

REPORT OF THE CHIEF LEGISLATIVE ANALYST

March 17, 2008

To: Honorable Members, Public Safety Committee

From: Gerry F. Miller
Chief Legislative Analyst

Assignment No.: 07-03-0439
Council File No.: 06-2636

Reducing the Video Imagery Retention Period From Five Years to Two Years

SUMMARY

In 2005, the Los Angeles Police Department (LAPD) began to explore the implementation of a digital in-car video system. Los Angeles Administrative Code (LAAC) Section 12.3(b)(5) currently requires a retention period of five years for specified classifications of City records, which video imagery would likely fall within. In an effort to manage video storage costs, the LAPD requested that the City Attorney examine the legal requirements for the retention of images captured on different types of video monitoring systems. In a letter dated November 22, 2005, the City Attorney cited the following relevant statutes:

State Law	Government Code Section 34090	Minimum 2-year retention for city records, with following exception:
	Government Code Section 34090.6	Minimum 1-year retention for routine video monitoring that "record regular and ongoing operations of the departments...including mobile in-car video systems, jail observation and monitoring systems, and building security taping systems."
	Code of Civil Procedure Section 335.1	2-year statute of limitations for personal injury actions
	Government Code Section 3304(d) (Peace Officers' Bill of Rights)	Investigation for misconduct must be completed within 1-year of discovery of the alleged misconduct
Federal Law	42 U.S.C. Section 1983	Follows state law personal injury statute of limitations (in California, 2 years) for civil rights actions

At the November 20, 2006 Public Safety Committee meeting, the LAPD requested that LAAC Section 12.3(b)(5) be amended to reduce the retention period for video imagery from five years to two years. The City Attorney advised the Committee that a general amendment to LAAC Section 12.3(b)(5) would impact the retention period of video imagery for all departments. The matter was continued so this Office could obtain feedback from other departments on the proposed amendment.

MAR 18 2008

**PUBLIC SAFETY
INFORMATION TECHNOLOGY &
GENERAL SERVICES**



The Public Safety Committee again considered this matter on April 23, 2007. This Office presented a report, dated April 19, 2007, indicating that the affected departments (General Services, Recreation and Parks, Street Services and Transportation) were supportive of the proposal to reduce the retention period. Presentations were also provided by representatives of the City Attorney's Office and the LAPD for which the Committee conducted lengthy discussion on the following issues:

- The cost savings that could be derived by the reduced retention period. Based on the LAPD's assumptions, it was estimated that the City could realize a savings in video storage costs of approximately \$3.8 million by reducing the retention period from five years (\$6.4 million) to two years (\$2.6 million).
- Stand-alone video monitoring systems that record on a "loop." These cameras are installed in police facilities and other locations, such as MacArthur Park, and the feed from these cameras is directed into the police station. The video images are recorded over after a certain period of time, such as seven days, unless an incident necessitates that the imagery be retained.
- The legislative history for enactment of LAAC Section 12.3(b)(5) establishing the 5-year retention period.
- The legality, reasonableness and appropriateness of a two-year retention period. The LAPD indicated the video imagery considered for destruction after two years would be those containing "dead air," that is, non-events. Video imagery containing evidence that would be part of civil litigation, criminal prosecutions, or administrative investigations have, in the vast majority of cases, come to the City's attention within the two-year period. In these cases, the imagery would be marked and retained as part of the litigation/investigative packages for the appropriate length of time beyond the proposed two-year retention period.
- The availability of data to support anecdotal information that the vast majority of cases and allegations of misconduct are brought to the City's attention within two years of the incident.

This Office's report back on each of the above issues is provided below:

Cost Savings in Reducing Retention from Five Years to Two Years

The LAPD's estimated digital in-car video storage cost was calculated in August 2006 in connection with the Request for Proposal (RFP) to equip 300 vehicles at Operations-South Bureau. The LAPD made the following assumptions:

- 300 vehicles deployed per shift x 2 shifts/day = 600 vehicles
- Per vehicle average of 7 hours recording time per shift (5 hours forward-facing camera; 2 hours rear-facing camera)
- Average of 2,400 hours of video stored in a terabyte of storage

- Average cost per terabyte of storage: \$2,000

600 vehicles x 7 hours of video = 4,200 hours/day (1.75 terabytes of storage)
 1.75 terabytes x \$2,000 = \$3,500 of storage/day x 365 days/year = \$1,277,500.

