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## **DOI'S OFFICE OF INSPECTOR GENERAL FOR THE NYPD REPORT EXAMINES USE OF NYPD'S BODY-WORN CAMERA FOOTAGE BY CITY POLICE OVERSIGHT AGENCIES AND RECOMMENDS THE CCRB BE GRANTED DIRECT ACCESS TO NYPD'S BWC FOOTAGE PLATFORM**

The Department of Investigation's ("DOI") Office of the Inspector General for the New York City Police Department ("OIG-NYPD") issued a Report today examining how NYPD's body-worn camera ("BWC") footage is used by five agencies in New York City that oversee and monitor police accountability. DOI issued the Report pursuant to Local Law 166. The law instructs OIG-NYPD to work with NYPD and these five agencies, the Law Department, the City Comptroller, the Civilian Complaint Review Board ("CCRB"), the Commission to Combat Police Corruption ("CCPC"), and the City's Commission on Human Rights ("CCHR"), and to assess data related to police misconduct allegations and findings, with the goal of developing recommendations based on that information. The legislation more specifically directs OIG-NYPD to consider, among other things, the information-sharing procedures of NYPD with these five other City agencies. A copy of the Report is attached to the release and can be found at the following link: <https://www1.nyc.gov/site/doi/newsroom/public-reports.page>

OIG-NYPD's Report determined that each agency has different procedures for requesting, accessing, and retaining NYPD BWC footage for their mandated activities and the current procedures do not provide every agency with the appropriate level of access to BWC footage needed to perform their respective duties. Some agencies require different kinds of access than others or have different needs as to timeliness of access. There is no one-size-fits-all approach. Therefore, the nature of access to BWC footage can affect the efficiency and effectiveness of the work done by each agency.

For instance, unlike other Charter §808 agencies, CCRB currently lacks the access to BWC footage necessary for optimal performance of its mission. For example, current NYPD procedures governing BWC footage-sharing require agencies to rely on NYPD staff to perform all searches and approve all requests. These procedures arise, in part, from the current structure of NYPD's BWC footage platform, which commingles all footage, including footage from sealed cases and involving juveniles. While the NYPD's process may work well for some agencies such as the Law Department and Comptroller, such an arrangement presents unique challenges for CCRB's responsibilities, and may contribute to unnecessary delays that impede CCRB investigations.

While CCRB and NYPD have entered into a Memorandum of Understanding ("MOU") that has the potential to improve the exchange of BWC footage between the two agencies, the MOU does not grant direct access. In fact, this examination found that if CCRB had direct access to NYPD's BWC footage system, as many police review agencies do in other cities, CCRB would be able to conduct its investigations in a timelier manner that would also reduce the compliance burdens on NYPD.

This Report found that sealed records laws are a legitimate legal impediment to further improving CCRB's BWC footage access, given the current structure of NYPD's BWC footage platform. While a long-term

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fix requires changes or clarification to existing law, most records are not sealed. NYPD's BWC footage platform commingles sealed records with unsealed records, thereby preventing direct access by CCRB and creating significant procedural obstacles. The commingling of sealed and unsealed records in the BWC database also creates other potential legal liability for the City. This examination found that if sealed records were properly sequestered within the BWC database, as required by law, this legal impediment to CCRB's direct access would be removed.

DOI Commissioner Margaret Garnett said, "The use of body-worn cameras should provide greater transparency into encounters between police officers and the public, with the goal of helping to clarify incidents in question, especially for police oversight agencies. But the promise of body-worn cameras is limited when the agencies entrusted with overseeing the examination of these incidents lack direct access to this vital oversight tool. The recommendations in this Report are needed to achieve that goal."

Inspector General for OIG-NYPD Philip K. Eure said, "Effective and independent police review requires direct access to body-worn camera footage. Oversight agencies cannot hold officers accountable for misconduct and foster greater trust between communities and law enforcement if the police withhold, redact, or delay the production of critical evidence."

The Report credits NYPD for streamlining and improving its process for responding to CCRB requests for BWC footage. While the pending MOU between CCRB and NYPD will improve the process even further, the envisioned arrangement inherently falls short. CCRB, which is an independent oversight agency conducting police misconduct investigations, needs direct access to BWC footage just as is done in several other jurisdictions around the country. This can be achieved in a way that also saves City resources while reducing potential legal exposure. DOI's OIG-NYPD makes three recommendations based on its findings:

- NYPD should conduct an internal review to ensure that sealed BWC footage is not commingled with unsealed BWC footage, and, if necessary, enact software safeguards to prevent sealed BWC footage from being viewed without a court order or waiver.
- NYPD should provide CCRB with independent and direct remote access credentials to all BWC storage databases so that BWC videos can be searched, viewed, and used as appropriate in CCRB investigations. Such access should be subject to appropriate credential procedures and audit trails to address security and privacy concerns.
- Within six months from the date of the release of this Report, NYPD should consult with each of the covered Charter §808 agencies, as well as OIG-NYPD, to determine whether additional access to BWC footage would benefit them in fulfilling their mandates, and engage in good-faith discussions to expand or streamline access if necessary.

This Report is part of a series of reports issued by OIG-NYPD pursuant to Local Law 166, specifically, [Ongoing Examination of Litigation Data Involving NYPD](#) in 2018 and [Assessment of Litigation Data Involving NYPD](#) in 2019.

The Report was prepared by DOI's Office of the Inspector General for the NYPD, specifically, Assistant Inspector General Justyn Richardson, Data Analyst Sara Hassan, Senior Attorney Tyler Gibson, and Deputy Inspector General - Policy Percival Rennie, under the supervision of First Deputy Inspector General Jeanene Barrett, and Inspector General Philip K. Eure.

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New York City  
Department of Investigation

Office of the Inspector General for the NYPD (OIG-NYPD)



# SHARING POLICE BODY WORN CAMERA FOOTAGE IN NEW YORK CITY

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Commissioner

Philip K. Eure  
Inspector General for the NYPD

November 2021

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## I. EXECUTIVE SUMMARY

On August 24, 2017, the New York City Council passed Local Law 166, now codified in Chapter 34, Section 808 of the New York City Charter.<sup>1</sup> This legislation instructs the Department of Investigation’s (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) to “work[] with the law department, the comptroller, the police department, the civilian complaint review board, the commission to combat police corruption, and the commission on human rights [to] collect and evaluate information regarding allegations or findings of improper police conduct and develop recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of the police department.”

In collecting this information and developing these recommendations, the legislation directs OIG-NYPD to consider, among other things, “Information on collaboration and information sharing procedures of the police department with the law department, the comptroller, the civilian complaint review board, the commission to combat police corruption, and the commission on human rights.”<sup>2</sup> The legislation further directs that a written evaluation or recommendations concerning these matters shall be published in the following three years and then every three years thereafter.<sup>3</sup>

In 2018, OIG-NYPD released its first report pursuant to this legislation: *Ongoing Examination of Litigation Data Involving NYPD*, in which OIG-NYPD conducted an analysis of claims and lawsuits filed against officers in six New York City Police Department (NYPD) precincts to illustrate the types of patterns and trends NYPD could be studying if its systems were more robust.<sup>4</sup> The second annual report in 2019 was a trend analysis of civil actions filed against NYPD or its personnel from 2014 through 2018, using litigation data publicly released by the Law Department pursuant to Local Law 166.

