

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



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VIA ELECTRONIC MAIL

Fritz Mulhauser
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**RE: MPD District of Columbia Freedom of Information Act Compliance
OOG-002-10.1.19-AO**

Dear Mr. Mulhauser:

This correspondence responds to your request for an advisory opinion from the Office of Open Government (“OOG”) regarding the Metropolitan Police Department’s (“MPD”) redaction of body-worn camera (“BWC”) footage before releasing the footage under the D.C. Freedom of Information Act (“D.C. FOIA”). Your request raised the following concerns: (1) that MPD’s definition of details to redact from BWC footage is too broad and cost prohibitive; (2) that there is inadequate information publicly available concerning MPD’s guidance to the contractors who redact BWC footage; and (3) that MPD has an unknown legal basis for redacting the faces of anyone involved; face (plus identification or badge) of any officer; any house number or name of residences; any vehicle license plates, and any audio with references to such items.¹

In response to your request,² I undertook an exhaustive review of the following: (1) the Body-Worn Camera Amendment Act of 2015, and its legislative history;³ (2) MPD General Orders GO-SPT-302.13 (Body-Worn Camera Program) and GO-OPS-304.19 (Video Recording, Photographing, and Audio Recording of Metropolitan Police Department Members by the Public); (3) the OAG’s April 10, 2019, opinion, “Requests for Body-Worn Camera Footage”⁴;

¹ The analysis of the BWC footage also applies to MPD’s audio recordings on BWCs.

² Attached to the request were: (1) the one page document released by MPD in response to your Requests 2019-FOIA-02033 and 2019-FOIA-02940, that describes redactions to BWC footage; (2) the aforementioned FOIA requests; and, (3) FOIA Appeal 2019-111.

³ Report of the Committee on the Judiciary and Public Safety on Bill 21-0351, the Body-Worn Camera Amendment Act of 2015, (Council of the District of Columbia November 19, 2015).

⁴ Read the OAG BWC opinion here <https://oag.dc.gov/legal-advice-ancs/anc-6b-requests-body-worn-camera-footage>.

(4) Executive Office of the Mayor’s (“EOM”) decisions regarding D.C. FOIA appeals (“D.C. FOIA Appeals”); (5) District and federal FOIA case law; (6) the federal and District driver’s protection privacy laws (“Driver’s Privacy Acts”);⁵ (7) recently proposed amendments to the BWC law;⁶ (8) BWC footage redaction cost studies from other jurisdictions; and (9) Mayor’s Orders.

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them. D.C. FOIA shall be construed with a view toward expansion of public access and the minimization of costs and time delays to persons requesting information.”⁷ To support this public policy, I am authorized to issue advisory opinions on the implementation of D.C. FOIA pursuant to section 205c(d) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective October 30, 2018 (D.C. Law 19-124; D.C. Official Code § 1-1162.05c(d)). This advisory opinion provides advice concerning the implementation of D.C. FOIA as applied to redaction of BWC video footage and audio recordings by MPD.

I. BACKGROUND

The police’s use of excessive and deadly force on citizens across the U.S., most frequently on African Americans, has heightened the public’s demand for justice and transparency in policing and has increased requests for release of BWC footage. The public, the family members of the deceased, and the media have requested the BWC footage that captured these events to reconcile what has been reported with what is recorded.

State and local legislatures have enacted BWC legislation to serve the following purposes: “(1) to foster accountability and enhance performance by law enforcement; (2) to improve police-community relations; (3) to promote the fair administration of justice in civil and criminal proceedings; (4) to create more accurate and transparent records of law enforcement’s interactions with the public; (5) to improve evidence collection; and (6) to discourage and defend complaints against law enforcement officials.”⁸ On March 9, 2015, the District’s BWC legislation, Bill 21-0351, the “Body-Worn Camera Program Amendment Act of 2015,” became permanent law. The law amended D.C. FOIA to allow public access to certain video footage recorded by MPD officers wearing BWCs.⁹ In your request for an advisory opinion, you alleged that MPD’s redactions of BWC video footage was excessive and unlawful. This advisory opinion examines whether MPD’s redactions of BWC video footage, prior to releasing that footage to a requester, complies with D.C. FOIA.

⁵ 18 USC § 2721-2725 and D.C. Official Code § 50-1401.01b.

