



July 13, 2015

Via postal and electronic mail

Commander Robert Moser
San Francisco Police Department
1245 3rd Street
San Francisco, California 94158

Dear Commander Moser:

Thank you for inviting the feedback of the ACLU of California on the draft body camera policy dated 7/9/15 (“draft policy” or “policy”).

We are joined by the Council on American-Islamic Relations and Color of Change in writing today to highlight several areas in the draft policy that need to be addressed in order to adequately safeguard civil liberties and civil rights. We also want to emphasize the need for consistent procedures to be in place to ensure that the community is fully involved and the right questions are considered before San Francisco moves forward with body cameras and any other technology with surveillance capabilities. These procedures are further explained in the ACLU of California’s recent report, *Making Smart Decisions About Surveillance: A Guide for Communities*,¹ which provides helpful guidance on both process and policy issues that should be considered for body cameras.

For body cameras to deliver on their promise of accountability and promote public trust, there must be transparency and public trust in both the process that crafts the decision to adopt them and the policy that may ultimately govern their use. Although the San Francisco Police Department’s initial public discussion of body cameras and the creation of a Working Group to draft a camera policy were promising, we are concerned that the Working Group has not delivered the transparency, full public debate, and community engagement needed for such an important issue. An ordinance has already been introduced in the San Francisco Board of Supervisors that seeks to standardize a process with transparency, accountability, and oversight for all technologies with surveillance capabilities. We urge the Board to consider and pass such an ordinance.²

We encourage San Francisco to take the following process and substantive policy points into consideration as efforts to move forward with body cameras continue.

¹ 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/>.

² 150623, Legislation Introduced at Roll Call, San Francisco Board of Supervisors, June 9, 2015, available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52902>.

I. BODY CAMERAS AS AN ACCOUNTABILITY TOOL IN SAN FRANCISCO

According to news reports, the San Francisco Board of Supervisors (“Board”) has allocated \$6.6 million for body-worn video cameras in the 2015-16 budget.³ Body-worn video cameras hold promise as tools for greater transparency, accountability and public oversight, but also pose serious risks to privacy and civil liberties. 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.

More importantly for SFPD today, body cameras are only a tool. Depending on the policies that SFPD ultimately adopts to govern their use, they can be effective or ineffective — and can even undercut the very values they are meant to promote. 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.

Setting the right policy on body-worn video requires balancing a number of concerns. What follows are specific policy points that SFPD should consider as it develops its policies on body cameras.

II. THE SFPD SHOULD MAKE THE PROCESS FOR ADOPTING BODY-WORN VIDEO MORE TRANSPARENT

While the use of body cameras has potential for building trust between our police and community heavily impacted by policing, San Francisco should be making additional efforts to ensure that there is a robust public process to consider the proper use of body cameras and that the Board adopt the resulting policy in a manner that is enforceable. A transparent process must be open to the possibility that body cameras may be rejected, despite budgetary allocations, if satisfactory policies are not put in place.

For body cameras to promote public trust deliver on their promise of accountability, there must be transparency and public trust in the process that crafts the decision to adopt them and the policies that govern their use. In a recent report, *Making Smart Decisions About Surveillance: A Guide for Communities*,⁴ the ACLU of California 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 strongly commend the report’s recommendations to the Department as a guide for consideration of body-worn video for officers.

³ *Public-Safety Reform Package Includes Body Cams for SF Cops, but No Date Announced*, US News and World Reports, May 1, 2015, available at <http://usnewsdaily.net/2015/05/public-safety-reform-package-includes-body-cams-for-sf-cops-but-no-date-announced/>.

⁴ 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/>.

In keeping with the report's recommendations, we recommend that before the City grant final approval for the purchase and deployment of body-worn video, it should do the following:

First, SFPD should submit a proposed use policy to the Commission and Board for body-worn video detailing the following:

- Purpose of body-worn video — What purposes will the use of body-worn video by SFPD serve?
- Policy for activation of body-worn cameras — When must officers turn them on, when must they keep them off, and under what circumstances, if any, do officers have discretion whether to record?
- Policy for access to and use of footage collected by body-worn cameras — For what reasons can police access footage taken by body-worn cameras? How do officers demonstrate or document that reasons for access have been satisfied?
- Data Protection— What safeguards protect against unauthorized access to data?
- Data Retention — How long are videos retained?
- Public Access — Under what circumstances will video be released to the public? Under what circumstances will video be kept confidential? Under what circumstances if any will video be shared with third parties but not publicly released?
- Oversight —What security and oversight mechanisms ensure polices on body worn video are being followed?

Second, SFPD should prepare a Privacy Impact Assessment that examines for the potential impact on privacy and civil liberties of body-worn video under its proposed policies.

