



REFORM AND TRANSPARENCY AT THE MTA POLICE DEPARTMENT – FINAL

Carolyn Pokorny
MTA Inspector General
State of New York

I. EXECUTIVE SUMMARY

In 2020, a movement swept the country to bring more accountability and transparency to police agencies’ handling of excessive force cases and racially motivated misconduct. New York State leaders joined the effort by quickly passing a variety of measures that increased citizens’ ability to hold police officers accountable for their actions, required greater transparency of police agencies’ activities and decision-making processes, directed every police force to engage more closely with its local constituency, and changed the process by which police misconduct is investigated.

The Metropolitan Transportation Authority’s (MTA) primary law enforcement unit, the MTA Police Department (MTAPD), needed to initiate reforms to meet the public demand for transparency and accountability. To further this effort, the Office of the MTA Inspector General (OIG) evaluated MTAPD’s process for managing complaints about officers’ conduct. OIG compiled best practices from industry sources, compared MTAPD’s policies and practices to those standards, and reviewed recent complaint case files. As this Report describes, we identified opportunities for MTAPD to improve the way in which it receives, investigates, and reports on complaints from transit riders and other members of the public.

In May 2021, we shared our Draft Report with MTAPD for comment. The Report contained 15 recommendations intended to improve the complaint-management process. In its June 9, 2021 response, the agency fully accepted all but one of the OIG’s recommendations with expected implementation dates no later than September 2022. MTAPD indicated partial agreement with one recommendation, noting that the department is constrained in implementing the full recommendation due to collective bargaining considerations. The response stated, “Our department believes that accountability and transparency are foundations of modern policing and strives to improve our employment of these principles. Allowing for enhanced transparency will assist in maintaining the high and appropriate standards in which the [MTAPD] operates and allow us to provide the service our public deserves.” MTAPD’s specific responses appear in the Recommendations section at the end of this Report.

A. Summary of Findings and Recommendations

- **MTAPD should establish formal standards for key aspects of its complaint investigations, including expected timelines and communication with the individual who made the complaint.** While the agency employs deeply knowledgeable and experienced investigators, management has not developed a consistent process for responding to complaints, which are handled either by personnel in an MTAPD district office or – for more serious allegations – by its Internal Affairs Bureau (IAB). The agency has also not shared with the public the disciplinary and corrective actions that are available to agency leadership when an allegation of misconduct is substantiated. While each case is unique, according to best practices management should disclose the actions that might be taken at varying levels of severity and considering officers’ prior disciplinary history. (See pp. 6-9.)
- **The agency should improve its procedures for communicating with an officer who is the subject of a complaint** (the Subject Officer) when an allegation might lead to criminal charges. In accordance with best practices, such procedures are designed to protect both the officer’s constitutional rights and the agency’s interests. (See pp. 9-10.)
- **MTAPD should provide more training to investigators at the district level to improve consistency.** Our review of detailed case materials revealed that some investigators had an incomplete understanding of terminology and expectations for thoroughness. (See pp. 10-12.)
- **MTAPD needs to employ an early intervention system to readily detect multiple complaints about an officer’s conduct.** The lack of such a system reduces management’s ability to identify an employee in need of assistance, retraining, or managerial intervention. (See p. 12.)
- **MTAPD should be more transparent about its complaint procedures and outcomes by streamlining avenues to complain and publishing an annual report on its handling of complaints.** The agency has not created a public document describing the steps it typically follows upon receiving a complaint about its officers’ conduct. It also does not share with the public or the MTA Board summary information about the complaints it has received, whether the allegations were substantiated, and what disciplinary actions or corrective measures were taken. Further, the agency’s ability to respond timely to a growing number of requests under the Freedom of Information Law – a key disclosure duty – is hindered by limited administrative and legal support. (See pp. 12-15.)

- **MTAPD must modernize IAB’s case-management and records-management systems.** Its current information technology (I.T.) and administrative systems impede IAB’s ability to manage its records securely and efficiently, track the progress of complex cases, create analytical reports to facilitate managerial oversight, and access case documents when investigators are working in the field. In addition, IAB relies excessively on paper records, which in our review were often illegible. (See pp. 15-17.)
- **The agency’s efforts to comply with Executive Order 203 (EO 203), while well intentioned, did not include adequate community outreach.** As a State agency, MTAPD was not required to comply with the [New York State Police Reform and Reinvention Collaborative](#), which directed every local police force to work closely with stakeholders and redefine how it should serve the community. Nevertheless, MTAPD sought to comply with the spirit of the law as it re-examined all of its policies and procedures during its re-accreditation process. While this effort was commendable, the agency did not engage with MTA riders’ councils, local law enforcement agencies, or other key constituencies. This was a missed opportunity to signal MTAPD’s commitment to increased accountability and transparency in the future. (See pp. 17-18.)

Our detailed suggestions for improvement appear in the Recommendations section at the end of this Report. (See pp. 18-23.)

