IMLA

Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

JAN FEB 2022 VOL.63 NO.01

BIAS AND PREJUDGMENT IN THE QUASI-JUDICIAL DECISION-MAKING PROCESS

THE PUBLIC RELEASE OF BODY CAMERA VIDEOS

PUBLIC NUISANCE: MUNICIPALITIES AND THE COMMON GOOD



OFFICERS
President
Barbara A. Adams
General Counsel
Illinois Local Government Lawyers Association

President Elect
Lori Grigg Bluhm
City Attorney
Troy, Michigan

Immediate Past President
Tyrone E. Cooper
City Attorney
Beaumont, Texas

Treasurer
Rose Humway-Warmuth
City Solicitor
Wheeling, West Virginia

General Counsel and Executive Director
Amanda Karras
IMLA, Rockville, Maryland

BOARD OF DIRECTORS
Christopher Balch
City Attorney
Brookhaven, Georgia

Shauna Billingsley
City Attorney
Franklin, Tennessee

Alan Bojorquez
City Attorney
Bostrop, Texas

Beth Anne Childs
Town Attorney
Bristow, Oklahoma

Diana Cortes
City Solicitor
Philadelphia, Pennsylvania

Bradford Cunningham
Municipal Attorney
Lexington, South Carolina

Jeffrey Dana
City Solicitor
Providence, Rhode Island

Arthur Gutekunst
Sr. Assistant Corporation Counsel
White Plains, New York

Nina R. Hickson
City Attorney
Atlanta, Georgia

Lori Lein
General Counsel
Alabama League of Municipalities

Wynetta Massey
City Attorney
Colorado Springs, Colorado

Gregory Priamos
County Counsel
Riverside County, California

Bryan Scott
City Attorney
Las Vegas, Nevada

Todd Sheeran
City Attorney
Bluffdale, Utah

Jennie Granahan Tarr
Chief Assistant County Attorney
Hillsborough County Hospital Authority

Nancy Thompson
City Counselor
Columbia, Missouri

Randall Van Vleck
Town Attorney
Kirtland, New Mexico

Wendy Walberg
City Solicitor
Toronto, Ontario

Byron Werry
City Solicitor
Regina, Saskatchewan

Susana Alcala Wood
City Attorney
Sacramento, California

CONTENTS

JANUARY / FEBRUARY 2022

THE PUBLIC RELEASE OF BODY CAMERA VIDEOS
By: Hilary Ruley, Chief Solicitor, Baltimore City Law Department, Baltimore, Maryland
There is virtually unanimous agreement across the nation about the benefits of police body cams. But there is far less consensus as to who can access the resulting images, which images may be accessed, and how they can be utilized. The author provides a 50-state analysis.
PAGE 6



BIAS AND PREJUDGMENT IN THE QUASI-JUDICIAL DECISION-MAKING PROCESS
By: Paul D. Reuvers, Partner, Iverson Reuvers Law Firm, Bloomington, Minnesota
Municipal officers often exercise quasi-judicial authority, particularly in the context of land use. Given their close connection to the community, they must avoid the potential for self-interest or bias, whether in hearings, city council meetings, or commission votes.
PAGE 10

PUBLIC NUISANCE: MUNICIPALITIES AND THE COMMON GOOD
By: Erich Eiselt, IMLA Assistant General Counsel and Director of Affirmative Litigation, Rockville, Maryland
Long limited to redressing injury which arises from property or illegal activity, public nuisance has increasingly been asserted by local governments to rectify a wider range of harm to the common good.
PAGE 16

DEPARTMENTS

26 DIVERSITY
Contracting in a New World Requires New Tools
By: Rita McNeil Danish, Partner, Taft, Stettinius & Hollister, LLP, Columbus, Ohio, and Jarrod D. Blue, Strategic Partnership Agreements Administrator, Oak Ridge National Laboratory, Knoxville, Tennessee
Towards more inclusive public contracting.

30 LISTSERV
Let's Take Care of Ourselves So We Can Take Care of Others
By: Brad Cunningham, Municipal Attorney, Lexington, South Carolina and IMLA Board Member
Facing up to the realities of mental illness.

32 INSIDE CANADA
Impound Fees, Unplugged Cellphones, Inhospitable Stadiums, and More
By: Monica Ciriello, Ontario 2015
Recent cases of interest.

34 AMICUS
Section 1983 Petitions of Interest
By: Amanda Karras, IMLA Executive Director and General Counsel
Seeking certiorari in a duo of Ninth Circuit cases.

STAFF

EXECUTIVE EDITOR Amanda Karras
EDITOR Erich R. Eiselt
EDITORIAL STAFF Deanna Shahnami
ART DIRECTION AND PRODUCTION Trujillo Design
MARKETING Caroline Storer

Views appearing in Municipal Lawyer are those of the author. Publication of articles in this magazine does not reflect a direct or implied endorsement of an author's views. © Copyright 2022 by the International Municipal Lawyers Association (IMLA). All rights reserved. IMLA is a non-profit professional association of municipal lawyers from across the United States and Canada. It offers its members continuing legal education courses, research services, litigation assistance on amicus briefs and an information-sharing network in the field of municipal law. Municipal Lawyer is IMLA's membership magazine. It is published bi-monthly. Views expressed by authors and contributors are not necessarily the views of IMLA. For membership information contact: IMLA, 51 Monroe Street, Suite 404, Rockville, Maryland 20850, phone: (202) 466-5424, or e-mail: info@imla.org. Contributions of articles are welcome. Municipal Lawyer reserves the right to refuse or edit manuscripts submitted for publication.

