



*Via email and certified mail*

September 3, 2015

Director Denise E. O'Donnell  
Bureau of Justice Assistance  
810 Seventh Street NW  
Washington, D.C. 20531

To Whom It May Concern:

I write on behalf of the ACLU of Southern California (“ACLU SoCal”) regarding the application of the Los Angeles Police Department (“LAPD”) for funds to assist in the purchase of 700 body-worn video cameras, through the Bureau of Justice Assistance (“BJA”) Body-Worn Camera Pilot Implementation Program (“BWC Pilot Program”).

While ACLU SoCal generally supports the appropriate use of body-worn cameras by police, we have deep reservations that the policy LAPD has adopted for their body-worn cameras as well as the process by which they adopted that policy.<sup>1</sup> We believe that LAPD’s policy does not promote—and in fact undermines—the goals of transparency, accountability and creation of public trust that body-worn cameras should serve. Accordingly, we respectfully request that the Department of Justice deny LAPD’s request for funding and instead direct federal support of body-worn cameras to agencies whose policies align more closely with the objectives of the program and better promise to build public trust.

*Background on ACLU SoCal and Body-Worn Cameras at LAPD*

ACLU SoCal has been generally supportive of law enforcement agencies’ efforts to equip their officers with body-worn video cameras, as well as the Department of Justice (“DOJ”) program to help fund those efforts by local agencies. We generally agree with the Attorney General’s assessment that “[b]ody-worn cameras hold tremendous promise for enhancing transparency, promoting accountability, and advancing public safety for law enforcement officers and the communities they serve.”<sup>2</sup> But body-worn cameras are only tools. Depending on the policies that govern their use, they can be effective or ineffective—and can even undercut the very values of transparency, accountability, and community trust they are meant to promote.

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<sup>1</sup> A copy of LAPD’s Body Worn Video Policy is enclosed and is available online at [http://www.lapdpolicecom.lacity.org/042815/BPC\\_15-0115.pdf](http://www.lapdpolicecom.lacity.org/042815/BPC_15-0115.pdf). The policy was submitted to the Los Angeles Board of Police Commissioners (“Police Commission”) on April 28, 2015, and was approved by the Police Commission without amendment.

<sup>2</sup> News Release, Dept. of Justice Office of Public Affairs, *Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program* (May 1, 2015), available at <http://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program>.

The BJA's approach has also stressed the crucial role of policies in body-worn camera programs. In its announcement of the BWC Pilot Program, the BJA made clear that "successful applicants must demonstrate a commitment and adherence to a strong BWC policy framework, including comprehensive policy adoption."<sup>3</sup> The BJA also expressly indicated that body-worn camera policies should be developed with input from community stakeholders and should further the goal of "improv[ing] transparency and accountability in encounters between police and the public."<sup>4</sup>

The Los Angeles Police Department is one of the largest departments in the country to implement a body-worn camera program, launching its program on September 1, 2015 at two divisions with plans to ultimately equip 7,000 patrol officers with body-worn cameras.<sup>5</sup> We understand that LAPD has applied for BJA funding for purchase of 700 of these cameras.

The road to body-worn cameras at LAPD has been a long one: The Board of Police Commissioners first announced its intention to pilot body worn video in September 2013, in only the second meeting for most of the current commissioners.<sup>6</sup> LAPD began a pilot program to test cameras in January 2014,<sup>7</sup> and since then has been considering policies to govern their use, including through two 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. ACLU SoCal has closely monitored the development of LAPD's policy regarding body-worn cameras through meetings with department officials, written letters, and participation at public meetings—including the meeting at which the proposed LAPD policy on body-worn cameras was adopted by the Board of Police Commissioners.

Although ACLU SoCal initially supported LAPD's exploration of body-worn cameras, we believe that the policy LAPD ultimately adopted to govern the program suffers from such serious flaws that we oppose the use of body-worn cameras under its terms. By withholding video from the public, requiring officers to review video before making statements in use of force and misconduct investigations, and failing to include protections against the use of body-worn cameras as general surveillance tools, LAPD's policy provides no transparency and threatens to taint the integrity of investigations and undermine the public trust.

