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October 21, 2019

Honorable Charles Allen, Chairman  
Committee on the Judiciary and Public Safety  
District of Columbia Council  
Room 412, John A. Wilson Building  
1350 Pennsylvania Ave. NW  
Washington, D.C. 20004

Dear Chairman Allen,

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) respectfully submits the following testimony to the Committee on the Judiciary and Public Safety for the roundtable, “Five Years of the Metropolitan Police Department Body-Worn Camera Program: Reflections and Next Steps.” We thank the Committee for its continued attention to this important topic, and for the opportunity to provide testimony concerning the importance of press and public access to body-worn camera videos under the D.C. Freedom of Information Act (“DC FOIA”). D.C. Code §§ 2-531, *et seq.*

The Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee is a nationwide leader in educational and advocacy efforts relating to public access to law enforcement records, including body-worn camera footage, including through its national BWC legislation and policy map.<sup>1</sup> The Reporters Committee was one of the organizations designated by the D.C. Council in 2015 to consult with the Mayor on issues surrounding the Metropolitan Police Department’s (“MPD”) body-worn camera (“BWC”) program.<sup>2</sup>

***Timely access to BWC video is essential for journalists to inform the public about the activities of law enforcement in the District.***

Washington, D.C. is one of many municipalities across the country that have adopted BWC technology. In December 2016, MPD led the nation by deploying approximately 2,800 BWCs across the District. As of December 2018, this had grown to more than 3,100 cameras.<sup>3</sup>

<sup>1</sup> Reporters Committee for Freedom of the Press, *Access to police body-worn camera video*, [www.rcfp.org/bodycams](http://www.rcfp.org/bodycams).

<sup>2</sup> D.C. City Council, Fiscal Year 2016 Budget Support Act of 2015 (Bill 21-158), <http://lims.dccouncil.us/Download/33645/B21-0158-Engrossment.pdf>

<sup>3</sup> Council of the District of Columbia, <https://dccouncil.us/wp-content/uploads/2019/09/Five-Years-of-the-Metropolitan-Police-Departments-Body-Worn-Camera-Program.pdf>.

The use of BWC technology can be a positive step toward ensuring that the MPD is transparent and accountable to the public, but only if the press and the public have timely access to the video records created through the use of this technology. Access to BWC videos by members of the news media in particular is critical to ensuring that the public understands actions taken by law enforcement officers, especially in the context of use-of-force incidents.

During the last five years, news media access to MPD BWC videos has enabled reporting on incidents that would not have been fully understood by the public without access to this video, including incidents that resulted in the lethal use of force by MPD officers. For example, following the 2016 fatal shooting of Gerald Hall by MPD officers, there were conflicting reports about whether Mr. Hall had a weapon at the time of the shooting, raising questions about the officers' conduct and prompting protests.<sup>4</sup> Public release of BWC video of the incident enabled the news media to walk the public through the video moment by moment, pausing at crucial points to show that Mr. Hall did, in fact, have a knife at the time of the shooting, and that his girlfriend had a cut on her arm.<sup>5</sup>

Access to BWC video has also facilitated reporting about cases where use of force by MPD officers was determined to be unjustified, such as the 2016 fatal shooting of Terrence Sterling.<sup>6</sup> MPD officer Brian Trainer opened fire when Mr. Sterling's motorcycle struck the door of his police cruiser as he was exiting the vehicle. Mayor Muriel Bowser eventually released BWC footage of the aftermath of the incident—but only after “weeks of tension, protests, and conflicting accounts” about what had occurred.<sup>7</sup> The BWC video shows Mr. Sterling laying on the ground in a pool of blood, with MPD officers administering aid.<sup>8</sup> Officer Trainer's own BWC was not activated during the incident,<sup>9</sup> which prompted the Mayor to make changes to the MPD's BWC policy.<sup>10</sup> Access to the BWC video that was captured and released ultimately helped journalists better inform the public about the incident.<sup>11</sup>

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<sup>4</sup> See Tom Roussey, *Family Says Man Killed in Police-Involved Christmas Day Shooting in D.C. was 'not armed'*, ABC7: WJLA (Dec. 27, 2016), <http://bit.ly/2oEvQmc>.

