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April 19, 2017

Via ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Floyd v. City of New York*, 08 Civ. 1034 (AT)
Davis v. City of New York, 10 Civ. 699 (AT)

Dear Judge Torres:

Pursuant to Fed.R.Civ.P. 53(f) and this Court's February 3, 2015 Order, *see Floyd* Dkt # 476, we write on behalf of Plaintiffs in the above-entitled actions to respond and object to the Independent Monitor's April 11, 2007 Memorandum approving the New York Police Department's (NYPD) operations order setting forth the policies and procedures that will govern the year-long body worn camera (BWC) pilot program ordered by this Court. *Floyd* Dkt # 545.¹ For the reasons set forth below, *Floyd* and *Davis* Plaintiffs submit that the sections of the operations order referenced in the Monitor's Memorandum must be approved by the Court before the order can be implemented. We also object to several of these sections as currently drafted and request that the Court direct that they be modified as set forth below.

As a threshold matter, we express our deep reservations about the Monitor's approval of an operations order which misstates the rationale relied on by the Court in ordering the BWC pilot project and diminishes the importance of body worn cameras as a remedy to prevent future constitutional violations. The Court ordered the NYPD to institute a BWC pilot project, "(b)ecause body worn cameras are uniquely suited to addressing the constitutional harms in this case . . ." *Floyd* Dkt # 372 at. 27. In doing so, the Court set out several "useful functions" of the BWC. These included providing a "contemporaneous, objective record of stops and frisks," encouraging "lawful and respectful interactions" on the part of both the police and the public, and level the playing field for those who file complaints against the police. *Id.* at 26-27. However, the opening paragraph of the Operations Order states that the "pilot program" will be "examined to determine whether BWCs contribute to officer safety, *provide evidence for criminal prosecutions*, help to resolve civilian complaints, reduce Terry stops, and foster positive relations with the community." (emphasis added). Nowhere in the Court's Remedial Order is this program directed to "provide evidence for criminal prosecutions," nor is the Monitor directed to evaluate it as such. We ask that this line be struck from the operations order and that the pilot program not be used for this purpose. The NYPD is free to conduct its own separate BWC pilot program for this purpose if it sees fit – and indeed, it has already conducted a small voluntary BWC pilot program. But this Court-ordered pilot should be focused on the purpose for which the Court ordered it. There are already myriad issues and data that need to be collected and analyzed from this pilot, per the Court's order. It is best not to cloud that already-

¹ In compliance with ¶ 3 of the Court's February 3, 2015 Order, Plaintiffs notified the Monitor and other parties of our intent to file this response and objection within five days of receiving the Monitor's April 11 Memorandum, and this response and objection is filed within fourteen days of our receiving the Monitor's Memorandum.

complicated process with additional issues, unrelated to the purpose of this pilot.²

A. Court Approval of the BWC Operations Order is Required

In his Memorandum, the Monitor makes much of the fact that the BWC pilot is discussed in a separate section of the Court’s August 2013 Remedial Order, section II.B.3, from the Court-ordered Immediate Reforms, which are discussed in section II.B.2., and that, unlike section II.B.2, section II.B.3 does not expressly mention “court approval.” *Floyd* Dkt # 545 at 2. However, the Monitor fails to mention that section II.B.1 of the Remedial Order, which sets forth his role, duties, and responsibilities with respect to all of his work under sections II.B.2, 3, and 4 of the Remedial Order, specifies that (1) “[t]he Monitor will be subject to the supervision and orders of the Court,” and (2) the Court “retains jurisdiction to issue orders as necessary to remedy the constitutional violations described in the [Floyd] Liability Opinion.” *Floyd* Dkt # 372 at 12. Thus, under any reasonable reading of section II.B.1. of the Remedial Order, the Court must have the ability to review and, if necessary, modify or reject *any* Court-ordered reform measure approved by the Monitor- including the procedures governing the BWC pilot required by Section II.B.3 of the Remedial Order- so that the Court can insure that such remedial measure furthers the goal of remedying, rather than perpetuating or exacerbating, the constitutional violations identified in the Court’s Liability Opinion.

Moreover, while the Monitor is technically correct that “[b]ody-worn cameras are not included as an ‘immediate reform’ in Part II.B.2,” Dkt # 545 at 2, it is clear from the face of the BWC operations order itself that several of its sections, which are the focus of Plaintiffs’ objections below, will directly and significantly impact several specific immediate reform measures required by Section II.B.2 of the Remedial Order which the Court has already approved or will soon be asked to approve, including policies and procedures for (i) recording and documenting stop- and-frisk encounters, *see* Dkt # 372 at 18-23, Dkt # 527 at 18-19; (ii) supervisory review of stops, Dkt # 372 at 24; Dkt # 527 at 19-20 (iii) monitoring and auditing of officer stop-and-frisk activity; Dkt # 372 at 2; Dkt # 527 at 21-22; and (iv) investigations and dispositions of civilian complaints about bad stops and/or racial profiling. Dkt # 372 at 24. Because all material changes to previously Court-approved immediate reforms also require Court approval, *see Floyd* Dkt # 509, the sections of the BWC operations order discussed below likewise require the Court’s approval before they can be implemented.³

² Along the same lines, Plaintiffs are concerned about the lack of guidelines and safeguards in the BWC operations order concerning the usage of BWC recordings and related data by the NYPD. There should be specific language prohibiting BWC recordings from being used to create databases of individuals or for police photo arrays or mug shots, and express safeguards against recordings being run through facial recognition software. Such uses risk violating civilians’ privacy rights and civil liberties and go well beyond the purposes for the BWC pilot program articulated by the Court. The Baltimore County, MD body-worn camera policy contains some suggested language that could be used as a starting point: “Stored video and audio data from a BWC shall not: 1) be used to create a database or pool of mug shots 2) be used as fillers in photo arrays 3) be searched using facial recognition software.” *See* <http://www.baltimorecountymd.gov/Agencies/police/bodycameras/usepolicy.html>

³ Plaintiffs are also confused and troubled by the Monitor’s contention that while the parties are not prohibited from petitioning the Court to seek relief from his decisions, “this is not the same as subjecting the monitor’s every decision regarding the [Court-ordered BWC] pilot to the possibility of a formal court review process,” which would undermine the flexibility the pilot requires. Dkt # 545 at 2-3. Seeking court approval of the central component of a court-ordered reform at the outset of the implementation of that reform is far from “subjecting the monitor’s every decision” to court review. Moreover, Plaintiffs do not understand how they would be able, as the Monitor suggests,

There is another important reason why this Court's approval of the BWC pilot operations order is essential. It has recently been reported that the supervisory unions in the NYPD are contemplating a legal challenge to the Court-ordered BWC pilot.⁴ Although no such action has yet been brought, it is important for this Court to protect its jurisdiction over the remedial process by subjecting the BWC pilot operations order to Court approval. Without Court approval, these unions would be free to challenge the pilot in a separate state court proceeding, which could lead to conflicting rulings on how an important remedy in this case has and will be implemented. Court approval of the pilot project will make clear that all challenges to the pilot from whatever source will be decided by this Court.

B. Plaintiffs' Objections to Certain Substantive Sections of the BWC Operations Order

Plaintiffs object to several sections of the BWC operations order and request that they be modified before the operations order is so ordered by this Court and implemented by the NYPD.

1. Mandatory recording of Some But Not All *DeBour* Levels of Investigative Encounters

As currently drafted, the BWC operations order mandates recordings of arrests (i.e., Level 4 *De Bour* encounters) and “[i]nteractions with persons suspected of criminal activity,” Dkt # 545, Att. 1 ¶ 5(d), which the NYPD and the Monitor claim encompasses all *Terry* stops (*De Bour* Level 3) and *De Bour* Level 2 encounters. Dkt # 545 at 6, Att 3 at 12. However, because the *Floyd* trial evidence demonstrated that NYPD officers often did not clearly understand the differences between Level 2 and Level 3 *De Bour* encounters, *see* Dkt # 373 at 104-05 n. 375, and because most if not all of the officers who will participate in the Court-ordered BWC pilot have not yet received the new investigative encounters in-service training being developed that clarifies these differences, there is a significant risk that the vague language of paragraph 5(d) of the operations order will result in officers failing to record many Level 2 and 3 encounters. Thus, at a minimum, paragraph 5(d) should specify that officers are required to record interactions that involve both forcible stops/detentions and encounters where the civilian is free to end the encounter and walk away.

More importantly, the Operations Order does not require recording of all *De Bour* Level 1 encounters. While it does require recording Level 1 encounters that take place inside of public housing and privately owned apartment buildings and when officers are responding to radio calls of crimes in progress, *see* Dkt # 545 at 7, Att 1 ¶¶ 5(i),(j), it exempts the same kind of Level 1 encounter that was at issue in the *De Bour* case itself: a self-initiated request for information from a civilian on the street by an officer who, rather than responding to a specific report of a crime, was generally on the look-out for and/or attempting to prevent potential criminal activity in the area. *People v. De Bour*, 40 N.Y. 2d 210, 218-20 (1976).

Mandatory recording and tagging of all *DeBour* levels of investigative encounters is

to petition the Court for relief from his decision regarding the BWC operations order if, as the Monitor urges, such decision is not subject to Court review.

⁴ See <https://www.nytimes.com/2017/04/16/nyregion/new-york-body-cameras-police-civil-rights.html?rref=collection%2Fsectioncollection%2Fnyregion&action=click&contentCollection=nyregion®ion=rank&module=package&version=highlights&contentPlacement=2&pgtype=sectionfront>

critical to assessing whether officers understand, and abide by, the distinctions between each level of encounter. This will allow the Monitor, the parties, and ultimately the Court, to assess “the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks,” which is the primary purpose of the body-worn camera pilot. Dkt # 372 at 27. If officers do not record all Level 1 encounters, the purpose of the pilot will be substantially undermined by a failure to collect a large body of information on whether officers understand and are following the rules for all of the *DeBour* levels. In addition, not recording self-initiated Level 1 encounters on the street will deprive NYPD managers and the Monitor of a large body of information about the extent to which officers are conducting what they believe are Level 1 encounters – and therefore do not document them – but which are legally Level 3 *Terry* stops. The Monitor recognized this important function of BWC video as a reason to record all Level 2 encounters, *see* Dkt # 545 at 6-7, but it is equally applicable to the recording of Level 1 encounters.

Omitting a potentially large number of Level 1 encounters from mandatory recording will also undermine the BWC’s ability to “provide a contemporaneous, objective record of stops and frisks,” which the Court identified as one of the primary ways of addressing the issues raised in the Liability Opinion. Dkt # 372 at 26. Because Level 1 encounters can and do often escalate to Level 2 or higher very quickly, failure to record Level 1 encounters will deprive a supervisor, NYPD auditor or court reviewing a Level 3 *Terry* stop that began as a Level 1 encounter of significant information about the basis for the stopping officer’s decision to make the stop, which will make it much more difficult to assess the constitutionality of that *Terry* stop. One only need look again to the facts of the *De Bour* case itself, where the self-initiated Level 1 encounter escalated to a search and then an arrest in a matter of minutes, 40 N.Y.2d at 213-14, for a clear illustration of the problem. Moreover, requiring recording of Level 2 and 3 but not Level 1 encounters would force officers to turn on their cameras in the middle of quickly escalating encounters that began at Level 1, which could pose serious safety risks to those officers.

Finally, the results of both the public and police officer NYU BWC surveys show clear majorities of both public and officer respondents support recording all Level 1 encounters.⁶ Given the Court’s recognition that “no amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety,” Dkt # 372 at 29, and given police officers’ on-the-ground, firsthand experience with the tactical challenges and safety risks of investigative encounters, these survey responses should be afforded significant weight. Accordingly, ¶ 5(d) of the BWC Operations Order should be modified to require recording of all police-civilian interactions where the officer is investigating criminal activity, whether or not the civilian him or herself is suspected of criminal activity and whether or not the interaction involves a forcible stop/detention or the person is free to end the encounter and leave.

2. Viewing of Recordings by Officers

⁶ According to the NYU public and police officer surveys, 82% of public respondents and 58% of officer respondents believe officers should be required to activate their cameras “anytime an officer approaches someone as part of investigating criminal activity.” *See* NYU Policing Project Report, attached hereto as Exhibit A, at 14; NYU Marron Institute Report, attached hereto as Exhibit B, at 7. Encounters where police officers approach civilians to request information related to their criminal law enforcement- and not their more general public service- function were precisely the kind of encounters the Court of Appeals addressed in *De Bour*. 40 N.Y.2d at 219-20, 223.

Separating an officer's personal recollection of an incident from the narrative on his or her body-worn camera video is of critical importance to the use of BWCs as an accountability tool. This Court observed that "contemporaneous records of the stops in this case were UF-250s and short memo book entries...which are inherently one-sided." Dkt #372 at 26. Whether or not BWC video tells the "whole story" of an encounter, this pilot was specifically proposed as a separate "objective record of stops and frisks, allowing for the review of officer conduct by supervisors and the courts," not a substitute and addendum to an officer's own observations.

Therefore, Plaintiffs object to the aspect of the proposed Operations Order that would permit officers to view their own or other officers' BWC recordings before making statements or writing reports. *See* Dkt # 545, Att. 1 ¶ 17. The current language of the Operations Order is overly permissive in regards to departmental investigations (Section 17c) and use-of-force situations. *Id.* ¶ 17(d). As the Office of Inspector General for the NYPD noted in its 2015 Report on BWCs, "[e]xposing officers to events to which they may not have been privy at the time of the incident affects the ability of investigators to assess the officer's contemporaneous appraisal of the circumstances which led him or her to take the actions under investigation." *See* <http://www1.nyc.gov/assets/oignypd/downloads/pdf/nypd-body-camera-report.pdf>. Additionally, the Department should add language to the Operations Order explicitly prohibiting officers from refreshing their recollections with BWC footage before any interviews with the CCRB, IAB, or any other internal NYPD investigator investigating officer misconduct, including civilian complaints for bad stops or racial profiling.

3. Notice to members of the public who are being recorded

The Remedial Order specifically refers to the importance of officers providing notice that an encounter is being recorded. As the Court noted, "the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties." Dkt # 372 at 26. The language in the BWC Operations Order directing officers to notify members of the public they are being recorded, "[a]s soon as reasonably practical," is substantively unchanged from the previous version, despite overwhelming public response in support of officers giving notice upon activation.⁹ The term "reasonably practical" is so vague and can be interpreted in numerous ways that make it virtually meaningless. In addition, since over 60% of officers polled in the NYU survey said they preferred to "never" give notice, *see* Ex B at 5, the current language makes it unlikely officers will feel obligated to.

Accordingly, for the reasons set forth above, *Floyd* and *Davis* Plaintiffs respectfully request that the Court overrule the Monitor's position that the BWC pilot operations order does not require Court approval, review the operations order approved by the Monitor on April 11, 2017, and direct the NYPD to modify the order as discussed in this letter. In addition, to the extent Your Honor requires some time to resolve Plaintiffs' requests, we respectfully request that the Court enjoin the NYPD from implementing the BWC operations order in its current form and commencing the Court-ordered pilot pending the Court's resolution of the issues raised herein.

⁹ *See* Dkt # 545, Att. 3 at 5. The previous draft of the operations order read "Upon activating a BWC for recording, members are encouraged to advise members of the public that they are being recorded as soon as it is safe and practicable to do so."

Thank you for your time and consideration.

