October 30, 2018

Hon. Arlander Keys (Ret.)
JAMS
71 South Wacker Drive, Suite 2400
Chicago, IL 60606

Dear Judge Keys:

We write in response to your September 21 letter seeking clarification regarding certain CPD policies and practices related to the documentation of investigatory stops and protective pat downs. In light of the extensiveness of your questions, we think a step-by-step review of the ISR submission and review process would be helpful in clarifying the protocol CPD supervisors undertake to conduct their reviews of ISRs. We provide such review below, followed by our responses to specific questions asked in your September 21 letter, as well as some clarifying questions of our own that we have regarding your ISR review.

OVERVIEW OF ISR SUBMISSION AND REVIEW PROCESS

### *Step One: Creation and Submission of ISR*

Below, we summarize the process an officer undertakes to create and submit an ISR.

1. <u>Officer creates the ISR.</u> First, the officer creates the ISR electronically in CPD's CLEARNET database. (ISRs are very rarely filled out in hard copy, as officers are able to access the CLEARNET database in the field, using the laptops in their cars.). The ISR remains in Preliminary ("PRE") status until the officer submits it for review.

2. <u>ISR Number is assigned</u>. As soon as an officer saves an ISR, CLEARNET automatically assigns an ISR number to the incident:
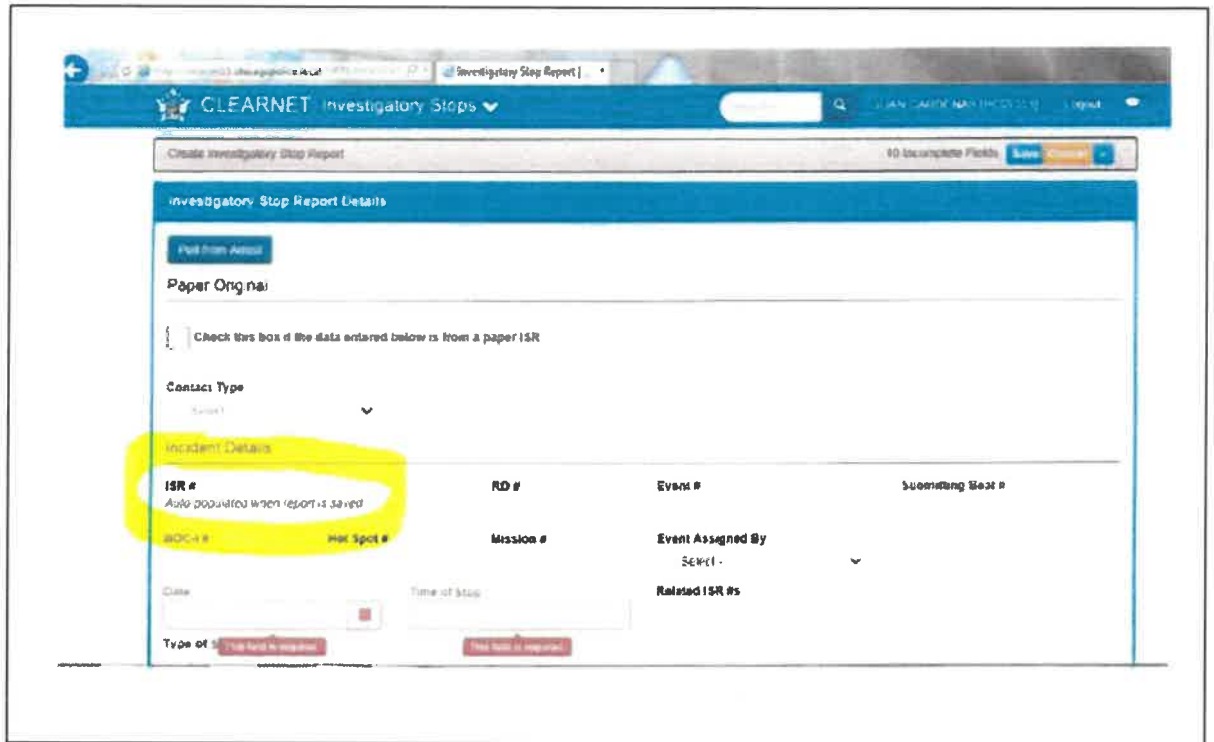
This ISR number remains constant throughout the entire ISR approval process.

