

FILED

04-20-2023

Anna Maria Hodges

Clerk of Circuit Court

2023CV002825

Honorable Frederick C

Rosa-35

Branch 35

STATE OF WISCONSIN : : CIRCUIT COURT : : MILWAUKEE COUNTY

MILWAUKEE POLICE ASSOCIATION

Local 21, IUPA, AFL-CIO,

By itself and on behalf of its Members,

Plaintiff,**Case No.:** _____**Case Type: Declaratory Judgment****v.****Case Code: 30701****CITY OF MILWAUKEE****Defendant.****AFFIDAVIT OF BRENDAN PAUL MATTHEWS**

STATE OF WISCONSIN }
 } ss.
 MILWAUKEE COUNTY }

Brendan Paul Matthews, being duly sworn upon oath does state as follows:

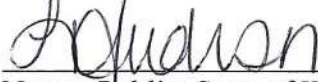
1. I am legal counsel to the Plaintiff and have personal knowledge of the facts stated herein.
2. Attached hereto and marked as ***Exhibit A*** is a true and correct copy of a newspaper article originally published in the Milwaukee Journal Sentinel on April 17, 2023. It was retrieved from the internet that same day at 2:14 PM.
3. Attached and marked as ***Exhibit B*** is a true and correct copy of the emails between myself and the FPC's Executive Director regarding SOP 575.
4. Attached and marked as ***Exhibit C*** is a true and correct copy of the Prohibited Practice Complaint filed with the WERC regarding SOP 660, which transpired similarly to the current situation with SOP 575.
5. Attached and marked as ***Exhibit D*** is a true and correct copy of the Prohibited Practice Complaint filed with the WERC regarding SOP 747, which transpired similarly to the current situation with SOP 575.

Dated this 20th day of April, 2023.

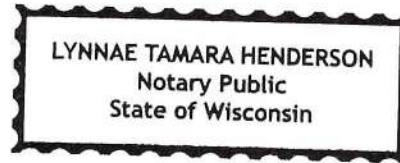


Brendan Paul Matthews

Subscribed and sworn to before me this
20th day of April, 2023.



Notary Public, State of Wisconsin
My commission 2/5/2027.



NEWS

Body cams are meant to improve transparency. Why's it so hard to figure out how to release their footage?



Elliot Hughes

Milwaukee Journal Sentinel

Published 6:01 a.m. CT April 17, 2023

After more than a year of discussion, Milwaukee appears poised to step into another frontier of the body camera era in policing: standardizing the process for releasing footage of police shootings in a timely manner.

It is an issue fraught with all kinds of complications to balance – transparency, investigation integrity, due process, privacy rights, communication with victims’ families and maintaining relationships with the outside police agencies that investigate such incidents in Milwaukee.

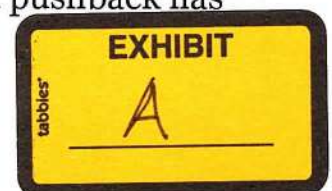
It is also an issue that few police agencies in the U.S. have voluntarily waded into yet.

The nine members of the Fire and Police Commission, one of the oldest and most powerful civilian oversight boards in the country, appear to have settled on the core aspects of a policy that would accelerate the Milwaukee Police Department’s current public disclosure process by about a month.

Milwaukee police have gently pushed back against the proposal. But the issue also affects other police agencies in the metropolitan area because of a state law mandating that such incidents be investigated by an outside agency. That's where the strongest pushback has come.

A vote is anticipated at its next meeting, 6 p.m. Thursday.

The effort to create the policy comes as activists pushed officials for a standard policy.



What followed was 14 months of information gathering, debate and more demonstrations from activists

“I can almost certainly say whatever we adopt will fail to satisfy everyone,” said Ed Fallon, the chair of the commission. “There will be people who are angry, who feel we did not do what they want, but nobody will say we did not listen because we have spent a year talking to everyone.”

Consensus forms around a 15-day deadline

Currently, Milwaukee has no standard operating procedure governing how police release footage of police shootings, in-custody deaths or other officer-involved incidents in which someone is killed or seriously injured – commonly referred to as “critical incidents.”

Instead the department has an internal process where it releases videos called “community briefings,” which include limited, edited and redacted footage with 911 dispatch audio and narration from police. The goal is to release them within 45 days, but that is not always met.

Eight out of nine members of the Fire and Police Commission were present for its last meeting, on April 6, where a consensus formed around three crucial components of a policy:

At least six commissioners support making the footage available to family of those hurt or killed by police within 48 hours of the incident.

Eight commissioners support a 15-day deadline for releasing footage publicly. Two prefer a shorter timeline.

Five commissioners are in favor of allowing police to extend the 15-day deadline for a set list of reasons, which must be provided to the commission. Two commissioners are not in favor of any extension.

The commission has not discussed the possibility of releasing names of involved officers any sooner than they are now. That typically comes after the Milwaukee County District Attorney’s Office decides to file charges or not.

Despite the consensus, there are indications that law enforcement outside Milwaukee could have an issue with the 48-hour provision for families.

Suburban police make strongest push in opposition, threaten to end role as outside investigators

Although Milwaukee police have repeatedly stated their preference for keeping a 45-day timeline for public disclosure, Chief Jeffrey Norman has said the department will accept the commission's decision.

The strongest push back has come from members of the Milwaukee Area Investigative Team, or MAIT, a collection of seven Milwaukee-area police agencies that step in as the outside investigators for critical incidents, to satisfy state law.

During a commission meeting in February, Waukesha Police Chief Daniel Thompson said releasing footage within 48 hours could jeopardize an investigation. He said it could cause MAIT to refuse to investigate critical incidents in the city of Milwaukee.

Leon Todd, the executive director of the commission, repeated in April that the provision to show family footage within 48 hours would create "significant risk" of the MAIT team falling apart, which he said would be "very detrimental" for investigating critical incidents in Milwaukee.

According to Todd, MAIT officials believe the provision would violate the spirit of the MAIT agreement. It would be improper, the logic goes, for the agency being investigated – in this case the Milwaukee Police Department – to reveal evidence to anyone so soon after the incident, before investigators are perhaps able to confirm exactly who was, and was not, involved.

MAIT officials told commissioners in February they would not want to show the footage to family themselves after 48 hours because they may not have answers to all the questions they would likely be asked.

Were MAIT to stop investigating critical incidents in Milwaukee, the only other option officials have identified is the state Department of Justice's Division of Criminal Investigation, or DCI – which most other Wisconsin police agencies rely on in those situations.

The problem is critical incidents happen more frequently in Milwaukee than anywhere else in the state, the MAIT team is local to the city and has considerably more resources than DCI.

Kent Lovern, Milwaukee County's chief deputy district attorney, said MAIT is a model system for investigating police that could go up against any other in the nation.

"I wouldn't want to see a different process," he said. "I don't want to see that compromised."

But the majority of the commission appears to have sided with community members, who have stressed that early family access is crucial. In early April, Fallon proposed that the commission be the entity that shares footage with family members.

"I'm trying to bring some comfort to the families who are in pain and who are hurting to know how this happened to (their) child," Commissioner Fred Crouther said.

Community members emphasize trust is lacking

In March, Linda and Jay Anderson addressed the commission.

Their son, Jay Anderson Jr., was killed by a Wauwatosa police officer in 2016. Months passed before they could view body camera footage or even come to understand what was going on with the investigation.

The wait was excruciating, they said. And by the time the mother saw the footage, she believed it had been tampered with.

"It's nerve-wracking," Linda Anderson said. "We just need these videos and stuff to come out a lot quicker."

It's a perspective that has been frequently expressed by activists and community members for years. They do not believe police are preserving an investigation. They believe police are getting their narrative out fast while holding back on transparency and covering their tracks.

Members of the Milwaukee Alliance Against Racist and Political Repression, which has stayed at the forefront of the issue since 2021, have called for a policy that would release officers' names within 24 hours and public release of footage within 48 hours. They and other residents have stressed that transparency is essential for repairing trust.

"This is a demand that is widely and deeply felt in our community," said Alan Chavoya, a member of the Milwaukee alliance. "There is no more trust in this police department."

Experts say arguments about protecting investigation integrity aren't good enough

Whether it's police from Milwaukee, the MAIT team or elsewhere in the nation, law enforcement's argument for withholding video footage for a period time usually centers around the idea of protecting an investigation.

