

# REPORTERS COMMITTEE

## FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

### STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

CHIP BOK  
*Creators Syndicate*

JAN CRAWFORD  
*CBS News*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Tsinghua University, Beijing*

ASHLEA EBELING  
*Forbes Magazine*

SUSAN GOLDBERG  
*National Geographic*

FRED GRAHAM  
*Founding Member*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

JEFF LEEN  
*The Washington Post*

DAHLIA LITHWICK  
*Slate*

TONY MAURO  
*National Law Journal*

JANE MAYER  
*The New Yorker*

DAVID McCUMBER  
*Hearst Newspapers*

JOHN McKINNON  
*The Wall Street Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*Boston University*

BILL NICHOLS  
*Politico*

JEFFREY ROSEN  
*The New Republic*

CAROL ROSENBERG  
*The Miami Herald*

THOMAS C. RUBIN  
*Seattle, Wash.*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*The Atlantic*

JENNIFER SONDAG  
*Bloomberg News*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Mayor Vincent Gray  
The Mayor's Correspondence Unit  
FOIA Appeal  
1350 Pennsylvania Avenue NW, Suite 316  
Washington, D.C. 20004  
foia.mayor@dc.gov

cc:

Mayor-Elect Muriel Bowser  
441 4th St NW, Suite 727N  
Washington, D.C. 20001  
press@wearewashingtondc.org

Teresa Quon Hyden  
Metropolitan Police Department  
300 Indiana Avenue, NW, Room 4153  
Washington, DC 20001  
teresa.quon@dc.gov

### VIA EMAIL AND U.S. MAIL

November 20, 2014

### **RE: DC Freedom of Information Act Appeal (2014-FOIA-00031, 2015-FOIA-00088)**

Dear Mayor Gray,

This is an appeal of an adverse determination under the D.C. Freedom of Information Act, D.C. Code § 2-532 ("DC FOIA"), by the Metropolitan Police Department ("MPD"), submitted on behalf of the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee").

Founded in 1970, the Reporters Committee is a nonprofit association of news reporters and editors dedicated to safeguarding and advancing the First Amendment's guarantee of a free press, and ensuring the public's right to be informed, through the news media, about the government. Through its DC FOIA request, the Reporters Committee sought video from Body Worn Cameras ("BWC") used by MPD officers on October 1 and 2, 2014. Notwithstanding the MPD's public acknowledgement that BWC videos are public records subject to DC FOIA, and the MPD's representations that use of BWC by law enforcement officers would make the department more transparent and more accountable to the public, the MPD denied the Reporters Committee's request in its entirety. It has refused to release any

BWC footage taken on October 1 or 2, 2014. The Reporters Committee respectfully requests your review of that refusal.

## I. INTRODUCTION

In a September 2014 press conference regarding the launch of the BWC pilot program, MPD Chief Cathy Lanier stated that use of BWC would, among other things, “make our department more transparent”<sup>1</sup> and “establish a record of police conduct.”<sup>2</sup> Acknowledging that footage from BWC was required to be made available to the public under DC FOIA, Chief Lanier stated that the MPD was “testing to see how long it’s going to take us to be able to [produce BWC videos], and if we need to make some modification to the FOIA process in order to comply . . . .”<sup>3</sup> Chief Lanier said that the department would potentially have to add staff in order to ensure that they would be able to meet MPD’s obligations under the DC FOIA.<sup>4</sup>

Notwithstanding these public representations, the MPD is refusing to make *any* BWC footage available to the public. Claiming that it is unable to make redactions to BWC footage, the MPD has denied the Reporters Committee’s request for BWC videos taken on October 1 and 2, 2014, the first two days that the BWC pilot program was in effect, in its entirety. As set forth herein, the MPD’s claimed inability to redact BWC footage is both implausible and legally unacceptable. As a practical matter, the position taken by the MPD means that, despite being public records subject to the DC FOIA, BWC videos are not, and will not, be accessible to the public. Not only does this run contrary to the stated objectives of the MPD’s BWC program—to increase transparency and accountability—it also undermines the purpose of the DC FOIA to ensure that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.”<sup>5</sup>

The public needs access to BWC footage in order to independently observe and evaluate the activities of government, including law enforcement officers and the MPD. Among other things, the public needs access to BWC videos now, while the BWC program is in its trial phase, so that citizens can meaningfully evaluate the efficacy of the program, provide feedback on the manner in which it is being carried out, and determine areas where it could be improved. Prompt public access to these government records is required for the democratic process to properly function. Facilitating that access should be a priority for the MPD.

