



POLICE DEPARTMENT

Honorable Bill de Blasio
Mayor of the City of New York
City Hall
New York, NY 10007

August 16, 2019

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 Law 70 of the New York City Charter, the New York City Police Department (“NYPD” or “the Department”) hereby submits its full¹ response to the June 2019 Report of the Office of Inspector General for the NYPD (“OIG”) titled, “Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training” (the “Report”).

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Website: <http://nyc.gov/nypd>

¹ On June 26, 2019, NYPD released its preliminary response. This response reiterates, re-emphasizes, and builds on what was previously stated.

Introduction

The NYPD thanks the OIG for their work in this extremely important area and its acknowledgment of the NYPD's deep commitment to combating racial profiling and biased policing.² The NYPD keenly recognizes that the trust of the community in large part depends on the belief that its police department performs its job without bias or prejudice and that it responds to any deviation from that standard in an expedient and appropriate manner. Working closely with the Federal Monitor and plaintiffs in *Floyd*³ over the last five years, the NYPD has refined its approach and has redoubled its efforts to prevent any biased policing in the first instance, and where found, in any form, to address it meaningfully.

The NYPD understands that constitutional, biased-free policing is foundational to building community trust and keeping New York City even safer. The NYPD is committed to addressing misconduct in any form, and has created comprehensive policies and procedures to prevent, investigate, discipline, and monitor any and all instances of biased policing. Whether enhancing training for officers, outfitting all 22,000 patrol officers with body-worn cameras, or dramatically reducing stop-question-frisk, every change is designed to bring the police and the community closer together and each has been overseen by the Federal Court and its monitor.

Since 2014, the NYPD has established in-depth biased policing-related training modules taught at the Police Academy, as well as mandatory day-long, in-service training on

² In this response, we utilize the terms “racial profiling” and “protected-class profiling” to refer to those allegations of police actions motivated by the protected-class of an individual. These allegations are investigated by the NYPD. We use the term “protected-class slurs” to refer to those allegations of offensive language based on protected-class status investigated by the CCRB pursuant to the statutory scheme provided for in Chapter 18-A Section 440 of the New York City Charter. Lastly, we use the term “biased policing” interchangeably with our preferred term of “misconduct based on protected class” to refer collectively to both “protected-class profiling” and “protected-class slurs.” It is not entirely clear to what extent OIG followed this same schema in its report.

³ *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013).

implicit bias. In addition, the NYPD has instituted a revised and significantly strengthened written policy covering both biased policing and racial profiling. Furthermore, the Department has instituted an additional day-long in-service training program on investigative encounters, which is focused in part on the prohibition of utilizing race or other protected class factors in the motivation for any decision to question or stop an individual.⁴ The NYPD has established a process to ensure thorough investigations of every allegation of racial profiling or biased policing, and has collected data related to such allegations and associated complaints, which is then analyzed to determine if any patterns or trends exist. Finally, and of great significance, the Department has now equipped every uniformed member of the service on patrol with a body-worn camera, which has allowed for better supervisory review of all officers, and for obtaining additional probative information in those underlying instances giving rise to complaints of biased policing. These efforts have been made with federal court oversight through the intense and continuing collaboration with the Federal Monitor and plaintiffs, and with community input and involvement.

More generally, over this five-year period, the Department has continued its efforts to increase diversity within the Department,⁵ and has instituted Neighborhood Policing, which strives, through proactive interaction and trust-building, to improve police/community relations throughout the city. The NYPD strongly believes in the importance of establishing diversity within the Department, and building trust within the community, and credits these

⁴ Patrol Guide 203-25 states, in relevant part: “3. Race, color, ethnicity, or national origin may not be used as a motivating factor for initiating police enforcement action. When an officer’s decision to initiate enforcement action against a person is motivated even in part by a person’s actual or perceived race, color, ethnicity or national origin, that enforcement action violates Department policy unless the officer’s decision is based on a specific and reliable suspect description that includes not just race, age, and gender, but other identifying characteristics or information.”

⁵ The Department is now a majority-minority Department. As of 12/31/18, 48.7% of uniformed members were White, 15.1% were Black, 28.1% were Hispanic, 9.2% were Asian, and .1% Other.

initiatives with promoting empathy and reducing biases. It is worth noting that complaints of misconduct represent less than .001% of the tens of millions of citizen interactions that NYPD has had since 2014.⁶ Most significantly, for the period of January 1, 2018 through July 31, 2018 there were a total of 460 protected-class profiling complaints received by IAB. This number was reduced to 316 complaints for the same period in 2019, representing a decrease of 31.3%. Lastly, since the filing of the OIG report, the Risk Management Bureau (RMB) has undertaken a non-disciplinary review of complaints alleging both protected-class profiling and offensive language, which could be indicative of an officer who can benefit from additional training irrespective of the disciplinary outcome of the Member of Service (MOS) case.

