

**IN THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No: 2024-CAB-003453
v.	)	Judge Carl E. Ross
	)	Next Court Date: September 19, 2025
DISTRICT OF COLUMBIA,	)	Event: Remote Status Hearing
	)	
Defendant.	)	
	)	

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**PLAINTIFF JUDICIAL WATCH'S RESPONSE TO DEFENDANT  
DISTRICT OF COLUMBIA'S SUPPLEMENTAL BRIEFING  
ON REDACTIONS OF BODY-WORN CAMERA FOOTAGE**

**I. Introduction.**

The sole question currently before the Court is whether the faces and voices of individuals captured by the body-worn cameras of MPD officers on January 6, 2021 are exempt from disclosure.<sup>1</sup> The District argues that FOIA's personal privacy exemptions require the District to redact the faces and voices of every individual who is not law enforcement personnel before it releases MPD's body camera footage of a public event that occurred on public property. The District's argument is wrong for three reasons.

First, the District fails to provide a single case in which any court has concluded that individuals have a privacy interest in BWC footage that captures their faces and voices at a public event on public property. Second, *WP Co., LLC v. District of Columbia*, No. 2018 CA

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<sup>1</sup> In its supplemental brief, the District asks the Court to grant its motion for summary judgment. The Court however denied this motion on May 27, 2025, and the District has not moved for reconsideration of that order or renewed its motion for summary judgment. Plaintiff therefore does not address the District's motion for summary judgment. If the Court were to treat the District's supplemental brief as a motion for summary judgment, Plaintiff requests an opportunity to respond accordingly.

005576 B, 2019 D.C. Super. LEXIS 6 (D.C. 2019) directly rejects the District’s argument. Judge Puig-Lugo concluded that an individual does not have a personal privacy interest in BWC footage of “an incident that took place in a public place.” *Id.* at 6. Third, even if individuals captured on BWC footage of a public event on public property have a privacy interest, the public’s interest in the events captured in MPD’s BWC from January 6, 2021 is greater. For these reasons, the faces and voices of individuals captured by MPD’s BWCs on January 6, 2021 are not exempt from disclosure.

## **II. Argument.**

### **A. No privacy interest exists.**

The District fails to cite any case holding that BWC footage of a public event on public property must be redacted to protect the personal privacy interest of the individuals captured. The District cites cases that concern the involuntary or inadvertent appearance of an individual’s name or other identifying information in a law enforcement record. For example, in *Fitzgibbon v. C.I.A.*, the plaintiff challenged the defendant’s withholding of the name of an individual who appeared in a FBI report. 911 F.2d 755, 766 (D.C. Cir. 1990). The defendant asserted that disclosure would invade a personal privacy interest. *Id.* at 767. Finding the defendant’s withholding proper, the court took “particular note of the strong interest of individuals, whether they be suspects, witnesses, or investigators, in not being associated unwarrantedly with alleged criminal activity.” *Id.* (citation omitted). In *Shrecker v. United States Department of Justice*, the plaintiff challenged the court’s determination that the defendant properly withheld names and other identifying information contained in records compiled for an FBI investigation. 349 F.3d 657, 659 (D.C. Cir. 2003). The defendant asserted that a personal privacy interest trumped disclosure. *Id.* The court determined that the defendant properly withheld this identifying

information, because “persons involved in law enforcement investigations—witnesses, informants, and the investigating agents—have a substantial interest in seeing that their participation remains secret.” *Id.* at 666 (citation omitted). Similarly, in *Stern v. FBI*, the defendant appealed a court order requiring disclosure of the names of low-level FBI employees who inadvertently participated in a criminal cover-up, asserting that disclosure unwarrantedly invaded a personal privacy interest. 737 F.2d 84, 86 (D.C. Cir. 1984). Agreeing with the defendant, the court found that “individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity.” *Id.* at 91-92.