3. ISR submitted. After the ISR is complete, the officer submits the ISR for approval:
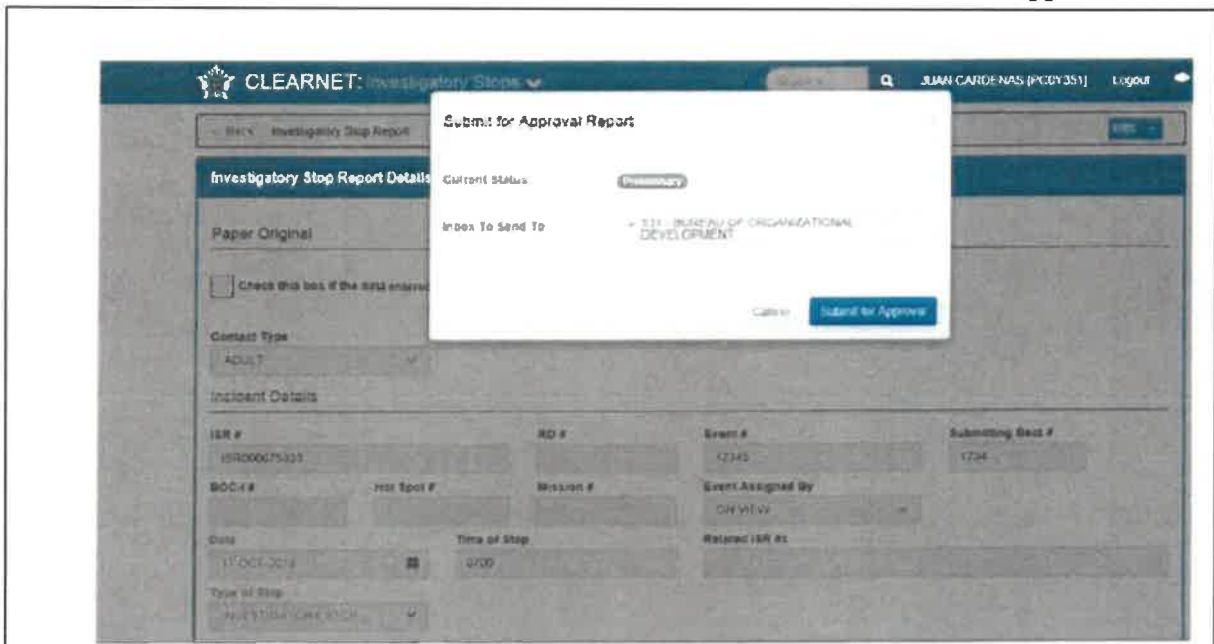
4. ISR transmitted to supervisor. After the officer hits "Submit for Approval," CLEARNET automatically transmits the ISR to the officer's supervisor to review. CLEARNET

automatically labels the submitted ISR as "Version 1":

5. Electronic record created. The database also creates an electronic record memorializing that the ISR was submitted:


(Note that the database creates a new line item (or "record") each time certain milestone actions are taken (e.g., when an ISR is submitted; when an ISR is approved or rejected; when an officer resubmits an ISR).)

Step Two: Supervisor Reviews the ISR

Below we summarize the process a supervisor undertakes to review an ISR.

1. Review the ISR. The supervisor reviews the submitted ISR electronically in CLEARNET.

2. Choose a rejection/approval status. After the review is complete, the supervisor chooses from a drop-down menu one of four rejection/approval statuses: (1) "Administrative

Reject" ("REJ"); (2) "Deficiency Reject" ("DEF"); (3) "Deficiency Review" ("REV"); or
(4) "Approve" ("APR"):
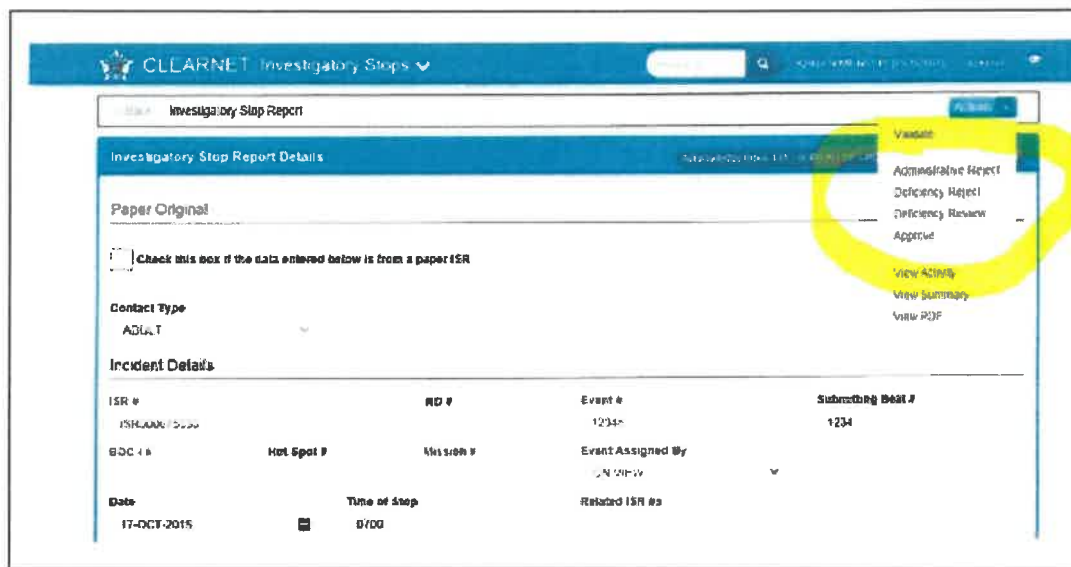
As explained below, the remainder of the review process varies depending on which
status the supervisor chooses.

