

List of questions to answer in researching review boards

## **New York City: Civilian Complaint Review Board (CCRB)**

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A: Types of conduct/complaints the new agency will investigate and determine outcomes  
(bureau complaints vs community complaints)

- \* Jurisdiction over Force, Abuse of Authority, Discourtesy, Offensive Language (known as FADO)
- \* Board does NOT have jurisdiction over theft of money, neglect of duty, corruption, perjury and off duty criminal conduct.

A-a: Does the Board review every complaint that gets filed?

- \* FADO further defined:
- \* \* Abuse includes improper search, entry, seizure, property damage, failing to identify, intentionally untruthful statements in oral or written testimony, sexual misconduct.
- \* \* Sexual misconduct is verbal harassment, physical gestures, humiliation (in relation to sexual organs or behavior), police action motivated by sexual misconduct, romantic propositions, sexual assault, rape or on duty sex.
- \* \* Offensive language includes slurs against race, ethnicity, religion, gender, sex or disability.
- \* If complaint involves other agencies, CCRB Chair and Executive Director can send it out for review, but may keep the complaint for investigation.
- \* In 2016 received 4282 complaints, 42% were Use of Force.

B: Complaint process: community member vs. internal bureau complaints

- \* Internal Affairs looks at theft of money, neglect of duty, corruption, perjury and off duty criminal conduct.
- \* Filing can be done online, by hotline (live person 8-5 M-F), 3-1-1, in person, at Council member office, by mail or at a police station.

B-a: Time limits to file complaints

- \* 18 months by statute but Chair and Exec. Dir. also have discretion to re-open based on nature (see B-c)

B-b: Materials given to complainant

- \* Can request body camera footage or encounter or stop report from NYPD (not CCRB)

B-c: Who can make complaints

- \* People who are incarcerated can complain; investigators "routinely" visit jails.
- \* Complainants can be of any age
- \* Can be filed in any language
- \* Can file regardless of immigration status- CCRB does not ask
- \* Anonymous complaints are accepted at discretion of Exec. Dir. or CCRB chair based on "nature":
- \* \* depends on nature and severity of allegations, availability of evidence/witnesses, identifying people and if it is practical based on how many other complaints are being handled.

C: Mediation options (community member and police officer)

- \* Mediation available in suitable cases: not if a lawsuit has been filed, civilian has a criminal case, there was a physical injury or property damage.
- \* Website claims 90% success rate in mediated cases
- \* Third party complainants cannot engage in mediation
- \* Family members of victims can be in mediation, even if the victim is not participating.

- \* If one party rejects mediation, the case is sent for investigation.
- \* Interpreters will be provided; accommodations provided for people with disabilities.
- \* No recordings are allowed.
- \* Either side can terminate the mediation; the mediator can also determine it is not successful.
- \* Civilians can be no-shows at least two times before mediation will be considered unsuccessful.
- \* Parties can sign statement expressing satisfaction with the process.
- \* If mediation is not successful, either party can ask for an investigation.
- \* (7/19) CCRB has an entire mediation unit.

#### D: Case handling and investigative processes, including work flow description

- \* Complainant files complaint.
- \* Investigators can identify officers from roll calls, logs, assignments, stop and frisk data from police dept.
- \* Complainant can check status of investigation online.
- \* If civilian or their attorney wants to suspend investigation it can be halted and reopened later.
- \* Investigators "may" interview complainant, officer, witnesses
- \* \* They also review video, medical records, can conduct site visits.
- \* \* People being interviewed can have up to two support people including counsel.
- \* \* Interviews done at "reasonable hours," can reschedule.
- \* \* Officers are told name of person in charge of investigation, investigator, people involved in investigation, if they are a subject or witness, nature of allegations, and identity of witnesses and complainant unless protected by confidentiality.
- \* \* No "off-the record" comments allowed, offensive language, threats or rewards offered.
- \* \* only CCRB is allowed to record interviews.
- \* \* interpreters will be provided; accommodations provided for people with disabilities.
- \* Panels of 3 review each case: 1 Council, 1 Mayor, 1 Commissioner appointee
- \* \* Public advocate or chair can serve as Council or Mayor appointee.
- \* \* (7/19) Staff attorney supports panel.
- \* Panel reviews completed investigation and makes findings
- \* \* But can refer case to full Board.
- \* Findings are sent to the Police Commissioner along with forms and background information.
- \* \* Commissioner can accept, modify or reject findings, can also request more investigation.
- \* \* CCRB can follow up with prosecution or investigation
- \* If a case is referred by CCRB for administrative hearing, complainant must sign statement.
- \* Officers can cut a plea deal with the CCRB.
- \* \* Police Commissioner can reject plea and send to hearing.
- \* Cases which do not result in one of the basic four findings ("F") can be closed.
- \* \* Board members can ask to review closed cases.

