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**DOI'S OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD ISSUES STATEMENT OF FINDINGS
REGARDING NYPD'S TECHNICAL ASSISTANCE AND RESPONSE UNIT ("TARU")
AND THE REVISED *HANDSCHU* GUIDELINES**

Today, the Department of Investigation's ("DOI") Office of the Inspector General for the New York City Police Department ("OIG-NYPD") issued a Statement of Findings regarding policies and procedures for retention of audio, photographs and video captured by the Technical Assistance and Response Unit ("TARU") in the New York City Police Department ("NYPD") at protests and public demonstrations. TARU is tasked with documenting these events under specific circumstances. This investigation was initiated to assess TARU's compliance with NYPD's Patrol Guide mandates concerning data retention and to ensure that to the extent TARU gave access to audio, photographic, and video materials concerning political activities to other units within NYPD for investigative purposes, that access was consistent with the "Revised *Handschu* Guidelines." Among other provisions, the Revised *Handschu* Guidelines were put in place to tightly control NYPD's ability to investigate political activity, which could include activity such as the public events that TARU routinely documents.

As part of the investigation, OIG-NYPD examined the relationship between NYPD's Intelligence Bureau ("Intel") and the audio, photographic and video materials collected and stored by TARU. Investigations involving political or protected First Amendment activity by NYPD's Intel are subject to certain limitations, enforced by third-party oversight, known as the *Handschu* Guidelines. OIG-NYPD concluded that NYPD's practices with respect to Intel's access to TARU's materials, as described by the Department, comply with the Revised *Handschu* Guidelines, but also found that NYPD currently lacks written policy or procedure governing that access. Such safeguards are necessary to ensure that — and to build public confidence that — TARU's video and photographic documentation, and recording capability, are not obtained or deployed by Intel in furtherance of Intel's investigations (or potential investigations) involving political activity without compliance with the Revised *Handschu* Guidelines for authorized investigations involving political activities.

OIG-NYPD's examination concluded that TARU retains all of its audio, photographic and video materials indefinitely. This is permitted by the Patrol Guide, which directs that such material be retained for a minimum of one year, and allows for longer retention periods for a variety of specific reasons and for "any other specific purpose." Because TARU's consistent practice is indefinite retention for "any other specific purpose," OIG-NYPD recommends that the Patrol Guide be amended to describe the additional permissible grounds and rationales for lengthier retention periods. OIG-NYPD considered NYPD's practices with respect to Intel's access to TARU's audio, photographic and video materials, as described by NYPD, and OIG-NYPD found no evidence that TARU's capabilities had been used — or that any NYPD unit ever sought to use TARU's capabilities — to violate the Revised *Handschu* Guidelines.

OIG-NYPD issued eight recommendations to NYPD as a result of this investigation. A copy of the Statement of Findings is attached to this release and can be found at the following link: <https://www1.nyc.gov/site/doi/newsroom/public-reports.page>.

DOI Commissioner Jocelyn E. Strauber said, “ Our review found that the practices described by NYPD with respect to access to TARU’s photographic, audio and video materials comply with the Revised *Handschu* Guidelines; we recommend that these practices be memorialized in written policies and procedures. Written procedures will provide further assurance, including to the public, that the NYPD is committed to compliance with those guidelines. The other recommendations in this Statement of Findings are likewise intended to memorialize and to improve existing practices with respect to materials created by TARU, to ensure consistency and public transparency in this important area.”

Acting Inspector General Jeanene Barrett said, “The First Amendment protects New Yorkers’ fundamental right to peacefully protest. In light of the importance of that right, and TARU’s responsibility to document protests under specific circumstances, this Statement of Findings recommends certain improvements to NYPD policies with respect to the handling of TARU materials. These recommendations are intended to better align NYPD policies with existing practices, memorialize certain existing practices in writing, and improve record-keeping with respect to TARU materials. These proposals will strengthen NYPD’s policies, practices, and procedures around protest-related video footage.”