II. BACKGROUND

A. Rising Societal Expectations

After the murder of George Floyd at the hands of a Minneapolis police officer on May 25, 2020, a nationwide protest movement called for action in 3 key areas, as widely publicized in [news reports](#) and statements by [government leaders](#) and [community advocates](#):

1. Police **accountability**, especially in cases when an officer uses force against an unarmed person. There is added concern when (a) the officer and the individual are of different racial groups, or (b) the individual seems to have a cognitive or emotional deficiency or might be under the influence of drugs or alcohol.
2. **Transparency** into police actions. Members of the public want to see regular reports on the complaints against officers and the corrective or disciplinary actions that an

agency has taken in response to proven allegations. The public also wants information about:

- Police disciplinary records, including whether an agency has received multiple complaints against an officer and what discipline he or she has received.
 - The initial and refresher training given to officers, especially regarding:
 - De-escalation tactics;
 - Use of force, including the use of firearms, Tasers, chokeholds, and other methods of control or restraint; and
 - Interacting with individuals who appear to be impaired.
3. **Community involvement** in setting the standards for a local police force’s work and in holding them accountable for meeting those standards. This requires open channels of communication and a commitment to regular dialogue.

B. Changes to the Law in New York State

In response to the calls for change, 3 key laws were revised or promulgated in New York:

1. On June 12, 2020, [Section 50-a](#) of the New York State Civil Rights Law was repealed. Beginning in 1976, § 50-a created a special right of privacy for the personnel records used to evaluate performance toward the continued employment or promotion of police officers and certain other groups employed by the State or political subdivisions. As a result of the 2020 change, police disciplinary records are no longer shielded from public disclosure as a matter of course; they now fall within the scope of New York’s Freedom of Information Law (FOIL). This applies to the MTAPD.
2. Also on June 12, 2020, Gov. Cuomo signed [Executive Order 203](#), the *New York State Police Reform and Reinvention Collaborative*. This order required every local police agency to collaborate closely with stakeholders to “perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices” and develop a plan to meet the needs and expectations of its community members. The deadline was April 1, 2021 for the local legislative body to pass an implementing law or resolution; the local government was then required to certify to the Director of the NYS Division of the Budget that it had followed the process outlined in the order. Failure to do so would put the local government at risk of losing state funding. MTAPD voluntarily submitted its plan on April 1.

3. And on June 16, 2020, Public Authorities Law [Section 1279](#) (4)(a-1), the statute authorizing the MTA OIG, was amended. Effective April 1, 2021, the MTA Inspector General shall “receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by any police officer under the jurisdiction of the office of the metropolitan transportation authority.” The OIG Legal and Investigations units have collaborated with MTAPD to create procedures to review allegations against officers, identify concerning patterns of behavior, determine appropriate investigative steps, and make referrals as required.

C. The Changing Role of the MTA Police

MTAPD was established in 1998, when the Long Island Rail Road (LIRR) and Metro-North Railroad (MNR) police departments were consolidated. The Staten Island Railway (SIR) police force was merged into MTAPD in 2005. The group is growing: Between 2016 and 2021, the number of full-time sworn members rose from 682 to 905, a 33% increase in 5 years. The department’s jurisdiction includes Grand Central Terminal, Penn Station, and the entire infrastructure of LIRR, MNR, and SIR: stations, tracks, yards, shops, and railroad crossings across 14 counties in New York and Connecticut. The department comprises 9 districts as well as specialized units focusing on counterterrorism, computer crimes, emergency services, and other key areas.

In response to more recent demands, the MTA has expanded and adjusted the duties assigned to 3 key groups: MTAPD officers, Bridge & Tunnel Officers,¹ and NYC Transit Eagle Team personnel.² For example, MTAPD created a specialized Homeless Assistance unit, and MTAPD officers provided security for NYC Transit’s overnight homeless outreach program at end-of-line subway stations from August 2019 through February 2020. These deployments clearly benefit the organization but also carry a risk: They require officers to interact with members of the public in new ways – perhaps more directly, in more restricted spaces, and in more intense situations. For these reasons, the likelihood of negative interactions might increase, an important consideration for leaders of law enforcement units.

¹ These state-licensed Peace Officers are employed by MTA Bridges and Tunnels. OIG also evaluated the complaint-management process at that agency (MTA/OIG #2021-09).

² The Eagle Team was established in 2007 and [focuses](#) on preventing fare evasion, vandalism, and graffiti. Members of this unit are not police or peace officers and do not carry weapons.

D. Complaints About Officers' Conduct

MTAPD receives complaints about police officers' conduct via a wide variety of channels, such as the MTA's website complaint form; calls to the MTA's Customer Service center, MTAPD's direct phone numbers, and 511; U.S. postal mail; and the MTA press office. In addition, IAB accepts referrals of complaints originally received by the OIG, NYPD, the NY State Police, and MTA operating agencies. Referrals are quite common, because members of the public often have difficulty discerning which agency employs the police officer they have interacted with.

Officers both at the district level and in the IAB handle cases concerning officers' behavior. According to an MTAPD policy manual, district-level personnel typically investigate complaints on such topics as officers' tardiness, discourtesy, or insubordination. In contrast, IAB investigators address more serious complaints about corruption, brutality, death or serious injury, criminal misconduct, breach of civil rights, or misconduct involving several officers. The Chief of IAB is ultimately responsible for determining whether the IAB or the district will investigate a specific complaint.

In the 3-year period OIG examined, from July 1, 2017 to June 30, 2020, IAB received 155 complaints about officers' behavior. This is an average of 52 complaints per year, or 4 per month.

