December 24, 2024

Judge Analisa Torres
United States District Court
Southern District Of New York

Submitted via www.nypdmonitor.org

Re: Comment from Communities United for Police Reform in Response to the Report to the Court on Police Misconduct and Discipline by James Yates

Dear Judge Torres:

As you know, Communities United for Police Reform (CPR) is an unprecedented campaign to end discriminatory and abusive policing practices in New York, and to build a lasting movement that promotes public safety and reduces reliance on policing. CPR runs coalitions of over 200 local, statewide and national organizations, bringing together a movement of community members, lawyers, researchers and activists to work for change. The partners in this campaign come from all 5 boroughs, from all walks of life and represent many of those most unfairly targeted by the NYPD.

CPR member organizations, including the Justice Committee (formerly known as the National Congress for Puerto Rican Rights), Malcolm X Grassroots Movement and other CPR member groups were part of the Floyd litigation since its inception - and the Daniels litigation that preceded it. After Amadou Diallo was killed in a hail of 41 shots in 1999, Richie Perez of the National Congress worked with other organizations in the Coalition Against Police Brutality and the Center for Constitutional Rights to bring what eventually became known as the Daniels litigation. Floyd's lead plaintiff, David Floyd, was a member of the Malcolm X Grassroots Movement. CPR members and partner organizations (and CPR) were part of amicus briefs, organized around the 10-week Floyd trial, were part of the Floyd Joint Remedies Process board and organized for years around Floyd.

About Directly Impacted Communities' Stake in Effective Reforms

We share the above background on CPR and coalitions we run, to make clear that our stake in the effectiveness of reforms from this litigation in reducing discriminatory and abusive policing is decades-long. Many of our member and partner groups' members and constituencies are those most impacted by abusive stops. CPR and our member/partner groups' expertise in these issues is extensive, particularly because while we've had litigation and organizing victories, we've seen decades of court reforms on stop-and-frisk fail to create enduring change related to ending abusive stops and holding officers and the NYPD to account for the continued abuses.

As Judge Scheindlin noted in her August 2023 remedy opinion (p. 29), nothing can replace the unique and vital expertise of directly impacted communities - and whether reforms are viewed as legitimate by our communities is of primary importance:

> *"Community input is perhaps an even more vital part of a sustainable remedy in this case. The communities most affected by the NYPD's use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms. 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….*
>
> *If the reforms to stop and frisk are not perceived as legitimate by those most affected, the reforms are unlikely to be successful. Neither an independent Monitor, nor a municipal administration, nor this Court can speak for those who have been and will be most affected by the NYPD's use of stop and frisk."*

We urge you to incorporate the following recommendations and requests before you finalize the discipline report for the court. Our recommendations are based on decades of our members' (and our) direct experiences being subjected to unlawful and abusive stops, questioning, frisks and searches - as well as decades of policy advocacy and community organizing around these issues. Like the plaintiffs legal team, we too agree with the report's observation that "officers rarely, if ever, receive a penalty for unconstitutional stops/frisks or searches – even when substantiated by CCRB" (p. 491).

Context for Recommendations

The original 2013 remedy opinion in this case cited the need for the monitor to recommend, and the court to order, reforms related to discipline. We believe the intent was to ensure there was effective discipline, which must include the option to terminate officers in order to disincentivize abusive stops - and must also include discipline for reporting, supervisory and other process violations.

We believe that the lack of strong and effective court-ordered Floyd discipline reforms to-date is a central reason for why the NYPD is still unable to get to substantial compliance and remains under the Floyd court's monitorship more than a decade after the Floyd trial. The overwhelming refusal of the NYPD to discipline officers related to stop-and-frisk and the resulting message that officers don't have to worry about departmental discipline for abusive stops, refusal to report on stops, lies/false statements related to stops, and failure to supervise has helped to facilitate the exponential rise in stops under the Adams administration[1], undermining the rapid decrease in reported stops that previously occurred after our campaign of organizing, community education and litigation a decade ago.

The current report recommendations don't facilitate an outcome of any officers being terminated for abusive or illegal stops, which we believe renders the overall recommendations ineffective

[1] https://hellgatenyc.com/nypd-stops-keep-going-up-under-eric-adams-2024/

unless changed to ensure that officers who engage in abusive stops – and those who engage in cover-ups and ignoring abusive stops – are fired.

