



POLICE DEPARTMENT

June 26, 2019

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, 18<sup>th</sup> Floor  
New York, NY 10007

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

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

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

Pursuant to Local Law 70 of the New York City Charter, the New York City Police Department (“NYPD” or “the Department”) hereby submits a preliminary response, with a more detailed

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response to follow, to the June 2019 Report of the Office of Inspector General for the NYPD (“OIG-NYPD”) titled, “Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training” (the “Report”).

## **Introduction**

The NYPD thanks OIG-NYPD for their work in this extremely important area and its acknowledgment of the NYPD’s deep commitment to combatting racial profiling and biased policing. The NYPD keenly recognizes that the trust of the community in large part depends on the belief that its police department performs its job without bias or prejudice and that it deals with any deviation from that standard in an appropriate way. Working closely with the Federal Monitor and plaintiffs in *Floyd*<sup>1</sup> over the last five years, the NYPD has refined its approach and has re-doubled its efforts to prevent any biased policing in the first instance, and where found, in any form, to address it meaningfully.

Since 2014, we have established in-depth biased policing-related training modules taught at the Police Academy; have undertaken mandatory day-long, in-service training on implicit bias; have instituted a revised and significantly strengthened written policy covering both biased policing and racial profiling; have instituted an additional day-long in-service training on investigative encounters, which is focused in part on the prohibition of utilizing race or other protected class factors in the decision to question or stop an individual; have established a process to ensure thorough investigations of every allegation of racial profiling or biased policing; and have collected data related to such allegations and associated complaints, which

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<sup>1</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013).

is analyzed to determine if any patterns or trends exist. Lastly and of great significance, the Department now has equipped every uniformed member of the service on patrol with a body-worn camera, which will allow not only for better supervisory review of all officers, but also for additional evidence in those instances giving rise to complaints of biased policing. These efforts have been made with federal court oversight including intense and continuing collaboration with the Federal Monitor and plaintiffs, and with community input and involvement.

More generally, over this five-year period, we have continued our efforts to increase diversity within the Department,<sup>2</sup> and have instituted Neighborhood Policing, which strives, through proactive interaction and trust building to improve police/community relations throughout the city. We believe in the importance of establishing diversity within the Department, and building trust within the community, and credit these initiatives with promoting empathy and reducing biases. It is worth noting that complaints of biased policing represent fewer than .001% of the tens of millions of citizen interactions that NYPD has had since 2014.<sup>3</sup> Most significantly, all of these efforts have produced results: biased policing complaints are down more than 33.1% year over year as of May 31, 2019.<sup>4</sup>

While the Department's biased policing investigations have yet to lead to a sustained complaint of any **act** of biased policing, (as opposed to a significant number of sustained complaints

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<sup>2</sup> The Department is now a majority-minority Department. As of 12/31/18, 48.7% of uniformed members were White, 15.1% were Black, 28.1% were Hispanic, 9.2% were Asian, and .1% Other.

<sup>3</sup> These interactions include 911 calls, 311 calls, arrests, summonses, as well as other interactions such as at parades, demonstrations, and protests.

<sup>4</sup> For the period of January 1, 2018 through May 31, 2018 there were a total of 329 biased policing complaints received by IAB. This number was reduced to 220 complaints for the same period in 2019.

alleging the utterance of protected-class slurs by officers), the Department believes that all of the efforts mentioned above have been extremely important and successful in educating its officers of their responsibilities to police in a fair and impartial manner and making the officers aware of some of the factors that could lead to constitutionally impermissible and morally unacceptable policing practices. Any implication or inference that the Department is reluctant to sustain such complaints is entirely misplaced. Many types of police misconduct are sustained on a regular basis, some more serious than others. Simply put, NYPD is committed to addressing misconduct in any form. The difficulty, as the Report correctly points out, in proving acts of biased policing rests with requirement of proof of intent. We regret that the OIG-NYPD did not review complete investigative files, as opposed to simply the closing sheets of investigated cases. We believe that had they done so, they would have found that the disposition reached in each case was appropriate based on the facts and applicable evidentiary requirements. That two or three other police departments have, on extremely rare occasions, been able to meet such evidentiary requirements, is solely case dependent, and should not serve as a substitute for a full evaluation of the investigation and findings of each case investigated by NYPD. It is noteworthy that OIG-NYPD did not itself find that any of the 888 allegations of biased policing that they reviewed should have been substantiated on the basis of available evidence.

The NYPD strives for continuous improvement in all of its endeavors and will continue to work with stakeholders to improve on the very significant advances that have already been achieved. We have addressed some of the prominent issues noted in the Report below, and intend to submit an additional detailed response within the 90-day statutory framework.

### **Timing and Scope of OIG-NYPD's Inquiry**

The NYPD has been working assiduously with stakeholders to address the issue of biased policing since 2014, and the Federal Court overseeing the *Floyd* case approved the specifics of many of the reforms undertaken by the NYPD, as detailed above. Yet, the period of review of the OIG-NYPD's inquiry, which ends mid-2017, does not reflect all of these reforms.

Two issues raised in the Report have been fully addressed since mid-2017. A department case management system, instituted in January 2018 and now used to document biased policing investigations, does not permit investigators to close cases until they have documented at least three attempts to contact a complainant. The system also requires investigators to sub-classify each case in accordance with the NYPD's nine defined sub classifications.

With respect to training since mid-2017, an additional eight hours of instruction dedicated to biased policing has been added to the recruit curriculum and is also mandatory training for all uniformed members of the Department. OIG-NYPD observed this training and their comments were added to comments by the Federal Monitor and his expert, Jennifer Eberhardt, as well as those of the *Floyd* plaintiffs, for incorporation into the final version of the training.

