



POLICE DEPARTMENT

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Arva Rice
Chair of Board
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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Dear Chairperson Rice and Executive Director Darche:

The New York City Police Department (“NYPD” or “the Department”) hereby submits its response to the January 2023 Report of the Civilian Complaint Review Board (“CCRB”), titled, “2020 NYC Protests.”

As a result of conducting investigations pursuant to the NYC Charter, the CCRB has published a report specifically focusing on misconduct allegations against members of the service stemming from the rioting and protests that occurred in New York City starting on May 28, 2020, lasting through November of 2020. During that time, many individuals took to the streets to condemn the killing of George Floyd by an officer of the Minneapolis Police Department. After receiving 321 complaints, and fully investigating over 70% of those complaints,¹ CCRB submitted conclusions and recommendations. CCRB based its findings upon review of NYPD paperwork and video, statements by uniformed members of the service (“UMOS”) of the NYPD, statements by individuals who were either the subject of or witness to police action, and review of videos taken by participants of and witnesses to the rioting and protests.

Over two and a half years removed from the events of the summer of 2020, CCRB’s findings and recommendations are obsolete and, in some cases, redundant with many having

¹ CCRB states that a complaint is “fully investigated” when the investigator is able to interview a complainant or alleged victim.

already received immediate attention and appropriate action almost two years ago. At least three other agencies conducted an investigation into NYPD's response to these same protests and issued timely reports and recommendations.² The recommendations issued by the New York City Department of Investigation were adopted and implemented by the NYPD, in full, before the end of 2021. See [Mass Demonstration Response Recommendations \(nyc.gov\)](https://www.nyc.gov/mass-demonstration-response-recommendations) Many, if not all, of the recommendations identified by CCRB are already current NYPD policy or have long since been enhanced to account for the concerns raised by CCRB.

CCRB's report is devoid of any meaningful acknowledgment of the unprecedented violence, property destruction and chaotic reality that the protests and riots, coupled with a global pandemic, created for the City. Other than recognizing thousands of people gathered to protest during this time, CCRB was silent as to the scale and nature of these events. At the peak of the protests, there were more than 22,000 UMOS deployed in a single day, attempting to facilitate people's rights to peaceful expression all while addressing acts of lawlessness including wide-scale rioting, mass chaos, violence, and destruction. Officers were faced with people looting, setting fires, and destroying property. Officers also had to respond to New Yorkers who feared for their safety as a result of the widespread violence. The vast majority of these events were mobile or happening simultaneously in multiple locations requiring real-time officer redeployments. More than 400 UMOS were injured, with over 250 of them hospitalized. Nearly 300 NYPD vehicles were vandalized. The Mayor of the City of New York implemented an 11 p.m. curfew in an attempt to quell the lawlessness and when that was not effective, the curfew was then moved to 8 p.m. What happened during the summer of 2020 was a once-in-a-lifetime confluence of events; officers with over 20 years of policing experience had never witnessed such violent and destructive behavior. This, in addition to dealing with, and having to work daily through, a global pandemic.³ These facts are largely, if not entirely, omitted by CCRB and do not appear to have played any role in CCRB's analysis and findings.

In relation to the summer of 2020, CCRB fully investigated 225 complaints, which contained a total of 1,800 allegations. Despite CCRB's assertion that widespread police misconduct occurred during the summer of 2020, CCRB substantiated just 14.83% of the 1,800 allegations. Of the 22,000 UMOS deployed at any given moment during the timeframe of this report, just a minuscule 0.62%, totaling only 138 individual UMOS, had an allegation substantiated against them.

CCRB's report artificially inflates the data presented to the NYPD's detriment. For example, the CCRB report states that allegations of misconduct were substantiated against 146 UMOS. However, in a footnote on Page 6, the CCRB Report states that if a UMOS had

² New York City Department of Investigation ("DOI"), the New York City Law Department ("Law Department"), and the New York State, Office of the Attorney General ("AG"), conducted respective investigations as it related to the NYPD's response to the George Floyd protests and issued findings with recommendations. The AG's report was published in July 2020 and the reports by DOI and the Law Department were published in December 2020.

³ New York Supreme Court Justice James Burke, in rejecting Legal Aid's June 2, 2020 argument in its writ of habeas corpus that the NYPD was intentionally prolonging the arrest processing in retaliation for arrestees protesting against police brutality held that this situation was a "crisis within a crisis specifically civil unrest crisis within the overarching COVID-19 crisis." The court acknowledged NYPD's response that "the entire police department has been deployed" and recognizing that even the Manhattan District Attorney's Office was "all hands on deck". (*People of the State of New York Ex Rel. Corey Stoughton, Esq., on behalf of Harris, Ayala, Jackson, et al.*, 100446/2020)

substantiated misconduct in more than one complaint, they were counted more than once in the total number of MOS with substantiated misconduct. A review of Appendix B, which is an alphabetical list of the 146 officers against whom an allegation was substantiated, revealed that 6 officers were the subject of multiple substantiated allegations, resulting in those 6 officers being counted 14 times (bringing the number of UMOS with substantiated complaints down to 138, as noted above).

