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In search for truth, policies govern use, access of Fresno police body camera videos

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Graphic videos from body cameras worn by two Fresno police officers who shot and killed an unarmed 19-year-old last month are focusing attention on the cameras as an investigative tool and on policies governing their use and access to the videos.

Fresno police Chief Jerry Dyer last week made public the body-cam videos of the officers' fatal encounter with Dylan Noble on June 25 in the parking lot of a gas station/convenience store at Shields and Armstrong avenues. The public release of the footage, which shows each of the four gunshots that struck Noble, comes before the completion of the Fresno County District Attorney's Office investigation, as well as an internal Police Department investigation – a departure from what Dyer said is the established policy for making such video evidence public.

“The policy we have in place says the video will be released at the conclusion of the criminal investigation,” Dyer said Wednesday. “However, if there is a greater good for that video to be released before that time, then I as police chief have the right to make that decision.”

“In this case, the criminal investigation is not completed, but there has been a great deal of concern in the community, and rightfully so. We have an individual who did not have a firearm on his person or in the vehicle,” Dyer said. “That’s why I made the decision to release the video.

Throughout California and across the nation, body cameras are becoming more prevalent as a law enforcement tool. But policies are inconsistent concerning their use and when videos should be publicly released.

One key point of contention is whether officers should be allowed to review the video from their body cameras before preparing an incident report or making a statement to internal affairs investigators – something police say is important to ensure the accuracy of an officer’s memory in writing a report, but which defense attorneys and civil libertarians fear opens the door to officers altering their account of what happened in a critical incident such as when someone is shot by police.

“It really does undermine the integrity of the investigation in the eye of the public,” said Catherine Wagner, a police practices legal fellow with the American Civil Liberties Union of

Southern California. “It does give officers a chance to tailor their story to the footage, even if only 20 minutes before making a statement to investigators.”

Also varying from one jurisdiction to another is when – or whether – video from officers’ body cameras should be released to the media and, in turn, the public. It becomes a matter of department transparency, officer accountability and public trust.

“What people are interested in, and why body cameras are supported overwhelmingly by the public, is they give us information about what officers believed and saw at the time of the shooting,” said Matthew Feeney, a policy analyst with the libertarian-leaning Cato Institute in Washington, D.C. “Is it true that this guy or woman posed an imminent threat to officers or the public? Because police are only allowed to use lethal force if they believe they or the public are in danger of lives being taken.”

Fresno police use Axon Flex body cameras, which include a small controller to turn the system on and off and a slender camera unit that can mount on an officer’s glasses, lapel, shoulder epaulet or helmet. The department has 405 cameras, enough to equip about 90 percent of the officers in the field. The department bought its first 100 cameras in mid-2014, and 300 more were ordered in May 2015. Fifty more were recently ordered to keep up with the department’s growth.

In the Noble case, public outcry for the police video was inflamed when a cellphone video surfaced, shot from a vantage point on the other side of the gas station and showing the final two shots that struck Noble as he lay on the ground next to his pickup.

“That video was from 150 feet away and didn’t show some of the movements that people needed to see,” Dyer said.

Prior to the public release of the videos on Wednesday, the footage had already been seen by the two officers, individually with their attorneys just before their interviews with internal affairs investigators two days after the shooting; Dyer also shared the video with Noble’s father and stepfather and the family’s attorneys on July 8.

Dyer said he had originally planned to release the videos later that same afternoon, but a sniper’s ambush that killed five police officers and wounded seven more during an otherwise-peaceful Black Lives Matter protest in Dallas on July 7 prompted the chief to wait until tensions and emotions eased.

“There was never a question on whether this video was going to be released, but simply a matter of timing,” Dyer said.

Under the Fresno Police Department policy manual, the release of body-cam video to the public is subject to the California Public Records Act.

The ACLU, in a set of policies that it recommends to police agencies, advocates for public access to the videos as a measure of accountability.

“Body cameras don’t provide transparency if the video is never released to the public,” the organization said. “Setting the right balance between privacy and the public interest in transparency is tricky, but some situations are clear.”

Some situations when the footage should clearly be released, the organization said, is when a body camera captures a critical incident, there are allegations of misconduct regarding the interaction captured on video or the subject of the footage requests a copy.

Officer access to video

The larger concern on the use of body cameras deals with policies in which police officers can have an opportunity to view the video from their cameras before writing up their report of an incident or, more critically, before being interviewed by investigators following shootings by police or other serious events.

“This has proven to be one of the more contentious issues over body cameras,” Feeney said. “The debate is whether this gives police officers an unfair advantage. Regular citizens aren’t given this kind of treatment with surveillance.”

Under ordinary circumstances, Fresno police officers can view their video before they do a report or are interviewed, Dyer said, in accordance with the department’s policy.

“Whenever a police officer goes out and conducts any type of investigation and interviews people, they’ll watch that video so they get their report absolutely accurate,” Dyer said. “That’s what we’re looking for. We’re looking for the truth. And so the best way to do that is review the actual video that you took so you can give a consistent statement.”