III. FINDINGS

A. MTAPD Does Not Always Follow Existing Best Practices for Handling Complaints

To facilitate our review of MTAPD's policies and protocols, OIG compiled a set of industry best practices drawn from 2 main sources: a [Best Practices Guide](#) (*Chiefs Best Practices*) for smaller police departments published by the International Association of Chiefs of Police, and a guide entitled [Building Trust Between the Police and the Citizens They Serve](#) (*Building Trust*) from the U.S. Department of Justice, Office of Community Oriented Policing Services. OIG selected what appeared to be best practices at all stages of the complaint-management process:

- Establishing policies and procedures
- Receipt and initial processing of the complaint
- Triage: assignment to the appropriate party for follow-up
- Investigation: the fact-finding phase

- Determining the appropriate disposition: the investigator’s conclusion about the validity of each allegation after evaluating the available evidence
- Reporting the conclusion to the appropriate party for action
- Implementing any necessary corrective action(s) or remedial measures
- Communicating with the Complainant and the Subject Officer
- Documenting, analyzing, and tracking complaints
- Reporting to management and the public about this process.

Based on our comparison between the best practices and MTAPD’s policies and protocols, we identified deficiencies in the following areas.

1. No policy describes the **Chief’s authority and responsibility** to act immediately in urgent and severe situations, e.g., by taking an officer’s badge and gun. The best practice is that a chief must immediately decide what action is warranted for the officer involved, rather than waiting for the outcome of a criminal investigation or administrative proceeding. [*Building Trust, 24*]

Despite the absence of a written policy, MTAPD officials explained that if a situation is dire, including the lethal use of force, all commanders – including the Chief – are authorized and prepared to remove a firearm or suspend an officer on the spot.

2. No standards exist for estimated or **desired timelines** for different stages of a complaint investigation. With the caveat that each case is unique, best practices indicate that agencies should establish baseline expectations for how long cases should remain open. One common guideline is that an investigation should be completed within 30 days of the original complaint; however, if the investigation is very complex, a policy provision should state that it can take longer than 30 days with written approval by the Chief of Police. [*Chiefs Best Practices, 6*]

In addition, key investigative steps are often given timelines of their own; a suggested practice is that the Complainant and witnesses should be interviewed within 24 hours of filing the complaint. [*Chiefs Best Practices, 5*] While IAB officials told us that such a tight timeframe is often infeasible – it can take more than a day for a complaint to arrive at the appropriate police agency – OIG believes setting reasonable timelines can help an agency ensure complaints are addressed timely.

3. Policies do not dictate what topics must be documented in an **investigative report**. To ensure that each report tells the full story of an incident, best practices suggest that it should describe the complaint allegations, identify the subject officer and all

witnesses, state which policies and procedures were allegedly violated, and include a narrative about the substance and process of the investigation. *[Building Trust, 26]*

4. No policy requires proactive **communication with the Complainant**. Best practices suggest not only that the agency should keep the Complainant apprised of the progress of the complaint, but that it should also set timelines for doing so. For example, it might be reasonable to send an email or letter to the Complainant acknowledging receipt of a complaint within a week. *[Chiefs Best Practices, 6]* At the close of a case, the agency can determine the appropriate level of detail to share: “The letter to the complainant need not include details of the investigation or even the disposition. It should include a statement thanking the Complainant for their input and telling them that the case has come to a conclusion.” *[Chiefs Best Practices, 7]*

The general public now expects greater transparency and more open communication with law enforcement agencies. Many Complainants want to be interviewed timely and notified of key developments in the investigation of their complaint, including its eventual closure.

5. No policy delineates the possible **corrective and/or disciplinary actions** that can be taken against officers found to have violated agency standards in the areas of discourtesy, abuse of authority, racial/ethnic discrimination, and use of force. To facilitate consistent treatment of Subject Officers, and to inform the public about corrective actions that might be taken when complaint allegations have been substantiated, some agencies use a disciplinary matrix or guidelines describing the available responses for specific actions. Notably, such guidelines also allow for discretion and judgment on the part of the decision-maker. This is intended to ensure that agency actions are consistent and not arbitrary, while remaining flexible to take into account the particular conditions of a given case. *[Building Trust, 28]*

IAB officials told OIG they were working to enhance their “Corrective Actions Guidelines” chart. The Chief of Police makes the final decision on an officer’s discipline and consults with both the Chief of IAB and Labor Relations personnel to develop appropriate responses to investigative findings, with consideration for an officer’s disciplinary history. Depending on the severity of the infraction, the agency will implement corrective actions or remedial measures to prevent similar misconduct or situations from recurring. Such measures might include systemic changes – such as adjusting policies and practices or instituting new training – as well as actions specific to the Subject Officer, such as a letter to the officer’s supervisor, an oral reprimand, suspension, or termination.

In all 5 of these areas, MTAPD officials agreed that documenting the relevant standards in writing would help clarify roles and expectations, improve consistency, and enhance communication both within the agency and with the public. The IAB Chief said that MTAPD has, for years, relied on a variety of sources of guidance and authority – including laws, internal policies, collective bargaining agreements, and longstanding practice – rather than a single comprehensive guide. However, he has begun combining the materials into a single authoritative manual. This compilation is a worthwhile endeavor and should help the agency create more consistent protocols and identify gaps in the documents governing its actions.

