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Testimony of  
**Robert S. Becker**

On behalf of the D.C. Open Government Coalition  
November 29, 2023

Before the Committee on the Judiciary and Public Safety  
Council of the District of Columbia

Public Hearing: Bill 25-555, the “Addressing Crime Trends (ACT) Now  
Amendment Act of 2023”

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On behalf of the D.C. Open Government Coalition, thank you for the opportunity to explain the very negative consequences of Bill 25-555 proposed by the mayor, the Metropolitan Police Department (MPD), and the police union. I am Robert Becker, a member of the Coalition board and a Ward 4 resident.

Nearly a year ago, the Council enacted the Comprehensive Policing and Justice Reform Amendment Act of 2022, Law 24-0345 (Bill B24-320, as amended). As permanent legislation, it reflected the Council’s unanimous agreement on key details of the justice system District residents want. It was the result of years of work by this committee and the Police Reform Commission, and included provisions the Council enacted and repeatedly renewed through emergency and temporary legislation, some dating back to 2019.

The police reform act didn’t provide as much transparency as the Coalition would have liked, but it promised to lift the tight shroud of secrecy the MPD has maintained over police misconduct investigations, officer-involved shootings, and other use-of-force incidents.

By enacting the law in January without the mayor’s signature, the Council did the right thing for all D.C. residents and, ultimately, for the MPD. It concluded that, to restore public confidence in policing, it is necessary to set additional rules for police conduct, including uses of force, and grant D.C. residents access to information showing whether the rules are followed — facts about police disciplinary cases and body-worn camera (BWC) videos of officer-involved shootings and use-of-force incidents. Today’s bill reverses key parts of that Council conclusion, a mistake in our view.

Making BWC videos and officer disciplinary records public will have benefits well beyond improving community trust. For example, the amendments provide invaluable investigative tools for criminal defense lawyers, who for decades have been forced to rely on prosecutors to disclose that potential MPD witnesses are on the U.S. Attorney’s so-called *Lewis* List of officers under disciplinary or criminal scrutiny, who the government would not put on the witness stand.<sup>1</sup>

In enacting the police reform act, the Council rejected dire, unsupported claims that greater transparency would impair the MPD’s ability to hire and retain officers, violate officers’ privacy rights, and jeopardize officer safety. Undeterred by that rejection, the mayor, the MPD and the union are making exactly the same arguments, for passage of Titles II, III and VII of Bill 25-555. Once again, they provide no supporting evidence for their dire warnings.<sup>2</sup>

The D.C. Court of Appeals,<sup>3</sup> the Office of Open Government (OOG),<sup>4</sup> and this committee<sup>5</sup> have firmly rejected the administration and union claims that on-duty officers have a right of privacy as they perform their assigned duties, and that, as a general principle, officers’ faces and badge numbers must be redacted for safety reasons. As the court said, citing prior legislation granting the public access to BWC video:

[The law reflects] a balancing of the goals of public accountability and transparency on the one hand, and the (relative) ease of investigation of use-of-force incidents, on the other. . . . We are not aware that any court has ever held that police officers have a fundamental right to the privacy of information about their involvement — while on duty and while in contact with the public they serve — in a shooting or other serious use of force.

Anti-crime provisions in the mayor’s bill may have merit and may deserve careful Council consideration. That said, we urge you to retain all of the transparency reforms embodied in Law

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<sup>1</sup> “D.C.’s Bad Cop List Is Shrouded in Secrecy — and Could Be Impacting Criminal Cases,” VICE NEWS, June 24, 2020, <https://www.vice.com/en/article/k7qzma/dcs-bad-cops-list-is-shrouded-in-secrecyand-could-be-impacting-criminal-cases>.

<sup>2</sup> High costs are another favorite administration objection. Transparency provisions of the police reform law still have not taken effect because the mayor did not request funding, and MPD refuses to follow them until the Council adds millions of dollars to its budget. Such costs are an estimate for which there is no basis except a redacted MPD email the Office of the Chief Financial Officer (OCFO) refused to disclose in response to the Coalition’s request for all facts and analyses supporting a multi-million-dollar fiscal impact statement.

<sup>3</sup> *Fraternal Order of Police (FOP) v. District of Columbia*, 290 A.3<sup>d</sup> 29, 43 – 44 (D.C. 2023) (rejecting union view that earlier legislation mandating BWC video release invades mayoral authority, jeopardizes officer’s safety and infringes officers’ privacy).

