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CITY ATTORNEY

REPORT NO. R17-0080
MAR 13 2017

REPORT RE:

**BODY WORN CAMERAS – REQUEST FOR RESOURCES
FY 2016-17: IINTERIM REQUEST FOR (4) ATTORNEYS
AND 4 PARALEGALS
FY 2017-18: CONTINUE 2016-2017 POSITIONS WITH FUNDING
ADD (3) ATTORNEYS AND (3) PARALEGALS**

The Honorable Budget & Finance Committee
of the City of Los Angeles
Room 1010, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

Last year, your Council approved the deployment of 7,000 Body Worn Cameras (BWCs) for Los Angeles Police Department (LAPD) officers assigned throughout the City, including all patrol officers and specialized units such as bike, Metro Division and gang deployments. That roll-out has begun with nearly 1,900 cameras already in the field and funding for 20 new BWC support positions in LAPD's 2016-17 budget. LAPD intends to complete this roll out by early 2018.

BWCs capture video and audio of officer-related activities and is intended to serve as evidence in criminal investigations and prosecutions, provide clarity to administrative investigations, increase accountability for officers and enhance credibility with the communities we serve. The deployment of BWCs will have a significant impact on public safety relative to criminal cases and the prosecutors handling them.

The deployment of 7,000 BWC along with 1,600 in car video cameras (exclusive of the California Highway Patrol's MVAR videos) has created crucial, sensitive and often

confidential evidence that prosecutors must locate, review, redact, share, store, duplicate, transcribe and place into evidence. BWCs videos have significant evidentiary value and are an important tool in the fair administration of justice. According to LAPD policy, BWCs will be turned on for every encounter with the public. The Office of the City Attorney, like many prosecutors across the nation, will need to review a significant amount of new crucial evidence.

With limited BWC deployment in December (only 1,000 of the BWCs deployed in the field), the City Attorney's Office had received over 15,000 videos. We have determined that it would take one staff member 71 weeks to review all videos received as of that time. Since that time, LAPD has nearly than doubled the number of BWCs in the field, dramatically increasing the number of resulting video hours requiring review.

As you may know, this Office has 48 hours from time of arrest to arraign an in-custody defendant. It is not unusual to receive custody referrals from the District Attorney or directly from LAPD mere hours before the filing deadline. In FY 2015-2016, we reviewed 69,762 LAPD cases for filing excluding direct cites, and 14,715 were set for trial, thereby triggering our discovery obligation. Moreover, each case could have multiple videos attached.

This will create the following challenges for prosecutors:

- LAPD is still developing a system to tag, bookmark or otherwise identify video for each case and cannot link all pertinent videos to the relevant case or suspect. As a result, prosecutors have to locate relevant footage to match up with arrest reports . Given the sheer volume of videos, this is a time consuming and resource intensive process.
- Once located, prosecutors should view videos prior to making a filing decision. While a video may contain admissions of guilt, identifications of suspects, important witness statements and crime scene information, it may also contain equally important exculpatory evidence which must be considered prior to filing to avoid the specter of wrongful convictions.
- Once viewed, it may become apparent that there is confidential and/or sensitive information, which by law must be redacted prior to disclosure, such as witness and victim identification and other personal information, including medical or mental health information, social security numbers, and dates of birth. Further, especially inside homes, there are important privacy concerns for many victims, including victims of domestic violence, child abuse and sexual assault. Victims and witnesses to gang crimes also warrant special protections. These same privacy concerns are relevant for bystanders who may have nothing to do with a police investigation. Responsible redaction is both time consuming and labor intensive.

