



Testimony of Adam A. Marshall on behalf of the
Reporters Committee for Freedom of the Press on

B21-0351, the “BODY-WORN CAMERA
PROGRAM REGULATIONS AMENDMENT ACT
OF 2015”

B21-0356, the “PUBLIC ACCESS TO
BODY-WORN CAMERA VIDEO AMENDMENT
ACT OF 2015”

and

PR21-0327, the “METROPOLITAN POLICE
DEPARTMENT BODY-WORN CAMERAS
APPROVAL RESOLUTION OF 2015”

Submitted to the Council of the District of Columbia
Committee on the Judiciary

October 21, 2015

Dear Members of the Committee on the Judiciary,

The Reporters Committee for Freedom of the Press (“Reporters Committee” or “RCFP”) appreciates the opportunity to provide testimony concerning the Metropolitan Police Department’s (“MPD”) body-worn camera (“BWC” or “bodycam”) program and the following related proposals: (1) B21-0351, the Body-Worn Camera Program Regulations Amendment Act of 2015, B21-0356, (2) the Public Access to Body-Worn Camera and Video Amendment Act of 2015, and (3) PR21-0327, the Metropolitan Police Department Body-Worn Cameras Approval Resolution of 2015. The Reporters Committee commends the Members of this Committee for their continued attention to this important issue, and for holding a hearing to allow members of the public to comment and provide input on the Mayor’s proposals. Were it not for the efforts of this Committee the residents of the District of Columbia would have little hope of ensuring that the MPD’s BWC program is implemented in a manner that is consistent with its purpose—increasing transparency and accountability of law enforcement.

Founded in 1970, the Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the right to a free and unfettered press guaranteed by the First Amendment. In its more than 40-year history, the Reporters Committee has participated as both a member of the public and a representative of the news media in matters presenting important issues that affect the public’s right to be informed about the activities of their government and elected representatives.

This testimony addresses the Public Access to Body-Worn Camera Video Amendment Act (the “Act”) proposed by the Mayor’s Office, and is designed to expand

upon the testimony previously presented to this Committee by the Reporters Committee on May 7, 2015.¹ As set forth in more detail below, the Act proposed by the Mayor's Office is the product of a rushed, flawed process that failed to properly take into account, among other things, the concerns expressed by the BWC Advisory Group and the interests of the public. As a result, the Act unnecessarily and imprudently limits the right of the press and the public to access BWC video under the D.C. Freedom of Information Act, D.C. Code §§ 2-531 *et seq.* ("D.C. FOIA"), and should be rejected in its entirety.²

I. The Mayor's Office has failed to incorporate the recommendations of the BWC Advisory Group and the MPD has failed to provide much-needed transparency with respect to its BWC program.

When the MPD's BWC program was first announced, MPD Chief Cathy Lanier assured D.C. residents that the program would "make [the] department more transparent"³ and "establish a record of police conduct."⁴ Consistent with that promise, the MPD's first BWC policy expressly stated that D.C. FOIA requests for bodycam video would be "processed in accordance with GO-SPT-204.05 (Freedom of Information Act Requests)."⁵ Earlier this year Mayor Bowser also expressed her commitment to transparency in her State of the District Address, stating that "[a]ccountability is embedded, and will be embedded in everything [her] administration does".⁶

¹ Available at <http://rcfp.org/sites/default/files/2015-05-07-comments-on-dc-police-bodycam.pdf>.

² The Reporters Committee does not endorse and takes no position on any part of the proposed regulations or legislation not specifically addressed in this testimony.

³ Mike DeBonis & Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, WASH. 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 (internal quotations omitted).

⁴ Associated Press/NBC4 Washington, *Group of D.C. Police Officers to Begin Testing Body-Worn Cameras*, NBC WASHINGTON (Sep. 24, 2014, 5:47 AM), <http://www.nbcwashington.com/news/local/DC-Chief-to-Discuss-Body-Cameras-for-Officers-276893401.html> (internal quotation omitted).

⁵ MPD SO 14-14, available at https://go.mpdconline.com/GO/SO_14_14.pdf, archived at <http://perma.cc/8NEL-CDJ9>.

⁶ Muriel Bowser, *State of the District Address*, DC.GOV (Mar. 31, 2015), available at <http://mayor.dc.gov/release/mayor-bowser%E2%80%99s-state-district-address>.

Unfortunately, however, in adopting and implementing the MPD's BWC program, these promises have been broken.

Beginning in October of last year, both the MPD and the Mayor's Office sought to eliminate or restrict public access to BWC video under the D.C. FOIA. After the MPD denied D.C. FOIA requests made by the Reporters Committee for BWC videos,⁷ the Mayor's proposed FY 2016 budget included a provision that would have exempted *all BWC video* from public disclosure under the D.C. FOIA.⁸ Following a public hearing that included testimony from civil society groups and members of the public who almost unanimously opposed the Mayor's proposal, the Council rejected the blanket exemption urged by the Mayor and the MPD. Instead, the Council passed the Body-Worn Camera Regulation and Reporting Requirements Act of 2015, which mandated that the Mayor create and consult with an Advisory Group, which included the Reporters Committee, on issues related to the MPD's implementation of its multi-million dollar BWC program.⁹

The Mayor's Office convened two meetings of the Advisory Group. However, it was evident almost from the outset that the Advisory Group's recommendations were not being meaningfully considered or being incorporated into the Mayor's proposals. Indeed, the decision by the Mayor's Office to jettison its original timeline for drafting regulations, and its failure to provide the Advisory Group a meaningful opportunity to comment on its final proposals before submitting them to the Council belies any claim that the proposals that the Mayor has put forth reflect the input of the Advisory Group, as

⁷ The Reporters Committee notes that the MPD represented that when it gained the technological ability to redact BWC video it would process these outstanding requests.

⁸ Letter from Jeffrey DeWitt to Phil Mendelson (Apr. 2, 2015), *available at* http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%20-%20Fiscal%20Year%202016%20Budget%20Support%20Act%20of%202015.pdf <http://perma.cc/V3MX-EUBA>.

⁹ See Fiscal Year 2016 Budget Support Act of 2015, Act Number A21-0148, § 3003 (Aug. 11, 2015), *available at* <http://lims.dccouncil.us/Download/33645/B21-0158-SignedAct.pdf>.

the Council intended. On September 10, 2015, several members of the Advisory Group submitted a letter to the Mayor voicing their concerns over the marginalized role of the Advisory Group in the process of developing the rules and regulations applicable to the MPD's bodycam program. The letter concluded that

the expert and community members of the Advisory Committee mandated by the Council have been given no opportunity for meaningful input into the details of this [BWC] proposal before it was publicly released with time for the executive branch to consider them before completing its proposals to the Council. We are sorry to see that the Administration has essentially used this Committee for show, trumpeting a collaborative process and concessions when, in fact, there has been little deviation from the originally proposed FOIA exemption.¹⁰

A copy of this letter is attached as Exhibit A. One particularly striking illustration of the Mayor's failure to work with the Advisory Group, which is discussed in more detail below, is the fact that her latest proposal regarding public access to BWC video is *more* restrictive than the proposal that what was presented to and discussed among the Advisory Group over the summer, and includes new exemptions that *no one* from the Advisory Group requested. In short, the proposals the Mayor's Office has presented to the Council do not reflect the Advisory Group's recommendations, which were not seriously considered.

In addition, while the Mayor's Office has been developing its proposals concerning the MPD's BWC program, the MPD has been withholding much-needed information, including cost information, relating to the implementation of its BWC program from the press and the public. In April, the Reporters Committee sent a D.C. FOIA request to the MPD requesting, *inter alia*, records related to the MPD's

¹⁰ Letter from D.C. Open Government Coalition, American Civil Liberties Union of the Nation's Capital, D.C. Police Union, and the Reporters Committee for Freedom of the Press to Mayor Muriel Bowser (Sept. 10, 2015).

procurement of BWC hardware and software.¹¹ This request encompassed records related to the cost of MPD's redaction of BWC videos, which are especially important for the public to have in light of the CFO's threat to refuse to certify the 2016 budget as balanced based on the purported cost concern of complying with public record requests.¹²

The MPD failed to release any records responsive to RCFP's request within D.C. FOIA's statutory time period. After a five-month delay with no records being produced, and with this hearing fast approaching, the Reporters Committee, represented pro bono by the law firm of Levine Sullivan Koch & Schultz, LLP, filed an administrative appeal with the Mayor's Office regarding the unlawful delay. A copy of that appeal (without its exhibits) is attached as Exhibit B. On October 16, 2015, the Mayor's Office ordered the MPD to begin releasing the requested records immediately. A copy of that decision is attached as Exhibit C.

The redacted records that have been released to RCFP by the MPD to date in response to that decision are remarkable in that they make no mention, whatsoever, of compliance with D.C. FOIA. For example, a detailed spreadsheet comparing and contrasting various providers of BWC technology does not include ease or cost-effectiveness of compliance with public records requests as a factor to be considered in choosing a vendor. Similarly, a list of "Key Agenda items" for meetings with BWC vendors does not reference or discuss compliance with D.C. FOIA. Copies of these records are attached as Exhibit D. The absence of any such discussion is telling. The

¹¹ This request did not ask for any BWC videos.

¹² See CFO estimates for cost of releasing DC police body cam footage unsubstantiated, groups say, rcfp.org (Jun. 29, 2015), <http://rcfp.org/browse-media-law-resources/news/cfo-estimates-cost-releasing-dc-police-body-cam-footage-unsubstantia>.

Reporters Committee hopes that the rest of the responsive records will be produced promptly so that the public can understand, among other things, how MPD sought to ensure that it could meet its obligations under D.C. FOIA when engaging with private contractors.¹³

In sum, the process surrounding MPD's procurement of BWC and the decision by the Mayor's Office to disregard the recommendations of the Advisory Group demonstrate a continued failure and refusal of the Executive Branch to make transparency a part of the MPD's BWC program.

II. The proposed amendments to D.C. FOIA are unnecessary and will inhibit accountability and transparency

To be clear, the Reporters Committee strongly opposes all proposed amendments to D.C. FOIA that are contained in the Public Access to Body-Worn Camera and Video Amendment Act of 2015. Not only are these changes unnecessary, but they will exempt BWC videos that the public has the greatest interest in seeing—namely, videos of assaults committed by MPD officers against civilians.