<sup>4</sup> [Metropolitan Police Department — Body-Worn Camera Footage Under the Freedom of Information Act of 1976, # OOG-2023-002\\_AO, Sept. 15, 2023; MPD District of Columbia Freedom of Information Act Compliance, OOG-002-10.1.19-AO.](#)

<sup>5</sup> Bill 24-320, *Committee Report*, 18 – 19 (Nov. 30, 2022), [https://lms.dccouncil.gov/downloads/LIMS/47448/Committee\\_Report/B24-0320-Committee\\_Report1.pdf?Id=151042](https://lms.dccouncil.gov/downloads/LIMS/47448/Committee_Report/B24-0320-Committee_Report1.pdf?Id=151042).

24-0345, and reject the administration’s attempt in Bill 25-555 to gut them.

We further implore you to commit to funding in this year’s supplemental budget the MPD Freedom of Information Act (FOIA) and Office of Police Complaints (OPC) provisions of the law, because, as a result of the unsupported CFO Fiscal Impact Statement (see note 2), they cannot take effect until funded.

Finally, we ask that you rebuke the MPD for its blatant refusal to follow the Council’s existing directive in the reform act amending D.C. Code § 5-116.33(f), which prohibits redaction of officers’ faces and badge numbers before releasing BWC videos to the public. No cost issue should be involved as this is current law, and actually saves funds by prohibiting MPD from engaging in the costly and time-consuming process of heavily redacting videos before disclosing them.<sup>6</sup>

To help you understand the extent to which Bill 25-555 would undermine the Council’s and Police Reform Commission’s efforts, we have attached a redline starting with relevant statutes and regulations as amended by Law 24-0345 (Bill 24-320 as amended) and overlaying amendments in Bill 25-555. We needed to create the redline because the unfunded provisions do not appear in the published D.C. Code.

**MAYOR’S BILL MAKES BWC VIDEO LESS USEFUL, UNDOING COUNCIL EFFORTS  
TO RESTORE CONFIDENCE**

In an October 2019 public roundtable, the Washington Lawyers’ Committee for Civil Rights and Urban Affairs told this committee that, due to lack of transparency, MPD’s body-worn camera program was failing to fulfill two of its most important goals: to enhance public confidence and increase public safety. “The failures ... are emblematic of deficiencies at MPD more generally: MPD is reflexively secretive....”<sup>7</sup> The American Civil Liberties Union of the District of Columbia agreed, saying the BWC program “has not led to any measurable improvements in police-community relations or in how officers conduct themselves.”<sup>8</sup> At least a half dozen relatives and friends of young men fatally shot by MPD officers joined them in asking the Council to order MPD to release unredacted BWC videos.

In response, as part of the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, the Council mandated public release of BWC videos in officer-

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<sup>6</sup> The Office of Open Government noted this in its 2019 opinion recommending against BWC redaction as both expensive and unlawful. See note 4. The confusing application of the fiscal impact analysis in this area is discussed in note 9.

<sup>7</sup> Testimony included unpaginated. Council Committee on Judiciary and Public Safety, “*Five Years of the Metropolitan Police Department’s Body-Worn Camera Program: Reflections and Next Steps*,” CLOSING ROUNDTABLE RECORD (cited below as ROUNDTABLE), 12 (Memorandum from the Chairman, November 27, 2019),

[https://lms.dccouncil.gov/downloads/LIMS/43760/Hearing\\_Record/HR23-0124-HearingRecord.pdf?Id=58392](https://lms.dccouncil.gov/downloads/LIMS/43760/Hearing_Record/HR23-0124-HearingRecord.pdf?Id=58392).

<sup>8</sup> *Id.* at 17.

involved shootings and use-of-force incidents.<sup>9</sup> Within two weeks after the Council’s July 2020 vote, MPD ignored the new law when it released “Community Briefings” regarding three 2018 fatal encounters between officers and civilians.

The “Community Briefings” presented in narrative form the MPD’s version of events preceding, during and following the use of force or shooting, and used heavily edited excerpts from the videos to support that narrative. Close examination of the incomplete video clips was impossible, and no matter how many officers were involved in an incident, MPD provided clips from at most two of them. This selective release contradicted the Council intent and prompted further legislation.

The police reform act passed last December made clear that MPD must release the names and BWC videos of all officers “directly involved” in every police-involved shooting or use-of-force incident, and could redact faces only of undercover officers. It required MPD to create a searchable online database of the names and BWC videos of all officers directly involved in officer-involved deaths since October 2014.