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\* DOI Commissioner Margaret Garnett and Inspector General Philip K. Eure thank the staff of OIG-NYPD for their efforts in producing this Report, specifically, Justyn Richardson, Assistant Inspector General; Sara Hassan, Data Analyst; Tyler Gibson, Senior Attorney; and Percival Rennie, Deputy Inspector General – Policy, under the supervision of Jeanene Barrett, First Deputy Inspector General. Appreciation is extended to the New York City Police Department, NYC Law Department, Comptroller, Civilian Complaint Review Board, Commission to Combat Police Corruption, and the City’s Commission on Human Rights for their cooperation during the investigation of this Report.

<sup>1</sup> N.Y.C. Local Law No. 166 (2017); N.Y.C. CHARTER § 808.

<sup>2</sup> N.Y.C. CHARTER § 808(b).

<sup>3</sup> N.Y.C. CHARTER § 808(e).

<sup>4</sup> N.Y.C. DEP’T OF INVESTIGATION, OFFICE OF THE INSPECTOR GEN. FOR THE NYPD, ONGOING EXAMINATION OF LITIGATION DATA INVOLVING NYPD (2018), [https://www1.nyc.gov/assets/doi/reports/pdf/2018/April/21NYPDLitData\\_Report\\_43018.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2018/April/21NYPDLitData_Report_43018.pdf).

This third Report assesses NYPD's policies, practices, and procedures related to the sharing of body-worn camera (BWC) footage with the five agencies covered by NYC Charter Section 808(b): the Law Department, the Comptroller, Civilian Complaint Review Board (CCRB), Commission to Combat Police Corruption (CCPC), and the City's Commission on Human Rights (CCHR) (collectively, the "Charter § 808 agencies").<sup>5</sup>

To conduct this assessment and develop its recommendations, OIG-NYPD interviewed officials from the various Charter § 808 agencies, reviewed documents detailing each agency's procedures for sharing information, and conducted research on comparable agencies in other cities to better understand best practices for the sharing of BWC footage between police departments and oversight agencies.<sup>6</sup> The key findings of this assessment include:

- CCRB and NYPD are in the process of implementing a Memorandum of Understanding (MOU).<sup>7</sup> This MOU will change the process CCRB uses to request and receive BWC footage pursuant to its investigations into excessive use of force, abuse of authority, discourtesy, and offensive language. The MOU contemplates a dedicated location to be used by CCRB and NYPD as a BWC search and review facility.
- Unlike other Charter § 808 agencies, CCRB currently does not have the level of access to BWC footage necessary for its mission. While CCRB's access to BWC footage is comparable to the Law Department and Comptroller in terms of the process employed by NYPD, CCRB's operational needs, mission, and statutory duties are different from those agencies.
- While the MOU represents a significant improvement in how CCRB accesses BWC footage for use in its police misconduct investigations, the agreement leaves room for further progress, including direct access to BWC footage to reduce investigative delay.

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<sup>5</sup> OIG-NYPD also reviewed the limited number of BWC footage requests it made to NYPD.

<sup>6</sup> In an effort to gain insight into NYPD's perspectives on information sharing with the Charter § 808 agencies, OIG-NYPD requested to meet with NYPD on January 3, 2020. This request noted that the meeting was part of OIG-NYPD's compliance with NYC Charter § 808(b). NYPD opted against making any representatives available for a meeting (or meetings) to discuss information sharing with Charter § 808 agencies, instead committing to send a written memorandum by February 14, 2020, addressing the topic. NYPD submitted a four-page document to OIG-NYPD on March 3, 2020. The submission contained the following statement on BWCs: "With regard to footage recorded on body-worn cameras, the Legal Bureau's Body-Worn Camera Unit has signed (but, not yet implemented) a Memorandum of Understanding (MOU) with CCRB to produce body-worn camera records directly to CCRB without the involvement of the IAB CCRB Liaison Unit."

<sup>7</sup> Memorandum of Understanding between CCRB and NYPD, (Nov. 21, 2019) (on file with author); *see also* CIVILIAN COMPLAINT REV. BD., STRENGTHENING ACCOUNTABILITY: THE IMPACT OF THE NYPD'S BODY-WORN CAMERA PROGRAM ON CCRB INVESTIGATIONS 35 (2020).

- According to CCRB, access to some BWC footage has been denied by NYPD on statutory grounds, in part because New York law does not permit CCRB to access BWC footage from sealed cases absent a waiver from the beneficiary of the sealing or court order.<sup>8</sup> Although the MOU, when implemented, will change the process for providing BWC footage, NYPD will continue to have discretion over the initial redaction or denial of footage.
- The MOU between CCRB and NYPD has the potential to improve the exchange of BWC footage between the two agencies. While the MOU may lead to positive results, the full implementation of the MOU is stymied by budgetary constraints in New York City resulting from the COVID-19 pandemic.
- Sealed records laws are a legitimate legal impediment to further improving CCRB's BWC footage access, given the current structure of NYPD's BWC footage platform. While a long-term fix requires changes or clarification to existing law, most records are not sealed. NYPD's BWC footage platform, however, commingles sealed records with unsealed records, thereby preventing direct access by CCRB.
- Commingling sealed records in an NYPD database creates significant procedural obstacles to BWC footage sharing, and may even open the City to potential liability. Proper sequestration of sealed BWC footage would improve access and efficiency while reducing potential liability.
- According to the MOU, while there is a required timeframe for NYPD to produce footage to CCRB once a search is complete and responsive footage is located, there is no specific timeframe for NYPD to complete the initial search request or locate the BWC footage itself. If CCRB had direct access to NYPD's BWC system, as many police review agencies do in other cities, CCRB would be able to conduct its investigations more efficiently, thereby also reducing the compliance burdens on NYPD.

Based on these and other findings, OIG-NYPD's recommendations are the following:

- NYPD should conduct an internal review and make whatever software or policy changes are necessary to properly sequester sealed BWC footage as required by law.
- NYPD should provide CCRB with independent and direct remote access credentials to all BWC storage databases so that BWC videos can be searched, viewed, and used as appropriate in CCRB investigations. Such access should be

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<sup>8</sup> CIVILIAN COMPLAINT REV. BD., STRENGTHENING ACCOUNTABILITY: THE IMPACT OF THE NYPD'S BODY-WORN CAMERA PROGRAM ON CCRB INVESTIGATIONS 32 (2020).

subject to appropriate credential procedures and audit trails to address security and privacy concerns.

➤ Within six months from the date of the release of this Report, NYPD should consult with each of the covered Charter § 808 agencies, as well as OIG-NYPD, to determine whether additional access to BWC footage would benefit them in fulfilling their mandates, and engage in good-faith discussions to expand or streamline access if necessary.

## **II. AGENCY MANDATES AND GENERAL POLICE-RELATED INFORMATION SHARING PROCESSES**

### **A. Law Department**

The New York City Law Department (specifically its agency head, the Corporation Counsel) is the “attorney and counsel for the City and every agency thereof and shall have conduct of all the law business of the City and its agencies in which the City is interested.”<sup>9</sup>

With respect to working with the New York City Police Department (NYPD), the Law Department collaborates most frequently with NYPD’s Legal Bureau (comprised of sub-units including the Police Action Litigation Section and the Civil Litigation Unit), which serves as a liaison to all members of NYPD facing litigation stemming from police action, as well as to NYPD’s Risk Management Bureau. In addition, according to NYPD, the Risk Management Bureau shares information with the Law Department pursuant to compliance with the Federal “stop, question and frisk” monitorship. The Law Department also receives information from the Department Advocate’s Office (DAO), in connection with the defense of litigation. This information is reviewed by the Law Department to inform determinations on legal representation of individual officers when they are sued in their official capacity.