As a preliminary matter, the Reporters Committee notes that regulations, not legislation, are the correct way to address the intricacies of public access to BWC videos under the D.C. FOIA. That is precisely why the Council expressly instructed the MPD to work with the Advisory Group to devise *administrative rules* regarding BWCs, not new legislation.¹⁴ Technological issues affecting the use of BWCs and access to BWC video, especially video redaction capabilities, are changing at a rapid pace. Since the beginning

¹³ See D.C. Code § 2-532(a-3) (“A public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function, and the public body with programmatic responsibility for the contractor shall be responsible for making such records available to the same extent as if the record were maintained by the public body.”).

¹⁴ See Fiscal Year 2016 Budget Support Act of 2015, Act Number A21-0148, § 3003.

of September alone two companies have launched automated redaction software for BWC videos,¹⁵ including TASER—the company that supplies the MPD’s BWCs. These programs make redacting BWC video to obscure faces, objects, and other information incredibly easy. They were launched mere months after Mayor Bowser proposed exempting all BWC video from disclosure under D.C. FOIA, largely on the flawed premise that it was too burdensome to redact such video.¹⁶ The prospect of continued, rapid developments in this area counsel in favor of the flexibility of regulations, not legislation, as the appropriate avenue to address BWC video access. A statute as fundamental and important to the residents of D.C. as D.C. FOIA should not be hastily and drastically modified based on rapidly changing technology.

With regard to specific amendments contained in the Public Access to Body-Worn Camera and Video Amendment Act of 2015, the Reporters Committee refers the Committee to its previous testimony, and reiterates that the D.C. FOIA already includes all the mechanisms needed to address privacy and law enforcement considerations when it comes to public access to government records, including BWC video.¹⁷

The most egregious proposal included in the Act would create a new exception to the D.C. FOIA that categorically exempts any BWC video depicting “assaults.” As written, this exemption would appear to allow the MPD to withhold BWC video of

¹⁵ *Smart Redaction™ for Police body-worn video*, PR Newswire (Sept. 14, 2015), <http://www.prnewswire.com/news-releases/smart-redaction-for-police-body-worn-video-300142227.html>; *The Future of FOIA: Find, Redact, Deliver*, axion.io, http://www.axon.io/webinar/follow-up-redaction?mkt_tok=3RkMMJWWfF9wsRohu6jPZKXonjHpfsX%2F4uUIWKC0lMI%2F0ER3fOvrPUfGjI4AT8ZiN6%2BTFAwTG5toziV8R7bNKc1p3doQXhXh (last accessed Oct. 19, 2015).

¹⁶ The MPD also denied the Reporters Committee’s requests for access to BWC videos, stating that it does not have the capacity to redact information in those videos that it states are exempt from disclosure under the D.C. FOIA. See Adam Marshall, *D.C. mayor upholds denial of second request for police body camera videos*, RCFP (Apr. 28, 2015), <http://www.rcfp.org/browse-media-law-resources/news/dc-mayor-upholds-denial-second-request-police-body-camera-videos>; *Reporters Committee appeals FOIA denial for video from D.C. police body cams*, RCFP (Nov. 20, 2014), <http://www.rcfp.org/reporters-committee-appeals-foia-denial-video-dc-police-body-cams>.

¹⁷ See *supra*, note 1.

assaults committed *by law enforcement personnel against civilians*. Yet, this is *precisely* the kind of event that the BWC program is intended to make transparent. It makes no sense that a category of video that the public has the highest interest in obtaining—video showing violence by the police against civilians—would be automatically shrouded in secrecy.

Almost as distressing as the substance of this exemption is its clandestine insertion into the proposed bill. At no point during the Advisory Group’s meetings with the Mayor’s Office was such an exemption discussed. As far as the Reporters Committee is aware, no member of the Advisory Group ever requested or proposed such a broad exemption. It only came to light when the Mayor’s Office transmitted its proposed regulations and legislation to the Council—which occurred *after* the last meeting of the Advisory Group, and with no discussion.

The consequences of exempting all BWC video involving “assaults” from disclosure under D.C. FOIA are not theoretical. In recent days citizens of the District have been focused on the detention of Jason Goolsby, a black teenager reported to the MPD for looking “suspicious.”¹⁸ According to Mr. Goolsby, a police cruiser responding to the call nearly hit him, and officers who detained him “threw [him] on the ground.”¹⁹ There has been widespread outcry regarding the manner of Mr. Goolsby’s detention,

¹⁸ Peter Hermann & Victoria St. Martin, *Detention of black teens by police outside D.C. bank sparks protests*, The Washington Post (Oct. 14, 2015), https://www.washingtonpost.com/local/public-safety/detention-of-black-teens-by-police-outside-dc-bank-sparks-protests/2015/10/13/055203d6-71c1-11e5-9cbb-790369643cf9_story.html.

¹⁹ *Id.*

spurred in part by the public release of a friend’s cellphone video that shows the teenager screaming and being roughly handled on the ground.²⁰

In response to the incident Kevin Donahue, Deputy Mayor for Public Safety and Justice, stated that “[i]f the officers involved here had been wearing body cameras, a recording of the entire incident—from the moment the call came in, to the end of the incident—would be available to those involved, and ultimately to the public.”²¹ But if the officers’ actions—whether with the police cruiser or with the detention—were determined to be an “assault,” then, under the Mayor’s proposed amendments to D.C. FOIA, that bodycam video *would not* be available to the public. Incidents like these are precisely the reason that public access to BWC video, including videos of “assaults,” must be preserved under D.C. FOIA.

There are other troubling amendments to D.C. FOIA proposed by the Act that should, likewise, be rejected. They include the following:

1. The Act imposes unwarranted and burdensome requirements on D.C. FOIA requesters.

The Act would require members of the public to specify not only the time and date of an incident when requesting bodycam video, but also its *location*. There is simply no need for the additional requirement of specifying a location when making requests. The D.C. FOIA already requires requests to “reasonably” describe the public record they wish to access,²² and as such this new requirement is superfluous. There is no geographical

²⁰ See “Mayor Bowser is committed to a fair and thorough review of Monday’s incident”, PoPville (Oct. 15, 2015), <http://www.popville.com/2015/10/mayor-bowser-is-committed-to-a-fair-and-thorough-review-of-mondays-incident/>.

²¹ *Id.*

²² D.C. Code § 2-532(c)

specification requirement imposed by D.C. FOIA for any other public record, and there is no reason for bodycam videos to be any different.

Moreover, this requirement will impose an unwarranted burden on members of the public making requests. It is not clear how precise the requester must be—do they need to specify the quadrant of the event? The ward? The neighborhood? The GPS coordinates? Additionally, there are likely to be many circumstances in which the requester simply does not know the location of the event in question. For example, if a reporter wants a copy of an incident that they know transpired between an officer and a member of the public on a specific date, but they don't know the location of the event, this requirement would inhibit the reporter from even submitting a D.C. FOIA request for that video. It is not clear that the MPD even categorizes or collects the geographical location of BWC videos, so it is puzzling that the requester should have to specify something that would not assist the MPD in locating the record. As long as the requester reasonably specifies the BWC video(s), and the MPD can find it, there is no reason why the specific time, date, *and* location need be provided.

2. D.C. FOIA's timeframe for responding to requests does not need to be altered.

Under the current timeline imposed by D.C. FOIA, an agency has 15 working days to respond to a request, subject to a 10 working day extension.²³ The Mayor's proposal, however, would stretch this timeframe to extraordinary lengths. The Act would permit the MPD a minimum of *45 working days* to respond to a request for BWC video, with a possible 30 working day extension. In total, this would allow the MPD *more than three months* to respond to a straightforward request for BWC video.

²³ D.C. Code § 2-532(c)-(d).

There is simply no need to change the applicable time period for D.C. FOIA requests for BWC video. As noted in the Reporters Committee's previous testimony on this topic,²⁴ the average length of an encounter between an officer and a member of the public is less than 10 minutes. Even without access to the new automated redaction software, such a video could be processed in less than 40 minutes.²⁵ The new automated redaction tools provided by Taser should make it relatively easy for anyone at the MPD to review and redact requested video, and significantly reduce any administrative burden associated with complying with requests for BWC video.²⁶ It is not clear why the MPD needs 45 days, let alone 75 working days to comply with such requests. Members of the public, including reporters, should be able to have access to these public records when they are still timely and of news value, not months later. Accordingly, there should be no changes made to the time period for the MPD to respond to a records request.

3. The new privacy exemptions in The Act are unwarranted and could deprive the public of important information

As the Reporters Committee and other members of the Advisory Group have consistently stated, there is no need to add additional exemptions to D.C. FOIA to protect personal privacy interests. The Reporters Committee reiterates its previous testimony to the Council on this subject.²⁷ To the extent that BWC videos reveal "information of a personal nature" that, if disclosed would "constitute a clearly unwarranted invasion of

²⁴ See *supra*, note 1.

²⁵ See *id.*

²⁶ The introduction of these redaction tools also negates the necessity of the proposed extension of the MPD's response time in situations where they are unable "to procure a vendor to perform the redactions within the original 45 days."

²⁷ See <http://rcfp.org/sites/default/files/2015-05-07-comments-on-dc-police-bodycam.pdf>.

personal privacy,” such information is *already exempt* from disclosure under the D.C. FOIA.²⁸

More specifically, the Reporters Committee objects to the Mayor’s proposal to exempt all BWC videos taken in a personal residence or a place with a “heightened expectation of privacy.” We conveyed our objections to this exemption to the Mayor’s Office in our July 2, 2015 letter, which stated as follows:

During the June 19 roundtable there was some discussion about distinguishing between videos recorded in public places and those recorded in private places, such as an inside an individual's home, for purposes of public access. While the Reporters Committee agrees that the vast majority—if not all—of BWC video recorded in public will not implicate any privacy interest sufficient to exempt it from disclosure, we urge the Mayor’s Office to resist such categorical line-drawing as it attempts to craft sound regulations. The DC FOIA's existing exemption for information in public records that, if released, would constitute a ‘clearly unwarranted invasion of personal privacy,’ D.C. Code § 2-534(a)(2), is both appropriately flexible and more than sufficient to address the privacy concerns that have been raised. The balancing test incorporated into this existing exemption ensures not only that BWC video of a truly sensitive, private nature will not be divulged to the public, but also that BWC video, even if taken in a ‘private’ place, could still be accessible under the DC FOIA when the public interest in that video is especially great. This tested approach to responding to DC FOIA requests that implicate issues of individual privacy is far preferable to any bright-line rule.

A copy of this letter is attached as Exhibit E.

Of particular concern is a situation where an allegation of improper force inside a private residence is made against an officer. Under the proposed exemption contained in the Act, the video of that incident would *never* be subject to public disclosure under D.C. FOIA, regardless of the strength of the public’s interest in seeing it. However, this information *could* be made available under the current privacy exemption, which incorporates a balancing test that weighs the public’s interest against any individual

²⁸ See D.C. Code § 2-534(a)(2).

privacy concerns.²⁹ Accordingly, the current privacy exemption is sufficient to both address privacy concerns and allow the release of video in situations of heightened public interest, and should not be changed.

