



April 28, 2015

**PNA TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE ON
BODY CAMERA FOOTAGE/LEGISLATION**

Good morning. Thank you for the opportunity to testify again before the Senate Judiciary Committee on the important issue of law enforcement body camera footage. My name is Paula Knudsen and I am the Director of Government Affairs/Legislative Counsel for the Pennsylvania NewsMedia Association (PNA). The PNA is the statewide trade association for print and online news media in Pennsylvania, and counts more than 300 print, digital and related media organizations as members.

PNA's mission is to advance the business interests of Pennsylvania's news media companies, and to promote a free and independent press. To that end, we advocate for reforms in the state legislature that will improve newsgathering, increase transparency in state government, and protect the first amendment.

The issue of law enforcement body camera and vehicle footage has received increasing attention in the wake of a number of high profile, and sometimes tragic, interactions between police and citizens across the country. Law enforcement members, as well as community activists, have begun to advocate for public access to law enforcement video footage, arguing that if such footage existed in Ferguson, Missouri, the community would have had a clearer idea of what happened –to the benefit of both law enforcement and the community. For instance, in a recent fatal shooting involving law enforcement in South Carolina, a citizen's cell phone video has provided the public with an unvarnished view of the fatal interaction.

The PNA strongly supports legislation that would encourage the widespread use of body camera technology and make such audio and video footage publicly accessible. Body camera footage of suspects being approached, detained or placed under arrest, including footage that depicts the interaction between officers and the subject of the police action, must be presumptively public, in order to provide accurate, fair information about the circumstances that led to the incident at issue. In fact, many police/public interactions occur on public roads or other public settings, and are open and available to anyone at the scene, including someone recording the interaction on a cell phone or other device.

Of course, there will be circumstances where competing interests will have to be considered, such as a video that includes nudity, or some other highly personal and embarrassing circumstance, and those could be handled by blurring the video or some similar solution. There is very little about a video recording that could disclose an 'investigation' secret; these videos

simply show law enforcement, the subject of police action, and the community at large an unbiased view of what occurred. They show the facts.

The strong presumption, then, must be that video recordings of law enforcement engaging in on-duty conduct are subject to public inspection. To enact a contrary policy would defeat the purpose of collecting the body camera footage in the first place - greater transparency and a better understanding of law enforcement/public interaction.

Withholding access to body camera footage would be contrary to the public interest and would result in the technology benefitting only law enforcement, a situation that we believe is untenable. In situations like Ferguson, Missouri, for example, if footage existed but was not released, that would have only further inflamed an already dangerous environment. Selective release of footage would be just as bad, creating the implication that law enforcement only releases the video when it benefits them to do so. If the goal of body camera legislation is to provide a clear, unadulterated view of how law enforcement and members of the public behave during arrests and similar circumstances, the only real solution is to presume public access to the footage.

Other states' body camera legislative, court responses and policies

Other states are dealing with this issue as well, with some finding legislative solutions for balancing the public interest in transparency with privacy-related concerns. Oklahoma, for instance, amended its Open Records Act in 2014 to allow for public access to law enforcement video footage, with specific exceptions, including obscuring a recording that depicts nudity.

In fact, Oklahoma police body camera footage has already been used to help diffuse public outrage in a fatal police shooting. In Muskogee, an officer shot and killed a man on Jan. 17, 2015. The video of the shooting was released to the public, and the community, police and clergy members all believe that the transparency calmed what could have been a highly charged time in the community. In fact, the police department said that it wanted to release the video as soon as possible to get in front of the story and dispel any rumors. ⁱ

In Washington State, the Supreme Court issued a June 2014 opinion holding that the state Public Records Act (PRA) permitted release, with limited exceptions, of police "dash-cam" footage. ⁱⁱ In response to significant interest in law enforcement footage, Seattle police recently hosted a "hackathon," an event that used citizens with technology skills to help create tools to redact or blur images in the footage. North Dakota recently passed a law that addresses video footage captured by law enforcement officer and firefighter body cameras. Footage is presumed to be open, except for images taken in a "private place."

