



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

Via email and U.S. mail

September 16, 2015

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

Karol Mason, Assistant Attorney General
Office of Justice Programs
810 Seventh Street, NW
Washington, DC 20531

Dear Director O'Donnell,

I write on behalf of the Electronic Frontier Foundation (EFF) 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 Body-Worn Camera Pilot Implementation Program.

EFF is a donor-supported, non-profit organization that works to defend civil liberties in the digital world. Founded in 1990, EFF fights illegal surveillance and champions user privacy, free expression, and innovation through impact litigation, legislative outreach, policy analysis, grassroots activism, and technology development. EFF works to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

EFF believes police body cameras may be useful in protecting civil liberties, but only if they are adopted with robust community input and used in line with a policy that ensures the cameras promote transparency and accountability within the police force. Without appropriate policies in place, body cameras may instead be used as tools for mass surveillance and police cover-up.

LAPD's body camera policy¹ epitomizes our concerns; it allows the Department to withhold all video footage from the public, requires officers to review footage before making a report or talking to an investigator—even in categorical use-of-force scenarios, fails to meaningfully address privacy issues, and has no consequences for officers who fail to turn on their cameras during use-of-force incidents. The policy also fails to meet the Bureau of Justice Assistance's requirements that grant applicants enact policies and practices that “at a minimum increase transparency and accessibility, provide appropriate access to information, allow for public posting of policy and procedures, and encourage

¹ See LAPD Chief of Police Intradepartmental Correspondence concerning Body Worn Video Procedures (April 23, 2015) available at http://www.lapdpolicecom.lacity.org/042815/BPC_15-0115.pdf.

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community interaction and relationship building.”² For these reasons, we respectfully ask that the Bureau of Justice Assistance deny LAPD’s request for funding.

In particular, we consider the following aspects of LAPD’s policy deeply problematic:

- The objectives stated in LAPD’s body camera policy are out of line with the objectives for body camera programs as expressed by the Whitehouse and the DOJ itself. The Whitehouse announced its Body Worn Camera Partnership Program by stating that the goal of funding body cameras was to “build and sustain trust between communities and those who serve and protect these communities.”³ But the LAPD’s policy does not mention transparency, accountability, or building community trust. To the extent it mentions the public at all, it focuses only on “deter[ring] criminal activity and uncooperative behavior during police-public interactions,” and assisting in the resolution of complaints “including false allegations by members of the public.” Transparency, accountability, and building public trust should be key objectives of any body camera program—not gathering more evidence for criminal prosecutions or operating solely for the purpose of exonerating police officers.⁴
- The policy also fails to provide for any public access to body camera video. Body camera footage is hardly useful for building trust if it is confidential. Yet the LAPD has made clear that it will not release video footage unless required to do so in court—or unless the chief, in his discretion, believes it would be “beneficial.”⁵ Further, the Department has publicly said that it will not release footage in most cases of shootings or alleged misconduct, and in fact has refused to produce body camera footage in more than one high-profile shooting.⁶ This is consistent with the Department’s position with respect to data gathered using other technologies. For example, the LAPD has maintained that all data gathered using the Department’s automated license plate cameras are exempt from public view under the California Public Records Act.⁷ When there is a serious use of force or an allegation of police misconduct, the public deserves to see what

² Body-Worn Camera Pilot Implementation Program FY 2015 Competitive Grant Announcement, Dept. of Justice, Office of Justice Programs, Bureau of Justice Assistance, 6 (June 2, 2015), available at <https://www.bja.gov/Funding/15BWCsol.pdf>.

³ White House Office of the Press Secretary, *FACT SHEET: Strengthening Community Policing* (Dec. 1, 2014) <https://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>.

⁴ See, e.g., Mario Aguilar, “How Police Body Cameras Were Designed to Get Cops Off the Hook,” *Gizmodo* (March 16, 2015) <http://gizmodo.com/how-police-body-cameras-were-designed-to-get-cops-off-t-1691693677>.

⁵ Associated Press, “LAPD Board OKs Body Camera Policy Despite Opposition,” *N.Y. Times* (Apr. 28, 2015) <http://www.nytimes.com/aponline/2015/04/28/us/ap-us-lapd-body-cameras.html>

⁶ Kate Mather & Richard Winton, *LAPD’s plan for 7,000 body cameras comes with challenges*, *Los Angeles Times* (Dec. 16, 2014) <http://www.latimes.com/local/lanow/la-me-ln-lapds-plan-for-7000-body-cameras-comes-with-challenges-20141216-story.html>.

