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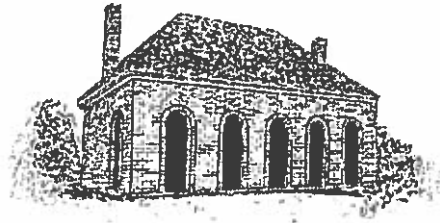
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July 14, 2015

Maria J.K. Everett  
Executive Director  
FOIA Advisory Council  
201 North Ninth Street  
General Assembly Building, Second Floor  
Richmond, Virginia 23219

**Re: Law Enforcement Records Created by Body Cameras and Dash Cameras**

Dear Ms. Everett:

I respectfully request an advisory opinion regarding the release, under the Freedom of Information Act ("FOIA"), of audio and video data created by body-worn cameras and vehicle dashboard cameras operated by law enforcement officers. Specifically, I ask what options a law enforcement agency has for responding to a FOIA request for body-worn camera and dashboard camera data that has not been made part of a criminal investigative or personnel file, but that does contain "information of a personal, medical, or financial nature" which would "jeopardize the safety or privacy" of private individuals.

Section 2.2-3706(B) of the Code of Virginia provides that "records required to be maintained by law-enforcement agencies shall be subject to [FOIA] except that those portions of noncriminal incident or noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person." Body-worn camera and dashboard camera video recorded by law-enforcement officers appears to be exempt in its entirety from mandatory disclosure under FOIA, if the recording is part of a criminal investigative file or is part of an internal affairs investigation and therefore a personnel record. Va. Code Ann. §§ 2.2-3706(A) (1) (c) and 2.2-3705.1(1). However, a large percentage of the video collected by these cameras will not be made part of a criminal investigative or personnel file, but is likely to contain identifying information of a personal nature, the release of which would jeopardize the safety or privacy of private individuals.

For example, when a law enforcement officer makes a traffic stop and activates his body-worn or dashboard camera, the faces and voices of the individuals in the vehicle, the make and model of the vehicle, the driver's license of the individual driving the vehicle and the vehicle's license plate information will be recorded, as will all of the information exchanged in dialogue with the officer. Likewise, a DUI or driver's license checkpoint would capture the same information for every driver coming through the checkpoint. This information is of a personal nature, the mandatory disclosure of which would jeopardize the privacy, and perhaps the safety, of the driver and passengers.

Similarly, when a law enforcement officer records his or her response to a domestic dispute or participates in a crisis intervention team response, the body-worn and dashboard camera recordings will capture images of a private home and its contents, the street name and house number, the faces and voices of the individuals involved, as well as whatever information is disclosed in dialogue with the officer and other responders. All of this information jeopardizes the privacy or safety of private individuals if disclosed to the public. This same risk arises when a law enforcement officer records a face-to-face encounter with an individual on the street, when the face and voice of the person, as well as information contained in conversation with the officer, are recorded.

Accordingly, it appears to me that body-worn and dashboard camera videos containing information that would reveal the identity or other information pertaining to private individuals are exempt in their entirety from mandatory disclosure under FOIA pursuant to Section 2.2-3706 (B), unless the requester were the only person captured on the requested video. If, however, it is your opinion that law enforcement agencies must make redactions and release the redacted videos in response to a FOIA request, then I request your view as to what type of redaction method must be employed.

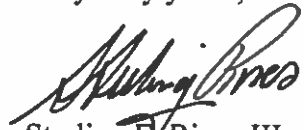
I understand that software is available that will blur the entire screen of the entire video, and modify any voices, sufficiently to avoid the disclosure of personal information. Although this method will require application to each video segment requested, I understand that this can be accomplished with relatively moderate time and expense. By contrast, I understand that going through each video segment and pixilating, blurring or distorting only individual faces, voices, license plates, driver's licenses and other identifying information is a very time intensive and expensive undertaking. If it is your view that only the redaction of individual faces, voices, etc., is permitted, then I ask your opinion whether law enforcement agencies can have this function performed by a third party vendor and bill the requester for the costs pursuant to Section 2.2-2704(F).

As you know, this is a topic of great importance to state and local law enforcement agencies in Virginia as they undertake the widespread implementation of body-worn camera systems and continue to expand the use of dashboard cameras. The potential for public disclosure of personal information of private individuals is great, as is the potential that compliance with disclosure requirements could impede the use of this technology.

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Thank you in advance for your attention to this request. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sterling E. Rives III". The signature is written in a cursive style with a prominent flourish at the end.

Sterling E. Rives III  
County Attorney

Cc: Colonel David R. Hines, Hanover County Sheriff