Third, the City should hold public hearings about the acquisition and use of body-worn video and the SFPD's proposed body camera policy and obtain meaningful public input prior to final approval. We have some concerns about the effectiveness of the Working Group's role so far in engaging public participation. The ACLU has received complaints from community members who have been unable to access the draft policy online and the news media has reported that SFPD has refused to make a draft use policy available, citing confidentiality concerns.⁵

We urge SFPD to take additional efforts to make its draft policy available to the public and seek meaningful input. It is important that San Francisco follow a transparent, public process for body cameras and also move forward with standardizing a transparent, public process for considering adoption of any new technologies with surveillance capabilities. We urge prompt passage of a surveillance ordinance with safeguards that ensure no technologies capable of surveillance are acquired or deployed unless there is a transparent process that results in enforceable use policies and robust oversight mechanisms.⁶ The process set forth in Ordinance 150623 already introduced in the San Francisco Board of Supervisors would help ensure that is possible.

⁵ Alex Emslie, *S.F. Mayor and Police Announce New Body Camera Initiative*, KQED News, Apr. 30, 2015, available at <http://www2.kqed.org/news/2015/04/30/s-f-police-expected-to-announce-body-camera-initiative>.

⁶ 150623, Legislation Introduced at Roll Call, San Francisco Board of Supervisors, June 9, 2015, *available at* <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52902>.

III. SAN FRANCISCO'S BODY WORN VIDEO POLICY MUST PROMOTE ACCOUNTABILITY, PROTECT PRIVACY, AND PROMOTE TRANSPARENCY

In drafting a proposed use policy on body-worn video, SFPD and the City must balance the following concerns:

- **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 is an important one. 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 SFPD, and does not create the impression that video will be used only to exonerate officers but not to hold them accountable.

A. Policy Must Promote Accountability

1. 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. Giving officers broad discretion not to record could have the effect of permitting officers to “edit on the fly” by simply turning the cameras off when they do not want to be recorded.⁷ This in turn would undermine 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

⁷ 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>.

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.

SFPD's draft policy generally requires officers to record in most investigative circumstances, including all stops and detentions, consensual encounters where the citizen "may be involved in criminal activity as a suspect, victim or witness," and a number of enumerated searches of persons or property which we read to encompass all searches of a person or property that would occur in the field, including protective frisks. The policy also generally prohibits officers from activating recording during five enumerated circumstances, including sexual assault and child abuse victims during a preliminary investigation, in situations that could compromise the identity of confidential informants, and First Amendment activities, among others. While officers may record in situations other than those enumerated if the video would serve evidentiary purposes, and even in those generally prohibited if they can articulate an exigent circumstance, the policy does not authorize officers to turn off recordings outside the enumerated circumstances.

We believe SFPD's proposed rules properly require officers to record, 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.

SFPD's current draft also properly authorizes officers not to record only in a few circumstances that are generally well-defined, involving highly sensitive circumstances, such as child abuse victims or in hospitals where patient confidentiality is at risk, or involving confidential information such as the identity of informants. Even as written, the policy should require officers to obtain on-camera consent of victims before turning off cameras, where feasible, and should document the reasons for not recording in all circumstances, not only when stopping a recording before the conclusion of an encounter.

We also have concerns about the provision allowing officers to stop recording "when gathering information from witnesses or community members, and there is concern that a [body camera] would inhibit information gathering efforts" The terms of that provision are less clearly defined and are potentially subject to a very broad interpretation, as officers may frequently believe that witnesses might be more forthcoming if body cameras are not on. While we are sensitive to the need for community members and witnesses to communicate freely with police, the breadth of this provision threatens to make it an exception that often swallows the rule. We recommend this exception to the recording requirement be better defined and more clearly limited to exceptional circumstances where there is a demonstrable need for confidentiality. We also recommend that the Commission monitor and report on the use of this exception to ensure it is not abused as justification to routinely avoid recording.

Indeed, the Department must ensure that its policies requiring recording are 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. For example, the Los Angeles Police Department ("LAPD") faced criticism that its officers 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.⁸ For cameras to provide accountability, officers' compliance with Department policies requiring recording cannot be voluntary.

2. 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. Based on this rationale, SFPD's draft policy allows officers to view recordings prior to writing reports or being interviewed. 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,⁹ 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 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.¹⁰ 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

⁸ 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>.

⁹ 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=B2F83E14FF0E6AA66EE34B44906B34F9&gwt=pay&assetType=opinion>.

¹⁰ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Los Angeles County Office of Independent Review found in working on the Los Angeles Sheriff's Department's 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.¹¹

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.

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).¹² 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.¹³

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. 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 those misperceptions about the accuracy of eyewitness memory,¹⁴ 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 SFPD's body camera program promotes accountability and retains public trust. To adopt a policy that allows officers 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.

¹¹ 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.

¹² 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.

¹³ Los Angeles County Office of Independent Review, *Eleventh Annual Report*, *supra* note 11, at 35.

¹⁴ See Innocence Project, "Eyewitness Misidentification," available at <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php>.

