



February 21, 2017

Dear Members of the Seattle City Council,

I write to you on behalf of the ACLU of Washington (ACLU-WA) and our 50,000 members dedicated to protecting civil liberties, to urge you to **vote down the release of city funds for police body cameras** until:

- A deeper engagement of impacted communities occurs;
- The Seattle Police Department's (SPD) problematic body camera policy is revised to achieve accountability rather than focus on evidence gathering for prosecutions;
- A review of emerging evidence around potential unintended consequences is undertaken; and
- State public records law is changed to allow for a coherent local policy.

In addition, creating a massive trove of video data open to public disclosure and access by the federal government allows for serious potential consequences directly at odds with Seattle's stated purpose of protecting and preserving trust in immigrant communities.

The deployment of body cameras has the potential to significantly impact the relationship between community members and the law enforcement officers who protect and serve them. The City Council should withhold further funding for police body cameras until the following issues are resolved:

1. **Deep and sustained engagement with communities whose trust in police will be most impacted by police body cameras has yet to happen, and key community voices have been missing.** Despite being mandated by the Council in November 2015 to reach out to such communities prior to the release of funds for police body cameras, SPD's outreach to those communities, according to its own report of February 17, 2017 ("Body-Worn Video Program Community Engagement—Proviso Response Final Report," [the Report]), commenced only in December 2016 and engaged only 33 community members; even that number was inflated by the inclusion of several city employees. Key impacted groups were notably missing—for example, BlackOut Washington and #Not1More. The Report notes that participants voiced concern over the unintended impacts of police body cameras, their explicit use as a tool for prosecutions, and the inadequacy of SPD's proposed policy. Those concerns were echoed by participants at a meeting of SPD's African-American Affairs Advisory Board on January 19<sup>th</sup>. None of those concerns were resolved.

General polls—even those showing strong support for body cameras among the general populace—are not a substitute for a nuanced, deep, and sustained

AMERICAN CIVIL  
LIBERTIES UNION  
OF WASHINGTON  
901 5TH AVENUE, STE 630  
SEATTLE, WA 98164  
T/206.624.2184  
WWW.ACLU-WA.ORG

JEAN ROBINSON  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

engagement in which SPD actively reaches out to bring to the table the communities most deeply impacted by police body cameras. True community engagement cannot be an afterthought on a policy as critical as rules around police body cameras. The City Council should insist on it before freeing additional funds.

2. **While body cameras are being touted as an accountability tool, SPD's policy emphasizes prosecution above accountability.** Many of those who support police body cameras have done so because they believe they will be a tool to reduce police violence against community members. Yet SPD's proposed policy (draft circulated by SPD, effective date 02/08/2017, [the Policy]) repeatedly emphasizes evidence gathering for criminal prosecutions while failing to use the word "accountability" even once. Officers are instructed to position cameras to "capture critical evidence" (Section 2), are *mandated* to record all "on-view infractions and criminal activity" (Section 5), can only stop recording when they believe the recording "will not capture audio/visual evidence regarding the incident or enforcement efforts" (Section 5), may record protests and demonstrations for the purpose of documenting property damage (and presumably prosecutions around such damage)(Section 5), can override privacy concerns in sensitive areas such as medical facilities in order to achieve "a direct law enforcement purpose" (Section 5), and film without consent in residences and private areas if "there is a crime in progress." (Section 5).

These provisions make it clear that police body cameras are being deployed as generalized surveillance tools to allow prosecutions. SPD has repeatedly expressed this position in meetings around body cameras, yet public debate over whether such an outcome is desirable has not taken place. The Council should clearly articulate that the purpose of police body cameras is accountability, not surveillance or increased prosecutions, and do so before freeing further funds.

3. **SPD's Policy gives so much discretion to officers that any failure to record could be justified under it.** Section 5 of the Policy is both unworkably complex and gives too much discretion to officers to turn cameras on and off, via nebulous base rules and various overlapping and conflicting exceptions to those rules. Emerging data appears to associate such broad discretion with a *rise* in violent encounters between police and community members. For example, one large-scale study by researchers Barak Ariel and Alex Sutherland found that "[p]olice use of force actually went up by an astonishing 71 percent when officers could turn their cameras on and off at will and went down ... only when they recorded nearly every interaction with the public from start to finish." (*Should We See Everything a Cop Sees?*, the New York Times, 1/20/17.)

