

**STATEMENT OF DEPUTY CHIEF KEVIN MALONEY
COMMANDING OFFICER, OFFICE OF THE FIRST DEPUTY COMMISSIONER
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY
REMOTE HEARING
DECEMBER 6, 2021**

Good morning Chair Adams and Members of the Council. I am Deputy Chief Kevin Maloney, the Commanding Officer of the First Deputy Commissioner's Office of the New York City Police Department (NYPD). I am joined today by Inspector Stephen Capasso, Commanding Officer of the Personnel Orders Division, Captain Ari Mass, Commanding Officer of the Risk Mitigation Division, and Michael Clarke, Director of the Legislative Affairs Unit. On behalf of Police Commissioner Dermot Shea, I want to thank the Council for the opportunity to discuss the extraordinary lengths the Department goes to properly evaluate the effectiveness of our officers, and our procedures to promote the right people to the right positions at every level.

Neighborhood Policing, first and foremost, is about building trust in the communities we police, but there has been a lesser commented on but equally important aspect to Neighborhood Policing; building trust with the men and women who are tasked with carrying out this vision. Historically, officers and members of the public lost confidence in our evaluation and promotion structures, which helped erode trust both inside and out of the department. For these reasons, Commissioner Shea and his predecessors in this administration have redefined the idea of performance evaluation, and completely retooled the entire evaluation and promotion framework.

The NYPD aims to recruit, retain and promote the best by incentivizing quality policing and designing a comprehensive framework under which we assess how uniformed officers do their jobs. We consistently message that we are not interested in the quantity of our work but the quality. We have created a transparent structure which gives our officers clear guidance on what is expected of them in order to excel at their jobs, and the goals that need to be met in order to be considered for promotions. The current model of performance evaluation provides twelve specific focus areas. Members of the service are evaluated on a variety of skill sets, including community interactions, recognizing problems, and proper application of the law and department procedures.

There are two mandatory levels of assessment, and two optional levels. First, data concerning command conditions and officer performance is compiled on an ongoing basis, and this information is used in the preparation of a Monthly Officer Profile Report. The purpose of the monthly assessments is for supervisors to monitor an officer's performance and to give short term guidance and feedback in between rating periods, as needed. One vital aspect of this sort of direct assessment is our first-in-the-nation body camera audit protocols. Sergeants are required to review a random sampling of body cam footage from each platoon on a rolling basis to evaluate officers on a variety of factors, including whether they were professional and courteous, whether the officer conducted a stop in a constitutional manner and the officer's tactics. This is in addition to the audits conducted Department-wide by the Risk Management Bureau and other executives. Second, each

supervisor in the Patrol, Housing and Transit Bureaus must complete a quarterly evaluation of each of their subordinates, with the fourth quarter evaluation also acting as an annual evaluation.

The two non-mandatory assessments are the Officer Self-Report Form and the Supervisor Feedback Form. Officers are encouraged to use the Self-Report Form to report positive and noteworthy achievements. These could be substantial community engagement, referring citizens to services beyond those required when dealing with certain crime victims, and other notable acts of problem-solving, crime detection, or crime prevention. Supervisor Feedback Forms are used by supervisors to provide real-time feedback and to document instances demonstrating either extraordinary accomplishment or a need for improvement.

I'll turn my focus now to how the Department determines promotions and transfers. Promotions to the Sergeant, Lieutenant and Captain ranks are non-discretionary and go through the civil service testing process. By and large, the top scorers on each exam are promoted into that rank to fill vacancies as needed. Detectives follow a different track. Officers may apply to open positions in the Detective Bureau. Once there, and after demonstrating competent work for approximately 18 months, passing performance evaluations at both the 8 and 15 month marks, they will be promoted to detective. Discretionary promotions to Deputy Inspector, Inspector, and Deputy Chief are conducted differently. Members must apply for promotion to these ranks and, after going through a rigorous review and interview process, a candidate may be recommended for promotion to the Police Commissioner. In an effort to increase the diversity at our senior ranks, we ensure that individuals who are members of underrepresented communities are chosen to be a part of the interview process.

Additionally, an important new aspect to how the Department appoints precinct Commanding Officers is the Precinct Commanding Officer Assignments Program. This program gives a voice to communities in the selection of precinct commanders by requiring candidates to sit down for interviews with community members and leaders, who then recommend a candidate for appointment to the Police Commissioner. After a successful pilot earlier this year, the program has expanded to each precinct citywide, and will soon be expanded to each Housing Police Service Area.

Thank you very much for the opportunity to speak with you about the important work we are doing to strengthen the quality of our workforce. I look forward to answering any questions that you may have.



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

**Full Testimony of Rev. Frederick Davie, Chair of the Civilian Complaint Review Board
before the Public Safety Committee of the New York City Council
in the Resolution 1762**

Chairperson 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 (CCRB), and am here on behalf of our Chair, Rev. 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, S6760, 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 officers. CCRB access to sealed records is critical to our Agency’s ability to investigate all allegations of misconduct particularly as we take on the investigations of racial profiling and bias based policing. Statutes created to seal arrest records that are often sealed due to police misconduct are used to prevent the CCRB and other oversight agencies from investigating the underlying misconduct that caused the arrest to be sealed.

