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VIA EMAIL AND U.S. MAIL

April 3, 2015

**RE: DC Freedom of Information Act Appeal (2015-FOIA-01380)**

Dear Mayor Bowser,

This is an appeal of an adverse determination under the D.C. Freedom of Information Act, D.C. Code § 2-531 *et seq.* ("DC FOIA"), by the Metropolitan Police Department ("MPD"), and submitted on behalf of the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee").

Founded in 1970, the Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding and advancing the First Amendment's guarantee of a free press, and ensuring the public's right to be informed, through the news media, about the government. Through its DC FOIA request, the Reporters Committee sought certain categories of videos from Body Worn Cameras ("BWC") used by MPD officers, and specified related records.

Notwithstanding the MPD's acknowledgement that BWC videos are public records subject to DC FOIA, and the MPD's representations that use of BWC by law enforcement officers would make the department more transparent and more accountable to the public, the MPD has denied the Reporters Committee's request on the basis of its claim that it purportedly lacks the technological capability to redact BWC video. However, as discussed in more detail below, the MPD's own YouTube page clearly demonstrates that the MPD has redacted BWC videos in order to disseminate

them to the public, and belies its claim that it lacks the technological ability to do so. Thus, the MPD's primary stated basis for denying the Reporters Committee's request is meritless. If BWC videos are not open to the public, as required by the DC FOIA, they can do nothing to improve community-law enforcement relations. Moreover, at least \$2,300,000 of the public's money has already been spent on purchasing BWCs,<sup>1</sup> and the public has a right to the records that reflect the efficacy of their operation.

In your State of the District address this week, you stated that "[a]ccountability is embedded in everything this administration does."<sup>2</sup> The Reporters Committee respectfully asks you to fulfill this promise and reverse the denial of its DC FOIA request.

## FACTS

### I. The MPD's BWC Program

In the wake of numerous instances of police misconduct across the nation, and in an effort to promote a more professional and accountable police force, the MPD announced earlier this year that it would launch a six-month pilot program whereby some of its officers would wear BWC to record their interactions with civilians.<sup>3</sup> The MPD's BWC pilot program was launched on October 1, 2014,<sup>4</sup> and is designed to "enhance service to the community by accurately documenting events, actions, conditions, and statements made during citizen encounters, traffic stops, arrests, and other incidents."<sup>5</sup> In a September 2014 press conference regarding the launch of the BWC pilot program, MPD Chief Cathy Lanier stated that use of BWC would, among other things, "make our department more transparent"<sup>6</sup> and "establish a record of police conduct."<sup>7</sup> On March 31,

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<sup>1</sup> Letter from Jeff DeWitt to Mayor Vincent Gray (Aug. 15, 2014), [http://mpdc.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/14-EC3\\_3rd%20Qtr%20Emergency%20and%20Contingency%20Cash%20Reserves%20-%20June%2030,%202014\\_Sent%208-25-14.pdf](http://mpdc.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/14-EC3_3rd%20Qtr%20Emergency%20and%20Contingency%20Cash%20Reserves%20-%20June%2030,%202014_Sent%208-25-14.pdf)

<sup>2</sup> Muriel Bowser, *State of the District Address*, DC.GOV (Mar. 31, 2015), <http://mayor.dc.gov/release/mayor-bowser%E2%80%99s-state-district-address>.

<sup>3</sup> See Executive Office of the Mayor, *Mayor Gray and Chief Lanier Announce Metropolitan Police Department's Body-Worn Camera Pilot Program*, DC.GOV (Sep. 24, 2014), <http://mayor.dc.gov/release/mayor-gray-and-chief-lanier-announce-metropolitan-police-department%E2%80%99s-body-worn-camera-pil-0>.

<sup>4</sup> Andrea Noble, *D.C. Council panel to hold hearing on police tactics Wednesday Night*, THE WASHINGTON TIMES (Oct. 8, 2014), <http://www.washingtontimes.com/news/2014/oct/8/dc-council-panel-to-hold-hearing-on-police-tactics/>.

