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**Testimony of Chair Richard Emery and
Executive Director Mina Q. Malik
of the Civilian Complaint Review Board
before the Public Safety Committee
of the New York City Council**

March 12, 2015

Chair Gibson, members of the Public Safety Committee, my name is Mina Q. Malik and I am the Executive Director of the Civilian Complaint Review Board (CCRB). In my role as the Chief Executive Officer, I administer the Agency's programs, operations, and supporting budget. The CCRB is the largest civilian oversight agency in the country, one of the oldest, and a model for other jurisdictions. With me today are Richard Emery, Chair of the Board, and members of our executive and senior staff. In this testimony, I will describe our mandate, our fiscal situation after the preliminary budget, and our three major programmatic initiatives. Mr. Emery, our executive staff, and I will be available to answer your questions at the conclusion of my testimony.

The mandate of the CCRB is to investigate, mediate, make findings, recommend disciplinary action and prosecute complaints of police misconduct made by members of the public against sworn members of the New York City Police Department (NYPD). Our jurisdiction includes allegations involving the use of force, abuse of authority, discourtesy and the use of offensive language. When the Board determines misconduct has occurred, it may recommend various levels of discipline, including Instructions,

Formalized Training, Command Discipline, or most seriously, Charges and Specifications. If the Board recommends Charges, the CCRB's Administrative Prosecution Unit (APU) prosecutes these cases before the NYPD Deputy Commissioner of Trials. For all other disciplinary recommendations, the Department Advocate's Office handles the case. In all cases, the Police Commissioner makes the ultimate determination for discipline.

For Fiscal 2016, the CCRB has a current preliminary budget of \$14,528,476, \$11,296,207 for Personal Services (PS) and \$3,232,269 for Other Than Personal Services (OTPS). The PS budget has increased by \$1,039,139, or 10%, up from \$10,257,068 in Fiscal 2015.

The authorized headcount is 178 positions; 123 positions in the Investigations Division, 20 positions in the APU, and 35 positions in administration. This includes 11 new positions that the Administration funded in the preliminary budget: three (3) positions for the new Training Unit, six (6) positions for the Community Outreach Unit, and two (2) positions for the Policy Unit.

Since the beginning of his term, Mayor de Blasio and this Council have demonstrated a strong desire and commitment to improve relations between the NYPD and the community, and to ensure that the rights of New Yorkers are protected. Since July 2014, the Mayor has made several new appointments to the Board, including Chairman Emery, with the hope and expectation of transforming an agency that has not lived up to its full potential into one that does. We take this mandate seriously and accept this great challenge.

In the early days of his tenure, Chair Emery worked with staff in the preparation of a comprehensive chokehold report. The report examined complaint data, highlighted problematic trends, identified the significant dilution of the chokehold prohibition over time, and noted the failure of the Police Department's disciplinary process in addressing the persistent use of chokeholds in spite of the clear-cut ban on chokeholds. The 150-page report speaks for itself, and demonstrates the vital contribution that accountability and transparency make in police-community relations. Additional funding for our Policy

Unit will enable us to conduct further relevant innovative and creative policy work. Among other projects, we are working on the development of an Early Warning System based on the number and severity of complaints, which will then be used to develop profiles of complaint-prone officers. We will also study complaints in schools, excessive force complaints, and the deterrent effect of the disciplinary process.

In reviewing our data, one issue we identified that needs immediate attention is our investigative training. Historically, there has been a lack of consistency and uniformity in how cases were investigated and evidence assessed. This called for an ongoing training program. The creation of our newly funded training unit is the key to addressing this historic deficiency. Also, in order to hire and retain excellent staff, we must invest in their professional development and training, which will be facilitated by utilizing these additional resources, funded in the January 2016 Financial Plan. I have already identified various people from other jurisdictions such as Boston and Washington, D.C., who have extensive knowledge and experience in the field of investigations and the law, and who have committed to assisting us in our endeavors. By having top training staff provide intensive and ongoing legal and investigative training to investigators, we will enhance their skills, enable them to conduct better investigations in a timelier manner, give them greater job satisfaction, and reduce staff turnover.

