *Civil Rights Principles on Body Worn Cameras*.[4] These principles were endorsed and signed by 35 civil rights and social justice organizations, including the ACLU, Center for Media Justice, Data and Society Research Institute, Electronic Frontier Foundation, Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People (NAACP), and Public Knowledge. According to these principles, law enforcement agencies should, *i.a.*: develop camera policies with public input; specify clear operational policies for recording, retention, and access; and make footage available to promote accountability with appropriate privacy safeguards in place. Within this context, records managers and archivists should play an active role in collaborating with policymakers, government agencies, and other stakeholders in meeting the complex records management challenges posed by mobile police video.

The ways in which these videos are understood and treated as records are of paramount concern to archivists, particularly with respect to preservation and access practices that may affect the evidentiary value and authenticity of mobile camera footage. This issue resides at the nexus of SAA's core values and principles, including the organization's commitment to ensuring transparency and accountability of government at all levels; ensuring the protection of citizens' rights and personal privacy; making accessible evidence of the diverse and complex elements of the human experience; and preserving historical documentation for future generations. Archivists' professional expertise and investment can help ensure the integrity of these records and assist in fostering transparency.

Regulations and statutes governing mobile camera footage have failed to keep pace with the growth of programs that produce them. However, *ad hoc* policies and practices have emerged from the need to process, store, and access massive amounts of data in accordance with evidence management standards and protocols. Because this work requires significant investment in infrastructure, many law enforcement agencies have contracted with private companies to purchase mobile cameras and manage footage through proprietary evidence management software. Regulations and statutes should clearly define mobile camera footage to be a public record within the context of state-specific public records law. Such statutes or regulations should dictate how these records are captured, stored, maintained, accessed, and destroyed.

While acknowledging the evidentiary value of police-operated camera footage, SAA recognizes the tension between the public's right to know and personal privacy concerns. Police-operated cameras capture deeply personal information and large amounts of footage that are incidental to any potential investigation. Law enforcement agencies should avoid the indiscriminate retention of personally identifiable information, including biometric data captured by mobile cameras. Data retention policies must balance the competing needs for citizen privacy and government transparency within practical, technical, and financial limitations.

In accordance with statutory privacy protections, manual review and redaction may be necessary before police mobile camera footage can be released. Because this process is both expensive and time-consuming, it may contribute to significant backlogs in fulfilling public requests for footage. Law enforcement agencies should develop efficient policies and procedures for promptly reviewing and releasing or destroying footage in accordance with public records regulations.

[1] http://aclum.org/wp-content/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf
[2] https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rvnT.EAJQwK4/v0
[3] http://aclum.org/wp-content/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf
[4] http://www.civilrights.org/press/2015/body-camera-principles.html

Additional Resources

American Civil Liberties Union of Massachusetts, "No Tape, No Testimony: How Courts Can Ensure the Responsible Use of Body Cameras," November 29, 2016. http://aclum.org/wp-content/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf

Bakst, Brian, and Ryan Foley. "For Police Body Cameras, Big Costs Loom in Storing Footage." Washington Times February 6, 2015. http://www.washingtontimes.com/news/2015/feb/6/for-police-body-cameras-big-costs-loom-in-storing-/

Brennan Center for Justice, "Police Body Cameras: Retention and Release," August 3, 2016. https://www.brennancenter.org/analysis/police-body-camera-policies-retention-and-release

Community Oriented Policing Services and Police Executive Research Forum, "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," 2014. https://ric-zai-inc.com/Publications/cops-p296-pub.pdf

Electronic Frontier Foundation, "Surveillance Drones." https://www.eff.org/issues/surveillance-drones

Funk, McKenzie, "Should We See Everything a Cop Sees?" The New York Times Magazine, October 18, 2016. http://www.nytimes.com/2016/10/23/magazine/police-body-cameras.html?_r=1

Laperruque, Jake, "Should Police Bodycams Come With Facial Recognition Software?" Slate. November 22, 2016. http://www.slate.com/articles/technology/future_tense/2016/11/should_police_bodycams_come_with_facial_recognition_software.html

The Leadership Conference on Civil and Human Rights, "Civil Rights, Privacy, and Media Groups Release Principles for Law Enforcement Body Worn Cameras," May 15, 2015. http://www.civilrights.org/press/2015/body-camera-principles.html?referrer=https://www.google.com /

The Leadership Conference on Civil and Human Rights, "Police Body Worn Cameras: A Policy Scorecard," August 2016. https://www.bwcscorecard.org/

Richards, Sam, "Drones: law enforcement's secret eye in the sky," August 24, 2016. https://thinkprogress.org/drones-law-enforcements-secret-eye-in-the-sky-9eda68fb8bc#.x6jdcsadv

Sledge, Matt and Hunter Stuart, "Cop Cams Will Change Policing. But Maybe Not the Way You Think," Huffington Post, March 25, 2015. http://www.huffingtonpost.com/2015/03/25/police-body-cameras_n_6933474.html

The Reporters Committee for Freedom of the Press. "Access to Policy Body-Worn Camera Video." 2017. http://rcfp.org/bodycams

UCLA Department of Information Studies National Forum, "On the Record, All the Time," August 17-19, 2016. https://is.gseis.ucla.edu/bodycams/

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Administration, "Body Worn Camera Toolkit." https://www.bja.gov/bwc/

WIRED, "Peter Gabriel: Tech can make video evidence a cornerstone of justice," 2014 December 30. https://www.wired.com/2014/12/peter-gabriel-witness-on-video-evidence/

All sites were accessed on April 1, 2017.

Support Statement: This issue brief supports SAA's Public Policy Agenda by providing members and other prospective audiences with SAA's considered opinion on the topic of managing police mobile camera video as a public record, as well as transparency and accountability of government agencies.

Impact on Strategic Priorities: Addresses Goal 1: Advocating for Archives and Archivists, Strategy 1.1. Provide leadership in promoting the value of archives and archivists to institutions, communities, and society, 1.2. Educate and influence decision makers about the importance of archives and archivists, and 1.3. Provide leadership in ensuring the completeness, diversity, and accessibility of the historical record.

Fiscal Impact: Approval of the issue brief does not commit SAA to expend funds on any particular advocacy effort at this time.