

Surveillance Technology and Military Equipment Study Committee

BODY WORN CAMERA CONSIDERATIONS FOR BROOKLINE

Warrant Article 6 of the Fall Special Town Meeting urged the Town to adopt a policy pertaining to the use of Body Worn Cameras (BWC) and In Car Video (ICV) cameras, to implement BWC and ICV as soon as practical, and to fund the costs of BWC and ICV in the Town's fiscal year 2022 budget. The recitals of the Warrant Article noted the perceived benefits of BWC and ICV for police departments and communities. The recitals also noted some of the limitations and problems of this technology, such as legitimate privacy interests of people filmed by BWC or ICV.

The petitioner of Warrant Article 6 withdrew the article when the Town and the Brookline Police Union reached agreement, memorialized in a Memorandum of Agreement that included a commitment to the deployment of BWC and ICV and also GPS monitoring.¹ This Considerations document will only address BWC, it will not address ICV or GPS monitoring, which the Surveillance Committee has not examined.

The Surveillance Technology and Military Equipment Study Committee (the Surveillance Committee) includes within its charge surveillance cameras used around Town, including BWC used by the Brookline Police Department (BPD). The Surveillance Committee, which includes members with deep expertise in surveillance and computer technologies, has discussed BWC over the past few weeks. The Surveillance Committee cannot present any final conclusions as to the efficacy of BWC or recommendations to the Town, but the Surveillance Committee can present some of the Considerations that should inform discussion of BWC as the Town considers the final deployment of this technology. We have categorized these Considerations under the following topics:

1. Cost Considerations – including Town infrastructure Considerations
2. Suitability Considerations based on community profile – size, form of government, community policing model, history of policy community relations, etc.
3. General Considerations – important BWC policy decisions that should be incorporated, before cameras are deployed, into BPD policies and procedures or Special Orders, following negotiations with the Brookline Police Union.
4. Adverse impact Considerations – civil liberties concerns, unintended consequences, etc.

The public hearing to be held on November 5, 2020 at 7:00 p.m. *via* Zoom is intended to give the public an opportunity to offer its views and concerns regarding BWC and the Considerations that the Surveillance

¹ **Memorandum of Agreement Between the Town of Brookline and the Brookline Police Union:**

“3. Upon the ratification of this MOA by the Union membership and the appropriation of funding by the Town, whichever occurs later, the Union and the Town will begin negotiations for a collective bargaining agreement to be effective July 1, 2020 and commit to including in their agreement a grant of authority to the Town, to be exercised at its discretion, for the deployment of body cameras, dash cameras and GPS to bargaining unit officers under terms and conditions mutually agreed by the parties. The union hereby waives its right to require the Town to bargain over the decision to deploy body cameras, dash cameras and GPS but reserves the right to bargain over the terms and conditions under which deployment shall take place as set forth above.”

Committee has identified in this document. The Surveillance Committee is not contemplating making recommendations following this hearing; rather it is looking to provoke discussion and thinking regarding some of the issues and Considerations that may be missed in the drive to implement BWC in Brookline.

The different parts of this Considerations document were written by different members of the Surveillance Committee and do not necessarily represent the opinions or concerns of other members of the Surveillance Committee or the voted opinion of the Surveillance Committee as a whole.

I. COST CONSIDERATIONS (Including Town Infrastructure Considerations)

Police Officer Scott Wilder, the BPD's Director of Technology provided the Surveillance Committee with the following details regarding cost Considerations.

Over the last 12 months the BPD has met with 3 Body Camera vendors. They have provided cost quotes based on 140 body worn cameras, one for each sworn officers, and 30 in car video systems for our marked cruisers, all equipped with GPS systems. The total estimated system costs for the hardware, software, cloud storage, and video evidence are:

Vendor A = \$1,196,218.75

Vendor B = \$785,840.00

Vendor C = \$672,190.00

Additionally, the annual storage costs, maintenance, and software licensing would be in the range of \$150,000.00 to \$225,000.00, depending on the vendor. And a decision to utilize in-house storage, which would provide more local control, would be considerably more expensive and likely require additional staff. And the initial cost could be deceptively low relative to the ongoing costs of the systems.²

Other costs that are hard to measure include:

1. Additional salary and benefits, including pensionable police pay, resulting from the additional personnel required;³
2. Initial training and ongoing training;
3. Maintenance, storage, and replacements;
4. Additional cost of entering into a lease, such as for a term of 5-years;
5. Technology upgrades based on evolving technology or court or legislative imposed additional requirements;⁴
6. Battery charging systems;