Based on the above assumptions, the following table shows one to five years of storage costs for South Bureau only, and for the total 1,375 black and white vehicles at all Bureaus. It is also the desire of the LAPD to eventually install in-car video cameras in the approximately 225 Gang Unit vehicles. However, these vehicles currently are not equipped with Mobile Digital Terminals (MDTs), which would provide the viewing screen for the cameras. Their inclusion in the project is contingent on availability of funding to also install MDTs. For informational purposes, the estimated storage costs for a total of 1600 vehicles are also provided below.

Years of Storage	South Bureau, only (300 Vehicles)	All Bureaus (1375 Patrol Vehicles)	All Bureaus (1600 Vehicles: 1375 Patrol + 225 Gang)
1	\$1,277,500	\$5,855,208	\$6,813,333
2	\$2,555,000	\$11,710,417	\$13,626,666
3	\$3,832,500	\$17,565,624	\$20,439,999
4	\$5,110,000	\$23,420,832	\$27,253,332
5	\$6,387,500	\$29,276,040	\$34,066,665

Following completion of the RFP process, the Police Commission approved, on November 13, 2007, the contract award to IBM which provides a digital near-line storage system. The proposed contract is pending Council approval (C.F. 06-0600-S38). The proposed contract amount of approximately \$5.5 million includes two years of storage for the 300 vehicles at South Bureau. IBM's digital near-line storage system is more cost efficient because while the data is first stored online to a server, it is later transferred to tape for long-term storage, which is less expensive but still allows for the retrieval of data within seconds, or a few minutes.

IBM estimates that each additional year of storage would cost between \$155,000 and \$200,000 depending upon the number of hours of recording time per day. If Council approves the proposed IBM contract, estimated additional annual storage costs would range as follows for the 300 black and white vehicles at South Bureau, and if these costs are applied to the black and white vehicles in all Bureaus:

Additional Years of Storage	South Bureau, only (300 Vehicles)	All Bureaus (1375 Patrol Vehicles)	All Bureaus (1600 Vehicles: 1375 Patrol + 225 Gang)
1	\$155,000 to \$200,000	\$710,417 to \$916,667	\$826,672 to \$1,066,672
2	\$310,000 to \$400,000	\$1,440,834 to \$1,833,334	\$1,653,344 to \$2,133,344
3	\$465,000 to \$600,000	\$2,131,251 to \$2,750,001	\$2,480,016 to \$3,200,016

Video Recording Systems on a “Loop”

As noted above, LAPD informed the Committee that it currently utilizes several stand-alone digital video recording systems which record/preserve imagery on a “loop.” Based on a survey conducted by this Office, it was determined that most video recording systems in other departments are also on a “loop.” Attachment 1 shows the video recording and retention practices of the departments surveyed. The retention periods range from 24 hours to “indefinitely.” The video imagery retained “indefinitely” is that at the Los Angeles World Airports and the Port of Los Angeles. (The Federal Aviation Administration requires the video imagery at airports to be retained for at least 90 days. As of the writing of this report, a response had not been received from the Port of Los Angeles regarding the federal minimum retention requirements, if any.) In other departments, most video imagery is retained between 30 days to six months.

All departments indicated their support of the reduction in the minimum retention period, as appropriate, because of the substantial cost savings. It appears that the stand-alone video recording systems recording/preserving imagery on a “loop” were acquired based in large measure on cost efficiency as balanced against the minimum security needs of the respective locations.

On April 23, 2007, the Public Safety Committee decided that the retention policy for in-car video should be considered separately from these other video recording systems.

Legislative History of LAAC Section 12.3(b)(5)

The City Attorney researched the history of LAAC Section 12 that establishes the policies and procedures for the retention and disposition of City records. Upon its enactment in 1981, Section 12.3(b)(5) provided for a 10-year minimum retention period. Council reduced the retention period to five years in 1992 because the Records Retention Center had reached full capacity. The November 21, 1991, City Administrative Officer report (C.F. 91-2405) indicated that the CAO conducted a cost analysis of leasing additional warehouse space and professional off-site management of inactive records, and concluded that reducing the retention period was the “alternative best for the City.” At that time, annual costs to lease warehouse space would have been \$120,000, and obtaining off-site management would have been \$36,000. Because of these fiscal considerations, the CAO recommended the reduction in retention period, stating “The Task Force [on paperwork reduction] concluded that a five year minimum retention period was prudent for those items now retained for 10 years, although State Law requires only two years for most items in this category.” No further analysis was provided regarding the appropriateness of the minimum five-year retention period.

Proposed Two-Year Retention Period

The Committee requested data to verify that the proposed two-year retention period would not result in the destruction of video imagery relevant to criminal proceedings, civil litigation and administrative investigations.

