

# BRENNAN CENTER FOR JUSTICE

*at New York University School of Law*

## **Retention and Release**

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The body camera policies address several issues related to retention and release of recorded data.

**“How long is non-evidentiary video kept?”** In order for video to be used or released, it has to be preserved. Storage space for video is very expensive, however, and privacy and security concerns crop up with a large database of videos. The length of time potential evidence in a court case must be preserved is governed by state law. Retention time for all other video is generally a matter of police policy.

**“Can public see or request recordings?”** One of the biggest questions surrounding body-worn cameras (BWCs) is whether the video will be eligible for public release under public records laws. This question is often not at the discretion of the police departments or specific to BWC video. Laws in each state address the release of public records and large departments usually have existing policies and offices to deal with public records requests. BWC video, however, presents unique challenges and privacy threats. Many state legislatures are debating bills to address this issue. In the meantime, departments have their own systems for how they deal with requests for video. Where policies are not clear on this issue, we have attempted to fill in some of the gaps with links to reporting. We expect this information to change for many departments as laws are passed and technical and privacy issues crop up.

**“How can the data be shared outside of the police department?”** Retention of body-worn camera video creates a substantial database that can be used as a powerful instrument of surveillance. Many of the police departments that use BWCs participate in [fusion centers](#), joint information-sharing efforts between local, state, and federal government and the private sector. These fusion centers pull in copious data that is tenuously related to crime or terrorism and generally retain it for long periods of time, and have been [castigated](#) as endangering citizens’ civil liberties with little counterterrorism value to show for it. At the same time, departments will occasionally need to be able to share evidentiary videos relating to a specific video with other law enforcement agencies. Even this limited sharing can raise privacy issues if the privacy protections the originating department has in place are not binding on the recipient agency. While most of the policies require permission from the Chief of Police for dissemination of video outside the department, few of the policies or related statutes provide guidance for when and with what limits will sharing with other law enforcement agencies be permitted.

City	How Long is Non-Evidentiary Video Kept?	Can Public See or Request Recordings?	How Can the Data be Shared Outside of the Police Department?
<a href="#"><u>Austin</u></a>	90 days	<a href="#"><u>Texas law</u></a> says recording of an incident that “involves deadly force or is otherwise the subject of an investigation” may not be released until the investigation is complete, but other footage is available.	“Authorized persons” may view recordings “for the purpose of reviewing evidence.” No definition of who is “authorized.”
<a href="#"><u>Baltimore (pilot)</u></a>	Not specified	Requests from the public shall be granted or denied based upon the <a href="#"><u>Maryland Public Information Act</u></a> , which says to release records as long as release does not interfere with a law enforcement proceeding or constitute an unwarranted invasion of personal privacy.	Process for law enforcement agencies to request access is not specified. In general, Police Commissioner must authorize access in writing. Data shall not “be used to create a database or pool of mug shots.”
<a href="#"><u>Charlotte, NC</u></a>	45 days	Recordings may be viewed, but not copied, by: the media with a court order, or a person submitting a request for a specific recording identified by date, time, or other particularity. Recordings that are criminal intelligence, records of a criminal investigation, evidence, or associated with a personnel investigation may not be viewed. Defendants in pending criminal cases may view videos. A person filing a complaint generally will be allowed to view the associated video unless it contains serious injury, death, or discharge of a firearm by an officer.	“Recordings shall be duplicated for court and investigative purposes only, unless authorized by the Chief of Police.”
<a href="#"><u>Chicago (pilot)</u></a>	90 days unless extended hold requested for complaint or other “official purpose.”	Policy does not specify. Under <a href="#"><u>IL law</u></a> , recordings are subject to FOIA only if flagged for a complaint, discharge of a firearm, use of force, arrest or detention, or death or bodily harm. If a victim or witness is the subject of an encounter and has a reasonable expectation of privacy, that person’s permission is necessary for release. Any recording shall be released to the subject of the encounter upon request. Any disclosed recording shall be redacted to remove identification of any person that appears on the recording and is not involved in the encounter.	The Superintendent must provide specific authorization to disseminate recordings outside the department.

