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July 11, 2022

Via Electronic Mail

Civilian Complaint Review Board
Attn: Heather Cook, Esq.
100 Church Street, 10th Floor
New York, N.Y. 10007
ccrbrules@ccrb.nyc.gov

Re: Proposed Revisions to Title 38-A, Chapter 1 of the Rules of
the City of New York Implementing NYC Charter Changes and Other Amendments

Dear Ms. Cook:

On behalf of the New York Civil Liberties Union, we submit comments on proposed revisions to Title 38-A, Chapter 1 of the Rules of the City of New York concerning the Civilian Complaint Review Board.¹ Our comments focus on the provisions of the proposed rules relating to the CCRB's expanded authority to conduct investigations of "bias-based policing" and "racial profiling" and on the CCRB's investigations of NYPD officer misuse of body worn cameras (BWCs) under its Abuse of Authority jurisdiction. In our view these provisions are particularly important to hold the NYPD and its officers accountable for misconduct and abusive policing.

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with over 100,000 members that defends and protects the civil rights and civil liberties embodied in the United States Constitution, New York State Constitution, and state, city, and federal law. Defending New Yorkers' right to be free from discriminatory and abusive policing is a core component of the NYCLU's mission. In this role, we have advocated for the establishment of civilian-complaint and officer-discipline mechanisms that are accessible, transparent, and effective in holding police accountable. We have also worked to ensure that information and data about police activities are publicly available.

In representing individual clients, we have experienced firsthand how difficult it is to achieve accountability for officer misconduct, particularly in cases where the only evidence is one person's word against an officer's. And we have offered cautious support for the use of police body-worn cameras as a means of producing objective video evidence of officers' actions during police encounters. The NYCLU has regularly engaged with the CCRB from its inception through public

¹ Published at NYC Rules, <https://rules.cityofnewyork.us/rule/implementation-of-charter-changes-and-other-amendments/>.

reporting, written correspondence, and participation in public meetings and has consistently urged the Board to effectively and fairly investigate police misconduct and to promote police transparency and accountability.

The CCRB’s Proposed Rules Regarding Biased-Based Policing and Racial Profiling Will Help Address Abusive Policing Practices by the NYPD.

At the onset, we acknowledge the focus of the CCRB’s proposed rules—investigations into civilian complaints of racial profiling and biased-based policing—as a historically important issue in New York City and one that has plagued the New York City Police Department for decades. Indeed, these rules and the CCRB’s handling of such investigations are largely a result of a damning investigation by the Office of Inspector General for the NYPD (OIG-NYPD)² that revealed the NYPD’s utter failure to properly investigate and address these abuses, as well as the critical need for independent agencies that will fairly, thoroughly, and properly investigate police misconduct.

The NYCLU therefore broadly supports the CCRB’s proposed rules setting out the process and framework by which it will investigate biased-based policing and racial profiling. The NYCLU is also encouraged by the steps the CCRB has taken to develop its new Racial Profiling and Biased Policing Unit, particularly its outreach and consultation with community stakeholders to better inform its understanding of biased-policing practices,³ and urges the CCRB to continue robust engagement with directly impacted communities and stakeholders. The NYCLU strongly believes these efforts, along with the proposed rules governing these investigations, will help shed much-needed light on the ways in which the NYPD continues to engage in unlawful, biased-based policing and on the ways to address these issues.

The CCRB’s Proposed Rules Will Improve the Use and Utility of BWCs and, More Broadly, Investigations of Police Misconduct in New York City.

We focus our comments on provisions of the proposed rules concerning BWCs given the importance of these proposals and the possibility that they will receive less attention. BWCs can provide objective and unique evidence of interactions between police officers and members of the public, but improper use of BWCs threatens the reliability of such evidence and, consequently, the quality of misconduct investigations. The CCRB’s proposal to investigate an NYPD officer’s improper use of BWCs would help ensure that BWCs are being used properly and are being used to address police misconduct, as intended.