The CCRB report also included Appendix E, containing what the CCRB maintains are the closing reports for the CCRB case numbers mentioned in this report, while excluding those complaints that are still being prosecuted by their Administrative Prosecution Unit (APU). While this is technically true, this 460-page Appendix E includes closing reports for CCRB cases that did not result in a substantiation, and in some cases, the subject officer was even exonerated. However, due to the nature of CCRB's redactions, the official case closing category cannot be ascertained. Including all of these closing reports in Appendix E only serves to make it appear as though more officers were involved in substantiated discipline than actually were.

The NYPD has safeguarded countless protests in this City over the last decade, allowing for hundreds of thousands of people to engage in their constitutional right to peacefully assemble, with little to no police interaction. The NYPD consistently stays ahead of the curve, designing and implementing robust training programs and policies around constitutional policing. Police departments across the country look to the NYPD as a leader in this area of policing.

Training for NYPD officers has long been grounded on the fundamental tenet that protesting is a constitutionally guaranteed and protected right. NYPD officers are trained to know that individualized probable cause must be established prior to an arrest. Officers also receive training in de-escalation and the appropriate use of force. Officers are taught to only use the force that is reasonable in any given situation. NYPD annually publishes its uses of force: [Use of Force - NYPD \(nyc.gov\)](https://www.nyc.gov/about/press-releases/2018/05/2018-use-of-force-report).

While there were incidents that run counter to the principles of NYPD training, as well as our mission of public safety, the actions by those officers stand apart from the restrained work of the several thousand other officers who worked tirelessly to protect those peacefully protesting while also keeping all New Yorkers safe. Accountability in policing is essential. The NYPD has zero tolerance for misconduct but it is also critical to review the totality of the circumstances that lead to each interaction. This needed perspective is often not employed by CCRB investigators; and their familiarity, comprehension and application of Department policies relevant to the matters they investigate is, at times, lacking. Awareness and understanding of Department policies and trainings, as well as the law and its application to real-life scenarios, is essential to making "fair and objective determinations on the merits of each case," as CCRB pledges to do.

The Police Commissioner has final authority over the imposition of appropriate discipline and will not hesitate to swiftly hold officers accountable when justified, as we have seen with many of the substantiated cases cited in CCRB's report. While CCRB highlights instances where the Police Commissioner deviated from its recommendations, it failed to include the published basis

for such deviation in the text of its report.⁴ Each time the Police Commissioner departs from the recommendations of CCRB, she provides a written explanation, which is publicly posted and found on the CCRB's website: [Departure Letters](#). When reviewing all disciplinary matters, the Police Commissioner carefully considers all of the established facts and performs an analysis of the applicable policy, law and/or training. The incident is also reviewed in its full context; making a determination based only on a short video clip, without consideration of the full universe of all the evidence, is not exercising proper due diligence and undermines the validity of the investigation.

Upon review of the CCRB case files provided to the Department, it is clear that CCRB investigators based findings on limited information, often failing to consider the entirety of a video, universe of videos or statements provided during interviews in their analysis. Similarly, it appears that CCRB investigators do not lend any credit to statements made by an officer unless the statement is corroborated by a non-NYPD witness or video, which runs afoul of CCRB's pledge to make fair and objective determinations.

Further, many examples of the alleged misconduct cited in CCRB's report are associated with open cases that have not reached the due process stage of the disciplinary process. CCRB made preliminary findings on these cases, but those findings are not dispositive. CCRB must prove the allegations in an administrative trial, where the accused officer has the opportunity to present their own evidence to an administrative judge for consideration. The judge decides who to credit, the complainant or the officer, after careful review and consideration of *all* evidence, not just what CCRB may proffer.

In an effort to explain the low substantiation rates, CCRB expends much attention on perceived barriers to its investigations. One of the main obstacles CCRB relies upon most heavily is that during the summer of 2020, officers allegedly concealed their identities by blocking their names/shield numbers with a mourning band. Though the report cites to examples where a name or shield number was covered by the mourning band, there are zero examples that indicate CCRB determined the covering was *intentional*. The examples provided by the CCRB highlight how little evidence was presented and considered in light of these accusations. In one example, a civilian was attending a candlelight vigil when she asked an officer, *as the officer walked by the civilian*, if she could uncover her shield number. This, according to CCRB, is an "intentional concealment" of a shield number. A fair and objective investigation would probe further: Did the officer hear the request? Was the officer's attention focused elsewhere? What were the circumstances and atmosphere at the time of this alleged incident?