The legislative history explains that the phrase “directly involved” includes “subject officers (the officers who committed the acts at issue),” and “all officers (not just subject officers) that capture any part of the events leading up to the incident, during the officer-involved death or serious use of force, and after the incident.”<sup>10</sup>

The committee definitively ruled out redaction. The report states:<sup>11</sup>

officers’ faces should not be redacted from BWC footage. Police officers have tremendous power over members of the public.... They can stop and search people, make arrests, and are authorized to carry firearms and, when justified, use deadly force. The unique powers and functions of police officers ... require a robust system of oversight to ensure they are not abused or misused.

Now, using the excuse of fiscal impact to justify a secrecy policy the mayor, the department and the union have long embraced, MPD has continued to redact faces and badge numbers of all officers and first responders from released body-worn camera videos.

Bill 25-555 would severely narrow the BWC disclosure requirements in several ways, to include:

- police-involved shootings;

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<sup>9</sup> Act A23-0336 (Bill 23-825). This was emergency legislation that expired in October 2020. Bill 24-320 permanently amended D.C. Code § 5-116.33, and made conforming changes to DCMR §§ 24-3900.10 and 24-3902.9. The fiscal impact statement doesn’t mention BWC tasks among those predicted by MPD to add costs. But the bill makes all of Section 103 (on BWC details) effective only subject to appropriations.

<sup>10</sup> Committee Report, 18

<sup>11</sup> Committee Report, 19.

- other use-of-force incidents — but only if they result in serious bodily injury;<sup>12</sup> involve use of choke holds, head strikes with firearms or batons, or bites by police canines; and
- limiting required disclosure of officers’ firearm negligence.<sup>13</sup>

Finally, the mayor’s proposals would allow redaction of officers’ faces and exclude their names from the database of officer-involved deaths. As a result, Bill 25-555 would render the database unsearchable and, therefore, useless as a tool for public oversight, criminal defense investigation, or civil litigation.

**MAYOR’S PROPOSALS ROLL BACK COUNCIL’S EXPANDED ACCESS TO DISCIPLINE RECORDS AND NEW DATABASE INTENDED TO BUILD TRUST, PROTECT RESIDENTS**

Law 24-0345 explicitly prohibited the MPD from continuing its long-standing practice of invoking the FOI Act’s privacy exemption in response to requests seeking records of any past officer discipline investigations, and created a searchable database of all new disciplinary cases in which complaints against officers are sustained.

The Council intended that “the public database serve as [a] low-barrier entry point for quickly examining an officer’s record of misconduct.” It deliberately made the FOIA amendments applicable to all disciplinary records, past and present — not just records in sustained cases — as “a tool for gaining a more comprehensive understanding of complaints issued against an officer...”<sup>14</sup>

The Court of Appeals has disposed of privacy claims (see note 3), and this committee noted that Michael Tobin, director of the Office of Police Complaints, praised both expanded FOIA access and the new database, to be created by his office. Mr. Tobin said those provisions “will [] improve community trust in the disciplinary process by eliminating the cloak of secrecy that has long shielded the public’s understanding of police misconduct.”<sup>15</sup> That would be especially true where residents have long viewed the MPD Gun Recovery Units and Crime Suppression Teams

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<sup>12</sup> See evidence from California on the years of delay and legal wrangling that have resulted from using imprecise language such as “serious injury.” Theresa Clift, “*California Law Mandates Access to Police Discipline Records. That Law is Weak in Sacramento.*” SACRAMENTO BEE (November 17, 2023),

<https://www.sacbee.com/news/local/article280447434.html#storylink=cpy>.

<sup>13</sup> Bill 25-555 would deny D.C. residents access to BWC video of incidents in which an officer, who has extensive training, negligently discharges a firearm if MPD deems the shot not to have “put members of the public at risk of injury or death,” or the officer shot at an animal, which might be someone’s pet. See “*Police shot their dog after entering their home without warrant. Now they want answers.*” THE WASHINGTON POST, Sept. 8, 2021. Untrained civilians face far greater liability for gun discharge in the District — two years in prison and/or a \$12,500 fine for negligently discharge a firearm in a place open to the public, a common area of a multi-unit housing structure, or a public conveyance, whether occupied or not. D.C. Code § 22-3571,01(a).