#### D-a: Timeline for investigation to be completed

#### D-b: Hearing process (also see Discipline process, "G")

- \* In serious cases CCRB attorneys prosecute officers at disciplinary hearings.
- \* Led by Administrative Prosecution Unit (APU)
- \* \* Police Dept also has Department Advocate Office (DAO) who can prosecute
- \* Hearings held at police department before administrative law judge
- \* \* (7/19) Involved is the "Commissioner of Trials" who is one of NYPD's deputy police commissioners
- \* \* CCRB has staff attorneys who also participate in the trials
- \* If the Commissioner sees a case with substantiated allegations they can send it to DAO

- \* If the officer is retiring or about to be promoted the case can be expedited.
- \* \* The CCRB chair and Executive Director can speed up case or ask DAO to handle case
- \* Charges drafted by CCRB are served to the officer through DAO.
- \* \* CCRB can recommend suspending officer while charges are pending.

E: Subpoena power and access to police records

- \* Can subpoena persons to testify or records
- \* Need permission for medical records
- \* Full board votes for subpoenas to be issued.
- \* \* can be delegated to Exec. Dir. (or revoked)
- \* Subpoena enforceable by law; access to police records allowed by law.

E-a: Does the board have access to all the records it needs?

E-b: Can the board compel officer testimony, if so how is it accomplished?

- \* Statement read to officers about constitutional rights against self-incrimination but if refuse to answer administrative question can be fired.
- \* \* Also officer will be dismissed for giving false testimony.

F: Potential findings in misconduct cases

- \* Basic four findings:
  - \* \* Substantiated (out of policy)
  - \* \* Within guidelines (in policy)
  - \* \* Unfounded (did not happen as alleged)
  - \* \* Unable to determine (Insufficient evidence)
- \* Additional findings:
  - \* Officers unidentified
  - \* Miscellaneous (usually means officer no longer works for Dept)
  - \* Unable to investigate (complainant uncooperative or unavailable)
  - \* Withdrawn

F-a: Standard of review to determine findings

- \* Preponderance of the evidence.

G: Discipline process – due process and just cause requirements

- \* Police Commissioner imposes discipline.
- \* In 2016, 525 officers were disciplined; 82% of Board recommendations led to discipline.
- \* Discipline can be:
  - \* \* Instruction- localized discipline, if officers "misunderstand" policy
  - \* \* training
  - \* \* command discipline (A or B) from instruction up to 10 days without pay
  - \* \*\* warning and admonition, loss of vacation, suspension w/o pay
  - \* \* dismissal probation
  - \* \* termination
  - \* \* charges (I think this applies to over 10 days without pay, dismissal probation and termination)
- \* Discipline letters with officers names are posted online (NYC charter 2019)
- \* Commissioner of Police can decide prosecution would be detrimental. To qualify:
  - \* \* Parallel criminal investigation is ongoing
  - \* \* Officer has no disciplinary history so "justice cannot be served."

- \* \* Commissioner can pursue discipline anyway
- \* \* CCRB can reject opinion within five days, Commissioner can counter-rebut five days after that.
- \* If the Commissioner wants to impose discipline lower than CCRB recommends, sends notification 10 days in advance.
- \* \* CCRB and "respondent" have five days to challenge
- \* Commissioner's decision is final.

H: Appeal process – will police and community members be allowed to appeal their cases?

- \* Complainant/victim or officer can appeal
- \* \* The panel, the Chair or the Exec. Dir. can reopen the case
- \* \* This includes cases that were closed without investigation.
- \* Reconsideration done based on whether there is new evidence including witnesses, or if re-opening will serve justice.
- \* Police Dept. Advocate can request a reconsideration of findings.
- \* \* The panel, Chair or the Boar can agree
- \* \* Reconsideration based on excessive discipline, new facts, facts of law that were overlooked or "misapprehended."
- \* Appeals have to be filed within 30 days from receipt of findings, though exceptions can be made.
- \* \* Decisions to make exceptions can take into consideration reasons for delays, if there is new information and whether it is practical to investigate.
- \* (7/19) The same panel hears the appeal because there has to be some new evidence to prompt the appeal.

H-a: Standard of review to examine/determine findings in appeal phase (NO DATA)

I: Will city council continue to be part of the process? (NOT APPLICABLE)

J: Will all or part of the oversight board be involved in appeals and other case-related decisions?

- \* The three person Panel which heard the case also hears the appeal.
- \* \* If a member has left or is unavailable, other members can be assigned to the case.

K: Process for making policy and training recommendations from both community board and agency staff

- \* CCRB analyzes complaints for policy, procedure and training issues
- \* Makes recommendations to chief and public
- \* Has a policy unit which does data analysis, includes lawyers
- \* \* unit creates monthly, semi-annual and annual reports.

L: Chief and police commissioner's obligation to respond and follow oversight board's decisions and recommendations

- \* Police commissioner can challenge findings and has final say on discipline (see "D" and "G")

M: Board membership:

M-0: In what way are community members involved in the oversight system?

- \* There is an all-civilian Board.

M-1: How many

- There are 15 members.
- (7/19) Although five of the 15 members are attorneys, that is not a requirement.
- \* Members have included, for instance, a Black physician from Staten Island who brought lived experience

M-2: Qualifications

- \* Must live in the city, cannot be law enforcement except those appointed by the police commissioner.

