

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW YORK CITY DEPARTMENT OF CORRECTION
AND
THE NEW YORK CITY BOARD OF CORRECTION

This Memorandum of Understanding (“MOU”) entered into on September 27, 2023 (the “Effective Date”) by and between the New York City Department of Correction (“DOC” or “the Department”), having offices located at 75-20 Astoria Blvd., East Elmhurst, New York 11370, and the New York City Board of Correction (“BOC” or “Board”), having offices located at 2 Lafayette Street, Suite 1221, New York, New York 10007, and on Rikers Island (each individually referred to as a “Party” and collectively referred to as the “Parties”).

WHEREAS, the Parties wish to establish an agreement, as described below, for access and usage of DOC Video Footage pursuant to Section 626 of the New York City Charter.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLE 1. TERM

1.1 This MOU shall commence as of the Effective Date and shall remain in effect unless terminated by either Party in accordance with the provisions set forth in Article 6 below.

ARTICLE 2. DEFINITIONS

2.1 “Board Staff” shall mean authorized Board staff members listed in Appendix A whose duties include monitoring activities in DOC facilities and Board executives. The Board will ensure that Appendix A is kept up to date and will advise the Department in writing whenever a Board staff member is added to or deleted from Appendix A, within 5 days of the change.

2.2 “DOC Video Footage” shall mean DOC Genetec video, handheld video, body-worn camera video, and any other platform or technology that may be used by DOC to capture video surveillance footage.

ARTICLE 3. AGREED TERMS

3.1 Board Staff shall have access to DOC Video Footage at all times (24 hours a day, 7 days per week) in BOC offices; access to DOC Video Footage is not permitted from non-BOC office locations.

3.2 Board Staff shall have access credentials to at least 12 functional DOC computers that can access DOC Video Footage located in the Board offices. Board Staff shall not share access credentials with other individuals. The Department will immediately provide access

credentials for Board Staff listed in Appendix A who have completed both the Board's initial and supplemental confidentiality trainings and have signed the confidentiality agreement. Within 2 days of BOC notifying the Department of any additions to or deletions from Appendix A, the Department will remove or add access credentials for Board Staff accordingly.

- 3.3 Watermarks shall be placed on DOC Video Footage to the extent practicable. DOC shall work with BOC to obtain such watermarks, provided that access to and downloading of DOC Video Footage shall not be contingent upon DOC implementation of watermarking technology with respect to DOC Video Footage.
- 3.4 Board Staff may download DOC Video Footage only to perform their Charter oversight role pursuant to Sections 626(c)(3), 626(c)(4), 626(d), 626(e), 626(f), 626(g), and 626(h). Subject to any use of DOC Video Footage pursuant to Sections 626(c)(3), 626(c)(4), 626(d), 626(e), 626(f), 626(g), and 626(h), any downloaded DOC Video Footage shall be maintained in accordance with procedures and security measures that ensure confidentiality.
- 3.5 Board Staff may show DOC Video Footage to any Board Member who has signed the confidentiality statement as discussed herein.
- 3.6 Board Staff shall not be permitted to take photographs or recordings of DOC Video Footage with any electronic recording devices, including cellular telephones or cameras.
- 3.7 Prior to providing login credentials to any Board Staff to view DOC Video Footage, the Board shall ensure that the Board Staff:
- 3.7.1 completes confidentiality training that supplements the confidentiality training BOC provided to the Law Department on May 1, 2023. The supplemental training will be reviewed by the Law Department, and will set forth the guidelines for review of DOC Video Footage, confidentiality of such records, and dissemination, if any, of such records; and
- 3.7.2 signs a statement acknowledging that they understand and will comply with limitations on use, access and disclosure of DOC Video Footage.
- 3.8 Except for any use of DOC Video Footage pursuant to Sections 626(c)(3), 626(c)(4), 626(d), 626(e), 626(f), 626(g), and 626(h), DOC Video Footage obtained under this MOU shall not be disclosed, made available, or disseminated to any individual or organization without notifying the Department, except as required by applicable law, rule or regulation. In the event that the Board receives a lawful request under the Freedom of Information Law or a valid subpoena from a third party seeking DOC Video Footage, the Parties will act as follows:
- 3.8.1 The Parties acknowledge that a lawful request for information may be subject to applicable privileges, including the Law Enforcement Privilege, and that such privileges serve an important purpose. The Board agrees to consider on a case by case basis whether any applicable privileges should be asserted and whether to withhold such records as authorized by the law;
- 3.8.2 The Board will provide prompt written notice and a copy of the request to the Department, except where such notice is legally prohibited;

