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March 13, 2017

Council of the City of Philadelphia
Committee on Public Safety
Office of the Chief Clerk
Room 402, City Hall
1401 John F. Kennedy Boulevard
Philadelphia, PA 19107

**RE: Support for Resolution # 161113 Regarding the Philadelphia Police Department
Body Worn Camera Policy**

Dear Members, Committee on Public Safety,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 210 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we appreciate the opportunity to offer our perspective on the body worn camera program. As these cameras come into greater use by law enforcement across the country, it is important to underscore that these cameras are not a substitute for broader policing reforms and without appropriate safeguards, can compound problems of over-surveillance and biased policing. As one of the nation's largest police departments, the Philadelphia Police Department (PPD) has the opportunity to not only significantly strengthen civil rights protections in its own use of body worn cameras, but also to set an example for other departments across the country that are adopting cameras. We offer these comments to identify ways this program can be strengthened and to offer practical guidance for implementation of the PPD's body worn camera program in ways that are positive for civil rights.

Video footage that documents law enforcement interactions with the public may play a valuable role in the present and future of policing. Whether they are worn by officers or mounted on police equipment, cameras may help provide transparency into law enforcement practices, by providing first-hand evidence of public interactions. Yet while body cameras carry the promise of officer accountability, accountability is far from automatic.

In 2015, a broad coalition of 34 civil rights, privacy, and media rights groups developed a set of shared Civil Rights Principles on Body Worn Cameras.ⁱ Importantly, the groups recognized that "without carefully crafted safeguards in place, there is a real risk that these new devices could become instruments of injustice, rather than tools for accountability."

The Leadership Conference and Upturn have since been monitoring and evaluating body worn camera policies all across the country, based on criteria derived from our civil rights principles.ⁱⁱ This policy scorecard analyzes more than 50 local department policies, including PPD's.

While the policy currently meets the requirements for three of our scorecard criteria, substantial improvements need to be made in five others:

1. **The Committee should urge PPD to establish new standalone procedures (in addition to existing public records procedures) that clearly describe the circumstances under which PPD will proactively release footage to the public (e.g., for any fatal police shooting), and how complainants can gain access to their own footage.**

PPD's current policy relies on Pennsylvania's public records law to make footage available, and does not expressly allow complainants to view relevant footage. (§9-A-4) The policy states:

The release of any digital recordings obtained through Body-Worn Cameras through a public records request will be consistent with the Pennsylvania Right to Know Act (65 P.S. §37.304 et seq.). To ensure compliance, the Digital Evidence Custodian shall coordinate with the Department's Right-to-Know Officer on such requests.

Furthermore, any public release of footage must be authorized by the Commissioner. (§9-B-6) The policy states:

If there is a legitimate law enforcement need, only the Police Commissioner or his designee shall have the authority to release any digital recordings from a Body- Worn Camera to the media and/or social media outlets.

2. **The Committee should urge PPD to establish a policy requiring officers to document what they witnessed before watching any footage. Then, in a second step, the officer can watch footage and document any additional information that they further glean or recall — clearly demarcating what information came before and after footage review.**

PPD currently allows officers to review footage as they write their incident reports. (§9-B-2) The policy states:

2. Department personnel shall review their own digital recordings for report writing, court preparations, and/or training purposes (See also, Section 6-G). The following statement will be recorded on all police reports prepared after reviewing their BWC video: "The contents of this document are based on my observations of the incident and a review of the recordings captured by a mobile video recording system."

Even in a critical incident, like a weapon discharge or other serious use of force, the operational protocol specifies that the officer's camera be taken by a supervisor to the district and uploaded as soon as possible — but it does not explicitly prohibit the officer from reviewing the footage in the field before that can happen. (§7-K) The policy states:

K. If any Body-Worn Camera video captures a police discharge, a seriously injured officer, a motor vehicle accident involving serious bodily injury, any death captured on video, or any use of force resulting in serious bodily injury or death, the officer's Body-Worn Camera shall be taken to the district by the first available supervisor and uploaded into the DEMS.



1. The supervisor shall immediately notify the DEMS Administrator of the incident and request the video footage be restricted from being viewed by all departmental personnel except the Police Commissioner, Deputy Commissioners, the appropriate investigative unit and the District Attorney's office. However, the Police Commissioner or their designee may approve access to other individuals or entities if necessary or required by court order.

2. Once the recorded media is uploaded, stored, and restricted from view, the Body- Worn Camera will be returned to the officer, as soon as possible.

3. The Committee should urge PPD to clarify its policy on deleting unneeded, routine footage.

PPD's current policy specifies that routine footage (i.e., footage that has no evidentiary or accountability value) must be retained for a minimum of 30 days, but does not specify a maximum retention period. (§§4-D, 9-A-1) The policy states:

Unless a specific incident or event is marked as evidence or tagged for further review, digital recordings captured by Body-Worn Cameras shall be retained for no less than thirty (30) days from the date of the incident or event. The retention of digital recordings marked as evidence shall be consistent with existing document retention periods for the appropriate investigative files.

...

Evidentiary and Right to Know Access to Data.

1. Retention periods for the purpose of the BWC Program shall be no less than thirty (30) days, unless video is required for evidentiary purposes or further review. If the video is required as evidence, the retention period shall be the same as that required for evidence of that particular crime (PLEAC 2.4.2 d).

4. The Committee should urge PPD to publicly reject all future uses of facial recognition in conjunction with body-worn cameras.

PPD currently does not place any limits on the use of biometric technologies (e.g., facial recognition) to search footage.

5. The Committee should urge PPD to establish a plan for periodically reviewing video access logs, to ensure that footage has been accessed only for legitimate reasons.

PPD expressly prohibits both footage tampering and unauthorized access to footage. But the policy does not indicate that access to recorded footage will be logged or audited. (§§6-E, K; 9-B-4) The policy states:

6-E. Officers shall not erase, alter, modify, or tamper with any Body-Worn Camera, software, hardware, or any audio/video recording.

...



6-K. Officers, investigators and supervisors shall not personally make any copies of any recordings for their personal use.

...

9-B-4. In no event shall any digital recording captured by a Body-Worn Camera be used for the purposes of officer or civilian ridicule or embarrassment. This includes submission of any portion of a digital recording from a Body-Worn Camera to a media organization, social media, or any other media platform designed to be viewed by the general public or other members of the department.

As the Committee considers community feedback on PPD's body worn camera program, we would be happy to further discuss our civil rights principles, our national policy scorecard, or any of our specific policy suggestions with you. Thank you for the opportunity to provide feedback, and we look forward to working with you. If you have any questions about these comments, please contact Sakira Cook, Counsel, The Leadership Conference, at cook@civilrights.org or 202-466-3311.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

ⁱ The Leadership Conference on Civil and Human Rights, *Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras* (May 15, 2015), <http://www.civilrights.org/press/2015/bodycamera-principles.html>.

ⁱⁱ The Leadership Conference on Civil and Human Rights & Upturn, *Police Body Worn Cameras: A Policy Scorecard*, <https://www.bwscorecard.org> (last updated August 2016).