---

<sup>1</sup> Mike DeBonis and Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, THE WASHINGTON POST (Sep. 24, 2014), [http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804_story.html).

<sup>2</sup> Associated Press/NBC4 Washington, *Group of D.C. Police Officers to Begin Testing Body-Worn Cameras*, NBC WASHINGTON (Sep. 24, 2014), <http://www.nbcwashington.com/news/local/DC-Chief-to-Discuss-Body-Cameras-for-Officers-276893401.html>.

<sup>3</sup> Brianne Carter, *D.C. police body camera pilot program slated to begin Oct. 1*, WJLA.COM (Sep. 24, 2014), <http://www.wjla.com/articles/2014/09/d-c-police-chief-cathy-lanier-to-discuss-body-cameras-for-officers-107450.html> (follow link to video of the press conference).

<sup>4</sup> *Id.*

<sup>5</sup> D.C. Code § 2-531.

In a memorandum issued on your first day in office, you announced your intent that the DC FOIA should be “construed with the view toward ‘expansion of public access and the minimization of costs and time delays to persons requesting information.’”<sup>6</sup> For the reasons set forth herein, the Reporters Committee asks you to uphold this promise by promptly reversing the decision of the MPD and requiring prompt release of the requested records.

## II. FACTS

### A. The MPD’s BWC Program

In the wake of numerous instances of police misconduct across the nation, and in an effort to promote a more professional and accountable police force, the MPD announced earlier this year that it would launch a six-month pilot program whereby some of its officers would wear BWC to record their interactions with civilians.<sup>7</sup> The MPD’s BWC pilot program was launched on October 1, 2014.<sup>8</sup>

### B. The Reporters Committee’s Consolidated Request for BWC Footage Under DC FOIA

On October 2, 2014, the Reporters Committee submitted a written DC FOIA request to the MPD seeking all BWC footage from the first day of the MPD’s trial period. Specifically, in its request, the Reporters Committee asked for “access to and copies of all video from BWC worn by MPD officers that was created on October 1, 2014.” A copy of the request is attached hereto as Exhibit A.

The Reporters Committee also asked for a fee waiver, stating that the subject of its request “can be considered as primarily benefiting the general public,”<sup>9</sup> and that the information was not being sought for commercial use. In support of its fee waiver request, the Reporters Committee pointed to the intense public interest in the relations between the MPD and civilians over the last few years,<sup>10</sup> and noted that, due to the trial

---

<sup>6</sup> Vincent C. Gray, *Transparency and Open Government Policy*, BEGA-DC.GOV (Jan. 3, 2011) [http://www.bega-dc.gov/sites/default/files/documents/VCG%20Memo%20on%20Transparency\\_Jan%203-2011.pdf](http://www.bega-dc.gov/sites/default/files/documents/VCG%20Memo%20on%20Transparency_Jan%203-2011.pdf).

<sup>7</sup> See Executive Office of the Mayor, *Mayor Gray and Chief Lanier Announce Metropolitan Police Department’s Body-Worn Camera Pilot Program*, DC.GOV (Sep. 24, 2014), <http://mayor.dc.gov/release/mayor-gray-and-chief-lanier-announce-metropolitan-police-department%E2%80%99s-body-worn-camera-pil-0>.

<sup>8</sup> Andrea Noble, *D.C. Council panel to hold hearing on police tactics Wednesday Night*, THE WASHINGTON TIMES (Oct. 8, 2014), <http://www.washingtontimes.com/news/2014/oct/8/dc-council-panel-to-hold-hearing-on-police-tactics/>.

<sup>9</sup> D.C. Code § 2-523(b).