3. 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 SFPD 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.

4. SFPD 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 SFPD uses must not allow any opportunity for officers to edit, alter or delete during the shift or the upload process. In the event that footage is stored in the cloud, it should be placed on a secure cloud server with no ability for officers to edit or delete original video footage until the retention period has elapsed. The policy should, in addition to prohibiting the deletion of videos, also prohibit the modification or editing of videos.

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. The draft policy allows for members to submit reports of unintentionally recorded footage for “appropriate action.” We recommend this section be amended and clarified to make clear that the editing or deletion of footage is not an “appropriate action.”

B. POLICIES MUST PROTECT PRIVACY

1. 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 aware that they are being recorded.¹⁵ However, SFPD’s draft policy is silent as to a notification requirement. We believe that the policy should be modified to require officers, 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.

¹⁵ 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>.

2. Limitations on Use, Sharing and Disclosure of Video

ACLU of California 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, but they should not 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 of 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 do 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 of particular incidents where there is some reason to believe misconduct has occurred, corrective action resulting from specified prior conduct, or randomized audits.

SFPD's draft policy rightly prohibits review that is not for any law enforcement purpose. But authorizing use of video for any law enforcement purpose is far too broad, as that standard would still allow fishing expeditions for recorded violations by disfavored civilians or officers, and would allow invasive processing, such as the use of facial recognition technology to identify civilians who appear on the video. The policy should allow SFPD officers and employees to review video only in the following circumstances: (1) in connection with resolving civilian complaints, (2) where there is reasonable suspicion to believe the recording contains evidence of criminal activity or administrative violations by an officer, (3) as part of randomized audits conducted by the Department of officers' performance; or (4) as part of corrective action plans for department members.

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.

3. Retention and Purging.

SFPD should also have strict purging policies that limit the unnecessary retention of body-worn video footage. SFPD's draft policy requires that videos be preserved for a minimum of one year, but does not specify any upper limits on the retention of video. SFPD should modify the draft policy to make clear that it will retain footage only for the stated period, outside of a proceeding for a specific case, 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.

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

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.

Despite the importance of public access to body camera information for transparency in some circumstances, and the withholding of video to protect privacy in others, SFPD's draft policy is silent on when video will be released to the public and when it should be retained, or even who in the department will make such decisions or what criteria they will use. Instead, the policy states only that "[m]embers shall accept and process public records requests in accordance with the provisions of federal, state and local statutes and Department policy." While the draft policy may be intended primarily for line officers to guide their use of body cameras, SFPD must set clear policies on the public release of video.¹⁶

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, or there is reason to believe the video shows evidence of misconduct — the very goals behind adopting body cameras demand disclosure — if not while an investigation is pending, then as soon as it is concluded.

Additionally, 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

¹⁶ The Police Executive Research Forum recommends that departments "have clear and consistent protocols for releasing recorded data externally to the public and the news media." PERF Report, *supra* note 14, at 46.

state agencies.¹⁷ Under this approach, because the individual would have control over whether to make the footage public, most privacy concerns would be eliminated.¹⁸

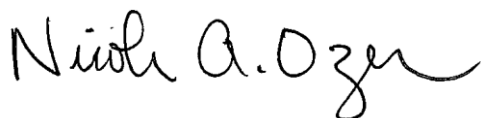
The City may also investigate other solutions to balance privacy and transparency. For example, the City could anonymize all video footage recorded by body cameras, allowing it to be released to the public. The Seattle Police Department is currently investigating such an approach.¹⁹ Releasing all video 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. As another approach, 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 process would require additional department resources, such an investment in transparency and public trust may be worthwhile.

To the extent that SFPD 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, but any policy must protect the privacy of civilians as well.

* * *

Thank you for inviting our input on this very important issue. We would welcome any coming opportunity to meet with those involved with this process to discuss the elements of a public process and use policy for body cameras. Finally, we encourage the City to move forward with a surveillance ordinance that will ensure an open process that provides for transparency, accountable, and oversight of all surveillance technologies. Please do not hesitate to contact us at 415.621.2493.

Sincerely,

A handwritten signature in black ink that reads "Nicole A. Ozer". The signature is fluid and cursive, with the first name "Nicole" written in a larger, more prominent script than the last name "Ozer".

Nicole A. Ozer
Technology & Civil Liberties Policy Director, ACLU of California

¹⁷ Cal. Civ. Code § 1798 *et seq.*

¹⁸ 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, SFPD 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 San Bernardino 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.

¹⁹ 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>.

A handwritten signature in blue ink, appearing to read "Peter Bibring". The signature is fluid and cursive, with the first name "Peter" and last name "Bibring" clearly distinguishable.

Peter Bibring
Director of Police Practices, ACLU of California

Council on American-Islamic Relations

Color of Change

CC: San Francisco Board of Supervisors
San Francisco Police Commission