III. Conclusion

For all of the reasons stated herein, the Reporters Committee strongly urges the Council to reject the proposed amendments to D.C. FOIA contained in the Public Access to Body-Worn Camera Video Amendment Act. We thank the members of the Judiciary Committee for their continued attention to this important issue and their efforts to ensure that the public has access to BWC video in order to promote accountability and transparency.

²⁹ See D.C. Code § 2-534(a)(2).

EXHIBIT A



September 10, 2015

The Honorable Muriel Bowser
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave., N.W.
Washington, DC 20004

Dear Mayor Bowser:

The undersigned organizations are concerned about an apparent short-cutting of crucial input in the final development of policy for public access to video taken by Metropolitan Police Department (MPD) officers' body-worn cameras (BWC). Because of the importance of such access to the goals we share of transparency generally, and police accountability in particular, we ask that you reconsider the present plan that omits a promised step of review so that the final result truly represents the consensus of the Advisory Committee and reflects all sides of the debate.

You recall that our groups have all taken an active interest in transparency issues in your administration. As the BWC plans developed, we joined many in the community pressing the Council to take a thoughtful approach to the topic of public access, as the Council eventually agreed. Thus we supported the Budget Support Act on final passage for its plan requiring a proposed rule to reach the Council by October 1 and mandating an Advisory Committee of identified stakeholders, including the Coalition. Act A21-0148, § 3003(b).

Unfortunately the process has lacked the transparency we believed the Act required, so that it now appears any regulation reaching the Council will lack serious views from the mandated Advisory Committee. Specifically, the schedule initially outlined by the Executive Office of the Mayor to the Advisory Committee called for a draft by August 7, committee comments due September 9, followed by revisions leading to the final draft of proposed rules ready October 1. That plan has been thrown by the wayside.

Three weeks after the planned August 7 date, the Executive Office of the Mayor circulated only a memo providing the barest framework of a proposal. At the Advisory Committee's latest meeting on August 27, officials told the committee that the final proposals, consisting of a hybrid of regulations and legislation, would be released much earlier than planned so as to encourage a Council hearing next month. However, we were under the impression that the Advisory Committee would also be able to review and comment on the detailed final proposal.

We were encouraged by that extra step because the "framework" memo we were given before the August 27 meeting included serious limits on access; the need for further deliberation was clear in that meeting, where discussion revealed the need for further details on several issues. In fact, staff from the Executive Office of the Mayor agreed that it would be premature to rush to judgment on that memo because it was not a detailed final proposal.

Yet, when those details were revealed to the Advisory Committee yesterday, there seemed to be few, if any, changes to the earlier framework. In fact, it seems as though the proposed legislative and regulatory changes have moved further back toward the full exemption you originally proposed. And, though this was the first time we were able to review the actual proposal, it appears that we are not being given any opportunity to comment on them before they are made public.

We conclude the expert and community members of the Advisory Committee mandated by the Council have been given no opportunity for meaningful input into the details of this proposal before it was publicly released with time for the executive branch to consider them before completing its proposals to the Council. We are sorry to see that the Administration has essentially used this Committee for show, trumpeting a collaborative process and concessions when, in fact, there has been little deviation from the originally proposed FOIA exemption.

Please contact Kevin M. Goldberg, President of the D.C. Open Government Coalition, at 703-812-0462 or goldberg@fhhlaw.com if you have any questions.

Sincerely,

Kevin M. Goldberg
President
D.C. Open Government Coalition

Monica Hopkins-Maxwell
Executive Director
American Civil Liberties Union of the Nation's Capital

Delroy Burton
Chairman
DC Police Union

Katie Townsend
Litigation Director
Reporters Committee for Freedom of the Press

cc: Members of the Council of the District of Columbia

EXHIBIT B

October 2, 2015

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Mayor Muriel Bowser
The Mayor's Correspondence Unit
FOIA Appeal
1350 Pennsylvania Avenue, N.W. Suite 316
Washington, D.C. 20004
foia@mayor.dc.gov

Re: Freedom of Information Act Appeal, 2015-FOIA-02760

Dear Mayor Bowser,

We represent *The Reporters Committee for Freedom of the Press* ("RCFP" or the "Reporters Committee"), which submitted a public records request to the D.C. Metropolitan Police Department ("MPD") on April 21, 2015, seeking a narrow category of contracts and other documents relating to the MPD's body worn camera program, and that program's actual and projected costs for taxpayers in the District of Columbia. *See* Ex. A (the "Request"). The Request at issue *did not* request any footage from body cameras. Five months later, on the eve of a D.C. Council hearing on body camera transparency legislation to which the requested records are crucial, the MPD has still not produced a single document. Pursuant to § 2-537 of the D.C. Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531 *et seq.*, this administrative appeal challenges the MPD's constructive denial of the Request.

It is no small irony that MPD has denied public access to information about body worn cameras ("BWCs"), a technology born of a national call for *greater transparency in civilian-police relations*. As MPD Chief Cathy Lanier acknowledged, the MPD adopted BWCs in part to "make our department more transparent."¹ But even as the program rapidly expands, now bolstered by federal funds,² the MPD continues to withhold from the public the very information

¹ Mike DeBonis & Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, THE WASHINGTON POST (Sept. 24, 2014), available at https://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.

² Aaron C. Davis, *D.C. mayor warns of big costs if city must release police body-camera video*, THE WASHINGTON POST (June 23, 2015) available at <https://www.washingtonpost.com/local/dc-politics/dc-mayor->

about the BWC program—the feasibility and costs of compliance with FOIA—that will determine how transparent it will be.

On October 21, 2015, the D.C. Council will consider proposed legislation that will determine the scope of public access to BWC footage. The public is concerned that the status quo fails to provide meaningful transparency,³ and rightly so: the MPD has denied FOIA requests for BWC footage wholesale and without exception on the basis that “no evidence exists” that it has the capability to redact videos for partial disclosure, and the Mayor’s Office has deferred to its claims. Mayor’s Office of Legal Counsel, Appeal No. (“FOIA Appeal No.”) 2015-55. Meanwhile, in this Request, the MPD has failed to produce long-overdue public records that would answer the very question it exploits to deny FOIA requests: what *are* the capabilities of the BWC program when it comes to FOIA compliance? *See* Ex. B; *see also, e.g.*, Ex. C at 2-3 (noting invocation of the supposedly high costs of FOIA compliance as a consideration weighing against full access to body camera footage without providing any specific information about those costs).

The MPD has violated the Reporters Committee’s right, and the public’s right, to obtain these records in a timely fashion as required under FOIA, *before* legislation to which they pertain has been considered. The Reporters Committee therefore respectfully requests that the MPD be directed to immediately produce the improperly withheld records, as further described *infra*, so that they may be adequately disseminated to stakeholders and the public before the October 21 hearing. D.C. Code § 2-537(a)(2).

BACKGROUND

Prior Relevant Requests

On October 2, 2014, the Reporters Committee requested BWC footage from the first day of the program’s trial period. On November 7, 2014, the MPD denied that request in its entirety on the basis that the “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” but would preserve the records “until such time as we are able to produce them in redacted form to you.” *See* Ex. D at 5.

On January 23, 2015, after the MPD posted redacted BWC footage to its YouTube page, the Reporters Committee filed a second FOIA request seeking certain specified, narrow categories of BWC footage and other records. This time, the MPD denied the request on the

[warns-of-big-costs-if-city-must-release-police-body-camera-video/2015/06/23/0b269d14-19d6-11e5-93b7-5eddc056ad8a_story.html](http://www.washingtonpost.com/news/energy-environment/wp/2015/06/23/0b269d14-19d6-11e5-93b7-5eddc056ad8a_story.html).

³ *E.g.*, Peter Hermann and Aaron C. Davis, *As police body cameras catch on, a debate surfaces: Who gets to watch?* THE WASHINGTON POST (Apr. 17, 2015); Paul Wagner, *DC says releasing police body camera footage would come with challenge of blurring faces, protecting private information*, FOX 5 (Apr. 21, 2015).

basis that the MPD had “not yet been able to obtain the necessary resources to perform the necessary redactions.” *See* Ex. E at 4. The Reporters Committee filed an administrative appeal demonstrating the MPD’s redaction capabilities through such evidence as uploaded (and redacted) BWC footage, posted by the MPD with a disclaimer that it was “edited to remove any confidential information,” numerous other instances in which the MPD released redacted video footage from other sources, and publicly released technical specifications from products used by the MPD that show full redaction capabilities. *Id.* at 6–7. The Mayor’s Office denied access to the records, stating in a written decision that the “main issue” was “MPD’s capacity to redact BWC recordings” and, despite evidence to the contrary, crediting the MPD’s “assertion” that it “lacks capacity to redact video.” This Office thus upheld the MPD’s complete withholding of all footage “because of the absence of sufficient evidence to rebut MPD’s claim that it lacks the capacity to redact BWC recordings.” Ex. F at 5 (FOIA Appeal No. 2015-55).

The Request

On April 21, 2015, the Reporters Committee submitted the Request to the MPD, seeking four categories of records: (1) contracts pertaining to BWC hardware and software; (2) procurement communications soliciting vendors for hardware and software; (3) procurement communications seeking vendors for redacting BWC vendors; and (4) records relating to redactions of publicly posted videos on YouTube. Ex. A at 1–2. The Request *did not* seek any body camera footage.

The Constructive Denial

On April 30, 2015, the MPD acknowledged receipt of the Request and invoked a ten day extension pursuant to D.C. Code § 2-532(d). Ex. G. On May 27, the MPD purported to invoke another ten-day extension, stating that it was unable to timely complete its processing of the Request. Ex. H.

June 5 came and went, and the Reporters Committee followed up by email and telephone, asking about the status of the Request. Ex. I. The Reporters Committee followed up again on June 15 and June 16, and on June 22, received a call from Ganet Amare, who stated that MPD had completed its search and located approximately 8,000 responsive records, and would review and produce them on a rolling basis. Ex. J.

On August 12, the Reporters Committee called to enquire about the status of the Request, and was informed by Ganet Amare that no progress had been made. On August 19, the Reporters Committee placed another follow-up call, and on August 21 was informed again, this time by Donald Kaufman, the new MPD FOIA officer, that all of the documents had been assembled and would be reviewed.

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On August 26, 2015, the Reporters Committee followed up again by email to Donald Kaufman, who stated that he had no idea when the MPD would be able to complete processing the Request, and was unwilling to provide a firm date of production. Ex. K.