The Public Release of Body Camera Videos

HILARY RULEY
Chief Solicitor, Baltimore City Law Department, Baltimore, Maryland



I. INTRODUCTION

Despite the near consensus in the United States that body cameras are beneficial, there are a myriad of ways that states respond to public information act requests seeking body camera videos. Some states treat body camera videos as any other investigatory record, while others have elaborate lists of required redactions. Still others mandate disclosure of the footage with few exceptions. Several states have considered legislation to amend their public information laws to address footage from body cameras, but the bills have failed to pass.[1] This article discusses the varying policies around the nation regarding release of body camera footage.

Investigatory Records

The Federal government and fifteen states classify body camera videos like any other investigatory record requested by the public. However, not all of these jurisdictions handle requests for investigatory records similarly. A few states provide almost a complete bar to access investigatory records in response to public record requests. In Mississippi, investigatory records are not subject to disclosure in response to such requests.[2] However, law enforcement can unilaterally decide to disclose the records and anyone can petition the state's ethics board for the records' release. In West Virginia, all investigatory records are exempt from disclosure, with no exceptions.[3] In Kansas, the subject of the investigatory record can view it but otherwise the record is not able to be disclosed in response to a record request.[4]

In contrast, most states that place body camera videos within the category of investigatory record take the approach that each investigatory record should be evaluated to determine if release would interfere with an investigation.[5] The emphasis is not on the content of the video but the consequences of release on the government's ability to investigate or prosecute. The federal government's treatment of investigatory records is rooted in the common law protections for law enforcement:

> It serves to preserve the integrity of law enforcement techniques and confidential sources, protects witnesses and law enforcement personnel, safeguards the privacy of individuals under investigation, and prevents interference with investigations.[6]

Most every state that categorizes body camera videos as a type of investigatory record highlights the importance of keeping sources or techniques confidential.[7] Maryland and New York also specify that investigatory records need not be disclosed when release would endanger someone or create an unwarranted invasion of privacy.[8] A few states also allow withholding of investigatory records when law enforcement would be endangered by the release.[9] New Mexico allows the government to deny access to investigatory records when disclosure would reveal the identity of victims of sexual crimes or assaults or the identity of someone accused of a crime, but not yet charged.[10] Louisiana allows the withholding of any investigatory record when the identity of a juvenile may be revealed.[11] Idaho's Supreme Court explained that its investigatory exemption was "intended to prevent premature disclosure of the government's case, 'thus enabling suspected violators to construct defenses in response thereto, enabling litigants

to discern the identity of prospective government witnesses, as well as confidential information, or the nature of the government's evidence and strategy, and exposing affiants and potential witnesses to intimidation or harassment.'"[12]

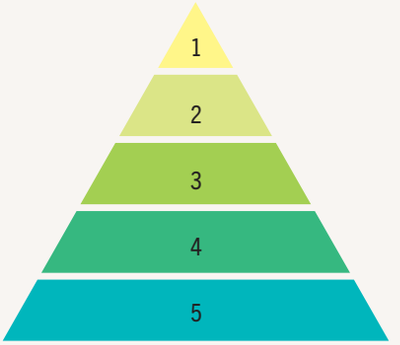
In these jurisdictions, it is crucial for government lawyers to articulate reasonable anticipated consequences of disclosure. In a New York case, a court held that "respondents have failed to demonstrate that the public's interest in disclosure of the audio footage is outweighed by the speculative safety concerns raised by NYPD. Indeed, this exception may not be applied simply because there is speculation that harm may result."[13] In a more recent case, a New York court similarly held that "NYPD's assertions in response to the FOIL request that disclosure would interfere with an ongoing internal investigation into the incident, which was being conducted by the Force Investigation Division at the time, was conclusory in the absence of any factual showing as to how disclosure would have interfered with that investigation."[14] Although NYPD did not provide concrete evidence of the harm to the investigations that those disclosures would cause, the New York statute provided a framework for the court to weigh harms against benefits.

If state law does not provide a balancing test, courts generally refuse to evaluate the harms of disclosure.[15] In Vermont, records of the detection and investigation of crimes are exempt from disclosure, but records of an initial arrest or citation are required to be disclosed.[16] In one case, a man was detained in his home with pepper spray but never officially arrested. A reporter requested the body camera video of the encounter and the government denied the request, arguing the harms of disclosure weighed against release of the record. The court held that the video was a government record of a detention and had to be disclosed under Vermont's statutory framework. The court was pained to be unable to consider the result of the disclosure:

> [M]any other states are guided by statutory criteria that provide police and courts with a far better and more defined framework in making decisions about disclosure of this type of record. The majority of our New England neighbors have adopted an open records rule of reason permitting public access to investigative records absent identifiable harm in disclosure. We leave that issue to the Legislature.[17]

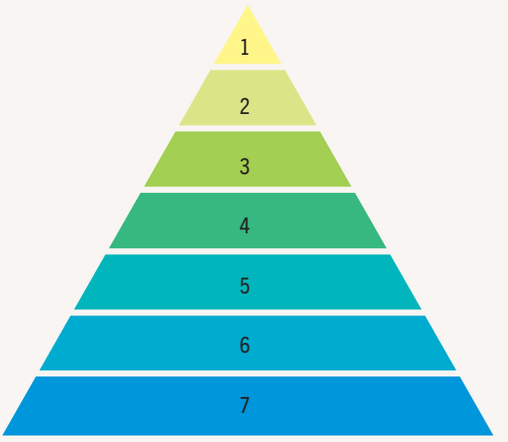
In record requests, lawyers cannot expect courts to enshrine privacy rights or protect investigations without a state law that permits a balancing of harms and benefits.