### **B. Comptroller**

The Comptroller is responsible for advising the Mayor and City Council “on the financial condition of the City or any phase thereof and mak[ing] such recommendations, comments and criticisms in regard to the operations, fiscal policies and financial transactions of the city as [they] may deem advisable in the public interest.”<sup>10</sup> Furthermore, the Comptroller has the authority to “settle and adjust all claims in favor or against the City in such a manner as shall be prescribed by law.”<sup>11</sup>

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<sup>9</sup> N.Y.C. CHARTER § 93(i).

<sup>10</sup> N.Y.C. CHARTER §93(a).

<sup>11</sup> N.Y.C. CHARTER §93(i).

The Comptroller's Bureau of Law and Adjustment (BLA) is responsible for overseeing settlements of claims filed against or on behalf of the City. BLA has the ability to decide which notices of claim (NOC) will be settled. The Comptroller uses information obtained from NYPD to better understand trends in litigation, notices of claim, and settlements, with the goal of improving NYPD policies and practices. The Comptroller has access to such information due to a 2014 agreement between the Police Commissioner and the Comptroller: this agreement addressed the Comptroller's ongoing difficulties related to obtaining information from NYPD, and created a working group between staff at both agencies. The implementation of this agreement formed the basis for the Comptroller's publicly available ClaimStat reports (based on CompStat, NYPD's data-driven approach to crime statistics), which document the Comptroller's data-driven approach to claims management.

### **C. Civilian Complaint Review Board**

The Civilian Complaint Review Board (CCRB) is a City agency with authority to investigate complaints from members of the public alleging misconduct by NYPD officers. CCRB specifically investigates "misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language."<sup>12</sup> In pursuit of CCRB's mission, it "may obtain records and other materials from the Police Department which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law."<sup>13</sup> CCRB investigations that substantiate the allegation(s) may result either in recommendations to the Police Commissioner for command discipline or other actions, or in the filing of charges and specifications against an officer by the agency's Administrative Prosecution Unit (APU). Under either scenario, the Police Commissioner retains the ultimate authority over the imposition of discipline.

### **D. Commission to Combat Police Corruption**

On the recommendation of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (otherwise known as the "Mollen Commission"), the Commission to Combat Police Corruption (CCPC) was created by mayoral executive order in 1995. CCPC's mandate states that it "shall perform audits, studies, and analyses to assess the quality of the Police Department's systems for combatting corruption, including but not limited to audits, studies and analyses regarding . . . anti-corruption policies and procedures."<sup>14</sup>

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<sup>12</sup> N.Y.C. CHARTER § 440(c)(1).

<sup>13</sup> N.Y.C. RULES TIT. 38-A § 1-23(e).

<sup>14</sup> N.Y.C. MAYOR EXEC. ORDER NO. 18, § 2(a)(i)-(v) (Feb. 27, 1995).

CCPC primarily applies this mandate to regular review of NYPD Internal Affairs Bureau investigations and practices, as well as the review of every disciplinary case against members of NYPD. In furtherance of these reviews, CCPC receives broad access to IAB case files and officer disciplinary case files for completed investigations. In addition to receiving documentation relevant to specific cases upon request, CCPC also receives documentation regarding all disciplinary cases as a routine disclosure from NYPD. These files are produced on a two- to three-month delay, due to the process necessary to approve the distribution of such files, which requires the Department Advocate's Office to wait for approval from the Police Commissioner before compiling relevant forms for delivery to CCPC.<sup>15</sup> In addition, CCPC regularly receives briefings from IAB and attends internal IAB meetings for cases on a subset of ongoing investigations. CCPC also conducts reviews of each IAB investigative group's entire caseload.

#### **E. City Commission on Human Rights**

The City has codified various human and civil rights protections into law under the NYC Human Rights Law.<sup>16</sup> The NYC Human Rights Law guards against discrimination on the basis of protected statuses.<sup>17</sup>

Under NYC Human Rights Law, the City Commission on Human Rights (CCHR) is charged with enforcing these protections.<sup>18</sup> CCHR is further authorized to receive, refer, investigate and prosecute complaints; provide public education; enlist the cooperation of third-party organizations; and conduct studies.<sup>19</sup>

NYPD shares information with CCHR's Law Enforcement Bureau (LEB) pursuant to a written request sent through NYPD's Legal Bureau. Although NYPD informed OIG-NYPD that to date no information requests have been made by the CCHR to the NYPD, CCHR informed OIG-NYPD that NYPD has provided documents such as 911 call transcripts, 250- Stop, Question and Frisk- forms, and results of certain IAB or CCRB investigations related to complaints CCHR has received from the public.

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<sup>15</sup> CCPC reports that NYPD redacts some information for alleged privacy concerns, and any records or information pending before a grand jury in a criminal proceeding.

<sup>16</sup> N.Y.C. ADMIN. CODE §§ 8-101—8-703; N.Y.C. ADMIN CODE § 14-151.

<sup>17</sup> Protected statuses currently include: "race, color, creed, age, national origin, immigration or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, uniformed service, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record." NY.C. ADMIN. CODE §8-101.

<sup>18</sup> N.Y.C. CHARTER §902.

<sup>19</sup> N.Y.C. CHARTER §905.

### **III. PROCEDURES AND POLICIES RELATED TO THE SHARING OF BODY-WORN CAMERA FOOTAGE**

The Charter § 808 agencies may have particular interests in reviewing BWC footage, including using the video as evidence to support an investigation or in the course of the investigation of a claim, settlement discussions, or litigation. There are different procedures for each agency to access, request, and retain such footage for their mandated activities. All requests are ultimately handled by NYPD Legal Bureau's Body Worn Camera Unit.

#### **A. Acquisition of Body-Worn Camera Footage by Charter § 808 Agencies**

##### **1. Comptroller**

BWC footage is crucial to the Comptroller's operations, as it is used in conjunction with other evidence to evaluate claims brought against the City. Currently, the Comptroller requests BWC footage related to claims on a case-by-case basis, and relies on NYPD to produce the footage. However, the Comptroller's Office and NYPD are working to implement a new system providing the Comptroller with direct, remote access to BWC footage. Once implemented, using a unique user ID and password, a Comptroller employee seeking to review evidence to evaluate a claim will have access, through "Evidence.com," to BWC footage from the Comptroller's offices through a remote server system. Access is limited to footage flagged by NYPD for the Comptroller in connection with claims brought against the City. After logging in, the Comptroller staff member(s) can further search through the footage made accessible by NYPD using incident details such as location, date, or time, as well as any search terms relevant to what the employee believes may have been captured in the video. The newly implemented system will not allow Comptroller employees to download or store the footage on the Comptroller's own systems, nor can Comptroller employees freely browse the entire BWC database. The Comptroller told OIG-NYPD that it receives all BWC footage it requests from NYPD in a timely fashion.

##### **2. Law Department**

The City's Law Department regularly obtains BWC footage from NYPD. When a Law Department attorney receives a new civil litigation matter, the attorney requests any and all BWC footage that captures any portion of the event underlying the filing of a claim or lawsuit against the City or NYPD. The Law Department sends these requests for BWC footage to NYPD's Legal Bureau with search terms describing the location, date, time, officer, subject or incident category. Historically, after locating BWC footage that was responsive to the Law Department's search criteria, NYPD would send the footage to the Law Department in the form of a physical DVD.