<sup>5</sup> *What's New*, MPD (Sep. 26, 2014), [http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/release\\_content/attachments/wn\\_140926.pdf](http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/release_content/attachments/wn_140926.pdf).

<sup>6</sup> Mike DeBonis and Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, THE WASHINGTON POST (Sep. 24, 2014), [http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804_story.html).

<sup>7</sup> Associated Press/NBC4 Washington, *Group of D.C. Police Officers to Begin Testing Body-Worn Cameras*, NBC WASHINGTON (Sep. 24, 2014), <http://www.nbcwashington.com/news/local/DC-Chief-to-Discuss-Body-Cameras-for-Officers-276893401.html>.

2015, you announced to the public that the trial program was over, and that the MPD's BWC program would be expanded to cover all patrol officers over the next 18 months.<sup>8</sup>

## II. The Reporters Committee's Request for BWC Footage and Other Records

On January 23, 2015, the Reporters Committee submitted a written DC FOIA request to the MPD via email seeking certain categories of BWC videos, and certain other specified, related records. Specifically, the Reporters Committee requested:

1. All BWC recordings that have been categorized as "Retain", as defined in Special Order 14-09 or Special Order 14-14.
2. All BWC recordings that have been categorized as "Requires Supervisory Review", as defined in Special Order 14-09 or Special Order 14-14.
3. All BWC recordings that have been used for training purposes.
4. All records indicating which MPD officers were issued BWC between October 1, 2014, and January 23, 2015.
5. All records that reflect activation and/or use of a BWC by an MPD officer between January 1, 2015, and January 8, 2015, including, but not limited to, narratives in field contact reports, supplements accompanying incident reports, arrest reports in the Records Management System (RMS), violation citations on PD form 61D, and notices of infraction (NOIs).
6. All BWC recordings that have been provided to the D.C. Office of Police Complaints.
7. All BWC recordings that have been offered or admitted as evidence, lodged with a court, or otherwise shown or used in connection with any civil or criminal proceeding.
8. All BWC recordings that have been offered or admitted as evidence, or otherwise shown or used in connection with any arbitration and/or mediation proceeding.

A true and correct copy of the request is attached hereto as Exhibit A.

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

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<sup>8</sup> Muriel Bowser, *State of the District Address*, *supra* note 2.

<sup>9</sup> D.C. Code § 2-523(b).

<sup>10</sup> See, e.g., Eric Tucker, *DC police facing scrutiny over arrested officers*, TWOP (Jan. 24, 2014), <http://www.wtop.com/41/3548231/DC-police-facing-scrutiny-over-arrested-officers>; The Associated Press, *D.C. Police Chief Addresses Officer Misconduct*, CBS DC (Jan. 26, 2014), <http://washington.cbslocal.com/2014/01/26/d-c-police-chief-addresses-officer-misconduct/>; Clarence Williams, *D.C. police officer guilty of assault for use of excessive force during 2011 arrest*, THE WASHINGTON POST (Oct. 16, 2013), <http://www.washingtonpost.com/local/crime/dc-police-officer-guilty-of-assault-for-use-of-excessive-force-during-2011-arrest/2013/10/16/f8e08018-369f-11e3-80c6->

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

On January 26, 2015 Teresa Quon Hyden, the MPD's Acting FOIA Officer, acknowledged receipt of the Reporters Committee's written DC FOIA request by email. A true and correct copy of that acknowledgement is attached hereto as Exhibit B. The request was given the tracking number 2015-FOIA-01380. In her acknowledgement, Ms. Quon invoked a ten business-day extension citing D.C. Code § 2-532(c), but presumably meaning to cite § 2-532(d).

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

After 38 business days, and many inquiries as to the status of its request, the Reporters Committee received an email and letter from Ron Harris at the MPD, denying the Reporters Committee's requests for BWC footage in their entirety. A true and correct copy of this letter is attached as Exhibit C. It stated that the MPD was denying RCFP's requests for the videos because the MPD has "not yet been able to obtain the necessary resources to perform the necessary redactions." Mr. Harris stated that redactions were necessary in order to protect the "names, faces, and other identifying information regarding arrestees, suspects, victims, and witnesses" pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C).

