



POLICE DEPARTMENT

NEW YORK, N.Y. 10038-1497

ERNEST F. HART

DEPUTY COMMISSIONER, LEGAL MATTERS

November 5, 2021

Honorable Bill de Blasio
Mayor of the City of New York
City Hall
New York, NY 10007

Honorable Corey Johnson
Speaker
The New York City Council
250 Broadway, 18th Floor
New York, NY 10007

Honorable Margaret Garnett
Commissioner
Department of Investigation
180 Maiden Lane
New York, NY 10038

Honorable Philip K. Eure
Inspector General
Office of the Inspector General – NYPD
180 Maiden Lane
New York, NY 10038

Dear Mayor de Blasio, Speaker Johnson, Commissioner Garnett, and Inspector General Eure:

The New York City Police Department (“NYPD” or “the Department”) hereby submits its response to the November 2021 Report of the Office of Inspector General for the NYPD (“OIG”) titled, “Sharing Police Body Worn Camera Footage in New York City” (the “Report”).

The NYPD thanks the New York City Department of Investigation (“DOI”) and the OIG for their work in assessing the NYPD’s policies, practices, and procedures related to the sharing of body-worn camera (“BWC”) footage with the five agencies covered by NYC Charter Section 808(b). The OIG Report makes conclusions and recommendations based on its reliance on information provided more than three years ago about past practices that are

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no longer applicable to the Department's current inter-agency production processes. The production of body-worn camera footage to requesting agencies has been streamlined to enhance implementation and efficiency. The Department respectfully submits the following response to clarify our efforts to effectively fulfill requests from Charter §808(b) agencies in compliance with any existing statutory limits. The information provided herein describes the NYPD's BWC program specific to the Department's obligation to effectively and thoroughly search for, review, and produce evidence to Charter §808(b) agencies in connection with their respective investigations.

In short, all §808(b) agencies submit written requests for BWC footage stored in Axon's proprietary Evidence.com platform to the NYPD Legal Bureau's Body-Worn Camera Unit ("Legal BWC"). Legal BWC's specially trained officers and media service technicians, under the supervision of attorneys, search for the broadest universe of responsive footage using all information provided by the requesting agency, while also identifying any statutory barriers to production.¹ If statutory barriers exist, Legal BWC works with the requesting agency to obtain waivers, court orders, or applies redactions to facilitate timely production.

At the outset of the BWC program, all §808(b) agencies received footage that Legal BWC burned onto DVDs. Today, most agencies, including CCRB, the Law Department, and the Comptroller, have or are in the process of obtaining their own "instances" of Axon's Evidence.com system, which allows Legal BWC to share responsive footage directly via email notification to the requesting agency. This is the same mechanism used to share BWC footage with prosecutors in ongoing criminal proceedings. The method of obtaining footage by an §808(b) agency, whether by DVD or Evidence.com, is within the sole purview of that agency and not the NYPD. The Department thanks DOI and OIG for including in the Report that the §808(b) agencies interviewed acknowledged that the NYPD provides responses to their requests in a timely manner, with the exception of the issues raised regarding CCRB.

Of all the §808(b) agencies, CCRB has the most extensive and immediate access to BWC footage consistent with a Memorandum of Understanding ("MOU") entered into in late 2019, and practices modified during the COVID-19 pandemic to expedite waivers of statutory barriers to production. The enhanced access and streamlined practices specific to CCRB were created to ensure that CCRB can effectively and efficiently carry out its mission. The NYPD believes that effective oversight and transparency build public trust and enhance public safety, which is why the Department continues to be committed to improving such processes.

In an effort to continuously improve the BWC production process, the NYPD reformed the scope and timing of its production of BWC footage to CCRB. Since October of 2017, the NYPD has received close to 12,000 CCRB requests for BWC footage. The high volume of requests, the technical challenges of searching for and redacting footage, and the COVID-19 pandemic's impact on staffing and office space, resulted in a *temporary* backlog

¹ The OIG Report identifies sealing statutes including CPL 160.50 as the primary statutory barrier to external agency "direct access" to BWC footage. In the first instance, there is no external agency that has "direct" or unfettered, self-initiated access to any NYPD system of record, including but not limited to Axon's Evidence.com platform. Allowing employees of other agencies to search for, review, and obtain copies of BWC footage during the pendency of criminal investigations and prosecutions poses substantial risks of compromising those very same investigations and prosecutions, long before the outcome of such prosecution might result in sealing. This undoubtedly will negatively impact public safety. This incontrovertible conclusion is the basis for the law enforcement and public safety exemptions to FOIL requests, as well as the law enforcement privilege and official information privileges in common law. Additionally, many statutes prohibit disclosure by the NYPD of certain information, including the Family Court Act, Social Services Law, Civil Rights Law, and the Public Health Law.

of requests. In June of 2020, still during the height of the pandemic, the backlog reached over 1,000 requests. In the interest of efficiency and public trust, the NYPD and CCRB took steps to clear the backlog and improve the pace of BWC production. Specifically, the NYPD and CCRB established a new and mutually agreed upon procedure for the search and production of BWC footage. As a result, (1) CCRB provides more information to assist in locating responsive footage; (2) the NYPD continues to search for and “tag” BWC footage responsive to each CCRB request while awaiting the removal of legal barriers to the release of footage to CCRB; and (3) the NYPD now accepts representations from CCRB investigators of verbal waivers from complainants in order to obtain protected footage. Previously, CCRB had to submit written waivers from complainants. This new procedure significantly decreased the time it takes for the NYPD to fully satisfy CCRB requests for BWC footage. From July through September of 2020, the NYPD completed approximately 1,476 CCRB requests, completely clearing the summer of 2020 backlog, which remains at zero as of the date of this letter. Year to date, Legal BWC has received approximately 2,295 requests from CCRB, all of which have been timely processed.