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<sup>3</sup> Body-Worn Camera Pilot Implementation Program FY 2015 Competitive Grant Announcement, Dept. of Justice, Office of Justice Programs, Bureau of Justice Assistance [hereafter "BJA Announcement"] 4 (June 2, 2015), available at <https://www.bja.gov/Funding/15BWCsol.pdf>.

<sup>4</sup> *Id.* at 4-6.

<sup>5</sup> See Alex Dobuzinskis, *Commission approves policy for Los Angeles police body cameras*, REUTERS (April 28, 2015), available at <http://www.reuters.com/article/2015/04/28/us-usa-police-cameras-idUSKBN0NJ2O720150428>.

<sup>6</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>7</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>.



*The Stated Purposes of LAPD's Body-Worn Camera Program Do Not Align With the DOJ's*

The body-worn camera program implemented by LAPD's policy is very different from the kind of program contemplated by the DOJ. Nationally, both the White House and the President's Task Force on 21st Century Policing have cast body-worn cameras as tools for improving transparency, trust, and oversight.<sup>8</sup> In the BWC Pilot Program description specifically, "strengthen[ing] accountability and transparency" are described as key goals of implementing body-worn camera programs.<sup>9</sup> In Los Angeles, 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>10</sup>

The policy adopted by LAPD explicitly sets out a very different set of objectives which nowhere mention as goals increasing transparency and public trust. Section I of the policy, which lays out the objectives of the program, focuses explicitly 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."<sup>11</sup> 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.<sup>12</sup> This fundamentally divergent view of the primary goals for implementing a body-worn camera program is troubling in itself and is manifested in other specific provisions of the policy as well.

*LAPD's Policy Provides No Transparency By Failing to Provide for Any Public Access to Video*

LAPD's failure to gear its body-worn camera program towards transparency and building public trust is evident in the Department's approach to public access to video footage.

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<sup>8</sup> See, e.g., David Hudson, *Building Trust Between Communities and Local Police*, THE WHITE HOUSE BLOG (Dec. 1, 2014), available at <https://www.whitehouse.gov/blog/2014/12/01/building-trust-between-communities-and-local-police>; News Release, the White House, *FACT SHEET: Strengthening Community Policing* (Dec. 1, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>; President's Task Force on 21st Century Policing, *Final Report* [hereafter "President's Task Force Report"] 26, 31-32, 36-37 (May 1, 2015), available at [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf).

<sup>9</sup> BJA Announcement, *supra* note 3, at 4.

<sup>10</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>11</sup> See LAPD Body Worn Video Policy, *supra* note 1.

<sup>12</sup> See *id.*



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LAPD's policy is silent on the issue of public release of video footage by the Department. The only provision relevant to release of videos, Section VII, characterizes the videos as confidential records, suggesting that the Department intends to release the videos not at all, or based on *ad hoc* decisions about when release would be suitable.<sup>13</sup>

In public statements, however, both LAPD Chief Charlie Beck and high-ranking members of the Department have repeatedly said that the Department will treat body-worn camera videos as categorically exempt from disclosure under California's public records law and will not release those videos unless required to do so in court proceedings.<sup>14</sup> But the Department also "reserves discretion" to release videos when the Chief believes it would be "beneficial."<sup>15</sup> That does not mean in critical incidents—the Department has already refused to release body-worn camera footage in at least two controversial shootings, despite public calls to do so, even where it has given detailed explanations of bystander video and where Department officials have leaked characterizations of the contents of video footage.<sup>16</sup>

LAPD's policy is at odds with the transparency body-worn camera programs are intended to promote. The Police Executive Research Forum ("PERF"), in the report of recommendations which the BWC Pilot Program description specifically directs grant applicants to utilize, explains:

A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. By facing the challenges and expense of purchasing and implementing a body-worn camera system, developing policies, and training its officers in how to use the cameras, a department creates a reasonable expectation that members of the public and the news media will want to review the actions of officers. And **with certain limited exceptions ..., body-worn camera video footage should be made available to the public upon request—not only**

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<sup>13</sup> *See id.*

<sup>14</sup> Sid Garcia, *Activists want access to LAPD body-camera footage*, KABC (Aug. 25, 2015), available at <http://abc7.com/news/activists-want-access-to-lapd-body-camera-footage/957312/>; Kate Mather, *LAPD expects to start deploying body cameras this summer*, LOS ANGELES TIMES (March 31, 2015), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-body-cameras-20150331-story.html>; Kate Mather, *A fight over access to video from LAPD body cameras is shaping up*, LOS ANGELES TIMES (Feb. 5, 2015), available at <http://www.latimes.com/local/crime/la-me-lapd-cameras-20150205-story.html>.