Investigations

While the Department's protected-class profiling investigations have yet to lead to a substantiated complaint of any **act** of protected-class profiling, (as opposed to a significant number of substantiated complaints alleging the utterance of protected-class slurs by officers), the Department believes that all of the efforts mentioned above have been extremely important and successful in educating its officers of their responsibilities to police in a fair and impartial manner. Likewise, these efforts have made officers aware of factors that could lead to constitutionally impermissible and morally unacceptable policing practices.⁷ Any implication or inference that the Department is reluctant to substantiate such complaints is entirely

⁶ These interactions include 911 calls, 311 calls, arrests, summonses, as well as other interactions such as those at parades, demonstrations, and protests.

⁷ Patrol Guide Procedure No. 203-25 details the Department Policy Prohibiting Profiling and Biased-Based Policing. Section 2 of that policy describes police-initiated enforcement actions as "including, but not limited to, arrests, Level 3 Terry stops, frisks, searches, summonses, and motor vehicle stops..."

misplaced. Many types of police misconduct are substantiated on a regular basis, some more serious than others. Simply put, the NYPD is committed to addressing misconduct in any form. The difficulty, as the Report correctly points out, in proving acts of profiling, rests with the requirement of proof of intent and motivation for the police action taken.

The OIG reviewed 596 closing reports of cases containing 888 allegations of profiling. Of those 888 allegations, they did not find that any of the allegations that they reviewed should have been substantiated on the basis of available evidence.⁸ Specifically, in the seven (7) cases listed as examples of the types of investigations reviewed by the OIG, a detailed analysis of the cases reveals that the investigators not only properly investigated the cases, but had more than sufficient evidence to support the eventual findings.⁹ The NYPD strives for continuous improvement in all of its endeavors and will continue to work with our stakeholders to improve on the very significant advances that have already been achieved.

Timing and Scope of OIG's Inquiry

Beginning in 2014, the NYPD has continuously and diligently worked with stakeholders to address the issue of biased policing, with much of that work occurring since the endpoint of the OIG inquiry.¹⁰

⁸ In citing examples of Bias Policing Investigations, OIG did not review complete investigative files, but rather, only the closing sheets of investigated cases. Had they done so, they would have found that the disposition reached in each case was appropriate based on the facts and applicable evidentiary requirements. That two or three other police departments have, on extremely rare occasions, been able to meet such evidentiary requirements, is solely case dependent, and should not serve as a substitute for a full evaluation of the investigation and findings of each case investigated by NYPD.

⁹ See Appendix A for an in-depth summary of each of the seven (7) cases the OIG proffered as representative examples of Bias Policing allegations.

¹⁰ The period of review of the OIG's inquiry, which ends mid-2017, does not reflect all of the efforts and reforms undertaken by the NYPD to date. Our response incorporates all updates to the NYPD's policies and practices to date, making this response accurate at publication.

In addition to the reforms noted above, two issues raised in the Report have already been fully addressed since mid-2017. A department case management system, instituted in January 2018 and now used to document biased policing investigations, does not permit investigators to close cases until they have documented at least three attempts to contact a complainant. These three required attempts include phone calls, certified letters, and in-person follow up attempts.¹¹ Furthermore, the system requires investigators to sub-classify each case in accordance with the NYPD's nine defined sub-classifications.

With respect to potential mediation of allegations of biased policing, the NYPD and the Civilian Complaint Review Board ("CCRB") conducted detailed discussions in mid-2018 about instituting mediation for biased policing complaints, and have continued those discussions as recently as July of 2019. We consider mediation to be a viable recommendation and will continue discussions towards possible implementation.

A number of the recommendations in the Report have been the subject of ongoing discussion by the NYPD and the CCRB – some as early as 2014. In furtherance of those prior discussions, we have expanded the working group to include the City Commission on Human Rights ("CCHR").¹² The group will review the feasibility of the CCRB expanding its Abuse of Authority jurisdiction to cover biased policing allegations, study ways to improve the investigation, policies, and training of biased policing complaints, and explore means of implementation.

It should be noted that the majority of reforms in the area of biased policing have been overseen and approved by the federal court supervising the *Floyd* case and that the Federal

¹¹ See Internal Case Management Tracking System User Manual published January 2018, page 61.

¹² The first meeting of the working group was held on July 29, 2019.

Monitor has reviewed, and will continue to review, a sample of full investigative files for adequacy and adherence to investigative protocols.