No Default Rule, But Enumerated Permissible Disclosures



1 To anyone filmed in interior location (FL)
1 To family after 10 years (LA)
1 To anyone with conditions if "reasonably likely to bring shame or humiliation to a person of ordinary sensibilities" (MO)
1 Encounter resulting in felony (NH)
1 At law enforcement's sole discretion (TX)
1 Complaint against law enforcement (WY)
1 Public safety requires disclosure (WY}
2 To owner of property seen in video (FL, MI)
2 Use of firearm (IL, NH) Bodily harm (IL, WY)
2 Any death (IL, WY) Death of law enforcement (AK, IL)
3 To law enforcement officer (CT, FL, WY); Arrest or detention (IL, KY, NH)
4 Use of force (IL, KY, MN, NH)
5 Person in interest or her representative: (FL, IL, MI, NC, WA, MN)

No Default Rule, But Enumerated Exemptions



1 Interior of private business (OH)
1 Suicide (CT)
1 Grievous bodily harm (OH)
1 Nude body (OH)
1 Inside jail (KY)
1 Inside school (MO)
1 Officer on break or personal (CT)
1 Footage of misdemeanor no arrest (TX)
1 Discussion between officers (CT)
1 ID a victim (PA)
1 Special event: hostage, training (KY)
1 ID a mass violence victim (FL)
1 ID someone not arrested or cited (OH)
1 Cannot disclose to police in some situations (AZ)
1 Use in misconduct investigation or reveal complainant (WA)
1 Violate FERPA (KY)
1 Violate CJS (KY)
1 Deprive of a fair trail (MI)
1 Related to civil action (MI)
1 Crime scene (ND)
2 Law enforcement officer dies (FL, OH)
2 Potential evidence in criminal case (PA, TX)
2 Interfere with law enforcement (MI, WA)
2 Disclose law enforcement technique (CT,
2 Endanger someone (MI, MO)
3. Unwarranted invasion of privacy (OH, MI, WI), Homicide (CT, KY, ND), Private place (FL, MI, TX)
4. Dead Body (KY, OH, WA, CT)
5: Reveal witness or confidential source (KY, MI, OH,CT, MO)
6: Sexual nature (KY, ND, OH, TN, CO, CT) Minor (KY, ND, OH, TN, CO, CT)
7. Inside Home (FL, KY, MO, TN, UT, WA, MI, ND,) or Medical Facility (FL, KY, MO, TN, UT, WA, OH, CT)

States with Default Rules

Many state legislatures have recognized that body camera videos require unique considerations that are not served by treating them as any other investigatory record. These

Continued on page 8

Body Camera *cont'd from page 7*

states have adopted laws specific to the release of body camera videos in response to record requests. These statutes fall into two broad camps: with and without a default rule. A default rule exists when the state enshrines an overarching policy statement that disclosure is or is not the general goal. Some states have the default rule of always releasing the body camera videos in response to a public information request, but with some exemptions to that preferred disclosure. Other states have adopted the opposite default rule with a policy to never disclose the body camera video in response to a public information request except in certain narrow situations where release or viewing is permitted. In contrast, many states have no default policy, instead listing only mandatory or permissive disclosures or mandatory or permissive exemptions from disclosure. Finally, some states articulate a balancing test to evaluate each request to disclose the body camera video on a case by case basis.

Four states—California, Oklahoma, Wisconsin and Kentucky— have a default rule that favors disclosure of the body camera video, with some exceptions.[18] Body camera footage in Wisconsin is subject to disclosure unless it depicts a place where someone has a reasonable expectation of privacy, or it shows a victim of a sensitive or violent crime or a minor, in which case disclosure occurs only if the person or next of kin consents, or if the government can show that public interest in allowing access is so great as to overcome these privacy interests.[19] California allows, but does not require, shielding the face, voice and body parts of victims of rape, sexual assault, child abuse, incest or domestic violence.[20] California's law places the onus on the government to show "the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording."[21]



[A] vast number of states have no default rules at all when body camera videos are sought in record requests, preferring instead to simply list mandatory or permissive non-disclosures. Collectively, these states have more than thirty different distinct situations when access to the body camera videos can be denied.