<sup>15</sup> Tami Abdollah, *LAPD board OKs body camera policy despite opposition*, LOS ANGELES DAILY NEWS (April 28, 2015), available at <http://www.dailynews.com/government-and-politics/20150428/lapd-board-oks-body-camera-policy-despite-opposition>. *See also* Kate Mather, *Divided Police Commission approves rules for LAPD body cameras*, LOS ANGELES TIMES (April 28, 2015), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-body-cameras-rules-20150427-story.html>.

<sup>16</sup> *See* Kate Mather and Richard Winton, *Sources: LAPD body cameras show struggle with homeless man*, LOS ANGELES TIMES (March 2, 2015), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-body-cameras-skid-row-struggle-20150302-story.html>; Jeff Sharlet, *The Invisible Man: The End of A Black Life That Mattered*, GQ MAGAZINE (July 7, 2015), available at <http://www.gq.com/story/skid-row-police-shooting-charly-keunang>.



**because the videos are public records but also because doing so enables police departments to demonstrate transparency and openness in their interactions with members of the community.**<sup>17</sup>

PERF's recommendations further urge that, although state public records laws may include exceptions that would cover body-worn camera video in certain circumstances, such as when release could jeopardize an ongoing criminal investigation or there are countervailing privacy concerns,

[B]y policy and practice, law enforcement agencies should apply these exceptions judiciously to avoid any suspicion by community members that police are withholding video footage to hide officer misconduct or mistakes. In launching body-worn camera programs, law enforcement agencies should convey that their goal is to foster transparency and accountability while protecting civil liberties and privacy interests. When an agency decides whether to release or withhold body-worn camera footage of a particular incident, the agency should articulate its reasons for doing so.<sup>18</sup>

The Office of Justice Programs Diagnostic Center report—another resource identified as guidance for policy development in the BWC Pilot Program description and highlighted in the BJA Body-Worn Camera Toolkit—likewise instructs departments, “Transparency, or willingness by a police department to open itself up to outside scrutiny, is an important perceived benefit of officer body-worn cameras.”<sup>19</sup> The BWC Pilot Program description itself explicitly states that recipients are expected to have, or develop, “policies and practices [that] at a minimum increase transparency and accessibility, provide appropriate access to information,” and “allow for public posting of policy and procedures.”<sup>20</sup>

LAPD's stated intention to withhold all body-worn camera footage absent a court order utterly fails to promote transparency. Body-worn video only provides transparency if the police release the videos. LAPD'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. That approach will undermine rather than advance public trust in police. Finally, while the policy bars unauthorized release of video by officers, its failure to set any rules for release through authorized channels threatens privacy by potentially allowing release of sensitive or embarrassing footage where there is no clear public interest in disclosure.

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<sup>17</sup> Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (emphasis added) [hereafter “PERF Report”], v (2014), available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

<sup>18</sup> *Id.* at 18.

<sup>19</sup> Michael D. White, Office of Justice Programs Diagnostic Center, *Police Officer Body-Worn Cameras: Assessing the Evidence* 19 (2014), available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

<sup>20</sup> BJA Announcement, *supra* note 3, at 5.



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*LAPD's Requirement that Officers Review Video before Making Statements in Critical Incidents Undermines the Reliability and Credibility of Its Investigations*

LAPD's policy not only permits but *requires* officers to review body-worn camera footage—not only from their own body-worn camera but potentially from other officers' cameras—before providing even an initial statement to investigators when they are involved in critical uses of force or accused of grave misconduct.<sup>21</sup> But allowing officers to review footage before making an initial statement threatens to taint investigations, undermines the use of body-worn cameras as a tool for accountability, and hurts the public trust that body-worn cameras should be building.