⁷ See, e.g., Jennifer Lynch, “EFF and ACLU of Southern California Urge California Supreme Court to Grant Review in Automated License Plate Reader Case,” *EFF* (July 28, 2015) <https://www.eff.org/deeplinks/2015/07/eff-and-aclu-urge-california-supreme-court-grant-review>.

happened. Body cameras won't further transparency if the public never gets to see the footage.

- The policy not only permits but *requires* officers to review body camera footage before they write up their reports—even before they provide an initial statement to investigators when they are involved in critical uses of force or accused of grave misconduct. Giving officers a chance to tailor their stories to the video evidence—and the chance to lie in a way consistent with videos—does not ensure public accountability and trust and, in fact, undermines the credibility of officers even when they tell the truth.
- The policy has no consequences for officers who fail to turn on their cameras during use-of-force incidents. Without consequences, the efficacy of body cameras will be severely diminished. For example, after the Oakland Police Department enacted a policy that included reporting requirements and consequences for failure to turn on cameras,⁸ its Independent Monitor noted approvingly that the OPD was taking failure to turn on cameras seriously and that body camera recordings were being used effectively in more and more investigations of officer misconduct.⁹
- The policy provides no clear rules to prevent LAPD from using body cameras as a tool to surveil the public at large. It also does not address the use of back-end analysis tools such as facial recognition on footage. Nor does it provide guidelines for use of the cameras during First Amendment-protected activity. Body cameras should not become yet another technology to allow broad police surveillance of the public.
- The policy was adopted through a process that did not provide a meaningful opportunity for community groups, public interest organizations, or individual citizens to debate or provide feedback on its concrete terms. Given LAPD's notorious history of police misconduct, secrecy, and unlawful surveillance stretching back to at least the 1930s,¹⁰ it is especially important for the many committed community organizations and concerned residents to be provided a

⁸ Oakland Police Departmental General Order I-15.1, *Portable Video Management System* (effective Mar. 05, 2014) available at https://www.aclu.org/sites/default/files/field_document/mar_14_pdrd_policy.pdf.

⁹ See, Robert Wareslaw, *Twentieth Quarterly Report of the Independent Monitor for the Oakland Police Department* (Jan. 21, 2015) available at <http://www.cand.uscourts.gov/filelibrary/1554/2015-01%20monitoring%20report.pdf>. The OPD is subject to independent court monitoring due to civil rights litigation against it, and in January 2014, the Independent Monitor reported significant problems with OPD's implementation of body cameras. See Robert Warshaw, *Sixteenth Quarterly Report of the Independent Monitor for the Oakland Police Department*, 3 (Jan. 21, 2014) available at <http://www.cand.uscourts.gov/filelibrary/1350/2014-01%20monitoring%20report.pdf> (“The matter of the proper use of the Department’s PDRDs [Portable Digital Recording Devices] remains a concern. In too many instances, there are questions about the measure to which personnel throughout the Department understand the use, review, and utility of these devices.”)

¹⁰ See, e.g., Los Angeles Police Department, *The LAPD: 1926-1950*, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1109; Nicholas Riccardi, “Rampart Scandal’s Cost to County Rising Fast,” *L.A. Times* (May 11, 2000) <http://articles.latimes.com/2000/may/11/news/mn-28866>; Richard Winton, *et al.*, “LAPD defends Muslim mapping effort,” *L.A. Times* (Nov. 10, 2007) <http://www.latimes.com/local/la-me-lapd10nov10-story.html>.

chance to comment on a proposed policy *before* it's adopted. Before any funding is provided to LAPD, the Los Angeles Police Commission should hold hearings on the policy—and on whether body cameras should be used at all—to allow for public input.

Strong policies are crucial for ensuring that body camera programs serve the intended goals of improving transparency, accountability, and public trust in law enforcement. Because LAPD lacks such a policy, EFF urges the Bureau of Justice Assistance to deny funding.

I would be happy to discuss EFF's concerns and recommendations further. I can be reached at 415-436-9333 x. 136.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Lynch", written in a cursive style.

Jennifer Lynch
Senior Staff Attorney