Information Management

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Ensuring Privacy in Police Body-Worn Camera Programs:

Policy Framework in the City of Austin

Introduction

Political pressures, especially following the shooting of Michael Brown in 2014 in Ferguson, Missouri, served as a national catalyst for police Body-Worn Camera (BWC) implementation.[9] Police officers in Ferguson started wearing BWCs within 23 days after the event and other local police departments began to adopt its usage in the subsequent weeks.[9] Starting in October 2016, Austin Police Department also began to equip their officers with BWC while other local police agencies in Baltimore, Atlanta, Chicago, Minneapolis, New York City, and Seattle were running pilot programs.[4] As the usage of BWC is on the rise, there is also an increasing need for policies that regulate the use of BWC and that manage its recordings in a manner that ensures the protection of privacy rights of the individual citizens.

According to the Bureau of Justice Assistance in the U.S Department of Justice, BWCs are defined as "relatively small devices that record interactions between community members (e.g., the public, suspects, and victims) and law enforcement officers." [4] Over the past decade, utilizing technology in policing and other sectors of the justice system has been drawing much public attention. These technologies include TASER electronic control devices, CCTV surveillance cameras, and in-car cameras but the level of interest and implementation of BWCs is of more recent origin.[10] Overall, the implementation of BWCs is seen to have several potential benefits: capturing recordings of critical incidents with the public, strengthening police accountability by holding them responsible for carrying out their service while treating individuals fairly within the bounds of law, and providing valuable evidence for criminal cases. These potential benefits, when BWC program is effectively implemented, can largely outweigh the potential drawbacks,[15] such as cost of implementation, complexities involved in data collection/storage/sharing/disposal, and privacy concerns.[7]

Moreover, as police agencies across the nation have come to realize, the introduction of BWCs in their organizations presents a number of additional challenges and issues that go beyond the purchasing of BWCs and equipping of their officers.[10] Some of these challenges include infrastructure costs for docking stations to upload the recordings, costs of video storage, accessibility of the recordings, and proper training protocols for officers who use BWCs on

duty.[10] As police agencies develop BWC programs, it is crucial that they thoughtfully examine all these issues. This article will examine what is perhaps the most pressing issue in the adoption and use of police BWC - privacy.[15]

Privacy Concerns in BWC Programs

One of the main areas of concern when implementing BWC programs is how to ensure the privacy of the individuals recorded. Privacy can be thought of as "the right to define for oneself when, how and to what extent information is released" [16] which provides a proper context to think about privacy concerns regarding BWC programs. When considering when the BWC videos are recorded, how these recordings are used, who gets to access these recordings, and how certain contents are redacted from the recordings, these questions bring up privacy concerns around the use of the BWCs and their recordings.

Unlike traditional surveillance cameras, BWCs can simultaneously record both audio and video capturing close-up images that allow for facial recognition technology to be applied to the captured video. In contrast to stationary surveillance cameras that generally only record in public areas, BWCs give officers the ability to record inside private properties such as homes, to record sensitive situations such as encounters with crime victims involving rape, abuse, or other matters or with witnesses who are concerned about retaliation if they are seen as cooperating with the police, and to record those who are not directly involved in the police activity but happen to be at the crime scene, all these can happen during police operations.[15] Although BWCs provide benefits of police accountability, documentation of critical incidents with the public, and evidence collection through their recordings, law enforcement agencies are faced with the challenge of ensuring privacy of individuals who are captured in these videos with questions presented earlier in this article; what is recorded, who gets access to the recordings, where are the recordings stored, when and how are the recordings disposed. To appropriately address these potential threats to privacy, clearly defined policies and guidelines around what is recorded, who gains access to the recordings, where, when and how are the recording stored and disposed, should be promulgated by those in the records and information management field.