OIG-NYPD’s findings include:

- While the Patrol Guide requires retention of TARU footage for no less than one and no more than three years, in the absence of certain specified reasons or “any specific purpose,” such footage in fact is never destroyed. NYPD takes the position that this approach serves the “specific purpose” of transparency, so that such footage is available if required for civil and criminal discovery, for oversight agencies, or in the event of a Freedom of Information Law (“FOIL”) request. The Patrol Guide’s broad language, however, gives no guidance as to the nature of the “specific purpose” that would justify indefinite retention, or the factors that should impact that decision. Furthermore, the NYPD’s consistent practice of indefinite retention in all case renders the specified reasons for extended retention in the Patrol Guide essentially moot.
- While TARU has been capturing footage since at least 1998, TARU did not maintain any tracking system of TARU’s footage until 2012. Furthermore, until May 2020, NYPD did not maintain a log of the footage held in TARU’s repository.
- While it appears that Intel’s access to TARU’s materials has been handled consistently with the Revised *Handschu* Guidelines as a matter of practice, NYPD currently lacks written policy or procedure governing that access.
- TARU request logs generally provide only a boilerplate explanation for the need for TARU’s capabilities, and in some cases, the logs do not provide any explanation.

Based on the findings from this examination, OIG-NYPD issued eight recommendations:

1. NYPD should require in a written policy that TARU notify the Legal Bureau of any requests from the Intelligence Bureau for access to TARU footage.
2. NYPD should require in a written policy that the Legal Bureau process any requests from the Intelligence Bureau for access to TARU footage in accordance with the Revised *Handschu* Guidelines.
3. NYPD should revise Patrol Guide Procedure 212-71 to more accurately reflect NYPD’s approach to TARU record retention. If the Department intends to continue its indefinite retention of all video/photographic materials the policy should clearly state that position, and explain the purpose of indefinite retention, as well as any other purposes for which materials can be retained, and the appropriate length of any such retention.
4. NYPD should create an index/log for the over two decades of video/photographic footage that was captured prior to May 2020, when the Department began consistently cataloging and indexing such footage.
5. NYPD should replace the current hard copy logbook and content lists which catalogue the video/photographic material collected by TARU (its practice since May 2020) with an electronic tracking system that would enable more efficient searches for particular footage in TARU’s library.
6. NYPD should revise NYPD Patrol Guide Procedure 212-71 to address the circumstances in which TARU can be deployed without the requisite preauthorization from NYPD’s Legal Bureau, and in which retroactive authorization can be granted.
7. NYPD should revise NYPD Patrol Guide Procedure 212-71 to require that TARU request logs identify the specific basis and rationale for TARU’s request to be present and record at a public gathering, instead of using boilerplate language.
8. NYPD should require that TARU request logs specify what types of video/photographic technology is sought.

Under Local Law 70 of 2013, OIG-NYPD can issue Reports or Statements of Findings at the conclusion of its investigations. DOI defines a Statement of Finding as a short-form report that is usually less than 10 pages.

This investigation was conducted by Assistant Inspector General Justyn Richardson, Investigative Attorney Julie Marling, Senior Policy Analyst Tatiana Hastings, and Confidential Investigator Lasse de Graaf of DOI's OIG-NYPD, as well as DOI staff member Special Investigator Ian Spearman, under the supervision of OIG-NYPD Acting Inspector General Jeanene Barrett and DOI Deputy Commissioner/Chief of Investigations Dominick Zarrella. Special thanks are given to the former OIG-NYPD team members who contributed to the advancement of the investigation.

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New York City
Department of Investigation

Office of the Inspector General for the NYPD (OIG-NYPD)



STATEMENT OF FINDINGS REGARDING NYPD'S
TECHNICAL ASSISTANCE AND RESPONSE UNIT
AND THE REVISED *HANDSCHU* GUIDELINES

Jocelyn Strauber
Commissioner

Jeanene Barrett
Acting Inspector General for the NYPD

June 2023



The City of New York
Department of Investigation

JOCELYN E. STRAUBER
COMMISSIONER

Statement of Findings Regarding NYPD’s Technical Assistance and Response Unit and the Revised *Handschu* Guidelines

