



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

**Report on the Chicago Police Department
Response to COPA Advisory Letter
Recommendations IN RE: Member
Failure to Activate Body Worn Cameras
in Incidents Resulting in Firearm
Discharge**

September 30, 2019



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY ● TRANSPARENCY ● INDEPENDENCE ● TIMELINESS

Eddie T. Johnson
Superintendent
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

September 30, 2019

**Re: Chicago Police Department's Response to COPA Advisory Letter IN RE:
Member Failure to Activate Body Worn Cameras in Incidents Resulting in
Firearm Discharge**

Dear Superintendent Johnson:

Pursuant to Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (Department). To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations, the Chief Administrator is charged with issuing recommendations when an investigation uncovers a problem that hinders the effectiveness of Department operations and programs or has identified a verifiable potential liability or risk that warrants attention by the Department.

On May 31, 2019, COPA sent the Department an Advisory Letter concerning the failure of some members to timely activate Body Worn Cameras (BWC) in civilian encounters that resulted in a firearm discharge. The Department responded to COPA's letter on July 29, 2019 and expressed its agreement with COPA's recommendations.

Please find enclosed our report addressing the Department's response.

Respectfully,

Sydney R. Roberts
Chief Administrator

I. Introduction

Pursuant to the Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has the duty to make recommendations to the Superintendent of the Chicago Police Department (Department) concerning Department policies. To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations, the Chief Administrator is charged with issuing an Advisory Letter to the Superintendent if an investigation uncovered a problem that hinders the effectiveness of Department operations and programs or if the investigation has identified a verifiable potential liability or risk that warrants attention by the Department.¹

On May 31, 2019, COPA issued an Advisory Letter concerning the failure of Department members to activate or to timely activate their assigned Axon-brand Body Worn Cameras (BWC) in civilian encounters that resulted in Officer Involved Shootings (OIS).² The Department provided COPA with its response on July 29, 2019.³ This report addresses COPA's recommendations, the Department's responses, and the status of COPA's recommendations.

II. Failure of some Department members involved in OIS incidents to use assigned Body Worn Cameras as required by CPD Special Order and state law.

In several 2018 and 2019 COPA OIS investigations, the involved member(s) and/or witnessing officer(s) either failed to activate or to timely activate their BWC. COPA has also noted similar activation failures in non-OIS investigations.

By December 2017 more than 7,000 BWC had been deployed to patrol officers. The Department also issued direction and guidance to its members on the proper use and activation of BWC to ensure compliance with Illinois law⁴ and Department Special Order. Special Order S03-14 imposes on members the duty to electronically record law-enforcement-related encounters. Similarly, the Illinois Law Enforcement Officer Body Worn Camera Act (Act) requires that BWC "must be turned on at all times when the officer is in uniform and is responding to calls for service or is engaged in any law-enforcement encounter or activity that occurs while the officer is on duty."⁵

Progressive discipline and other remedial action is authorized for members who do not comply with the Department's BWC Special Order, as permitted by law and subject to potential review and deference to the court-appointed Independent Monitor under the Consent Decree, collective bargaining agreements, applicable litigation, or other court order.⁶

The Department's Special Order and Illinois statute provide few and narrowly-drawn exceptions, such as in exigent circumstances. In its response, the Department noted that "State law and CPD policy recognize that for the safety of the public and the responding

¹ City of Chicago, Civilian Office of Police Accountability, Rules and Regulations (Eff. 4.13.2018).

² See Appendix A for a copy of COPA's Advisory Letter IN RE Body Worn Camera Use.

³ See Appendix B for a copy of the Department's Response Letter to COPA's Advisory Letter.

⁴ 50 ILCS 706/10.

⁵ 50 ILCS 706/10-20(a)(3).

⁶ State of Illinois v. City of Chicago, Case No. 17-cv-6260, ¶239.

officers, life-threatening or emergency circumstances may exist where it is reasonable and necessary for an officer to focus his or her efforts on priorities other than body-worn camera activation.”

COPA does not assert that video or audio recordings, alone, would be dispositive of the lawfulness of a member's actions, however the probative value of such recordings as additional material/independent evidence in an investigation cannot be over-emphasized.

III. COPA's May 2019 Recommendations

COPA therefore recommended the Department act to ensure that all members who are issued BWC comply with State law and the Department's unambiguous Special Order. COPA further recommended that the administrative sanction for failure to activate or delay in activating BWCs when recording is required be increased to impose a meaningful deterrent to violating the Special Order. Strict enforcement of Illinois law and Department orders in instances not involving isolated minor rule infractions is necessary in order to give effect to the legislature's clear directive and to convey the importance of member compliance with the Act and Special Order S03-14 requiring the use of BWC.

