

## Memorandum

Re: Basis for Recommendations and Advice to the DOJ, City of Portland, Mayor Hales, Chief Marshman and PPB for Substantially Improving Citizen-Based Oversight of the PPB

Date: 7/9/16

From: Work group for Accountability Subcommittee (AS)

For the reasons below, a work group<sup>1</sup> for the AS has developed recommendations to streamline the complaint system by moving all community complaints to the purview of the Independent Police Review Division and Citizen Review Committee, eliminating unnecessary and duplicative parts of the current process, and adding the new position of Police Auditor to oversee the proper functioning of the system. The recommendations to accomplish these changes and some related recommendations to further the transparency of the accountability systems related to the operation of the Portland Police Bureau (PPB) are set forth in detail below.

### **A. The Need For a More Comprehensive, Independent Citizen-Based Accountability System for the PPB**

Modern day police departments, including the PPB, regard “citizen complaints as important *management information*, data that are an important part of accountability. Even complaints that are not sustained in favor of the citizen represent information about officer performance that supervisors need to know about. The San Jose, California, Independent Police Auditor argues that each complaint ‘matters.’”<sup>2</sup> *The New World of Police Accountability*, Walker and Archbold (2nd ed. 2014), p. 104.

“One of the most important themes in the new accountability [of the police] is the focus on organizations rather than individual officers.” *The New World of Police Accountability*, p. 21.

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<sup>1</sup> The work group consisted of Debbie Aiona, Dan Handleman, COAB member Rochelle Silver, and AS member Tom Steenson.

<sup>2</sup> “The complaint process is an important tool because it strives to hold SJPD [San Jose Police Department] officers accountable to the communities that they serve. While a small minority of offices receive formal discipline as a result of complaints, complainants can influence SJPD policy and practice when they make their concerns known. Here are some of the reasons why complaints matter, regardless of their outcomes:

- Officers receive Intervention Counseling when their work prompts multiple complaints — even when the complaints are not sustained.
- Some complaints are selected for mediation, an invaluable opportunity for both complainants and the officers to gain deeper understandings of their experiences.
- The IPA [Independent Police Auditor] tracks trends in complaints that often shape our police recommendations to SJPD.”

*The New World of Police Accountability*, page 105, Figure 4.1 (Source: San Jose Independent Police Auditor, *2011 Year End Report* (2012), p. 29.

As different police experts have commented, “the problem of officer-involved shootings [i]s not a matter of a few bad officers but poor management practices” and “police reform needs to focus on ‘rotten barrels’ rather than rotten apples.” *Id.* “[R]eform efforts have focused too much on notorious incidents and misbehaving individuals,’ and not enough on police organizations that sustain a ‘police culture that facilitates and rewards violent conduct.’” *Id.* Thus, “[c]hanging police organizations, rather than changing single policies or prosecuting individual officers is the focus of ‘pattern and practice’ by the Civil Rights Division of the U.S. Department of Justice [DOJ].” *Id.*

At the conclusion of its investigation of the Portland police, the DOJ made findings regarding a number of causes of the pattern and practice of excessive force being used by the Portland Police Bureau (PPB) against those with actual or perceived mental illness.

“[W]e find reasonable cause to believe that PPB engages in a pattern or practice of unnecessary or unreasonable force during interactions with people who have or are perceived to have mental illness. In this letter, we discuss the need for revised policies, training, supervision, and timely, thorough internal review of use of force in this context.” DOJ letter to Portland Mayor Adams, dated 9/12/12 (Findings), page 1.

“PPB, along with the City, should streamline its investigation and adjudication of complaints of officer misconduct to give greater effect to and faith in the process. Currently, PPB has a number of fragmented processes for review of uses of force, none of which result in timely individual or systemic corrective action.

An open, fair, and impartial process for receiving and investigating citizen complaints serves several important purposes. An appropriate citizen complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence in and respect for PPB. Improving the current procedure for handling citizen complaints at PPB would maximize these goals.