B. Admissibility of Employee Statements Requires Attention

OIG found that MTAPD’s policy and practice do not adequately address matters related to an important guideline for public employers, **the Garrity Rule** (Garrity). This [1967 U.S. Supreme Court ruling](#) limits the ability of employers to use a public employee’s statements against him or her when an administrative infraction might also lead to a criminal prosecution. While employers may compel employees to provide information for internal investigations, the ruling determined that using such compelled statements in criminal proceedings would violate employees’ 5th Amendment right against self-incrimination. Because an instance of police misconduct might represent a violation of both departmental policy and criminal law, every police agency must take steps to comply with Garrity’s restrictions.

Best practices suggest that when a complaint allegation raises a potential criminal issue, an agency can pursue 1 of 3 strategies: (1) complete the criminal investigation before beginning the administrative inquiry; (2) separate the matter into 2 cases, 1 administrative and 1 criminal, and assign a separate investigator to each; or (3) pursue a single investigation but interview the Subject Officer only at its very end, giving either a Garrity warning or the [Miranda warning](#). Regardless of its chosen protocol, the agency should have written guidelines regarding which approach it will follow under various circumstances. [*Chiefs Best Practices, 4; Building Trust, 24.*] In addition, some agencies require a Garrity warning in every investigation. [*Chiefs Best Practices, 4.*]

IAB’s training materials show that the agency follows option 1: “Criminal investigations will always have priority over administrative investigations. Once the criminal investigation is completed, it will then be incorporated into the administrative case, which can then proceed.” We learned that the MTAPD Chief of Police, in consultation with IAB officials, determines whether the alleged behavior might be criminal, and if so, IAB will reach out to the appropriate district attorney’s office to see whether the case fits the criteria for prosecution.

While this process is reasonable, we found that the agency's policies governing the investigative process do not include instructions to help investigators comply with Garrity restrictions. In a more positive finding, we learned that the attestation form used when the Subject Officer is interviewed includes this clear and accurate statement: "*I understand that my statement, and any evidence derived therefrom, cannot be used against me in any criminal proceeding, but can be used against me in a departmental proceeding should there be one.*" Because employees who refuse to speak might face sanctions, the law considers these interviews to be compelled – even if the employee has volunteered to make a statement. Thus, the Garrity warning is necessary.

The IAB Chief agreed that the current policy didn't adequately address the Garrity issue; he said the new policy manual, described above, would do so.

C. District-Level Complaint Investigations Showed Weaknesses

OIG reviewed 9 cases from 2020 that encompassed a range of complaint types: abuse of authority (4), use of force (3), and discourtesy (2). The sample included cases with dispositions of unfounded (4), substantiated (2), unsubstantiated (2), and exonerated (1). Senior OIG investigative staff with prior experience in prosecuting police misconduct matters assisted in this review.

IAB officials investigated 2 of the 9 cases and district personnel handled the other 7. We found that the depth and breadth of the investigations varied widely, in part depending on the complexity of the allegations. In addition, investigations conducted at the district level were less closely aligned with best practices than those conducted centrally by IAB. Specifically, we found these weaknesses in case materials from 4 district cases:

1. One case was **miscategorized**. A commuter complained about officers' treatment of another individual while issuing that person a summons for panhandling at Grand Central Terminal. The investigators categorized it as a *discourtesy* case, while IAB officials told us that, based on the facts presented in the complaint, they would have categorized it as an *abuse of authority/use of force* case instead. We learned that the categorization of cases might be inconsistent because district investigators have not received the same in-depth training available to IAB officials.

Investigators did not always consult the **available sources of evidence**. In 1 case, the Complainant alleged that at the Herald Square subway station, an officer used force when grabbing the arm of the Complainant's girlfriend after the officer saw the couple pass through a turnstile together on a single MetroCard swipe. IAB officials

told us they would have requested and analyzed security camera footage, which the district-level investigators did not do. IAB staff explained that district-level investigators have not received the same training as IAB staff and do not conduct these reviews with the same regularity. When OIG auditors suggested that a checklist of potential sources of evidence could help investigators better identify and consider the available information, IAB officials readily agreed that such a checklist would be helpful.

2. District-level investigators occasionally misapplied the **dispositions** of *unfounded*, *exonerated*, and *unsubstantiated*. While these conclusions all indicate that an allegation has not been substantiated, they differ in important ways, as these 2 cases illustrate:
 - A Complainant stated that when she complained to an MTAPD officer in Penn Station about an individual who was harassing her, the officer failed to issue a summons to her alleged harasser. The district investigative personnel assigned the case a disposition of *unfounded*, which is appropriate when the evidence indicates that an officer's alleged action did not occur at all. However, *exonerated* would have been a more appropriate disposition, because it applies when the officer did engage in the alleged conduct, but such conduct was lawful and in accordance with applicable policies. In this case, the officer did not observe the alleged behavior and thus, according to state law, was not authorized to issue a summons.
 - Another Complainant alleged that an officer in Suffolk County had been driving erratically and had almost struck her car. MTAPD district personnel had given this case a disposition of *unsubstantiated*, which applies when the available evidence is insufficient to show that the complaint was substantiated or unfounded or that the officer should be exonerated. However, *unfounded* would have been a more appropriate disposition in this case, because the evidence proved that the officer had not even been present at the location where the incident allegedly occurred.

