



January 12, 2017

Brandon del Pozo, Chief
Burlington Police Department
Sent via email: bdelpozo@bpdvt.org

Lia Ernst
Staff Attorney
T/802.223.6304
lernst@acluvt.org

Re: Officer Review of Body Worn Camera Footage

Dear Chief del Pozo:

Board of Directors

James Morse, president

Julie Kalish, vice president

Pamela Marsh, secretary

Bernie Lambek, treasurer

Robert Appel

Peter Asch

Denise Bailey

Traci Griffith

Geoffrey Jones

Kim Jordan

Brad Myerson

David Putter

Tony Pyle

Barbara Rachelson

William Sayre

Bill Schubart

Abe Sender

Rosalynne Whitaker-Heck

This letter is in response to the Burlington Police Department's December 23rd letter regarding the ability of law enforcement officers to review body camera footage before making an initial statement or report.

The BPD purports to advocate for law enforcement officers to be treated just like everybody else—but in reality it would do so only when it is to its officers' benefit. The extraordinary powers the people entrust to law enforcement necessarily require a corresponding accountability to the people as to how those powers are used. The BPD's proposal would subvert rather than enhance that accountability.

The ACLU-VT of course agrees that all people, including law enforcement officers, enjoy the Fifth Amendment right against self-incrimination. Nothing in our proposed language would preclude any officer from invoking this right in declining to write a report or give a statement when she reasonably believed that the report or statement could incriminate her in a criminal proceeding.

But the ACLU-VT does not agree that law enforcement officers should benefit from a special privilege not afforded anybody else: the ability to preview BWC footage before giving an initial statement or report. It is one thing to say that officers (or suspects or witnesses) have the Fifth Amendment right to make no statement at all; it is quite another to say that they have the right to demand to review BWC footage as a prerequisite to making a statement. Surely it is not the BPD's practice to share its evidence, including video evidence, before interviewing a witness or interrogating a suspect. Yet this is the exact privilege the BPD would reserve for its officers. The BPD, without explanation, evidently thinks that permitting pre-interview review is bad practice when it comes to civilians but good practice when it comes to officers. Its refusal to hold its officers to the same rules as everyone else fosters public mistrust and undermines the accountability that the people rightly demand.

The self-evident inconsistency in the BPD's stances forces us to ask whether the BPD truly believes BWCs are a means for the community to ensure police accountability. As detailed in our December 15th letter, the ACLU-VT seeks reasonable policies that further the accountability, transparency, and community trust purposes of BWCs. Any BWC policy

that is not first and foremost directed at these aims is a bad policy, and it is one that we cannot support.

Sincerely,

Lia Ernst
Staff Attorney

cc: Rick Gauthier, Vice-Chair, Vermont Law Enforcement Advisory Bureau