

New York City Civilian Complaint Review Board

Complaint Processing

Report 2020-N-9 | October 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the New York City Civilian Complaint Review Board (CCRB) has an appropriate and sufficiently documented basis for the complaints referred to the New York City Police Department (NYPD) and other agencies and for truncated complaints,¹ and if CCRB is conducting investigations in compliance with New York City regulations and CCRB's internal policies and procedures. The audit covers the period from January 2018 through May 2021.

About the Program

CCRB receives, investigates, prosecutes, mediates, hears, makes findings, and recommends action on civilian complaints filed against members of the NYPD. CCRB has jurisdiction over complaints that allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language – collectively referred to as FADO. Although CCRB investigators make recommendations to CCRB's Board on how each allegation should be resolved, the Board decides the disposition of each allegation based on the majority vote of a panel of three Board members. CCRB reported that it received 3,872 and 1,749 complaints within its jurisdiction in 2020 and the first half of 2021, respectively.

Key Findings

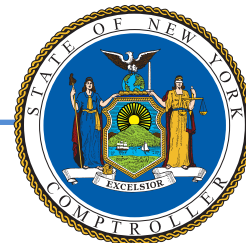
CCRB does not complete investigations in a timely manner and does not have performance measures in place to effectively monitor lengthy investigations. CCRB reported that it took 211 and 248 days, on average, to fully investigate and close cases in 2018 and 2019, respectively. Investigation durations significantly increased during the COVID-19 pandemic, with CCRB reporting averages of 317 and 430 days to fully investigate and close cases in 2020 and the first half of 2021, respectively. In October 2018, CCRB officials reported to the Board that the internal expectation to fully investigate a case in 90 days is not being met and is not realistic. While CCRB officials attributed long investigation times in part to NYPD's delays in providing information or access to members of service, we identified weaknesses in CCRB's oversight of timeliness of investigations and monitoring of delays that could jeopardize its ability to hold officers accountable for misconduct. However, CCRB did not revise this time frame or create effective ways to monitor causes of delays. For example, CCRB has automated notifications that cases are nearing the statute of limitations. However, given the time it takes to address delays during investigations, these notifications may not occur timely enough for CCRB to effectively address such cases.

Furthermore, CCRB did not always follow its own complaint processing policies and procedures. For example, CCRB truncated a sampled complaint while there was an outstanding request to the NYPD for body-worn camera footage. According to CCRB's Investigative Manual, no case should be recommended for truncation if there is an outstanding request for body-worn camera footage. In addition, we determined CCRB did not follow the recommended penalties stated by its memorandum of understanding (MOU) with the NYPD over disciplinary penalties in one case soon after the MOU was effective.

¹ A truncated case is when an investigation is attempted but is not completed.

Key Recommendations

- Augment existing formal processes with appropriate controls to ensure that the NYPD responds to CCRB's requests for documentation and interviews in a timely manner, and improve the efficiency, thoroughness, and effectiveness of its investigations.
- Enhance formal processes to help ensure that cases approaching the 18-month statute of limitations are identified and prioritized more timely, allowing sufficient time to resolve them and recommend penalties as appropriate.
- Enhance formal processes to assess the extent to which various causes of delays affect the timeliness of investigations and take appropriate remedial action.



**Office of the New York State Comptroller
Division of State Government Accountability**

October 5, 2022

Arva Rice
Chairperson
New York City Civilian Complaint Review Board
100 Church Street
New York, NY 10007

Dear Ms. Rice:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Complaint Processing*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Board	CCRB's civilian Board	<i>Entity</i>
CCRB	New York City Civilian Complaint Review Board	<i>Auditee</i>
CTS	CCRB's complaint tracking system	<i>System</i>
FADO	Excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language	<i>Key Term</i>
Flip	Occurs when the Board panel makes a different disposition of an allegation than what the investigator recommends	<i>Key Term</i>
IAB	NYPD's Internal Affairs Bureau	<i>Unit</i>
Investigative Manual	CCRB's Investigative Manual	<i>Policy</i>
MOS	Member of service	<i>Key Term</i>
MOU	Memorandum of understanding	<i>Key Term</i>
NYPD	New York City Police Department	<i>Agency</i>
NYPD Guidelines	NYPD Disciplinary System Penalty Guidelines	<i>Policy</i>
Patrol Guide	NYPD Patrol Guide	<i>Policy</i>
Truncate	Refers to cases where the complaint is withdrawn, or no complainant or alleged victim is available for an interview and there is no additional evidence upon which the investigation can proceed	<i>Key Term</i>

Background

The New York City Civilian Complaint Review Board (CCRB) is an independent oversight agency for the largest police force in the nation. CCRB is empowered to receive, investigate, prosecute, mediate, hear, make findings, and recommend action on civilian complaints filed against members of the New York City Police Department (NYPD), commonly referred to as members of service (MOS).