Investigative deficiencies weaken MTAPD's efforts to increase accountability and transparency in several ways: They can (1) prevent investigators from understanding the full fact pattern of any given case; (2) obscure management's understanding of incidents reportedly occurring between officers and members of the public; and (3) hinder the reporting of accurate complaint statistics to the general public.

In our review of MTAPD training materials, we found that they did not provide information about how to categorize complaints, what types of evidence to consult, and how to apply dispositions to a case. In addition, we learned that district level personnel do not receive in-depth training on investigative protocols.

D. MTAPD Lacks an Early Intervention System

We learned that the agency does not have a formal early intervention system to detect multiple complaints about an officer's conduct. Such a system, designed to be positive and non-disciplinary, offers several benefits: (1) it provides a way to determine whether an officer might need personal support, assistance, or managerial intervention; (2) it can identify a squad or other work unit that needs refresher training or other reinstruction; and (3) it can help management evaluate the types of offenses that are the most frequent subject of complaints. [*Chiefs Best Practices*, 7; *Building Trust*, 32.] To be effective, the system must facilitate regular review and analysis, and for a large agency like MTAPD, this requires an electronic database or spreadsheet program. One best practice suggests that such review should occur at least annually to detect patterns. [*Chiefs Best Practices*, 7.]

IAB officials told us they are working on creating such a system as part of MTAPD's response to amended Public Authorities Law § 1279, which, as noted above, authorized the OIG to investigate complaints to determine whether the subject officer or employee has engaged in a pattern or practice of misconduct, use of excessive force, or acts of dishonesty. The accountability provisions of EO 203 were another impetus for IAB to create an early intervention system. IAB officials are collaborating closely with OIG's legal and investigative personnel on this topic, and the group will continue to hold quarterly meetings. In addition, we learned that IAB officials are working with MTA Information Technology (MTA-IT) staff members to improve IAB's ability to identify repeated complaints against individual officers; we discuss this further in Finding F, below.

E. MTAPD Should be More Transparent About its Complaint Procedures and Outcomes

The best practices OIG reviewed emphasize that to maintain an open channel of communication with the community it serves, each law enforcement agency should enable members of the public to express their concerns about its officers' conduct and should also report on the agency's response to those concerns. As 1 clear guideline states, "It is incumbent on the police department to make its citizens aware that a complaint process exists, how to file a complaint, and how the agency processes and investigates complaints." [*Building Trust*, 20.]

OIG found 4 areas in which MTAPD could make its complaint process more transparent.

1. **How to file a complaint.** MTAPD receives complaints via several channels, most significantly the MTA’s customer service phone numbers and the complaint form on the MTA website. To assess the visibility of MTAPD’s complaint process, OIG reviewed the webpages for both MTAPD and MTA as a whole and also met with MTA customer service personnel and website designers.

We found that while it was reasonably easy to find the MTA’s general online complaint/comment form, each *new.mta.info* webpage could more prominently describe how to complain about police officers’ actions, e.g. via the online form, phone numbers, and police district office locations. In a positive development, we learned that MTAPD had begun making improvements to the website. For example, the website editor was working to make it easier for users to find MTAPD’s homepage, and the complaint form would soon be linked to the “Contact Us” and the “Customer Feedback Form” pages.

Regarding contacts by phone, we learned that prospective Complainants who call either 511 (the NYS Traveler Information System) or the MTA Customer Service center were not able to connect directly to MTAPD; instead, they were either routed to an automated phone directory at MTA Headquarters or were given the IAB phone number and instructed to make a separate phone call. MTA Communications officials, who are responsible for handling these incoming calls, told OIG that these channels could be improved.

In addition to advertising complaint channels clearly on its website, another best practice suggests that an agency should publicize the complaint process through *proactive* measures, e.g. media announcements, materials in multiple languages, and community presentations. [*Building Trust, 21.*] As we note below in Finding G, MTAPD can improve its outreach to key stakeholder groups, and that effort should include information about the complaint process.

2. **How MTAPD handles the complaints it receives.** The agency has not created a public document describing the agency’s general process for managing complaints about officers’ conduct. This would outline such basic steps as the initial review of a complaint to ensure that it did, in fact, involve an MTAPD officer; the assignment to an investigator; the typical steps and estimated timeline for an investigation (depending on its complexity); the possible dispositions; and what a Complainant could reasonably expect to learn once an investigation was concluded. IAB

acknowledged that they needed to explain their complaint-management process to the public in a clearer, more accessible way.

3. **Summary information about prior complaints and investigative outcomes.** OIG learned that each year, IAB creates a report summarizing the prior year's complaints and submits it to the Chief of Police in late January. While this is likely a useful management tool, the agency hasn't created a parallel process to report *publicly* on the number of complaints it received during the year, the types of allegations, and the dispositions assigned to completed cases. Such a report need not be onerous or overly detailed; a best practice states, "A simple chart excluding names, but including the types of offenses, is appropriate, which will allow the public to compare yearly stats." [*Chiefs Best Practices*, 7.] Another guideline explains that such summary reports should be widely disseminated to send a message of transparency and accountability. [*Building Trust*, 32.] As noted earlier, it is critical that all such information be adequately reviewed for accuracy, so the public can be confident that MTAPD is presenting a true picture of its complaint-management process each year.
4. **The agency's ability to respond to information requests.** IAB is directly responsible for responding to external requests for records related to officers' conduct. We learned that 3 key factors are driving a significant increase in this workload: (1) FOIL requests are rising, given increased public interest in the actions of police officers; (2) the repeal of NYS Civil Rights Law § 50-a has opened officers' disciplinary records to public scrutiny; and (3) local district attorneys are requesting documents from MTAPD more often.