The MPD denied the Reporters Committee's request for BWC videos developed and/or used internally for training purposes, on the basis that the release of names and/or faces of the police officers would constitute an unwarranted invasion of privacy under D.C. Code § 2-534(a)(2), and the MPD cannot make the redactions.

RCFP's request for videos admitted or used in connection with criminal or civil proceedings was denied because the MPD stated it did not know which videos were introduced or admitted as evidence.

Finally, the MPD denied the Reporters Committee's request for BWC recordings that have been provided to the D.C. Office of Police Complaints, on the basis that they are "exempt from disclosure under D.C. Code § 20534(a)(3)(A)(iii) [sic]." As that statute does not exist, the Reporters Committee assumes for the purposes of this appeal that the MPD meant to cite § 2-534(a)(3)(A)(iii).

## ARGUMENT

### I. The requested BWC videos are "records" subject to the DC FOIA.

The DC FOIA gives the public the right to inspect and copy "any public record of a public body . . . ." D.C. Code § 2-532(a). Public records subject to disclosure include "all books, papers, maps, photographs, cards, tapes, recordings, vote data (including

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7e6dd8d22d8f\_story.html; Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, (Jan. 2013), <http://www.hrw.org/reports/2013/01/24/capitol-offense-0>.

ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format.” *Id.* at § 2-502(18).

There is no question in this case that the BWC videos are public records subject to the DC FOIA. They are recordings created and currently retained by the MPD, which is a public body. The MPD does not dispute the fact that the BWC videos are records subject to the DC FOIA. Therefore, absent an applicable exemption, the videos must be released to the Reporters Committee.

II. The MPD’s claim that it cannot redact BWC video is simply untrue and, in any event, does not provide a legal basis for withholding responsive records.

Under the DC FOIA, “[b]arring a valid exemption,” a requester “has a near-absolute right to receive the information it requests within the statutorily prescribed period.” *FOP v. District of Columbia*, 2011 D.C. Super. LEXIS 11, 12 (D.C. Super. Ct. 2011). The DC FOIA provides for 14 categories of records that an agency *may* withhold in response to a FOIA request. D.C. Code § 2-534(a)(1)-(14). Unless the requested information specifically falls within one of these categories, and the agency chooses to assert the exemption, the record must be released. *See Barry v. Wash. Post Co.*, 529 A.2d 319, 321 (D.C. 1987) (the DC FOIA “provides for full disclosure unless the information requested is exempted under a specific statutory provision . . .”).

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

In this case, the MPD has cited several exemptions to withhold certain information within the BWC videos requested by the Reporters Committee, and it states that because it has “not yet been able to obtain the necessary resources to perform the necessary redactions,” *none* of the video requested by the Reporters Committee can be released. However, the MPD’s stated inability to conduct redactions is belied by the fact that the MPD has already made redacted BWC available to the public.

On December 8, 2014, the MPD uploaded a redacted BWC video<sup>11</sup> to its YouTube channel from a “real-life traffic stop”<sup>12</sup> that occurred on November 2, 2014.<sup>13</sup>

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<sup>11</sup> All of the MPD’s YouTube videos specifically referenced in this appeal are on file with the Reporters Committee and can be provided in the event that they are removed from the MPD’s YouTube page.

<sup>12</sup> *MPD and Body-Worn Cameras*, MPD.DC.GOV, <http://mpdc.dc.gov/bwc> (last accessed Apr. 1, 2015).

<sup>13</sup> [https://www.youtube.com/watch?v=6V\\_sGqXoSo8](https://www.youtube.com/watch?v=6V_sGqXoSo8). The video description suggests that it was captured by an AXON Flex BWC.