Oklahoma, although adopting the default rule of disclosure in response to a public records request for a body camera video, has the most complex list of situations when disclosure is required and when it is prohibited.[22] Redactions may be made where the footage shows the death of a person, nudity, severe violence resulting in great bodily injury, reveals personal information, or identifies a minor, or a law enforcement officer that is subject to internal investigation but then the video must be released after the investigation is over or before conclusion "if the investigation lasts for an unreasonable amount of time."[23] Subject to these exceptions, footage shall be released that depicts the use of physical force or violence by a law enforcement officer, pursuits or traffic stops, events leading to a person being arrested, cited, charged or issued a written warning, as well as any detentions, exercise of law enforcement authority that deprives a citizen of liberty or any actions of a law enforcement officer that have become the cause of an investigation or charges being filed; or "recordings in the public interest that may materially aid a determination of whether law enforcement officers are appropriately performing their duties as public servants."[24] In one case, an Oklahoma court ruled that its state records disclosure law, while allowing for redaction or withholding of videos concerning sexual crimes, did not give the victim a statutory right to privacy when the police department released a video of her alleged rape, which was later broadcast on television.[25]

Other states follow a default rule of non-disclosure of the body camera video, with some exceptions permitting limited viewing or release.[26] In Georgia, body camera videos are only subject to disclosure in response to record requests from next of kin, those accused in a criminal case or an attorney who signs a sworn affidavit that she will use it to pursue a civil case.[27] Similarly, in South Carolina, record requests for body camera videos are denied except to subjects of the videos or when needed for litigation.[28] In Oregon, body camera videos are only released in response to record requests if the requestor can show that release is in the public interest, but all faces must be blurred.[29]

States without Default Rules

In contrast, a vast number of states have no default rules at all when body camera videos are sought in record requests, preferring instead to simply list mandatory or permissive non-disclosures. Collectively, these states have more than thirty different distinct situations when access to the body camera videos can be denied. Most frequently among these is when

the body camera video depicts a home[30] or hospital setting.[31] Six states allow the government to prevent disclosure of body camera videos of a sexual nature[32] or when it depicts a minor.[33] Five states permit non-disclosure of the body camera video when it would reveal a witness or confidential source.[34] Four states allow non-disclosure when the video shows a dead body.[35] A smaller number of states allow the body camera videos to be withheld or redacted when they show a homicide[36] or when release would be an unwarranted invasion of personal privacy[37] or other locations where people may have an expectation of privacy.[38] These nine situations, out of the more than thirty, are the only ones that have at least three states enumerating them as exemptions to disclosure of body camera videos in response to records requests. The remaining statutory exemptions to disclosure have been enacted by less than three states, reflecting the lack of national consensus about which scenes in police body camera videos should be shielded from public view. This includes everything from not showing the interiors of businesses,[39] schools,[40] and jails,[41] to preventing the release of footage that shows a crime scene,[42] a hostage situation,[43] pictures of a suicide,[44] a misdemeanor where no arrest was made,[45] a nude body,[46] grievous bodily harm,[47] a situation where an officer died,[48] a discussion between officers,[49]or an officer on a break.[50] There are also states that permit withholding of body camera videos where the release would interfere with law enforcement proceedings,[51] disclose a law enforcement technique,[52] deprive someone of a fair trial,[53] endanger someone,[54] identify a victim[55] or a victim of mass violence,[56] identify someone not cited or arrested,[57] disclose evidence in a criminal case,[58] or if the footage is related to a civil matter.[59] Some states prevent disclosure when the footage shows a training exercise,[60] when it would reveal a complainant,[61] or would violate the Federal Education Rights Privacy Act or other federal laws.[62] Arizona even prevents disclosure to the police in certain situations.[63]

A smaller number of state statutes enumerate situations when body camera videos may or should be released in response to public record requests. This includes some states that also have lists of required or permissible non-disclosures. There are approximately seven states that permit disclosure of body camera videos to the person depicted in the video or her representative.[64] Several states also allow disclosure of body camera videos when there is a police use of force.[65] A few state statutes authorize disclosure to law enforcement[66] or when the videos show an arrest or detention.[67] There are less common situations where state legislatures have permitted or required body camera video disclosure in response to record requests: to the owner of the property seen in the video,[68] when there is use of a firearm,[69] depictions of bodily harm,[70] death in general[71] or death of a law enforcement officer,[72] an encounter resulting in a felony,[73] to anyone in a video of an interior location,[74] to the family of the person depicted after ten years have passed,[75] when there is a complaint against a law enforcement officer,[76] when public safety requires disclosure,[77] or at the law enforcement officer's discretion.[78]

Interestingly, some states' enumerated exemptions to disclosure are other states' permissible disclosures. For example, redactions must be made to shield the part of a body camera video showing the death of a law enforcement officer in Florida and Ohio, but it is permissible to release such footage in Arkansas and Illinois. Even when state legislatures articulate specifics, there is still a need to apply the statute to the facts. The appellate court in Washington state held that footage of the inside of a jail would reveal "specific intelligence information" that prevented its disclosure under the Washington open records statute, but footage of a college campus would not reveal any such information and could therefore be disclosed.[79] In Missouri, the government may put conditions on release when disclosure is "reasonably likely to bring shame or humiliation to a person of ordinary sensibilities,"[80] an analysis that is inherently subjective.