<sup>5</sup> See Garrett Haake, *Body Camera Video Shows D.C. Man Armed with Knife When Shot by Police*, WUSA9 (updated Jan. 5, 2017), <http://on.wusa9.com/2BN51W7>.

<sup>6</sup> Delia Goncalves, *Officer 'broke policy' in fatal shooting of Terrence Sterling*, WUSA9 (Dec. 5, 2017, 2:23 PM), <https://www.wusa9.com/article/news/local/dc/officer-broke-policy-in-fatal-shooting-of-terrence-sterling/65-496940740>.

<sup>7</sup> Christina Sturdivant, *D.C. Releases Terrence Sterling Video, Identifies Officer Who Shot Him*, DCist (Sept. 27, 2016, 2:21 PM), <https://dcist.com/story/16/09/27/terrence-sterling-video/>.

<sup>8</sup> *Id.*

<sup>9</sup> Keith L. Alexander, *District reaches \$3.5 million settlement with family of unarmed motorcyclist shot dead by police officer*, Wash. Post (Feb. 21, 2018, 3:10 PM), [https://www.washingtonpost.com/local/public-safety/dc-settles-with-family-of-fatally-shot-unarmed-motorcyclist-by-police-officer-for-35-million/2018/02/21/4a732138-159e-11e8-8b08-027a6ccb38eb\\_story.html](https://www.washingtonpost.com/local/public-safety/dc-settles-with-family-of-fatally-shot-unarmed-motorcyclist-by-police-officer-for-35-million/2018/02/21/4a732138-159e-11e8-8b08-027a6ccb38eb_story.html).

<sup>10</sup> Christina Sturdivant, *D.C. Updates Police Body Camera Policy After Death Of Terrence Sterling*, DCist (Sept. 15, 2016), <https://dcist.com/story/16/09/15/bodyworn-cameras-policy-update/>.

<sup>11</sup> Mark Segreaves and Gina Cook, *Officer Who Killed Terrence Sterling to Be Fired*, NBC4 (June 15, 2018, 5:06 PM), <https://www.nbcwashington.com/news/local/Officer-Who-Killed-Terrence-Sterling-Fired-485701821.html>.

Earlier this year, access to BWC video facilitated reporting about an incident that resulted in four MPD officers being reprimanded.<sup>12</sup> In 2018, four MPD officers approached a driver near the Southwest Waterfront after they found him parked in a no-parking zone with his engine running.<sup>13</sup> The officers detained the driver for more than an hour, subjecting him to two field sobriety tests and a K-9 search.<sup>14</sup> BWC video of the incident enabled the public to see what occurred step by step, facilitating an accurate understanding of the officers' actions that led them to be reprimanded by the D.C. Office of Police Complaints.<sup>15</sup>

BWC video can provide the public with a more accurate, complete, and objective understanding of law enforcement actions, but only if the press and public have access to such video, and only if such access is timely. As the sixteen-day delay in the release of BWC video from the aftermath of the fatal shooting of Terrence Sterling illustrates,<sup>16</sup> the MPD and the Mayor's office can do better in ensuring timely access for the news media to report on matters of public concern.

***MPD should take additional steps to ensure BWC video of controversial incidents are being retained.***

MPD faced a record number of complaints (780) in 2018.<sup>17</sup> In order for journalists to report effectively and accurately about such matters it is imperative that BWC videos of controversial incidents, including use-of-force incidents and interactions that prompt complaints, are retained by the MPD so that they can be released under the DC FOIA.