IV. The Department's Response

In its July 2019 response, the Department informed COPA that it has taken and will continue to undertake significant efforts to dutifully implement its BWC program in all police districts in Chicago.

Specifically, the Department's response identified several strategies it will use to bolster overall compliance and transparency on the issue. It noted that discipline or other remedial action are subject to current or future litigation before the Illinois Labor Relations Board or other court of law. The Department also noted that the implementation of these policies and technologies are subject to the Consent Decree, applicable collective bargaining agreement provisions, and applicable court order

1. **Two Minute Buffer:** Effective May 17, 2019, the Department increased its 30 second BWC pre-event recording buffer to two (2) minutes, even though state law only requires 30 seconds of buffering.⁷ This expansion is intended to increase the likelihood that critical portions of certain incidents are captured in circumstances where an officer cannot practicably or physically activate his or her camera before the incident takes place.
2. **Watch Operations Lieutenant Review:** CPD has adopted the Axon Performance BWC software capabilities in order to improve compliance with Watch Operations Lieutenant (WOL) review of BWC footage. This will be used to verify that WOLs are compliant with their obligation to review random BWC segments submitted by officers during each tour of duty.⁸ WOLs are required to determine whether the officers are acting within policy and are in compliance with S03-14.

⁷ 50 ILCS 706/10-20(a)(1).

⁸ S03-14(VI)(D)(3).

3. **Indicators of Activation Rates:** CPD command staff will use the Axon Performance software to review the BWC activation rates of individual officers.
4. **Impose Progressive Discipline for Noncompliance:** CPD will impose progressive discipline or other remedial action on CPD members and will provide training to members who do not comply with the BWC policy, as permitted by law.

Note that the Department did not specify a timeline for the implementation of its plans.

V. Recommendation Status

Based on the Department's response to its Advisory Letter, COPA assesses the Department's response to the recommendations contained therein. COPA classifies the status of recommendations into three categories:

- **Agrees:** The Department agrees with COPA's policy recommendation and indicates that they have taken steps to implement or plan to implement such recommendation in full.
- **Agrees In Part:** The Department partially agrees with COPA's policy recommendation and may or may not have indicated that they have taken steps to implement such recommendation
- **Does Not Agree:** The Department does not agree with COPA's policy recommendation and has not taken steps to implement such recommendation or is non-responsive.

Therefore, based upon the Department's response, we assess the Chicago Police Department's response as being in agreement with COPA's recommendations.

Recommendation 1: COPA recommended that the Department act to ensure that all members who are issued BWC comply with State law and the Department's unambiguous Special Order.

Status: Agrees.

Recommendation 2: COPA further recommended that the Department increase the administrative sanction for failure to activate or delay in activating BWC to impose a meaningful deterrent to violating the Special Order.

Status: Agrees.

VI. Additional Considerations

In addition, at this time COPA offers the following as suggestions, not as formal recommendations. As such, please consider them, but no formal response is required.

- Expand the Watch Operations Lieutenants' inspections of BWC recordings to include review of every OIS and Display of Weapon incident as a way of reinforcing the Department's emphasis on strict compliance with the BWC Special Order and state law.
- Require all members executing search warrants to wear and have BWC turned on for the entirety of the search.
- Require that Sergeants and Lieutenants activate their BWC if interviewing arrestees as part of the TRR approval process.
- Require that Sergeants and Lieutenants flag and retain all of the BWC footage for an incident as part of the TRR approval process.
- Require Mass Transit Unit members to wear and activate their BWCs.

COPA will continue to monitor Department member compliance with the BWC requirements as set forth in Department orders, state law, and the Consent Decree.

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Appendix A



Mr. Eddie T. Johnson
Superintendent
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

May 31, 2019

IN RE: Advisory Letter Regarding Enforcement of Body Worn Camera Policy

Dear Superintendent Johnson:

Pursuant to Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (Department) “in order to improve the accountability, effectiveness, integrity and transparency of the Department.” To fulfill the mission, as outlined in Section 4.4.1 of COPA’s Rules and Regulations (effective September 15, 2017), the Chief Administrator may issue an Advisory Letter to the Superintendent if an investigation uncovered a problem that hinders the effectiveness of Department operations and programs or if the investigation has identified a verifiable potential liability or risk that warrants the Department’s attention.¹

This Advisory Letter addresses COPA’s growing concern that Department Members are routinely failing to activate their Body Worn Cameras (BWCs) as expressly required by Department Policy and Illinois Statute.

