

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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December 6, 2021
Start: 2:19 p.m.
Recess: 3:26 p.m.

HELD AT: Remote Hearing - Virtual Room 3

B E F O R E: Adrienne E. Adams
Chairperson

COUNCIL MEMBERS:

Justin L. Brannan
Fernando Cabrera
Robert F. Holden
Vanessa L. Gibson
Carlos Menchaca
I. Daneek Miller
Keith Powers
Kevin C. Riley
Ydanis A. Rodriguez

A P P E A R A N C E S (CONTINUED)

Jonathan Darche
CCRB Executive Director

Kevin Maloney
Deputy Chief at NYPD

Stephen Capasso
Inspector at NYPD

Ari Maas
NYPD Captain

Michael Clarke
Director of Legislative Affairs at NYPD

Niji Jain
Bronx Defenders Services

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2 UNIDENTIFIED: Thank you and good
3 afternoon, and welcome today's remote New York City
4 Council hearing of the Committee on Public Safety.
5 At this time would all Council Members and Council
6 Staff please turn on their video? To minimize
7 disruption, please place electronic devices on
8 vibrate or silent mode. If you wish to submit
9 testimony, you may do so at
10 testimony@council.nyc.gov. Once again that is
11 testimony@council.nyc.gov. Thank you. Chair Adams,
12 we are ready to begin.

13 COUNCIL MEMBER ADAMS: Good afternoon and
14 thank you for your patience. I am Council Member
15 Adrienne Adams of the 28th District of Queens, and I
16 am the Chair of the Committee on Public Safety. I
17 want to thank the members of the Public Safety
18 Committee who have been hanging in there all day. I
19 appreciate your patience. Joining us from the
20 committee currently, Council Members Holden, Riley,
21 and Brannan. Today, the committee will continue its
22 ongoing work at reforming the NYPD by conducting
23 oversight hearing of legislation that collectively
24 aims to promote increased transparency and
25 accountability and improve public trust of the

1 Department. The following items are on today's
2 agenda: First, we will be conducting oversight on
3 NYPD performance indicators. We will also hear
4 Resolution Number 1762 calling for enactment of state
5 legislation S6760 to grant civilian law enforcement
6 oversight entities such as CCRB access to sealed and
7 protected records to support investigations and
8 disciplinary proceedings for misconduct by police and
9 peace officers. The oversight portion of today's
10 hearing will be an examination of how the NYPD
11 evaluates its performance and that of its officers
12 and meeting the Department's critical mission of
13 improving quality of life and promoting public safety
14 for all New Yorkers. Neighborhood policing, an
15 approach to law enforcement that emphasizes the
16 importance of police and resident collaboration in
17 talking community issues, offers Police Departments
18 an opportunity to evaluate officer precinct
19 commanders and over all Department performance on a
20 variety of metrics beyond traditional measures, such
21 as fluctuating crime rate and the quantity of
22 enforcement action. Although the modern NYPD has
23 been recognized for its ground-breaking use of data-
24 driven policing, this approach has been criticized as
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2 resulting in Department policies that place too much
3 focus on quantity-based enforcement metrics in a
4 matter that breeds heavy-handed policing. Most
5 notably, this was seen in the unconstitutional use of
6 stop, question and frisk, and allegations of the
7 quota-based system where officers promotional and
8 overtime opportunities allegedly depended on meeting
9 internal enforcement quotas. While the NYPD Federal
10 Monitor has credited the Department's improvement in
11 implementing performance evaluation systems that more
12 holistically examine officer performance, there
13 remains ongoing allegations related to the
14 Department's use of quotas, and claims that officer
15 promotional and overtime opportunities continue to
16 depend on meeting internal enforcement quotas. I
17 believe this oversight hearing offers the Council and
18 the public a vital opportunity to examine the
19 Department's practices related to evaluating officer
20 performance, how the Department measures success, and
21 in turn, how internal priorities are reflected in
22 this process. Additionally, we will hear Resolution
23 Number 1762, asking the state to grant access to
24 sealed and protected records to civilian law
25 enforcement oversight entities such as the Civilian

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2 Complaint Review Board to aid in their investigations
3 of police misconduct. This needed reform, which was
4 discussed with CCRB Chair Davie at our last hearing,
5 will provide the CCRB with another tool in advancing
6 its important mission ensuring police responsibility
7 and investigating misconduct. We have also been
8 joined by Council Member Menchaca. Thank you all. I
9 look forward to the Department's testimony. I will
10 now turn it over to our moderator, Committee Counsel
11 Josh Kingsley, to review today's procedural items.

12 COMMITTEE COUNSEL: Good afternoon
13 everyone. Thank you for your patience and thank you
14 Chair Adams. I'm Josh Kingsley, Counsel to the
15 Public Safety Committee. Before we begin testimony,
16 I want to remind everyone that you'll be on mute
17 until you're called on to testify. After which
18 you'll be unmuted by the host. I'll be calling up
19 panels to testify. Please listen to your name to be
20 called. I will be periodically announcing who the
21 next panelist will be. First panelist to give
22 testimony will be representatives from the Civilian
23 Complaint Review Board. Second panelists will be
24 representatives from the NYPD, followed by members of
25 the public. Testifying for CCRB will be Executive

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2 Director, Jonathan Darche. Second panel we will hear
3 from representatives from the NYPD, specifically
4 Deputy Chief Kevin Maloney, Inspector Stephen
5 Capasso, Captain Ari Maas, and Michael Clarke who is
6 the Director of Legislative Affairs at the Police
7 Department. I will call on you when it's your turn
8 to speak. During the hearing, if Council Members
9 would like to ask questions of the Administration or
10 panelists, please use the Zoom raise hand function.
11 I will call on you in order. All hearing
12 participants submit written testimony to
13 testimony@council.nyc.gov. I will now call on
14 members of the Administration to testify. Before I
15 begin I will administer the oath. Members of the
16 Administration, I will call on each of you
17 individually for a response. Please raise your right
18 hand. Do you affirm to tell the truth, the whole
19 truth, and nothing but the truth before these
20 committees and to respond honestly to Council Member
21 questions? Executive Director Darche?

22 EXECUTIVE DIRECTOR DARCHE: I do.

23 COMMITTEE COUNSEL: And we might as well
24 swear the PD panel in as well for now. Deputy Chief
25 Maloney?

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DEPUTY CHIEF MALONEY: I do.

COMMITTEE COUNSEL: Inspector Capasso?

INSPECTOR CAPASSO: I do.

COMMITTEE COUNSEL: Captain Maas?

CAPTAIN MAAS: I do.

COMMITTEE COUNSEL: And Director Clarke?

DIRECTOR CLARKE: I do.

COMMITTEE COUNSEL: Okay, thank you all.

CCRB, Mr. Darche, you can begin. Thank you.

