



**THE POLICE COMMISSIONER
CITY OF NEW YORK**

April 3, 2015

Honorable Bill de Blasio
Mayor of the City of New York
City Hall
New York, NY 10007

Honorable Melissa Mark-Viverito
Speaker
The New York City Council
250 Broadway, 18th Floor
New York, NY 10007

Honorable Mark G. Peters
Commissioner
Department of Investigation
80 Maiden Lane
New York, NY 10038

Honorable Phil Eure
Inspector General
Office of the Inspector General – NYPD
80 Maiden Lane
New York, NY 10038

Dear Mayor de Blasio, Speaker Mark-Viverito, Commissioner Peters and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, I hereby submit the New York City Police Department's response to the January report of the Office of the Inspector General entitled "Observations on Accountability and Transparency in Ten NYPD Chokehold Cases."

All the best,

A handwritten signature in black ink, appearing to read "William J. Bratton". The signature is written in a cursive style and is enclosed within a large, loopy oval shape.

William J. Bratton
Police Commissioner



POLICE DEPARTMENT

NEW YORK, N.Y. 10038

LAWRENCE BYRNE
DEPUTY COMMISSIONER, LEGAL MATTERS

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Dear Mayor de Blasio, Speaker Mark-Viverito, Commissioner Peters and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, the New York City Police Department hereby submits its response to the January report of the Office of the Inspector General entitled "Observations on Accountability and Transparency in Ten NYPD Chokehold Cases." I note at the outset that this report reviews chokehold claims filed with the Civilian Complaint Review Board ("CCRB") against New York City Police Department Officers during the period 2009-2012. During the five year period from 2009-2014 when these claims were reviewed, the CCRB, which is the agency charged with receiving and investigating certain use of force complaints, substantiated only 10 chokehold claims. Those 10 substantiated claims then proceeded through the Department's disciplinary process, which is detailed in your report. One of the 10 substantiated claims was not prosecuted because the CCRB's own prosecution unit declined to prosecute the chokehold allegations; another substantiated claim resulted in

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the Officer's exoneration after trial; and one substantiated claim was closed due to the death of the Officer before the conclusion of the process. We agree with your observation that no definitive conclusions can or should be drawn from such a limited universe of cases, nor do we believe it is useful to revisit the factual circumstances of these cases, particularly in light of the fact that all of the cases, with the exception of one that is pending and has not yet reached the point where it is ripe to be reviewed by Commissioner Bratton, pre-date Commissioner Bratton's tenure and also pre-date significant reforms that have occurred with respect to the enhanced collaboration between the CCRB and the NYPD as discussed more fully below.

To address your specific recommendations, we agree with your first recommendation (which we were implementing already with the CCRB) that NYPD and CCRB increase coordination and collaboration regarding use of force cases generally. Since January 2014, we have been working collaboratively with the CCRB in several respects. As you note in your report, CCRB and NYPD executed a Memorandum of Understanding ("MOU") in April of 2012, which was authorized by City Rules governing CCRB in April 2013¹ and implemented thereafter, and which set forth new guidelines for the prosecution of certain use of force cases. Previously, these use of force cases were initially investigated by the CCRB and, if substantiated, then forwarded to NYPD with a recommendation for discipline. The NYPD Department Advocate's Office ("DAO") prosecuted all substantiated use-of-force cases before the NYPD Deputy Commissioner for Trials who then made recommendations to the Police Commissioner with respect to discipline, sometimes deviating downward from the recommendations of CCRB. The MOU established a new unit under CCRB, the Administrative Prosecutions Unit ("APU"), for administrative prosecution of substantiated civilian complaints with respect to, among others, certain use of force complaints. Since April 2013, the APU prosecutes chokehold cases before the NYPD Trial Commissioner. At the conclusion of a trial, the Deputy Commissioner for Trials forwards her recommendations, along with the CCRB's recommendations, directly to the Police Commissioner for a final determination.