The Pending BWC Legislation

Meanwhile, the Reporters Committee and other members of the Advisory Committee on BWC legislation petitioned the Mayor for concrete details about the proposed legislation on body camera transparency without success. *See* Ex. L. On September 21, 2015, the Mayor issued a notice of proposed rulemaking, setting out for the first time draft legislation that would govern public access to BWC footage.

A hearing at which the D.C. Council will take up the proposed legislation has been scheduled for October 21, 2015, ***two days after the written disposition of this administrative appeal is due.***

ARGUMENT

“The [D.C. FOIA] was designed to ‘pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.’” *Wash. Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521 (D.C. 1989) (citation omitted); *see also DOJ v. Reporter’s Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (emphasizing public interest in information that “sheds light on an agency’s performance of its statutory duties.”).⁴ Accordingly, records may only be withheld if they meet one of fourteen designated statutory exemptions, which must be “approached with a jaundiced eye” and “narrowly construed, with ambiguities resolved in favor of disclosure.” *Minority Bus.*, 560 A.2d at 521. Because FOIA “does not contemplate an ‘all or nothing’ approach” to records, if a document contains exempt material, it must be produced as redacted rather than withheld. *Id.* at 522; D.C. Code § 2-534(b).

“Unlike the federal FOIA, the D.C. FOIA provides no safe harbor for an agency to delay its response.” *Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 113 A.3d 195, 197 n.3 (D.C. 2015). An agency must produce all records in its possession, or justify its decision not to release documents, within fifteen days, unless “unusual circumstances” warrant a single ten-day extension. D.C. Code §§ 2-532(c) & (d). Notably, even in “unusual circumstances” involving “voluminous” records, FOIA forbids agencies from extending the statutory deadline beyond ten extra days. *Id.* § 2-532(d). The Council, for its part, has mandated that FOIA be construed “with [a] view towards expansion of public access and the minimizations of costs and time delays to persons requesting information.” *Id.* § 2-531.

⁴ The D.C. FOIA was modeled on the federal Freedom of Information Act, *Barry v. Wash. Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law, *Minority Bus.*, 560 A.2d at 521, n.5.

I. MPD Has Unlawfully Withheld Access To Public Records

The MPD has not produced a single document in the five months the Request has been pending. Nor has it provided any valid basis for withholding them. The MPD's constructive denial of the Request violates FOIA and should be promptly remedied by an order "to disclose the record[s] immediately." D.C. Code § 2-537(a)(2).

There is no excuse for the MPD's protracted noncompliance. As in *Prison Legal News v. The District of Columbia*, where the court ordered the District to pay \$75,000 in attorneys' fees, the fact that the MPD claimed that it "was willing to make the documents available" did not alter the fact that it never did: the MPD "functionally withheld the documents" by its "protracted searches for and production of responsive records." 2011 WL 6942577 (D.C. Super. Dec. 1, 2011) (agency's "delayed responses" to a "lawful request had no reasonable basis in law."). Nor do the MPD's putative "extensions" excuse the violation. As the MPD was reminded a month before RCFP filed the Request, FOIA "provides no safe harbor for an agency to delay its response." *Fraternal Order of Police*, 113 A.3d at 197 n.3. FOIA deadlines are statutory, and agencies have no latitude to violate their "strict confines," even if compliance seems unreasonable in the context of a particular request. *The Fraternal Order of Police v. D.C.*, 2011 WL 7040148, at *6 (D.C. Super. Sept. 16, 2011) (rejecting agency's argument that timely compliance would be unreasonable as "legislative in nature"). This is particularly true, where, as here, there is simply no justification for a drawn-out review process because most of the requested records simply do not implicate valid bases for withholding.

The MPD's denial of access to the very public records that would shed light on its BWC FOIA positions creates the appearance of strategic noncompliance by "unwilling official hands" that FOIA was passed to preclude. *Minority Bus.*, 560 A.2d at 521. The MPD has relied on requestors' lack of information about its redaction capabilities to deny public records requests, and is now withholding precisely that information without any legitimate basis for doing so. The MPD already has purchased inexpensive (\$19.99 per month) software that enables novice users to redact body camera footage efficiently, and quotes from external vendors for redaction services for reasonable fees, *see* Ex. M at 8–9. Publicly available evidence suggests that redacting videos is eminently feasible, *see* Ex. E at 5–6, and readily done in other jurisdictions,⁵ but the Mayor's Office has credited the MPD's assertions to the contrary to uphold denials of public access to BWC footage. And, in the context of budgeting, it has now requested millions

⁵ The Reporters Committee for Freedom of the Press, *CFO estimates for cost of releasing DC police body cam footage unsubstantiated, groups say* (June 29, 2015) (reviewing BWC redaction costs and practices in Seattle); Ex. M at 2–3 (reviewing access to body worn camera footage through public records requests in Oklahoma and Denver), available at <https://www.rcfp.org/browse-media-law-resources/news/cfo-estimates-cost-releasing-dc-police-body-cam-footage-unsubstantia>.

of dollars for “FOIA compliance.” The public has a right to the contracting information that sheds light on MPD’s actual capabilities, and the costs of FOIA compliance.

Pursuant to FOIA, this Office “*shall*,” within ten business days, order “*immediate[]*” disclosure of most of the requested records. D.C. Code § 2-537(a)(2) (emphasis added). As further described below, most of the requested records do not implicate valid exemptions and must be immediately disclosed.

II. There Is No Credible Basis For Withholding Requested Records

The Request seeks procurement records relating to completed commercial transactions between the MPD and third-party vendors. These technologies are well-known to the public, the bidding process for these procurements has been concluded, and the invoices have been paid. Records relating to the purchases and the products, particularly redaction costs and capabilities, should be disclosed immediately. As for remaining records that may include exempt information, such as certain types of communications exclusively between MPD staff, the MPD should be directed to promptly review and redact them for production no later than November 1, 2015.

A. The MPD Must Immediately Disclose All BWC Contracts And Agreements

In the first part of the Request, the Reporters Committee sought “[a]ll contracts and agreements between the MPD and providers of BWC hardware and software.” Ex. A at 1. Likewise, the fourth part of the Request sought contracts and invoices relating to redactions of BWC videos published by the MPD. *Id.* at 2. These records must be immediately disclosed in their entirety.

Records relating to contracts and bid proposal materials are “routinely” disclosed under FOIA. *Payne Enters., Inc. v. United States*, 837 F.2d 486, 488 (D.C. Cir. 1988) (chastising agency for repeatedly denying requests for copies of abstracts and offer prices for negotiated contracts “once those contracts had been awarded.”); FOIA Appeal Nos. 2011-26 at 3-5 (May 26, 2011) (ordering disclosure of bid submission, final offer, and pricing terms); 2011-45 at 2-3 (July 13, 2011) (ordering disclosure of order quantities where transportation department over-redacted payment applications from construction contractor); and 2011-50 at 50 (Aug. 3, 2011) (agency disclosed winning proposal and contract); *see also Ctr. for Pub. Integrity v. Dep’t of Energy*, 191 F. Supp. 2d 187, 194 (D.D.C. 2002) (ordering disclosure of bid information following sale of public land); *Mexican Intermodal Equip., S.A. de C.V. v. United States*, 61 Fed. Cl. 55, 56 (2004) (contract award price was released after contract was awarded); *Racal-Milgo Gov’t Sys., Inc. v. Small Bus. Admin.*, 559 F. Supp. 4, 6 (D.D.C. 1981) (ordering disclosure of unit price information for computer equipment under government contract).

Indeed, FOIA itself requires the District to affirmatively disclose its spending on particular products. D.C. Code § 2-536(a)(6) (requiring disclosure of “[i]nformation in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other

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funds by public bodies.”). Certain BWC expenditures have already been disclosed: for example, the District of Columbia has already disclosed its purchase of VieVu Body Worn Camera Charging Cradles on August 26, 2014 in the amount of \$11,585.58, and Wolfcom charging stations in the amount of \$3,436.00.⁶ Likewise, the District purchased body camera “pilot program” software from Dell Computer Corp for \$14,976.80,⁷ and licensed the “VERIPATROL” mobile platform, which permits body worn camera footage to be viewed and relayed through the proprietary network of another vendor,⁸ on September 9, 2014 for approximately \$40,000.⁹

“Disclosure of prices charged the Government is a cost of doing business with the Government,” *Racal-Milgo*, 559 F. Supp. at 6, and the presence of pricing information does not permit the MPD to withhold records. D.C. Code § 2-534(a)(1) exempts from disclosure certain financial information “to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.” *Minority Bus.*, 560 A.2d at 522 (quoting D.C. Code § 2-534(a)(1)). But as the Mayor’s Office recognized when it ordered an agency to disclose bid submissions for a food services contract, final offer and addenda materials, and pricing terms, “there is no *per se* rule with respect to contracting and procurement documents.” FOIA Appeal No. 2011-26 at 4 (May 26, 2011). The fact that financial information about *other* BWC products and services has been disclosed without incident shows that expenditure amounts do not threaten competitive injury, *see Office of People’s Counsel v. Pub. Serv. Comm’n of D.C.*, 955 A.2d 169, 176 (D.C. 2008), and disparate treatment for redaction-related products and services would be improper. Certainly the mere fact that the MPD has purchased a particular product or service does not threaten any competitive harm. The redaction capabilities of the BWC products purchased by the District are widely marketed by their vendors and well known to the public. Ex. D at 7; Ex. M at 9-10.

At bottom, there is simply no non-speculative basis to believe that disclosing the paid costs for contracted services will cause competitive harm. *Ctr. for Pub. Integrity v. Dep’t of Energy*, 191 F. Supp. 2d 187, 194 (D.D.C. 2002) (requiring “disclosure of both aggregate and unit prices”); *Brownstein*, 781 F. Supp. at 33 (ordering disclosure of unit prices); *Racal-Milgo*, 559 F. Supp. at 6 (ordering disclosure of unit price information for computer equipment under

⁶ See D.C. Office of Contracting and Procurement, *Report of Contracting Activity - Part II: PO Report*, at p. 88 (April 28, 2015), available at <http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/Report-of-Contracting-Activity-Part-II-PO-Report.pdf>.

⁷ See D.C. Office of Contracting and Procurement, *Report of Contracting Activity - Part II: PO Report*, at p. 92 (April 28, 2015), available at <http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/Report-of-Contracting-Activity-Part-II-PO-Report.pdf>.

