



STAND FOR JUSTICE

April 28, 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:

I write regarding the proposed Special Order setting forth body worn video policies for the Los Angeles Police Department (“LAPD” or the “Department”), submitted by the Department for the Police Commission’s approval today.

The proposed policy is deeply flawed. As set forth below, the policy includes highly problematic provisions allowing officer review of video before making statements in critical incidents such as shootings and describing circumstances under which officers must record (and document failure to record) interactions that are vague enough to provide officers substantial discretion to avoid recording. The proposed policy also entirely fails to address some of the chief concerns raised by body worn video, including protections for privacy by imposing any limitations on the Department’s use of video and the Department’s policies on allowing public access to video footage.

The ACLU of Southern California (“ACLU SoCal”) opposes LAPD’s use of body worn video cameras under this policy, and calls on the Board of Police Commissioners (“the Commission”) not to approve it under any circumstances, but especially on such short notice of the policy terms. Given the importance of this policy not just to the success of the body worn video program but to police-community relations generally, the time the Department has taken so far in evaluating and testing body worn video, and the difficulty in changing this policy once it is approved, the Board should not rush into approving these policies less than two business days after the Department proposed them. Instead, the Commission must approach the body-worn video policy with the care it deserves. The Commission should at least postpone consideration of the policy to allow time for meaningful public input and to allow it to obtain independent evaluation of the proposed policies by the Office of the Inspector General, experts in law enforcement and oversight, and civil rights groups.

While the policy would benefit from a more thorough vetting altogether, the following aspects pose particular concerns.

***The Stated Purposes of the Body-Worn Video Program.*** The body camera program contemplated by this policy is very different from the one initially promoted by Board President

Soboroff in 2013. Bringing body worn cameras to LAPD was touted as progress towards the accountability goals of the Christopher Commission and the federal consent decree, which urged LAPD to install cameras in patrol cars to protect against biased policing and to create an objective record of incidents.<sup>1</sup> The policy now presented to the Board explicitly sets out a very different set of objectives, in Section I, focused on gathering evidence of crime, “deter[ring] criminal activity and uncooperative behavior during police-public interactions,” assisting officers with completing reports, assisting in the resolution of complaints “including false allegations by members of the public” and providing other information for officer “evaluation training and improvement.” While the objectives include accountability, it is telling that they do not mention trust or transparency, and mention the “public” only in connection with the public’s uncooperative or criminal behavior and false allegations. As set forth in our January letter to the Board,<sup>2</sup> the policies undergirding any positive body camera program must balance the goals of accountability, privacy, transparency and public access, and promoting police-community trust. The policy presented to the Board fails to address these goals in several critical respects.

***Unclear Exceptions to Recording and Documentation Requirements.*** Body worn cameras will be effective only if they’re turned on. But as written, the exceptions to the general requirement that officers records investigative interactions lack clarity that could allow significant officer discretion not only in deciding when to record encounters, but when and how to document decisions not to record. There appears to be no requirement that the officer document (on video or otherwise) that the subject of the video requested or consented to the officer not recording the encounter, and exceptions when witnesses are not cooperative, when “in the officer’s judgment, a recording would interfere with his or her ability to conduct an investigation” (which may be tied to “sensitive circumstances”) or would “risk the safety” of a citizen informant are potentially broad enough to swallow the rule of general recording, depending on how the policy is interpreted in practice. Compounding this danger is the lack of clear review of officers’ decisions not to record encounters. Although watch commanders’ duties do include “[r]eview[ing] deviations,” it is far from clear that an officer’s report indicating that an exception applied would trigger any inquiry into the truth of that assertion.

***Fails to Address Public Access to Video.*** It is deeply problematic that the policy says nothing about when members of the public might gain access to video footage. The only provision to address transparency and public access to body camera video, Section VII, characterizes the videos as confidential records, suggesting that the Department intends to release them not at all, or based on *ad hoc* decisions about when release would be suitable. The lack of clear provisions governing release of video hurts both transparency and privacy.

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<sup>1</sup> See Los Angeles Police Dept., Police Commission President Steve Soboroff’s Comments Upon Being Elected President (2013), available at [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/47446](http://www.lapdonline.org/police_commission/content_basic_view/47446); Joel Rubin, *Soboroff takes reins of revamped Police Commission*, LA TIMES (Sept. 10, 2013), available at <http://articles.latimes.com/2013/sep/10/local/la-me-lapd-soboroff-20130911>.

<sup>2</sup> A copy of the letter is attached for the Commission’s convenience.



One of the most promising aspects of body worn video should be its power to provide transparency into officers' actions and what department policies and training mean, not just on paper but when applied to actual situations and incidents. Even if using video for internal misconduct investigations would increase accountability within the Department, body worn cameras will not improve public accountability or police-community relations if the Department withholds all videos — even of critical incidents where the public interest in seeing its officers in action is strongest, and even with respect to requests by members of the public for footage of incidents where they are the subjects of interactions with law enforcement, where privacy concerns do not exist or are greatly reduced. The Department's refusal to set forth clear policies on the public release of video also creates the impression it may release video that exonerates officers but not video that shows misconduct, which does not advance public trust.

