

Posted 11/3/2016

Source: <https://saarmrt.wordpress.com/2016/11/03/legislating-the-creation-access-and-not-the-retention-of-officer-worn-body-camera-records/>

## Legislating the Creation, Access, and (not) the Retention of Officer-Worn Body Camera Records

Alex J. Toner

As more and more law enforcement incidents are captured on police officer-worn body and dashboard cameras, states are obliged to consider legislation that governs the creation, retention, and public access of such records. Regulations, where they do exist, often lack uniformity between municipalities, cities, and states, as illustrated by the [Brennan Center's guide](#) detailing police body camera retention policies across the U.S.

Awareness of such regulations, and navigating their inconsistencies, is an important part of how records managers execute their positions. What happens when retention and preservation provisions are absent from legislation governing the creation and access of such police records?

The Pennsylvania General Assembly is currently considering a bill that would legislate law enforcement use of body-worn cameras, and more importantly, public access to such records. [Approved by the PA Senate](#) (currently pending a vote in the House) on October 19, [Senate Bill 976](#) – an expansion of Pennsylvania's current Wiretap Act – would essentially do two things.

First, the bill would [increase areas where police officers are permitted to use body cameras](#), such as within private homes and in public spaces. Under the bill, officers would not be required to directly inform individuals they were potentially being recorded. Second, the bill would place a considerable burden on those attempting to access these records.

SB976 stipulates that within 14 days of the incident a written request be submitted that includes, in "particularity", the date, time, and location of the incident. *Each individual* in the footage must be identified by the requester, or at the least, described. If a request is denied – grounds for dismissal include lack of "sufficient particularity" – an appeal must be filed in a PA Court of Common Pleas within 14 days of the denial, a \$250 filing fee will be applied, the written request must be resubmitted, and finally "if the requested audio or video recording was made inside a structure, [identify] the owner and occupant of the structure."

The amendment seems to contradict itself in that it specifically states that "an audio or video recording by a law enforcement officer shall not be subject to production under the act of February 14, 2008 (p.l.6, no.3), known as the right-to-know law" ([Section 6702](#)) while stipulating that that a court may grant release if a "preponderance of evidence" are met, including that "disclosure of the audio or video recording would be permissible under the right-to-know law."

Pennsylvania civics and policy aside, you may be asking where records management fits into all this? While legislating officer-worn body camera use and record access, the bill does nothing to address appropriate retention periods and preservation methods law enforcement entities could

be required to employ uniformly across the state. The bill actually removes language concerning retention periods of certain recorded communications. Primary sponsor Sen. Stewart Greenleaf, R-Montgomery, [has acknowledged](#) that provisions governing how long footage and accompanying data must be retained before it's erased, as well as when a body-worn camera is turned on or off, are not considered in the bill.

The intent of the SB976 may be noble (“body cameras have a civilizing effect on both the officers and members of the public”), and there is no doubt that balancing public transparency, individual privacy, and the integrity of police investigations presents public policy and records management challenges alike. However, constraints to access and record keeping oversights may only serve to distance the citizenry from law enforcement and public officials, rather than fostering the transparency and trust the bills seeks to instill.

As [states continue to consider legislation](#) governing the use and access of police officer-worn body and dashboard camera records, records managers should be engaged in this dialogue. If creation and access to such record can be legislated to serve the public interest, so too can record keeping policies. Records managers must continue to be advocates for clear and consistent retention and preservation provisions that benefit the public good, in Pennsylvania and across the nation.