⁸ See Vievu, *VERIPATROL Mobile User Guide*, at p. 1, available at <http://storage.vievu.com/VERIPATROL/documents/VERIPATROL%20Mobile%20User%20Guide.pdf>

⁹ See D.C. Office of Contracting and Procurement, *Report of Contracting Activity - Part II: PO Report*, at p. 91 (April 28, 2015), available at <http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/Report-of-Contracting-Activity-Part-II-PO-Report.pdf>.

government contract). To the contrary, because disclosing pricing and bid information can only harm a bidder by enabling competitors to proffer lower bids, and publicly available evidence (including a price and feasibility study from Baltimore's Mayor that demonstrates non-prohibitive pricing) shows that disclosure of the supposedly prohibitive costs to which the Mayor has alluded cannot harm any contracted vendors. That is, they are *already* being underbid by the licensors of Adobe Acrobat Pro, or outfits that advertise an ability to redact an hour of BWC footage for \$200 or less. Ex. M at 9–10.

In any event, “[i]t is recognized that bids and proposals submitted as part of a procurement are capable of redaction of the exempt portions.” FOIA Appeal No. 2011-08 (Feb. 16, 2011). Even if the MPD could show that disclosure of discrete, particular information could threaten competitive injury, it would at most be *entitled* to redact that information. But to firmly refute any suggestion that the MPD has selectively withheld redaction-related information so that it may continue to categorically resist disclosure of BWC footage, the Reporters Committee respectfully submits that the Mayor's Office exercise its discretion and direct it not to. D.C. Mun. Regs. tit. 1 § 400.4 (“records exempt from mandatory disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest”).

B. Records Relating To MPDs Procurement Efforts Must Be Disclosed

In the second and third parts of the Request, the Reporters Committee sought RFPs and other communications related to BWC procurement efforts. Likewise, in the fourth part of the Request, the Reporters Committee sought communications relating to the redactions of BWC footage posted by the MPD to its YouTube account. Ex. A at 1–2. As discussed above, the awarded contracts and related materials must be disclosed immediately. So too must communications with the outside vendors, including RFPs and product inquiries, relating to BWC products and services that have already been purchased, as well as the unsuccessful bids and supporting materials. Importantly, this includes records relating to the redactions the MPD performed, or caused to be performed, on the BWC videos it posted to YouTube. *Id.* at 2.

FOIA permits an agency to withhold certain “inter-agency or intra-agency” communications, and has been applied to protect certain information received or generated by an agency during the pendency of a particular procurement process. D.C. Code § 2-534(a)(4); *see also* FOIA Appeal No. 2012-15 at 4 (Dec. 23, 2011) (withholding proper under deliberative privilege because “the proposed contract has not been awarded”); FOIA Appeal No. 2012-52 at 3 (June 26, 2012) (same); FOIA Appeal No. 2012-24 at 4 (Feb. 3, 2012) (bid documents properly withheld because “the contracting process is now ongoing.”). But this exemption simply does not apply once contracts have been awarded. *Fed. Open Mkt. Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 360 (1979) (“the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn.”). The Request seeks only records pertaining to consummated procurements. Accordingly, responsive RFPs and related communications with potential vendors about product capabilities, services, and pricing, as well as bids and related

materials from both successful and unsuccessful bidders, must be disclosed. This includes offers and counter-offers with potential vendors, because information about the “negotiating process outside an agency, between itself and an outside party” may not. *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 257–58 (D.C. Cir. 1977).

Concededly, portions of responsive records, including email communications exclusively among MPD staff, that reflect the MPD’s “internal self-evaluation of its contract negotiations, including discussion of the merits of past efforts, alternatives currently available, and recommendations as to future strategy,” may be redacted. *Id.* at 257. In light of the unjustifiable delays to date and the imminence of legislative action on BWC transparency, however, the Reporters Committee respectfully requests that the MPD be directed to complete its review and produce all records responsive to the third part (relating to redaction procurements) before November 1, 2015, and the second part (relating to BWC software and hardware generally) before December 15, 2015. In connection with that task, the Reporters Committee notes that communications may not be redacted merely because they “exchanged some sort of ‘comments’” about pending transactions, or contain “explanations or summaries” of actions or positions taken: redacted portions must reflect genuine deliberations on a specific, unsettled aspect of a negotiation. *Muttitt v. Dep’t of State*, 926 F. Supp. 2d 284, 308 (D.D.C. 2013).

C. Compliance Will Not Reveal Investigative Techniques Not Known to the Public

Though FOIA authorizes agencies to withhold law enforcement records that would “[d]isclose investigative techniques and procedures not generally known outside the government,” body worn camera technology in general, and redaction capabilities in particular, are generally known outside the government and may not be withheld. D.C. Code § 2-534(a)(3)(E). Indeed, the public *itself* called for BWC programs to be adopted, and “[o]fficers in one out of every six departments nationwide are patrolling with body-mounted cameras.” Wash. Att’y Gen. Op. 2014 NO. 8, 2014 WL 6711950, at *3 (Nov. 24, 2014). As discussed above, body camera technologies are well known, heavily marketed, promoted publicly by their vendors, and studied by commissions in cities less inclined to withhold details. “Anyone who is familiar with the media, both television and print, is aware that the police use these and similar techniques in the course of criminal investigations,” and information about BWC technologies, like information about “wired informants and ‘bugs’,” or “eavesdropping, wiretapping, and surreptitious tape recording and photographing,” cannot be withheld under the law enforcement exemption. *Albuquerque Publ’g Co. v. DOJ*, 726 F. Supp. 851, 857–58 (D.D.C. 1989) (noting that “the government should release such information to the plaintiff voluntarily”).

CONCLUSION

For the foregoing reasons, the Reporters Committee respectfully requests that the MPD be directed to produce all responsive records before the D.C. Council convenes on October 21, 2015.

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In the alternative, the Reporters Committee requests that the MPD be directed to *immediately* (before October 21) disclose the categories of records specifically addressed above: (1) all completed contracts and agreements between the MPD and providers of BWC hardware and software, (2) the bid proposals and related materials submitted by winning bidders, (3) all contracts and invoices relating to the redactions of videos published by MPD, and (4) all communications with outside vendors relating to purchased BWC products; and to promptly produce all remaining records on or before November 1, 2015.

For the reasons stated in the Request, and in light of the strong public interest in these records, the Reporters Committee respectfully requests that the MPD be directed to waive any search or reproduction fees.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By Patrick S. Kabat
Chad R. Bowman
Patrick Kabat

Attachments (Exhibits A-L)

Copies (by email with attachments):

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Teresa.quon@dc.gov
Donald.kaufman@dc.gov

Katie Townsend
Adam Marshall
The Reporters Committee for Freedom of the Press
1156 15th Street NW, Suite 1250
Washington, DC 20005
amarshall@rfcp.org
ktownsend@rfcp.org

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Copies (by email without attachments):

Committee on the Judiciary, D.C. Council
Attn: Kate Mitchell, Committee Director
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
kmitchell@dccouncil.us

EXHIBIT C

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR**



Mayor's Office of Legal Counsel

October 16, 2015

VIA ELECTRONIC MAIL

Mr. Patrick Kabat, Esq.

RE: FOIA Appeal 2016-01

Dear Mr. Kabat:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on behalf of your client, the Reporters Committee for Freedom of the Press ("RCFP"). In your appeal, you assert that the Metropolitan Police Department ("MPD") has failed to respond to a request the RCFP submitted to the MPD.

Background

On April 21, 2015, the RCFP submitted a request to the MPD seeking: (1) contracts pertaining to body worn camera ("BWC") hardware and software; (2) requests for proposals and other communications related to MPD's efforts to find vendors for BWC software and hardware; (3) requests for proposals and other communications related to MPD's efforts to find vendors or software for redacting BWC videos; and (4) records, including proposals, communications, contracts, and invoices related to the redaction of MPD videos posted on YouTube and MPD's website.

On October 2, 2015, you appealed to this Office MPD's failure to produce any records, arguing that in the 5 months since RCFP's original request, not a single document has been released, despite numerous assurances by MPD that a review has been underway and that responsive documents would be released on a rolling basis. Moreover, you argue that a public hearing is scheduled for October 21, 2015, on a topic that directly relates to RCFP's FOIA request, and that MPD's lengthy period of noncompliance will inhibit RCFP's ability to fully participate in that hearing.

We notified the MPD of your appeal on October 6, 2015, when we received it. Generally, an agency has 5 business days to provide this Office with a response; however, section 412.6 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR § 412.6) provides that an agency may request an extension. On October 14, 2015, the MPD requested a 5-day extension to respond

to your appeal. In correspondence to this Office on the same date, you submitted a formal opposition to the granting of an extension. You argue that MPD's request for an extension is untimely and inappropriate given MPD's failure to produce any records.

Discussion

It is the public policy of the District of Columbia 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." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is MPD's failure to provide any documents responsive to a request RCFP submitted in April 2015. RCFP's request seeks two categories of documents: (1) procurement records related to providers of BWC hardware and software, and invoices pertaining to redactions of MPD videos; and (2) communications related to MPD's efforts to find vendors for BWC software and hardware. With respect to the first category of records, an MPD FOIA officer notified your client in an email dated April 30, 2015, that for "actual contracts and RFPs for BWC hardwar[e] and software, you should submit a FOIA request with the Office of Contracting and Procurement (OCP) as OCP provides contracting services to MPD."¹ It appears that RCFP has not requested this information from OCP in the intervening months. As a courtesy, in light of the BWC hearing scheduled for October 21, 2015, this Office contacted OCP and asked it to produce the contracting records you seek on an expedited basis. OCP has already provided this Office with the solicitation, offer, and award to Taser International Inc., which we will provide to you under separate cover.

With respect to the second category of records RCFP requested, MPD has indicated in previous correspondence with you/ your client that it has completed its search and identified approximately 40,000 pages of documents. MPD has further indicated that it has been reviewing these documents to release them to RCFP on a rolling basis.

¹ *See* Exhibit G of your appeal.

Conclusion

Based on the circumstances here, and specifically the nearly 6-month delay in producing any documents to RCFP, we will forego our normal practice of permitting an agency to invoke an extension to respond to an appeal. We direct MPD to immediately begin releasing the non-procurement documents in its possession that are responsive to RCFP's requests.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

EXHIBIT D

From: [REDACTED] (MPD)
To: Gersten_Barry (MPD); [REDACTED] (MPD); [REDACTED] (MPD); [REDACTED] (MPD); Greene_Lamar (MPD)
Subject: in-car/ body worn Cam system presentations
Date: Wednesday, October 09, 2013 5:31:53 PM

Team,

Below is a list of 10 key agenda points I identified that the vendor demo presentations should capture. If you have anything to add or would like to modify what I have listed, please let me know. I would like to send this out in advance (by cob Friday) to the scheduled vendor presenters to incorporate in their demos. Vendors have already been advise they only have a total of 90min which includes any historical background of company, ppt, live demonstrations and Q&A.