The policy bars unauthorized release of video by officers, an important protection for privacy. But by not setting any rules for when the Department might release video through authorized channels, it fails to address privacy concerns by potentially allowing release of sensitive or embarrassing footage where there is no clear public interest in disclosure.

***Fails to Impose Limitations on Department's Use of Video.*** Body worn video should be used as a tool for providing accountability and transparency, and building public trust — not as a device to facilitate surveillance of the public or unjustified scrutiny of particular officers. But the policy sets no limits on how the Department may use body worn camera video. It provides no protection against so-called fishing expeditions, for members of the public or for individual officers, and does not prohibit the use of video for public surveillance. Rather, Section III of the policy expressly authorizes recording encounters “for later investigation,” strongly suggesting that it would be legitimate to use the cameras for intelligence gathering—such as during peaceful political protests. Nor does the policy bar the use of any technology, such as facial recognition technology, in conjunction with the video, limit how long video may be retained, or set out protocols for ultimately disposing of video.

***Flawed Provisions Allow Officers To Review Video Before Making Statements in Critical Incidents and Complaints.*** Following critical incidents such as police shootings and other serious uses of force, the policy appears to require (and at the very least authorizes) that officers involved review video from their body camera, and perhaps from other officers' cameras, before providing even an initial statements. This is a critical flaw that seriously undercuts the accountability and investigative accuracy that body worn video should advance. As set forth in the ACLU's January 15 Letter, not only is this a poor investigative practice, but such a one-sided policy of allowing officers, but not members of the public, to see video before being interviewed will undercut the legitimacy of any investigation for which video is involved. Nor is such a policy followed by other departments — the Oakland Police Department, another large urban department that has operated body cameras for four years, longer than any other department in California, bars officers from reviewing video



footage until after they have made an initial statement.<sup>3</sup> The Los Angeles Sheriff's Department follows a similar policy for video footage taken by cameras in the jails, a policy they set after careful consideration of evidence that reviewing video footage could taint officers' initial statements.<sup>4</sup> This policy at best threatens to taint officers' memories and undermine public confidence in investigations, and at worst to allow a tool for accountability to be used to assist in a cover-up. The ACLU SoCal strongly urges against allowing officer review prior to an initial statement in uses of force, complaints, and other investigations into officer conduct.

***The Process of Releasing this Policy.*** In addition to concern over substantive aspects of the policy, the ACLU SoCal is also alarmed by the haste with which this Commission is being asked to approve these policies. These policies are crucial not only to the success of body worn video and to the public's trust in this program. Body worn video cameras are a tool. Whether they work or fail, whether they promote transparency and accountability and build public trust or undermine those objectives, depends on the way in which they are used.

The road to body worn video at LAPD has been a long one: This commission first announced its intention to pilot body worn video in September 2013, in only the second meeting for most of the current commissioners.<sup>5</sup> The Department began a pilot program to test cameras in January 2014,<sup>6</sup> and since then has been considering policies to govern their use, including through public meetings held in February 2015. The Department has been working on policies for much of that time, including long negotiations with the Police Protective league. In part because of the length of that process, these policies will be hard to change once they are approved. It is crucial that the Commission get the policies right, from the beginning.

But after an eighteen-month-long process, the Department released the proposed policies late on a Friday afternoon and asked this Commission to approve them less than two business days later. The short time span does not provide a meaningful opportunity for community groups, public interest organizations, or individual citizens to debate or provide feedback on the concrete terms of the Department's proposed policy. Nor does the short time span allow this Commission to carefully review and evaluate its terms, much less to solicit independent evaluation from experts or even the LAPD Inspector General's office, as it certainly should.

Given how crucial appropriate policies will be to the effectiveness of LAPD's body worn camera program, the ACLU SoCal urges the Board to withhold approval of the policy at the Tuesday meeting. We encourage the Board to seek independent input on the details of the policy from the Office of the Inspector General, and to schedule additional public meetings so that community voices may be heard in a relevant way. Transparency and true public accountability demand no less.

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<sup>3</sup> See 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](https://www.aclu.org/sites/default/files/assets/mar_14_pdrd_policy.pdf).

<sup>4</sup> Los Angeles County Office of Independent Review, *Eleventh Annual Report*, 35-37 (Dec. 2013), available at [http://shq.lasdnews.net/shq/LASD\\_Oversight/OIR-Eleventh-Annual-Report.pdf](http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf).

<sup>5</sup> See *Private Donors Offer To Fund LAPD Lapel Cameras*, Associated Press/CBS Los Angeles (Sept. 17, 2013), available at <http://losangeles.cbslocal.com/2013/09/17/private-donors-offer-to-fund-lapd-lapel-cameras>.

<sup>6</sup> See *LAPD Officers Test On-Body Cameras*, Associated Press/CBS Los Angeles (Jan. 15, 2014), available at <http://losangeles.cbslocal.com/2014/01/15/30-lapd-officers-to-begin-testing-on-body-cameras>.



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

Sincerely,



Peter Bibring  
Director of Police Practices and Senior Staff Attorney

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  
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