With respect to potential mediation of allegations of biased policing the NYPD and the CCRB conducted detailed discussions in mid-2018 about instituting mediation for biased policing complaints. We consider mediation to be a viable recommendation and will continue discussions towards possible implementation.

A good number of the recommendations in the Report have been the subject of ongoing discussion by NYPD and CCRB – some as early as 2014. In furtherance of those prior discussions, we will expand the working group to include CCHR. The group will review the feasibility of CCRB expanding its Abuse of Authority jurisdiction to cover biased policing allegations; study ways to improve the investigation, policies, and training of biased policing complaints; and explore means of implementation.

Given that the OIG-NYPD did not review the complete investigative files of the cases that it criticized, many of the examples cited in the report of investigative deficiencies are taken out of context. We will work with OIG-NYPD to explain these instances and will address them in detail in our 90-day response.

It should be noted that the Federal Monitor has reviewed, and will continue to review, a sample of full investigative files for adequacy and adherence to investigative protocols.

### **Protected-Class Slurs**

As with all biased policing, the NYPD has zero tolerance for racial and other protected-class slurs. The policy prohibiting slurs is drilled into members of the service from their earliest training as recruits in the Academy and is reinforced in a variety of different ways by in-service training.<sup>5</sup>

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<sup>5</sup> Patrol Guide 203-10 Public Contact- Prohibited Conduct

Complaints of racial and other protected-class slurs are investigated by the Civilian Complaint Review Board (“CCRB”) as cases of offensive language, pursuant to the statutory division of investigative responsibilities between CCRB and the NYPD.<sup>6</sup> If the complaints are sustained, they come to the NYPD for a final determination of penalty, if applicable. The NYPD investigates biased policing acts, as opposed to offensive language based on racial or other protected-class slurs. Offensive language complaints can be sustained without proving that the underlying motivation or intent of the person uttering the slur was the complainant’s protected status. In contrast, sustaining a biased policing allegation requires proof of that motivation or intent on the part of the police officer by a preponderance of the evidence. As explicitly recognized by the OIG-NYPD, absent direct evidence, it is extremely difficult to meet this burden of proof. Even the best investigation protocols, and NYPD believes that it has the best protocols in place, cannot go inside an officer’s mind to glean intent.

We agree with the OIG-NYPD that complaints and investigations of protected-class slurs should be included when considering the NYPD enforcement totals relating to misconduct involving protected classes. If substantiated cases of slurs directed at people of a protected class were included by OIG-NYPD in the reporting of NYPD’s resolution of biased policing cases, as is done in other jurisdictions including, as noted in the Report, Seattle, Baltimore and Grand Rapids, the number of sustained biased policing cases would increase from zero

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<sup>6</sup> New York City Charter, ch. 18-A §440(c)(1) states, “[t]he board shall have 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...use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The findings and recommendations of the board, and the basis therefore, shall be submitted to the police commissioner.”

substantiated cases to forty-nine,<sup>7</sup> higher than the number of cases sustained by any other major city police department.

We disagree, however, with the OIG-NYPD's suggestion that a higher bar be applied to slur cases, requiring proof of intent, as is required in the biased policing cases.<sup>8</sup> From a practical point of view, sustaining these cases under the current regime allows for appropriate intervention and discipline that usually could not be imposed if the cases had to meet the higher standard, which, as noted by the OIG-NYPD in the Report, is very difficult to achieve.

### **Training for Investigators**

The OIG-NYPD has put forward some useful suggestions relative to training of our investigators, which will be addressed specifically in our 90-day response. We appreciate their recognition of the great strides that have been made since 2014. As noted in the Report, the Department continues to improve the process, by issuing written clarifications about how various aspects of a biased policing investigation must be conducted and for what purposes certain items may be considered. The Department has also issued written instructions that biased policing allegation cases may only be assigned to those who have undergone the appropriate training. Before investigating these highly important cases, experienced investigators receive two weeks of robust training to effectively investigate complaints against

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<sup>7</sup> This number includes all sustained cases of offensive language involving a protected class, and is broken down as follows: 2014 (6 cases); 2015 (8); 2016 (16); 2017 (10); 2018 (9). The Department imposed various penalties on many of these cases including instructions, command disciplines, and loss of vacation days

<sup>8</sup> The other jurisdictions that include racial slurs as actionable instances of biased policing do not have a requirement that the intent of the offending officer be established.

Members of the Service. This intensive, targeted, and comprehensive training incorporates the two-hour biased policing module referenced by OIG-NYPD in the Report.

### **Conclusion**

The Report found areas of potential improvement in the Department's procedures, training, and investigations of biased policing complaints. The NYPD agrees with many of the recommendations in the Report, has already acted on some and will continue to work in collaboration with all our partners and stakeholders including OIG-NYPD to implement others. Our goal is to build the public's confidence in, and support for, policing by ensuring that we conduct all enforcement activities in an unbiased manner. As noted, the NYPD plans to provide a more detailed written response to the OIG-NYPD's findings and recommendations within the statutory response schedule.

The Department again thanks OIG-NYPD for their thoughtful assessment of the Department's investigations, policies, and training in connection with racial profiling and biased policing. We look forward to responding more fully to the Report as we continue our mission to protect the people of this city in partnership with the community by promoting and engaging only in constitutionally sound policing practices.

Very truly yours,

Jeffrey Schlanger  
Deputy Commissioner  
Risk Management Bureau