



Fire and Police Commission

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Memorandum

To: Edward Fallone
Chair

From: Leon W. Todd
Executive Director

Date: September 12, 2022

RE: Recommended objectives for SOP governing the release of video footage of critical incidents

The purpose of this memorandum is to provide you with a list of recommended objectives for the creation of a new Milwaukee Police Department (MPD) standard operating procedure (SOP) governing the release of department video footage of critical incidents.

As you know, MPD's current (unwritten) practice is to release selected portions of critical incident video footage as part of community briefings that are held within 45 days of the incident. No SOP or formal written policy, however, requires such disclosure, either within 45 days or any amount of time. For some time now, several community members and groups have called for the Fire and Police Commission (FPC) to create such an SOP. For example, the Milwaukee Alliance against Racist and Political Oppression has requested an SOP requiring the release of critical incident video footage within 48 hours, along with the disclosure of the names of involved officer within 24 hours.

The primary purpose of such an SOP will be to enhance transparency of police operations, thereby improving police-community trust. In the same vein, if video footage is released in a prompt and timely manner, this may further enhance community trust. A key objective for such an SOP should therefore be a release deadline that requires disclosure as soon as reasonably practical and avoids unnecessary delays.

While having a prompt release deadline should certainly be a key objective, the speed of disclosure should be balanced against other key objectives and considerations. Set forth below are a number of key objectives and considerations that I recommend the Board incorporate into any such SOP. These objectives/considerations will be instructive in determining the appropriate length of time for a release deadline:

- Release of video footage should not interfere with a criminal investigation.
 - Stated otherwise, the release should not occur before the investigating agency has had an opportunity to interview all relevant witnesses, including the involved officer(s). This will avoid the risk that the release of the video may influence witness testimony. We have been informed that, absent extraordinary circumstances, the investigating agency should be able to interview the relevant witnesses within 7-10 days. Officer interviews are usually conducted within 48 hours.
- Release of video footage should not occur until MPD has had an opportunity to show the video to the decedent's immediate family members (or at least offer them this option).
- Release of the video footage should comply with Marcy's law and Wis. Stat. 165.87(b), (c) (the language of this statute is quoted in the memo from Barbara Cooley on this matter). This will require that MPD be given time to redact faces of victims and juveniles, along with anything else that would allow for their identification.
- The policy should recognize that outside agencies conduct investigations of critical incidents involving officer-involved deaths. Wis. Stat. § 175.47; SOP 453. In such cases, MPD will usually not receive a copy of the investigative file until approximately 2 to 4 weeks after the incident. During this time, MPD may thus have limited information about the circumstances of the incident. Also, to protect the integrity of the outside investigation, it may be necessary to afford the outside agency an opportunity to object to the release of the video footage within a specific timeframe. This would avoid a claim that there has been a "leak" in a criminal investigation.
- If the footage is related to a federal or state task force case, MPD should follow any agreement in the task force MOU as to how footage would be used.
- Whether to require the disclosure of all footage related to an incident or merely footage of the actual incident and the immediate surrounding circumstances. Similarly, the Commission could allow MPD to withhold footage that is redundant and/or irrelevant.

Beyond the above "key" objectives and considerations, there are a number of other objectives/considerations the Commission may wish to consider. These are

offered solely for purposes of presenting the Commission with its various options. Their inclusion does not necessarily indicate that I recommend them. Nor do I consider them to be as critical as the objectives/considerations listed above:

- Allowing sufficient time for MPD to release portions of video footage as part of a community briefing, as is the current practice.
 - According to MPD, this would realistically require a deadline of approximately 45 days, although a slightly shorter deadline may be possible in cases where MPD is the investigating agency or receives the investigative file unusually early. If the Commission does not wish to include this objective, it should be mindful that a policy requiring the release of all related or relevant footage (as opposed to only selected portions, as is the current practice) will likely require additional time and effort to complete redactions.
 - A significant benefit of the community briefings (and the accompanying release of relevant portions of the video) is that it avoids the possibility that portions of the video can be “cherry-picked” and presented in a misleading, inaccurate, or incomplete way. This would be particularly true if the video is released as part of large “data dump” consisting of many hours of footage, especially without any accompanying explanation or context.
- Allowing the decedent’s family the opportunity to object to the release of portions of the video.
- Whether to permit extensions of the deadline for release. For example, the SOP could authorize the Chief or his designee to extend the time period either for good cause or in the event of certain enumerated circumstances.
- The existence of any rights accorded to law enforcement officers under the Constitution, law, or collective bargaining agreement.
- Whether the DA’s Office should be given an opportunity to object.
- Whether MPD should have the ability to redact other portions of video footage, such as disturbing images/sounds.

LWT