Protected-Class Slurs

As with protected-class profiling cases, the NYPD has zero-tolerance for racial and other protected-class slurs. The policy prohibiting slurs is drilled into members of the service from their earliest training as recruits in the Academy and is reinforced in a variety of different ways by in-service training.¹³

Complaints of racial and other protected-class slurs are investigated by the CCRB as cases of offensive language, pursuant to the statutory division of investigative responsibilities between the CCRB and the NYPD.¹⁴ If the complaints are substantiated, they come to the NYPD for a final determination of penalty, if applicable. The NYPD investigates biased policing **acts**, otherwise known as profiling, as opposed to offensive language based on racial or other protected-class slurs. Offensive language complaints can be substantiated without proving that the underlying motivation or intent of the person uttering the slur was the complainant's protected status. In contrast, substantiating a racial or other protected-class profiling allegation requires proof of that motivation or intent on the part of the police officer by a preponderance of the evidence. As explicitly recognized by the OIG, absent direct evidence, it is extremely difficult to meet this burden of proof. Even the best investigative

¹³ Patrol Guide 203-10 Public Contact- Prohibited Conduct

¹⁴ New York City Charter, ch. 18-A §440(c)(1) states, “[t]he board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege...use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The findings and recommendations of the board, and the basis therefore, shall be submitted to the police commissioner.”

protocols, and the NYPD believes that it has the best protocols in place, cannot go inside an officer's mind to glean, and prove by a preponderance of the evidence, intent or motivation.

We agree with the OIG that complaints and investigations of protected-class slurs should be included when considering the NYPD enforcement totals relating to misconduct involving protected classes. If substantiated allegations of slurs directed at people of a protected class were included by the OIG in the reporting of the NYPD's resolution of protected-class misconduct allegations, as has been done in other jurisdictions including, as noted in the Report, Seattle, Baltimore, and Grand Rapids, the number of substantiated allegations of misconduct based on protected-class would increase from zero substantiated allegations to forty-nine,¹⁵ higher than the number of allegations substantiated by any other major city police department.

We disagree, however, with the OIG's suggestion that a higher bar be applied to slur cases, requiring proof of intent, as is required in the profiling cases.¹⁶ From a practical point of view, substantiating these cases under the current regime allows for appropriate intervention and discipline that usually could not be imposed if the cases had to meet the higher standard, which, as noted by the OIG in the Report, is very difficult to achieve. It should be noted that, to the extent that a profiling allegation reveals evidence of a protected class slur, that aspect of the case is referred by the NYPD to the CCRB for investigation and disposition. Likewise, to

¹⁵ This number includes all substantiated allegations of offensive language involving a protected class, and is broken down as follows: 2014 (6 allegations); 2015 (8); 2016 (16); 2017 (10); 2018 (9). Of these 49 allegations, 10 were based on race as the protected-class, 15 on gender, 6 on ethnicity, 4 on religion, 3 on sexual orientation, 2 on physical disability, and 9 on "other." Interestingly, in three cases NYPD sought a greater penalty than that requested by CCRB. The Department imposed various penalties on many of these allegations including instructions, command disciplines, and loss of vacation days.

¹⁶ The other jurisdictions that include racial slurs as actionable instances of biased policing do not have a requirement that the intent or motivation of the offending officer be established.

the extent that a protected class slur reveals evidence of protected-class profiling, that aspect of the case is referred by the CCRB to the NYPD for investigation and disposition.

Training

The OIG recognized the great strides that have been made in the training of our investigators since 2014. The Department continues to improve the training process by issuing written clarifications about how various aspects of a biased policing investigation must be conducted and for what purposes certain items may be considered. The Department has also issued written instructions that biased policing allegation cases may only be assigned to those investigators who have undergone the appropriate training. Before investigating these highly important cases, experienced investigators receive two weeks of robust training to effectively investigate complaints against Members of the Service (MOS). This intensive, targeted, and comprehensive training incorporates the two-hour biased policing module referenced by the OIG in the Report.¹⁷

With respect to training since mid-2017, an additional eight hours of instruction dedicated to biased policing has been added to the recruit curriculum, and is also mandatory training for all uniformed members of the Department. The OIG observed this training and their comments were added to comments by the Federal Monitor and their expert, Jennifer Eberhardt, as well as those of the Floyd plaintiffs, for incorporation into the final version of the training. In addition to dedicated training, there are numerous classes, training sessions, and workshops that address many different topics, including anti-bias awareness at the recruit training level. Training in these areas does not end once a recruit graduates the academy.

¹⁷ This training has recently been observed by the Federal Monitoring team, who indicated that the training was very good and in accordance with the court-approved training materials.

There is continued in-service training for line officers as well as continued leadership training for those MOS in supervisory positions.