PPB and Portland have admirably sought to include civilian and public participation in the complaint intake and review process. \* \* \* However, the efficacy of the system is undercut by the unreasonable delay in reaching an outcome from a complaint. Additionally, the layers of review have provided escape valves inappropriately eviscerating full administrative investigation and corrective action for some complaints.” *Id.*, pages 26-27.

Finally, the DOJ found that “the force review interactions with the complaint system are so byzantine as to undercut the efficacy of the system.” *Id.*, page 27.

The DOJ's monitoring of the implementation of the Settlement Agreement to bring about organizational change in the PPB and the important roles of the Community Oversight Advisory Board (COAB) and Compliance Officer Community Liaison (COCL) in that effort will come to an end some day. With that in mind and in recognition of the need for continuing citizen oversight of the PPB, the AS has undertaken a review of the existing system(s) for citizen oversight of the PPB with the goal of strengthening and expanding that oversight to ensure that reforms brought about by the Settlement Agreement will not be lost or marginalized over time. Similarly, the AS wants to ensure that citizens will have an ongoing voice as additional reforms will no doubt prove necessary in the future.

## **B. The AS and its Work Group's Review of the Current Citizen-Based Accountability System for the PPB**

To begin its review of the existing system for citizen-based oversight of the PPB, over the last several months the AS scheduled and received public presentations from the Independent Police Review Division (IPR), the Citizen Review Committee (CRC), the Portland City Auditor, Portland Copwatch and others. More recently, the AS has studied and reviewed existing systems for citizen oversight of the police in Denver (see: <https://www.denvergov.org/content/denvergov/en/citizen-oversight-board/about-us.html>) and San Francisco (see: <http://sfgov.org/occ/>), the recent report recommending significant reform in police oversight in Chicago (see: [https://web.-mail.comcast.net/service/home/~/?auth=co&loc=en\\_US&id=536812&part=2.2](https://web.-mail.comcast.net/service/home/~/?auth=co&loc=en_US&id=536812&part=2.2)), *The New World of Police Accountability*, miscellaneous articles and other information regarding comprehensive, independent citizen-based oversight of the police.

## **C. Recommendations from the AS's Work Group**

The AS's work group believes its recommendations regarding complaints of misconduct by a PPB member involving a member of the public (community complaint) will make it less "byzantine" and help streamline the complaint process for those types of complaints. As one example, the work group makes a recommendation to eliminate the use of the Internal Affairs Division to investigate community complaints. Regarding community complaints, the work group also makes a recommendation to eliminate the Commander's review of the investigation and send community cases to a panel of the CRC for recommended findings and discipline rather than using the Police Review Board (PRB). The attached table provides a comparison of the current complaint process for community complaints and what the work group recommends.

The work group joins in the conclusion reached by commentators and community members in Portland and elsewhere that a critical component for ensuring police accountability and guiding successful police oversight is citizen involvement and input at every possible stage, including hiring and firing of officers, policy making, training, equipment, supervision, early intervention, investigation of misconduct complaints, discipline, and allocation of police resources. To some degree, the AS believes the existing citizen oversight of the PPB can be reshaped to ac-

comply with the oversight of those functions but additional reform and additional funding also is recommended.

The AS's work group's recommendations regarding citizen oversight are listed below.<sup>3</sup>

1. The complaint system should be streamlined by moving all community complaints to the purview of the IPR and CRC, eliminating unnecessary and duplicative parts of the current process, and adding the new position of Police Auditor to oversee the proper functioning of the system.

**a. Overall Operation of the IPR and CRC**

2. The Director of the IPR shall be selected by the CRC in conjunction with the Portland Auditor. When evaluating the performance of the Director of the IPR, the Portland Auditor shall consult with and seek the input of the CRC.

3. The IPR should have an annual budget and administrative staff adequate enough to allow it to effectively perform its responsibilities.

4. The IPR should have a sufficient number of full-time complaint investigators to ensure the timely investigation of complaints against members of the PPB involving the public.

5. When the Police Auditor (PA) (see Recommendations 24-36, below) determines that the Portland's City Attorney Office may have a conflict in advising or representing the IPR and/or CRC, the IPR and/or CRC should have private, outside legal counsel separate from the Portland City Attorney's Office.