⁶ Pending before the Council is B23-0882, the “Comprehensive Policing and Justice Reform Amendment Act of 2020.” If enacted this legislation would impact the release of BWC footage. View the legislation here <https://lims.dccouncil.us/Legislation/B23-0882>.

⁷ D.C. Official Code § 2-531.

⁸ Report of the Committee on the Judiciary and Public Safety on Bill 21-0351, the Body-Worn Camera Amendment Act of 2015, at 6 (Council of the District of Columbia November 19, 2015).

⁹ On October 21, 2015, the Council’s Committee on the Judiciary received testimony from twenty individuals and organization from the public, private and non-profit sectors and five government witnesses on this measure. The regulations implementing the BWC law are found at 24 DCMR § 3900 *et seq.*

II. DISCUSSION

Based on my review of the D.C. FOIA law and relevant information, I make the following findings concerning MPD's redaction of BWC video footage:

- (1) MPD must provide a publicly available fee schedule of redaction costs for BWC footage that reflects the cost to redact per minute and per individual or object;
- (2) D.C. FOIA should be amended to require MPD to use redaction technology that provides the least costly commercially available method of redacting BWC recordings, to the extent possible and reasonable;
- (3) MPD police officers do not have an expectation of privacy when performing their duties in a public place, so MPD's redaction of police officers' faces, badge numbers, and other information that would identify the police officers does not have a basis in D.C. FOIA;
- (4) D.C. FOIA does not support MPD's redaction of third parties in BWC video footage in every instance;
- (5) D.C. FOIA exempts from disclosure vehicle license plates to protect personal privacy; however, because the Driver's Privacy Protection Act¹⁰ prohibits the release of personal identifiable information associated with vehicle license plates, redacting vehicle license plate information is unnecessary;
- (6) MPD may rely on D.C. FOIA's personal privacy exemption to redact residential addresses, but the exemption does not apply to business addresses; and
- (7) The exemptions applicable to BWC video footage applies to audio containing personal private information.

The analysis below provides a detailed discussion of each of the above findings and establishes the rationale for the findings. The analysis begins with a discussion of the propriety of publicly providing a BWC video footage redaction fee schedule.

A. MPD must publish the redaction costs of BWC video footage that it passes on to FOIA requesters to be transparent.

As Director of Open Government, I have consistently stated in testimony before the Council of the District of Columbia that MPD must release to the public, in the form of policy or regulation, redaction guidance that explains the cost of redaction in actual work hours (cost per hour).¹¹ The regulations implementing D.C. FOIA were promulgated prior to enactment of the

¹⁰ The statute prohibits the disclosure of personal information (as defined in [18 U.S.C. § 2725](#)) without the express consent of the person to whom such information applies, with the exception of certain circumstances set forth in [18 U.S.C. § 2721](#). *See also* D.C. Code § 50-1401.01b.

¹¹ See October 15, 2020, testimony before the Committee on the Judiciary and Public Safety on B23-0882, the "Comprehensive Policing and Justice Reform Amendment Act of 2020" here https://www.open-dc.gov/Testimony_ImprovingAccessstoBWC; and October 21, 2019, testimony before the Committee on the Judiciary and Public Safety Roundtable, "5 years of MPD's BWC Program Reflections and Next Steps" here <https://www.open-dc.gov/documents/director-allens-october-21-2019-body-worn-camera-program-testimony>

Body-Worn Camera Amendment Act of 2015.¹² The D.C. FOIA regulations were never amended to include a schedule of costs to redact BWC video footage. The regulations promulgated to implement release of BWC footage also do not provide a cost schedule regarding video redaction.¹³ However, the provisions of D.C. FOIA¹⁴ and the D.C. FOIA regulations¹⁵ notify the public of the fees and cost for processing non-BWC FOIA requests. When the request is for BWC video footage, the requester is notified of the cost, but not the public. The public should also know the cost of BWC redaction.

Further, the District’s public policy requires MPD to publish the cost in the interest of transparency. D.C. FOIA’s public policy requiring “full and complete disclosure” by the government supports a requirement that MPD publish the cost of redacting BWC footage.¹⁶ Not doing so calls into question the District government’s commitment to transparency. It is also inconsistent with current District regulations that publish the costs and fees to process non-BWC FOIA requests.

The administrative burden on MPD to publish the schedule is also exceptionally light. This is because current law requires MPD to “report to the Council every 6 months and make available in a publicly accessible format, data on the Metropolitan Police Department’s Body-Worn Camera Program, including the cost to the department for complying with each request including redaction.”¹⁷ After five years, MPD clearly knows the costs of redacting BWC footage; therefore, MPD is able to convert this information into a fee schedule for the public with minimal effort.

