OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF

June 22, 2020

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

RESPONSE TO OFFICE OF INSPECTOR GENERAL'S THIRD REPORT BACK ON IMPLEMENTING BODY WORN CAMERAS IN LOS ANGELES COUNTY

The Office of Inspector General (OIG) has submitted its third report back to your Board for the implementation of Body Worn Cameras (BWC) for the Los Angeles County Sheriff's Department (Department). I am providing this response to address several areas in the report, which seems to mislead the reader into believing the there was a continuous effort going back years to address the BWC program.

First, I feel compelled to address the OIG's statement in its opening paragraph that the Department *"has lagged far behind other major police agencies in the incorporation of video technology as a means of police supervision and public accountability."* Although the previous Sheriff failed to make the implementation of BWC a priority, I made the campaign promise to do so and acted decisively since taking office to make the BWC program a reality.

In my first month in office, I met with members of the Board of Supervisors (Board) and the Chief Executive Office (CEO), and promised my commitment to deploying cameras in the most economical and expeditious manner possible. I believed, at that time, the Board and CEO were in support of an immediate deployment of BWC. Unfortunately, later in January 2019, the CEO acted upon a Board motion, passed five months prior, on August 7, 2018. That motion directed the CEO to hire an outside consultant to review a previous BWC implementation plan submitted to the Board in June 2017.

When the Department was informed by the CEO that a BWC consultant would be contracted to evaluate the BWC program, the Department expressed concern this action was not necessary because of the reduction in costs and would unnecessarily

delay the project. Regardless, the consultant was retained by the CEO at a cost of $225,000. The Department worked closely with the BWC consultant and CEO staff until the completion of the report, six months later, on June 12, 2019. Even though the report caused a six-month delay, the Department was pleased to learn that the consultant's final report supported the Department implementation strategies and policies.

Upon completion of the consultant's report, the Department submitted a new implementation plan with the promised reduction in costs and reduction of additional personnel. Although a budget request was submitted prior to engaging vendors, the Department team members and CEO staff agreed upon a budget request that reflected the known 2019 costs and a best estimate of purchasing prices for equipment and services.

Two months later, on September 24, 2019, the Board approved a motion to fund the implementation of the Department BWC program. Unfortunately, the funds were not provided directly to the Department and were placed into a Provisional Finance Uses (PFU) account held by the CEO. This subsequently caused further delays in permitting the Department to begin critical network infrastructure, construction, and computers needed for BWC.

The CEO directed the Department to submit another budget request for the funds, which could only be spent in the remainder of Fiscal Year 2019-20. This required a second Board motion authorizing the release of the already allocated funds.

Meanwhile, the Department requested the procurement of a BWC vendor be completed through one of several expedited processes the Board could authorize. The Department was directed to pursue a Request for Proposal (RFP). This process generally takes 9-12 months to complete. The Internal Services Department (ISD), released the RFP for BWC solicitation on October 31, 2019. The solicitations were due to ISD on January 9, 2020.

More than two months after the first motion to fund the BWC, the Board approved a second motion to provide $5.63 million from the PFU account for the use of BWC program infrastructure upgrades to the Department on December 19, 2019. The Department finally encumbered the partial funds on January 21, 2020. The Department began the purchasing process for infrastructure equipment for the BWC deployment, yet in April 2019, those funds were removed from the Department budget without notice or reason for four weeks. The loss of funds created conflicts with current Los Angeles County (County) spending regulations and approval processes. The removal of the funds forced the Department to cancel equipment orders, then create new orders following the reinstatement of funds. The funds were only returned after I sent a letter to the CEO requesting the return.

Since taking office, it has been the Board's desire to constrict the Sheriff's budget, combined with the obstacles detailed above has created the County to lag behind the rest of the Nation's cities and counties who have implemented BWC.

With regards to the rest of the OIG report, I am providing the below responses to assist you in clarifying many of the topics discussed.

On page 3, the OIG reports the Department released a "draft" policy to its County justice partners. The Department complied with the September 24, 2019, Board motion that requested the Sheriff provide a "final" policy prior to issuing an RFP for the BWC. The Department completed the request and provided the final policy. Additionally, the final policy was released as part of the Civilian Oversight Commission (COC) agenda to the public at its January 16, 2020, meeting and was subsequently reported in media outlets. The Department will place the final policy on its website for the public and its personnel once the department has BWC's and the policy is in effect.