Although currently an all-civilian entity, CCRB has its roots as an entity within the NYPD. From 1953 to 1987, it largely operated as an all-police organization, with police officers conducting investigations of their fellow officers and deputy police commissioner board members rendering decisions on whether or not to recommend discipline. In 1987, following legislation passed by the New York City Council, CCRB, including its investigations arm, was reorganized as a joint civilian–police entity. In 1993, CCRB was restructured to its current, all-civilian form.

Pursuant to the New York City Charter, CCRB consists of a Board of 15 civilians: five appointed by the New York City Council, five by the Mayor, three with law enforcement experience designated by the Police Commissioner and appointed by the Mayor, one by the New York City Public Advocate, and one by the Mayor and the Speaker of the New York City Council to serve as Chairperson. In addition, as specifically relates to this audit, CCRB includes an Investigations Division, which investigates the complaints – a process that includes interviewing witnesses and gathering relevant records from the NYPD. CCRB also employs analysts and lawyers who gather data to address policy challenges that impact CCRB. As of New York City fiscal year 2021, CCRB’s budgeted headcount was 221 positions and is 0.65% of NYPD’s budgeted uniformed headcount. This allows CCRB to retain a proportional number of staff when and if New York City changes the size of the NYPD’s police force in the future.

Under the New York City Charter, Chapter 18-A, CCRB originally had jurisdiction over complaints that allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language (collectively referred to as FADO). In March 2020, CCRB’s jurisdiction expanded to include investigation of the truthfulness of official statements made by MOS during the resolution of a CCRB complaint. In addition, CCRB’s jurisdiction was clarified in 2021 to include investigation of sexual misconduct and racial profiling allegations. While CCRB is responsible for investigating allegations and recommending disciplinary action, it does not have the power to bind the NYPD to any specific policy recommendation or disciplinary outcome. The Police Commissioner ultimately decides which penalties, if any, to impose.

Some complaints may be referred to another entity with jurisdiction (either entirely, jointly, or partially), such as the Internal Affairs Bureau (IAB), which investigates harassment, corruption, and criminal behavior allegations, or the Office of the Chief of Department, which investigates alleged lower-level violations of the rules established in the NYPD Patrol Guide (Patrol Guide), which NYPD must follow in carrying out their duties.

Complaint Review Process

Civilian complaints can be filed in person, by telephone or voicemail, or via CCRB’s online complaint form or referred from other governmental entities (e.g., complaints filed directly at NYPD precincts). CCRB has established procedures for conducting investigations, which are documented in its Investigative Manual. During an investigation, investigators gather documentary and video evidence and conduct interviews with complainants, victims, civilian witnesses, and subject and witness officers (see Exhibit for definitions) to determine, based on guidance from CCRB legal counsel, whether there was misconduct pursuant to applicable laws and rules.

Not all complaints receive a full investigation. For instance, some may be resolved through mediation. For others, the investigation may be closed due to “truncation,” as when a complaint is withdrawn, or no complainant or alleged victim is available for an interview and there is no additional evidence upon which the investigation can proceed.

For allegations that receive a full investigation, the investigator submits a closing report of the case to the Board, including a recommendation of disposition for each allegation, generally either identifying the allegation(s) as substantiated, exonerated, unfounded, or unsubstantiated or as “Officer Unidentified” if the officer accused of misconduct cannot be identified (see Exhibit for definitions).

Based on a review of the case, including information in the investigator’s report, a panel of Board members – also guided by CCRB’s legal counsel and following applicable laws and rules – makes a final determination of the disposition of each allegation based on a majority vote. Where the Board panel makes a different disposition than what the investigator recommends (known as a “flip”), the reasons for the deviation must be documented. When the Board panel determines that the allegation of misconduct is substantiated, the case, along with the panel’s discipline recommendation, is advanced to the NYPD Police Commissioner.

