



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

**Full Testimony of Rev. Frederick Davie, Chair of the Civilian Complaint Review Board
before the Public Safety Committee of the New York City Council
March 19, 2019**

Chairperson Richards, members of the Public Safety Committee, thank you for the opportunity to appear before you today. I am Rev. Frederick Davie, Chair of the Civilian Complaint Review Board (CCRB). I am joined by Agency staff members Jonathan Darche, our Executive Director, and Jeanine Marie, our Deputy Executive Director for Administration.

The City Charter tasks the CCRB with the fair and independent investigation of civilian complaints against uniformed 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). The Board oversees the investigation, mediation, and administrative prosecution of misconduct in the largest police department in the country, and where the evidence supports disciplinary action, recommends appropriate discipline to the Police Commissioner.

Over the past year, the Agency has re-dedicated itself to better serving its complainants, many coming from the most vulnerable and diverse communities in New York, including young people, the homeless, LGBTQ individuals, those with mental illnesses, people living with disabilities, and people of low income. The CCRB has also worked to ensure consistency in its disciplinary recommendations.

CURRENT INITIATIVES

As part of its oversight and accountability work under its Charter mandate, the CCRB engages in a wide variety of public education efforts. In 2018, the Agency focused heavily on this work. The CCRB Outreach Unit delivered over 1,000 presentations in 2018—the largest number in Agency history—to audiences including high school students, immigrant populations, probationary groups, homeless service organizations, formerly incarcerated individuals, NYCHA residents, and LGBTQ groups. Our staff has worked to meet members of the public where they are, reaching all of the City’s neighborhoods and developing productive partnerships with community service providers including homeless shelters, schools, and organizations servicing

youth. The Agency was able to make those efforts because it was fully staffed at the time with an outreach team of six that we were granted by the City Council.

In anticipation of the Right to Know Act (RTKA) becoming effective in October of 2018, the CCRB also constructed a full public education campaign in partnership with members of City Council that involved creation of educational materials and distribution of these materials via street team efforts, participation in press and social media efforts, and working with elected officials to help provide information to constituents. On October 19, 2018,^[1] when the law went into effect, CCRB staff worked with RTKA's co-sponsors, Council Member Antonio Reynoso, 34th District, Council Member Ritchie J. Torres, 15th District, and the City Council's Progressive Caucus to conduct a public education campaign. CCRB staff worked with advocates and partners to develop RTKA Know Your Rights materials. CCRB staff also distributed thousands of flyers outside of subway stations, schools, and at street festivals throughout the five boroughs in coordination with street team efforts by Council Member Carlina Rivera, 2nd District, Carlos Menchaca, 38th District, and Keith Powers, 4th District.

Understanding that young people, particularly young people of color, have a disproportionately higher likelihood of contact with police, the Agency has begun a number of new initiatives aimed at giving younger complainants and victims a voice in how the CCRB investigates, prosecutes, and reports on police-youth interactions. In December 2018, the CCRB selected 19 New Yorkers between 11 and 24 years old to be members of its inaugural Youth Advisory Council (YAC) following an open citywide application process. This group, which meets quarterly, advises the Agency on its policies and outreach efforts to young members of the public. One of the YAC's recent accomplishments was the February 26, 2019 event entitled, "Speak Up, Speak Out: A Youth Summit on Policing in New York." This summit featured panels of youth activists and advocates and breakout groups that discussed the types of interactions young people report having with police in New York, and brainstormed next steps for police accountability efforts in this area. From this summit, the CCRB hopes to gain insight into aspects of police-youth relations to inform an upcoming Policy Unit report on complaints the Agency receives from young people.

In an effort to further the conversation on police accountability in New York City, the Agency co-sponsored "Trust and Transparency: NYC Symposium on Oversight of Law Enforcement" at John Jay College of Criminal Justice on March 15, 2019. This symposium brought together academics, oversight practitioners, advocates, elected officials, and law enforcement in a daylong series of discussions on topics including how oversight bodies can best work together toward accountability and how important advocates are in building bridges to vulnerable communities. Although the CCRB is currently operating with only partially-staffed Communications and Outreach teams, the Agency was able to make both this event and the Youth Summit happen with external support from academic institutions and other sponsoring organizations.