<sup>10</sup> See, e.g., Eric Tucker, *DC police facing scrutiny over arrested officers*, TWOP (Jan. 24, 2014), <http://www.wtop.com/41/3548231/DC-police-facing-scrutiny-over-arrested-officers>; The Associated Press, *D.C. Police Chief Addresses Officer Misconduct*, CBS DC (Jan. 26, 2014), <http://washington.cbslocal.com/2014/01/26/d-c-police-chief-addresses-officer-misconduct/>; Clarence Williams, *D.C. police officer guilty of assault for use of excessive force during 2011 arrest*, THE WASHINGTON POST (Oct. 16, 2013), <http://www.washingtonpost.com/local/crime/dc-police-officer-guilty->

nature of the BWC program, it is important for the public to have access to BWC footage in order to evaluate the program itself.

On October 2, 2014, Teresa Quon Hyden, the MPD's Acting FOIA Officer, acknowledged receipt of the Reporters Committee's written DC FOIA request by email. A copy of that acknowledgement is attached hereto as Exhibit C. The request was given the tracking number 2014-FOIA-00031.

On October 2, the Reporters Committee also requested, in person, BWC footage from MPD officers within District 2 at the MPD's District 2 Station. Following submission of that request, Ms. Quon Hyden informed the Reporters Committee in a telephone call that on October 1 BWC was utilized solely in District 5. Accordingly, in an email sent to Ms. Quon Hyden on October 7, 2014, the Reporters Committee confirmed that its second DC FOIA request could be consolidated with its first and that, per the Reporters Committee's earlier telephone conversation with Ms. Quon Hyden, that consolidated request was modified to cover BWC footage from both October 1 and 2, 2014. A copy of that email is attached hereto as Exhibit B.

In that same email to Ms. Quon Hyden, the Reporters Committee stated its understanding from their telephone discussion that the MPD intended to delay access to BWC footage relating to arrests. In order to facilitate prompt access to the requested records, the Reporters Committee proposed that the "MPD first produce all BWC footage from October 1, 2014 that did not result in an arrest. All remaining BWC footage from October 1 (i.e., footage relating to arrests) could be provided on a rolling basis thereafter." The email stressed that "given the pilot nature of the BWC program instituted by the MPD, allowing the public to immediately evaluate the MPD's use of BWC, as well as the MPD's response to requests for access to footage and other information about that program under the D.C. FOIA, is critical."

The Reporters Committee did not receive a response to its October 7, 2014 email. Subsequent follow up emails sent on October 14, 2014, and October 17, 2014, also received no response.

### C. The MPD's Denial of the Reporters Committee's DC FOIA Request

On October 24, 2014, the Reporters Committee received an email from Genet Amare, stating that the MPD was "unable to process your request within the time allotted," and therefore was "invoking the ten (10) day extension that is provided under the FOIA statute." A copy of the email is attached hereto as Exhibit D.

On November 7, 2014, Teresa Quon Hyden sent a final response by email to the Reporters Committee denying its DC FOIA requests. In its email, the MPD stated that it was in "receipt of your Freedom of Information Act (FOIA) requests, as modified, for

---

of- assault-for-use-of-excessive-force-during-2011- arrest/2013/10/16/f8e08018-369f-11e3-80c6-7e6dd8d22d8f\_story.html; Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, (Jan. 2013), <http://www.hrw.org/reports/2013/01/24/capitol-offense-0>.



copies of all body-worn camera footage from Wednesday, October 1, 2014, through Thursday, October 2, 2014.” The email said that the MPD had found 128 responsive video recordings, but was denying access to all 128 videos in their entirety. A copy of that email is attached hereto as Exhibit E.

The email set forth two reasons for denying access to the records. First, it stated that “[i]nsofar as these video recordings depict arrests and/or active criminal investigations, such recordings are exempt under D.C. Official Code §§ 2-534(a)(3)(i).” Second, the email stated that “the faces, names, and other identifying information regarding arrestees, suspects, victims, and witnesses are exempt from disclosure as unwarranted invasions of personal privacy under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) and must be redacted from the requested body-worn camera recordings.” The email went on to state that “MPD cannot at this time make the necessary audio and visual redactions to protect the privacy of the individuals captured in the body-worn camera recordings. We must therefore deny your request. However, we will preserve the recordings responsive to your request until such time as we are able to produce them in redacted form to you.”