The Law Department also receives BWC footage in support of the juvenile prosecution work handled by the agency's Family Court Division. As part of NYPD's arrest protocols, when a juvenile is arrested, the relevant BWC footage is immediately made available to the Law Department; while attorneys then follow up with NYPD if additional video is needed (*e.g.*, from other officers on the scene).

Given its role as "attorney and counsel for the City," the Law Department must have access to BWC footage in both civil litigation and Family Court matters. Further, in contrast to the Comptroller, Law Department attorneys need to retain and preserve copies of the BWC footage because they may have a legal duty to provide such footage to other parties involved in the litigation and may need to later use such footage as evidence in a hearing or trial. The process of creating and obtaining DVD copies, however, can cause delays. In an effort to hasten the transfer of data, the Law Department obtained licensing for "Evidence.com" and is currently using that platform to access BWC footage. That platform enables NYPD to share requested videos with the Law Department in real time, eliminating the need for burning physical DVDs and making the delivery process more efficient. For civil litigation, access via Evidence.com facilitates the Law Department's review of video footage in defense of litigation, with the additional ability to preserve video footage for discovery obligations and presentation of evidence in court. The Law Department confirmed to OIG-NYPD that it receives all the BWC footage it requests in a timely manner.

### **3. City's Commission on Human Rights**

CCHR has authority through its LEB unit to investigate and prosecute complaints of discrimination.<sup>20</sup> These are administrative actions that are filed with the Commission, not in court.<sup>21</sup> These actions may be litigated before the Office of Administrative Trials and Hearings (OATH) and then returned to the Commission for *de novo* review and issuance of a final Decision and Order by the Office of the Chair. Pursuant to this authority, CCHR can request or order materials from NYPD as part of its investigation of complaints alleging discrimination, including "bias-based profiling," by NYPD or its employees.<sup>22</sup> This may include requests for copies of BWC footage. CCHR, through LEB, can also issue subpoenas to NYPD in cases where an officer is a third-party witness to a complaint.

### **4. Commission to Combat Police Corruption**

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<sup>20</sup> N.Y.C. ADMIN. CODE §8-114(b); 47 R.C.N.Y. § 1-33.

<sup>21</sup> Individuals may bring claims under the City Human Rights Law in state or federal court.

<sup>22</sup> Bias-based Profiling by Law Enforcement occurs when the police target individuals for arrest or other criminal law enforcement action, not because of specific information linking them to unlawful activity, but instead because of their protected status under the law, such as their race, national origin, color, religion, age, immigration or citizenship status, gender, gender identity, sexual orientations, disability, or housing status. N.Y.C. ADMIN. CODE § 14-151.

CCPC has never specifically requested BWC footage from NYPD, separate from its standard audits of IAB case files. CCPC's review of BWC footage has been limited to the BWC footage that may be included as part of closed case files provided by NYPD to CCPC for its routine review. CCPC also may view BWC footage in the course of the ongoing case briefings that CCPC attends at NYPD Headquarters.

## 5. Civilian Complaint Review Board

Unlike other Charter § 808 agencies, CCRB currently does not have the level of access to BWC footage necessary for its mission. While CCRB's access to BWC footage is comparable to the Law Department and Comptroller in terms of the process employed by NYPD, CCRB's operational needs, mission, and statutory duties are different from those agencies. As a practical matter, what is adequate for the Law Department and the Comptroller is not sufficient for CCRB. In February 2020, CCRB issued a report on its experience with NYPD's BWC program, including the usefulness of BWC footage in investigations and a review of current and future access procedures and their consequences.

As noted in that report, under the current pre-MOU-implementation procedures, a CCRB investigator with reason to believe that BWC footage relevant to a complaint exists, or who has knowledge that the involved officer had been issued a BWC, must complete a BWC footage request form that provides all known incident data including involved persons, incident location, date and time, type, and/or outcome. The form is then submitted to the NYPD Legal Bureau Body Worn Camera Unit. Using the information on the form, NYPD Legal Bureau BWC Unit will search "Evidence.com" for any BWC footage that is responsive to the search terms and parameters on the submitted form. NYPD Legal also determines whether any responsive footage should be withheld for legal reasons (*e.g.*, if the footage contains any images of juveniles or of sealed arrests, NYPD takes the position that such footage cannot be released to CCRB without CCRB first obtaining a waiver from the depicted individuals). NYPD Legal then sends a link to the footage, along with certain administrative details, back to CCRB's NYPD Liaison Unit, which subsequently downloads the videos to CCRB servers, making it available to the assigned CCRB investigator. If the investigator determines that the footage provided is not what was requested or later learns of additional potential BWC footage, the entire process must be repeated. This current pre-MOU-implementation process can be time consuming and prone to administrative delays, although significant improvements have been made since the February 2020 CCRB Report.<sup>23</sup>

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<sup>23</sup> CCRB, *supra* note 8, at 30.

The MOU between CCRB and NYPD has the potential to improve CCRB's access to BWC footage, although it does not appear to fully address either the timeliness issue or the related potential for excessive administrative delay. The MOU provides that NYPD will set up a secure viewing room with at least 10 terminals (proposed to be located at CCRB's offices at 100 Church Street), open every business day during normal business hours. CCRB investigators will still submit written requests for search terms and parameters for BWC footage to a designated email address at NYPD. An NYPD employee, however, will conduct the search in the secure viewing room in the presence of a CCRB employee. The CCRB employee may confer with the NYPD employee on new search terms if the original terms prove too broad or too narrow. Once results are obtained, the CCRB employee will determine which results are relevant and should be viewed by the assigned investigator. The assigned CCRB investigator can then view the relevant footage in the secure viewing room, without redaction. Once the assigned investigator views the selected footage and determines which portions are necessary for the investigation, the investigator completes a request for a copy of that footage. NYPD Legal Bureau personnel will then make determinations on redactions. Footage that does not require redaction is to be produced within 10 business days; redacted footage is to be produced within 25 business days, along with a written explanation of the redactions. The MOU also defines a protocol through which CCRB will be able to dispute NYPD's redaction of BWC footage.

While the MOU may lead to positive results, the full implementation of the MOU is stymied by the current budgetary challenges in New York City caused by the COVID-19 pandemic. As of the date of this report, the procedures described in the MOU which would allow CCRB staff to participate in the BWC footage search have not yet been implemented.

## **B. Body Worn Camera Footage Access: Findings, Consequences, and Solutions**

### **1. "Equal" Access to BWC Videos Is Not Always Equal in Practice**

All Charter § 808 agencies require some level of access to BWC footage in order to perform their statutory duties. Some agencies require different kinds of access than others or have different needs as to timeliness of access — there is no one-size-fits-all approach. Therefore, the nature of access to BWC footage can affect the efficiency and effectiveness of the work done by each agency.

For instance, independence is of paramount importance to investigative agencies, such as CCRB, CCHR, CCPC, or even OIG-NYPD. On the other hand, independence would actually be an impediment to the Comptroller or Law Department when partnering with NYPD in defending litigation against the City. Moreover, the

Comptroller and Law Department are typically dealing with established claims that are specific as to identity of complainants and date, time and place of the relevant events. Complaints or allegations brought to investigative agencies may be much less definitive or specific. For much the same reason, sealing statutes have little practical impact on requests by agencies involved in City litigation, such as the Comptroller or the Law Department.<sup>24</sup> Conversely, investigative agencies often face significant challenges in obtaining a sealing waiver or unsealing order.<sup>25</sup>

When an investigative Charter § 808 agency does not have direct and unredacted access to at least search and view BWC footage, several related issues arise. First, the agency must rely on NYPD to produce BWC footage that is responsive to a request, making the progress of investigations dependent on NYPD's capacity and discretion. As mentioned above, and discussed further below, capacity and manpower issues at NYPD have caused extensive delay in the past, and easily could again. But the problems are also substantive. For example, an NYPD searcher may consider certain tags to be not relevant or responsive even if the requesting CCRB investigator would have disagreed.<sup>26</sup> This is problematic since only the investigator has complete knowledge of the investigation, and therefore is best suited to know what may be relevant. In such a case, not only might relevant BWC footage be withheld, but the CCRB investigator would never even know that such footage existed in the first place. This scenario arises from unavoidable information disparities regardless of the intent or good faith of the NYPD employee conducting the search.