A DC FOIA request submitted by WUSA9 in July 2018 for records related to an interaction involving an MPD officer that led to a civil rights lawsuit against the MPD illustrates the need to ensure that BWC video is being properly retained in accordance with MPD policy. WUSA9's DC FOIA request for BWC video of a stop and frisk of M.B. Cottingham by MPD Officer Sean Lojacono on September 27, 2017, was denied on the ground that the MPD had "purged" the video.<sup>18</sup> The incident in question involved an allegation by Mr. Cottingham that he was improperly touched by Officer Lojacono during the stop.<sup>19</sup> While a cellphone video of the incident was posted online,<sup>20</sup> it only shows one angle. Because the incident sparked an internal

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<sup>12</sup> Eric Flack, *Body cam shows DC police traffic stop that led to officer reprimand*, WUSA9 (July 9, 2019, 1:31 PM), <https://www.wusa9.com/article/news/local/dc/we-cant-do-that-body-cam-shows-dc-police-traffic-stop-that-led-to-officer-reprimand/65-ffb7e0d7-7474-4192-af29-d05b1863a100>.

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

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Jay Korff, Sam Ford and Brianne Carter, *VIDEO: D.C. police releases body-cam footage in shooting death of Terrence Sterling*, ABC7: WJLA (Sept. 27, 2016), <https://wjla.com/news/local/mayors-office-to-release-police-body-cam-footage-in-shooting-death-of-terrence-sterling>.

<sup>17</sup> *See supra* note 12.

<sup>18</sup> Eric Flack, *DC Police: Body cam video of questionable search 'purged'*, WUSA9 (Oct. 25, 2018, 2:52 PM), <https://www.wusa9.com/article/news/local/dc-police-body-cam-video-of-questionable-search-purged/65-608071618>.

<sup>19</sup> Eric Flack, *Lawsuit filed against DC cop claiming man's rights were violated*, WUSA9 (July 18, 2018, 10:50 AM), <https://www.wusa9.com/article/news/crime/stop-and-frisk/he-stuck-his-finger-in-my-crack-lawsuit-filed-against-dc-cop-claiming-mans-rights-were-violated/65-575086119>.

<sup>20</sup> *Id.*

investigation and led to the eventual dismissal of the officer from the force,<sup>21</sup> BWC video of the incident should have been retained because the footage met the standard for retention under MPD's policy. The MPD's "purge[]" of the video deprived the press—and, thus, the public—of information about an incident that resulted in the dismissal of an officer and a legal settlement paid by MPD.<sup>22</sup>

Transparency is necessary for public accountability. Not retaining BWC video of controversial incidents prevents communities from evaluating the conduct of police officers and police departments. MPD should ensure that such videos are retained and work as quickly as possible to release BWC video when it is requested by journalists and members of the public. Having officers better understand department policies surrounding record retention through more training could also improve MPD's compliance with its legal obligations.

***The Reporters Committee is gathering information about local journalists' experiences with access to MPD BWC video, which it will share with the public and the D.C. Council.***

Over the coming weeks, the Reporters Committee will be working to gather information about local journalists' experiences with requesting and obtaining access to BWC video from the MPD. The Reporters Committee plans to share its findings with the public and the D.C. Council to facilitate further discussion of the important issues raised by this roundtable.

As police departments around the country adopt body-worn camera programs, our nation's capital can and should serve as a model of transparency and accountability. The Reporters Committee thanks the members of the Judiciary and Public Safety Committee for their continued attention to this important issue and their efforts to ensure press and public access to BWC video.

Sincerely,



Melissa Wasser  
Policy Analyst

cc: At-Large Councilmember Anita Bonds  
Ward 3 Councilmember Mary M. Cheh  
Ward 2 Councilmember Jack Evans  
Ward 7 Councilmember Vincent C. Gray

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<sup>21</sup> Eric Flack, *MPD officer reacts after board upholds firing for improper body searches*, WUSA9 (Apr. 17, 2019), <https://www.wusa9.com/article/news/crime/stop-and-frisk/grateful-for-the-opportunity-mpd-officer-reacts-after-board-upholds-firing-for-improper-body-searches/65-af07936e-96bb-4d12-add6-9cfec0343bb3>.

<sup>22</sup> Natalie Delgadillo, *Settlement Reached With D.C. Police After 'Inappropriate Touching' During Stop-And-Frisk*, WAMU 88.5 (Dec. 6, 2018), <https://wamu.org/story/18/12/06/settlement-reached-with-d-c-police-after-inappropriate-touching-during-stop-and-frisk/>.