EXECUTIVE DIRECTOR DARCHE: Chair Adams,

members of the Public Safety Committee, thank you for

the opportunity to appear before you today. I am

Jonathan Darche, Executive Director of the Civilian

Complaint Review Board, and I am here on behalf of

our Chair, the Reverend Frederick Davie. He

apologizes for not being here this afternoon, but he

had a scheduling conflict. I am here to testify

today in support of Chair Adams' resolution calling

upon the New York State Legislature to pass, and the

Governor to sign, Senate Bill 6760, legislation to

allow access to sealed and protected records to

civilian law enforcement oversight entities

conducting investigations and disciplinary

proceedings for misconduct by police and peace

1 officers. CCRB access to sealed records is critical
2 to our Agency's ability to investigate all
3 allegations of misconduct particularly as we take on
4 the investigations of racial profiling and bias-based
5 policing. Statutes created to seal arrest records
6 that are often sealed due to police misconduct are
7 used to prevent the CCRB and other oversight agencies
8 from investigating the underlying misconduct that
9 caused the arrest to be sealed. Records are often
10 sealed because they are the result of
11 unconstitutional stops which lead to arrests or they
12 are instances where a prosecutor will decline to
13 prosecute a case because the officer did not have a
14 sufficient level of suspicion to warrant a stop.
15 Cases may also be dismissed and sealed if a court
16 finds that the police did not have probable cause to
17 arrest or reasonable suspicion to conduct a search
18 that yielded evidence. Allowing the CCRB access to
19 records of these cases will mean that the CCRB will
20 be able to conduct thorough, effective, and timely
21 investigations. Currently, the CCRB is required to
22 either seek an unsealing order or obtain a release in
23 every case where the NYPD denies a document or BWC
24 request on the ground that the record is sealed.
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2 This causes significant delays often resulting in the
3 CCRB being unable to fully investigate a complaint,
4 or the investigation not being completed within the
5 18-month statute of limitations. The resolution
6 calling upon the New York State Legislature to pass,
7 and the Governor to sign, 6760, will allow our Agency
8 and all civilian oversight agencies in the state to
9 ensure that some of the most vulnerable New Yorkers,
10 all of whom were improperly arrested or summoned to
11 have their cases looked into by independent agencies.
12 It is imperative that the CCRB have access to these
13 and all documents that enable us to investigate
14 police misconduct. The CCRB has made great strides
15 in the last couple of years and continues to push
16 forward changes and policies that make the agency
17 more effective, and police accountability fairer and
18 swifter. I believe this resolution, and the passing
19 of state law will help us to continue to push
20 forward, in addressing police misconduct across the
21 state. Thank you.

22 CHAIRPERSON ADAMS: Thank you very much,
23 Executive Director Darche, again, for your patience
24 and for being here testifying before this committee
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2 once again. What type of sealed record does CCRB
3 envision obtaining?

4 EXECUTIVE DIRECTOR DARCHE: The most
5 common type of record would be records sealed
6 pursuant to Criminal Procedure Law 170-60 or 170-65
7 which are in cases where there's been a disposition
8 in favor of defendant and the case has been sealed
9 for a Family Court act which governs juvenile cases
10 which may prevent us from viewing records relevant to
11 our investigations.

12 CHAIRPERSON ADAMS: So once those records
13 are open to the CCRB, you would be able to-- can you
14 give more specific examples of how exactly this
15 process in obtaining access to these records that
16 exactly benefit CCRB in potential investigation?

17 EXECUTIVE DIRECTOR DARCHE: It's a very
18 good question, Chair Adams. The most typical example
19 would be in a case where a person who's filed a
20 complaint with us that they were improperly stopped,
21 and as a result of that stop, they were arrested and
22 given a summons, and then that summons was later
23 resolved or that arrest with dismissed with
24 violation, or an adjournment in contemplation of
25 dismissal, or dismissal. And in all those pieces,

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2 their records, their arrest records would then be
3 sealed, and there's a lot of information in those
4 records that would be extremely useful to our
5 investigations, especially now that early next year
6 when the CCRB begins investigating cases of racial
7 profiling and bias-based policing where we're going
8 to need records about incidents, interactions between
9 police and civilians where we might not have a
10 complaint because we're looking at conduct by an
11 officer who's been accused of bias-based policing or
12 racial profiling by one civilian, but has interacted
13 with numerous other civilians, and we have no way of
14 knowing who those civilians are to get a waiver from.

15 CHAIRPERSON ADAMS: Executive Director
16 Darche, currently are there any mechanisms available
17 for CCRB to obtain sealed records at all?

18 EXECUTIVE DIRECTOR DARCHE: Yes, but
19 they're very time consuming and resource intensive.
20 We have to go to court. In cases where we are unable
21 to get a waiver from the particular civilian or
22 civilians involved in the investigation, we have to
23 get-- go to court and get an unsealing order which is
24 time consuming, sometimes difficult, and often a
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2 barrier to us getting the information in a timely
3 fashion.

4 CHAIRPERSON ADAMS: What's the
5 approximate timeframe just say for the staff? Is
6 there any like standard timeframe, 10 days, five
7 days?

8 EXECUTIVE DIRECTOR DARCHE: So, the-- I
9 think it's more measured in months, Madam.

10 CHAIRPERSON ADAMS: Okay. Five months,
11 three months, six months?

12 EXECUTIVE DIRECTOR DARCHE: So there's
13 one case active right now that I'm aware of where
14 it's been more than six months, but what often
15 happens is because it is so time consuming, we forgo
16 the process.

17 CHAIRPERSON ADAMS: So you just give up,
18 you abandon ship, and forget about it because the
19 time that it takes to do this is just too much?

20 EXECUTIVE DIRECTOR DARCHE: We conduct
21 the investigation as well as we can with the
22 information we are able to get.

23 CHAIRPERSON ADAMS: Okay. And usually
24 what does that look like? When you know that you--
25 you know, you're missing information and potential,

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2 you know, can potentially change things radically. I
3 mean, what does that look like from your perspective?

4 EXECUTIVE DIRECTOR DARCHE: It's
5 extremely difficult for us to get dispositions on the
6 merits of the investigation when we are unable to
7 access the information. So in the cases where we
8 conduct a full investigation, a disposition on the
9 merits means that we're either able to substantiate
10 misconduct, or say that the allegation was unfounded,
11 or say that the allegation should be exonerated,
12 which means that the conduct alleged occurred, but
13 was appropriate under the law in the Patrol Guide.
14 In cases when we're unable to get all the
15 information, we are far more likely to have to either
16 unsubstantiated the case or not conduct the full
17 investigation at all.

18 CHAIRPERSON ADAMS: What would you say
19 was the percentage, let's say, of cases like this
20 that go through CCRB where you are unable to obtain
21 records that would, you know, fortify [sic] cases?

22 EXECUTIVE DIRECTOR DARCHE: You know,
23 that's a very good question, Chair Adams, and I'll
24 get an answer to you later. I don't have the

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2 percentage broken out by cases where we are unable to
3 get a full investigation.

4 CHAIRPERSON ADAMS: Okay. I'd be curious
5 to know that, you know, particularly in knowing, you
6 know, the barrier of time and the cases that are lost
7 because you all have to give up and kind of abandon
8 the process. So--

9 EXECUTIVE DIRECTOR DARCHE: [interposing]
10 Yes, ma'am.

11 CHAIRPERSON ADAMS: whenever you get
12 that, that'd be great. Are there any alternative
13 sources for obtaining information contained in sealed
14 records at all?

15 EXECUTIVE DIRECTOR DARCHE: Really, no.
16 Sometimes when body-worn camera footage is sealed,
17 there's often times other footage available from
18 other sources, but it rarely matches the quality and
19 the audio in a body-worn camera. And then, a lot of
20 the information in the paperwork is just information
21 that would only be in that paperwork.