For each allegation of misconduct, the Board recommends one of five basic types of discipline, as follows (in ascending order of severity):

- Instructions (e.g., re-training)
- Formalized training
- Command Discipline A – misconduct examples: failure to maintain neat and clean professional appearance, failure to perform duties in connection with court appearances, failure to properly perform patrol or other assignment; carries a penalty range from oral admonishment to forfeiture of up to 5 days
- Command Discipline B – misconduct examples: failure to give name and shield number to person requesting; failure to respond, report disposition promptly, or acknowledge radio call directed to unit; carries a penalty of forfeiture of up to 10 days.

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- Charges and Specifications – misconduct examples: accessing confidential information without police necessity; body-worn camera – unintentional or negligent failure to record a prescribed event; racial profiling/bias-based policing; carries a penalty range from instructions to forfeiture of up to 30 days to termination.

Disciplinary Process

Pursuant to the New York City Charter, New York City Administrative Code, and New York State Civil Service Law, the Police Commissioner has final approval over all disciplinary action – and can accept, reject, or modify CCRB’s recommendations. As of November 2019, if the Police Commissioner decides to impose a lesser discipline than CCRB recommended, the Police Commissioner must submit a letter of explanation to CCRB supporting the decision, as required by amendments to the New York City Charter.

When CCRB recommends Charges and Specifications – disciplinary actions recommended for the most serious violations within CCRB’s jurisdiction – the substantiated allegations are usually prosecuted by CCRB’s Administrative Prosecution Unit. The MOS can accept a plea offer from an Administrative Prosecution Unit prosecutor in lieu of a trial. If the officer chooses to go to trial and is found guilty, the trial commissioner will recommend a penalty. The Police Commissioner may accept, reject, or modify any plea or trial verdict or penalty recommendation.

In January 2021, in an effort to improve transparency and consistency of the NYPD internal discipline process, the NYPD established the Disciplinary System Penalty Guidelines (NYPD Guidelines), which outlines the presumptive penalties for a wide variety of offenses, including police misconduct during encounters with members of the public. Subsequently, the NYPD and CCRB signed a memorandum of understanding (MOU) generally requiring both entities to follow the NYPD Guidelines in recommending and issuing officer penalties for misconduct. CCRB and the NYPD Commissioner can deviate from the recommended penalties in the NYPD Guidelines only in extraordinary circumstances and must document the rationale for the deviation in writing.

Pursuant to Civil Service Law Section 75, any disciplinary action must be commenced within 18 months of the date of the incident, unless the misconduct, if proved in court, would constitute a crime. For cases that are fully investigated, CCRB set an internal benchmark of 90 days to complete a full investigation (from the date a complaint is received to when the investigator makes a disposition recommendation to the Board). During the COVID-19 pandemic, the 18-month statute of limitations was temporarily suspended through November 2020.

CCRB reported that it closed 4,005 cases in 2018; 4,796 cases in 2019; 3,293 cases in 2020; and 2,688 cases in 2021 (see Table 1 for a breakdown by closure type). The time to complete full investigations averaged 211 days in 2018, 248 in 2019, 317 in 2020, and 430 in the first half of 2021.

Table 1 – Breakdown of Cases Closed for the 4-Year Period 2018–2021

	2018		2019		2020		2021	
	No. of Cases	% of Total	No. of Cases	% of Total	No. of Cases	% of Total	No. of Cases	% of Total
Truncated	2,317	58%	2,799	58%	2,084	63%	1,734*	65%
Full Investigation	1,208	30%	1,539	32%	981	30%	614	23%
Mediation Attempted	231	6%	240	5%	109	3%	140	5%
Mediated	232	6%	187	4%	30	1%	120	4%
Miscellaneous Closure	17	0%	31	1%	89	3%	80	3%
Totals	4,005	100%	4,796	100%	3,293	100%	2,688	100%

*In 2021, CCRB stopped reporting cases as being truncated. CCRB now divides these cases into the following three categories: Complaint Withdrawn, Unable to Investigate, or Closed – Pending Litigation.