The BWC video depicts a rather standard traffic stop and is thoroughly redacted to obscure, among other things, the face of the person that was stopped, her identifying documents, the license plate of the stopped vehicle and other vehicles passing by, the officer's computer screen, and certain audio segments.<sup>14</sup> MPD's webpage that embeds the videos confirms that it has "been edited to remove any confidential information."<sup>15</sup> Another video uploaded by the MPD on December 8, 2014, is a more than nine minute BWC video from a traffic stop on November 27, 2014.<sup>16</sup> This video has also been redacted to obscure objects such as the officer's patrol car computer, the stopped person's face and personal documents, a bystander's face, and certain audio.<sup>17</sup>

Based on these two videos alone, there can be no argument that the MPD lacks the technological means to redact BWC video. The MPD's representation to that effect in response to the Reporters Committee's DC FOIA request is baseless. The failure to produce the responsive records in this case suggests that the MPD is simply unwilling to apply the technology it already has in order to comply with its stated commitment to "a transparent, open form of government."<sup>18</sup> That unwillingness does not provide a basis for failing to comply with the DC FOIA.

Even if the MPD had not already demonstrated that it can redact BWC videos, its other publications show it is more than capable of doing so. The MPD's YouTube page contains dozens other videos that have been redacted and uploaded to aid in the identification of persons of interest. These videos demonstrate that the MPD has had the ability to redact videos since at least November 2011, when video from a surveillance camera that captured a robbery was redacted to blur the face of a civilian bystander.<sup>19</sup>

Since that time the MPD's technological capabilities have only improved. For example, a video uploaded in December 2014, which, according to the MPD, was "captured on a bystander's cell phone camera"<sup>20</sup> was redacted to blur the faces of numerous persons. Despite substantial movement on the part of the person taking the video *and* the subjects, the MPD was still able to effectively and competently redact the faces when necessary.<sup>21</sup> This footage, which is almost identical in nature to that captured by a BWC, confirms that the MPD can redact complex videos to protect privacy interests. Indeed, the MPD has proven itself incredibly skillful at redacting videos from a wide variety of sources, including public buses,<sup>22</sup> WMATA surveillance cameras,<sup>23</sup> private stores' surveillance cameras,<sup>24</sup> and a bar's surveillance camera with scores of people in

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<sup>14</sup> *See id.*

<sup>15</sup> *MPD and Body-Worn Cameras*, *supra* note 12.

<sup>16</sup> <https://www.youtube.com/watch?v=0vrUH-QP5mI>

<sup>17</sup> *See id.*

<sup>18</sup> *Open Government and FOIA – MPDC*, MPD.DC.GOV, <http://mpdc.dc.gov/page/open-government-and-foia-mpdc> (last accessed Apr. 1, 2015).

<sup>19</sup> <https://www.youtube.com/watch?v=PUuEILaDowo>

<sup>20</sup> <https://www.youtube.com/watch?v=ldgVNPmOTMo>

<sup>21</sup> *See id.*

<sup>22</sup> <https://www.youtube.com/watch?v=mVgA0IG7idk>

<sup>23</sup> *Id.*

<sup>24</sup> <https://www.youtube.com/watch?v=GtBECAtRw9s>

the footage.<sup>25</sup> In all of these videos, the MPD has blurred the faces of moving individuals in situations whether the camera is both stationary and moving, demonstrating a level of technological sophistication more than capable of protecting the privacy interests of persons captured on video that the MPD disseminates to the public.

Moreover, at least one of the companies that manufactures BWC currently used by the MPD<sup>26</sup> provides software that specifically integrates with video editing tools in order to accomplish redactions.<sup>27</sup> Wolfcom USA's webpage states that they "support customers who export a copy of the video out of the software and then use Adobe Premier or Avid to edit/enhance or blur/pixelate video as needed. At that point, they can re-ingest the video back into the software and have the original and the edited version with continuity intact."<sup>28</sup>

The MPD may argue that it is too burdensome for to redact video in order to address exemptions that they are *choosing* to assert, but that is not a valid legal reason for refusing to disclose records. That a FOIA request may involve some administrative burden does not excuse an agency's failure to abide by the statutory deadlines for producing responsive records. *See, e.g., FOP*, 2011 D.C. Super. LEXIS at 14 ("The District's argument that it is not reasonable to expect the District to respond to a FOIA request within the strict confines permitted under DC FOIA, made in this matter and others, is legislative in nature, and is properly made to the District of Columbia City Council, not this Court."). Indeed, the DC FOIA has a procedure that specifically provides for additional time for an agency to respond in complex cases. *See* D.C. Code § 2-532(d). The MPD invoked that provision in this case, and yet still did not turn over any BWC video. Their failure to do so violates the DC FOIA.