<sup>14</sup> Committee Report, 45.

<sup>15</sup> ROUNDTABLE, 46.

as hostile, occupying forces in their neighborhoods.<sup>16</sup>

But if the Council enacts the mayor’s amendments, the OPC database will be fatally hobbled. It will not include the officer’s name, the final order or full written determination in the case. It would include only the rank, length of service, current duty status and “a description of the final disposition.”

The database in the law as passed will include only sustained complaints and only certain types of misconduct. Other jurisdictions, among them New York and Maryland, include a broader range of misconduct cases.

The mayor’s amendments would hide from public view in the database even more sustained cases that involve complaints of serious misconduct. Under Bill 25-555, the database would not include sustained cases that do not result in suspension, demotion or termination. For example, cases would be excluded if officers were required to undergo additional training or counseling. These minor wrist-slaps are so common, the Police Complaints Board detailed them in a policy report that was critical of the practice.<sup>17</sup>

The FOIA amendments in Bill 25-555 would allow MPD to continue to invoke the privacy exemption to withhold from public disclosure all disciplinary cases that predate passage of the bill, all future cases that are not sustained, and all future sustained cases that result in penalties short of suspension, demotion or termination.

Going forward, even in cases that must be disclosed under the FOI Act, the department could withhold personal identifying information, including officers’ names; all medical records, including those material to the basis of the complaint; and all records of employee-assistance programs — mental health, substance abuse treatment, counseling, therapy — mandated by the disciplinary proceeding. In short, the mayor’s bill would largely allow MPD to continue the bad FOIA practices about which D.C. residents, the Office of Police Complaints, the Police Reform Commission, and the Council have long complained.

Once the Council funds the transparency provisions of the police reform act, it is likely that most

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<sup>16</sup> Mitch Ryals, “DC Court of Appeals Vacates Gun Conviction, Ruling MPD Conducted Illegal Stop and Search,” WASHINGTON CITY PAPER (April 19, 2021), <https://washingtoncitypaper.com/article/514777/dc-court-of-appeals-vacates-gun-conviction-ruling-mpd-conducted-illegal-stop-and-search/>.

<sup>17</sup> “[MPD’s sole authority for officer accountability] has led to an opaque system that can appear to the community as being too lenient. ... The sanctions imposed by MPD in response to sustained community complaints suggest that the Department is reluctant to impose serious sanctions based on community complaints, and often goes outside of the Table of Penalties Guide. ... [T]he majority of sustained complaints for the past two years have resulted in reprimands or education-based development. These minor disciplinary sanctions allow officers to believe that complaints from community members are unimportant and that MPD tolerates, or endorses, behaviors likely to produce complaints.” D.C. Police Complaints Board (PCB), *Policy Report #21-2, “Discipline.”* (October 2022).

FOIA requests will be filed for all disciplinary records related to one or more officers identified by name, or for officers involved in a particular incident. If the Council allows MPD to withhold officers' names, it is exceedingly difficult to predict how the department would respond to such a FOIA request. For example, would it redact the officers' names before releasing non-exempt portions of records, even though the requester knows the names? If the request involved more than one officer, but MPD redacts officers' names before disclosing records, it would be impossible to figure out which records relate to each officer.

Consider a request identifying an incident and four responding officers, one of whom later was fired and three of whom received minor discipline. Would MPD disclose anonymized records regarding the fired officer, and withhold records related to disciplinary cases against the other three?

Based on MPD's past practice, the more likely response would be to deny the request entirely, claiming that if it discloses the terminated officer's records without identifying information, the less culpable officers' reputations would be harmed because the public might believe one of them had been the bad actor? This outcome is exactly what the Council intended to prevent by prohibiting MPD from invoking the privacy exemption, redacting officers' names, and withholding cases based on the severity of the imposed penalty.

When the Council passed the police reform act, it intended that D.C. residents be able to use the database to identify MPD personnel who have been disciplined, and to use the FOI Act to build more detailed profiles of those officers. Bill 25-555 would allow MPD *carte blanche* to circumvent records access via the new database and FOIA. It would perpetuate practices the PCB criticized by encouraging the union, when representing members in disciplinary proceedings, and MPD to negotiate dispositions short of suspension, demotion or termination to avoid public scrutiny of how it handles complaints of serious misconduct.

