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ACCOUNTABILITY
TASK FORCE

**Background Briefing: Chicago Police Accountability Task Force
Policy Proposal for Publicly Releasing Video, Audio and Other
Evidence Relating to Police-Involved Incidents**

CHICAGO - The Chicago Police Accountability Task Force has sent Mayor Rahm Emanuel recommendations for a new video and audio release policy related to Chicago police-involved shootings and in-custody incidents involving death or great bodily harm. The Task Force recommends that recordings and certain related police reports be released to the public no later than 60 calendar days from the date of any incident that falls within the scope of the policy, while allowing entities that may be investigating the incident to request a delay of release limited to 30 days. Access to information about other police actions would remain subject to the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.*

If this policy is adopted, the City would become the first in the nation to have a specific written policy guaranteeing the public's timely access to information relating to sensitive police-involved incidents such as shootings and deaths in custody. The policy is intended to strike a balance between competing, and sometimes conflicting, interests of the public in timely access to video and audio recordings, of individuals who are the subject of the police action and of units of government investigating or otherwise addressing the consequences of those incidents. The Task Force strongly believes that the purpose of this policy is to foster transparency, and thus to build trust between the police and the communities that they serve.

Background

The need for a policy regarding the release of recordings and reports related to police-involved shootings and serious incidents in custody arises for various reasons. A key consideration is the public's undeniable interest in being informed in a timely fashion about how their police force conducts its business, especially where the use of force by the police results in the death of, or great bodily harm to, a civilian.

Another important, and sometimes competing, consideration is ensuring that investigations into police incidents of this kind are not inadvertently compromised by the release of critical evidence, such as video or audio recordings, in the initial stages of an investigation in a manner that could allow fact witnesses, intentionally or even inadvertently, to conform

their recollections of events to fit what they see, hear or read regarding an incident.

In the first instance the Independent Police Review Authority (IPRA) has a mandated and important role in investigating these incidents. IPRA has primary jurisdiction over police-involved shootings, and over incidents in which an individual suffers great bodily harm while in police custody where there is an allegation that excessive force was used. Video evidence has become an increasingly important part of investigations of these incidents, and gathering and reviewing it is an important part of IPRA's work. By necessity (and in accord with best practices) IPRA tries to collect all relevant video information, whether generated by the City or other parties. Given the increase in video available from a range of sources, IPRA's task in identifying and securing relevant video has grown, and that preliminary fact-gathering process takes more time.

The potential involvement of law enforcement agencies in these incidents was also important to the Task Force's consideration of this issue. IPRA refers all police-involved shootings where an individual is struck or killed to the Cook County State's Attorney's Office. There are also occasions in which these incidents are referred to the U.S. Department of Justice (including the U.S. Attorney's Office) and/or the Federal Bureau of Investigation. While these referrals do not always result in the initiation of grand jury proceedings or prosecutions, the Task Force believes that, in striking the balance described above, the immediate release of video and other information must give way, to a limited and specific degree, to the needs of agencies conducting criminal investigations, as well as to IPRA's investigations of the use of force by police. In order to be effective, any investigation must have sufficient time to allow for fact gathering and analysis. While the policy does not contemplate that video, audio or police reports should be withheld until the conclusion of any such investigation, it does provide for sufficient time at the start of any such investigation to allow key fact witnesses to be interviewed and their recollections be considered and shared without the high risk of undue influence by outside and powerful sources such as video or audio recordings, and for investigative personnel to determine if further action by law enforcement would be compromised by release. The policy also allows investigating agencies to seek one brief and specific additional period if the particular needs of the investigation require it.

Providing for an initial period and a brief extension before recordings or reports are released expressly reflects the balancing of interests that was the most important aspect of the Task Force's work on this issue. In this respect, the public's interests were always in the Task Force's mind. While the public has an indisputable interest in being fully informed in as timely a way as possible about what transpired in incidents covered

by this policy, it would not serve the public's interest in addressing the consequences of these incidents if investigations were routinely compromised because witness recollections became so intertwined with, or unduly influenced by, video or audio recordings or other information before those witnesses were interviewed by IPRA or by law enforcement agencies. This policy also further anticipates that IPRA and law enforcement will conduct these preliminary investigations with all deliberate speed and the need to request a single extension of time beyond the initial 60 day period will only be sought in rare circumstances.

Currently, the City has a practice of delaying the release of video information when there is a pending criminal or use-of-force investigation. In interviews, City officials indicated that they attempt to operate within the bounds of the FOIA in addressing the public's demand for information related to significant police actions. The City's practice is consistent with the practices of other jurisdictions surveyed. Based on interviews with other stakeholders outside of City government and on our own observations, however, the absence of a formal written policy has contributed to confusion, a lack of transparency, significant and inconsistent delays in the release of information to the public and an increase in the number of FOIA requests.

This proposed policy also reflects the reality that advances in technology have caused the proliferation of available videos which may bear on a police-related incident and underscore the need for a formal written policy. The City needs a policy that addresses the reality of those technology advances.

The Task Force has addressed this important policy recommendation now, in advance of other policy recommendations anticipated in its final report, because we feel it is critical to have a clear path forward for the public, the City, persons involved in these incidents and their families and law enforcement agencies as soon as possible. The mistrust that has arisen from the application of the City's current practice has contributed to the erosion of the relationship between the community and the police. It is important to move forward in a better, more transparent way.

This policy is intended to set a clear and predictable standard by which the City of Chicago automatically releases to the public any video, audio and certain initial police reports related to serious matters involving police action. It is our sincere hope that this policy will be an important step in bringing a greater degree of transparency to police-involved incidents, which are of significant interest to the public.

