



POLICE DEPARTMENT

July 29, 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, 18th 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 Laws 70 and 166 and the New York City Charter, the New York City Police Department (“NYPD”) hereby submits its response to the April 30, 2019

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Report of the Office of Inspector General for the NYPD (“OIG”) entitled, “2019 Assessment of Litigation Data Involving NYPD” (the “OIG Report”).

The NYPD appreciates the work of the Inspector General and its recognition of the significant advances that the NYPD has made in its continuing efforts to track and use litigation data and to incorporate data from lawsuits and claims into its Early Intervention System.¹ Indeed, the NYPD is committed to a process of continuous improvement in all of its various undertakings and seeks to both cooperate and collaborate with the Inspector General in that process.

In 2015 the NYPD established the Risk Management Bureau to, among other things, identify, prioritize and take action to mitigate risks to the Department, including those risks giving rise to litigation. Such risks may be identified through litigation itself or through the tracking of indicators which point to a potentially at-risk officer. This tracking is commonly known as an Early Intervention System (“EIS”). The NYPD’s system is known as RAILS (Risk Assessment Information Liability System).

In short, an EIS is a data based tool that utilizes risk management strategies to intervene at the first opportunity in order to support officer wellness and professional development by attempting to identify and mitigate factors which may lead to negative performance issues, employee discipline, and/or liability to the Department. RAILS is a work in progress and we look forward to reporting on its progress, along with our improved ability to track and use litigation data in the identification of potentially at-risk officers. As the NYPD moves forward, we will continue to work collaboratively with OIG and other key stakeholders such as the Federal Monitor, in our efforts to improve the caliber of

¹ *2019 Assessment of Litigation Data Involving the NYPD*. Office of the Inspector General for the NYPD, page 3.

interactions between members of the Department and the public while developing comprehensive systems to ensure officers comport with both the spirit and letter of the law. We do so with the recognition that the vast majority of police officers and other members of the Department work diligently day in and day out to protect New York City and its inhabitants without engaging in misconduct or generating complaints from members of the public.

Our continuous improvement process is working. The OIG Report includes proof of our efforts in the realm of reduction of litigation filed against NYPD. Specifically, it points to the “49% decline in the number of NYPD-related lawsuits alleging police misconduct” between 2014 and 2018.² This dramatic improvement did not happen by accident.

Since 2013, the NYPD’s Legal Bureau has conducted litigation data analysis; since 2015, those efforts have been performed by the Legal Bureau’s Police Action Litigation Section (PALS). PALS utilizes merit-based litigation data to provide legal advice and counsel that improves individual officer performance and enhances NYPD policy and training to ultimately improve the quality of police services provided to communities. These efforts have been demonstrably successful, in large part because PALS relies on merit-based litigation information as the basis of its advice and counsel to the agency, not mere filing data. Consequently, and as noted above, since 2014, there has been a **49% decrease** in the number of lawsuits filed alleging some sort of “police misconduct” that would be subject to reporting under Local Law 166 (from 3,084 in 2014 to 1,586 in 2018). From Fiscal Year 2017 to Fiscal Year 2018, the collective efforts of the NYPD, the New

² OIG Report, page 2.

York City Office of the Comptroller and the New York City Law Department resulted in a close to \$100 million decrease in NYPD tort claim payouts, with a \$52.7 million decrease in payouts on police action claims alone. (Comptroller Report, at pp. 2, 13.)

Notwithstanding our appreciation of the work of the OIG and acceptance of the recommendations, there are some areas of disagreement with the methodology employed by OIG in conducting its inquiry which does not paint the full picture of the diligent work that NYPD has undertaken in connection with litigation data.