Respectfully submitted,

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EXHIBIT A



Report to the NYPD Summarizing Public Feedback on its Proposed Body-Worn Camera Policy

Prepared by the Policing Project at
New York University School of Law

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Executive Summary

In the coming months, the New York Police Department (NYPD) will launch a 1,000-camera pilot body-worn camera program, as required by the federal district court in the *Floyd v. City of New York* stop-and-frisk litigation.¹ To ensure that its program responds to the interests and concerns of the communities it serves, the NYPD asked the Policing Project to assist the department in soliciting public input regarding its proposed body-worn camera policy. This report summarizes the public feedback received.

Beginning on June 29, 2016, the Policing Project posted the NYPD’s proposed policy online, along with a brief policy fact sheet highlighting its main points. Individuals and organizations were invited to share their feedback in one of two ways: by taking a brief questionnaire, or by submitting more detailed written comments. All of the materials—which were translated into seven languages in addition to English—were available at www.nypdbodycameras.org. The comment period ran for 40 days, concluding on August 7.

The Policing Project received just over 30,000 questionnaire responses—25,126 of which were from individuals who identified themselves as living, working, or attending school in New York. (We did not include in our analysis the nearly 5,000 responses we received from individuals who presumably were from outside of New York City.) We also received 50 sets of written comments from individuals and organizations.

We describe at length below the feedback we received, but in summary:

- **Body-Worn Camera Program:** Respondents overwhelmingly were in favor of body-worn cameras, and expressed the hope that use of the cameras would improve police-community relations, enhance officer and public safety, and improve the conduct of both officers and members of the public during police-citizen encounters.
- **Activation:** Respondents generally were of the view that officers should be required to record a greater number of interactions than currently is called for in the NYPD’s draft policy. Nearly two-thirds of respondents said that officers should be required to record all interactions with members of the public, and just over eighty percent favored recording whenever an officer approaches someone as part of the investigation of criminal activity.
- **Notification:** A large majority of respondents said that officers should be required to notify people when cameras are recording, both in public and when entering a private residence. However, most of these respondents supported delaying that notification until officers felt it was safe to provide it.
- **Officer Review:** More than two thirds of respondents said that officers should not be permitted to review their own body-camera footage until they have filled out a report describing the incidents—particularly when an officer is involved in a use of force.

¹ Throughout the report we use “*Floyd* litigation” to refer to three related cases—*Floyd v. City of New York*, *Ligon v. City of New York*, and *Davis v. City of New York*. The latter two cases challenged the NYPD’s criminal trespass enforcement practices in New York City Public Housing as well as buildings enrolled in the Trespass Affidavit Program (TAP).

- **Public Access:** Respondents urged the NYPD to establish a clear and streamlined process by which the subject of a body-worn camera recording could ask to see the footage. Respondents also favored releasing body-worn camera footage of high-profile incidents involving officers and members of the public either immediately, or after an internal investigation is complete.

As we explain in the next section of the report, the solicitation of public comment on police department policies is in its infancy in the United States. The process described here—which occurred over a very short period of time, in the country’s largest city—could not have been accomplished without substantial efforts by the NYPD, the plaintiffs’ lawyers in the *Floyd* litigation, and numerous public officials and community groups. These efforts were entirely commendable, and resulted in substantial input from tens of thousands of New Yorkers.

Introduction

I. Public Comment Process and Community Outreach

In its August 12, 2013 order in *Floyd v. City of New York*, the federal district court required the NYPD to institute a one-year body-worn camera pilot to measure “the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks” and to evaluate “whether the benefits of the cameras outweigh their financial, administrative, and other costs.” The federal court also appointed a Monitor, Peter Zimroth, to oversee implementation of the body-worn camera pilot and evaluate the effectiveness of the cameras. The Monitor has been working with the NYPD and the plaintiffs’ lawyers in the *Floyd* litigation to ensure that the body-worn camera pilot meets the requirements of the court order.

As a prelude to the roll-out of the body-camera pilot, the NYPD developed a proposed body-worn camera policy, intended to govern the use of the cameras. It also decided that it would engage in a process of public comment on that proposed policy, in order to inform what its final policy should be. The NYPD asked the Policing Project at New York University (NYU) School of Law to assist the department in soliciting public input. The goal of the public comment process was to give all New Yorkers a meaningful opportunity to have a say in how body-worn cameras will be used in their communities, and to ensure that the NYPD’s body-worn camera policy is, to the extent possible, consistent with the interests and preferences of the communities it serves. (The NYPD also sought input on the draft policy from officers and other members of the Department with the help of the Marron Institute of Urban Management, also at NYU.)

In many areas of governmental policy-making, public input is a regular part of the process, but historically that has not been the case around policing. The NYPD’s decision to solicit public comment on its proposed body-camera policy was thus a notable endeavor. Because public input has not been common around policing, it has proven necessary—in instances throughout the country where this is being tried in some fashion—to engage in a certain amount of experimentation.

In designing the public comment and outreach process employed here, the Policing Project worked closely with the NYPD, the federal Monitor, and the plaintiffs’ attorneys in the *Floyd* litigation (referred to here as the “Working Group”). The Policing Project also sought, and received, input from elected officials and key community stakeholders. The timeline established by the parties to the *Floyd* litigation for getting body-worn cameras out on the streets necessarily limited the time available to solicit public comment, and the means used to receive it.

The Comment Process

To obtain public input on the NYPD’s proposed body-worn camera policy, the Policing Project invited individuals and organizations to visit www.nypdbodycameras.org, where they could read the draft policy or a brief summary of its key policy provisions, and then share their feedback in one of two ways: by taking a brief questionnaire, or by submitting more detailed written comments.² Both the

² This public input process could not have happened without the notable assistance of the Communications and Information Technology departments at NYU School of Law. Rebekah Carmichael and Tolga Ergunay, and their dedicated staffs, contributed a great deal of time and energy, and solved innumerable problems.

questionnaire and comment portal were available for 40 days—from June 29 through August 7.³ All of the materials, including the questionnaire, were available in seven languages in addition to English: Arabic, Chinese, Haitian Creole, Italian, Korean, Russian, and Spanish.⁴

The questionnaire included 12 questions about the substance of the proposed policy. It asked respondents to share their views on key policy questions, including when cameras should be turned on and off, and who should get to view the footage. It also asked a number of background and demographic questions, including the respondent’s race, gender, age, and borough, as well as the respondent’s past interactions with and views of the NYPD. In addition to the multiple choice questions, each of the 12 substantive questions included a space for individuals to add comments to explain or clarify their answers, or raise specific concerns.

The website also included a means for individuals or organizations to submit more elaborate sets of written comments.

Public Outreach

New York is a very large city, and the time available for public input was quite short. In order to ensure broad-based participation, the Policing Project reached out to numerous elected officials, city agencies, and civil rights and community-based organizations in order to ask for their help in getting the word out. Prior to launching the public comment process, the Working Group held several meetings to discuss outreach strategy. The Policing Project also consulted with retired judge Ariel Belen, who oversees the joint remedial process mandated by the stop-and-frisk settlement, with staff members at each of the five borough presidents’ offices, and with the Mayor’s Office of Criminal Justice. In addition, the Policing Project had several conversations with representatives from Communities United for Police Reform in order to get their input and ask their assistance in reaching the various organizations and communities that they represent.

As a result of these many conversations, a variety of outreach strategies were employed, including traditional and social media, flyers, and direct outreach. Here we briefly summarize some of those efforts:

- **Traditional Media:** Press releases were sent to dozens of news outlets to announce the public comment period. Articles describing the process and inviting community members to participate appeared in a range of news outlets, including the *New York Daily News*, the *Wall Street Journal*, the *New York Post*, and *AM New York*, as well as local print and online newspapers like the *Queens Chronicle* and the *Sunset Park Voice*. Local news channels—including ABC 7 and Fox 5—also covered the process. Several local radio stations ran public service announcements, including 97.1 (hip-hop), 107.5 (urban adult contemporary), and 1190 (gospel).
- **Social Media:** Both the NYPD and the Policing Project announced the feedback process on their websites and social media channels. So did many other community groups, including

³ Initially, the comment period was to close on July 31. However, at the request of Plaintiffs’ attorneys in the *Floyd* case as well as other community groups, we were able to obtain a one-week extension, in order to permit additional outreach, and to distribute some paper questionnaires (described in greater detail on page 5).

⁴ These included the six languages mandated by the Mayor’s executive order on language access, as well as Arabic. Due to some unforeseen delays in obtaining translated versions, initially there was a Google Translate button on the landing page and policy summary, which individuals could use to review the materials before clicking through to the questionnaire. Once all of the translated materials were available, they were made easily accessible on the comment site.

organizations representing the *Floyd* plaintiffs. Each day, through its Twitter feed, the Policing Project tagged different community groups, businesses, and faith-based organizations to encourage them to let their members and followers know about the opportunity to comment. The Policing Project also posted announcements on the New York City and individual borough Reddit forums (an online social media and discussion site).

- **Direct Outreach:** In addition to the groups and individuals consulted in developing the outreach plan, Policing Project staff members and interns called more than one hundred elected officials, community organizations, and social service agencies to ask for their help in getting the word out, and to invite them to submit comments on the draft policy. The Citizens Committee for New York City shared information on how to participate with more than a thousand local community organizations. Many other local organizations, including Avenues for Justice, the Innocence Project, and Esperanza NY, helped as well. Councilmember Ruben Wills hosted a community forum in Jamaica, Queens, where residents had an opportunity to ask members of the NYPD and the Policing Project questions about the body-worn camera policy, and then to fill out questionnaires. The NYPD also sent an email announcement describing the process and inviting public input to the thousands of individuals and organizations that subscribe to its community affairs list.
- **Flyers:** Several agencies and community organizations helped distribute flyers throughout the city. Both the Brooklyn and New York Public Libraries posted flyers near computer stations at each of their many branches. With help from the Mayor's Office of Criminal Justice, flyers were distributed to 13 of their Cure Violence partner organizations—including the Center for Court Innovation, Man Up! Inc., and the Bronx Connect/Urban Youth Alliance. The New York City Housing Authority (NYCHA) posted flyers in their “digital vans,” which provide computer and internet access to public housing residents who do not have computers at home. Flyers also were distributed through the Breukelen (NYCHA) Tenants Association, the Brownsville Recreation Center, and MetroLaLSA.
- **Paper Questionnaires:** Although the primary feedback mechanism was the online questionnaire and comment portal, the Policing Project also prepared and distributed a small number of paper questionnaires. Given limited resources and the short deadline for reporting to the NYPD on public feedback, the Policing Project initially concluded it did not have the ability to process hundreds, or potentially thousands, of paper questionnaires. However, several community groups urged adding paper questionnaires, in order to enable community members without internet access to share their views with the NYPD. Responding to these concerns, midway through the process the Policing Project made paper questionnaires available to those who requested them. Staff members from NYCHA and the NAACP Legal Defense Fund provided paper questionnaires to public housing residents at several NYCHA Family Days in late July and early August. Paper questionnaires also were handed out to attendees at the community forum in Jamaica, Queens. All told, 157 paper questionnaires were submitted.⁵

⁵ Of the 135 respondents on the paper questionnaire who indicated their race, all but two were people of color. Their responses generally were consistent with the policy preferences expressed by African Americans and other people of color on the online questionnaire. The one exception was on notification—a majority of respondents on the paper questionnaire said that officers should be required to notify people “as soon as possible” that cameras are recording, whereas most respondents on the online questionnaire said officers should be required to notify as soon as it is safe and advisable to do so.

Tally of Responses Received

Over 30,000 individuals filled out the questionnaire. Respondents were asked if they lived in, worked in, or attended school in New York City.⁶ Just over 25,000 indicated that they did. (The questionnaires of 5,000 respondents who did not self-identify as New Yorkers were excluded from the analysis below, although for most of the questions, including them would not have appreciably affected the conclusions.) In addition, 35 individuals and 15 organizations uploaded sets of written comments. The organization comments included input from over forty organizations and stakeholder groups all told, themselves likely representing the views of countless other individuals:

- Brennan Center for Justice
- Bronx Defenders
- Center for Media Justice (with Black Youth Project 100, MayFirst/People Link, Million Hoodies for Justice, Generation Justice, Witness, Hollow Earth Radio, UCIMC, Black Alliance for Just Immigration, Families for Freedom, Working Narratives, Families Rally for Emancipation and Empowerment (FREE!))
- Color of Change
- Communities United for Police Reform
- Data & Society Research Institute
- Hispanic National Bar Association
- LaGuardia Housing Resident Association
- Leadership Conference on Civil and Human Rights (with Upturn, 18MillionRising.org, Electronic Frontier Foundation, National Hispanic Media Coalition, New America's Open Technology Institute)
- Legal Aid Society
- New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus
- New York Civil Liberties Union
- Police Executives Research Forum
- Progressive Caucus of the New York City Council
- Reporters Committee for Freedom of the Press (with The Associated Press, BuzzFeed, Center for Investigative Reporting, Hearst Corporation, Media Law Resource Center, National Association of Black Journalists, National Press Club, National Press Photographers Association, National Public Radio, Inc., New York Times Company, Online News Association, Radio Television Digital News Association, Society of Professional Journalists, Tully Center for Free Speech)

II. Methodology for Reviewing Questionnaire Comments

After each of the substantive multiple choice questions on the questionnaire, there was a space for respondents to provide comments. Respondents used this space to explain or clarify their answers, to raise specific concerns, and sometimes just to express their views more generally. Approximately 35% of questionnaire respondents left a comment on at least one of the questions. The number of comments varied depending on the question, ranging from 5% to 15% of the total responses received.⁷

⁶ We received 47 completed responses on the Spanish language questionnaire, and fewer than 10 on each of the other foreign language versions.

⁷ The two questions that generated the largest number of comments were: whether the NYPD should use body-worn cameras, and whether the Department should make footage available to the media. The two questions that generated the

We received a total of 26,273 comments, plus an additional 4,664 free-form responses on the question of how long footage should be kept (for which there was no multiple choice option).

In discussions among the Working Group about the design of the questionnaire, there was a question as to whether there would be an opportunity for respondents to leave additional comments. The concern was that the Policing Project would not have the ability to process comments, given the size of New York City, the hope that thousands of people would take the questionnaire, and the limited time available to prepare this report given the plan for getting body-worn cameras on the street. All concerned also recognized an inherent difficulty with soliciting such comments: because—as proved to be the case—not everyone who filled out the questionnaire might provide additional comments, it was impossible to know if the comments actually represented the views of responding public as a whole.

At the same time, the parties to these discussions recognized that soliciting comments could prove valuable in two ways: first, by providing a general sense of the reasons why at least some of the respondents seemed to favor particular policy alternatives; and second, by highlighting any problems with the questions themselves (e.g., if people misunderstood the question, or if the answer choices provided did not adequately capture people’s preferences).

Ultimately, all of the Working Group members agreed that the Policing Project would invite additional comments, but then read only a random sample of the additional responses, in order to capture the sense of what respondents were saying. To accomplish this, for each question the Policing Project drew a random sample of 400 comments. We then associated the written comments with each respondent’s answer to the multiple-choice question. Several Policing Project staff members then read each set of comments (at least one senior staff member read each set), and identified key themes and patterns in the responses. In order to check how well the random sample process was capturing the nature of the public comments, in some instances Policing Project staff read many more responses as well.