Administrative Reject ("REJ"). As indicated in the ISR Workflow, administrative
rejections are those based on clerical errors or simple omissions. The process for an
administrative rejection is as follows:

i. Document the rejection in CLEARNET. Per CPD policy, if a rejection is
administrative, the supervisor must document the rejection—along with the
corrective action taken to address the deficiency—in CLEARNET. *See* S04-13-
09 at VIII(C)(1)(d)(3) ("Reviewing supervisors will . . . for rejected Investigatory
Stop Reports . . . document rejections based on [administrative] deficiencies, such
as typographic errors, incomplete fields, etc., and the corrective action taken in
the comments section within the Investigatory Stop Database.").

ii. When a supervisor chooses "Administrative Reject" in CLEARNET, the
following screen appears, which allows the supervisor to write a narrative
addressing why the ISR is being administratively rejected and any corrective
action the supervisor took:

4
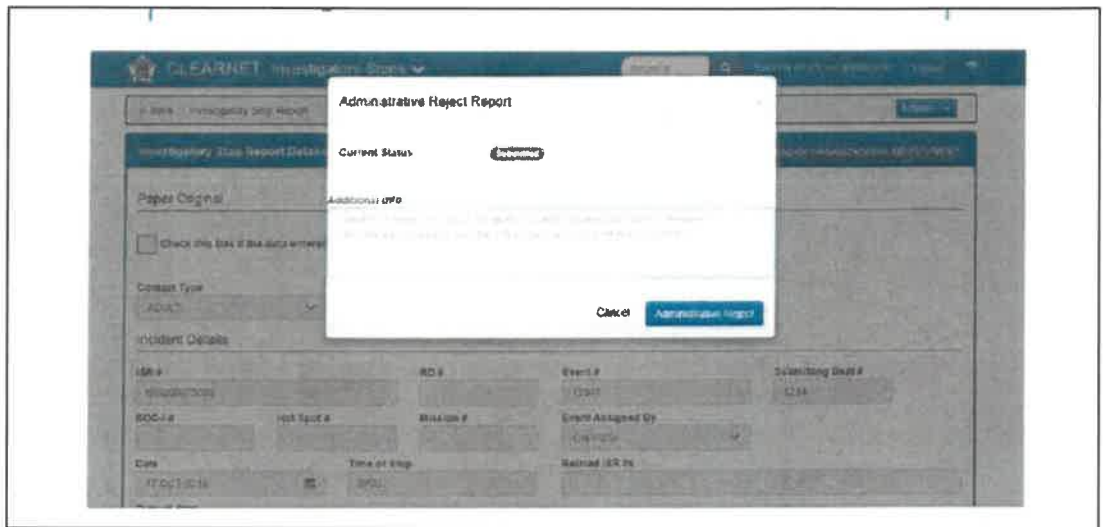
iii. <u>Personally inform the officer.</u> Per CPD policy, if a supervisor rejects an ISR for *any* deficiency, administrative or otherwise, the supervisor must also let the officer know why the ISR is being (or has been) rejected. *See* S04-13-09 at VIII(C)(1)(d)(1) ("Reviewing supervisors will . . . for rejected Investigatory Stop Reports . . . personally inform the preparing sworn member of the reason for the disapproval or rejection.").

iv. <u>ISR returned to officer.</u> After the supervisor submits the administrative rejection, the database automatically returns the rejected ISR back to the officer for correction and resubmission.

CLEARNET automatically labels resubmitted ISRs as the next version number:

5
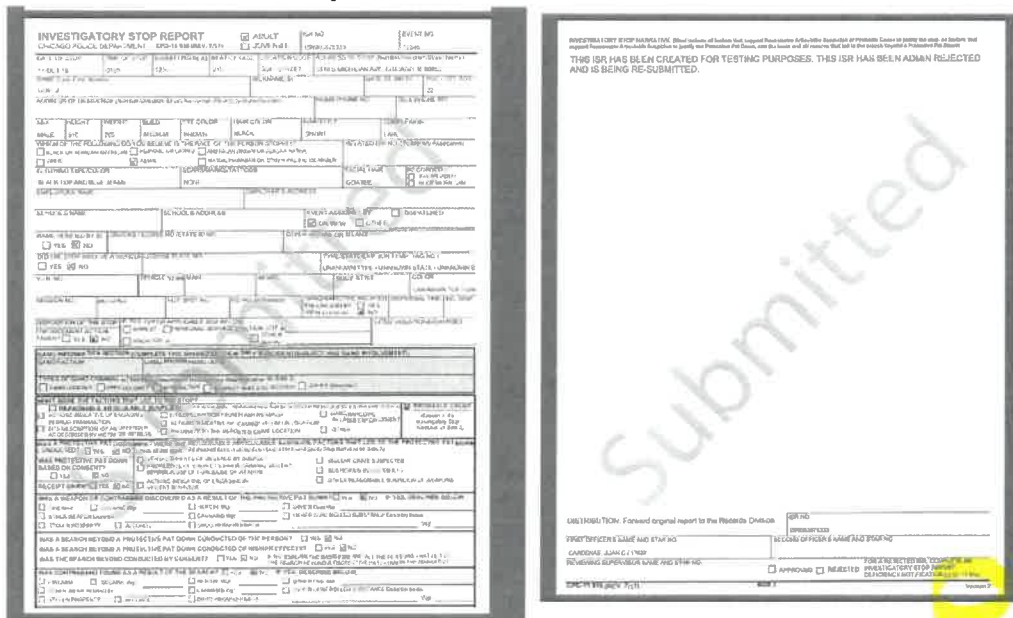
Deficiency Reject ("DEF"). As indicated in the ISR Workflow, Deficiency Rejects are ISRs rejected for failure to articulate reasonable articulable suspicion or probable cause. Deficiency Reject status is appropriate when the supervisor learns (usually through a conversation with the officer) that the officer was justified in conducting the stop, pat down, or search, but did not sufficiently articulate the RAS or probable cause in the ISR narrative.[1] The process for a Deficiency Reject is as follows:

i. Complete a DNR. Per CPD policy, in the circumstances in which a Deficiency Reject is appropriate (*i.e.*, the officer failed to properly document their justification for the stop, pat down, or search),[2] the supervisor must complete an Investigatory Stop Report Deficiency Notification report ("DNR"). *See* S04-13-09 at VIII(C)(1)(d)(2)(a).

When a supervisor chooses "Deficiency Reject" in CLEARNET, the following screen appears, allowing the supervisor to fill in the DNR electronically:

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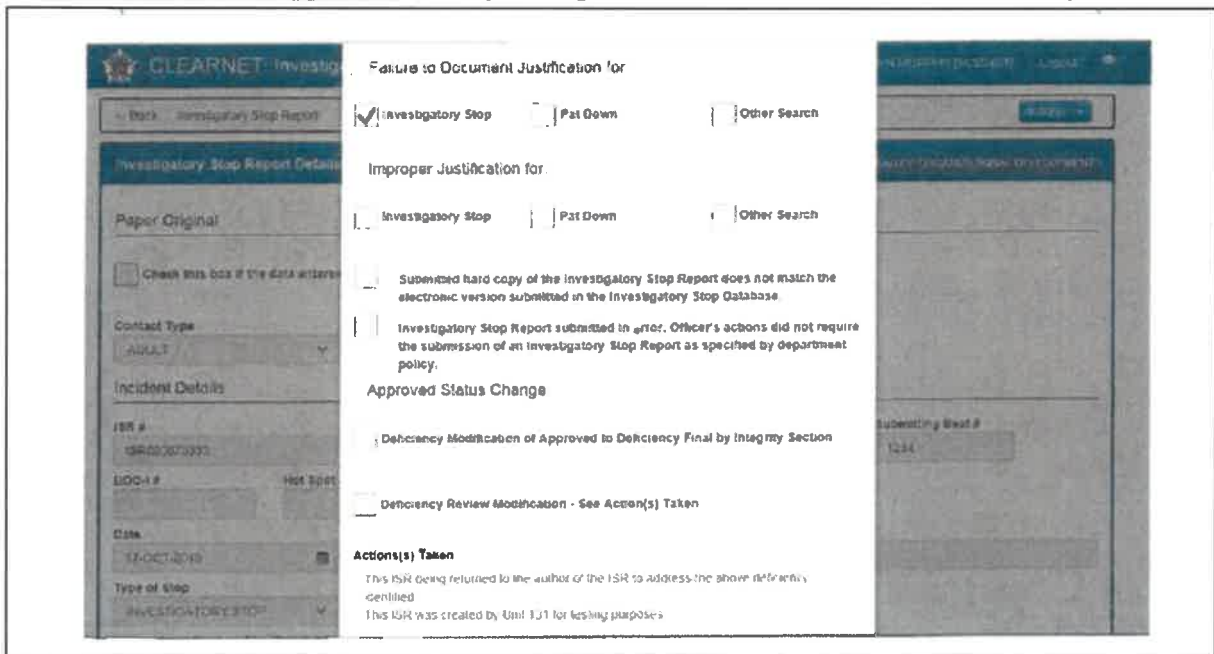
[1] "Deficiency Reject" status is also appropriate in one other circumstance. Per CPD policy, officers may submit hard copies of ISRs if they are unable to access CLEARNET and get permission from their supervisors. *See* S04-13-09 at VIII(B)(2). If the officer fills out a hard copy ISR, they must still later fill out an electronic ISR. As part of their review, the supervisor must ensure that the information in the hard copy form matches the information later input into the database. If the information in the hard copy does not match the information put into CLEARNET, the supervisor should reject the ISR as a "Deficiency Reject."