On page 4, the OIG report indicated the Department would provide BWCs in the jails The LASD implementation plan does not include funding or a proposal for BWCs in Custody Division. The Department is unaware of the reason the OIG wrote this.

Further on page 4, the OIG report wrote the Department's BWC policy, "largely mirrors that of the Los Angeles Police Department (LAPD) which has been in effect since April 28, 2015. Where it does not, the provisions appear to strongly favor LASD employees over public transparency." The OIG further addressed the following "concerns" raised by the Public Defender (PD), Alternate Public Defender (APD), and the OIG:

1. LASD policy grants supervisors and deputies too much discretion in deciding when to turn on or off a Body Worn Camera and "there is no real accountability for a deputy failing to activate the Body Worn Camera."

2. BWC "prohibits routine or random audits solely for the purpose of discovering misconduct." OIG further states Department policy "prohibits use of unintentionally recorded personal communications to initiate an administrative investigation and creates other exceptions that could be used to avoid administrative consequences."

3. A concern raised specifically by the PD and APD is the use of the term "citizens" throughout the Department's BWC policy. The concern is that the term may be "understood to reference immigration status." OIG proposed the term be changed to "members of the public" or "community members" for clarification purposes as it notes it may "likely" be the manner the Department intended it to be.

In response to #1, the Department's BWC policy Manual of Policy and Procedures (MPP) 3-06/200.08—Body Worn Cameras – The policy is very specific as to when

Department members shall activate the BWC: Prior to initiating, or upon arrival at, any enforcement or investigative contact involving a member of the public, including all vehicle and pedestrian stops (including self-initiated consensual encounters), calls for service, Code-3 responses (which includes calls for service or responses where a Department member may need assistance), vehicle and foot pursuits, searches, arrests, uses of force, suspect and/or subject transportation, any encounter with a member of the public who is or becomes uncooperative, belligerent/hostile, including any suspect, victim, and witness interviews.

Exceptions of BWC recording are listed in MPP 3-06/200.18—Body Worn Camera Recording Exceptions. The purpose of this Section is for the protection of witnesses or victims (of any age) who refuse to provide a statement when the BWC equipment is on, this is applicable only when the encounter is non-confrontational. This particular Section gives members of the public (victims and witnesses) the ability to request whether or not they want to provide a BWC recorded statement. The Section also protects confidential informants, citizen informants (or "community" informants as proposed by the PD and APD), and members of the public inside patient-care areas of a hospital, rape treatment, or other healthcare facility, unless law enforcement action is taken.

In response to #2, we believe this is misleading as the Department intends to conduct random audits of Body Worn Camera footage. This matter was explained in detail during the January 16, 2020, COC presentation regarding the BWC policy. The Department's Audit Policy will be described in an amendment to Field Operations Directive (FOD) 90-007. Controlled random audits of BWC video will be performed with guidelines and procedures of how audits will be conducted. The purpose of controlled random audits is to ensure fair treatment to Department members and proper documentation.

We are currently in the process of negotiating an audit policy with the affected unions. At this time, our camera vendor has not been finalized. Procedures and strategies for conducting audits could change based on the capabilities of the selected vendor's product.

In addition to the Body Worn Camera service audits, video footage will routinely be audited as part of existing administrative reviews of incidents including; uses of force, allegations of force, foot pursuits, vehicle pursuit, personnel complaints, civil claims, injuries, lawsuits, and traffic collisions. A variety of actions can be taken upon the discovery of misconduct, including counseling, training, performance log entries, and the initiation of administrative and criminal investigations.

The OIG report further contends the Department policy prohibits "the use of unintentionally recorded personal communications to initiate an administrative investigation and creates other exceptions that could be used to avoid administrative consequences." The policy continues beyond what is authored in the OIG report and

states, "unless there is independent evidence or allegations of criminal conduct or misconduct that would likely result in suspension or termination that may be confirmed by the video." This verbiage permits the Department to take action against offenses by employees.

In response to #3, although the term "citizen" does not reference a person's immigration status, we are considering an update to this terminology ("member of the public").

