

## How to Monitor Police Agencies: Part 1

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Police officers have the ability to arrest and detain suspects, to seize property, and to lawfully use force against people when justified. Because police officers are given these tremendous powers, we hold them to very high standards—we expect that they will be honest, trustworthy, and follow the law and the Constitution.

In a two-part series, we will discuss how you can use OPRA to monitor police conduct. This blog highlights records you can request to monitor the use of force by police officers.

#### **Use of Force Reports:**

Pursuant to the Attorney General's Use of Force Policy, every time an officer uses any level of force against an individual they must complete a Use of Force Report ("UFR"). A UFR is a simple one-page report that provides information about a specific use of force incident, such as the names and biographical data of those involved and the type of force that was used. A model form is available [here](#).

You can request UFRs relating to a single specific incident of force that you read about in the news or you can request all of an agency's UFRs for a specific timeframe. By requesting all of an agency's UFRs during a specific timeframe, you can determine how often force is used and whether there are any patterns that emerge, such as whether a specific officer uses force far more frequently than other officers or whether certain races are the target of force more often than others.

#### **Sample OPRA requests:**

*"Pursuant to OPRA and the common law, I would like all of your police department's Use of Force Reports from January 1, 2017 to present date."*

*"Pursuant to OPRA and the common law, I seek all UFRs that were created as a result of the police-involved shooting that occurred on May 1, 2017 involving a suspect named Bob Jones."*

### **Police Use of Deadly Force Attorney General Deadly Notification Report:**

Where deadly force is used, a “Police Use of Deadly Force Attorney General Deadly Notification Report” must also be completed. This is true even if the deadly force does not actually result in death. If a police officer shoots at someone, that action constitutes the use of deadly force even if the officer misses.

#### **Sample OPRA request:**

*“Pursuant to OPRA and the common law, I would like all of your police department’s Police Use of Deadly Force Attorney General Deadly Notification Reports for the year 2016.”*

### **Body-Worn Camera Footage:**

Recently, The Lab @ DC released a **report** which suggests that Body Cams do not change police behavior and cause them to use force less often. Body Cams do, however, promote transparency over the police. For example, *The Trentonian* has recently published Body Cam footage that has exposed police officers **bragging about roughing up suspects**. The public obviously has a significant interest in knowing that its officers are behaving this way so that it can advocate for discipline or leadership change.

Because Body Cam Footage is required to be made and maintained by Attorney General Law Enforcement Directive No. 2015-1, it cannot be exempt under OPRA’s criminal investigatory records exemption. It may, however, be exempt under the ongoing investigation exemption depending on the nature of the tape, when it was created, and whether releasing it would be harmful to the public interest. The Supreme Court, however, has said that the public’s interest is in disclosure where police use of force is involved and that an agency should not need to withhold police video for more than a few days in most instances.

#### **Sample OPRA request:**

*“Pursuant to OPRA and the common law, I seek all Body-Worn Camera Footage for the police-involved shooting that occurred on 5/1/17 at 29 Main Street.”*

### **Dash Camera Footage:**

The Supreme Court has recently ruled that dash camera videos that relate to criminal incidents are not subject to OPRA because there is no law that requires it to be made, thus it is a criminal investigatory record. That may change when the Court decides Paff v. Ocean County Prosecutor’s Office next year. In the interim, the Court has made it clear that dash cam footage should be routinely disclosed under the common law right of access. Accordingly, make sure to invoke the common law when you file your records request.

Dash camera footage that relates to a non-criminal incident, however, is subject to OPRA. So, if your mayor was caught on tape after being pulled over for a DWI, that video should be publicly accessible.

**Sample OPRA request:**

*“Pursuant to OPRA and the common law right of access, please provide all dash camera footage from the incident that occurred on October 1, 2017 wherein Mayor Jones was pulled over for a DWI.”*