As mentioned, privacy concerns around BWCs stem from a concern about how the BWC data will subsequently be used. The biometric software capabilities of BWCs, such as iris scanning or facial recognition technology that scan the features of an individual to register him or her in a database, go well beyond the intended and practical use of BWC's stated purpose as devices to monitor police operations and evidence collection.[5] Perhaps one of the most troubling risks to privacy is that some recordings will be made inside people's homes including in cases where officers are responding to a burglary or a domestic violence call, and where the general public is voluntarily participating in an investigation.[3] Therefore it is critical that implementation of BWC programs and management of the records produced from these cameras be accompanied by a comprehensive, robust, and effective policy framework so that the benefits of the technology are not outweighed by potential invasions of privacy.[11]

Thus, privacy concerns should be taken into consideration when developing policies and regulations around how and when BWC are to be used, and how these records are stored, shared, and disposed. Help is at hand however, as legislature at the local and state level are engaged in the work of developing more robust policy frameworks to help address such issues. To see what work is currently being done at the local level, the Austin Police Department (APD) will be used as an example of how the privacy concerns raised by the use of BWCs are being addressed within the state of Texas. *Image 1* highlights how Texas is one of the several states in the nation that restricts recordings in situations where privacy is expected, that dictates where and when camera can/should be used, that restricts public access to the recordings, and that specifies set video storage periods.

BWC Program Policy Framework in the City of Austin

Policies around BWCs can vary at the local, state, and federal level. Austin Police Department (APD) issued its Policy 303 as part of their policy manual on September 2017 to address the use of BWCs by the employees and the management of BWC recordings. The policy is organized into six main sections (refer to *Image 3*) that provides a framework for how to properly use the device and responsibly handle the recordings produced. As a local government agency, APD adheres to the records management policies at both the local and state level incorporating policy framework from the City of Austin Records Management Ordinance Chapter 2-11, Texas State Library and Archives Commission (TSLAC) local government retention schedules, Criminal Justice Information Services (CJIS) Security Policy, Texas Occupations Code Chapter 1701.655, Texas Commission on Law Enforcement, and the Texas State Senate Bill 158 Subchapter N (refer to *Image 2* to view these agencies and their policy framework more in detail).

APD policies comply to the minimum requirements proposed from the state and federal level, as well as creating requirements at the local level. *Image 3* provides a brief policy-at-a-glance that APD has in place for using

BWCs and managing the records produced, policies which are continually being updated and developed over time. The aim is to ensure that BWCs are used appropriately and that the records produced are properly maintained, used, preserved, and disposed to maximize potential benefits while protecting the privacy rights of the individuals who are captured in the recordings. These policies help avoid situations that can compromise the privacy rights of individual citizens by outlining and documenting the major roles and responsibilities of those involved in the implementation of the BWC program, monitoring and assessing that the implementation process is going well, and providing clear guidelines to make sure that the recordings are properly managed.

Considerations when Developing a Policy Framework for BWC Programs

As APD and other local police departments continue to develop and improve policies that define the major roles and responsibilities of those involved in using BWCs and the requirements for managing these records, these policies will play a vital role in protecting the privacy rights of individual citizens who are subject to the use of BWCs. There are currently existing resources that can lay out core principles to include when designing and implementing an effective policy framework to effectively address privacy issues involved in the BWC program. *Image 4* outlines some key elements to consider for an effective policy framework to ensure minimum privacy risk or loss when implementing BWC program in four policy areas. These elements combine the knowledge of the Police Executive Research Forum staff members, police executives, and other experts in the U.S Department of Justice revealing a number of lessons that they have learned regarding body-worn cameras and privacy rights [15] as well as Jay Stanley who is a senior policy analyst for the American Civil Liberties Union (ACLU) [11], and myself.

Conclusion

With their potential benefits, BWCs have significant implications for the public's privacy rights, particularly with its advanced technologies such as biometric software capabilities, flexible video and audio recording of victims in sensitive situations that can occur during a police officer's duty including people's private homes. Agencies must factor in these privacy considerations when making decisions about officer roles and responsibilities in using the camera, how the records are going to be stored, retained, and disposed, and securely making the records accessible for properly authorized personnel. Policymakers and the records management professionals who are directly involved in the BWC program need to take these issues into consideration to responsibly implement the BWC programs.