IAB officials told us they face significant challenges in responding to these requests in a timely manner. One hindrance is the small size of the IAB, which includes 4 uniformed members – whose primary responsibility is the investigation of allegations about MTAPD officers – and an administrative assistant. In addition, IAB does not have regular access to an attorney knowledgeable in both the criminal and administrative areas of law to help produce documents, review the available materials, and respond efficiently to the requesting party.

We also learned that MTAPD leadership has planned to make changes to the website that would streamline the production of documents and data to the public, thereby greatly reducing the need for members of the public to file FOIL requests. However, the proposed website revisions would require approval from 2 key unions – the MTA Police Benevolent Association and the MTAPD Commanding Officers Association –

but at the time of writing the unions had not yet approved the changes. (If they do not, we're told that FOIL requests will increase, which will ultimately cost more money and staff time.)

F. IAB Urgently Needs to Modernize its Case-Management and Records-Management Systems

Underlying many of the critical tasks this Report has outlined is the need for a robust management information system. To meet the needs of MTAPD managers and members of the public, IAB must have modern systems to help it manage investigative cases efficiently, report on its activities in a timely manner, and maintain the critical records of that work securely and in a conveniently accessible form.

During our review, OIG learned that IAB lacks the necessary capabilities to allow managers to readily monitor, track, and report on complaints and the progress of investigations. Of greatest concern, we found that the unit uses **a paper-based system**, keeping its case records in folders, filing cabinets, boxes, and files kept offsite by a private records-management vendor. The IAB Chief told us he would like to have a central records repository and a software program to manage this process, but financial and I.T. constraints have prevented him from making these improvements. IAB's administrative staff has begun scanning paper files before sending them offsite, but this is just a small step in the direction of modernization.

Deficiencies in managing its records and data can prevent MTAPD from improving its accountability and transparency in the following ways.

- 1. Delayed responses to discovery and information requests.** OIG learned that prosecutors ask IAB for officers' disciplinary records under NYS Criminal Procedures Law [CPL 245.20](#), which governs discovery and sets a 15-day turnaround schedule for such requests. However, the disciplinary reports are not stored electronically and thus IAB staff must retrieve them from the paper-based filing system. FOIL requests present the same challenge: [Section 89\(3\)\(a\) of that law](#) requires an initial response in 5 business days and, when needed, a more complete response in 20 business days. As noted above, information requests are rising dramatically, and IAB officials expressed grave concerns about their ability to satisfy this legal mandate. The flawed information management system presents a serious risk to MTAPD's reputation and its relationship with the community it serves.

2. **Illegible investigative materials.** During OIG’s review of the 9 complaint cases, we found that certain key documents were very hard to read because IAB officials had needed to copy and/or scan the paper documents in their files – some of which were photocopies themselves. For example, in nearly every case, the handwriting in officers’ memo books was virtually illegible because the copy was so poor. Because these memo books contain the record of an officer’s movements and key actions during a tour of duty, they can be important sources of evidence for an investigator working to develop a full understanding of an incident.
3. **Laborious management reporting.** MTAPD is unable to run reliable, automated statistical reports on its complaint investigations. We learned that executive managers do not have the ability to easily check the progress of a particular case or view IAB’s caseload as a whole. OIG experienced this deficiency firsthand, in fact: To respond to OIG’s request for summary information about the complaints MTAPD received from mid-2017 to mid-2020, IAB officials had to create a spreadsheet manually. In addition to taking time away from IAB’s other duties, the need to create a document from scratch introduced errors into the process, including incorrect closure dates for some cases. OIG staff were able to identify these errors and work with IAB to correct them; however, if such deficiencies crept into reports for management, advocacy groups, or the general public, they would damage the credibility of the agency.
4. **Minimal analytical capability.** OIG learned that the I.T. system doesn’t support efficient research into a particular officer’s past allegations; in addition, IAB officials told us it takes significant time to ensure the information is accurate. This hinders the agency’s ability to identify officers who might need assistance, retraining, or other guidance. If MTAPD seeks to implement an early intervention system, as this Report recommends, it will need a new I.T. system to support such an effort. Improved analytical functions will also allow management to identify trends and patterns of concern.
5. **Limited access to records when working in the field.** OIG learned that IAB’s current I.T. system has such significant data storage constraints that investigators cannot access the necessary investigative documents when working in the field – a frequent occurrence, given MTAPD’s enormous jurisdiction. Thus, while simply scanning paper files seems like a step forward, IAB has discovered that even that apparent solution will not allow them to work in a more modern fashion.

When reviewing how MTAPD was addressing these deficiencies, OIG learned that MTA-IT has worked with IAB to develop a customized civilian complaint system, to be rolled out in 2022. However, in our discussions with MTA-IT officials, OIG recognized that MTA-IT was building a system that was not specifically designed as a police case-management program. For example, MTA-IT staff will need to add to the software such basic fields as case open and close dates, complaint disposition, names of the officers involved, etc. We also learned that MTA-IT's proposed changes would place limitations on the type and size of files that the system will support, which could inhibit IAB's ability to develop and share the case materials needed to create a complete investigative file. Lastly, the planned system might not include a records-management module to support the investigation process. Thus, we have serious doubts about the likely success of this effort.