The NYPD’s Body-Worn Camera policies⁴ are in large part a consequence of legal challenges to the NYPD’s historic and harmful policy of racial profiling and unlawful stops and trespass arrests of

² New York City Dep’t of Investigation’s Office of the Inspector General for the NYPD, *Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training 2* (2019) (“OIG-NYPD Biased Policing Report”), https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf.

³ Memorandum to the Civilian Complaint Rev. Bd., *Changing CCRB’s Rules to Incorporate CCRB’s New Jurisdiction under Local Law 47 (2021) to Investigate Racial Profiling, Biased-Based Policing, and Past Professional Conduct of Certain NYPD Members* (Jul. 8, 2022), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/2022/Memo/CCRB_RBPB_Rules_Memo.pdf.

⁴ New York City Police Dep’t, *Body Worn Camera Impact & Use Policy* (2021) (“NYPD BWC Policy”), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/body-worn-cameras-nypd-Impact-and-use-policy_4.9.21_final.pdf; New York City Police Dep’t, Patrol Guide § 212-123.

Black and Latinx people in New York City.⁵ As such, the core principles that underpin the use and usefulness of BWCs are the commitments to fostering police accountability and eliminating biased, abusive, and unconstitutional policing. These fundamental principles are further served by robust transparency regarding (and in increased public understanding of) department policies, investigations of misconduct, and any efforts to discipline or otherwise hold misconducting officers accountable. Having the CCRB investigate the NYPD officers' misuse of BWCs will support these goals in three key ways.

First, our experiences representing individuals and classes of individuals harmed by abusive and biased policing suggest that BWCs can be important oversight and compliance-measuring tools. One report from the NYPD federal court monitor suggests that BWC footage may lead to increased compliance with efforts to police constitutionally.⁶ Though the effect of BWCs remains a topic of study,⁷ so long as the NYPD is using them, the City must ensure they are used properly so they can advance police accountability. BWCs are susceptible to abuse, yet the NYPD maintains minimal auditing of officer compliance with its BWC rules.⁸ The CCRB's itself, however, has documented instances of various forms of misuse, including failure to activate BWCs in a timely manner and officer interference with recordings.⁹ Given this situation, it is particularly valuable to have the CCRB independently monitor officer use of BWCs in its investigations of alleged mistreatment of civilians. Through this independent oversight, the CCRB can help assure that BWCs are as useful as possible to police accountability and transparency.

Second, the NYPD's well-documented history of inadequate investigations of officer misconduct, particularly those stemming from civilian complaints, demonstrates the critical need for independent agencies like the CCRB to handle investigations into the improper use of BWCs by NYPD officers.¹⁰ Independent assessments of IAB investigations have revealed, among other things, improper or unsatisfactory interviewing techniques and biases against, or even mistreatment of, complainants and civilian witnesses.¹¹ These flaws particularly affect the IAB's ability to

⁵ See *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013) (issuing a sweeping ruling declaring unconstitutional the NYPD's policy of stopping and frisking hundreds of thousands of New Yorkers each year and ordering that the NYPD conduct a pilot study on the use of BWCs in reducing unconstitutional stops and frisks).

⁶ Peter L. Zimroth, *Twelfth Report of the Independent Monitor, The Deployment of Body Worn Cameras on New York City Police Department (NYPD) Officers 7–9* (2020), <https://www1.nyc.gov/assets/nypd/downloads/pdf/monitor-reports/federal-monitor-12th-report.pdf>.

⁷ One study has raised questions about the benefits of BWCs. See David Yokum et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial* (2017), https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf.

⁸ NYPD BWC Policy at 10–11.