### **III. ARGUMENT**

#### **A. The Requested BWC Videos are “Records” Subject to the DC FOIA**

The DC FOIA gives the public the right to inspect and copy “any public record of a public body . . .” D.C. Code § 2-532(a). Public records subject to disclosure include “all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format.” *Id.* at § 2-502(18).

There is no question that the 128 BWC videos at issue are public records. They are recordings that were created by the MPD and are currently retained by the MPD, which is a public body subject to the DC FOIA. The MPD does not dispute the fact that the BWC videos are records subject to the DC FOIA. In addition to the public statements of MPD officials acknowledging that BWC videos are public records, the MPD’s own procedures regarding the BWC program state that “[r]equests for BWC recordings by the public shall be referred to the Freedom of Information Act (FOIA) Office, Office of the General Counsel.”<sup>11</sup> And, in its final email response to the Reporters Committee’s request, the MPD acknowledged that it had found 128 video recordings responsive to RCFP’s FOIA request.<sup>12</sup> In short, it is clear that the videos sought by the Reporters Committee through its request are “records” that must be released by the MPD under the DC FOIA.

---

<sup>11</sup> *Special Order 14-09: Body-Worn Camera Pilot Program*, MPDCONLINE.COM, [https://go.mpdconline.com/GO/SO\\_14\\_09.pdf](https://go.mpdconline.com/GO/SO_14_09.pdf) (last accessed Nov. 18, 2014).

<sup>12</sup> *See supra*, note 11, on the number of responsive records.

B. The MPD's Refusal to Release Any BWC Footage in Response to the Reporters Committee's Request is Unlawful Under the DC FOIA

The DC FOIA provides for 14 categories of records that are exempt from disclosure. D.C. Code § 2-534(a)(1)-(14). Unless requested information specifically falls within one of these categories, it must be released. *See Barry v. Wash. Post Co.*, 529 A.2d 319, 321 (D.C. 1987) (the DC FOIA “provides for full disclosure unless the information requested is exempted under a specific statutory provision . . .”).

Even if certain portions of records are properly exempt from disclosure, “[a]ny reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure . . .” D.C. Code § 2-534(b); *see also Wash. Post Co. v. Minority Bus. Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989) (“A document often contains some information which is exempt from disclosure and other information which is not. The Act does not contemplate an ‘all or nothing’ approach where this situation arises.”).

Even assuming, *arguendo*, that the 128 BWC videos at issue contain certain material that is properly exempt from disclosure under the DC FOIA, there is unquestionably nonexempt footage responsive to the Reporters Committee's request that the MPD has failed to segregate and release. In its final response, the MPD stated that only video from “arrests and/or active criminal investigations”, along with “faces, names, and other identifying information regarding arrestees, suspects, victims, and witnesses are exempt from disclosure . . .” This leaves a host of other nonexempt information, including the conduct of MPD law enforcement officers themselves, that the public has a strong interest in obtaining. Among other things, the requested records will help the public understand how the law enforcement officers tasked with protecting their safety and well-being are conducting themselves, and provide the public with needed information concerning the BWC pilot program itself.

Moreover, there are likely numerous BWC video records responsive to the Reporters Committee's request that do not involve arrestees, suspects, victims, and/or witnesses. The MPD's own orders regarding the use of BWC state that video recordings should capture a wide range of events, including “[a]ll contacts” with citizens.<sup>13</sup> The MPD's General Order 304.10 defines “[c]ontact” as “[c]onduct by a member which places the sworn member in face-to-face communication with an individual citizen under circumstances in which the citizen is free not to respond and to leave.”<sup>14</sup> It is impossible to believe that there were no instances on October 1 or 2, 2014 in which an officer with a BWC had “contact” with a civilian that did not involve an arrest. Such records would not fall within either of the exemptions claimed by the MPD.

As there are records responsive to the Reporters Committee's request that do not fall within one of the 14 exemptions enumerated in the DC FOIA, they must be released.

---

<sup>13</sup> *Id.*

<sup>14</sup> *General Order 304.10: Police-Citizen Contacts, Stops, and Frisks*, MPDCONLINE.COM, [https://go.mpdconline.com/GO/GO\\_OPS\\_304\\_10.pdf](https://go.mpdconline.com/GO/GO_OPS_304_10.pdf) (last accessed Nov. 18, 2014).