In 2019, the Office of the Inspector General for the NYPD (“OIG-NYPD”) commenced an investigation into the New York City Police Department’s (“NYPD”) Technical Assistance and Response Unit (“TARU” or the “Unit”) with respect to its policies and practices for retention of video/photographic/audio material captured during protests, demonstrations, and similar public gatherings that involve conduct and speech that is generally protected by the First Amendment.¹ TARU is a unit tasked with documenting these events under specific circumstances, including when footage is deemed necessary for training, when there is a reasonable belief criminal or unlawful conduct is about to occur, has occurred, or is occurring, or when there is a need for live video transmissions to continuously assess crowd conditions, according to Patrol Guide Procedure 212-71.² This investigation was initiated (1) to assess TARU’s compliance with NYPD’s Patrol Guide mandates concerning data retention and (2) to ensure that to the extent TARU gave access to video/photographic/audio material concerning political activities to other units within NYPD for investigative purposes, that access was consistent with the “Revised *Handschu* Guidelines.”³ Among other

* DOI Commissioner Jocelyn Strauber and Acting Inspector General Jeanene Barrett thank the staff of OIG-NYPD for their efforts in producing this Statement, specifically, Justyn Richardson, Assistant Inspector General; Julie Marling, Investigative Attorney; Tatiana Hastings, Senior Policy Analyst; Lasse de Graaf, Confidential Investigator, and Percival Rennie, Deputy Inspector General - Policy; as well as DOI staff member Ian Spearman, Special Investigator. Appreciation is extended to the New York City Police Department for its assistance and cooperation. Special thanks are given to the former OIG-NYPD team members who contributed to the advancement of the investigation.

¹ Per the Department’s website, the Technical Assistance Response Unit (TARU) “provides specialized investigative equipment and tactical support to all bureaus within the NYPD, from officers on patrol to the Emergency Service Unit (ESU). The unit’s expertise in audio/visual technology helps: enhance investigations through the recovery of surveillance video footage; record police action at large-scale demonstrations and arrest situations; and provide crucial live video to incident commanders during ongoing emergency situations.” N.Y.C. POLICE DEP’T., *NYPD Unveils New Unmanned Aircraft System Program*, NYC.GOV (Dec. 4, 2018), <https://www1.nyc.gov/site/nypd/news/p1204a/nypd-new-unmanned-aircraft-system-program#/0>; see also N.Y.C. Police Dep’t, Patrol Guide Proc. No. 212-71 (2023).

² Patrol Guide Procedure 212-71, which provides guidelines for the use of video/photographic equipment by operational personnel, uses the term “demonstrations,” to describe the type of events at which TARU can record. Based on other sections of the Patrol Guide, such as Patrol Guide Procedure 212-123 (Use of Body Worn Cameras), which states that the “Technical Assistance and Response Unit (TARU) remains solely responsible for documenting protests, demonstrations, political events,” as well as the common understanding of the term “demonstrations,” OIG-NYPD understands the term as it is used in Patrol Guide Procedure 212-71 to encompass other forms of public activity such as protests and similar public gatherings. Therefore, this Statement refers broadly to demonstrations, public events, protests and other public gatherings to describe the types of events at which TARU can record.

³ The *Handschu* Guidelines were established following the filing of a class action lawsuit against NYPD in 1971 by parties who alleged the improper use of investigative techniques by the Department when evaluating the activities/membership/platforms of political organizations, as well as the maintenance of dossiers on activists. *Handschu v. Special Services Div.*, 605 F. Supp. 1384, 1388 (S.D.N.Y. 1985). The Revised *Handschu* Guidelines are enumerated in the NYPD Patrol Guide under procedure 212-72, Appendixes A and B.

provisions, the Revised *Handschu* Guidelines were put in place to tightly control NYPD's ability to investigate political activity, which could include activity such as the public events that TARU routinely documents.

As to (1), OIG-NYPD concluded that TARU retains all of its video, audio, and photographic material indefinitely. This is permitted by the Patrol Guide, which directs that such material be retained for a minimum of one year, and allows for longer periods for a variety of specific reasons and for "any other specific purpose." Because TARU's consistent practice is indefinite retention for "any other specific purpose," the catch-all, rather than for one of the specific reasons itemized in the Patrol Guide, OIG-NYPD recommends that the Patrol Guide be amended to describe the additional permissible grounds and rationales for lengthier retention periods. As to (2), OIG-NYPD considered the Department's practices with respect to access to TARU's video, audio, and photographic material, as described by NYPD, and the Office concluded that those practices comply with the Revised *Handschu* Guidelines. OIG-NYPD recommends that those practices be codified by NYPD in written policies and procedures, to provide further assurance that TARU materials are not improperly accessed in a manner that could violate those guidelines.