²Axon, a body camera vendor, has said clients that have canceled contracts cited costs. "The easy part is buying the body cameras and issuing them to the officers. They are not that expensive," said Jim Pasco, executive director at the National Fraternal Order of Police. "But storing all the data that they collect — that cost is extraordinary. The smaller the department, the tougher it tends to be for them." https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fcc9e4_story.html#comments-wrapper

³ In Virginia Beach "video evidence has increased costs by more than \$1 million a year, a significant impact on a \$10 million annual budget. [The Virginia Beach Commonwealth's attorney] is adding 14 employees — lawyers, paralegals and clerks — to a 93-member staff to handle the added workload." https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fcc9e4_story.html

⁴ In a 2019 article in The Washington Post, titled Some US Police Departments Dump Body Camera Programs Amid High Costs, the reporter noted that: "In Wayne County, Mich., a jurisdiction that includes Detroit, prosecutors were hit with \$2.5 million in unexpected personnel costs — nearly an 8 percent increase in their annual budget — for work associated with preparing videos to be presented as evidence at trial." https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fcc9e4_story.html

7. Evidence tracking systems - basically a system for each vendor's product that manages the video in regards to tracking, redacting, sharing (public record requests & court production) and the cataloging as is done with traditional evidence or potential evidence.

Some footage will likely have to be stored longer than other footage, depending on what it contains, and at any time state law may dictate what footage we must keep and for how long, pre-empting local policy and law. The upshot is that Town policies may be rendered moot and the Town could be compelled to pay to store surveillance footage for an unknown period of time at great cost to us.

Town Infrastructure Considerations

Below are steps the Town would have to take to accommodate the system to the Town's technology infrastructure (the following equipment would be outside the scope of the quotes from the above vendors).

1. Address the Town's internal network, since the video recordings for the BWC will be uploaded over docking stations on our network to the cloud storage server.
2. For the in car video systems, Officer Wilder would recommend using the AT&T's Public Safety FirstNet Broadband network. The Town would need to purchase in car ruggedized routers, with exterior antennas. A good guess would be that the cost will be in the range of \$1,100 to \$1,400 for each of these units, plus the cost of installation.
3. The BPD would have to dedicate at least 2 full time officers to handle the video & audio redactions as well as the day to day operation and basic troubleshooting issues.
4. The data storage costs are the big budget re-occurring costs along with the work with preparing videos to be presented as evidence.

II. SUITABILITY CONSIDERATIONS BASED ON COMMUNITY PROFILE

The nation-wide push for BWC began about five years ago after several high-profile police shootings, including the 2014 death of Michael Brown in Ferguson, Missouri. The rise of video sharing on social media added to the momentum, and in 2015 the Obama administration handed out more than \$23 million in federal grants to help agencies of all sizes purchase BWC. BWC are seen by many as a magic bullet that will fix actual or perceived problems between police and especially minority communities. But it is not a foregone conclusion that BWC will be the answer to all problems, especially problems that have been simmering for long periods of time. Nor is it a foregone conclusion that BWC are suitable, *a priori*, to all communities.

To ensure that BWC answers some problems and serves as a net force for good in Brookline, the Surveillance Committee has identified the following Considerations:

1. What are the purposes for implementing BWC that are related to the specific needs and problems of Brookline? In some communities BWC are acquired to improve officer accountability and community relations or to document police misbehavior or citizen abuse. Others may get them to enhance training, improve evidence quality or make cases easier to prosecute. There are other purposes, but whatever they are they should be clearly spelled out.
2. If Brookline determines that BWC are suitable for Brookline, what will be the extent of its deployment in the BPD? Will BWC be deployed to all officers or only officers engaged in certain roles?
3. Brookline is a relatively low crime community and it places a high value on community policing, which emphasizes the police's role to serve the community instead of acting with a warrior or overseer/enforcer mindset. Will the deployment of BWC help or hinder that role?
4. To the extent that it is believed that BWC will help improve police accountability and community relations, does that benefit outweigh the cost of implementing a program that may (i) limit the BPD budget's ability to carry out other programs addressing these issues and (ii) increase a perceived risk to civil rights and civil liberties?
5. In a community with Brookline's profile (successful community policing model, low crime, few incidents of use of force) will BWC be perceived as a tool of police surveillance, which could undermine community confidence and policing practices? Social science research has long understood that the mere presence of an outsider, in this case a police officer, can influence how a person responds or the type of relationship a person develops with the outsider. Will the use of BWC exacerbate that effect on persons being recorded and change their behavior in ways that undermine developing relationships with community members?⁵

⁵ For example, "Chief of Police Ken Miller of Greensboro, North Carolina says that if citizens 'think that they are going to be recorded every time they talk to an officer, regardless of context, it is going to damage openness and create barriers to important relationships.'"

