



MEMORANDUM OF SUPPORT

Intro. 0938-2023

A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York city police department to provide the civilian complaint review board with direct access to officer body-worn camera footage and to establish related procedures

March 27, 2023

Summary of Provisions

Intro. 0938-2023 (Adams) would require the New York City Police Department to provide the Civilian Complaint Review Board (CCRB) with direct, real-time connection to its body-worn camera footage servers, which would include, at minimum, the ability to remotely access, search, and store the footage. The Police Department would be forbidden from limiting the CCRB's access unless otherwise required by law. Additionally, the bill would require the NYPD segregate its sealed body-worn camera footage in accordance with relevant laws. It would add a new section to Title 14 of the administrative code.

Statement of Support

Citizens Union supports Intro. 0938-2023 because it would expedite and improve the quality of investigations into police misconduct and wrongdoing, thus strengthening appropriate oversight and accountability of the NYPD. The bill would reduce the limitations investigative agencies face in accessing police officers' body-worn camera footage through codifying the timing, type, and uses of such access. By providing prompt and full access to body-worn camera footage, Intro. 0938-2023 would ensure the CCRB arrives at a clear and fair interpretation of events in a timely manner and prevent the Police Department from unjustifiably denying access to effective investigative resources.

Details of Position

Pursuant to the New York City Charter, the Civilian Complaint Review Board (CCRB) has the power to "compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of matters within its jurisdiction."¹ In practice, however, the New

¹ Charter Chapter 18-A, § 440(c)(3)

York City Police Department (NYPD) withholds significant, relevant information from the CCRB or produces it after substantial delays and often with redactions.²

The NYPD provides limited access to body-worn camera footage

The NYPD's failure to provide prompt access to relevant materials for investigations is especially apparent in the use of body-worn camera (BWC) footage. Since the introduction of body-worn cameras in 2014, the NYPD has resisted and delayed efforts by the CCRB to obtain the needed footage. In 2019, the two agencies agreed to a cumbersome procedure in a memorandum of understanding (MOU) for providing access to CCRB investigators, which still gave the NYPD control of the footage and significantly hindered the CCRB.

Although the MOU established a timeline for the NYPD to produce BWC footage to the CCRB once that footage has been located by NYPD staff, it did not set a deadline by which the NYPD must begin the search for BWC footage, leading to significant backlogs and delays.

Further delays are caused by the NYPD comingling sealed and unsealed records on their BWC footage system. Under state law, arrest records must be sealed in several cases and accessible only to authorized individuals.³ Because sealed and unsealed records are not separated – a practice that may be in violation of the law⁴ – NYPD Legal Bureau attorneys need to review and screen each search request from outside agencies prior to their production.

Although the MOU between the CCRB and NYPD created the conditions to allow individual CCRB investigators the ability to request access and review BWC footage in full and unedited, it also allowed the NYPD to deny, edit or redact any BWC footage request for production to the CCRB on any grounds so long as it provides a rational for doing so.

The NYPD justifies its failure to provide the CCRB with prompt access to documents and other relevant materials based on a myriad of claims of privilege and privacy concerns, some based on statutes designed to protect innocent civilians, not police officers accused of misconduct. It is easy to get lost in the competing legal arguments involved, but for the most part, the NYPD's arguments against sharing materials with the CCRB do not appear to be well supported, and in any case, it should be the Corporation Counsel, not the NYPD, who makes the legal judgment as to whether there are any current legal impediments to the NYPD sharing all relevant materials with the CCRB. Intro. 0938-2023 would

² See for example, the Department of Investigation's report into NYPD Response to the 2020 George Floyd Protests, demonstrating NYPD resistance to the production of information not only to the CCRB but also to the Inspector General for the Police Department and the Mayor's Commission to Combat Police Corruption (<https://www.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>), See also, Eric Umansky and Mollie Simon, The NYPD Is Withholding Evidence From Investigations Into Police Abuse, Pro Publica (Aug. 17, 2020), <https://www.propublica.org/article/the-nypd-is-withholding-evidence-from-investigations-into-police-abuse>

³ Including when the prosecution drops charges, the case is dismissed or the offender is a juvenile, and sometimes in the case of a conviction. See more at <https://www.nycourts.gov/courthelp/criminal/sealedRecords.shtml>

⁴ Sharing Police Body Worn Camera Footage in New York City, Office of the Inspector General for the NYPD (OIG-NYPD), November 2021 <https://www.nyc.gov/assets/doi/press-releases/2021/November/21BWCRelease.Rpt.11.05.2021.pdf>

clarify the legal framework in such cases by requiring the NYPD to segregate its sealed body-worn camera footage in accordance with relevant laws.

