



## Department of Public Safety Policy - Release of Video Evidence *Adopted 10-10-2018*

The Denver Police Department, the Denver Sheriff Department and the Denver Department of Public Safety are the custodians of body worn camera (BWC) video, surveillance video obtained from city-owned cameras, and video obtained from other sources for investigative purposes. This video evidence is a criminal justice record, the disclosure of which is governed by the Colorado Criminal Justice Records Act, CRS 24-72-301, *et seq.* The following factors are used to determine whether video evidence should be released or withheld:

- (a) the privacy interests of individuals, if any, who may be impacted by a decision to allow disclosure of the record;
- (b) the agency's interest in keeping confidential information confidential;
- (c) the agency's interest in the integrity of on-going investigations;
- (d) the public purpose to be served in allowing disclosure of the record; and
- (e) any other pertinent considerations relevant to the circumstances of the particular records request, including whether disclosure would be contrary to the public interest. (Harris v. Denver Post, 123 P.3d 116 (Colo. 2005))

A case-by-case analysis will be performed weighing the factors above, for a proactive release or for a release responsive to a request for video evidence. The specific nature of the video and the timing of the release in relation to any ongoing investigation or prosecution will be considered. Whether the video is a positive or negative reflection on the members of the involved agency will not be considered.

### **Policy on Pre-Trial Release of Video Evidence**

The right to a fair and impartial trial in each criminal case is the cornerstone of the U.S. criminal justice system. In accordance with this fundamental right, and per guidance and directive by Colorado Supreme Court rulings, the Colorado Rules of Professional Conduct, and the Colorado Criminal Justice Records Act applicable to all Colorado law enforcement agencies and criminal prosecution offices, evidence in a pending criminal case or a criminal case about to be filed is generally and presumptively not publicly releasable prior to disposition of a criminal case. The presumption against pre-trial release of evidence is based on this fundamental principle of ensuring a fair and impartial criminal judicial process and is **not** based on any interest to avoid or impede public interest or scrutiny of public official or law enforcement personnel conduct in any case.

The discretionary, limited release of video evidence in a specific case prior to disposition of that case may be appropriate in serving the public interest in limited circumstances without violating the above principle and authorities.

Release may be authorized, on a case-by-case basis, for one the following reasons:

- 1) To serve the public interest in preserving law and order in a community crisis;
- 2) To rebut misinformation deliberately or unintentionally distributed to the public related to a case that is resulting in or could result in public misunderstanding, disorder, or violence; or
- 3) To assist in the investigation or apprehension of a suspected violent offender.

#### **Protocol to be Followed Prior to Release of Video Evidence**

When release of video evidence is being considered by the District Attorney's Office, City Attorney's Office, Denver Police Department, Denver Sheriff Department, or the Department of Safety, the following coordination shall occur:

- The office or agency anticipating release shall notify all other interested offices or agencies of the intent to release the specific video evidence. For example, if a criminal prosecution is pending, notification between Safety agencies and either the District Attorney's Office or the City Attorney's Office shall occur.
- The notification will articulate the factors under consideration.
- The office or agency receiving the notification shall be provided an opportunity to provide additional information for consideration prior to a decision being made.
- Any video release shall be accompanied by a statement providing context to the incident and an explanation of the decision to release the video evidence.