Body-worn cameras hold the potential to address one of the most significant trust gaps around police use of force: the concern, particularly in communities most affected by police violence, that officers who have used serious or deadly force will simply lie about what happened to avoid discipline or prosecution. By providing an objective record of an incident, body-worn cameras can lessen an investigation's dependence on the officer's account and the officer's credibility, helping restore confidence in the investigative process even for those that may not trust individual officers to be fully truthful. But allowing officers under investigation to view video before making a statement about a critical incident undermines this effort by providing officers who are inclined to lie the opportunity to do so in a manner consistent with the video evidence. Body-worn camera video, while helpful, will not capture everything from every angle. If an officer watches the video and discovers that certain elements that put them in a poor light happened not to have been captured—or that some moments when the subject is blocked, blurred or out of the frame provide an opportunity for the officer to say something happened—then the officer will feel at liberty to shade and color their account of events, if not to lie outright.

Police departments know that showing video to witnesses threatens to taint their testimony, because they do not do so in any other situations, including with other witnesses to police shootings. In a recent, controversial shooting, LAPD withheld public release of autopsy results because, as a senior LAPD commander explained:

“We don't want the witnesses' testimony to be tainted,”  
[Commander] 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.<sup>22</sup>

<sup>21</sup> See LAPD Body Worn Video Policy, *supra* note 1, at 4-5.

<sup>22</sup> Frank Stoltze, *Ezell Ford shooting: LAPD places 'security hold' on autopsy report*, KPCC (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) (quoting LAPD Police Chief Beck as saying, “We don't want to release the autopsy report too early so that we taint people coming forward.”) available at <http://losangeles.cbslocal.com/2014/08/20/tensions-high-as-south-la-residents-meet-with-lapd-over-ezell-ford-shooting-death/>.



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Providing officers an advantage other witnesses are not afforded and an opportunity to make their first statement completely consistent with video testimony affects the credibility of officer statements and the integrity of investigations whether the officers actually lie or not. LAPD openly admits that they want their officers' first statements to be consistent with video evidence. But that approach is an obvious attempt to improperly boost officer credibility.

Where officers are allowed to review video, even their initial accounts and written reports will align closely with and contain corroborating details from video evidence—much more so than the statements of civilian witnesses that have not had the chance to review video. To jurors and others, such consistency may suggest that the officer perceived the incident more clearly, remembers it better, or is otherwise more reliable than other witnesses, rather than simply indicating that he alone had the benefit of reviewing the video. But precisely because allowing officers to review video makes their accounts seem more credibly consistent, LAPD's policy of allowing officers to review video will create an appearance of bias—that LAPD will use body-worn camera video to “protect its own” and help its officers create testimony more credible than their actual memories—and will undercut public trust in the integrity of the investigative process.

Even where officers attempt to tell the full truth, as we hope and expect the vast majority will, cognitive science demonstrates that, because human memory is malleable, viewing the video—especially viewing multiple videos, multiple times—will confuse the officer's original, percipient memories of the incident. A wealth of studies show the ways in which suggestion and the presentation of information that is new or different<sup>23</sup> from an individual's percipient memory will actually alter the memory held by that person.<sup>24</sup> Exposure to information that is not captured in the

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<sup>23</sup> Although the scientific research uses the term “misinformation,” that term is meant to distinguish information that is not within the individual's original memory, rather than to indicate that the information is necessarily false.

