



Via email and US Mail

October 21, 2015

San Francisco Police Review Commission
1245 3rd Street
San Francisco, California 94158

Dear Members of the Police Review Commission

I write on behalf of the Electronic Frontier Foundation (EFF) regarding the draft body camera policy you are considering at tonight's public meeting.

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. Striking this balance is not easy. Without appropriate policies in place, body cameras may instead be used as tools for mass surveillance and police cover-up.¹

The proposed body camera policy embodies these concerns; it doesn't prevent the cameras from being used for surveillance, permits officers to review footage prior to writing reports, has no consequences for officers that fail to turn on their cameras during use-of-force incidents, and fails to provide for expedient public access to body camera video. We note that the Body Camera Policy Working Group seems to have considered many specific concerns that we also bring up in this letter, but to have disregarded them in this current draft. We urge you to reconsider.

The Bureau of Justice Assistance, which is administering federal grant money for body cameras, requires 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 community interaction and relationship building."² If you adopt the body camera policy as currently written,

¹ Nick Wing, *Here's How Police Could End Up Making Body Cameras Mostly Useless*, The Huffington Post (Oct. 10, 2015),

http://www.huffingtonpost.com/entry/police-body-camera-policy_5605a721e4b0dd8503079683

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>.

however, you will outweigh any benefits body cameras could provide, instead deepening the accountability concerns of San Francisco residents that they are meant to address.³

In particular, we find the following aspects of the policy especially problematic:

The policy provides no clear rules to prevent SFPD from using body cameras as a tool to surveil the public at large. In fact, it clearly encourages the use of body cameras for surveillance, since it requires officers to turn on their body cameras during “consensual encounters where the [officer] suspects that the citizen may have knowledge of criminal activity.” It also does not address the use of back-end analysis tools such as facial recognition on footage. And while it references the San Francisco Police Department’s “Guidelines for First Amendment Activities,” (DGO 8.10), it doesn’t actually provide specific guidelines for use of the cameras during First Amendment-protected activity and what to do with any resulting footage. Body cameras should not become yet another technology that allows broad police surveillance of the public.

Furthermore, while the policy prohibits recording in some sensitive situations, including strip searches and preliminary investigations of sexual assault and child abuse, it also contains an exception. The policy says “a member may record in these circumstances if the member can articulate an exigent circumstance that required deviation from the normal rule in these situations.” This dangerous exception swallows the rule.

The policy permits officers to review body camera footage before writing reports or providing an initial statement to investigators, even when they are accused of grave misconduct. As some members of the Working Group have undoubtedly noted, this is a very controversial issue. The policy falls short by only prohibiting such review for shootings or in-custody deaths. 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. In fact, this undermines the credibility of officers even when they tell the truth.

The policy fails to provide for expedient public access to body camera video. Body camera footage is hardly useful for building trust if it is confidential. Some California police departments have made it incredibly difficult for the public to access important videos.⁴ The status of body camera videos under the California Public Records Act is hardly settled law. A better policy would specify that the SFPD would release body camera videos to the greatest extent possible considering privacy and investigatory concerns.

The policy has no consequences for officers who fail to turn on their cameras during use-of-force incidents, other than requiring officers to write a report. Without clear and specific consequences, the efficacy of body cameras will be severely diminished. For example, after the Oakland Police Department enacted a policy that included reporting

³ See, *Public Trust in SFPD Shaken*, KQED (Apr. 17, 2015), available at <http://www.kqed.org/tv/programs/newsroom/watch/archive/288206>

⁴ See, 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>.

requirements and consequences for failure to turn on cameras,⁵ 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.⁶

Strong policies are crucial for ensuring that body camera programs serve the intended goals of improving transparency, accountability, and public trust in law enforcement. I would be happy to discuss EFF's concerns and recommendations further. I can be reached at 415-436-9333 x. 104.

Sincerely,

Nadia Kayyali
Activist
Electronic Frontier Foundation

⁵ 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.

⁶ See, Robert Warshaw, *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.")