Since early 2014, the Department Advocate's Office and the new APU unit have been working collaboratively together with respect to the prosecution of cases as well as applying consistent standards. The DAO and CCRB have implemented a formal "Remand" process, which works to address cases in which CCRB has voted in favor of Charges and Specifications, which is the most serious classification of discipline, but the DAO disagrees with that recommendation. In those instances, the DAO informs the CCRB in writing that the DAO disagrees with the CCRB's conclusion, providing a factual and legal basis for that conclusion. The CCRB has the authority to decline to review the remanded case, but must state its reason for the declination. If CCRB accepts the remanded case, the case is re-presented to the Board that initially voted to substantiate the case. The Board is provided with the DAO's position on the case, and is then asked to review and re-vote on the matter.

The second innovation with respect to CCRB/NYPD cooperation and collaboration is the Penalty Review Process, which is currently in a preliminary pilot phase. Penalty Review

¹ Rules of the City of New York, Title 38A, Chapter 1, Section 1-46(f).

occurs when the DAO receives a case from CCRB recommending lesser discipline than Charges and Specifications. In those cases in which the DAO disagrees with the CCRB's recommended penalty, DAO notifies CCRB in writing, specifically stating the reasons for the suggested change in penalty and affords the CCRB an opportunity to comment. These procedures have thus far been very effective in increasing transparency and cooperation between the CCRB and NYPD. While we are fully committed to increasing the collaboration between the NYPD and the CCRB, as you note in your report, the Police Commissioner continues to retain the final authority and complete discretion to make all judgments about internal discipline of all Uniformed Members of Service pursuant to applicable law. *See, e.g.*, New York City Administrative Code, Title 14, Section 14-115 ("Discipline of Members"); New York City Charter, Chapter 18, Section 434; Rules of the City of New York, Title 38, Sections 15-12, 15-18.

With respect to your second recommendation that final decisions the Police Commissioner makes with respect to disciplinary actions for Officers in substantiated chokehold cases be reasoned, transparent and in writing, the MOU between the CCRB and the NYPD sets forth the NYPD's prior agreement, which was subsequently codified in the City Rules governing the CCRB in 2013, that the Police Commissioner will provide a written explanation to the CCRB of any decision that deviates downward from a penalty recommended by the CCRB. Specifically, the agreement provides that in any substantiated case in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by CCRB, the Police Commissioner "shall include a detailed explanation of the reasons for deviating from CCRB's recommendation including but not limited to each factor the Police Commissioner considered in making his decision." Commissioner Bratton fully supports this principle and has been complying fully with this agreement and the law. The NYPD will continue to do so by providing a legally sufficient written explanation for any decision resulting in disciplinary action that is less than that recommended by CCRB.

We also agree with your third recommendation that CCRB expand NYPD's access to newly-filed complaints and that CCRB share substantive information with NYPD about use-of-force cases filed with the CCRB. We are continuing our discussions with the CCRB on this important initiative.


With respect to your fourth recommendation that the NYPD improve consistency, information-sharing and case tracking for lower level offenses termed "Outside Guidelines" cases that are investigated by the borough and precinct investigators, the NYPD is in the process of expanding its existing system to include an improved tracking system for these Outside Guidelines cases. The goal is to have these cases integrated into the system that the Internal Affairs Bureau ("IAB") uses to investigate the cases within its jurisdiction which will provide for a more efficient tracking system.

Although not specifically recommended in the instant report, it is germane to note that under Commissioner Bratton, and with funding provided by Mayor de Blasio, the NYPD has instituted a brand new three day refresher tactical training program for the 20,000 Police Officers who are out on patrol that teaches them new methods for deescalating

conflicts. And, for those times when de-escalation techniques do not work, it also teaches them new tactics to end conflicts decisively and safely for involved citizens and Officers alike. Eventually, all 35,000 Uniformed Members of Service will receive this annual training which we believe will further enhance the skills of our already highly trained Officers.

Under the direction and leadership of Commissioner Bratton and Chairman Richard Emery, the NYPD has been working with the CCRB to improve cooperation and collaboration between CCRB and NYPD and we are pleased with the progress to date. We welcome the continued input from the OIG-NYPD and intend to continue to work collaboratively with your Office and the Community as a whole to ensure the safety of the public and our Police Officers in every neighborhood throughout the City.

Very truly yours,

A handwritten signature in black ink that reads "Lawrence Byrne". The signature is written in a cursive, flowing style with a large initial "L" and a long, sweeping tail on the "y".

Lawrence Byrne
Deputy Commissioner
Legal Matters