6. The IPR will provide comprehensive information to the PA for use in annual reports.

7. The current role of the IPR in auditing and reviewing the overall operation of the PPB should be reduced to the extent the position of PA is created, becomes fully operational and assumes those responsibilities of the IPR.

8. The CRC should be expanded to at least 15 members.

**b. Complaints Involving Members of the Public and Investigation Procedures for Those Complaints**

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<sup>3</sup> These recommendations do not address the PPB's need for a fully operational and effective early warning system. The work group does note that from reading the comments by the DOJ and COCL it appears that the PPB's Employee Information System (EIS), i.e., the PPB's version of an early warning system, is having serious problems.

### IPR's Role:

9. The IPR should have jurisdiction and authority over the administrative investigation of all complaints of misconduct by a PPB member involving a member of the public (community complaints), whether made by a community member, a PPB member, or the IPR Director. There should be no exception for complaints related to officer involved shootings or in-custody deaths. The PPB's Internal Affairs Division should no longer conduct administrative investigations of community complaints.
10. The IPR should take steps to significantly reduce the number of complaints which it dismisses without an investigation. To assist the IPR in doing that, the PA should audit the IPR's dismissal of complaints and make recommendations for improving the dismissal rate.
11. The IPR should conduct on-scene administrative investigations.
12. During its investigations, the IPR should have the authority to compel the testimony of a sworn PPB member.
13. The IPR should accept and investigate anonymous complaints of misconduct by a PPB member.
14. Once a community complaint has been received, the IPR should immediately assign an advocate to assist the complainant in navigating the IPR's investigation process.
15. The IPR should have the authority to recommend all types and levels of discipline allowed by law and as set forth in the PPB's Discipline Guide.
16. The IPR should operate a 24 hour tip line for PPB members to report misconduct of a fellow PPB member.

### CRC's Role:

17. Following the IPR's investigation and with input from the Commander of the PPB member who was investigated, 5 members of the CRC will conduct a hearing and make findings on the disposition of individual community complaints. The community member and his/her advocate, as well as the involved officer, will appear at this hearing. This hearing will be open to the public and the media. Police accountability is in the public interest, which under state law means certain personnel matters may be handled openly.
18. The CRC should also have authority to hear appeals by community members (complainants-appellants) of all complaints of misconduct investigated by the IPR, including those involving officer involved shootings and in-custody deaths. The CRC members who made the findings will be recused from participating the appeal process.

19. Complainants shall have 30 days to file an appeal.
20. Community members should have the option to retain the same advocate from recommendation #14 or to have the IPR assign a new advocate to assist them in formulating an appeal, to navigate the appeal process, and to appear with them at the appeal hearing.
21. The CRC should have the authority to recommend a reformulation of the allegations and issues being considered at either the initial or appeal stage if the IPR's categorization doesn't properly match the complainant's concern to PPB policies.
22. The CRC should have the authority to compel the appearance and testimony of a PPB member during an appeal.
23. The definition of "supported by the evidence" and the standard of review should be changed to "preponderance of the evidence."
24. The CRC should have the authority to recommend all types and levels of discipline allowed by law and as set forth in the PPB's Discipline Guide.
25. The PPB's ability to request a conference hearing with the CRC should be eliminated.
26. The time which the CRC has to complete the appeal process should be expanded from the current 21 days to a more reasonable period consistent with a recommendation to be made by the PA. Delays caused by further investigation by the IPR or refusal by the PPB to accept recommendations should not count against the CRC as part of the appeal timeline.

PRB's Role:

27. The Police Review Board (PRB) should no longer review community complaints, whether made by a community member, a PPB member, or the IPR Director. This recommendation is not intended to impact the PPB's use of the PRB to review complaints that do not involve a member of the public.