22 CHAIRPERSON ADAMS: So, it sounds to me
23 that, you know, you've got a lot kind of prohibiting
24 the process from going forward that should really be
25 more of a straightforward process without a whole lot

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2 of hindrance and it's keeping the CCRB from doing
3 what CCRB is supposed to do.

4 EXECUTIVE DIRECTOR DARCHE: Yes, ma'am.
5 Thank you. Committee Counsel, do we have-- we've
6 been joined by Council Member Powers. Do we have any
7 questions from my colleagues at this point?

8 COMMITTEE COUNSEL: Council Member
9 Holden, go ahead.

10 COUNCIL MEMBER HOLDEN: Yes. Thank you,
11 Director, for your testimony. I just want to-- I
12 mean, there's a lot of reasons why something would be
13 sealed, records would be sealed, right? I mean,
14 there's a host of reasons. So, I'm a little-- you
15 know, I'm a little in the dark about this, about why
16 something is sealed, why-- I mean, there's a lot of
17 reasons, right? How many reasons are there that
18 records would be sealed?

19 EXECUTIVE DIRECTOR DARCHE: So, I
20 couldn't give you an exhaustive list, but some
21 examples are cases where a criminal case has been
22 resolved without a criminal conviction. So, a person
23 pleads guilty to a violation or a case is dismissed
24 or there's a not-guilty verdict, or there's
25 adjournment and contemplation of dismissal, or

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2 there's a Family Court proceeding that results in--
3 and I should know the technical term for this when
4 there's a juvenile who's been accused of a crime, but
5 the equivalent of a not-guilty verdict in those
6 pieces.

7 COUNCIL MEMBER HOLDEN: So, do you think
8 that the police should have access to sealed records
9 to catch criminals as well? Like, let's say there is
10 an active investigation and they're trying to
11 identify a suspect, should they have access to the
12 records, the sealed records.

13 EXECUTIVE DIRECTOR DARCHE: As Executive
14 Director of the CCRB, I'm not really qualified to
15 speak to that. I can only speak to the circumstances
16 that are preventing the CCRB from effectively
17 investigating allegations of police misconduct.

18 COUNCIL MEMBER HOLDEN: Yeah, because the
19 Bronx Defenders now are currently suing the NYPD to
20 prevent them from looking at their own NYPD records.
21 So, it's a kind of-- it should be a two-way street
22 here. We're going to allow CCRB to investigate. We
23 should allow-- you know, sealed records. We should
24 allow the police [inaudible] investigate.
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EXECUTIVE DIRECTOR DARCHE: Council

Member, I just need to say it's not quite an apples to apples comparison because many times cases are sealed because someone has been a victim of inappropriate police conduct, and to then prevent us from investigating police misconduct because of a law that was designed to protect people who have been potentially the victims of misconduct seems to me, and frankly I think to the staff at the CCRB, to be an unfair equivalency.

COUNCIL MEMBER HOLDEN: It's unfair to release the records that have been sealed to get-- to catch criminals, to further their investigation? I don't know. I don't know. I think it's a two-way street, I think. However, I just think that there has to be good reason to suspect that there might be some wrongdoing, that's why you're asking it to be unsealed, not just every case. Because otherwise, couldn't this go on forever? I mean, these accusations could go on for decades then, couldn't they?

EXECUTIVE DIRECTOR DARCHE: So, I don't know how that's possible because of the statute of limitations that effects misconduct, misconduct

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2 investigations, and misconduct cases. But I'm sorry,
3 Councilman, I just don't--

4 COUNCIL MEMBER HOLDEN: [interposing] You
5 don't see a-- okay, alright. I mean, it's fair.
6 Thank you.

7 CHAIRPERSON ADAMS: Thank you, Council
8 Member Holden.

9 COMMITTEE COUNSEL: Chair, there are no
10 other Council Member questions at this time.

11 CHAIRPERSON ADAMS: Thank you very much.
12 So, I don't have any follow-up questions for you. I
13 just-- I appreciate my colleague's line of
14 questioning, of course. And taking a look at this in
15 both sides I think is important also that that be
16 recognized as well, and that you know, we have right
17 now as Council Member Holden said, we have right now
18 District Attorneys that are looking for information,
19 you know, concerning their cases. But can you just
20 go a little bit farther into the differences between
21 those examples and what we're talking about with the
22 CCRB and the lack of access?

23 EXECUTIVE DIRECTOR DARCHE: So, I think a
24 good example would be the in the upcoming case--
25 investigation into racial profiling and bias-based

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2 policing where the CCRB may need access to stop and
3 frisk paperwork or arrest paperwork or summonses for
4 a particular officer to look at their conduct over a
5 certain period of time, where we don't have any
6 possible starting point for the other people who that
7 officer has interacted with. And those people are
8 not targets of our investigation. And so the purpose
9 of the sealing statute, which I think was to-- I'm
10 not an expert on this, Madam Chair, but I'm pretty
11 sure it was to protect the rights of people who have
12 been accused of criminal conduct but not convicted of
13 criminal conduct, to protect them from having their--
14 the fact that they were accused of misconduct used
15 against them. Here we're seeking to look at the
16 conduct of a police officer or police officers who
17 have been accused of misconduct, to look at how they
18 are behaving with the people in the community whom
19 they are policing. So, we're seeking access to
20 information that is sealed not to take action against
21 the person whose record was sealed.

22 CHAIRPERSON ADAMS: Okay. Thank you for
23 that. I was under the presumption as well-- I guess
24 you can't answer this, but the DA's can get the
25 records if they [inaudible].

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2 EXECUTIVE DIRECTOR DARCHE: I used to be
3 a DA. I am no longer a DA, so I can't.

4 CHAIRPERSON ADAMS: I thought so. I
5 thought so. I wanted to tap that a little bit, but
6 thank you very much, Director Darche. It's always a
7 pleasure to see you. Thank you for your testimony
8 here today. Committee Counsel, are there any further
9 questions from my colleagues at this point?

10 COMMITTEE COUNSEL: There are not.

11 CHAIRPERSON ADAMS: Okay, thank you.
12 Thank you very much, Director Darche.

13 EXECUTIVE DIRECTOR DARCHE: Have a nice
14 day-- nice day [inaudible].

15 COMMITTEE COUNSEL: Thank you. NYPD, you
16 can begin.

17 DEPUTY CHIEF MALONEY: Good afternoon
18 Chair Adams and members of the Council. I'm Deputy
19 Chief Kevin Maloney, Commanding Officer of the First
20 Deputy Commissioner's Office of the New York City
21 Police Department. I'm joined today-- to my left,
22 Inspector Stephen Capasso, Commanding Officer of the
23 Personnel [sic] [inaudible] Division. To my far
24 right, Captain Ari Maas, Commanding Officer of the
25 Risk Mitigation Division, and Michael Clarke at my