IAB officials expressed deep concern about the adequacy of MTA-IT's proposed solution to their workload challenges and the expected increase in information requests. In addition, they said the system does not fully satisfy their current needs: Simple tasks, such as uploading scanned paper files, are often unsuccessful, and IAB officials must be in frequent contact with MTA-IT to correct mistakes or system glitches.

The situation is untenable. This is not the modern system that IAB deserves, and the planned in-house solution will not address all of the deficiencies outlined above. A better strategy would be for IAB to use a commercially available case-management program. Some IAB officials had a positive experience with such a program, IAPro, more than 10 years ago, but because it fell out of use under a prior administration, MTA-IT allowed the license to expire. While perhaps reasonable at the time, this decision should be revisited in light of today's needs.

To ensure that it is able to meet the growing information demands of a modern, transparent, law enforcement agency, agency leadership will need to work with executives in MTA-HQ, MTA Transformation Office, Safety & Security, and MTA-IT to develop a detailed plan to modernize IAB's case-management and records-management systems.

G. Efforts to Comply with EO 203 Did Not Include Adequate Community Outreach

As mentioned above, [EO 203](#) required every "local government entity which has a police agency operating with police officers as defined under 1.20 of the criminal procedure law" to create a plan to "reform and reinvent" its operations, in collaboration with community members and affected stakeholders. Because MTAPD is part of a New York State public authority, EO 203 did not officially apply to the agency. However, OIG learned from the MTA General Counsel's office that MTAPD would work to comply with "the spirit of the law." In addition,

we heard in our interviews that the Chief of Police supported the law's requirements and saw it as an opportunity for improvement.

MTAPD has been [accredited](#) by the NYS Division of Criminal Justice Services since 2016; this is intended as formal recognition that an agency meets or exceeds quality standards in the law enforcement field. In 2020-21, MTAPD was working toward its 5-year re-accreditation. As part of this process, and in light of the governor's directive under EO 203, MTAPD reviewed all of its policies and procedures and updated many – including those on the use of force and an officer's duty to intervene, critical topics directly related to the demands voiced by 2020 protestors.

The agency was re-accredited in March 2021, a commendable accomplishment. MTAPD also finalized its EO 203 reform plan and submitted it to the Governor's office on April 1, 2021. And in a third critical step toward greater accountability and transparency, MTAPD officials told OIG they are in the process of implementing body cameras for uniformed personnel.

However, there is an area in which MTAPD's reform effort fell short of the governor's directive: The agency did not involve community members in its reform process. MTAPD officials attributed that decision to the constraints caused by the Covid-19 pandemic, because many of the groups they would have consulted did not hold meetings for many months beginning in March 2020. While the pandemic's challenges are undeniable, and MTAPD's service area comprises dozens of localities, a more concerted effort at community engagement would have been worthwhile – and more in keeping with the law's collaborative spirit. We believe that MTAPD could have successfully held virtual "listening sessions" and discussions with such groups as the Permanent Citizens Advisory Committee to the MTA, particularly its subgroups the LIRR Commuter Council and the MNR Commuter Council.

IV. RECOMMENDATIONS

To respond to society's call for increased officer accountability, greater transparency, and closer engagement with the communities it serves, the leadership of the MTA Police Department should take the following actions:

- **Create formal policies governing complaint investigations in accordance with industry best practices:**

1. Establish formal policies addressing: (1) the Chief's authority to take immediate action after serious incidents; (2) investigative timelines, including when to interview a Complainant and the desired timeframe for completing key steps in an investigation; (3) the topics that must be addressed in an investigative report; and (4) guidelines for when and how Complainants should be notified and what information should be shared with them.

Agency Response: Agreement. MTAPD expects to implement this recommendation in Q1 of 2022.

2. Develop and publicize a matrix outlining possible corrective actions and disciplinary protocols to address substantiated complaint allegations at varying levels of severity.

Agency Response: Partial Agreement. The written response stated, "While we agree with the spirit of the recommendation, we are constrained by our collective bargaining agreements [CBA] in terms of making changes to process. In coordination with the MTA [Police Benevolent Association] and following along the lines of the CBA, we will make a good faith attempt to enhance an already existent matrix of disciplinary standards by Q2 of 2022. Due to the nuanced nature of negotiation strategy and pending arbitrations, we must conduct a careful analysis regarding the publicizing of such information. Other comparable agencies, such as the New York State Police, do not currently publicize such information."

3. Address matters related to the Garrity Rule:
 - a. Establish written policy and procedures to follow when a case might result in both a criminal inquiry and an administrative investigation.
 - b. In consultation with legal counsel, evaluate the language related to potential criminal matters that appears on any MTAPD forms to ensure it is accurate and appropriate.

Agency Response: Agreement. MTAPD expects to implement both parts of this recommendation in Q1 of 2022.

- **Improve the consistency of complaint investigations across the agency:**

4. Create detailed baseline standards for all MTAPD investigations, whether conducted by personnel in the IAB or at the district level.