This Office's investigative steps, and its additional factual findings and recommendations, are set out in detail below.

I. Investigative Steps:

Over the course its investigation, OIG-NYPD reviewed NYPD's Patrol Guide procedures concerning (1) TARU's use of video/photographic/audio equipment at protests and public demonstrations and (2) the investigative actions permitted with respect to political activities.⁴ OIG-NYPD observed 26 protests related to, among other issues, racial justice, immigration, police reform, animal rights, environmental causes, anti-gentrification, and anti-Trump protests. OIG-NYPD staff members assessed how TARU captured activities occurring during these public protests and demonstrations using audio and/or video equipment. As part of the protest/demonstration monitoring, OIG-NYPD assessed NYPD's record-keeping by reviewing TARU's "request logs" from January 3, 2018 to November 19, 2020.⁵

OIG-NYPD conferred with members of TARU and NYPD's Legal Bureau ("Legal Bureau") to determine the length of time that NYPD is required to retain audio and video recordings made by TARU, and NYPD's practices with respect to retention or destruction of materials at the expiration of that period. NYPD confirmed that it retains all TARU footage indefinitely. OIG-NYPD also completed a site visit to TARU's Fort Totten headquarters to observe the storage facility where the video/photographic/audio material created by TARU is held.

OIG-NYPD reviewed the policies, practices, and procedures of the largest police departments in the United States regarding video/audio recording or photographing of individuals at protests and/or demonstrations. Lastly, OIG-NYPD examined the relationship between NYPD's Intelligence Bureau ("Intel") and TARU with respect to the recorded video/photographic/audio material collected and stored by TARU, to assess the Department's compliance with the Revised *Handschu* Guidelines, with respect to whether, and how, Intel obtains material created by TARU.

⁴ OIG-NYPD reviewed the Command Operations section of the Patrol Guide, including Procedures 212-71, "Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations," 212-72, "Guidelines for Uniformed Members of the Service Conducting Investigations Involving Political Activities," 212-124, "Use of Department Unmanned Aircraft System (UAS)" and 212-129, "Facial Recognition Technology." (N.Y.C. Police Dep't, Patrol Guide Proc. Nos. 212-71, 212-72, 212-124, 212-129 [2023]).

⁵ Every approved request for the use of video/photographic equipment at a public protest or other gathering is required to be entered into a serially numbered log for record keeping known as a TARU "request log" N.Y.C. Police Dep't, Patrol Guide Proc. No. 212-71 (2023).

II. Findings:

TARU

Patrol Guide Procedure 212-71 describes those circumstances when TARU may record audio and/or video at demonstrations with prior authorization from the NYPD Legal Bureau. According to NYPD's written policy, TARU records only in the following circumstances: (1) when NYPD needs footage for training, (2) when there is a reasonable belief criminal or unlawful conduct is about to occur, has occurred, or is occurring, or (3) when NYPD needs live video transmissions from a gathering to continuously assess crowd conditions. Although this policy limits the circumstances in which TARU can record public gatherings, the reality is that large protests frequently involve civil disobedience, which can include conduct that is unlawful in New York, such as blocking sidewalks and streets without a permit, failing to follow lawful orders of the police, and trespassing on private property. As a result, in a wide range of gatherings there is a reasonable belief that unlawful activity is, has or is about to occur, and therefore, TARU is permitted to record. Indeed, members of OIG-NYPD observed that TARU was generally present, with video and audio equipment, at protests and demonstrations that the Office attended. In short, under current NYPD policy, it is likely that TARU is authorized to be present and to video/audio record, at most if not all large protests and demonstrations.

The Legal Bureau determines whether video recording or photography is permissible and whether to authorize it, per NYPD policy. However, OIG-NYPD found that in the event of a spontaneous protest or demonstration, TARU takes videos or photographs without prior authorization from the Legal Bureau. While the Patrol Guide provides no exceptions to the prior authorization requirement, according to NYPD, permission is granted retroactively where there are exigent circumstances.

