

**EVIDENCE SHARING AGREEMENT
BETWEEN THE
NEW YORK CITY POLICE DEPARTMENT
AND THE
NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD**

EVIDENCE SHARING AGREEMENT ("Agreement") dated this 5 day of December, 2023, (Effective Date), between and among the New York City Police Department ("NYPD"), with offices at One Police Plaza, New York, NY 10038; and the New York City Civilian Complaint Review Board ("CCRB"), with offices at 100 Church Street, New York, NY 10007 (each individually referred to herein as the "Party" and jointly as the "Parties").

WHEREAS, Section 440 (c)(1) of the New York City Charter ("Charter") gives CCRB the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, and the truthfulness of material statements made by a member of the police department who is the subject of a complaint received by the board, if such statement is made during the course of, and in relation to, the CCRB's resolution of a complaint; and

WHEREAS, New York City Local Law No. 47 of 2021, states that the CCRB's abuse of authority jurisdiction under New York City Charter Section 440(c)(1) includes the power to investigate allegations that a member of the police department engaged in bias-based policing or racial profiling; and

WHEREAS, pursuant to Charter Section 440(d), the NYPD has a duty to cooperate fully with CCRB investigations and provide the CCRB with requested materials and records necessary for their investigations, except such records or materials that cannot be disclosed by law; and

WHEREAS, the CCRB requests, from time to time, body-worn camera ("BWC") footage and NYPD documents related to conduct being investigated by the NYPD's Force Investigation Division ("FID") that are relevant to an ongoing CCRB investigation ("Evidence"); and

WHEREAS, the CCRB and the NYPD have agreed to establish particular standards regarding the sharing of Evidence; and

WHEREAS, the New York City "Identifying Information Law," codified at Section 8(h) of the Charter and Chapter 12 of Title 23 of the New York City Administrative Code ("Code"), sets forth procedures for the collection, retention, and disclosure of information obtained by or on behalf of New York City that may be used on its own or with other information to identify or locate an individual ("Identifying Information"); and

WHEREAS, the Parties are both New York City agencies subject to the Identifying Information Law; and

WHEREAS, Section 23-1202 of the Code provides that, absent exigent circumstances, agency employees may not collect or disclose Identifying Information without the approval of their Agency Privacy Officer ("APO"); and

WHEREAS, Section 6.2.1 of the Citywide Privacy Protection Policies and Protocols of the Chief Privacy Officer ("CPO Policies") provides that "when an agency makes a disclosure of identifying information to another agency that its APO has not designated as routine, the agency must enter into a data sharing agreement with the agency collecting the information unless the APO, in consultation with the Chief Privacy Officer as necessary, determines that such an agreement is not required because there is not a risk that an important privacy interest will be compromised" and expressly requires a data sharing agreement for data sharing that involves the disclosure of "sensitive identifying information," as such term is defined in section 3.2.5; and

WHEREAS, the Parties seek to responsibly comply with both the law and New York City policies concerning the privacy and security of the data being requested and to be shared,

NOW THEREFORE, the Parties hereto agree as follows:

ARTICLE I. TERM AND TERMINATION

- A. This Agreement shall become effective immediately upon execution by the Parties and shall remain in effect until terminated by one or both Parties.
- B. This Agreement applies to CCRB requests relating to FID investigations that are open as of, or after, the date of this Agreement. This Agreement does not apply to FID investigations that were closed prior to the date of this Agreement.
- C. Either Party shall have the right to terminate this Agreement upon 30 days' written notice.

ARTICLE II. USE OF, ACCESS TO, AND CONFIDENTIALITY OF EVIDENCE

- A. Evidence includes, but is not limited to, the following items generated or obtained by FID in the course of an FID investigation: BWC footage, BWC metadata, audio and video recordings, medical records, records from the Office of the Chief Medical Examiner, records of any tests done by any experts employed by the NYPD, records of any tests done by any outside experts retained by the NYPD, training records of members of service, transcripts of statements and interviews, interim and final reports, and any NYPD paperwork, such as DD5s, complaint reports, or arrest reports.
- B. Subject to the provisions this Agreement, Evidence shall be provided by the NYPD to the CCRB to the extent the NYPD possesses the Evidence and to the extent that providing the Evidence is permitted by local, state, and federal law.
- C. The NYPD shall provide the Evidence within ninety (90) days from the date that the CCRB requests the Evidence. Requests for Evidence shall be considered to continue until the closure of the FID investigation.
- D. The NYPD will notify the CCRB if the Evidence is related to any open criminal investigation or prosecution of a member of service. In such a circumstance, the CCRB agrees that it will not question any individual in connection with its investigation until approval is given by any prosecutor's office conducting such an investigation or prosecution.