In their Report, OIG reached the conclusion that the NYPD was cherry picking which search results to produce to CCRB. Nothing could be further from the truth. The Department has consistently made efforts to refine and expand searches for BWC footage to ensure optimal responses to CCRB. Legal BWC routinely expands on timeframes submitted by CCRB to ensure all relevant video is returned during the search. Video is reviewed to confirm that it contains the correct incident, however video is shared without making any determination regarding content, other than the previously mentioned statutory barriers. We believe this fact was omitted from the OIG report and therefore led to this incorrect assertion.

The inter-agency MOU will further enhance the retrieval and exchange of responsive footage to CCRB. The MOU provides for a secure room within CCRB office space where CCRB personnel and the NYPD’s Legal Bureau will work hand in hand to search the Axon Evidence.com platform for any and all footage of incidents at issue in CCRB investigations. Search terms will be initially entered based on the information contained in CCRB’s request, but can be expanded in the presence of CCRB personnel. Upon establishment of this secure room, CCRB investigators will be able to watch all footage before any redactions are applied. The secure room was created to allow CCRB to perform its work while balancing the Department’s duty to ensure that statutorily protected information in the Department’s possession remains protected. The secure room was unfortunately postponed due to social distancing requirements and work-from-home mandates during the COVID-19 pandemic. However, the challenges produced by the pandemic did not stop the NYPD and CCRB from working collaboratively and eliminating the entire CCRB request backlog.

The NYPD and CCRB continue to work together to ensure that CCRB receives all BWC footage in a timely fashion, so that CCRB will be able to fully investigate and complete its essential investigations within its charter authority. The ongoing collaboration between both parties has led to an excellent working relationship, which includes weekly conference calls between the NYPD Legal Bureau and CCRB leadership and further communication as needed to identify and resolve any issues that may arise. As of this writing, the NYPD routinely responds to all CCRB requests for BWC video within five days from the date of receipt, with limited exceptions.

Finally, the NYPD continues to take steps to enhance compliance with all obligations to obtain, review, and produce information to external stakeholders including both prosecutors and §808(b) agencies. Specifically, with respect to the BWC program, the NYPD continues to train all members in the proper categorization of BWC footage at the time it is first recorded, in order to create a more manageable universe of footage for subsequent search and production. We thank you for recognizing that the enormity of video footage produced in any given week by our officers (over 150,000 videos per week) makes the ongoing efforts to properly tag and categorize these videos essential. Additionally, the NYPD's Information Technology Bureau and Risk Management Bureau continue to work with Axon to develop and implement new features in the Evidence.com system to support the unique needs of the nation's largest municipal law enforcement agency, which will certainly benefit our agency partners.

Since the inception of the BWC program, the NYPD has strived to strike a balance between the need for robust, external oversight, including full access to all relevant evidence requested by §808(b) agencies, the legally protected privacy of individuals who are captured on BWC footage, and the integrity of ongoing criminal investigations and prosecutions that is critical to public safety. Individuals captured in BWC footage may include suspects, witnesses, victims in criminal proceedings (including victims of sex crimes, domestic violence or gender-based violence), juveniles, informants, and undercover officers, as well as those whose arrests have been sealed and who do not wish to pursue a misconduct complaint made on their behalf to any oversight body. Legal BWC carefully balances these sometimes competing interests and produces evidence in a timely manner to all §808(b) agencies, in order for each agency to meet its unique mission and obligations to the public.

Based on the above information, the NYPD responds to the OIG's three recommendations as follows:

Recommendation One: There is ongoing litigation surrounding sealed records, that does not involve §808(b) agencies, but the result of which may impact such agencies' access. The NYPD therefore declines to accept or reject this recommendation, but affirms that it will enact any necessary changes to policy and/or technology consistent with the outcome of the litigation.

Recommendation Two: This recommendation stems from an issue identified in 2017 and suggests a solution to an issue which has since been resolved. The CCRB already has access to BWC footage detailed in this recommendation. Specifically, CCRB has the ability to review requested BWC footage via remote access through Evidence.com and in accordance with an MOU executed by the NYPD and CCRB.

Recommendation Three: The NYPD accepts this recommendation. Discussions are ongoing with the §808(b) agencies and as of July 2020, the NYPD has enhanced protocols for responding to requests, resulting in timely responses and zero backlog.

The NYPD thanks DOI and the OIG for their work in assessing its policies, practices, and procedures related to the sharing of BWC footage. We commit to continuously improving information sharing between the NYPD and all Charter §808(b) agencies.

Regards,



Ernest F. Hart
Deputy Commissioner,
Legal Matters