Audit Findings and Recommendations

CCRB has established processes and procedures to guide its investigations and ensure that investigations are conducted in compliance with New York City regulations, that the resulting recommendations are appropriate, and that substantiated cases of misconduct are advanced for disciplinary action. However, we determined CCRB does not always comply with established procedures and guidelines. For example, we found two complaints that, based on its Investigative Manual, should not have been referred or truncated by CCRB.

Most notably, however, we identified weaknesses in CCRB’s oversight of timeliness of investigations and monitoring of delays that could jeopardize its ability to hold officers accountable for misconduct. As reported by CCRB, for the audit period, the average time to complete investigations ranged from 211 days (approximately 7 months) in 2018 to 430 days (approximately 14 months) for the first half of 2021 – far exceeding CCRB’s established 90-day benchmark. While CCRB has acknowledged that the benchmark is unreasonable and of little use, it has not created a new benchmark that is achievable for measuring timeliness of investigations.

CCRB officials attributed the excessive time to delays by NYPD in providing critical evidence (e.g., body camera footage) and appearing for interviews. In the process of conducting our audit of CCRB’s investigation completion times, we likewise found that similar delays by NYPD, including its failure to provide requested documents in a timely manner, contributed to the lengthy investigation times. These delays can drive cases closer to the statute of limitations.

Although CCRB identified the NYPD delays as a significant risk, it does not have a process for routinely tracking and analyzing all delays (whether internal or external) in investigations and determining their root cause in order to proactively address and prevent them.

Delays in Closing Full Investigations

For a judgmental sample of 28 cases that CCRB fully investigated and closed during our audit period, we found that the Investigations Division generally followed its internal policies and procedures and New York City regulations. However, we found it took an average of 372 days for the investigations to be completed, far exceeding the 90-day time frame. In fact, none of the cases were completed within the 90-day time frame (see Table 2).

Table 2 – Time to Complete Full Investigations of 28 Complaints

Time to Completion	Number of Investigations
> 90–179 days	4
180–365 days	12
> 365–547 days	8
> 547 days	4

We found that delays stem, in part, from the difficulty in obtaining documentation from the NYPD and scheduling subject and witness officers for interviews. We observed these delays throughout our audit samples. For example:

- In one case that took 615 days to investigate, and ultimately 881 days (nearly 29 months) to close, it took the NYPD 411 days to send CCRB a case file from the Force Investigation Division.
- In another case that took 546 days to investigate, and ultimately 715 days to close, it took the NYPD 137 days to send CCRB a MOS memo book containing documentation of the incident and 120 days for IAB to provide requested information. It also took one MOS 185 days to appear for an interview. Another MOS was on medical leave and took 320 days to appear for an interview.
- A third case had extensive delays before it was truncated. In this case, which took 412 days to close, it took NYPD 297 days to provide the requested body-worn camera footage and 196 days to provide a taser use report. We also note that two of the identified MOS retired before the case was closed, at which point charges could no longer be filed. The case was originally truncated due to pending litigation but was reopened after the litigation ended.

For a variety of reasons, cases can be reassigned to another investigator (e.g., reassigned to a more “seasoned” investigator due to the nature of the case), which can also lead to delays. For example, in the third example cited above, the case had been reassigned three times. (We also note that when cases are reassigned, CCRB is required to notify the complainant. Documentation provided for two reassigned cases did not show that CCRB sent a reassignment letter to the complainant as required. In response, CCRB officials stated that it has, as a result, reprogrammed its complaint tracking system, or CTS, to automatically generate a reassignment letter whenever a case is assigned to a new investigator.)

According to CCRB’s annual reports, protracted investigations have been an issue since at least 2011. In October 2018, CCRB’s Director of Quality Assurance and Improvement reported concerns to the Board regarding the established 90-day benchmark: specifically, that it was not being met, was not realistic, and should be revised. It is unclear what steps the Board took, if any, in response to that report, but the benchmark continues to be the policy and CCRB’s investigations continue to significantly exceed it.

As mentioned, protracted delays increase the risk that misconduct complaints will not be fully investigated before the statute of limitations expires. CCRB officials stated that CTS sends out weekly automated spreadsheets to CCRB’s Executive Director and Deputy Chief of Special Operations identifying cases that are approaching the statute of limitations. They indicated that the cases are discussed during weekly meetings among senior and executive staff, and efforts are made to the extent possible to expedite closing such cases before the statute of limitations expires. Upon our request for supporting documents, CCRB officials only provided a spreadsheet that identified cases where the statute of limitations would expire

within 60 days. They did not provide meeting agendas or meeting minutes, nor did they provide documentation demonstrating how CCRB prioritized such cases. Furthermore, considering the length of time investigations take to close, 60 days may not be enough time to complete even prioritized investigations before the expiration date.

