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July 15, 2022

Board of Directors

Washington Metro Area Transit Authority

300 7th Street, S.W.
Washington, DC 20024

*Sent via email: boardofdirectors@wmata.com*

**RE: Policies governing Transit Police body-worn cameras**

Dear Board Members:

We write on behalf of D.C. and Virginia open government coalitions, nonprofit organizations that work to enhance public access to government information and ensure the transparency of all types of government operations. Transparency promotes civic engagement and is critical to responsive and accountable government.

In announcing the new Transit Police body-worn camera program June 28, the agency quoted Chief Michael Anzallo affirming a “focus on safety, transparency and building community partnerships.” We look forward to working with you to ensure transparency with the goal of improving public confidence regarding Metro Police operations.

We have done the same over the past seven years regarding the District’s body-worn camera program. The D.C. Coalition has been there from the beginning, providing input as the Metropolitan Police Department and D.C. Council set the legal framework governing use and retention of, and public access to, the video. We brought to the table information on best practices from our research on policy elsewhere. See our 2020 review available at: <https://tinyurl.com/5x39tcp3>. We have continued to monitor access to the video since 2015, when cameras were fully adopted, including making requests and evaluating issues raised as the program has matured.

With the Virginia Coalition’s support, state law provides that police body-worn camera video is subject to the state’s regular FOIA statute. Maryland law is the same.

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The June 28 WMATA release noted progress on the “necessary internal work to draft policies and procedures,” and that texts are “now being reviewed by DOJ.” It said WMATA would engage in “public outreach prior to program rollout” next year.

We have tried unsuccessfully to obtain the policies, so we have been unable to review what is covered and offer comments in support of maximum transparency. We recommend below a broader process suited to this important set of decisions.

While the Virginia Coalition for Open Government does not take a policy position on the specific process that should be used to develop rules governing access to Metro Transit Police body-worn camera video, it fully endorses any effort that maximizes public input, access, and involvement.

**Cameras raise issues that require public discussion**

Briefly stated, police agencies face many issues in adopting body-worn cameras. These include:

* Rules for use of the equipment, such as mandatory or discretionary activation, times and places not to be recorded (such as inside a private house where no criminal activity is taking place), whether/when cameras may be deactivated, sanctions for improper use and failure to activate, and retention of video
* Rules for internal access such as by officers writing reports about their own conduct that is under review, complaint investigators, auditors, supervisors
* Mandatory release requirements in situations of high public interest (officer-involved shootings, significant other uses of force)
* Rules for public access, including general requests, processing deadlines, privacy protection rules including allowable redactions or any exceptional situations where video is not to be released, and fees that may be imposed
* Requirements for regular public report of data on, and impact evaluation of, the camera program

In 2015, Mayor Muriel Bowser proposed that MPD camera video be kept secret. The D.C. Council strongly believed rules on issues such as these should not be adopted without broad engagement and therefore legislated a process for Council review. The process is described in the Council committee report that accompanied the resulting draft rules that passed unanimously. The report is available at: <https://tinyurl.com/2yn7my3u>.

In the end, D.C. police body-worn camera video has been made available to the public under the D.C. Freedom of Information Act, which generally treats BWC videos like any other public record, subject to mandatory disclosure unless its content justifies withholding under one of the existing, substantive exemptions in the statute. (There is a narrow exception for certain types of incidents like sexual assault, domestic violence, and stalking. *See* D.C. Code Ann. § 534(a)(2A)(A)-(B).) While the District’s approach to BWC video access is far from perfect, both

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on paper and in practice (where it has proved to be a struggle to enforce the public’s general right to rapid access at reasonable cost to interpretable footage), its rules at least have the legitimacy that comes from review by both legislative and executive branches and months of community consultation. Administrative rulemaking alone lacks this powerful affirmation.

**WMATA should adopt an inclusive process for setting camera policy**

The process WMATA has embarked on, involving extensive in-house development followed by federal sponsor review, but lacking a wide range of expert and consumer perspectives, is inefficient and almost certainly will not achieve your stated goals. By the time you get to the “public outreach” stage, WMATA staff will have invested much time and effort in their proposed policies and the time until “rollout” will be short. By that point, changes proposed by members of the public that would better serve the public interest, even minor changes, will meet significant internal resistance. That result would be a disservice to WMATA and to the public.

We recommend an alternate process for WMATA, since the interests involved are so diverse that rules on cameras should not be made by police alone. The WMATA board should publish draft policies and hold one or more public hearings to make informed decisions about this crucial step in police transparency. The board will benefit from the participation of a wide range of expert and consumer perspectives, such as transit riders, police and civic organizations, attorneys, news media, and criminal justice researchers, all engaged with the board in a public-facing dialogue.

Unfortunately, although police accountability is a major public issue, access limits are the norm in many jurisdictions. Privacy advocates and representatives of police nationwide have repeatedly opposed public access to body-cam videos, citing potential threats to officers or claims that union contracts shield “personnel records” from public view.

Open government advocates have rejected those arguments generally, and specifically in the jurisdictions WMATA serves, because law enforcement and privacy exemptions in the D.C., Maryland, and Virginia public records laws provide ample protection for body-cam videos. We believe that if WMATA engages in an open, public, and evidence-based process, the policies it adopts will produce transparency, enhance public confidence, and protect legitimate public safety and privacy concerns.

The past several years have repeatedly shown, particularly in cases where force was used against civilians, that withholding BWC footage sows distrust and frustrates public demands for police accountability. Almost inevitably, video comes out anyway, captured by other bystanders, and the delay in producing BWC video only makes it appear that law enforcement has something to hide. But robust access also can protect officers who do behave properly (for instance, by putting to rest false allegations). We urge WMATA to consider these lessons learned.

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Thus, we believe it would be a mistake not to engage the public openly in the rules themselves. WMATA Transit Police appear to be deep into a process that they may assume, after months of work, is on track to be completed shortly. The WMATA Board of Directors should instead take the police work product as a draft subject to further open and public review, with adoption only after the board has considered a full range of views on the important issues the new technology raises. **We strongly urge the board to adopt an open and full-blown public-engagement process such as we have proposed above, and we look forward to taking an active part in that.**

Sincerely,

*/s/*

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President

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*/s/*

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cc: Andy Off, WMATA Interim General Manager and CEO, via USPS

 WMATA Riders’ Advisory Council, via email: *raccomments@wmata.com*