We note that a similar problem faces other agencies that require independent access to BWC footage to fulfill their mandates for oversight over the NYPD. The Office of the Inspector General for the NYPD (OIG-NYPD) at the Department of Investigations, which is charged by Charter §808 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,”⁵ has an express interest in also being provided access to BWC footage. Other §808 agencies, including the Law Department, the Comptroller, the Commission to Combat Police Corruption, and the Commission on Human Rights, may also need some level of access to body-worn camera footage.

Limited access to footage impedes investigations into police misconduct

These limitations present substantial obstacles to investigations of complaints of police misconduct. Since its introduction in 2014, the NYPD’s BWC program has become the largest in the country, with 24,000 of its members equipped with the technology.⁶ The result of years of unconstitutional “stop and frisk” policing – through which the NYPD disproportionately targeted and infringed on the civil rights of Black and Hispanic communities – BWC footage has played a critical role in producing video evidence crucial to the exoneration and protection of citizens as well as members of the NYPD.

The footage allows the CCRB to resolve conflicting testimonies and receive a clearer interpretation of the circumstances of an encounter. They have been especially effective in getting fully investigated complaints closed “on the merits,” allowing the CCRB to determine whether an officer’s actions are misconduct. CCRB data shows that the rates of both “substantiated” and “unfounded” findings significantly increased in investigations with BWC footage.⁷

In fact, one of the key reasons for the agency’s inability to complete investigations of complaints related to the 2020 protests was problems with getting BWC footage, including “delayed responses, false positives (NYPD turned over footage that was either incorrect or irrelevant in response to a video request), false negatives (the NYPD reported that queries for the requested video footage did not return any results, but the footage was later discovered), and inconsistent responses by the NYPD.”⁸

The delays also run counter to the city’s stated goals for the CCRB, as set by the Mayor’s Management Report, including improving the timeliness of investigations.⁹ They also contribute to a high rate of “non-concurrence” in disciplinary actions between the CCRB recommendations and the Police Commissioner’s

⁵ Charter Section 808(b)

⁶ CCRB Semi Annual Report 2022 https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_semi_annual.pdf

⁷ For example, in the first half of 2022, 78% of complaints without video evidence closed “not on the merits”, i.e. because the CCRB did not have enough evidence to determine the outcome, compared to 24% of investigations with BWC evidence. (CCRB Semi Annual Report 2022)

⁸ CCRB Semi Annual Report 2022 https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_semi_annual.pdf

⁹ Mayor’s Management Report, CCRB, Goal 1a

decision; the Police Department justifies dismissing many CCRB recommendations by citing delays in the disciplinary process.¹⁰

There has been some progress made in providing footage. Under a new protocol, the Police Department's Legal Bureau is now responsible for fulfilling the CCRB's request, locating and passing along BWC footage. The average business days it took for the NYPD to respond to CCRB footage requests dropped from 48 in 2019 and 58 in 2020 to 8 days in 2021 and 4 days in the first half of 2022. Most recent data shows that 70% of CCRB investigations include BWC footage.¹¹

However, the basic point is that the city currently runs two parallel systems for disciplining police officers. One is run by the NYPD through its Internal Affairs Bureau and has access to all relevant information in the possession of the Police Department. The other is run by the CCRB and has access only to the materials that the NYPD decides to turn over. This situation is intolerable.

The best way to ensure the safe and democratic application of policing is to strengthen and streamline systems of oversight and accountability. The CCRB should have prompt and full access to footage from body-worn cameras and all other NYPD documents and materials relevant to its investigations.

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¹⁰ Testimony of Police Commissioner Keechant L. Sewell. New York City Council Committee on Public Safety, Preliminary Budget Hearing, 03/20/23

¹¹ CCRB annual and semi-annual reports, 2020, 2021, 2022