While expanded outreach efforts are an important way the Agency has been working toward better serving complainants, the CCRB also renewed its commitment to protecting the mental health and well-being of our complainants. In April 2018, we adopted a new policy of providing civilians with information about NYC Well, a City program that provides free support and assistance to people experiencing stress and trauma as well as more serious mental, psychological, and emotional health challenges. In conjunction, the CCRB Investigations Division received comprehensive training related to mental health issues in 2018, including effective call management, face-to-face communication skills, active listening, empathetic response, the mechanics of making a warm-transfer to NYC Well, how to introduce NYC Well into conversations with complainants, and the steps an investigator should take when a civilian presents an imminent risk to themselves or to others. Further, in accordance with best practices recommended by service providers to victims of violence, the Agency recently began providing forensic experiential trauma interview (FETI) training to the Investigations Division. This type of interview technique allows for interviewing complainants and victims in ways that empower them, providing investigators with better information and complainants with a more productive and caring experience at the CCRB.

Finally, the Board also made a number of changes to enhance the efficacy of its investigations and prosecutions and to more effectively serve the people of New York City. In January 2018, the Board piloted the use of a Disciplinary Framework, a non-binding matrix designed to guide Board Panel discussions on disciplinary recommendations for substantiated cases and aimed at achieving consistent and fair discipline recommendations for both civilians and members of service. The Framework outlines six allegation types that—if substantiated by a three-member Board Panel—typically would result in the panel recommending Charges and Specifications, the most severe level of discipline. These allegations include chokeholds, strip searches, warrantless entries, offensive language, excessive force with serious injury, and sexual misconduct. Under the Framework, Board Panels also discuss the subject officer’s CCRB history and the totality of the circumstances of the case as a way to guide disciplinary recommendations. Agency staff are currently examining data related to the impact of the Disciplinary Framework Pilot Program, and will make recommendations to the Board based on these findings.

In February 2018, the Board unanimously voted to adopt a resolution directing Agency staff to begin investigating certain allegations of sexual misconduct that had previously been referred to the NYPD’s Internal Affairs Bureau and to develop a plan to investigate allegations of criminal sexual misconduct. Now, more than one year later, the Agency has received 83 complaints containing 126 allegations of sexual harassment, sexual or romantic propositions, sexual humiliation, and sexually motivated strip searches, and has created an internal working group to determine how best to incorporate investigations and prosecutions of sexual assault into Agency operations. We are currently working with OMB to obtain funding to develop a victim advocacy

and support program, and commenced a number of training initiatives, further discussed in the Training section of this testimony, aimed at better supporting victims of sexual violence.

Lastly, the Agency has taken additional steps to reduce its truncation rate and keep complainants involved in their investigations and prosecutions. We now make an average of approximately 12 contact attempts per case before we truncate a complaint, and investigators go above and beyond to reach complainants, often going into the field to meet with complainants. In 2018, approximately 13% of truncations were due to case closures that occurred due to pending litigation. Of the more than 330 cases the Agency has had to close for this reason since it started tracking this issue in 2017, investigators have been able to reopen ten percent as a result of tracking when litigation has ended and re-engaging with complainants. The Agency's new Blake Fellow recently began her tenure at the CCRB, and will be focusing her work on testing new initiatives to reduce truncations, including building partnerships with local service providers and advocates, meeting with community members, and analyzing truncation patterns at the CCRB to make recommendations for improvements in Agency protocols.

All of these initiatives reflect the CCRB's unwavering commitment to continue to improve its service to the people of the City of New York.

INVESTIGATIONS

In 2018, the CCRB received 4,745 complaints within its jurisdiction, an increase of nearly 11% from just two years prior. The Agency strives to fully investigate each one of these complaints, reaching out to complainants within 48 hours to begin collecting statements. Evidence collection, often handled by our Field Evidence Collection Team, must happen quickly to obtain information from commercial or privately-owned surveillance cameras, cell phones taken by private citizens, or NYPD surveillance cameras.

One type of evidence that is becoming increasingly prevalent in CCRB investigations is NYPD Body-Worn Camera (BWC) footage. To date, the Agency has requested such footage in more than 2,600 of its investigations, the majority in 2018. Currently, it takes an average of eight business days to receive BWC footage from the NYPD in cases in which only one request is required. When the CCRB must make follow-up requests, generally due to additional information coming to light in an investigation that reveals the existence of BWC footage after the NYPD reported that no such footage was discovered during their database search (internally termed a "false negative" response), it takes an average of 28 business days to obtain all relevant footage from the NYPD.