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2 immediate right is Director of Legislative Affairs
3 Unit. On behalf of Police Commissioner Dermot Shea,
4 I want to thank the Council for the opportunity to
5 discuss the extraordinary lengths the Department has
6 gone through to properly evaluate the effectiveness
7 of our officers and our procedures to promote the
8 right people to the right positions at every level.
9 Neighborhood policing, first and foremost, is about
10 building trust with the communities we police, but
11 there's also been a lesser commented on but equally
12 important aspect to neighborhood policing, building
13 trust for the men and women who are tasked with
14 carrying out this vision. Historically, officers and
15 members of the public lost confidence in our
16 evaluation and promotional structures which have
17 helped erode trust both inside and out of our
18 department. For these reasons, Commissioner Shea and
19 his predecessors in this administration have
20 redefined the idea of performance evaluation and
21 completely retooled the entire evaluation and
22 promotion framework. The NYPD aims to recruit,
23 retain and promote the best by incentivizing quality
24 policing and designing a comprehensive framework
25 under which we assess how uniformed officers do their

1 jobs. We consistently message that we are not
2 interested in quantity of our work, but rather
3 quality. We have created a transparent structure
4 which gives our officers clear guidance on what is
5 expected of them in order to excel in their jobs and
6 the goals that need to be met in order to be
7 considered for promotions. The current model of
8 performance evaluation provides 12 specific focus
9 areas. Members to the service are evaluated on a
10 variety of skillsets, including community
11 interactions, recognizing problems, and proper
12 application of law and Department procedures. There
13 are two mandatory levels of assessment and two
14 optional levels. First, data concerning command
15 conditions and officer performance is compiled on an
16 ongoing basis and this information is used in
17 preparation of monthly officer profile reports. The
18 purpose of monthly assessments is for supervisors to
19 monitor an officer's performance and to give short-
20 term guidance and feedback in between rating periods
21 as needed. One vital aspect of this sort of direct
22 assessment is the first in the nation body camera
23 audit protocols. Sergeants are required to review a
24 random sampling of body cam footage from each platoon
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1 on a rolling basis to allow evaluate the officers on
2 a variety of factors, including whether they were
3 professional and courteous, whether the officer
4 conducted a stop in a constitutional manner, and also
5 the officer's tactics. This is in addition to the
6 audits conducted department-wide by the Risk
7 Management Bureau and other executives. Second, each
8 supervisor in the Patrol, Housing, and Transit
9 Bureaus must complete a quarterly evaluation of each
10 of their subordinates with a fourth quarter
11 evaluation also acting as their annual evaluation.
12 The two non-mandatory assessments are officer's self-
13 report form and supervisor's feedback form. Officers
14 are encouraged to use the self-report form to report
15 positive and noteworthy achievements. These could be
16 substantial community engagements, referring citizens
17 to services beyond those required, and dealing with
18 certain crime victims and other notable acts of
19 problem-solving, crime detection, and crime
20 prevention. Supervisor feedback forms are used by
21 supervisors to apply real-time feedback and to
22 document instances demonstrating either extraordinary
23 accomplishment or need for improvement. I'll turn my
24 focus now to how the Department determines promotions
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2 and transfers. Promotions to sergeant, lieutenant,
3 and captain ranks are non-discretionary and go
4 through civil service testing process. By in large,
5 the top scorers on each exam are promoted into that
6 rank to fill vacancies as needed. Detectives follow
7 a different track. Officers may apply to open
8 positions in the detective [sic] Bureau. Once there,
9 after demonstrating competent work for approximately
10 18 months, passing performance evaluations at both
11 the eighth and 15 month's marks, they will be
12 promoted to detective. Discretionary promotions to
13 Deputy Inspector, Inspector, and Deputy Chief are
14 also conducted differently. Members must apply for
15 promotion in these ranks and after going through a
16 vigorous review and interview process, a candidate
17 may be recommended for promotion to the Police
18 Commission. [inaudible] increase the diversity in
19 our senior ranks, make sure that individuals who are
20 members of the under-represented communities are
21 chosen to be part of the interview process.
22 Additionally, an important new aspect of how the
23 Department appoints precinct commanding officers is
24 the Precinct Commander Officer Assignments Program.
25 This program gives a voice to communities in a

1 selection of precinct commanders by requiring
2 candidates to sit down for interviews with community
3 members and leaders who then recommend the candidate
4 for appointment to the Police Commissioner. After a
5 successful pilot this year, the program has been
6 expanded to each precinct citywide and will soon be
7 expanded to housing police service areas. Thank you
8 so much for the opportunity to speak to you about the
9 important work we're doing to strengthen the quality
10 of our workforce. We look forward to answering any
11 questions that you may have.

13 CHAIRPERSON ADAMS: Thank you very, very
14 much Deputy Chief Maloney for being here and your
15 team for your patience for sticking it out with us
16 today to join us for this important hearing. Thank
17 you. So I just want to say, I am an extreme
18 proponent of neighborhood policing. The NCL program
19 has been outstanding in my precinct, and the only
20 glitch that we saw-- we did see a glitch even pre-
21 pandemic which was noticeably, you know, noticeably
22 affected by constituents who appreciated the NCOs and
23 their participation. At one point when the program
24 first kicked off in one of my precincts, NCOs
25 actually came to my door with flyers. They didn't

1 know me from, you know, from a can of paint, and they
2 to my door with flyers and I introduced myself, and
3 they seemed pretty shocked that I represented the
4 City Council, and that, you know, I actually
5 appreciated them going door-to-door and inviting
6 residents and my neighbors, you know, to the meetings
7 and for letting them know, you know, who they were,
8 what their mission was, you know, and for promoting
9 that good will in the community. So, I can't tell
10 you how, you know, how much the program has been
11 appreciated. Like I said, we did hit a glitch pre-
12 pandemic when all of a sudden our NCOs just seemed to
13 just drop off, and my ongoing question to my precinct
14 leadership was what happened. We were doing well
15 with the pace of the NCOs, and the community was
16 engaged and the reports were great, and we were
17 coming out to the meetings, and then I don't know if
18 it was a matter of staffing or something like that.
19 Then we came into the pandemic. Coronavirus seemed
20 to just stood [sic] us all, you know, on our ears at
21 that point, and were then looking at I guess
22 rebuilding the program and rebuilding those
23 relationships again. So I just wanted to go on the
24 record with saying that. The NCO program has been
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2 one of the most effective, you know, at least in my
3 precinct [inaudible] what we've seen as far as
4 community policing and partnering with the community.
5 So we just hope that that continues to build and
6 build and build. So, my first question is, what
7 measurements or indicators does the NYPD currently
8 use to evaluate its successes, enhancing the quality
9 of life in New York City?

10 DIRECTOR CLARKE: Yeah, so I think
11 there's a lot of things we can look at when we're
12 talking about how we're successful enhancing the
13 quality of life. We've done a lot of work on
14 building out community surveys. So, you know, part
15 of it is we're asking people what you think. We have
16 our Build a Block meetings and our Precinct [sic]
17 Council [sic] meetings, and I hear you about the NCO
18 program. Obviously, that's something that we, all at
19 the NYPD, have been very proud of, and COVID-- I know
20 it happened pre-COVID, but COVID really made it a
21 lot-- some of this a lot more difficult to have these
22 meetings. But we're always evaluating data. We're
23 evaluating crime numbers. We're evaluating 311 calls
24 for quality of life issues, trying to see if there's
25 ways we can solve these issues, and you know, there's

1
2 been an increasing focus on collaborative working
3 with our partner agencies and working with members of
4 the community. We've had our precinct solution. I
5 forget the exact name of it, but we're working with
6 members of the community to find problems that
7 they're having and bring in non-governmental
8 organizations, bring in community members, bring in
9 other agencies to sort of tackle a problem. So
10 there's a lot of factors that we're looking at, and
11 at the end of the day the goal is to really correct
12 the problem and help New Yorkers have a better
13 quality of life.