- E. The Parties acknowledge that all Evidence shared under this Agreement contains Identifying Information and shall therefore be subject to the confidentiality provisions herein, unless such Evidence is otherwise publicly available.
- F. The CCRB shall maintain the security and confidentiality of all Evidence received in connection with this Agreement, and shall comply with its agency data security requirements, as well as all applicable provisions of federal, state, and local laws, rules and regulations, pertaining to confidentiality, privacy, and security of the Evidence received, generated, used, or held for no purpose other than in the course of its performance under this Agreement. Such safeguards shall include, but not be limited to, the following:
1. Access to Evidence in connection with this Agreement is restricted to "Authorized Users" for a "Permitted Use." For purposes of this Agreement, Authorized Users shall include only those employees and agents of the CCRB whose access to or use of the Evidence is necessary to execute their official job duties, or as required by law, and a Permitted Use shall include actions necessary to fulfill the Authorized Users' official job duties, as they relate to conducting investigations as authorized under New York City Charter Section 440(c)(1), in the course of their employment with the CCRB.
 2. The CCRB shall not disclose Evidence to any third parties, make use of such information for the benefit of another; or publish, sell, license, distribute, or otherwise reveal the Evidence without the prior written authorization of the NYPD, unless the Evidence is otherwise publicly available, or where required by law.
 3. Technical and physical limitation of access to the Evidence on any CCRB or NYPD computers, shared drives, laptops, or other devices and files, whether in paper or electronic format, to Authorized Users only, and utilizing secure means for accessing, storing, and transmitting the Evidence between and among Authorized Users;
 4. Educating Authorized Users on their obligations under this Agreement and applicable laws, regulations, and relevant City and agency policies;
 5. Protecting against anticipated hazards or threats to the integrity and security of the Evidence;
 6. Complying with the New York City Information Technology Security Standards and Requirements, as set forth by the New York City Office of Technology and Innovation (OTI), and the CPO Policies, as they may be modified from time to time; and
 7. Destroying the Evidence to the extent such destruction is consistent with agency record retention practices and in accordance with applicable law.
 - i. Original Evidence shall be maintained by the NYPD, and the CCRB shall

be provided with copies only, and are therefore not deemed records under New York City Charter Section 3011(2).

- G. The CCRB shall promptly notify the NYPD, including the NYPD's APO, of any requests by third parties, including but not limited to governmental officials, commercial interests, researchers, and academics for the Evidence. Evidence — excluding APU records — shall not be disclosed to any third party without the prior written authorization of the NYPD, unless such disclosure is required by law or the Evidence is otherwise publicly available. Upon receipt of a subpoena, court order, request for Evidence pursuant to the Freedom of Information Law ("FOIL"), request from another governmental entity, or other legal process served upon CCRB for Evidence, other than Evidence that is otherwise publicly available, the CCRB shall, within five (5) business days, notify the NYPD, in order to allow the NYPD to seek a protective order, as appropriate. The CCRB shall only disclose Evidence to the extent necessary to comply with the subpoena, court order, FOIL request, governmental request, or relevant legal process, and to the extent not protected from disclosure by applicable privileges.
- H. In the event of any actual or suspected breach involving the Evidence or any reports, drafts, information, plans, or documents derived from the Evidence furnished to, prepared by, assembled, or used by the CCRB, the CCRB shall: (i) provide written notice to the NYPD of the breach within 48 hours of discovery, including notification to the NYPD's APO, which describes the nature of the breach, the identifying information disclosed, the names and/or affiliations of the parties (if known) who gained access to the Evidence, and a description of the steps taken, if any, to mitigate the effects of the breach in accordance with all relevant laws and regulations; (ii) safeguard or destroy any information that would identify any individual, as requested by the NYPD; (iii) forward a written incident report to the NYPD expeditiously, and not re-disclose the identity of any individual to anyone else; and (iv) take reasonable steps to remediate the cause(s) of such breach, and provide written notice to the NYPD of such steps. For the avoidance of doubt, a breach is an occurrence or event which, intentionally or unintentionally, results in any of the Evidence being improperly released or removed from the CCRB's custody.
- I. In the event that the CCRB substantiates one or more allegations against a member of service in an investigation that utilized evidence obtained through this MOU and recommends that member of service receive charges and specifications, the NYPD will follow the procedures set forth in the 2012 Memorandum of Understanding between the two Agencies concerning the processing of substantiated complaints.

ARTICLE IV. MERGER AND MODIFICATION

- A. This Agreement constitutes the entire agreement between the Parties related only to the provision of Evidence, supersedes any prior agreements regarding the subject matter of this Agreement.
- B. This Agreement shall only be modified in a writing signed by the Parties.
- C. This Agreement may be executed in counterparts, each of which when executed and

delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

- D. This Agreement does not alter the Parties' obligations under other agreements, except to the extent noted in this Agreement.

ARTICLE V. NO THIRD-PARTY BENEFICIARY

- A. This Agreement shall be binding upon and for the benefit of the Parties hereto and their respective successors and permitted assigns. The provisions of this Agreement shall be for the sole benefit of the Parties hereto and no other person or entity shall be a third-party beneficiary thereof.

ARTICLE VI. NOTICES

- A. Except as otherwise provided herein, all notices required hereunder shall be in writing and directed to each of the Parties as follows:

If to NYPD:

New York City Police Department
CCRB Liaison Unit
One Police Plaza
New York, NY 10038

With a copy to:

New York City Police Department
Deputy Commissioner, Legal Matters
One Police Plaza, Room 1406
New York, NY 10038
Attention: Agency Privacy Officer
privacyofficer@nypd.org

If to CCRB:

New York City Civilian Complaint Review Board
General Counsel
100 Church Street, 10th Floor
New York, NY 10007

IN WITNESS WHEREOF, the Parties have executed this Agreement by the signatures of duly authorized officials.

NEW YORK CITY POLICE DEPARTMENT



Edward A. Caban
Police Commissioner

NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD

A handwritten signature in black ink, appearing to read "Arva Rice", written over a horizontal line.

**Arva Rice
Chair**