While it is still too early to tell the true effect of BWCs on investigations of misconduct, video evidence in general plays a major role in the outcomes of investigations. In 2018, the existence of video evidence more than doubled the rate of substantiation in our complaints, from 12% when no video has been collected to 28% when video evidence exists. Video evidence is especially helpful in making determinations of fact in cases involving allegations of excessive

force. In 2018, 56% of allegations of excessive force were closed as unsubstantiated—in other words, the Board could not determine with a preponderance of evidence whether misconduct had occurred—compared with 37% of those in which the Agency was able to obtain video evidence in the case. The CCRB anticipates that in the coming years, video evidence, and in particular, BWCs, will have the single most meaningful impact on the outcome of complaints of police misconduct.

CCRB operations have been greatly impacted by the increase in available BWC and other video footage. In 2018, the Agency trained all of its investigators in forensic video analysis techniques, which are now employed in all investigations. These techniques involve intensive transcription notations and multiple viewings of videos, increasing the length of time it can take to close all investigations—not just those with video. Investigators must identify each of the individuals in video footage to identify witnesses, and take detailed notes as to the statements made and events that occur, often requiring frame-by-frame review. While video evidence has long played a role in CCRB investigations, the amount of footage in CCRB’s electronic evidence repository has exponentially increased. In the second half of 2014, the CCRB received 393 video files of roughly 137 gigabytes. In the second half of 2018, the CCRB received 3,444 video files of roughly 1.18 *terabytes*, a 776% increase in video evidence in just four years. To date, video footage occupies more than three and a half terabytes of space, with 300 gigabytes of that added in January 2019 alone. At current rates, without additional funding, the Agency will run out of video storage space in approximately a year and a half. The Agency is working with OMB and DOITT to ensure that we are able to meet the demands of the BWC program.

The NYPD’s implementation of the BWC program is not the only external event that has changed how the CCRB does its work. Prior to the RTKA going into effect in October 2018, the Agency trained all of its investigators on the law’s major components, as well as how to plead alleged violations of the RTKA. Since October, the Agency has received 137 complaints containing 229 allegations of a failure to provide a business card under the RTKA. Following the Agency’s public education efforts surrounding the RTKA, there has been an uptick in complaints. In fact, 2018 saw over 200 more fourth-quarter complaints received in the CCRB’s jurisdiction than 2017 (1,298 compared with 1,059), and the highest number since 2013 (1,331). The proportion of complaints received in the fourth quarter compared with the rest of the year went from 23.6% of complaints received in 2017 to 27.4% of complaints received in 2018. Though it’s too soon to know how much of an impact the RTKA will have on Agency operations, early signs indicate that the law has potentially increased the number of complaints received by as much as 7%, based solely on the number of complaints alleging failure to provide a business card.¹

¹ This number is calculated by assuming the 70 complaints alleging failure to receive a RTKA business card received in Q4 of 2018 will continue to remain a constant figure, and adding these to the number of complaints received in 2018 to determine the number of additional complaints expected in 2019.

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 Administrative Prosecution Unit (APU) prosecutes these cases in an NYPD trial room before the NYPD Deputy Commissioner for Trials (DCT). In 2018, the Board recommended Charges and Specifications in 22% (73) of substantiated cases. 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—an important part of transparency of the police disciplinary process, since trials are one of the few publicly-accessible aspects of police discipline in New York City. Since the APU was created by a Memorandum of Understanding (MOU) between the CCRB and the NYPD in 2013, the APU has conducted 374 trials, some of them the subject of a great deal of public interest and press. In 2018, 85% of APU cases closed resulted in some form of disciplinary action, and 25 of the 41 cases adjudicated (61%) 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. In 2018, 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 39% (128) of the 326 officers against whom there was a substantiated allegation, Training at the Police Academy for 17% (55), and Instructions for 21% (70). The NYPD imposed discipline on officers in 84% of the cases where the Board recommended discipline other than Charges and Specifications, and 52% of the time, the discipline imposed by NYPD concurred with that recommended by the Board.