Criminal Proceedings

The Los Angeles Police Department Manual establishes current policy for retention of evidence in a criminal proceeding. The LAPD will issue a Special Order as an addendum to this Department Manual Section after installation of the DICVS in black and white vehicles, but prior to deployment of the system. For informational purposes, the LAPD will transmit to Council a copy of the Special Order after approval by the Board of Police Commissioners.

Civil Litigation

The City Attorney reviewed data for police-related litigation matters contained in its Computer Law Systems (CLS) application. In a sample of LAPD cases reviewed for the years 2006/2007, nearly 300 of the sampled 337 cases were filed within the 2-year statute of limitations period.

Of the remaining approximately 35 cases, entries in CLS indicate that some cases were dismissed due to the plaintiff's failure to file a claim for damages in accordance with the California Tort Claims Act, or otherwise initiate litigation within the statute of limitations period prescribed under Section 335.1 of the Code of Civil Procedure. Some cases were employment related in which the "incident dates" reflected the earliest date an employee recalled first suffering an injury, as part of his or her allegation of a "continuous violation." For some remaining cases, no information was available in the database to explain the apparent delay between the "incident date" entered and the "open date" entered (date case was entered into CLS), or the incident date and the date the complaint was filed with a court. Additional information would require a manual search of the physical case files for each matter, and a summary of all the activity for each case.

Importantly, in the vast majority of cases brought by individuals outside the Department, the litigation flowed from a contact between that individual and the police, which took the form of an arrest, or other documented contact. Arrests, service of warrants, or compliance with the Tort Claims Act will all trigger the preservation of any imagery relevant to the contact which forms the basis of the subsequent lawsuit, and that imagery will be retained beyond the existing 5-year retention period.

Administrative Investigations

This Office requested that the LAPD, TEAMS II Development Bureau conduct a query of the Complaint Management System for complaints received by Internal Affairs Group (IAG) in 2007. The table below summarizes the 5,810 complaints received broken down in 12-month increments from the date of occurrence of an alleged incident of misconduct and IAG's receipt of the complaint.

Time Between Incident and Date Reported to IAG	0 to 1 Year	1 to 2 Years	2 to 3 Years	3 to 4 Years	4 to 5 years	Over 5 Years	Total
No. of Complaints	5,606	113	30	19	10	32	5,810
Percentage of Total	96.49	1.94	.52	.33	.17	.55	100

On average, complaints were received by IAG within 78 days of the date of the incident. Approximately 98.4 percent of the complaints (5,719) were received within 2 years of an alleged incident of misconduct. The LAPD reviewed the case files of the 91 complaints received more than two years after the alleged incident and determined that three incidents, possibly, could have been captured by an in-car video camera if the system had been installed. A brief description of the incidents and the allegations of misconduct are as follows:

- Officers responded to a trespass complaint and found the complainant sleeping in her vehicle. She was cited and told to leave the location. Later, the officers were called back to the location because complainant was creating a disturbance in the street, leading to her arrest. Complainant alleged the officers used unauthorized force, falsely arrested her and illegally transported her to the police station.
- While approaching a vehicle to conduct a traffic stop, the officers saw the complainant throw a small plastic baggy out of the vehicle's window. It was determined that the baggy contained rock cocaine. Complainant alleged the officers planted the narcotics on her.
- Complainant alleged the accused officer stopped him six times without probable cause, arrested him five of those times, and planted narcotics on him.

Attachment 2 provides a summary of 10 randomly selected case files of the remaining 88 complaints received two years after the incident. Based on the nature of the allegations (e.g., off-duty misconduct; tampering with evidence; failure to comply with work rules), it is unlikely the incidents could have been captured by an in-car video camera.

The Committee expressed concern over video imagery which might capture officer misconduct, but which would not be brought to the attention of the LAPD because no complaint is filed. The LAPD is in the process of developing a Special Order that will include policies and procedures for implementation of the in-car video system, including an audit plan. The audit plan will include quarterly Division reviews of randomly selected cars/shifts in accordance with Audit Division and Office of the Inspector General standards; reviews conducted in conjunction with employee Annual Performance Evaluations and Quality Service Audits; reviews by the Department Risk Management Executive Committee; and reviews conducted by the Professional Standards Bureau Ethics Enforcement Section in conjunction with integrity audits. Should an incident warrant an administrative investigation, the video imagery would be marked and retained until the matter is adjudicated. If the incident involved a Categorical Use of Force, the LAPD's long-standing practice has been to retain any such evidence for a minimum of 20 years due to potential litigation, and for risk management assessments of the involved officers.