If anyone involved with a critical incident can see footage of what happened before they're interviewed by investigators, the argument goes, they can tailor their statements to the footage rather than give an honest account of their thoughts, feelings and actions during the incident.

They also say the large workload behind preparing for a public release – protecting privacy rights of witnesses, notifying people ahead of time and providing context around the footage – is prohibitive on a short timeline. That's a disservice to transparency, they argue.

The Journal Sentinel asked three criminologists about that line of thinking and they all agreed releasing the footage – at least to the family – should be a prioritized.

“Those arguments I think are old and trite and they simply don't work for me anymore,” said Michael White, a former deputy sheriff who is now a professor at Arizona State University and an expert in body cameras. “I think the transparency argument is far more important.”

Maria Haberfeld, a professor of police science at John Jay College, said public disclosure is not nearly as much of a concern as giving the family early access.

Justin Nix, a criminology professor at the University of Nebraska-Omaha, said opportunities for transparency are lost when the community already loses faith in the footage after lengthy delays.

Body cameras are still a new technology in policing. Across the U.S., there is wide variation in how their footage is released. In Wisconsin, it's subject to open records law. In North Carolina, the public doesn't see that footage without a judge okaying it.

California, on the other hand, has mandated police release footage of critical incidents within 45 days. A collection of police agencies elsewhere have also crafted their own policies.

Police in Washington, D.C., release footage in five days. In Las Vegas, it's 72 hours. New York, 30 days. Chicago, 60. San Diego County – not until after the district attorney finishes their investigation.

“That’s the nature of policing in the 21st century,” Nix said. “They got to find the sweet spot.”

Contact Elliot Hughes at elliott.hughes@jrn.com or 414-704-8958. Follow him on Twitter @elliothughes12.

Brendan P. Matthews

From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Tuesday, April 04, 2023 9:41 AM
To: 'Todd, Leon'; 'Gehling, Naomi'
Cc: 'Andrew Wagner'
Subject: SOP 575

Good Morning-

Upon review of the FPC's proposed agenda for its upcoming meeting, the MPA noticed that SOP 575 was up for discussion.

As a reminder, Article 59 of the MPA's collective bargaining agreement with the City requires that "prior to" making any change that will affect wages, hours or conditions (as would be the case here), that the President of the MPA must be provided with a written copy of the same and that the Chief of Police is required to meet in good faith with the Association in an effort to reach an agreement over the proposed change(s).

Obviously, that has not occurred here. Moreover, implementation of changes that are primarily related to wages/hours/conditions cannot be done unilaterally.

Given the foregoing facts, what is the FPC's plan with respect to SOP 575?

The MPA would prefer not to litigate this matter, as it can easily be rectified with good faith bargaining.

Please advise.

Thanks.

-bpm

Brendan P. Matthews
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Milwaukee, WI 53213
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C: (414) 526-9201
F: (414) 276-8906
brendan@cermelelaw.com



Brendan P. Matthews

From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Wednesday, April 05, 2023 11:38 AM
To: 'Todd, Leon'; 'Gehling, Naomi'
Cc: 'Andrew Wagner'
Subject: FW: SOP 575

Just checking in with you both again regarding the email I sent yesterday morning.

A response would be greatly appreciated.

I'm happy to discuss the matter via phone if that is preferred.

Thanks.

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From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Thursday, April 06, 2023 1:26 PM
To: 'Todd, Leon'; 'Gehling, Naomi'
Subject: FW: SOP 575

Reaching out one last time before tonight's meeting.

Please advise how the FPC plans to address the MPA's concerns listed below.

Continued non-response from both of you is disheartening, as I strongly believe neither of you would treat a community member in the same manner.

It's also a common professional courtesy.

Thanks.

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From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Thursday, April 06, 2023 1:39 PM
To: 'Todd, Leon'; 'Gehling, Naomi'
Subject: RE: SOP 575

Thanks.

Feel free to let me know that next time, so I don't need to send out three emails.

-bpm

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Sent: Thursday, April 06, 2023 1:38 PM
To: brendan <brendan@cermelelaw.com>; Gehling, Naomi <naogeh@milwaukee.gov>
Subject: Re: SOP 575

Mr. Matthews,

I forwarded your email to the City Attorney's Office and am waiting for some additional information from them. Once I receive it, I will respond to the substance of your email.

I appreciate your patience in this regard.

Leon W. Todd

Executive Director

Fire and Police Commission

200 East Wells Street, Room 705

Milwaukee, WI 53202

Phone: (414) 286-5054

Fax: (414) 286-5050

letodd@milwaukee.gov

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From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Friday, April 14, 2023 1:25 PM
To: 'Todd, Leon'; 'Gehling, Naomi'
Cc: 'Andrew Wagner'
Subject: FW: Fire and Police Commission Meetings
Attachments: 230420_FPC_EXEC_AGENDA_-_FINAL.pdf; 230420_FPC_REG_AGENDA_-_FINAL.pdf

I am in receipt of the latest FPC agenda which now lists SOP 575 as being up for creation.

Did you receive anything back from the City Attorney's Office?

Also, if I do not hear back from you by the close of business today, I will assume the FPC/Chief/City is not willing to engage in good faith bargaining (or any bargaining whatsoever for that matter) on this SOP. This is not a threat, but I know the MPA is likely to take action if that's the case, which all signs point to that being the case.

I graciously await a response from you.

Thanks.

-bpm

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brendan@cermelelaw.com

From: Milwaukee.E-Notify@enotify.milwaukee.gov <Milwaukee.E-Notify@enotify.milwaukee.gov>
Sent: Friday, April 14, 2023 12:50 PM
Subject: Fire and Police Commission Meetings

Fire and Police Commission Meetings

The Fire and Police Commission will conduct hybrid meetings on Thursday, April 20, 2023, in City Hall, Room 301-B, located at 200 E Wells St.

Click on the link below to view the EXECUTIVE meeting details:

<https://milwaukee.legistar.com/MeetingDetail.aspx?ID=1098302&GUID=D4A45FAE-662D-441F-B816-63A78BC6E6BB&Options=info|&Search=>

Click on the link below to view the REGULAR meeting details:

<https://milwaukee.legistar.com/MeetingDetail.aspx?ID=1055371&GUID=AAF7BE3A-41CA-4E79-BDB5-B511A8FCB1E2&Options=info|&Search=>

Accommodation Requests

Reasonable accommodations, of an auxiliary aid or service required due to a disability, for a **City of Milwaukee event** will be provided upon request. Contact the City of Milwaukee ADA Coordinator, 414-286-3475 or adacoordinator@milwaukee.gov as soon as possible but no later than 72 hours before the scheduled event.

ADA accommodation requests for **Milwaukee County events** should be filed with the [Milwaukee County Office for Persons with Disabilities](#), 414-278-3932 (voice), 711 (TRS), or Michael.Bonk@milwaukeecountywi.gov upon receipt of this notice.

Please do not respond to this email. It is not set up to receive emails.

Please email brhughe@milwaukee.gov with your questions.

You have received this notification because you subscribed to the 'Fire and Police Commission Meetings' category

Please use the link to add or to remove categories from your account or delete your account

<https://itmdapps.milwaukee.gov/Enotify>

This E-Notify was sent successfully by the City of Milwaukee on 04/14/2023 at 12:49PM. After the email leaves the City of Milwaukee network, control passes to your Internet service provider. Email is typically reliable; however, once out of City of Milwaukee control there are various reasons that email may legitimately be delayed or not received.

CERMELE & MATTHEWS, S.C.

6310 WEST BLUEMOUND ROAD • SUITE 200 • MILWAUKEE • WISCONSIN 53213

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CERMELELAW.COM

FILE

JONATHAN CERMELE
jon@cermelelaw.com
BRENDAN P. MATTHEWS
brendan@cermelelaw.com

JACLYN SCHWARTZ
jackie@cermelelaw.com

September 15, 2017

Wisconsin Employment Relations Commission
4868 High Crossing Blvd.
Madison, WI 53704

**Re: Milwaukee Police Association v. City of Milwaukee
(SOP 660 "Pursuit Policy" Prohibited Practice Complaint)**

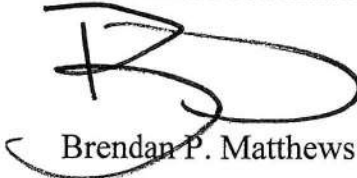
Dear Members of the Commission:

Enclosed is a Prohibited Practice Complaint with attachments, along with a \$100.00 check for the filing fee.