In *Showing Animals Respect & Kindness v. United States Department of Interior*, the plaintiff challenged the defendant’s withholding and redactions of various records, including photographs and recordings. 730 F. Supp. 2d 180, 187-88 (D.D.C. 2010). The defendant argued that three responsive video recordings were exempt, as disclosure would constitute an unwarranted invasion of personal privacy. *Id.* at 191. The court found only *minimal* cognizable privacy interests implicated by the disclosure of video of “an individual, who identifie[d] himself by name, [led] a tour of his residence, . . . narrate[d] the video recording and [was] in full view throughout the recording, as [was] the interior of his house and garage, and the view from within his garage onto the street[,]” because there was “nothing in the record to suggest, and Defendants [did] not argue[], that [the individuals] appeared in these videos without their knowing consent[,]” the court ordered disclosure of the video. *Id.* at 187-88, 193.<sup>2</sup> Finally, in *New York*

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<sup>2</sup> The District has also argued that disclosure of this BWC footage would “likely lead to reputational harm and possibly affect employment prospects and standing in certain communities.” Def’s Suppl. Briefing at 6. The defendant in *Showing Animals Respect* similarly argued that “negative comments on Plaintiff’s website about [the individual] and his unlawful conduct [was] evidence of the harassment that is likely to come if the videos are disclosed.” 730 F. Supp. 2d at 193. The court rejected this argument, finding that it was “unclear how the release of the videos . . . would materially add to the invasion of privacy that has already occurred.” *Id.*

*Times Co. v. National Aeronautics & Space Administration*, the plaintiff sought disclosure of an audio recording capturing the final moments of the Challenger crew's lives. 782 F. Supp. 628, 629 (D.D.C. 1991). The court found the defendant's withholding of the requested audio recording appropriate because of the intimate nature of the recording. *Id.* at 631 (explaining that the transcript sought contained the "voice of a beloved family member immediately prior to [his] death[.]").

Each of these cases concern drastically different factual scenarios from the one here. This case does not concern the inadvertent or involuntary appearance of one's name in a criminal investigation or an audio recording capturing the final moments of a person's life. In fact, the only case the District identifies concerning video undermines its own argument, as the court in *Showing Animals Respect* found only *minimal* privacy interests implicated by disclosure of a video containing *substantially* more identifying information than the BWC footage here. 730 F. Supp. 2d at 194.

Although not cited by the District, there is at least one case on all fours: *WP Co., LLC v. District of Columbia*, No. 2018 CA 005576 B, 2019 D.C. Super. LEXIS 6 (D.C. 2019).<sup>3</sup> In this case, the plaintiff requested MPD's BWC footage of a traffic stop. *Id.* at 1. The District asserted that the BWC footage was exempt from disclosure pursuant to the same personal privacy exemptions at issue here. *Id.* at 5. Rejecting this argument, Judge Puig-Lugo concluded that

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<sup>3</sup> Plaintiff also identified one case outside D.C. that supports Plaintiff's position that individuals who are bystanders to an event do not have an expectation of privacy if they are captured in public. In *Matter of N.Y. Lawyers for the Public Interest v. N.Y.C. Police Department*, 140 N.Y.S.3d 696 (App. Div. 2021), the plaintiff requested unredacted BWC footage from an officer-involved shooting. *Id.* at 696. The defendant asserted that the faces of bystanders to the incident should be blurred to protect their personal privacy interest. *See id.* The court concluded that this privacy interest was "attenuated" because "bystanders' expectations of privacy in the public square are limited[.]" *Id.*

“there is no personal privacy interest in the circumstances of a traffic stop that took place in a public space for anyone in the area to see.” *Id.* at 8.<sup>4</sup> Judge Puig-Lugo explained:

This matter involves a request for the BWC video of an incident that took place in a public place and in a principal thoroughfare of the District of Columbia . . . , this case does not involve a request for private financial information, hospital admission records, social security numbers, medical records or similar materials where disclosure would compromise an interest in personal privacy with possible deleterious consequences.

