

MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING BETWEEN THE NEW YORK CITY
POLICE DEPARTMENT AND THE NEW YORK CITY CIVILIAN COMPLAINT
REVIEW BOARD**

Memorandum of Understanding ("MOU") entered into on this 21 day of Nov, 2019, 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 CCRB the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege 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, CCRB's investigators collect and review all available evidence, such as documents and video and audio recordings, including footage from body worn cameras ("BWC"), and interview all available victims, witnesses, subject officers, and witness officers, among others, as part of its investigative process, and

WHEREAS, Section 1-23(e) of Title 38-A of the Rules of the City of New York states that the CCRB may obtain records and other materials from NYPD which are necessary for the investigation of complaints submitted to the CCRB, except such records and materials that cannot be disclosed by law, and the CCRB may issue subpoenas for those requests; and

WHEREAS, the CCRB's Administrative Prosecution Unit ("APU"), which was created pursuant to a separate Memorandum of Understanding between CCRB and 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 of the New York City Charter requires that NYPD provide assistance as 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 CCRB, except such records or materials that cannot be disclosed by law; and

WHEREAS, Section 434 of the New York City Charter gives the Police Commissioner cognizance and control over the disposition and discipline of the 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 department 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, while the CCRB investigates civilian complaints independent from NYPD, CCRB's Charter-mandated jurisdiction over FADO complaints brought by civilians against members of NYPD makes the CCRB an integral component of NYPD's disciplinary process;

WHEREAS, the NYPD has provided body-worn cameras ("BWC") to police officers on patrol and has begun wider deployment of BWCs to officers throughout the department, and the camera footage routinely captures interactions between police officers and members of the public whom they encounter while on patrol;

WHEREAS, the CCRB routinely requests BWC footage from the NYPD in connection with investigations it conducts and it is in both parties' interests to create an efficient process by which CCRB can request such footage from NYPD and NYPD can provide such footage to CCRB;

WHEREAS, CCRB and NYPD agree that premature submission of a search request, without information that can be obtained through a diligent investigation prior to submission of the form, is counterproductive and contrary to the intent of this agreement as it will routinely result in multiple requests in the same case causing delays in providing video footage to the CCRB by the NYPD;

WHEREAS, by signing this agreement the NYPD intends to expeditiously process requests for BWC footage it receives from CCRB and to provide relevant footage to CCRB, and CCRB intends to make diligent efforts to collect and identify relevant facts and information in connection with complaints it receives before requesting BWC footage so that requests made to

the NYPD will contain as many facts as possible, making it easier for NYPD to identify relevant footage and significantly reducing the need for NYPD to conduct multiple searches for each case;

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

I. CREATION OF BWC SEARCH AND REVIEW FACILITY

1. NYPD will set up a secure search and viewing room at 100 Church Street, 12th Floor, New York, NY, 10007, or some other mutually convenient location, with at least ten (10) computer terminals ("Secure Room"). A sufficient number of computer terminals will be staffed by an NYPD employee and a CCRB employee during all operating hours specified below, for the purpose of entering search criteria and identifying BWC video(s) responsive to search requests submitted by the CCRB. The remaining computers will be available for CCRB staff to view BWC videos that were responsive to CCRB's particular search requests.
2. The NYPD and CCRB will each make a supervisor available to address issues that may arise in the Secure Room.
3. The Secure Room will be accessible to CCRB personnel during normal business hours—Monday to Friday, specific times to be agreed upon by the NYPD and the CCRB.
4. Each CCRB investigator and staff member granted access to the secure room will sign a confidentiality and non-disclosure agreement in regard to the information observed or obtained in the Secure Room.
5. Each CCRB investigator will have their own unique user name and password for both the Viewu Solution and Axon Evidence.com systems, which can only be logged into on computers located in the Secure Room dedicated for this purpose. All logins under each user name will be recorded and subject to audit by the NYPD. Misuse of a user name and/or access privileges or improper dissemination of any information obtained from search results shall be grounds for revocation or suspension of the offender's access privileges by the NYPD.
6. CCRB investigators will obtain the same training for both the Viewu Solution and Axon Evidence.com systems, by each system's vendor, as is provided to NYPD personnel for the searching and retrieval of video evidence, including all updates and refresher courses. Costs for such training will be borne by CCRB.

