



ERIC L. ADAMS  
MAYOR

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



ARVA RICE  
INTERIM CHAIR

**Full Testimony of Arva Rice, Interim Chair of the Civilian Complaint Review Board, before the Public Safety Committee of the New York City Council  
March 27, 2023**

Good afternoon,

My name is Jonathan Darche and I use he/him pronouns. I will be reading the following statement on behalf of CCRB Interim Chair Arva Rice.

City Council Members, I am grateful to have the opportunity to address this council for the third time this month. Today, I have been asked to testify in regards to proposed bill Int 938 that would grant the CCRB direct access to BWC footage as well as Resolution 3149 which is in favor of exempting the CCRB from sealing statutes. These are both key issues the Agency has long advocated for.

After the 2013 case *Floyd v. City of New York* found that the NYPD’s use of stop, question and frisk was unconstitutional, the Court ordered a one-year body-worn camera program. In December 2014, the Department launched a volunteer BWC pilot program before implementing the Court ordered program in April 2017. In May of that year, the CCRB made its first request and by June had received its first BWC footage.

BWC footage became an important tool the CCRB used to determine whether misconduct occurred at an incident. In 2020, the CCRB released a report analyzing the use of BWC footage in investigations and determined that BWC footage more than doubles the CCRB’s ability to reach a conclusion as to whether misconduct occurred. Both the rate of substantiations and exonerations go up with BWC footage.

With the increase of footage, there was an increase of requests. The way that NYPD shares BWC footage with CCRB has evolved. In the first two years of the program, the CCRB received about half of the footage requested. Soon after, NYPD response times doubled, reaching a peak in 2020 with a backlog of 1,012 requests. While investigating the 2020 protests, the Agency was told footage did not exist that then turned up later. Furthermore, the Agency was sometimes given hours of footage that were not relevant to our requests.

The Police Department and the CCRB have come together many times to optimize this process. In 2019, both agencies signed an MOU with targeted plans to improve the process,

including having a room CCRB investigators could use and access all footage so long as a member of the NYPD was present. When COVID hit, this was no longer practical.

The pandemic was a large disrupter for both agencies and we worked together to resolve the backlog. Today there is an average of 7 days to fulfill a request and the backlog has shrunk to 137 requests. While the process is working better now, it would still be an important improvement for the CCRB to have direct access to BWC footage.

The most qualified people to search through BWC footage and identify what is relevant to a CCRB investigation are CCRB investigators. Our investigators have been specifically trained on how to analyze BWC footage using specialized software. They are the ones speaking to civilians for an hour, sometimes two, in order to best understand the incident they are looking for. At present, an investigator has to summarize that conversation into a few lines which get sent to someone at NYPD to interpret and search for footage.

Presently, the NYPD and CCRB maintain largely duplicative databases of body worn camera footage. The agencies both carry staff dedicated to, in the case of CCRB creating BWC requests, following up and tracking the requests, receiving footage, and distributing it to the relevant investigative squad; and, in the case of NYPD, to receive requests, search video databases that are stored in the cloud, mark responsive video, and deliver it to CCRB by electronic or physical delivery.

The CCRB will redeploy staff currently engaged in the document and data exchange process and delegate searching to the individual investigators. Furthermore, NYPD and CCRB replicate data storage: the CCRB stores it physically on its premises while the NYPD stores in the Axon cloud. By sharing BWC footage in the Axon cloud, the CCRB and NYPD could avoid the double cost of video storage. This structure would have a negligible, if any, impact on the cost of NYPD's Axon contract and eliminate the need for CCRB to maintain its own Axon databases and help to minimize CCRB's on premises storage needs. CCRB storage costs the Agency \$100,000 a year and becomes more expensive the more storage we need.

In fact, the need for rapid access to evidence goes beyond BWC footage: it includes all evidence in possession of the NYPD. This need became increasingly clear with the creation of our Racial Profiling and Bias-Based Policing Investigations Unit. The City Charter mandates that the NYPD provide information that is relevant and necessary for two types of investigations: first, complaints of racial and other profiling as abuses of authority under Section 440 of the City Charter; and second, complaints of bias-based policing for individuals who have already been found to have committed acts of bias or severe bias under Section 441.

