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FREDERICK DAVIE
ACTING CHAIR

**Testimony of Frederick Davie, Acting Chair
of the Civilian Complaint Review Board before the Public Safety
Committee of the New York City Council
March 12, 2018**

Chairperson Richards, members of the Public Safety Committee, thank you for the opportunity to appear before you today. It has been my privilege to serve as Acting Chair of the Civilian Complaint Review Board (“CCRB”) for the last three months. I am joined by my colleagues at the Agency: Jonathan Darche, our Executive Director, Jerika L. Richardson, our Senior Advisor and Secretary to the Board, and Jeanine Marie, our Deputy Executive Director for Administration.

The City Charter charges the CCRB with the fair and independent investigation of civilian complaints against sworn members of the New York City Police Department (“NYPD” or the “Department”). Our jurisdiction includes allegations involving the use of force, abuse of authority, discourtesy and the use of offensive language (referred to as “FADO”). We take that role very seriously, evaluating each case individually. The Board makes findings and, where the evidence supports disciplinary action, the Board recommends discipline to the Police Commissioner. The CCRB is the largest police oversight entity in the country, overseeing the investigation, mediation, and administrative prosecution of misconduct in the largest police department in the country.

Throughout 2017, the CCRB worked to build a cohesive, effective, and efficient agency by filling pivotal staff positions and proactively reviewing internal policies and strategic development. The Agency, under the management of Executive Director Jonathan Darche, who was appointed in May 2017, has new leadership in several Units, including Communications, Outreach and Intergovernmental Affairs, Operations, Policy and Advocacy, and the Administrative Prosecution Unit (“APU”). Following recent developments in New York City policing, including the expansion of NYPD’s Body-Worn Camera (“BWC”) program and

passage of the Right to Know Act (“RTKA”), the CCRB has increased investigator training in video analysis, created new ways of tracking receipt of footage from the Department, and developed new categories of allegations related to violations of the RTKA. Further, after a long period of review and development, we recently began to investigate and administratively prosecute allegations of sexual misconduct by police officers.

The Agency also recommitted itself to better serving vulnerable and diverse communities in New York. In 2017, the Outreach Unit expanded to include Intergovernmental Affairs and delivered 828 presentations to audiences including constituent services staff for various offices, high school students, immigrant populations, probationary groups, homeless service organizations, formerly incarcerated individuals, NYCHA residents, and LGBTQ groups. The CCRB remains dedicated to conducting hundreds of interactive and informative workshops throughout the five boroughs while building strategic partnerships with city agencies, educators and service providers to better serve New York City’s various populations. All Agency Board meetings are open to the public and half of those are conducted in the City’s various communities, where residents can attend and meet with our staff and express to the Board their issues and concerns in a local setting. The CCRB’s Policy and Advocacy Unit began systemic reviews of issues, complaints, and NYPD policies impacting homeless individuals and youth, and plans to issue a number of reports in 2018, including a follow-up to our 2016 Taser Report.

Investigations

In 2017, the CCRB received 4,487 complaints within its jurisdiction, an increase of 5.3%. 2017 was the first time complaints increased since 2009.

One of the challenges to successfully determining what happened in any incident under investigation is the spoliation of evidence: whether it is video from commercial or privately-owned surveillance cameras, cell phones taken by private citizens, or NYPD surveillance cameras. The Field Evidence Collection Team proactively gathers evidence of these types, and the CCRB requests footage from NYPD BWCs as well. The importance of video evidence to CCRB investigations cannot be overstated. In 2017, the Board substantiated 31% of full investigations where there was video evidence as compared to 14% where there was no video evidence. Video evidence did not only influence substantiation rates. In 2017, 55% of allegations with video evidence were closed “on the merits” (substantiated, exonerated, or unfounded) compared to 38% without video. The availability of video evidence allows for clearer interpretation of circumstances—and thus an increase in the rate of substantiated, unfounded, and exonerated allegations.

By early February 2018, the NYPD had rolled out Body-Worn Cameras (BWC) to at least one tour of duty at 24 different precincts citywide. In 2017, the CCRB requested BWC footage in 165 complaints—a number that will only grow as the NYPD’s program expands in 2018 to

include all members of service on patrol assignments. As you heard, video evidence is extremely beneficial for CCRB's investigations. The quality of the cameras, combined with audio recording, makes BWC footage more useful than many other types of recordings.