In recent months, our priority has been to improve the quality and efficiency of the Investigations Division. The central mission of the CCRB is to investigate and resolve allegations of police misconduct in an impartial, timely, and efficient manner. The recently released FY 2015 PMMR identified the main challenges the Board and I face. The report notes that there is ample room for improvement and changes, which would result in greater efficiency. Take for example the time it takes to investigate a complaint. When comparing the time period from July to October 2013, before Chair Emery was appointed, to the time period from July to October 2014, the first four months after his appointment, the average number of days to complete full investigations decreased by 12 percent, from 343 to 303 days. The average time to complete substantiated investigations also decreased by 11 percent, from 410 to 365 days.

These improvements were good but insufficient. Our goal is to drastically decrease the amount of time it takes to investigate a case, which historically has been a challenge for this Agency. In November, after reviewing the data I mentioned earlier, the Chair and the Board asked the executive staff to undertake the major process of re-engineering and revamping our Investigations Division. In order to attain the various reform goals, including reducing the time it takes to complete an investigation, we implemented a comprehensive action plan. The action plan includes the following key elements: a) restructuring the Investigations Division from a hierarchical, larger team structure to one based on smaller teams that we call pods; b) developing a transition strategy by creating a Case Closing/Transition Unit for old cases received prior to December 1, 2014, and the immediate implementation of the new Investigations Division that would receive only new cases; c) creating new benchmarks and accountability instruments for the investigative process, including the creation of CCRBstat meetings; and, d) prioritizing resources to aggressively reduce the open docket, including the creation of a Field Team, which gathers evidence, and a Strike Team, which provides additional oversight to ensure that quality investigations are conducted in a timely manner.

We are starting to see the first signs that our overhaul is working. At the end of February 2015 the open docket was 1,514 cases, which was a significant reduction from the 2,699 cases that were pending at the end of January 2014. This reduction was particularly visible in the open docket of the Investigations Division which decreased from 1,858 cases in January 2014 to 912 active cases by the end of February 2015 - a 51% decrease.

With this decrease in the docket, the number of days it takes to investigate a complaint has decreased from 298 days in January 2014 to 241 days in February 2015 and the number of days it takes to investigate a substantiated complaint has decreased from 418 days in January 2014 to 351 days in February 2015. They are both significant decreases.

Also, the preliminary data for the restructured Investigations Division, based on the small pod structure with closer supervision, shows definitively that it is more effective than the old team system. The number of days it takes to interview a complainant has decreased from 31 days in January 2014, to 11 days in February 2015. In February 2015, approximately 75% of complainant interviews were conducted in less than 15 days.

Furthermore, in February 2015, we conducted an analysis of all cases received since August 2014 that have been fully investigated and the Investigations Division has closed these cases in an average of 96 days.

The second programmatic initiative is the restructuring of our role in the Police Department's disciplinary process. In August 2014, less than a month after Mayor de Blasio appointed the Chair to the Board, the Chair met with Police Commissioner Bratton and his executive staff. The Parties all agreed that the discipline for CCRB cases had been given second-class status in the past, and that a transformed disciplinary system needed to be put in place, where the two agencies cooperated in order to ensure that the complainants and police officers were treated fairly. Although the APU was fully implemented, the Department retained APU cases without disciplinary action, APU pleas were set aside and charges dismissed, and it continued to decline prosecution in one-quarter of our cases.

Since that initial meeting, a small working group comprised of the Board Chair, CCRB attorneys, and a handful of executive staff from the Police Department's Office of Legal Affairs and Department Advocate's Office (DAO) have been meeting to reform and change the interactions between CCRB and the NYPD on the question of discipline. The goals have been to enhance the NYPD's respect for both the CCRB's decisions to substantiate complaints and for its disciplinary recommendations on those cases, and further to transform that respect into discipline that is rational and collaborative. As a result of this collaboration, there is a notable difference between Police Department discipline on cases that were handled before the appointment of the new Chair and the implementation of the inter-agency working group, and those cases that were handled afterwards.