First, the NYPD and the Comptroller primarily assess litigation data by fiscal year, rather than calendar year. We believe that the Comptroller's Fiscal Year 2018 Claims Report, published in April 2019, as the controlling public record detailing the success of the inter-agency partnership tackling meritless civil litigation, and leveraging merit-based litigation information for the betterment of the NYPD, should have been highlighted in the Report. The Comptroller's analysis of FY 2018 claims involving the NYPD reflects that "filings of police action claims resulting from allegations of improper police conduct remain stable." (see, footnote 22, OIG Report pages 15-16). Moreover, the Comptroller's FY18 report states that there was a decrease in the number of claims filed against the NYPD for the fourth consecutive year. There was a 32% decrease in the overall payout amount for NYPD claims from FY17 to FY18. Significantly, the Comptroller's report continues to emphasize its partnership with the NYPD, and extolls the work done in conjunction with PALS as an example for expanding risk mitigation efforts to other City agencies.

The OIG report references a 72% increase in the number of lawsuits filed alleging use of force from Calendar Year 2017 to 2018. In the first instance, much like crime analysis, percentages alone may fail to provide an accurate reflection of circumstances on

the ground when the raw numbers drop to their lowest historical levels. Second, that a lawsuit has been filed does not mean that officer misconduct has occurred, or will be proven. The majority of lawsuits involving the NYPD are settled, without admission of fault or liability. Each year, more cases are defended on their merits, and the win rate across Law Department divisions on both motions and trials is substantial. In FY18, 46 police action lawsuits were tried to verdict (in state and federal court), and 35 of those resulted in defense verdicts. These statistics lend credence to the conclusion that filing data in and of itself is not a legitimate performance indicator for either the NYPD or its employees.

That said, the OIG Report does not detail the more robust and sophisticated four-year comparison for the four allegation categories in the Law Department's Local Law reporting, which have all seen significant filing decreases since 2014. From 2014 to 2018, lawsuits alleging use of force have decreased by 19%, lawsuits alleging assault and battery have decreased by 40%, lawsuits alleging malicious prosecution have decreased by 33%, and lawsuits alleging false arrest and imprisonment have decreased by 41%.

Most importantly, with respect to individual officer performance, as the Law Department states on its Local Law 166 website, the "disposition amounts reflect the total for the case and cannot be attributed to a particular defendant, other than the City of New York. The individual officers listed in this report were parties in the indicated litigation but may have been dismissed prior to the final disposition." (see, <https://www1.nyc.gov/site/law/public-resources/nyc-administrative-code-7-114.page>) There are many examples of cases which were resolved in favor of defendant officers (either through motion practice or discontinuance prior to settlement); however, the

reported data does not correctly reflect that individualized defendant outcome. Therefore, that a lawsuit was filed – and even that a lawsuit was settled by the City – are not in themselves appropriate indicators for a meaningful analysis of the data.

Similarly, the OIG’s reporting of “trend” by borough is not an accurate measurement of relative liabilities. While indicating that the Bronx and Brooklyn had the largest volume of lawsuits each year, the attempt to tie this into the population of each borough for comparison purposes is misplaced. (See page 12 and footnote 20 of the OIG Report). According to the OIG Report, Brooklyn had the largest estimated 2018 population across boroughs.³ More relevant, however, is the fact that in 2018, Brooklyn precincts had the largest volume of 911 calls across all five boroughs, as well as the highest number of arrests. With respect to the Bronx, since FY 2012, the Bronx has had the most overall tort claims filed each fiscal year, and also has had the highest per capita filing of personal injury claims citywide. The volume of police action litigation in the Bronx is consistent with these broader trends, and reflective of myriad factors that seem to have little to do with either the merit of these cases or the performance of officers assigned to commands within that Patrol Borough. (See, Comptroller’s Fiscal Year Reports from FY 2012 through FY 2018.)

The NYPD is eager to work with the OIG in the future to discuss methodologies, to control for these extremely relevant factors, and to conduct a qualitative analysis that accurately reflects trends.

It should be noted that the Department’s success in addressing risks goes far beyond that of PALS and its successful reduction of litigation and associated costs. In the most

³ The geographic borough of Brooklyn consists of two Patrol Boroughs and any analysis should track the organization of the Department rather than simple geographic boundaries.

recent published Semi-Annual Report released by the New York City Civilian Complaint Review Board (“CCRB”), covering the period January to June 2018, the section entitled “Complaint Activity” shows that CCRB complaints received for the first half of 2018 went down to 2,177 as compared to 2,266 complaints received for the same period in 2017. For this same period, CCRB’s complaints alleging stop, question, frisk, or search of a person, had a decline from 448 to 419 allegations during the same periods.⁴ Similarly, complaints of racial profiling have dropped by 33% in the first five months of 2019 compared to the same period in 2018.