14 CHAIRPERSON ADAMS: Do you engage the
15 public when it comes to evaluating officers? How
16 often is the public engaged? What does that feedback
17 look like? Are there surveys? What's the response
18 been?

19 DIRECTOR CLARKE: Yeah, so have certain--
20 we've been doing community surveys and rolling out a
21 pilot where people who have been victims of certain
22 crimes, not all crimes will get a text message from
23 us about it asking how their interaction was. If a
24 person-- if an officer is singled out as having done
25 an exemplary job or, you know, being deficient in

1
2 some way, we can create what's called a "craft
3 report" and put that in the officer's file, and then
4 when officers are being evaluated, the evaluators
5 have access to the whole file to be able to determine
6 if they're getting constant good praise. That'll
7 obviously effect their evaluations.

8 CHAIRPERSON ADAMS: Okay. So going back
9 to my initial statement when it came to neighborhood
10 policing, NCOs, how has the Department's neighborhood
11 policing model changed the way it evaluates officer
12 performance and overall success.

13 DIRECTOR CLARKE: So, you know, I think
14 one way is-- and it's part of the overall philosophy
15 we-- in terms of how we evaluate officers is-- one of
16 the key components is how you interact with members
17 of the community and that is sort of, you know, the
18 corner stone of neighborhood policing is building the
19 trust, and that is one of the key focuses of one of
20 our evaluation systems. So that's certainly part of
21 it. Obviously there are other issues. Hand it over
22 to Inspector.

23 INSPECTOR CAPASSO: It's also taking away
24 the pressure from the officers to have to go out
25 there, arrest people, write summonses. It's a matter

1
2 of working with the people that live and work in that
3 community and hearing from them and solving their
4 problems. Not just-- it took away that stress from
5 the officer. I have to go write summons. I have to
6 go arrest somebody. That's what that neighborhood--
7 we're problem solvers, and that's what they wanted
8 officers to be. That's actually what the whole
9 neighborhood policing is. Like, what you mentioned
10 Councilwoman, they knocked on your door. They didn't
11 know who you were. They want to meet you. They want
12 to hear the concerns, and I really think that's what
13 neighborhood policing has done for the officers.
14 They can feel more like a part of the community
15 instead of an outsider. I mean--

16 CHAIRPERSON ADAMS: [interposing] Yeah, I
17 would agree with that. I'm sorry, go ahead.

18 INSPECTOR CAPASSO: And the supervisors
19 make them aware of that. The supervisors are the
20 people that are-- when they evaluate them, they let
21 them know, you know, I'm putting your in for this.
22 I'm going to put my supervisor's feedback in for you,
23 give you a positive reward, and that automatically
24 populates by the officer's name on that profile
25 report that the Chief mentioned. So, it

1
2 automatically goes into the officer when they sit
3 down. [inaudible] doing a good job. We heard from
4 the community. You're listening to their problems.
5 So that's, I really think, the whole basis of the
6 neighborhood policing. Look what it's done to the
7 officer.

8 CHAIRPERSON ADAMS: Okay, so-- yeah. So
9 we're talking about the community and engagement and
10 community involvement which is great. Everybody
11 appreciates that. So how does the Department
12 determine-- when you take a look at the metrics that
13 you're using, because there are several of them I
14 would imagine. How does the Department determine
15 which metrics are appropriate to use during an
16 evaluation process or to evaluate the performance of
17 the rank and file?

18 DIRECTOR CLARKE: Yeah, so I think-- so
19 part of it was done in collaboration with the Floyd
20 litigation. So, the evaluation for our police
21 officers went through that process. We worked with
22 the monitor who-- you know, just like to take a
23 minute to say, you know, we are thinking about his
24 family now because he passed away recently and we
25 wish the family the-- wish them well. But the

1
2 monitor and the plaintiffs helped to determine what
3 the correct formula is for our officers and how to
4 evaluate them, how often we evaluate them, the topics
5 that we should be, you know, reviewing. That was
6 part of that process.

7 CHAIRPERSON ADAMS: Yeah, we offer our
8 condolences as well, by the way. Are there any best
9 practices nationally or in other jurisdictions that
10 you follow or take guidance from?

11 DIRECTOR CLARKE: So, I don't know if
12 there's a national best practice. Everyone has sort
13 of their own way of doing things, but certainly we
14 are willing to hear from other jurisdictions if they
15 have, you know, something that they find has worked
16 well. We often talk to other jurisdictions about a
17 variety of things, and if something comes out that
18 says this is like the golden standards, you know,
19 we're obviously willing to listen to that. But I
20 don't know if that's something that is out there
21 right now.

22 CHAIRPERSON ADAMS: So, some of you know
23 or may not know that I'm the former Chairperson of
24 Community Board 12, elected in this seat in my third
25 term as Chairperson of Board 12, the second-largest

1
2 Community Board in the Borough of Queens. During my
3 time as Chairperson of that Community Board, we heard
4 a lot of-- we heard a lot of stories, complaints, you
5 know, conversation around the issue of quotas and the
6 quota system, and the fact that, you know, NYPD said
7 no. The public said yes. Other people said maybe.
8 Your position on quotas these days, has the
9 Department ever implemented the use of quotas in
10 evaluating officer performance, period?

11 DIRECTOR CLARKE: So, no, our position is
12 we've never done that. I think what we've done
13 recently has really stressed that we don't do that.
14 We want to make sure that everyone from the top to
15 bottom knows that we are looking at, you know,
16 looking at the quality of your performance, not the
17 quantity. You know, that's always been department
18 policy, but you know, we want to make sure that
19 everyone knows that and is aware of that and that's
20 how the modern department is behaving, is that we're
21 talking quality not quantity.

22 CHAIRPERSON ADAMS: Okay. So, what are
23 the methods that you use to evaluate that quality?

24 INSPECTOR CAPASSO: So with the Federal
25 Monitor they came up with 12 dimensions for the

1 officers. If you'd like, I could mention them:

2 Problem identification solving, adaptability and
3 responsiveness, judgement, integrity, application of
4 law and procedures, community interaction, department
5 interaction, professional [inaudible] quality and
6 timeliness of written reports, initiative,
7 leadership, and implementation of proactive policing
8 strategies while on patrol.

10 DIRECTOR CLARKE: And so some of these
11 things are, as the Chief mentioned, you know, we're--
12 all our supervisors have to do some monthly checks on
13 body worn camera video. So, in addition to seeing
14 them in the field when they're with them, when
15 they're not with them they'll see some body worn
16 camera video. They have to-- sergeants have to
17 review all stop reports to determine whether the
18 officer behaved-- you know, was acting
19 constitutionally in their stops, right? So these are
20 various factors where we can get in and view the
21 officer's interactions and how they're doing. But
22 again, it's to make sure they're doing things
23 properly and well, not that they're just doing them a
24 lot.

