



128 DORRANCE STREET, SUITE 400  
PROVIDENCE, RI 02903  
401.831.7171 (t)  
401.831.7175 (f)  
www.riaclu.org | info@riaclu.org

July 24, 2017

Chief Gary Silva  
Newport Police Department  
120 Broadway  
Newport, RI 02840

Dear Chief Silva:

I am writing to follow up on a letter I sent you on June 12th, regarding your police department's adoption of a "Body Worn Cameras" policy. I have not received any response to that letter, which included some suggestions for increasing the policy's transparency and accountability. Recent events elsewhere prompt this follow-up, as I believe they highlight the legitimacy of our previously expressed concerns about the Department's policy and the need for considering revisions to it.

Last week, as you undoubtedly know, in a tragic incident about which many questions remain, an Australian woman was killed by a Minneapolis police officer after she called the police for assistance. A major controversy of that tragedy involves the police officers' failure to have turned on their body cameras during this incident. We find this relevant because, under your Department's current policy, were a similar tragedy to occur here, your officers' cameras likely would not have been activated either.

As I stated in my earlier letter, a copy of which I have enclosed for your ease of reference, the greatest benefit of body cameras is their ability to promote transparency in policing. But as I also noted, under your Department's policy, "there are too many situations where the recording of an encounter will start too late, if at all. . . By having in place too loose a standard for camera activation, a major purpose of the program will often be lost."

The Minneapolis tragedy provides an opportune time for the Department to revisit its current policy and to strengthen it so that the accountability underlying the use of body cameras is fully realized. We hope you will take advantage of that opportunity and the lesson learned from that tragedy. Thank you again for considering our views, and I look forward to hearing back from you about this.

Sincerely,

Steven Brown  
Executive Director

cc: Newport City Council  
City Manager Joseph Nicholson, Jr.



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June 12, 2017

Chief Gary Silva  
Newport Police Department  
120 Broadway  
Newport, RI 02840

Dear Chief Silva:

I am writing in response to your police department's recent adoption of a "Body Worn Cameras" policy coinciding with the initiation of a pilot program in your city of having some police officers wear body cameras while on duty.

While it is clear that much thought has gone into the adoption of the policy, which appears to be modeled in large part on Providence Police Department protocols, one thing that has been missing is any community input. The initial City Council resolution calling for the possibility of purchasing such cameras noted how their use could "establish mutual accountability and trust between [police] and the citizens they are sworn to protect," but that can only happen if citizens have some say in the process. In that regard, in his January 2016 memo to the City Council on this issue, City Manager Joseph Nicholson, Jr. noted that a body-worn camera program should "involve open communication with the community" so that groups could "raise any concerns" about the program. As far as we can tell, however, that type of communication has not taken place.

In accordance with those sentiments, the purpose of this letter is to provide some input based on our and other ACLU affiliates' experiences with police body cameras. Without downplaying the City's work in putting the current policy together, we do not believe that it provides sufficient transparency and accountability, both key goals that should be underlying any such program.

There are at least three key ways in which we believe the current policy should be strengthened in order to better promote accountability, and I briefly summarize them below.

\* In delineating when officers must activate the cameras, the policy's generic standard is to do so when there is "at least reasonable suspicion" of criminal activity. However, we believe the default standard should be broadened to include *any* investigative encounter between an officer and a member of the public. Otherwise, we fear there are too many situations where the recording of an encounter will start too late, if at all. (See, e.g., 4(B)(f): "all incidents involving a reportable use of force, as soon as and whenever practicable"). By having in place too loose a standard for camera activation, a major purpose of the program will often be lost.

\* The policy allows police officers routine access to their recordings in preparing their written statements and reports of an incident, with only one exception: where it involves a "known or alleged serious use of force." Since the term "serious use of force" is not defined, it is difficult to determine the exact extent of this allowance. But however defined, we believe it is too permissive. There are important reasons for not allowing an officer to "refresh" his or her memory of an incident with the recording before he or she has set their recollections down to writing. It will allow for after-the-fact interpretations or re-interpretations of events that are incompatible with the "objective reasonableness" standard cited in the policy. Many disputes in police encounters with civilians, including complaints of police misconduct, will be for situations other than those involving "serious use of force." In all instances, we believe, an officer's initial report of an incident should be unhampered and not compromised by enhanced recollections obtained through viewing their body camera footage.

\* Finally, we note the policy makes no reference to the circumstances under which recordings will be released either to the subject of a recording (including those claiming to be victims of alleged police misconduct) or to members of the public at large. We strongly believe that a person should have reasonable access to any recording on which he or she is the subject, and that for particularly serious incidents, public access should also be allowed.

The greatest benefit of body cameras is that of transparency in policing - a benefit that is denied to the public and the subject of a recording if the Department can refuse access to these videos in circumstances warranting scrutiny. We fully recognize that in most routine encounters, privacy interests are likely to outweigh any public interest in releasing body camera footage, but even then, subjects of the recording should have the ability to review their own encounters, and also to decide for themselves whether to share it with others. Further, it is imperative that any policy clearly allow for the release to the public, without delay, of footage that captures use of force incidents or similar controversial encounters with members of the public.

By essentially being silent on the matter, implementation of the department's current policy will default to the Access to Public Records Act's guidance. However, the Act's exemption for law enforcement records that "could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings" will likely be used as a default mechanism to routinely deny to both the subject or alleged victim of a police encounter, and the public itself, any access to recordings, even for highly-publicized police encounters. R.I.G.L. 38-2-2(4)(D)(a).

This would be a terrible mistake, and would undermine the goal of accountability that we presume underlies the decision to purchase the cameras. While APRA allows the release of records even when otherwise capable of exemption, leaving the discretion about when to release tapes of contested police encounters completely up to the department will not provide solace to community members legitimately seeking transparency in civilian-police encounters.

To put it into more concrete terms: When one examines some of the major police-involved deaths across the country that were recorded in recent years - Oscar Grant, Eric Garner, Laquan McDonald, Tamir Rice, Eric Harris, Walter Scott, and Alton Sterling, to name just a handful - all of those recordings, if captured by Newport police body cameras, would likely be withheld from scrutiny under this policy. The fact that police would be able to make a colorable argument that the footage could remain secret in some of the most widely-publicized national incidents of taped police-civilian encounters demonstrates a serious flaw in the policy that should be corrected.

We therefore urge you to revise the policy to address these critical issues of transparency. Thank you for your time and attention to this important issue, and trust that you will give our input careful consideration.

Sincerely,

  
Steven Brown  
Executive Director

cc: Newport City Council  
City Manager Joseph Nicholson, Jr.