

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING BETWEEN THE NEW YORK CITY POLICE DEPARTMENT AND THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD CONCERNING THE NYPD DISCIPLINE MATRIX

Memorandum of Understanding (“MOU”) entered into on this ____ day of _____, 2021, between the New York City Police Department (“NYPD”), with headquarters at One Police Plaza, New York, New York 10038; and the New York City Civilian Complaint Review Board (“CCRB”), with offices at 100 Church Street, New York, New York 10007 (collectively the “Parties”).

WHEREAS, Section 440 of the New York City Charter gives the CCRB 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 misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language (“FADO”); and

WHEREAS, in accordance with Section 440 of the New York City Charter, the CCRB’s investigators collect and review all available evidence, such as documents and video and audio recordings, and interview all available victims, witnesses, subject officers, and witness officers, among others, as part of its investigative process; and

WHEREAS, the CCRB’s Administrative Prosecution Unit (“APU”), which was created pursuant to a separate Memorandum of Understanding between the CCRB and the NYPD dated April 2, 2012, is authorized to prosecute substantiated cases where the CCRB has recommended that Charges and Specifications be brought against a subject officer, except in those cases where the Police Commissioner retains jurisdiction; and

WHEREAS, Section 440 (d)(1) of the New York City Charter requires that the NYPD provide assistance as the CCRB may reasonably request, cooperate fully with CCRB investigations, and provide the CCRB, upon request, records and other materials necessary for the investigation of complaints submitted to the CCRB, except such records or materials that cannot be disclosed by law, and the CCRB may, pursuant to Section 440(c)(3) of the New York City Charter, issue subpoenas for those records and other materials; and

WHEREAS, subdivision (b) of 38 Rules of the City of New York (“RCNY”) § 15-19 provides that the CCRB and the NYPD may also exchange information pursuant to subdivision (b) of 38 RCNY § 15-12 and 38 RCNY § 15-18 to the extent that the disclosure of such information does not tend to reveal the identity of a party or witness involved in the investigation or prosecution of the substantiated civilian complaint which is the subject matter of the correspondence; and

WHEREAS, Section 434 of the New York City Charter gives the Police Commissioner cognizance and control over the disposition and discipline of the police department and police force; and

WHEREAS, Section 14-115 of the New York City Administrative Code gives the Police Commissioner discretionary power to discipline members of the NYPD for criminal offenses, neglect of duty, violation of rules, neglect or disobedience of orders, conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming of an officer, by reprimand, suspension, with or without pay, or dismissal; and

WHEREAS, in January 2018, the CCRB instituted a pilot program to test the use of an internal disciplinary framework with the goal of creating more consistent voting recommendations across its various Board Panels; and

WHEREAS, in 2018, the NYPD convened an independent panel of experts which, after conducting a top to bottom review of the NYPD's disciplinary system, made thirteen recommendations, one of which was for the NYPD to consider adopting a non-binding disciplinary matrix; and

WHEREAS, Section 14-186 of the New York City Administrative Code establishes an internal NYPD disciplinary matrix, which sets forth an advisory schedule of violations, penalties, and mitigating and aggravating circumstances, or any other factors considered by the commissioner to be relevant to the process of determining the appropriate discipline for police department personnel for substantiated violations of department rules or other policies; and

WHEREAS on January 15, 2021 the NYPD released its Discipline Matrix, developed pursuant to the requirements of Administrative Code section 14-186, and which the public and the CCRB reviewed and provided comments in advance of its adoption; and

WHEREAS, while the CCRB investigates civilian complaints independent from the NYPD, the CCRB's Charter-mandated jurisdiction over FADO complaints brought by civilians against members of the NYPD makes the CCRB an integral component of the NYPD's disciplinary process; and

WHEREAS, the CCRB routinely requests officer employment histories from the NYPD in connection with its APU cases and it is in both Parties' interests to create an efficient process by which the CCRB can request and obtain officer employment histories from the NYPD; and

WHEREAS, shared use of the Discipline Matrix may increase accountability and efficiency in the system by giving the NYPD and the CCRB a framework from which to determine disciplinary recommendations;

NOW THEREFORE, upon the mutual agreement of the Parties, it is agreed as follows:

I. DISCIPLINE MATRIX

1. The goal of this MOU and the Discipline Matrix is to achieve consistent and fair discipline recommendations. As such, the CCRB and the NYPD are committed to the Discipline Matrix serving as a framework for discipline recommendations and to the administration by each agency of the discipline recommendations therein.
2. Where the CCRB's Board substantiates a complaint against a member of service, the CCRB agrees to use penalty guidelines set forth in the Discipline Matrix as the framework for its recommendations and shall only deviate from those recommendations in extraordinary circumstances. The CCRB shall use the subject officer's CCRB history, the NYPD employment history, and the totality of the circumstances, including but not limited to any aggravating or mitigating factors the subject officer applied, to guide its determination of the appropriate recommendation, as outlined in the Discipline Matrix. Such analysis shall be in writing, describing with particularity the basis for the recommended penalty, any aggravating and/or mitigating factors applied and a description of how those factors were applied, and shared with the NYPD, provided that the NYPD produces the subject officer's NYPD employment history to the CCRB, as described in section V.

II. NON-APU CASES

3. In cases where the CCRB's Board recommends Instructions, Formalized Training or Command Discipline, the recommended penalty will be in line with the Discipline Matrix penalty guidelines and take into account all the facts and circumstances, including but not limited to any aggravating or mitigating factors, as well as the NYPD employment history and any other relevant information. Such analysis shall be in writing, describing with particularity the basis for the recommended penalty, any aggravating and or mitigating factors applied and a description of how those factors were applied, and shared with the NYPD. Where there is a finding of guilty, or a plea of guilty, the Police Commissioner and his/her designees will accept the recommended penalty subject to section IV of this agreement.

III. APU CASES

4. In cases where the CCRB recommends charges and specifications, the CCRB agrees to use the Discipline Matrix as the framework for making penalty recommendations during the APU¹ process, subject to section IV of this agreement. The CCRB will take into account all the facts and circumstances, including but not limited to any aggravating or mitigating

¹ The process for when CCRB's APU Unit asserts jurisdiction over administrative prosecutions is outlined in a previous memoranda of understanding between the CCRB and the NYPD executed on April 2, 2012. The MOU also specifies when the NYPD may retain jurisdiction over such prosecutions. Nothing herein this agreement intends to replace or supersede this previous MOU that was executed on April 2, 2012. *See* Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints (Apr., 2, 2012), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf.

factors, the NYPD employment history, and other relevant information. Such analysis shall be in writing, describing with particularity the basis for the recommended penalty, any aggravating and or mitigating factors applied and a description of how those factors were applied, and shared with the NYPD. Where there is a finding of guilty, or a plea of guilty, the Police Commissioner and his/her designees will accept the recommended penalty subject to section IV of this agreement.

5. In cases where the CCRB conducts plea negotiations with subject officers and their attorneys, to be heard by an NYPD Trial Commissioner and presented to the Police Commissioner for determination, the CCRB agrees to recommend penalties that are within the guidelines set forth in the Discipline Matrix, taking into account all the facts and circumstances, including aggravating and mitigating factors, the NYPD employment history, and other relevant information. Such analysis shall be in writing, describing with particularity the basis for the recommended penalty, any aggravating and or mitigating factors applied and a description of how those factors were applied, and shared with the NYPD. Subject to section IV of this agreement, the Police Commissioner will accept the plea recommendation.

IV. DEPARTURES FROM DISCIPLINE MATRIX AND CCRB RECOMMENDATIONS

6. In the extraordinary circumstance that the CCRB determines that a departure from the Discipline Matrix is required by the facts and circumstances, the CCRB shall set forth such departure in writing, describing with particularity the basis for such determination with reference to the guidelines set forth in the Discipline Matrix, including but not limited to aggravating and mitigating factors, and a description of how those factors were applied, and shall share the written determination with the NYPD and make it publicly available.²
7. In the extraordinary circumstance that the Police Commissioner determines that a departure from the Discipline Matrix is required by facts and circumstances, the Police Commissioner shall set forth such departure in writing, describing with particularity the basis for such determination with reference to the guidelines set forth in the Discipline Matrix, including but not limited to aggravating and mitigating factors, and a description of how those factors were applied, and shall share the written determination with the CCRB and make it publicly available.³
8. In the event that the Police Commissioner intends to impose discipline or penalty within the guidelines set forth in the Discipline Matrix that is lower than that recommended by the CCRB, the Police Commissioner shall notify the CCRB, with notice to the Respondent,

² Notwithstanding the above, the publicly available copy of any such written determination referenced in Section IV may be redacted or withheld only where permitted by applicable local, state, or federal laws.

³ For purposes of paragraphs 7 and 8 of this section, such determinations by the Police Commissioner may be made based on recommendations from the NYPD Trials Commissioner or Department Advocate, where applicable.

pursuant to the process specified in the 2012 MOU between the NYPD and the CCRB,⁴ and make the written determination publicly available.

