

Via E-Mail

October 9, 2020

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Dear Dr. Kanengisser,

RE: Body-Worn Camera Policy Consultation

The Canadian Civil Liberties Association (CCLA) appreciates the opportunity to participate in the Toronto Police Service Board's (TPSB) consultation on the policy for body-worn cameras for the Toronto Police Service.

This letter is a follow-up to the in-person conversation we had on September 25, 2020, and is a supplement for the points we raised at that time. We have had the opportunity to review your follow-up email of September 28th and the changes you have made to the policy in response to our initial feedback. The changes address the majority of the points we raised in our last meeting and we appreciate the hard work that you and your team have done to reflect the feedback from the consultation.

We understand the decision to roll-out body-worn cameras has been made, and that these consultations are being conducted to create a strong and effective policy framework for this implementation. We must note, however, that CCLA shares the concerns expressed by the Ontario Human Rights Commission in their submissions to this consultation regarding moving forward with this implementation despite community concerns expressed pointedly and poignantly by individuals and groups in the Black and other racialized communities.

Body-worn cameras are not, by their mere implementation, going to serve the goal of enhanced police accountability. They are rather technological tools that, if not well constrained and focused by policy, are all too likely to exacerbate the power asymmetry between officers and members of the public, in a system where systemic racism is a reality. The stakes for this policy framework, and the more explicit procedures that will be based on it, could not be higher.

The points below elaborate on issues that we were not able to fully explore during our last meeting and provide feedback on some of the most recent changes to the policy.

1. Facial recognition

As mentioned in our consultation, the potential privacy impacts of body-worn cameras when used in combination with facial recognition technology are immense. Even if facial recognition technology is limited to comparing images to the service's existing mug-shot database, the number of facial images the service will be recording will be increasing exponentially. As currently drafted there is no requirement that the images run against the mug-shot database will be images connected to an active investigation. It is an extremely permissive provision.

We recommend that the exception in s. 30 for comparing images with the Service's mug-shot database be removed entirely.

Should the TPSB and TPS wish to explore the use of the mug-shot database in combination with body-worn camera images in the future, a full dedicated consultation, privacy impact assessment, and human rights impact assessment must first be undertaken.

If s. 30 remains in the policy, at a minimum, we strongly recommend that the policy significantly strengthen the limitation on the use of facial recognition. Possible revised wording for s. 30:

Recordings from body-worn cameras may not be used in combination with face recognition technology, video analytics software, voice recognition software or to generate a searchable database of images of individuals who have interacted with Service Members, with the exception of comparing images that are directly related to an active investigation to a "mug shot" database in a manner approved by the Board.

2. Facial recognition and protests

As set out above, we strongly recommend a complete ban on facial recognition for body-worn camera footage. Therefore, while we appreciate the addition of Section 31, we believe that stronger restrictions are warranted.

If the event that Board proceeds with a policy that allows for the use of the Service's mug-shot database, we recommend that the Board revisit the wording of s. 31. The provision is extremely permissive. It would permit any recordings from a protest to be used in combination with the "mug shot" database, regardless of whether the recordings were connected to the suspected offence. The threshold – reasonable suspicion – is also quite low. In our view, almost any large protest will give rise to *some* reasonable suspicion that *someone* has committed an offence. In addition, most disruptive but peaceful protests involve actions that on their face are prohibited by bylaws (eg. noise bylaws) or the *Highway Traffic Act*. In many cases these individuals will have been engaged in entirely lawful, constitutionally-protected activity.

Should the Board proceed with a policy that allows body-worn camera images to be used in combination with the Service's mug-shot database, there should be a carve-out prohibition for the use of images or video obtained at protests.

At the absolute minimum, the use of images from protests should be more tightly restricted that is currently set out in s. 31. We would suggest the following wording:

“The Service shall not use recordings or images gathered at protests in combination with the Service’s “mug shot” database unless there are reasonable grounds to believe that the individual the Service seeks to identify committed a criminal offence at the protest; the image used must consist only of the person or persons who are suspected of having committed the relevant offence.”

3. Use of body-worn cameras at protests

Given the significant privacy interests at protests and the potential for police recordings to significantly chill freedom of expression and peaceful assembly, we strongly recommend that body cameras be presumptively turned off when police officers are attending protests. The policy should specifically reference that the limit on body-worn cameras at protests has been put in place to ensure that there is not undue influence on the rights to freedom of expression and peaceful assembly.

There should also be specific situations that result in the cameras being turned on at a protest.

Should a police officer determine that she needs to respond to a particular situation or initiate a specific interaction with a member of the public during a protest, the body camera should be turned on.

Cameras should also be turned on if police officers believe that there is a likelihood that force will be used. This could be achieved by requiring that the cameras be turned on when a group of police officers actively equip themselves with heavier tactical gear during a protest situation, including for example shields or tactical helmets. This would be a clear sign that police believe that use of force may become necessary. This type of tactical gear, however, will not be actively deployed in the vast majority of protest situations.

We believe that this intermediate position appropriately reconciles the freedom of expression, privacy, peaceful assembly, and police accountability interests that intersect at protest events. Regardless of the final text of the policy, however, the provisions on body-worn cameras during protests should be reviewed after two years to ensure that the policy is achieving its goals, including the potential negative impacts on expression and peaceful assembly.

4. Rules on secondary uses and subsequent disclosure

During our consultation we mentioned that the policy likely needed a section limiting subsequent disclosure. We referenced the provisions of the *Youth Criminal Justice Act* regarding youth records as an example of a regime that contained provisions regarding both access and disclosure.

We believe that there needs to be a clear prohibition on secondary uses and subsequent disclosure by individuals who have access to recordings under s. 19.

5. Consideration of non-governmental recommendations

You note that Section 1 was revised as follows:

Implement the recommendations set out in the Office of the Privacy Commissioner of Canada's *Guidance for the Use of Body-Worn Cameras by Law Enforcement Authorities* (2015), and ensure that new recommendations continue to be monitored and implemented as they are made by the relevant Provincial and Federal authorities;

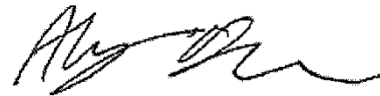
Government bodies are not the only ones that may provide relevant recommendations. We recognize that there may not be an ability to make a commitment, in policy, to implement all recommendations of non-governmental actors or organizations. Nevertheless, we do believe that any relevant recommendations should be monitored and given due consideration, regardless of the source.

CCLA also commends to you and supports the recommendations of the Ontario Human Rights Commission regarding the need for proactive and systematic supervisory review of footage to identify, monitor and address discrimination in interactions with the public. We also support the creation of an accessible and expedient process for individuals who are charged with offences or are planning on filing a police misconduct complaint to view all relevant footage. We believe that this process should be separate from access to information or more fulsome access requests, and allow individuals and their advocates to view-only expedited access to footage on a provisional, confidential and privacy-protective basis.

Regards,



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