3.8.3 The Board will propose a written response to the request and promptly share the proposed response with the Department at least five business days prior to production;

3.8.4 The Department will respond to the Board within two business days of receiving the proposed response to indicate whether the Department agrees with the proposed response, and the Department's failure to respond within two business days will constitute a waiver of the Department's opportunity to respond to the Board;

3.8.5 The Parties will confer in good faith to resolve any dispute before the deadline for production;

3.8.6 In the event of a disagreement between the Board and the Department about whether records obtained under this agreement should be disclosed or withheld pursuant to FOIL or a subpoena, the parties agree to meet and confer in good faith, and seek and consider advice from the Law Department as to both the applicability of privileges and the reasons for asserting or not asserting them, to resolve any issues; and

3.8.7 The Law Department will make a determination as to whether the Law Enforcement Privilege or any other privileges apply to a FOIL request or a subpoena for DOC Video Footage provided under this MOU consistent with how the Law Enforcement Privilege or any other privileges are applied to all New York City agencies. The Board will respond to the FOIL request or subpoena consistent with the Law Department's determination.

3.9 No DOC Video Footage obtained under this MOU shall be disseminated by the Board without approval of the BOC Executive Director, Interim Executive Director, or General Counsel.

3.10 The Board shall take meaningful and appropriate discipline if a BOC staff member improperly discloses DOC Video Footage obtained under this MOU, in violation of this MOU and the Board's Code of Conduct 1.2(b), effective September 29, 2019, which prohibits "Disclosing to any unauthorized person any confidential information relating to the staff, operations, activities, records and/or information of the Agency, DOC, CHA or other City Agency or to people in DOC custody."

ARTICLE 4. AMENDMENTS

4.1 No amendment or waiver of any provision of this MOU shall be effective unless in writing and signed by the Parties.

ARTICLE 5. NOTICES

5.1 Any notice sent pursuant to this MOU shall be sent by email to the Parties as follows, unless a Party has notified the other Party of a change in the identity or address of a contact person.

If to DOC:

Allie Robertson
Executive Director of Intergovernmental Affairs
New York City Department of Correction
75-20 Astoria Blvd.
East Elmhurst, New York 11370
Allie.Robertson@doc.nyc.gov

If to BOC:

Jasmine Georges-Yilla
Executive Director
New York City Board of Correction
2 Lafayette, Suite 1221
New York, New York 10007
Jgeorges-villa@boc.nyc.gov

ARTICLE 6. TERMINATION

6.1 A Party shall have the right to terminate this MOU, for violation of any of the provisions of this MOU, upon thirty (30) days prior written notice to the other Party. The Parties agree to meet and confer in good faith, and consult the Law Department, to resolve any issues. The Parties retain all their rights to contest such termination.

ARTICLE 7. MISCELLANEOUS

7.1 This MOU may be executed in one or more counterparts, by original signature or e-signature, all of which shall be considered an original. An electronic copy of a signature received in PDF format or by fax machine shall be deemed to be of the same effect as an original signature on an original-executed document.

ARTICLE 8. ENTIRE AGREEMENT

8.1 This MOU sets forth the entire agreement between DOC and BOC as it relates to the matters set forth herein.

[SIGNATURE PAGE FOLLOWS]

AGREED:


NEW YORK CITY DEPARTMENT OF CORRECTION



Louis Molina, Commissioner

Date: 9/28/23

NEW YORK CITY BOARD OF CORRECTION



Jasmine Georges-Yilla, Executive Director

Date: 9/27/23