Excluding from the database officers' names and details regarding case dispositions will make it a tool useful only for academic researchers, not as a means of inspiring D.C. residents' trust, encouraging residents to cooperate with law enforcement, or combating bad policing. Allowing MPD to invoke the privacy exemption to withhold officers' names, and all but the most egregious disciplinary violations, will prevent anyone from profiling any officer, including those fired for the most serious offenses.

Bill 25-555 includes other amendments that should be rejected as limiting access to information for no clear public safety benefit:

- The police reform act directs MPD to give the OPC "unfettered access to all information" as it investigates misconduct complaints. Bill 25-555 substitutes "timely and complete access to information," the weaker language from the prior version of D.C. Code § 5-1104(d-2)(2) that lent itself to endless controversy over the meaning of "timely and complete access."
- D.C. Code § 5-1031(c)(2) requires full public notice for any hearing for an officer challenging proposed termination. Bill 25-555 would remove the longstanding requirement that notices include the officer's name and badge number.

We urge you to recommend that the Council reject Titles II, III and VII of Bill 25-555 because, if enacted, they will further erode public trust in the MPD, and by doing so, they will make all D.C. residents less safe. We look forward to working with this committee to ensure that the MPD and other public safety agencies operate transparently because public accountability is essential to improve public trust. If you have questions, please let us know.

Thank you.

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Formed in March 2009, the D.C. Open Government Coalition seeks to enhance public access to government information and transparency of government operations of the District. We believe transparency promotes civic engagement and is critical to a responsive and accountable government. We strive to improve the processes by which the public gains access to government records and proceedings, and to educate the public and government officials about the principles and benefits of open government.

For additional information call Robert Becker, (202) 306-2276.



**ATTACHMENT**

**§ 5–116.33. Body-Worn Camera Program; reporting requirements; access.**

(a) By October 1, 2015, and every 6 months thereafter, the Mayor shall collect, and make available in a publicly accessible format, data on the Metropolitan Police Department's Body-Worn Camera Program, including:

- (1) How many hours of body-worn camera recordings were collected;
- (2) How many times body-worn cameras failed while officers were on shift and the reasons for the failures;
- (3) How many times internal investigations were opened for a failure to turn on body-worn cameras during interactions, and the results of those internal investigations, including any discipline imposed;
- (4) How many times body-worn camera recordings were used by the Metropolitan Police Department in internal affairs investigations;
- (5) How many times body-worn camera recordings were used by the Metropolitan Police Department to investigate complaints made by an individual or group;
- (6) How many body-worn cameras are assigned to each police district and police unit for the reporting period;
- (7) How many Freedom of Information Act requests the Metropolitan Police Department ("Department") received for body-worn camera recordings during the reporting period, the outcome of each request, including any reasons for denial, any costs invoiced to the requestor, the cost to the Department for complying with each request, including redaction, and the length of time between the initial request and the Department's final response; and
- (8) How many recordings were assigned to each body-worn camera recording category.

(b) The Metropolitan Police Department shall provide the Office of Police Complaints with direct access to body-worn camera recordings.

(c) Notwithstanding any other law:

- (1) Within 5 business days after a request from the Chairperson of the Council Committee with jurisdiction over the Metropolitan Police Department ("Chairperson"), the Metropolitan Police Department shall provide unredacted copies of the requested body-worn camera recordings to the Chairperson and the Councilmember elected by the Ward in which the incident occurred. Such body-worn camera recordings shall not be publicly disclosed by the Chairperson or the Council; and

(2) The Mayor:

(A) Shall, except as provided in paragraph (3) of this subsection:

(i) Within 5 business days after

(I) ~~an~~ An officer-involved death;

(II) A Metropolitan Police Department officer discharges a firearm, with the exception of a negligent discharge that does not otherwise put members of the public at risk of injury or death, a discharge at an animal, or a range or training incident; or the serious use of force, publicly release;

(III) A Metropolitan Police Department officer applies a head strike with an impact weapon;

(IV) A Metropolitan Police Department officer engages in use of force resulting in serious bodily injury; resulting in loss of consciousness or creating a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; or involving the use of a prohibited technique, as that term is defined in section 3(6) of the Limitation on the Use of the Chokehold Act of 1985, effective January 25, 1986 (D.C. Law 6-77; D.C. Official Code § 5-125.02(6)); or

(V) A Metropolitan Police Department canine bites a person;

(ii) Publicly Releases

(I) The names and body-worn camera recordings of all officers directly involved in the officer-involved death or serious use of force incident described in paragraph (2)(A)(i) of this subsection; and

(II) A description of the incident; and

(iii) Maintain, on the website of the Metropolitan Police Department in a format readily accessible and searchable by the public, the ~~names and~~ body-worn camera recordings of all officers who were directly involved in an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014; and

(B) May, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the Office of the Attorney General, and the United States Attorney's Office for the District of Columbia, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request or subparagraph (A) of this paragraph.