The Police Executive Research Forum (PERF) recently released a best-practices summary of various law enforcement departments' experiences with body camera footage. Among its findings, the PERF paper called for "a broad disclosure policy to promote agency transparency and accountability." "The police executives whom PERF consulted cited many ways in which body-worn cameras have helped their agencies strengthen accountability and transparency. These officials said that, by providing a video record of police activity, body cameras have made their operations more transparent to the public and have helped to resolve questions following an encounter between an officer and members of the public."ⁱⁱⁱ

Police and district attorneys in Pennsylvania have recognized the same concepts. In Cumberland County, Carlisle Borough Police Chief Steve Margeson recently explained his position in an article in *The Sentinel* (Carlisle). "The concept, from the broadest picture is yes, we think these police body cams can be very beneficial to the community and the police department," Margeson said. "Let's face it, when we know that our actions are being recorded, we're all probably going to be on our best behavior. ... It eliminates the need for these personnel complaints, and that's a good thing. ... This is a good tool to help in court, too. Hopefully this type of video would cut down the amount of time that everybody has to spend in court."^{iv} In Scranton, Police Chief Carl Graziano in Dec. 2014 told *The Times-Tribune* (Scranton) that he supported use of body cameras to improve transparency. ^v Dauphin County District Attorney Ed Marsico last week announced that he would release footage of a law enforcement officer's Taser device footage. The officer is being criminally prosecuted for the death of a suspect she was pursuing.

Right to Know Law

As a practical matter, although Pennsylvania's Right to Know Law specifically includes videos and recordings in the definition of "records," a number of statutory exemptions permit agencies to withhold video or audio recordings under certain circumstances. For instance, Section 708 (b)(16)(ii) allows law enforcement to deny Right to Know requests under the "criminal investigative" exception if "investigative materials, notes, correspondence, *videos* and reports" would be responsive to a request (emphasis added). Section 708(b)(2) is an exception for "public safety" and has been used to justify withholding of police videos based on officer safety. Section 708(b)(18) provides an exemption for recordings dealing with transmissions received by emergency dispatch personnel.

Citing the criminal investigation exemption, the state Office of Open Records (OOR) has issued final decisions denying access to "MVRs." "MVRs" are "Mobile Video/Audio Recordings" that Pennsylvania State Police regulations dictate are to be used to record "traffic and criminal enforcement stops; in-progress vehicle and crimes code violations; police pursuits; field interviews, interrogations, and tests; patrol vehicle travel and movements when emergency lights or sirens are activated; fatal crash or major crime scenes, as necessary, to document the scene; traffic safety and sobriety checkpoints, and any other incident the member deems appropriate

while acting in the performance of official duty.” *Otto v. Pennsylvania State Police*, OOR Docket No. 2013-2323.

Other OOR decisions have denied access to MVR footage from law enforcement, including Township police departments, when the custodian of the records has sworn an affidavit verifying that no MVR record exists due to malfunctioning or missing equipment. *Lipscomb v. Horsham Township*, OOR Docket No. 2014-1277; *Oberneir v. West Brandywine Township*, OOR Docket No. 2014-1667; *Coley v. Pennsylvania State Police*, OOR Docket No. 2010-0424.

Given the number of exemptions that already exist in the Right to Know Law, and the interpretation of those exemptions, we believe that an amendment to the Right to Know Law is necessary to permit citizens and the news media to review law enforcement footage.

Alternatively, stand-alone legislation could clarify that law enforcement body camera and vehicle footage would be available for public review. For instance, a clause could provide: “Notwithstanding the provisions of the Right to Know Law and the Criminal History Records Information Act, video and audio from police body camera and police vehicle recordings shall be publicly accessible.”

Conclusion:

Thank you for your time and consideration of our views on this very important issue. We hope to work with you on legislation that recognizes the critical nature of public access to body camera footage, and I am happy to take any questions that you might have.

ⁱ TulsaWorld http://m.tulsaworld.com/news/crimewatch/muskogee-police-release-video-of-officer-fatally-shooting-armed-man/article_fed8ff3e-847e-5c8b-b155-64c4332a6cdd.html?mode=jqm

ⁱⁱ *Fisher Broadcasting v. City of Seattle*, No. 87271-6 (2014)

ⁱⁱⁱ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services, page 5.

^{iv} A Closer Look: Midstate police look at body cameras, The Sentinel (Carlisle), Feb. 1, 2015 http://cumberlink.com/news/local/midstate-police-look-at-body-cameras-to-improve-accountability-public/article_9bd6460b-bd15-50ca-943a-0a69c7e59683.html

^v Local police departments mull body cameras in wake of federal funding proposal, The Times-Tribune (Scranton), Dec. 3, 2014