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<sup>24</sup> Sealed records do not pose a practical issue for the Law Department or the Comptroller, as sealing waivers are obtained in the course of litigation against the City. It is a well settled matter of law that a plaintiff cannot sue the City for misconduct stemming from an arrest, and then prevent access to those records by refusing to waive the sealing privilege. *Green v. Montgomery*, 219 F.3d 52, 57 (2d Cir. 2000) (citing *Kalogris v. Roberts*, 586 N.Y.S.2d 806, 807 (1st Dep't 1992)). The Law Department can even compel a sealing waiver in order to defend a lawsuit. *Rafter v. Bank of Am.*, 2011 U.S. Dist. LEXIS 76082, at \*4 (S.D.N.Y. June 28, 2011). There may be instances where the plaintiff is not the subject of the sealed records, but these are rare, and there are other legal mechanisms available to unseal those records for use in the litigation and/or settlement. In short, by the time the Law Department or Comptroller is involved in requesting BWC footage, sealed records do not present any real impediment to timely production.

<sup>25</sup> For the purposes of a criminal prosecution or investigation, a law enforcement agency can obtain an unsealing order on request via an ex parte motion to a judge. NY CLS CPL § 160.50(1)(d). Absent an active criminal investigation by a law enforcement agency as defined by §160.50, however, unsealing orders can only be granted by the inherent authority of the courts. The exercise of that authority to unseal is entirely within the discretion of the judge, and "such authority should be exercised rarely and only in extraordinary circumstances." *New York State Police v. Charles Q.*, 192 600 N.Y.S.2d 513, 515 (N.Y. App. Div. 1993). While obtaining a sealed record waiver from the complainant is an alternative, this is not always easy or even possible. The extra procedural hurdle can create a chilling effect, requiring the acquiescence of a complainant alleging police misconduct. In such situations, complainants may be understandably mistrustful of providing any kind of waiver of rights to NYPD.

<sup>26</sup> Although NYPD claims that it does not make "relevancy" determinations, this is a distinction without a difference because, according to the Department, it will make "responsiveness" determinations that can still exclude potentially relevant material concerning CCRB's requests.

A similar concern arises when NYPD makes redactions based on legal or non-legal grounds (such as generalized privacy or relevancy/responsiveness concerns) regarding what should and should not be redacted or withheld.<sup>27</sup> When only NYPD has seen the unredacted footage, the redaction analysis, legal or otherwise, is impaired because NYPD has sole discretion regarding handling of the footage, but incomplete information as to the facts of the investigation and its procedural posture. This is especially problematic when the grounds asserted by NYPD for redaction are disputed or otherwise in doubt. Given the information disparities, the requesting investigative agency may find it difficult to effectively challenge the redactions, which can produce inaccurate or unnecessary redactions, cause additional delay, or force the requesting agency to make disclosures that may infringe on the independence or confidentiality of its investigations. Again, these issues exist even assuming all NYPD employees involved are acting in good faith and with no intent to obstruct or delay. It is unclear why City attorneys employed by NYPD are permitted to review requested footage for redaction and legal issues, while City attorneys employed by CCRB are not.

These access concerns are not merely theoretical given that the current protocols have led to unexplained redactions or non-responses to video requests. Some search problems are likely unavoidable due to the necessary reliance on human input. For instance, as mentioned above, videos in the BWC storage platforms are entered into the system by NYPD officers and tagged by NYPD with terms describing the content of the footage. Regardless of which agency is conducting the search, the quality of search results will depend to some degree on the accuracy and veracity of these tags and uploads. As anyone who has ever done a Google search knows, effective searches in a database that relies on human subjectivity in labelling and tagging must, by necessity, be a creative and iterative process, in which the type of results returned from initial searches help the searcher to craft better and more responsive search parameters. Thus, current systems for some Charter § 808 agencies that give NYPD sole discretion to search for responsive BWC records are deficient.

Aside from presenting an impediment to full and independent investigations, the inability of Charter § 808 agencies to conduct their own searches for BWC footage also leads to administrative bottlenecks. With approximately 20,000 uniformed patrol officers using BWCs as of February 2019, and approximately 130,000 new videos captured by BWCs uploaded to NYPD systems each week, it is likely that the number of requests for footage will increase as more interactions with the public are being recorded by BWCs. The increasing number of requests for video (and the larger search pool of videos available) will affect the amount of time it takes NYPD to return footage

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<sup>27</sup> NYPD asserts it has not made redactions “since July 2020 for privacy reasons.” While certainly an improvement, it is troubling that NYPD previously made unilateral non-legal redactions to BWC footage required for police misconduct investigations. This policy can change again just as quickly.

to agencies that rely on NYPD for retrieval, resulting in an increased strain placed both on NYPD staff who process requests for footage and on the Department's Legal Bureau personnel who approve footage for release or otherwise redact it as NYPD deems appropriate. If unaddressed, these issues will likely continue to compound over time.

In its February 2020 report, CCRB identifies similar issues arising from the current request and retrieval procedures, adversely affecting the duration and progress of investigations.<sup>28</sup> Furthermore, in a letter to the CCRB Board, CCRB's Director of Quality Assurance and Improvement stated that "the backlog of CCRB requests for video evidence will continue to increase and will impair the CCRB's ability to complete investigations within the 18-month statute of limitations."<sup>29</sup> According to NYPD, procedural changes for requesting footage implemented in July 2020 have helped to eliminate the backlog of requests.

CCRB has previously reported increases over time in the length of its wait for BWC footage, as well as increased difficulty with regard to receiving footage with unexplained redactions or not receiving existing relevant footage as requested. For example, CCRB reported that in the second quarter of 2019, 99 percent of BWC video requests *remained open* for 20 or more business days, or longer than one month.<sup>30</sup> From the beginning of 2018 through the second Quarter of 2019, the percentage of footage returned redacted grew from six to 63 percent.<sup>31</sup> CCRB also reports that there were occasions in which it was not notified that video had been redacted, nor was it provided an explanation for such redactions.

Moreover, current (pre-MOU-implementation) procedures have resulted in a number of "false negative" returns. False negatives are defined as instances in which NYPD reports there is no relevant footage for a particular search, yet CCRB later learns that a pertinent video does exist. CCRB reports learning about false negatives through other police documents, during interviews, or via footage provided to the media, and attributes these false negatives in part to potential incompleteness of NYPD search criteria, incomplete tagging of videos in the system, as well as lack of geotagging of footage.<sup>32</sup> Due to the inability to conduct its own searches, CCRB cannot be certain how many negative search results are accurate.<sup>33</sup>

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<sup>28</sup> CCRB, *supra* note 8, at 27.

