



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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BY ELECTRONIC AND FIRST CLASS MAIL

July 31, 2014

Commissioner William Bratton
New York City Police Department
One Police Plaza, 14th Floor
New York, N.Y. 10038

Chairman Richard Emery
New York City Civilian Complaint Review Board
100 Church Street
New York, N.Y. 10007

Inspector General Philip Eure
New York City Department of Investigation
80 Maiden Lane
New York, N.Y. 10038

Re: Reforms in the Aftermath of Death of Eric Garner

Dear Commissioner Bratton, Chairman Emery, and Inspector General Eure:

On behalf of the New York Civil Liberties Union, we write to address issues arising out of the death of Eric Garner. City officials, including the mayor, have conveyed condolences to Mr. Garner's family and have expressed concern about the circumstances of his death, and we commend the City for that.

Beyond the circumstances of Mr. Garner's tragic death, the incident raises a host of important policy issues in which the NYCLU has been deeply involved and that implicate the NYPD, the CCRB, and the Inspector General's office. We write to urge a series of actions by the three of you, to request public release of documents and information, and to request meetings to discuss these issues.

1. Use of Force in NYPD Enforcement of Low-Level Offenses- Mr. Garner's death brings into sharp focus two aspects of policing practices in New York City: the aggressive enforcement of low-level offenses and the use of force in conjunction with that enforcement. With respect to the first, the NYCLU for years has noted that aggressive police enforcement of minor offenses is sweeping large numbers of people into the criminal justice system, with dire consequences for them far out of proportion to the seriousness of the offense. (To take just one example, during the Bloomberg administration the NYPD was arresting tens of thousands of people each year for

marijuana-possession offenses, even though New York decriminalized most marijuana possession decades ago.) Compounding this problem has been the fact that black and Latino New Yorkers bear the brunt of low-level enforcement activity.

Separate and apart from the merits of the “Broken Windows” philosophy, the death of Eric Garner highlights a particular aspect of low-level enforcement that should concern all of you: police-civilian encounters over minor offenses escalating into situations where officers use excessive, even lethal, force. Though there appears to be no publicly available comprehensive data about the use of force connected to low-level enforcement, data that are available suggest this may be a serious problem.

Perhaps the most comprehensive data available to the public is the NYPD’s stop-and-frisk database, which includes detailed information about the use of force by officers during reasonable-suspicion stops, which we believe typically involve lower-level offenses. According to our analysis of the database, officers recorded 1,381,843 acts of force in the 4,984,393 stops recorded between 2003 and 2013. This extraordinary number of acts of force reported by officers themselves is particularly alarming when one considers that nearly 90 percent of stops during this period were of innocent people (as evidenced by the fact the person stopped was neither arrested nor given a summons).

A second, though more limited, source of data is complaints filed with the CCRB. Between 2009 and 2013, the agency received 26,548 allegations of excessive force in the 31,246 complaints it received. That represented nearly one-third of the allegations the CCRB received and was the second most common type of complaint.

The stop-and-frisk and CCRB data plainly suggest that force may be a significant problem with the NYPD, but we recognize that these sources are neither comprehensive nor conclusive and that the department has additional data, including from arrest reports. We therefore request that the NYPD produce to us any databases or reports it has about the use of force by its officers so that the NYCLU can conduct an independent analysis of that information. We also call on the NYPD to undertake its own comprehensive review of its use-of-force practices, a review that might best be undertaken by an independent entity with expertise in this area.

2. NYPD Use-of-Force Policy and Training- Commissioner Bratton announced last week that the NYPD would conduct a thorough review of its use-of-force policy and conduct extensive retraining. We welcome this and write to make several specific requests.

At the outset, we note that the NYPD’s written use-of-force policy, as spelled out in Patrol Guide section 203-11, is quite skeletal. Other than stating that force “must be consistent with existing law and New York City Police Department Values” and that deadly physical force “will be used ONLY as a last resort and consistent with Department policy and law,” section 203-11 provides precious little affirmative guidance to officers about appropriate use of force. (We recognize that it bars certain things, like

chokeholds.) To the extent the department has other written policies governing officer use of force, we ask that it provide us copies of those policies. To the extent there are no other written policies, we urge the department to review section 203-11 with an eye towards developing the policy to provide officers with much more specific and comprehensive guidance in the use of force.

As for additional training, we of course welcome that. But before the department undertakes this important (and expensive) enterprise, we believe it should make available to the public information about its current use-of-force training, including curriculum outlines, written training materials, and information about the length and frequency of such training and make available specifics of the proposed new training. We ask that you produce all these materials to us and provide us and others with the opportunity to comment on them in conjunction with the new training.

