Admin Minnesota
DEPARTMENT OF ADMINISTRATION

Information Policy Analysis Division

Peace Officer Body-Worn Camera Data

The new peace officer body-worn camera ("body cam") law amends portions of Minnesota Statutes, section 13.82 and creates new sections 13.825 and 626.8473.

The following highlights the major classifications and other requirements in the new law.

Body Cam Data Classification and Retention

- Body cam data are generally private/nonpublic, except when the data is active criminal investigative data. (§ 13.825, subd. 2(a)(3))
- Active criminal investigative body cam data are confidential/protected nonpublic. (§ 13.825, subd. 2(a)(3); § 13.82, subd. 7)
- Body cam data that are not active or inactive criminal investigative data must be retained for at least 90 days. (§ 13.825, subd. 3)
- After an investigation is complete, body cam data are public if they document an incident where an officer discharges a weapon in the course of duty (not including training or killing an animal) and the data must be retained for at least one year. (§ 13.825, subd. 2, 3)
- After an investigation is complete, body cam data are public if the recording documents the use of force by a peace officer that results in substantial bodily harm and the data must be retained for at least one year. (§ 13.825, subd. 2, 3)
- Body cam data that are public personnel data under § 13.43, subd. 2 remain public. (§ 13.825, subd. 2(a)(4))
- Whether law enforcement used a body cam (or any portable recording system) is public in the context of arrest data (§ 13.82, subd. 2) and response or incident data. (§ 13.82, subd. 6)
- Law enforcement agencies may release any private/nonpublic body cam data to the public to aid law enforcement, promote public safety, or dispel rumor or unrest. (§ 13.82, subd. 15)

Body Cam Data Subjects

- Subjects of the data (i.e. the person(s) recorded in the footage), including peace officers, have access to the private/nonpublic data and may request to have the data made public. (§ 13.825, subd. 2(a)(2))
- Publicly-released data must have redacted identities of non-consenting data subjects and undercover officers. (§ 13.825, subd. 2(a)(2); subd. 4)

Data Sharing

Section 13.825 limits the sharing of not public body cam data between law enforcement agencies (§ 13.825, subd. 8) and requires agencies that use body cams to arrange for an independent, biennial audit to ensure compliance (§ 13.825, subd. 9).

Public Comment

Section 626.8473 requires a law enforcement agency to allow for public comment and to create written policies and procedures before it purchases body cams or implements a body cam program. Such policies and procedures must be in place by January 15, 2017.

Audits

The new law requires the Legislative Auditor to review compliance with the requirements in sections 13.825 and 626.8473 and submit the results to the legislature by January 15, 2020.

Frequently Asked Questions

1. Do the same classifications and requirements in the new body cam law apply to other video that law enforcement agencies may maintain, such as squad camera video?

   NO. THE NEW BODY CAM DATA LAW ONLY APPLIES TO AGENCIES THAT MAINTAIN A "PORTABLE RECORDING SYSTEM" DEFINED AS: "A DEVICE WORN BY A PEACE OFFICER THAT IS CAPABLE OF BOTH VIDEO AND AUDIO RECORDING OF THE OFFICER'S ACTIVITIES AND INTERACTIONS WITH OTHERS OR COLLECTING DIGITAL MULTIMEDIA EVIDENCE AS PART OF AN INVESTIGATION." SQUAD CAM DATA ARE CLASSIFIED UNDER THE GENERAL LAW ENFORCEMENT DATA SECTION 13.82.

2. Does the public comment requirement for an agency purchasing or implementing a portable recording system apply to an agency that already has systems in place? If an agency renews a contract or switches vendors would this language apply?

   GENERALLY, A NEW LAW WILL NOT HAVE A RETROACTIVE EFFECT UNLESS THE LEGISLATURE SPECIFICALLY REQUIRES IT IN THE SESSION LAW. THERE IS NOT A RETROACTIVE EFFECT FOR THE PUBLIC COMMENT PROVISIONS, SO THE PUBLIC COMMENT LANGUAGE WILL APPLY ONLY TO AGENCIES THAT HAVE YET TO PURCHASE BODY CAMERAS OR IMPLEMENT A PROGRAM.