[The former group of cases was handled under a dysfunctional disciplinary system, while the latter group is comprised of cases handled under a more rational system resulting from the CCRB/NYPD working group's efforts.

1. APU Cases: Cases where the board recommended Charges

From January 1, 2014 through December 31, 2014, the department closed 98 APU cases: 45 cases resolved by the old system (Jan-Aug) and 53 under the new system (Sept-Dec).

- o The discipline rate for cases under the old system was 47%. The discipline rate under the new system was 72%.

- o The rate of agreement with the Board recommendation was 40% under the old system and 51% under the new system.

- o The DUP rate was 16% under the old system and 11% under the new system.

2. DAO Cases: Cases where the board recommended Command Discipline and Formalized Training

From January 1, 2014 through December 31, 2014, the Department closed 140 DAO cases: 84 cases under the old system (Jan-Aug) and 56 under the new system (Sept-Dec).

- o The discipline rate for cases under the old system was 62%. The discipline rate under the new system was 89%.

- o The rate of agreement for command discipline was 19% under the old system and 33% under the new system. The rate of agreement for instructions was 78% under the old system and 95% under the new system.

- o The DUP rate was 27% under the old system and 11% under the new system.

Furthermore, since October, but formally adopted in December, the CCRB and the Department have implemented a new process of collaboration where the Department has up to 90 days to ask for a formal reconsideration of a substantiated case. This opportunity was already afforded to police officers and complainants. I would like to give you a basic update on this reconsideration process. From October 1, 2014 to February 15, 2015, the CCRB substantiated 130 cases against 195 officers. Thus far, the CCRB has received 24 requests for reconsideration (18.5%) involving 36 subject officers.

The CCRB received 5 requests to reconsider the finding of substantiation for either all or one of the officers. The CCRB agreed in 4 cases and disagreed in 1 case. This means that the finding of substantiation was changed in 3% of all cases originally substantiated.

The CCRB also received 4 requests to change the penalty recommendation of charges in cases before the APU where charges had already been served. All these 4 requests were handled through the APU. In 2 cases no change was made. In one case, the charges were dismissed against 2 officers. In another case against 3 officers, the charges against 2 of the officers were dismissed. In all of these cases, the finding of substantiation remained on the officer's record.

The CCRB received 15 requests to change the penalty recommendation of Command Discipline and/or Formalized Training/Instructions. In 4 cases the CCRB refused to change the penalty. In 10 cases, the CCRB reduced the penalty from Command Discipline to Formalized Training. In 1 case, the CCRB upgraded the penalty from Instructions to Command Discipline.

In my view, the collaboration between the CCRB and the Police Department has begun to dramatically change the way the Department handles discipline in CCRB cases. This change is evidenced by the aforementioned statistics.]

The CCRB is committed to growing its outreach and communications efforts so that people who need our services know how to access them; so that the general public

and the news media understand the significance of having a strong civilian oversight agency in New York City; so that we can help young people and other vulnerable populations understand their rights during police/civilian encounters and know how to stay safe during these encounters. We also want the public to understand how mediating a complaint can be a viable and satisfying option for civilians, and a way to promote mutual understanding between police and the community.

In 2015, the CCRB is focusing on New York City Housing Authority (NYCHA) developments and Precinct Community Council meetings in order to have a presence in neighborhoods where a large number of our complainants live. The CCRB is also diversifying its outreach efforts by also focusing on Precinct Community Council meetings. We had only one event at Precinct Community Council meetings in 2014, compared to five events completed and ten more scheduled between March and May of 2015. The CCRB receives a significant number of complaints from NYCHA residents, and we are continuing to reach out to NYCHA resident association leaders and organizations associated with NYCHA. In 2014, the CCRB completed 12 events at NYCHA locations, including resident association meetings, family day celebrations, and resident association president district meetings. The CCRB hopes to exceed the number of NYCHA events attended in 2014. The Agency has an upcoming event at the Queens District Council of residents meeting in this month. We will work with the NYCHA Council of Presents so that we can attend district council meetings in all the boroughs and gain support in notifying NYCHA residents of the services the CCRB provides. We hope to participate in the upcoming NYCHA Family Day celebrations at developments throughout the city this Summer, and further expand our outreach efforts by going beyond traditional outreach approaches. The positions recently funded by the Mayor was a major step in providing the CCRB with the resources to move towards accomplishing these and other outreach goals set by the Board.