Investigations

The Report points to alleged deficiencies in the way that protected-class profiling cases have been investigated, but in no case was there any indication from the Report or from the OIG that a disposition which was reached was inappropriate. While not every investigation through mid-2017 was perfect, the vast majority of investigations were done in complete accord with the established protocols. The Department has worked diligently to correct even minor deficiencies such as miscategorization¹⁸ and has re-emphasized the need for prompt interviewing of both subject officers and complainants. In some cases, however, interviews are not possible for any number of valid reasons. Such is the case when officers are not identified and an appropriate investigation fails to identify the alleged offending officer. Similarly, complainants can be unavailable for any number of reasons.¹⁹ With respect to the OIG indicating that some investigations were conducted by untrained investigators, it does not appear that any untrained investigators were primarily responsible for any profiling

¹⁸ There are nine available sub-categories applicable to all Profiling allegation investigations. Those sub-categories are: Race/Color/Ethnicity/National Origin; Alienage/Citizenship Status; Gender/Gender Identity; Sexual Orientation; Age; Religion; Disability; Housing Status; and Other. While an investigator may assign multiple sub-categories to one Profiling allegation, neither this, nor any other section of IAB Guide 620-58, requires the assignment of multiple sub-categories or states that assigning only one sub-category of multiple possibilities deems the case “incorrectly or improperly” sub-categorized. Of the 56 cases the OIG claims were improperly sub-categorized, 30 of those cases contained at least one applicable sub-category consistent with the IAB Guide requirements. Seven cases involved an allegation that could apply to different sub-categories in addition to the one chosen. The remaining 19 cases were either miscategorized or did not contain a sub-category.

¹⁹ Of the 20 cases where Officers were not interviewed per the OIG, in ten (10) of the cases, the investigator properly documented why the interview was not feasible. Of the 123 cases the OIG claims the required in person interviews of complainants and witnesses were not properly conducted, approximately two-thirds of these cases involved scenarios where the complainant was: (1) uncooperative, (2) anonymous, (3) unreachable, or (4) inaccessible due to an attorney’s advice

investigations. Rather, it appears that some investigators who had not yet received their additional two hour training were working alongside of trained investigators, essentially engaging in field training.²⁰

Response to OIG Recommendations

The following are the Department's responses to the OIG's Report recommendations.

A. NYPD Policies

1. NYPD should amend its Patrol Guide policies to explicitly require NYPD officers and non-uniformed employees to report instances of biased policing upon observing or becoming aware of such conduct.

NYPD Response: Accepted in Principle²¹

PG 207-21 (*Allegations of Corruption and Other Misconduct Against Members of the Service*) clearly and unambiguously requires any MOS who observes any misconduct to report same and provides detailed instructions on the protocol to be followed for such reporting. Any violation of either protected-class profiling (PG 203-25 *Department Policy Prohibiting Racial Profiling*) or the use of any protected class slur (PG 203-10 *Public Contact – Prohibited Conduct*), would clearly constitute misconduct requiring reporting under 207-21. The Department does not believe a separate Patrol Guide procedure requiring the reporting of biased policing is necessary. It would, by implication, diminish other areas of misconduct which would need to be reported, if observed.

²⁰ When notified of the OIG's concern, written instructions were disseminated reiterating the requirement that all profiling investigations only be conducted by those investigators who had already received the training.

²¹ "Accepted in Principle" is meant to connote that NYPD agrees with the essence of the recommendation and has or will implement the recommendation's spirit, but not necessarily in the prescribed manner suggested by the OIG.

2. NYPD should amend its Patrol Guide policies so that complaints alleging the use of offensive or derogatory language associated with an individual's actual or perceived protected status, such as racial slurs, are classified as biased policing if there is a discriminatory intent.

NYPD Response: *Accepted in Principle.*

We agree with the OIG that complaints involving protected class slurs should fall under the umbrella of "misconduct involving protected classes" and be counted in statistics of complaints and dispositions of such misconduct. That being said, a slur cannot satisfy the requirement of the Administrative Code Section 14-151 which requires that it be a law enforcement action (as opposed to offensive or derogatory language) that is motivated by the protected class of the complainant that gives rise to a complaint of biased-based profiling. As detailed in PG 203-25:

Section 14-151 of the New York City Administrative Code and Department policy prohibit bias-based profiling and include demographic categories in addition to race, color, and national origin. The Administrative Code and Department policy prohibit the Department and individual officers from intentionally engaging in bias-based profiling, which is defined as "an act of a member of the force of the police department or other law enforcement officer that relies on actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity."

Moreover, as noted above, the New York City Charter, mandates that offensive or derogatory language be investigated not by NYPD, but rather by CCRB.

B. NYPD Investigative Procedures

3. NYPD should amend its written investigative procedures related to biased policing so that offensive or derogatory language associated with an individual's actual or perceived protected status, such as an officer's use of racial slurs, is classified, investigated, and adjudicated as a biased policing matter.

NYPD Response: Accepted in Principle.