The NYPD's refusal to discipline officers for abusive stops needs to be understood within the broader context of the NYPD's routine refusal to fire officers who kill, brutalize, sexually assault/harass and otherwise harm and violate the rights of New Yorkers. In fact, the New York Times[2] and ProPublica[3] published a joint exposé just last month that highlighted dangerous and growing police impunity under the current administration, with NYPD Commissioner Caban personally blocking and burying discipline in egregious cases of substantiated brutality.

The Court is in a unique position to order discipline reforms that would require officers to be fired for abusive stops and set a baseline that could help to improve the overall discipline system.

Overall Recommendations

The following summarizes key requests and recommendations that CPR members, including but not limited to the Justice Committee and VOCAL-NY, are requesting be incorporated into the final report. While the below recommendations are not a comprehensive listing of possible revisions, they flag what we were able to identify as priority concerns and alternative recommendations that we believe should be reflected in a revised report. If the recommendations aren't incorporated into the final report recommendations, we request that this memo be included as an appendix to the final report.

1. The Court should order discipline reforms - particularly those that would facilitate firing of officers who engage in abusive stops. Judge Scheindlin wrote the following in her Floyd liability ruling[4], where she reviewed the inadequacy of NYPD discipline related to unconstitutional stops:

> *"Despite the mounting evidence that many bad stops were made, that officers failed to make adequate records of stops, and that discipline was spotty or non-existent, little has been done to improve the situation."* (p.11)

While the above was written over a decade ago, it still rings true today. Unless the NYPD is ordered to discipline and fire officers who engage in abusive stops, and unless their supervisors are also held accountable, the above assertion from Judge Scheindlin's 2013 ruling will likely be true a decade from now.

This memo focuses on recommendations related to discipline of abusive, discriminatory and/or illegal elements of the NYPD's practice of SQF. However, part of the discipline problem relates

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[2] https://www.nytimes.com/2024/06/27/nyregion/how-the-nypd-quietly-shuts-down-discipline-cases-against-officers.html

[3] https://www.propublica.org/article/nypd-commissioner-edward-caban-police-discipline-retention-eric-adams

[4] https://ccrjustice.org/files/Floyd-Remedy-Opinion-8-12-13.pdf

to other aspects of stop-and-frisk outside of a specific stop (e.g. supervision, reporting, etc). The NYPD's refusal to discipline at all stages is part of the overall problem.

2. The discipline report should add recommendations that would require officers who engage in abusive, improper and/or unconstitutional stops to be fired - and these recommendations should be ordered by the Court.

It's striking that the sum of all of the discipline recommendations in the current draft report would not result in the firing of any officer, at any time, for abusive or unconstitutional stop-and-frisks. The report recommendations are currently primarily process recommendations that unfortunately do nothing to change the NYPD's current operating premise that unconstitutional stop-and-frisks don't warrant firing. This premise is illustrated in the NYPD discipline matrix, where termination is not even an option as a penalty:

New York City Police Department Disciplinary System Penalty Guidelines Matrix:

Improper/Wrongful:			
Stop and Question or Improper Question of Person	Training	3 Penalty Days	15 Penalty Days
Frisk of Person	Training	3 Penalty Days	15 Penalty Days

[5]

This sends the clear and dangerous message and directive that NYPD officers will not be fired for unconstitutional stops, under any circumstance - in spite of being under Court monitorship and failing to show substantial compliance with respect to stop-and-frisk for over a decade.

The need to terminate employment of officers who engage in abusive stops has been a priority solution identified by directly impacted communities since the monitorship began. In the Floyd Joint Remedies Process, discipline and the need to fire officers who engage in abusive stops was raised at numerous town halls, meetings and discussions with Court-appointed Facilitator Judge Belen and former Monitor Peter Zimroth. As the report states, "the NYPD [should] be ordered to develop and publish progressive disciplinary standards to be used in cases arising from unconstitutional stops and trespass enforcement regarding excessive force, abuse of authority, discourtesy or offensive language, and racial profiling allegations."[6] This is a crucial priority because if officers can never be fired for abusive stops (which is the case now, according to the discipline matrix and NYPD practice), there's no substantive incentive to end improper stops - and they will continue, repeatedly. No amount of process tweaks can achieve the discipline goals unless officers know they can and will be fired for abusive stop-and-frisk encounters.

