



David Snyder, Executive Director

Submitted Via Online Portal: <https://policingproject.org/lapd-video-release/>

May 7, 2017

Dear Los Angeles Police Commissioners:

Thank you for the opportunity to share our views on the Los Angeles Police Department's policy regarding body-worn camera ("bodycam") recordings of so-called "critical incidents." On behalf of the First Amendment Coalition (FAC), I write to urge the Police Commission to implement a policy of routine and timely release of bodycam footage, consistent with the California Public Records Act ("CPRA"), the California Constitution, and the goals of government transparency, government accountability, and community trust in policing. Specifically, LAPD should:

- 1) Treat all bodycam footage as "public records" within meaning of the CPRA;
- 2) Provide a uniform policy, consistent with the requirements of the CPRA and the California Constitution, providing for prompt public access to bodycam footage of "critical incidents;" and
- 3) Expedite processing of citizen requests for "critical incident" footage.

FAC is a nonprofit, nonpartisan group of ordinary citizens, activists, journalists, media outlets, academics, and others interested in free speech and access to government records and meetings. FAC promotes free speech and government transparency by ensuring public agencies comply with their obligations under the CPRA, Gov. Code § 6250 *et seq.*, and other open records laws, and by giving the public the tools necessary for understanding, using, and enforcing those laws.

The right of all citizens to gain access information about their government's activities is not only mandated by the California Constitution (see Cal. Const. Art. I, sec. 3), it is imperative to the formulation of sound policy, particularly in controversial and contentious situations such as those arising from officer-involved shootings, in-custody deaths, and officer uses of force.

In short, providing public access to bodycam footage is both a requirement of California law and a sound policy decision.

The Department Can and Must Treat Bodycam Footage as a “Public Record” Under the California Public Records Act

Bodycam video is a public record within the meaning of the CPRA. See Gov. Code §§ 6252 (e), (g) (defining records subject to CPRA). The definition of public records in the PRA includes most documents generated or used by the government. Gov. Code § 6252(e). It is “intended to cover every conceivable kind of record that is involved in the governmental process,” and “only purely personal information unrelated to ‘the conduct of the public’s business’ could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.” Assembly Comm. On Statewide Information Policy, Appx. 1 to Journal of Assembly (1970 Reg. Sess.) Final Report p. 9.

Police officers unquestionably conduct the “people’s business” while on duty, and recordings of their interactions—particularly those in which shots are fired or an individual is killed—are of significant public interest. See *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324 (2009) (“If the records sought pertain to the conduct of the people’s business there is a public interest in disclosure”). The fact that such recordings may result in controversy does not change their fundamental nature as public records subject to disclosure under the California Public Records Act. Accordingly, all such records are subject to disclosure unless they fall within one of the specific exemptions created by the CPRA. Gov. Code §§ 6253, 6254.

The CPRA has numerous exemptions to protect a wide variety of legally established interests (e.g., privacy), and decades of case law address valid interests in nondisclosure. See, e.g., Gov. Code § 6254(c) (“personnel, medical or similar files the disclosure of which would constitute an unwarranted invasion of personal privacy”). While the application of these exemptions on a case-by-case basis is by no means mechanical or rote, the law in California is well-established as to what, and what is not, subject to disclosure. LAPD must apply this law, as all agencies subject to the CPRA must, in response to requests for bodycam footage. And where portions of footage are exempt from disclosure, those portions must be withheld via redaction, while the remainder is produced. Gov. Code § 6253(a) (“Any reasonably segregable portion of a record shall be available for inspection...after deletion of the portions that are exempted by law”). Even where valid interests in nondisclosure apply, they generally must be balanced against the public interest in access, transparency and public oversight. See, e.g., *City of Hemet v. Superior Court*, 37 Cal.App.4th 1411, 1428 (1995) (privacy exemption “would rarely be available ...because the public interest in misconduct by police officers would make the disclosure of pertinent records virtually ipso facto warranted”). Police “hold one of the most powerful positions in our society; our

dependence on them is high and the potential for abuse of power is far from insignificant.” *Hemet*, 37 Cal.App.4th at 1428. Moreover, “unfortunate as it may be, there is a public perception that misbehavior by law enforcement officers is not infrequently ignored or even covered up by supervisory personnel.” *Id.*

Accordingly, the public interest in records of police interactions with the public is heightened, and the LAPD’s apparent blanket use of the “investigatory file” exemption, Gov. Code § 6254(f), is improper. “[T]he law does not provide [] that a public agency may shield a record from public disclosure, regardless of its nature, simply by placing it in a file labeled ‘investigatory.’” *Williams v. Superior Court*, 5 Cal. 4th 337, 355 (1993). Moreover, the exemption for “investigatory records” applies “only when the prospect of enforcement proceedings becomes concrete and definite.” *Id.* at 356. The bare assertion that a record relates to an investigation is insufficient to shield it from public view. *Id.* at 356. In fact, even if an investigatory file is exempt, a law enforcement agency can be required to disclose “any recorded description” of the factual circumstances of an incident. *Fredericks v. Superior Court*, 233 Cal. App. 4th 209, 217 (2015). Bodycam videos are simply recordings of factual circumstances. The videos are often taken in public, and are unlikely to reveal investigators’ analyses or confidential information. The “investigatory file” exemption simply cannot support the current policy of blanket nondisclosure.

A Consistent and Uniformly Applied Policy Requiring Release of Bodycam Footage Consistent with California Law Will Promote Accountability, Community Trust, and the Pursuit of the Truth

As we understand it, current LAPD policy is to not release bodycam footage unless ordered by a court or if the video is used at trial. This policy cannot be reconciled with the requirements of the CPRA. Moreover, it thwarts transparency at a time when incidents of officer-involved shootings, in-custody deaths, and controversies about the police use of force have heightened tensions between the police and the communities they serve. Transparency—the ability of the people to see and know what their government is doing—is essential to the proper functioning of our democracy, including the vital role that law enforcement plays in it. Not only does transparency promote accountability, it promotes trust on the part of the people toward the government that serves them. In short, both the law and sound public policy compel prompt release of bodycam footage.

Before LAPD launched its bodycam program, Chief Charlie Beck noted that one key justification for equipping some 7,000 officers with the devices was that they are “a great tool for building trust.” (“LAPD expects to start deploying body cameras this

summer,” *Los Angeles Times*, March 31, 2015.) However, a policy that reserves the use and review of bodycam footage to the police department, to the exclusion of the public, can only have the opposite effect. (See, e.g., “LAPD is reaching out to the public on its use of police body cameras. The Sheriff’s Department should take note,” *Los Angeles Times* editorial, March 23, 2017 [withholding bodycam footage “exacerbate[es] suspicions that [LAPD] has something to hide”].)

Thus, LAPD’s current policy harms the credibility of the LAPD at a time when police nationwide are facing difficult discussions about trust and the use of force. When the department releases video only when it believes the footage supports an officer’s account, as it did after the shooting of Carnell Snell Jr., it raises the inference that other footage contradicts officers’ reports. Of course, that is not always—or even frequently—the case. But without regular access to such videos, citizens are prevented from reaching their own conclusions. The current lack of transparency denies citizens the ability to understand “critical incidents” from the officer’s point of view and undermines thoughtful debate about whether current use-of-force policies and practices appropriately protect both officers and the public.

Conclusion

For the reasons set forth above, FAC supports the implementation of a policy that clarifies that bodycam footage is a public record within meaning of the CPRA and provides for the routine and timely release of such records.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Snyder', with a stylized, cursive script.

David Snyder
Executive Director
First Amendment Coalition