On page 5, the OIG report, indicated that "Most stakeholder groups recommend against allowing deputies to review Body Worn Camera footage prior to writing reports of a deputy-involved shooting or any other use of force." The OIG report states both the PD and APD expressed "grave concerns" regarding the Department's policy (similar to LAPD), which allows Department members to view BWC video footage prior to writing reports, including involvement in a use of force.

The Department will permit personnel to view BWC video footage prior to writing a report in accordance with best practices as indicated by a Bureau of Justice Assistance (BJA) Study Summary: Current research published December 2019 by the BJA determined this is the best practice through review of 304 agency policies across the nation. This study was a four-year policy analysis which resulted in the following statistic.

The BJA report, under the Section Officer Authority to Review, states in part, "With regard to a critical incident (e.g., officer-involved shooting), the vast majority of agencies (92 percent) allow officers to view video of the incident before making a statement."

The Department took to heart the County taxpayer funded consultant report performed by the International Association of Chiefs of Police (IACP) throughout the development of this project. The IACP's expert Attorney Bruce D. Praet was consulted and included recommendations on the topic as part of the CEO and BOS mandated IACP report. On Mr. Praet's legal aspects report, page #5 (page #71 of the overall report), Mr. Praet in essence states deputies review of BWC footage and LAPD's policy is "best practice" and outlines reasoning, as well as case law supporting his recommendation.

There is additional motivation for the Department and the groups who provide oversight to continue this best practice. Unlike many law enforcement agencies, the Department deputies still provide a voluntary statement following a critical incident. Though the deputy has the same protections as anyone else under the 5th Amendment of the U.S. Constitution, the "Gates Johnson" Settlement Agreement [Assn. for LA Deputy Sheriffs v. Baca CA2/7, B238141 (Cal. Ct. App. 2013)] requires the Department not initiate the administrative investigation until the criminal investigation is concluded. This means the Department is not able to compel a statement until the criminal investigation is complete. If a deputy is not allowed to review video following a critical incident, then

there is little incentive to give a statement until the administrative investigator compels a statement.

On page 5, 3rd paragraph, the OIG contends the Department's policy "falls short of adopting all best practices recommended by Penal Code (PC) Section 832.18. The OIG included a breakdown of 832.18 PC and compared it to our Department's BWC policy, listed in the appendix of the report.

The following is additional information in response to the OIG appendix items:

Bullet #2, the OIG cited MPP 3-06/200.55, MPP 3-06/200.63, and 3-06/200.68. Further into this bullet point, it indicated BWC policy "does not incorporate the best practice set forth in Penal Code Sections 832.18(b)(1) that a law enforcement officer's supervisor should take physical custody of an officer's camera and be responsible for downloading the data in cases of "uses of force or other serious incidents" (emphasis added)." The OIG's concern is the referenced policy Sections are specific to Category 3 use of force incidents, including a deputy-involved shooting, but not for Category 1 or Category 2 uses of force.

Penal Code Section 832.18(b) indicates law enforcement agencies shall consider the best practices regarding the downloading and storage of Body Worn Camera data as prescribed in 832.18(b)(1): Designate the person responsible for downloading the recorded data from the Body Worn Camera. If the storage system does not have automatic downloading capability, the officer's supervisor should take immediate physical custody of the camera and should be responsible for downloading the data in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident (emphasis added).

The Department's BWC policy MPP3-06/200.55 Use Of Force Incidents sets forth the guidelines as prescribed by PC 832.18(b)(1) for Category 3 use of force incidents, including deputy-involved shootings; however, the Department's uploading process, regardless of the captured incident, is automatic and cannot be tampered with by Department personnel (RFP-IS-19255005/BWC Requirements B24, C10 and DC1, DC3, DC5, DC9, D13, D18 and BD4). The file is not deleted off the device until it is "hashed" and the file's integrity is verified. The Department believes the intent of 832.18(b)(1) PC is satisfied with our intended automated processes and compliant with the law.

The purpose of seizing the devices on a Category 3 incident or deputy-involved shooting has less to do with the upload concern, but rather, having a trained BWC technician from the Body Worn Camera Unit be able to restrict access to just those involved in the investigation(s). Whereas, this is less of a concern on Category 1 and 2 incidents and can be done by the field sergeant and/or watch commander if malfeasance is suspected on the deputy's part.