Situational analyses are the bread and butter of the seven states[81] that have no default rules, but instead mandate a case by case balancing test to evaluate body camera video release in response to record requests. In Indiana, disclosure is disfavored if it "would not serve the public interest."[82] In New Jersey, the local or state prosecutor is tasked with determining if "disclosure to that particular person/entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality."[83] In North Carolina, the government must consider whether the video is "confidential," would jeopardize safety, or be "a serious threat to the fair, impartial, and orderly administration of justice."[84] The governing Council of Greensboro, North Carolina filed a court petition requesting to view body camera footage of a police incident.[85] The court granted the right

Continued on page 24



Hilary Ruley is Chief City Solicitor for Baltimore City. She has been in the General Counsel Division of the City's Law Department for over fifteen years, advising agencies, reviewing city and state legislation and overseeing responses to Public Information Act requests. She was previously a litigator in private practice for several years and clerked for the Honorable Judge James Eyler on the Maryland Court of Special Appeals. She obtained her J.D. and B.S. degrees from the University of Notre Dame and is licensed to practice law in Maryland and the District of Columbia. She is the recipient of the Maryland Bar Association's 2007 Alex Fee Memorial Pro Bono Service award and and IMLA's 2014 William I. Thorton, Jr. Faculty Award.

Body Cams *cont'd from page 9*

but prevented the councilmembers from discussing the video publicly, permitting discussions about the video only amongst themselves for the sole purpose of their work. The appellate court upheld the decision, reasoning that a "gag order does not violate the City's First Amendment rights because the gag order only restricts the council's speech about matters that the council, otherwise, had no right to discover except by the grace of the legislature through a judicial order."[86]

Although states apply many different policies regarding public record requests for body camera videos, almost all jurisdictions require redaction of the videos in certain instances. In fact, redaction is such an obvious requirement for body camera videos that governments should expect to procure appropriate redaction software. A New York court explained five years ago that "the NYPD cannot intentionally fail to update its technology during the procurement process for the BWC program and simultaneously rely on outdated software as the reason to deny a FOIL request."[87] The court went on to hold that "the NYPD may not pass the costs associated with reviewing or redacting the footage requested onto petitioner."[88] The court's decision reflects the obvious fact that redaction and production of NYPD body camera footage is routine and costs should be borne collectively by tax payer not the requestor. This is true not only in big cities but in relatively smaller ones like Jackson, Arkansas where a court held that the government could not charge a deposit fee before producing a body camera video.[89]

Redaction is generally regarded as a process rather than the creation of a new record, which most state record disclosure statutes do not require. This is true even though the video is not static and redacting can be more complex. The California Supreme Court explained that for body camera video "to delete the exempt data, Perez separated the audio and visual material, spliced out the exempt data from each set of material, and then saved the redacted video as a new MP4. But in video-editing terms, what Perez did was not substantively different from using an electronic tool to draw black boxes over exempt material contained in a document in electronic format."[90] In short, what the government did "was simply perform redactions of an otherwise producible record, albeit through technologically more advanced means."[91] When redaction is not possible, states do allow viewing the video rather than denying access completely.[92]

Litigation Considerations

Courts are increasingly familiar with body camera videos mostly from their increasing use as evidence. An Indiana court ruled that a statement heard on a body camera video which implicated another person in a crime was not admissible under the recorded recollection exemption to the hearsay rule but was admissible under the excited utterance exception.[93] In another context, federal courts are grappling with how to treat body camera videos in motions to dismiss. Last year, a North Carolina court was asked to consider body camera video in deciding a motion to dismiss.[94] The video captured the entire set of relevant facts in the tragic death of a paranoid schizophrenic who had been wandering the streets at night. Police caught him and with paramedics looking on, handcuffed and hog-tied him so tightly that he could not breathe. After two minutes in that condition, the paramedics put him on a gurney, he was unresponsive, unconscious and could not be revived. Despite its probative value, the court held that the body camera footage was not relevant in a 12(b)(6) motion because it was outside of the pleadings. There are two exceptions to that rule: one for documents intrinsic to a complaint and the other for information of which the court could take judicial notice. However, the court reasoned that neither exemption applied. The reference to the camera footage in the complaint did not make a document upon which the complaint was based. Nor was it a public document even though North Carolina law allowed it to be posted on a government website. In contrast, a federal judge in Connecticut reasoned that he "may rely on the police body camera videos (Defs.' Ex. K) for purposes of this motion to dismiss because Boudreau has incorporated them by reference in his amended complaint."[95]

Once the body camera footage is in the Court record, it is likely open to the public without the need to submit a public records request. In 2018, an Iowa Court explained that video submitted to the court was no longer subject to the confidentiality provisions in Iowa's public records law but rather was to be categorized as "judicial records belonging to the Court."[96] The federal common law right to access judicial record preempted the state record disclosure law, making the video that state law would otherwise shield open for public viewing.[97]

Preemption, as well as the rules of hearsay and civil procedure, provide some jurisprudential guideposts for court decisions about body camera footage. In civil and criminal cases, video footage can be treated like other court records and evidence. This gives government lawyers a pool of existing law to reference in providing advice to clients and formulating arguments in litigation concerning how to use the body camera footage. However, no such road map exists for the government lawyer seeking to navigate the very nascent subject of body camera footage sought pursuant to state record request laws. Even when state laws detail the process or considerations that must be employed in responding to requests for body camera footage, the government lawyer is often using her best guess as to how a court may apply the statutory factors to the video, given that since there is scant precedent. If the jurisdiction in which a lawyer practices has not yet addressed a particular subject depicted in a body camera video, analogies can be made to the handling of similar footage in other states. However, lawyers should determine if the comparison state treats body camera videos as generally subject to disclosure with a

few exemptions, generally unable to be disclosed with a few permissible releases, or has no default rule as this will inform the judicial analysis. Lawyers must remember that some states' enumerated exemptions to disclosure are other states' permissible disclosures. A case cited for the proposition that a particular subject matter should not be disclosed to the public could be countered by opposing counsel with a case from a different jurisdiction arguing for the opposite policy. This underscores that the country is far from coalescing around a uniform body camera video disclosure paradigm.