This matter should be set for hearing as soon as practicable.

Thank you.

CERMELE & MATTHEWS, S.C.



Brendan P. Matthews

BPM/bms

Enclosures

cc: Nicole Fleck (w/enc)
Milwaukee City Attorney's Office (w/enc)
MPA (via email)



REPRESENTING LAW ENFORCEMENT UNIONS AND INDIVIDUAL OFFICERS
THROUGHOUT THE STATE OF WISCONSIN.

Offices also located in Arbor Vitae, WI - Vilas County (715) 356-5164



**BEFORE THE
WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

MILWAUKEE POLICE ASSOCIATION,
Complainant,

v.

CITY OF MILWAUKEE,
Respondent.

COMPLAINT

The above-named Complainant, by its attorneys, Cermele & Matthews, S.C., complains that the above-named Respondent has engaged in prohibited practices contrary to the provisions of Chapter 111.70 of the Wisconsin Statutes, and, in that respect, alleges that:

1. Complainant Milwaukee Police Association, Local 21, IUPA, AFL-CIO, ("MPA"), is a labor organization within the meaning of §111.70(h), Stats., with offices located at 6310 West Bluemound Road, Milwaukee, Wisconsin, 53213 and which, pursuant to the Wisconsin Municipal Employment Relations Act ("MERA"), §111.70, Stats., *et seq.*, has been recognized by the City of Milwaukee as the exclusive bargaining representative for certain non-supervisory police officers of the Milwaukee Police Department ("MPD"), all of whom are employees of the City of Milwaukee.

2. Respondent City of Milwaukee ("City"), is a municipal employer and political subdivision organized and existing under the laws of the State of Wisconsin, with its principal place of business, main offices and mailing address located at 200 East Wells

Street, Milwaukee, Wisconsin, 53202. The City is a signatory to the labor agreement (“Agreement”) between said City and the MPA covering the non-supervisory employees represented by the MPA.

3. On or about April 20, 2017, thirteen (13) of the fifteen (15) members of the City of Milwaukee’s Common Council (“Common Council”) sent a letter to the City of Milwaukee Fire and Police Commission (“FPC”) calling for an overhaul of City of Milwaukee Police Department (“MPD”) Standard Operating Procedure 660 (“SOP 660”). MPD Police Chief Edward Flynn (“Chief Flynn”) was copied on the letter. A true and correct copy of the Common Council’s letter is attached and marked as *Exhibit A*.

4. Upon information and belief, pursuant to that letter, the FPC issued a written directive to Chief Flynn directing him to modify SOP 660 by July 27, 2017 or face discipline up to, and including, discharge. A true and correct copy of the FPC’s directive, signed July 13, 2017 is attached and marked as *Exhibit B*.

5. In a letter dated July 25, 2017 Chief Flynn requested an extension of time. Upon information and belief, one reason Chief Flynn wanted an extension was so that he could meet with “special interest groups” and his command staff regarding possible modifications to SOP 660. A true and correct copy of Chief Flynn’s letter requesting additional time is attached and marked as *Exhibit C*.

6. At no point between April 2017 and July 25, 2017 did the City (neither the FPC nor the MPD) meet with, advise, or discuss modification of SOP 660 with the MPA.

Nor did the City ever agree to meet with, advise, discuss or collectively bargain over the MPA's repeated requests to reexamine and modify SOP 660 over the last few years.

7. On September 7, 2017, the FPC released its agenda for its meeting on September 8, 2017. SOP 660 was one of the scheduled items on the agenda. A true and correct copy of the FPC's meeting agenda for September 8, 2017 is attached and marked as *Exhibit D*.

8. Upon information and belief, upon receipt of that meeting agenda, the MPA's President ("President Crivello"), contacted the FPC's Executive Director ("ED Regan") and requested that SOP 660 be taken off the meeting agenda because the City had not met with the MPA ("in good faith"), or even advised the MPA of proposed modification to SOP 660, both of which normally must, and do, occur prior to the FPC voting on the implementation of a new or modified SOP. SOP 660 was not taken off the FPC's calendar for the September 8, 2017 meeting.

9. Upon information and belief, when similar situations have occurred, ED Regan has exercised her authority by taking new or proposed SOPs off the FPC's meeting agenda.

10. Upon information and belief, at the September 8, 2017 regular meeting, President Crivello again spoke with ED Regan regarding his concerns with the FPC voting on SOP 660 on that date. ED Regan advised President Crivello that she had discussed the situation with the City Attorney and it was the opinion of that office that SOP 660

represented a “prohibited subject of bargaining” and it would therefore not be taken off the agenda.

11. Shortly thereafter, the FPC voted to approve Chief Flynn’s unilateral modifications to SOP 660 (absent any input from the MPA, or its members). In a letter sent to the FPC dated August 30, 2017, Chief Flynn noted all of the people he had consulted with before creating the modifications to SOP 660. None of the persons consulted were members of the MPA, or the MPA itself. A true and correct copy of Chief Flynn’s August 30, 2017 letter, with his proposed version of SOP 660, is attached and marked as *Exhibit E*.

12. The City previously implemented SOP 660 on May 9, 2016. It was collectively bargained over prior to that implementation. A true and correct copy of SOP 660 as implemented then is attached and marked as *Exhibit F*.

13. SOP 660 constitutes a mandatory subject of bargaining, as it primarily relates to conditions of employment. And, even in the event that the contents of SOP 660 are not deemed to constitute a mandatory subject of bargaining, the City nonetheless has an obligation to bargain over the impact of the modifications to SOP 660.

14. Article 59 of the parties’ collective bargaining agreement specifies that “prior to” the Chief of Police making “a change in an existing rule” that will affect wages, hours or conditions of employment, he/she must present the President of the Association with a written copy of the same and also meet with the Association in good faith in an effort to reach an agreement over the proposed change(s).

15. On September 13, 2017, nearly a week after the FPC approved Chief Flynn's new, unilateral version of SOP 660 for implementation, a representative from the MPD sent the MPA an email with a copy of the new SOP 660 attached. The email did not offer to bargain, or meet in good faith, over (the now already-implemented changes to) SOP 660. A true and correct copy of the MPD's email and relevant attachment is attached and marked as *Exhibit G*.

16. *Exhibit G* represents the first direct notice the MPA has received regarding changes to SOP 660. The MPD's conduct in this instance is especially egregious, given the parties' past and very recent practices regarding bargaining over proposed changes to SOPs. A recent example of the typical correspondence received from the MPD prior to implementation of change(s) to a current SOP is attached and marked as *Exhibit H*.

17. The City's brazen refusal to bargain over SOP 660 constitutes a prohibited practice, as defined under §111.70(3)(a)(5), Stats.

18. As implemented, the SOP 660 violates provisions of the parties' collective bargaining agreement, including Articles 59 and 69.

19. As implemented, SOP 660 interferes with and restrains the rights of the MPA and its members.

20. The City's conduct constitutes a prohibited practice in violation of §111.70(3)(a)4, §111.70(3)(a)5 and derivatively §111.70(3)(a)3, Stats.

WHEREFORE, the MPA requests that a hearing be set in due course and that

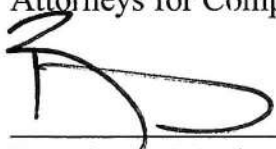
an Order be issued as follows:

- a. That Respondent committed the above-alleged prohibited practice(s);
- b. That Respondent cease and desist from such violations in the future, as well as post a notice to that effect;
- c. That Respondent immediately bargain the scope and contents of the SOP 660, and stay any implementation of the same until such time as bargaining is completed; and,
- d. That Respondent rescind any action taken in violation of §111.70(3)(a), Stats., until such time as bargaining has been completed.

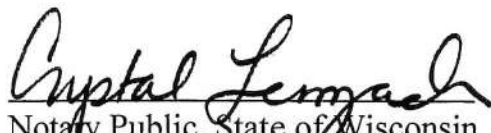
The required filing fee accompanies this Complaint.

Dated this 15th day of September, 2017 in Milwaukee, Wisconsin.

CERMELE & MATTHEWS, S.C.
Attorneys for Complainant


Brendan P. Matthews
State Bar No. 1076452
CERMELE & MATTHEWS, S.C.
6310 West Bluemound Road, Suite 200
Milwaukee, WI 53213
(414) 276-8750
(414) 276-8906 (facsimile)

Subscribed and sworn to before me
this 15th day of September 2017.