The NYPD's acceleration of the BWC program means that the CCRB will need to address current limitations in storage of video evidence. At current rates, the Agency will run out of video storage space in less than three years. As it is expected that the Department will issue all patrol officers a BWC earlier than anticipated, this timeline is likely to be even shorter. The Agency is working with OMB and DOITT to make sure that we are able to meet the demands of the BWC program.

When the Council passed the RTKA, the Agency began preparing for its implementation. Starting in October 2018, officers for the first time will be required to hand out business cards during all Level 2 and Level 3 stops. The card will include the number for 311 and an indication that civilians may call the number if they wish to comment on their interaction with officers. Those calls will be routed to the CCRB, and the Agency will be prepared to effectively manage the anticipated increase in complaints. In addition, officers equipped with BWCs will be required to record themselves giving guidance and requesting permission before searching individuals. Officers who are not yet equipped with BWCs will have to find an alternative, objective procedure to document the request. Failures to give guidance, request informed consent, or properly record the interaction will be additional allegations the Agency will be investigating.

Discipline

In those cases where the Board substantiates allegations and recommends that an officer receive the most serious type of discipline—Charges and Specifications—the APU prosecutes these cases in an NYPD trial room. As far as we have been able to ascertain, the CCRB is the only civilian oversight agency in the country that prosecutes cases in the trial section of the law enforcement agency that they oversee. Comprised of attorneys and trial assistants, the APU prosecutes misconduct before the NYPD Deputy Commissioner for Trials (“DCT”). In 2017, the APU conducted 37 trials and closed a total of 112 cases. Of the cases closed by APU in 2017, 59 (53%) resulted in some form of disciplinary action and 49 (44%) resulted in a suspension or loss of vacation time of between one and 20 vacation days.

When the Board recommends Instructions, Formalized Training, or Command Discipline against a member of service, that recommendation is sent to the Department Advocate's Office (DAO). In 2017, the Board recommended Command Discipline—a recommendation for a loss of vacation days, and the second most serious disciplinary recommendation, following Charges and Specifications—for 51% of the 367 officers against whom there was a substantiated allegation, up from 43% in 2016. The NYPD imposed discipline on officers in 73% of the cases where the

Board recommended discipline other than Charges and Specifications, and 42% of the time, the discipline imposed by NYPD concurred with that recommended by the Board.

Mediation

In addition to investigating cases, the Agency has a robust Mediation Program, successfully mediating 204 cases in 2017. The mediation program is an important tool for the CCRB to improve police-community relations. Cases are only sent to the Mediation Program at the civilian's request. Mediation sessions focus on fostering discussion and mutual understanding between civilians and subject officers. After a successful mediation, the complaint is closed as "mediated," meaning that there will be no further investigation and the officer will not be disciplined. If the mediation is not successful, the case returns to the Investigations Division for a full investigation. Successful mediations benefit communities because a measure of trust and respect often develops between the parties. That, in turn, can lead to better police-community relations. In 2017, the mediation success rate increased from 88% to 90%. The Mediation Unit is implementing changes in how it prepares both civilians and members of the NYPD for mediations sessions in an effort to continue to improve the mediation success rate.

Policy

The CCRB tracks and analyzes a wide variety of data points. We present trends and findings on an ongoing basis through public Board meetings, monthly statistical reports, the Data Transparency Initiative ("DTI"), and our Annual and Semi-Annual Reports. The Annual Report for 2017 will be released in the coming weeks.

In addition to these reports, the Agency produces reports on a variety of topical issues in policing and oversight. In 2017, the Agency released a study examining the frequency and impact of officer interference with civilian recordings of police activity entitled "Worth a Thousand Words: Examining Officer Interference in Civilian Recordings of Police." In 2018, five issue-based reports are planned: the aforementioned Taser follow-up, as well as reports on NYPD's interactions with homeless New Yorkers and young people, sexual misconduct, and the impact of Body-Worn Cameras.

The CCRB will host the National Association for Civilian Oversight of Law Enforcement (NACOLE) regional conference this year. This large event, which will bring together oversight practitioners, law enforcement, advocates, academics, prosecutors, defenders, judges, elected officials, and members of the public, will take place in June at John Jay College of Criminal Justice. Panelists and attendees will discuss topics ranging from policing in sanctuary cities and the unique concerns of vulnerable communities to the impact of body-worn cameras and the role of advocacy in police oversight, all under the theme of "Building Public Trust."