Compliance with Body Worn Camera (BWC) Department Special Order & State Law

The Department has gone to great lengths to provide its Members with direction and guidance on proper use and activation of BWCs to ensure compliance with Department directives.² In addition, the Illinois Law Enforcement Officer Body Worn Camera Act (Act)³ requires that BWCs “must be turned on at all times when the officer is in uniform and is responding to calls for service or engaged in any law-enforcement encounter or activity that occurs while the officer is on duty.”⁴

¹ City of Chicago, Civilian Office of Police Accountability, Rules and Regulations (Eff. 4.13.2018)

² Special Order S03-14 (Eff. 4.30.2018)

³ 50 ILCS 706/10.

⁴ 50 ILCS 706/10-20(a)(3).

While the Act allows certain exceptions to 50 ILCS 706/10-20(a)(3), the exceptions are very narrow and from what COPA has determined are not applicable to most instances of an officer's failure to activate or delay in activating a BWC.⁵ Thus, the Act's exceptions are not the focus of this letter.

Department Special Order S03-14 (Special Order Eff. 4/30/2018) entitled "Body Worn Cameras," was implemented to satisfy the requirements of the Act. The Special Order states in Section III(A)(1) that the duty to electronically record a law-enforcement-related encounter is mandatory, not discretionary, except as specifically excepted. Section III(A)(2) of the Special Order delineates eighteen (18) specific situations when a Member **must** activate his or her BWC.⁶ The list includes, but is not limited to, all calls for service; investigatory and traffic stops; pursuits; arrests; use of force incidents; and all searches of people, items, vehicles, buildings, and places.

As noted above, the Act's directive could not be more clear:

[C]ameras must be turned on at all times when an officer is in uniform and responding to a call for service or is engaged in any law enforcement-related encounter or activity that occurs while the officer is on duty.⁷ (*emphasis added*).

Yet, in several recent investigations of Officer Involved Shootings (OIS), the involved Member(s) and/or witnessing officer(s) either failed to activate or to timely activate their BWCs. COPA has also noted similar activation failures in non-OIS investigations. COPA does not assert that video, alone, would be dispositive of the lawfulness of a Member's actions, however the probative value of a video recording as additional material/independent evidence in an investigation cannot be over-emphasized.

The point of this Advisory Letter is to bring attention to the fact that in most, if not all, of these instances the Members knew or should have known in advance that the duties they were performing or were about to perform required the activation of their BWCs – before they engaged "**in any * * * encounter or activity.**" This clear, succinct command would seem to be particularly important and applicable to an encounter or activity leading to an Officer Involved Shooting.

Recommendation

COPA therefore recommends that the Department act to ensure that all Members who are issued BWCs comply with State law and the Department's unambiguous directive. In doing so, COPA further recommends that the administrative sanction for failure to activate or delay in activating BWCs when required be increased to impose a meaningful deterrent to violating the Special Order. Strict enforcement of Illinois law and Department policies in instances not involving isolated minor Departmental rule infractions is necessary in order to give effect to the legislature's clear directive and to convey the importance of Members' compliance with the Act and the Department's directive requiring the use of BWCs.

⁵ 50 ILCS 706/10-20(a)(3)(A) and (B), 10-20(a)(4) and 10-20(a)(4.5).

⁶ Special Order S03-14 (III)(A)(2)(a - r).

⁷ 50 ILCS 706/10-20(a)(3)

The Act and Special Order were implemented to help build the public's trust in the Department. The failure to activate or delay in activating BWCs, whether intentional or unintentional, can give rise to a negative inference that such failures are intentional—which begs the question: *Why?* COPA cannot estimate how often the public answers its own question with a suspicion of concealed misconduct—but given the current level of citizen mistrust of police it likely is not an infrequent response. The Department can address the public's perception directly and sincerely through the meaningful application of its own BWC policy.

Thank you for your time and consideration of these issues. We respectfully request a response to our recommendations within 60 days, along with an explanation of how the Department intends to strengthen its enforcement of its BWC policy. COPA will publish this letter and the Department's response, if any, on the COPA website after the 60-day response time has passed.

