

## **MINNESOTA COALITION ON GOVERNMENT INFORMATION (MNCOGI)**

### **Written Testimony related to the Draft Saint Paul Body-Worn Camera Policy**

Matt Ehling - Chair, Legislative Issues Committee, MNCOGI

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#### **Background**

MNCOGI is an all-volunteer, non-partisan, non-profit organization that focuses on government information policy issues. MNCOGI advocates for policies that foster government transparency and accountability.

MNCOGI was closely involved in the debate and discussion surrounding the body camera regulations passed by the Minnesota Legislature earlier this year.

#### **Executive Summary**

1) St. Paul's BWC policy should follow the City of Maplewood's draft BWC proposal to permit the release of body camera data to any person designated by a "data subject"; 2) St. Paul's BWC policy should be modified so that Section 7 clarifies when recording is permitted or prohibited during police-citizen encounters in private residences; 3) St. Paul's BWC policy should follow Maplewood's draft BWC policy in documenting employee access to body camera data.

#### **Data Issues**

MNCOGI makes the following observations regarding Maplewood's draft BWC policy:

##### *Access to data*

St. Paul should modify Section 15 of its draft BWC policy to add language that mirrors a portion of the City of Maplewood's draft body camera policy. Maplewood's draft policy would ensure that "private" body camera video is available to the subject of the data (the person whose image is present on a body camera recording), as well as to any other person or entity designated by the data subject. In the "Access to BWC Data" section of Maplewood's BWC policy, Part G states that:

"It shall be the policy of this department to freely provide BWC data to any individual, group, or entity representing the BWC data subject upon receipt of a notarized request from the data subject for the BWC footage."

MNCOGI notes that such language is consistent with the text of the Minnesota Government Data Practices Act (MGDPA). Minn. Stat. 13.05 Subd. 4(d) reads, in part:

"Private data may be used by and disseminated to any person or entity if the individual subject or subjects of the data have given their informed consent."

Providing data in such a manner serves a positive policy purpose by granting citizens broad control over how to obtain and disseminate government data of which they are a subject.

#### *Logging employee access to BWC data*

Due to past controversies over unauthorized access to private government data (including incidents involving the DNR and some local law enforcement agencies), the Minnesota Legislature has taken several steps to improve data access protocols and breach reporting requirements. For instance, in automated license plate reader (ALPR) legislation passed in 2015, the legislature required that access to ALPR data include a "data audit trail" to log "all actions in which data are entered, updated, access, shared, or disseminated."

While the body camera legislation passed earlier this year did not require such documentation, the creation of an audit log is a "best practice" to help detect patterns of unauthorized access. Maplewood's draft body camera policy (part F of the draft policy) requires departmental personnel to document "their reasons for accessing stored BWC data within the database at the time of each access." The requirement to create such documentation will help the department in any audits of whether unauthorized access may have occurred.

Saint Paul should follow Maplewood's lead, and modify Section 16 to require that officers document who is accessing BWC data, the times at which it is accessed, as well as the reasons for access. This would involve broadening the request documentation language that now appears in Section 16(I) of St. Paul's draft policy.

### **Recording/Notice Issues**

#### *Recording Prohibited*

Police-worn body cameras have transparency impacts (such as providing documentation of government conduct), as well as privacy impacts. The privacy impacts stem from the fact that the cameras are small, light, and can enter into situations that were generally not subject to recording prior to the advent of BWC technology.

The topic of BWC recordings in private residences was much discussed during the legislative debate over body camera regulation. Concerns were raised by legislators and members of the public alike about whether law enforcement officers should be limited in

their ability to collect body camera footage inside domiciles - places that have traditionally been granted the highest level of privacy protection under the American legal system.

The legislature was unable to come to agreement on whether to regulate the use of body cameras in private domiciles. However, this issue was effectively deferred and left for review by municipal officials during the creation and approval of BWC policies. In its body camera legislation, the Minnesota Legislature required BWC policies to address "circumstances under which recording is mandatory, prohibited, or at the discretion of the officer using the system."

Section 7 of St. Paul's draft BWC policy states that recording is prohibited in:

"Any location where a reasonable expectation of privacy exists, such as a bathroom or locker room, unless responding to or encountering resistance or aggression or necessary for a law enforcement investigation."

MNCOGI notes that private homes are locations where a "reasonable expectation of privacy exists" under both the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution. MNCOGI would suggest that St. Paul's BWC policy should explicitly acknowledge that for the sake of clarity. MNCOGI suggests the following modifications:

Language in Section 7 (C) should be altered by adding another paragraph before the existing fifth paragraph that states:

"Within private domiciles, unless police have a warrant, or exigent circumstances are present."

This language would restrict recording in private domiciles, but would also recognize circumstances in which officers may use body cameras on their own volition - such as during warrant service or emergency (exigent) circumstances. Adding this language would protect citizen privacy during the many consensual police encounters that occur in private homes (welfare checks, police accompanying medical professionals, etc.) while allowing police body camera use within traditional legal contexts (such as warrant service and exigent circumstances).

After that change, the existing sixth paragraph could then be altered to read,

"At other locations where a reasonable expectation of privacy exists, such

as a bathroom, locker room, unless responding to or encountering resistance or aggression or necessary for a law enforcement investigation.”