In late June 2014, the Agency launched an initiative called CCRB in the Boroughs and after the new Chair was appointed, the Board made this a priority program. The goal was to have a physical presence, not just in Manhattan, but in all the boroughs. This is crucial to accommodating complainants who cannot travel during conventional business hours to CCRB's Manhattan office to give investigators the

necessary in-person statements. It will also enable the Agency to reach people where they live and work or attend school. The CCRB has also collaborated with the City Council Speaker's office to designate district offices in the boroughs that can be used to interview candidates and conduct presentations and outreach. We are grateful to the Council Speaker, to Chair Gibson, and to the entire Council for its December commitment to allow CCRB to establish a permanent presence in council members' district offices in all the boroughs.

With the funding increase announced in the Mayor's preliminary budget, we will be hiring six additional staffers who will be conducting outreach, and who will be available to take complaints and conduct initial interviews with complainants at these district offices. The additional funding will also enable us to update and expand our outreach materials and methods, to optimize our web site for mobile devices and to further enhance the interactivity and customization of our statistics so that the public can see rates of complaints in their communities.

At the Executive Budget, the CCRB will request Expense funding in the amount of \$2.1 million to fund higher starting salaries and a promotional path. Currently, the investigative starting salary is approximately 20% lower than similarly-situated investigators employed by the Business Integrity Commission, Department of Investigations, Department of Corrections, Consumer Affairs, the Housing Authority, and other sister agencies. As such, despite the training and experience they receive through the CCRB, investigators resign from the Agency to work in other offices where they can earn a higher salary. As a result, investigations become delayed because cases need to be transferred to new investigators, who need to familiarize themselves with those cases. The practical effect is that our case processing times are hindered, which, among other things, may jeopardize our ability to prosecute cases within the 18-month statute of limitations. Ultimately, such situations result in delayed justice to both law enforcement personnel and civilians, and could lead to a disservice to the people of this City. The inability to increase salaries will erode the productivity gains that the Agency has achieved through our restructuring.

The CCRB will also request Capital and Expense funding during the upcoming Executive Budget to revamp the Agency's antiquated, computerized Complaint Tracking System (CTS). CTS is the most essential tool used in registering, routing, tracking and analyzing over 6,000 complaints received by the Agency each year. CTS is also the main repository for tens of thousands of case files compiled over more than 20 years during which the Agency has been independent of the Police Department. Currently, the system is 14 years old, and its programming language and capabilities have become obsolete. Given the system's age, it is difficult to modify the programming language in accordance with the Agency's operational changes, and difficult to recruit staffers who are familiar with the outdated programming language. Rebuilding CTS and using the most modern and commonly used platform is essential and critical to the efficiency of our investigative process.

We are not where we want to be, but we are on the right path to transforming this Agency to make it more effective, efficient, and a great model for our nation. In the coming months, the Board and I will work together to make sure that the changes I outlined here are fully implemented and adjustments are made as needed. To that end, we will continue to work with the Administration to ensure that we address additional needs that we have identified: a promotional path for our hard working investigators so we can retain them and address our double-digit attrition rate, and the creation of two deputy positions to assist our head of the Investigations Division.

With the support and funding we have received from the Administration, we are confident that we are in better position to meet the objectives of Mayor de Blasio and the City Council in fulfilling the CCRB's mission to provide thorough, quality, and fair investigations into police misconduct for the citizens of New York. We are grateful that the Administration and the Council are committed to ensuring that the Agency has all the resources needed for the future success of the CCRB.

Thank you for your time and continued support. Mr. Emery, the executive staff, and I will be happy to answer any questions you may have.