See ProCon.org, 8/2/2019 (ProCon is an information and research site that provides information on all sides of controversial issues; it is owned by the publishers of the Encyclopedia Britannica, the Britannica Group)

III. GENERAL CONSIDERATIONS

The Surveillance Committee has previously articulated the principle that privacy and security are inseparable.⁶ This principle applies to the deployment of BWC, which should not compromise the privacy and security of the public. By protecting the privacy and security of the public, Brookline will help ensure the effective application of BWC for the benefit of the public and the police officers using them.

The Surveillance Committee was presented with two representative BWC policies: the Boston Body Worn Camera Policy (Boston Police Department Rule 405, dated June 3, 2019) and the ACLU Model Act for Regulating the Use of Body Worn Cameras by Law Enforcement (Version 3.0, dated October 2020).⁷ By comparing these two policies the Surveillance Committee identified the following critical areas which must be addressed in a Brookline BWC policy:

1. Activation: when the cameras must be activated. The Boston policy contains a list of 11 specific occurrences that shall be recorded; the ACLU policy contains a broader requirement that every “call for service” or “encounter” must be recorded “except when an immediate threat to the officer’s life or safety” precludes. Officer Wilder indicated that the newest systems available from the vendor contain various technology triggers as well: when an officer’s firearm is removed from the holster, when the flashing blue lights are activated in a cruiser, or when the officer is within Bluetooth signal range of another officer with an activated camera from the same vendor.
2. Deactivation: what circumstances require the cameras to be turned off. The Boston policy refers to “recording within a residence” and “recording in areas where there may be a reasonable expectation of privacy”; the ACLU policy requires recording to be stopped on request by an “occupant” of a residence, “apparent crime victim”, or “person seeking to anonymously report a crime”. The ACLU policy also contains a ban on use of cameras “to gather intelligence information based on First Amendment protected speech” and bans camera use on school grounds “except when responding to an imminent threat”. The Boston policy also labels improper recording “during breaks”, during “non-work-related personal activity”, “departmental meetings”, etc.
3. Technical issues relating to the camera system: pre-buffering (recording and retaining camera footage for a short period of time *preceding* camera activation), handling equipment failure, placement of the camera on the uniform, shift start/end procedures, labeling recordings, etc. Officer Wilder has cautioned these aspects of the policy tend to depend on details of the particular camera system acquired; in one example given: most vendors pre-buffer video but not audio.
4. Consequences of improper activation/deactivation. The Boston policy requires an “incident report” to be created, with reporting up to Bureau Chief if the report is not created. The ACLU policy contains a “No Tape, No Testimony” proposal favoring evidentiary consequences for officers who are found to have unreasonably or in bad faith failed to record crucial incidents.
5. Footage custody, retention, and access. This category includes what the Boston policy labels “Officer Access to Their Own Footage” and “Internal Access/Review”. The ACLU policy states that no officer “shall review or receive an accounting [...] prior to completing any required initial reports”. The Boston policy explicitly provides that officers “may view their own video before giving a statement” although

⁶See “Privacy and Security” Statement at: https://www.brooklinema.gov/DocumentCenter/View/22483/Privacy_and_Security

⁷ <https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement> -- note also a similar model policy by the ACLU of Massachusetts at <https://www.aclum.org/en/police-body-worn-cameras-lets-do-it-right>

“footage should not replace an officer’s memories [...] and the officer should base his/her statement on his/her memories, not solely on the video.” Both policies segregate footage, with stricter access control and disclosure and longer retention periods for certain footage. The ACLU policy calls out footage involving “any use of force; or an encounter about which a complaint has been registered”; the Boston policy separates out footage “related to officer-involved death, officer-involved shooting, or other use of deadly force” and has a five-part schedule for retention ranging from 30 days for “test/training” footage to indefinite retention for “death investigation”, “code 303 - Lethal/Less Lethal” and “Sexual Assault / Abused Person”. The ACLU policy additionally seeks to prevent selective or retaliatory disclosure of footage. Both policies also consider requirements of state open records law and of legal proceedings.