II. SEARCHING AND REVIEW OF BWC FOOTAGE

1. CCRB investigators may submit search requests for BWC video in any case where the CCRB has received a complaint from a member of the public against a uniform member of the NYPD for alleged incidents of misconduct which fall under CCRB's jurisdiction.

2. In order to initiate a search, the CCRB investigator must complete a BWC search request form, providing as much information as is available to the investigator at the time of the request. Prior to submitting the search request, the CCRB investigator shall review all records that already have been provided by the NYPD, to determine if those records contain information needed for the search request form and shall diligently conduct as many investigatory steps as reasonable to locate additional information necessary to conduct a comprehensive search. After the request form is complete, the CCRB investigator shall email the search request form to BWC-Legal@nypd.org.
3. After receiving the BWC search request form, the NYPD, in the presence of a CCRB employee, will search both the Viewu Solutions and Axon Evidence.com software to locate any videos responsive to the search criteria.
 - a. The NYPD will use the search terms listed on the search form provided by the CCRB investigator. The search terms submitted by CCRB must be reasonably related to the information provided in the complaint or information obtained during CCRB's investigation. Except in exceptional circumstances, CCRB shall submit no more than ten (10) search terms in a search request.
 - b. If the search criteria is too broad or too narrow to reasonably identify relevant BWC video(s), the NYPD and CCRB employees shall confer to adjust the search parameters, and, if necessary, request additional information from the CCRB investigator who submitted the search request.
 - c. The CCRB employee will determine which BWC video(s) returned by the search are relevant and should be made available for viewing by the investigator making such request.
 - d. Once a video is determined to be relevant:
 - i. In Viewu Solutions, each video will be tagged in the event field with the corresponding CCRB number.
 - ii. In Axon Evidence.com, a case will be created and titled with the corresponding CCRB case number.
 - e. The entire NYPD BWC database shall be available for search. To the extent that certain videos are on "lockdown" and are unavailable, the search results shall reflect that the video exists, but that it is unavailable, or NYPD personnel with access to "lockdown" videos will perform an independent search of such videos and represent to CCRB that the requested video exists, but is not accessible.
4. BWC video(s) deemed relevant and responsive to a search request will be shared in its entirety by NYPD staff and accessible by CCRB via the terminals in the Secure Room designated for video review.

- a. None of the video(s) uploaded for review purposes shall be redacted, clipped, edited, deleted or altered in any way.
 - b. The CCRB investigator who submitted the BWC search request shall be notified when the BWC video(s) becomes accessible in the Secure Room. The CCRB investigator will appear at the Secure Room, at a time convenient for the investigator, and review the uploaded video(s) to determine which video(s), or portion(s) thereof, is relevant and needed for the CCRB investigation.
5. CCRB investigators are strictly prohibited from making any sound or video recordings of any BWC video, or segments thereof, on cell phones or other recording devices.
6. CCRB investigators may take notes during the review of BWC video.
7. CCRB investigators shall not use any information obtained during this process that is unrelated to the incident under investigation.
 - a. If, while reviewing video related to a complaint, the CCRB investigator recognizes or believes that he or she has observed potential misconduct by an NYPD uniform member of the service (“UMOS”) unrelated to the incident under investigation by the CCRB, the investigator shall refer the incident to the NYPD’s Internal Affairs Bureau. The CCRB investigator shall not commence an investigation into the unrelated incident.
 - b. The NYPD IAB Liaison will inform the CCRB of the actions, including dispositions, it has taken in response to any such referral.
 - c. If CCRB subsequently receives a complaint from a member of the public regarding the incident that was referred to Internal Affairs Bureau, the NYPD will provide the footage related to the initial referral, pursuant to a new request from CCRB, and subject to the subsequent provisions of this agreement.