When approval to deploy TARU is sought in advance of a protest and/or demonstration, generally a borough commanding officer for the patrol borough where the gathering is expected seeks permission for TARU to attend by making a request to the Operations Bureau. This request is forwarded to the Legal Bureau for authorization per the above-referenced policy. OIG-NYPD reviewed 383 TARU "request log" entries — the log that reflects authorizations sought by TARU to be present and to record public gatherings. The reviewed entries generally stated that TARU deployment was sought "[d]ue to the possibility for civil disobedience" but did not explain why there was a risk of civil disobedience or the specific unlawful or criminal conduct anticipated. OIG-NYPD identified that approximately 30 requests did not include any justification. OIG-NYPD also found that officers requesting TARU's assistance did not specify the types of video/photographic technology that may be used, nor are officers required to include such information in these requests.

When TARU makes video recordings or takes photographs, members of TARU transfer the footage to digital video discs (DVDs) while still in the field. Those materials are subsequently invoiced by a property clerk located in the Unit's facility at Fort Totten. The DVDs are placed in binders and stored in a locked filing cabinet; a table of contents for the cabinet is placed on the front of the cabinet. The TARU Commanding Officer is responsible for ensuring that footage is maintained for a minimum of one year from the date of recording. According to NYPD, only four individuals within the Unit can access the area where the DVDs are maintained and electronic ID cards are required for admission.

Per NYPD Patrol Guide Procedure 212-71(8), the Deputy Commissioner of Legal Matters (DCLM) is charged with reviewing recorded materials to determine whether they should be preserved beyond the minimum one-year period. Data may be retained for more than one year if (1) the material captured unlawful activity and is being treated as evidence, (2) the content is considered valuable for civil litigation, (3) the

content is relevant to unit training activities, or (4) “*any other specific purpose.*”⁶ Records that do not meet those criteria must be destroyed after three years. The Patrol Guide’s broad language — “any other specific purpose” — permits indefinite retention for any articulable reason.

TARU and the Legal Bureau stated in interviews with OIG-NYPD that the Department has never destroyed TARU video/photographic footage, the Legal Bureau does not regularly review the footage, and that the Department deems public transparency to be a “specific purpose” within the meaning of the Patrol Guide. The Department represents that it preserves this material, among other reasons, in the event that a member of the public might request it, consistent with public transparency. When pressed on how this preservation serves transparency, the Department acknowledged that it does not as a general matter make TARU footage available to the public, in part because the footage captures large number of individuals who are not subjects of police action but merely present, but represented that the Department would evaluate on a case-by-case basis any request for TARU footage pursuant to the Freedom of Information Law (“FOIL”). The Department further stated that preservation serves the purposes of transparency because thousands of hours of TARU footage has been disclosed in civil and criminal litigation, and also is available to oversight agencies in connection with their investigations.

OIG-NYPD also determined that while TARU has been capturing footage since at least 1998, the Unit did not maintain any tracking system of TARU’s footage until 2012. Since 2012, NYPD has used a system called “Job Tracker” which memorializes each instance in which TARU takes video footage at an event. OIG-NYPD reviewed samples of the Job Tracker provided by NYPD and noted that some of the entries contain inconsistencies — for example simultaneously stating that TARU created “no media” at a particular event but noting in the comment section that DVDs of footage were provided to TARU’s repository. Furthermore, until May 2020 NYPD did not maintain a log of the footage held in TARU’s repository. As of May 2020, a hard copy logbook was maintained, reflecting when and where footage was recorded, the member of service who made the recording, and the type of camera used. The representatives of NYPD with whom the Office spoke said they did not know why such logs were not previously kept.

Intelligence Bureau and the Revised Handschu Guidelines

TARU is one of the entities at NYPD that can take videos at public events, including live video transmissions, pursuant to the policies described above. Intel also conducts video surveillance in the course of its investigations. Intel is a large division at NYPD, with numerous specialized responsibilities, including but not limited to general intelligence gathering to support other NYPD operations, counter-terrorism investigations, covert surveillance, and undercover operations. Intel’s investigations can at times involve gathering evidence involving political activity or other activity generally protected by the First Amendment.