1
2 INSPECTOR CAPASSO: Also, on the monthly
3 report they said that the supervisor sits down with
4 the officer. [inaudible] monthly. So in case a
5 community concern came in and it's in the officer's
6 area or is where he patrols, he might say, "Look, you
7 might want to address this. There's a traffic
8 condition that's going on there, but maybe been
9 causing some accidents and people are getting hurt.
10 What can we do over there to [inaudible] people from
11 getting hurt?" So they review it monthly so it
12 doesn't get out of control. Now that's part of the
13 Federal Monitor to have them sit down monthly and
14 review any community concerns that might be affecting
15 the community adversely as opposed to any other
16 issues.

17 CHAIRPERSON ADAMS: Are there any
18 incentives offered like overtime or specialized
19 assignments, you know, or promotions even? Are those
20 types of things offered to officers based on their
21 performance?

22 DIRECTOR CLARKE: So, no not really,
23 right. So what we try to do is make sure we keep our
24 officers overtime level and make sure we're not going
25 over. Certainly, right, if you are applying to do a

1
2 specialized assignment and you have glowing reviews
3 you're going to be more attractive, like in any other
4 profession, any other job. If your reviews are
5 glowing when you try to move to a new spot, that is
6 going to affect whether they want you there. So, it
7 does, but it's not-- yes and no. In terms of
8 promotions, especially at the lower ranks, it's based
9 on the civil service exam to go to sergeant to
10 lieutenant to captain. What could impact your
11 ability to get promoted is, you know, poor or
12 substandard reviews that puts you on some kind of
13 monitoring. Then you wouldn't be promoted while that
14 happens, but it doesn't-- you know, it's not like the
15 person with the best hundreds of reviews gets
16 [inaudible]. It's about how you did on the test, but
17 certainly effects the way you, you know, whether you
18 want to transfer to better assignments, you know,
19 they're going to want the person with the better
20 reviews.

21 CHAIRPERSON ADAMS: So are there any
22 incentives offered at all? Sounds like no.

23 INSPECTOR CAPASSO: Well, if you wanted
24 to go to a Detective Squad, like Mike just said, you
25 had good reviews, you need to look at that as part of

1
2 an example trying to move to a [inaudible] Detective
3 Squad to become a detective. So there is that
4 incentive that you always want to have good
5 evaluations. Someone in the Detective Bureau or ESU
6 or K9 or mounted, the units will be looking at your
7 performance evaluations.

8 DEPUTY CHIEF MALONEY: I think what's
9 important to say here is that, you know, the way the
10 Department through neighborhood policing has really
11 turned-- did a 180 in the way we review our officers.
12 Every officer, the old system, the new system,
13 [inaudible] systems, every officer wants to perform
14 to the best of their ability. That's what we want as
15 an agency, that officer doing what we want to do out
16 there. But we've kind of switched gears and now we
17 expect officers instead of writing summonses and
18 making certain number of arrests to address problems.
19 So when we can identify officers that are out there
20 addressing problems, interact with the community,
21 accomplishing the mission of the Police Department
22 and may get higher performance evaluations than the
23 person that's going to be not as effective as doing
24 that. Those people tend to move up further in their
25 career. I think that's a good thing. I think it's

1 something going forward that we're going to stay on
2 track doing. I don't think it equates to somebody
3 that's writing more summonses, getting a leg up or
4 getting more overtime than somebody that's not
5 writing summonses or making arrests. It's more of a
6 holistic look at the performance of an officer on the
7 criteria that Steve Capasso spelled out, how we rate
8 that.

10 CHAIRPERSON ADAMS: Okay. So I'm taking
11 a look at the other side of that. Officers who fail
12 to meet the metric, certain metrics when it comes to
13 performances, is there discipline involved or how
14 does that work?

15 DEPUTY CHIEF MALONEY: [inaudible] Ari,
16 when there's somebody that's rated, you know, below
17 standards and not performing there's a process in
18 place through the evaluation process, but that
19 officer could be placed on monitoring. You want to
20 speak, Ari, just a little bit about the monitoring
21 component of--

22 CAPTAIN MAAS: So monitoring is broken
23 into several levels. For the sake of performance,
24 it's going to be a level one and level two
25 monitoring. Poor performance evals will trigger a

1 look at by the Performance Monitoring Unit to place
2 the officer on one of the two monitoring levels. The
3 criteria to get on the levels are a little different.
4 Level one, having a lower threshold. Level two,
5 since it's-- it's more in-depth monitoring, has a
6 little bit of a higher threshold. So at the level
7 one monitoring level it's something called a-- we
8 refer it to Command Level Monitoring. So, myself, my
9 team will work with the officers, commanding officer,
10 to develop a plan of action for that officer to kind
11 of turn him or her around in the process so that we
12 can get them up to standards. And that plan of
13 action can include things from training to change of
14 assignment within the command. Maybe they're not
15 working well with their current partner. Maybe they
16 need some extra supervision. Maybe they'll be with
17 the sergeant for a couple tours. Maybe they need to
18 come down to the borough level and speak to
19 executives there to turn that person around.

21 CHAIRPERSON ADAMS: I'm going to ask one
22 more question. I know my colleague Council Member
23 Holden wants to get in here. I'm just curious to
24 know your thoughts on, you know, the wave of social
25 media and civilians that use cameras, you know, to

1
2 record instances of bad behavior. How has that
3 impacted NYPD? What are your thoughts on that? And
4 I'm thinking particularly of the two officers in the
5 subway, I believe it was last month, that didn't have
6 the masks on and the gentleman kind of exposed that,
7 and they kind of pushed him out of the subway. So
8 what are your thoughts, you know, when civilians
9 report these instances or document these instances?
10 What are your thoughts on that?

11 DIRECTOR CLARKE: Yeah, so, you know, I
12 think we've put out guidance to officers that it's a
13 citizen's right to record public officials doing
14 their job. Obviously, I don't want to talk about any
15 specific incidents. There's investigations ongoing,
16 but we've seen a lot more cameras out, and we now--
17 most of our officers have body cameras, too. So a
18 lot of these interactions you're getting recorded one
19 way or another. I don't know that that's a bad
20 thing, but you know, we put it out that citizens do
21 have the right to record officers, without getting
22 into details of any specific incident.

23 DEPUTY CHIEF MALONEY: And I think that's
24 a good thing, too. I think Department has gone
25 through great links to instruct the officers that

1
2 public recording us is permissible and allowed, that
3 we should not interfere with that. You know, I think
4 that message has been loud and clear. I think the
5 body worn cameras help with the officers being used
6 to being recorded. Maybe early on there was some
7 apprehension about being recorded. In the world that
8 we live in today, everywhere you go, everything you
9 do in New York City is pretty much being recorded by
10 entity or another. So I think as we move along in the
11 process, the fact that they're being recorded, it's
12 acceptable by the officers and they've become used to
13 working in those conditions, whereas early on were
14 not. Body worn cameras weren't a thing and citizens
15 recording police weren't as prevalent as they are
16 today. We had some hiccups in [inaudible].

17 CHAIRPERSON ADAMS: I think it's impacted
18 transparency and the perception of transparency when
19 it comes to the public very much also, which is
20 something that we needed for so long, you know,
21 transparency in the NYPD. I think that it helps at
22 least to foster some more of that trust and that
23 something will happen, there will be penalties for
24 bad behavior. So I think that's impacted it as well.

25

1
2 So, I'm going to turn it over now to Council
3 questions.