Bullet #5, in the Appendix Section, cites MPP 3-06/200.28, indicated this Section does not "establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of Body Worn camera" as set forth by 832.18(b)(3). It further indicates the above policy "is not necessarily sufficient to prevent such tampering in the first place." The Department policy is specific as to the data tampering, deleting, copying and unauthorized use or distribution of BWC data covered by the below outline Sections:

- MPP 3-06/200.25 Confidential Nature of Recordings
- MPP 3-06/200.28 Prohibition Against Modification of Recordings

Furthermore, the Department revised and updated verbiage on all Department policies to ensure it included BWC equipment was covered under the electronics umbrella. For example MPP Sections 3-01/040.15, Care of County Property and Equipment; 3-01/100.45, Use of Communications Equipment; 3-07/210.05, Permissible Use; 3-07/210.10, System Use; 3-07/220.00, Prohibitions; 3-06/200.75, Public Release of Critical Incidents; and Field Operations Directive (FOD) 90-007.

Many of these concerns are addressed in the RFP (RFP-IS-19255005/ BWC Requirements B27, BV9, C10, C12, DC2, DC9, BD40, BD44, BD52, and BD61), so the awarded vendor will have systems to prevent some concerns, such as tampering and deleting. Those concerns which can occur after viewing or downloading are addressed by policy.

In Bullet #6 of the Appendix Section, the OIG cited 832.18(b)(5) "requires a minimum retention period of 60 days for footage with no evidentiary data and a minimum of two years for use of force incidents, incidents that led to the arrest or detention of an individual, or for incidents relating to a formal or informal complaint."

The Department's BWC policy MPP 3-06/200.48 states in part a Department member shall enter metadata for the event type which best describes the content of the recording (i.e. arrest, traffic stop, report, etc.). All evidence identified as being related to the arrest and subsequent criminal prosecution of an individual will be identified by the handling deputy and discoverable by the handling detective, which will be presented as evidence. All identified evidence (including Body Worn Camera footage) will be retained for the same time period as all other evidence related to the criminal case. Our policy not only satisfies, but exceeds the requirements set by PC Sections 832.18(b)(5), subsections (A), (B) and (C).

Additional recordings shall be retained for a minimum period of three years (MPP 3-06/200.73), which exceeds standards set by PC 832.18(b)(5).

The Department currently has only "0" (zero) retention and "9" (nine) retentions. Zero retention is indefinite, whereas nine retention represents 9 years. We intend to add a "3" (three) year retention for all other recordings. Simply, if it is not an indefinite or nine

retention, the file will be deleted in 3 years. This exceeds G.01.010 (Administrative Records) and SHD-540 (Traffic and Parking Citation) of the Los Angeles County Records Retention Schedule and exceeds the referenced penal code Section. Though most of the underlying authority Sections are two years or less, the Department chose 3 years to also allow for retention to include statute of limitations on civil lawsuits.

Any incident that requires administrative documentation including, but not limited to, a traffic collision, employee injury, use of force, allegation of force, complaint, vehicle pursuit, foot pursuit, civil claim, or damage to property, the involved supervisors are responsible for adding the categorization of "Administrative Hold" for the concerned Body Worn Camera records in our Department's digital evidence management systems (cloud based storage) per MPP 3-06/200.73.

In Bullet #8 of the Appendix Section, the OIG indicated our Department policy "does not have any sanctions for violations of its policy within the policy itself, which this subsection states should be considered." The applied discipline for violations of BWC policy, including any and all policies applicable to prohibited behavior, are contained within the Department's Discipline and Education Guide.

Guidelines for discipline are being revised. The BWC Unit requested revisions, which will impose discipline for BWC related policy violations.

You and you alone are responsible for the delays in implementing the BWC program. Every delay, obstacle, and misdirection can be traced directly back to your offices and those who report to you, specifically the CEO and the Internal Services Department. Both the community and the Department would appreciate if you prioritize the BWC program and eliminate all obstacles remaining.

Should you have any questions or need additional information, please have a member of your staff contact Commander Chris Marks, Detective Division Headquarters, at [redacted].

Sincerely,

ALEX VILLANUEVA
SHERIFF