3-06/200.75 - Public Release of Critical Incidents

Consistent with statutory law but notwithstanding other policy provisions, the Department shall retain the sole discretion to publicly release any portion of body worn camera (BWC) recordings upon the approval of the Sheriff, or his designee, under any of the following conditions:

- The release of any portion of such BWC recordings may assist with the furtherance of an ongoing investigation; and/or
- The release of any portion of such BWC recordings may serve to dispel erroneous or inaccurate information in the public domain or may otherwise serve to educate the public without interfering with any ongoing investigation.

Nothing in this section shall be considered a waiver of any statutory provisions or otherwise require the public release of any portion of any BWC recording or other materials not released under such terms.

In response to any written request under the California Public Records Act (PRA), BWC video and audio recordings of any critical incident (defined below) shall be subject to release unless any of the following conditions apply:

- If the release of any such recording(s) would substantially interfere with an active criminal or administrative investigation, disclosure may be delayed for up to forty-five calendar days after the date the Department knew or reasonably should have known about the critical incident. If such delay is asserted, the Department shall provide the requester with a written response specifying the basis for the delay and an estimated date for disclosure;
- If after the forty-five days it is determined the release of such recording(s) would continue to substantially interfere with an active criminal or administrative investigation, disclosure may be further delayed up to one year with written notice to the requester of the specific basis for the further delay and an estimated date for disclosure;
- Any delay beyond a total of one year must be supported by clear and convincing evidence that release of the recording(s) would substantially interfere with an active criminal or administrative investigation. The requester shall promptly be provided with a written response setting forth the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public's interest in disclosure, as well as an estimated date for release. Such delay shall be reassessed every thirty days with ongoing written notice to the requester; or
- If, at any time, it is determined that, based on the facts and circumstances depicted in any recording, that the public interest in withholding such recording clearly outweighs the public interest in disclosure due to a violation of the reasonable expectation of privacy of any subject depicted in the recording, the requester shall be promptly provided with written notice of the specific basis for the expectation of privacy and the public interest served by withholding the recording.

The Department may use redaction technology to blur or distort images or audio in order to obscure specific portions of the recording in order to protect the privacy interest of any subject depicted in the recording.

Where a recording is withheld from the public because the reasonable expectation of privacy of a subject depicted in the recording cannot be adequately protected through the use of redaction technology and that interest outweighs the public interest in disclosure, the recording (redacted or un-redacted) may nonetheless be disclosed (subject to any applicable delays), upon written request, if so doing does not pose an

unreasonable threat to, or endanger the lives of, the peace officers or any person depicted therein, of any of the following:

- The subject of the recording whose privacy is to be protected, or his or her authorized representative;
- The parent or legal guardian of any minor whose privacy is to be protected; or
- The heir, beneficiary, designated immediate family member or authorized legal representative or guardian of the deceased person whose privacy is to be protected;

For purposes of this policy, video and audio recordings of any critical incident shall include any of the following:

- Any incident involving the discharge of a firearm at a person by a Department member;
- Any incident involving a strike with an impact weapon or projectile to the head or neck of a person by a Department member;
- Any incident in which the use of force by a Department member against a person results in death or great bodily injury, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, or serious disfigurement; and/or
- The death of any arrestee or detainee in custody.

Notifications

Absent exigent circumstances, reasonable attempts shall be made to notify the following individuals or entities prior to the release of video:

- Department members depicted in the video and/or significantly involved in the use of force;
- Subject upon whom force was used;
- If the subject upon whom force was used is deceased, the next of kin;
- If the subject upon whom force was used is a juvenile, the subject's parents or legal guardian;
- If the subject upon whom force was used is represented by legal counsel, and such representation is known to the Department;
- District Attorney's Office and/or City Attorney's Office;
- Employee unions representing Department members; and
- Other individuals or entities connected to the incident as deemed by the Department as appropriate to notify.