The MPD has a legal obligation to segregate such records from any that may be properly withheld. It failed to fulfill that obligation when it denied the Reporters Committee's request in its entirety. The MPD's claim that it "cannot at this time make the necessary audio and visual redactions to protect the privacy of the individuals captured in the body-worn camera recordings" is not a legally permissible reason to deny access to the requested records. It must, as the law states, provide any and all "reasonably segregable" records.

To be clear, redacting videos is not technologically difficult. Anyone who has seen the long-running television show "COPS" knows that obscuring faces and other information from pre-recorded videos has been possible for decades. Adobe Premiere Pro, a common video editing application that is available for \$19.99/month,<sup>15</sup> is one example of software that would permit video footage to be redacted with minimal effort.<sup>16</sup> Redaction of audio from BWC videos should be even less problematic. *Live* redactions of audio—a more difficult task than redacting pre-recorded audio tracks—has been possible since at least 1921.<sup>17</sup> There are numerous computer programs available that would make such redactions easy to accomplish. In short, the MPD's claim that it cannot make necessary video redactions is tantamount to saying it cannot release responsive records because it has yet to go to the office supply store to buy a thick black pen. If it needs, as Chief Lanier said, to "make some modification to the [MPD's] FOIA process in order to comply," with the DC FOIA, then it should do so. The public has a right to this information, and the MPD has an obligation to take steps to comply with the law.

### C. Public Access to BWC Footage is Necessary for the MPD's BWC Program to Succeed

As set forth above, the MPD launched the BWC program in order to improve relations between the department and the general public, including by increasing transparency and accountability. Public access to BWC footage—and public understanding of how the BWC program operates—is thus a critical component of fulfilling the MPD's stated goals for that program. And public access is particularly vital now, when the BWC program is in its early stages. Access will provide members of the public with the information they need to meaningfully evaluate the BWC program, and to engage with their elected officials concerning it. The MPD's compliance with the DC FOIA when responding to requests like the one submitted by the Reporters Committee is necessary if the department's BWC program is to succeed.

---

<sup>15</sup> *Creative Cloud Plans*, ADOBE.COM <https://creative.adobe.com/plans> (last accessed Nov. 18, 2014).

<sup>16</sup> *How to blur a moving face with masking and tracking*, ADOBE.COM, <https://helpx.adobe.com/premiere-pro/how-to/blur-face-masking-tracking.html> (last accessed Nov. 18, 2014).

<sup>17</sup> Maria Bustillos, *Curses! The birth of the bleep and modern American censorship*, THE VERGE (Aug. 27, 2013), <http://www.theverge.com/2013/8/27/4545388/curses-the-birth-of-the-bleep-and-modern-american-censorship>.

#### IV. CONCLUSION

For the reasons detailed above, the Reporters Committee respectfully requests that you reverse the MPD's decision to withhold from the public all BWC video records from October 1 and 2, 2014.

Sincerely,



Adam Marshall  
Jack Nelson Legal Fellow  
amarshall@rcfp.org  
(571) 481-9324



Katie Townsend  
Litigation Director  
ktownsend@rcfp.org  
(703) 807-2103



# EXHIBIT A

# REPORTERS COMMITTEE

**FOR FREEDOM OF THE PRESS**

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

---

STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

CHIP BOK  
*Creators Syndicate*

JAN CRAWFORD  
*CBS News*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Tsinghua University, Beijing*

ASHLEA EBELING  
*Forbes Magazine*

SUSAN GOLDBERG  
*National Geographic*

FRED GRAHAM  
*Founding Member*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

JEFF LEEN  
*The Washington Post*

DAHLIA LITHWICK  
*Slate*

TONY MAURO  
*National Law Journal*

JANE MAYER  
*The New Yorker*

DAVID McCUMBER  
*Hearst Newspapers*

JOHN McKINNON  
*The Wall Street Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*Boston University*

BILL NICHOLS  
*Politico*

JEFFREY ROSEN  
*The New Republic*

CAROL ROSENBERG  
*The Miami Herald*

THOMAS C. RUBIN  
*Seattle, Wash.*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*The Atlantic*

JENNIFER SONDAG  
*Bloomberg News*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Adam Marshall  
Katie Townsend