4 COMMITTEE COUNSEL: Thank you, Chair.
5 Council Member Holden, you may begin.

6 COUNCIL MEMBER HOLDEN: Thank you. Thank
7 you, Chair and thank you Chief and all the personnel
8 from NYPD. I appreciate the testimony, and I just
9 want to-- talking about summonses, I don't think we
10 have enough in a certain area, summonses, and I just
11 want to go over a couple of stats that we uncovered
12 under Open Data. For instance, 131,156 noise
13 complaints in 2020, 246 summonses citywide for noise
14 out of those 131,000. So far this year-- this is up
15 to September 27th, 101,000 complaints-- 101374
16 complaints and a little bit better, 345 summonses.
17 But that, again, that's better than last year, but
18 it's still at 0.34 percent. So when you call in a
19 noise complaint, chances are nothing is going to
20 happen or no summonses is going to be issued. And
21 I'll just go over a couple in my own precinct,
22 because I'm very curious. Last year, let's just take
23 residential noise complaints-- or this year, 5,000.
24 Five thousand residential noise complaints, and guess
25 how many summonses, Chief? Zero. So, and I had this

1
2 experience. There was a night that we were turning
3 back our clocks, and somebody across the street
4 decided that they were going to have an all-night
5 party, and lasted until 3:30 a.m. until I finally was
6 able to flag down a squad car, which had warned these
7 individuals turn the music down. 3:30 a.m., turn the
8 music down. They're saying close the door. This is
9 an attached house. These are attached houses. Close
10 the door, and then the squad car leaves. No
11 summonses issued. Four times I had to put in 311
12 complaints. Four times, no summons until I flagged
13 down the officer. I said, "What did you-- why didn't
14 you summons this guy?" He said, "Well, we told him
15 to turn it down, the noise." And of course, when the
16 squad car leaves they turn it up again. Now, I
17 didn't get to sleep that night, and I could have
18 contacted the precinct myself and got it done, but I
19 wanted to see what my constituents are, you know,
20 experiencing, obviously, and I got a good lesson.
21 That it's almost impossible to get a noise complaint
22 to a residential issue. Now, these stats are
23 alarming. We need our sleep. We need-- like you
24 talk about quality of life, we don't have quality of
25 life when somebody decides to violate the law and

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2 have a party and have people on their porch there all
3 day looking for-- all night looking at the cops. The
4 cops come, they turn it down, and then they obviously
5 leave, and turn it back up again. This is an issue,
6 and again, the citywide stats over the decade has
7 been the same way. So, do you know that we're not
8 issuing noise complaints, especially the residential?

9 DIRECTOR CLARKE: So, I mean, I don't
10 know exactly what's going on with some of this, but I
11 think, you know, going to residential does present
12 some challenges, in that we can't go into the house
13 if we're not invited because it's not a crime. I
14 think there is a focus on trying to solve the issue,
15 but it sounds like in this instance it wasn't solved,
16 and that's, you know, when we leave and someone just
17 turns it back up is a problem. You know, we can go
18 back and you know, talk to people about what-- how we
19 respond to noise complaints and whether this is
20 working. I know you've had some-- a lot in your
21 district, too, not just the residential. So, you
22 know, we can certainly-- if it's not working, go back
23 and see what we can do to fix it.

24 COUNCIL MEMBER HOLDEN: Right, because
25 let's say all noise complaints, it's 8,671 this year

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2 so far, and the total-- this is including vehicle,
3 loud exhaust, residential, commercial, 68 summonses
4 issued. So, again, and last year is 12,000 and the
5 number is even worse. Over 12,000 noise complaints
6 and maybe 37 total summonses of all the noise
7 complaints. So, quality of life is very important,
8 especially for Queens's neighborhoods where, you
9 know, we work and we have to get up in the morning,
10 and we want to maintain our quality of life, and the
11 Chair's community is the same as my community. We
12 want-- we-- plenty of us work and we have to get our
13 sleep. I think all human beings have to get some
14 sleep. If we can't sleep, we can't function, and
15 quality of life is very, very important in my
16 district. And you know, talking about the NCO
17 program, that's taken a big hit, and Chief Holmes
18 admits that at one of our hearings when she said that
19 was one of the first hits when we cut the budget,
20 NYPD budget, which Chair, I had predicted that. I
21 said the NCO program-- if we're going to cut the NYPD
22 budget, the NCO program will take the biggest hit,
23 and sure enough we also eliminated the Anti-Crime and
24 many of the duties of the Anti-Crime were given to,
25 believe it or not, the NCOs, and the Chief admitted

1
2 that. So, I have a big staffing problem in my
3 precincts, and for instance there was four units out
4 on a particular night in a very large precinct, 7.5
5 square miles. I got four patrols out and they're
6 holding four or five jobs. And the NCOs have, like I
7 mentioned, their work cut out for them, but the
8 pressure is now on the NCOs is greater than ever now
9 with the cuts and the extra duties. And believe it
10 or not, they give out their phone numbers, and they
11 really can't do a lot of their work because they're
12 answering, you know, these noise complaints. They're
13 trying to deal with the noise complaints and they
14 really can't address it. So, what I'd like is an
15 emphasis if you could look into this, the emphasis on
16 these noise complaints, but also how do we really
17 bring back the NCO program to what it should be?

18 DIRECTOR CLARKE: Yeah, we definitely
19 talk to-- bring that back and-- NCO programs, I mean
20 we were-- have been proud of. So the extent it has
21 lowered its level, we would, you know, bring it back
22 to try and get it back to where it should be.

23 COUNCIL MEMBER HOLDEN: Okay, on this
24 resolution, how do you feel about the Resolution

1
2 1762, about unsealing records for the CCRB? Do you
3 have any opinion on that?

4 DIRECTOR CLARKE: So, you know, I think
5 we have worked with CCRB to try and help them get
6 more access to sealed records. For instance, we've
7 allowed ourselves-- we now allow an oral [sic]
8 representation from a CCRB investigator that there's
9 going to be a waiver, that the victim is going to
10 waive the access in order to start providing that.
11 So, we are trying to work with them to clear any
12 hurdles there are, not, you know, unnecessarily
13 stalled cases. I think you mentioned that the
14 litigation from the Bronx Defenders Services earlier
15 and I think that's an excellent point. We believe
16 that we should have some ability and we do have
17 ability to use our internal records, but we'd be
18 willing to work with CCRB and the state to help them
19 get greater access, and you know, reaffirm our
20 custodial [sic] use of sealed records and ongoing
21 investigations or in-- not ongoing investigations,
22 but in terms of helping fight crime or work with
23 domestic violence victims and a whole host of
24 reasons. So, we'd be willing to work with everyone
25 on those two, sort of twin, objectives.

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2 COUNCIL MEMBER HOLDEN: It's interesting,
3 though, because I think it's a two-way street and the
4 Director didn't think so. But I-- if you're going to
5 unseal records for, you know, investigating police
6 conduct, then you certainly have to unseal the
7 records for obviously investigations that result, you
8 know, from-- you know, investigations, shooting
9 victims, obviously are going up. So there's some--
10 there-- you know, gun violence and homicides and sex
11 crimes. We should be able to unseal records and
12 investigate suspects. So, I don't see that-- you
13 know, again, it's a two-way street, but it's
14 interesting the CCRB Director-- well, I don't see-- I
15 don't see the correlation here. I don't see that
16 it's-- they're related. It's apples and oranges. I
17 don't think so. You unseal the records for one body,
18 you should unseal the records for investigations at
19 least. So, thank you Chair. Sorry I took so much
20 time. Thank you.