Notary Public, State of Wisconsin
My commission expires 2/26/21



CERMELE & MATTHEWS, S.C.

6310 WEST BLUEMOUND ROAD • SUITE 200 • MILWAUKEE • WISCONSIN 53213

PHONE (414) 276-8750 • FAX (414) 276-8906

CERMELELAW.COM

JONATHAN CERMELE
jon@cermelelaw.com
BRENDAN P. MATTHEWS
brendan@cermelelaw.com

JENNIFER R. HELLMER
jennifer@cermelelaw.com

October 20, 2015

Wisconsin Employment Relations Commission
1457 East Washington Avenue
P.O. Box 7870
Madison, WI 53703

**Re: Milwaukee Police Association v. City of Milwaukee
(Body Cameras Prohibited Practice Complaint)**

Dear Members of the Commission:

Enclosed is a Prohibited Practice Complaint with attachments, along with a \$100.00 check for the filing fee.

This matter should be set for hearing as soon as practicable.

Thank you.

CERMELE & MATTHEWS, S.C.



Brendan P. Matthews

BPM/bms
Enclosures

cc: Deborah Ford (w/enc)
Milwaukee City Attorney's Office (w/enc)
MPA (via email)



REPRESENTING LAW ENFORCEMENT UNIONS AND INDIVIDUAL OFFICERS
THROUGHOUT THE STATE OF WISCONSIN.

Offices also located in Arbor Vitae, WI - Vilas County (715) 356-5164



**BEFORE THE
WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

MILWAUKEE POLICE ASSOCIATION,
Complainant,

v.

CITY OF MILWAUKEE,
Respondent.

COMPLAINT

The above-named Complainant, by its attorneys, Cermele & Matthews, S.C., complains that the above-named Respondent has engaged in prohibited practices contrary to the provisions of Chapter 111.70 of the Wisconsin Statutes, and, in that respect, alleges that:

1. Complainant Milwaukee Police Association, Local 21, IUPA, AFL-CIO, ("MPA"), is a labor organization within the meaning of §111.70(h), Stats., with offices located at 6310 West Bluemound Road, Milwaukee, Wisconsin, 53213 and which, pursuant to the Wisconsin Municipal Employment Relations Act ("MERA"), §111.70, Stats., *et seq.*, has been recognized by the City of Milwaukee as the exclusive bargaining representative for certain non-supervisory police officers of the Milwaukee Police Department ("MPD"), all of whom are employees of the City of Milwaukee.

2. Respondent City of Milwaukee ("City"), is a municipal employer and political subdivision organized and existing under the laws of the State of Wisconsin, with its principal place of business, main offices and mailing address located at 200 East Wells

Street, Milwaukee, Wisconsin, 53202. The City is a signatory to the labor agreement (“Agreement”) between said City and the MPA covering the non-supervisory employees represented by the MPA.

3. On or about July 20, 2015, the MPA received an email from Captain Regina Howard (“Captain Howard”) notifying the MPA of a new proposed Standard Operating Procedure (“SOP”) relative to body cameras. A true and correct copy of Captain Howard’s email is attached and marked as *Exhibit A*.

4. On August 4, 2015, counsel for the MPA responded to Captain Howard’s email, requesting to bargain over the contents of the new proposed SOP. A true and correct copy of the MPA’s response and bargaining demand is attached and marked as *Exhibit B*.

5. Following additional prompting from the MPA, Captain Howard responded late in the business day (4:52 pm) on August 18, 2015 that she was no longer the contact person for the new SOP, and that Lieutenant Derrick Harris (“Lt. Harris”) was now that person. Captain Howard copied Deborah Ford (“Ms. Ford”) on her response. Ms. Ford is the City’s labor negotiator. Captain Howard also copied Nicole Fleck (“Ms. Fleck”) on her response. Ms. Fleck is the MPD’s Human Resources Director. Both Ms. Howard and Ms. Fleck had been copied on the MPA’s additional prompting of Ms. Howard. A true and correct copy of Captain Howard’s response is attached and marked as *Exhibit C*.

6. The following morning (8/19/15), counsel for the MPA emailed Lt.

Harris, Ms. Ford and Ms. Fleck, again demanding to bargain over the proposed Body Worn Camera (“BWC”) SOP. A true and correct copy of that email is attached and marked as *Exhibit D*.

7. A few hours later, Lt. Harris responded that he would “make the appropriate notifications and route your request through my chain of command.” He then wrote that “[a]s soon as I get some information I will contact you regarding the meeting.” A true and correct copy of Lt. Harris’ email is attached and marked as *Exhibit E*.

8. After that email, Lt. Harris never contacted the MPA again.

9. While still ignoring the MPA’s bargaining request, the City instead asked the MPA to participate in a Body Camera demonstration. During that demonstration, a Microsoft PowerPoint indicated dates and times during which the Body Cameras would be implemented and used by MPA members. Upon information and belief, the indicated dates were going to be followed regardless of the MPA’s bargaining demands.

10. The City also conducted a Body Camera demonstration during a City of Milwaukee Fire and Police Commission meeting on September 3, 2015. A Microsoft PowerPoint presented during that meeting indicated dates and times during which the Body Cameras would be implemented and used by MPA members. Upon information and belief, the indicated dates were going to be followed regardless of the MPA’s bargaining demands.

11. On September 2, 2015, Ms. Ford emailed counsel for the MPA and advised that she would be happy to meet and bargain over the BWC SOP. A true and correct

copy of Ms. Ford's email is attached and marked as *Exhibit F*.

12. Multiple emails between the parties ensued, relating the MPA's desire to bargain over the proposed BWC SOP. True and correct copies of those emails are attached and marked as *Exhibit G*.

13. The parties finally met to bargain over the BWC SOP on September 14, 2015. The City made clear during that meeting that it was going to implement the BWC SOP regardless of the MPA's bargaining demands and concerns.

14. Despite promising to get back in touch with the MPA about the BWC SOP and its bargaining demands, the City has not done so as of October 20, 2015. In fact, the City has not contacted the MPA about the BWC SOP in any capacity since September 14, 2015.

15. The City implemented the BWC SOP on October 15, 2015. A true and correct copy of the BWC SOP as implemented is attached and marked as *Exhibit H*.

16. The BWC SOP constitutes a mandatory subject of bargaining, as it primarily relates to wages and conditions of employment.

17. The City's refusal to bargain over the BWC SOP constitutes a prohibited practice, as defined under §111.70(3)(a)(4), Stats.

19. As implemented, the BWC SOP violates provisions of the parties' collective bargaining agreement, including Article 69.

20. As implemented, the BWC SOP interferes with and restrains the rights

of the MPA.

21. The City's conduct constitutes a prohibited practice in violation of §111.70(3)(a)4, §111.70(3)(a)5 and derivatively §111.70(3)(a)3, Wis. Stats.

WHEREFORE, the MPA requests that a hearing be set in due course and that an Order be issued as follows:

- a. That Respondent committed the above-alleged prohibited practice(s);
- b. That Respondent cease and desist from such violations in the future, as well as post a notice to that effect;
- c. That Respondent immediately bargain the scope and contents of the BWC SOP, and stay any implementation of the same until such time as bargaining is completed; and,
- d. That Respondent rescind any action taken in violation of §111.70(3)(a), Stats., until such time as bargaining has been completed.

The required filing fee accompanies this Complaint.

Dated this 20th day of October, 2015 in Milwaukee, Wisconsin.

CERMELE & MATTHEWS, S.C.
Attorneys for Complainant



Brendan P. Matthews
State Bar No. 1076452
CERMELE & MATTHEWS, S.C.
6310 West Bluemound Road, Suite 200
Milwaukee, WI 53213
(414) 276-8750
(414) 276-8906 (facsimile)

Subscribed and sworn to before me
this 20th day of October, 2015.

Crystal Lewzader
Notary Public, State of Wisconsin
My commission expires 2/26/17



Brendan P. Matthews

From: Michael V Crivello <crivello@milwaukeeecops.org>
Sent: Thursday, July 30, 2015 5:04 PM
To: JON CERMELE; BRENDAN MATTHEWS
Subject: Fwd:
Attachments: Untitled attachment 00531.htm; DRAFT 747 - BODY WORN CAMERA (BWC).pdf;
Untitled attachment 00534.htm

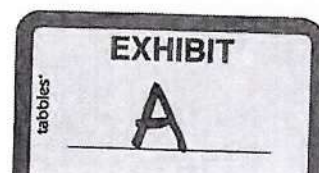
Sent from my iPhone

Begin forwarded message:

From: "Howard, Regina" <RHOWAR@milwaukee.gov>
Date: July 20, 2015 at 11:44:43 AM CDT
To: "Mike Crivello, Milwaukee Police Association" <crivello@milwaukeepoliceassoc.com>

Please see the attached draft policy for Body Worn Cameras.