Reporters Committee for Freedom of the Press  
1101 Wilson Blvd., Suite 1100  
Arlington, VA 22209

Teresa Quon  
Metropolitan Police Department  
300 Indiana Avenue, NW, Room 4153  
Washington, DC 20001  
teresa.quon@dc.gov  
Phone: (202) 727-3721

October 2, 2014

Via electronic mail and U.S. Mail

## FOIA Request

### Fee waiver requested

Dear Ms. Quon,

This letter constitutes a request under the D.C. Freedom of Information Act, D.C. CODE § 2-532 ("D.C. FOIA"), and is submitted on behalf of the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee") to the D.C. Police Department ("MPD"). The Reporters Committee is a nonprofit association of news reporters and editors. By this request, it seeks information regarding the MPD's use of body worn cameras ("BWC").

### Records Requested

Pursuant to the D.C. FOIA, I, on behalf of the Reporters Committee, request access to and copies of all video from BWC worn by MPD officers that was created on October 1, 2014.

I prefer to receive these records in electronic form, preferably in a standard video codec (such as a H.264 or MPEG-4 implementation) that fairly and accurately represents the resolution and quality of the original video

### Fee Waiver

As the information that is the subject of this request "can be considered as primarily benefiting the general public"<sup>1</sup>, I ask that you waive any applicable

---

<sup>1</sup> D.C. CODE § 2-523(b).

fees. This information is not being sought for commercial use. This information is being sought by RCFP, as a representative of the news media, for dissemination to the general public through multiple avenues, including its website,<sup>2</sup> email newsletters, and *The News Media & The Law*,<sup>3</sup> RCFP's quarterly magazine that has been continuously published since 1977.


Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. There has been intense interest in the relations between the MPC and civilians over the last few years.<sup>4</sup> According to Police Chief Cathy Lanier, BWC will help promote transparency in these relations because they "establish a record of police conduct."<sup>5</sup> As the BWC are currently in a trial period to determine their effectiveness,<sup>6</sup> it is important that the public have access to this information in order to determine if they are, in fact, having the intended effect.

### Conclusion

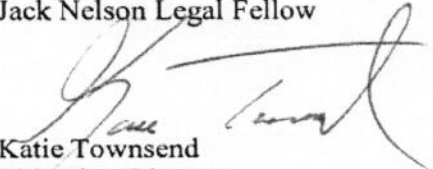
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the FOIA.

I look forward to your response within 15 business days, per the requirements of the D.C. FOIA.<sup>7</sup> Please feel free to contact me via email (amarshall@rcfp.org) or telephone (571-481-9324) if you have any questions regarding this request.

Sincerely,



Adam Marshall  
Jack Nelson Legal Fellow



Katie Townsend  
Litigation Director

<sup>2</sup> <https://www.rcfp.org/>.

<sup>3</sup> Available at <http://www.rcfp.org/magazine-archive>.

<sup>4</sup> See, e.g., Eric Tucker, *DC police facing scrutiny over arrested officers*, TWOP (Jan. 24, 2014), <http://www.wtop.com/41/3548231/DC-police-facing-scrutiny-over-arrested-officers>; AP, *D.C. Police Chief Addresses Officer Misconduct*, CBS DC (Jan. 26, 2014), <http://washington.cbslocal.com/2014/01/26/d-c-police-chief-addresses-officer-misconduct/>; Clarence Williams, *D.C. police officer guilty of assault for use of excessive force during 2011 arrest*, THE WASHINGTON POST (Oct. 16, 2013), [http://www.washingtonpost.com/local/crime/dc-police-officer-guilty-of-assault-for-use-of-excessive-force-during-2011-arrest/2013/10/16/f8e08018-369f-11e3-80c6-7e6dd8d22d8f\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-officer-guilty-of-assault-for-use-of-excessive-force-during-2011-arrest/2013/10/16/f8e08018-369f-11e3-80c6-7e6dd8d22d8f_story.html); Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, (Jan. 2013), <http://www.hrw.org/reports/2013/01/24/capitol-offense-0>.

<sup>5</sup> Associated Press/NBC4 Washington, *Group of D.C. Police Officers to Begin Testing Body-Worn Cameras*, NBC WASHINGTON (Sep. 24, 2014), <http://www.nbcwashington.com/news/local/DC-Chief-to-Discuss-Body-Cameras-for-Officers-276893401.html>.