3. Possible Expansion of Taser Use- According to at least one press account,¹ the NYPD is considering expanding its use of tasers. While recognizing there have been notable instances of taser misuse by the NYPD, the NYCLU nonetheless has viewed the department's cautious approach to tasers as prudent.

Given widespread and serious problems with tasers elsewhere,² the prospect of the NYPD greatly expanding its use of tasers concerns us greatly. Before any such expansion takes place, we urge the NYPD to make available to advocates, the City Council, and the public the particulars of any proposed expansion and provide a full opportunity for comment.

4. NYPD Responses to CCRB-Substantiated Complaints of Misconduct- CCRB data revealing that the NYPD took little or no disciplinary action in nine cases involving chokeholds points to a far larger problem with the NYPD's response to civilian complaints that are substantiated by the CCRB. This is a problem the NYCLU has been calling attention to since 2008.

In March 2008 the NYCLU wrote to CCRB Chair Franklin Stone about a dramatic jump in the number of cases substantiated by the CCRB but simply dismissed

¹ J. Goldstein, "New York City Police Study Use of Force; May Issue More Tasers," New York Times (July 22, 2014).

² In 2011 the NYCLU issued a report about problems with taser usage by police departments in New York outside New York City. See NYCLU, Taking Tasers Seriously: The Need for Better Regulation of Stun Guns in New York (2011) (available at http://www.nyclu.org/files/publications/nyclu_TaserFinal.pdf). In 2008 Amnesty International issued a report examining about 330 deaths in the United States associated with tasers. See Amnesty International, "'Less Than Lethal,' The Use of Stun Weapons in US Law Enforcement" (Dec. 2008) (available at <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf>).

by the NYPD without any disciplinary action. As our letter noted, in the five years before 2007 the department had been dismissing only a tiny percentage CCRB substantiated cases, with the following rates:

2002: 3.9 percent
2003: .8 percent
2004: 2.9 percent
2005: 2.3 percent
2006 3.3 percent

After 2007, however, NYPD dismissals increased dramatically and in some years resulted in about one-third of all CCRB-substantiated cases being dismissed by the NYPD without any disciplinary action against the officer:

2007: 34.4 percent
2008: 32.0 percent
2009: 27.1 percent
2010: 17.5 percent
2011: 16.1 percent
2012: 21.7 percent
2013: 28.3 percent
2014: 24.5 percent (through May 31)

This leap in the dismissal rate translated into a large increase in the number of officers who escaped punishment. While only 49 cases were dismissed in the first five years of the Bloomberg Administration, in the last seven years the NYPD dismissed 494 CCRB-substantiated cases without pursuing any discipline against the officer.

The NYPD's systematic dismissal of CCRB-substantiated cases seriously undermines CCRB oversight and sends a strong signal to officers that the department will not discipline them for civilian misconduct. With new leadership at the NYPD and the CCRB, now is the time to fix this problem. To the extent the NYPD is identifying shortcomings in CCRB investigations, the two agencies need to work together to address them. If that is not the issue -- and we do not believe that CCRB investigations deteriorated precipitously over the last seven years -- the NYPD should take immediate steps to end its frequent dismissal of CCRB-substantiated cases of police misconduct.

5. CCRB Failure to Address Policy Issues Presented by Police Misconduct- Shortly after Mr. Garner's death, the CCRB announced that it would investigate NYPD chokehold practices, using complaints received by the agency. We welcome this investigation but note that this announcement highlights the CCRB's abdication in recent years of its critically important responsibility to investigate and report on NYPD policies and practices.

Despite having access to an extraordinary amount of information about civilian-police encounters and despite having sophisticated policy staff and information systems, the Board has done virtually no policy analysis for many years. Since 2006 the CCRB's policy-report track record is as follows:

2007: 0 reports
2008: 0 reports
2009: 0 reports
2010: 0 reports, City Council testimony about trespass arrests and related press release
2011: 0 reports
2012: 0 reports
2013: 4-page report on trespass arrests
2014: 0 reports

With new leadership at the CCRB, it is time for the agency to end this silence. The CCRB is uniquely qualified to analyze NYPD practices, to provide useful recommendations to the NYPD, and to inform the public about reforms that need to be made. We hope that the announced chokehold study will mark the beginning of a new era in CCRB oversight.

6. Coordination Between the CCRB and the Inspector General- According to press reports, both the CCRB and the Inspector General will be conducting reviews of chokehold complaints filed with the CCRB.⁴ Given that both agencies have policy-review responsibilities, each has a role to play, though we think that each agency can contribute in different ways.