Records are often sealed because they are the result of unconstitutional stops which lead to arrests or they are instances where a prosecutor will decline to prosecute a case because the officer did not have a sufficient level of suspicion to warrant a stop. Cases can also be dismissed and sealed if a court finds that the police did not have probable cause to arrest or reasonable suspicion to conduct a search that yielded evidence. Allowing the CCRB access to records in



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

these cases will mean that the CCRB will be able to conduct a thorough, effective, and timely investigation without being denied access to these records by the Police Department.

Currently, the CCRB is required to either seek an unsealing order or obtain a release in every case where the NYPD denies a document or BWC request on the ground that the record is sealed. This causes significant delays often resulting in the CCRB being unable to fully investigate a complaint, or the investigation not being completed within the 18-month statute of limitations.

The resolution calling upon the New York State Legislature to pass, and the Governor to sign, S6760, will allow our Agency and all civilian oversight agencies in the state to ensure that some of the most vulnerable New Yorkers, all of whom were improperly arrested or summoned to have their cases looked into by independent agencies.

It is imperative that the CCRB have access to these and all documents that enable us to investigate police misconduct. The CCRB has made great strides in the last couple of years and continues to push forward changes and policies that make the agency more effective, and police accountability fairer and swifter. I believe this resolution, and the passing of state law will help us to continue to push forward, in addressing police misconduct across the state.

Thank you.



OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

MICHAEL E. MCMAHON
DISTRICT ATTORNEY

December 6, 2021

VIA EMAIL

Honorable Corey Johnson
Speaker, NYC City Council
City Hall Office
New York, New York 10007

Re: Opposition to Res. 1762

Dear Speaker Johnson:

I write to express our opposition to Res. 1762. As I am certain you are aware, Res. 1762 calls upon the New York State Legislature to pass, and the Governor to sign, New York State Bill S6760, which allows access to sealed and protected records to civilian law enforcement oversight entities.

As I understand S6760, it would add to the list of agencies entitled to access to files otherwise sealed by various provisions of CPL Article 160 any "Civilian law enforcement oversight entity," defined as an entity with responsibility for investigating or recommending discipline for a police officer or peace officer for misconduct that does not employ any current police officer or peace officer. While the amendments to the various sealing statutes authorize disclosure of those sealed files, the only limitation on that disclosure appears to be that the files sought "relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of that open investigation or disciplinary proceeding." The potential for abuse of this provision is obvious; any case file concerning a matter in which the officer was involved would appear to be subject to disclosure, even if the information in the file has no direct connection to the allegations being investigated but relate only to the individual officer being investigated.

Moreover, the bill does not appear to provide the ability or opportunity for anyone to oppose the disclosure of the sealed file. The subject of the sealed file may well not wish to have any involvement in any investigation by a civilian law enforcement oversight agency. The file may contain information whose disclosure will impact a confidential informant whose personal information may be contained in the sealed file. Put simply, as written, the proposal seems to

ignore the possible need to ensure continued confidentiality of a file. The harm to the criminal justice system by careless disclosure is incalculable.

Finally, the bill does not ensure that the purposes of the sealing statute itself will be maintained. It does not provide for any limitation on use or dissemination of the sealed file by the civilian agency that receives it. While disclosure of such sealed files may well advance a necessary investigation into police conduct, dissemination of the material may well have other adverse impacts.

The unsealing of a file for purposes of the investigations envisioned by the statute may well be needed for proper resolution of a complaint against a particular officer, an important and understandable function. But such disclosure needs to be subject to some limitation to ensure that whatever is disclosed is relevant to the investigation at issue and does not harm anyone else who may be identified by the file.

Please be assured that I sympathize with the concerns that this bill attempts to address. I do not believe, however, that the bill adequately accounts for the concerns I have described. Consequently, I am constrained to oppose the resolution.

Thank you for your attention to the above, I look forward to working with you towards a more just criminal justice system and safer city for us all.

Sincerely,

Michael E. McMahon

Michael E. McMahon
Richmond County District Attorney

**New York City Council
Committee on Public Safety**

**Re: Res 1762 - Resolution calling upon the New York State Legislature to pass S6760,
legislation to allow access to sealed and protected records to civilian law enforcement
oversight entities**

December 6, 2021

**Written Testimony of The Bronx Defenders
By Niji Jain, Impact Litigation Attorney**

Chair Adams and Committee Members, thank you for considering the testimony of The Bronx Defenders (“BxD”).¹

The NYPD is disingenuously using the sealing statutes as an excuse to withhold documents from the CCRB. The NYPD’s argument that New York’s current sealing laws somehow inhibit police accountability and discipline is a red herring. It is the NYPD’s own intransigence and refusal to take records management and privacy seriously—not Criminal Procedure Law §§ 160.50 and 160.55—that stand in the way of meaningful police accountability.