<sup>29</sup> Memorandum from Director of Quality Assurance and Improvement to Members of CCRB, BWC and Document Request Issues with the NYPD (Jul. 5, 2019), [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/board/20190710\\_boardmtg\\_BWC\\_memo.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20190710_boardmtg_BWC_memo.pdf).

<sup>30</sup> CCRB, *supra* note 8, at 31.

<sup>31</sup> *Id.* at 34.

<sup>32</sup> *Id.* at 55.

<sup>33</sup> *Id.* at 43.

According to CCRB, “restrictions in gaining access to BWC footage can significantly compromise the integrity of its investigations and negatively impact the use and effectiveness of BWCs for oversight.”<sup>34</sup> Additionally, when CCRB makes a BWC footage request under the current protocols, NYPD may have to request more information from CCRB in order to perform the search, causing further delays. Both CCRB and NYPD are hopeful that the MOU, once fully implemented, will address some of these concerns.<sup>35</sup>

## 2. An Imperfect Solution: CCRB’s MOU

The MOU should improve CCRB’s access to BWC footage. However, the MOU does not designate a specific timeline for the implementation of the whole agreement, including the beginning of the use of the special facility for CCRB’s BWC review. CCRB was unable to predict for OIG-NYPD the timeline for full implementation of the MOU. And there are additional uncertainties. NYPD has stated that the space is secured, but has not provided further details. Since the acceptance of the MOU by NYPD and CCRB, the City’s circumstances have changed dramatically. The challenges created by COVID safety protocols, as well as the significant fiscal constraints that have led to reductions in City agency budgets, are likely to persist for an indeterminate amount of time as the City copes with additional costs, reduced revenue, and safety measures associated with addressing the pandemic. These circumstances create further uncertainty for the implementation timeline.

In addition, according to the MOU, “requested BWC video(s) not requiring redaction shall be provided to the CCRB within ten (10) business days.” This ten-day period begins *after* NYPD and CCRB personnel conduct the initial BWC search in the secure room and the CCRB investigator determines which BWC video(s) are relevant to the CCRB investigation. Conversely, once CCRB makes a BWC search request to NYPD, there is no specified timeframe for CCRB and NYPD’s joint review in the secure room. Furthermore, the description of the second round merely states that “NYPD shall make best efforts to provide redacted video(s) within twenty-five (25) business days,” but there is no process for determining if the Department actually made its “best efforts,” nor is there a process for when NYPD fails to meet this deadline. If CCRB had direct access to NYPD’s BWC system, many of these hurdles could be avoided and CCRB would be able to conduct its investigations in a timelier manner, or at least bear the responsibility for the allocation of its own resources and any resulting impact on timeliness of investigations.

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<sup>34</sup> *Id.* at 35.

<sup>35</sup> Some concerns have been addressed by the creation of a formalized request form and process by CCRB in 2018, as well as changes NYPD has made to its process for fulfilling these requests since July 2020.

In short, while the protocols outlined in the MOU significantly improve the current regime for providing BWC footage to CCRB, the process could create additional hurdles when simpler and more effective solutions are available. In fact, the CCRB's executive director stated in a public forum in December 2020 that "[t]he most important reform for us at the CCRB would be direct access to body-worn camera footage. Having the ability to search the database on our own would be the biggest help for the CCRB."<sup>36</sup> Simply put, while NYPD points to improvements in the current system for producing BWC footage since July 2020, and the MOU may offer further progress, there are inherent structural flaws in the current arrangement that no amount of incremental tinkering can resolve. Even if the system as established by NYPD worked perfectly every time, it would still ultimately waste limited City time and resources attempting to perfect an imperfect solution. For example, a delay of five business days, which NYPD asserts is the time within which most requests are produced, represents five business days of unnecessary delay when compared to instantaneous access if CCRB could perform its own search directly.

The MOU is an imperfect solution because it does not fully address the main issue—all Charter § 808 agencies should have the level of access to BWC footage that is necessary for the agency's discharge of its duties. The Comptroller and Law Department have sufficiently prompt and direct access to the BWC footage they request in ways that do not inhibit the discharge of their statutory duties. The other Charter § 808 agencies deserve the same. The CCRB MOU largely seeks to tailor and tweak access protocols that work for the Comptroller and Law Department to work for CCRB as well. But investigative agencies have different duties and needs than the Law Department or Comptroller. Investigative agencies need independent access to BWC footage. CCRB investigators should be able to independently search for and view BWC footage relevant to their investigation without disclosing the existence or nature of the investigation to NYPD.

### **3. The Main Impediment to Improved BWC Access: Sealed Records**

While the CCRB MOU is an imperfect solution, it is also a product of the restrictions imposed by NYPD and relevant law. During OIG-NYPD's investigation, NYPD raised the issue of sealed records as the primary legal barrier preventing full and direct access by CCRB to the BWC database.<sup>37</sup> NYPD's only other legal argument made to OIG-NYPD was that New York State juvenile records laws prohibit CCRB's direct access to the BWC database, but NYPD provided no legal support or rationale for why

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<sup>36</sup> NYC CCRB (@CCRB\_NYC), TWITTER (Dec. 16, 2020, 5:51 PM), [https://twitter.com/CCRB\\_NYC/status/1339342387320119297](https://twitter.com/CCRB_NYC/status/1339342387320119297).

<sup>37</sup> See, e.g., NY CLS CPL §§ 160.50, 160.55.

such laws would be applicable.<sup>38</sup> According to NYPD, the presence of potentially sealed records in the BWC database requires that NYPD Legal Bureau attorneys review and screen any search request prior to production. As discussed above, this poses a far greater procedural burden in practice on investigative agencies, such as CCRB, as compared to the Comptroller or Law Department. Without a solution to the sealed records issue, the MOU cannot be substantially improved upon. Sealed records are a legitimate issue, but not insurmountable. As a general matter, sealed records laws in New York State negatively impact oversight and accountability in ways that may have been unforeseen or unintended by the state legislature. The New York State sealing statutes were enacted to protect the rights, privacy, and reputation of the accused, not to impede police oversight or cover up police misconduct.<sup>39</sup> However, courts have interpreted the sealing statutes extremely narrowly.<sup>40</sup> In doing so, sealed records can become a barrier to police oversight, discipline, and reform—contrary to the spirit of the sealing statutes.<sup>41</sup> In fact, as arrest records are most often sealed by law automatically when criminal charges are dropped, declined by prosecutors, or otherwise dismissed in favor of the accused, some of the most egregious incidents of police misconduct often become subject to sealing under New York law.<sup>42</sup> NYPD itself is familiar with the paradoxical nature of the sealing statutes and the procedural obstacles they can present.<sup>43</sup> Prior attempts by NYPD to use sealed records internally, absent an explicit court order, even for non-investigative purposes such as training or disciplinary oversight, have been repeatedly rejected by the courts.<sup>44</sup>

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<sup>38</sup> New York State law requires that “police records relating to the arrest” of juveniles be kept “separate from the arrests of adults” and “not made available for public inspection.” NY CLS Family Ct. Act § 381.3; *see also* NY CLS Family Ct. Act § 166. It is unclear how these provisions are applicable to intra-agency sharing of BWC footage pursuant to a lawful request under a statutory mission to conduct police oversight and investigations. In fact, case law suggests CCRB should have access for its legitimate governmental purpose. *See, e.g., In re Hecht*, 394 N.Y.S.2d 368, 371 (N.Y. Sup. Ct. 1977); *People v. Brailsford*, 482 N.Y.S.2d 907, 908 (N.Y. App. Div. 1984); *People v. Price*, 419 N.Y.S.2d 415, 420 (N.Y. Sup. Ct. 1979); *Schwahl v. Grant*, ` , 160 (N.Y. App. Div. 2008). Moreover, if the BWC database was truly subject to these legal provisions, NYPD would be in violation of the law by not keeping juvenile and adult records separate. Furthermore, the pending NYPD and CCRB MOU—that allows for CCRB to view unredacted BWC footage in the presence of NYPD personnel— would also be in violation of the law.