"Improper" stops (as the NYPD refers to them) are not only unconstitutional, they are fundamentally abusive. New Yorkers subjected to abusive stops report experiencing humiliation,

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[5] New York City Police Department Disciplinary System Penalty Guidelines, effective 1/15/21, p.26

[6] NYC Joint Remedial Process, On NYPD's Stop, Question, and Frisk and Trespass Enforcement Policies

intimidation and terror. We recommend the following rubric, to change the relevant sections of the discipline matrix that outline discipline penalties for improper stops, frisks and searches:

	Mitigated Penalty	**Presumptive Penalty**	**Aggravated Penalty**
1st improper stop, frisk or search	Training	Training + 3 Penalty Days	Training + 15 Penalty Days
2nd improper stop, frisk or search	5 Penalty Days	15 Penalty Days	Termination
3rd improper stop, frisk or search	Termination	Termination	Termination

3. In addition to the pressing need of firing officers who engage in abusive behavior, we also recommend that formal charges and discipline be pursued for any officer for the 2nd improper stop, and first if aggravated. As it stands, formal charges are almost never pursued, and instead informal discipline is the norm in these cases, and there is no legal reason for this.

4. **We also believe that a recommendation should be made that both the patrol guide and administrative guide be made public.** As it stands now, only the patrol guide and not the administrative guide, is required to be made public by law, which currently allows for NYPD to avoid accountability. [7]

5. Any deviations by the police commissioner from recommended discipline should be made public and POSTED on the discipline portal for public access.

6. We believe there must be a recommendation for the CCRB budget to be increased. Every recommendation in the report that enhances the discretion or authority of the CCRB relies on the assumption that the CCRB will have the necessary resources to carry out its work. These recommendations are impossible to implement if CCRB's budget is not significantly expanded to account for increased responsibilities. We urge you to add a recommendation that the **CCRB must be funded significantly more than its current levels, as the Adams administration**

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[7] "The patrol guide is required to be made public by law, but the administrative guide is not. As a way to circumvent this requirement, in 6/2021 large parts of the patrol guide were moved to the administrative guide. The move to the Administrative Guide followed shortly after the Department and the City were required, by Executive Order, to submit a plan going forward for improvement of police practices following the murder of George Floyd. A draft plan was prepared March 5, 2021 and, with some modifications adopted by the City Council on March 25, 2021. The Draft Plan promised that NYPD and CCRB would '[e]stablish the Patrol Guide Review Committee,' which would 'allow for reform by identifying policies and practices outlined in the Patrol Guide that need to be changed.' This, if adopted, would have accomplished three reforms: (1) it would constrain the Police Commissioner's unilateral power to define misconduct; (2) it would lend transparency and community involvement to the portions of the Guide; and (3) it would synchronize definitions employed by CCRB and NYPD. The final plan adopted 20 days later, omitted the recommendation. Nonetheless, moving large sections of the Patrol Guide to the Administrative Guide insulates, for now, the Police Commissioner's exclusive authority to define misconduct from the City Council proposal." (41)

has slashed the CCRB budget.[8] As it stands, the CCRB's caseload continues to grow and is vastly outpacing both its budget and staffing, and the CCRB currently does not have the operational capacity to meet its demands. In fact, the CCRB announced at the end of 2023 that it will no longer investigate many violations under its jurisdiction, including:

- Failure to provide Right to Know Act (RTKA) cards with no other allegations;
- Refusal to provide name or shield number with no other allegations;
- Discourteous words or actions with no other allegations;
- Threats with no action with no other allegations;
- Refusal to process a civilian complaint with no other allegations;
- Property seizures with no other allegations;
- Forcible removal to hospital with no other allegations;
- Untruthful statements with no other allegations;
- Any complaint that has only the above referenced allegations.[9]