BxD represents a certified class of over 3.5 million people impacted by the NYPD’s unlawful use of sealed arrest records. *R.C. et al. v. The City of New York*, Index No. 153739/2018 (NY Supreme Court, NY County). Through our class action litigation, we recently won a [court order](#)

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

requiring the NYPD to stop these practices.² We now wish to offer insight based on representing this class for the Council’s consideration before passing Resolution 1762.

We support the CCRB’s goal of accessing information to hold police accountable. We believe the existing sealing laws already permit the access necessary for police oversight, as detailed below. S6760 lends credence to a problem manufactured by the NYPD to pit police accountability against the privacy interests of millions of New Yorkers and will embolden the NYPD to attempt to make other changes to the sealing laws to undermine the current protections. As the NYPD testified at the hearing, the Department seeks to create an end-run around the statute’s longstanding protections to “reaffirm [their] custodial use of sealed records in ongoing investigations,”³ despite the courts’ repeated rejections of that precise use and despite that this kind of use has been expressly prohibited under the sealing statutes since 1976.

The NYPD’s Violation of New York’s Sealing Laws

CPL 160.50 and 160.55 were enacted in 1976 to ensure that people are not stigmatized by arrests that were dismissed or otherwise resolved in their favor. For decades, the NYPD has nevertheless illegally used nearly 7 million sealed records in a network of at least fourteen interconnected NYPD surveillance databases and has trained officers to violate the law. When sealed records are accessed and disclosed by the NYPD without people’s consent, they experience privacy violations, reputational harm, and targeting based on the mere fact of prior allegations, even though they were never convicted. The sealing statutes protect the privacy and presumption of innocence of millions of New Yorkers while reducing the impact of longstanding and ongoing racial disparities in policing, since Black and brown communities are disproportionately targeted by over-policing and racially biased policing.

A Problem of the NYPD’s Own Making

The real barriers to CCRB’s access are the NYPD’s refusal to cooperate and to handle sealed material properly. The majority of records that CCRB needs to review are unsealed, and the NYPD can and should provide direct access to those unsealed records—something we understand CCRB has requested but the NYPD has refused. For sealed records, the CCRB can obtain a waiver from the subject of the records, which allows the person who was impacted by the sealed arrest to decide whether to grant access to their private, protected information. Alternatively, the CCRB can request an unsealing order from a court. In the rare cases where neither of these avenues is possible, the NYPD can provide redacted or anonymized records to the CCRB. These existing options permit the CCRB to do its important work while preserving the privacy and civil rights of the intended beneficiaries of the sealing laws: the overwhelmingly Black and brown New Yorkers whose arrests have been dismissed and sealed.

² *R.C. et al. v. The City of New York*, Index No. 153739/2018 (NY Supreme Court, NY County), at NYSCEF Doc. No. 200, available at

https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=8H2w12SCxx_PLUS_NQGVGR2MJNQ==

³ Video of December 6, 2021 New York City Council Committee on Public Safety Hearing at 58:15.

As a legal matter, the NYPD can already provide redacted or anonymized records to the CCRB. Neither the sealing laws nor the court's recent order prevent the NYPD from holding or reporting anonymized information about arrests for purposes of ensuring the lawfulness of police conduct or for holding police accountable for misconduct. First, the sealing statutes were designed to protect people from ongoing stigmatization and scrutiny when an arrest was resolved in their favor; reviewing those records for the purpose of assessing the lawfulness of officer conduct, especially anonymized records, does not implicate that interest.⁴ Second, the sealing statutes must be read in conjunction with other relevant laws, including the provision of the New York City Charter charging the Commissioner with "responsib[ility] for the execution of all laws and the rules and regulations of the department," N.Y.C. Charter § 434(b), as well as the section of the Charter requiring that the NYPD "provide such assistance as the [CCRB] may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for investigations," N.Y.C. Charter § 440(d)(1). When read together, these statutes should mean anonymized records may be reviewed for purposes of investigating officer conduct without running afoul of the sealing statutes.

Conclusion

In our litigation and to the public, the NYPD has misrepresented the sealing laws in a way that will likely erode protections against biased surveillance while not actually advancing police accountability.

We urge caution when considering exceptions to the sealing laws that fail to center the New Yorkers who are directly impacted and whose rights are at stake.

Thank you again for the opportunity to submit this written testimony on behalf of The Bronx Defenders.

⁴ Courts regularly grant access to redacted sealed records when necessary to prosecute civil rights claims, and in the context of discovery. *Crosby v. City of New York*, 269 F.R.D. 267, 275 (S.D.N.Y. 2010) ("Federal courts commonly order production of documents sealed pursuant to [CPL] Sections 160.50 or 160.55 . . ."). Such use has been deemed consistent with the Sealing Statutes. *Id.* at 275 ("The worthy goals of Sections 160.50 and 160.55 as well as a litigant's need for pertinent discovery can usually be honored simultaneously by redaction of information that identifies, directly or indirectly, persons entitled to protection under these statutes."); *Haus v. City of New York*, No. 03 Civ. 4915, 2006 WL 1148680, at *5 (S.D.N.Y. Apr. 24, 2006) (ordering disclosure of "redacted arrest and on-line booking documents" and opining that such disclosure "would not undermine the policies embodied in the cited Criminal Procedure Law provisions").