



July 25, 2018

Senator Ricardo Lara  
Chair, Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

**Re: A.B. 748 (public access to police recordings)—Support**

Dear Sen. Lara:

The Electronic Frontier Foundation supports the amended (July 5) version of A.B. 748, a bill that strengthens the public right to access police video and audio recordings, including footage from body-worn cameras.

EFF is a member-supported, non-profit civil liberties organization that protects free speech and privacy rights in the digital world. EFF was founded in 1990, is headquartered in San Francisco, and has more than 40,000 members nationwide, including thousands in California.

Under the California Public Records Act, law enforcement records are generally subject to public disclosure, with certain limitations. Those records include recordings from body-worn cameras, which are being adopted by more police departments. Following high-profile police shootings of civilians in 2014, public interest increased in the use of body-worn cameras (BWCs) as a method of police accountability. A 2015 survey found that 95 percent of large police departments planned to use body-worn cameras (BWC) in the near future.<sup>1</sup>

However, body-worn cameras are far less useful as a police accountability tool if the public cannot access the recordings. Unfortunately, California police departments have widely differing practices regarding public access to BWC footage. The state's largest police force, the Los Angeles Police Department, refused to provide any public access whatsoever to BWC footage until a policy change in March 2018.<sup>2</sup> Without a right of public access, police departments release camera footage in a selective and misleading manner. As we pointed out in our 2015 letter to the Department of Justice, urging them not to fund the LAPD's BWC

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<sup>1</sup> Ripley, Amanda. *The New York Times*. "A Big Test of Police Body Cameras Defies Expectations." Oct. 20, 2017. <https://www.nytimes.com/2017/10/20/upshot/a-big-test-of-police-body-cameras-defies-expectations.html>

<sup>2</sup> Mather, Kate. *The Los Angeles Times*. "LAPD to reverse policy and make body camera, patrol car videos public." March 20, 2018. <http://www.latimes.com/local/lanow/la-me-ln-lapd-video-release-20180320-story.html>

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program, the LAPD policy appeared “designed to protect law enforcement officers rather than members of the public who they have sworn to serve.”<sup>3</sup>

Without strong disclosure policies, police BWCs are less likely to be a tool to ensure police accountability, and more likely to be a tool of police surveillance against the public.

A.B. 748 would generally require public access to video or audio recordings related to a “critical incident,” defined as an officer’s use of force, or a legal or policy violation by an officer. The bill provides that a police agency can withhold recordings if they are relevant to an active investigation, but only for 45 days. After that time, the agency must disclose the recordings, unless they can prove by clear and convincing evidence that the risk of interference in an investigation outweighs the need for disclosure. The bill also provides that privacy interests cannot be the grounds for withholding a recording from the subject of that recording. Finally, if privacy is the basis for withholding a recording from a third-party requestor, the police agency must try to provide a version of the recording that obscures the civilians involved.

In our view, police agencies should not use BWCs unless they comply with strict policies that would protect civilians’ rights. In addition to the public access advanced by A.B. 748, such policies should, among other things, define a short retention period, especially for video that does not have value to a criminal or administrative investigation. A proper policy would also bar the use of BWCs for recording First Amendment protected activity. Police recordings of protests and other First Amendment activity bear the risk of chilling such speech.<sup>4</sup>

We urge you to vote Aye on A.B. 748. While it is not a substitute for a comprehensive policy on the use of police BWCs, the proposed law makes significant progress towards public access to BWC recordings, and ensuring that body cameras are used as a police accountability tool, rather than a method of general surveillance.

Please feel free to contact me if you have any questions. I may be reached at [joe.mullin@eff.org](mailto:joe.mullin@eff.org), or at 415-436-9333.

Sincerely,

Joe Mullin  
Legislative Activist

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<sup>3</sup> Lynch, Jennifer. Electronic Frontier Foundation. “EFF Urges Department of Justice Not to Fund LAPD’s Body Cameras.” September 16, 2015. <https://www.eff.org/deeplinks/2015/09/eff-urges-department-justice-not-fund-lapds-body-cameras>

<sup>4</sup> For more detailed recommendations, please see EFF’s Jan. 23, 2017 letter to the Santa Clara Board of Supervisors, written in conjunction with the ACLU of Northern California and the Council on American-Islamic Relations. [https://www.eff.org/files/2017/01/24/2017-01-23\\_-\\_aclu-cair-eff\\_-\\_comments\\_on\\_sccs\\_proposed\\_policy\\_on\\_bwc\\_0.pdf](https://www.eff.org/files/2017/01/24/2017-01-23_-_aclu-cair-eff_-_comments_on_sccs_proposed_policy_on_bwc_0.pdf)