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Testimony submitted to the San Francisco Police Commission  
Submitted by the Bill of Rights Defense Committee and the Defending Dissent Foundation  
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Contact: Chip Gibbons, Legal Fellow, Chip@defendingdissent.org

RE: Police Body Worn Camera Policy

The Bill of Rights Defense Committee and the Defending Dissent Foundation (BORDC/DDF) are national organizations dedicated to realizing the rights promised by the US Constitution. As part of this mission, BORDC and DDF are concerned with both accountability for police misconduct and unrestrained surveillance by the state of the general population.

Police body worn cameras (BWC) are an issue of particular concern to us as they have implications for both of these areas of our work. On the one hand, police BWC present a possible mechanism for ensuring police accountability. On the other hand, BWC are a surveillance technology and as a result could potentially worsen the issue of mass surveillance in the United States. Neither organization endorses the deployment of police BWC.

However, if municipalities are to deploy this technology both BORDC and DDF firmly assert that proper procedures and policies must be put into place to make sure that BWC are instruments of police accountability, not yet another tool for surveillance of already targeted communities. In order to help strike this balance, we have developed criteria that any BWC policy should include. Assessed against our criteria, the current policies recommended by the San Francisco Police Department do not properly ensure civil liberties while promoting police accountability.

## **I) Footage must be used exclusively for police accountability purposes**

BORDC/DDF supports limiting the use of BWC footage solely for police accountability. Otherwise BWC become a means of surveillance of or evidence collecting against the general population.

The proposed policies do not include such limitations.

## **II) Absolutely no facial recognition technology may be used with BWC footage**

BORDC/DDF takes the position that BWC guidelines must include an absolute prohibition on BWC being used in conjunction with facial recognition technology.

There is nothing in the proposed policy to address this issue.

## **III) No BWC in primary and secondary schools — whether public, private, or parochial; Absolute prohibition on BWC being used to gather intelligence anytime, anyplace or anywhere, particularly First Amendment protected speech, associations, or religion**

We are in agreement with the provisions forbidding the filming of victims of sexual assault and child abuse, or inside hospitals. We are concerned, however, that similar prohibitions on the use of BWC are not

made for domestic violence victims, the use of BWC inside elementary and secondary schools (public, private, and parochial). There are no prohibitions on the use of BWC to gather intelligence on First Amendment protected activities.

While the prohibitions in the policy are a good start, in order to uphold the important interests of personal privacy and safeguarding the First Amendment they need to be expanded.

#### **IV) Police must inform individuals they are being filmed, especially when entering private property, and must give them the opportunity to decline to be recorded**

The problematic provision within the proposed policies is III-B—“consent not required.” BORDC/DDF, like most civil liberties, civil rights, and privacy groups, takes the position that police officers must at all times notify individuals that they are being filmed and request their consent to continue filming. If an individual clearly states **on camera** that they do not wish to be filmed the police should immediately cease filming.

We are equally troubled by the provision that a police officer need not activate a BWC upon a citizen’s request. While there could be good reasons not to activate a camera upon request in a limited number of circumstances – such as perhaps when doing so would infringe on the privacy rights of another person, this policy is so broad as to essentially give the police carte blanche in determining when cameras are or are not deployed, when it should be up to the subject of the video. Under such a regime, BWC become tools of mass surveillance rather than police accountability.

The current “consent not required” provisions do not do enough to safeguard civil liberties nor do they adequately promote police accountability.

#### **V) Requirements for police to turn on BWC must be enforced, disciplinary action beyond ‘administrative leave’ must be imposed against the officer and any evidence taken from an unrecorded encounter that should have been recorded, must be excluded from use in criminal, civil, or administrative proceedings**

Since BORDC/DDF does not advocate constantly activated BWC we recognize that this gives officers the ability to turn on and turn off said cameras. There must be strong measures in place to ensure that BWC are not turned off to cover up police misconduct. These measures must include disciplinary measures to be taken against the offending officer(s) and an exclusionary rule, similar to the one used for warrantless searches, excluding any evidence collected when a BWC was supposed to be running, but was not, due to the fault of the officer.

The policy proposal does not do enough to ensure that officers will be properly incentivized to comply with the BWC policy.

#### **VI) Police cannot review tapes before filing reports**

As a matter of public policy, officers should never be allowed to review BWC footage before completing an incident report. The proposed policies bar officers from viewing BWC footage when they are involved in an officer-involved shooting, the subject of a criminal investigation, or at the discretion of the police chief. Beyond these circumstances officers are allowed to review BWC footage in order to help them file an incident report.

The policy proposal is right to exclude officers being investigated of a crime or involved in an officer-involved shooting from reviewing BWC footage, but it must go further.

## **VII) Unedited tapes must be made available immediately to people filing complaints of police misconduct**

The proposed policy only includes three provisions for “non-departmental requests” for BWC footage. This includes through public record requests, discovery during trial, and requests made by the Office of Citizen Complaints. As anyone who has ever filed a request for a public record knows, such requests can sometimes take lengthy periods of time to complete. Individuals with complaints against the police are entitled to see footage immediately.

This policy needs to be amended to mandate immediate and automatic access to unedited tapes of the incident in question to any citizen filing a police misconduct complaint.

## **VIII) Limitations must be put on retention time – as soon as the time period allowed for filing complaints is over, the tape must be destroyed**

Another point of concern for BORDC/DDF is the policy’s stance on retention of data. Nearly every policy recommendation from civil rights, civil liberties, and privacy groups have included a maximum retention period, yet this policy includes only a MINIMUM retention period. This two year minimum retention period far exceeds what should generally be the maximum retention period, unless the BWC footage depicts a use of force or is subject of criminal or civil proceedings. This two-year minimum retention period would erode privacy without improving police accountability. In addition to a maximum retention period a BWC policy that safeguards civil liberties would also include penalties for storing data beyond its retention time.

The proposed retention policy does not safeguard civil liberties and would lead to the San Francisco Police Department compiling and storing information on the general public.

## **IX) BWC should only be worn by police officers with the authority to conduct searches and make arrests—so no traffic officers walking about filming everyone**

The policy limits BWC only to those officers authorized by the chief of police and trained in their use. It is unclear who those officers are. The list of authorized uses of BWC does include during arrests and while serving warrants, however it also contains the vague language of “situations that serve a law enforcement purpose.”

The policy should add clarity to which officers can and will wear BWC. Those officers should be only those with the authority to conduct searches and make arrests.

## **X) Tapes should not be exempt from open government laws, but before release, the identities of individuals on the tapes must be obscured.**

There are serious conflicts between open access to the government and the privacy of the individuals recorded. BORDC/DDF recognizes this is a thorny issue that has led many in the civil liberties community who are usually allies to take differing positions. The proposed policies merely state that the police will process all Public Records Act requests “in accordance with state, federal, and local statutes and Department policy.”

Given the privacy protections within state and federal open government laws, we believe this section should strike the right balance between the public’s right to know and individual privacy. However, we believe the policy should more thoroughly spell out what steps will be taken to guarantee individual privacy, including obscuring the identities of individuals on tape.

## Conclusion

Frustrated with a lack of police accountability, many have begun to demand that police departments use BWC. While holding police accountable is important, BWC, as a surveillance technology, could be used to erode civil liberties, instead of strengthening them. As a result, any BWC policy must include safeguards to prevent BWC from becoming a tool of mass surveillance. Based on our criteria, BORDC/DDF believes the proposed policy by the San Francisco Police Department fails to do so.



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