I also note that other jurisdictions make BWC redaction costs publicly available. The city of Spokane, Washington is one jurisdiction that makes this information publicly available. In December 2019, Spokane, Washington released its study on the costs to redact BWC video footage.¹⁸ This study informs the public that “[t]he city will charge requesters redaction costs reflecting the actual time it takes to redact a particular video calculated at the rate of \$0.39 per minute.” Additionally, Spokane requires “[a]n agency that charges redacting costs must use redaction technology that provides the less costly commercially available method of redacting body camera recordings, to the extent possible and reasonable.”¹⁹ Applying the principles of fairness and good governance, I find that the District must amend D.C. FOIA to include similar language is essential to ensure minimization of cost of processing D.C. FOIA requests.

¹² The D.C. FOIA regulations are found at 1 DCMR § 400 *et seq.* 1 DCMR § 408.2 provides: “[W]hen a response to a request requires services for materials for which no fee has been established, the direct cost of the services or materials to the government may be charged, but only if the requester has been notified of the cost before it is incurred.”

¹³ BWC regulations are found at 24 DCMR § 3900 *et seq.*

¹⁴ D.C. Official Code § 2-532(b-1)-(b-2).

¹⁵ 1 DCMR § 408.1.

¹⁶ D.C. Official Code § 2-531. *See also* Mayor’s Order 2016-082 which created an Open Government Officer (May 25, 2016) and Mayor’s Order 2014-170, which states “[T]he District government is committed to creating an unprecedented level of openness in government” (July 21, 2014).

¹⁷ D.C. Official Code § 5-116.33(7). See the most recent MPD report here: <https://lims.dccouncil.us/Legislation/RC23-0023>

¹⁸ Review the City of Spokane Body Camera Video Redaction study here: <https://static.spokanecity.org/documents/police/information/redaction-cost-study-body-cam-2020-01-30.pdf>

¹⁹ D.C. Official Code § 2-532(b) prohibits any agency from “establishing and collecting fees that exceed the actual cost of searching for, reviewing, redacting, and making copies of records.”

Next, I will examine MPD’s justification for redacting BWC audio and video footage based upon applicable D.C. FOIA exemptions. This will include a legal analysis of D.C. FOIA as it relates to MPD’s redaction (i.e. blurring out) of the following information before releasing the BWC video footage: (1) the face, identification or badge number of any officer involved in a matter; (2) all addresses; (3) vehicle license plates; and (4) the faces of individuals that are third parties to the incident recorded. Our analysis begins below with the redaction of the face, identification, and badge number of any officer involved in a matter and moves to the other items in turn.²⁰

B. The redaction of video footage that reveals an MPD officer’s identity is not a proper application of the D.C. FOIA personal privacy exemption because MPD officers have no reasonable expectation of privacy while performing their duties in public places.

To justify its redactions of BWC footage, MPD mainly relies on D.C. FOIA’s personal privacy exemptions: D.C. Official Code § 2-534(a)(2) (“Exemption 2”); and D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”). A brief overview of these two exemptions is provided to evaluate MPD’s justification for the redactions.

Exemption 2 exempts from disclosure “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exemption 3 exempts certain law enforcement investigatory records from disclosure. Specifically, “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” The privacy language in Exemption 3 contains much broader privacy language than Exemption 2. While the language in Exemption 2 requires that the invasion of privacy be “clearly unwarranted,” the adverb “clearly” is omitted from Exemption 3. Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3 is broader than under Exemption 2.²¹

D.C. FOIA was modeled on the federal Freedom of Information Act. Although not binding, the District of Columbia looks to decisions interpreting similar provisions in the federal Freedom of Information Act when interpreting the meaning of D.C. FOIA.²² D.C. FOIA’s Exemption 2 correlates with Exemption 6 in federal FOIA. To determine whether an agency lawfully applied Exemption 2, both District of Columbia courts and federal courts employ a two-part analysis. Part one of the analysis requires the court to identify whether the individual’s privacy interest is substantial or minimal.

²⁰ In this context, the term “identification” refers to an officer’s actual identification and any other recorded material that would enable a viewer of the BWC footage to ascertain the officer’s identity.