### III. The MPD must release BWC video developed and/or used internally for training purposes.

The MPD's denial in response to the Reporters Committee's request for BWC videos that have been used for training purposes is without merit. The MPD states that the names and faces of officers in the training videos must be withheld for privacy reasons under D.C. Code § 2-534(a)(2). However, this argument ignores the fact that much of this information is already statutorily required to be released to the public. D.C. Code Sections 2-536(a)(1)-(2) requires the names of all employees and officers of a public body to be made public, as well as "[a]dministrative staff manuals and instructions to staff that affect a member of the public . . . ." There can be little argument that the operation of BWC impacts members of the public—essentially every interaction between a member of the public and an officer wearing a BWC is now recorded and stored by the MPD. Accordingly, these training videos must be released. To the extent that the DC

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<sup>25</sup> <https://www.youtube.com/watch?v=XLmA1WNdfY4>

<sup>26</sup> *MPD and Body-Worn Cameras*, *supra* note 12.

<sup>27</sup> *Wolfcom Management Software with GPS*, WOLFCOMUSA.COM, [http://www.wolfcomusa.com/police\\_camera\\_management\\_software/police%20camera%20backend.html](http://www.wolfcomusa.com/police_camera_management_software/police%20camera%20backend.html) (last accessed Apr. 1, 2015).

<sup>28</sup> *Id.*

MPD's position is that the faces of officers in BWC training videos are exempt from disclosure, the MPD has the capacity to redact them, as demonstrated above. The failure to produce any responsive records again violates the DC FOIA.

IV. The MPD must release BWC videos used in connection with civil and criminal proceedings.

In response to the Reporters Committee's request for BWC videos "that have been offered or admitted as evidence, lodged with a court, or otherwise shown or used in connection with any civil or criminal proceeding," the MPD responded that they do not know what videos, if any, have been introduced or admitted as evidence in civil or criminal proceedings. But the MPD's response completely ignores the fact that the Reporters Committee's request also asked for any BWC footage *shown or used* in connection with any civil or criminal proceeding. This includes any BWC videos that the MPD has turned over to either the Office of the Attorney General for D.C., or the U.S. Attorney's Office for D.C., regardless of whether or not such videos were ultimately offered or admitted as evidence in the cases. The MPD did not cite any applicable exemption that would allow them to withhold such records, and thus their failure to produce them in response to the Reporters Committee's request violates the DC FOIA.

V. The MPD must release BWC videos provided to the Office of Police Complaints.

In addition to the claimed inability to redact videos, the MPD denied the Reporters Committee's request for BWC videos provided to the Office of Police Complaints ("OPC") under D.C. Code § 2-534(a)(3)(A)(iii). That section of the DC FOIA allows an agency to withhold "[i]nvestigatory records compiled for law-enforcement purposes . . . but *only* to the extent that the production of such records would (A) [i]nterfere with . . . Office of Police Complaints ongoing investigations." *Id.* (emphasis added). In this case, the MPD has made no showing that release of the requested BWC video would interfere with OPC investigations. It is not at all apparent how providing access to these videos would have any impact on any such investigations, and therefore these records should be released pursuant to the DC FOIA.

VI. Public Access to BWC Footage is necessary for the MPD's BWC program to succeed.

MPD Chief Cathy Lanier has stated that "[t]he presence of [BWC] will benefit the community and MPD members by improving police services, increasing accountability and enhancing public safety."<sup>29</sup> Likewise, you have stated that the MPD's BWC program is "the right thing to do for our officers *and* our residents."<sup>30</sup> But this is only the case if the public, in addition to the government, have access to the records they create. The position taken by the MPD means that, despite being public records subject to the DC FOIA, BWC videos are not, and will not, be accessible to the public. Not only does this

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<sup>29</sup> *What's New*, DC.GOV (Sep. 26, 2014),

[http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/release\\_content/attachments/wn\\_140926.pdf](http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/release_content/attachments/wn_140926.pdf).

