

INTRADEPARTMENTAL CORRESPONDENCE

March 14, 2018

1.0

TO: The Honorable Board of Police Commissioners

FROM: Executive Director, Board of Police Commissioners

SUBJECT: SUMMARY OF PUBLIC INPUT ON DRAFT CRITICAL INCIDENT VIDEO RELEASE POLICY

RECOMMENDED ACTION

1. Approve the draft Critical Incident Video Release Policy as amended and direct the Department to place it in the Special Order format.
2. Direct the Department to prepare the necessary procedures to implement the approved Critical Incident Video Release policy.

DISCUSSION

At the Board of Police Commissioners (Board) meeting on February 20, 2018 the direction was given to staff to post on the Department web site the draft Critical Incident Video Release Policy to provide an opportunity for public comment.

The draft was posted on February 20, 2018 with a specific electronic mail address provided to provide input for a period of two weeks. As of this date fifty-nine electronic mail responses were received of which fifty-five contained the same comments.

Below is a summary of the comments received:

- Support for the release of body cam footage being released to the public
- Release of video is important for strengthening the relationship between the police and the public
- The Department should demand that any news agency, news individual, news group, blogger, etc. only be allowed to rebroadcast videos released in their entirety
- Recommend adding a fifth category for delayed release of video imagery. That individuals involved in the incident (not including officers, witnesses, bystanders or other third parties) and/or those who lost a loved one in the incident and who have standing to bring a civil lawsuit, submit an objection to the release of the video. In the event an objection is submitted release be delayed until the issuance of a court order to release the video imagery
- Fifty-five responses with the same text stated that the maximum time for delayed release of video imagery should be ninety days. Also, that the exception allowing with withholding of video relating to any death in custody should be eliminated

The comments have been reviewed by the Board's two liaisons on video release, Vice-President Matthew M. Johnson and Commissioner Shane Murphy Goldsmith. After their review, they do not recommend the comments be incorporated into the policy.

During the Board's discussion at the meeting of February 20, 2018 Commissioner Cynthia McClain-Hill expressed concerns relative to the process for consideration of the Board's two designated liaisons and the Chief of Police for delaying the release of video imagery within forty-five days.

Because of that discussion and input from Commissioner McClain-Hill the below revised language (highlighted in bold font) is proposed as an amendment relative to the process when there is a decision for "Delayed Release" of video imagery:

"These reasons may not be general; they must have a factual basis and be specific to the individual case. For example, investigators have identified but not yet been able to interview a key witness to the incident. The delay of the release of video, in accordance with this policy, shall be made pursuant only to the unanimous decision of the Chief of Police and the Commission's two designated liaisons for video release. In the absence of a unanimous decision supporting a delay, the video imagery will be released. Any decision to permit a delay shall be re-assessed every fourteen days. **If the delay in the release continues for more than twenty-eight days, the matter shall be placed on the next regularly scheduled Commission meeting for consideration of the continued justification for delay, as well as anticipated time frame for release. The Commission shall make the decision to release or continue the delay. The video imagery in question shall be released as soon as the reason for delay has been resolved.**"

The above revised wording has been incorporated into the attached draft policy that is before the Board for consideration. If approved the Board should also direct the Department to prepare the appropriate procedures to implement the Special Order.

Should you have any questions please contact me at (213) 236-1400.

Respectfully submitted,



RICHARD M. TEFANK, Executive Director
Board of Police Commissioners

Attachment

LOS ANGELES BOARD OF POLICE COMMISSIONERS CRITICAL INCIDENT VIDEO RELEASE POLICY – DRAFT

PURPOSE

It is the intent of the Los Angeles Board of Police Commissioners (Commission), through the adoption of this policy, to increase transparency with respect to the operations of the Los Angeles Police Department (LAPD), and in doing so, foster greater public trust. The people of Los Angeles have an undeniable interest in being informed, in a timely fashion and based on the most accurate information available, about how their police department conducts its business, especially where officers use lethal force or where the use of force by the police result in the death or serious injury of a civilian.

This policy sets the standards and criteria for the public release of video recordings that capture critical incidents involving LAPD officers. This policy is intended to balance two important interests: the public's interest in transparency and police accountability, and the privacy interests of the individuals depicted in such videos. The public has a strong interest in obtaining timely access to information, including video footage, regarding incidents where officers use lethal force and/or where a person has died or suffered a serious injury as a result of a police encounter or while in police custody. At the same time, the individuals who appear in these videos have a privacy interest which must be considered. These individuals include not only the involved individuals and the police officers, but also witnesses, bystanders, and the subject upon whom force is used.