²¹ See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

²² See *District of Columbia v. Fraternal Order of Police Metro. Police Labor Comm.*, 33 A.3d 332, 342 n.8 (D.C. 2011).

For reasons that follow, MPD may not rely on D.C. FOIA's personal privacy exemption to redact information that would reveal the identity of any MPD officer involved in an encounter captured on a BWC. This is because government officials and employees do not have a reasonable expectation of privacy while performing their duties in public places.²³ In fact, the First Amendment protects the public's right to record public officials, including the police, while the police are engaged in their duties in a public place. Notwithstanding, MPD redacts these identifying items from BWC footage prior to public release. Yet, MPD affirmatively acknowledges the public's First Amendment right to record its officers. The MPD General Order that prohibits an officer from preventing a person from recording any officer engaged in the performance of duties in a public place is displayed on MPD's website and distributed to officers.²⁴ MPD's General Order is an admission that no expectation of privacy exists. So, their D.C. FOIA redactions are inconsistent with their own policy.

However, there may be investigative records where an officer's identity may be lawfully redacted from BWC footage to "protect the life or physical safety of law-enforcement personnel."²⁵ For instance, where an undercover MPD officer's face, badge number or identification appears in the BWC footage, a redaction may be justified under D.C. FOIA. This is not applicable when an MPD officer is in a public place and wearing a uniform while performing duties.

Also note that District of Columbia and federal courts employ the second prong of the analysis once a privacy interest is recognized. The privacy interest is balanced against the public interest in disclosure.²⁶ "We balance the interest in disclosure against the privacy interest Congress and the Council of the District of Columbia intended the exemption to protect."²⁷ For MPD to lawfully apply Exemption 2 to redact the identifying information of officers from BWC video footage, the officer's interest in the control of the identifying information about themselves while performing their duties in a public place must outweigh the public interest in knowing what the government is doing. Since I have found that there is no substantial privacy interest, the second part of the analysis is unnecessary. Therefore, based on the foregoing, I find MPD's redactions of officer's face, identification or badge number when the officer is in a public place and wearing a uniform is inconsistent with D.C. FOIA law.

²³ See *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011), which holds there is a First Amendment interest in videotaping government officials performing their duties in public places. "[U]nder the First Amendment's right of access to information the public has the commensurate right to record—photograph, film, or audio record—police officers conducting official police activity in public areas." *Fields v. City of Philadelphia*, 862 F.3d 353, 360.

²⁴Section II B.2 of the July 19, 2012 General Order (Topic: OPS, Series 304, Number 19) states: "[A] bystander has the right under the First Amendment to observe and record members in the public discharge of their duties."

²⁵ See D.C. Official Code § 2-534(a)(3)(F), which exempts law enforcement investigatory records.

²⁶ "The public interest that is safeguarded by FOIA is the right to obtain full and complete information regarding the affairs of government and the official acts of public officials and employees." *Padou v. District of Columbia*, 29 A.3d 973, 982.

²⁷ *U.S. Department of Defense v. FLRA*, 510 U.S. 487,495.

C. MPD may rely on D.C. FOIA’s personal privacy exemption to redact residential addresses, but not business addresses, from BWC video footage.

It is well established in D.C. FOIA²⁸ that the redaction of home addresses from government records prior to release is appropriate to protect personal privacy. Residential addresses are considered as personal identifiable information and the public’s right to such information is de minimis when balanced against the individual’s substantial privacy interest. The issue in this matter pertains to the redaction of every house number and street name that appears in the BWC video footage. The privacy protections under FOIA are also generally applicable to individuals and not businesses.²⁹ Therefore, MPD may not rely on the Exemption 2 to redact a business’ name and address from the BWC video footage.

MPD’s practices concerning police reports and incident reports further illustrates that the reliance on Exemption 2 to redact business addresses in BWC video footage is improper. MPD currently provides the street name and unit block where an event occurred when releasing the records to a third party under D.C. FOIA. MPD may redact these records under Exemption 2 when a third party seeks the records that contain personal information because it is an unwarranted invasion of privacy.³⁰ So, in such instances when MPD blurs out a residential address in a BWC video, it is generally and correctly justified under Exemption 2.