As it happened, for most of the questions two or three suggestions or rationales *clearly* predominated among the responses. Given the limitations of the random sampling approach, we have been careful to report only on these clear patterns, and did not attempt to summarize every suggestion or qualification received (which, after all, could represent the views of a very small number of respondents).

III. Demographics

In addition to the 12 substantive questions, the questionnaire included several optional background and demographic questions. Respondents were asked to indicate their race, gender, and age; their borough, precinct, and zip code; and whether they lived in a NYCHA or Trespass Advisory Program (TAP) building. Respondents also were asked to state when they last interacted with a New York City police officer, and whether they generally believed that officers treat members of the public with courteousness and respect.

These questions were included both to assist in tracking the success of the outreach efforts over the course of the comment period, and to provide some indication of whether public views on key policy questions generally were uniform throughout the city, or whether there were certain issues on which different communities had varying perspectives.

fewest comments were: whether officers should be permitted to review their own footage, and whether officers should be required to notify people that they are recording when entering a private residence.

Approximately 80% of respondents answered the demographics questions. As the table on the following page makes clear, although there was a disproportionate share of responses from individuals who identified as “White” relative to the actual demographics of New York City, it nonetheless is the case that we received a large number of responses from all of the major racial or ethnic groups in the city.

Table 1: Respondents by Race (Versus New York City Population)

	Respondents	NYC Population
White	60% (12,996)	33%
Black	15% (3,147)	22%
Hispanic*	11% (2,409)	29%
Asian/Pacific Islander	6% (1,302)	14%
American Indian/Alaskan Native	<1% (55)	1%
Middle Eastern/Southwest Asian	1% (286)	**
Other	7% (1,480)	3%

* Includes both Black and White Hispanic, to better enable comparison with the total population.

** Not included in the 2010 U.S. Census

Despite the differences in response rates, there was considerable uniformity in the responses across *all* demographic groups—by race, gender, age, and public housing status. There were several questions for which responses differed somewhat along various demographic lines. But the differences typically were in the level of support for a particular policy recommendation, and not as to what the ultimate policy outcome should be.

For example, when asked when officers should be required to turn on their cameras, Black and Hispanic respondents were *more* likely to say that officers should record all interactions with members of the public (70% and 67%, respectively)—but a clear majority of White respondents (61%) likewise said that all interactions should be recorded.

On many of the key policy questions, there was virtually no difference in the responses by race. For example, 78% of White respondents and 76% of Black respondents either agreed or strongly agreed that the NYPD should be required to show footage to the subject of a recording upon request.

Similarly, although respondents tended to be younger—57% of respondents were ages 18 to 35, compared with approximately 28% for New York City overall—only a few of the questions showed notable differences in responses by age. On only two questions, both on public access to body-worn camera footage, did respondents of different ages disagree as to what the overall policy should be. For example, a slight majority (53%) of respondents under 35 said that the NYPD should release footage of high profile incidents “as soon as possible,” whereas only 43% of respondents over 55 said that the NYPD should release footage immediately. Still, substantial majorities of *all* respondents said that the NYPD should at the very least be required to release such footage after it completes an internal investigation.⁸

⁸ We also found that responses generally were consistent across the five boroughs, with some exceptions for Staten Island. Respondents from Staten Island, for example, were more likely to say that officers should always be permitted to view their own recordings prior to writing a report—41% said officers should be able to view recordings “anytime”, compared with 26% of respondents in Manhattan and 24% in Brooklyn. Still, a majority agreed that there should be some restrictions on

Recognizing that there might be significant differences *within* demographic groups—for example, between older and younger respondents within a particular racial or ethnic group—we also looked for patterns along these lines.

We found, for example, that Black women were more likely than any other demographic group to say that officers should never be permitted to review their own body-worn camera footage, or that they should only be permitted to do so after writing a report: 65% of Black women picked one of these answer choices, compared with 53% of Black men, 48% of White women, and 43% of White men. Yet again, however, clear majorities of all respondents (between 61% and 80%) said that officers should not be permitted to review body-worn camera footage prior to writing a report when there is a use of force.

We also examined whether residents in public housing had differing perspectives on any of the key issues. We received 695 responses from residents in public housing, of whom 90% were from people of color.⁹ We found that people of color who lived in public housing—particularly Black respondents—were less likely to believe that cameras would improve police-community relations, or the conduct of officers or members of the public.¹⁰ They also were less likely to say that they would feel comfortable reporting a crime to an officer wearing a camera.¹¹ On the key policy questions, however, their responses were consistent with the weight of public opinion generally.

In the report that follows, we indicate if there were noteworthy differences in responses among different demographic groups. Given the high degree of uniformity as to ultimate policy recommendations, however, we generally report only the overall percentages of respondents who favored a particular outcome.

officer review of footage. The only question on which Staten Island respondents disagreed with the weight of public opinion was on whether the NYPD should be required to provide footage to news agencies or advocacy organizations upon request.

⁹ NYCHA residents comprised 3% of the responses received from New York City residents. Approximately 7% of New York City residents live in NYCHA.

¹⁰ 75% of Black NYCHA residents said cameras would improve officer conduct, compared with 89% of respondents overall. There were no meaningful differences in responses between Hispanic NYCHA residents and Hispanic respondents generally. We did not receive enough responses from White NYCHA residents to enable us to assess their responses separately.

¹¹ 64% of Black NYCHA residents, compared with 72% of Black respondents generally, and 80% of respondents overall.

Public Comments and Recommendations

I. General Feedback

A. Body-Worn Camera Program

Support for Body-Worn Cameras: Respondents overwhelmingly were in favor of NYPD officers using body-worn cameras. Large majorities of respondents also expressed their belief that cameras would improve police-community relations and public trust, promote the safety of officers and members of the public, and improve the conduct of officers and members of the public alike.

Table 2: New York City police officers should use body-worn cameras

	Respondents (%)
Strongly Agree	74%
Agree	18%
Neither Agree nor Disagree	4%
Disagree	2%
Strongly Disagree	2%

Table 3: Will use of body-worn cameras cause the following to improve or worsen?

	Improve (%)	Worsen (%)	No change (%)
Police-community relations and increase public trust	82%	3%	14%
Public safety	82%	3%	16%
Officer safety	77%	3%	19%
The conduct of members of the public when interacting with officers	73%	3%	24%
The conduct of officers in interacting with members of the public	89%	2%	9%

In their additional comments, respondents offered up a number of perceived benefits to body-worn cameras. Respondents emphasized that cameras would protect both officers and members of the public by creating an impartial record of police-citizen encounters. They expressed the hope that use of cameras would enable the NYPD to better identify instances of officer misconduct—but also the expectation that camera footage would protect officers from false accusations. A number of respondents suggested that cameras would encourage both officers and members of the public to treat one another with respect. Still, respondents underscored that cameras are only a partial solution to some of the perceived problems in police-community relations, and that the Department would need to take additional steps—through training, police-community engagement, and broader transparency and accountability—to strengthen public trust in the police.

In their uploaded written comments, a number of organizations similarly expressed their support for the body-worn camera program, noting that cameras can promote accountability and transparency, make “street policing safer and more just” by improving both officer and public conduct, and reduce the incidence of unconstitutional stops. The Hispanic National Bar Association made the point that cameras could improve “judicial fact-finding” and reduce the reliance on eyewitness testimony.

The Police Executive Research Forum (PERF) in Washington, DC, noted in its written comments that the NYPD's proposed policy as a whole is "aligned with the PERF/COPS Office guidelines" and that it appears "effectively to balance the goal of promoting agency transparency and accountability with the goal of protecting the public's privacy and preserving the integrity of investigations."

Need for Further Evaluation: Several organizations emphasized the need for a comprehensive and transparent assessment of the body-worn camera program to determine whether the benefits of body-worn cameras do in fact outweigh the financial and other costs. The Data & Society Research Institute cited a number of recent studies that showed mixed results from use of body-worn cameras, and recommended that "as the NYPD moves forward with its body-worn camera program, it (1) incorporates a strategy for empirically evaluating their impact, and (2) uses evidence gained from such assessments to inform its policy as it evolves to reflect best practices." Communities United for Police Reform likewise emphasized the need for "full transparency related to the budget for the pilot [body-worn camera] program" as well as a "reliable, evidence-based evaluation" of the program's effectiveness. It urged that any such evaluation consider the effect of body-worn cameras on more heavily policed communities, including low-income communities of color, youth, immigrants, and the homeless. The Brennan Center for Justice ("Brennan Center") noted that "the cost of storing and managing body camera video will become significant very quickly" and that "those costs cannot be justified in the absence of evidence that their use contributes to effective and community-focused policing." The Hispanic National Bar Association likewise expressed its support for "the collection of empirical data and use of cost-benefit analysis to help assess and formulate policies pertaining to their continued use."

Opposition to Body-Worn Cameras: Only a small number of respondents either disagreed (2%) or strongly disagreed (2%) that officers should use cameras. These respondents primarily expressed concern that cameras would make it more difficult for officers to do their jobs—either by making officers think twice during fast-moving situations, or by making it possible for supervisors or members of the public to second-guess officers after the fact.

B. Need for Additional Safeguards

Although respondents generally were supportive of body-worn cameras, many underscored the need for additional safeguards to ensure that cameras are used in ways that would in fact promote public safety, trust, and accountability.

Throughout the questionnaire, a substantial number of the sampled respondents who left additional comments—on some questions, as many as one fourth of the comments received—expressed concern that officers would fail to record contentious encounters, or that officers or others within the department would be able to tamper with the footage in some way. Respondents suggested a variety of potential safeguards, from requiring cameras to stay on at all times, to automatically streaming all footage to a secure server, to giving an independent third-party control of the footage.

In uploaded written comments, a number of organizations and individuals likewise urged the department to adopt additional safeguards—including clearer or stricter policies and procedures regarding activation, retention, and access—to promote transparency and accountability while minimizing the privacy and other costs that use of cameras can impose. Both Color of Change and the Leadership Conference on Civil and Human Rights underscored that "without appropriate safeguards," body-worn cameras could in fact "compound problems of over-surveillance and biased policing." The Legal Aid Society and Communities United for Police Reform raised similar concerns. The New York

State Black, Puerto Rican, Hispanic & Asian Caucus stressed that “it is imperative that New York City establish a set of smart body-worn camera policies that serve to protect residents and officers, while respecting the rights and freedoms of all.” These organizations’ specific recommendations—on auditing, training, and discipline—are discussed in the last section of the report.

II. Activation

A. Interactions with the Public, Generally

Draft policy:

Under the draft policy, officers are required to record many, but not all, enforcement-related encounters—including arrests, stop-and-frisks, and uses of force.

In describing the incidents that officers must record, the policy uses the same terms that New York courts use to characterize the intrusiveness of an encounter (and the level of suspicion that an officer must have to initiate it). Under New York law, a “Level 1” encounter is a brief, non-threatening encounter during which an officer may ask a person if they need assistance, or ask their name and reason for being in a particular location. A “Level 2” encounter may include more accusatory, pointed questions that would lead someone to conclude that the officer suspects them of criminal activity.

The draft policy requires that officers record all Level 2—but not Level 1—encounters. Officers are, however, permitted to activate their cameras whenever they believe it would be helpful to do so (unless expressly prohibited from doing so, for example when speaking with a confidential informant).

Additional provisions of the activation policy along with specific feedback are discussed below.

Public Feedback and Recommendations:

As Table 4 on the next page makes clear, an overwhelming majority of respondents agreed that officers should record at least what the draft policy requires. They stated that officers should record arrests, traffic stops, and pedestrian stop-and-frisks. Respondents also were in favor of recording searches within the home and on the street, and vertical patrols of public housing buildings. Both the Progressive Caucus of the New York City Council and the Police Executive Research Forum (PERF) also generally expressed their support for the proposed policy.

However, as detailed below, substantial majorities of respondents also were in favor of requiring officers to record a greater number of interactions than currently is called for under the NYPD policy. Some 64% of respondents favored officers recording all interactions with the public, and—as we explain below—between 64% and 82% of respondents appear to favor recording all Level 1 encounters.¹²

¹² Support for requiring officers to record all interactions was consistent across all demographic groups—by race, gender, age, and borough. Although younger respondents and people of color were more likely to say that all interactions should be recorded, 50% of White respondents over 55, and 61% of White respondents expressed support for recording all police-citizen encounters. One of the more notable differences on this question was between respondents who said later in the questionnaire that officers always or mostly treat members of the public with respect, and those who said that officers only sometimes, rarely, or never do so. Only 47% of respondents who said officers always are respectful thought that all interactions should be recorded, compared with 72% of those who said officers sometimes are respectful, and 85% of those who said officers never are.

Table 4: Officers should be required to use body-worn cameras to record:

	Yes (%)
Arrests	91%
Searches within the home	84%
Searches on the street	87%
Vertical patrols of public housing buildings (NYCHA)*	79%
Uses of force	91%
Pedestrian stops/frisks	88%
Traffic stops	85%
Witness interviews	71%
Any time an officer approaches someone as part of investigating criminal activity	82%
Any time an officer approaches someone to ask a question	64%
Any interactions with members of the public	64%

* 77% of respondents who said they lived in a NYCHA building agreed that vertical patrols should be recorded.

Require Officers to Record All Interactions with Members of the Public: Nearly two thirds of respondents (64%) felt that officers should be required to record *all* interactions with members of the public. Respondents stressed that encounters can quickly escalate—and that officers may not have time to turn a camera on if things become contentious. A number of people cited recent officer-involved shootings as evidence that even routine traffic stops or enforcement actions could lead to uses of force. Others emphasized that requiring officers to record more frequently would benefit officers as well as members of the public. They suggested that it would provide an objective account of what occurred, backing up officers in many instances, and that people generally would be more respectful if they knew their actions were captured on film.

Although the questionnaire did not list “always on” as an option, approximately one fourth of respondents who left additional comments said cameras should always be on—either for the duration of an officer’s shift, or while an officer is on patrol. These respondents expressed concern that officers intentionally might choose not to record encounters that could lead to complaints, or that officers simply would forget to do so. A number of organizations—including The Bronx Defenders, and the New York State Black, Puerto Rican, Hispanic, and Asian Caucus—likewise urged the NYPD to have cameras on for the duration of an officer’s shift.¹³

On the other hand, the NYCLU urged the NYPD to limit recording to “interactions with the public that have an investigative or law enforcement purpose.” It stressed that “community members need to be able to trust that they can speak with officers privately and to not have every casual interaction with or mere observation by officers be recorded.”

The Legal Aid Society emphasized that its recommendations depend on whether the NYPD or an independent agency controls the body-worn camera footage. The Legal Aid Society explained that “concerns about mass surveillance are assuaged by the presence of an independent agency that is only

¹³ Bronx Defenders added that if doing so is not feasible, the NYPD should at the very least require officers to record all interactions with members of the public, and also to activate officers’ cameras remotely at random intervals to ensure compliance with the activation requirements.

concerned with police misconduct.” If control of the footage were given to an independent agency, the Legal Aid society would favor recording for the duration of an officer’s shift (except when the officer goes on break). If recordings are kept by the NYPD, the Legal Aid Society recommends recording all police-initiated encounters—starting from an initial, “pre-Level 1” encounter with a member of the public—but with exceptions for sensitive locations or situations (e.g. in private residences, or during strip searches).

