

Media and Public Access to BWC (and Other) Recordings

UNC School of Government

NC Association of Chiefs of Police

May 2023



A Little History

Before 2016

- BWCs were just taking root
- G.S. 132-1.4A did not exist
- Many recordings were “[r]ecords of criminal investigations” under G.S. 132-1.4 and so were “not public records”
- But sometimes it was not clear whether a recording was such a record
- And agencies were permitted to release the recording in their discretion



A Little History

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-88
HOUSE BILL 972

AN ACT TO PROVIDE THAT RECORDINGS MADE BY LAW ENFORCEMENT AGENCIES ARE NOT PUBLIC RECORDS, TO ESTABLISH WHETHER, TO WHAT EXTENT, AND WHAT PORTIONS OF A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR TO OBTAIN A COPY OF A RECORDING, TO DIRECT STATE OR LOCAL LAW ENFORCEMENT AGENCIES TO PROVIDE, UPON REQUEST, ACCESS TO A METHOD TO VIEW AND ANALYZE RECORDINGS TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY, TO AUTHORIZE GOVERNMENTAL AND NONGOVERNMENTAL ORGANIZATIONS TO ESTABLISH AND OPERATE HYPODERMIC SYRINGE AND NEEDLE EXCHANGE PROGRAMS, AND TO OFFER LIMITED IMMUNITY TO EMPLOYEES, VOLUNTEERS, AND PARTICIPANTS OF AUTHORIZED HYPODERMIC SYRINGE AND NEEDLE EXCHANGE PROGRAMS.

In 2016

- G.S. 132-1.4A adopted
- Agency recordings not public records, disclosure/release governed by this statute
- Disclosure (= show video)
 - Available only to someone in the video or their representative
 - Agency head decides whether to allow, considering listed factors
 - Person can appeal to superior court if denied or no response in three days
- Release (= give a copy)
 - Only with judge's approval
 - Expedited process for people eligible for disclosure and for agencies
 - Regular process for everyone else
- Release for law enforcement purposes



A Little History

- 2019, minor changes
- 2021, new provision re “immediate disclosure”
 - Applies when video shows death or serious bodily injury
 - Agency no longer able to disclose voluntarily
 - Rapid timeline for court consideration of disclosure

Overview of Current Law

Applies to:

- “A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency” except suspect, witness, and IA interviews.

Includes:

- BWCs
- Dash cams
- Pole cams
- Surveillance cams operated by LEA
- Jail calls



Overview of Current Law (continued)

Disclosure

Note: Disclosure is only available to a person whose image or voice is in a recording or to the personal representative of such a person

“Immediate”

- Recordings of death or serious bodily injury
- Court approval required, quick timeline

Regular

- All other recordings
- Agency may disclose
- Requester may appeal denial

Release

“Expedited”

- Request from agency or person eligible to receive disclosure
- Seeking release to person eligible to receive disclosure
- Court approval required, quicker petition process

Regular

- All other requests
- Court approval required, slower “action” process

Scenario 1

- Scenario: A jail inmate is attacked by another inmate and is seriously injured. The injured inmate and his attorney believe that the detention officers on duty may have been negligent in allowing the attack to occur. They want to review the surveillance camera footage to see why officers took so long to respond.
- Analysis:
 - The inmate and his attorney are seeking disclosure
 - The recordings sought show serious bodily injury, so the “immediate disclosure” provisions apply
 - Process starts with submission of notarized form to agency, AOC-CV-275
 - Agency must petition court regarding disclosure within three business days, AOC-CV-276
 - Agency must notify interested parties and submit recording for in camera review
 - SRSCJ or designee must rule within seven business days
 - If disclosure is denied to protect an investigation, the ruling must be reconsidered within 20 days

Scenario 2

- Scenario: An SRO breaks up a fight between two girls at a middle school. No one is seriously hurt but the parents of one of the girls contend excessive force was used. They come to the agency head demanding to see the video.
- Analysis:
 - The parents are seeking **disclosure**
 - Immediate disclosure not available; **no death or serious bodily injury**
 - Must **request** disclosure from the agency **in writing**
 - **Agency head** must consider statutory factors and may disclose
 - If disclosure is denied, or no decision is made within three business days, the parents can **appeal** the denial, AOC-CV-272
 - SCJ reviews agency's decision for abuse of discretion and enters order, AOC-CV-273



Scenario 3

File No.

SEARCH WARRANT

In the Matter of
Peter Michael Frank
Roland Grise Middle School
Building C Room 196

Date Issued **2/4/20** Time

Name of Applicant
Detective M.P. Whitt

Name of additional Affiant

- Scenario: Officers are executing a residential search warrant when an officer sees an occupant reaching for what the officer thinks is a gun. The officer shoots and kills the occupant. The occupant's family demands release of the officer's BWC video.
- Analysis
 - Because the family is eligible for disclosure, this is an **"expedited release"** situation
 - The family or the agency may file a **petition**, AOC-CV-270, and notify interested parties
 - SCJ hears "as soon as practicable," considers statutory factors, and enters an order, AOC-CV-271