[2] The policy likewise provides that a DNR is required if a hard copy ISR does not match the information later put electronically into CLEARNET. *See* S04-13-09 at VIII(C)(1)(d)(2)(c).

ii.   Personally inform the officer. As with Administrative Rejects, the supervisor is required under CPD policy to personally inform the officer as to why the ISR is being (or has been) rejected. During this conversation, the supervisor may determine that although the ISR did not state sufficient RAS or probable cause, the stop was justified (but ill-documented). In this case, Deficiency Reject status is appropriate.

iii.   DNR transmitted to Integrity Section. After the supervisor completes and submits the form, CLEARNET automatically transmits the DNR to the Integrity Section.[3] (Because CLEARNET can accommodate electronic submission, the supervisor is not required to separately email the DNR to the Integrity Section.)

iv.   ISR returned to officer. After the supervisor submits the rejection and accompanying DNR, the database automatically returns the rejected ISR back to the officer for correction and resubmission.

Deficiency Review ("REV"). As indicated in the ISR workflow, Deficiency Review[4] status is appropriate when an ISR cannot be corrected because: (1) the ISR should not have been created in the first place or (2) the stop, pat down, or search was not justifiable. The process for Deficiency Review is as follows:

i.   Personally inform the officer. As with Administrative Reject and Deficiency Reject, the supervisor is required under CPD policy to personally inform the officer as to why the ISR is being (or has been) rejected. During this conversation, the supervisor may determine that the stop or pat down was not justifiable. The supervisor could also determine (either upon review of the ISR or through speaking with the officer) that an ISR should not have been completed. In these cases, Deficiency Review status is appropriate.

ii.   Complete a DNR. Per CPD policy, in the circumstances in which Deficiency Review is appropriate (*i.e.*, the stop, pat down, or search was not justifiable, or an ISR should not have been completed), the supervisor must complete a DNR. *See* S04-13-09 at VIII(C)(1)(d)(2)(b), (d).

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[3] Your September 21 letter sought clarification as to whether more than one CPD unit audits ISRs. Only one CPD unit—the Integrity Section, which falls under the Bureau of Organizational Development— audits ISRs. (That unit has changed names over time because it has lived in different divisions, but the Commanding Officer who oversees it, Capt. Karyn Murphy, has remained constant.) CPD is currently in the process of revising S04-13-09 to reflect such.

In a separate process, executive officers in each district also conduct an additional monthly review of a sample of approved ISRs in their district.

[4] Some CPD materials refer to "Deficiency Review" status as "Deficiency Rejection Review" status. The two are synonymous.

As when a supervisor chooses "Deficiency Reject" in CLEARNET, when a supervisor chooses "Deficiency Review," the supervisor is prompted to fill in the DNR electronically.

iii. <u>DNR transmitted to Integrity Section</u>. After the supervisor completes and submits the DNR form, CLEARNET automatically transmits the DNR to the Integrity Section. (As with the DNRs associated with Deficiency Rejects, because CLEARNET can accommodate electronic submission, the supervisor is <u>not</u> required to separately email the DNR to the Integrity Section.)

iv. <u>Integrity Section full review</u>. Unlike Deficiency Rejects, Deficiency Reviews are deemed not correctable and therefore are <u>not</u> returned to officers for correction and resubmission. Rather, the Integrity Section reviews <u>all</u> the Deficiency Review ISRs, and their associated DNRs, to determine whether the supervisor's decision was consistent with CPD policy and whether any remedial action is necessary. The Integrity Section can take one of three actions after reviewing Deficiency Reviews:

- o If the Integrity Section determines that the supervisor erred and should have approved the ISR, the Integrity Section will change the ISR's status to Approved.

- o If the Integrity Section determines (through communication with the supervisor or officer) that the stop, pat down, or search may have been justifiable (but the justification was not sufficiently articulated in the ISR), the Integrity Section returns the ISR to the officer to correct and resubmit to their supervisor.

- o If the Integrity Section agrees with the supervisor and determines that the stop, pat down, or search was not justifiable, or that an ISR should not have been completed, the Integrity Section changes the ISR status to Deficiency Rejection Review Final ("FIN") and suggests necessary remedial action for the officer.