Retention Period Pending Council Approval for Records Destruction

Although the proposed retention period is two-years, as a practical matter, the video imagery will be retained for about three years. This is because the destruction of City records, including electronic records, requires Council approval, as set forth in LAAC Section 12.5. The process entails a department submitting a request to the City Clerk for authority to destroy that record. The request includes "an identifying description of the date and time, extent and type of record

on the tape.” The City Clerk reviews and certifies the completeness and accuracy of the request. The certification is transmitted to the City Attorney for review and issuance of a written consent to the Council for destruction of records. According to the City Clerk, this review and approval process has taken an average of approximately 9.5 months. Added to this time is the approximate one to two months of internal processing within the LAPD for Police Commission approval before transmission to the City Clerk. Pending completion of this process, the video records would continue to be available for review and further retention as situations arise.

It must be noted that the above-described additional retention period, pending Council approval for destruction of records, may incur additional storage costs. This will not be known until several months after implementation of the in-car video project. The LAPD assumed seven hours of video imagery would be captured in each vehicle per shift. The actual number of hours of video imagery captured will dictate the retention costs for operational purposes as well as the period pending Council approval of records destruction.

RECOMMENDATION

That Council request the City Attorney to prepare an ordinance establishing a two-year retention period for in-car video imagery.

FISCAL IMPACT

Assuming implementation of a digital near-line storage system, reducing the in-car video retention period from the current minimum five years to the proposed two years would provide an annual cost savings of between \$465,000 to \$600,000 for 300 black and white vehicles at the Los Angeles Police Department, Operations-South Bureau, and between approximately \$2,130,000 and \$2,750,000 for 1,375 black and white vehicles in all Bureaus.

GFM:JWG:jwg

Attachments 1 and 2

VIDEO RETENTION PERIODS

Department	No. of Cameras	Current Installations	Retention Period	Retention Cost	Future Installations
General Services	410	Animal shelters, Sanitation facilities, various City buildings, various Rec & Parks facilities, Street Services vehicle yard	Video loops range from 24 hours to 180 days	Currently \$350,000 per year, estimates about \$1.5 million for 5-year period	35 more funded for FY 08-09 (20 for new EOC, 15 for PW building), up to 50 more for proposed projects
Transportation	11	Parking Enforcement Division (handheld cameras to cite unsafe vehicles in school zones)	2 years	None	7
	22	Meter Investigation Division (installed in coin room)	90 days	Undetermined	None
Water & Power	380	Warehouses, water stations, power stations	30 days (looped video)	(Response pending)	(Response pending)
Harbor	22	Waterside views of channels, interior/exterior of 28 buildings, landside views of terminals/marinas	Indefinitely (Response pending re: federal retention requirements)	Undetermined	258 total by June 2008, 410 by Dec. 2009
Airports	670	Airport police security videos, airfield operations, board meetings	Indefinitely (FAA requires at least 90 days)	\$500,000 for 3 months of on-line storage, \$1.5 million for 5 years of off-line storage	150 more for Tom Bradley Intl. Terminal through FY 2009-10
Street Services	2	Handheld cameras used by investigators for illegal dumping surveillance	Less than 1 year, video held until illegal dumping cases are adjudicated	None	Working with AQMD on using State cameras for monitoring known illegal dumping sites (up to 10 more)

Attachment 2

**SAMPLING OF INTERNAL AFFAIRS GROUP
COMPLAINTS RECEIVED AFTER TWO YEARS**

Case #1 - The Department alleged that the accused employee failed to notify the Department that the accused was arrested and convicted of a crime prior to employment.

Case #2 - The complainant stated the accused employee provided false and misleading testimony during complainant's criminal trial in which he was convicted.

Case #3 - The Department alleged the accused employee improperly accepted a donation.

Case #4 - Department employee filed a complaint against the Department for failure to pay overtime in violation of the Fair Labor Standards Act.

Case #5 - Former employee alleged wrongful termination for misuse of Department computer.

Case #6 - The Department alleged accused failed to maintain control of City owned property resulting in its loss.

Case #7 - The complainant alleged that from July 2004 to August 2007, the accused failed to pay the required association dues for her condominium complex.

Case #8 - The complainant alleged the accused tampered with evidence after the alleged incident resulting in his arrest and conviction.

Case #9 - The complainant alleged the accused did not present his criminal case to the District Attorney's Office in a timely manner.

Case #10 - The complainant alleged an "unknown" employee failed to properly care for his property resulting in its loss.