V. ACCESS TO EMPLOYMENT HISTORY⁵

9. In any case where the CCRB investigator recommends that an allegation of misconduct be substantiated, the CCRB's Board must have access to the NYPD employment history of the officer in order to appropriately evaluate the appropriate penalty, including but not limited to aggravating and mitigating factors as set forth in the Discipline Matrix.
10. To obtain the NYPD employment history for an officer against the whom the CCRB has substantiated an allegation, the CCRB investigator shall complete and email a NYPD employment history request form to an electronic address designated by the Police Commissioner, providing as much information as is available at the time of the request. The email shall include, at minimum, the CCRB case number, and the name(s) and tax number(s) of the member(s) of service.
11. The NYPD employment histories provided to the CCRB may contain records and other materials that constitute law enforcement disciplinary records, which may be withheld from public disclosure, or subject to redactions within the meaning of New York Public Officers Law §§ 86(6-9), 87. Pursuant to the CCRB's existing policy, the CCRB shall not disclose any NYPD employment history to any person, organization or agency without first notifying the NYPD's Legal Bureau and providing the NYPD a reasonable opportunity to review the proposed disclosure and assert any applicable legal exemptions. The paragraph shall not apply to disclosures to the NYPD Trial Commissioner, the Department Advocate (DAO), or the NYPD Internal Affairs Bureau. Nothing in this agreement shall bar disclosure compelled by law, but the CCRB shall notify the NYPD of any such disclosure as soon as reasonably practicable.
12. Absent exceptional circumstances, which shall be documented in writing and shared with the CCRB, the NYPD employment histories shall be provided to the CCRB within twenty (20) business days. In instances where the CCRB determines the receipt of the NYPD employment history to be a high priority, the NYPD shall make best efforts to expedite the processing of an officer's employment history.
13. The NYPD shall not refuse to disclose or delay disclosure of an officer's employment history on the ground that it is conducting a concurrent or parallel investigation.

⁴ Nothing in this MOU shall abrogate or modify the obligations of the NYPD to the CCRB pursuant to Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints (Apr., 2, 2012), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf.

⁵ For purposes of the Section V, "employment history" refers to a document which was previously supplied by the NYPD to the CCRB in cases where CCRB's Administrative Prosecution Unit handled the prosecution of substantiated allegations resulting in charges and specifications.

14. The CCRB will ensure that all CCRB investigator and staff members granted access to NYPD documents will maintain the confidentiality of all information observed and obtained. Failure to maintain such confidentiality may result in termination of this agreement subject to the process outlined in Paragraph X.

VI. AMENDMENTS TO THE DISCIPLINE MATRIX

The Discipline Matrix is developed by and remains solely within the discretion of the NYPD. The NYPD shall have the authority to amend the Discipline Matrix at any time, but, consistent with Administrative Code Section 14-186, shall only do so following notice by posting such amendment on the NYPD's website, with an accompanying description of the modification as needed. The CCRB shall be given notice and an opportunity to provide comment on any proposed changes.

VII. OTHER LAW

Nothing in this agreement shall be interpreted to abrogate or otherwise conflict with State or Local law, or to modify or curtail the powers of the Police Commissioner under section 75 of the New York Civil Service Law or section 434 of the NYC Charter.

VIII. ANNUAL REVIEW OF THIS AGREEMENT

On August 1, 2021 and annually thereafter, the NYPD and the CCRB agree to review whether this agreement is accomplishing the mutual goal of consistent and fair discipline as well as the Discipline Matrix serving as a framework for discipline recommendations and to the administration by each agency of the discipline recommendations therein, as well as to consider any potential modifications to the agreement. Such reviews may include an analysis of relevant data such as the NYPD concurrence rate with the CCRB penalty recommendations, agency rates of deviation from the Discipline Matrix, facilitation and access to employment history, etc., in guiding any potential amendments to this agreement.

IX. AMENDMENT AND MODIFICATION

If at any time the Parties to this MOU determine that this MOU cannot be implemented substantially in the manner set forth herein for any reason, the parties shall act to amend such rules as may be appropriate. Any amendments or modifications must be writing and signed by both Parties. Unless explicitly stated, nothing in this MOU shall abrogate or modify the obligations of the NYPD to the CCRB pursuant to 2012 MOU between the CCRB and the NYPD.

X. TERMINATION

Termination of this Agreement requires written notice and reason(s) for termination to the other Party. Following the notification, the other Party shall have a period of thirty (30) days to cure before the termination takes effect.