7. Some of the process suggestions seem good in the abstract, but based on CPR member groups' experience dealing with discipline cases for years, we believe they would be incredibly detrimental as an order (or even a recommendation) from the Court. For example - the idea of having the NYPD and CCRB determine at the outset of a case which agency should move forward sounds good (rec. 10), but in practice would likely mean that most cases would never move forward to formal discipline processes (e.g. Daniel Pantaleo - the officer who killed Eric Garner, Wayne Isaacs - the officer who killed Delrawn Small). Similarly, uniform misconduct finding categories across the CCRB and NYPD may sound good (rec. 9), but the reality is that if the two agencies are tasked with making it uniform, we're concerned the NYPD will dictate the terms because of their outsized power, particularly in comparison to the CCRB. Rather, the recommendations should be adjusted to make clear that: a) The CCRB should have sole jurisdiction to investigate whenever the allegation is SQF-related; b) The NYPD should be required to share any information they have related to an allegation immediately; and c) There should never be an NYPD designee involved in CCRB Board determinations on SQF allegations.

8. In accordance with the report's recommendation that CCRB have unfettered and early access to records/materials from the NYPD in all cases, records/material access should be automatic for any case the CCRB investigates and it should have the ability to investigate/prosecute any cases, without being put on hold by other entities, including the NYPD (and in some cases without being put on hold by criminal proceedings). As recommended, this includes investigative files and courts records and IAB files (recs. #19[10] and

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https://www.politico.com/news/2023/12/13/new-york-police-oversight-body-warns-of-curtailed-operations-in-face-of-budget-cuts-00131644

9 https://www.nyc.gov/site/ccrb/complaints/file-a-complaint/ccrb-jurisdiction.page

10 In any SQFS investigation, when assessing the credibility of the subject officer's statements, CCRB should seek and have full access to the entire investigative file or court record of any case alleging a 4th or 14th Amendment violation, where the officer had been the subject of an adverse credibility finding or is the subject of a pending investigation for making an untruthful, misleading, or false statement, whether sworn or not. If IAB is investigating, or has investigated, a subject officer for an untruthful, false or misleading

32[11]), as well as any disciple issued by the commanding officer and Force Investigative Division (rec. 38[12])**, but should not be limited to only these cases**, as one of the key obstacles to discipline has been delays in receiving information. For example, the NYPD generally shares body-worn camera footage with district attorneys and the NYS Attorney General immediately, and there is no reason CCRB should not also receive it immediately.

9. We believe that as much of the discipline process, status of proceedings, proposed changes to the discipline guidelines, etc. should be made public by default (including command discipline and other measures that the NYPD doesn't consider "formal" discipline).

10. Discipline should also not be repeated, and we agree with rec. 28[13] - discipline should be consecutive, not concurrent, for each separate and distinct act during an unconstitutional stop. For example, if an officer receives training as a penalty for an unconstitutional stop, there is no reason this should be the same discipline given for a repeat offense, rather a greater penalty should be assessed. The report should include recommendations that:

- **All allegations related to stops, question, frisks should be made immediately publicly accessible on the NYPD's discipline portal.**
- **All dispositions and final decisions related to stops, questions, frisks should be made immediately publicly available on the discipline portal.**
- **All letters re NYPD deviations from CCRB recommendations should be made immediately available on the portal.**

<u>Additional recommendations</u>

While the above indicates some of our overarching recommendations, there are other specific areas of concern, as listed in the report's recommendations that we would like to respond to, which the following chart outlines:

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statement in connection with a current CCRB case, the CCRB should have full access to the file of such investigation and any statements the officer made regarding the encounter for consideration in the pending matter. If CCRB finds that an officer testified untruthfully about material facts pertaining to the encounter, it may disregard the officer's testimony. Such a determination, if made, is entitled to deference when reviewed by the Police Commissioner.

[11] If IAB decides to separately investigate a profiling complaint (either concurrently with CCRB or after the Police Commissioner receives a substantiated profiling complaint from CCRB), the results of the investigation should be shared with CCRB. If there is a material difference in the findings, the full investigative IAB file should be sent to CCRB for reconsideration.

[12] In any force investigation, whether done by the CO, IAB, or FID, there should be an inquiry by the Department into whether there is an SQFS complaint being investigated by CCRB for the same or a related encounter. In any SQFS investigation by CCRB where the complainant alleges use of force, there should be an inquiry by CCRB into whether there is a force investigation by the local command, IAB, or FID. In either instance, the two investigations should be coordinated with information and interviews being shared. If there are parallel investigations of racial profiling or bias-based policing, they should be disclosed and coordinated as well.