- Constitutional, statutory and case law driven prosecutorial discovery obligations, including Brady obligations, require that we share evidence with the defense in a timely manner. It is essential that prior to giving access to these videos, we view them to ascertain what information is present and what measures need to be taken to protect vulnerable victims, witnesses and innocent bystanders.
- Once we have determined that a video presents admissible evidence in a case, we will need to tag or bookmark it for use in court. The Court has been very clear that it will not accept “cloud based evidence.” According to existing court rules, in order for information contained in any video to be admitted into any proceeding, hearing or trial, it must be transferred to a DVD and transcribed as well translated for the court. Neither LAPD nor TASER are currently tasked with creating DVDs or transcripts. While TASER has been working on creating an automated transcription of video, currently it is not functional. There is great cost associated with the creation of DVDs as well as with the transcription and translation of videos, which often include multiple simultaneous speakers and multiple languages. Further, we cannot delegate the task of editing videos which we seek to have admitted into evidence, as it is the responsibility of the prosecutor both to edit and to argue for admission to the court.

Given the significant increase in workload to date and the continued roll-out of BWCs city-wide, this Office requires additional resources immediately to meet the legal challenges associated with BWCs.

Kristine Hamann, Executive Director and Founder of Prosecutor’s Center for Excellence, Former Visiting Fellow at the Department of Justice, Bureau of Justice Assistance and the national subject matter expert on prosecution issues with BWC, has indicated that jurisdictions have calculated their resource needs at one new position for every 100 BWCs deployed. This is in line with public requests made in Phoenix and Wayne County (Detroit). By this standard, our office would require 86 new positions to handle the workload created by BWCs.

We recognize that given available resources these staffing formulas are not realistic. Therefore, our initial resource request attempts to address the most pressing ethical, legal and fairness responsibilities imposed on our prosecutors by LAPD’s deployment of BWCs while matching the added demand created by LAPD’s ongoing rollout.

Based on the BWCs already in the field, LAPD’s roll out schedule for the next 18 months and the need for immediate prosecutorial support, the following is recommended:

FY 2016-17

- Provide immediate position authority for (4) Deputy City Attorney IIs and (4) Paralegal Is to handle BWC videos associated with LAPD cases referred to the City Attorney's Branch Operations as well as the Family Violence and Anti-Gang Units
- Transfer approximately \$200,000 from the Unappropriated Balance line item for Outside Counsel to the City Attorney's Salary account to cover three-months of salary costs for these positions

FY 2017-18

- Request the Mayor to continue the (8) interim position authorities and provide ongoing, full year funding for these positions in the 2017-18 Proposed Budget
- Request the Mayor to include the next increment of City Attorney staff -- (3) new Deputy City Attorney II and (3) new Paralegal I position authorities -- with six months funding in the 2017-18 Proposed Budget, to match LAPD's continued roll-out of BWCs
- Request the Mayor to consider funding for new transcription services associated with these videos as required by the courts

This office will continue to keep the Mayor, Council and CAO informed should workload dramatically outstrip resources provided, requiring staff beyond that which is identified here.

Please note that this request includes both attorneys as well as paralegals because in large part our initial obligations relating to BWCs will include pre-trial review and redaction, which will lead to discovery motions, motions to compel and other law and motion issues that will need to be briefed and argued in court by attorneys. Attorneys are also necessary to do case assessments based on video content and to engage with defense attorneys in early case disposition discussions.

RECOMMENDATIONS:

1. RESOLVE that employment authority in the City Attorney's Office for the period February 1, 2017 – June 30, 2017, for the following positions be approved:

(4) Deputy City Attorney II (0551)
(4) Paralegal I (0576)
2. Appropriate \$178,548 (the equivalent of three months funding for all positions) within Fund 100, Department 12, Account 001010 from the Unappropriated

Balance line item for Outside Counsel, Fund 100, Department 12, Account 009301

3. Request the Mayor to continue the resolution authority and provide full-year funding for the (8) interim positions in the 2017-18 Proposed Budget
4. Request the Mayor to include position authority and six month funding for (3) Deputy City Attorney II (0551) and (3) Paralegal I (0576) in the 2017-18 Proposed Budget for the next increment of BWC roll out
5. Request the Mayor to provide additional funds to the City Attorney for transcription services associated with BWCs in the 2017-18 Proposed Budget

If you have any questions regarding this matter, please contact the undersigned at (213) 978-8795. A member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By


LEELA KAPUR
Chief of Staff

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Transmittal

cc: Rich Llewellyn, Interim City Administrative Officer
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