

DEPARTMENT OF POLICE ACCOUNTABILITY

CITY AND COUNTY OF SAN FRANCISCO



Paul Henderson
Interim Executive Director

January 5, 2018

Hon. Julius Turman, President

Members, San Francisco Police Commission

Re: Department of Police Accountability's Suggested Revisions to Department General Order 10.11 (Body Worn Cameras)

Dear President Turman and Commissioners:

The Department of Police Accountability has reviewed the Police Department's suggested revisions to the Body Worn Camera Department General Order (DGO 10.11) and provides alternative language in two areas. First, the DPA suggests that DGO 10.11 (III) (F) be revised to state that in officer-involved shootings, in-custody deaths and criminal matters, subject and witness officers shall not view any audio or video recordings until they have provided an initial statement. This recommendation is based on the compelling need to preserve both the subject and witness officers' independent recollection of an incident in officer-involved shootings, in-custody deaths and criminal matters.

Second, in addition to the Department's suggested language that a failure to activate a body worn camera may result in disciplinary action, the DPA recommends that DGO 10.11 explicitly prohibit officers from taking actions that interfere with proper audio and video recording such as reducing the audio volume, turning off the lights/LEDs display on the BWC, or blocking the camera's view. The DPA suggests revising DGO 10.11 to state that such actions, absent an authorized exception under the policy, will subject an officer to an administrative investigation and may result in discipline. The DPA's suggested revisions in these two areas are discussed more fully below.

Currently, DGO 10.11 (III) (F) states that "[f]ollowing any (1) officer-involved shooting; (2) in-custody death; or (3) criminal matter, any subject officer shall be required to provide an initial statement before he or she reviews any audio or video recording."

The Police Department proposes the following changes to this paragraph:

Following any (1) officer-involved shooting; or (2) in-custody death; ~~or (3) criminal matter~~ any subject officer shall be required to provide an initial statement

before he or she reviews ~~his or her own any audio or video BWC~~ recording(s).
This excludes other members' BWC videos involved in the incident.

The DPA agrees with the Police Department's intention to prevent subject officers from viewing other officers' body worn camera videos. However, the DPA suggests alternative language so that both subject and witness officers are explicitly prohibited from viewing any audio or video recordings (including body worn camera video, surveillance or third party footage) before providing an initial statement.

The DPA does not agree with the Police Department's position that in criminal matters, subject officers should no longer be required to provide an initial statement before reviewing their own body camera video recording. After extensive stakeholder discussion and input, the Police Commission adopted DGO 10.11 that specifically sets forth a procedure following an officer-involved shooting, in-custody death or criminal matter that requires subject officers to provide an initial statement before viewing any audio or video recording. The Police Department has not provided any explanation to justify less stringent rules to preserve an officer's independent recollection following a criminal incident. The DPA suggests that the term "criminal matter" be defined.

Highlighted in red, the DPA suggests the following revisions to DGO 10.11 (III)(F):

Following any (1) officer-involved shooting; (2) in-custody death; or (3) criminal matter, any subject officer ~~or witness officer shall not review any audio or video recording (including but not limited to body worn camera, surveillance or other third party footage) shall be required to before providing an initial statement about the incident. before he or she reviews any audio or video recording.~~

The initial statement by the subject officer shall briefly summarize the actions that the officer was engaged in, the actions that required the use of force, and the officer's response. The statement shall be distinct from the "public safety statement."

~~The initial statement by the witness officer shall summarize the witness officer's actions and observations.~~

After providing the initial statement, the subject ~~officer~~ shall have an opportunity to review ~~any audio or video~~ ~~his or her own BCW~~ recordings depicting the incident with his or her representative or attorney prior to being subject to an interview.

~~A criminal matter is defined as an incident in which there is a reasonable suspicion to believe that an officer has committed a crime. A criminal matter includes an officer's use of force in which there is evidence that the officer willfully, intentionally, recklessly or knowingly used excessive or unreasonable force. (See for example U.S. Department of Justice, Office of Community Oriented Policing Services, "Standards and Guidelines For Internal Affairs: Recommendations from a Community of Practice, Section 2.1 Criminal Complaints, page 22.)~~

Nothing in this section is intended to limit the ~~Office of Citizen Complaints' (OCC)~~ Department of Police Accountability's (DPA) role in these investigations.

The DPA commends the Police Department for suggesting that DGO 10.11 be amended to include that failure to activate a BWC may subject an officer to an administrative investigation and, if warranted, appropriate discipline. (See DGO 10.11 (III) (C)). The DPA suggests that DGO 10.11 (III)(A) be amended to explicitly prohibit officers from taking actions that interfere with proper audio or video recording such as reducing the audio volume, turning off the lights/LEDs display on the BWC, or blocking the camera's view. The DPA suggests that the following provision be included in DGO 10.11 (III)(A): "Officers are prohibited from taking actions that interfere with proper audio or video recording such as reducing the audio volume, turning off the lights/LEDs display on the BWC, or blocking the camera's view unless such actions are explicitly authorized under this policy." The DPA also suggests that DGO 10.11 (III)(C) state that "failures to activate a BWC as outlined in this order or to take actions that interfere with proper audio or video recording, absent an authorized exception under the policy, will subject an officer to an administrative investigation and may result in discipline."

In closing, while the effort to amend DGO 10.11 will potentially improve the integrity of the Department's investigative process, I am very troubled that the Department never provided our agency with an advanced copy of its draft revisions nor permitted adequate notice to allow our agency to participate in a discussion with the Department about these revisions. Less than 24 hours before the filing deadline, our agency learned of the Department's revisions by obtaining a copy of them from the Commission's website. Department General Order 3.01 states that no Department-initiated General Order shall be placed before the Police Commission for action "without the Department and the Office of Citizen Complaints meeting, exchanging views and attempting to resolve any differences as required by Police Commission Resolution No.27-06." The Police Department's lack of notice and discussion with our agency not only violates DGO 3.01 but thwarts our agency's ability to effectively respond to this important Department General Order in a timely manner.

Sincerely,



Paul Henderson
Interim Executive Director

cc: Chief William Scott