Approved. When a supervisor determines that an ISR should be approved, they choose "Submit for Approval" in CLEARNET:
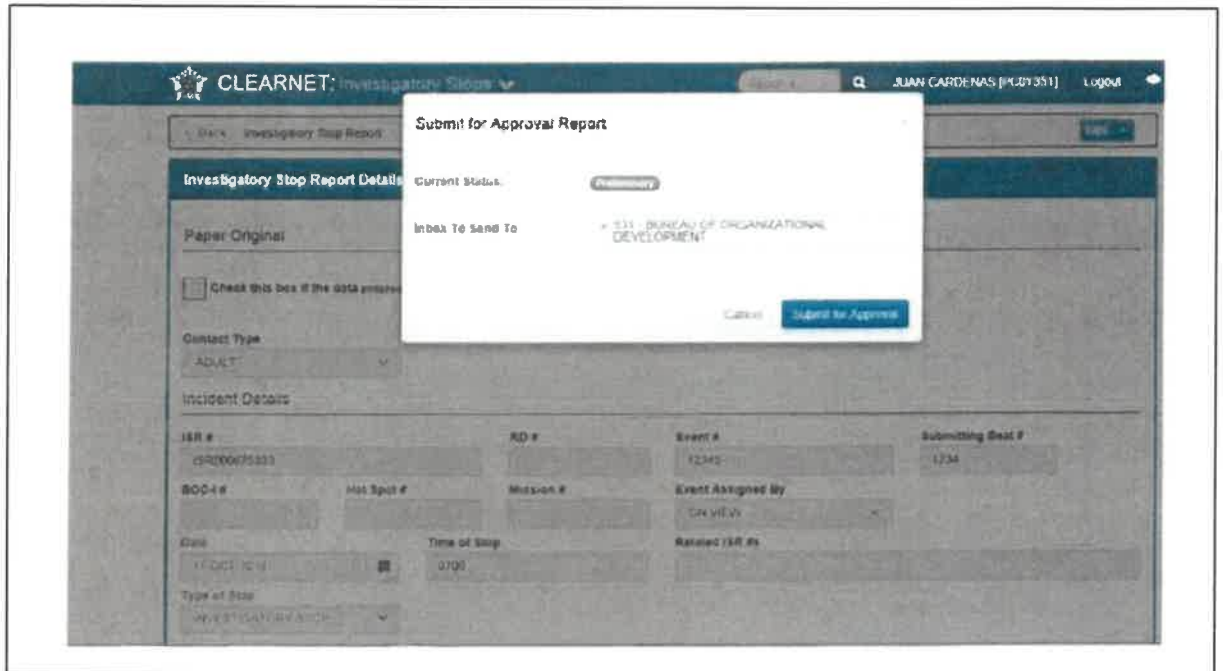
i.   ISR transmitted to Integrity Section. CLEARNET automatically transmits the approved ISR to the Integrity Section.

ii. Integrity Section daily spot review. The Integrity Section conducts a daily audit of at least 10 percent of the approved ISRs to determine whether the supervisor's decision was consistent with CPD policy.

RESPONSES TO SEPTEMBER 21 QUESTIONS

1. *Under S04-13-09 at VIII(C)(1)(d)(2)-(5), supervisors submit two types of rejections directly to the Integrity Section, without first returning them to the officer for correction—(1) unjustifiable stops, searches, pat downs and (2) ISRs that should not have been completed. Does that mean that these two types of rejected ISRs would never have multiple versions?*

Not necessarily. It is correct that because these two types of ISRs have been deemed not correctable, supervisors submit them directly to the Integrity Section without first returning them to the officer for correction. In situations where the Integrity Section agrees with the supervisor's determination, the Integrity Section would "finalize" the ISR by placing the ISR in the FIN status. Thus, only a single version (the originally submitted version) of the ISR would exist.

As noted above, however, the Integrity Section may determine that the supervisor erred and that the ISR was in fact correctable. In those situations, the Integrity Section would return the ISR to the officer to correct and resubmit. Thus, multiple versions of the ISR would exist after the officer resubmits the ISR—as noted above, CLEARNET automatically assigns version numbers to resubmitted ISRs.

2. *What is CPD's interpretation of the Exception in S04-13-09 at VIII(C)(1)(d)(4)?*
As noted above, officers are expected to correct and resubmit all deficient ISRs except for those placed in Deficiency Review status. Deficiency Review status is appropriate when the supervisor determines that the stop, pat down, or search was not justifiable or that ISR should not have been completed at all.

2. *When are records versus versions created?*

As noted above, CLEARNET creates a new line item (or "record") each time certain milestone actions are taken (*e.g.*, when an ISR is submitted; when an ISR is approved or rejected; when an officer resubmits an ISR)):

New ISR *versions*, however, are created only when an officer resubmits an ISR (after the ISR has been returned to the officer for correction and resubmission). CLEARNET automatically archives each version of an ISR.

Version 1 is always the officer's originally submitted ISR.

3. *How does a preliminary ("PRE") status code create a separate record?*
As discussed above, CLEARNET creates a new line item (or "record") each time certain milestone actions are taken. When an officer creates an ISR, CLEARNET assigns the ISR a preliminary ("PRE") status. The ISR remains in PRE status until the officer submits the ISR for review (or, in some situations, cancels the ISR). Once the ISR is submitted, its status changes to Submitted ("SUB").