The Agency is committed to making as much of its data public as possible via innovations to its DTI. The DTI is featured on the Agency's website and provides descriptive data on FADO complaints against New York City police officers. Visitors can view, interact with and download CCRB data on four key areas of the Agency's work: (a) complaints; (b) allegations; (c) victims and alleged victims; and (d) members of service. The DTI presents 10 years of CCRB data covering more than 72,000 complaints, 210,000 allegations of police misconduct, 86,000 victims and alleged victims, and encompasses the approximate 36,000 current NYPD officers over their entire careers.

Future Initiatives

The CCRB continues to expand training for investigative staff, and the Agency's Training Unit is regularly consulted by other oversight agencies to offer guidance and support in training development. The Agency remains committed to expanding and improving the training given to new investigators, as well as implementing expanded and more sophisticated training for more experienced investigators. The Training Unit regularly revises and improves new investigator training, which is now an in-house, competency-based, multi-week training program for all new investigators, including topics such as: the NYPD Patrol Guide, investigative and interviewing techniques, evidence gathering, and substantive issues surrounding the types of cases that fall within our jurisdiction under FADO. Additionally, the Training Unit brings in trainers to instruct staff on topics such as Forensic Video Analysis and Implicit Bias.

Given the NYPD's recent acceleration of the rollout of its BWC program, one of the Training Unit's priorities for 2018 will be expanding the Forensic Video Analysis training to all our investigators. In 2017, the Agency trained select senior investigators in Forensic Video Analysis. The Agency anticipates that by the end of 2018, nearly every complaint will involve analysis of one or more officers' BWC footage. Therefore, it is critical that the Agency provide this training to all of its investigators.

A second significant component of this expansion of training will involve preparing the Agency to take on the investigation and prosecution of allegations of serious sexual misconduct, including sexual assault and forcible rape. At our February meeting, the Board adopted a resolution directing staff to begin investigating certain allegations of sexual misconduct and develop a plan to investigate allegations of criminal sexual misconduct. One major concern will be working to avoid re-traumatizing alleged victims of sex crimes. The CCRB takes seriously its commitment to civilians' well-being, and intends to provide a designated group of experienced CCRB senior investigators with specialized training in trauma-informed care from certified professionals before the Agency begins accepting complaints related to criminal sexual conduct.

Additionally, the Agency took a number of new steps to reduce the rate of investigations that we are not able to complete (the "truncation" rate). Investigators now spend more time trying to

reach unavailable complainants, sometimes making field visits to communicate with complainants who have difficulty reaching the CCRB offices. The Agency continues to expand the Community Partners Initiative (“CPI”) in collaboration with the New York City Council, holding special evening office hours in participating Council Members’ district offices across the five boroughs to accommodate individuals who do not have access to our main office during regular business hours, and will continue to work with Council Members to find improved ways to reach their constituents who may be unable to travel for interviews. The Agency is in the late stages of hiring its first Blake Fellow, who will help determine, via in-depth statistical analysis, the underlying reasons for truncations and identify possible steps to ameliorate those reasons.

The Outreach and Intergovernmental Affairs Unit also began to target presentations in areas with unusually high rates of truncations relative to the rate of complaints, and provides more detailed information on the investigation process and the benefits of filing complaints directly with the CCRB. Complaints filed directly with the CCRB are less likely to be truncated than complaints that are referred to the Agency. For example, in 2017, the truncation rate for complaints filed directly with the CCRB was 44%, compared to a truncation rate of 69% for complaints that originate with NYPD’s Internal Affairs Bureau (IAB).

Conclusion

For the current Fiscal Year (“FY”) 2018, the CCRB has a modified budget of \$16,027,278: \$12,452,798 for Personnel Services (“PS”) and \$3,574,480 for Other Than Personnel Services (“OTPS”)—an 18% total budget increase along with a 12% headcount increase since FY 2015. The FY 2018 budget reflects a decrease of \$151,165 from the previous Fiscal Year’s Budget, which was \$16,178,443. The authorized headcount for FY 2018 and 2019 is 187 positions: 110 positions in Investigations; four positions in Mediation; 24 positions in the APU; eight positions in Policy and Advocacy; six positions in Outreach and Intergovernmental Affairs; three positions in Training; and 32 positions in Administration.

Due to the support of the Administration and the Council, the Agency is stronger than ever and better able to accomplish its mission, to provide strong, effective, and independent civilian oversight for the New York City Police Department, but there is more to be done. I am confident that with your help, the CCRB will continue to flourish, improve, and lead the way in civilian oversight nationally.

Thank you for your time and continued support. The members of the Executive Staff and I will be happy to answer any questions you may have.