Selective Monitoring and Mitigation of Delays

Given the critical time frame for completing investigations, having an understanding of the root causes of all delays is essential to mitigate them. However, despite having knowledge of a range of NYPD-related delays, CCRB does not have a process for routinely tracking and analyzing all delays to identify root causes or sources in order to proactively address and prevent them. Rather, it conducts only selective monitoring of certain issues. For instance, in 2018, CCRB monitored the number of days the NYPD delayed providing access to body-worn cameras. According to CCRB's annual report, in 2019, the average time for the NYPD to respond to a body-worn camera request was 24 days in Quarter 1, 62 days in Quarter 2, 56 days in Quarter 3, and 59 days in Quarter 4. This information was used by CCRB in its public reporting to highlight the challenges of obtaining this type of evidence, and contributed to CCRB's November 2019 MOU with the NYPD to secure more effective access to "all available evidence, such as documents and video and audio recordings," including footage from body-worn cameras, and to reduce an outstanding backlog of such requests. Although the data reported for 2020 varied significantly (56 days in Quarter 1, 49 days in Quarter 2, 89 days in Quarter 3), the average at Quarter 4 was an all-time low of 21 days.

In addition, according to CCRB officials, in February 2022, CCRB launched its NYPD Documents Project, which tasks two CCRB staff members with expediting receipt of requested documents from the NYPD and escalating matters where there are delays or cases are nearing the statute of limitations, which may alleviate some of the delays in obtaining documents and decrease investigation times. However, CCRB officials did not provide any supporting documentation or additional details about the project.

Station House Footage

We also uncovered instances where the Investigations Division did not request relevant video footage. In two of our sampled cases, the complainants stated that they were turned away when attempting to file a complaint at their respective New York City precinct, even though police are required to receive complaints from the public. In response, CCRB officials stated only "sometime in 2018" did they learn that some NYPD station houses had video footage, which they could request. Despite their assertion, we note that for these two complaints, the investigations occurred in 2019.

Furthermore, for one of the cases, CCRB officials also stated they did not request the footage because it was unclear which local precinct was in question. However,

CCRB’s record of the intake interview shows the complainant indicated the specific local precinct. In this case, the complainant indicated that they attempted to file a complaint at an NYPD precinct but was instructed to instead file the complaint with CCRB. During CCRB’s intake interview, the complainant identified the precinct initially visited. However, according to CCRB officials, investigators found that no officers at the named precinct remembered the incident and no officer on the applicable roll call matched the complainant’s description of the officer. Had CCRB investigators requested station house footage, it may have provided more independent, reliable verification. CCRB officials responded by saying that, after a subsequent interview with the complainant, the investigator indicated it wasn’t clear which precinct was in question.

Consistency in Complaint Recommendations and Resolutions

Investigator Recommendations Flipped by the Board Panel

Investigators receive in-house training in gathering documentary and video evidence; conducting interviews with complainants, victims, civilian witnesses, and subject and witness officers; and making recommendations as to whether an allegation constitutes misconduct pursuant to applicable laws and rules and based on guidance from CCRB legal counsel.

Based on a review of the case, including information in the investigator’s report, a panel of Board members – also guided by CCRB’s legal counsel and following applicable laws and rules – makes a final determination of the disposition of each allegation based on a majority vote. Where the Board panel makes a different disposition than what the investigator recommends (known as a “flip”), they must document reasons for the deviation.

For a sample of 10 cases, the Board panel flipped investigator recommendations: from substantiated to exonerated in eight cases and from substantiated to unsubstantiated in two cases.

For example:

- In one case, an investigator determined that a vehicle search was reasonable but recommended that the victim’s allegation was substantiated because the MOS did not properly document the search results in a property voucher. The investigator’s closing report noted that the vehicle contained shoes, baby clothes, and a Halloween costume. The panel flipped the investigator’s recommendation from substantiated to exonerated because the MOS said there was nothing of value to voucher. The panel believed that the MOS substantially complied with the requirements of the Patrol Guide.