**c. Policy-related Issues Pertaining to Hiring and Firing of Officers, Policy Making, Training, Equipment, Supervision, Early Intervention, Investigation of Misconduct Complaints, Discipline, Allocation of Police Resources, and Other Issues of Concern to the Community and Other Interested Stakeholders**

28. The position of Police Auditor (PA) should be created. The PA should be independent and separate from the PPB.

29. The PA should be selected by the CRC in conjunction with the Portland City Auditor. The PA may be removed from office by the Portland City Auditor and only for cause and through a clearly defined removal process.
30. The Portland City Auditor should develop a list of the qualifications necessary for the PA. To avoid the appearance of possible bias, the PA should not be a former police officer.
31. The PA should have an annual budget and adequate staffing to fulfill its responsibilities.
32. The PA should have the authority and responsibility under the direction of the CRC to carry out audits and reviews and make findings and recommendations regarding policies and practices related to hiring and firing of PPB members, policy making, training, equipment, supervision, early intervention, investigation of misconduct complaints, discipline, firing, allocation of police resources, the operation of the IPR, and other issues of concern to the community and other interested stakeholders regarding the PPB. In doing so, the PA should have unfettered access to PPB data, records, reports, materials, and personnel, like the IPR is currently authorized.
33. In conjunction with the PA, the CRC should be responsible for (a) assessing whether the IPR is effectively performing its duties, (b) handling appeals regarding community complaints about PPB misconduct, (c) making recommendations on policies and practices related to hiring and firing of PPB members, policy making, training, equipment, supervision, early intervention, investigation of misconduct complaints, discipline, and allocation of police resources, (d) and addressing issues of concern to the community and other interested stakeholders regarding the PPB. In addition to hearing appeals, the CRC should meet at least quarterly in public with the Commissioner in Charge of the PPB and the Chief of Police and should conduct at least three public forums annually for public comment. The CRC should also make an annual comprehensive report to the public, Mayor, Commissioner in Charge of the PPB, City Council, Police Chief and PPB and furnish additional public reports as necessary.
34. The PA should have the authority to examine individual incidents and complaints and raise concerns about the quality and integrity of an investigation generally as well as the quality and integrity of the findings.
35. The PA should obtain input from members of the public to aid its work.
36. The PA should have the authority to examine information and data in the aggregate and identify patterns, determine whether the patterns reflect systemic problems, and, if so, make findings and recommendations on how to address them.
37. The PA should investigate the use of mediation to resolve complaints investigated by the IPR to ensure it is only used in appropriate cases and not in cases involving the use of force, bias and other significant matters of police misconduct.

38. The PA should investigate the time which the CRC needs to complete the appeal process and make a finding and recommendation to the CRC as to what a reasonable period would be.

39. The PA will make an annual comprehensive report to the public, Mayor, Commissioner in Charge of the PPB, City Council, Police Chief and PPB and may furnish additional public reports as necessary. The annual report will include information previously reported by the IPR, with a summary section but also complete with tables, data and analysis similar to the IPR's pre-2009 reports.

40. When the PA determines that Portland's City Attorney Office may have a conflict in advising or representing the PA, the PA should have private, outside legal counsel separate from the Portland City Attorney's Office.

#### **d. Other Recommendations**

41. The range of possible findings for the resolution of a complaint investigated by the IPR should be restored to "Unfounded, Insufficient Evidence, Sustained, and Exonerated."

42. The Portland City Council will retain its authority to make the last determination regarding a community member-appellant's appeal of a complaint. The Council should be authorized to consider new evidence.

43. In its reporting of officer involved shootings and in-custody deaths, the PPB should include data for all such incidents regardless of what the Medical Examiner may have determined was the cause of death.

44. The PPB should list all disciplinary actions on its website, including a brief description of the violation(s) of policy or reason(s) for the discipline, officer's name, number of years on the force, gender, and race. The PPB should also include the age, gender, and race of the community member(s) subjected to the conduct for which the officer was disciplined.

45. There should be an explicit PPB policy stating that PPB members have a duty to report misconduct by another PPB member and to ensure that the complaint, if it relates to misconduct involving a public member, is made to the IPR.

46. Meetings held by the IPR, CRC (including appeals by community members), Training Advisory Council, and Behavioral Health Unit Advisory Committee shall be open to the general public.