Require Officers to Record Level 1 Encounters: Because of the way the questions were constructed, it is not possible to say precisely what proportion of respondents would favor requiring officers to record all Level 1 encounters. Although one of the goals in framing the question was to gauge public sentiment on this policy question, the choices offered to members of the public for what incidents to record did not track perfectly the legal categories (Level 1 and Level 2 encounters) used by New York courts and the NYPD.¹⁴

Although 64% of respondents said officers should be required to record “anytime an officer approaches someone to ask a question,” 82% said that officers should be required to record “anytime an officer approaches someone as part of investigating criminal activity.” Both types of encounters potentially can be classified as “Level 1.” A Level 1 encounter can include an officer approaching someone who appears ill and asking if they need assistance. But a Level 1 encounter also can involve an officer approaching someone whom the officer suspects of wrongdoing, and asking for the person’s name and address, or asking where the person is headed. At the same time, the phrase “anytime an officer approaches someone to ask a question” may be interpreted to include purely social interactions that would fall short of a Level 1—for example, an officer asking a resident how their day is going, or if they watched the baseball game the night before. Thus, although it appears that the percentage of respondents who would favor recording all Level 1 encounters falls somewhere between 64% and 82%, we cannot be more precise.

In its written comments, the New York Civil Liberties Union (NYCLU) specifically urged the NYPD to record all Level 1 encounters, noting that although such encounters “are meant to be brief and non-threatening, a request by an officer to produce identification or an officer approaching a person with his or her hand on a holstered gun can be perceived as threatening or intimidating to the person being approached, and such encounters have the potential to quickly escalate.”

Limit Mandatory Activation. A relatively small percentage of respondents favored more limited activation than the proposed NYPD policy. For example, 9% of respondents did not think officers should be required to record arrests, and 14% did not think officers should be required to record traffic stops.¹⁵

¹⁴ The Policing Project developed these questions in consultation with the NYPD, the federal Monitor for the *Floyd* litigation, and the attorneys representing the plaintiffs in that lawsuit. After lengthy conversations, these were the choices to which all of the parties agreed. In retrospect it would have been better to frame this question to track the Level 1/Level 2 distinction more precisely. Still, as indicated above, it is plain that a substantial majority of respondents favored recording Level 1 encounters.

¹⁵ These percentages likely overstate the proportion of respondents who wanted fewer incidents recorded. The questionnaire did not offer respondents the option of selecting “none of the above.” Thus, it was not possible to distinguish between respondents who chose to skip the question, and respondents who did not think that any of the described encounters ought to be recorded. (We did, however, limit our analysis to those respondents who answered at least one additional question later in the questionnaire, to ensure we were not counting those individuals who simply clicked through the questions without responding.) In addition, when we reviewed the additional comments we found that some respondents chose not to check any of the response categories but instead wrote “all of the above” or “cameras should always be on” in the additional comments. In other words, rather than targeting particular incidents to record or checking all of the choices, some who chose no particular incident actually felt all incidents should be recorded. When all is said and done, it is extremely difficult

Some reiterated the concern—discussed above regarding utilizing body cameras—that requiring officers to use cameras would discourage them from taking enforcement action. Others said officers might not have time to activate their cameras in a fast-moving situation, and should not be penalized for failing to do so. Finally, a number of respondents listed specific types of encounters that they felt should not be recorded, including witness interviews and encounters in private residences.

B. Witness Interviews

Draft Policy:

The draft policy encourages—but generally does not require—that officers record initial statements from victims or witnesses, with the exception of victims of a sexual assault. The policy instructs officers to “consider the needs of victims and witnesses and the sensitivity of the nature of the crime being reported in deciding whether and for how long the statement should be recorded.”

The draft policy also notes that there may be some circumstances in which—as a result of the mandatory activation requirements (e.g. for vehicle stops, or interactions with an emotionally disturbed person)—officers would be required to record a victim or witness interview.

Public Feedback and Recommendations:

In its written comments, the NYCLU urged the NYPD to require officers to inform victims or witnesses when a camera is recording, ask whether they would prefer to have the camera turned off, and if an individual prefers that the officer stop recording, to immediately comply with the request.

Although we did not specifically ask respondents whether victims and witnesses should be able to decide whether to have their statements recorded, several questionnaire responses bear on this decision.

Respondents generally agree that witness and victim statements ought to be recorded: 70% of questionnaire respondents stated that officers should be required to record witness interviews, and (as indicated on Table 5), 80% of respondents either agreed or strongly agreed that they would feel comfortable reporting a crime to an officer wearing a camera.

Table 5: I would feel comfortable reporting a crime to an officer who is recording with a body-worn camera.

	Respondents (%)
Strongly Agree	56%
Agree	24%
Neither Agree nor Disagree	13%
Disagree	4%
Strongly Disagree	3%

In their additional comments, respondents explained that recording victim or witness statements can help preserve an accurate record of the statement, and some noted that they actually would feel more comfortable speaking with an officer wearing a camera. However, even among this group, many of the

to conclude *anything* about those who checked none of the choices, at least without reading each of their comments (if they left any).

respondents raised concerns about the safety or privacy of victims or complainants (particularly if recordings were made available to defendants or released publicly), and suggested that victims or witnesses should have the option for anonymity.

A small number of respondents stated that they would *not* feel comfortable reporting a crime to an officer wearing a camera.¹⁶ In the additional comments, respondents who said they would not feel comfortable reporting a crime on camera expressed concerns about their safety or privacy, particularly if the crime involved a sensitive issue or potential gang activity. Others stated that they *generally* would not be comfortable reporting a crime to a police officer—and that having a camera present would not have any effect.

C. Inventory Searches

Draft Policy:

The draft policy requires officers to record all searches of persons or property, but specifically exempts “inventory searches”—which include searches of impounded vehicles as well as other property that comes into the custody of the NYPD.

Public Feedback and Recommendations:

In its written comments, the Hispanic National Bar Association (HNBA) urged the NYPD to require officers to record all inventory searches. The HNBA explained that “inventory searches are often the source of important evidence in a criminal investigation and prosecution” and that—particularly in drug or firearm cases—recording such searches “could provide ‘real time’ evidence of how, when, where and in what condition the drugs or firearm” were found. This information could be particularly useful “in cases where multiple passengers are located in the vehicle prior to it being impounded for an inventory search.”

D. Political Activity

Draft Policy:

The draft policy prohibits officers from recording any individuals engaged in political activity, such as a protest or demonstration. Officers are not permitted to record in these circumstances, even if they initiate an enforcement encounter (e.g. make a stop or arrest).

Public Feedback and Recommendations:

In their uploaded written comments, PERF and the Brennan Center for Justice—as well as four other individual commenters—urged the NYPD to revise or clarify its policy on protests and demonstrations. PERF suggested that officers be permitted or even required to record at protests and demonstrations—but that footage of such events be deleted within 24 or 48 hours unless the footage captures “a crime,

¹⁶ Here there was a notable difference in responses along racial lines. Although only 5% of White respondents said that they would not feel comfortable reporting a crime on camera, 10% of African Americans and 9% of all people of color said the same. 10% of White respondents picked “neither agree nor disagree” whereas 19% of African Americans and 17% of people of color chose this option. However, substantial majorities of all respondents (69% of Black respondents and 72% of White) still were in favor of requiring officers to record witness interviews.

terrorist attack, riot, or contentious interaction between police and citizens.” PERF argued that such a policy would balance the public’s right to exercise their constitutionally protected rights without fear of surveillance, with the “interest of protecting public safety” and “promoting agency transparency.” The Brennan Center proposed that the NYPD generally prohibit the recording of political activity, but require officers to activate cameras before conducting any sort of enforcement activity (such as a search or arrest) at a protest or demonstration. Four additional written comments from New York City residents likewise urged the NYPD to record such incidents.

III. Notification

Draft Policy:

Under the draft policy, officers are encouraged—but not required—to notify members of the public that they are being recorded as soon as it is safe and practicable to do so.

Public Feedback and Recommendations:

A clear majority of respondents said that officers should be required to notify members of the public anytime that they are being recorded, both in public (73%) and when officers enter private residences (87%).

Table 6: An officer who approaches a person in a public space like a store or on the sidewalk should be required to tell that person that the camera is recording:

	Respondents (%)
As soon as the officer approaches the person	27%
As soon as possible, without compromising officer safety or other important law enforcement interests	46%
Never	14%
No opinion	13%

Notification in Public: For interactions that take place in public, 27% of respondents said that notification should happen immediately, while 46% said that an officer could wait to notify the person if doing so would compromise officer safety or undermine other important law enforcement interests. In their additional comments, respondents explained that people generally have a right to know that they are being recorded, and that notification could help de-escalate tense situations and encourage both officers and members of the public to treat one another with respect. Some noted that notification may be necessary only until people get used to the fact that all officers wear cameras, while others said that a non-verbal notification mechanism, like a sign or blinking light, also would be sufficient.

Many of the respondents who said in response to the multiple choice question that notification should happen immediately acknowledged in their additional comments that officers sometimes may need to delay notification for safety reasons, but expressed concern that “important law enforcement interests” was too broad of an exception.

Those who said that notification should never be required (14%) emphasized that there is no expectation of privacy in a public place, and that people should just assume that body cameras are on and recording. Some also expressed concern that having to notify people would distract officers or potentially put them in harm’s way.

In their written comments, NYCLU, the Brennan Center, The Legal Aid Society and The Bronx Defenders urged the department to require officers to notify members of the public, except when it is not possible to do so (e.g. in an active pursuit) or when doing so would put officers or members of the public at risk. Communities United for Police Reform said members of the public should always be notified, and that it should happen immediately. The Legal Aid Society added that officers should announce at the end of an encounter that they are turning off their cameras because the encounter is over.

Table 7: An officer who enters a person's home should be required to tell that person that the camera is recording:

	Respondents (%)
As soon as the officer enters	37%
As soon as possible, without compromising officer safety or other important law enforcement interests	50%
Never	8%
No opinion	5%

Notification in Private: 37% of respondents said officers should be required to notify residents that a camera is recording “as soon as the officer enters” a private home, and an additional 50% thought officers should notify people as soon as it was safe and practicable to do so. Many of the respondents underscored that residents have a greater expectation of privacy within the home, and therefore should be told when a camera is recording. Respondents also explained that notification could help make everyone safer.

As was the case with the previous question, some of the respondents who said notification should happen immediately qualified their response in the additional comments, noting that there may be emergency situations in which it is not possible or safe to do so. Others said that notification was particularly important when an officer enters with the resident’s consent, and that it may not be necessary when an officer has a warrant.

Those who did not think notification was necessary (7%) in private residences said that people should always assume that officers are recording, that requiring notification might interfere with officers’ jobs, and that so long as officers are there for a reason—to execute a warrant or respond to a call for service—they should not have to tell anyone that they are recording.

IV. Deactivation

Draft Policy:

The draft policy permits an officer to stop recording if asked to do so by a member of the public, if the officer concludes that it is “safe and advisable” to do so. Officers are not required to deactivate their cameras upon request.

Public Feedback and Recommendations:

As Table 8 indicates, 85% of respondents said that officers should be permitted to consider their own and others’ safety in deciding whether to stop recording, and at least 62% said officers could continue

to record if necessary to preserve evidence.¹⁷ However, in their additional comments, many of these respondents clarified that they did not think officers should ever be allowed to turn off their cameras, even if asked to do so by a member of the public. Conversely, others listed a number of circumstances in which officers should be required to comply with a request—for example, when speaking with a witness, victim, or confidential informant, or when entering a private home—but said that otherwise cameras should remain on. Some of the respondents recognized the privacy concerns with continuing to record, but suggested a variety of alternatives to complying with a request to deactivate, for example disabling the video while continuing to record audio, or ensuring that the video is not released to the public. Finally, a number of respondents pointed out that if officers are required to wear cameras, members of the public should not get to insist that cameras be turned off during police-citizen encounters.

Table 8: If a person asks an officer to turn off a camera, the officer should:

	Respondents (%)
Immediately turn off the camera	5%
Be allowed to keep the camera on for the officer's safety or that of others	22%
Be allowed to keep it on if necessary to record evidence	7%
Be allowed to keep it on both for the officer's and others' safety and to record evidence	62%
No opinion	4%

Only a small number of respondents said that officers should be required to turn their cameras off immediately upon request. In their additional comments, many of these respondents qualified their responses, noting that officers should only be required to turn the camera off if speaking with a witness, or when entering a private home. Others stressed that people should have a right not to be recorded.

In their written comments, Bronx Defenders, NYCLU, The Legal Aid Society, and Communities United for Police Reform all urged the NYPD to require officers to comply with requests to deactivate. NYCLU acknowledged that there may be exigent circumstances in which officers would be unable to do so. The Legal Aid Society likewise agreed that officers should be permitted to continue recording if they fear for their own safety.

The Brennan Center proposed that officers be required to turn their cameras off upon request when entering a private residence with the occupant's consent, unless they expect to take an enforcement action. The Brennan Center explained that because “a body camera captures a record of the home and preserves it for later review,” continuing to record over the resident’s objection would exceed the scope of the consent given. However, if an officer enters with a warrant or in the context of another non-consensual interaction, the officer should retain discretion to continue recording if the officer believes it advisable to do so.

¹⁷ 7% of respondents said that officers should only be permitted to continue recording to preserve evidence. Yet, many of those who left additional comments still emphasized the importance of ensuring officer safety. Others stressed that witnesses should be able to speak with officers in private.

Finally, the New York State Black, Puerto Rican, Hispanic, and Asian Caucus expressed concern that the draft policy provided insufficient guidance on when to deactivate, and that “such an important decision was left solely to the judgment of an officer.” The Caucus suggested that officers generally should refuse requests to deactivate, except in a narrow set of circumstances—for example, when entering a private home.

V. Retention

A. Retention, Generally

Draft Policy:

Under the proposed retention schedule that is outlined in the addendum to the draft policy, all recordings will be kept for a minimum of six months. Certain videos will be kept longer. Videos that capture a use of force incident will be kept for 3 years; other adversarial police-citizen encounters will be kept for 18 months. All recordings that are related to ongoing civil or criminal investigations—including videos of arrests—will be kept until the conclusion of the case.

Public Feedback and Recommendations:

Rather than ask respondents specific questions about the time of retention, the questionnaire summarized the retention policy and invited comments, questions, or concerns about how long footage is to be kept. Approximately 5,000 people—20% of respondents—answered this question. Given that there was no multiple-choice question for input, in preparing this analysis we first read a random sample of 400 responses, and then reviewed an additional 200 to ensure that our original sample provided a complete picture of what was said.

Keep all or most footage longer: A clear majority of respondents said either that *all* footage should be kept longer, or that certain categories of footage—in particular, use of force incidents and adversarial encounters—should be kept for a longer period of time. Frequent suggestions included: keeping all footage a minimum of one year, and keeping footage of use of force incidents for a minimum of five years. Respondents offered several rationales, including: that cases often move slowly through the system; that people wait a long time to come forward with a complaint; and that because all files are digital, they could be kept indefinitely at little cost.

The New York State Black, Puerto Rican, Hispanic, and Asian Caucus likewise urged the NYPD to retain all footage for a minimum of one year, noting that existing technology would make it feasible to do so. The Legal Aid Society suggested that all recordings should be kept “at least for the period of time that one can file a complaint”—but only if control of the footage is given to an independent oversight agency. (The Legal Aid Society did not specify how long recordings should be kept if the NYPD retains control.)

Support for Current Policy: A smaller fraction of respondents—approximately 20%—approved of the proposed retention times. Some qualified their support, noting that the retention times would only be adequate if subjects of the footage were made aware that they could request access, and if the department promptly responded to such requests.