3. *What is the review process for an ISR placed in Deficiency Review ("REV") status? Is there a difference between the review conducted by the "Commanding Officer, Integrity*

*Section, Crime Control Strategies" and the "Integrity Section of Crime Control
Strategies" referenced in S04-13-09?*

As noted above, after the supervisor completes and submits the DNR, CLEARNET
automatically transmits the DNR to the Integrity Section. The Integrity Section reviews
the ISR to determine whether the supervisor's decision was consistent with CPD policy.
The Integrity Section can then take one of three actions:

- o If the Integrity Section determines that the supervisor erred and should have
  approved the ISR, the Integrity Section will change the ISR's status to Approved.

- o If the Integrity Section determines (through communication with the supervisor or
  officer) that the stop, pat down, or search may have been justifiable but the
  justification was not sufficiently articulated in the ISR, the Integrity Section
  returns the ISR to the officer to correct and resubmit to their supervisor.

- o If the Integrity Section agrees with the supervisor and determines that the stop or
  pat down was not justifiable, or that an ISR should not have been completed, the
  Integrity Section changes the ISR status to Deficiency Rejection Review Final
  ("FIN") and suggests necessary remedial action for the officer.

Only one CPD unit—the Integrity Section, which is overseen by Commanding Officer
Capt. Karyn Murphy—conducts the audits of ISRs placed in REV status. (As noted
above, this audit unit has gone by different names over the years, so some CPD materials
may reflect an outdated name.)

4. *Does an ISR have to be in Deficiency Review ("REV") status for the Integrity Section to
   review it?*
   As discussed above, REV is a rejection code available to supervisors in two
   circumstances—(1) the ISR should not have been created in the first place or (2) the
   supervisor determines that the stop, pat down, or search was not justifiable, meaning it
   would not be possible for the officer to correct the ISR. The Integrity Section
   automatically receives (and then reviews) all ISRs placed in REV status, along with their
   associated DNRs.

As also discussed above, two other rejection codes—Administrative Reject ("REJ") and
Deficiency Reject ("DEF")—are also available to supervisors. DNRs are required for
Deficiency Rejects (but not for Administrative Rejects). Upon submission of a DNR, the
DNR is automatically transmitted to the Integrity Section.

Unlike DNRs submitted with Deficiency Reviews, the Integrity Section does not put eyes
on every single DNR submitted with Deficiency Rejects. Such an endeavor would not be
an efficient use of the Integrity Section's resources. But the Integrity Section does
review many of the DNRs during its daily audit of the approved ISRs, as this review

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includes looking at the entire history of the ISR (which may include DNRs if the ISR was previously rejected).

5. *Is a DNR required for Administrative Rejects?*

No. As noted above, DNRs are only required for ISRs in Deficiency Reject and Deficiency Review status.

4. *Why are there so many approved ISRs and so few ISRs finalized as Deficiency Rejection Review Final ("FIN")?*

Although some ISRs go through multiple rejections and resubmissions because the documentation was not filled in correctly, in the end, most ISRs are eventually corrected and approved because officers are generally making good stops.

The FIN code, then, is reserved for the small number of ISRs that cannot be cured because the stop, pat down, or search was not justifiable, or an ISR should not have been completed.

5. *Why are there so few DNRs?*

As noted above, DNRs are not required for Administrative Rejects. To be sure, it is possible that some supervisors may be improperly coding ISRs as Administrative Rejects when an ISR does not sufficiently document justification for the stop, pat down, or search. The Integrity Section plans to conduct additional supervisor trainings to refresh supervisors on the differences between the status codes.

Meanwhile, we do not believe such technical errors meaningfully alter the quality of the supervisory reviews. Corrective action is still taken, and officers must nonetheless correct and re-submit their ISRs regardless of whether their supervisor completed the additional form. Further, as your letter notes, most of the Administrative Rejects contain written comments documenting and informing the officer of the deficiencies identified.

6. *How many single-version ISRs were rejected by supervisors?*

As noted above, each time an officer resubmits and ISR, a new version is created. Therefore, the only single-version ISRs *rejected by supervisors* would be the single-version ISRs in REV status. All of these ISRs have an associated DNR, as a DNR is required when an ISR is placed in REV status.

CPD is researching to determine whether it is feasible—without a manual review—to identify the single-version ISRs placed in REV status. CPD can say, however, that the number is small, as the majority of ISRs are correctable and therefore would not warrant

REV status.

7. *What do "clearance" and "remain in rejected status" mean in the Exception to S04-13-09 at VIII(C)(1)(d)(4)?*

As discussed above, officers are expected to correct and resubmit all deficient ISRs except for those placed in Deficiency Review status. The Integrity Section reviews all ISRs placed in Deficiency Review status. Until such ISR is reviewed and "cleared" by the Integrity Section (*i.e.*, the Integrity Section either endorses or disagrees with the supervisor's determination), the ISR "remains in rejected status."