<sup>30</sup> Muriel Bowser, *State of the District Address*, *supra* note 2 (emphasis added).




run contrary to the stated objectives of the MPD’s BWC program—to increase transparency and accountability—it also undermines the purpose of the DC FOIA, which is to ensure that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-531. The public needs access to BWC footage so that citizens can meaningfully evaluate the efficacy of the program, provide feedback on the manner in which it is being carried out, and determine areas where it could be improved. Facilitating that access should be a priority for the MPD, in addition to its obligations under the DC FOIA.

#### **IV. CONCLUSION**

The MPD has not put forth sufficient legal reasons justifying withholding the requested records, and so for the reasons detailed above the Reporters Committee respectfully requests that you reverse their decision and provide access to the requested records.

Sincerely,



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# EXHIBIT A

# REPORTERS COMMITTEE

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*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Adam Marshall  
The Reporters Committee for Freedom of the Press  
1156 15th St. NW, Suite 1250  
Washington, D.C. 20005

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

January 23, 2014

Via electronic mail

## FOIA Request

### Fee waiver requested

Dear Ms. Quon,

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

### Records Requested

Pursuant to the D.C. FOIA, I, on behalf of the Reporters Committee, request access to and copies of:

1. All BWC recordings that have been categorized as “Retain”, as defined in Special Order 14-09 or Special Order 14-14<sup>1</sup>
2. All BWC recordings that have been categorized as “Requires Supervisory Review”, as defined in Special Order 14-09 or Special Order 14-14
3. All BWC recordings that have been used for training purposes.
4. All records indicating which MPD officers were issued BWC between October 1, 2014, and January 23, 2015.
5. All records that reflect activation and/or use of a BWC by an MPD officer between January 1, 2015, and January 8, 2015, including, but

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<sup>1</sup> Available at [https://go.mpdconline.com/GO/SO\\_14\\_14.pdf](https://go.mpdconline.com/GO/SO_14_14.pdf)

not limited to, narratives in field contact reports, supplements accompanying incident reports, arrest reports in the Records Management System (RMS), violation citations on PD form 61D, and notices of infraction (NOIs).

6. All BWC recordings that have been provided to the D.C. Office of Police Complaints.
7. All BWC recordings that have been offered or admitted as evidence, lodged with a court, or otherwise shown or used in connection with any civil or criminal proceeding.
8. All BWC recordings that have been offered or admitted as evidence, or otherwise shown or used in connection with any arbitration and/or mediation proceeding.

I prefer to receive these records in electronic form. For video files, my preference is that they are released in a standard video codec (such as a H.264 or MPEG-4 implementation) that fairly and accurately represents the resolution and quality of the original video. For other records, my preference is that they are released in their original format, or if that is not possible, as PDFs.

#### Fee Waiver

As the information that is the subject of this request “can be considered as primarily benefiting the general public”<sup>2</sup>, I ask that you waive any applicable fees. This information is not being sought for commercial use. This information is being sought by RCFP, as a representative of the news media, for dissemination to the general public through multiple avenues, including its website,<sup>3</sup> email newsletters, and *The News Media & The Law*,<sup>4</sup> RCFP’s quarterly magazine that has been continuously published since 1977.

Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. There has been intense interest in the relations between the MPC and civilians over the last few years.<sup>5</sup> According to Police Chief Cathy Lanier, BWC will help promote transparency in

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<sup>2</sup> D.C. CODE § 2-523(b).

<sup>3</sup> <https://www.rcfp.org/>.

<sup>4</sup> Available at <http://www.rcfp.org/magazine-archive>.