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<a href="#">Dallas</a>	90 days	Yes, under existing public records law: “Public Information Act requests for videos will be handled in accordance with Chapter 552 of the Texas Government Code and departmental procedures.” Texas law says recording of an incident that “involves deadly force or is otherwise the subject of an investigation” may not be released until the investigation is complete.	Recordings will not be shared outside the Department unless requested through Public Records or a “Criminal Justice request.” The latter is undefined in the policy.
<a href="#">Denver</a>	Specified in records retention schedule that does not appear to be public.	<a href="#">Records policies</a> do not mention videos specifically, but generally say release of a police record is at the discretion of records management as long as certain information is redacted, including identifying information of juvenile victims and witnesses.	Requests from other law enforcement agencies “will comply with both the records disclosure and records management policies of the department.” Those policies allow most criminal history records and photographs to be shared with other law enforcement agencies, but do not specifically refer to BWC videos.
<a href="#">Ferguson</a>	Not specified	Not specified in policy. Under <a href="#">MO public records law</a> , the public may currently request videos. <a href="#">Legislation is pending</a> that would limit public release of BWC video.	The Chief of Police must approve external requests for video and the requesting agency “must acknowledge that the recording will be used for law enforcement purposes only.”
<a href="#">Las Vegas</a>	45 days	Some video will be subject to public records law. Exceptions: evidence, video of juveniles, private homes, police officers without their consent, victims of sexual assault, abuse of elders or vulnerable persons, video covered by any other confidentiality laws, and video implicating “any other privacy concerns giving the person(s) depicted a legitimate privacy interest.” The <a href="#">Department website</a> says requests must be limited to a	Process for law enforcement agencies to request access is not specified. In general, Sheriff must provide written consent to make copies.

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		<p>specific incident. A requestor will be allowed to view the video at department headquarters within 5 days of the request. The requestor may then request a copy, and will be charged for redaction fees. “A citizen who had direct and primary interaction with an officer wearing a BWC” can request their confidential information not be redacted. If a recording cannot be redacted, it can be viewed but not copied.</p>	
<a href="#">Los Angeles</a>	Not specified	<p>Policy doesn’t mention. <a href="#">Media reports</a> indicate recordings won’t be released unless required by a criminal or civil court proceeding, or – on “extraordinary occasions” – at the discretion of police officials.</p>	Not specified
<a href="#">Mesa, AZ (pilot)</a>	120 days	Yes, with the same process as any other records.	<p>Access and copying permitted only for “official law enforcement purposes,” and “dissemination of information will be for criminal justice purposes only.” Process and limits not specified.</p>
<a href="#">Minneapolis</a>	One year	<p><a href="#">MN law</a> requires the fact that video exists of an arrest to be in the public arrest record unless it jeopardizes an investigation. A video that is part of an active investigation is exempt from public records law but the agency can choose to make it public if it is in the public benefit. A video that is not part of an active investigation is subject to public records requests if it depicts firearm discharge or use of force by an officer resulting in substantial bodily harm; if a subject requests it be public (with non-consenting civilian subjects redacted in any copies); or if it is “public personnel data.” The department may redact video portions that are “clearly offensive to common sensibilities.” Any person may bring action in district court to challenge decision to withhold video.</p>	<p><a href="#">MN law</a> allows videos to be shared with another law enforcement agency for a “legitimate, specified” law enforcement purpose when authorized by the chief of police. The recipient agency must comply with all data classification, destruction, and security requirements of the law.</p>

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<a href="#">New Orleans</a>	2 years	Existing <a href="#">law</a> says public records should be released, with personal identifying info including photographs redacted. The policy on <a href="#">Public Release of Critical Incident Recordings</a> applies in cases where officer use of force or a vehicle pursuit results in hospitalization or death, an officer shoots his or her gun at a person, or an arrested or detained subject dies. In these incidents, the Public Integrity Bureau will confer with relevant Attorneys’ Offices and make a recommendation on release within 7 days to the Superintendent of the NOPD, who will decide within 48 hours whether or not to release the video. No recording will be released in cases of domestic violence or sexual assault. During the duration of the NOPD Federal Consent Decree, this decision will be reported to the court administering the decree and the Department of Justice.	“General access to digital recordings shall be granted to Department-authorized users only.” Not clear whether other agencies can get access to specific videos.
<a href="#">New York (draft for public comment)</a>	6 months	Generally yes. Disclosure prohibited for records relating to: an arrest if the case is dismissed (video can be released to person in whose favor the criminal action was terminated); victims of a sex crime; juveniles; or medical information. NYPD has discretion to deny release or redact video that interferes with an active investigation for judicial proceeding, or that could: identify confidential sources, deprive a person of a right to a fair trial; endanger the life or safety of any person; or “constitute an unwarranted invasion of personal privacy, such that it would result in economic or personal hardship.” When there is a high-profile incident, the NYPD will confer with the Attorney General about release.	Not specified
<a href="#">Oakland, CA</a>	2 years	Yes, in accordance with <a href="#">statutes</a> & Departmental General Order M-9.1, Public Records Access.	Individuals with a “lawful right to know and need to know” may view or receive videos, and Chief of Police can authorize additional sharing under unspecified