In 2019, NYPD saw over 25 of its members pass away from illnesses related to their response to the tragedy on September 11, 2001. There were over a dozen more 9/11-related fatalities from the start of 2020 through the start of the protests. To further compound the profound loss already felt by the NYPD, by the time the protests started on May 29, 2020, NYPD had lost

⁴ One example: CCRB substantiated a Use of Force allegation against one officer because he used his OC spray on the crowd and the Board recommended a "B" Command Discipline. The Police Commissioner, in her deviation letter, stated that the officer's actions did "not rise to the level of actionable misconduct," and referenced the fact that he "was faced with a hostile crowd that refused the orders to disperse and instead hurled projectiles at the officers. In the face of this threat, and in accordance with his training as member of the Strategic Response Group ("SRG"), [the police officer] deployed his capsicum oleoresin spray ("OC Spray") in the direction of a group of protesters."

at least five uniformed members of the service to COVID-19. On April 16, 2020, then-Police Commissioner Dermot Shea issued a message to all members of the service directing UMOS to wear black mourning bands across their shields in quiet commemoration of the 27 members of the service (civilians included) who lost their lives to COVID-19.⁵ CCRB failed to even acknowledge this solemn display of respect and remembrance, and instead categorically labels it as a vehicle to intentionally conceal shield numbers, and thus, the identity of the officers working the protests.

CCRB further claims that officers often displayed other officers' shield numbers on their helmets in order to conceal their identities. Again, to provide missing context to the events at the time of this report, individuals were throwing bricks, batteries, bottles full of known and unknown substances, marbles, pieces of trash and entire trashcans, knives, fireworks, Molotov Cocktails and incendiary devices, and other dangerous objects at our officers. The helmet was a piece of personal protective equipment that became a necessity as violence erupted throughout the City. Thankfully, situations that require the use of helmets for officer safety are few and far between. For this reason, officers typically do not have them at the ready, which led to officers sharing helmets during this time. Without this consideration, the allegation that officers switched helmets to avoid detection is disingenuous. The end result of wearing someone else's helmet is not a lack of officer accountability; it may mean that the wrong officer would be held accountable. Moreover, the CCRB grossly overestimates the amount of time the officers had to contemplate these alleged ways to evade identification while they were responding to multiple evolving scenes across the City.

Despite CCRB's pledge to "expeditiously investigate each allegation thoroughly and impartially," many CCRB investigations take so long that the 18-month statute of limitations is close to expiring when CCRB issues a finding, and in some cases has already expired. This practice persisted even after the Governor of New York extended various statutes of limitation due to the ongoing public health emergency. When CCRB issues a finding after the statute of limitation has expired, discipline cannot be imposed upon the officer, even though CCRB substantiated an allegation against them. While CCRB blames the NYPD for delaying its investigations, many of CCRB's statements regarding NYPD delays are unfounded – and many of the delays are from the CCRB's own doings. Specifically, the Department's document production capabilities have been greatly expanded in recent years and a significant amount of staff is dedicated to providing Body-Worn Camera ("BWC") footage to CCRB. The turnaround time for producing this footage to CCRB averages a mere five days, an impressive statistic considering thousands of hours of footage must also be expeditiously produced for prosecutions, lawsuits, other oversight entities such as the Attorney General and the Department of Investigation, as well as in response to FOIL requests. When the information or video requested is voluminous, it can take a significant amount of time to identify and gather the necessary paperwork or video. The delay and strain on resources is compounded when requests from CCRB are vague, overbroad, imprecise, or simply incorrect. The Department believes that it is in the interest of the public, and all stakeholders, to resolve all disciplinary investigations and cases in a timely and transparent manner. Prolonged investigations detrimentally impact the community, as well as officers, who are seeking a swift resolution to these disciplinary matters. The Department will continue to make substantial efforts to provide all footage and records that the CCRB needs to conduct its

⁵ Officers are permitted to wear such bands pursuant to Administrative Guide Section 305-14.

investigations.

The NYPD responds to CCRB's seventeen recommendations below. Most, if not all recommendations, have previously been adopted in response to reports issued by other investigating agencies or are already reflected in current Department policy.

Recommendations One and Two: As of April 2021, NYPD completed an assessment of its then existing training curricula, from recruits to executives, and developed more expansive content related to protests, First Amendment activity, and de-escalation/crowd psychology. Feedback from community partners was incorporated into the curriculum.

In addition, the Department developed both a classroom training curriculum and tactical training module that together impose reasonable limitations on the use of disorder control tactics such as encirclement and mass arrest, specific to their use at First Amendment protected protests. This training also reiterates the Department's existing policy as it relates to members of the media.

Additionally, the NYPD issued Patrol Guide Section 213-20, titled, "Response to First Amendment Activities," on September 10, 2021 which memorialized its existing practices. This Patrol Guide procedure identified the duties and responsibilities involved at the scene of First Amendment activities and reiterated the Department's existing policy as it relates to legal observers, and expressly distinguished between individuals participating in First Amendment activity using violent behavior from those not engaged in violent behavior.

