

NYC PBA LOSES FIGHT TO PREVENT PUBLIC RELEASE OF BODY WORN CAMERA FOOTAGE

Hodgson Russ Media Law & First Amendment Alert
May 30, 2019

A new decision from a New York appeals court could make it easier for members of the public to obtain footage from police body cameras.

Background: In this case, *In re Patrolman's Benevolent Association of the City of New York v. Bill DeBlasio, et al.*, (2019 NY Slip Op 03265), the union representing the members of the New York City Police Department challenged the decision of City leaders to release body worn camera footage without a court order or without the applicable officer's consent. The union had argued that the City was prohibited from releasing the footage because it was a "personnel record," used to evaluate officers, and protected from public disclosure under N.Y. Civil Rights Law Section 50-a.

New York's Appellate Division, First Department disagreed, concluding that body worn camera footage was not primarily intended to act as a personnel record or tool to evaluate officers, but rather was intended to promote "transparency, accountability and public trust building," which are goals of the body worn camera footage program.

The Court further noted that, while supervisors may sometimes be required to review camera footage for the purpose of evaluating performance, "...the footage being released here is not primarily generated for, nor used in connection with, any pending disciplinary or promotional processes."

Takeaway: Although this case does not involve a request for police body camera footage made pursuant to the Freedom of Information Law ("FOIL"), it has the potential to affect FOIL requests. In particular, local municipalities that do not want to release police body camera footage may now have a tougher time withholding it on the basis that it is a "personnel record" prohibited from release under New York law. However, this does not mean the footage will now be released upon request. There are other exceptions to disclosure under FOIL, including an exception for certain law enforcement records. Municipalities will likely cite this exception as a basis for withholding the footage, although, depending on the nature of the footage, they may be required to release it if and when a related criminal investigation or trial has concluded.

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