   HOWEVER, BECAUSE THE LANGUAGE READS "...PURCHASES OR IMPLEMENTS..." IF AN AGENCY DECIDES TO PURCHASE ALL NEW BODY CAMERAS FROM A COMPLETELY NEW VENDOR (AS OPPOSED TO JUST RENEWING A CONTRACT), IT APPEARS THAT THE PUBLIC COMMENT LANGUAGE WOULD APPLY. NEW PURCHASES OF THIS SIZE ALSO LIKELY REQUIRE GOVERNING BODY APPROVAL AND DISCUSSION AT AN OPEN MEETING. A BODY COULD INCLUDE THE PUBLIC COMMENT PERIOD AT THE SAME OPEN MEETING.

3. The law states that the identity and activities of an on-duty officer engaged in law enforcement activities may not be redacted from a body cam video. Does this include undercover officers?

   NO. THE LAW SPECIFICALLY STATES THAT UNDERCOVER OFFICERS MUST BE REDACTED IN ANY BODY CAM VIDEOS PROVIDED TO A DATA SUBJECT OR THE PUBLIC.

4. Does a body cam video, classified as private, that is presented as evidence in court remain private data?

   YES. UNLIKE GENERAL CRIMINAL INVESTIGATIVE DATA IN SECTION 13.82 THAT REVERT TO PUBLIC AFTER PRESENTATION IN COURT, BODY CAM DATA REVERT BACK TO THE CLASSIFICATIONS IN SECTION 13.825. IF

THE DATA ARE PRIVATE BEFORE PRESENTATION IN COURT, THEY REMAIN PRIVATE. AS WITH ALL PRIVATE DATA, ANY SUBJECTS OF THE BODY CAM VIDEO MAY ALWAYS ACCESS THE VIDEO.

5. Are officers allowed to view body cam video prior to writing an incident report?

   IT DEPENDS. A PROVISION REQUIRING LAW ENFORCEMENT AGENCIES TO ALLOW OFFICERS TO VIEW VIDEO PRIOR TO WRITING A REPORT DID NOT MAKE IT INTO THE FINAL VERSION OF THE LAW. BECAUSE THE LAW NEITHER REQUIRES NOR PROHIBITS IT, AGENCIES CAN INDIVIDUALLY DECIDE WHETHER TO ALLOW THIS REVIEW. ADDITIONALLY, AGENCIES MIGHT CONSIDER INCLUDING THIS DECISION IN THEIR WRITTEN POLICY.

6. Must an officer request an individual's consent to record prior to entering into a private home?

   IT DEPENDS. THE LAW DOES NOT REQUIRE CONSENT PRIOR TO RECORDING IN A PRIVATE HOME. HOWEVER, THE LAW ENFORCEMENT AGENCY'S REQUIRED WRITTEN POLICY MUST INCLUDE CIRCUMSTANCES WHEN A DATA SUBJECT MUST BE GIVEN NOTICE OF A RECORDING. THE POLICY MUST ALSO INCLUDE CIRCUMSTANCES WHEN RECORDING IS MANDATORY, PROHIBITED, OR AT THE DISCRETION OF THE OFFICER AND CIRCUMSTANCES WHEN A RECORDING MAY BE ENDED WHILE AN INVESTIGATION, RESPONSE, OR INCIDENT IS ONGOING.

7. If I request to see body cam data and my request is denied, what can I do?

   THE NEW LAW SETS OUT A PROCESS IN SECTION 13.825, SUBD. 2(D) THAT ALLOWS ANY PERSON TO CHALLENGE A DETERMINATION ABOUT BODY CAM DATA ACCESS. THE COURT MAY ORDER THAT ALL OR PART OF THE DATA BE RELEASED TO THE PUBLIC OR TO THE PERSON BRINGING AN ACTION.

   A REQUESTER CAN ALWAYS ALSO CONTACT IPAD FOR ANY DATA REQUEST ASSISTANCE.