RMH



Brendan P. Matthews

From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Wednesday, August 05, 2015 8:19 AM
To: 'RHOWAR@milwaukee.gov'
Cc: 'Michael Crivello'
Subject: BWC SOP

Captain Howard-

Greetings to you.

I am in receipt of the proposed BWC SOP (numbered 747 on the copy I have).

The draft I received looks like it was sent to MPA President Crivello from your email account, so I am emailing you back as I am assuming you are the "point" person on this matter.

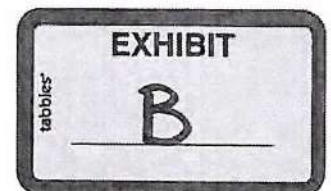
The MPA would request to meet with the necessary persons regarding the scope and content of the proposed SOP.

Please advise when those persons would be available and we can get something on the calendar.

Thank you.

If you have any questions, please let me know.

-Brendan



Brendan P. Matthews

From: Howard, Regina <RHOWAR@milwaukee.gov>
Sent: Tuesday, August 18, 2015 4:52 PM
To: Michael Crivello
Cc: Brendan P. Matthews; Ford, Deborah; Fleck, Nicole; Harris, Derrick - MPD
Subject: Re: BWC SOP

Good afternoon,

I am no longer assigned to OMAP. Please contact Lieutenant Derrick Harris regarding any questions or concerns. He is copied on this email.

Thank you,

RMH

Sent from my iPad

On Aug 18, 2015, at 2:22 PM, Michael Crivello <crivello@milwaukeeccops.org> wrote:

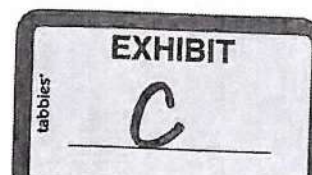
****resend of original message from 2015.08.05**

Michael V. Crivello
President/Milwaukee Police Association
Local 21 IUPA AFL/CIO
6310 West Blue Mound Road
Milwaukee, WI 53213
Bus (414) 778-0740
Fax (414) 778-0757
crivello@milwaukeeCCOPS.org



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From: Brendan P. Matthews [<mailto:brendan@cermetelaw.com>]
Sent: Wednesday, August 05, 2015 8:19 AM
To: RHOWAR@milwaukee.gov
Cc: 'Michael Crivello' <crivello@milwaukeeccops.org>
Subject: BWC SOP



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Please advise when those persons would be available and we can get something on the calendar.

Thank you.

If you have any questions, please let me know.

-Brendan

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Brendan P. Matthews

From: Michael Crivello <crivello@milwaukeeecops.org>
Sent: Tuesday, August 18, 2015 2:23 PM
To: 'Brendan P. Matthews'; RHOWAR@milwaukee.gov
Cc: 'Ford, Deborah'; CITY NEG NICOLE FLECK
Subject: RE: BWC SOP

**resend of original message from 2015.08.05

Michael V. Crivello
President/Milwaukee Police Association
Local 21 IUPA AFL/CIO
6310 West Blue Mound Road
Milwaukee, WI 53213
Bus (414) 778-0740
Fax (414) 778-0757
crivello@milwaukeeCOPS.org



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Cc: 'Michael Crivello' <crivello@milwaukeeecops.org>
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Thank you.

If you have any questions, please let me know.

-Brendan

Brendan P. Matthews

From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Wednesday, August 19, 2015 9:00 AM
To: 'Michael Crivello'; 'dharri@milwaukee.gov'
Cc: 'Ford, Deborah'; 'Fleck, Nicole'
Subject: RE: BWC SOP

Lt. Harris-

I have copied and pasted most of my email from below...

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-Brendan

From: Howard, Regina [mailto:RHOWAR@milwaukee.gov]
Sent: Tuesday, August 18, 2015 4:52 PM
To: Michael Crivello <crivello@milwaukeecops.org>
Cc: Brendan P. Matthews <brendan@cermelelaw.com>; Ford, Deborah <dford@milwaukee.gov>; Fleck, Nicole <nfleck@milwaukee.gov>; Harris, Derrick - MPD <DHARRI@milwaukee.gov>
Subject: Re: BWC SOP

Good afternoon,

I am no longer assigned to OMAP. Please contact Lieutenant Derrick Harris regarding any questions or concerns. He is copied on this email.

Thank you,

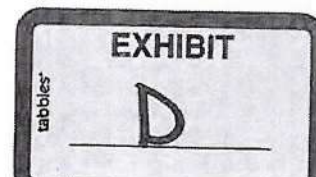
RMH

Sent from my iPad

On Aug 18, 2015, at 2:22 PM, Michael Crivello <crivello@milwaukeecops.org> wrote:

**resend of original message from 2015.08.05

Michael V. Crivello
President/Milwaukee Police Association
Local 21 IUPA AFL/CIO



6310 West Blue Mound Road
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Bus (414) 778-0740
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-Brendan

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Brendan P. Matthews

From: Harris, Derrick - MPD <DHARRI@milwaukee.gov>
Sent: Wednesday, August 19, 2015 9:16 AM
To: Brendan P. Matthews
Subject: RE: BWC SOP

Good Morning,

I will make the appropriate notifications and route your request through my chain of command. As soon as I get some information I will contact you regarding the meeting.

From: Brendan P. Matthews [mailto:brendan@cermelelaw.com]
Sent: Wednesday, August 19, 2015 9:00 AM
To: 'Michael Crivello'; Harris, Derrick - MPD
Cc: Ford, Deborah; Fleck, Nicole
Subject: RE: BWC SOP

Lt. Harris-

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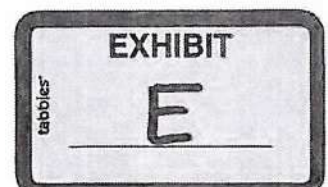
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Subject: BWC SOP

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If you have any questions, please let me know.

-Brendan

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Brendan P. Matthews

From: Ford, Deborah <dford@milwaukee.gov>
Sent: Wednesday, September 02, 2015 4:19 PM
To: Brendan P. Matthews; Fleck, Nicole; crivello@milwaukeeecops.org
Cc: Wiorek, Douglas
Subject: RE: Body Camera Demo

Good Afternoon Brendan

If you are interested in meeting to talk about any bargaining, please direct those requests to me. I would be happy to meet with you.

Deborah

From: Brendan P. Matthews [mailto:brendan@cermelelaw.com]
Sent: Wednesday, September 02, 2015 10:55 AM
To: Fleck, Nicole; crivello@milwaukeeecops.org
Cc: Ford, Deborah; Wiorek, Douglas
Subject: RE: Body Camera Demo

Nicole-

I have left multiple voice messages for you so I will try sending something out via email.

Unfortunately, the body camera demo scheduled for 9/8 will not be possible anymore due to my error.

When we spoke about getting this scheduled, I indicated that I was working from home and did not have the information in front of me, but that I believed Crivello was available Monday and Tuesday. Upon review of my notes, he was/is available Monday (holiday) and Thursday, not Tuesday. Tuesday is the MPA's monthly meeting day, so Crivello will already be tied up all day.

I genuinely apologize for the inconvenience, but I hope we can get this (body camera demo) rescheduled for Thursday 9/10 (1pm or otherwise, District 3 or elsewhere) without issue.

Please let me know if this works for the Department. And, if it does, when and where we should show up for the demo.

I would also like to touch base with you about the "roll out" of the body cameras and our requested bargaining meeting regarding the SOP covering the body cameras.

Thank you.

-Brendan

From: Fleck, Nicole [mailto:nfleck@milwaukee.gov]
Sent: Friday, August 28, 2015 9:00 AM
To: 'crivello@milwaukeeecops.org' <crivello@milwaukeeecops.org>; Brendan P. Matthews (brendan@cermelelaw.com) <brendan@cermelelaw.com>
Cc: Ford, Deborah <dford@milwaukee.gov>; Wiorek, Douglas <DWIORE@milwaukee.gov>
Subject: Body Camera Demo



Mike and Brendan,

The body camera demo has been scheduled for Sept. 8th at 1 pm at District 3 in the EOC. Vanessa Armstrong will be in attendance from HR as I will be on vacation that week.