Scenario 4

- Scenario: A newspaper reporter is doing a story about allegations that a particular officer has been verbally abusing minority motorists during traffic stops. The reporter wants copies of BWC and dash cam videos of the officer's last 100 stops.
- Analysis
 - Reporter is seeking release, is not eligible for expedited consideration
 - Must file an "action," not a petition, and notify interested parties
 - Including serving the agency with the complaint?
 - The superior court considers statutory factors and enters an order granting or denying release



Release for Law Enforcement Purposes

- Must disclose or release recording to **district attorney**
 - For review of potential criminal charges
 - To comply with discovery
 - For use in criminal proceedings in district court, or
 - For any other law enforcement purpose



Release for Law Enforcement Purposes

- May disclose or release for any of the following purposes
 - For LE training purposes
 - Within the agency for any administrative, training, or law enforcement purpose
 - To another LEA for law enforcement purposes
 - For suspect identification or apprehension
 - To locate a missing or abducted person





Redaction/Editing

- Unless ordered by court, recording disclosed in death/serious bodily injury cases may not be edited or redacted.
- If the agency proposes releasing a redacted version, the original and redacted version should be submitted to the court for its review.
- What might you seek to redact?

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division

**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner

Address

City, State, Zip

**ORDER TO PROVIDE CUSTODIAL
LAW ENFORCEMENT AGENCY RECORDING
FOR IN-CAMERA REVIEW AND ORDER
TO PROVIDE NOTICE OF HEARING**

G.S. 132-1.4A(e), (f), (g)

This matter is before the undersigned Superior Court Judge on a:

- Petition For Release Of Custodial Law Enforcement Agency Recording under Chapter 132 of the N.C. General Statutes.
- Petition For Review Of Denial Or Delay Of Disclosure Of Custodial Law Enforcement Agency Recording under Chapter 132 of the N.C. General Statutes.

ORDER

1. The head of _____ (custodial law enforcement agency) is ordered to provide to the Court a copy of the custodial law enforcement agency recording identified in the attached Petition.
2. The copy of the custodial law enforcement agency recording shall be provided to _____ (court official), on or before _____, along with a list of all law enforcement agency personnel whose image or voice is in the recording. In the event the head of the custodial law enforcement agency is unable to identify all voices or images of law enforcement agency personnel in the recording, the head of the custodial law enforcement agency shall identify to the Court where in the recording the unidentifiable voice or image appears.
3. The copy of the custodial law enforcement agency recording and the list of all law enforcement agency personnel whose image or voice is in the recording delivered to the Court pursuant to this Order shall not be open to inspection or copy by any person except to and by the Superior Court Judge conducting the hearing, unless and until ordered released or disclosed by the presiding Superior Court Judge. The copy of the custodial law enforcement agency recording and the list of all law enforcement agency personnel whose image or voice is in the recording shall be delivered to the court official in a sealed envelope with a copy of this Order attached to the outside of the sealed envelope.
4. The head of the custodial law enforcement agency is ordered to provide to the Court, at least one business day prior to the hearing date set forth below, appropriate software and/or means to conduct an in-camera review of the custodial law enforcement agency recording.
5. The head of the custodial law enforcement agency is hereby ordered upon receipt of this Order, to give notice of the Petition and hearing to any law enforcement agency personnel whose image or voice is in the recording and to the head of that person's employing law enforcement agency. In the event the head of the custodial law enforcement agency is unable to give notice to all law enforcement agency personnel whose image or voice is in the recording, the head of the custodial law enforcement agency shall state the same in their Certificate of Service and provide an explanation as to why notice was not given, but the head of the custodial law enforcement agency shall not identify said personnel by name.
6. Other (if applicable): _____

NOTICE OF HEARING

It is hereby ordered that a hearing on the Petition in this matter is set for the date, time, and place shown below.

Date Of Hearing Time Of Hearing Location Of Hearing

AM PM

SIGNATURE OF SUPERIOR COURT JUDGE

Date Name Of Superior Court Judge (type or print) Signature Of Superior Court Judge



Raleigh Police Agency Recording Release Request Attachment A

The City is seeking to release the attached agency recordings in the custody of the Raleigh Police Department (RPD) (labeled as Attachment A) relating to the in-custody death that occurred on January 17, 2023. Release of these recordings is necessary to advance a compelling interest in that it supports RPD's efforts to be transparent with the community during critical incidents. Please note that the enclosed body-worn camera and dash camera recordings have been edited to obscure graphic images of the decedent.

Officer	Body-worn camera	Dashcam
Officer 1	0:00-18:25	N/A*
Officer 2	0:00-18:14	0:00-14:49
Officer 3	0:00-12:54	0:00-12:49
Officer 4	0:00-7:00	0:00-16:54
Officer 5	0:00-3:16	0:00-3:16
Officer 6	0:00-7:50	0:00-14:50

Also included is a separate flash drive (labeled as Unredacted Recordings) containing the unredacted recordings. Release of the unredacted recordings is not being sought; they are only being provided for reference to show what is being obscured in the recordings that the City is seeking to release.

Sherita Walton
City Attorney's Office/Raleigh Police Department

What is your agency's stance?

When might your agency seek release?



When might your agency oppose release?



What limitations might you seek?

Questions?



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