(10) Key Agenda items should include:

- In car video and audio equipment quality- Need to see and hear clarity of both.
- Body worn video and audio equipment quality- Need to see and hear clarity of both.
- Night Camera video, when facing headlights- how clear is the video? Does the cameras compensate for brightness of lighting(ie headlights) at night?
- Video Compression
- Active Directory compatible
- How easily and securely does back-end move/transfer video from device to VMS?
- Background recording between events
- Low light capable
- What Database version supported?
- Integrated Body Camera/Range/battery –life

Currently we have three vendors scheduled:.

WatchGuard Video- **Date:** October 21st, 2013 **Time:** 1pm -2:30pm
Media Solv- **Date:** October 30th, 2013 **Time:** 3pm- 4:30pm
Safety Vision / ICOP **Date:** October 30th, 2013 **Time:** 4:30- 6pm

New, expanded library hours start **Oct. 1**. More hours for story time. More hours for community meetings. More hours to use free computers. Check out the library's new hours at dclibrary.org/newhours.

Vendor Information			
Vendor	Parasonic	WatchGuard Video	Dat911
Vendor	Two Riverfront Plaza Newark, NJ 07102-5490	415 Century Parkway, Allen, TX 75013	Dat911
Contact	301-965-8872 Joe.Chirco@us.parasonic.com	703-399-6512 mparson@watchguardvideo.com	2021 Challenger Drive, Alameda, CA Ric.Thompson@Dat911.com
Contact			shantshel@safetysystem.com

Video System							
	In Vehicle Camera System		Worn Camera System				
Product Name	4RE		CopVu				
Product Version	Arbitrator 360 HD WV-TW310		Gen II Gen I				
	In Vehicle Camera System		Worn Camera System				
	Data911 – MDV Stand-alone		Data911 – MDV Tethered				
	In Vehicle Camera System		Worn Camera System				
	ICOP 20-20W/ 20-20 Vision		ICOP 20-20W/ 20-20 Vision				
	Flashback3		VIEVU				
	3		2				
	In Vehicle Camera System		Worn Camera System 1		Worn Camera System 2		
	AXON Body & Flex		AXON Body		AXON Flex		
	Same as to the right, vehicle mountable		73000 Series		73000 Series		

Cameras											
In Vehicle Camera System			Worn Camera System			In Vehicle Camera System			Worn Camera System		
Automatic Video Trigger Events	Y-16 triggers	N	Yes	No	8 configurable triggers, crash sensor	Simple on/off/recording, slide switch					
Background Recording Between Events	Y	Y	Yes	No	Configurable, 1-5 fps	-					
Frames Per Second	30		30		Configurable, up to 30 fps						
Resolution	1080P	1280x960	1280 X 720 (720p)	640 X 480	640x480						
Low light Capable	.02Lux	1.0 Lux	Yes (0.85 LUX)	No	.015 LUX	0.5 LUX					
Video Compression	H.264	H.264	H.264 High Profile	MPEG-4	MPEG-4	MPEG-4					
Camera Megapixels	2.1		1		380,000	300,000					
Live Remote	Y	N	Yes	No	Yes, remote streaming	-					
Video Recording	Y	Y	No	No	Yes	Yes					
Video Recording Format	AVI3	AVI	MPEG-2 transport stream - this is the Blu-Ray standard	AVI	MPEG-4	MPEG-4					
Video Viewing Angle / Color?	65 degrees at 29Ft.	180 Degree Horizontal 140 Vertical	Zoom 57.7-251. 68"	71"	52 degrees	71 degrees					
Black and White? Auto switch?	Y, Y, Auto and manual	Y, Y auto	Color	Color	Front Camera Color, infrared mode. Rear Camera Color, infrared projection						
Max number of cameras	5	1	6	1	3 inputs, record 2 simultaneously						
In Vehicle Camera System			Worn Camera System			In Vehicle Camera System			Worn Camera System		
Yes - Lights, Siren, Speed, Mtc, etc.			Yes - Lights, Siren, Speed, Mtc, etc.								
No			Yes - Pre-Event and post-event recording is available for up to 60 seconds. Please note that Continuous Background record is also available to record an entire shift. Frame rates and video quality are adjustable.								
30FPS x 2 cameras			Yes Up to 30 frames per second (fps)	Yes, 30 frames per second (fps)							
720x480 D1, VGA, QVGA			Yes 720x480	Yes 640x480							
Yes down to .03 lux			Near 1 lux								
.0004 lux, Excellent low light picture			N/A								
Proprietary, similar to MPEG4			N/A								
NTSC solution, 5 Mega Pixel			720x480 resolution	640x480 resolution							
Yes, ICP LIVE will stream video			Yes, optional with Patrolsout.	No.							
Typical Sony block type camera			Yes.	Yes.							
Proprietary, DAV very secure			Yes h.264	Yes MPEG-4							
52 wide 12x optical/4x digital			Yes 47 or 61 Degree lens available	71 Degrees							
Auto switch, Color & B/W mode.			Yes: Yes, Please note the front facing camera offers the ability for the officer to also manually select low light recording	Color							
3 inputs, record 2 simultaneously			5	Not applicable.							
In Vehicle Camera System			Worn Camera System 1			Worn Camera System 2					
N/A			Officer Activation Now: Light Bar and TASER Activation on Roadmap	Officer Activation Now: Light Bar and TASER Activation on Roadmap							
N/A			30 Second Pre-Event Buffer Record	30 Second Pre-Event Buffer Record							
N/A			Up to 30	Up to 30							
N/A			640x480 VGA	640x480 VGA							
N/A			Yes, Retina Low Light less than 1 lux	Yes, Retina Low Light less than 1 lux							
N/A			1 GB per hour at optimized, 510 MB at fast upload, and 1.7 GB at high quality	1 GB per hour at optimized, 510 MB at fast upload, and 1.7 GB at high quality							
N/A			0.3	0.3							
N/A			Yes, video buffer through bluetooth	Yes, video buffer through bluetooth							
N/A			No additional stabilization	No additional stabilization							
N/A			mp4	mp4							
N/A			130 Degrees	75 Degrees							
N/A			Color	Color							
N/A			1	1							

Worn Components / Range/ Building Penetration / Battery Type-life/ Size/ Weight	Mic- 5000 Ft., 900MHz/Lithium ion, battery 1 year warranty, 2.17ton, 1.07' wide, 2.97' H, 2 US\$ / Battery Type-life/ Size/ Weight	Built in mic. Battery is 28.3/6" w 3.8/6/15" h 1.87/16 deep. Weight 33LBS. Lithium ion, 3year warranty	1 mile range/superior bldg penetration/ Lithium Polymer battery – 24 hours talk time & 30 days standby/2.875" h x 1.94" W x 1.07" D/2.8 oz	Infinite range (onboard memory/Lithium ion battery – 4 hours record time & 72 hours standby/3.07" x 2.13" W x 0.75" D/3.5 oz	Wireless Mic, 2.4GHz, 1000' line of sight, 4 oz., Lithium 8 hours record, 14 day standby	3.5 oz. Lithium, 4 hours record	2000' range, NiMH type battery (450 mah) 8.5 hr continuous, 134 hr standby.	Range 1000ft. Building Penetration: Yes: independent upon interference/building type. Battery Type: Lithium ion. Battery Life: 10hour continuous recording. Standby: complete charge within 50 minutes. Wireless mic size 1.77" W x .87" D x 2.86" H Wireless Mic Weight 0.15lbs	Range Body worn is not range limited Building Penetration: Yes: body worn system. Battery Type: Lithium ion. Battery Life: 4hours continuous recording. Standby: 72hours standby. Size 3" x 2.13" x .75" Weight 3.5oz	N/A	Rechargeable lithium-ion battery (2500 mAh capacity); 2.6in (W) x 3.3in (H) x 0.8in (D); 3.3oz weight	Rechargeable lithium-ion battery (2500 mAh capacity); Controller 2.6 in (W) x 3.3 in (H) x 0.8 in (D); 3.3 oz weight DVR 0.7 in (W) x 0.8 in (H) x 3.2 in (L); 0.52 oz weight	
Live remote listening	Y	N	Yes	No	No	No	Only from the car (monitor wireless channel from inside the car)			Yes.	No.	Yes, live listening through bluetooth	Yes, live listening through bluetooth
Max number of microphones supported?	3	1	3	1	2 wireless mics, 1 in-vehicle	1	3 Audio Channel/ Dual Cradle Mic base, will record 2 wireless mics simultaneously	3 total 2 wireless; one in-car.	1 microphone built-in	N/A	N/A	1	1

Video/Sound Storage												
	In Vehicle Camera System	Worn Camera System		In Vehicle Camera System	Worn Camera System		In Vehicle Camera System	Worn Camera System		In Vehicle Camera System	Worn Camera System	
How are recording secured in vehicle	Locked enclosure	Secured within camera		Locked in USB Drive/Internal Hard Drive	Internal storage, secure transfer		Lockable CF card	-	Encrypted Data, locked via PW behind screen.	System is body worn and secured by lock and key behind an environmentally sealed door.	N/A	Stored on non-removable, solid state storage (internal device memory)
Average Days storage in Car	Varies based on config	3 days on a 12 hr shift		14 hrs	4 hrs		Configurable	-	1-2weeks	Varies by hours of video recorded each day and the size of SDHC card.	N/A	Store until removed from device
Recording Capacity	Varies on configuration	Up to 32 hours		100 hrs	4 hrs		8-12 hours 8gb, 32-48 hours 32GB	4 hours	14-30 hours	SD card standard size is 8GB; upgradeable to 16GB, 32GB, or 64GB.	N/A	Up to 4, 9, or 13 hours storage (based on quality setting)
Storage type (data card, hard	SSD	SDHC		USB and HDD	Imbedded storage		CF card	Internal	SSD drive	SDHC Card	N/A	Hard Drive
Storage capacity	Up to 1.024TB	32GB		232 GB	4GB		8GB, 32GB	4GB internal	32, 64 gB	Varies based on SDHC storage size	N/A	8 GB
												8 GB

