



DATE: November 3, 2016

TO: Council Technology Application Committee

FROM: Director of Information Technology

SUBJECT

Video Data Retention and Release Policy

RECOMMENDATION

That the Council Technology Application Committee reviews and comments on this informational report.

BACKGROUND

With advances in technology, the availability and use of video capture devices has become commonplace, including in the public sector. Security cameras, body worn public safety cameras, and other video capture devices are widely deployed by cities throughout the country. With the availability of federal grants for body worn public safety cameras, deployment of video capture devices continues to spread. A 2013 Police Executive Research Forum survey of 500 departments nationwide found that 25% were using body-worn cameras. A more recent survey released by the Major Cities Chiefs' Association and Major County Sheriffs' Association found that 95% of their membership was committed to the implementation of body worn cameras or had already completed their implementation.

This widespread increase in public sector video capture devices, particularly in public safety, has given rise to a national debate on the disposition of recorded video data driven by concerns about privacy, public safety, transparency, and cost. However, no consensus has emerged at the national or state levels. In California, the Public Records Act (PRA), which compels governments to disclose their records to the public absent a specific reason not to do so, provides a framework for this conversation.

For the purposes of ensuring public safety, the City of Hayward owns and operates a number of video capture devices, including traffic cameras, security cameras at City facilities, and body-worn public safety cameras.

Traffic cameras monitor traffic at some signaled intersections in the City to control congestion and do not record any footage, so images they capture may only be viewed in real time.

Security cameras, or V5 cameras, are located at City worksites and in the downtown area. These cameras record high-quality video that can be viewed live at the City Hall security desk, and can be accessed by City staff, including HPD, as needed.

Body Worn Cameras were first deployed on Hayward Police Department officers in 2014 as part of a pilot program designed to increase officer safety and accountability. The cameras, slightly larger than a marker, record officers' interactions with the public and have been shown to reduce negative outcomes and complaints. Since the initial pilot, all HPD officers have been equipped with body cameras. Officers are required to upload recordings to a third-party repository by the conclusion of every shift.

Policy at the federal, state, and local levels has not kept pace with technology and emerging issues surrounding recorded audio or video data. In the California State Legislature, every bill introduced to regulate recorded body camera footage – those intended to increase transparency as well as those restricting access to footage – has failed. Issues of privacy, accountability, and transparency have largely been addressed by local governments in the absence of comprehensive directives from higher levels of government.

Within the City of Hayward, the City Council has discussed recorded video data release and retention, and requested that staff work to create a citywide policy. A policy working group comprised of staff from the City Manager's Office, City Attorney's Office, IT, and HPD was convened to accomplish this task.

DISCUSSION

Absent comprehensive directives or guidelines from the state or federal government, local governments have developed their own policies regarding recorded video data, resulting in wide variation in formality and balance between transparency and restriction. In the interest of consistency, staff chose to develop a formal policy addressing the disposition of all the City's recorded video data via an addition to the City's Administrative Rules, which establish, explain, and define procedures for the implementation of City policy.

Staff considered two main questions guiding local government policies regarding recorded video:

1. When should recorded video data be released, and when should it not be?
2. How long does recorded video data need to be retained?

Staff addressed the issue of when to release video with an Administrative Rule (see Attachment II) that lays out guidelines for release of video based on the content of the video, in line with best practices/case law/statutory requirements. The Administrative Rule is intended to provide guidance and direction regarding: the appropriate storage and use of captured video data; ensuring citywide compliance with federal, state, and local laws; ensuring compliance with the Public Records Act; and balancing the public interests of government transparency and individual privacy.

The Administrative Rule states that recorded video may be released upon request, and identifies situations in which video may not be released to the public – specifically, in order to comply with statutory requirements, protect sensitive or vulnerable subjects, preserve the integrity of ongoing investigations and critical incidents, and in cases when releasing the requested video would endanger the safety of any person involved. Additionally, the Rule addresses circumstances in which video footage may need to be extracted prior to release. Some of these circumstances include the protection of personal or medical information, preservation of public safety operational integrity, and preventing endangerment. The policy also states that except in the circumstances where unedited release is not appropriate as defined by the policy, departmental policies, or in cases where release is prohibited by law, recorded video will be made available to the requestor in its original, unedited form.

The issue of data retention is being addressed with an update to the Records Retention Program (Administrative Rule 1.9) governing the retention and destruction of all records in the City. Discussions in the State legislature are occurring about a 60- to 90-day retention policy for BWCs, generally considered best practice by privacy advocates. However, the Public Records Act requires that at a minimum video recordings should be retained for one year unless a duplicate record (in the form of a written record summarizing the video's contents) exists, in which case records can be destroyed after 90 days. Staff is currently working to update the records retention schedule to specifically address recorded video.

Finally, in the course of the discussion regarding balancing transparency and privacy, staff concluded that addressing employee conduct with regard to social media sharing would also further the City's goal to protect resident privacy. As such, staff created an amendment to Administrative Rule 1.7 (Computer Network System Use Policy) to address the expectation that all Hayward employees conduct themselves in a manner that maintains the safety, privacy, and dignity of all community members and Hayward employees, including in materials posted on the internet and social media (Attachment III).

FISCAL IMPACT

In order to comply with the current provisions of the Public Records Act, recorded video will need to be retained for one year. This requirement will increase the amount of storage needed to retain recorded video footage. The body worn camera third party storage system currently has the storage capacity to meet this mandate. However, the City's security camera footage is stored on City servers, and more storage space will be required to meet the requirement. Additionally, the City's liability in response to PRA requests will grow because of the longer retention period.

NEXT STEPS

City staff will adopt and implement the amendments to the Administrative Rules according to Administrative Rule 1.1 – Guidelines for the Writing, Revising, Rescinding, Classifying, and Enforcement of Administrative Rules. As the nationwide and statewide policy conversations around the use, retention, and release of captured video evolve, the City Manager, City

Attorney, and Police Chief will continue to review Hayward's policies to ensure compliance with any new legal precedents and statutory requirements that emerge.

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Recommended by: Adam Kostrzak, Director of Information Technology

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager