ACLU FOUNDATION
AMERICAN CIVIL LIBERTIES UNION of SOUTHERN CALIFORNIA
STAND FOR JUSTICE

January 16, 2015

Commissioner Steve Soboroff, President
Commissioner Paula Madison, Vice President
Commissioner Sandra Figueroa-Villa
Commissioner Kathleen Kim
Commissioner Robert M. Saltzman
Los Angeles Board of Police Commissioners
100 West First Street, Suite 134
Los Angeles, CA 90012

Dear Board of Police Commissioners:

The ACLU Foundation of Southern California is cautiously optimistic about the Los Angeles Police Department's ("LAPD's") move to equip its officers with body-worn video cameras. By providing video evidence of police officers' interactions with the public, body-worn video holds the potential to deter misconduct and uses of force, to hold officers accountable when misconduct does occur and quickly exonerate officers who are wrongly accused, and to help the public understand how police use the powers we give them.

Body-worn video is not a panacea. Video does not always capture the full story, and having video will not resolve every question about a use of force or complaint. Many questions about policing—from implicit racial bias or use of force policies, to deployment of resources and so-called "broken windows" policing, to crafting systems for oversight and transparency — require looking beyond individual incidents, and body-worn cameras will not answer all these questions. Body cameras hold real potential to improve policing, but they are not the last word in police reform, or even the only reform that is needed now.

More importantly for LAPD today, body cameras are only a tool. Depending on the policies that LAPD adopts to govern their use, they can be effective or ineffective — and can even undercut the very values they are meant to promote. Setting the right policy on body-worn video requires balancing a number of concerns, including:

- **Accountability** — Body cameras should be used in a way that helps assure that footage will be used to hold officers accountable when they engage in misconduct, to exonerate officers who are wrongly accused of misconduct and to deter misconduct and use of force.
- **Privacy** — Body cameras are surveillance tools. Police have the authority to enter private places and often deal with sensitive issues and people who are not at their best. For incidents where there are privacy concerns and no allegations of misconduct, the public should not have to worry that their encounter with law enforcement will wind up on the evening news or the internet. Both civilians and police should be confident that video will not be used for "fishing expeditions" to gather information on law-abiding individuals

outside an investigation, where there is no reason to believe a crime or misconduct has occurred, or formal audit.

- **Transparency and Public Access** — We give police tremendous authority, and the public has right to know how their police use that authority, particularly in critical incidents or where there are allegations of misconduct. But the balance between the public right of access and the privacy rights of those who appear on video must be carefully balanced. The policies governing recording of, access to, and release of body-worn video should also be clearly articulated and publicly available.
- **Promoting Police-Community Trust**— Cameras should be used in a way that promotes public trust in LAPD, and does not create the impression that video will be used only to exonerate officers but not to hold them accountable.

I. POLICIES MUST PROMOTE ACCOUNTABILITY

A. Officers Should Be Required To Record All Interactions With the Public, With Limited Exceptions.

Body-worn video cameras only work to provide accountability if they are turned on. A policy that allows officers discretion not to record some incidents permit officers to "edit on the fly" by simply turning the cameras off when they do not want to be recorded.[1] This undermines the cameras' core purpose of deterring and documenting misconduct, which rightly undercuts the public trust in cameras as an effective tool for accountability. Having clear rules about when to turn cameras on also helps protect officers: because there will inevitably be an implicit assumption that an officer who did not record an incident was trying to hide something, which could harm officers if allegations of misconduct do arise.

While continuous recording might best serve the goal of accountability, we recognize that constant recording may begin to intrude on officers' privacy rights. Officers are public servants, and they do not have an expectation of privacy in their interactions with members of the public.[2] But officers have greater privacy when on breaks or performing aspects of their work out of the public view.

We believe that LAPD should adopt a policy that requires recording of all contacts with members of the public — or, at a minimum, all investigatory contacts, including consensual encounters initiated by officers for investigatory purposes. Because seemingly ordinary encounters can evolve quickly, and officers faced with a sudden fleeing or resisting suspects may not think to turn his or her body camera on, officers should be required to activate body cameras at the earliest stage of each interaction, before leaving a car or making contact with a pedestrian. While we believe that

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[1] Officers' ability to turn off cameras at critical moments, or simply avoid turning them on, has been problematic in the past. With patrol car "dash cams," for example, select portions of a video recording an arrest in Seattle were mysteriously missing; those portions of the video are alleged to show the officers using excessive force. Alyssa Newcomb, *Seattle Arrest Questions Cops' Use of Dash Cams,* YAHOO NEWS (Feb. 14, 2012), available at http://news.yahoo.com/seattle-arrest-questions-cops-dash-cams-194643944--abc-news.html. And with body cameras, two Oakland police officers were disciplined after one turned off his lapel camera during a contentious interaction with a photographer. Ali Winston, *A New Way to Punish Oakland Cops?,* EAST BAY EXPRESS (Feb. 15, 2012), available at http://www.eastbayexpress.com/oakland/a-new-way-to-oakland-cops/Content?oid=3125656.

[2] *See, e.g.*, *Glik v. Cunniffe*, 655 F.3d 78, 82–85 (1st Cir. 2011) ("[A] citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment."); *Long Beach Police Officers Assn. v. City of Long Beach,* 59 Cal. 4th 59, 74 (2014) (personal privacy interests of officers involved in shootings did not justify withholding their names).

recording statements of witnesses, suspects, and victims should generally be required as an additional safeguard against misconduct,[3] exceptions may be appropriate for sensitive situations such as minor victims of sexual assault, so long the officer obtains clear, on-camera permission of the interviewee to stop recording.

Importantly, the Department must ensure any policy requiring recording is actually followed by auditing officers' compliance and imposing disciplinary consequences for failure to activate of cameras or tampering with equipment. Where an incident under investigation should have been recorded, failure to record could also result in a rebuttable inference against the officer. LAPD has already faced criticism that officers in Southeast Division went so far as to break antennae off the more than half the audio receivers for in-car video systems in order to avoid scrutiny — blatant misconduct for which the Department never disciplined a single officer.[4] For cameras to provide accountability, officers' compliance with Department policies requiring recording cannot be voluntary.

B. Officers Must Not Be Allowed to View Recordings Before Providing a Statement in Use-of-Force or Complaint Investigations.

Body-worn video may seem like a useful resource for officers in writing reports, who could review video to ensure details for a written report are accurate. That might be acceptable for routine report writing, but not if the officer is the subject of an investigation. When an officer is involved in a critical incident like a shooting, or faces a charge of misconduct around an incident, that officer should not be permitted to view body-camera footage before making a statement or writing an initial report.

Simply put, allowing the target of an investigation to review potentially incriminating evidence over and over again before writing a report or making a statement is a poor investigative practice. Police do not adopt such an approach for any other type of investigation, and they should not for investigations into officers.

Showing the subject of an investigation video evidence enables lying. If an officer is inclined to lie or distort the truth to justify a shooting,[5] showing an officer the video evidence before taking his or her statement allows the officer to lie more effectively, and in ways that the video evidence will not contradict. Video evidence can be enormously helpful, but it does not capture everything from every angle. If an officer is not sure what was and was not captured by the camera, he or she will feel a healthy pressure to tell "the whole truth and nothing but the truth" in describing an incident out of a desire not to be later caught by a discrepancy with the video. But if the officer watches the video and discovers that certain elements that put them in a poor light happened not to have been captured—or that moments when the subject is not in frame that the officer can say he reached for his

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[3] While we believe that recording statements of witnesses, suspects, and victims should generally be required as an additional safeguard against misconduct, very limited exceptions may be appropriate for highly sensitive situations such as minor victims of sexual assault, so long the officer obtains clear, on-camera permission of the interviewee to stop recording.

[4] Joel Rubin, *LAPD officers tampered with in-car recording equipment, records show*, LOS ANGELES TIMES (April 7, 2014), available at http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408.

[5] See Michelle Alexander, *Why Police Officers Lie Under Oath,* NEW YORK TIMES (Feb. 2, 2013), available at http://www.nytimes.com/2013/02/03/opinion/sunday/why-police-officers-lie-under-oath.html?pagewanted=all&_r=1&&gwh=B2F83E14FF0E6AAF6EE34B44906B34F9&gwt=pay&assetType=opinion.

waistband—then the officer can feel at liberty to shade and color their account of events, if not to lie outright.

Showing the subject of an investigation video can affect their memory of the event. Even for officers who are trying to tell the truth (as we hope most do), showing them the video can easily influence their memory of events and impede the search for truth. A camera worn on a police officer's body may capture some things an officer missed and miss things an officer did see. That video provides one important piece of evidence on whether the officer acted reasonably. But the officer's memory of what took place is also important evidence—especially since courts evaluate the legality of an officer's use of force based on what he or she knew at the time, not on information gleaned from poring over video evidence later.[6] Memory is highly malleable, and an officer's initial recollections of what took place are likely to be altered by viewing the video, so that details that do not appear on video are forgotten and things captured by the video are recalled as if experienced firsthand. As the Los Angeles County Office of Independent Review found in working on the Sheriff's Office policy:

> In our review of the available research, we found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event.[7]

LAPD Does Not Release Evidence to Other Suspects, or to Other Witnesses in Shooting Investigations. On one hand, LAPD seems to agree, because the Department does not show video evidence to witnesses or suspects in other investigations, or to other witnesses of police uses of force. LAPD Commander Andy Smith recently explained why LAPD withholds autopsies in police shootings from the public for a period of time:

> "We don't want the witnesses' testimony to be tainted," Smith said. Detectives want to obtain "clean interviews" from people, rather than a repetition of what they may have seen in media reports about [the subject's] death, he added. "They could use information from the autopsy to give credibility to their story," Smith said.[8]

That reasoning applies with equal force to showing officers footage of an incident that's under investigation. The Department cannot justify a different rule for officers than applies to other witnesses or subjects of investigation.

A one-sided policy of allowing officers under investigation to view video before making a statement of an investigation undercuts the legitimacy of investigations. Because letting officers preview videos of an incident before giving a statement can allow them to lie, doing so undermines the credibility of officer statements and the integrity of investigations whether the officers actually lie or not. Such a policy will create an appearance of bias and therefore taint the integrity of investigations. This is particularly true because

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[6] *Graham v. Connor*, 490 U.S. 386, 396 (1989).

[7] Los Angeles County Office of Independent Review, *Eleventh Annual Report,* 36 (Dec. 2013), available at http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf.

[8] Frank Stoltze, *Update Ezell Ford shooting: LAPD places 'security hold' on autopsy report*, 89.33 KPCC SOUTHERN CALIFORNIA PUBLIC RADIO (Aug. 18, 2014), available at http://www.scpr.org/news/2014/08/18/46063/ezell-ford-lapd-places-security-hold-on-autopsy-fo/; see also *Tensions High As South LA Residents Meet With LAPD Over Ezell Ford Shooting Death,* CBS LOS ANGELES (Aug. 20, 2014), available at http://losangeles.cbslocal.com/2014/08/20/tensions-high-as-south-la-residents-meet-with-lapd-over-ezell-ford-shooting-death/.

LAPD does not show video evidence to the subjects of uses of force or to civilian witnesses. It would be a special privilege only given to officers.

Some departments agree with us. The Oakland Police Department, which was one of the first police agencies to adopt body cameras in 2010, has a policy prohibiting officers from reviewing video prior to making a statement in an investigation arising out of a Level 1 use of force (the most serious, including shootings, and equivalent to LAPD's categorical use of force).[9] When the Los Angeles Sheriff's Department recently installed video cameras in its jails, the department, after careful consideration, adopted a policy that requires deputies in the jails to file reports on incidents before viewing video, for many of the reasons we articulate below.[10]

LAPD's Policy on In-Car Video Should Not Control This Question. LAPD's own policy on in-car cameras actually *requires* officers to review video before giving a statement in use-of-force investigations—a policy that the Department included in its policy for the pilot program for body-worn video.[11] We believe that is bad policy, for all the reasons discussed here. LAPD cannot simply apply that policy to body cameras. The policy on in-car video was enacted only in 2009, affects fewer officers and fewer types of encounters, and was adopted without the careful public process the Police Commission claims to be giving the policy for body-worn video. If the Department approaches this question as a *fait accompli* because of the existing policy for in-car video, the supposedly careful process for getting the Body-Worn Video policy right will ring hollow.

The main argument given by those who support showing officers video is simply that "we want police to give the most accurate possible statement, so why not let them view the video?" These proponents agree that research shows that in stressful situations like shootings, even trained observers may have trouble to recalling events accurately.[12] But they argue that since video is often the most accurate record of what occurred, letting officers review footage will help lead to the truth of the incident by helping officers to remember an incident more clearly. But none of those reasons justifies giving officers access to video *before* they've given an initial statement. Of course officers should be allowed to watch the video after giving an initial statement and offer additional information if it jogs their memory of something they left out or misremembered, or provide context if it shows something they missed entirely. That would help provide the fullest picture of what happened, including the officer's commentary on the video evidence, without tainting the officer's initial recollection or giving them a roadmap to lie without getting caught.

Officers may have an additional concern: because memories are fallible, particularly in stressful events, officers' initial accounts almost certainly are not going to match the videos exactly. Officers do not want to be disciplined because they misremembered some details such as which hand a subject used to reach for a door or wallet, or even important facts like how many shots they fired.

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[9] Departmental General Order I-15.1, "Portable Video Management System," Oakland Police Department, 4 (effective Mar. 5, 2014), available at https://www.aclu.org/sites/default/files/assets/mar_14_pdrd_policy.pdf.

[10] Los Angeles County Office of Independent Review, *Eleventh Annual Report, supra* note 7, at 35.

[11] *See* LAPD Special Order No. 45, *Digital In-Car Video System Use and Deployment — Pilot Program* (Oct. 20, 2009) at 2-3 ("[E]mployees involved in a known [categorical use of force shall review video footage captured during the incident and/or other relevant footage prior to being interviewed."); LAPD Operations—Central Bureau, Order No. 1, *Deployment and Use of the Body-Worn Video (BWV) System — Voluntary Proof of Concept* (Jan. 1, 2014), at 3 (containing identical language).

[12] *See, e.g.*, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned,* 29–30, 45–47, 62 (2014), available at http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf.

That concern has some validity. Officers in a stressful incident like a shooting should not be disciplined for giving testimony that contradicts a video absent evidence that they intentionally misstated the facts. But every other subject of an investigation has to deal with those realities; police should not get special treatment in that regard. The right answer is to confront that misperceptions about the accuracy of eyewitness memory,[13] not to fabricate a false level of accuracy by letting officers tailor their accounts to video.

We cannot stress enough how central this issue is to ensuring LAPD's body camera program promotes accountability and retains public trust. To adopt special treatment for officers that allows them to review video evidence before making statements during an investigation risks turning police body cameras from tools for police accountability into tools for police cover-up.

C. The Department Should Randomly Audit Body-Worn Video Footage to Ensure Quality of Training and Compliance with Policy and Law

Although body-worn video may help resolve complaints or use of force investigations when they arise, the vast majority of police encounters do not result in complaints or uses of force. Body-worn video should be used to identify problems with training or officer behavior before those problems result in complaints or incidents. Moreover, regular review of video will allow the Department to identify problems with training or officer conduct that might not be captured in a complaint or other mandatory investigation. As set forth below, however, review of video should either be based on specified prior conduct or should be randomized and conducted according to accepted auditing principles to avoid and risk that some officers are unfairly targeted by supervisors for unwarranted scrutiny.

D. LAPD Must Handle Video Footage So As To Avoid Any Possibility of Tampering or Editing

The public can only trust video evidence if there is no doubt officers cannot edit, alter, or delete the video they record. The devices LAPD uses must not allow any opportunity for officers to edit, alter or delete during the shift or the upload process. Uploaded videos should be placed on a secure server with no ability for officers to edit or delete original video footage until the retention period has elapsed.

Officers may sometimes forget to turn cameras off and so may inadvertently record private, personal activity that should not be recorded. Officers should be allowed to flag those videos for heightened protection or restricted access, and to avoid release of any such videos. But any ability to edit or delete videos can be abused and will call into question the integrity of body-worn video footage.

II. POLICIES MUST PROTECT PRIVACY

A. Civilians Should Be Given Notice that Officers Are Recording.

Hidden surveillance is more invasive than open recording. Moreover, to the extent that the presence of cameras deters aggressive behavior by civilians, that deterrence is lost if civilians are not

[13] See Innocence Project, "Eyewitness Misidentification," available at http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php.

aware that they are being recorded.[14] Officers should be required, whenever possible, to notify people that they are being recorded. This could easily be accomplished by having cameras clearly marked with a plate or sticker noting that the encounter may be recorded.

B. Recording in private places

Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to be especially sure to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. Departments might also consider a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off should themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.

C. Limitations on Use, Sharing and Disclosure of Video

ACLU SoCal supports the use of body worn video for police accountability and oversight. Body camera footage should be reviewed where there is reason to believe the video contains evidence of misconduct or criminal activity; where there has been use of force or other reason for mandatory internal investigation; or for auditing as part of a randomized audit or corrective plan for an officer based on specified prior conduct. But the vast majority of body-worn video footage should never need to be reviewed by the Department in its original state, and will simply be deleted when the retention period ends.

Body cameras are a surveillance technology, and there are very real concerns that they could be used as a backdoor for surveillance or tracking of the public. For example, body-worn video footage of protests against police brutality or against City officials could be reviewed to identify and build dossiers on protestors, or to scan for minor infractions that could be charged. The Department must enact strong policies limiting access to and use of body-worn video to prohibit use for surveillance of the public, especially the surreptitious gathering intelligence information based on First Amendment protected speech, associations, or religion. The Department should bar review of any video absent specific reason to believe that video contains evidence of a crime or misconduct, and should expressly prohibit use of other surveillance tools, such as facial recognition technology, on body-worn video footage.

These concerns also apply to officers. Officers can reasonably expect that body-worn video would be consulted during an investigation into a use of force or an allegation of misconduct. As set forth above, the Department also can and should audit video to ensure quality of training and officer compliance with all policies and laws. But officers should not have to worry that supervisors who does not like them can spend the weekend reviewing their body-worn video footage looking for any violation of policy they could charge. Review of officers' video should be limited to investigations

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[14] A study conducted in Rialto, California, showed nearly a 90% decline in complaints for officers who wore cameras, where members of the public were "aware of being videotaped." Farrar and Barak Ariel, *Self-awareness to being watched and socially-desirable behavior: A field experiment on the effect of body-worn cameras on police use-of-force* (2013), available at http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf.

of particular incidents where there is some reason to believe misconduct has occurred, corrective action resulting from specified prior conduct, or randomized audits.

Video should also never be shared or released for any reason other than to promote accountability or transparency — never for voyeuristic reasons, personal advantage, or financial gain. Even in circumstances where some release of recordings may be appropriate, the decisions about when and how to release the body-worn video footage should be made by the Department according to clear, standard criteria, not by the individual officers involved in the incidents recorded. In the wake of an individual LAPD officer's recent decision to release an audio recording he had made of an actresses' detention, "[I]t is not the best policy to allow officers to decide on an individual, ad hoc basis whether or not to record stops…. The LAPD needs better rules to govern the use of recording devices, and especially to balance the promise of accountability they offer with the potential loss of privacy."[15]

These limitations must be implemented with both sound technology and strong policies. To limit misuse of footage, the video must be securely stored and accessible only through a system that requires individualized logins, purpose-specification for access, and an impeccable auditing capabilities. Access must actually be audited to ensure the integrity of the system. Department policy should also clearly prohibit officers from duplicating or sharing video outside of a formal system for release, and should impose disciplinary consequences for any breach.

D. Retention and Purging.

LAPD should also have strict purging policies that limit the unnecessary retention of body-worn video footage. LAPD should retain footage only until applicable statutes of limitations for officer misconduct elapse, and should implement storage systems that automatically purge videos that have reached the end of the retention period and are not part of an investigation.

III. POLICIES MUST PROVIDE ACCESS TO BODY-WORN VIDEO FOOTAGE THAT BALANCES PRIVACY WITH THE PUBLIC'S RIGHT TO KNOW

Developing policies on when video captured by body cameras should be released will require a delicate balancing act in order to protect the privacy rights of individuals while serving the strong public interest in disclosure. As the Los Angeles Times and California Newspaper Publishers Association discuss more fully in their letter to the Commission, legal precedent makes clear that body camera footage is public record generally subject to disclosure under the California Public Records Act (CPRA).[16]It is equally clear that the exception for certain law enforcement records in § 6254(f) does not provide a categorical exemption for all videos of police interactions with civilians.[17]

Even if § 6254(f) does allow LAPD to withhold video in certain instances, the exemption does not require the Department to do so, and we strongly urge LAPD not to assert that exemption

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[15] Editorial, *Clear, thoughtful rules are needed for recordings by LAPD*, L.A. TIMES (Oct. 1, 2014), available at http://www.latimes.com/opinion/editorials/la-ed-police-audio-tmz-daniele-watts-20141002-story.html; *see also* Kate Mather and Richard Winton, LAPD officer in actress' detention defends TMZ leak to police panel, L.A. TIMES (Sept. 30, 2014), available at http://www.latimes.com/local/crime/la-me-lapd-actress-detention-20141001-story.html.

[16] Cal. Gov't Code §§ 6252(e), (g).

[17] *See ACLU Foundation v. Deukmejian*, 32 Cal. 3d 440, 449 (1982); *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1071 (2001).

categorically. Rather, the Department should adopt clear, standardized policies of releasing video in a manner that balances the public's right to know with privacy concerns and other legal protections.

On the spectrum of incidents likely to be captured on video, there are some circumstances in which we believe the proper path is clear. On the one hand, when the privacy interests of the subjects are great — for example, when officers enter private homes or conduct sensitive victim or witness interviews — the video should not be made public[18]. Conversely, when the public interest in transparency is strongest — such as when officers are involved in shootings or other critical incidents, or accused of egregious misconduct — the very goals behind adopting body cameras demand disclosure — if not while an investigation is pending, then as soon as it is concluded.

In between these clear extremes lies murkier waters. Three possibilities stand out as possible solutions for balancing individuals' privacy interests with the public's interest in access to information on police conduct.

First, civilians recorded by body cameras should unquestionably have access to, and the right to make copies of, those recordings, for however long the government maintains them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence. Release to the involved party is consistent with the CPRA's requirement that police disclose certain records of incidents to "victims," and with the California Information Practices Act (CIPA), which recognizes an individual's right to access records on himself held by state agencies.[19] Under this approach, because the individual would have control over whether to make the footage public, most privacy concerns would be eliminated.[20]

A second potential solution would be to use electronic tools to anonymize all video footage recorded by body cameras, allowing it to be released to the public. The Seattle Police Department is currently investigating such an approach.[21] Releasing all video after blurring or removal or alteration of audio could preserve the anonymity of people recorded while still giving the public insight into officers' conduct, but the technology needs further investigation to insure video can be anonymized while retaining enough quality to provide meaningful access.

Third, the police department of Oakland, California has adopted a similar policy of releasing all video footage, unless it is part of an active investigation. Prior to releasing the footage, OPD staff screen every video for privacy concerns that would justify withholding it. While such an additional

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[18] *See Wilson v. Layne*, 526 U.S. 603, 614 (1999) (police violate the Fourth Amendment by bringing print reporters into home during execution of search warrant).

[19] Cal. Civ. Code § 1798 *et seq.*

[20] Because the CPRA makes clear that disclosures required by law do not waive the agency's right to assert exemptions to future disclosure, Cal. Gov't Code § 6254.5(b), disclosure to the video's subjects need not necessarily constitute waiver. Section 6254(f) itself contains language requiring local agencies to disclose records of incidents to "victims," which would seem to encompass at least those individuals complaining of misconduct or subjected to uses of force. Moreover, to simplify matters, LAPD could request the City Council to pass an ordinance analogous to CIPA, making it a legal requirement to disclose body-worn video on which that individual appears absent certain exceptions. The City of San Diego adopted such an ordinance in 1994, and the Los Angeles City Council could use that ordinance as a model. *See* Telecommunications Policy, No. 900-13, San Diego City Council, 4 (adopted Oct. 1994), available at http://docs.sandiego.gov/councilpolicies/cpd_900-13.pdf.

[21] *See* Colin Wood, *Seattle Police Hackathon Tackles Video Transparency*, GovTech Magazine (Dec. 22, 2014), available at *http://www.govtech.com/public-safety/Seattle-Police-Hackathon-Tackles-Video-Transparency.html*.

process would require additional department resources, such an investment in transparency and public trust may be worthwhile.

To the extent that LAPD feels its policy requires a statutory framework, the balancing test explained in § 6255 of the Government Code should provide the necessary guidance. Body cameras' potential benefits to transparency and public trust are central to their usefulness and have been touted as a driving force in the push to adopt them. While some exceptions must be made to protect privacy and certain law enforcement functions, the rule must err on the side of disclosure.

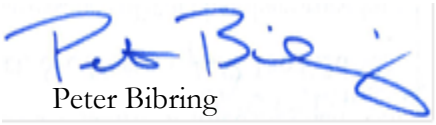
IV. THE LAPD SHOULD MAKE THE PROCESS FOR ADOPTING BODY-WORN VIDEO AS TRANSPARENT AS POSSIBLE

The LAPD's has invited public input on policies for body-worn video and has stated it will not deploy video cameras until the policy is approved by this Commission in a public meetings. Compared with the many police agencies that decide adopt new surveillance technology behind closed doors, this process is a positive step toward transparency.

In a recent report, *Making Smart Decisions About Surveillance: A Guide for Communities*,[22] the ACLU of California has recommended a process to ensure police agencies thoroughly vet new surveillance technology, by issuing privacy impact assessments that evaluate potential risks to privacy and safeguards that could address them, clearly outline oversight mechanisms and create standards for reporting data, as well as releasing draft policies that can focus debate on key issues. We applaud the LAPD's efforts to make this process public and commend the report's recommendations to the Department as a guide for the remainder of the process.

I am happy to discuss the ACLU SoCal's recommendations with any members of the Police Commission or Department further.

Sincerely,



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Cc: Mayor Eric Garcetti
Rich Llewellyn, Legal Counsel to the Mayor
Mike Feuer, Los Angeles City Attorney
Los Angeles Police Department Chief Charlie Beck
Maggie Goodrich, Chief Information Officer, LAPD
Arif Alikhan, Special Assistant for Constitutional Policing, LAPD

[22] ACLU of California, *Making Smart Decisions About Surveillance: A Guide for Communities* (Nov. 2014), available at https://www.aclusocal.org/community-making-smart-decisions-surveillance/.