As noted above, we agree with the OIG that complaints involving protected class slurs should fall under the umbrella of "misconduct involving protected classes" and be counted in statistics of complaints and dispositions of such misconduct. Yet, the statutory scheme of division of cases between the NYPD and the CCRB does not currently allow for the NYPD to investigate such allegations of misconduct. To the extent that any investigation by CCRB into racial or other protected class slurs uncovers evidence of protected-class profiling, a referral by the CCRB to the NYPD will be made.

4. Consistent with NYPD's investigative training, NYPD should amend its written investigative procedures to document the number of attempts that investigators must make to contact complainants for interviews when investigating biased policing complaints before the case is closed.

NYPD Response: Implemented.

The Department has amended its investigative guide to reflect the changes and has already implemented this in our training.

5. NYPD should amend its written investigative procedures to require investigators to attempt to interview incarcerated complainants when such complainants are being held at a jail located within the five boroughs of New York City (regardless of whether the jail is managed by NYC Department of Correction, NYS Department of Corrections and Community Supervision, or the Federal Bureau of Prisons).

NYPD Response: Implemented.

The Department has amended its investigative guide to reflect the changes and has already implemented this in our training. The amendment points out that an incarcerated complainant's right to counsel will, absent a specific waiver, prevent an interview from proceeding.²²

6. Consistent with NYPD's investigative training, NYPD should amend its written investigative procedures to state that a guilty status, plea, or conviction does not resolve the issue of whether an officer or a non-uniformed employee engaged in discriminatory conduct, even if the criminal matter and the complaint of biased policing arise from the same set of underlying facts.

NYPD Response: Implemented.

The Department has amended its investigative guide to reflect the changes and has already implemented this in our training.

7. NYPD should amend its written investigative procedures to state that a complainant's previous criminal history should not be dispositive of whether a biased policing allegation is

²² *People v. Burdo*, 91 N.Y.2d 146 (1997).

substantiated. Where NYPD does regard the complainant's previous criminal history as a factor in a non-substantiation decision, the investigator should articulate how the criminal history impacted the decision and the investigator must still complete a full investigation of the allegation.

NYPD Response: *Implemented.*

The Department has amended its investigative guide to reflect the changes and has already implemented this in our training.

8. Consistent with NYPD's investigative training, the Department should amend its written investigative procedures to state that a subject officer's race/ethnicity or other protected status should not be determinative in deciding whether to substantiate a biased policing allegation, even when the officer (or non-uniformed employee) and complainant identify as members of the same race/ethnicity or other protected group.

NYPD Response: *Implemented.*

The Department has amended its investigative guide to reflect the changes and has already implemented this in our training.

9. NYPD should make records of complaints and investigations of biased policing allegations available to CCHR for analysis and review.

NYPD Response: *Implemented.*

The Department will comply with any appropriate request for closed complaints that come from CCHR.

C. NYPD Investigative Integrity

10. NYPD investigators should not be assigned investigations of biased policing allegations until they complete the formal “Profiling and Bias-Based Policing” training for investigating such complaints.

NYPD Response: Implemented.

A Department memo was issued reemphasizing that anyone investigating biased investigation must complete “Profiling and Bias-Based Policing” training prior to investigating such complaints.

11. NYPD should develop a checklist of all the required protocols for investigating allegations of biased policing, such as interviewing complainants and sub-classifying all applicable protected statuses.

NYPD Response: Accepted in Principle.

The ICMT system already requires documentation of at least three attempts to interview a complainant and sub-classification of all complaints. Similarly, other investigative steps are mandated by ICMT.

12. Investigators should be required to complete and submit to their supervisors the checklist with their case closing reports.

NYPD Response: Accepted in Principle.

The ICMT system already requires investigators to submit to their supervisors the investigatory steps that were taken to close the case. Supervisors ensure that all mandated tasks have been completed.

13. Deputy Chiefs should receive training and reminders emphasizing that biased policing investigations can only be closed when proper investigative protocols have been followed, unless such protocols were impossible to implement or inapplicable to the particular case.

NYPD Response: Implemented.

All Deputy Chiefs who are authorized to approve profiling investigations have been trained and are aware of the need to ensure that all appropriate investigative protocols have been followed in each investigation that they review.

14. With respect to complaints of biased policing, NYPD should ensure that IAB's case management system contains the same controls found in the ICMT system used by NYPD's Bureau/Borough investigators, including controls regarding the requisite number of attempts to contact complainants. This will ensure that the necessary requirements of an investigation are completed prior to the closure of all biased policing cases.

NYPD Response: Implemented.

IAB's case management system known as ICMS has the same requirements and controls for protected-class profiling cases as the system used by Borough/Bureau investigators (ICMT). Irrespective of whether a protected-class profiling case is handled by IAB or at the Borough or Bureau level, all necessary requirements of the investigation are mandated by the system to be completed.