If you have any questions please let me know.

Thanks,
Nicole

Nicole M. Johnson
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Brendan P. Matthews

From: Ford, Deborah <dford@milwaukee.gov>
Sent: Thursday, September 03, 2015 10:00 AM
To: Brendan P. Matthews; Fleck, Nicole; crivello@milwaukeeops.org
Cc: Wiorek, Douglas; Harris, Derrick - MPD
Subject: Re: Body Camera SOP.

Good Morning Brendan

While there appears to have been some confusion in the communications between the parties regarding who was handling the various aspects of your requests, please be advised that any request to bargain any aspects of the camera implementation will be handled by this office. If you would like to meet before you have had an opportunity to see the camera demo, my availability next week is the afternoon of the 8th or the afternoon of the 9th. Otherwise we are into the following week. Please let me know what works for you.

Deborah

From: Brendan P. Matthews <brendan@cermelelaw.com>
Sent: Thursday, September 3, 2015 8:17 AM
To: Ford, Deborah; Fleck, Nicole; crivello@milwaukeeops.org
Cc: Wiorek, Douglas; Harris, Derrick - MPD
Subject: Body Camera SOP.

Deborah-

I am confused.

The MPD emailed Crivello regarding the proposed body camera SOP on July 30th.

I then emailed the sender of that email (Capt. Regina Howard) and requested that she set up a meeting to bargain over the contents of the proposed SOP, or that she get that request to the "powers that be" so that we could get a meeting scheduled.

A few weeks later I received an email from Capt. Howard stating that she is longer assigned to OMAP and that I needed to contact Lt. Derrick Harris to set up the requested meeting. You were copied on that email. You did not reply at that time (or at any point thereafter until yesterday) that you, and not Lt. Harris, were the contact person on this matter.

In fact, when I forwarded my initial email (requesting a meeting on the "scope and content of the proposed SOP") to Lt. Harris, I specifically stated that the MPA wanted to meet with the "necessary persons" about the scope and content of the SOP. Again, you were cc'd on that email, but I did not receive any response from you.

I did receive a reply from Lt. Harris, who informed me that he would make the appropriate notifications and route the MPA's request through the appropriate chain of command. That was on August 19, 2015. To date, I have not heard anything further from Lt. Harris. Yet, I am hearing word that the MPD plans to roll out the body cameras in the very near

future, regardless of the MPA's request to bargain over the content and scope of the SOP. That is disheartening and troubling.

I would strongly advise the MPD to refrain from implementing the proposed body camera SOP until meaningful bargaining takes place regarding the same. I will be forced to file multiple causes of action if that does not happen, including at least one prohibitive practice complaint with the WERC.

I will reiterate the MPA's request to meet to discuss the scope and contents of the proposed body camera SOP. If you are the person the MPA needs to meet with, please let me know when you are available and we can set up the requested meeting. If you are not the person the MPA needs to meet with, please advise who is.

Thank you.

-Brendan

From: Ford, Deborah [mailto:dford@milwaukee.gov]

Sent: Wednesday, September 02, 2015 4:19 PM

To: Brendan P. Matthews <brendan@cermelelaw.com>; Fleck, Nicole <nfleck@milwaukee.gov>; crivello@milwaukeeecops.org

Cc: Wiorek, Douglas <DWIORE@milwaukee.gov>

Subject: RE: Body Camera Demo

Good Afternoon Brendan

If you are interested in meeting to talk about any bargaining, please direct those requests to me. I would be happy to meet with you.

Deborah

From: Brendan P. Matthews [mailto:brendan@cermelelaw.com]

Sent: Wednesday, September 02, 2015 10:55 AM

To: Fleck, Nicole; crivello@milwaukeeecops.org

Cc: Ford, Deborah; Wiorek, Douglas

Subject: RE: Body Camera Demo

Nicole-

I have left multiple voice messages for you so I will try sending something out via email.

Unfortunately, the body camera demo scheduled for 9/8 will not be possible anymore due to my error.

When we spoke about getting this scheduled, I indicated that I was working from home and did not have the information in front of me, but that I believed Crivello was available Monday and Tuesday. Upon review of my notes, he was/is available Monday (holiday) and Thursday, not Tuesday. Tuesday is the MPA's monthly meeting day, so Crivello will already be tied up all day.

I genuinely apologize for the inconvenience, but I hope we can get this (body camera demo) rescheduled for Thursday 9/10 (1pm or otherwise, District 3 or elsewhere) without issue.

Please let me know if this works for the Department. And, if it does, when and where we should show up for the demo.

I would also like to touch base with you about the "roll out" of the body cameras and our requested bargaining meeting regarding the SOP covering the body cameras.

Thank you.

-Brendan

From: Fleck, Nicole [<mailto:nfleck@milwaukee.gov>]

Sent: Friday, August 28, 2015 9:00 AM

To: 'crivello@milwaukeeecops.org' <crivello@milwaukeeecops.org>; Brendan P. Matthews (brendan@cermelelaw.com) <brendan@cermelelaw.com>

Cc: Ford, Deborah <dford@milwaukee.gov>; Wiorek, Douglas <DWIORE@milwaukee.gov>

Subject: Body Camera Demo

Mike and Brendan,

The body camera demo has been scheduled for Sept. 8th at 1 pm at District 3 in the EOC. Vanessa Armstrong will be in attendance from HR as I will be on vacation that week.

If you have any questions please let me know.

Thanks,
Nicole

Nicole M. Fleck, APA

Human Resources Administrator
Milwaukee Police Department
3215 W. State Street
Milwaukee, WI 53208

Phone: (414) 935-7110

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MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

747 – BODY WORN CAMERAS (BWC)

GENERAL ORDER: 2015-42
ISSUED: September 4, 2015

EFFECTIVE: September 18, 2015

REVIEWED/APPROVED BY:
Captain Mark Stanmeyer
DATE: August 28, 2015

ACTION: Creates SOP

WILEAG STANDARD(S): 1.2.5, 6.3.6, 6.6.4,
10.2.1

747.00 PURPOSE

The purpose of this policy is to establish guidelines for the use, management, storage and retrieval of recordings from the department's body worn camera (BWC) system.

BWC's will be used to support the mission of the department and assist department members in the performance of their duties by providing an accurate and unbiased recording of interactions between police members and the public.

747.05 POLICY

This policy establishes standards and guidelines related to the capture and use of audio and video recordings produced by Taser Axon Flex body worn cameras.

This policy applies to all members assigned a BWC, and any members, investigative personnel, and support staff responsible for preparing cases for criminal prosecution and the release of public records. This policy does not apply to the use or management of the DP3 in-car video system that is permanently mounted in police vehicles.

747.10 DEFINITIONS

A. AXON MOBILE SMARTPHONE APPLICATION

A smartphone application (app) that allows for a Bluetooth connection from the camera to a supported smartphone device. The app will allow a member to view live or recorded video stored on the camera. Video cannot be altered or modified, but members can tag the video in the field while the video is still stored on the camera. Tagging videos in the field will eliminate the need to tag videos after uploading at the work location.

B. 30 SECOND PRE-EVENT BUFFERING

The Axon Flex BWC is continuously recording video in 30 second looped increments. This is sometimes known as a pre-event 30 second buffer and works similar to the DP-3 in car video buffer. Audio is not recorded until the member begins a recording. Once the member begins to record, the previous 30 seconds of video is included in the evidentiary recording.

EXHIBIT

H

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C. BODY WORN CAMERA (BWC)

A BWC is the two piece Taser Axon Flex camera system that includes the camera and the Tactical Controller (TC). One cannot function without the other.

D. EVIDENCE.COM

Web-based, secure, offsite storage solution for the management and storage of audio/video recordings produced by each BWC.

E. EVIDENCE SYNC

A desktop-based application that allows Taser CEW logs and Axon Flex video to be annotated with meta-data in the same fashion as the AXON Mobile smartphone application prior to uploading to Evidence.com. SYNC streamlines video uploads from the field when you connect AXON cameras to an MDC or at a work location desktop computer.

F. EVIDENCE TRANSFER MANAGER (ETM)

Docking station that uploads data from a BWC to Evidence.com. The ETM also recharges the TC.