With respect to the chokehold complaints filed with the CCRB, we believe the CCRB is in the best position to review them. Not only would Inspector General review be duplicative, but the CCRB will have a recorded interview of the officer or officers involved in many of those complaints, and those interviews could be invaluable for assessing the adequacy of NYPD policies and training and for determining reforms that should be implemented. The CCRB also has an extensive database of years of investigations of excessive-force complaints, and that information may provide important context for an examination of the specific issue of chokeholds.

⁴ J. Goldstein and N. Schweber, "Complaints About chokeholds Are Focus of Study," *New York Times* (July 19, 2014) (available at http://www.nytimes.com/2014/07/20/nyregion/thousands-police-chokehold-complaints-are-focus-of-new-york-study-after-man-dies-in-staten-island.html?_r=0); G. Smith, "NYPD Inspector General Will Review Complaints When Cops Allegedly Used Chokeholds Over Last Five Years," *New York Daily News* (July 22, 2014) (available at <http://www.nydailynews.com/new-york/nypd-inspector-general-starts-chokehold-review-article-1.1876673#ixzz38mEyGoA>).

As for the Inspector General, we believe he could profitably examine several issues arising out of Mr. Garner's death. For instance, the Inspector General could probe the NYPD's disturbing practice of dismissing large numbers of CCRB-substantiated cases. The Inspector General also could conduct a full review of the NYPD's actual use-of-force training and could study precincts or other commands that appear to have problems with chokeholds.

Finally, we note that this controversy affords the Inspector General and CCRB an opportunity to come to a working agreement about how the two agencies will coordinate review of NYPD policies and practices. This is a topic we discussed with Mr. Eure when we met with him in June, and we encourage the two agencies to address this issue now.

7. Early Warning Systems for Police Officers ("Copstat")- Press reports indicate that one of the officers involved in Mr. Garner's death had a substantial history of CCRB complaints and had been sued twice for misconduct. Though we have no information about what, if any, monitoring the officer may have been subject to, the officer's reported history reinforces our long-running concern about the lack of a comprehensive early-warning system to identify problem officers who may require re-training and additional supervision. We believe that the NYPD, the CCRB, and the Inspector General all have a role to play in developing such a system. While the NYPD of course has the most comprehensive information about officer behavior, complaints filed with the CCRB and the agency's subsequent investigations (including officer interviews) are critically important in identifying officers who may be at risk of future misconduct. As for the Inspector General, his office can play an essential role in developing and monitoring an effective early-warning system and in gathering relevant information from other agencies, including the New York City Law Department and local District Attorneys.

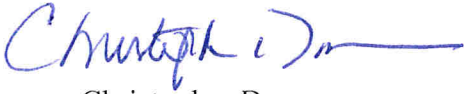
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As we think all of you recognize, the death of Eric Garner exposes an important need to examine police practices and to reassess oversight of the NYPD. And with new leadership at the NYPD and CCRB and with the advent of the Inspector General, we believe that this examination and reassessment can be genuine and result in real change.

If you have any questions about our requests and concerns, please let us know. Otherwise, we ask that you provide us with the material requested in this letter at your earliest convenience.⁵ Independent of that, we would like to meet with each of you to discuss how you intend to proceed with the issues outlined in this letter.

⁵ To be specific, we ask that the NYPD produce the following: (1) documents sufficient to identify all databases or reports that contain data or information about the use of force by members of the Department since January 1, 1994; (2) all databases containing information about the use of force by members of the Department since January 1, 1994 (with redactions where appropriate); (3) all reports describing, reporting, or assessing the use of force by members of the Department since January 1, 1994 (excluding reports of individual incidents); (4) all policies governing the

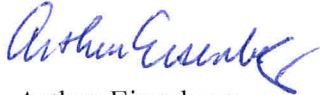
Sincerely,



Christopher Dunn
Associate Legal Director



Donna Lieberman
Executive Director



Arthur Eisenberg
Legal Director



Johanna Miller
Advocacy Director

use of force (other than Patrol Guide section 203-11); (5) all use-of-force training materials, including instructor outlines, written training materials provided to trainees, Powerpoints, role-play descriptions, and documents sufficient to determine the frequency and duration of use-of-force training; (6) documents describing or discussing any new use-of-force training the NYPD plans to conduct; (7) all policies governing the use of tasers (or other similar devices); (8) documents describing any planned expansion of the use of tasers (or other similar devices).