D. NYPD Mediation

15. NYPD should develop and implement a pilot mediation program for some biased policing complaints. As part of that program, NYPD should develop criteria for referring to mediation cases involving both uniformed and non-uniformed members.

NYPD Response: Accepted in principle.

The Department is in the process of designing appropriate mediation protocols and has consulted with the CCRB and the CCHR to determine the extent to which their existing protocols may be utilized as a model.

E. NYPD Early Intervention

16. NYPD's RAILS should be expanded to capture unsubstantiated biased policing allegations involving both uniformed and non-uniformed members.

NYPD Response: Accepted in principle.

RAILS, by design, deals only with uniformed personnel. Allegations against non-uniformed members of the service are tracked through other systems. RAILS does, in fact, capture unsubstantiated biased policing allegations involving uniformed members.

17. NYPD's Performance Monitoring Program should develop monitoring criteria to include officers and non-uniformed employees who are the subject of biased policing complaints, regardless of substantiation, modeled on the metrics currently in use for excessive force complaints.

NYPD Response: Accepted in principle.

The Department is in the process of implementing a protocol whereby any uniformed member or civilian member (Traffic Agent, School Safety Agent) will be reviewed for potential non-disciplinary, early intervention upon receipt of two (2) or more complaints of biased policing or offensive language involving protected class slurs.

F. NYPD Transparency

18. NYPD should develop written materials to educate the public about what biased policing is and how members of the public can file biased policing complaints. This information should be conspicuously visible on NYPD's website and in other locations where such information would be readily available to the public.

NYPD Response: *Accepted in Principle.*

While the policy defining biased policing is on the NYPD's website and information about how to file a complaint is publicly available in every precinct, NYPD will explore making the information more prominent and more easily accessible.

19. NYPD should publish statistics for the public as part of an annual report covering biased policing. These statistics should, at a minimum, include a breakdown of the following: (i) the subject officer's uniformed versus non-uniformed status, bureau or unit assignment, gender, race/ethnicity, age, and length of service to the Department; (ii) the self-reported demographics (race/ethnicity, sex, age, etc.) of complainants; (iii) the types of police encounters that resulted in complaints of biased policing; (iv) the number of biased policing complaints initiated by borough and precinct; (v) the discriminatory policing conduct alleged; (vi) the sub-classifications and outcomes of such complaints; and (vii) the status of the Department's efforts

to prevent biased policing. This information should be conspicuously visible on NYPD's website and in other locations where such information would be readily available to the public.

NYPD Response: *Under Consideration.*

The Department is currently determining whether or not to adopt this recommendation.

G. Other Agencies

20. CCRB should add all the protected statuses, such as "National Origin," "Color," "Age," "Alienage," "Citizenship Status," and "Housing Status" as outlined in § 14-151 of the NYC Administrative Code and § 203-25 of NYPD's Patrol Guide, to the sub-classifications of its Offensive Language category.

NYPD Response: *Not Applicable to NYPD.*

21. CCRB should adopt a policy to classify and investigate allegations of biased policing by uniformed members of NYPD under its Abuse of Authority jurisdiction instead of referring such allegations to IAB for investigation. Consistent with this new authority, CCRB should request additional resources from the City to take on this new responsibility if the agency can demonstrate that more resources are necessary.

NYPD Response: *Not Applicable to NYPD.*

22. City agencies that handle biased policing complaints (NYPD, CCRB, CCHR) should convene within the next four months to address the findings and recommendations in OIG-NYPD's investigation. This would, for example, include developing standard categories and definitions for how these complaints are grouped and sub-classified.

NYPD Response: *Implemented.*

The NYPD has met with the other city agencies cited in OIG's Report.

23. NYPD, CCRB, and CCHR should develop protocols and procedures to share data and information on biased policing complaints on a regular basis. To the extent that implementing this Report's recommendations would require CCRB or CCHR to have prompt access to NYPD records (e.g., case files, data, body-worn camera video, etc.), protocols should be established so that NYPD will commit itself to providing such access to these agencies.

NYPD Response: *Accepted in principle.*

NYPD is working with both CCRB and CCHR relative to the establishment of such protocols.

Conclusion

The Report found areas of potential improvement in the Department's procedures, training, and investigations of biased policing complaints. The NYPD agrees with many of the recommendations in the Report, has already acted on several of these recommendations and will continue to work in collaboration with all our partners and stakeholders, including the OIG to implement others. Our goal is to build the public's confidence in and support for policing by ensuring that we conduct all enforcement activities in an unbiased manner.

The Department again thanks the OIG for their thoughtful assessment of the Department's investigations, policies, and training in connection with racial profiling and biased policing. We will continue our mission to protect the people of this city in partnership with the community by promoting and engaging only in constitutionally sound policing practices.