6. Facial recognition and automated analysis. Brookline currently bans use of facial recognition technologies. The Boston policy is silent on their use; the ACLU model policy explicitly forbids both facial-surveillance in particular as well as any other “automated analysis or analytics” on camera footage absent a “judicial warrant.”

The impact of BWC on the Town of Brookline and on the officers of the BPD depends crucially on policy details falling in these six areas. In addition, the Surveillance Committee has identified the following questions that should be addressed:

1. Has there been sufficient engagement of individuals and advocates in relevant stakeholder groups (e.g., advocacy groups for general crime victims, domestic violence/sexual assault victims, child welfare, immigrants – documented and undocumented, etc.) before final deployment of BWCs?
2. For general BWC data that is not subject to special retention rules, where (locally or the cloud) and for how long will such data be stored?
3. Other than access to data by officers whose cameras produced the data and who should be subject to special rules (see #5 above), who will have access to the data and who can be denied access based on the Public Records Law, or court rules or orders, or other rules?
4. Will the public have ready access to information regarding camera and data use, such as the purposes, frequency and identity (if such information is available) of persons who access the data, such as local police, citizens, other law enforcement or federal agencies?
5. What restrictions for viewing footage will be in place? Will an independent body ensure protocols are followed?
6. What procedures are in place in the event a vendor goes out of business, merges, or is purchased?
7. What procedures will govern how the Town handles a change in state or federal law that creates incompatibilities with Town policies or articulated Town values?
8. What contractual or other provisions will the Town use to ensure notice of software updates that materially change the nature of the software or the uses to which the cameras can be put?
9. How will the public know that officers are fitted BWC and that they are on?

10. What procedures will be used to give a member of the public the right to request that an officer's BWC is turned off?
11. Will officers be required to tell members of the public in certain specified situations (e.g., in private homes without warrants, in certain domestic violence calls, around underage children, when a person wants to speak confidentially as a witness or to report criminal activity, etc.) that they can ask that the BWC be turned off?

IV. ADVERSE IMPACT CONSIDERATIONS

The current popular narrative regarding police body cameras is that they are a progressive means of increasing police transparency and accountability, and reducing police violence. In 2020, with a refreshed nation-wide push for racial justice and police reform, the metered drum beat of that narrative continues to grow. The truth, however, is that body cameras are not a clear solution to any one of the problems they purport to address and they may in fact create more problems than they solve.

Body cameras are sufficiently fraught with issues that the ACLU does not take a position endorsing them, rather they have tried to provide guidance to communities that choose to deploy them.⁸ Some communities which began using them in an effort to increase transparency and accountability have ended their use for a variety of reasons including the exorbitant cost and questionable benefits.⁹

There is also an important but less considered problem with body cameras: they prop-up surveillance companies who profit from fear, suspicion and discord, selling the idea that surveillance is safety. The multi-billion-dollar surveillance industry has sunk significant resources into convincing the public and law enforcement that their products provide safety and justice, which many view as a false narrative that could cost Brookline financially and could undermine current community policing efforts.

This section of the Surveillance Committee's Considerations is intended to highlight civil rights and civil liberties Considerations against using body cameras in Brookline.

The Benefits of Body Cameras are Questionable

A 2017 study of the Washington DC police indicated that there were no statistical changes in the number of use-of-force or civilian complaints after body cameras were deployed.¹⁰ There are a number of reasons that may have been true, including that police had already become used to the public wielding cameras or being watched generally, but the study results are notable.¹¹

Similarly, a study from the Center for Evidence-Based Crime Policy at George Mason University in Fairfax, Virginia, which reviewed 70 empirical studies on body cameras' effects found that:

[the] "technology may not lead to the outcomes sought, and often it has unintended consequences for police officers, their organizations and citizens [...].The reason for this is that technology is often filtered through — and shaped by — human factors (such as the reaction to and the employment of said technology), as well as through an agency's organization, procedural and cultural ways."¹²

Of course, body cam vendors and law enforcement agencies across the country can site desired changes in behavior in both the public and the police. Given the massive troves of video surveillance body cams collect, that is not surprising, but the question is – is this the best we can do? Is this what we should be doing? Changing police and community culture through communication, out-reach and hard work seems the elevated choice compared to escalating surveillance tools and a surveillance mindset.