⁹ See e.g., New York City Civilian Complaint Rev. Bd., *Strengthening Accountability: The Impact of the NYPD's Body-Worn Camera Program on CCRB Investigations* (2020) (identifying “instances where officers failed to comply with NYPD policy with respect to when BWCs must be activated”) (“CCRB BWC Report”),

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf; accord Staten Island Advance Staff, *D.A. Drops Charges in Controversial NYC Arrest Involving Allegations of Police Misconduct*, SILive.com, Nov. 6, 2021 (reporting on a story involving an officer found to have “not follow[ed] the NYPD's guidelines, and other best practices, regarding the use of body worn cameras”), <https://www.silive.com/crime-safety/2021/11/da-drops-charges-in-controversial-nyc-arrest-involving-allegations-of-police-misconduct.html>.

¹⁰ See, e.g., New York City Commn. to Combat Police Corruption, *Nineteenth Annual Report 27–35* (2019) (identifying various deficiencies in the IAB's handling of investigations and noting that “the Commission's satisfaction rate with the questioning in [IAB] interviews has declined significantly since 2014”), <https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf>; OIG-NYPD Biased Policing Report at 2.

¹¹ See, e.g., NYPD-OIG Biased Policing Report.

thoroughly, impartially, and fairly handle allegations of misconduct involving racialized or other marginalized communities. By contrast, the CCRB has demonstrated that it takes these types of investigations seriously and has demonstrated a clear understanding of the importance of proper BWC usage for investigations of police misconduct.¹²

Third, given the NYPD's notorious lack of transparency around investigations into police misconduct and the CCRB's mandated reporting to the public, the CCRB's proposal will serve the important goal of increasing transparency around, and the public's understanding of, officer use, and misuse, of BWCs. CCRB investigations into the improper use of BWCs can shed light on larger or other misconduct-related issues, such as whether there are patterns of improper BWC use for specific types of misconduct, including more serious allegations as was found in the city of Chicago.¹³ The increased scrutiny that would result from the CCRB's proposed rule would also help the City determine whether certain related procedures that should be occurring on camera (e.g., compliance with the Right To Know Act), are in fact being followed by NYPD officers. Moreover, the CCRB's history of adhering to its reporting mandate can better inspire confidence in the government's ability to investigate and address police misconduct. This increased access to information and understanding will better equip the public to advocate for ongoing improvements to the NYPD's use of BWCs.

For these reasons, the NYCLU strongly supports the CCRB's proposal to investigate improper use of BWCs.

Recommendations

Though supportive of the proposed rules, we believe they can be strengthened in three ways. To start, Section 1-18 under Subchapter B specifies a process by which the CCRB will seek from other government agencies final determinations of bias by NYPD officers, so the CCRB has that information available to it when conducting investigations. The proposed rules are silent, however, about release of that information to the public. The NYCLU strongly urges the CCRB to commit—by rule or otherwise—to releasing all such information to the public regularly and frequently.

In addition, although the CCRB's proposed use of plain language for case dispositions is a step toward improving the public's understanding of case results, the agency can further improve language access. Because biased-based policing will implicate complainants with limited-English proficiency (LEP), it is critical for the CCRB to fully implement its language access plan, assess any additional measures necessary to improve access to individuals with LEP, and prioritize outreach to and engagement with individuals with LEP.

Finally, we note that individuals with disabilities, particularly those with mental illness, are disproportionately impacted by police misconduct, including biased-based policing. We therefore call on the CCRB to assess and improve access to the CCRB for disabled complainants.

¹² See CCRB BWC Report (describing the uniquely valuable benefits of accessing BWC footage for its investigations, including enabling investigators to more clearly make factual determinations and substantiate more instances where there had been misconduct).

¹³ See Civilian Office of Police Accountability, *Report on Non-Compliance with Body-Worn Camera Regulations* (2021), <https://www.chicagocopa.org/wp-content/uploads/2021/07/2021-07-26-BWC-Report-Package.pdf>.

* * *

We thank you for the opportunity to comment on the proposed revisions to Title 38-A, Chapter 1 of the Rules of the City of New York. We are available to work further with you on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Aguirre', written in a cursive style.

Guadalupe Aguirre
Staff Attorney

A handwritten signature in blue ink, appearing to read 'Christopher Dunn', written in a cursive style.

Christopher Dunn
Legal Director