Respectfully submitted,

Jeffrey Schlanger
Deputy Commissioner
Risk Management Bureau

APPENDIX

The Department thanks and welcomes the OIG's review of our investigative practices in regards to biased policing complaints. Nonetheless, we believe that the highlighting of cases based on an incomplete review of the entire investigative file, and a failure to indicate that such cases were, in fact, appropriately investigated with appropriate dispositions reached, is not helpful. We reiterate that each complaint was fully and properly investigated and an appropriate disposition reached based on the facts and applicable standards of proof. A synopsis of the investigations and rationale for the dispositions reached appear below.

Allegation 1:

A female complainant alleged that her Black husband was racially profiled when two NYPD officers blocked his parked Bentley vehicle so they could verify his disability placard. The two officers were unable to determine whether the placard was valid, but one of the officers wrote the husband a ticket for littering based on a discarded cigarette on the sidewalk. The complainant also alleged that one of the officers directed a racial slur at her husband and that the officer assumed the placard was invalid because her husband "look[ed] fine."

Synopsis:

The subject officers in this investigation were assigned to address conditions in the area such as illegal parking. The officers had previously issued the complainant's husband a parking ticket for double parking his vehicle, had knowledge of his extensive arrest history, including criminal possession of a firearm, and had seen him on multiple occasions without any physical disabilities. On the date of the incident, the officers observed complainant's husband's vehicle parked in a parking spot reserved for people with disabilities with a parking placard for people with disabilities. While one of the subject officers was on the phone and on hold with an agency to verify the parking placard, the complainant's husband refused to answer any questions about the placard and committed littering by throwing a cigarette butt on the ground. The subject officers issued him a summons for littering and officers ceased further investigation into the parking placard. The investigation exonerated the officers relative to allegations regarding the lawfulness of the summons itself, finding that the officers' actions were lawful and proper. The protected-class slur allegation was referred by NYPD to CCRB for investigation. The racial profiling allegation was unfounded as there was no evidence that the motive or intent on the officer's part in issuing the summons was based on the complainant's protected class.

Allegation 2:

A complainant who was working as a store clerk alleged that he was falsely arrested after a confrontation outside his store during which a man pulled out a screwdriver. The clerk stated that he believed the man would attempt to rob the store, so the clerk went back inside. Shortly after, the police arrived and arrested the clerk on suspicion of wielding a knife. While no knife was found, the clerk was arrested for possession of a gram of marijuana. The clerk alleged that during the arrest, one of the officers made an offensive statement based on the clerk's apparent religion.

Synopsis:

The subject officers responded to a 911 call by a female caller stating that there were two males who were pushing each other on the sidewalk. The female caller also gave a detailed description of the complainant as a man wearing a purple shirt and cargo shorts and that he was threatening the other male with a four-inch blade. Upon arrival of the subject officers, the female caller positively identified the complainant. While searching the complainant for the knife, the officers recovered marijuana from the complainant. The officers denied the allegations of bias policing made by the complainant and the female caller informed the investigating officer that the subject officers did not make any disparaging comments regarding the complainant's protected class status on the scene. The officers were exonerated of allegations of unlawful arrest and unlawful search of a person because the investigation showed that the officers responded to a 911 call, arrested the complainant after a positive show-up with the female caller who observed him with a knife, and searched him for the observed knife. The allegation regarding racial profiling was unsubstantiated as there was evidence that the subject officer based the arrest of the complainant on the female caller's positive identification of the complainant and not on any protected class. The allegation regarding offensive language was referred to CCRB and all allegations were closed due to the complainant being uncooperative. It should be noted that in addition to the subject officer's denial of the alleged statement, no one heard the alleged remark, including the female caller who was on the scene.

Allegation 3:

A female complainant was informed by her 15-year-old son that while on his way to school, an officer "pulled up alongside him, threw him up against a car, handcuffed him," and brought him to the police station. According to the complainant, the officer claimed that her son "was observed on camera stealing [55 dollars] from a [restaurant]" and that the officer "wanted to know a little more about [the boy's] background... and a little more about Romanian Gypsies." The complainant alleged that while at the police station, the officer said, "they are all Gypsies, and you know what I do with Gypsies? I put all Gypsies in jail."