<sup>5</sup> See, e.g., Eric Tucker, *DC police facing scrutiny over arrested officers*, TWOP (Jan. 24, 2014), <http://www.wtop.com/41/3548231/DC-police-facing-scrutiny-over-arrested-officers>; AP, *D.C. Police Chief Addresses Officer Misconduct*, CBS DC (Jan. 26, 2014), <http://washington.cbslocal.com/2014/01/26/d-c-police-chief-addresses-officer-misconduct/>; Clarence Williams, *D.C. police officer guilty of assault for use of excessive force during 2011 arrest*, THE WASHINGTON POST (Oct. 16, 2013), [http://www.washingtonpost.com/local/crime/dc-police-officer-guilty-of-assault-for-use-of-excessive-force-during-2011-arrest/2013/10/16/f8e08018-369f-11e3-80c6-7e6dd8d22d8f\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-officer-guilty-of-assault-for-use-of-excessive-force-during-2011-arrest/2013/10/16/f8e08018-369f-11e3-80c6-7e6dd8d22d8f_story.html); Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, (Jan. 2013), <http://www.hrw.org/reports/2013/01/24/capitol-offense-0>.

these relations because they “establish a record of police conduct.”<sup>6</sup> As the BWC are currently in a trial period to determine their effectiveness,<sup>7</sup> it is important that the public have access to this information in order to determine if they are, in fact, having the intended effect.

### Conclusion

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

I look forward to your response within 15 business days, per the requirements of the D.C. FOIA.<sup>8</sup> Please feel free to contact me via email (amarshall@rcfp.org) or telephone (202-795-9308) if you have any questions regarding this request.

Sincerely,

Adam A. Marshall  
Jack Nelson – Dow Jones Foundation Legal Fellow  
Reporters Committee for Freedom of the Press

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<sup>6</sup> Associated Press/NBC4 Washington, *Group of D.C. Police Officers to Begin Testing Body-Worn Cameras*, NBC WASHINGTON (Sep. 24, 2014), <http://www.nbcwashington.com/news/local/DC-Chief-to-Discuss-Body-Cameras-for-Officers-276893401.html>.

<sup>7</sup> *See id.*

<sup>8</sup> D.C. CODE § 2-532(c).

# EXHIBIT B

# Acknowledgment Letter 2015-FOIA-01380

**From:** Quon Hyden, Teresa <teresa.quon@dc.gov>  
**To:** amarshall@rcfp.org  
**Cc:** genet.amare2@dc.gov  
**Subject:** Acknowledgment Letter 2015-FOIA-01380  
**Date:** Monday, January 26, 2015 1:10 PM  
**Size:** 173 KB

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Dear Mr. Marshall,

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

Pursuant to D.C. Official Code § 2-532(c), we have fifteen (15) business-days, subject to the possibility of a ten (10) business-day extension, to respond to the request as of the date of receipt. Given the voluminous nature of your request and need to consult other entities, we are invoking our right to the ten (10) business-day extension at this time.

If for any reason you should need to communicate with this office regarding your request, please be sure to reference the above request number.

Regards,

Teresa Quon Hyden  
Acting FOIA Officer

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RCFP FOIA Request re MPD BWC 2.pdf 123 KB

# EXHIBIT C





GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

Transmitted via electronic mail

Mr. Adam Marshall  
The Reporters Committee for Freedom of the Press  
1156 – 15<sup>th</sup> Street, N.W., Suite 1250  
Washington, D.C. 20005

Re: FOIA Request No. 2015-00031

Dear Mr. Marshall:

This is in response to your Freedom of Information Act (FOIA) request dated January 23, 2014. You requested the following records:

1. All BWC recordings that have been categorized as “Retain”, as defined in Special Order 14-09 or Special Order 14-14;

**Response: See discussion below.**

2. All BWC recordings that have been categorized as “Requires Supervisory Review”, as defined in Special Order 14-09 or Special Order 14-14;

**Response: See discussion below.**

3. All BWC recordings that have been used for training purposes;

**Response: See discussion below.**

4. All records indicating which MPD officers were issued BWCs between October 1, 2014, and January 23, 2015;

**Response: See attached.**

5. All records that reflect activation and/or use of a BWC by an MPD officer between January 1, 2015, and January 8, 2015, including, but not limited to narratives in field contact reports, supplements accompanying incident reports, arrest reports in the Records Management System (RMS), violation citations on PD form 61D, and notices of infraction (NOIs);

**Response: As we discussed, we cannot release any documents relating to pending criminal cases. We are attempting to determine if there is a method to**

**identify closed cases in order to retrieve responsive documents. We will advise you when we have determined how to proceed.**

