

Recommendation Submitted for Full COAB Vote

DATE submitted: 4/12/16

Expected DATE of COAB vote: 4/28/16

*Note: Recommendations for full COAB consideration must be submitted **two weeks** prior to the full COAB meeting.*

What is the recommendation? (1000 character max)

The Community Oversight Advisory Board urgently advises Mayor Hales and Chief O’Dea to immediately remove the 48-hour rule from PPB policies, procedures, and the Portland Police Association Collective Bargaining Agreement:

As a range of Portland social justice, religious and non-affiliated community leaders and partners have shown and the OIR Group (herein, OIR) and the Police Assessment Resource Center (herein, PARC), organizations have reported, the well known “48 Hour Rule,” has repeatedly shown to be antithetical to good community policing.

The impact of the 48-hour rule on the Portland community has had a historical trajectory of confusion, mistrust and skepticism about the Portland Police Bureau (herein, PPB), and, because the 48 hour rule is situated within the Collective Bargaining Agreement, the Portland Police Association (herein PPA), itself. Since the role of the PPA is to act on behalf of the members of the Portland Police Bureau and not on behalf of the inhabitants of Portland, this places the members of the Portland Police Bureau in a most precarious position; against the very community they are charged to keep and maintain safety. Continuing with this philosophy demonstrates an ethos which is diametrically opposed to the very community for which they have the responsibility for public safety.

Further, since the City Council is a signatory on the PPA and likewise, a representative body of Portland citizens, maintaining the 48-hour rule within the PPA Collective Bargaining Agreement puts the City Council representatives in direct opposition to the very citizens who elected them to The Council. To maintain the 48-Hour Rule, or to require concessions on unrelated matters in return for abandoning such a rule, speaks against the very missions of both the PPB and the PPA.

Therefore, the Community Oversight Advisory Board, as per paragraph 141 of the Settlement Agreement, urgently advises Mayor Hales and Chief O’Dea to take immediate steps to remove the 48-hour rule from PPB policies, procedures, and the Portland Police Association Collective Bargaining Agreement, in acknowledgment that the rule is contrary to good policing.

Brief synopsis of options explored/considered and pros and cons of each (attach relevant documents)

In the latest Report to the City of Portland on Portland Police Bureau Officer-Involved Shootings and IN-Custody Death, January 2016, the OIR Group stated and continues to recommend discontinuing the 48 Hour Rule:

In each of the 11 shooting cases reviewed, no involved Bureau member provided an account of his actions and observations until at least 48 hours after the incident, and some even later. The “48-hour rule” dictated by the current Bureau labor contract with the Portland Police Association, the union that represents the line officers continues to impede the Bureau from obtaining from officers involved in a shooting an account of why they used deadly force until at least two days after the incident. The City made small progress toward the goal of doing away with the 48-hour rule last fall, when it entered into a collective bargaining agreement with the Portland Police Commanding Officers’ Association that no longer includes the requirement that the Bureau give 48 hours advance notice prior to an administrative interview. However, because the Portland Police Association represents the overwhelming majority of officers who have been involved in shootings, the change to the agreement with the commanding officers’ union does little to change the status of the Bureau’s ability to obtain contemporaneous officer interviews after a critical incident.

As we have stated repeatedly, beginning with our initial report to the City in May 2012, the inability of the Bureau to obtain a statement from the involved officers the night of an incident is inconsistent with best investigative practices. Bureau investigators are aware of the importance of obtaining contemporaneous statements from witnesses as evidenced by their tireless work in the hours after these incidents interviewing both officer and civilian witnesses. However, the officers who fired their weapons – those most knowledgeable and whose conduct is being reviewed – are not interviewed for at least two days and often longer.

By agreeing to a contract that requires this delay in the Bureau’s ability to compel an interview of the officers, the City requires the Bureau to forfeit the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it. While the Bureau’s investigative machinery works hard to obtain contemporaneous and pure statements of observations from civilian witnesses and officer witnesses, the investigative protocols allowed the involved officers’ versions to be subject to contamination and recall issues as a result of the passage of time or exposure to other accounts of the incident from media sources, legal representatives or fellow officers. Moreover, any leads or further investigative guidance that might be derived from the involved officers’ version of events are hindered and perhaps lost because of the delayed acquisition of officers’ statements.