<sup>24</sup> See generally Morgan, Southwick, Steffian, Hazlett, Loftus, *Misinformation can influence memory for recently experienced, highly stressful events*, *International Journal of Law and Psychiatry* 36 (2013) 11–17, available at [https://webfiles.uci.edu/eloftus/Morgan\\_Misinfo\\_IJLP2013.pdf?uniq=-5q3yfp](https://webfiles.uci.edu/eloftus/Morgan_Misinfo_IJLP2013.pdf?uniq=-5q3yfp); Jeffrey L. Foster, Thomas Huthwaite, Julia A. Yesberg, Maryanne Garry, Elizabeth F. Loftus, *Repetition, not number of sources, increases both susceptibility to misinformation and confidence in the accuracy of eyewitnesses*, *Acta Psychologica* 139 (2012) 320–326 (repeated viewing increases the chances that officers will remember video as their own perception), available at [https://webfiles.uci.edu/eloftus/Foster\\_Repetition\\_ActaPsych2012.pdf?uniq=7a5h8l](https://webfiles.uci.edu/eloftus/Foster_Repetition_ActaPsych2012.pdf?uniq=7a5h8l); Elizabeth F. Loftus, *Planting misinformation in the human mind: A 30-year investigation of the malleability of memory*, *Learn. Mem.* 2005 12: 361-366; <http://learnmem.cshlp.org/content/12/4/361.full>; Zaragoza, M. S., Belli, R. F., & Payment, K. E., *Misinformation effects and the suggestibility of eyewitness memory*, in *DO JUSTICE AND LET THE SKY FALL: ELIZABETH F. LOFTUS AND HER CONTRIBUTIONS TO SCIENCE, LAW, AND ACADEMIC FREEDOM* 35–63 (M. Garry and H. Hayne eds., 2007), available at <http://www.personal.kent.edu/~mzaragoz/publications/Zaragoza%20chapter%204%20Garry%20Hayne.pdf>. See also Kathy Pezdek, *Should Cops Get to Review the Video Before They Report?* THE MARSHALL PROJECT (Aug. 13, 2015), available at <https://www.themarshallproject.org/2015/08/13/should-cops-get-to-review-the-video-before->



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original memory does not supplement that memory; rather, it causes the entire memory to be reintegrated—to the point that the original memory is effectively lost.<sup>25</sup> Allowing an officer to review his or her body-worn camera video of an incident, therefore, cannot help but change that officer's account of the incident, even for individuals who are trying their best to provide an honest account of their memory. Given that use of force investigations seek the reasons an officer acted, based on the officer's perception at the time of the incident, those investigations should attempt to capture the officer's subjective memories before they are tainted by viewing video evidence.

Several law enforcement agencies and prominent actors have adopted an approach that provides for officer review of video only after an initial statement has been made. The Los Angeles Sheriff's Department, for example, determined that officers in the county's jails should not view video before providing statements, based on "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."<sup>26</sup> The Inspector General for the New York Police Department came to similar conclusions that concerns about the effect on officers' memories and the impacts on investigative integrity warranted requiring an initial statement or report before review of body-worn camera video.<sup>27</sup> The Oakland Police Department, which in 2010 became one of the first police agencies to adopt body-worn cameras, has a policy prohibiting officers from reviewing video prior to making a statement in investigations arising from serious uses of force,<sup>28</sup> and the San Jose Police Department provides that initial interviews should occur before video is reviewed as well.<sup>29</sup> LAPD's policy of allowing officer review gives a one-sided advantage to its own officers, creates the impression of bias, and undercuts the reliability of its own investigations.

*LAPD's Policy Fails to Guard against Use of Video as Surveillance of the Public and of First Amendment-Protected Activity*

The fast pace of technological advances, and specifically the use of new technology by law enforcement, has the potential to dramatically alter the nature of everyday interactions between officers and civilians. New tools, used well, can be a boon for police-community relations—indeed, that is the great hope for body-worn cameras. But if new technology is adopted without appropriate safeguards, it can quickly backfire. The prospect that facial recognition technology could be used in

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[they-report](#); Lara Boyle, *Malleable Memories: How Misinformation Alters Our Perception of the Past*, YALE SCIENTIFIC (April 1, 2013), available at <http://www.yalescientific.org/2013/04/5227/>.

<sup>25</sup> See Loftus, *supra* note 24, at 363; Foster, et al, *supra* note 24.

<sup>26</sup> 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](http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf).

<sup>27</sup> New York City Department of Investigation, The Office of the Inspector General for the NYPD, *Body-Worn Cameras in NYC: An Assessment of NYPD's Pilot Program and Recommendations to Promote Accountability*, 26–29 (July 2015), available at <http://www.nyc.gov/html/oignypd/assets/downloads/pdf/nypd-body-camera-report.pdf>.

<sup>28</sup> 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>29</sup> San Jose Police Body Worn Camera Policy, San Jose Police Department, section 16 (effective date June 29, 2015), available at [http://www.sjpd.org/InsideSJPD/BodyCameras/BWC\\_Policy.html](http://www.sjpd.org/InsideSJPD/BodyCameras/BWC_Policy.html).