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- In another case, the investigator determined that it was improper for the MOS to issue two disorderly conduct summonses and thus recommended that the victim's abuse of authority allegations were substantiated. The investigator noted that the victim's actions did not rise to the level of disorderly conduct. Furthermore, the investigator's closing report noted that while the body-worn camera footage showed the victim used profanity, it was directed at the MOS while the MOS was walking away and did not involve any other aggressive action or extenuating circumstances. One of the Board panel members who reviewed the case agreed that the victim's allegations were substantiated; however, the other two panelists voted to flip the recommendation to unsubstantiated. They determined that the MOS properly issued the summonses because the victim's behavior could be interpreted as an attempt to cause a scene and therefore alarming to the people surrounding the victim.

For our audit period, less than 2% of fully investigated allegations were flipped by the Board. We recognize this shows that only a small portion of allegation investigations are flipped by CCRB. These instances present an opportunity for "lessons learned" between investigators and the Board, such as ensuring consistent application of applicable laws and rules throughout the investigative process. In response, CCRB officials indicated that its closing reports are reviewed at multiple levels, including CCRB counsel, and asserted that Board panels and investigators can reach different conclusions depending on their individual interpretations of rules and/or evidence. CCRB's position is that disagreements are not necessarily a matter of clear right or wrong; rather, they are mainly caused by different interpretations of rules and/or evidence.

As mentioned, where the Board panel's conclusions differ from those of investigators, the panel is required to document the rationale for their dissent. However, our analysis of the supporting documentation indicates that explanations are not always sufficiently descriptive for the investigator to understand the reasoning behind the flip, which could improve future investigations. We encourage the Board to improve the quality of its explanations so that they can serve as more helpful lessons learned for investigators to apply in their subsequent investigations. Not only would it help to ensure consistency across entities, but it would also promote transparency in decision making.

CCRB Compliance With NYPD Guidelines

In January 2021, in an effort to improve transparency and consistency of the NYPD internal discipline process, the NYPD and CCRB signed a MOU confirming that both parties will use the NYPD Guidelines to recommend and issue penalties for misconduct, intended to accomplish a mutual goal of consistent and fair disciplinary recommendations.

For three of the 28 sampled cases that CCRB fully investigated and closed during our audit period, the MOU was in effect at the time the Board panel had made its determination. We found that for one of the three cases CCRB did not recommend

appropriate penalties based on the NYPD Guidelines for MOS misconduct, nor did it document the reason supporting the deviation, as required. For this case, which involved “Abuse of Authority, Discourtesy and Offensive Language,” CCRB recommended a lesser penalty than the 1-day penalty stipulated in the NYPD Guidelines. CCRB officials informed us that they did not document the reason why they departed from the agreed-upon guidelines, but indicated that the Board had voted on the case before CTS modifications necessary to implement the NYPD Guidelines were completed. Their assertion notwithstanding, we question why these system modifications were necessary in order for CCRB to make disciplinary recommendations consistent with the NYPD Guidelines.

Complaints Referred or Truncated

As mentioned, CCRB has jurisdiction over FADO complaints, including abuse of authority allegations. Complaints that fall outside of this jurisdiction are referred to another entity. Complaints that are within CCRB’s jurisdiction but cannot be fully investigated are truncated. Referrals and truncations are done in accordance with CCRB’s Investigative Manual. To assess whether CCRB followed its Investigative Manual in referring and truncating cases, we selected a judgmental sample of 43 complaints (23 referred, 20 truncated) received by CCRB between January 2018 and January 2021.

Of the 43 sampled complaints, we found that two complaints should not have been truncated or referred based on the Investigative Manual. In one case, CCRB truncated the complaint even though there was an outstanding request for body-worn camera footage, which the Investigative Manual specifically prohibits. The other complaint involved an allegation that three MOS conducted a vehicle stop without cause. According to the complaint, the MOS never asked for the victim’s license or registration and did not disclose the reason for the stop; nor did they issue a summons, but only asked if the victim resided in the area. Rather than investigate this as an abuse of authority allegation, CCRB referred it to IAB because the victim “expressed that this is a form of ongoing harassment.” Nevertheless, according to the Investigative Manual, a vehicle stop without appropriate cause falls under abuse of authority, which is within CCRB’s jurisdiction.