Practice Pointers

As the foregoing suggests, courts appear reluctant to recognize privacy rights or government interests where the state legislature has not provided for those concerns in the records request statute. In states where some video content is addressed in the statutory scheme, it may be better for lawyers to argue why the novel scenes in the footage at issue are similar to the content already covered in the law. If lawyers practice in jurisdictions where there is a default rule, an argument for how the court should treat a request for body camera footage that is not enumerated within the state statute would be to explain how the default rule could apply to reach the outcome sought. Alternatively, if lawyers are in a state where body camera records are treated like investigatory records, a successful approach might be to analogize the video footage to similar paper records containing information on the same type of police encounter. Emphasis should be placed on the likely consequences of disclosure of the video to ongoing investigations.

Finally, it is important for government lawyers to encourage clients to purchase easy to use software for redaction of body camera footage if that tool is not already available. The ability for the public to view body camera footage remains a developing area of public information statutes across the country. As the laws evolve to address ever more specific situations, the need for quality, easy redaction will increase. Just as government lawyers must be familiar with their state's record laws, they should take time to be proficient with the redaction software. The need to redact and release body camera footage is here to stay.

Notes

1. 2017 Hawaii House Bill 383; Hawaii Senate Bill 331; 2017 Iowa HB 77; 2015 Iowa Senate Bill 2174; Montana 2017 House Bill 5214.
2. Miss. Code Ann. § 25-61-12(2)(a).
3. W. Va. Code § 29B-1-4(a).
4. Kan. Stat. Ann. § 45-254.
5. *See, e.g.,* Coughlin v. Lee, 946 F.2d 1152, 1160 (5th Cir. 1991); Alaska Stat. § 40.25.120; Idaho Code §74-124; La. Rev. Stat. Ann. § 44:3; Me. Rev. Stat. Ann., tit. 16, § 804, Md. Code, Gen. Prov., § 4-351; Mass. Gen. Laws, ch. 4 § 7, twenty-sixth; NY Pub. Off. § 87; R.I. Gen. Laws § 38-2-2(4)(D).
6. Tuite v. Henry, 181 F.R.D. 175, 176-77 (D. D.C. 1998).
7. La. Rev. Stat. Ann. § 44:3(A)(2); Me. Rev. Stat. Ann., tit. 16, § 804(4), Md. Code, Gen. Prov., § 4-351(b)(4)., N.M. Stat. Ann. § 14-2-1(D)(1), NY Pub. Off. § 87(2)(e)(iii).
8. Md. Code, Gen. Prov., § 4-351(b)(3), (7), NY Pub. Off. § 87(2), (b)(f).
9. Me. Rev. Stat. Ann., tit. 16, § 804(8) Md. Code, Gen. Prov., § 4-351(b)(1), (6), (7).
10. N.M. Stat. Ann. § 14-2-1(D)(2)(a), (b).
11. La. Rev. Stat. Ann. § 44:3(A)(6).
12. Wade v. Taylor, 320 P.3d 1250, 1257 (Idaho 2014).
13. NY Lawyers for the Public Interest v. NYPD, 103 N.Y.S.3d 275, 284 (N.Y. Sup. Ct. 2019).
14. Dioso Faustino Freedom of Information Law Request v. New York City, 191 A.D.3d 504, 506 (N.Y. App. Div. 2021).
15. Mercer v. SD AG, 864 N.W.2d 299, 304-06 (S.D. 2015).
16. Vt. Stat. Ann. 1 § 317(c)(5).
17. Galloway v. Town of Hartford, 57 A.3d 684, 687 (Vt. 2012).
18. Cal.Gov't Code, § 6254.4.5; 51 Okl.St.Ann. § 24A.8.A.9; Wisc. Stat. § 165.87; KRS § 61.168(2).
19. Wisc. Stat. § 165.87(3)(c).
20. Cal.Gov't Code, § 6254.4.5(b)(2).
21. Cal.Gov't Code, § 6254.4.5(a).
22. 51 Okl.St.Ann. § 24A.8.
23. 51 Okl.St.Ann. § 24A.8.A.
24. 51 Okl.St.Ann. § 24A.8.A.10.
25. Anderson v. Blake, No. 05–0729–HE, 2008 WL 2404040, *3 (W.D. Okla. June 10, 2008) (unreported).
26. Ala. Code § 12-21-3.1; Ga. Code Ann. § 50-18-72(a)(26.2); Nev. Rev. Stat. Ann. § 289.830.2; Or. Rev. Stat. Ann. § 192.345(40); S.C. Code Ann. § 23-1-240 (G)(1).
27. Ga. Code Ann. § 50-18-72(a)(26.2).
28. S.C. Code Ann. § 23-1-240 (G)(5).
29. Or. Rev. Stat. Ann. § 192.345(40)(c).
30. Fla. Stat. Ann. § 119.071(2)(l)(2)(a); Ky. Rev. Stat. Ann. § 61.168(4)(a); Mo. Ann. Stat. § 610.100.2(4); Tenn. Code Ann. § 10-7-504(u)(1)(C); Utah Code Ann. § 63G-2-302(2)(g); Wash. Rev. Code Ann. § 42.56.240(14)(a)(ii); Mich. Comp. Laws Ann. § 780.313(2); N.D. Cent. Code Ann. § 44-04-18.7.9.
31. Fla. Stat. Ann. § 119.071(2)(l)(2)(b); Ky. Rev. Stat. Ann. § 61.168(4)(b); Mo. Ann. Stat. § 610.100.2(4); Tenn. Code Ann. § 10-7-504(u)(1)(B); Utah Code Ann. § 63G-2-305(66); Wash. Rev. Code Ann. § 42.56.240(14)(a)(i); Ohio Rev. Code Ann. § 149.43(A)(17)(i); Conn. Gen. Stat. Ann. § 29-6d(g)(1)(E), (F).
32. Ky. Rev. Stat. Ann. § 61.168(4)(e); N.D. Cent. Code Ann. § 44-04-18.7.8; Ohio Rev. Code Ann. § 149.43(A)(17)(j); Tenn. Code Ann. § 10-7-504(w)(1); Colo. Rev. Stat. Ann. § 24-72-304(4); Conn. Gen. Stat. Ann. § 29-6d(g)(2)(B)(i).
33. Ky. Rev. Stat. Ann. § 61.168(4)(f); N.D. Cent. Code Ann. § 44-04-18.7.8; Ohio Rev. Code Ann. § 149.43(A)(17)(a); Tenn. Code Ann. § 10-7-504(t)(1)(E), (u)(1)(a), (aa)(1); Colo. Rev. Stat. Ann. § 24-72-304(4.5), Conn. Gen. Stat. Ann. § 29-6d(g)(2)(C).
34. Ky. Rev. Stat. Ann. § 61.168(4)(h), Mich. Comp. Laws Ann. § 780.315(1)(d); Ohio Rev. Code Ann. § 149.43(A)(17)(k); Conn. Gen. Stat. Ann. § 29-