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conjunction with body-worn camera video threatens to turn tools meant to promote police accountability into tools for mass surveillance.<sup>30</sup> PERF, in its report, recognized the possibility that body-worn cameras could be used in conjunction with other technology such as facial recognition programs, and highlighted the need for departments to carefully consider the privacy implications in how they use the resulting videos.<sup>31</sup> It also encouraged departments to communicate to the public their policies for how body-worn camera video would be used.<sup>32</sup> The President's Task Force on 21st Century Policing made similar recommendations in its final report.<sup>33</sup>

Contrary to these recommendations, LAPD's policy provides no clear limitation against use of body-worn camera footage as general surveillance of the public, or regarding use of the cameras and resulting footage capturing First Amendment-protected activity, such as political demonstrations. The Department therefore remains free to retain and examine footage of law-abiding citizens without reason to believe it holds any evidentiary value and to use facial recognition technology and other invasive tools in conjunction with body-worn video.

The policy's stated objective of using cameras to "[c]ollect evidence for use in criminal investigations and prosecutions," without articulated limits, only exacerbates these concerns. Additionally, 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.<sup>34</sup> This raises serious concerns about privacy, as highlighted by the reports mentioned above, as well as the real possibility that body-worn camera videos may be used in ways that chill First Amendment-protected activity.

Whatever the law enforcement advantages of new technological possibilities, it is vital for public trust and community-police relations that decisions regarding use of body-worn camera video be made pursuant to a clear and public policy, adopted with the benefit of public input.

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<sup>30</sup> See Michael De Yoanna, *Colorado Police Cautiously Eager About Body Cameras That Recognize Faces*, COLORADO PUBLIC RADIO (July 19, 2015), available at <http://www.cpr.org/news/story/colorado-police-cautiously-eager-about-body-cameras-recognize-faces>; Shakeer Rahman, *Body cameras could transform policing – for the worse*, AL JAZEERA AMERICA (April 17, 2015), available at <http://america.aljazeera.com/opinions/2015/4/body-cameras-could-transform-policing--for-the-worse1.html>; Lauren C. Williams, *Why Body Cameras Alone Won't Solve Our Police Abuse Problem*, THINKPROGRESS (Aug. 19, 2014), available at <http://thinkprogress.org/justice/2014/08/19/3471722/why-police-body-cams-wont-prevent-the-next-ferguson>. See also Michele Coppola, *The future of body worn cameras for law enforcement*, POLICEONE (Nov. 11, 2013), available at <http://www.policeone.com/police-products/body-cameras/articles/6583291-The-future-of-body-worn-cameras-for-law-enforcement/>.

<sup>31</sup> PERF Report, *supra* note 17, at 17.

<sup>32</sup> *Id.* at 16, 19.

<sup>33</sup> See President's Task Force Report, *supra* note 8, at 32.

<sup>34</sup> See LAPD Body Worn Video Policy, *supra* note 1, at 2.



*The Process by which LAPD Developed and Adopted Its Policy Was Deeply Flawed*

In addition its substantive flaws, LAPD's policy was adopted through a process that unnecessarily limited meaningful public input and prevented the Board of Police Commissioners (the policy-making body for LAPD) to fully consider options other than the Department's recommended policy.

In the months during LAPD's testing of body-worn cameras in its pilot program, members of the Department met with the ACLU and asked its concerns about body-worn cameras in general terms. The Board of Police Commissioners also held public meetings on the general topic of body-worn cameras where Los Angeles residents could voice their opinion on body-worn cameras, without reference to any particular policy. But after an eighteen-month-long process, LAPD released its proposed policy less than two business days before the meeting at which the Board of Police Commissioners voted to approve it. This short time span did not provide a meaningful opportunity for community groups, public interest organizations, or individual citizens to debate or provide feedback on the concrete terms of LAPD's proposed policy. Nor, in our view, did the timing allow the Board of Police Commissioners to carefully review and evaluate its terms, much less to solicit independent evaluation from experts or even the LAPD Inspector General's office—as one Commissioner publicly complained.<sup>35</sup>

ACLU SoCal requested that the Board of Police Commissioners hold a meaningful hearing on the most important issues implicated by body-worn cameras, by directing its Inspector General to provide independent analysis of these controversial provisions and inviting community input on the proposed policy. We also urged the Board of Police Commissioners to invite experts with different viewpoints to make presentations and hear from representatives of law enforcement agencies that have adopted different policies that address the above concerns, or take other steps to consider facts beyond those presented by LAPD in support of its own policy proposal. The Board of Police Commissioners has twice declined to do so.