Investigations involving political or protected First Amendment activity by Intel are subject to certain limitations, enforced by third party oversight, known as the *Handschu* Guidelines. The *Handschu* Guidelines were established as the result of a 1971 class action lawsuit brought by civil rights and civil liberties activists against the City, the Police Commissioner, and NYPD’s Intelligence Bureau (then called the Special Services Division). The suit alleged that NYPD’s Special Services Division had surveilled, infiltrated, and compiled dossiers on various political, ideological, and religious groups and individuals, in violation of plaintiffs’ constitutional rights. Following a 1985 court ruling, the City entered into a consent decree which vested NYPD’s Intelligence Bureau with the sole authority within NYPD to conduct investigations that involve political activity and which established rules – the *Handschu* Guidelines – to govern these investigations.⁷ These Guidelines were codified in NYPD Patrol Guide Procedure 212-72.

⁶ N.Y.C. Police Dep’t, Patrol Guide Proc. No. 212-71 [2023].

⁷ *Handschu v. Special Services Div.*, 605 F. Supp. 1384, 1388 (S.D.N.Y. 1985).

After a series of press articles in 2011 detailing NYPD surveillance activity, the plaintiffs in the *Handschu* case made additional allegations in that litigation.⁸ The *Handschu* plaintiffs alleged that NYPD violated the existing *Handschu* guidelines by routinely surveilling Muslim communities.⁹ This new phase of the litigation led to lengthy settlement discussions with the City, which ultimately resulted in new proposed revisions to the *Handschu* guidelines as part of a potential settlement.¹⁰ The presiding judge in the *Handschu* litigation, however, rejected this proposed settlement. The Court noted, among other things, OIG-NYPD's 2016 Report: "An Investigation of NYPD's Compliance with Rules Governing Investigations of Political Activity" which found that NYPD repeatedly failed to follow the *Handschu* guidelines with respect to "a number of the rules governing the conduct of these investigations."¹¹ Because the proposed settlement did not address these failures, among other reasons, the Court rejected the settlement.¹² The parties' subsequent proposal, known as the "Revised *Handschu* Guidelines," was approved.¹³ Those guidelines established a *Handschu* Committee with a "Civilian Representative."¹⁴ Under these Revised *Handschu* Guidelines, investigations involving political activities by Intel are now subject to continued oversight by the *Handschu* Committee, which consists of the Chief of Intelligence and other high-ranking commanding or executive officers, as well as a Civilian Representative.¹⁵

The Revised *Handschu* Guidelines create a detailed oversight framework that imposes significant restrictions on investigations involving, or that relate to, political activity. Under the revised *Handschu* Guidelines, for instance, Intel must make specific authorizations and the Guidelines impose time limitations for lead checking, preliminary investigations, and full investigations involving political activity. Data gathered during full investigations involving political activity, including video surveillance, must be retained for no less than five years. All investigative activities are subject to ongoing oversight by the *Handschu* Committee, which includes the Civilian Representative. Investigative techniques, including video recording, are also subject to an oversight process.

While the *Handschu* Committee does not actively authorize investigative decisions or techniques, the Committee, including the Civilian Representative, must be fully briefed and may ask questions and offer opinions on investigations.¹⁶ The Civilian Representative is allowed to make objections to the *Handschu* Committee and has an obligation to elevate any violations of the Revised *Handschu* Guidelines to the Police Commissioner.¹⁷ If the Police Commissioner fails to respond in a timely manner to the objections or the Civilian Representative is not satisfied with the Police Commissioner's response, the Civilian

⁸ *Handschu v. NYPD*, 219 F. Supp. 3d 388, 391 (S.D.N.Y. 2016).

⁹ *Id.* at 391.

¹⁰ *Id.* at 394.

¹¹ *Handschu v. NYPD*, 219 F. Supp. 3d 388, 408-410 (S.D.N.Y. 2016) (quoting N.Y.C. DEP'T OF INVESTIGATION, OFF. OF THE INSPECTOR GENERAL FOR THE NYPD, AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY (AUG. 2016) at 1).

¹² *Id.* at 408-409.

¹³ *Handschu v. NYPD*, 241 F. Supp. 3d 433, 443 (S.D.N.Y. 2017).