(3)(A) The Mayor shall not release a body-worn camera recording pursuant to paragraph (1)(A) of this subsection if the following persons inform the Mayor, orally or in writing, that they do not consent to its release:

(i) For a body-worn camera recording of an officer-involved death, the decedent's next of kin; and

(ii) For a body-worn camera recording of a serious use of force, the individual against whom the serious use of force was used, or if the individual is a minor or unable to consent, the individual's next of kin.

(B)(i) In the event of a disagreement between the persons who must consent to the release of a body-worn camera recording pursuant to subparagraph (A) of this paragraph, the Mayor shall seek a resolution in the Superior Court of the District of Columbia.

(ii) The Superior Court of the District of Columbia shall order the release of the body-worn camera recording if it finds that the release is in the interest of justice.

(d) Before publicly releasing a body-worn camera recording of an officer-involved death, the Metropolitan Police Department shall:

(1) Consult with an organization with expertise in trauma and grief on best practices for providing the decedent's next of kin with a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting prior to its release; and

(2) In a manner that is informed by the consultation described in paragraph (1) of this subsection:

(A) Provide actual notice to the decedent's next of kin at least 24 hours before the release, including the date on and the manner in which it will be released;

(B) Offer the decedent's next of kin a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting; and

(C) If the next of kin accepts the offer in subparagraph (B) of this paragraph, provide the decedent's next of kin a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting.

...

~~(f) When releasing body-worn camera recordings, the likenesses of any local, county, state, or federal government employees acting in their professional capacities, other than those acting undercover, shall not be redacted or otherwise obscured.~~

(g) For the purposes of this section, the term:

(1) "FOIA" means [subchapter II of Chapter 5 of Title 2](#).

(2) "Next of kin" means the priority for next of kin as provided in Metropolitan Police Department General Order 401.08, or its successor directives.

~~(3) "Serious use of force" means any:~~

~~(A) Firearm discharges by a Metropolitan Police Department officer, with the exception of range and training incidents;~~

~~(B) Head strikes by a Metropolitan Police Department officer with an impact weapon;~~

~~(C) Use of force by a Metropolitan Police Department officer:~~

~~(i) Resulting in serious bodily injury;~~

~~(ii) Resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;~~

~~(iii) Involving the use of a prohibited technique, as that term is defined in [§ 5-125.02\(6\)](#); and~~

~~(iv) Resulting in a death; and~~

~~(D) Incidents in which a Metropolitan Police Department canine bites a person.~~

(4) "Serious bodily injury" means extreme physical pain, illness, or impairment of physical condition including physical injury that involves: a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment 120 of the function of a bodily member or organ; or protracted loss of consciousness.

“DCMR 24-3900.10.

(a) Notwithstanding any other law, the Mayor:

“(1) Shall, except as provided in paragraph (b) of this subsection:

“(A) Within 5 business days after

(i) ~~an~~ An officer-involved death;

(ii) An MPD officer discharges a firearm, with the exception of a negligent discharge that does not otherwise put members of the public at risk of injury or death, a discharge at animals, or a range or training incident; or the serious use of force, publicly release;

(iii) An MPD officer applies a head strike with an impact weapon;

(iv) An MPD officer engages in use of force resulting in serious bodily injury; resulting in loss of consciousness or creating a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; or involving the use of a prohibited technique, as that term is defined in section 3(6) of the Limitation on the Use of the Chokehold Act of 1985, effective January 25, 1986 (D.C. Law 6-77; D.C. Official Code § 5-125.02(6)); or

(v) An MPD canine bites a person.

(B) Publicly release:

“(i) The names and body-worn camera recordings of all officers directly involved in the officer-involved death or incidents described in subparagraph (1)(A) of this paragraph; ~~serious use of force;~~ and

~~(“ii) A description of the incident; and~~

(BC) Maintain, on the website of the Metropolitan Police Department in a format readily accessible and searchable by the public, the ~~names and~~ body-worn camera recordings of all officers who were directly involved in an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014; and

“(2) May, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the Office of the Attorney General, and the United States Attorney's Office for the District of Columbia, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request or paragraph ~~(2)~~(1)(A) of this subsection.