Yet in SPD's Policy, the baseline is that "employees may initiate recording any time they determine it would be beneficial to capture an event or activity"—where the term "beneficial" is entirely undefined. There is a list of events that officers are required to record, but a lengthy series of exceptions where the camera may be turned off, including: when the officer believes that continuing to record "will not capture audio/visual evidence regarding the incident or enforcement efforts" (Section 5); where people are exercising or will exercise their First Amendment rights

as determined by the officer, except if a supervisor orders recording or if there is risk of property damage (Section 5); in sensitive locations such as jails, medical facilities, or residences, again with multiple exceptions for each case or if “any person with legal standing denies permission to record” (Section 5); where an officer determines that “the respect for an individual’s privacy or dignity outweighs the need to record an event” (Section 5); or that recording would “impede or limit the cooperation of a victim or witness during an investigative contact” (Section 5). At times, the policy for recording diverges between video and audio, making it even more confusing (Section 5). And individual units can request yearlong exemptions from the Chief of Police (Section 9), meaning Seattle residents will have no way to ascertain when they are or are not being recorded by a police body camera. Finally, an additional provision immunizes officers for failure to record in a broad range of instances (Section 5).

SPD’s proposed Policy is unworkable. Under the broad discretion included in this Policy, any failure to record an incident could be justified under any of several exceptions which expand officer discretion and undermine accountability. The City Council should insist this Policy is changed before further funding body cameras.

4. **It is impossible to craft a successful local policy without changing the statewide Public Records Act.** As we have previously articulated to the Council, the statewide Public Records Act trumps local policy and currently would require the City to disclose footage that is invasive of privacy and irrelevant to police accountability. The legislature has convened a statewide task force to consider recommendations for the state level around police body cameras, and that task force will not make its recommendations to the legislature until late 2017, meaning a statewide law would be enacted in 2018 at the earliest. Seattle’s leadership should recognize this challenge and wait for a clear state statute that would allow our local rules to effectively protect Seattleites’ privacy.
5. **Police body cameras create a massive trove of publicly available location data that is available to the federal government.** Under SPD’s current rollout of police body cameras, state law ensures that a massive amount of footage is kept by the city, making it vulnerable to commandeering by the federal government. The City’s leaders have unequivocally stated, including in the recently passed Welcoming City Resolution (City of Seattle Resolution 31730, adopted 1/30/17), that protecting immigrant communities is a priority for this city. Our state has an effort underway to scrub its databases to determine what information is collected that might reveal an individual’s immigration status. We also know that the federal government regularly runs facial recognition searches—for example on the driver’s license databases of states that make those databases available (*The Perpetual Line-Up*, Georgetown Law Center on Privacy and Technology, October 18, 2016).

The potential result is that body camera footage, combined with availability of that footage to the federal government, and with facial recognition searches, could compromise an individual’s immigration status in direct contravention of our city’s status as a welcoming city. For example, day laborers often gather in the parking lot of Home Depot in West Seattle, which is located next to the SPD West Precinct.

With officers wearing body cameras, recordings showing the faces of those individuals would be open for the federal government to run facial recognition searches, possibly triggering deportation actions.

6. **Emerging data about the impact of police body cameras on police violence is troubling, and their impact on community-police trust remains unstudied.** As you are aware, the landscape around body cameras is changing, with more empirical data available as to the impact of body cameras on police violence and behavior. Seattle's leaders must consider this data in creating an appropriate body camera policy, rather than relying on unsupported intuition. We know that the impact of body cameras depends heavily on the policy regime around them, and in some instances, body cameras may be associated with an increase in violence between police and community members. For example, in addition to the Ariel and Sutherland study referenced above, Temple University researchers found that "when officers wore body cameras, civilians were 3.64 percent more likely to die," and they hypothesized that "[o]fficers, aware of their bodycams and more certain their use of deadly force would be seen as justified, were less likely to hesitate" (*Should We See Everything a Cop Sees?*, the New York Times, 1/20/17).

Another critical issue is the impact of the cameras on community-police trust—if individuals are less willing to interact with law enforcement because of their reluctance to be recorded, or if there are language barriers, this would undermine your efforts to improve community-police relations, which has been proven to reduce police violence.

All of this should give pause to all who see body cameras as an unequivocal good. The reality is far more complicated, and the City Council would do well to get the rules right *before* rolling out police body cameras, rather than deal with unintended consequences, including undermining community-police trust, after the fact.

There are two paths forward for the City Council on police body cameras. One is to ignore the flaws in the process through which the City is rolling out police body cameras, with its lack of inclusion of communities most impacted; the concern that these cameras should be for accountability and not surveillance; the flaws in SPD's body camera policy that will undermine their accountability value; and the cloudy evidence around the impact of body cameras; and simply continue with the rollout without further examination of these challenges. The other path forward is to exercise your leadership and oversight function and engage in further examination to determine whether the City should pursue its current course of action. The ACLU of Washington sincerely urges you to choose the latter.

Sincerely,

Shankar Narayan  
Technology and Liberty Project Director