¹⁴ *Id.* at 436-437. The Revised *Handschu* Guidelines are incorporated into Patrol Guide provision 212-72, in Appendixes A and B. Appendix B § VIII(B) outlines the requirements for the retention of materials generated or obtained by Intel, including with respect to checking investigative leads, making preliminary inquiries, and conducting full investigations that may involve political activity. N.Y.C. Police Dep't, Patrol Guide Proc. No. 212-71 [2023].

The first Civilian Representative, U.S. District Judge Stephen Robinson, was appointed by then-Mayor Bill de Blasio. Mayor Eric Adams subsequently appointed Muhammad U. Faridi in February 2023 (OFFICE OF THE MAYOR, *Mayor Adams Announces Appointment of Muhammad Faridi as Civilian Appointee for Handschu Committee* [Feb. 21, 2023], <https://www.nyc.gov/office-of-the-mayor/news/125-23/mayor-adams-appointment-muhammad-faridi-civilian-appointee-handschu-committee#/0>).

¹⁵ N.Y.C. Police Dep't, Patrol Guide Proc. No. 212-72 [2023]

¹⁶ *Handschu v. NYPD*, 241 F. Supp. 3d 433, 453 (S.D.N.Y. 2017).

¹⁷ *Id.* at 454-455.

Representative is authorized to refer the matter to the Court for further action.¹⁸ This multi-layered oversight mechanism specifically addressed the Court’s concerns regarding NYPD’s ability to oversee *Handschu* compliance by itself, and the Court’s specific direction that the role of the Civilian Representative—and its ability to communicate with the Court—be expanded.¹⁹ While NYPD retains full decision making authority with respect to the day-to-day conduct of investigations, the presence of the Civilian Representative means their actions and investigative steps can be subject to the Court’s direct oversight, should the Civilian Representative deem it necessary.

OIG-NYPD undertook this investigation in part to determine whether TARU’s video and audio recording capabilities — which are subject to a distinct set of requirements — could potentially be used for purposes of gathering evidence to support investigations involving political activity outside the requirements of the *Handschu* Guidelines and outside the oversight of the *Handschu* Committee. The Office noted, among other things, that TARU’s responsibilities include, under specific circumstances, the recording of activities that in theory could be relevant to an investigation that might fall within the *Handschu* Guidelines. Thus, there is potential for overlap with respect to protests, demonstrations, or other activity that may be relevant to Intel’s investigations involving political activity and that TARU may record. The Office also noted that TARU is subject to different, and less stringent, requirements than those imposed by *Handschu*.

This Office’s investigation explored those potential risks, but found no evidence that TARU’s capabilities ever had been used — or that Intel or other units within the Department ever sought to use TARU’s capabilities — to violate the *Handschu* Guidelines. During interviews with Department personnel, OIG-NYPD determined that Intel has a limited role in TARU’s activities. Intel provides TARU with advance notice of upcoming demonstrations or public gatherings, but based on information provided to this Office by NYPD, that notice is not an explicit or implicit request for TARU to conduct surveillance on behalf of Intel.²⁰ A high-ranking member of TARU stated to OIG-NYPD that during their time with the Unit, the officer could not recall that Intel ever asked to obtain or view materials that TARU had collected during event recording. Furthermore, the officer noted that if such materials were sought, TARU would immediately consult with the Legal Bureau for guidance as to how to proceed. The Legal Bureau confirmed to this Office that any request by Intel to review TARU recordings would be processed in accordance with the Revised *Handschu* Guidelines. However, OIG-NYPD found that there is no written policy or procedure to this effect.

III. Conclusions:

OIG-NYPD reached the following conclusions as a result of this investigation:

1. NYPD has never destroyed TARU video/photographic/audio footage. The Patrol Guide, Procedure 212-71, requires that TARU footage be retained for a one-year minimum period, or for lengthier periods for several specific reasons or for “any specific purpose.” Otherwise, records must be destroyed after 3 years. The Legal Bureau confirmed that video/photographic footage obtained by TARU at protests and public demonstrations is never destroyed. As set out in greater detail above, the Department takes the position that retention serves the purpose of public transparency because the footage is available in the event of a FOIL request, for disclosure in civil and criminal litigation, or to oversight agencies; OIG-NYPD is unaware of any situation in which a member of the public has requested and received such footage, however. The Legal Bureau also expressed the view that

¹⁸ *Id.*

¹⁹ *Id.* at 436, 441.