However, the context of the FOIA request is an important consideration when making this redaction. If the FOIA request is unrelated to government operations, then the redaction is necessary to protect the privacy interest in addresses and other personally identifiable information in the report.³¹ When the request is for BWC video footage, MPD must use the same analysis it undertakes when producing police reports and incident reports. So, while MPD’s protection of an individual’s personal privacy is warranted, there are limits. In general, it is unreasonable for MPD to redact every street number or every house number from BWC video footage when that information is generally included in written reports regarding the incident and the report would be produced without redaction under Exemption 2. The expectation is for MPD to perform an analysis of the information and not perform a blanket, general redaction just because an address appears in the BWC footage. The redaction of every street name or house number when disclosed independently of each other and independent of other personally identifiable information is not warranted under Exemption 2. This position is supported by D.C. FOIA precedent.³²

²⁸ FOIA Appeal 2017-75 (May 24, 2017) and FOIA Appeal 2016-77 (July 1, 2016).

²⁹ See FOIA Appeal 2017-101, which cited *FCC v. AT&T, Inc.*, 131 S. Ct. 1177, 1182 (2011), to support its holding that a business cannot hold a personal privacy interest pursuant to Exemption 2.

³⁰ See *United States DOJ v. Reporters Comm. for Freedom of Press* at 780, which held: “a third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy, and when the request seeks no official information about a government agency, but merely records that the government happens to be storing, the invasion of privacy is unwarranted.” (internal quotes omitted). See also FOIA Appeal 2017-10 (December 20, 2016) where MPD asserts that an event report would be protected under D.C. FOIA’s personal privacy exemption, D.C. Official Code § 2-534(a)(2).

³¹ *DOJ v. Reporters Comm. for Freedom of Press* at 780.

³² See FOIA Appeal 2011-30 (June 16, 2011), finding partial address information such as a zip code, without other identifying information, was not problematic.

Lastly, as the analysis above demonstrates, the addresses that MPD redacts in their written reports under Exemption 2 are residential, not business addresses. This further demonstrates that a blanket blurring of addresses in BWC video footage is not proper. A business has no personal privacy interest in its address. So, MPD should not redact business addresses in BWC video footage under Exemption 2. MPD must perform a reasonable analysis of the addresses to determine if a particular address is a business or residential address before performing a redaction based on Exemption 2.

D. MPD’s redaction of motor vehicle license plates is justified, but unnecessary.

MPD has legal justification to support the redaction of vehicle license plates from BWC footage pre-release. D.C. FOIA Appeals decisions generally support MPD’s redactions based on Exemption 2. “We have not viewed the images on the videos. However, it is reasonable to presume that such images capture the license plates of motor vehicles, whose owners could face unwanted contact regarding the events on the videos.”³³ However, there is also at least one D.C. FOIA Appeal that questions if MPD is justified to exempt “every video or photograph because a license plate is visible.”³⁴ In that appeal, the requester sought MPD records related to a collision between a pedestrian and a MPD vehicle. In finding that Exemption 2 did not require the redaction of pedestrians and vehicle license plates, *inter alia*, the EOM stated that; (1) “the only persons whose privacy would be invaded would be the requester”; and (2) MPD’s reliance on FOIA Appeal 2015-15, that an image that captures the license plate of vehicles must be withheld under Exemption 2 was in error. This is because the EOM found that MPD wrongly relied on *dicta* in a federal FOIA decision to support its position.³⁵ EOM’s reasoning in that appeal is sound and has a strong foundation in D.C. FOIA law.

Pursuant to D.C. FOIA’s regulations, an agency may release an otherwise exempt record when there is no harm in the release of the record.³⁶ BWC video footage that contains motor vehicle license tag numbers fall within this provision because the Driver’s Privacy Acts regulate and limit the release of vehicle registration information, including personal identifiable information associated with the vehicle license plate. These laws prohibit the release or use by any department of motor vehicles (or any officer, employee, or contractor thereof) of personal information about an individual obtained by the department in connection with a motor vehicle record. They set penalties for violations and make violators liable in a civil action to the individual to whom the released information pertains.

In essence only under strict statutory approved reasons may someone obtain personal identifiable information from the government using a motor vehicle license tag. There is no reason to redact motor vehicle tags from BWC video footage because the Driver’s Privacy Acts strictly regulates the release of personal identifiable information. Releasing BWC footage with unredacted vehicle tags is harmless due to the protections the Driver’s Privacy Acts affords. To properly

³³ See FOIA Appeal 2015-15 (December 31, 2014).

³⁴ FOIA Appeal 2016-45 at page 4 (March 25, 2016).

³⁵ *Judicial Watch, Inc. v. FBI*, 522 F.3d 364 (D.C. Cir. 2008).