In the summer of 2022, months before the Agency began investigating profiling and biased policing complaints, the CCRB informed the NYPD of the types of data and documents it would need to complete under both types of investigations. With regard to investigations pursuant to

Section 440, in order to thoroughly investigate and assess allegations of racial profiling and biased policing, investigators need to review subject officers' profiling and biased policing complaint histories, EEO complaint histories, and related documents, as well as subject officers' enforcement activity for the year prior to the incident to look for potential patterns of bias. These are different and larger datasets than the Agency has required in its traditional FADO investigations but are the same materials that the NYPD instructed its own investigators to use in their internal investigations into profiling. Since beginning to investigate profiling cases under Section 440 in October 2022, the CCRB submitted well over 100 data and document requests to the NYPD—all of which have been rejected—that are key to our current racial profiling and bias-based policing investigations. In order to avoid further case backlogs or cases passing the statute of limitations, we hope our requests will be honored as soon as possible.

Sealing statutes are another cause of case delays. The CCRB is currently barred access from documents in sealed records. Assembly Member Catalina Cruz has proposed a bill that would exempt the CCRB from sealing statutes, which would grant us access to key evidence. Being blocked from accessing sealed evidence has negatively impacted investigations in various ways.

For instance, the case against officer Wayne Isaacs has been delayed for over a year and a half because of sealed records. In 2016, Officer Isaacs killed Delrawn Smalls. The Attorney General commenced a criminal proceeding against Officer Isaacs that resulted in an acquittal. In 2018, the CCRB received a complaint about the incident and commenced an investigation. The CCRB analyzed the available evidence and substantiated misconduct against Officer Isaacs. In his many attempts to delay the administrative prosecution, Officer Isaacs claimed that he should not face a disciplinary trial as a result of the acquittal, implying that there was evidence not examined by the CCRB that would show he did not commit misconduct. As a result, in October 2021, the CCRB submitted a motion to unseal the evidence from Officer Isaac's criminal case in order to be fully prepared for our own trial. Just a few weeks ago, the judge ruled in the CCRB's favor to unseal the evidence. The CCRB was ready to move forward with this case and get closure for Delrawn Smalls' family, however, Officer Isaacs has now filed an appeal and the case will be further delayed.

Sealing statutes also affect our ability to access BWC footage. The CCRB is currently investigating an abuse of force incident that circulated on social media platforms. We received many complaints from civilians, yet investigators are unable to track the alleged victim or the witness who recorded the incident. Investigators were, however, able to identify the officer involved and submitted a request for BWC footage of the incident. While IAB found the footage, the CCRB's request was denied because NYPD sealed the arrest. The investigation cannot move forward without the BWC footage, and, without an identified victim, the CCRB is unable to obtain consent to view the sealed footage. This is just one example of how sealing statutes prevent the CCRB from fully investigating complaints of misconduct.

It emphasizes not only the Agency's need for an exemption from sealing statutes but the need for direct access to BWC footage as well.

Direct access to the NYPD's BWC footage platform would not be unique. Other independent, civilian oversight agencies in the United States have direct access. We are the largest Civilian oversight board in the country overseeing the largest police force. We often lead the nation in civilian oversight, but we fall behind when it comes to Body Worn Cameras. In a report published in November 2021, the Department of Investigation's Office of Inspector General for the NYPD found that, of the 20 largest police departments in the United States, four of them have oversight agencies with similar functions as the CCRB. Of these four, two of them – the Office of Police Complaints in Washington, D.C., and the Civilian Office of Police Accountability in Chicago – have unfettered, read only, direct access to their police departments' BWC footage. There are civilian agencies that oversee smaller police departments that also have direct access to their departments' BWC footage platforms. The Office of the Independent Police Auditor that oversees the Bay Area Rapid Transit Police and the Civilian Police Oversight Agency that oversees the Albuquerque Police Department both have direct access to their police departments' platforms as well.

In 1993, Mayor Dinkins and the City Council voted to restructure the CCRB because they decided our independence was paramount to having a trusted oversight board. Depending on NYPD for every single piece of evidence removes some of that independence. The most important piece of evidence we can find is in the hands of the people being investigated. Civilians will have less confidence knowing that we are only getting footage PD has passed on to us.

I will end by reiterating that having BWC footage improves investigation outcomes substantially, increasing both the rate of substantiation and exoneration. In 2022, the Board was able to close cases with a definitive outcome 75% of the time for cases with BWC footage, while cases without BWC footage were only closed on the merits 37% of the time. Direct access will help New York City hold officers who have committed misconduct accountable and exonerate officers who were within NYPD guidelines.

We thank the City Council for championing this bill, which would have a profound impact on the CCRB's ability to investigate cases efficiently. Thank you for your time.