Respectfully,

A handwritten signature in black ink, appearing to read "Sydney R. Roberts". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sydney R. Roberts
Chief Administrator

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Appendix B



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

July 29, 2019

VIA ELECTRONIC MAIL

Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability
1615 W. Chicago Ave, 4th Floor
Chicago, IL 60622
Sydney.roberts@chicagocopa.org

Re: Advisory Letter Regarding Enforcement of Body Worn Camera Policy

Dear Chief Roberts,

As part of the Chicago Police Department's unwavering commitment to build trust and transparency with the residents we serve, CPD has and continues to undertake significant efforts to dutifully implement its body-worn camera program in all police districts throughout Chicago. The Department made this decision in order to promote the highest level of police services among its members. CPD leadership not only recognized that the public and the courts had come to expect the availability of camera footage following an incident involving a law enforcement response, but that all parties would be better served in certain circumstances where a body-worn camera is able to capture an objective recording of the incident. This is of course in addition to the myriad of evidentiary and deterrence benefits that law enforcement officials and researchers have identified from similar body-worn camera initiatives throughout the country.

At the time that the Department began a citywide rollout, CPD's body-worn camera program was the largest such camera deployment in the country. Not to mention, although CPD initially planned a two-year deployment to all police districts, the Department expedited its camera deployment to be completed within one year. CPD met its goal under the expedited camera deployment, and equipped all patrol and tactical officers with a body-worn camera a year ahead of schedule.

Leading up to the implementation of the body-worn camera program, CPD worked to develop its policy in accordance with research and guidance from outside jurisdictions, state law, and practical input from officers in the field. In 2014, CPD initiated its first body-worn camera pilot program, equipping officers in the pilot with body-worn cameras in order to receive feedback and inform its policy considerations. Shortly thereafter, the Illinois General Assembly convened a working group of stakeholders, which included representatives from the City of Chicago and Chicago Police Department, to craft what would become the Illinois Law Enforcement Officer-Worn Body Camera Act. *See* Public Act 99-352; 50 ILCS 706/ *et seq.* In negotiating the statewide standards for body-worn camera regulation, CPD and other stakeholders uniformly expressed the belief that due to the dangerous and often unpredictable nature of policing, certain exceptions and a degree of officer discretion should be reflected in body-worn camera policies throughout Illinois.

One notable exception that may be applicable to an officer's inability or delay in activating a body-worn camera is the "exigent circumstances" exception, codified in Section 10-20(a)(3)(A) of the Law Enforcement Officer-Worn Body Camera Act and reflected in Special Order S03-14(III)(A)(2). Using Fourth Amendment precedent as a guide, Illinois courts evaluate exigent circumstances on a case-by-case basis based upon the reasonableness of the officer's actions under a totality of the circumstances. *See People v. Ramsey*, IL App (1st) 160977 (2017). Similarly, the United States Supreme Court has recognized such instances where the "exigencies of the situation" are so compelling that imminent law enforcement action is necessary. *See Kentucky v. King*, 131 S. Ct. 1849 (2011). Such exigencies include situations in which an officer reasonably believes that imminent harm to a person exists. *Id.* State law and CPD policy recognize that for the safety of the public and the responding officers, life-threatening or emergency circumstances may exist where it is reasonable and necessary for an officer to focus his or her efforts on priorities other than body-worn camera activation. Balancing the interests of capturing a body-worn camera recording of the incident, the officer is required to activate his or her body-worn camera as soon as it becomes practicable to do so. *See* 50 ILCS 706/10-20(a)(3)(A); *see also* S03-14(III)(A)(2).

In its advisory letter, COPA deems exigent circumstances as one of a "very narrow" list of exceptions that are for the most part inapplicable to the body-worn camera requirements. For purposes of evaluating whether an officer was within policy for activation of his or her body-worn camera, it is foreseeable that the exigent circumstances exception could be applicable to officer discharge incidents, where an officer asserts that a subject presented an imminent threat to life or great bodily harm to the officer or another person. Of course, without additional factual background and for purposes of this advisory letter, CPD cannot offer an opinion as to whether a reasonable exigency may have existed to justify a delay or inactivation of the officer's body-worn camera. Similarly, for purposes of this advisory letter, CPD does not offer any opinion on COPA's determination that the officers involved "knew or should have known" in advance that the duties they were performing would lead to an encounter or activity requiring body-worn camera activation, much less a firearm discharge incident.

COPA acknowledges in its advisory letter the significant efforts CPD has undertaken to pursue an effective and transparent body-worn camera program. The Department continues to work towards this end, recognizing that the implementation of a robust body-worn camera program will require continued adaptation and improvement. Under the Consent Decree with the Illinois Attorney General's Office, the Department has committed to continue to develop and implement its body-worn camera policy in accordance with the terms set forth. *See State of Illinois v. City of Chicago*, Case No. 17-cv-6260, ¶¶236-242. CPD will continue to require officers to record law enforcement activities in accordance with the policy. *Id.* at ¶237. The terms further require CPD to impose "progressive discipline, training, or other remedial action" on CPD members who are not in compliance with the policy, as permitted by law. *Id.* at ¶237. CPD notes that in addition to these requirements under the consent decree, CPD's management decisions also remain subject to the outcomes of litigation or applicable court order under its collective bargaining agreements. There is currently pending litigation before the Illinois Labor Relations Board addressing officer discipline under the body-worn camera policy. *See Fraternal Order of Police Lodge 7 v. City of Chicago*, L-CA-17-037.

