



**POLICE DEPARTMENT**

NEW YORK, N.Y. 10038-1497

**ERNEST F. HART**

DEPUTY COMMISSIONER, LEGAL MATTERS

July 12, 2022

Heather Cook, Esq.  
Assistant General Counsel & Deputy Chief of Investigations  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

Re: Opportunity to Comment on Proposed Rule

Dear Ms. Cook:

On behalf of Police Commissioner Keechant Sewell, I am submitting the below comments in response to the Civilian Complaint Review Board's (CCRB) notice of proposed rules which is scheduled for a public hearing on Wednesday, July 13, 2022.

At the outset, the majority of the CCRB's proposed rule accounts for a recent change in local law that permits CCRB to initiate investigations into bias-based policing. As a covered entity under this recently-enacted law, my staff has directly engaged with executives from the CCRB on the implementation of this law. While these conversations have been productive, we have raised some concerns regarding the scope of such investigations and will continue to do so in these discussions.

The focus of these comments is the CCRB's expansion of "abuse of authority" to include the "improper use of body-worn camera" ("BWC") by members of the service. The Department objects to this expansion by the CCRB. The Department takes issue with how the CCRB frames an "improper use of BWC" as it suggests that members of service are perniciously recording footage that is inappropriate. Rather the conduct CCRB seeks to address is non-compliance with the Department's BWC policy as outlined in Patrol Guide Section 212-123. A function that should remain with the NYPD. Specifically, these are incidents where a member fails to turn on the camera, turns it off prematurely, or fails to record an incident when required under the policy. Such infractions are far less pernicious than the CCRB's rule and accompanying memorandum issued on July 6, 2022 suggests.

Though impossible to view every video, the NYPD has instituted procedures to ensure compliance with the Patrol Guide's requirements. While the policy is continually revised to account for additional activation events, officers must generally activate their cameras during all investigative and enforcement actions with some obvious exceptions, such as undercover operations, interviewing victims of sex crimes, and when inside a medical facility. The Department randomly selects videos that each sergeant must review and assess. The sergeant is required to evaluate an officer on a variety of factors, including whether they were professional and courteous, whether the officer conducted a stop in a constitutional manner and the officer's tactics. In addition, the department audits a sample of arrests, stops, summonses, uses of force and aided cases to ensure that the body-worn camera was turned on during mandatory activation events.

Through the memorandum issued on July 6, 2022, the CCRB asserts that violations of the Department's BWC policy are "fundamental" and "clear" abuses of authority. The CCRB, however,

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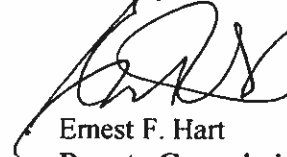
currently defines an “abuse of authority” to be a “misusing of police powers” and includes improper searches, entries, seizures, property damage, and untruthful statements, among others. Pointedly, abuses of authority center on constitutional harms at issue between civilian interactions and the police. It is incongruent to suggest that an officer who deactivates their BWC prematurely has engaged in a similar affront. The Department is not aware of any complaint from the public regarding a member failing to activate their BWC, or alternatively deactivating their camera prematurely, during an encounter.

The CCRB already has a mechanism to address violations of the Department’s BWC policy, as it currently refers such infractions to the Department as “Other Possible Misconduct Noted.” When these referrals are made to the Department, they are investigated and, when appropriate, discipline is issued. As CCRB noted in its July 6, 2022 memorandum, approximately 60% of these referrals result in instruction, formalized, training, or a command discipline. While the CCRB classifies such discipline as “the least severe discipline,” the vast majority of BWC policy violations are unintentional or even inadvertent, such as the BWC coming detached from the officer in the course of apprehending a suspect or the BWC being defective. The Department has found very few incidents where a member intentionally does not record or purposely deactivates their BWC. Issues of compliance with a dynamic and at times changing policy, with new units and personnel being issued BWCs frequently, should remain within the disciplinary purview of the NYPD.

Throughout the proposed rule and July 6, 2022 memorandum, CCRB notes how critical BWC evidence is to their investigations. Over the last several years, the Department and CCRB have worked together to ensure that CCRB receives BWC footage that is relevant to the disciplinary cases they investigate. Currently, CCRB has the most extensive and immediate access to BWC footage consistent with prior memoranda of understanding entered into by both agencies as well as practices that have been modified and improved to expedite production. The NYPD and CCRB work together to ensure that CCRB receives all BWC footage in a timely fashion. The CCRB itself acknowledged in its most recent Semi-Annual Report that this improved working relationship has reduced BWC request turnaround substantially – to the point where NYPD routinely responds to all CCRB requests for BWC video within 5 days from the day of the receipt, with limited exceptions.<sup>1</sup> To the extent the proposed rule seeks additional access to NYPD BWC footage, the Department believes that the current system more than adequately addresses CCRB’s investigative needs.

The Department’s position is that CCRB’s proposed rule is misguided and represents a substantial overreach by expanding its abuse of authority jurisdiction to include noncompliance with the Department’s BWC policy. As always, my staff and I are willing to engage in productive discussions with the CCRB on matters related to their investigations and how the Department can address any issues.

Sincerely,



Ernest F. Hart  
Deputy Commissioner,  
Legal Matters

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<sup>1</sup> See [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2021\\_semi-annual.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2021_semi-annual.pdf)