**COUNCIL OF THE DISTRICT OF COLUMBIA**

**COMMITTEE ON THE JUDCIARY**



**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC OVERSIGHT ROUNDTABLE**

**THE METROPOLITAN POLICE DEPARTMENT’S**

**BODY-WORN CAMERA PROGRAM**

**Testimony of Traci L. Hughes, Esq.**

**Director, Office of Open Government**

**Board of Ethics and Government Accountability**

**Thursday, May 7, 2015**

**2:00 P.M.**

**1350 Pennsylvania Avenue NW**

**Room 500**

**Washington, D.C. 20004**

Good afternoon, Chairman McDuffie. Members of the Committee. My name is Traci Hughes and I am the Director of the Office of Open Government under the Board of Ethics and Government Accountability. My office oversees agency compliance with the Freedom of Information Act (FOIA). And in my capacity as director, I serve as the chief FOIA Officer for the District, advising agencies and the public on FOIA. Additionally, I advocate for open government and transparency policies that will make District Government a more responsive and inclusive one that meets the needs of our many varied and diverse communities.

Community engagement with our public safety agencies can, in many respects, shape the way the public views our government. Public safety personnel are indeed our front line, and risk their lives every day for our safety. And for that, I thank them and their families for their sacrifice.

But because our public safety personnel, specifically our law enforcement officers, often can be the face of our government (and for many the only connection with our government), it is critical that any policies concerning body-worn cameras (BWCs) not only address a means to improve evidence collection, performance and accountability, but advances overall government transparency. This will no doubt foster greater trust of law enforcement.

The testimony I offer today is in opposition to the Metropolitan Police Department’s (MPD) and Mayor Bowser’s proposed “Body-Worn Camera Privacy Emergency Amendment Act of 2015”.[[1]](#footnote-1) The amendment is unnecessary; it is exhaustive; and it is completely counter to the Executive’s professed aim of a more inclusive and transparent government.

The District is not uniquely positioned on BWC’s. Increasingly, jurisdictions across the country are adopting BWC’s as a means of guarding law enforcement personnel against bogus claims of misconduct and improper use of force. In fact, the utility of the technology is widely accepted and recommended as standard equipment for law enforcement personnel.[[2]](#footnote-2) But the incorporation of the technology into the standard operating procedures of police departments is far from cut and dry. Policies must take into consideration privacy protections of law enforcement personnel and the public; access protocols; the retention of non-evidentiary video versus video that may be used in the litigation of criminal and civil matters; cost of video storage and the collection of metadata; and the monetary and human capital costs inherent to the review and editing of video pursuant to public access laws.[[3]](#footnote-3) It is a balancing of internal controls and external access that must be weighed within the context of FOIA and the public policy of the District 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.[[4]](#footnote-4)

It is indisputable that the videos taken with BWC’s are public records that are created and maintained by MPD. And the public may request access to those records under FOIA. But the public’s ability to request access does not necessarily imply release of records. MPD has at its disposal a number of exemptions that may be reasonably and legally relied upon to exempt those public records from disclosure.[[5]](#footnote-5) Namely, the investigatory records exemption and the personal privacy exemptions.[[6]](#footnote-6) MPD asserted as much in declining the release of BWC video in response to the October 2014 FOIA request of the Reporters Committee for Freedom of the Press (Reporters Committee).[[7]](#footnote-7) Further, MPD supported its position by stating it did not have the necessary “resources to perform the necessary redactions” to properly edit 128 videos in such a manner as to protect the privacy of individuals appearing in the videos.[[8]](#footnote-8)

This is not an uncommon response. District agencies routinely decline to release entire files (most often within the context of audio and video recordings) if the agency does not have access to the technology that will allow personnel to make redactions. This is not, however, a fallback upon which the District may continue to rely. Video editing technology is so readily available at low costs, or for free, that MPD will be hard-pressed to assert it does not have access to the very same technology that we all do in some rudimentary way on our smart phones and tablets, on up to more advanced professional editing software.

In its response to the Reporter’s Committee appeal, MPD’s Deputy General Counsel, Ronald Harris, takes great pains to describe the time and technical expertise that would be required to edit the requested video.[[9]](#footnote-9)

Assuming the workload as stated in MPD’s appeal response is accurately assessed, the inability to edit the video is properly addressed with software and additional personnel -- not the proposed blanket exemption absolving MPD from review and release of video under FOIA. Surely, some portion of the more than $5 million dollars proposed in the FY 2016 budget to assist MPD to expand the BWC program can be reallocated to hire additional staff to assist in handling video requests from the public, and requests from other law enforcement, prosecuting agencies, courts and defense attorneys.[[10]](#footnote-10)

It is instructive to also note that the exemption as proffered in the Budget Support Act is entirely incompatible with the findings of The President’s Task Force on 21st Century Policing. The task force, co-chaired by former D.C. Police Chief Charles Ramsey, and Laurie Robinson, Professor at George Mason University, specifically addresses the development of best practices to gauge the use, maintenance, retention of and access to BWC video. Among the recommendations, the Task Force found that any adoption of policy must first include input from impacted stakeholders:

**“Law enforcement agencies should encourage public engagement and collaboration, including the use of community advisory bodies, when developing a policy for the use of a new technology.** Local residents will be more accepting of and respond more positively to technology when they have been informed of new developments and their input has been encouraged….And as the task force co-chair, Charles Ramsey, noted, ‘[j]ust having the conversation can increase trust and legitimacy and help departments make better decisions.’”[[11]](#footnote-11)

I therefore implore the Council to strike this amendment from the Budget Support Act. Any other action is ill-advised from not only the standpoint of the law and public policy, but would indicate an extreme insensitivity to the seemingly national climate of distrust of law enforcement by communities that have long felt disenfranchised, disengaged and quite frankly targeted by the very people charged with keeping them safe.