[13] Consecutive/concurrent discipline: a stop, a failure to file a stop report, a frisk, or a search are all separate and distinct acts. Each act should be examined individually and, if substantiated, the penalties assigned in the Disciplinary Guidelines should be applied consecutively, absent extraordinary circumstances detailed in writing by CCRB or the Police Commissioner, as the case may be.

Rec #	Current Report Recommendation	CPR Recommendation & Rationale
2	Proposed changes to the Disciplinary System Penalty Guidelines or the Department Manual pertaining to 4th Amendment or 14th Amendment enforcement, compliance, and related discipline, should be made available to the Monitor prior to adoption. The Monitor, after consultation with the Community Liaison, may direct that such proposed changes be made public or presented for public comment.	Any changes to disciplinary guidelines should always be made available to the public, within a period of 90 days, and NYPD should have to notify the public as well. This should be done by advising the press and posting it to all NYPD websites, using existing infrastructure. Changes should not simply be made available to the Monitor, but rather to the public at large to ensure transparency and compliance.
5	Command disciplines imposed for SQFS misconduct are not “technical” findings under Public Officer’s Law § 86 and should be publicly available under FOIL. (See, United Fire Officers Ass’n v de Blasio, 846 F. App’x 25, 33 [2d Cir. 2021]).	When the CCRB is investigating a claim, they are not told about any command discipline that has taken place. The CCRB spends a lot of time investigating a case but then can't move forward because command discipline has already been exercised.
9	CCRB and NYPD should agree upon one set of descriptions for findings and outcomes and apply them uniformly. In particular: a. “Exonerated” in SQFS cases should be reinstated by CCRB as a finding, and reserved exclusively for cases where it is demonstrated that the subject officer engaged in the alleged conduct, but the officer’s actions were lawful and proper. b. “Unfounded” in SQFS cases should be applied in cases of misidentification or where it is demonstrated that the officer did not perform the acts or engage in the conduct attributed to the officer. c. In SQFS cases, if there is insufficient evidence to determine whether or not the acts alleged occurred or that the officer performed the acts or engaged in the conduct	The CCRB's definitions, not the NYPD's, should be used. In addition to this, “exonerated” should not be used because the way the NYPD uses “exonerated” is very misleading as it is commonly understood., The CCRB definitions[14]: Substantiated: means there is sufficient credible evidence to believe that the subject officer committed the alleged act without legal justification. Substantiated cases are sent to the police department with a disciplinary recommendation. Within NYPD Guidelines: means the subject officer was found to have committed the act alleged, but the officer’s actions were determined to be lawful. Unfounded: means there is sufficient credible evidence to believe that the subject officer did not commit the alleged act.

[14] https://www.nyc.gov/site/ccrb/investigations/case-outcomes.page#:~:text=Substantiated%3A%20means%20there%20is%20sufficient,department%20with%20a%20disciplinary%20recommendation.

Rec #	Current Report Recommendation	CPR Recommendation & Rationale
	attributed to the officer, the case is “unsubstantiated” not “unfounded.”	Other Findings reflect the board’s decision that there isn’t enough evidence to determine whether or not what the officer did was wrong. Unable to Determine: means the available evidence is insufficient to determine whether the officer did or did not commit misconduct. Officer(s) Unidentified: means the agency was unable to identify the officers who committed the alleged misconduct. Miscellaneous: most of the time this means that the subject officer is no longer a member of the NYPD This is closer to plain language that the public can understand. We are also concerned that if the agencies are to come to an agreement on which set of definitions to use, the NYPD will prevail every time. In addition to this, “exonerated” should not be used, because this is interpreted to mean that the officer did not commit the act. However, it is not that the officer didn’t commit the act, but that it was found to be lawful. When it comes to discipline, however, it is not whether the action is lawful or not, but whether it follows NYPD discipline guidelines.
10	In any case containing an SQFS allegation where there is overlap of separate investigations or a split in investigations of the same complaint, encounter or subject officer, NYPD and CCRB should coordinate the investigations, sharing information and explaining differences in outcome. CCRB should have access to any interview by IAB of any police witnesses regarding the subject matter of the complaint being investigated by CCRB. Where separate investigations (by NYPD and CCRB) of an encounter have occurred, DAO should present both matters to the Police Commissioner	By default, any cases where there is an SQFS allegation and there is an overlap investigation, the CCRB should investigate and information should be shared with the CCRB in real time. Both agencies should continue to investigate, and information should be shared in real time with the CCRB. It should not be determined at the outset which agency investigates, as the NYPD’s determination would likely be the prevailing determination.