Some police officer advocate groups have pointed to memory studies which suggest memory improves after an individual has had an opportunity to de-stress, sleep, and process the event before being called upon to provide a recollection as a reason to afford officers up to a three day period before being interviewed. Those advocates, however, undervalue the competing factors detailed above, including the potential for conscious or unconscious contamination during the wait period. Moreover, if police agencies were to accept this premise as paramount, they should likewise delay the preparation of written police reports and the collection of witness, victim, or suspect statements after any event. This clearly would not be consistent with accepted police investigative practices, which teach that subjects, victims, and witnesses should generally be interviewed as soon as they are identified.

Some have questioned whether the real reason for a delay in interviewing officers is to afford the officers the opportunity to either consciously or subconsciously choreograph or tailor their responses with the help of external influences or exposure – in other words, “to get their stories straight.” The fact that this belief persists among community members is damaging to the credibility of the police

agency and its investigative and review processes and should provide additional incentive for the City to eliminate the 48-hour rule.

In reality, the delay may not afford the officers any advantage whatsoever and may call into question the usefulness of their statements because of the likelihood of memory contamination or memory loss. In talking with officers involved in critical incidents, many have expressed their desire to quickly provide their account of what occurred and have reported that any delay may be counterproductive to their interest in giving their report in a timely fashion and their ability to provide an accurate and useful account. In fact, as noted in the discussion of the shooting involving Mr. Moffett, Sergeant Fort appeared willing to talk freely and candidly about his decision to use force but then declined to do so after consulting with his legal representative.

Ideally, officers involved in shootings would provide voluntary statements to Bureau detectives on the night of the shooting, as many officers routinely do across the country. However, if officers decline to provide such a voluntary statement, as they are entitled to do under the Fifth Amendment of the Constitution, it is vital that the Bureau then has the ability to order them to provide a compelled statement in the hours immediately after the shooting.

In our First Report, in May 2012, we made the following recommendation regarding the 48-hour rule. In our final report pursuant to our current contractual engagement, we renew the recommendation here.

Recommendation 31: The Bureau and the City should begin as soon as possible a dialogue with the Portland Police Association to remove the 48hour rule restriction on interviewing involved officers in shootings and incustody deaths.

FOOTNOTE

27 To be clear, unlike a voluntary statement, a compelled statement cannot be used by the District Attorney or the grand jury to determine potential criminal liability. Indeed, any one with a role to play in any part of a potential criminal proceeding must be completely walled off from a compelled statement and may not be provided any opportunity to learn what the officer said. So while the Bureau can use the compelled statement during its Internal Affairs investigation and administrative review, the contents of that statement cannot be made public unless or until the conclusion of any criminal proceeding.

What are the reasons this option was selected above the others?

Did the committee receive any additional information from individuals or organizations regarding this recommendation?

Tracking Info:

Subcommittee & Chair: AS; Wolfe Subcommittee Vote Date: 04/12/16
Subcommittee Vote Outcome: Approved 2-0 (Wolfe, Rivier); Steenson excused

Re: Paragraph in the Settlement Agreement or Related to Other PPA CBA; "48-hour rule"

Which of COAB's areas of responsibility does this recommendation relate to?

Recommendation # 042816-1

- Independently assess implementation of this Agreement
- Recommendations to the Parties and the COCL on additional actions
- Advice to the Chief and the Police Commissioner on strategies to improve community relations
- Providing the community with information on the Agreement and its implementation
- Development and implementation of a PPB Community Engagement and Outreach Plan (“CEO Plan”)
- Receiving public comments and concerns
- Other:

If adopted this recommendation would (check one or more):

- Change existing policy/procedure:
- Change training content:
- Other; please describe:

Please use this as a cover sheet and attach relevant documents. Please number all pages in this packet. Thank you.

Submit to COAB Support Specialist Mandi Hood two weeks prior to Full COAB vote: mandi.hood@portlandoregon.gov