³⁶ 1 DCMR § 400.4 provides “[m]oreover, records exempt from mandatory disclosures shall be available as a matter of discretion when disclosure is not prohibited by the law or is not against public policy.”

implement D.C. FOIA, MPD should refrain from this redaction which adds to the overall cost of producing the BWC video footage to the FOIA requester. Based on the aforementioned, I must find that the redaction of every license plate in BWC video footage is unnecessary.

E. The legality of MPD’s redaction of the faces of third parties from BWC video footage depends on the nature of the recorded activity.

The validity of MPD’s redaction of third parties’ faces from BWC video footage depends on the nature of the activity recorded by the BWC. As stated above, the analysis of BWC footage must balance the individual privacy interest against the public interest in disclosure. It is well established in instances where criminal conduct is depicted during a law enforcement investigation that:

[I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C). The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.³⁷

In such instances the individuals substantial interest outweighs the public’s de minimis right of disclosure. Where no subject is depicted in criminal activity, the privacy interest recognized by courts is minimal. In essence, “[a]n individual recorded walking or standing on a public street has no presumption of privacy that would be breached if the recording were publicly disclosed, third parties do not have a cognizable privacy interest.”³⁸

In summary, MPD may not rely on D.C. FOIA’s privacy exemptions to redact from BWC video footage the police officer’s face, identification, or badge number, when the officer is in uniform and in public. MPD may also not rely on that exemption to redact business names and business addresses from BWC video footage. Further, to lawfully redact the image of a third party to the incident recorded, the recording must depict criminal activity, or third parties must be witnesses or victims to such activity. In this instance there is a clear privacy interest. When MPD redacts all vehicle license plates the redaction is unnecessary because adequate protection exists under District and federal Driver’s Privacy Acts to prevent release of personal identifiable information. Under D.C. FOIA, MPD may the release BWC footage with vehicle license plates unredacted since the release would do no harm.

³⁷ *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir.1984).

³⁸ FOIA Appeal 2016-45 (March 25, 2016).

III. CONCLUSION AND RECOMMENDATIONS

Currently, no schedule of the cost to redact BWC footage is available. Publishing such a schedule is in line with the District government's transparency policies, D.C. FOIA public policy and constitutes good governance. As discussed herein, in many instances MPD is over-redacting BWC footage. This results in increases in the cost of production that is passed on to the FOIA requester receiving the recording. The extensive redaction and the associated costs make obtaining BWC video footage cost prohibitive. These over-redactions either are discretionary or unlawful.

To properly implement D.C. FOIA law, I recommend that MPD make publicly available a fee schedule that provides redaction costs per minute and per individual or per object for BWC video footage. MPD should also provide guidance on expected acceptable time frames for completing the video editing and redaction. Promulgating regulations or policies respecting cost per hour for production and guidelines for redacting would serve the public interest by clarifying the video production process.

Additionally, D.C. FOIA should be amended to require that MPD use redaction technology that provides the least costly commercially available method of redacting body camera recordings, to the greatest extent possible. Neither of these recommendations are novel. They are in place in other jurisdictions they appear to work well. Also, MPD's use of an outside contractor to perform redactions may not be the most cost-effective method of generating the BWC video footage. So I encourage MPD to consider internal resources to redact its BWC video footage. Having government personnel perform video redactions could reduce the cost of video production that is passed on to the public to receive BWC footage. MPD should also expand its BWC program by hiring or assigning additional staff to assist in handling video requests from the public, and requests from other law enforcement, prosecuting agencies, courts and defense attorneys. Moreover, MPD should consider partnering with and utilizing the Office of Cable Television, Film, Music, and Entertainment ("OCTFME") to assist with the BWC video production and redaction process because OCTFME has state-of-the-art video editing capability. Using the District's internal resources could result in a cost savings and decrease the amount of time it takes to turn over footage.

Lastly, MPD should immediately adopt the recommendations contained in this advisory opinion to properly execute the requirements of D.C. FOIA in its BWC program when responding to requests for BWC video footage. The Office of Open Government is available to assist MPD with implementing this guidance and bring the BWC program into alignment with the proper application of D.C. FOIA.

Sincerely,



NIQUELLE M. ALLEN
DIRECTOR OF OPEN GOVERNMENT
BOARD OF ETHICS & GOVERNMENT ACCOUNTABILITY

CC: Mark Viehmeyer
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