



**State of New York
Department of State
Committee on Open Government**

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FOIL 19890

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The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.

Dear:

This opinion is in response to your request dated October 2, 2026 seeking an advisory opinion regarding a Freedom of Information Law (FOIL) request received by your agency for body worn camera (BWC) footage that shows both the exterior and interior locations of a private residence. Similar inquiries have been brought to our attention by other police departments, and we offer this formal advisory opinion in the hopes of providing consistent guidance.

FOIL presumes the availability of all agency records, and an agency must assert one or more of the exemptions to disclosure contained in § 87(2) of FOIL to withhold any records, or portions thereof. Generally, where records sought contain both exempt and non-exempt material it is the Committee on Open Government's view that the agency may redact the exempt portions of records but generally must disclose the remaining records and non-exempt portions. See [FOIL-AO-19866](#).

Agencies may withhold records to prevent an unwarranted invasion personal privacy under FOIL § 87(2)(b). FOIL § 89(2)(b) sets forth a non-exhaustive list of examples of what may constitute an unwarranted invasion of personal privacy, including:

- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency[.]

When none of the enumerated exemptions under § 89(2)(b) are applicable, an agency must determine whether any invasion of privacy is unwarranted by balancing the privacy interests at stake against the public interest in the disclosure of the information. See *Matter of Harbatkin v. New York City Dept. of Records & Info. Servs.*, 19 N.Y.3d 373, 948 N.Y.S.2d 220 (2012).

The Court of Appeals has held that records which include information that "would ordinarily and reasonably be regarded as intimate, private information" may constitute an unwarranted invasion of personal privacy that could be withheld under FOIL § 87(2)(b). *Hanig v. State Dept. of Motor Vehicles*, 79 N.Y.2d 106, 112, 588 N.E.2d 750, 754, (1992).

The application of FOIL §§ 87(2)(b) and 89(2)(b) are, however, very factually specific. In most cases, the level of detail captured in footage withheld under those sections and the content of those records would determine whether that exemption applies.

In our view, portions of BWC footage displaying the exterior portions of a private residence which are visible from a public location would not ordinarily contain intimate, private information about an individual which would constitute an unwarranted invasion of personal privacy if disclosed. However, exterior footage of a private residence showing information not visible from a public location (e.g. property kept in a backyard hidden behind a privacy fence, the location of a hidden spare key, the location of backdoor entrances) may constitute an unwarranted invasion of personal privacy if it would result in economic or personal hardship if disclosed and is also not relevant to the work of the police department.

BWC footage displaying the interior of a private residence may, in our view, largely consist of intimate, private information such as the layout and decoration of a home, assets contained within the home, or personal living spaces (i.e. bedrooms) of a home. Footage or portions thereof reflecting that content could likely be withheld if they are not relevant to the work of the police department. However, portions of footage containing views visible from front entranceways would likely not be considered intimate, private information.

As we noted above, a relevant factor in determining whether disclosure of a record, in whole or in part, would constitute an unwarranted invasion of personal privacy is whether the record is “relevant to the work of the agency” (see FOIL § 89(2)(b)(iv) and (v)). If the agency determines that the requested BWC footage is relevant to the work of the police department, the agency could not rely on § 89(2)(b)(iv) and (v) to withhold the record or portion of the record. However, the agency is still permitted to withhold footage or portions of footage if the balancing act established by the courts, privacy interests at stake against the public interest in disclosure, favors non-disclosure.

Concerning BWC footage taken in private residences specifically, a decision issued in New York County Supreme Court held that the public has a strong interest in understanding the actions of police officers and interactions between police officers and members of the public. *New York Lawyers for Public Interest v. New York City Police Department*, 103 N.Y.S.3d 275 at 281-282, (Sup. Ct., June 12, 2019). The footage in that case captured the events leading up to and after an officer involved shooting. The footage included the officers’ actions both before and after the shooting but also included images of the deceased as well as scenes of his blood on the floor, walls, and furniture. The Court found that the footage withheld by the NYPD was not exempt from disclosure as the public’s strong public interest in disclosure outweighed the claims of privacy asserted by the NYPD . *Id.*

We hope that this is helpful.

Sincerely,

Miguel-Carlo Bautista
Senior Attorney