There are considerations, such as preserving the integrity of related investigations, that may justify a delay or deviation from the standard procedure, and these considerations are also detailed in this policy. In recognizing that a video may not tell the whole story, the LAPD will also provide the necessary context when releasing video so the public has the most accurate picture of what occurred based on the information known at the time of release.

POLICY

It is the policy of the Los Angeles Police Department that video evidence in the Department's possession of "Critical Incidents" involving LAPD officers be released to the public within 45 days of the incident. The Commission or the Chief of Police may determine that earlier release is in the public interest. This release shall consist of relevant video imagery that depicts the actions and events leading up to and including the "Critical Incident". Relevant video imagery is video and accompanying audio footage that is typically considered by the Chief of Police, Board of Police Commissioners, and criminal prosecutors to determine the propriety of an officer's conduct during such "Critical Incident". The release of video shall be accompanied by additional information to provide context based on the evidence available at the time of release. This policy applies only to incidents occurring after the effective date set forth below.

Critical Incidents: This policy applies to video imagery concerning the following types of incidents:

- Officer-involved shootings, regardless of whether a person was hit by gunfire¹;
- A use of force resulting in death or serious bodily injury requiring hospitalization;
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is *no preliminary evidence* of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death; or
- Any other police encounter where the Commission or the Chief of Police determines release of video is in the public interest.

Video Sources: The sources of video that may be released pursuant to this policy includes, but are not limited to, body-worn camera video, digital in-car video, police facility surveillance video, video captured by the Department's use of a small Unmanned Aerial System (sUAS), and video captured by third parties that is in the Department's possession.

Privacy Protections: Video will not be released where prohibited by law or court order. Further, consistent with the protections afforded juveniles and the victims of certain crimes, video imagery shall be redacted or edited to the extent necessary to ensure that the identity of said individual(s) is protected. Where the video cannot be sufficiently redacted or edited to protect the person's identity, it will be withheld. In addition, video may also be redacted or edited to protect the privacy interests of other individuals who appear in the video. In each instance, such redaction may include removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information. Further, where possible, such redaction or editing shall not compromise the depiction of what occurred during the incident.

Delayed Release: There may be circumstances under which the release of such video must be delayed to protect one or more of the following:

- Safety of the involved individuals, including officers, witnesses, bystanders, or other third parties
- Integrity of an active investigation (including criminal or administrative)
- Confidential sources or investigative techniques
- Constitutional rights of an accused

These reasons may not be general; they must have a factual basis and be specific to the individual case. For example, investigators have identified but not yet been able to interview a key witness to the incident. The delay of the release of video, in accordance with this policy, shall be made pursuant only to the unanimous decision of the Chief of Police and the Commission's two designated liaisons for video release. In the absence of a unanimous decision supporting a delay, the video imagery will be released. Any decision to permit a delay shall be re-assessed every fourteen days. If the delay in the release continues for more than twenty-eight days, the matter shall be placed on the next regularly scheduled Commission meeting for

¹ This does not include unintentional discharges or officer-involved animal shootings.

consideration of the continued justification for delay, as well as anticipated time frame for release. The Commission shall make the decision to release or continue the delay. The video imagery in question shall be released as soon as the reason for delay has been resolved.

Notifications: Absent exigent circumstances, reasonable attempts shall be made to notify the following individuals or entities forty-eight hours prior to the release of video imagery:

- Officers depicted in the video and/or significantly involved in the use of force
- Subject upon whom force was used
 - If the subject is deceased, the next of kin will be notified.
 - If the subject is a juvenile, the subject's parents or legal guardian will be notified.
 - If the subject is represented by legal counsel, that representative will be notified.
- District Attorney's Office and City Attorney's Office
- Los Angeles Police Protective League
- Other individuals or entities connected to the incident as deemed appropriate.

Posting: All released video shall remain posted on the Department's designated website until twelve months after the Board of Police Commissioners adjudicates the incident.

RELEASE – LIMITED WAIVER

The release of any specific video imagery does not waive the Department's right to withhold other video imagery or investigative materials in the same case or any other case, as permitted by law. This policy is not intended to displace or supersede any legal right or remedy available to any person or entity, and it is also not intended to prevent or hinder compliance by the Department with respect to any legal disclosure requirements, including but not limited to, any court order or disclosure provisions of the California Public Records Act.

EFFECTIVE DATE

This policy shall take effect 30 days after approval by the Board of Police Commissioners.