III. PRODUCTION OF RESPONSIVE FOOTAGE

1. After the CCRB investigator determines which shared BWC video(s), or portion(s) thereof, is relevant to the CCRB investigation, the CCRB investigator shall send an email to BWC-Legal@nypd.org requesting the specific footage to be shared with the CCRB for download purposes.
 - a. The email shall include, the CCRB case number, the requested file name(s), name(s) of the UMOS, if known, and the time stamps for the specific portion of the BWC video(s) being requested, in those instances where the entire video is not being requested.

2. Absent exceptional circumstances, requested BWC video(s) not requiring redaction shall be provided to the CCRB within ten (10) business days. The NYPD shall make best efforts to provide redacted video(s) within twenty-five (25) business days.
3. The entirety of the requested footage shall be provided, subject to the following provisions and subsection (d) of subdivision (3) of this section.
 - a. If the BWC video request is denied or all or any portion of the requested footage is redacted, clipped, altered, or deleted in any way, the changes must be specified in writing by the NYPD along with an explanation and rationale for the denial, redaction, or clipping, including specific citation to the statute (including subdivision(s), where applicable) and/or legal provision relied upon, if applicable.
 - b. NYPD may redact and/or clip the provided footage according to the following considerations, as well as subsection (d) below:
 - i. Medical treatment being provided to any private citizen or UMOS.
 - ii. Any NYPD computer, mobile data terminal, cell phone, or other equipment depicting: (a) confidential databases or (b) confidential information.
 - iii. Any UMOS cell phone depicting personal photos, phone numbers or social media accounts unrelated to the investigation.
 - iv. Any key pad code entries for Department facilities.
 - v. Protecting the identity of any undercover officer or confidential informant. In cases where an undercover officer's image is redacted, NYPD will inform CCRB of the individual's UC Number.
 - c. For recordings related to cases sealed pursuant to Criminal Procedure Law §§ 160.50/160.55 or Family Court Act §§ 375.1, 375.2, recordings containing the identity of the victim of a sex crime pursuant to Civil Rights Law § 50-b, or recordings depicting a juvenile questioned or detained by the Department, if the CCRB does not have a release from the individual(s) whose case has been sealed, from the victim(s) of the sex crime, or the parent/guardian of the juvenile, the NYPD will blur the faces and redact the audio of all personally identifying information such as name, date of birth, and address, as well as the audio of any admission of a sex offense pursuant to CRL 50-b of the individual(s) from whom the CCRB has not obtained consent or a release.
 - d. NYPD shall not refuse to disclose or delay disclosure of footage on the ground that it is conducting a concurrent or parallel investigation, except for those investigations being conducted by the Force Investigation Division and other sensitive force investigations not being conducted by FID. Notwithstanding, upon the conclusion of the investigation, the BWC footage will be shared with CCRB.

- e. Disputes over whether a video is relevant to a CCRB investigation will be resolved through the procedure described in Section IV, entitled “Dispute Resolution.”
 - f. CCRB will adopt procedures to obtain valid consent, when possible, to view and use BWC footage without redaction or blurring at the start of its investigation. Informed, verbal consent shall be sufficient. CCRB investigators shall affirm in writing on their search request form that they have obtained valid consent from the proper party, including the name of the individual providing consent.
 - (i) CCRB will endeavor to obtain written waivers/consent from depicted complainants, if possible, and will ensure that CCRB employees accepting complaints via telephone, in-person or otherwise use scripted language seeking a verbal waiver/consent from depicted complainants for recordings related to cases sealed pursuant to Criminal Procedure Law §§ 160.50/160.55 or Family Court Act §§ 375.1, 375.2, recordings containing the identity of the victim of a sex crime pursuant to Civil Rights Law § 50-b, or recordings depicting a juvenile,.
4. NYPD shall share the requested footage via the Viewu Solutions or Axon Evidence.com software systems with the CCRB staff designated in both systems, which will only include members of the CCRB NYPD Liaison Unit. The footage may be downloaded by members of the CCRB NYPD Liaison Unit which has the necessary download capabilities.