G. TACTICAL CONTROLLER (TC)

The camera control module and battery that is attached on a belt, placed in a holster, a pocket or otherwise attached to the member's uniform.

747.15 GENERAL INFORMATION

Each BWC system will be used to document various events that occur during the duty shift of the assigned member. Upon completion of the assigned member's shift, all captured data will be preserved in a secure recording storage location. Once captured, these recordings are protected with multiple layers of encryption and cannot be altered. BWC technology facilitates the department's objectives to collect evidence for prosecutions, ensure both officer and citizen accountability, facilitate administrative inspection functions, and provide a valuable training aid by allowing for the evaluation of officer and citizen behavior.

747.20 GENERAL GUIDELINES**A. TRAINING**

Members will receive prescribed training prior to being assigned a BWC. Any training provided will be commensurate with the level of participation in the BWC program (e.g., camera wearer, detective, administrator).

B. CARE AND EQUIPMENT

1. The only BWC authorized by the Milwaukee Police Department is the department-issued Taser Axon Flex BWC. Personal video recording devices are prohibited.
2. All BWC's and related equipment will be issued to individual members by the BWC program administrator or his/her designee.
3. A record of inventory will be maintained by the BWC program administrator.
4. Only members that have received the prescribed training will be assigned or permitted to wear a BWC.
5. Members assigned a BWC are responsible for the proper care of the equipment.
6. Any BWC that is lost or stolen will be reported as required by SOP 340.75.

C. REPAIR / REPLACEMENT

1. Replacement video cords will be available in the lieutenant's office of each deploying work location.
2. When a BWC is in need of repair or replacement due to damage (other than for a video cord), the member assigned the camera must notify a supervisor. The member shall detail the circumstances leading to the damage in an official police incident report if the damage occurred during an incident. If the damage did not occur during a reportable incident, the member shall detail the circumstances in a *Department Memorandum* (form PM-9E).
3. BWC replacement parts and/or systems are available by contacting the Technology Unit or the BWC program administrator. The proper documentation, outlined above, must have been filed with a copy made available for review by the Technology Unit or the BWC program administrator before replacement parts or systems will be issued.

747.25 OPERATIONAL GUIDELINES (WILEAG 1.2.5, 6.3.6, 6.6.4, 10.2.1)**A. PRE-SHIFT INSPECTION**

Prior to each shift, members assigned a BWC will ensure the unit is adequately charged. Further, members will inspect their charging and camera cables as well as the camera to ensure there is no visible damage and the device is in good working order. Any visible damage or concerns about the functionality of the equipment will be brought to the attention of the member's immediate supervisor as soon as it is practical to do so.

B. WORKING REPLACEMENT SHIFTS

Members assigned a camera and working a uniformed patrol replacement at a work location other than where normally assigned will utilize a spare BWC kept at the work location where the replacement is being worked.

1. Before using the spare camera, a supervisor with Evidence.com access will need to assign the camera to the member.
2. If a supervisor is not immediately available, the member can use the camera, but should locate a supervisor with Evidence.com access before the end of their shift so the camera can be properly assigned.
3. If a spare BWC is not available, the shift commander will be notified.

C. AUDIO / VIDEO RECORDING**1. Wearing Position of the BWC**

The camera mounted on a pair of glasses or on the head with the low rider head mount is the preferred mounting location. The adjustable collar mount, the vest mount, brim of a department issued ball cap, or motorcycle helmet are secondary mounting options for the member. The camera should generally be worn on or near the member's head and worn on the member's strong side.

2. Use of and Recording with the BWC

- a. A member assigned a BWC must wear it at all times when on duty, in uniform and performing or likely to perform enforcement duties.
- b. In car video and body cameras are each considered a tool in the performance of law enforcement duties. When a member is assigned a BWC and operating a vehicle equipped with in-car video, both the in-car video body microphone and the BWC will be worn.
- c. The department recognizes that officer safety is paramount. Members with a BWC who arrive on a scene or engage in an enforcement contact must start recording as soon as it is safe and practical to do so. If multiple members are on scene with a BWC, all members with a BWC will record.
- d. Members with a BWC will make every effort to activate their BWC for all investigative or enforcement contacts including, but not limited to:
 1. Vehicle stops
 2. Impaired driver investigations
 3. Field interviews and pedestrian stops
 4. Transporting citizens or prisoners
 5. Searches of persons or property

6. Dispatched calls for service
 7. Crime scenes
 8. Crash scenes (may be turned off if member is waiting on a tow truck and no additional enforcement activity is likely).
 9. Advising a subject of Miranda warnings (in the field or without MediaSolv)
 10. Suspect/witness statements and interviews
 11. Vehicle and foot pursuits
 12. Emergency response to critical incidents
- e. Members assigned a BWC and with a prisoner in an MPD booking room will record until either the booker releases the member or the prisoner is put into a cell.
 - f. Recording at the Criminal Justice Facility (CJF) will cease upon entry to the facility unless approved by CJF staff.
 - g. Once a BWC is recording, members must continue to record until either the completion of the event or until they leave the scene and their involvement in the event ceases.
 - h. While not required by policy or state law, members assigned a BWC may find it valuable to inform other parties that they are being recorded. This has proven to be influential in garnering cooperation of subjects and has been shown to reduce incidents of use of force.
 - i. A BWC is not specifically designed to log evidence or to be used for any situation where fine detail and resolution is necessary. Members are encouraged, however, to use their assigned BWC to record crime scenes prior to the arrival of crime scene technicians or forensic investigators, especially if the scene may change or be compromised.
 - j. For efficiency, members assigned a BWC can view and tag captured video via the Axon mobile smartphone app or by using Sync prior to uploading to Evidence.com.

D. EXCEPTIONS TO RECORDING

1. Police members have discretion in whether or not to record potentially sensitive events or circumstances (e.g., victims of a sexual assault, child victim statements / interviews, nude persons who are not the target of enforcement action, or a citizen victim/witness who requests they not be recorded while giving a statement, or where otherwise authorized in this policy).
2. Police members may deactivate BWC's during non-enforcement activities such as:
 - a. Member to member conversations about crime charging issues or other general conversations.

- b. Traffic control at fires, crime scenes, or crash scenes when the member's likelihood of being involved in enforcement activities is low.
 - c. Lengthy hospital stays awaiting medical clearance (unless enforcement actions are likely, the likelihood of additional criminal activity or escape attempt is high, the suspect is making voluntary statements, or the member is gathering additional evidence (e.g., OWI blood draws).
3. Members shall make a verbal notation on the recording anytime he or she plans to intentionally stop a recording prior to the completion of an event or incident. The verbal notation must include the reason why the member is stopping the recording.

E. PROHIBITED RECORDINGS

In keeping with the department's core values of respect and integrity, members assigned a BWC will adhere to the following guidelines:

1. BWC's will not be activated in a place where a reasonable expectation of privacy exists, such as dressing rooms, locker rooms and restrooms (Wis. Stat. § 175.22). Any purposeful or accidental recordings made under these circumstances may be deleted prior to the standard 120 day retention period at the direction of the Chief of Police or his/her designee.
2. BWC's shall not be used to record a strip search or a body cavity search conducted in a hospital setting.
3. BWC's will not be intentionally activated to record conversations of fellow members without their knowledge during routine and non-enforcement activities. This includes while a member is on a rest break, while report writing, attending roll calls, general discussions with other members, discussing a case with another member, or performing other administrative functions.
4. BWC's will not be utilized to surreptitiously record conversations of the public and/or other members of the department.
5. Members utilizing a BWC will not knowingly record undercover officers or confidential informants.
6. BWC's will not be utilized to record any off duty or personal activity.

F. CRITICAL INCIDENT PROTOCOL

1. A critical incident for the purpose of this SOP is any police action or activity that directly or indirectly results in great bodily harm or death to a department member and/or a citizen.
2. In the event of a critical incident, members assigned a BWC will refrain from viewing the recorded data until the investigative entity responsible for the

investigation arrives on scene and any permitted viewing can be done in conjunction with current critical incident protocols. This section does not prohibit members in critical incidents with ongoing exigency from viewing BWC recordings that may aid the present investigation (e.g., suspect descriptions, suspect vehicles, direction of travel).

3. If there are BWC's in use during a critical incident, a police supervisor assigned to the Investigations and Intelligence Bureau and not involved in the actual critical incident will take physical custody of any BWC's that may have captured the incident and deliver them to the nearest police district where the same police supervisor will immediately upload them into Evidence.com by placing the camera device into a camera charging/download port.