Thank you Chairman McDuffie for the opportunity to testify. I am happy to answer any questions from the Committee.

1. *“Fiscal Year 2015 Budget Support Act of 2015” Section 3001-Section 3003.* [↑](#footnote-ref-1)
2. *See* The White House Fact Sheet: Strengthening Community Policing, issued December 2, 2014, proposing a three-year $263 million investment to expand the use of BWC’s. (<https://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>). [↑](#footnote-ref-2)
3. Police Executive Research Forum (PERF), *Implementing a Body-Worn Camera Program Recommendations and Lessons Learned* (<http://ric-zai-inc.com/Publications/cops-p296-pub.pdf> ). [↑](#footnote-ref-3)
4. D.C. Code §2-531 [↑](#footnote-ref-4)
5. D.C. Code § 2-532 affords to any person the “*…right to inspect…and to copy any public record of a public body*” except as expressly provided in the enumerated exemptions under D.C. Code § 2-534. [↑](#footnote-ref-5)
6. D.C. Code § 2-534(a)(3)(A-F) exempts investigatory records compiled for law enforcement purposes if release would interfere with enforcement proceedings; Council investigations; Office of Police Complaint investigations; deprive a person of due process; constitute and unwarranted invasion of personal privacy; disclose a confidential source; disclose investigative techniques; endanger law enforcement personnel.D.C. Code § 2-534(a)(2) exempts from disclosure information of such a personal nature that release would constitute an unwarranted invasion of personal privacy. [↑](#footnote-ref-6)
7. See November 20, 2014 DC Freedom of Information Act Appeal (2014-FOIA-00031, 2015-FOIA-00088), [http://www.rcfp.org/sites/default/files/docs/20150428\_115914\_rcfp\_appeal\_to\_dc\_mayor\_re\_dc\_foia\_request\_2\_for\_bwc\_.pdf at p. 5](http://www.rcfp.org/sites/default/files/docs/20150428_115914_rcfp_appeal_to_dc_mayor_re_dc_foia_request_2_for_bwc_.pdf%20at%20p.%205). The Reporter’s Committee for Freedom of the Press requested video recorded on October 1 and 2, 2014 (the first two days of as the MPD body camera pilot program). Mike DeBonis and Victoria St. Martin, D.C. police wear body cameras as part of pilot program, The Washington Post (September 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> [↑](#footnote-ref-7)
8. D.C. Code § 2-534(b) directs agencies to segregate, or in this case edit out, video frames that are exempt from disclosure under FOIA. [↑](#footnote-ref-8)
9. April 14, 2015 letter to Melissa C. Tucker, Associate Director, Mayor’s Office of Legal Counsel (MOLC), FOIA Appeal (Marshall-2015-000055), page 3. <http://www.rcfp.org/sites/default/files/docs/20150428_120030_mpd_response_to_rcfp_dc_foia_appeal_2_for_bwc_.pdf> . “Redacting video is a highly technical skill and time-consuming task. Some video editing applications, including Adobe Premiere, advertise the ability to track faces and objects in motion to be masked or redacted. However, BWC footage, which often involves an officer and a citizen or citizens walking or moving, contains too much motion for the masks to remain on the faces or objects. As a result, the footage must be broken into its individual frames and a mask placed on the face or object in each frame. There are 30 frames per second. A 1 0-minute video would therefore have 18,000 frames. Assuming that a face or object appears throughout the entire video, a mask must be placed individually on the face or object in each of the 18,000 frames. Moreover, each face or object in the video must be redacted separately. For example, a BWC video of a mother, with a child, involved in a verbal altercation with the father would require three separate frame-by-frame redactions for a total of 54,000 frames reviewed and redacted.” [↑](#footnote-ref-9)
10. Mike Maciag, *What We Can Learn From the Police that Pioneered Body Cameras,* Governing (April 13, 2015), <http://www.governing.com/mag/may-2015-table-of-contents.html> explores the history of the use of body cameras in law enforcement. The Chesapeake Police Department created a new position of video evidence coordinator to handle requests for video from the Commonwealth’s Attorney’s Office. [↑](#footnote-ref-10)
11. March 2015, *The Interim Report of The President’s Task Force on 21st Century Policing*, 3.2.1 Action Item, pages 34-35. <http://www.cops.usdoj.gov/policingtaskforce> . Task Force members include: Cedric L. Alexander, Deputy Chief Operating Officer for Public Safety, DeKalb County, Georgia; Jose Lopez, Lead Organizer, Make the Road New York; Tracey L. Meares, Walton Hale Hamilton Professor of Law, Yale Law School; Brittany N. Packnett, Executive Director, Teach For America, St. Louis, Missouri; Susan Lee Rahr, Executive Director, Washington State Criminal Justice Training Commission; Constance Rice, Co-Director, Advancement Project; Sean Michael Smoot, Director and Chief Counsel, Police Benevolent & Protective Association of Illinois; Bryan Stevenson, Founder and Executive Director, Equal Justice Initiative; and Roberto Villaseñor, Chief of Police, Tucson Police Department. [↑](#footnote-ref-11)