



COUNCIL AGENDA: 9/15/2020
ITEM: 4.2
FILE NO: 20-1045

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: September 15, 2020

SUBJECT: Release of Police Department Video Footage

RECOMMENDATION

As recommended by the Rules and Open Government Committee on August 26, 2020:

(a) The Council deem as “incidents of extraordinary public interest” the three publicized encounters between SJPd officers and protesters during the May 2020 period of unrest, as identified on (http://www.sjpd.org/records/protest_videos.html) and in the Council memorandum dated June 5, 2020 from Vice Mayor Jones and Council Members Peralez, Diep, and Carrasco, and Mayor Liccardo as:

(1) The incident involving the collision between the police motorcycle and the running pedestrian;

(2) The incident involving a physical altercation between police and a male who is pulled back behind the police line by multiple officers, and subjected to repeated blows by police; and

(3) The incident involving an officer responding to a protester with expletives, including “shut up, b***h.”

(b) Within 2 weeks of Council vote on this item, the City Manager shall release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest identified in paragraph (a), under the following conditions:

(1) All video sources shall be provided, but where multiple such sources exist and production of all sources would unduly consume time and labor, the City shall identify the three videos that most clearly and fully capture the event;

(2) At least ten minutes of footage prior to the actual interaction or event shall be provided in each case, to ensure the viewer has the benefit of the full context of the incident; and

(3) Provision of this video shall be limited only by the exceptions outlined in state law under SB 748 for responses to Public Record Act requests for video of “critical incidents,” mandating disclosure except where would doing so would “substantially interfere” with an ongoing criminal or administrative investigation, such as “endangering a witness’ or confidential source’s safety,” as demonstrated by clear and convincing evidence.

(c) Return to Council with an ordinance or Council Policy requiring release of body-worn camera footage under similar conditions similar to those described in Paragraph (b) for all incidents that the Council deems to be “police incidents of extraordinary public interest,” unless Staff recommends different conditions based on public input and Staff’s experience.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Mayor)

[Rules Committee referral 08/26/2020- Item G.4]



Memorandum

TO: CITY COUNCIL
SUBJECT: SEE BELOW

FROM: Mayor Sam Liccardo
DATE: August 20, 2020

APPROVED:

DATE: 08/20/20

SUBJECT: RELEASE OF POLICE DEPARTMENT VIDEO FOOTAGE

DIRECTION

Agendize for the Council September 15, 2020 meeting the following set of recommendations:

1. The Council deem as “incidents of extraordinary public interest” the three publicized encounters between SJPD officers and protesters during the May 2020 period of unrest, as identified on (http://www.sjpd.org/records/protest_videos.html) and in the Council memorandum dated June 5, 2020 from Vice Mayor Jones and Council Members Peralez, Diep, and Carrasco, and myself as:
 - a. the incident involving the collision between the police motorcycle and the running pedestrian, and
 - b. the incident involving a physical altercation between police and a male who is pulled back behind the police line by multiple officers, and subjected to repeated blows by police, and
 - c. the incident involving an officer responding to a protester with expletives, including “shut up, bitch.”

2. Within 2 weeks of Council vote on this item, the City Manager shall release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest identified in paragraph 1, under the following conditions:
 - a. All video sources shall be provided, but where multiple such sources exist and production of all sources would unduly consume time and labor, the City shall identify the three videos that most clearly and fully capture the event;
 - b. At least ten minutes of footage prior to the actual interaction or event shall be provided in each case, to ensure the viewer has the benefit of the full context of the incident;

- c. Provision of this video shall be limited only by the exceptions outlined in state law under SB 748 for responses to Public Record Act requests for video of “critical incidents,” mandating disclosure except where doing so would “substantially interfere” with an ongoing criminal or administrative investigation, such as “endangering a witness’ or confidential source’s safety,” as demonstrated by clear and convincing evidence.
3. Return to Council with an ordinance or Council Policy requiring release of body-worn camera footage under similar conditions similar to those described in Paragraph 2 for all incidents that the Council deems to be “police incidents of extraordinary public interest,” unless Staff recommends different conditions based on public input and Staff’s experience.

DISCUSSION

In January of 2019, the City received a Public Records Act request from two media outlets, the Bay Area News Group and KQED, for officer misconduct and use of force documents under California’s new law enforcement transparency law, SB1421. As reported in the Mercury News, the City Staff estimated last year that it would take 4 years to produce the 86 records, and [after 11 months, produced exactly one case.](#)

One First Amendment expert has called the City’s torpid pace of records production “absurd.” The same requests were made of police records in hundreds of other cities, with far better response. When this issue was brought to the Rules Committee by the Bay Area News Group in February, I urged and the Committee agreed to direct the City Manager to agree to a schedule for a more rapid production of those records.

Substantial negotiation ensued, but the City has been unable or unwilling to commit to a schedule that would result in the production of those records at a rate acceptable to the media organizations seeking the record, nor to has the City produced the records over the last 18 months at an acceptable pace. According to a July 2nd email from Bert Robinson of the Bay Area News Group, the City has produced only 6 complete files, and portions of 18 files. He has expressed the view, in frustration, that his organization has no choice but to file a lawsuit.

I have repeatedly expressed my concerns internally about the slow pace of the production of these records. As a former criminal prosecutor, I am very familiar with the task of providing police reports and tapes to defense counsel, and of long hours that I spent next to a photocopy machine with a redacting pen to release police case files in a timely manner—typically within a couple of weeks. Under the City Charter, however, the Office of the Mayor has no authority to direct the City Manager to require more rapid production of the records.

The Charter does grant me the very limited authority to direct and supervise the City’s Public Information Office under Section 502(g). That authority has been rarely invoked over the past several decades by any mayor, out of traditional deference and respect for the coherent operation of the City Manager’s Office. I invoke that authority today, in an effort to break this inexplicable logjam.