8. *Were any of the single-version ISRs in the 2017 sample still "pending" (i.e., not yet reviewed by the Integrity Section)?*

The only single-version ISRs that are subject to automatic review by the Integrity Section are ISRs placed in REV status. It is possible that some of the single-version ISRs in the full-year 2017 production (which was provided to you in March 2018) had not yet been reviewed by the Integrity Section. However, this number would be minimal, as the Integrity Section generally conducts its reviews of ISRs placed in REV status in short order.

9. *Does anyone at CPD review ISRs that are rejected for lack of justification (or because they should not have been submitted) which are not placed into the return and resubmission process and are not placed in REV status? Do executive officers audit these ISRs?*

As noted above, the Integrity Section reviews all ISRs placed in REV status, and conducts a daily audit of at least 10 percent of the ISRs that are approved.

Executive officers conduct a monthly audit of a random sample of 10 percent of all ISRs that are approved by supervisors in the executive officers' particular district.

10. *Does CLEARNET archive supervisory notes and comments for rejected single-version ISRs?*

CLEARNET creates a record for supervisory comments even if no DNR is completed. To clarify, however, all rejected single-version ISRs would have an associated DNR, as CLEARNET requires the completion of a DNR in order to place an ISR in REV status.

11. *Do any of the rejected single-version ISRs remain in rejected status waiting to be cleared and finalized?*
At present, all 2017 ISRs placed in REV status have been reviewed and cleared by the Integrity Section.

12. *How many ISRs were rejected for each of the following reasons?*

      a. *Failure to document justification for a search or pat down;*
      b. *Improper justification (i.e., no justification exists) for the stop or pat down;*
      c. *The hard copy ISR did not match CLEARNET;*
      d. *An ISR should not have been submitted.*

This data was not previously requested, and CPD is researching whether it would be possible to provide this data without conducting a manual review of ISRs placed in REJ and REV status.

13. *Does the City have additional documentation regarding civilian and internal complaints related to stops and pat downs that occurred in 2017?*

On August 9, 2018, the City produced documents relating to civilian and internal complaints regarding stops and pat downs that occurred in 2017. On September 17, 2018, the City supplemented this initial production with additional documents relating to complaints that were pending at the time of the August production but were subsequently closed. The City stated that it intended to check back with BIA and COPA in 45 days and again supplement the production, if necessary. We will provide a supplemental production in early November with a small number of additional complaints that were recently identified as well as additional documents relating to complaints that were previously produced but were pending at the time of the September production. At that time, the City will provide a report regarding the 2017 complaints following the format of the report the City provided on October 20, 2017.

14. *Do the multi-version report samples include electronic versions of the originally submitted hard-copy ISRs?*

As noted above, most ISRs are created electronically. When an officer does have to complete an ISR in hard copy, the officer must then input the information from the hard copy into CLEARNET. The supervisor is responsible for verifying that the information on the hard copy matches what was input into CLEARNET. The hard copy is then stored in a paper file.

15. *Have all data and documents related to ISRs submitted during the first four reporting periods and rejected for any reason been produced?*

All requested data and documents related to ISRs have been produced. To the extent you have questions concerning the data that has been produced, the City can provide a detailed inventory.

Lastly, we seek clarification on two points raised in your letter.

First, on page 7, you describe your review of "the **representative** multiple version sample," and further state that "[t]he point of having a representative statistical sample to review is that the ISRs in the sample are supposed to be representative stand-ins for any number of other ISRs in the larger pool of ISRs." The City understands from our telephone conference earlier this month that, in addition to your review of a statistically significant sample of the total body of ISRs from 2017, you are also conducting a qualitative review of a number of multi-version ISRs to provide observations on the quality of the supervisor review as reflected in the changes in a the life cycle of an ISR.

Please confirm that this review of multi-version ISRs is qualitative in nature only (*i.e.*, that you do not intend to draw statistical findings concerning the quality of supervisory review as reflected in the changes in the life cycle of an ISR).

Further, we understand from the telephone conference that your coding form includes a number of questions specific to supervisory review (*i.e.*, Questions 20 to 29). We do not believe we have been provided those questions for review and comment. **Could you please provide us the questions at your earliest convenience?**

Second, on page 11, you state that because none of the earlier-version ISRs from the first reporting period had been archived in the ISR database, your coding sample did not include any rejected ISRs. You further state that this has influenced your review of subsequent reporting periods. The City seeks clarification on this point. **Particularly, why does the sample from the first reporting period have an effect on the coding you are conducting on the third and fourth periods?** The City is of the understanding that given the changes made to the ISR database, the analysis you are conducting of ISRs from the third and fourth reporting periods is distinct from the analysis conducted during the first reporting period. Please clarify if this understanding is incorrect.

We hope this letter is responsive to your request for information and, in addition, that you will provide us with the clarification we are seeking. Please let us know if you would like further information and/or would like to schedule a teleconference to discuss.

Sincerely,

Tyeesha Dixon
Deputy Corporation Counsel