In a critical incident like the Noble case, the procedure differs somewhat.

“When an officer-involved shooting occurs, the first thing we do is take the officer’s body-worn camera from them so they do not have an opportunity to review it,” Dyer said. Officials also confiscate the officer’s handgun and ammunition. “And then that video is uploaded to the cloud and, being part of the evidence, it cannot be altered, it cannot be modified.”

After 24 to 48 hours – time enough, Dyer said, for an officer’s mind to be rested after a traumatic incident – the officer and his or her attorney are shown the video, get 15 to 20 minutes to confer under attorney-client privilege and then are interviewed by investigators.

“It’s important for people to know that when an officer is involved in a shooting, they are also a citizen,” Dyer said. “And they have the right to an attorney because it’s a criminal investigation. They don’t give up their constitutional rights just because they’re police officers.”

Criminologist Eric Hickey, a professor emeritus at Fresno State and dean of the California School of Forensic Studies at Alliant International University, said he believes it is appropriate for officers to review camera footage before writing an incident report, even if they are being investigated.

“We’re not trying to catch officers in lies,” Hickey said. “Sometimes when there are emotional issues, you don’t recall every detail. But you can look through the lens of the camera.”

The president of the California Police Chiefs Association, Ventura police Chief Ken Corney, said his department and most others in the state allow officers to review body-cam footage before speaking with investigators. The footage, he said, helps bring clarity to stressful situations.

“I think in the dynamic and stressful environment that officers operate in, their reality may be a little different than their immediate recollection,” Corney said. “Having them view it doesn’t change what happened. It just allows them to put it in perspective without the stress of the environment they were in.”

There are some exceptions, though: In Oakland, San Jose, Fullerton and Riverside County, officers involved in use-of-force cases must give their statements before viewing the video and then can add additional testimony.

“They are encouraged to add context; we expect the video to jog their memory,” the ACLU’s Wagner said. “But it would be clear what the officers remembered before seeing the video.”

Wagner said that for most everyday report writing, there’s no major concern about officers reviewing the footage. “But when there’s an allegation of serious misconduct on the job, it’s important for accountability” for investigative interviews to come before officers view the video.

Fudging the truth?

Dyer acknowledged the potential perception problems of allowing officers to see video before a report or interview.

“That’s a fair question. The video speaks for itself. The officer speaks for himself,” Dyer said. “In a traumatic situation like an officer-involved shooting, it’s not uncommon for officers to forget certain details and remember them later. Sometimes that video helps them refresh their mind so they can give the right statements in terms of the truth, the accuracy.

“There have been times our officers are interviewed and say, ‘I know the video showed this, but that’s not what I saw (because) I may have been looking in a different direction,’ or ‘I saw this and the video doesn’t show that,’ ” he added.

Warren Paboojian, an attorney representing Dylan Noble’s father, Darren Noble, said he believes investigations could be undermined by the department’s policy.

“This is my concern about an impending investigation: The officers had the luxury of going back, reviewing everything and then giving a statement,” Paboojian said. “That, to me, is not an unbiased investigation.”

Clovis attorney Eric Schweitzer, who co-chairs the legislative committee for the defense attorney organization California Attorneys for Criminal Justice, said the cameras aren’t perfect. “Some things are captured, and others are not,” he said. “They’re a convenient little tool.”

Likewise, he added, policies allowing officers to see the video ahead of a statement are imperfect, too.

“If they’re going to be truthful in their report, they don’t need to see the body camera,” Schweitzer said. “If there’s a mistake or an inaccuracy, they’re human.” The cameras, he added, ought not be used “to play a game of gotcha” with officers. But in instances of discrepancies between the officer’s recollection and the video footage, a judge or jurors “need to look at that evidence and decide if this person is credible, a liar or a ---damn liar,” he said.

A policy that doesn’t let officers look at the video first, Schweitzer added, “is a smart policy because it prevents the innuendo of whether the officer conformed his testimony to what was on the tape or what wasn’t on the tape.”

Wagner said some studies have shown that viewing body camera video can alter an officer’s memory of an event, making it impossible to know if an officer’s testimony is in fact influenced. “Even officers trying their hardest to give the most accurate, honest account, they will still give a different statement. . . . We base the reasonableness of an officer’s actions on what they knew at the time, so it’s crucial to have an accurate account of what they remembered.”

Criminologist Hickey acknowledged the possibility of an officer altering a statement to investigators after watching video footage but said the footage would eventually reveal the truth.

“There’s not different shades of truth – either an officer is at fault or not – and the camera is pretty telling,” Hickey said.

Dyer said his department is still feeling its way in the use of the cameras. “We’ve only been using the cameras for a year” in widespread deployment, he said. “I think people look for video cameras on officers to be the end-all, and it’s not. It’s just another tool that helps collect evidence, so we’re learning with it.”