Reduce Retention Times: Very few of the questionnaire respondents thought that the retention times were too long. Those who did cited either cost or privacy concerns. In its written comments,

Communities United for Police Reform urged the NYPD to delete all “footage with no evidentiary value” within three months.

B. Retention in Criminal Cases

Draft Policy:

Under the draft policy, footage related to a criminal case will be kept until the conclusion of the case.

Public Feedback and Recommendations:

In its written comments, the Hispanic National Bar Association (HNBA) asked the NYPD to clarify that it would retain all footage related to criminal cases “through the final disposition of any pending appeals of a criminal conviction and, where applicable, any pending state and federal post-conviction proceedings,” and “until the relevant time for filing any appeal or post-conviction proceeding has run.” The HNBA also suggested that the NYPD provide notice to the attorney of record before deleting any footage related to a criminal case.

A number of questionnaire respondents likewise expressed concerns about criminal defendants, particularly in more serious cases, suggesting that footage should at the very least be kept until the conclusion of all appeals, and potentially a year or two after that as well.

C. Retention of Arrest Footage

Draft Policy:

Under the draft policy, footage related to an arrest will be kept until the conclusion of the case.

Public Feedback and Recommendations:

In its written comments, Bronx Defenders pointed out that for cases that are quickly dismissed, footage of an arrest may be deleted long before the statute of limitations has run for filing a civil lawsuit or administrative complaint against the arresting officer. Bronx Defenders urged the NYPD to retain all arrest footage for a minimum of 18 months to ensure that individuals have time to file a complaint should they choose to do so.

D. Additional Comments

Specify What Tags Officers Will Use: The Hispanic National Bar Association (HNBA) asked the NYPD to specify what tags officers can use to identify footage, and to make clear whether the tags used will be “coextensive” with the mandatory activation categories listed in the policy.

Require Prompt Deletion at the End of Retention Period: In their written comments, both Color of Change and the Leadership Conference on Civil and Human Rights urged the NYPD to make clear in its policy that it will promptly delete all footage after the maximum retention period. Both organizations pointed to the Chicago Police Department’s policy, which states that at the end of the retention period, “any and all recordings made with an officer-worn body camera must be destroyed.”

Third-Party Control of Footage: Both the Legal Aid Society and Communities United for Police Reform—as well as a number of individual commenters both throughout the questionnaire and in uploaded written comments—recommended that control over body-worn camera footage be given to a third-party government agency. The Legal Aid Society stressed that if the primary purpose of body-worn cameras is to promote police accountability, an independent agency should be given the authority to “regularly audit, critically examine and use recordings to improve police conduct.” The Legal Aid Society also pointed out that concerns over the possibility of tampering—as well as over the privacy of those captured on film—would be diminished if a third-party were given control of the recordings.

Adopt Security Measures to Prevent Unauthorized Access: The Legal Aid Society recommended that the NYPD adopt “the strictest security measures … to prevent hacking or unauthorized access to recordings.” It also urged the Department to ensure that recordings are stored automatically and cameras turned in at the end of each shift so that “individual officers cannot alter or view footage.”

Formalize Retention Schedule in Written Policy: The Brennan Center pointed out that the retention schedule is only included as an addendum to the proposed policy, and asked that the NYPD formalize the retention limits in actual policy—and notify the public if the retention times change at any point.

VI. Access

A. Officers

Draft Policy:

The draft policy allows officers to view their own body-camera recordings prior to filling out police paperwork or signing a sworn statement. If an officer is involved in a serious use of force, the officer will have an opportunity to review the footage of the incident prior to giving an official statement—but only at a time and place determined by the supervisor tasked with investigating the incident.

The draft policy also allows officers to view recordings made by other members of the department if doing so would further an ongoing investigation, assist in case preparation, or serve another official purpose. All access would be monitored by an audit system.

Public Feedback and Recommendations:

Support for Draft Policy: 27% of respondents agreed that officers should always be permitted to review their own body-worn camera footage. In their additional comments, respondents explained that memory can often be imperfect—particularly after a tense encounter—and that allowing officers to review their own camera footage would improve the accuracy of police reports. Some expressed concern that requiring officers to first write a report would make it too easy to “trap” officers with minor discrepancies between video footage and their own reports. However, many of these respondents (perhaps as many as one fourth of those who left additional comments) emphasized that officers should only be permitted to review footage if there are safeguards in place to prevent them from tampering with the videos in any way.

Table 9: An officer should be permitted to view a recording from his or her own body-worn camera:

	Respondents (%)
Anytime, including before writing a report or giving a sworn statement	27%
Anytime, unless there is an incident involving the use of force, in which case the officer must first write a report	19%
Only after first writing a report about the incident, whether or not there is a use of force by the officer	43%
Never	6%
No opinion	5%

Limit Officer Access to Body-Worn Camera Footage: On the other hand, as Table 9 indicates, a clear majority of respondents (68%) favored some restrictions on officer review of body-worn camera footage. Most said that officers should be required to first file a report, either in general or when there is a use of force. A small percentage of respondents did not think officers should ever be permitted to review their own recordings.¹⁸

Those who said that officers must first file a report—either after a use of force incident or for all encounters—offered several rationales. Many expressed concern that officers would attempt to tailor their reports to what they saw on the video, and that reviewing footage would enable officers to explain away their conduct. Some of these same respondents said that requiring officers to first submit a report would enable the department to identify those officers who have a tendency to bend the truth. Others argued it was important to get the officer’s perception of what occurred—either because the officer’s perception of events would itself be probative, or because discrepancies between perception and reality would demonstrate the limitations of human memory.

The small number of respondents (6%) who said that officers should never be permitted to review their own footage were primarily concerned that officers would be able to tamper with the footage in some way, or that officers would adjust their reports to match the footage.

Many of the written comments—from NYCLU, Bronx Defenders, Communities United for Police Reform, Color of Change, the Leadership Conference on Civil and Human Rights¹⁹, and the Center for Media Justice²⁰, as well as a number of individual commentators—also addressed the question of officer access, and urged the NYPD to require officers to submit a written report before reviewing footage.

Several organizations argued that permitting officers to review footage would undermine the accountability value of body-worn cameras, erode the public’s trust in the effectiveness of the department’s internal investigation process, and contribute to the perception that the body-worn

¹⁸ On this question there were differences along demographic lines. 65% of African American women, and 53% of African American men said either that officers should never be permitted to review body-worn camera footage, or that officers should always be required to write a report before doing so. Only 48% of White women and 43% of White men picked one of these two answer choices.

¹⁹ These comments were submitted on behalf of the Leadership Conference on Civil and Human Rights, Upturn, 18MillionRising.org, Electronic Frontier Foundation, National Hispanic Media Coalition, and New America’s Open Technology Institute.

²⁰ These comments were submitted on behalf of the Center for Media Justice, Black Youth Project 100, MayFirst/People Link, Million Hoodies for Justice, Generation Justice, Witness, Hollow Earth Radio, UCIMC, Black Alliance for Just Immigration, Families for Freedom, Working Narratives, and Families Rally for Emancipation and Empowerment (FREE!).

camera program is primarily for the benefit of the NYPD. Commentators argued that the draft policy would undermine the evidentiary value of *both* the body-camera footage and officer reports because officers would be inclined to write their reports based on what they see on the video as opposed to what they perceived at the time the incident took place. Both Color of Change and the Leadership Conference on Human and Civil Rights made the point that “if immediately viewing footage provided the most accurate reports then body-camera footage should be shown to witnesses, victims, and suspects all before they provide statements to the police.” NYCLU added—quoting a report by the NYPD Inspector General—that “officers’ honest recollections of an incident may be altered inadvertently by viewing video footage, leading them to omit events they recall but which were not captured on camera.”

In addition, Bronx Defenders argued that requiring officers to first report on incidents would “provide a valuable source of information with which to study the degree of implicit bias that may be unconsciously operative in NYPD/civilian interactions”—particularly if it turned out that discrepancies between officer perceptions and video footage varied depending on the race of the subject of the recording.

Both the Leadership Conference and Color of Change urged the NYPD to emulate the Oakland Police Department’s policy, which requires officers who are involved in a use of force incident to first submit a report about the incident and be interviewed by an investigator, and only then to review the footage and supplement their statement with any additional information that the officer would like to provide. Bronx Defenders proposed that when footage pertains to a criminal case, officers be required to submit a written complaint report or arrest report to the district attorney’s office before getting access to footage.

Communities United for Police Reform argued that officers should only be permitted to review footage at the same time that the subject of the footage or the subject’s family is granted access. Several individual commentators suggested that Department officials only access footage to investigate misconduct, or based on a “reasonable suspicion that a recording contains evidence of a crime.”

Require Officers to Articulate Purpose for Viewing Other Officers’ Footage: The Hispanic National Bar Association recommended that prior to accessing another officer’s footage, officers be required to verify that they are doing so in furtherance of an investigation or case preparation. If an officer wishes to access the footage for another “official purpose,” the officer first should be required to articulate what that purpose is.

B. Subjects of Body-Worn Camera Footage

Draft Policy:

As summarized in the addendum to the draft policy, subjects of body-camera footage will be able to request access in one of three ways. If someone intends to file a Civilian Complaint Review Board (CCRB) complaint against an officer—and the footage is not related to any pending criminal case—they will be permitted to view the footage before filing a formal complaint. If the person wants to see the footage for some other reason, they would need to file a Freedom of Information Law (FOIL) request with the NYPD. Finally, if the footage is related to an ongoing criminal case, the NYPD plans turn the footage over to the prosecutor, who would then make the footage available to the defendant according to New York State’s rules of criminal procedure.

Public Feedback and Recommendations:

A majority of respondents (76%) either strongly agreed or agreed that if the subject of a body-worn camera recording asks to see the footage, the NYPD should be required to show it to them.

Table 10: If a person has an interaction with an officer wearing a body-worn camera, the NYPD should be required to show that person the footage upon request.

	Respondents (%)
Strongly Agree	53%
Agree	23%
Neither Agree nor Disagree	12%
Disagree	7%
Strongly Disagree	4%

Respondents emphasized that for body cameras to increase accountability, members of the public would need to be able to get access to recordings. Many also said that there must be some streamlined process for requesting footage—and that officers should tell people that they have a right to ask to see the recording of their interaction. At the same time, many respondents qualified their answers, noting that the person requesting the footage must have some reason for wanting to see it—for example, because they want to file a complaint against an officer, or because they believe that the footage will help them in a criminal case. These respondents expressed concern that the NYPD would be inundated with requests if people simply could request footage to satisfy their curiosity. Others suggested additional exceptions—for example, if releasing the footage would interfere with an ongoing investigation or put the officer or a member of the public at risk.

Those who disagreed that the NYPD should be required to provide subjects of the video with an opportunity to see the footage (11%) emphasized that there should be some process for making the request, and that individuals must have some reason for making the request (for example, to defend against a criminal charge or file a complaint). Some expressed concern that officers would be required to show footage to subjects immediately after the encounter, which they thought could potentially put officers in danger or waste officer time.

In their written comments, several organizations and individual commentators stressed the importance of ensuring that the subjects of a recording have an opportunity to review the footage. They made a number of specific policy recommendations:

Establish Clear and Streamlined Procedures for Complainants to Request Footage: Both the Leadership Conference and Color of Change urged the NYPD to establish a streamlined process—outside of the ordinary public records process—for prospective complainants to get access to body-camera footage. They argued that “by establishing a specially tailored process outside of the public records process, departments can provide transparency to specific individuals while also protecting privacy.” They cited the process used by the Washington, D.C. police department, which enables individuals to request by filling out a brief form either online or in person at the local precinct. After the request is reviewed by the department’s public record’s office to ensure the safety and privacy of other individuals captured on video—and the footage is redacted if necessary—the requestor can then come to the local precinct to view the recording.

The Legal Aid Society argued that the subject of a body-worn camera recording should have easy access to footage, so long as the person can provide enough information to assist the department in locating the video, and demonstrate that he or she is indeed the person captured in the video.

Promptly Provide Footage to Criminal Defendants: Bronx Defenders proposed that criminal defendants be given access to body-camera footage “from the very outset of the criminal process, at arraignments,” noting that “fundamental fairness and due process require no less.” The Legal Aid Society likewise recommended that recordings be “immediately” shared with the defense.²¹ Bronx Defenders noted that “the standard practice in most jurisdictions in this City is to provide discovery, including video recordings, well after plea negotiations and often only on the eve of trial.” Because “the overwhelming majority of cases result in a plea bargain that occurs prior to the initiation of the discovery process,” waiting to hand over footage along with other documents would put defendants “at a unique disadvantage” and undermine “the goals of transparency and accountability.”

C. News Media and the General Public

Draft Policy:

In an addendum to the draft policy, the NYPD explained that it considers body-worn camera recordings to be public records, and that it intends to comply with the New York State Freedom of Information Law (“FOIL”) in responding to public requests for access to body-worn camera recordings. The Department listed a number of circumstances in which it would be prohibited by law from complying with a public records request—for example if the recording captures information about a victim of a sex crime or a juvenile offender.

The Department also explained that under FOIL, it has discretion to deny a request or redact footage if releasing a video would interfere with an active law enforcement investigation, identify a confidential source, endanger the life or safety of any person, deprive someone of a right to a fair trial, or would unduly interfere with a person’s right to privacy.

Public Feedback and Recommendations:

A majority of respondents (57%) either agreed or strongly agreed that the NYPD should be required to show footage of a person’s interaction with an officer to a news or advocacy organization upon request, noting that recordings were public documents, and that making footage available would promote transparency and accountability.²²

²¹ The Legal Aid Society’s written comments are drawn in part from testimony that it previously had submitted to the New York State Assembly, and as a result, many of its recommendations are focused on potential legislative reforms—for example, a complete “overhaul of the criminal discovery statute” to ensure that defense attorneys get prompt access to body-worn camera footage and other potentially-exculpatory evidence.

²² Here there was a notable difference in responses by age. Whereas 61% of respondents aged 18-35 agreed or strongly agreed that the NYPD should be required to release footage to news agencies or advocacy groups, only 46% of respondents over age 55 agreed. This difference in responses between different age groups was true of both White and Hispanic respondents. However, 65% of Black respondents in each age group said that footage should be released. We also found differences by borough: only 38% of respondents from Staten Island agreed that the NYPD should be required to release footage, compared with 65% of respondents from Brooklyn.

Table 11: If a person has an interaction with an officer wearing a body-worn camera, and a news reporter or advocacy group requests the footage, the department should be required to give it to them.

	Respondents (%)
Strongly Agree	33%
Agree	24%
Neither Agree nor Disagree	19%
Disagree	14%
Strongly Disagree	9%

However, in the additional comments we sampled, a clear majority of the respondents who favored releasing footage then qualified their answers by listing several circumstances under which it would be proper for the NYPD to deny a request. Many expressed concern for the safety or privacy of those captured on film, and suggested that the Department either obtain consent from the subjects of the recording, or blur faces to protect their identity. Others noted that the NYPD should be permitted to withhold footage if releasing it would interfere with an ongoing investigation. Still others stressed that there should be a formal process for requesting footage, and that the individuals or organizations making the request should have some reason for needing to see it.

Those who disagreed that the NYPD should be required to release footage (23%) cited many of these same concerns about individual privacy and the integrity of law enforcement investigations.