6. All BWC recordings that have been provided to the D.C. Office of Police Complaints;

**Response: See discussion below. In addition, to the extent that the body worn camera recordings pertain to ongoing investigations by the D.C. Office of Police Complaints, they are exempt from disclosure under D.C. Official Code § 20534(a)(3)(A)(iii).**

7. All BWC recordings that have been offered or admitted as evidence, lodged with a court, or otherwise shown or used in connection with any civil or criminal proceeding;

**Response: As you are no doubt aware, decisions regarding whether BWC recordings are offered into evidence rest with the prosecuting attorneys of either the Office of the Attorney General for the District of Columbia or the United States Attorney's Office for the District of Columbia and decisions regarding the admissibility of BWC recordings are made by the presiding judges of either the Superior Court for the District of Columbia or the United States District Court for the District of Columbia. Therefore, the Department does not know what videos if any have been introduced or admitted as evidence in civil or criminal proceedings. However, it is our understanding that a portion of the body worn camera footage was used in the criminal trial of Allen Wells. We are unaware of what portion of the footage was released and what redactions, if any, were made by the United States Attorney's Office to the footage. You may wish to file a FOIA request with the United States Attorney's Office to obtain a copy of the footage released at trial. All or some part of the footage has already been posted on-line at [http://www.washingtonpost.com/local/crime/lawyers-see-new-benefit-to-dc-police-body-cameras--as-evidence-for-trials/2015/01/25/c0d89f06-9c11-11e4-bcfb-059ec7a93ddc\\_story.html](http://www.washingtonpost.com/local/crime/lawyers-see-new-benefit-to-dc-police-body-cameras--as-evidence-for-trials/2015/01/25/c0d89f06-9c11-11e4-bcfb-059ec7a93ddc_story.html)**

8. All BWC recordings that have been offered or admitted as evidence, or otherwise shown or used in connection with any arbitration and/or mediation proceeding.

**Response: The Department has not introduced any videos in arbitration or mediation proceedings.**

Marshall, Adam  
March 19, 2015  
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As we discussed in our conversation today, the Department is not able to release the body worn camera videos that you have requested because it does not presently have the capability to protect the privacy interests of those persons captured in the videos. Individuals subject to arrest, suspects in the commission of crimes, and victims of and/or witnesses to crimes have privacy interests in their persons, names, and other identifying information. To determine whether such information may be released under FOIA, the individuals' privacy interests must be weighed against the statutory purpose of FOIA, i.e. to shed light on MPD's performance of its duties. In this case, the individuals' privacy interests prevail as the release of their identities will not contribute anything to public understanding of the operations or the performance of

MPD. Therefore, the faces, names, and other identifying information regarding arrestees, suspects, victims, and witnesses are exempt from disclosure as unwarranted invasions of personal privacy under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C).

In order to protect the privacy of these persons, the Department would have to review and redact their faces, unique scars/tattoos, personalized clothing, Driver's licenses/identification cards, house numbers, as well as their spoken names, Social Security numbers, birth dates, and any other identifying visual image or audio recording. The Department has not yet been able to obtain the necessary resources to perform the necessary redactions. We must therefore deny your request for the body camera footage. However, we will preserve those videos responsive to your request until such time as the Department is able to perform the necessary redactions.

Similarly, the Department cannot release body worn camera videos developed and/or used internally for training purposes. Individuals, including police officers, have a privacy interest in their person. The disclosure of the names and/or faces of the police officers captured in the training videos do not contribute to the public's understanding of how the Department performs its duties. Their release would therefore constitute unwarranted invasions of personal privacy under D.C. Official Code §§ 2-534(a)(2). Again, the Department must deny your request as it is not yet able to make the necessary redactions.

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

Marshall, Adam  
March 19, 2015  
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The appeal must be mailed to: The Mayor's Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor's Correspondence Unit at [foia.mayor@dc.gov](mailto:foia.mayor@dc.gov). Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there.

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

Sincerely,



Ronald B. Harris, Esq.

Teresa Quon  
Acting FOIA Officer

Attachment  
Listing of Officers issued cameras