- \* Cannot be a public employee or official
- M-3: Recruitment, replacement [removal-- see M-10]
- M-4: Appointment process
  - \* 5 members appointed by Mayor, 5 by City Council, 3 by Police Commissioner, 1 by Public Advocate, Chair appointed by Mayor and Council.
- M-5: Representation/Diversity (NO DATA)
  - (7/19) City Charter calls for CCRB to reflect the diversity of New York.
- M-6: Length of terms – renewable or not
  - \* Three years, renewable.
- M-7: Training requirements (NO DATA)
  - (7/19) Board gets basic information on the process, structure and manual of police operations.
  - \* Staff suggests a more thorough training would be better, but might take up volunteers' valuable time.
- M-8: Quorum requirements
  - \* On three person panels, decisions can be made if only two people are present.
- M-9: Paid or unpaid
  - \* Compensated per term, some choose to do work pro bono
- M-9a: If paid, how? (NO DATA)
- M-10: Removal (NO DATA)
- M-11: How does the board break down its time? (NO DATA)
- M-12: Rules for vacancies [relates to M-3, M-8 and M-10] (NO DATA)
- M-13: What officers are there for the board?
  - \* Chair (NO OTHER DATA)
- M-14 (NEW!): Voting process
  - \* Members cannot abstain unless there is a conflict of interest

N: Transparency and public access: guidelines around open meetings and public participation within limits of personnel regulations

- \* Monthly public meetings (but optional in August and December)
- \* Note: Officer discipline with names posted online
- \* Note: data on open cases, mediated (and attempted mediated) cases not public.
- \* Hearings are not open to the public.
- \* CCRB can propose disclosure of normally confidential information.

N-a: What happens at meetings (other than hearing cases)?

- \* Agency operations, complaint activity and disposition of cases are shared
- \* There is public input

O: Agency director – qualifications, hiring process, authority, performance reviews

- \* Board oversees operations, sets policies, hires Director

O-a: What other staff does the board have? [also see Q: Independent Legal Counsel]

- \* Total of 180 employees.
- \* Civilian investigators are trained on policies, interviewing, evidence, patrol mandates, operations, legal issues about force, stops, frisks and searches.
- \* Investigators spend two days at the police academy.
- \* Must have 8 years experience.
- \* Board prosecutors trained in PD policies and procedures, relevant to case
- \* \* NYPD gives legal and administrative guidance.

P: Office location – How/where does it exist to be? free-standing? Where is the bureaucratic structure?

- \* Has own offices in Manhattan
- \* Can do interviews in each of the five boroughs

Q: Independent legal counsel —(NO DATA)

- (7/19) CCRB does not have legal counsel outside City Attorney's office
- \* It does have many staff attorneys who work on trials and support hearing panels

R: Reporting requirements – quarterly and annual reports, required contents, consultation with oversight board, presentation to city council and the public

- \* Monthly statistical reports generated before each meeting
- \* Reports include agency operations, complaint activity, case dispositions, discipline. (not clear if required)
- \* Data analysis done by policy unit generated 14 times a year (see "K")
- \* (from"N"): Note: data on open cases, mediated (and attempted mediated) cases not public.

R-a: What is included in the public reports other than required contents?

- \* Note: Online sections include sample cases, complaints, allegations, victims and officers.
- \* \* Data includes race, gender, age and outcomes.

S: Public and police bureau member education on the new system

- \* Has Outreach and Intra-governmental Affairs Unit which educates on:
  - \* \* CCRB
  - \* \* Civilians' rights
  - \* \* de-escalation
  - \* \* filing complaints
- \* Outreach done at:
  - \* \* schools
  - \* \* libraries
  - \* \* advocacy and community organizations including LGBTQ, NGOs, religious groups
  - \* \* precinct councils
  - \* \* housing authority
- \* Has Youth Advisory Council (ages 10-18)

T: Independent expert review of shootings and deaths in custody (NO DATA)

U: Inspector General or Police Auditor with full access to Bureau records, trainings, and staff

- \* The Executive Director audits closed cases.

V: What is the board's budget?

- \* As of 2016 budget was \$15 million
- \* As indicated in item Y below, in 2022 that is closer to \$39 million.

W: How are internal rules made for the Board?

- \* Board determines investigative procedures.

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X: What are barriers that you are facing?

- (7/19) Direct access to body-worn camera footage and other documents

- \* Axon allows external access if the police check a checkbox. The state is working on a carve-out.
- Final disciplinary authority.

Y: If you could add other powers and authorities to your board, what would you like to add?

- (7/19) a set budget
- \* In a recent charter review they were granted 0.65% of the NYPD's budget (which is about 6 BILLION dollars, so, that is about \$39 million).
- \* They were able to staff a new Racial Profiling unit with the money that was added
- \*\* They wanted 53 staff but were only able to get 33 positions in that unit.

Z: Is there anybody else we should talk to?

- (7/19) Washington, DC and San Francisco's review boards (particularly SFO's budget),
- The Center for Policing Equity, NACOLE and Campaign Zero.