Continued on page 38

Body Cam *cont'd from page 25*

6d(g)(1)(B); Mo. Ann. Stat. § 610.100.3.
35. Ky. Rev. Stat. Ann. § 61.168(4)(g), Ohio Rev. Code Ann. § 149.43(A)(17)(b); Wash. Rev. Code Ann. § 42.56.240(14)(a)(iv); Conn. Gen. Stat. Ann. § 29-6d(g)(2)(B)(iii).
36. Conn. Gen. Stat. Ann. § 29-6d(g)(2)(B)(ii); Ky. Rev. Stat. Ann. § 61.878(1)(q); N.D. Cent. Code Ann. § 44-04-18.7.8.
37. Ohio Rev. Code Ann. § 149.43(A)(1)(ii); Mich. Comp. Laws Ann. § 780.315(1)(c); Wis. Stat. Ann. § 165.87(3)(c).
38. Fla. Stat. Ann. § 119.071(2)(l)(2)(c); Mich. Comp. Laws Ann. §§ 780.313(2), 780.315(1)(c); Tex. Occ. Code Ann. § 1701.661(f).
39. Ohio Rev. Code Ann. § 149.43(A)(17)(q).
40. Mo. Ann. Stat. § 610.100.2(4).
41. Ky. Rev. Stat. Ann. § 61.168(4)(d).
42. N.D. Cent. Code Ann. § 44-04-18.7.8.
43. Ky. Rev. Stat. Ann. § 61.168(4)(n).
44. Conn. Gen. Stat. Ann. § 29-6d(g)(2)(B)(ii).
45. Tex. Occ. Code Ann. § 1701.661(f).
46. Ohio Rev. Code Ann. § 149.43(A)(17)(h).
47. Ohio Rev. Code Ann. § 149.43(A)(17)(f).
48. Fla. Stat. Ann. § 119.071(2)(p)(2); Ohio Rev. Code Ann. § 149.43(A)(17)(c).
49. Conn. Gen. Stat. Ann. § 29-6d(g)(1)(A).
50. Conn. Gen. Stat. Ann. § 29-6d(g)(1)(C).
51. Mich. Comp. Laws Ann. § 780.315(1)(a); Wash. Rev. Code Ann. § 42.56.240(1).
52. Mich. Comp. Laws Ann. § 780.315(1)(e); Conn. Gen. Stat. Ann. § 29-6d(g)(1)(a).
53. Mich. Comp. Laws Ann. § 780.315(1)(b).
54. Mich. Comp. Laws Ann. § 780.315(1)(f); Mo. Ann. Stat. § 610.100.3.
55. 42 Pa. Stat. and Cons. Stat. Ann. § 67A04(a).
56. Fla. Stat. Ann. § 119.071(2)(p)(2).
57. Ohio Rev. Code Ann. § 149.43(A)(17)(l).
58. 42 Pa. Stat. and Cons. Stat. Ann. § 67A04(a); Tex. Occ. Code Ann. § 1701.661(d).
59. Mich. Comp. Laws Ann. § 780.315(2).
60. Ky. Rev. Stat. Ann. § 61.168(4)(n).
61. Wash. Rev. Code Ann. § 42.56.240(14)(a)(vi).
62. Ky. Rev. Stat. Ann. § 61.168(4)(j).
63. Bolm v. Custodian of Tucson Police Dept., 969 P.2d 200, 205 (Arz. Ct. App. 1998).
64. Fla. Stat. Ann. § 119.071(2)(l)(4)(a),(b); 50 Ill. Comp. Stat. Ann. 706/10-20(b)(1)(A); Ky. Rev. Stat. Ann. § 61.168(5)(d); Mich. Comp. Laws Ann. § 780.314(a); N.C. Gen. Stat. Ann. § 132-1.4A(c); Wash. Rev. Code Ann. § 42.56.240(14)(e)(i), Minn. Stat. Ann. § 13.825, subd. 4.
65. 50 Ill. Comp. Stat. Ann. 706/10-20(b)(2); Ky. Rev. Stat. Ann. § 61.168(5)(a); Minn. Stat. Ann. § 13.825, subd. 2; N.H. Rev. Stat. Ann. § 91-A:5.X(a).
66. Conn. Gen. Stat. Ann. § 29-6d(f); Fla. Stat. Ann. § 119.071(2)(l)(3)(b); Wyo. Stat. Ann. § 16-4-203(d)(xviii)(A).
