



MEMORANDUM

TO: Community Stakeholders

FROM: Melissa W. Nelson, State Attorney

RE: Update regarding Officer-Involved Critical Incident Investigations and the Public Release of Body-Worn Camera Footage

DATE: September 1, 2020

This memorandum follows a June 9, 2020, memorandum wherein the State Attorney's Office ("SAO") committed to review and revise its policies regarding the investigation of Officer-Involved Critical Incidents ("OICI")¹ and develop a uniform framework for the public disclosure of body-worn camera recordings ("BWC") in Officer-Involved Critical Incidents.

This framework provides certainty by establishing a firm baseline whereby the SAO will advise the Law Enforcement Agency ("LEA") within 30 days of any objection it has, to the public release of the BWC footage. The State Attorney's Office agrees that the swift and certain public release of BWC footage in OICI is in the public's best interest.

SPECIFIC REVISIONS OF OFFICER-INVOLVED CRITICAL INCIDENT POLICIES AND PROCEDURES

While the SAO works in partnership with the myriad law enforcement agencies throughout the Fourth Circuit, the SAO is a distinctly different and separate entity from these agencies and serves the community independent from these agencies.

The SAO holds integrity and public trust as vital to its service and function. The State Attorney's Office seeks to ensure greater efficiency, consistency, and continued transparency in conducting OICI investigations. With this in mind, the SAO recently updated its OICI policy, making the following important revisions:

- **Dedicated an OICI SAO Team Leader**

An experienced senior prosecutor ("Team Leader") now leads a group of experienced prosecutors and SAO investigators in the investigation and examination of all OICI. The Team Leader's duties include presiding over a comprehensive and timely investigation. At

¹ Officer-Involved Critical Incidents are defined in the State Attorney's Office Officer-Involved Critical Incident Policy and specifically include the use of deadly force by a law enforcement or correctional officer within the Fourth Judicial Circuit resulting in actual death or great bodily harm of another person, and include any in-custody death of persons who are detained, awaiting trial, or sentenced within the Fourth Judicial Circuit.

the end of that investigation, he/she must prepare a report that will be disclosed to the public.

- **Expedited Timeline**

Our policy reduces the time from incident to preliminary review by the OICI Team from several months to 21 days. The Team Leader will work from the date of the incident to develop the necessary facts of the incident, secure witness testimony, and gather critical evidence needed to render a determination by the office. In addition to a preliminary review by the OICI Team, the new policy contemplates a second review prior to final determination and publication of our conclusions and findings.

BODY-WORN CAMERA FOOTAGE IN OFFICER-INVOLVED CRITICAL INCIDENTS

The State Attorney's Office issued its initial OICI Policy in 2017. At that time, very few body-worn cameras were in use. In fact, of the over 20 local, state, and federal law enforcement agencies throughout the Fourth Circuit, only two currently have body-worn camera. JSO is one of these agencies and the Fernandina Beach Police Department, the other. In 2017, JSO's BWC pilot had only just begun. Consequently, the issue of the public release of BWC footage was not addressed in the SAO OICI 2017 Policy. However, as the implementation of BWC became more prevalent, so did the video capture of incidents where law enforcement officers have used deadly force. It is clear that there is a need for a uniform approach to the public disclosure of BWC in OICI.

Release of BWC

BWC footage is evidence in a criminal investigation. Under Florida's Public Record's Law, the footage is legally exempt from disclosure during a criminal investigation. § 119.071(2)(c), Fla. Stat. Currently, BWC evidence is treated like other evidence and has not been made publicly available until an investigation concludes or, if criminal charges are filed, when discovery is provided to the defense. This said, we recognize BWC is unique evidence, the public's expectation to see it as soon as possible is reasonable, and its public disclosure should be presumed.

The SAO – absent exceptional circumstances— will advise the LEA within 30 days of the OICI if the SAO objects to the public release of the BWC footage.

The LEA, as the official custodian of the BWC, has the authority and responsibility of releasing the BWC.

Some want BWC footage to be immediately released after an OICI. But there are certain important factors the SAO must consider before releasing BWC footage: the integrity of any criminal investigation, the privacy of persons in the BWC footage, and the duty to provide accurate and complete information.

(1) Ensuring the Integrity of an Investigation

In any criminal investigation, it is of utmost importance that a witness' memory be their own. If BWC footage is released before witnesses are interviewed, this footage may taint witnesses' recollections,

or worse, allow them to conform their accounts to match the video evidence. Either possibility can threaten the integrity of an investigation.

Effort will be made to take all potential witness statements, including that of any officer using deadly force, within 21 days of the OICI and before public disclosure of the BWC.

(2) Ensuring Accurate and Complete Information

The public's interest in transparency demands the need for accurate and complete information. Often, BWC footage captures important statements — both by officers and other persons. Many times, the audio is difficult to understand, and in some cases, it is confusing. To fully understand the BWC footage, care must be taken to discern the precise statements recorded. Consequently, it is essential that all statements made by any person and captured on BWC are accurately conveyed at the same time the video footage is released.

When necessary, BWC footage will be professionally transcribed and all efforts will be made to include closed captioning before being publicly disclosed.

(3) Consultation with/Notification to Persons Depicted in a Footage or Their Families

BWC may capture images of crime victims, the interior of private homes, and/or the death of a person or persons. Each scenario implicates potential privacy concerns.

The State Attorney's Office will consult with victims appearing in a BWC footage or, in the case of decedents, with their families, to assess whether they object to the release of the BWC footage.² Their objection is non-binding and will not prevent the Sheriff/Police Chief and/or State Attorney from waiving the exemption if it is in the best interest of the public.

The State Attorney's Office will notify the LEA of any victim or next of kin objections to the public release of BWC.

(4) Objection to Public Disclosure

Lastly, the State Attorney's Office may object to the public disclosure of BWC footage in the following circumstances:

- Release is prohibited by Florida's Public Records Law.³
- Exceptional circumstances exist.
- Disclosure would impair an ongoing criminal investigation or potential criminal prosecution.

² Once the SAO complete its investigation, the BWC footage loses its exemption under Florida Statutes Chapter 119. Any continued objections to public disclosure must be heard by and determined by a court of competent jurisdiction.

³ A photograph, video, or audio footage that depicts the killing of a law enforcement officer who was acting in accordance with his or her official duties is confidential and exempt from public disclosure under Florida Statutes Chapter 119.

Exceptional circumstances may include, but are not limited to, additional time to review and/or redact BWC footage to protect the privacy of victims or other persons depicted, to complete interviews with principal eyewitnesses, or to complete other essential aspects of the initial investigation.

If the SAO objects to the public disclosure of the BWC, the SAO will advise the LEA, in writing, of its objection and the basis for the objection within 30 days of the OICI. If the objection is exceptional circumstances, the SAO will state the reasons additional time may be necessary and provide a good faith estimate of the amount of time necessary to resolve the exceptional circumstances. The LEA retains the ability to release the BWC, but has agreed to give deference to an objection by the SAO to help maintain the integrity of an ongoing criminal investigation.

RELEASE OF EVIDENCE DISCLAIMER

The public release of BWC footage of an OICI does not extend to, nor otherwise imply the release of, other OICI evidence relating to an investigation, nor does it act as a waiver of any law enforcement privilege, or public records exemption necessary to maintain the confidentiality and integrity of a criminal investigation.

EFFECTIVE DATE

This policy is effective immediately and applies prospectively. BWC footage in active OICI investigations will be released pursuant to current public records request procedures.