Image 1: *Texas is doing its work through its state legislature to protect the privacy rights of individual citizens through their policy framework*

La Vigne, N.G., Ulle, M. (2017, January 1). Police Body-Worn Camera Legislation Tracker. Retrieved from https://apps-staging.urban.org/features/body-camera-update/

Image 2: *Agencies and their Policy Framework for Body Worn Cameras*

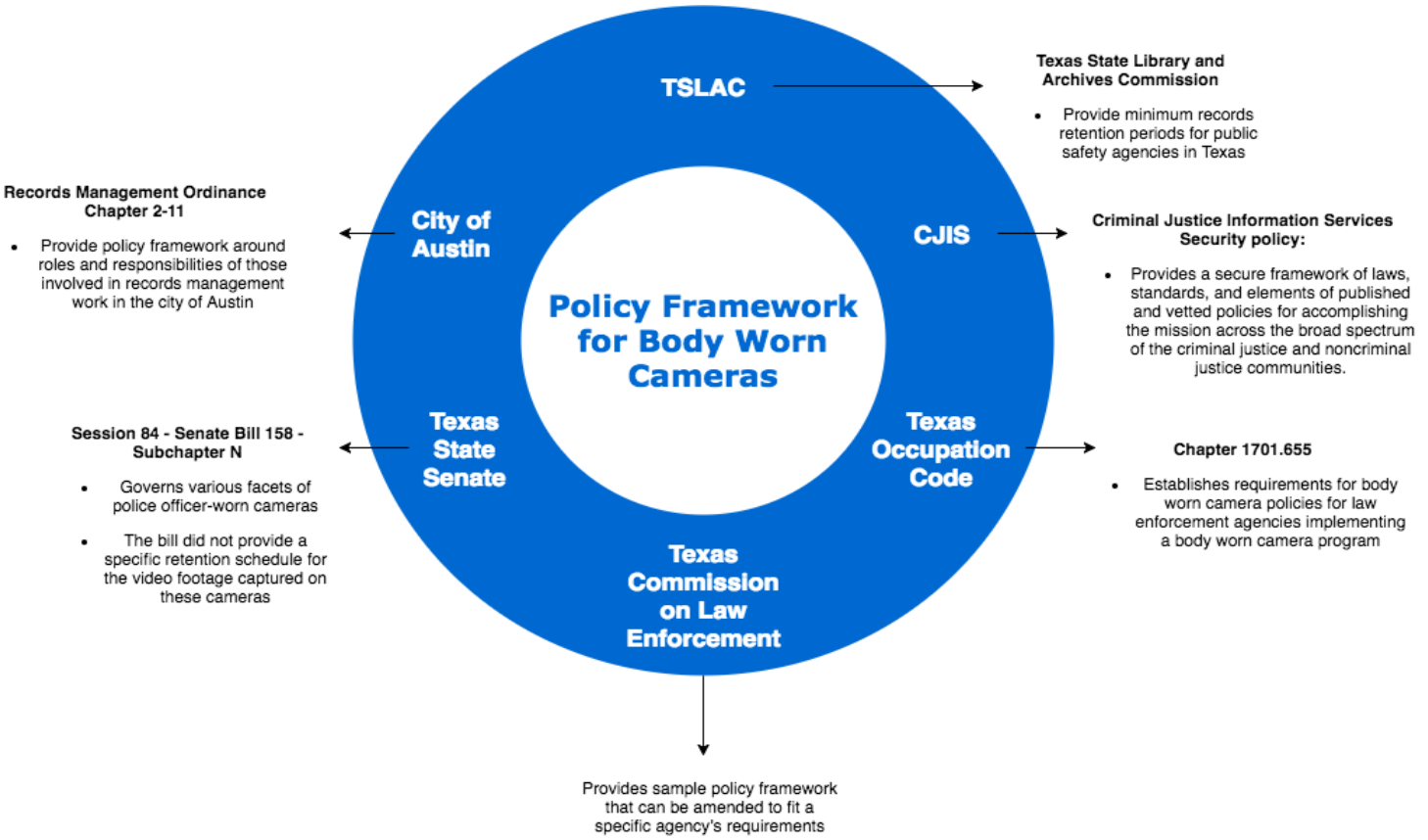
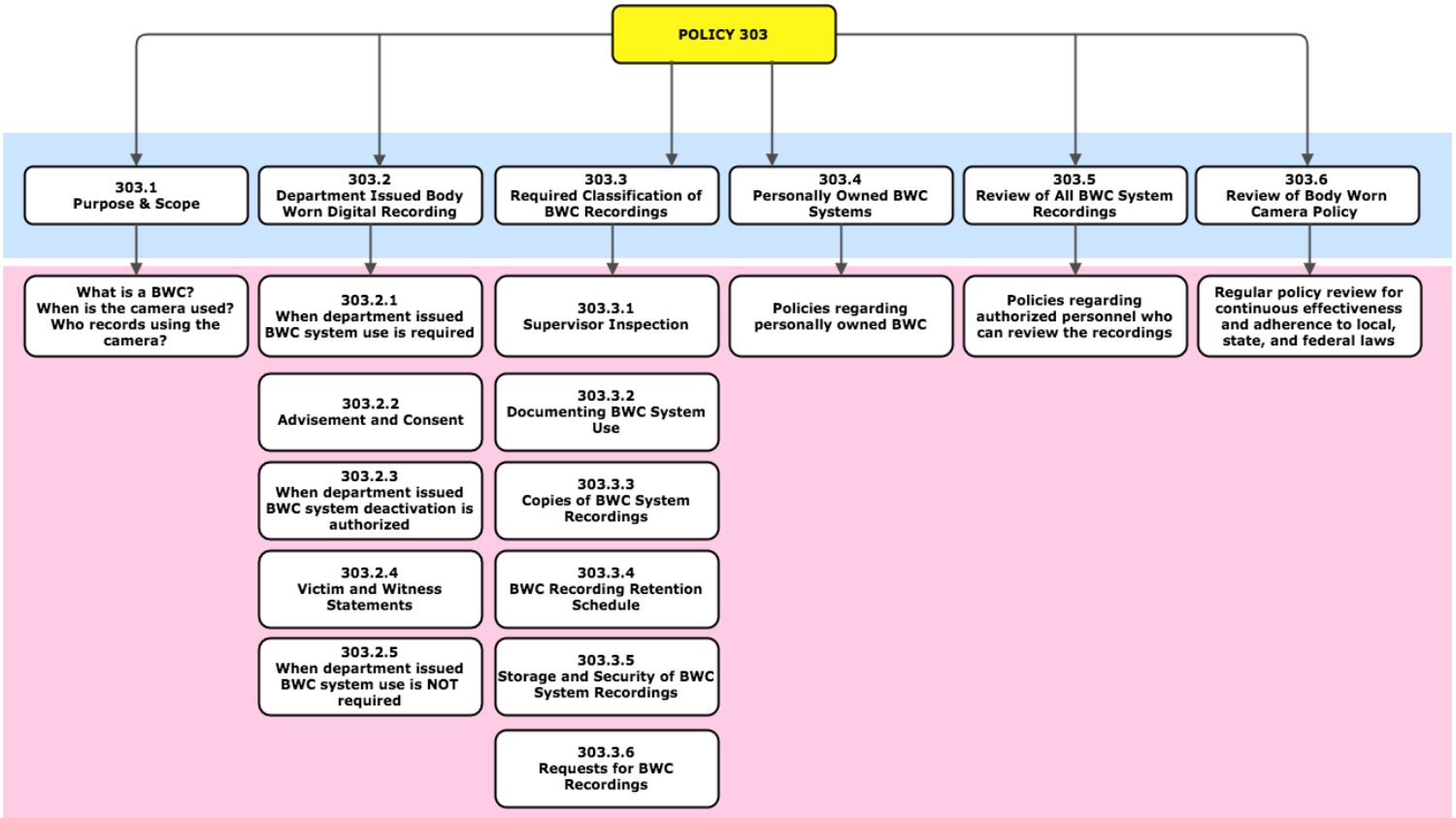
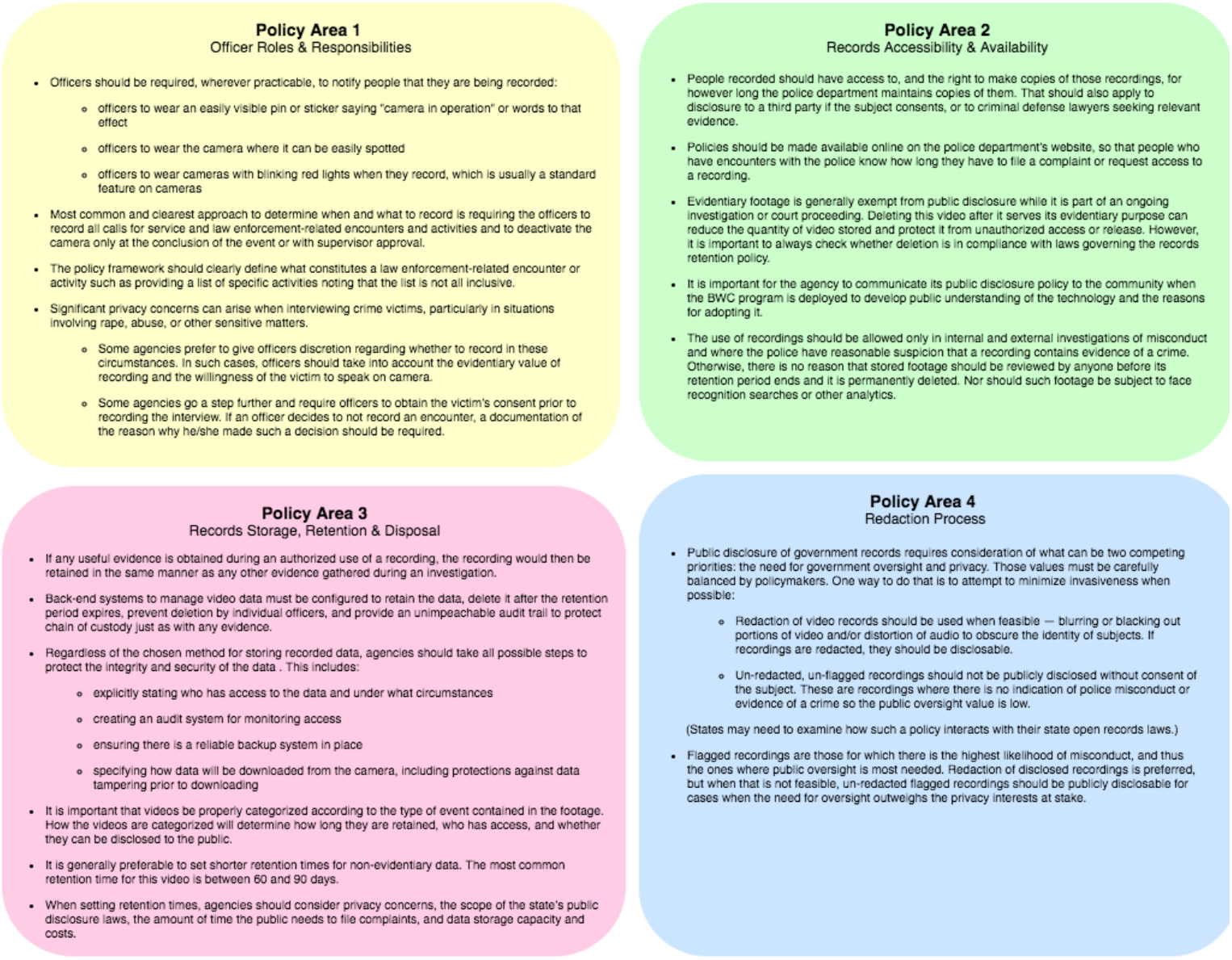


Image 3: *Austin Police Department's Policy 303 - Body Worn Digital Recording Systems*



Austin Police Department. (2017, September 28). Austin Police Department Policy Manual: Policy 303. Retrieved from http://www.austintexas.gov/sites/default/files/files/Police/policy_9-28-17.pdf

Image 4: *Key elements to consider when developing a policy framework for BWC program*



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