67. 50 Ill. Comp. Stat. Ann. 706/10-20(b)(2); Ky. Rev. Stat. Ann. § 61.168(5)(b); N.H. Rev. Stat. Ann. § 91-A:5.X(c).
68. Fla. Stat. Ann. § 119.071(2)(l)(4)(c); Mich. Comp. Laws Ann. § 780.314(b).
69. 50 Ill. Comp. Stat. Ann. 706/10-20(b)(2); N.H. Rev. Stat. Ann. § 91-A:5.X(b).
70. 50 Ill. Comp. Stat. Ann. 706/10-20(b)(2); Wyo. Stat. Ann. § 16-4-203(d)(xviii)(B)(II).
71. 50 Ill. Comp. Stat. Ann. 706/10-20(b)(2); Wyo. Stat. Ann. § 16-4-203(d)(xviii)(B)(II).
72. Ark. Code Ann. § 12-6-701(d); 2019 Ill. Atty. Gen. Op. 19-010.
73. N.H. Rev. Stat. Ann. § 91-A:5.X(c).
74. Fla. Stat. Ann. § 119.071(2)(l)(4)(a),(b).
75. La. Stat. Ann. § 44:3(F).
76. Wyo. Stat. Ann. § 16-4-203(d)(xviii)(B)(III).
77. Wyo. Stat. Ann. § 16-4-203(d)(xviii)(B)(IV).
78. Tex. Occ. Code Ann. § 1701.661(e)(3).; Tex. Atty. Gen. Op. KP-0186, 2018 WL 1448758, *2 (Tex.A.G. 2018).
79. Banks v. City of Tacoma, No. 52072-9-II, 2021 WL 2229038, * 11 (Wash Ct. App. 2021) (unreported) (citing Jane Does 1-15 v. King County, 366 P.3d 936, 945-46 (Wash. Ct. App. 2015); Gronquist v. State, 313 P.3d 416, 421 (Wash. Ct. App. 2013)).
80. Mo. Ann. Stat. § 610.100.5(3)(c).
81. Ariz. Rev. Stat. Ann. § 39-121.04; Colo. Rev. Stat. Ann. § 24-72-305; Fla. Stat. Ann. § 119.071(2)(l)(4)(d); Ind. Code Ann. § 5-14-3-5.2; La. Stat. Ann. § 44:3(I); NJ AG Directive 2021-5 of May 25, 2021, §10.1; N.C. Gen. Stat. Ann. § 132-1.4A(d).
82. Ind. Code Ann. § 5-14-3-5.2(a)(2)(D).
83. NJ AG Directive 2021-5 of May 25, 2021, §10.1(h).
84. N.C. Gen. Stat. Ann. § 132-1.4A(d)(5); *but see* 2021 North Carolina Laws S.L. 2021-138, § 21(c) (new paradigm for disclosure analysis effective December 1, 2021 for requests occurring thereafter).
85. Matter of Custodial Law Enforcement Recording Sought by City of Greensboro, 833 S.E.2d 1, 2 (N.C. Ct. App. 2019).
86. *Id.*at 3.
87. New York- Time Warner v. NYPD, 36 N.Y.S.3d 579, 595 (Supreme Court 2016).
88. *Id*. at 597.
89. Daugherty v. Jackson Police Dept., 411 S.W.3d 196, 202 (Ark. 2012).
90. Nat'l Lawyers Guild v. City of Hayward, 464 P.3d 594, 608 (Ca. 2020).
91. *Id*.
92. Nev. Rev. Stat. Ann. § 289.830.2(b).
93. McMillen v. State, 169 N.E.3d 437, 441-42 (Ind. App. 2021).
94. Smith v. City of Greensboro, 1:19CV386, 2020 WL 1452114 (M.D.N.C. 2020).
95. Boudreau v. Smith, 2018 WL 4426010, *3, n. 1 (D. Conn. 2018) (unreported).
96. Steele v. City of Burlington, Iowa, 334 F.Supp.3d 972, 981-82 (S.D. Iowa 2018).
97. *Id*. at 982.