<sup>39</sup> *Hynes v. Karassik*, 47 N.Y.2d 659, 662-663 (N.Y. 1979).

<sup>40</sup> *Id.* at 663.

<sup>41</sup> While the agencies defending the City against officer misconduct lawsuits can obtain sealing waivers by right, and law enforcement agencies can obtain unsealing orders on request where necessary for criminal investigations, oversight agencies engaged in administrative, disciplinary, or policy investigations have no such right, and must rely on the rarely exercised discretion of a judge. *See supra* notes 24-25 and accompanying text.

<sup>42</sup> *See* NY CLS CPL § 160.50(1).

<sup>43</sup> *R.C. v. City of New York*, 100 N.Y.S.3d 824, 830 (N.Y. Sup. Ct. 2019).

<sup>44</sup> *See, e.g., New York State Police v. Charles Q.*, 192 600 N.Y.S.2d 513, 515 (N.Y. App. Div. 1993).

#### 4. Sealed Records Solutions: Long-Term and Immediate

In the long term, the only permanent solution to this problem is a clarification of the intent and purpose of the sealing statutes with regard to BWC footage and police oversight, be it by the judiciary or the legislature. The most certain outcome would be the amendment of sealing statutes themselves by the state legislature. The sealing statutes could be amended to allow the non-public use of BWC footage for police oversight and accountability. NYPD, along with other Charter § 808 agencies, can be an advocate for that kind of reform, alongside those advocacy and community groups who have pushed for the expansion of BWC use by police because of its promise as a tool for accountability and transparency. The state legislature has already provided exceptions to the sealing statute for firearms licensing, police or peace officer hiring, or probation department supervision.<sup>45</sup> As the judge in *R.C. v. City of New York* observed, these exemptions exist "because their proponents successfully argued [to the legislature] against having to make a time-consuming motion."<sup>46</sup>

Further research and study would be necessary to consider the long-term consequences and ultimate impact, as there may be countervailing policy or legal concerns outside the scope of this current review. Whatever the approach, however, the intersection of sealed records and police oversight is a novel issue that will take some time to resolve. That does not mean nothing can be done for years, however. Most records requested by CCRB are not sealed. Immediate steps can and should be taken that would both improve CCRB's ability to conduct investigations and reduce potential liability to the City.

Immediate steps to address sealed records in the BWC database are necessary as the co-mingling of sealed and unsealed footage in the NYPD BWC database may open the City to legal liability. Sealed records should not be co-mingled with unsealed records, nor should they be readily viewable by anyone with access to the database. In 2019, a State judge in New York rejected arguments that NYPD could maintain sealed arrest records in its interconnected "Domain Awareness System" and allow that information to be used internally at NYPD without an explicit court-issued unsealing order.<sup>47</sup> In the wake of that court decision, NYPD reportedly took steps to ensure that sealed records were not broadly accessible internally at NYPD. The Department should take the same approach to improve the BWC database. The NYPD BWC database should be able to be searched by a user without returning the full contents

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<sup>45</sup> NY CLS CPL §§ 160.50(1)(d)(iv)-(vi).

<sup>46</sup> *R.C. v. City of New York*, 100 N.Y.S.3d at 831.

<sup>47</sup> *Id.* at 831-832.

of a sealed record.<sup>48</sup> If NYPD's current BWC footage platform cannot restrict or sequester access to sealed BWC footage, it should be replaced with one that can.

Not only would segregating sealed records reduce potential liability to the City, it would immediately improve CCRB's ability to perform its statutory mission and increase efficiency. The current system creates delays for every request because, according to NYPD, the existence of sealed records mixed in with the larger database prevents direct access as a matter of law. While sealed records are an undeniable obstacle to certain kinds of direct access, most records requested by CCRB are not fully sealed. Other than sealed records, which can be addressed by improving the organization of the BWC database, OIG-NYPD is unaware of any other legal restrictions that would prevent NYPD from granting read-only access to the BWC database in furtherance of CCRB's statutory duties. CCRB is a City agency legally mandated to conduct police misconduct investigations. Legitimate concerns about confidentiality and legal restrictions on some types of footage could be addressed through limiting database access to physical terminals that are only available to CCRB investigators, as well as maintaining quality audit trails through unique log-in credentials that cannot be shared, certification of confidentiality at each log-in, tagging each search with the corresponding case number to which it relates, and maintaining logs of searches and their results.<sup>49</sup> City attorneys employed at CCRB would be able to handle any necessary legal screening or review. These measures would greatly assist CCRB's investigations and reduce the administrative burden on NYPD, while appropriately addressing legal restrictions or privacy concerns on the use of the footage.

In short, a long-term and permanent solution is required to address the inherent tension between the treatment of sealed records under New York law and the promise of BWC footage for police oversight and accountability. While NYPD, CCRB, and the City as a whole can advocate for a long-term solution, there is no non-legislative quick fix to all of the obstacles posed by sealed records. There are, however, immediate steps that can and should be taken that would both significantly improve operational efficiency and reduce liability for the City. NYPD should implement a system that properly sequesters sealed BWC footage and then provide direct access to CCRB for use in investigations. Any cost associated with implementing these changes would be mitigated, at least in part, by reducing potential City liability and increasing efficiency at both CCRB and NYPD. Such measures could potentially be less

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<sup>48</sup> For example, a search result for sealed records should only reveal the existence of the sealed record and the necessary indexing information required to obtain an unsealing order or waiver, but not the sealed content itself.

<sup>49</sup> Similar protocols are used by NYPD and other agencies to control and audit access to criminal history databases and other law enforcement databases to protect against misuse and improper access.

expensive overall (including personnel costs) than the protocols contemplated by the MOU.

### C. Access to BWC Footage by Oversight Agencies Outside of NYC

Not every police department is in a jurisdiction that has an external entity that primarily investigates police misconduct complaints akin to CCRB. Among the police oversight agencies connected to the 20 largest U.S. police departments, in addition to New York City's CCRB, there are four oversight agencies performing similar functions. OIG-NYPD reviewed the policies related to the exchange of BWC footage between the police departments and oversight agencies in these four jurisdictions: Washington, D.C., Chicago, San Francisco, and Memphis.

OIG-NYPD found varying levels of access to BWC footage and identified some arrangements that allow for more complete, or direct, access than CCRB is afforded. These arrangements could serve as a model for CCRB's access going forward. For example, the policies in some other cities dispense with redactions of BWC footage by the police department.<sup>50</sup> For example, the District of Columbia's police accountability agency has direct access to the police department's BWC footage.<sup>51</sup> The Office of Police Complaints (OPC) receives complaints from the public regarding alleged misconduct by officers of the D.C. Metropolitan Police Department and the D.C. Housing Authority Police Department. OPC investigators may search the BWC footage database only in connection with a complaint under investigation, by logging in directly to Metropolitan Police Department's "Evidence.com" account where BWC footage is stored.<sup>52</sup> This system provides OPC investigators with access to unredacted read-only BWC footage as soon as it is uploaded to the database, which generally takes place at the end of an officer's tour. This is the same level of access generally afforded to relevant Metropolitan Police Department personnel.<sup>53</sup> To locate

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<sup>50</sup> Nassim Moshiree, Policy Director, ACLU, Statement on Behalf of the American Civil Liberties Union of the District of Columbia, before the D.C. Council Committee on Judiciary and Public Safety Budget Oversight Hearing on the D.C. Office of Police Complaints (Mar. 27, 2019), <https://www.acludc.org/en/news/aclu-dc-budget-oversight-hearing-statement-office-police-complaints-dc-council-judiciary>.