Agency Response: Agreement. The written response stated, “Subject to any constraints in process posed by collective bargaining agreements, the department will standardize investigations by way of instruction, creation of guidelines, and/or checklists for district level guidance to match the in-depth investigations conducted by the MTAPD IAB.” The agency expects to implement this recommendation in Q1 of 2022.

5. Improve the training provided both to individuals who are responsible for conducting complaint investigations and to their supervisors:
 - a. Evaluate current training materials and identify areas for revision and enhancement, to reflect changing societal expectations, industry best practices, and the updated policies and procedures described in Recommendation 1 and Recommendation 3.
 - b. Identify the appropriate people to provide the training and establish a timeframe for its implementation.

Agency Response: Agreement. MTAPD expects to implement both parts of this recommendation in Q2 of 2022.

- **Establish an early intervention system:**

6. Create an efficient, reliable electronic method to identify officers who have been the subject of multiple complaints.

Agency Response: Agreement. The department will include this requirement “in a new needs request for a records management system. The MTAPD will further work to develop a system of periodic alerts or reports for review of officers with multiple complaints. In the near term, while an automated system is being developed, we will review currently produced complaint records on a routine basis.” The agency expects to implement this recommendation in Q2 of 2022.

7. Define IAB's responsibility for: (1) analyzing the information to detect patterns or trends, (2) reporting regularly to management on the results of the analysis, and (3) collaborating with the MTA OIG under Public Authorities Law [Section 1279](#).

Agency Response: Agreement. MTAPD "will formalize its role for detection of patterns, reporting, and collaborating with MTA OIG. The department will establish an auto-generated reporting and alert system." MTAPD expects to implement this recommendation in Q2 of 2022.

- **Provide more information to the public about the agency's complaint-management process and outcomes:**

8. In collaboration with MTA Communications personnel, evaluate the recent changes to the MTA website to ensure they have improved ease of use, timely receipt by MTAPD, and the overall visibility of MTAPD's complaint process.

Agency Response: Agreement. MTAPD expects to implement this recommendation in Q1 of 2022.

9. Add language to the website describing the complaint-management process, including how MTAPD receives, reviews, and investigates complaints, and how the agency implements any necessary corrective action.

Agency Response: Agreement. MTAPD expects to implement this recommendation in Q1 of 2022.

10. Create a process to produce a public report summarizing the complaints the agency received in the prior year, including types of complaint, dispositions, and corrective actions taken. This report should be made available on the MTA's website and presented to the MTA Board in the first quarter of the following year.

Agency Response: Agreement. In its response, MTAPD stated: "The department will review its internal current-year report and attempt to make a public-facing version similar to the New York State Police report." The agency also noted that it will strive to "include a summary of our received complaints while respecting the sensitivity of specific information." MTAPD expects to implement this recommendation in Q1 of 2022.

11. Develop a plan to manage the growing number of information requests. As part of this planning process, evaluate the benefits and costs of adding administrative and legal staff to work on MTAPD matters, including active IAB cases.

Agency Response: Agreement. MTAPD will “develop a plan to present to MTA Executive Leadership requesting increased staff support necessary to include administrative, investigative, and legal functions.” The agency expects to implement this recommendation in Q4 of 2021.

- **Modernize its case-management and records-management systems:**

12. In collaboration with appropriate MTA executives, develop a plan to modernize the IAB’s case-management and records-management systems, including a timeline and budget. The plan should include an evaluation of the benefits and costs of using a commercially available case-management software program. Among other features, the improved systems must allow the agency to reduce investigators’ reliance on paper documents; improve management’s ability to track and report on complaint investigations; allow management to identify trends or patterns requiring further research or corrective action; and facilitate access to investigative case files when working remotely.

Agency Response: Agreement. MTAPD will evaluate its requirements as well as commercially available software and will present a request to MTA executive leadership in Q3 of 2022.

13. Given that MTAPD is facing a rising number of FOIL requests while working with an antiquated case and records management system, in the short term MTA and MTAPD must determine how the agency will respond to Freedom of Information requests efficiently and accurately.

Agency Response: Agreement. The agency response noted that MTAPD “currently uses a FOIL management system which is centralized at the MTA General Counsel’s office. The department will review its internal role in the FOIL response process and strive to reflect these processes within the consideration of a new records management system. The MTAPD will provide the MTA General Counsel an assessment of support needs and request that [the] department is supported adequately.” MTAPD expects to implement this recommendation in Q3 of 2022.

- **Enhance its outreach to key community stakeholders:**

14. In collaboration with NYC Transit, LIRR, and MNR, establish a program for regular public outreach on matters of police accountability and transparency, including opportunities for input from local stakeholders and community members.

Agency Response: Agreement. MTAPD will establish “regular periodic meetings with its community stakeholders such as the Permanent Citizens Advisory Committee” and will “explore other outreach opportunities within the transit and railroad public communities.” The agency expects to implement this recommendation in Q1 of 2022.

15. Develop a plan to inform county-level law enforcement officials in MTAPD’s service area about the agency’s efforts to increase its accountability and transparency, including any key policy changes made during the 2021 re-accreditation process.

Agency Response: Agreement. MTAPD will work with the local law enforcement community “to share lessons learned, identify and share best practices and grow the experience and prestige of the law enforcement profession.” The agency expects to implement this recommendation in Q1 of 2022.