IV. DISPUTE RESOLUTION

- 1. If the CCRB disagrees with the NYPD’s denial, redaction or clipping, of requested BWC video, the Parties shall meet and confer to try to resolve the dispute.
- 2. If the Parties are unable to resolve the dispute, the dispute will be referred to the New York City Law Department (“Law Department”) for review. Disputes will be resolved by the Corporation Counsel or his or her designee. The dispute resolution request shall include a copy of the NYPD’s denial, the CCRB’s explanation for why the recording should have been disclosed, and any other relevant information. A person designated by the NYPD’s Deputy Commissioner, Legal Matters shall be copied on any dispute resolution request sent by the CCRB to the Law Department.
- 3. Both parties agree to timely provide the Law Department with any materials or information it requests in order to resolve the dispute. The NYPD and CCRB agree to accept the determination of the Law Department.
- 4. If prior to the Law Department issuing a determination, the NYPD reconsiders its denial, redaction, editing, deletion or clip, it shall immediately provide the CCRB with the

recording and notify the Law Department that the dispute has been resolved and no determination is necessary. If the CCRB withdraws its challenge to the NYPD's denial, redaction, or clip, prior to the Law Department issuing a determination, it shall promptly notify the NYPD and the Law Department that no determination is necessary.

V. CONFIDENTIALITY

1. The CCRB agrees that records and BWC recordings obtained from the NYPD, and any materials created therefrom, are confidential, must be kept secure and may not be disclosed or made public, except as may be mandated by lawful order of a court of competent jurisdiction or statute.
2. The Parties shall comply with all applicable laws, rules, regulations, and agreements pertaining to the confidentiality, privacy and security of the information accessed pursuant to this MOU.
3. In the event that the CCRB receives a subpoena, judicial order, or other legal process for copies of records related to a sealed case, the CCRB shall notify the NYPD, in writing as soon as practicable. The CCRB shall not release the records without first notifying the NYPD.
4. In the event that the CCRB receives a Freedom of Information Law ("FOIL") request for records that include NYPD records obtained pursuant to this MOU, the CCRB shall consult and cooperate with NYPD in responding to the FOIL request. Both NYPD and CCRB shall each designate a FOIL representative for the purpose of resolving any disagreements. If the Parties cannot agree on which, if any, records should be disclosed pursuant to FOIL, the records in dispute shall not be disclosed until the Law Department issues a determination.
5. Nothing in this Agreement shall prevent the CCRB from notifying complainants and/or victims of the findings of the CCRB's investigation.

VI. TERM AND TERMINATION

1. Termination of this Agreement requires thirty (30) days written notice to the other Party. Subdivision (1) of Section I of this MOU shall become effective immediately upon the execution of this agreement by the Parties, however, the remaining portions of this

agreement shall not take effect until the satisfaction of Subdivision (1) of Section I. This agreement shall remain in effect until terminated in writing by either party.

VII. NOTICES

1. Notices to be sent pursuant to this Agreement shall be sent to:

If to CCRB:

NYC Civilian Complaint Review Board
General Counsel
100 Church Street, 10th Floor
New York, NY 10007

If to NYPD:

Deputy Commissioner, Legal Matters
New York City Police Department
One Police Plaza, Room 1406
New York, NY 10038

VIII. MERGER AND MODIFICATION

1. This MOU constitutes the entire agreement among the Parties, and merges all prior discussions, agreements or understandings regarding its subject matter into it. No prior agreements, oral or otherwise, regarding the subject matter of this MOU, shall be deemed to exist or to bind either of the Parties hereto.
2. This MOU shall only be modified in a writing signed by the Parties.

IX. NO THIRD-PARTY BENEFICIARY

1. This MOU shall be binding upon and for the benefit of the Parties hereto and their respective successors and permitted assigns. The provisions of this MOU shall be for the sole benefit of the Parties hereto and no other person or entity shall be a third-party beneficiary thereof.

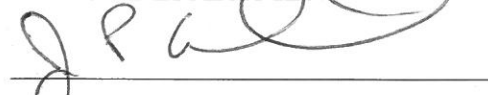
IN WITNESS THEREOF, the Parties have executed this MOU by the signatures of duly authorized officials.

NEW YORK CITY
CIVILIAN COMPLAINT REVIEW BOARD



Fred Davie
CHAIR, CCRB

NEW YORK CITY
POLICE DEPARTMENT



James P. O'Neill
POLICE COMMISSIONER