Process

In developing these policy recommendations, the Task Force interviewed a broad cross section of relevant stakeholders, including law enforcement agencies, criminal defense attorneys, civil rights attorneys, media, individuals active in the use of FOIA and protection of FOIA rights, representatives of the Fraternal Order of Police, and representatives of the Law Department and IPRA. The views of all these parties were critical to the creation of this policy.

The Task Force also considered how other municipalities around the country have handled these issues. As noted above, in researching best practices across other jurisdictions the Task Force was unable to identify any other written policy that codified a specific directive to local officials defining the type of incidents or information that would be subject to automatic release to the public, or a specific mechanism for the dissemination of information of significant interest to the public, such as video or related audio recordings, in the wake of some noteworthy police action.

Key Provisions

I. Scope: The policy recommendations encompass the following:

A. Incidents. (1) Those incidents in which a CPD officer discharges his or her firearm, stun gun, or Taser in a manner that strikes, or that potentially could strike, an individual, even if no allegation of misconduct is made; and (2) those where the death of, or great bodily harm to, a person occurs while that person is in police custody. "Great bodily harm" is defined in the policy as any injury that is serious enough to require treatment in a hospital or similar facility located in a correctional institution.

B. Recordings and Reports. This policy applies to the following items that relate to any covered incident: all video and audio recordings relating to the incident, including tapes of 911 calls, Office of Emergency Management and Communications ("OEMC") dispatch recordings, CPD radio calls, video and audio from CPD dash or body cameras, videos from CPD or OEMC POD cameras, as well as any video or audio recordings made using cameras or equipment not owned or controlled by the City that come into the possession or control of CPD or the Independent Police Review Authority ("IPRA"); and any arrest reports, original case incident reports, tactical response reports (TRR's), and officer's battery reports (OBRs).

II. Release of Recordings and Reports

A. Timing of Release of Information. Any information covered by this policy shall be released to the public no more than 60 calendar days from the date of the incident at issue unless a request is made to delay the release of any of the items covered by the policy. Where any video or audio recording covered by this policy was made using cameras or equipment not owned or controlled by the City, and comes into the possession of the City after the date of that incident, it shall be released to the public no more than 60 days after it comes into the possession of the City, but the City shall make every effort to provide for the release of such recordings simultaneously with the release of other information related to the incident.

B. Requests to Delay Release. Any request to delay the release of information covered by the policy shall be made in writing and shall be directed to the City Corporation Counsel. A request may be made only by the United States Attorney for the Northern District of Illinois, the Cook County State's Attorney, the Attorney General of Illinois, IPRA, or any other federal, state, county or local law enforcement agency. These requests must set forth with specificity the length of the delay requested (not to exceed an additional 30 calendar days) and shall set forth as reasons supporting the requested delay one or more of the factors listed at 5 ILCS 140/7(d)(i) through (vii). In addition, any such request must identify the specific item(s) sought to be temporarily withheld from release. A written request to delay release will itself be released to the public immediately upon receipt using a portal or website used for the distribution of information subject to this policy. The City will not honor any further requests to delay release beyond the initial request, and will not honor a request for a delay of release that exceeds 30 days.

C. Early Release of Information. Where doing so will not compromise an ongoing disciplinary or criminal investigation, any information covered by this policy may be released before the expiration of 60 calendar days, and may occur as soon as possible after the incident.

D. Manner of Release of Information. The City shall create and maintain a publicly accessible website or similar portal dedicated to the posting of the information covered by this policy.

III. Notice to Affected Parties. The Task Force believes that it is critically important that the rights of people affected by police action be recognized and respected in addressing the issues associated with this policy recommendation. Toward that end, the policy recommendations provide for notification to the subject of the police action or his/her representative, prior to the release of any such video or audio recording as a courtesy.

More specifically, the policy provides that prior to the release of the information, IPRA will attempt to notify any person who was the subject of the police action and is depicted in any video recording, or if that person is deceased or otherwise unavailable, that person's legal representative and/or next of kin, that the video recording and any related information will be released and the date of release. IPRA will also offer to promptly show such individuals (and/or, if applicable, their legal representative and/or next of kin) the video recording(s) in which that person was depicted, and to play any related audio, in advance of its public release, and to answer questions and provide other information concerning the incident and the status of any investigation of the incident, to the extent that information can be provided without compromising any investigation.

Other Considerations

The Task Force also urges the City to re-visit this policy one year after implementation to consider whether the 60 day period for the automatic release of information can be shortened. After agencies become used to operating under the policy, a deadline of 45 or 30 days may be determined to be more appropriate. In addition, it is important to note that these policy recommendations do not foreclose the City from adopting other policies that aid in transparency and the public's access to information about incidents or practices related to police action.

The full policy recommendation is available on the Police Accountability Task Force website [here](#).

About The Police Accountability Task Force

Mayor Rahm Emanuel appointed the Task Force in December 2015 to develop detailed, comprehensive findings with specific recommendations for change in the short, interim and long-term in five important areas of reform: Community-Police Relations, De-escalation, Early Intervention & Personnel, Video Release Policies, and Police Oversight & Accountability. The Police Accountability Task Force has formed five Working Groups made up of a broad and diverse range of professionals, including those in police training, mental health, as well as elected officials, faith leaders, and community activists. Each Working Group is focused on one of the five areas of reform. They are meeting with organizations and individuals who are subject matter experts, have direct experience with police through one-on-one or group interactions, and others who have additional information and perspectives to share. The Task Force is also holding four Community Forums throughout the month of February so the public can provide direct input. Recommendations will be presented to the Mayor and City Council by March 31, 2016.

For more information and to obtain updates about the Police Accountability Task Force, visit <http://www.ChicagoPATF.org>.

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