MEDIATION

Restorative justice-modeled programs like complaint mediation are frequently used in both oversight work and the criminal justice system to provide complainants/victims with an opportunity to explain in their own words how the incident affected them or to ask questions. They also give officers the chance to explain their thought processes—and in some cases, to apologize or think more about how they might better approach a similar situation next time. Mediation, which is a required component of the Agency's work under the City Charter, is complainant-driven at the CCRB. While there are some complaint types that are never appropriate for mediation—cases involving force with a serious injury or sexual misconduct, for instance—complainants in cases that investigators believe may be suitable for mediation are offered the opportunity to engage in a guided discussion with the subject officer. Approximately 38% of complainants are offered the opportunity to mediate, and of those, 43% choose to do so. Mediations are conducted by trained professional mediators who do not work for the CCRB, and at any point, the complainant may withdraw from the mediation process and request that the case

be returned to the Investigations Division. In 2018, 93% (232) of mediations were successfully completed, and 7% (18) were returned to the Investigative Division.

DATA AND TRANSPARENCY

There are thousands of complaints of misconduct that the CCRB impartially investigates each year. While we can't provide officer-specific information on cases given the limitations of Civil Rights Law §50-a, we do provide the public a clear service: without the CCRB, no one would know that these incidents occurred, and no civilian would ever investigate them or prosecute them. In an effort to provide the public with a window into the police disciplinary process, the CCRB Policy Unit tracks and analyzes a wide variety of data points, and frequently provides aggregate data to the public. The Agency presents up-to-date trends and findings on an ongoing basis at public Board meetings, in hundreds of pages of monthly statistical reports and Annual and Semi-Annual Reports, in an annually-updated large-scale dataset on the New York City Open Data Portal, and through our Data Transparency Initiative, or "DTI," available on our website, which provides 55 interactive graphics with downloadable data containing up-to-date information on all of our complaints, allegations, complainants, and subject officers. The Unit is also immediately responsive to public inquiries for data. The Agency is committed to making as much of its data public as possible via innovations to its DTI. 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. The DTI also has a feedback form to allow members of the public to tell us what other kinds of data they want to see on our website, and we are in the planning stages of revising the interactive graphics on the DTI to be even more responsive to what the public wants to know.

TRAINING 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 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.

Internal and external changes at the Agency also dictate changes in CCRB training. In September 2018, CCRB staff participated in an eight-hour Mental Health First Aid Certification Training

(MHFA), bringing the total number of MHFA Certified staff to 150. CCRB representatives from the Policy, Legal, Investigations, and Training Units also audited 40 hours of NYPD Crisis Intervention Training (CIT) at the NYPD Academy in College Park. To address the growing amount of video footage received by the agency, in 2018, the CCRB acquired licenses for iNPUT-ACE Video Analysis Software, a multimedia workflow engine for police investigators that assists in streamlining the analysis and processing of video evidence. In October 2018, CCRB investigators, members of the Training Unit, and APU attorneys participated in a two-day training on forensic video analysis. The training, conducted by Forensic Video Solutions, focused specifically on video examinations relating to use of force, motion, timing, image refresh rate reliability, and the interpretation of police body worn and in-car video systems.

Following the Board's February 2018 vote to begin investigating sexual misconduct, the CCRB embarked on a two-phase program: Phase One called for the Agency to immediately begin investigating allegations of sexual harassment; Phase Two allowed for the Agency to begin investigating sexual assault allegations once the CCRB staff was properly trained to handle those types of allegations. In the spring of 2018, investigators received training on allegations of sexual harassment and began investigating Phase One complaints. In the fall of 2018, investigators received more in-depth training in preparation for Phase Two implementation. In October 2018, select investigations staff received 40 hours of training from Bellevue Hospital Center's Victim Advocacy Training Program on trauma and working with victims of sexual assault. In partnership with the NYC Alliance on Sexual Assault (the Alliance), Training staff also began a multi-part training series on sexual misconduct. The first training, held in December 2018, focused on Understanding the Neuroscience of Trauma. Upcoming training sessions will focus on: sexual assault and understanding rape culture, documenting a sexual assault investigation, and vicarious trauma are scheduled for 2019.

CONCLUSION

For the current Fiscal Year (FY) 2019, the CCRB has a modified budget of \$17,173,879: \$13,102,052 for Personnel Services (PS) and \$4,071,827 for Other Than Personnel Services (OTPS), a category which includes funding for, among other items, training initiatives and digital video storage. The authorized headcount for FY 2019 and 2020 is 183 positions: 110 positions in Investigations; four positions in Mediation; 20 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.

With 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 far 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.