In their uploaded written comments, the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus generally expressed support for the NYPD's proposed access policy. Other organizations and individuals made a number of recommendations:

Formalize Addendum as Policy: The Brennan Center urged the NYPD to formalize the addendum describing its proposed access rules as a written policy, and to make that policy available to the public on the Department website. The Brennan Center noted that policies on these issues are "critical to public confidence in, and effective functioning of, the program." Both the Hispanic National Bar Association and the Reporters Committee for Freedom of the Press (along with 14 other organizations, collectively described as the "Media Coalition") likewise urged the NYPD to develop a more detailed access policy and to offer additional guidance both on the process for requesting footage and the Department's policies on responding to the requests.²³ Their specific suggestions are summarized in detail below.

Clarify Standards for Responding to FOIL Requests: Both the Media Coalition and the NYCLU acknowledged that FOIL exemptions further important privacy and public safety goals, but urged the NYPD to apply the exemptions "narrowly" so as to maximize transparency and public access. The Hispanic National Bar Association described the NYPD's proposed policy as "vague" and "ambiguous in multiple respects" and said that "the policy should provide more concrete guidance" regarding the circumstances in which releasing footage would "interfere with active law enforcement investigations" or "deprive a person of a right to a fair trial." It recommended that when footage relates to ongoing

²³ These comments were submitted by the Reporters' Committee for Freedom of the Press, along with: Associated Press, BuzzFeed, Center for Investigative Reporting, Hearst Corporation, Media Law Resource Center, National Association of Black Journalists, National Press Club, National Press Photographers Association, National Public Radio, Inc., New York Times Company, Online News Association, Radio Television Digital News Association, Society of Professional Journalists, and Tully Center for Free Speech.

judicial proceedings, the judge handling the case should be the one to decide whether footage should be made public.

The Media Coalition recommended that the NYPD make clear in its policy that body-worn camera footage would not be “categorically” withheld either under the “law enforcement investigation” exceptions to FOIL, or the New York Civil Rights Law § 50-a, which protects officer personnel records from disclosure. The Legal Aid Society likewise expressed concern that the Department will rely on § 50-a to deny public requests for access.

The Media Coalition also emphasized that FOIL exemptions are discretionary, and that even if a recording falls within a particular exemption, it still should be released when it is in the public interest to do so. In particular, the Media Coalition stressed that recordings that capture “use of force by NYPD personnel are inherently in the public interest and should be released to the public, regardless of whether those videos may fall within the scope of an exemption.”

The Media Coalition urged the NYPD to incorporate into its final policy a number of principles that New York State courts have announced in interpreting FOIL, namely: (1) that “FOIL is to be liberally construed ... so that the public is granted maximum access to the records of government”; (2) that if the Department decides to withhold a body-worn camera recording, it will “articulate a particularized and specific justification for denying access”; and (3) that FOIL requires the Department to “release any non-exempt portion of a video, even if some information in the video is permitted to be withheld.”²⁴ The NYCLU likewise stressed that where redacting footage would enable release of recordings otherwise exempt from disclosure, the Department should “require that the redactions be made in order to allow for release.”

The NYCLU also encouraged the Department to “remain responsive to new technological developments” in redaction software “that will maximize public access to [body-worn camera] footage while minimizing overly burdensome costs and procedures.” The Media Coalition suggested a number of redaction tools—some of which are available for free or at a low cost—that would enable the Department to blur faces of witnesses or victims or otherwise edit footage prior to release.

Establish Clear Process for Requesting Footage: The NYCLU urged the NYPD to establish a “straightforward and responsive mechanism for members of the public to obtain and review [body-worn camera] footage,” noting that doing so is necessary for cameras “to be effective in rebuilding trust and improving police-community relations.” The Media Coalition recommended that the NYPD include in its policy the time frames that FOIL sets out for complying with public records requests.

Blur Faces Prior to Release: The NYCLU noted that public access to body-worn camera footage must “be balanced against the privacy interests of people who appear on that footage” and recommended “that the NYPD require blurring of faces and other personally identifiable characteristics such as tattoos prior to the release of such footage.”

Fees: The Media Coalition expressed concern about the fees charged to individuals or organizations requesting footage, citing a recent case in which the Department told a television news agency that it

²⁴ Citing *Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246 (1987); *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562 (1986); *Polansky v. Regan*, 81 A.D.2d 102 (N.Y. App. Div. 1981). The Media Coalition also noted that in withholding footage on individual privacy grounds, the Department must balance individual privacy against the public interest in disclosure.

would need to pay \$36,000 for an officer to review and redact the five weeks of footage that it had requested. The Media Coalition argued that imposing such fees “has the practical effect of eliminating effective public oversight,” and that under FOIL, the Department is not permitted to charge individuals for the time it takes to review and redact body-worn camera footage.²⁵ The Media Coalition recommended that the NYPD include a “general fee waiver for bodycam videos requested by members of the media, including freelance and independent journalists,” noting that the Metropolitan Police Department in Washington, D.C. does not charge news agencies for access to footage.

D. Footage of High-Profile Incidents

Draft Policy:

In the addendum to the draft policy, the NYPD explained that when a recording captures a high-profile incident, such as a serious use of force or death in police custody, the NYPD expects to confer with the Attorney General or a District Attorney about whether it is possible to release the footage without undermining an ongoing investigation or possible criminal prosecution.

Public Feedback and Recommendations:

A slight majority of respondents (51%) said that the NYPD should release video of high-profile incidents “as soon as possible” and an additional 25% said that the NYPD should release such footage after it completes an internal investigation.

Table 12: If a body-worn camera captures a high-profile incident of interest to the public, the department should make the footage public:

	Respondents (%)
As soon as possible	51%
After it completes an internal investigation	25%
At the end of any court case or judicial proceeding	17%
Never	3%
No opinion	5%

In their additional comments, those who favored immediate release underscored the need for transparency and accountability, and emphasized that failure to promptly release footage would undermine public trust and potentially create the impression that the Department has something to hide. Others pointed out that releasing footage after a high-profile incident would enable the Department to better control the narrative and avoid public speculation about what the footage shows. At the same time, many of the respondents recognized that there may be legitimate safety or investigative reasons to delay withholding footage, noting that “as soon as possible” need not require the Department to release footage immediately after the incident in question.

²⁵ The Media Coalition cited an advisory opinion issued by the New York Committee on Open Government, a state agency that provides guidance to other government agencies and members of the public on the requirements of the public records law. Committee on Open Government Advisory Opinion FOIL-AO-18127 (May 27, 2010), *archived at* <https://perma.cc/WD5E-S2S6>.

Those who said that the NYPD should wait until it completes an internal investigation likewise emphasized that footage should be released within a reasonable time frame—and that making video available could help ease tensions and promote public trust in the investigative process.

A small number of respondents (17%) said that the NYPD should wait until the end of any judicial proceedings related to the incident in question. In their additional comments, respondents expressed concern about the possibility that footage might influence potential jurors or otherwise interfere with the case. Some suggested that it should be up to the judge to decide when footage should be released.

In their uploaded written comments, a number of individuals and organizations made suggestions for how to treat body-worn camera footage that captures high-profile incidents, particularly officer uses of force. The Media Coalition urged the NYPD “to adopt a policy of proactive, automatic release of bodycam video showing serious use of force incidents to the press and the public.” It pointed out that selective release of some videos but not others “deprives the public of important information” and “risks creating the perception that law enforcement is not being transparent with respect to all incidents.” Many of the individual commentators likewise urged the NYPD to promptly release such footage to the public.

The Hispanic National Bar Association (HNBA) recommended that the final policy *require* the NYPD to confer with a representative from the Attorney General’s or District Attorney’s office—and that if possible, that person not be the prosecutor handling the investigation. If the NYPD does decide to confer with the prosecutor handling the case, it should ask that another attorney who is not involved in the case also review the decision of whether or not to release the footage, and memorialize whether he or she agrees with the conclusion. The HNBA emphasized that these additional steps were necessary to “enhance the integrity of the decisionmaking process” and avoid the perception that the decision to release footage is “politicized.” It added that “unnecessary delays undermine public confidence and the public’s interest in transparency,” citing the fallout in Chicago from the Chicago Police Department’s decision to withhold footage in the Laquan McDonald case.

E. Monitoring Access

Draft Policy:

The draft policy states that access to body-worn camera recordings will be recorded and monitored by the body-worn camera audit system.

Public Feedback and Recommendations:

The Brennan Center urged the NYPD to establish a “robust and fully functioning audit system” to monitor “access to, copying, and sharing of recordings.” It also requested that the NYPD elaborate—either in the policy itself or elsewhere—how the audit system will operate to guard against misuse. The Legal Aid Society similarly stressed that “there should be mechanisms for auditing when footage has been accessed and by whom.” As noted earlier in the report, many questionnaire respondents expressed concern in their additional comments—both on the access questions and elsewhere in the questionnaire—that officers or others in the Department would be able to erase, tamper with, or provide unauthorized access to body-worn camera recordings.

VII. Officer Discipline

Draft Policy:

The draft policy does not specify any consequences for failure to comply with the body-worn camera policy. The addendum to the draft policy explains that it is difficult to specify a discipline system for failure to comply with the body-worn camera policy because there are many variables that determine whether or not an officer should face discipline in any given circumstance. However, the addendum makes clear that officers will face discipline for failure to follow the patrol guide and for consistent and unjustified failure to record.

The draft policy does state that officers will not be disciplined for minor violations captured on a body-worn camera recording. The addendum to the draft policy explains that the goal of this provision is to prevent supervisors from disciplining officers for minor violations of the patrol guide—such as chewing gum or taking off a hat—that a supervisor would not be able to observe but for the existence of body-camera footage.

Public Feedback and Recommendations:

In uploaded comments, several organizations and individual commenters urged the NYPD to make clear in its policy that officers will face discipline for failure to comply with the body-worn camera policy. The Bronx Defenders cited a number of studies and investigations in other jurisdictions, which found that officers routinely failed to comply with activation requirements, and that as a result, a significant proportion of use of force incidents were not recorded. The Brennan Center acknowledged that it might not be possible to specify the particular consequences that would attach to any given violation, but nonetheless recommended that the policy “more explicitly spell out the disciplinary consequences for unjustified failures to record.” The NYCLU likewise stressed that although “it is not necessary to spell out the full scope of a discipline system” it nevertheless is important to include in the policy “a general warning to officers that violations of the policy will result in discipline.” It explained that such a provision “is appropriate and will demonstrate that the NYPD takes seriously the potential value to the community of [body-worn cameras] as an accountability tool.” The NYCLU suggested that the NYPD revise the policy to make clear that “officers who consistently and unjustifiably violate its provisions will be subject to discipline up to and including termination.” The Brennan Center proposed that the policy make clear that there will be “an escalating series of disciplinary measures, perhaps after a pilot or ‘break-in’ period” for failure to comply with the activation requirements. The Legal Aid Society insisted that there be “concrete disciplinary consequences” for officers who turn their cameras off midway through an encounter without explanation. Several individual commentators echoed many of these same recommendations.

The NYCLU also proposed that the NYPD establish a “rebuttable presumption” against officers accused of misconduct in incidents where they were required to record but failed to do so. Several individual commenters suggested that a similar presumption should apply in civil cases, as well as in favor of criminal defendants who claim “exculpatory evidence was not captured or was destroyed.” The Legal Aid Society also argued that there should be “evidentiary consequences” in criminal cases when officers fail to record.

Communities United for Police Reform also suggested that the NYPD establish a process for people to file complaints about misuse of body-worn cameras—and that the process includes whistleblower protection and permit anonymous complaints.

VIII. Additional Comments and Recommendations

A. Use of Biometric Technology

Several organizations and individual commenters urged the NYPD to place limits on future use of biometric recognition technologies—such as facial recognition—as part of the Department’s body-worn camera program. Both Color of Change and the Leadership Conference emphasized that cameras should not be used “as a tool for surveillance” and that use of facial recognition technology “would give officers undue visibility into heavily policed communities—where cameras will be abundant—compared with other communities where cameras will be rare.” They recommended that the NYPD adopt a policy similar to the Boston Police Department’s, which makes clear that cameras “will not include technological enhancements including, but not limited to, facial recognition or night-vision capabilities.” Communities United for Police Reform similarly stressed that cameras should not be equipped with biometric or “automated analytics capacities”—and added that cameras also should not have “infrared” or “x-ray capabilities.” The Center for Media Justice described the NYPD’s failure to set limits on the use of facial recognition software as “problematic.”

The Brennan Center recommended that the NYPD establish a “forward-looking policy that sets strict limits” on how biometric technologies can be used. The Brennan Center pointed out that Taser, one of the leading manufacturers of body cameras, already is working on integrating facial recognition technology into its camera software. Although the Brennan Center acknowledged the potential value of these technologies for identifying suspects, it expressed concern that use of facial recognition would “create an unpredicted level of intrusion into private moments and everyday activities.” It also noted the possibility of mistaken identification, which could result in people being unnecessarily detained. The Brennan Center recommended that the NYPD develop “robust oversight mechanisms, and regular audits” to ensure that such “technologies are used, if at all, in a limited fashion.”

B. Training

The Brennan Center noted that neither the policy nor the addendum make any reference to how officers will be trained on the use of cameras or the handling of camera footage. The Brennan Center stressed the importance of training to achieving the goals of the body-worn camera program, and encouraged the Department to “commit to dedicating training time and resources” to ensuring that officers are trained on “how and when to notify civilians that the body camera is operating; how to position the body camera to ensure that it is recording as much of an interaction as possible; [and] what the consequences are for deliberately failing to record.”

C. Camera Placement

The draft policy directs officers to affix a body-worn camera “in a manner that maximizes the camera’s field of view.” The Hispanic National Bar Association recommended that the NYPD provide additional guidance to officers on where best to place cameras, and if necessary, to “confer with the vendor providing the cameras or other relevant third parties.”

D. Assigning Cameras

Communities United for Police Reform recommended that officers who work at “precincts and central booking facilities” are outfitted with body-worn cameras during the pilot “in order to document and prevent abuses” at these facilities. The LaGuardia Housing Resident Association similarly asked the NYPD to introduce body-worn cameras “in all precincts, transit borough district offices, and housing borough police service offices.” The Legal Aid Society recommended that cameras “be targeted to problem units, times, or officers named by community complaints.”

E. Use of Personal Body-Worn Cameras

Communities United for Police Reform asked that the NYPD expressly prohibit officers from using privately-owned body-worn cameras while on duty.

F. Protecting the Public’s Right to Record

The Legal Aid Society emphasized that the body-worn camera program should not “be considered a substitute for recording by community members” and urged both the NYPD and the New York State Legislature to protect the public’s right to record police-citizen encounters.

G. Policy Transparency

A number of organizations and individual commenters recommended that the NYPD make its body-worn camera policy available on the Department’s website. Both the Leadership Conference and Color of Change urged the NYPD to emulate the San Francisco Police Department “by adding a special page to its website that is dedicated to the development of its [body-worn camera] policy.”

Communities United for Police Reform also stressed the importance of “full transparency” around the proposed body-worn camera deployment and asked that the Department announce “which officers, precincts, or squads will be assigned [body-worn cameras] and under what circumstances.”

H. Ongoing Public Forums

The LaGuardia Housing Resident Association recommended that the NYPD hold monthly public forums “during off-peak work hours for community members to voice their opinions, concerns, questions, and any other matters” relating to body-worn cameras.²⁶

IX. The Public Comment Process

In addition to the comments on substantive provisions of the NYPD’s proposed body-worn camera policy, some organizations offered feedback on the public comment process itself.