*Id.* at 6. The same is true here. MPD’s BWC footage from January 6, 2021 captured a public event on public property. The footage does not reveal private financial information, hospital admission records, social security numbers, medical records or similar materials. The BWC footage only consists of faces and voices that were seen and/or heard by anyone present on public property or has seen other images/videos captured that day. There is nothing whatsoever private about the faces and voices. It is therefore “difficult to see how a personal privacy interest . . . can exist under these circumstances.” *WP Co.*, 2019 D.C. Super LEXIS at 6.<sup>5</sup>

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<sup>4</sup> Judge Puig-Lugo also determined that any personal privacy interest in BWC footage capturing a public place conflicts with FOIA’s text. *See id.* The statute specifically exempts “[a]ny body-worn camera recordings recorded by the Metropolitan Police Department . . . [i]nside a personal residence; or . . . [r]elated to an incident involving domestic violence[,] . . . stalking[,] . . . or sexual assault[.]” D.C. Code § 2-534(a)(2A). Finding that none of those enumerated scenarios were present when the District withheld BWC footage of a traffic stop, the court concluded that the existence of a privacy interest was “dubious.” *WP Co.*, 2019 D.C. Super LEXIS at 8. In addition, the inclusion of “inside a personal residence” as a condition exempting BWC, combined with the well-established canon of statutory interpretation, *expressio unius est exclusio alterius*, supports Judge Puig-Lugo’s determination that no privacy interest exists under either § 2-534(a)(2A) or § 2-534(a)(3)(C). *See Council of D.C. v. Clay*, 683 A.2d 1385, 1390 (D.C. 1996) (“[W]hen a legislature makes express mention of one thing, the exclusion of others is implied.”). The District therefore asks the Court to overlook FOIA’s narrow exemptions and substitute the Council’s determination for its own.

<sup>5</sup> Interestingly, the Mayor’s Office of Legal Counsel agrees with Plaintiff. *See Mayor’s Office of Legal Counsel, FOIA Appeal 2016-45 at 4* (March 25, 2016) (“We do not believe that an individual recorded walking or standing on a public street has a presumptive privacy interest that would be breached if the [BWC footage] were publicly disclosed.”).

**B. Any privacy interest is outweighed by the public interest.**

If the Court were to find that more than a *de minimis* privacy interest is implicated by the unredacted disclosure of the BWC footage, the obvious public interest outweighs it. As U.S. District Court Judge Randolph Moss stated, “[The events of January 6, 2021 were] a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself.” *United States v. Cua*, No. 21-107 (RDM), 2021 U.S. Dist. LEXIS 44293, at \*9 (D.D.C. Mar. 10, 2021). While then President-elect Joe Biden called January 6, 2021 one of the “darkest days” in U.S. history, other accounts suggest that “most of the rioters were peaceful[,] . . . calling them ‘sightseers,’ not ‘insurrectionists[]’” after reviewing footage which “did not show an insurrection or a riot in progress,” but rather “police escorting people through the building[.]”<sup>6</sup> Regardless, like the release of footage from the Capitol surveillance cameras, the release of MPD’s BWC footage “will provide millions of Americans, criminal defendants, public interest organizations, and the media an ability to see for themselves what happened that day, rather than having to rely upon the interpretation of a small group of government officials.” @SpeakerJohnson, X.com (Nov. 17, 2023, 16:33 ET), <https://x.com/SpeakerJohnson/status/1725628274657706198>.

**III. Conclusion.**

For these reasons, the faces and voices of individuals captured by MPD’s BWCs on January 6, 2021 are not exempt from disclosure.

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<sup>6</sup> See Adam Edelman, *Biden Slams Capitol Rioters as ‘Domestic Terrorists’: ‘Don’t Dare Call Them Protestors’*, NBC News (Jan. 7, 2021, at 16:37 ET), <https://www.nbcnews.com/politics/white-house/biden-slams-capitol-rioters-domestic-terrorists-don-t-dare-call-n1253335>; Sahil Kapur, *Tucker Carlson, with Video Provided by Speaker McCarthy, Falsely Depicts Jan. 6 Riot as a Peaceful Gathering*, NBC News (Mar. 7, 2023 at 12:51 ET), <https://www.nbcnews.com/politics/justice-department/tucker-carlson-new-video-provided-speaker-mccarthy-falsely-depicts-jan-rcna73673>.

Dated: July 28, 2025

Respectfully submitted,

/s/ Michael Bekesha

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