⁸ <https://www.aclu-wa.org/docs/aclu-seattle-city-council-put-brakes-funding-police-body-cameras>

⁹ https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fcc9e4_story.html

¹⁰ <https://bwc.thelab.dc.gov/#home>

¹¹ <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/should-we-reassess-police-body-cameras-based>

¹² <https://www.thegazette.com/subject/news/public-safety/research-police-body-cameras-crpd-wayne-jerman-aclu-20191111>

What You See Isn't What You Get

A New York Times online article shows a variety of video clips demonstrating that video evidence, like eye-witness testimony, is problematic.¹³

Negative Impacts on Marginalized Communities and Civil Liberties

There is a strong likelihood that marginalized communities and disaffected individuals may avoid law enforcement in larger numbers than they already do.¹⁴ Consider the following:

- The information and research website, ProCon.Org, notes that “Recording police encounters with the public could lead to the public exposure of private medical conditions such as mental illness. Victims of crimes such as rape or domestic abuse may be further traumatized by recordings. Informants or witnesses may fear reprisal from criminals. People being arrested may fear the damage of public exposure, such as being fired from a job.”^{15 16 17}
- “When police enter a citizen’s home with a body-worn camera, they may pick up video and audio footage of victims of domestic violence or sexual assault. Video and audio records may capture footage of children or people in various states of undress. Some police departments have policies that protect vulnerable individuals from being recorded without their informed consent, while others offer only vague guidance on personal privacy issues. Some policies don’t address these concerns at all.”¹⁸

Even those of us who may otherwise have been comfortable interacting with police may not place a call for help, knowing that the police may enter a home and record a dwelling, family members and friends, and fearing what the cameras will capture or how the footage will be used. Perhaps an officer’s questions, which might have otherwise been answered, will be stilted or go unanswered because the camera is there. Or, perhaps answers given will be misconstrued later or used out of context.

Immigrant communities may avoid the police as well, fearing that their image may later be used to identify and locate them, their family, friends or employer. There is also the potential to **chill free speech** of those who attend constitutionally protected protests and gatherings.

If combined with facial recognition or other technologies, thousands of police officers wearing body-worn cameras could record the words, deeds, and locations of much of the population at a given time, raising serious First and Fourth Amendment concerns.¹⁹

Data Security

¹³ <https://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html?>

¹⁴ Lindsay Miller, et al., "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," policeforum.org, 2014

¹⁵ Michael D. White, "Police Officer Body-Worn Cameras: Assessing the Evidence," nicic.gov, 2014

¹⁶ Emmeline Taylor, "Lights, Camera, Redaction... Police Body-Worn Cameras: Autonomy, Discretion and Accountability," queensu.ca, 2016

¹⁷ Reporters Committee for the Freedom of the Press, "Access to Police Body-Worn Camera Video," rcfp.org (accessed May 23, 2018)

¹⁸ <https://www.eff.org/pages/body-worn-cameras>

¹⁹ <https://www.eff.org/pages/body-worn-cameras>

There are no guarantees that stored data will remain safe, whether it is stored locally or on a criminal justice information server (CJIS) server. NSA servers have been hacked. And with a warrant (or without?) ICE or any other federal agency may obtain access to the data – in which case Town policies regarding footage would be irrelevant.

May be used disproportionately for prosecution rather than police oversight

Direct Quotes from Pro/Con.org

- In the six months since body cameras were deployed in Burnsville, [Minnesota], police recorded video for almost every domestic violence case, something former Chief Deputy of the Dakota County Attorney’s Office, Phil Prokopowicz, JD, found useful. He stated that camera footage “can be influential in resolving the case in terms of negotiations. The defendant gets to see the act and know what will be displayed in front of the jury. The documenting of those first moments is very critical to those types of cases, as well as any admissions that may occur as officers are entering.”²⁰
- Officers in the United Kingdom and Queensland, Australia echoed this benefit, stating some abusers plead guilty because they knew there was video footage evidence against them.^{21 22}
- Cameras also protect police officers against false accusations of misconduct.

²⁰ Shannon Prather, “Police Body Cameras Are Newest Tool against Domestic Violence,” startribune.com, Apr. 26, 2015

²¹ University of Leeds, “‘Tipping the Balance’ against Domestic Abuse,” phys.org, June 27, 2018

²² Axon, “Using Modern Technology to Combat Domestic Violence,” axon.com, Nov. 14, 2017