Several organizations expressed their support for the public comment process and commended the NYPD for giving members of the public an opportunity to share their comments on the Department’s draft policy. The Progressive Caucus of the New York City Council described the comment process as

²⁶ The LaGuardia Tenant Association also asked the NYPD to explain how its body-worn camera technology will differ from that in other jurisdictions—like Oakland and Albuquerque—where cameras appeared to malfunction during high-profile incidents of concern to the community.

“a good step in ensuring an inclusive and transparent program that will improve police interactions.” The Police Executive Research Forum emphasized that “this kind of collaborative process is central to the PERF/COPS Office recommendations, and will lead to [body-worn camera] policies and practices that better serve both the police agency and the greater community.” The New York State Black, Puerto Rican, Hispanic & Asian Legislative Caucus likewise noted that “the process of policy-making” can “be improved through strong community engagement and participation.”²⁷

On the other hand, a number of organizations expressed some concerns with the way in which the public process was handled. The Bronx Defenders noted their “concern that the results of the survey will not be representative of the views of the policed communities of New York City, as (a) the survey was open for response for an insufficient time, even with the one-week extension, (b) there were insufficient translations, and (c) there was insufficient outreach, particularly to over-policed communities.” The Legal Aid Society likewise expressed concern about accessibility, noting that paper questionnaires were only made available midway through the comment period, which did not give organizations enough time to distribute them to individuals who did not have Internet access. The Legal Aid Society also described language access as a “major concern,” noting that the questionnaire initially was made available only in English and Spanish (with additional translations listed as “coming soon”), and that the policy itself was only made available in English. The Legal Aid Society acknowledged that these problems ultimately were addressed—but suggested that this did not occur until the last week of the comment period, and “with no announcement that these changes were made.”²⁸

The Oakland-based Center for Media Justice (in comments submitted on behalf of 11 other organizations) described the public comment process as “a false process to support a false solution,” noting that “the process for public comments lacks transparency and accountability.”²⁹ They had three primary concerns: that “there is no independent oversight of the process”; that “the public is not guaranteed access to a summary of the comments before they are given to the department; and that “the department is [not] held accountable for incorporating feedback.”³⁰ They urged the NYPD “to develop a comment process that allows the public to have a fair voice and ensures the department is held accountable for incorporating public feedback.”³⁰

Finally, Communities United for Police Reform indicated a desire for yet more opportunities for public comment. It said that “there should be an opportunity for structured and meaningful community input after the NYU Policing Project has submitted its report to the NYPD … and before the NYPD

²⁷ We recognize that the delay in providing additional translations may have made it more difficult for people with limited English proficiency to participate in the feedback process, and regret the delays in obtaining those translations. However, we do want to clarify that the Haitian Creole translation of the questionnaire was available on July 1, and that all seven languages were available as of July 14. Although complete translations of the draft policy itself were not available until July 21, a complete summary of the key policy provisions was available in all seven languages from the first day of the comment period. We cannot know but suspect that most respondents did not read the entire policy, but rather made use of the summary to the extent any consultation of the policy was necessary. The questionnaire was designed so that respondents could take it without reading any additional materials.

²⁸ These comments were submitted on behalf of the Center for Media Justice, Black Youth Project 100, MayFirst/People Link, Million Hoodies for Justice, Generation Justice, Witness, Hollow Earth Radio, UCIMC, Black Alliance for Just Immigration, Families for Freedom, Working Narratives, and Families Rally for Emancipation and Empowerment (FREE!).

²⁹ Although we leave it to the NYPD to comment on this criticism if it wishes, we would like to note that the Policing Project is entirely independent of the NYPD and the other members of the Working Group.

³⁰ The Center for Media Justice and its partner organizations did not provide any substantive comments on the draft policy—except to identify three areas of the policy they deemed “problematic”—which we have incorporated into our summary of public feedback, above.

finalizes policies for the pilot program.” It also believed that “there should be public consultation, as well as consultation with law enforcement and policy advocates, on the purpose, nature, scope and policies governing [body-worn camera] programs *before* [cameras] are deployed by the NYPD.”

Conclusion

This report is being provided to the federal Monitor and the NYPD. It is the Policing Project's understanding that its contents will be shared with the public generally, either prior to, or simultaneously with, the NYPD's public response to the input summarized in this report.

We would be remiss if we did not thank the many, many people and organizations that assisted this effort, and particularly the members of the Working Group. The process among this group was consistently collegial and productive. The Monitor, the plaintiffs' lawyers, and the NYPD labored hard together to see that the public's voice was heard.

None of this is to say that the process was hurdle- or error-free. Obtaining public input on relatively short notice in a city the size of New York is no small task. We at the Policing Project can point to many lessons we learned, and to a variety of things that in the future might be done better or differently.

The important point with which we would like to close, however, is that we hope there *will* be future instances of public input into NYPD policy—whether conducted by us or by others. Policing is a vital part of government. It is both essential, and by its nature implicates substantial individual and public interests. The process of allowing the public to weigh in, even while allowing the agency ultimately to exercise its independent expert judgment, is a healthy one employed throughout American democracy, at all levels of government. We admire the NYPD's decision to solicit public input into its body-worn camera policy.

Appendix: Questionnaire Responses

Question 1: New York City police officers should use body-worn cameras.

	Respondents (%)
Strongly Agree	74%
Agree	18%
Neither Agree nor Disagree	4%
Disagree	2%
Strongly Disagree	2%

Question 2: Will use of body-worn cameras cause the following to improve or worsen?

	Improve (%)	Worsen (%)	No change (%)
Police-community relations and increase public trust	82%	3%	14%
Public safety	82%	3%	16%
Officer safety	77%	3%	19%
The conduct of members of the public when interacting with officers	73%	3%	24%
The conduct of officers in interacting with members of the public	89%	2%	9%

Question 3: Officers should be required to use body-worn cameras to record:

	Yes (%)
Arrests	91%
Searches within the home	84%
Searches on the street	87%
Vertical patrols of public housing buildings (NYCHA)	79%
Uses of force	91%
Pedestrian stops/frisks	88%
Traffic stops	85%
Witness interviews	71%
Any time an officer approaches someone as part of investigating criminal activity	82%
Any time an officer approaches someone to ask a question	64%
Any interactions with members of the public	64%

Question 4: I would feel comfortable reporting a crime to an officer who is recording with a body-worn camera.

	Respondents (%)
Strongly Agree	56%
Agree	24%
Neither Agree nor Disagree	13%
Disagree	4%
Strongly Disagree	3%

Question 5: An officer who approaches a person in a public space like a store or on the sidewalk should be required to tell that person that the camera is recording:

	Respondents (%)
As soon as the officer approaches the person	27%
As soon as possible, without compromising officer safety or other important law enforcement interests	46%
Never	14%
No opinion	13%

Question 6: An officer who enters a person's home should be required to tell that person that the camera is recording:

	Respondents (%)
As soon as the officer enters	37%
As soon as possible, without compromising officer safety or other important law enforcement interests	50%
Never	8%
No opinion	5%

Question 7: If a person asks an officer to turn off a camera, the officer should:

	Respondents (%)
Immediately turn off the camera	5%
Be allowed to keep the camera on for the officer's safety or that of others	22%
Be allowed to keep it on if necessary to record evidence	7%
Be allowed to keep it on both for the officer's and others' safety and to record evidence	62%
No opinion	4%

Question 8: If a person has an interaction with an officer wearing a body-worn camera, the NYPD should be required to show that person the footage upon request.

	Respondents (%)
Strongly Agree	53%
Agree	23%
Neither Agree nor Disagree	12%
Disagree	7%
Strongly Disagree	4%

Question 9: An officer should be permitted to view a recording from his or her own body-worn camera:

	Respondents (%)
Anytime, including before writing a report or giving a sworn statement	27%
Anytime, unless there is an incident involving the use of force, in which case the officer must first write a report	19%
Only after first writing a report about the incident, whether or not there is a use of force by the officer	43%
Never	6%
No opinion	5%

Question 10: If a person has an interaction with an officer wearing a body-worn camera, and a news reporter or advocacy group requests the footage, the department should be required to give it to them.

	Respondents (%)
Strongly Agree	33%
Agree	24%
Neither Agree nor Disagree	19%
Disagree	14%
Strongly Disagree	9%

Question 11: If a body-worn camera captures a high-profile incident of interest to the public, the department should make the footage public:

	Respondents (%)
As soon as possible	51%
After it completes an internal investigation	25%
At the end of any court case or judicial proceeding	17%
Never	3%
No opinion	5%

Question 12: When was your most recent interaction with a New York City police officer?

	Respondents (%)
Within the past month (30 days)	21%
More than 1 month ago but within the last year	23%
More than 1 year ago but less than 5 years	25%
More than 5 years	11%
Never	20%

Question 13: I believe that NYPD officers treat members of the public with courteousness and respect:

	Respondents (%)
Always	7%
Mostly	44%
Sometimes	40%
Rarely	1%
Never	8%

Question 14: What is your race?

	Respondents (%)
White	60%
Black	8%
White Hispanic	3%
Black Hispanic	15%
Asian/Pacific Islander	6%
American Indian/Alaskan Native	<1%
Middle Eastern/Southwest Asian	1%
Other	7%

Question 15: What is your gender?

	Respondents (%)
Male	50%
Female	49%
Other	1%

Question 16: How old are you?

	Respondents (%)
Under 13	<1%
13-17	1%
18-25	18%
26-34	39%
35-54	29%
55-64	8%
65 or over	6%

Question 17: Which borough do you live in?

	Respondents (%)
Brooklyn	34%
Bronx	8%
Manhattan	28%
Queens	19%
Staten Island	3%
Not an NYC Resident	8%

Question 18: Do you live in a New York Housing Authority (NYCHA) or
Trespass Affidavit Program (TAP) building?

	Respondents (%)
Yes, NYCHA	3%
Yes, TAP	1%
No	92%
I'm not sure	4%

EXHIBIT B



**Report on the
NYPD Officer Body-Worn Camera Questionnaire**

Jonathan Stewart, Research Scholar

NYU Marron Institute of Urban Management

September 6, 2016

Public Version: October 31, 2016
Removes quotes from officer comments.

Introduction

In August 2013, Judge Shira Scheindlin ruled against New York City in a landmark case regarding the New York Police Department's (NYPD) stop and frisk practices, Floyd, et al. v. City of New York, et al. In her decision, Judge Scheindlin ordered "the NYPD to implement a pilot project in which body-worn cameras will be worn for a one-year period by officers on patrol..." to be overseen and reviewed by a court-appointed monitor.

As the department prepared for the court-ordered body-worn camera (BWC) program, it included uniformed members of the service (UMOS) in policy development and program implementation. The NYPD also conducted a pre-pilot BWC program with 54 officers in the field from December 2014 to March 2016. The small pilot was intended to give the department experience using BWCs, and officers wearing BWCs gave feedback to the department about their experience.

Following this pre-pilot, the department wanted to give all officers and members of the public the opportunity to give their views of BWCs. To that end, the NYPD asked researchers at the NYU Marron Institute of Urban Management and the NYU Law School's Policing Project to help it gather opinions on BWCs from NYPD UMOS and the public. The Marron Institute and the Policing Project worked with NYPD officials, UMOS, community members and government stakeholders to develop questionnaires that would allow UMOS and the public to have their voices heard on body-worn camera policy and implementation. This report covers the UMOS questionnaire administered and analyzed by the NYU Marron Institute of Urban Management.

The questionnaire was open to all UMOS, but the UMOS who responded to it likely do not form a representative sample of the department. This is particularly true because some union representatives were reported to have discouraged UMOS participation in the questionnaire. Additionally, several public safety incidents gained national attention during this time period and may have affected responses. These include the shooting deaths of Alton Sterling on July 5, Philando Castile on July 6, and 5 Dallas police officers on July 7.¹ Nonetheless, the questionnaire is a useful tool for canvassing officer opinions and understanding UMOS perspectives on BWCs and their use in the NYPD.

The questionnaire for UMOS contained 20 questions, including demographic questions and one question for open-ended comments. It was open for UMOS to complete from June 29, 2016 to August 7, 2016. During this time, 5,419 officers (over 15% of the force) completed the survey.

The questions covered officers' views of themselves and their relationship with the communities they serve, their personal interest in wearing a BWC, their expectations about

¹ These shooting incidents may have had some effect on responses, but the data do not suggest that in the period immediately following these incidents there were significantly different responses to two key questions: whether officers agree with the statements "In general, members of the public treat police officers with respect." and "In general, police officers treat members of the public with respect."

the possible effects of BWCs, and their opinions about particular aspects of BWC policy and implementation.

Demographics of the Respondents

Respondents by Race

White	55%
Black	10%
White Hispanic	17%
Black Hispanic	4%
American Indian/Alaskan Native	0%
Asian/Pacific Islander	6%
Middle Eastern/Southwest Asian	1%
Other	7%

Respondents by Gender

Male	87%
Female	13%
Other	2%

Respondents by Rank

Police Officer/Detective	67%
Sergeant	18%
Lieutenant	9%
Captain or above	6%

The vast majority of UMOS respondents had no experience with BWCs. Five percent of respondents had either worn BWCs or worked with another officer who had worn them.

Police-Community Relationship

Researchers asked two questions to judge UMOS views of the relationship between the police and the community: “In general, members of the public treat police officers with respect.” and “In general, police officers treat members of the public with respect.” Overall, 29% of UMOS believe that members of the public treat officers with respect. However, this proportion increases as you move up from officers to captains.

In general, members of the public treat police officers with respect.

	Police Officer/Detective	Sergeant	Lieutenant	Captain or above	Total
Strongly Agree/Agree	24%	31%	40%	57%	29%
Neither Agree Nor Disagree	21%	22%	19%	18%	21%
Disagree/Strongly Disagree	54%	47%	41%	25%	50%

88% of UMOS believe that, in general, police officers treat members of the public with respect. In contrast to the previous question, this belief is relatively constant across ranks, although police officers more strongly agree with the statement.

In general, police officers treat members of the public with respect.

	Police Officer/Detective	Sergeant	Lieutenant	Captain or above	Total
Strongly Agree/Agree	89%	88%	87%	89%	88%
Neither Agree Nor Disagree	9%	10%	9%	8%	9%
Disagree/Strongly Disagree	3%	2%	4%	3%	3%

Opinions about whether officers and the public treat each other with respect also varied by race. In particular, Black officers stand out as having views that are distinct from other officers. 42% of Black officers agree that, “In general, members of the public treat police

officers with respect," while only 28% of White UMOS and 27% of Hispanic² UMOS agreed with this statement. 37% of Black UMOS disagree with this statement, while 51% of White and Hispanic UMOS disagree.

In general, members of the public treat police officers with respect.

	White	Black	White Hispanic	Black Hispanic	Asian/Pacific Islander	Total
Strongly Agree/Agree	28%	42%	27%	29%	31%	29%
Neither Agree Nor Disagree	21%	21%	21%	25%	23%	21%
Disagree/Strongly Disagree	51%	37%	52%	47%	45%	50%

Similarly, 77% of Black UMOS agree that, "In general, police officers treat members of the public with respect," compared with 91% of White UMOS and 87% of Hispanic UMOS. 7% of Black UMOS disagree with this statement, compared with 2% and 3% of White and Hispanic UMOS, respectively.

In general, police officers treat members of the public with respect.