²⁰ Intel provides these notifications as part of its ongoing support role at NYPD. TARU obtains notice of upcoming protest activity in various ways, including City permits or advance coordination by protest organizers. However, some protests occur spontaneously or without formal organization/permitting, or are deliberately concealed from City or law enforcement officials. Intel provides TARU with advance notice of these kinds of protests, when possible.

the need for transparency is a “specific purpose” within the meaning of provision 212-71. The Patrol Guide’s broad language, however, gives virtually no guidance as to what is contemplated by “any specific purpose” or how long retained materials should be kept, or the factors that should impact that decision. NYPD’s current practice of retaining all TARU footage indefinitely, within the “any specific purpose” exception, renders the other specific exceptions, as well as the one-year minimum and three-year max retention periods, essentially moot.

2. OIG-NYPD determined that while TARU has been capturing footage since at least 1998, the Unit did not maintain any tracking system of the footage until 2012, and did not maintain a logbook of the footage in TARU’s library until May 2020. Prior to May 2020, NYPD simply stored TARU’s video in file cabinets that were organized chronologically. Therefore, there are over two decades of stored footage that are not memorialized in any log or index.
3. While it appears that Intel’s access to TARU’s materials has been handled consistently with the Revised *Handschu* Guidelines as a matter of practice, NYPD currently lacks written policy or procedure governing that access. Such safeguards are necessary to ensure that — and to build public confidence that — TARU’s video and photographic documentation, and recording capability, are not obtained or deployed by Intel in furtherance of Intel’s investigations (or potential investigations), and without compliance with the Revised *Handschu* Guidelines for authorized investigations involving political activities. To be clear, OIG-NYPD did not identify any potential violations, and TARU members stated that they would refer any request by Intel for access to TARU materials to NYPD Legal. However, this practice has not been formalized into written policies and procedures.
4. NYPD’s Patrol Guide Procedure 212-71 requires authorization from the NYPD Legal Bureau *prior* to TARU’s video/photographic documentation at demonstrations, protests, or other types of collective public gatherings; the Patrol Guide does not include an exception or separate procedure for retroactive authorization when NYPD asserts that exigent circumstances makes prior authorization not feasible. According to NYPD, its practice is to seek authorization from the Legal Bureau retroactively when these gatherings occur spontaneously and prior authorization therefore is not feasible.
5. TARU request logs generally had a boilerplate explanation for the need for TARU’s capabilities, such as “[d]ue to the possibility for civil disobedience,” but did not include the basis for the determination that civil disobedience was possible. In some cases, the logs do not provide any explanation. Furthermore, the requests generally do not specify what types video/photographic technology is requested and ultimately deployed.

IV. Recommendations:

As a result of these findings, OIG-NYPD recommends that NYPD adopt the following policy and procedural changes:

1. NYPD should require in a written policy that TARU notify the Legal Bureau of any requests from the Intelligence Bureau for access to TARU footage.
2. NYPD should require in a written policy that the Legal Bureau process any requests from the Intelligence Bureau for access to TARU footage in accordance with the Revised *Handschu* Guidelines.

3. NYPD should revise Patrol Guide Procedure 212-71 to more accurately reflect NYPD's approach to TARU record retention. If the Department intends to continue its indefinite retention of all video/photographic materials the policy should clearly state that position, and explain the purpose of indefinite retention, as well as any other purposes for which materials can be retained, and the appropriate length of any such retention.
4. NYPD should create an index/log for the over two decades of video/photographic footage that was captured prior to May 2020, when the Department began consistently cataloging and indexing such footage.
5. NYPD should replace the current hard copy logbook and content lists which catalogue the video/photographic material collected by TARU (its practice since May 2020) with an electronic tracking system that would enable more efficient searches for particular footage in TARU's library.
6. NYPD should revise NYPD Patrol Guide Procedure 212-71 to address the circumstances in which TARU can be deployed *without* the requisite preauthorization from NYPD's Legal Bureau, and in which retroactive authorization can be granted.
7. NYPD should revise NYPD Patrol Guide Procedure 212-71 to require that TARU request logs identify the specific basis and rationale for TARU's request to be present and record at a public gathering, instead of using boilerplate language.
8. NYPD should require that TARU request logs specify what types of video/photographic technology is sought.