General Features												
	In Vehicle Camera System		Worn Camera System			In Vehicle Camera System		Worn Camera System			In Vehicle Camera System	
Operating Temperature Range	-10 degree C to 50 degree C	-10 degree C to 50 degree C			-40°F - +185°F (Full Industrial)	-4°F - +131°F			-40°C to +85C	-20C to +55C		
Integration with Generic VMS	Possible	Possible		This is possible at which point WatchGuard and DC Metro can discuss what type(s) of integration is/are desired.	This is possible at which DC Metro can discuss what type(s) of integration is/are desired.		No	No	Possible, more research needed.	Not currently available.		
Installed system is tamper proof	Y	Y		Yes	Yes		Yes	Yes	Yes	Yes		Yes
Display speed of vehicle	Y	N/A		No	No		Yes, via GPS readings	-	Yes	Yes, via GPS readings		Yes
Display location of	Yes, GPS coordinates	N/A		Yes	No		Yes, via GPS lat/long	-	Yes, GPS coordinates			Yes

Integrated Body Camera / Range / Battery Type-Life	N/A	Lithium Ion, 1 yr warranty	No	No	-	4 hour	N/A	Integrated Body Camera Yes/Range Not applicable; body camera is standalone unit Building penetration Yes/Not applicable; body camera is standalone unit Battery Type Lithium Ion Battery Life 4-hours continuous record; 72hours standby	Integrated Body Camera Yes Range Not applicable; body camera is standalone unit Building penetration Yes/Not applicable; body camera is standalone unit Battery Type Lithium Ion Battery Life 4-hours continuous record; 72hours standby	N/A	N/A	N/A
Number of components	Trunk or Console- 3 piece	Officer preference 2 piece	4 Components – The DVA installs in the radio console or in the trunk. The Display typically is mounted on the ceiling. The Camera is mounted to the glass behind the rear view mirror. The Microphone (base) is often mounted to the side of the radio console and its antenna is mounted to the windshield.	1-no install applicable	1	-	5 boxes, DVA, J-800X, Front Camera, Rear Camera, Wireless Mic Cradle	4 main components Flashback3 DVR (typically mounted in center console) Front-facing MileWatch 144x zoom camera (typically mounted to windshield or roof) 3.5" LED monitor (typically mounted to windshield or roof) VoiceLink Plus2 wireless microphone (in-car docking station typically mounted on side of center console – optional mounting locations available based on vehicle interior)	1 – body worn camera	N/A	1	2
Typical install			Yes	Manual On and Off	Yes	-		Yes.	Not applicable; user controlled	N/A	No	No
Auto on with ignition	Y	N	Yes	Record button	Yes	Crash Sensor, Siren, Lights, mtc speed, push button, any 12v high or low signal.	Crash Sensor, Siren, Lights, mtc speed, push button, any 12v high or low signal.	Lights	Manual Record	N/A	Yes	Yes
List all available auto record triggers (i.e. voltage change of sirens, etc.)	Lights, Siren, door up to 16 triggers, Any 12v device capable of voltage change	Manual trigger						2 Available Auxiliary Inputs		N/A	Officer Activation Now; Light Bar and TASER Activation on Roadmap	Officer Activation Now; Light Bar and TASER Activation on Roadmap
User login from laptop	Y	N	Yes	No	Yes	-	Yes, only on the "Vision" Model	Yes.	Not applicable.	N/A	Yes	Yes
Active Directory	Y	N	Yes	No	No	-	Yes for the back end solution	Dallas Police Department, TX Units	Not applicable.	N/A	Yes	Yes
Largest Customer in Units	1400 Units	50 units	2,000	50-100			Charles County SO, VA 220 units	550	Oakland Police Department, CA Units	N/A	Good County Sheriff, IL (250)	Cook County Sheriff, IL (250)

Video Management System

	In Vehicle Camera System	Worn Camera System										
Product	Safeserv	Safeserv	Evidence Library	CommanVu	VidNet	Uses VidNet also	INVALT	Digital Evidence Pro	Digital Evidence Pro	N/A	Evidence.com	Evidence.com
Product	80	Y	3.0	Yes	2 xxx	-	1.13	3.5.5	3.5.5	N/A	1.15.1.2	1.15.1.2
Storage	Y	Y	Yes	No	Yes	-	Yes, Manually	Server Based	Server Based	N/A	Yes	Yes
Active Directory	Y	Y	No	No	No	-	YES	User Authentication	Not applicable	N/A	Yes	Yes
Integration with Genetec	Possible	Possible	This is possible at which point WatchGuard and DC Metro can discuss what type(s) of integration is/are desired.	This is possible at which point WatchGuard and DC Metro can discuss what type(s) of integration is/are desired.	No	-	Maybe, need to do more research on Genetec's capabilities	Not Currently Available	Not Currently Available	N/A	Yes, native .mp4 file works in Genetec	Yes, native .mp4 file works in Genetec
1 server per location or 1 central server	Both	Both	Both models supported	Both models supported	Central Server	-	Either, prefer 1 central server	Either configuration can be supported based on the connectivity available between each location, L-3 Mobile-Vision is well versed in providing both solutions.	Either configuration can be supported based on the connectivity available between each location, L-3 Mobile-Vision is well versed in providing both solutions.	N/A	Cloud servers enable access from anywhere	Cloud servers enable access from anywhere

Database version	SQL Server 2008/2012	SQL Server 2008/1012	SQL 2008/SQL 2012	SQL Express	MySQL (no add. license purchase)	SQL 2005, 2008	PostgreSQL	PostgreSQL	N/A	Yes	Yes
Operating System / Version	Windows XP/7-Server 2003/2008/2012	Windows XP/7-Server 2008/2012	Win Server 2008/Win XP / Win 7	Win Server 2008/Win XP / Win 7	Windows XP, 7, Server, SysStorage	Server 2003, 2008R2	Redhat Linux OS	Redhat Linux	N/A	Windows, iOS	Windows, iOS
Browser Client or Installed	Installed client	Installed Client	Both	Installed	Browser	Yes, Insite Client	Browser client – no install client required.	Browser client – no install client required	N/A	Firefox Google Chrome, Internet Explorer	Firefox Google Chrome, Internet Explorer
SSN Storage	Y	Y	Yes	Yes	Yes	Yes	Yes, dependent upon system	Yes, dependent upon system	N/A	Yes, custom	Yes, custom
Case Management	Y	Y	Yes	No	Yes	Yes	Yes	Yes,	N/A	Yes;	Yes;
Video File Formats Supported	AV/DVD/WMV	AV/DVD	All – Case Management supports importing of all file types.	MPEG-4, AVI	MPEG-4	INVALID can manage any file, but can only play DAV files. If Windows associates the file as video, then it will play by double clicking it (i.e. an AVI file uploaded will open in windows media player when double click on inside INVALID.	System uses proprietary format. Video files can be exported and converted into other formats.	System uses proprietary format. Video files can be exported and converted into other formats.	N/A	DIVX, TS, 3GP, ASF, AVI, FLV, MOV, MP4, RM, VOB, WMV, F4V, MPEG, MPG	DIVX, TS, 3GP, ASF, AVI, FLV, MOV, MP4, RM, VOB, WMV, F4V, MPEG, MPG
Digital File Formats Supported	All Except EXE, DLL, or .BAT	All Except EXE, DLL, or .BAT	All – Case Management supports importing of all file types.	MPEG-4, AVI	MP4, AVI and wma export	.DAV	Via Case Management, nearly any digital file is capable of being stored on the Video Management System	Via Case Management, nearly any digital file is capable of being stored on the Video Management System	N/A	JPEG, JPG, GIF, PNG, BMP, TIFF, TIF, MP3	JPEG, JPG, GIF, PNG, BMP, TIFF, TIF, MP3
Video Viewers Supported	Windows Media Player, VLC DVD software for PC, AVI Player(Panasonic provided)	Windows Media Player, VLC DVD software for PC, AVI Player(Panasonic provided)	48F native files play in Evidence Library. Windows Media player (older versions require an I284 codec), VLC (a popular freeware player), and many other media players.	Windows Media player or any other, ai compatible player;	Windows Media DV, CD export	It uses Associations in Windows, so any program that you associate with a certain file type.	Proprietary viewer is required. System can produce "consumer" DVDs which are playable in "consumer" DVD players for use in court, etc. Video files can also be exported from the system and converted into other formats.	Proprietary viewer is required. System can produce "consumer" DVDs which are playable in "consumer" DVD players for use in court, etc. Video files can also be exported from the system and converted into other formats.	N/A	Quicktime, Windows Media Player, VLC and Flash	Quicktime, Windows Media Player, VLC and Flash

Project Support											
In Vehicle Camera System			Worn Camera System			In Vehicle Camera System			Worn Camera System		
Coverage Hours	24/7	24/7	Staffed call center during business hours of 8-5 central time with after-hours emergency support.	Staffed call center during business hours of 8-5 central time with after-hours emergency support.	8-5 PT	8-5 PT	24 hours pending working hours	7am-7pm Monday thru Friday	8AM to 8PM EST MON-FRI	N/A	24/7 Support
Callback SLA	Y < 2 hours, can customize	Y < 2 hours, can customize	WatchGuard's Service Desk is available from 8am-5pm CST. With average hold times of less than 5 minutes, you never need to wait for a callback. During business hours, you always speak to a live technician. For after hours emergencies, support can be reached on a separate phone number. Callbacks to this number can be expected within 2 hours.	WatchGuard's Service Desk is available from 8am-5pm CST. With average hold times of less than 5 minutes, you never need to wait for a callback. During business hours, you always speak to a live technician. For after hours emergencies, support can be reached on a separate phone number. Callbacks to this number can be expected within 2 hours.	Optional	Optional			Critical Support (Priority 1) Acknowledgment within 1 hour Standard Support (Priority 2-3) Acknowledgment within 1 hour	Critical Support (Priority 1) Acknowledgment within 1 hour Standard Support (Priority 2-3) Acknowledgment within 1 hour	N/A
In Vehicle Camera System			Worn Camera System			In Vehicle Camera System			Worn Camera System		
In Vehicle Camera System			Worn Camera System			In Vehicle Camera System			Worn Camera System		
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In Vehicle Camera System											

Resolution SLA	Yes, can be customized	Yes, can be customized	WatchGuard Video will work with your agency to provide the fastest resolution to any critical issues. However, system changes, feature requests, and non-critical fixes may be rolled into a future software/firmware release.	WatchGuard Video will work with your agency to provide the fastest resolution to any critical issues. However, system changes, feature requests, and non-critical fixes may be rolled into a future software/firmware release.	Optional	Optional	Parts shipped in 48 hours		Critical Support (Priority 1) Resolution initiated within 4 hours Standard Support (Priority 2-3) Resolution initiated within 24 hours	Critical Support (Priority 1) Resolution initiated within 4 hours Standard Support (Priority 2-3) Resolution initiated within 24 hours	N/A	Can be supplied at request	Can be supplied at request
Tier Definitions	Y- up to 3	Y- up to 3	WatchGuard has only one Tier	WatchGuard has only one Tier	Optional	Optional	N/A		Priority 3 - Product feature and/or administration questions. Low severity. Priority 2 - Minor feature/product failure, convenient workaround exists. This may require servicing or repair of one or more components. If service or repair is required, we will issue an RMA number and instruct your representative to return the defective components to us or a designated service center or third party provider. Advance replacement of components will be at the discretion of L-3 Mobile-Vision. Priority 1 - Product or major feature failure or data corruption. The		N/A	24/7 support regardless of tier	24/7 support regardless of tier