G. IMPOUNDING OF DATA, DATA UPLOADING AND VIDEO CATEGORIZATION

1. Prior to docking their TC or camera, members should use the Axon Mobile smartphone App or Sync to assign the appropriate category, ID and Title to each individual recording. For efficiency, members should make an effort to tag and categorize their videos throughout their shift using the Axon mobile app or Sync when possible. Instructions for categorizing, titling and identifying each individual recording follow:

- a. ID field: Enter the CAD number or IR number (when applicable).

1. Members should use the following formats in the ID field:

CAD number: CAD(nine digit cad number) e.g., CADXXXXXXXXXX

IR number: IR(nine digit CAD number) e.g., IRXXXXXXXXXX

2. Incidents which involve an incident number should be tagged with the incident number in the ID field rather than the CAD number.

- b. Title field:

1. Provide a brief explanation of what is recorded.

- a. Examples: DV, suspect interview, T.S., arrest for POCS, FI, etc.

- c. Category fields:

There are 13 category choices for each individual recording. Members will primarily use only seven of the categories (categories 2-8). If multiple categories apply to an event, members should choose the category with the highest retention period available to them. Categories 1 and 13 are for administrative purposes and required by Taser. Categories 9, 10, 11 and 12 are reserved for supervision and command staff. If a member has recorded what would be considered a category 9 (training), 10 (use of force), or 11 (critical incident) event, they should notify their supervisor or the program administrator

for permission to have the item categorized as such.

2. Recording Management Categories

a. The following recording categories are to be used.

1. Uncategorized

- a. Used when the video contains no discernable incident or activity.
- b. Retention of video in this category is 120 days.

2. Incident - No Official Police Action Taken / Call Advised

- a. All video files that have contact with the public having no immediate evidentiary value at the time of recording will be saved in this category.
- b. Any file not tagged into another category by a member will be placed into this category.
- c. Files retained in this category will be preserved for 120 days from the date of recording.

3. Municipal Traffic and Ordinance Citations and/or Arrests

- a. All recordings that have potential use in Milwaukee Municipal Court will be retained in this category.
- b. Files retained in this category will be preserved for 3 years from the date of recording.

4. State Traffic Citations & Misdemeanor or Felony Arrests

- a. All recordings associated with circuit court will be retained in this category.
- b. Files retained in this category will be preserved for 7 years from the date of recording.

5. Emergency Detentions

- a. All recordings associated with emergency detentions (ED's) will be retained in this category.
- b. Files retained in this category will be preserved for 7 years from the date of recording.

6. Active Investigation / Evidence

- a. All video files associated with an active or open investigation without an arrest or citation will be saved in this category.
- b. Evidentiary recordings will be maintained as required by law, and subject to record requests.

7. Officer Injury

- a. All recordings in which a member becomes injured will be retained in this category.
- b. Files retained in this category will be preserved for 2 years from the date of recording.

8. Testing

- a. Recordings made in order to test equipment.
- b. Files retained in this category will be preserved for 120 days from the date of recording.

9. Training

This category will be used by supervisors to permanently save recordings that can be used for teaching or training other members.

10. Use of Force

- a. All recordings in which a member is involved in a use of force not rising to the level of a critical incident will be retained in this category.
- b. Files retained in this category will be preserved for 3 years from the date of recording.

11. Critical Incident

- a. For the purpose of this SOP, a critical incident is any police action or activity that directly or indirectly results in great bodily harm or death to a department member and/or a citizen.
- b. All recordings of critical incidents will be placed in this category by supervisors or command staff only.
- c. Incidents in this category are only viewable by command staff and IAD, who may share the recordings with other members as determined by a member of IAD.

d. Once videos are placed in this category they may only be reassigned to a different category or deleted at the direction of the Chief of Police or his/her designee.

e. Retention of critical incidents is permanent.

12. Administrative Hold

a. Any recording can be placed on administrative hold by a supervisor.

b. Recordings on administrative hold will be retained as required by law.

13. Pending Review

This folder is populated when there is a technical issue with a recording. Files with technical issues are forced into this folder automatically until reviewed by a department administrator and/or a Taser Corporation administrator. Once the technical issues with a recording are resolved, it will be recategorized as appropriate.

3. At the end of each shift, members assigned a BWC will place their TC and camera into the ETM for automatic uploading of all recorded data from the BWC into Evidence.com.

Note: Due to the unique nature of their assignments (i.e., take-home vehicles), motorcycle and K9 officers are exempt from charging and uploading cameras at a dock connected to Evidence.com after each shift. These members will be responsible for uploading their camera video via Sync from their vehicle-mounted MDC prior to the beginning of their next shift. Extra care will have to be used to ensure the camera is downloaded and charged prior to beginning their next shift.

4. The recorded data is considered to be impounded once uploaded. Upon upload to Evidence.com, the BWC will be cleared of existing data and ready for use during the member's next shift.

H. REPORTING / DOCUMENTATION

1. The use of a BWC will be documented in the opening paragraph of an ARS incident or supplemental report.
2. When a BWC records an incident resulting in either an arrest or citation, the use of the BWC will be documented in the citation and/or the ARS narrative. If a citation is issued, the words "On Officer Video" will be written in the lower right hand corner of a paper citation or typed in the Agency Notes section when using TraCS.

I. DEPARTMENT REVIEW / TRAINING

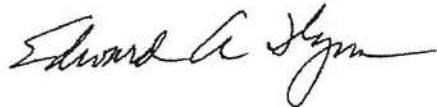
1. All recordings made with a BWC are the property of the Milwaukee Police Department.

Recordings may be reviewed:

- a. By a department member to ensure a BWC system is working properly.
 - b. By a police member viewing their individually assigned recordings to assist with writing a report, supplement, citation, memorandum or court case preparation.
 - c. By authorized persons for the purpose of reviewing evidence and processing records requests.
 - d. By a supervisor to investigate a specific act or allegation by another member or by a member of the public. While recorded data shall not be routinely or randomly viewed by supervisory members for the sole purpose of enforcing policy violations, the Chief of Police or his/her designee may order periodic integrity inspections of recordings to be conducted by the Risk Management Bureau.
 - e. By authorized department personnel participating in an official investigation, such as a citizen complaint, administrative inquiry or criminal investigation.
 - f. By others with permission of a supervisor if they are participating in an official investigation.
2. BWC recordings may be used for the purposes of training. Members aware of BWC recordings that may serve as a training aid for other members should notify a supervisor who will review the recording to determine its feasibility as a training aid.
 - a. Members involved in a recording that has been deemed a training aid will be notified by a supervisor of the intent to use the recording for training purposes.
 - b. Members objecting to the display of a recording will submit their written objection on a *Department Memorandum* (form PM-9E). The member's commanding officer will determine if the training value outweighs the member's objection.
 - c. Supervisors having received the involved member's permission to use a video for training or when a member's objection for use has been overruled by the commanding officer shall categorize the video as a category 9 (training) video.
 3. BWC recordings will never be used with the intent of belittling, ridiculing or embarrassing any member of the department, notwithstanding the potential use of BWC recordings in disciplinary matters.

J. DATA PRIVACY / RETENTION OF RECORDINGS / RECORDS REQUESTS

1. All digital media that is captured with a BWC is the property of and will be retained by the Milwaukee Police Department for a minimum of 120 days following the date it is recorded. Captured video may be retained for longer periods in the event the video is the subject of a litigation hold, a criminal case, part of discovery, etc.
2. Unauthorized accessing, copying, or releasing captured video without the approval of the Chief of Police or his/her designee is strictly prohibited. Members are prohibited from making copies of a BWC audio/video recording by using another recording device such as a cell phone.
3. With the proper Evidence.com permission level, recordings may be duplicated or shared with criminal justice agencies or when otherwise authorized by the Chief of Police or his/her designee.
4. Members will not allow citizens to review video captured by a BWC unless there is an investigative reason to do so and such viewing has been approved by a supervisor. Members shall advise citizens that they may request a copy of the recording through the public records process.
5. The release of video requested through a public records request will be handled in accordance with existing policy and public records laws. Reproduction fees for duplication of recordings will be established by the City of Milwaukee. See SOP 265 Open Records for additional information.
6. Prior to the release of any BWC recording to the public, Open Records will ensure that proper redactions have been made in accordance with state law.



EDWARD A. FLYNN
CHIEF OF POLICE

EAF:djw