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			circumstances.
<a href="#">Orlando</a>	90 days	Yes, videos are public records as defined <a href="#">in Chapter 119, Florida Statutes</a> . Florida law exempts BWC video from release if it is from inside a home, a hospital, the scene of a “medical emergency”, or somewhere the individual recorded has “a reasonable expectation of privacy.” However, the subject of any footage can authorize its release.	<a href="#">Florida law</a> permits disclosure of BWC videos “[t]o another governmental agency in the furtherance of its official duties and responsibilities.”
<a href="#">Phoenix, AZ (pilot)</a>	1 year	Yes, with standard redactions, including victim’s identifying information, as well as “information that by its very nature is so gross, demeaning, biased, or sensitive that it would do irreparable harm to innocent persons or their character if released.”	Not specified
<a href="#">Rialto, CA</a>	Not specified	Files will be reviewed and released according to <a href="#">statutes</a> & policy as set forth in General Order 810 Public Information Release, which is not publicly available.	Requests from outside the department are processed “in accordance with federal, state, local statutes and Departmental policy.”
<a href="#">San Diego</a>	Not specified	“Public release of digital evidence is prohibited unless approved by the Chief of Police or designee.” No criteria for these approvals in policy.	“In situations where there is a need to review digital evidence not covered by this procedure, a captain or higher must approve the request.... evaluated on a case by case basis”
<a href="#">San Jose (pilot)</a>	1 year	“All recordings are subject to PRA [Public Records Act]. Like 9-1-1 calls, they are considered records of investigation. There are many legal cases pending that may eventually affect how/if files are released to the public, but R&D’s [Research & Development] PRA staff will coordinate with the City Attorney’s Office before release of any video.” (from department <a href="#">website</a> )	“All file viewing is for law enforcement use only and subject to a right to know and need to know basis.” Policy does not specifically address viewing outside the Department.

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<a href="#">Seattle (pilot)</a>	Not specified in policy; <a href="#">Washington law</a> requires retention for at least 60 days.	<a href="#">Washington law</a> exempts video from public release if it depicts: a medical facility or patient, the interior of a place of residence, an “intimate image,” a minor, a dead body, the identity of a victim or witness of sexual assault or domestic violence (unless the subject requests release), or the location of a domestic violence program. This exemption “may be rebutted by specific evidence in individual cases.” A request for recordings must specify a person involved, a case number, or a date, time, and location. A person involved in a recorded incident, or a relevant criminal case, or an executive director from the Washington State Commission on African-American Affairs, Asian Pacific American Affairs, or Hispanic Affairs, has the right to obtain video, subject to exemptions under the law.	Not specified
<a href="#">Tampa</a>	90 days	Yes, through “the Public Records Office and subject to the provisions of <a href="#">Florida Statutes Chapter 119</a> .” Florida law exempts BWC video from release if it is from inside a home, a hospital, the scene of a “medical emergency”, or somewhere the individual recorded has “a reasonable expectation of privacy.” However, the subject of any footage can authorize its release.	<a href="#">Florida law</a> permits disclosure of BWC videos “[t]o another governmental agency in the furtherance of its official duties and responsibilities.”
<a href="#">Tucson</a>	180 days	Yes, with redactions, through the existing public records process. The release of recordings “will be subject to the same statutory exemptions from disclosure as any other Departmental records”	Not specified
<a href="#">Washington, D.C.</a>	90 days. Recordings of First Amendment activities kept for 3 years. Retained	BWC video is available through public records law. Video is exempted from release if it is from inside a personal residence, is related to an incident involving domestic violence, stalking, or sexual assault, or if release would interfere with enforcement proceedings. The <a href="#">Body-Worn Camera Program Regulations Amendment Act of 2015</a> allows the Mayor to release recordings in matters of “significant public interest” that would not be releasable to a FOIA request. A subject of a	<a href="#">D.C. law</a> directs the police department to make recordings available to “law enforcement or investigatory agencies ... pursuant to the officers’ or agencies’ official duties.” The department may also provide access to other

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	<p>videos reviewed every 60 days for deletion after court proceeding or other retention reason is complete.</p>	<p>recording can view it at a police station as long as it does not interfere with the privacy rights or safety of another subject, but must file a FOIA request for a copy of the recording.</p>	<p>government agencies, as long as the governing agreements require the receiving agency to comply with privacy protections imposed by statute or departmental policy.</p>



Model Policies

Org	How Long is Non-Evidentiary Video Kept?	Can Public See or Request Recordings?	How Can the Data be Shared Outside of the Police Department?
<a href="#"><u>ACLU Model Statute</u></a>	6-months for non-evidentiary video (3 years for video flagged for retention by officer or subject).	Videos should be released only if they show a use of force or activity leading to a felony arrest, or if a subject of the video has filed a complaint or requested the video be retained and does not object to public release.	Recordings “shall not be divulged or used... for any commercial or non-law enforcement purpose.”
<a href="#"><u>International Association of Chiefs of Police</u></a>	Not specified	Not specified	The chief executive officer must authorize all distribution; authorization criteria are not specified.
<a href="#"><u>Police Executive Research Forum</u></a>	60-90 days common for non-evidentiary video.	“PERF generally recommends a broad disclosure policy to promote agency transparency and accountability.” Note that evidence in an ongoing proceeding is usually exempted by state law. “When the videos raise privacy concerns, such as recordings of crime victims or witnesses or footage taken inside a private home, agencies must balance privacy concerns against the need for transparency while complying with relevant state public disclosure laws.”	Not specified