The vast majority of UMOS received this amended training on crowd control tactics and policing First Amendment activity, in general, by the end of 2021.

Recommendation Three: NYPD officers do not take enforcement against any individual unless they have a legal basis to do so and they certainly do not take enforcement against individuals who are complying with a lawful order to disperse. Warnings of the impending curfew were given repeatedly, sometimes hours in advance of the curfew. Individuals who failed to adhere to the warnings were lawfully the subject of police action.

Recommendations Four, Five and Nine: NYPD Administrative Guide Section 305-12 has long required all UMOS, regardless of rank, to wear their shield and nameplate on their outer most garment at all times while in uniform and to make sure the shield number or rank designation are visible at all times.

Recommendations Six, Seven, and Eight: Every command maintains a vehicle log for each Department vehicle and who is assigned to them on any given day. This information is also memorialized in the command log and in the activity log of each officer who is assigned a vehicle. Supervisors are identified in the normal course and wear designated insignia on their uniforms specific to their rank. Importantly, however, UMOS are to follow their chain of command. Therefore, they are to follow the instructions of any supervisor, regardless of whether it's the one initially assigned to them. All of this is done in the normal course. The summer of 2020, however, was not the normal course. CCRB's continued lack of recognition as to the actual environment in which NYPD was operating is evident here.

Recommendation Ten: NYPD does, in fact, log which officers respond to radio calls. When responding to a call for police assistance, an officer uses the radio to acknowledge the job and give an affirmative response to that call for assistance. During this time, the officers reference themselves as being assigned to a particular sector. This is memorialized both on the audio recording that is maintained for one year and transcribed in the Intergraph Computer Aided Dispatch (“ICAD”) computer system, maintained for seven years. Further, the officers assigned to specific sectors are memorialized on the command’s roll call. Use of the ICAD report and the roll call will very clearly identify the responding officers.

Recommendation Eleven through Fifteen: Existing Patrol Guide Section 212-123 (revised as recently as January 17, 2023) details the mandatory BWC activations, which includes prior to taking any police action. It would therefore be activated when responding to an officer’s call for assistance.

Officers of all ranks through Inspector are assigned a BWC if assigned to a command that requires its officers to wear a camera. This makes up the vast majority of the Department.

As of February 2022, the GPS capability on the BWCs assigned to each MOS was upgraded and activated, in addition to the multi-cam link feature.

The NYPD’s Internal Affairs Bureau, when conducting its investigations, will identify the BWC footage reviewed. This can be easily located upon request.

The CCRB has the most extensive and immediate access to BWC footage. No one outside of the NYPD has direct access to the BWC database because it contains videos related to sealed arrests, juvenile arrests or detentions, and sex crime cases, none of which can legally be made available to the public or other city agencies without a proper waiver or court order. Obtaining a waiver from the complainant is a responsibility that falls squarely upon the CCRB in the normal course in its investigation.

Recommendation Sixteen: NYPD may set up medical treatment areas pursuant to the Citywide Incident Management System, when there is information available to the Department in advance of the activity that indicates a potential need for such designated areas, and regularly makes sure the ingress and egress to areas where first responders are responding to emergencies are free and clear of vehicle and pedestrian traffic. During the height of the rioting and protesting, the roving nature of these demonstrations moving from one borough to another made it difficult to establish medical treatment areas. Furthermore, response of emergency medical staff would have been impeded by traffic created by the protest as it moved from location to location via the streets.

Recommendation Seventeen: The Rules of the City of New York govern the procedure for when members of the NYPD vouch for an individual’s property and officers remain obligated to follow the identified procedure.

A key element missing from this report is any acknowledgement that officers were performing their utmost duty, protecting the city and its people, under what were often sustained,

dangerous conditions. Officers were working long hours in hostile and adversarial situations. There were many people who disobeyed lawful orders of the police and confrontation ensued. This type of engagement day after day could reasonably result in an inability to recall specific events or an officer's own exact whereabouts at any given time. Events that would normally be memorable outliers became the norm when those events repeated every tour for at least ten days. The report is also missing any recognition at all that the NYPD has already made numerous improvements to its existing policies and trainings after carefully considering its own self-analysis and public input, all in an effort to better serve its officers and its community. The report does, however, include its substantiation rates – less than 15% of all allegations identified in this report were substantiated by the CCRB – confirming that the NYPD's response to the protests during the summer of 2020 was largely professional, commendable, and responsive to the unique circumstances that were present at the time.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Carrie B. Talansky". The signature is fluid and cursive, with a large initial "C" and "T".

Carrie B. Talansky
**Acting Deputy Commissioner
Legal Matters**