“(b)(1) The Mayor shall not release a body-worn camera recording pursuant to paragraph (a)(1)(A) of this subsection if the following persons inform the Mayor, orally or in writing, that they do not consent to its release:

“(A) For a body-worn camera recording of an officer-involved death, the decedent’s next of kin; and

“(B) For a body-worn camera recording of a serious use of force, the individual against whom the serious use of force was used, or if the individual is a minor or unable to consent, the individual’s next of kin.

“(2)(A) In the event of a disagreement between the persons who must consent to the release of a body-worn camera recording pursuant to subparagraph (1) of this paragraph, the Mayor shall seek a resolution in the Superior Court of the District of Columbia

“(B) The Superior Court of the District of Columbia shall order the release of the body-worn camera recording if it finds that the release is in the interest of justice.

“(c) Before publicly releasing a body-worn camera recording of an officer involved death, the Metropolitan Police Department shall:

“(1) Consult with an organization with expertise in trauma and grief on best practices for providing the decedent’s next of kin with a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting prior to its release; and

“(2) In a manner that is informed by the consultation described in subparagraph (1) of this paragraph:

“(A) Provide actual notice to the decedent’s next of kin at least 24 hours before the release, including the date on which it will be released;

“(B) Offer the decedent's next of kin a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting; and

“(C) If the next of kin accepts the offer in sub-subparagraph (B) of this subparagraph, provide the decedent's next of kin a reasonable opportunity to view the body-worn camera recording privately in a non-law enforcement setting.”.

DCMR 24 -3902.9

When releasing body-worn camera recordings, the likenesses of any local, county, state, or federal government employees acting in their professional capacities, other than those acting undercover, shall not be redacted or otherwise obscured.

DCMR 24-3999.1

...

“Serious bodily injury” means extreme physical pain, illness, or impairment of physical condition including physical injury that involves: a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member or organ; or protracted loss of consciousness.

“Serious use of force” means any:

“(1) Firearm discharges by a Metropolitan Police Department officer, with the exception of range and training incidents;

“(2) Head strikes by a Metropolitan Police Department officer with an impact weapon;

“(3) Use of force by a Metropolitan Police Department officer:

“(A) Resulting in serious physical injury;

“(B) Resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;

“(C) Involving the use of a prohibited technique, as that term is defined in section 3(6) of the Limitation on the Use of the Chokehold Act of 1985, effective January 25, 1986 (D.C. Law 6-77; D.C. Official Code § 5-125.02(6)); and “(D) Resulting in a death; and

“(4) Incidents in which a Metropolitan Police Department canine bites a person.

D.C. Code § 2-534. Exemptions from disclosure

...

(d-1)(1) Notwithstanding any provision of this act, a request under this act for disciplinary records, sustained on or after the effective date of the Addressing Crime Trends 238 (ACT) Now Amendment Act of 2023, passed on 2nd reading on (Enrolled version 239 of Bill 25-\_\_\_\_\_), shall not be categorically denied or redacted on the basis that it constitutes an unwarranted invasion of a personal privacy for officers within the Metropolitan Police Department ("MPD"), the District of Columbia Housing Authority Police Department ("HAPD"), or the Office of the Inspector General ("OIG"), except as described in paragraph (3) of this subsection.

(2) For the purposes of this subsection, the term "disciplinary records" means any record created in furtherance of a sustained disciplinary proceeding for, or an Office of Police Complaints ("OPC") investigation of, an MPD, HAPD, or OIG officer, that resulted in a penalty of suspension, demotion, or termination regardless of whether the matter was fully adjudicated or resulted in policy training, including:

(A) The name-rank of the officer complained of, investigated, or charged;

(B) The complaints, allegations, and charges against the officer;

(C) The transcript of any disciplinary trial or hearing, including any exhibits introduced at the trial or hearing;

(D) The disposition of any disciplinary proceeding; and

(E) The final written opinion or memorandum supporting the disposition and any discipline imposed, including the MPD's, HAPD's, or OIG's complete factual findings and its analysis of the conduct and appropriate discipline of the officer; and

(F) Any other record or document created by OPC, MPD, HAPD, or OIG in anticipation of, or in preparation for, any disciplinary proceeding.