<sup>6</sup> See *id.*

<sup>7</sup> D.C. CODE § 2-532(c).

# **EXHIBIT B**



# Acknowledgment Letter 2014-FOIA-00031

**From:** Adam Marshall <amarshall@rcfp.org>  
**To:** Quon Hyden, Teresa <teresa.quon@dc.gov>  
**Cc:** Amelia Rufer <arufer@rcfp.org>  
**Bcc:** Katie Townsend <ktownsend@rcfp.org>  
**Subject:** Re: Acknowledgment Letter 2014-FOIA-00031  
**Date:** Tuesday, October 07, 2014 11:02 AM  
**Size:** 285 KB

---

Dear Ms. Quon Hyden,

Thank you for your email. I wanted to follow up with you regarding this request, as well as a second D.C. Freedom of Information Act ("D.C. FOIA") request also submitted to the Metropolitan Police Department ("MPD") on October 2, 2014 by the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee") regarding Body Worn Camera ("BWC") footage. I understand from my colleague, Amelia Rufer (copied here), that you spoke with her by phone yesterday concerning that second request, which she submitted in person at the District 2 Station. In talking to Ms. Rufer, it appears that it may be beneficial for RCFP to consolidate her request into the written request I submitted, and for RCFP and MPD to agree to a modified production schedule. Accordingly, in the interest of assisting the MPD in responding to the request I submitted efficiently and in a timely manner, we propose the following:

First, we propose that the request submitted by Ms. Rufer on behalf of RCFP for BWC footage from District 2 be subsumed under RCFP's first FOIA request that was submitted by me, in writing, on October 2, 2014 at 12:01 a.m. That initial request was for "all video from BWC worn by MPD officers that was created on October 1, 2014." (See attached original request). Due to the refusal of the personnel at the 2nd District Station to allow Ms. Rufer to access the arrest logs from October 1 in person on October 2, pursuant to her oral request, Ms. Rufer was unable to determine whether any BWC footage would be available from that district, which resulted in the submission of a written request covering District 5. We understand, based on your telephone discussion with Ms. Rufer yesterday, that BWC was worn by MPD officers on October 1 in District 5 only. Accordingly, it now appears that this second request is duplicative of RCFP's first request, and therefore may be consolidated into it.

Second, in your conversation with Ms. Rufer yesterday, you indicated that MPD's production of BWC footage relating to incidents that resulted in arrests could be delayed. Particularly given the pilot nature of the BWC program instituted by the MPD, allowing the public to immediately evaluate the MPD's use of BWC, as well as the MPD's response to requests for access to footage and other information about that program under the D.C. FOIA, is critical. Accordingly, in order to facilitate a faster production of the public records sought by RCFP's request, RCFP proposes that MPD first produce all BWC footage from October 1, 2014 that did *not* result in an arrest. All remaining BWC footage from October 1 (i.e., footage relating to arrests) could be provided on a rolling basis thereafter.

Third, again per your conversation with Ms. Rufer yesterday, we ask that BWC footage from October 2, 2014, that was taken in Districts 5, 6, and 7, be included within its request. Again, RCFP is willing to accept non-arrest BWC footage initially, followed by arrest footage.

Please let me know at your earliest convenience whether the MPD agrees to the proposal set forth herein. If you have any questions regarding these requests, or wish to discuss anything contained in this letter, please do not hesitate to contact me by phone (571-481-9324) or email ([amarshall@rcfp.org](mailto:amarshall@rcfp.org)).

Sincerely,

Adam Marshall

 Adam Marshall  
Jack Nelson Fellow (FOIA)  
1101 Wilson Blvd., Suite 1100, Arlington VA 22209  
[amarshall@rcfp.org](mailto:amarshall@rcfp.org) · (571) 481-9324

On Thu, Oct 2, 2014, at 10:36 AM, Quon Hyden, Teresa wrote:

Dear Mr. Marshall,

This office is in receipt of your Freedom of Information Act request.

Pursuant to D.C. Official Code § 2-532(c), we have fifteen (15) business-days, subject to the possibility of a ten (10) business-day extension, to respond to the request as of the date of receipt.