Recommendations

1. Augment existing formal processes with appropriate controls to ensure that the NYPD responds to CCRB’s requests for documentation and interviews in a timely manner, and improve the efficiency, thoroughness, and effectiveness of its investigations.
2. Enhance formal processes to help ensure that cases approaching the 18-month statute of limitations are identified and prioritized more timely, allowing sufficient time to resolve them and recommend penalties as appropriate.

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3. Enhance formal processes to assess the extent to which various causes of delays affect the timeliness of investigations and take appropriate remedial action.
 4. Improve formal review processes to promote greater consistency, and transparency, of recommendations across the Investigations Division and the Board, including but not limited to:
 - Evaluating the reasons for Board flips of investigators' recommendations; and
 - Sharing lessons learned with investigators and panelists.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if CCRB has an appropriate and sufficiently documented basis for the complaints referred to the NYPD and other agencies and for truncated complaints, and if CCRB is conducting investigations in compliance with New York City regulations and CCRB's internal policies and procedures. The audit covered the period from January 2018 through May 2021.

To achieve our audit objective and assess relevant internal controls, we interviewed CCRB officials and reviewed relevant rules and regulations, as well as CCRB manuals, guidelines, policies, and procedures related to investigating, reviewing, and processing complaints. We also reviewed CCRB annual reports, emails, memorandums, and additional investigative records. In addition, we reviewed the Patrol Guide and NYPD Guidelines. We observed walk-throughs of CCRB's electronic system for tracking complaints (CTS) and obtained complaint data pulled from this system. We performed data reliability testing and found the data to be sufficiently reliable for the purposes of our audit.

To determine if CCRB had an appropriate and sufficiently documented basis for the complaints referred to the NYPD and other agencies, we selected a judgmental sample of 23 referred cases and reviewed the associated complaint documents. To determine if CCRB had an appropriate and sufficiently documented basis for truncated complaints, we selected a judgmental sample of 20 truncated cases and reviewed the associated complaint documents. We also selected a judgmental sample of 28 cases that CCRB fully investigated and closed during our audit period and reviewed the associated complaint documents to determine if CCRB is conducting investigations in compliance with City regulations and CCRB's internal policies and procedures. Our samples were pulled from a total population of 32,535 cases that were in process and/or closed between January 1, 2018 and April 19, 2021. To select our judgmental samples, we considered factors such as the case dispositions and closing dates. None of our samples were designed to be projected to the entire population.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from CCRB officials that all relevant information was provided to us during the audit.

Reporting Requirements

We provided a draft copy of this report to CCRB officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report. CCRB officials generally agreed with most of the audit recommendations, and indicated that certain actions have been and will be taken to address them. We address certain CCRB remarks in our State Comptroller's Comment.

Within 180 days after final release of this report, we request that the Chairperson of the New York City Civilian Complaint Review Board report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Exhibit

Definitions of Key Roles and Disposition Terms

Key Roles

- *Complainants*: Members of the public who file complaints regarding alleged misconduct by NYPD officers
- *Civilian witnesses*: Other civilians involved in the incident
- *Subject officers*: Officers who are alleged to have committed acts of misconduct
- *Witness officers*: Officers who witnessed or were present for the alleged misconduct

Complaint Disposition (Board's Finding Based on a Preponderance of the Evidence)

- *Substantiated*: Alleged acts occurred and were improper.
- *Exonerated*: Alleged acts occurred but were not improper.
- *Unfounded*: Alleged acts did not occur.
- *Officer Unidentified*: The Board panel was unable to identify any of the officers accused of misconduct.
- *Unsubstantiated*: There is insufficient evidence to determine if the alleged misconduct occurred.

Agency Comments



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August 17, 2022

Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, New York 10038

Re: Draft Audit Report 2020-N-9 - Civilian Complaint Review Board Complaint Processing

Dear Audit Director Sifontes:

The New York City Civilian Complaint Review Board (CCRB or Agency) offers the following comments on the findings and recommendations in Draft Audit Report 2020-N-9 – CCRB Complaint Processing. The Agency thanks the audit team for its time and welcomes the opportunity to review its processes and identify areas for improvement in achieving its mission to conduct fair, thorough, and impartial investigations of allegations of police misconduct against civilians, increase transparency, and strengthen the public's trust in its oversight of the New York City Police Department (NYPD).