LAPD's process in adopting this policy should give the DOJ and the BJA pause when considering whether to fund the Department's program. The BWC Pilot Program description sets the clear expectation that programs will be developed in "collaboration with other justice stakeholders, for instance, citizen and community groups" and "encourage community interaction and relationship building."<sup>36</sup> This expectation is built on one of the overarching themes in the report by the President's Task Force on 21st Century Policing, that openness and collaboration in developing policies is absolutely central to improving police-community relations and increasing public trust. One of that report's specific recommendations is that "[l]aw enforcement agencies should encourage public engagement and collaboration, including the use of community advisory bodies, when

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<sup>35</sup> Frank Stoltze, *Police Commission: LAPD Cops should be able to review body cam video before reports*, SOUTHERN CALIFORNIA PUBLIC RADIO (April 28, 2015), available at <http://www.scpr.org/news/2015/04/28/51310/police-commission-lapd-cops-should-be-able-to-revi/>; *LA Police Commission OKs Rules For Body Cameras*, ASSOCIATED PRESS/CBS LOS ANGELES (April 28, 2015), available at <http://losangeles.cbslocal.com/2015/04/28/la-police-commission-to-review-proposed-rules-for-body-cameras/>.

<sup>36</sup> BJA Announcement, *supra* note 3, at 5, 6.



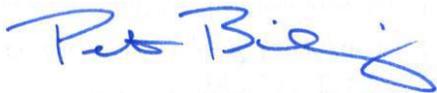
developing a policy for the use of a new technology.”<sup>37</sup> Both the President’s Task Force on 21st Century Policing report and the BWC Pilot Program represent components of President Obama’s broader efforts to foster “strong, collaborative relationships between local police and the communities they protect” in order to “fortify the trust that must exist” between them.<sup>38</sup> LAPD’s process for rolling out body-worn cameras hardly reflects “strong, collaborative relationships” with local communities. The BJA should look to fund programs with open process, real community involvement in the process, and strong community support.

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Appropriate policies are vitally important for ensuring that body-worn camera programs serve their intended goals of improving transparency, accountability, and public trust in law enforcement, and do not do more harm than good. Accordingly, ACLU SoCal urges the DOJ and the offices administering its grant programs to carefully consider the policies of all agencies applying for body-worn camera funding and provide funds only when satisfactory policies are in place. With specific regard to LAPD’s body-worn camera program, we urge the BJA not to grant any requests for funding until the concerns above have been resolved.

I would be happy to discuss ACLU SoCal’s concerns and recommendations further. I can be reached at by email at [pbibring@aclusocal.org](mailto:pbibring@aclusocal.org) and by phone at (213) 977-9500 x.295. While this letter originates in the ACLU Southern California affiliate, our national office is cooperating in our advocacy on this request, and you may also contact Legislative Counsel Kanya Bennett in our Washington Legislative Office at [kbennett@aclu.org](mailto:kbennett@aclu.org) or (202) 715-0808.

Sincerely,



Peter Bibring  
Director of Police Practices and Senior Staff Attorney

cc: Karol Mason, Assistant Attorney General, Office of Justice Programs  
LAPD Chief Charlie Beck  
LAPD Board of Police Commissioners

Encl.: LAPD Body Worn Video Policy

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<sup>37</sup> President’s Task Force Report, *supra* note 8, at 35.

<sup>38</sup> News Release, the White House, *FACT SHEET: Strengthening Community Policing*, *supra* note 8; see Nick Gass, *DOJ announces new \$20 million body-camera program*, POLITICO (May 1, 2015), available at <http://www.politico.com/story/2015/05/doj-police-body-camera-program-117546.html>.



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