Synopsis:

As part of an ongoing investigation, the subject officer reviewed a surveillance video from a restaurant which showed the complainant directing her son to steal \$55 in cash left on a table from another paying customer. After reviewing the video, the subject officer apprehended the complainant's son and interviewed the complainant's son with his grandmother's permissions and Miranda waiver. The complainant's son stated that he stole \$55 per his mother's directions and gave the complainant the stolen money. The subject officer advised complainant's son that severity of charges will change once he turns 16 years old and that he should try to stay out of trouble. The complainant learned of this arrest from her sister-in-law while she was incarcerated at Rose M. Singer Correctional Facility on another matter and reported the incident. The complainant was interviewed at the correctional facility by the investigating officers for this investigation. The subject officer denied making any disparaging comments as

alleged in the allegation. The investigating officer also reviewed said surveillance video and it clearly showed the complainant directing her son to remove the money from the table. The allegations regarding offensive language and abuse of authority were referred to CCRB and both allegations were closed as the complaint was withdrawn. The subject officer was exonerated from the allegation regarding unlawful arrest because the investigation found that probable cause was established. The racial profiling allegation was unfounded because there was evidence which showed that the motivation for the arrest was a complaint regarding the theft of the \$55 not the complainant's protected class.

Allegation 4:

A male complainant was awoken by two police officers after falling asleep inside a building. The man said that he apologized to the officers, who then "pushed him against a wall" and made offensive remarks relative to the national origin and ethnicity of the complainant.

Synopsis:

The male complainant called the IAB Command Center to report that while he was sleeping in a building in Queens, the officers woke him up and removed him. The complainant was unable to provide additional details as to the location of the incident or description of the officers involved in the allegation other than that one officer was White and the other officer was Italian or possibly American with dark hair. The investigator indicated that the male complainant sounded highly intoxicated and was offered medical attention, which the complainant declined. Subsequent efforts to reach the complainant were unsuccessful. The allegations regarding offensive language was referred to CCRB and the allegations were closed due to complainant being unavailable. The profiling allegation was unsubstantiated as there was insufficient evidence to clearly prove or disprove allegations.

Allegation 5:

A complainant alleged that an officer "regularly harasses him and his friends" and occasionally places them under arrest "for no reason." According to the complainant, the officer also told the complainant and his friends to "go back to Africa."

Synopsis:

The complainant walked into the CCRB and provided a vague description of an unidentified officer that made the comment in the allegation on an unknown date. The complainant also stated that said officer regularly harassed and arrested him and his friends for no reason. The complainant did not provide any additional details or contact information for himself. The investigator sent certified letters to the complainant's last known address and attempted phone calls, but was unable to connect with the complainant. The letters sent were returned by the post office, unopened and returned as undeliverable. With a lack of a valid address, a home visit could not be conducted. This extensive search revealed that the location of the alleged harassment is where multiple officers arrested the complainant for selling products unlawfully without a vendor's license multiple times in the past. While all reasonable efforts were made

to interview the complainant, the absence of identifying information prevented the investigator from being able to identify and interview the specific officer in question.

Allegation 6:

A White female complainant alleged that her Arab male friend was subjected to biased policing by two police officers who stopped the pair as they talked in the street after exiting a bar. After the complainant's male friend ran over to her to say goodbye, the officers asked her "if she was ok, felt scared, or if [the Arab male friend] was harming her." The complainant noted that she believed the officers' treatment of her friend was "racist."

Synopsis:

The investigator interviewed the complainant's male friend who she referenced in her complaint. The male friend admitted that he and the complainant got into an argument while drinking at a bar. The complainant left, and he ran after her and grabbed her as she headed to the train. The male stated to the investigator that he felt that the stop was racially motivated because "she's a little Irish girl, and he is a big Middle Eastern guy." The investigation revealed that one of the officers stated that he had seen the male grabbing the female complainant, and that was the reasoning for the lawful stop. Both complainants confirmed with the investigating officer that the officers did not make any offensive comments. The investigation determined that the profiling allegation was unfounded as it appeared that the motivation of the officers was based on their observation of a possible crime in progress rather than the protected class of the subject.

Allegation 7:

A Black male filed a complaint alleging that he was targeted for a vehicle stop because of his race. The complainant also alleged that the officer planted illegal drugs in the vehicle.

Synopsis:

The subject officers observed the complainant's car operating with the headlight out during the evening hours. Upon further investigation, the subject officers determined that the license plate was reported stolen. When the subject officer approached the vehicle, he observed one of the passengers holding a lit marijuana cigarette. This provided the basis for the vehicle and its occupants to be searched, resulting in the recovery of four (4) bags of crack-cocaine and MDMA (molly). Subsequently, a passenger in the vehicle pled guilty to possession of narcotics. The Assistant District Attorney (ADA) on the case stated to the investigator that no charges were filed against the driver due to the passenger's guilty plea admission. The ADA further stated to the investigator that the officer's actions were legally justified. The investigation exonerated claims of unlawful arrest because sufficient evidence proved that the car stop was based on probable cause and that the allegation of profiling was unfounded because there was insufficient evidence to prove the intent or motive of the officer to profile the individual based on the individual's protected class. Abuse of Authority allegations were referred to CCRB and CCRB closed all allegations as the complainant was uncooperative.