We note that this audit covered the period from January 2018 through May 2021, the latter part of which included the COVID-19 pandemic when the CCRB staff was working remotely. It also included the Summer 2020 protests in response to the killing of George Floyd by police officer Derek Chauvin in Minneapolis, MN. Protest investigations generally were more complex and time-consuming than other investigations. The findings in this report, including the increased investigation times during 2020 and 2021, should be viewed with these challenges in mind. The CCRB acknowledges the work of its investigative staff who completed over 1,500 full investigations during the 2020-2021 audit period that included the pandemic.

Recommendation 1: Augment existing formal processes with appropriate controls to ensure that the NYPD responds to CCRB's requests for documentation and interviews in a timely manner, and ultimately improve the efficiency, thoroughness, and effectiveness of its own investigations.

Recommendation 2: Enhance formal processes to help ensure that cases approaching the 18-month statute of limitations are identified and prioritized more timely, allowing sufficient time to resolve them and recommend penalties as appropriate.

Recommendation 3: Enhance formal processes to assess the extent to which various causes of delays affect the timeliness of investigations and take appropriate remedial action.

Response: All three of these recommendations deal with the timeliness of CCRB investigations. The CCRB is always looking for ways to decrease investigative times and is appreciative of the audit team's recommendations. As the report correctly points out, extended investigation times are largely

due to delays in receiving records from the NYPD. The CCRB has already implemented changes to address delays in NYPD record production, including creating the NYPD Documents Unit, which is currently staffed with five employees who are responsible for monitoring outstanding NYPD record requests, following up on delayed responses, and escalating requests in cases that are approaching the 18-month statute of limitations period. Two additional staff members, one of which solely tracks body-worn camera (BWC) footage requests, have also been assigned to handle NYPD records requests. Additionally, the NYPD has centralized the handling of CCRB requests within its Legal Department, which should cut down on delays and facilitate timely resolution of record production issues. CCRB executive and senior staff have weekly meetings to review open investigations, make sure that cases are moving forward—especially cases approaching the limitations period, and determine if intervention is necessary to expedite cases. The CCRB and NYPD have also instituted a monthly meeting for similar purpose. The CCRB will evaluate the effectiveness of these steps and make adjustments as necessary. The Agency is also committed to achieving direct access to BWC footage, which we believe would significantly reduce investigative delays.

Recommendation 4: Improve formal review processes to promote greater consistency, and transparency, of recommendations across the Investigations Division and the Board, including but not limited to:

- Evaluating the reasons for Board flips of investigators' recommendations; and
- Sharing lessons learned with investigators and panelists.

Response: Although the Board concurs with the recommendation of the investigative staff in well over 90% percent of cases, it is not a rubber stamp for the investigators' conclusions. Board "flips" are inevitable and evidence that the Board is performing its Charter-mandated function to fairly, independently, and impartially make findings and recommendations. Board panels—and the full board when it meets to vote on a case—consider each allegation and make findings on a case-by-case basis. Even cases that involve similar allegations may warrant different findings and recommendations based on the particular facts and circumstances of each case.

The CCRB already has formal processes in place to facilitate communication between the Board and the Investigations Division when the Board disagrees with the investigator's recommendation. A "flip memo" is provided to the investigator explaining the reason for the disagreement and the investigator has the opportunity to write a memo back to the Board explaining why they made the initial recommendation. After considering the investigator's memo, the Board can adhere to its recommendation or vote in accordance with the investigator's recommendation. Additionally, the CCRB underwent a restructuring in late 2020 that included the creation of a joint Assistant General Counsel/Deputy Chief of Investigations job title. The attorneys who serve in this role manage the investigative squads, review cases before they go to panel, and advise the Board during panels. They serve as a bridge between the Board and the Investigations Division to facilitate communication of any issues or questions that may arise.

The CCRB acknowledges the time and effort involved in conducting this audit and will continue to take steps to improve the efficiency, effectiveness, and transparency of its investigations.

Sincerely,


Jonathan Darche
Executive Director

[Comment 1](#)

State Comptroller's Comment

1. While investigators have the opportunity to submit a response memo to better explain the basis for their initial recommendation, perhaps a better, more effective – and transparent – approach would be for the Board to ensure at the outset that its flip memos to investigators provide a thorough explanation. Such a comprehensive memo would also be a more helpful “lesson learned” to guide future investigations.

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