	White	Black	White Hispanic	Black Hispanic	Asian/Pacific Islander	Total
Strongly Agree/Agree	91%	77%	87%	87%	90%	88%
Neither Agree Nor Disagree	7%	16%	11%	9%	9%	9%
Disagree/Strongly Disagree	2%	7%	2%	4%	1%	3%

In a period of tension between police and the community, particularly communities of color, Black UMOS appear to view police and the communities they serve differently from other officers.

Willingness to Volunteer

In order to get a sense of UMOS's overall willingness to wear BWCs, researchers asked if UMOS would be willing to volunteer to wear a BWC. Over 70% of UMOS responded that they were at least "Somewhat Likely" to volunteer to wear a BWC.

If you were offered an opportunity to volunteer to wear a body-worn camera, would you volunteer?

Yes, Definitely	25%
Very Likely	19%
Somewhat Likely	27%
No, Definitely Not	29%

Officers gave various explanations about why they would or would not volunteer for the program. Many think that the program will be a hindrance to public and officer safety. Some think that turning on a camera might make dangerous situations even more risky. They also worry that they might unintentionally fail to activate the camera and that this failure will always be seen as a purposeful attempt to hide something. Alternatively, other UMOS think BWCs will improve officer and public safety. In particular, many believe BWCs will help to protect them against frivolous complaints.

² Including both White Hispanic and Black Hispanic.

Expected Impact of BWCs

On balance, UMOS expect BWCs will improve or not impact policing conditions in a number of areas. In particular, nearly half (49%) thought that officer safety would improve. Most (55%) UMOS thought that BWCs would improve the conduct of officers, and nearly half (45%) thought that BWCs would improve the conduct of members of the public.

Police-Community Relations and the Public Trust in Police	Public Safety	Officer Safety	The conduct of members of the public when interacting with officers	The conduct of officers when interacting with members of the public
Improve	40%	36%	49%	45%
No Change	49%	55%	36%	40%
Worsen	11%	10%	15%	15%

One officer explained that he believes BWCs will worsen police-community relations because, even though most videos will show positive interactions with the public, only the videos that show negative interactions will be released to the public.

Officer and Supervisor Video Viewing

UMOS were overwhelmingly in favor of allowing officers to view their own video at any time, including before preparing a report or making a sworn statement. UMOS opinions did not vary due to rank.

An officer should be permitted to view a recording from his own body-worn camera:

	Police Officer/Detective	Sergeant and above	Total
Any time, including before he or she prepares a report or makes a sworn statement	86%	87%	86%
Any time unless there is a use of force incident, in which case the officer must first submit a report	5%	5%	5%
Only after first submitting a report about the incident, whether or not there is a use of force by the officer	4%	4%	4%
Never	1%	1%	1%
No opinion	5%	3%	4%

UMOS were less likely to believe that supervisors should have unrestricted access to the videos of officers they supervise. Only 22% believed that supervisors should be able to view any video they select, and an additional 30% believe that supervisors should have open access as long as reviews are tracked and used to not only address performance deficiencies but also to provide positive feedback. Furthermore, there was a distinct difference between police officers/detectives and higher ranked officers. Only 42% of officers believe that supervisors should have such open access to their officers' video, while 73% of higher ranked UMOS believed that supervisors should have this access.

How much access should supervisors have to the video footage of the officers they supervise? A supervisor should be able to view:

	Police Officer/Detective	Sergeant and above	Total
Any video that he or she selects	16%	34%	22%
Any video he or she selects, provided the reviews are tracked and are done to not only address performance	26%	39%	30%
Only videos of incidents involving civilian complaints or a use of force	41%	16%	33%
Only videos randomly selected by a third-party manager, such as the Integrity Control Officer	8%	7%	8%
No videos of the officers they supervise	10%	4%	8%

Officers explained their preference for restricted supervisor access by saying that it could damage an already-tense relationship between officers and their supervisors. While over 80% thought supervisors should be able to view video when there was a use of force or civilian complaint³, many officers thought unrestricted viewing could lead to unhelpful micro-management.

The reluctance to give supervisors open access to video may also be because officers are concerned about being punished for minor violations. 81% of UMOS believe that the department will use BWC video to punish officers for minor violations, even when the video shows that their police work was handled appropriately. This was especially true for UMOS at the police officer/detective rank, 86% of whom agreed with the statement, but even 72% of UMOS ranked sergeant or above agreed with the statement as well.

I am concerned that the department will use body-worn camera video to penalize officers for minor violations, even when the video shows that their police work was handled appropriately.

	Police Officer/Detective	Sergeant and above	Total
Strongly Agree/Agree	86%	72%	81%
Neither Agree nor Disagree	9%	13%	10%
Disagree/Strongly Disagree	5%	15%	8%

Even among UMOS who said they would “Yes, Definitely” volunteer to wear a BWC, 69% said that they were concerned that the department would use videos to punish officers for minor violations. Comments, such as the one below, reinforced this view.

One officer questioned how the department would keep officers from being punished for minor violations. Another explained the distrust he saw between police officers and NYPD leadership. He pointed to the need for better mentorship and leadership preparation in the department.

³ Includes UMOS who chose “Any video that he or she selects” “Any video he or she selects, provided the reviews are tracked and are done to not only address performance deficiencies but also to provide positive feedback,” and “Only videos of incidents involving civilian complaints or a use of force”.

Required Recording

In general, UMOS believe that recording should be required in many situations.⁴

Officers should be required to use body-worn cameras to record:

Traffic stops	77%
Arrests	74%
Uses of force	66%
Searches within the home	65%
Pedestrian stops/frisks	61%
Vertical patrols of public housing buildings (NYCHA)	60%
Searches on the street	60%
Any time an officer approaches someone as part of investigating criminal activity	58%
Witness interviews	49%
Any time an officer approaches someone to ask a question	29%
Any interaction with members of the public	26%
None Indicated	8%

Only 8% of officers indicated no situations in which they believed officers should be required to record. In comments, several of these officers explained that even when they did not record for the benefit of their own or the public's safety, they did not believe they would be given the benefit of the doubt when violating policy in such instances.

One officer said that the only way to get around these concerns is to have BWCs recording at all times.

Notification of Recording

Overall, UMOS did not think that officers should be required to notify people that they were recording, though more agreed that notification should be required when entering peoples homes than when approaching them on the street. Half of officers thought that they should not be required to notify people that they were recording when they entered their homes, and 65% thought that they should not be required to do so when they approached people on the street.

Whether officers agreed or disagree with the statement "In general, members of the public treat police officers with respect" appeared to impact whether they thought officers should be required to notify. Over half (51%) of all UMOS who think that the public generally respects the police believe that officers should be required to notify when entering homes versus 34% of UMOS who disagreed that the public respects the police.

⁴ When respondents chose "Any interaction with members of the public," they were assumed to have indicated all other areas as well.

Public Respects Police				Total
	Strongly Agree/ Agree	Neither Agree Nor Disagree	Strongly Disagree/ Disagree	
An officer who approached a citizen in a public space like a store or on the sidewalk should be required to tell that person that the camera is recording:				
As soon as the officer approaches the person	3%	2%	2%	2%
As soon as possible, without compromising officer safety or other important law enforcement interests	31%	23%	18%	23%
Never	59%	60%	72%	65%
No opinion	8%	15%	8%	10%

Public Respects Police				Total
	Strongly Agree/ Agree	Neither Agree Nor Disagree	Disagree/ Strongly Disagree	
An officer who enters a persons home should be required to tell that person that the camera is recording:				
As soon as the officer enters	6%	4%	3%	4%
As soon as possible, without compromising officer safety or other important law enforcement interests	45%	36%	31%	36%
Never	42%	45%	56%	50%
No Opinion	8%	15%	10%	10%

Requests to Turn Off the Camera

If a member of the public requests that an officer turn off the video, 92% of UMOS thought that officers should be allowed to continue recording for safety purposes and 75% thought that they should be allowed to continue recording for evidentiary purposes. Almost no officers thought they should be required to turn the camera off at the request of a member of the public.

If a person asks an officer to turn off a camera, the officer should:

Immediately turn off the camera	0%
Be allowed to keep the camera on for his own safety or that of others	21%
Be allowed to keep it on if necessary to record evidence	4%
Be allowed to keep it on both (b) for his and others' safety and (c) to record evidence	71%
No opinion	4%

Public Access to Videos

UMOS were generally reluctant to give the public access to videos, either to individuals recorded in the videos or to news organizations. 60% disagreed that members of the public should be allowed to view videos after they were recorded, 53% disagreed that news organizations should be allowed to obtain video.

If a person has an interaction with an officer wearing a body-worn camera, the NYPD should be required to show that person the footage if that person requests to see it at a later date following the interaction.

Strongly Agree	4%
Agree	18%
Neither Agree Nor Disagree	19%
Disagree	32%
Strongly Disagree	28%

If a person has an interaction with an officer wearing a body-worn camera and a news reporter or advocacy group files a freedom of information request to view the footage, the NYPD should be required to give it to them.

Strongly Agree	4%
Agree	21%
Neither Agree Nor Disagree	22%
Disagree	26%
Strongly Disagree	27%

Several officers explained their reluctance to allow people or media to view video footage as a concern for privacy. Some officers expressed concern that, while video shows an incomplete story, the incident will be portrayed only for what happens on the video. Other officers UMOS suggested that higher-ranking officials such as the police commissioner, or even a court, be required to approve any public access to BWC video.

Another side of the story

The questionnaire did not address one area that officers frequently mentioned in comments. This was that officers felt like they encounter difficult circumstances every day that were not well understood by outsiders. They thought that BWC video would provide evidence of those difficulties and show a different side of the story than what would otherwise be told.

Conclusion

Officers' opinions need to be considered carefully as the department plans and implements its BWC program. However, their opinions also need to be considered in context of a complex legal environment and the opinions of other important stakeholders, including the public. The NYPD may be able to make technology, policy, or implementation changes that address officer concerns, but, at times, officers' concerns may not entirely align with laws, court rulings, or the opinions of members of the public. In these cases, the department must make its choices and rationale clear to officers. The NYPD must also explain how it is going to help officers make the most of the BWCs that many of them will soon be wearing, and it must follow through on that plan.

BWCs are a new and complicated technology. As the NYPD implements its BWC pilot program, the department and its officers will undoubtedly learn more about how best to use these devices. Officers using BWCs will become BWC experts, and they will likely develop many innovations for how best to use the devices. Learning about officer

innovations and then adopting these good ideas as standard policy is critical to making the most out of BWCs. The NYPD should regularly assess the program, paying careful attention to where officer opinions change after they begin using BWCs. The department should be prepared to make adjustments based on these new insights. It might make some of these changes during the pilot, but it might not put into other changes into practice until some later date. However, the department must communicate openly with its officers about BWCs' impact, both good and bad, and how it plans to address shortcomings.

BWCs will not be a panacea for all public safety, police department, and police-community issues, and many are skeptical of BWCs' impact. However, continuous departmental learning and improvement will give the best chance for fulfilling the potential of BWCs.

Appendix – NYPD Officer Body-Worn Camera Questionnaire

1. Have you or an officer you've worked with worn an NYPD issued body-worn camera?

Yes - No

2. If you were offered an opportunity to volunteer to wear a body-worn camera, would you volunteer?

Yes, definitely - Very likely - Somewhat likely - No, definitely not

3. In general, members of the public treat police officers with respect.

Strongly Agree - Agree - Neither Agree nor Disagree - Disagree - Strongly Disagree

4. In general, police officers treat members of the public with respect.

Strongly Agree - Agree - Neither Agree nor Disagree - Disagree - Strongly Disagree

5. Will police use of body-worn cameras cause the following to improve or worsen? (You may skip any of these if you have no opinion or don't feel like answering.)

Police-community relations and increase public trust

Improve - Worsen - No change

Public safety

Improve - Worsen - No change

Officer safety

Improve - Worsen - No change

The conduct of members of the public when interacting with officers

Improve - Worsen - No change

The conduct of officers in interacting with members of the public

Improve - Worsen - No change

6. Officers should be required to use body-worn cameras to record (check all that apply):

Arrests

Searches within the home

Searches on the street

Vertical patrols of public housing buildings (NYCHA)

Uses of force

Pedestrian stops/frisks

Traffic stops

Witness interviews

Anytime an officer approaches someone as part of investigating criminal activity

Anytime an officer approaches someone to ask a question

Any interactions with members of the public

7. An officer who approaches a citizen in a public space like a store or on the sidewalk should be required to tell that person that the camera is recording:
 - a. *As soon as the officer approaches the person*
 - b. *As soon as possible, without compromising officer safety or other important law enforcement interests*
 - c. *Never*
 - d. *No opinion*
8. An officer who enters a person's home should be required to tell that person that the camera is recording:
 - a. *As soon as the officer enters*
 - b. *As soon as possible, without compromising officer safety or other important law enforcement interests*
 - c. *Never*
 - d. *No opinion*
9. If a person asks an officer to turn off a camera, the officer should:
 - a. *Immediately turn off the camera*
 - b. *Be allowed to keep the camera on for his own safety or that of others*
 - c. *Be allowed to keep it on if necessary to record evidence*
 - d. *Always be allowed to keep the camera on, including both (b) for his and others' safety and (c) to record evidence*
10. I am concerned that the department will use body-worn camera video to penalize officers for minor violations, even when the video shows that their police work was handled appropriately.

Strongly Agree - Agree - Neither Agree nor Disagree - Disagree - Strongly Disagree

11. If a person has an interaction with an officer wearing a body-worn camera, the NYPD should be required to show that person the footage if that person requests to see it at a later date following the interaction.

Strongly Agree - Agree - Neither Agree nor Disagree - Disagree - Strongly Disagree

12. If a person has an interaction with an officer wearing a body-worn camera, and a news reporter or advocacy group files a freedom of information request to view the footage, the NYPD should be required to give it to them.

Strongly Agree - Agree - Neither Agree nor Disagree - Disagree - Strongly Disagree

13. An officer should be permitted to view a recording from his own body-worn camera:
 - a. *Any time, including before he prepares a report or makes a sworn statement*
 - b. *Any time unless there is a use of force incident, in which case the officer must first submit a report*
 - c. *Only after first submitting a report about the incident, whether or not there is a use of force by the officer*
 - d. *Never*

14. How much access should supervisors have to the video footage of the officers they supervise? A supervisor should be able to review:

- a. *Any video that he or she selects*
- b. *Any video he or she selects, provided the reviews are tracked and are done to not only address performance deficiencies but also to provide positive feedback.*
- c. *Only videos randomly selected by a neutral NYPD manager.*
- d. *Only videos of incidents involving a civilian complaints or a use of force.*
- e. *No videos of the officers they supervise.*

15. Please provide any other comments or questions that you may have.

16. In which Patrol Borough/Bureau do you work?

*PBBX - PBBN - PBBS - PBMN - PBMS - PBQN - PBQS - PBSI - Transit - Transportation
- Detective - Housing - Other*

17. What is your current rank?

Police Officer/Detective - Sergeant - Lieutenant - Captain or above

18. What is your gender?

Male - Female - Other

19. What is your race?

- a. *White*
- b. *Black*
- c. *White Hispanic*
- d. *Black Hispanic*
- e. *Asian/Pacific Islander*
- f. *American Indian/Alaskan Native*
- g. *Middle Eastern/Southwest Asian*
- h. *Other*

20. How long have you been a police officer?

Less than 2 years - 2-5 years - 6-10 years - 11-20 years - 20+ years