Rec #	Current Report Recommendation	CPR Recommendation & Rationale
	for reconciliation or resolution. If the findings regarding SQFS conduct are inconsistent, the Police Commissioner should describe, in writing, the reasons for the final decision.	
13	A CCRB panel should have available upon request a complete disciplinary history of the subject officer, including all Departmental investigations, when recommending a penalty for substantiated SQFS misconduct. The CCRB executive director should be able to obtain this history at an earlier point, upon request, during investigation, when relevant to any of the issues arising in that investigation.	For any case that CCRB is investigating, CCRB should be able to immediately access full disciplinary history, including command discipline. There is no reason CCRB should not have real time access to disciplinary history and information, this should be by default and not by request. Information is shared with the Attorney General in real time, and so it can be with CCRB as well.
16	When CCRB cases with SQFS allegations are "closed pending litigation," CCRB should review the matter upon conclusion of the litigation and determine, if requested by the complainant, whether to re-open the matter for investigation or recommendation. The Law Department should send a notice to the Legal Bureau or IAB upon conclusion of litigation, when advised that a CCRB investigation was closed pending litigation. The IAB liaison should be responsible for advising CCRB of the status.	Cases should never be closed pending litigation, they should be put on pause and reopened automatically when litigation is completed. If cases are closed pending litigation, they are often never opened again, as the complainant is often not informed of status updates.

There are also a few recommendations that create timelines for steps in the discipline process, so that survivors of abusive stop-and-frisks are not waiting around indefinitely for accountability. However, we would like to flag that these timelines are contingent on whether or not CCRB has direct access to information. Any timelines should be imposed on both NYPD, including the IAB, and CCRB, and not just the CCRB. For rec. 3[15], officers are already updated by their lawyers whenever there's a development in a case, but complainants are not, so this is particularly important to ensure transparency for those who were impacted. **Rec. 4[16] gives 30 days for a CO to report to DAO. However, we believe this is too long. Additionally, when this is "forwarded immediately to CCRB and be made publicly available. Any complainant**

[15] Complainants and officers should be advised every 60 days of the status of a pending complaint, including where it is pending and causes for delay. When either CCRB or the Internal Affairs Bureau (IAB) sends notice of an outcome to a complainant, the complainant should be advised with particularity which allegations were substantiated along with a listing of any other outcome and any specific penalty or guidance ordered.

[16] Upon receiving notice and a directive to impose discipline or guidance of a substantiated SQFS (Stop, Question, Frisk, Search of Person) finding by CCRB, the CO must report back to the Department Advocates Office (DAO) the final result, including the specific penalty or guidance imposed and the date of imposition, within 30 days. This should be forwarded immediately to CCRB and be made publicly available. Any complainant should be personally advised of the penalty outcome.

should be personally advised of the penalty outcome," "immediately" should be defined as "within 24 hours of receipt." Rec. 49[17] should impose the 120 day timeline on IAB, not only on the CCRB.

Regarding the plaintiff's additional recommendations, **we strongly disagree with the recommendation to remove board panel review**. If agency staff attorneys' decisions are final, ultimately this will mean many of the cases' findings will be dependent on the executive director of the CCRB at the time. However, **we agree with the report recommendation that police reps of the CCRB shouldn't have to be in every panel.** Other recommendations beyond what is offered by the table include that the Court should order that anytime CCRB files charges, that NYPD should serve the charges within 3 days.

Thank you again for the opportunity to weigh in on these critically important recommendations, and we hope this feedback will be incorporated.

[17] All SQFS investigations should be completed by CCRB within 120 days and, if not, the reasons for the delay shall be explained in writing to the subject officer and the complainant .