(3) When providing records or information related to disciplinary records, the responding public body may redact:

(A) With respect to the officer or the complainant, records or information related to:

(i) Technical infractions solely pertaining to the enforcement of administrative departmental rules that do not involve interactions with members of the public and are not otherwise connected to the officer's investigative, enforcement, training, supervision, or reporting responsibilities;



~~(iiB) Their medical history, except in cases where the medical history is a material issue in the basis of the complaint; and;~~

~~(iiiC) Their use of an employee assistance program, including mental health treatment, substance abuse treatment service, counseling, or therapy, unless such use is mandated by a disciplinary proceeding that may be otherwise disclosed pursuant to this subsection; and;~~

~~(D) Any personally identifiable information; and~~

~~(E) Any other records or information otherwise exempt from disclosure under this section other than subsection (a)(2) of this section.”.~~

~~(B) With respect to any person:~~

~~(i) Personal contact information, including home addresses, telephone numbers, and email addresses;~~

~~(ii) Any social security numbers;~~

~~(iii) Any records or information that preserves the anonymity of whistleblowers, complainants, victims, and witnesses; and~~

~~(iv) Any other records or information otherwise exempt from disclosure under this section other than subsection (a)(2) of this section.~~

(d-2) Notwithstanding any other provision of law, agencies shall not categorically treat law enforcement disciplinary records as falling within any exemption listed in this section.

D.C. Code § 5-1104. Police Complaint Board

...

(d-2)(1) The Board shall review, with respect to the MPD:

....

(2) The Executive Director, acting on behalf of the Board, shall have timely and complete access to information~~have unfettered access to all information~~ and supporting documentation specifically related to the Board’s duties under paragraph (1) of this subsection.

(3) The Executive Director shall keep confidential the identity of all person's names in any documents transferred from the MPD to the Office pursuant to paragraphs (1) and (2) of this subsection.

(4) The disclosure or transfer of any public record, document, or information from the MPD, the DCHAPD, or the OIG to the Office pursuant to paragraph (1) of this subsection shall not constitute a waiver of any privilege or exemption that otherwise could be asserted by the MPD, the DCHAPD, or the OIG to prevent disclosure to the general public or in a judicial or administrative proceeding.

(5) A Freedom of Information Act request for public records collected pursuant to paragraph (1) of this subsection may only be submitted to the MPD, the DCHAPD, or the OIG.

(6) Beginning on December 31, 2017, and by December 31 of each year thereafter, the Board shall deliver a report to the Mayor and the Council that analyzes the information evaluated by the Board under paragraph (1) of this subsection.

(7) In its review of in-custody deaths described in paragraph (1)(E) of this subsection, the Board shall issue findings related to, and recommendations in response to, each death.

D.C. Code § 5-1116 Officer disciplinary records database.

(a) Notwithstanding section 3105 of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-631.05), by December 31, 2024, the Office shall maintain a publicly accessible database that contains the following information related to sustained allegations of misconduct pertaining to an officer's commission of a crime, the officer's interactions with members of the public, or the officer's integrity in criminal investigations, as determined by the Office, MPD, DCHAPD, or OIG for incidents that occurred on or after the effective date of the Comprehensive Policing and Justice Reform Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-320):

(1) The ~~name, badge number,~~ rank, length of service, and current duty status of an officer against whom an allegation of misconduct has been sustained;

(2) A description of:

(A) The complaint that is the basis of the sustained allegation of misconduct, if initiated by a complaint; or

(B) The conduct that is the basis of the sustained allegation of misconduct, if initiated by another means;

(3) Whether the allegation of misconduct was initiated by:

(A) MPD;

(B) DCHAPD;

(C) OIG;

(D) A complaint submitted to the Office pursuant to section 8(a);

(E) The Executive Director as described in section 8(g-1); or

(F) Other entity;

(4) A description of the final disposition ~~and a copy of the final order or written determination~~;

(5) The discipline imposed on the officer in response to the sustained allegation of misconduct and the date on which it was imposed;

(6) If applicable, the discipline recommended by the Office, as described in section 12(i)(1)(A); and

(7) Whether the officer or another entity has requested an appeal regarding the sustained allegation of misconduct.

(b) In the event a sustained allegation is successfully appealed, overturned, vacated, or otherwise invalidated, the Office shall remove database entries related to the initial sustained allegation of misconduct.

(c) MPD shall maintain records necessary to update the database as needed and furnish that information to the Office as requested.