21 CHAIRPERSON ADAMS: Thank you, Council
22 Member Holden. I just want to make sure that I'm on
23 the record in just saying that for me, the NCOs
24 slowed down before the budget was passed in 2022
25 [sic]. So, for at least my precincts, we saw them,

1
2 you know, kind of dissipate before that budget. It
3 really didn't have anything to do with, you know,
4 with the lack of funding yet, I'll say. Not that
5 some things were not affected, but were, you know, at
6 least [inaudible]. Council Member Holden, your hand
7 is still up, did you want to come back?

8 COUNCIL MEMBER HOLDEN: Yeah, I just
9 wanted to answer that because Chief Holmes said that
10 the NCO program was--

11 CHAIRPERSON ADAMS: [interposing] Oh, I
12 don't doubt that. I don't--

13 COUNCIL MEMBER HOLDEN: And I wouldn't
14 know because I was the last precinct to get the NCO
15 program pre-pandemic, so we got it right around the
16 pandemic. And we did have a few months of-- they
17 were working before the pandemic, but it's
18 definitely-- and they all admit it. They all admit
19 that it was a big fall-off because not only the
20 pandemic, but the cuts, because the cuts-- they
21 raised in 2000-- they raised the NYPD budget 2014 to
22 fund the NCO program, and then when you scale it
23 back, that's the first thing they're going to cut,
24 and that's exactly what happened. But thanks, thanks
25 Chair.

1
2 CHAIRPERSON ADAMS: Thank you, Council
3 Member Holden. I've got some other opinions on that
4 as well, but I'll save that for another hearing. I
5 also wanted to concur with the noise complaints. I
6 just met with some of my constituents a few days ago
7 in my office dealing with noise complaints. It's
8 not, you know, unique to Queens. However, we have a
9 substantial number of noise complaints in Queens that
10 just go unanswered and quality of life issues are
11 ignored, noise being the number one complaint coming
12 through. House parties, amplified mufflers, you name
13 it, we've got it all in Queens, and it is-- I'll
14 just-- you know, to the Council Member's point, those
15 complaints are underserved, and it's just not
16 enforced for whatever reason. Noise complaints are
17 just not enforced. They're ignored. So, I got to
18 put in a plug with that as well, as we are greatly
19 affected in Queens when it comes to noise complaints.
20 So, with that, Committee Counsel are there any other
21 questions from any of my colleagues?

22 COMMITTEE COUNSEL: There is not.

23 CHAIRPERSON ADAMS: Okay, I thank this
24 panel once again for your patience this afternoon and
25 joining us, and thank you for your testimony today.

1
2 DIRECTOR CLARKE: Thank you.

3 COMMITTEE COUNSEL: Thank you everyone.

4 We'll now turn to the public testimony section of
5 today's hearing. We only have one individual who is
6 here to testify. So, Ms. Jain, you may go ahead.

7 NIJI JAIN: Good afternoon, my name is
8 Niji Jain from the Bronx Defenders. We represent a
9 class of over three million people who have been
10 impacted by the NYPD's unlawful use to seal arrest
11 records. We recently won a court order requiring the
12 NYPD to cease that unlawful use. For decades the
13 NYPD has illegally been using millions of sealed
14 arrest records in a network of 14 inter-connected
15 surveillance databases. When sealed records are
16 disclosed, people experience privacy violations,
17 reputational harm, and targeting based on the mere
18 fact of a prior allegation. As the NYPD continues to
19 disproportionately target black and brown
20 communities, the sealing statutes protect the
21 presumption of innocence of millions of New Yorker
22 and it stem racially disparate outcomes. We support
23 the CCRB's important goal of accessing information to
24 hold police accountable. However, the existing
25 sealing laws already permit the access necessary for

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2 police accountability and oversight. The barriers
3 are the NYPD's refusal to cooperate and to handle
4 those records appropriately. The majority of records
5 that the CCRB seeks to access are unsealed and the
6 NYPD should simply provide direct access to those
7 records to the CCRB, which we understand is something
8 that the CCRB has requested. For sealed records, the
9 CCRB can obtain a waiver from the complainant or a
10 court order, and in the rare instances where neither
11 of those is available, the NYPD can provide redacted
12 or anonymized records. We're concerned that S6760,
13 the proposed legislation, lends credence to a problem
14 that has been manufactured by the NYPD to pit police
15 accountability on the one hand against privacy
16 interests of millions of New Yorkers on the other,
17 when in fact those are consistent goals, and we would
18 urge the-- we would urge caution when considering
19 exceptions to the sealing laws that fail to center or
20 even take into account the perspective of the New
21 Yorkers who are directly impacted and whose rights
22 are at stake. Thank you. I would welcome the
23 opportunity to answer any questions that you might
24 have.

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2 CHAIRPERSON ADAMS: Thank you, Ms. Jain,
3 for your testimony. How long have you been in your
4 capacity?

5 NIJI JAIN: Yes, I've been with the Bronx
6 Defenders for almost five years as an Impact
7 Litigation Attorney and I've been on the sealed
8 records class action since the beginning, since we
9 filed in 2018.

10 CHAIRPERSON ADAMS: And directly to your
11 testimony, how often do you see instances like this,
12 what you're testifying on. How often do you see
13 instances like this impacting your [inaudible]?

14 NIJI JAIN: Yes. So we regularly see
15 instances where the NYPD has accessed sealed records
16 either through their databases or through for
17 example, using sealed photographs in the context of a
18 photo lineup or another application, and then they
19 turn those records over to prosecutors who then turn
20 them over to our criminal defense attorneys in the
21 context of criminal discovery. So we see it happen
22 frequently in that context, but more importantly what
23 I can tell you at a macro level is that in the course
24 of our litigation, the NYPD has told us-- has
25 admitted in discovery responses that its network of

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2 databases contains over six million sealed records
3 that pertain to over three million people. So, our
4 class, the impacted class is very, very big, and that
5 data is or 2019, so you can imagine that the number
6 has only grown as more people have had arrests that
7 were resolved in their favor or dismissed and then
8 sealed.

9 CHAIRPERSON ADAMS: Thank you. Powerful
10 testimony. Thank you very much for your testimony
11 today.

12 NIJI JAIN: Thank you.

13 COMMITTEE COUNSEL: Thank you, Chair.
14 Seeing no other members of the public, and seeing no
15 Council Members with hands raised, I believe that we
16 could close out the session today. Chair, go ahead.

17 CHAIRPERSON ADAMS: Okay. With that
18 said, thank you very much all of my colleagues who
19 were present here, for your patience and for your
20 being in this hearing today. Thank you to Committee
21 Counsel, to Josh Kingsley, to Matt Thompson, all of
22 the staff at Council, everyone who testified here
23 today, CCRB, NYPD, and of course the public for your
24 testimony today. This meeting is hereby adjourned.

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COMMITTEE ON PUBLIC SAFETY

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COMMITTEE ON PUBLIC SAFETY

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date January 21, 2022