Despite these successes there is clearly room for additional improvement, and NYPD is committed to achieving additional improvement. As stated by New York City Police Commissioner James P. O’Neill, “in most areas of policing the NYPD is very good. In many areas we are the best. But in all areas we can always get better.”

In sum, the NYPD agrees with the overall conclusions of the OIG Report and will continue to work with the OIG to build the capabilities of our EIS and to continue the work that is already in progress to improve how data from claims and lawsuits is tracked and analyzed. We do this with the keen understanding that litigation brought against the NYPD can be helpful in identifying and assisting at-risk officers and therefore needs to be a component of an early intervention system.

Our specific responses to OIG’s recommendations appear below.

⁴ CCRB 2018 Semi-Annual Report, page 4.

NYPD REPOSES TO OIG-NYPD'S RECOMMENDATIONS

RECOMMENDATION #1:

NYPD should consider incorporating peer officer averages and performance indicator ratios in its thresholds for RAILS, or other approaches that would account for officers with greater activity who may not necessarily exhibit problematic behavior.

NYPD RESPONSE:

Accepted. As RAILS matures, the NYPD will consider incorporating peer officer averages and performance indicator ratios in its thresholds for RAILS, or other approaches that would account for officers with greater activity who may not necessarily exhibit problematic behavior.

RECOMMENDATION #2:

NYPD should seek input from supervisors in further development of RAILS and create a mechanism for supervisors to direct their feedback. Supervisors should be involved in each stage of the development and implementation process of RAILS. NYPD should have a formal, standing mechanism for supervisors to direct their feedback, including any problems or concerns with the system.

NYPD RESPONSE:

Accepted. The NYPD is in the process of forming a working group of supervisors which will act as a mechanism for direct feedback during further development and implementation.

RECOMMENDATION #3:

NYPD should ensure that sufficient and ongoing training is available to all supervisors once RAILS is fully developed. Such training should specifically take into account supervisors new role and responsibilities with the system.

NYPD RESPONSE:

Accepted. The NYPD believes appropriate training is crucial to successful implementation of RAILS as a tool for use in exercising supervisory roles and responsibilities.

RECOMMENDATION #4:

NYPD should ensure there are procedures in place before RAILS is fully implemented to hold supervisors accountable for upholding their responsibilities concerning the system. These procedures should include a policy outlining how often supervisors should log onto RAILS and review their alerts. NYPD should also take steps to confirm that supervisors are following this policy as directed, such as by conducting regular audits of the system.

NYPD RESPONSE:

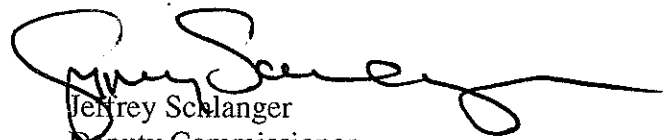
Accepted. Before RAILS is fully implemented, policies and procedures will be promulgated so as to ensure that supervisors are appropriately discharging their duties relative to the system.

CONCLUSION

The NYPD is absolutely committed to constitutional policing and to early intervention based on appropriate indicators pointing to potentially problematic behavior of its officers. The work of PALS is a prime example of how such intervention, when merit-based, can serve to not only improve policing but also to reduce liability. The

Department envisions that RAILS will become a tool by which the NYPD can enable intervention at the earliest appropriate opportunity, thereby enhancing constitutional policing, reducing liability and most importantly deepening the connection and trust between the NYPD and all of the communities it serves. We again thank the OIG-NYPD for its recommendations in this important area of policing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Schlander", with a long horizontal flourish extending to the right.

Jeffrey Schlander
Deputy Commissioner
Risk Management Bureau