In a continued effort to improve implementation of the body-worn camera program, CPD has already identified several steps to bolster overall compliance and transparency with the policy:

- Two Minute Buffer: Effective May 17, 2019, CPD increased its pre-event recording buffer from 30 seconds up to two (2) minutes. The pre-event recording buffer is required under state law, but only

for a minimum of 30 seconds. *See* 50 ILCS 706/10-20(a)(1). CPD's adoption of the two minute buffer technology will help to increase the likelihood that critical portions of certain incidents are captured in circumstances where an officer cannot practicably or physically activate his or her camera before the incident takes place. Once it is reasonable or safe for the officer to activate his or her body-worn camera, the buffer will retroactively capture the preceding two minutes, and greatly increase the likelihood that material evidence of the incident is saved. The increased buffering time will enhance CPD's ability to provide an objective and transparent recording of interactions with citizens, preserve critical evidence in criminal and civil cases, and improve public trust within the body-worn camera program.

- Watch Operations Lieutenant Review: In order to ensure meaningful oversight and accountability within its body-worn camera program, CPD recently adopted the *Axon Performance* software capabilities in order to improve compliance with watch operations lieutenant review of body-worn camera footage. Under its current policy, CPD requires a watch operations lieutenant to review a random body-worn camera segment submitted by an officer under his or her span of control during each tour of duty. *See* S03-14(VI)(D)(3). The watch operations lieutenant is then required to determine whether the officer is within policy, including whether the officer activated his or her camera under the terms of the directive. This component of the policy provides an opportunity for training, troubleshooting, or potential discipline with an individual officer. It further helps district command staff identify patterns or overall noncompliance with the policy among a unit or district.

The enhanced capabilities will streamline the review process to help ensure that a watch operations lieutenant reviews a body-worn camera video segment each tour of duty, and that the officers under their span of control are selected for review on a truly random basis under the computer algorithm. The randomized process will further serve to ensure that all officers within a unit and district are selected at a similar rate, and ultimately give each officer the opportunity for body-worn camera compliance review by a supervisor.

Additionally, CPD has added a data review metric to CompStat which evaluates whether watch operations lieutenants are completing the random body-worn camera review. Adding an additional layer of oversight to compliance with this portion of the body-worn camera policy should aid the Department in meeting its objectives.

- Indicators of Activation Rates: An additional component of the *Axon Performance* software allows CPD command staff to review the body-worn camera activation rates of individual officers. The software is specific in its reach, and can indicate whether a CPD member was dispatched to an event that would likely require body-worn camera activation, but the CPD member did not activate or delayed activation of his or her camera. Additionally, command staff can assess the overall activation rate of the officer to assess more general compliance when responding to law enforcement activities.

Like the watch operations lieutenant random video review process, this function can serve to provide opportunities for training and troubleshooting with individual officers, or identify situations or patterns of noncompliance in which progressive discipline is appropriate.

- Impose Progressive Discipline for Noncompliance: CPD first acknowledges that there is currently

pending litigation before the Illinois Labor Relations Board related to officer discipline for misuse or loss of body-worn cameras under the policy. *See Fraternal Order of Police Lodge 7 v. City of Chicago*, L-CA-17-037. However, CPD plans to follow its obligations under the Consent Decree, and impose progressive discipline, training, or other remedial action on CPD members who do not comply with the body-worn camera policy, as permitted by law. *See State of Illinois v. City of Chicago*, Case No. 17-cv-6260, ¶239. Any discipline, training, or other remedial action imposed due to failure to activate or insubordination in violation of the body-worn camera policy is subject to the result of any current or future litigation before the Illinois Labor Relations Board or other court of law.

Finally, CPD reiterates that implementation of all of the policies and technologies described above are subject to review and legal obligations under the Consent Decree, applicable collective bargaining agreement provisions, or the result of litigation or applicable court order.

Thank you for your time and attention to this matter. Please feel free to contact the Legal Affairs Section with any additional questions or considerations.

Sincerely,



Dana O'Malley
General Counsel
Office of the Superintendent
Chicago Police Department