If for any reason you should need to communicate with this office regarding your request, please call (202) 727-3721 and be sure to reference the above request number.

Regards,

Teresa Quon Hyden  
Acting FOIA Officer

---

RCFP FOIA Request re MPD BWC.pdf

269 KB

# EXHIBIT C

# Acknowledgment Letter 2014-FOIA-00031

**From:** Quon Hyden, Teresa <teresa.quon@dc.gov>  
**To:** amarshall@rcfp.org  
**Subject:** Acknowledgment Letter 2014-FOIA-00031  
**Date:** Thursday, October 02, 2014 10:43 AM  
**Size:** 3 KB

---

Dear Mr. Marshall,

This office is in receipt of your Freedom of Information Act request.

Pursuant to D.C. Official Code § 2-532(c), we have fifteen (15) business-days, subject to the possibility of a ten (10) business-day extension, to respond to the request as of the date of receipt.

If for any reason you should need to communicate with this office regarding your request, please call (202) 727-3721 and be sure to reference the above request number.

Regards,

Teresa Quon Hyden  
Acting FOIA Officer



# EXHIBIT D

# Ten-day Extension for FOIA Request No. 2014-FOIA-00031

**From:** Amare, Genet <genet.amare2@dc.gov>  
**To:** amarshall@rcfp.org  
**Subject:** Ten-day Extension for FOIA Request No. 2014-FOIA-00031  
**Date:** Friday, October 24, 2014 9:30 AM  
**Size:** 3 KB

---

Dear Mr. Adam Marshall,

We are unable to process your request within the time allotted, we are now invoking the ten (10) day extension that is provided under the FOIA statute. Pursuant to D.C. Official Code § 2-532(d) and 1 DCMR §§ 405.2 and 405.3, we are providing you with written notice of our intent to extend the deadline for our response to the above-referenced FOIA request by ten (10) business days. Thank you for your patience and understanding.

Regards,

Genet Amare

# EXHIBIT E

# Final Response for 2015-FOIA-00031 and 2015-FOIA-00088

**From:** Quon Hyden, Teresa <teresa.quon@dc.gov>  
**To:** amarshall@rcfp.org  
**Subject:** Final Response for 2015-FOIA-00031 and 2015-FOIA-00088  
**Date:** Friday, November 07, 2014 3:30 PM  
**Size:** 8 KB

---

Dear Mr. Marshall and Ms. Rufer:

We are in receipt of your Freedom of Information Act (FOIA) requests, as modified, for copies of all body-worn camera footage from Wednesday, October 1, 2014, through Thursday, October 2, 2014.

A search of the body-worn camera system has located 128 video recordings of varying lengths that are responsive to your requests. Insofar as these video recordings depict arrests and/or active criminal investigations, such recordings are exempt under D.C. Official Code §§ 2-534(a)(3) (i). Release of these recordings would adversely affect any pending or reasonably anticipated enforcement proceedings as it would allow the targets of the investigations to destroy or alter evidence, fabricate fraudulent alibis, tamper with or harass witnesses, and/or take other actions to frustrate the government's case.

Moreover, individuals subject to arrest, suspects in the commission of crimes, and victims of and/or witnesses to crimes clearly have personal privacy interests in their names and other identifying information. To determine whether such information may be released, the individuals' privacy interests must be weighed against the statutory purpose of FOIA, i.e. to shed light on MPD's performance of its duties. On balance, the individuals' privacy interests prevail as the release of their identities will not contribute anything to public understanding of the operations or the performance of MPD. Therefore, the faces, names, and other identifying information regarding arrestees, suspects, victims, and witnesses are exempt from disclosure as unwarranted invasions of personal privacy under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) and must be redacted from the requested body-worn camera recordings.

Unfortunately, MPD cannot at this time make the necessary audio and visual redactions to protect the privacy of the individuals captured in the body-worn camera recordings. We must therefore deny your request. However, we will preserve the recordings responsive to your request until such time as we are able to produce them in redacted form to you.

Under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.



The appeal must be mailed to: The Mayor's Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor's Correspondence Unit at [foia.mayor@dc.gov](mailto:foia.mayor@dc.gov). Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there.

Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

Regards,

Teresa Quon Hyden  
Acting FOIA Officer