EXHIBIT E

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July 2, 2015

VIA EMAIL

Dear Mr. Donahue and Mr. Gil,

The Reporters Committee for Freedom of the Press welcomes the opportunity to provide input on the implementation of a body-worn camera (“BWC”) program for the D.C. Metropolitan Police Department (“MPD”), and to emphasize the important role that transparency will play in ensuring that any such program is successful in increasing police accountability and community confidence in the MPD. As you work to draft proposed regulations to present to the public and the D.C. Council, we urge you to consider the testimony we submitted to the Council’s Committee on the Judiciary on May 7, 2015. In addition, in response to the invitation you extended to participants at the June 19 roundtable to provide additional comments during this time period, we wanted to highlight three key issues:

First, we reiterate that the D.C. Freedom of Information Act, D.C. Code §§ 2-531 *et seq.* (“DC FOIA”), is and should be the legal framework for providing the press and the public access to government records, including BWC video, created by the MPD. The D.C. Council underscored that point when it passed the 2016 BSA, which rejected Mayor Bowser’s proposal for a wholesale exemption of BWC video from disclosure under the DC FOIA and, instead, required the Mayor’s Office to promulgate rules that provide “public access to body-worn camera recordings.” The BSA thus reaffirms that BWC video, like all public records created by government agencies, are subject to the DC FOIA, and should be treated accordingly.

There appeared to be some misunderstanding among at least some of the participants at the June 19 roundtable concerning the DC FOIA. Under the statute, *only* non-exempt records that are in the possession of the D.C. government must be released, and only *after* a request for those records is made. *See* D.C. Code § 2-532(a). There is no legal requirement that *all* government records—bodycam video or otherwise—be released to the public.¹

Second, an issue that continues to be raised is how best to protect legitimate privacy interests of individuals recorded by MPD bodycams. During the June 19 roundtable there was some discussion about distinguishing between videos recorded in public places and those recorded in private places, such as an inside an individual's home, for purposes of public access. While the Reporters Committee agrees that the vast majority—if not all—of BWC video recorded in public will not implicate any privacy interest sufficient to exempt it from disclosure,² we urge the Mayor's Office to resist such categorical line-drawing as it attempts to craft sound regulations. The DC FOIA's existing exemption for information in public records that, if released, would constitute a "clearly unwarranted invasion of personal privacy," D.C. Code § 2-534(a)(2), is both appropriately flexible and more than sufficient to address the privacy concerns that have been raised. The balancing test incorporated into this existing exemption ensures not only that BWC video of a truly sensitive, private nature will not be divulged to the public, but also that BWC video, even if taken in a "private" place, could still be accessible under the DC FOIA when the public interest in that video is especially great. This tested approach to responding to DC FOIA requests that implicate issues of individual privacy is far preferable to any bright-line rule.

Third, the Reporters Committee is dismayed by recent public statements made by Mayor Bowser regarding purported concerns relating to the cost of complying with DC FOIA requests for bodycam video. The Mayor has not disclosed the basis for these purported concerns, and what information has been reported about the basis of those concerns appears to be contradicted by publicly available information. Moreover, it is entirely unclear why these cost concerns were not raised during the June 19 roundtable, since both the MPD and the Mayor's Office must have been aware of what the Mayor has now indicated she believes to be a significant issue.

Specifically, the Mayor has stated in recent days that it is her understanding that it will take an additional \$1.5 million for the MPD to comply with requests by the press and the public for access to bodycam video under the DC FOIA. No details about how this

¹ Nevertheless, we would encourage the MPD and the Mayor's Office to proactively release to the public as much information pertaining to the BWC program as possible. In particular, we recommend, as detailed below, that the MPD make metadata from its BWC program publicly available in order to facilitate more targeted requests for BWC video under the DC FOIA.

² *See, e.g., Mark v. Seattle Times*, 635 P.2d 1081, 1094 (Wash. 1981) ("On the public street, or in any other public place, the plaintiff has no legal right to be alone; and it is no invasion of his privacy to do no more than follow him about and watch him there. Neither is it such an invasion to take his photograph in such a place, since this amounts to nothing more than making a record, not differing essentially from a full written description, of a public sight which anyone would be free to see.") (quoting W. PROSSER, TORTS 808-09 (4th ed. 1971)).

figure was reached have been released to the public, though it has been reported that it is based on a calculation that involves the cost of hiring four new full-time employees and paying a contractor \$600 per hour to redact video.³ Unfortunately, neither the Reporters Committee nor any member of the public has been given the information necessary to evaluate these estimates.⁴

To be clear, the DC FOIA already contains a cost-recovery mechanism that allows agencies to charge for the cost of searching, reviewing, and making copies of records upon a request. D.C. Code § 2-532(b).⁵ Therefore, it is likely that many of the requests for bodycam video that the MPD may receive will be revenue-neutral. Moreover, and in any case, publicly available information indicates that the Mayor's cost estimates are excessive and unfounded. It has been reported that her estimate is based on anticipated requests for 4,500 videos.⁶ But as of April 17, however, the MPD had received just seven DC FOIA requests for bodycam video— at least five of which were submitted by either the Reporters Committee or The Washington Post.⁷ It is inconceivable that these seven requests, made over the course of six months, can be extrapolated to result in an estimate of 4,500 video requests per year. Similarly, the estimate of \$600 per hour for a contractor to redact video appears excessive. As noted in the testimony we presented to the D.C. Council, estimates given to both the Reporters Committee and the Baltimore City working group on bodycams are closer to \$50 an hour. In short, the cost estimates that appear to form the basis of the Mayor's concerns are questionable at best, and should not be used as a justification to deny the press and the public access to bodycam video under the DC FOIA. We encourage the Mayor's Office and the CFO to provide the public with the basis for these estimates as soon as possible, including any cost analyses that have been performed, so that we and other members of the public may fully consider and evaluate that information, and attempt to find solutions that are both fiscally responsible and ensure the MPD's compliance with its obligations under DC FOIA.

It should be noted that while other police departments around the country have voiced concerns about the cost of BWC programs, those concerns are typically related to the fiscal impact associated with the storage and retention of BWC video. It is our understanding, based on representations made at the June 19 roundtable, that this is not a concern for the MPD, as the contract it has negotiated with Taser provides for cloud-based storage at a cost that is not tied to volume. That is good news for the citizens of

³ Aaron C. Davis, *D.C. mayor warns of big costs if city must release police body-cam video*, THE WASHINGTON POST (Jun. 23, 2015), <http://perma.cc/899U-ZWE8>.

⁴ The Reporters Committee has been attempting to obtain such information for quite some time. On April 21, 2015, the Reporters Committee submitted a DC FOIA request to the MPD for records related to, among other things, the costs it has already incurred for redacting BWC video, and any RFPs for redaction services. While the MPD has acknowledged that it has numerous records responsive to that request, it has yet to provide any of them to the Reporters Committee.

⁵ These fees are limited to the cost of duplication when made by educational, scientific, or news media organizations. D.C. Code § 2-532(b-1)(2).

⁶ Aaron C. Davis, *supra* note 2.

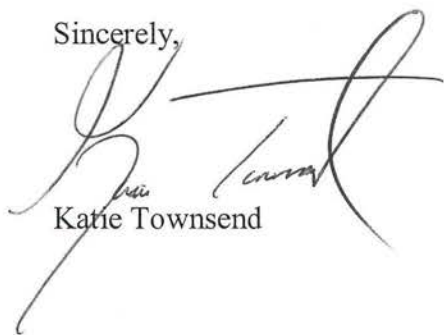
⁷ Peter Hermann & Aaron C. Davis, *As police body cameras catch on, a debate surfaces: Who gets to watch?*, THE WASHINGTON POST (Apr. 17, 2015), <http://perma.cc/WN2Q-X93N>.

D.C., and should enable the MPD both to retain BWC video for an appropriate length of time—a period no shorter than six (6) months for any video—and create cost savings that can be used to facilitate the MPD’s compliance with DC FOIA when it comes to requests for BWC video.

The Reporters Committee also strongly urges that the draft regulations presented to the public and the D.C. Council for approval require the MPD to routinely publish metadata that will enable requesters to make more informed and, accordingly, more targeted requests for BWC video. The Seattle Police Department, for example, maintains an online database (available at <https://data.seattle.gov/view/bj92-due5>) that contains an ID for all its body camera videos accompanied by other information, including the date and time the recording started and stopped, the officer who recorded the video, the general subject matter of the video or the type of incident involved, and whether the video has been flagged for some reason, such as because it was recorded inside a home or a hospital, or because it is evidence in an investigation. The database also contains YouTube identifiers that allow the public to view a heavily blurred, over-redacted version of most BWC videos. Creating such a system in DC would not only give the public valuable information on how the MPD’s BWC program is operating, but would also enable most DC FOIA requesters to make more specific and targeted requests for videos. Given that the MPD already maintains this metadata, as represented at the June 19 roundtable, such a program should be relatively easy to implement. Ideally, such a database would be coupled with the automatic publication of most over-redacted videos, as Seattle does. The Reporters Committee is more than happy to assist the Mayor’s Office or the MPD in reaching out to developers and coders who can assist in the creation of such a system. Proactive disclosure of metadata information and over-redacted videos will either eliminate many requests for videos entirely or dramatically reduce the effort required to respond.⁸ Regulations that require such a system to be implemented would benefit the MPD, the press, and the city as a whole.

The Reporters Committee appreciates the time and effort you are devoting to preparing these draft regulations. We look forward to continuing our dialogue with you over the coming months as the rules for facilitating public access to records from the MPD’s BWC program are finalized.

Sincerely,



Katie Townsend



Adam A. Marshall

⁸ See Bill Schrier, *The future of police video: Inside the Seattle PD’s workshop on wearable cameras*, GeekWire (Jun. 23, 2015), <http://perma.cc/7EXU-FD3V> (“One news organization asked for 300 minutes of video of the 2015 May Day protests, but after viewing the over-redacted video, reduced that request to just 48 minutes, simplifying the work of the Public Records Unit to redact it.”).