<sup>51</sup> In an interview with NPR, the District of Columbia's Office of Police Complaints's executive director asserted that BWC footage should not be redacted when provided to police oversight agencies, as they are investigative bodies—not members of the general public. The agency's executive director added, "It really doesn't make a whole lot of sense to be redacting evidence before it gets sent to the investigating agency... The police department certainly would not be accepting of any type of video or documentary evidence that's been redacted before they get it... Because that would inhibit their investigation of any type of criminal offense. Why wouldn't you want to have an uninhibited investigation of a misconduct offense?" Cindy Rodriguez, *When it Comes to Police Misconduct, Body-Worn Camera Videos Are Slow to Come*, WNYC NEWS (July 22, 2019), <https://www.wnyc.org/story/police-misconduct-body-worn-camera-videos-slow-come/>.

<sup>52</sup> Evidence.com is the same BWC footage platform used by NYPD and accessed by the Comptroller and the Law Department, as described above.

<sup>53</sup> All log-ins by OPC and MPD personnel are tracked by an audit log feature on Evidence.com, which tracks log-in information for individuals, as well as views. The audit log feature is accessible by both MPD and OPC,

BWC footage relevant to a complaint, OPC investigators can search the footage uploaded by Metropolitan Police Department and create additional tags for later search and reference by investigators, indicating that footage resulting from a search is deemed relevant to a complaint.

Chicago also authorizes the sharing of BWC footage by its police department beyond the level afforded to NYPD's oversight agencies. In Chicago, members of the public may make a complaint alleging mistreatment by a police officer to the city's Civilian Office of Police Accountability (COPA), which is empowered to investigate such claims and recommend discipline or other action. Pursuant to the Chicago Police Department's (CPD) Special Order S03-14, investigators working for COPA may be granted direct and unfettered read-only access to view BWC footage on Evidence.com, subject to their clearance level and the CPD Information Services Division's authorization to access the BWC recordings on the Evidence.com database.<sup>54</sup> These policies, in Washington, D.C., and Chicago, thereby permit the two oversight agencies to access BWC videos in a timely manner, without depending on police personnel.

On the other end of the spectrum, the police departments in San Francisco and Memphis provide their oversight agencies with less direct access to BWC footage than is the case in Washington, D.C., and Chicago. In San Francisco, the Department of Police Accountability (DPA) investigates complaints against members of the police department, makes policy recommendations, and conducts periodic audits.<sup>55</sup> In the course of an investigation into a complaint, DPA may request, among other materials, BWC footage. The SFPD's Legal Division is required to provide BWC recordings to staff of the DPA upon receipt of a formal written request, consistent with its document protocol policy for routine requests.<sup>56</sup> Upon receipt of the request, SFPD Legal redacts footage and sends a link to DPA to download the requested footage through Evidence.com. This method of BWC footage request and receipt is similar to the current cumbersome CCRB-NYPD arrangement. The SFPD and DPA document protocol also requires quarterly reporting on SFPD's response rate to requests for BWC footage as well as other documentation. SFPD reports that in the first quarter

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creating transparency and accountability so that employees of both agencies cannot abuse access to the platform. METRO. POLICE DEP'T OF D.C., GENERAL ORDER SPT-302.13 (2016), [https://go.mpdconline.com/GO/GO\\_302\\_13.pdf](https://go.mpdconline.com/GO/GO_302_13.pdf).

<sup>54</sup> CHI. POLICE DEP'T, SPECIAL ORDER S03-14: BODY WORN CAMERAS (2018), <http://directives.chicagopolice.org/directives/data/a7a57b38-151f3872-56415-1f38-89ce6c22d026d090.html>.

<sup>55</sup> S.F. DEP'T OF POLICE ACCOUNTABILITY, <https://sfgov.org/dpa/> (last visited Feb. 2, 2020).

<sup>56</sup> S.F. POLICE DEP'T, GENERAL ORDER 10.11 (2016), <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/AgendaDocuments/COMMISSION-DGO-10.11-BODYWORNCAMERAS.pdf>.

of 2020, SFPD produced 217 of 243 routine document requests within a reasonable time period.<sup>57</sup>

In Memphis, the Citizen’s Law Enforcement Review Board (CLERB) has the authority to investigate certain complaints that have already been investigated by Memphis Police Department’s Inspectional Services Bureau (ISB). CLERB cannot investigate a complaint if ISB has already determined that the officer did not commit a policy violation.<sup>58</sup> CLERB investigators are able to request copies of BWC recordings from the police department, but receive them only after the department has made redactions that it deems necessary. CLERB investigators thus lack direct access to BWC footage. Unlike many police review agencies, CLERB investigators also do not have subpoena power and cannot otherwise compel the police department to produce evidence.<sup>59</sup>

#### IV. RECOMMENDATIONS

NYPD should be credited for streamlining and improving its process for responding to CCRB requests for BWC footage. Although the pending MOU between CCRB and NYPD will improve the process even further, the envisioned arrangement inherently falls short. CCRB, which is an independent oversight agency conducting police misconduct investigations, needs direct access to BWC footage just as is done in some other jurisdictions around the country. Neither current practices nor the pending MOU provide that level of access. While New York State sealing laws present a unique statutory obstacle that will require a legislative fix to completely solve, there are immediate steps that could be taken to provide CCRB with direct access to the vast majority of NYPD’s BWC footage, while simultaneously saving City time and resources and reducing the City’s potential legal exposure. Therefore, based on the findings in this Report, DOI’s OIG-NYPD makes the following recommendations:

1. NYPD should conduct an internal review to ensure that sealed BWC footage is not being commingled with unsealed BWC footage, and, if necessary, enact software-level safeguards to prevent sealed BWC footage from being viewed (either within or without NYPD) without a court order or waiver.
2. In an effort to more efficiently produce BWC footage and assist CCRB in fulfilling its mandate, NYPD should provide CCRB with independent and direct

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<sup>57</sup> Internal Memorandum, S.F. Police Dep’t., DPA Document Protocol Quarterly Report – 1st Quarter 2020, <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/2020%201Q%20Document%20Protocol%20Letter.pdf>.

<sup>58</sup> *Process Overview*, MEMPHIS CIVILIAN LAW ENF’T REV. BD., <http://clerbmemphis.org/process2> (last visited Feb. 2, 2020).

<sup>59</sup> *Frequently Asked Questions*, MEMPHIS CIVILIAN LAW ENF’T REV. BD., <https://clerbmemphis.org/faq/> (last visited Feb. 2, 2020).

remote access credentials to all BWC storage databases so that BWC videos can be searched and viewed as necessary for CCRB investigations. Such access should be subject to appropriate credentials and audit trails to address security and privacy concerns.

3. Within six months of the release of this Report, NYPD should consult with each of the covered Charter § 808 agencies, as well as OIG-NYPD, to determine whether additional access to BWC footage would benefit them in fulfilling their mandates, and engage in good-faith discussions to expand or streamline access if necessary.