

**COMPLIANCE OFFICER AND COMMUNITY LIAISON**

*Feedback on PPB's Crowd Control  
and Force Management Documents*

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For the City of Portland, Oregon

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## Introduction and Overview

On March 29<sup>th</sup>, 2021, the City and PPB provided the COCL and DOJ with the following documents: "2020 Portland civil Unrest After action and recommendations formal versi...(FINAL)"; "Challenge and Solution analysis 2020 final"; and "2020\_Civil\_Unrest\_AAR dobson". The COCL has reviewed these documents and provide the following formal feedback.

We acknowledge that PPB has made an initial effort to analyze the organizational problems associated with the management of force during the protests and civil unrest that occurred in 2020. However, from our perspective, these documents are not sufficiently responsive to the technical assistance provided by the COCL in our 2020 Q4 Compliance Report. In that report, we noted that the failure of PPB to appropriately manage force throughout the summer protests was "connected to a system that was not designed for such prolonged and intensive events. As a resolution, PPB should take steps to ensure that its system can adapt should the future bring more unrest." In reviewing the assessment documents, we are not satisfied that such steps have been taken and do not believe the reports adequately address the relevant compliance issues. We appreciate that PPB recognized and immediately corrected some command and control problems during the protest period (e.g. too many Incident Commanders), but that does not address the larger management issues around staffing, training, and documentation of events.

As an initial comment, we noted the informal language and structure of the assessment reports provided by PPB, calling into question whether these documents were to be considered an official Bureau document or whether they were prepared solely for the benefit of COCL and DOJ. The reports are not formally formatted and appear to be in draft form despite being designated "final." Additionally, with the exception of the Master After Action document, the documents are anonymous, leading us to wonder whether they represent an official Bureau position or the opinion of the individual author. Assuming these are recommendations to the Chief of Police, the Police Commissioner, or the City Council, we see no evidence that the recommendations have been reviewed and approved. This would be a necessary step for compliance, particularly given that PPB is planning (in a few months) for In-Service Training and Crowd Control Training for all sworn personnel, and RRT training -- all with topics relevant to the 2020 protests. We wonder how PPB will inform members of any changes to policy or operations based on these reports or whether members will walk away with the understanding that, while deficiencies in crowd control were identified, PPB has not changed any managerial or street-level operations relevant to the use of force.

In executing a sound approach to problem solving, we look to see whether the assessments included (1) a clear, well-researched and accurate definition of the problems; (2) a comprehensive evaluation of the extent of such problems; (3) proposed solutions to the problems that are feasible and compelling, i.e., a remediation plan; (4) the high-fidelity implementation of the remediation plan; and (5) built-in mechanisms to assess the effectiveness of the plan in addressing the problems. In each of these areas, we either found deficiencies in the assessment or note a complete absence of assessment.

While PPB identified some large-scale contextual problems that contributed to poor performance (e.g., the number of operational periods, the scale of the protests, staffing issues, or the actions of Bureau partners), the assessment does not identify or fully admit to specific problems with applications of force, review of force, command and control, accountability, or the documentation and effectiveness of PPB's response on a night-by-night basis (among other topical omissions).

In other areas, PPB identifies problems by making causal statements without any empirical evidence. For instance, the master After Action begins by assuming that the COVID-19 restrictions on the freedoms of Portland residents was a primary driver of the animosity towards PPB, in contrast to alternative explanations provided by community members and experts (not withstanding PPB's own lack of expertise to make such causal statements regarding the COVID-19 restrictions). Other instances of causal statements without proof were found throughout the assessment, leading the COCL to question the rigor with which PPB conducted the reviews, particularly given the failure to include more relevant assessments where PPB can claim expertise, such as uses of force. Also, placing the blame on external factors, from the governor to the pandemic, draws attention away of the actions of PPB members and changes needed to manage events of this nature in the future. PPB should focus on the factors they can control (e.g. front-line supervision and the monitoring of munitions used per night) and not on factors they cannot control, such as the psychology of the pandemic.

We now discuss particular topics and recommendations where PPB's assessment (and corresponding recommendations) is problematic or outright absent.

### Missing Assessments

Command and control of large events is critically important, particularly given the events of 2020. However, there is no analysis of PPB's leadership and supervision throughout the protest events. For instance, we saw no evaluation of the IC's decision-making or evaluation of how the IC's tactics changed across different nights and circumstances. On a smaller scale, we saw no evaluation regarding supervisory control of officers in the field nor any evaluation of supervisory directions given to officers. Related to this, we saw no evaluation of how supervisors modeled behavior for officers, particularly as it relates to the importance of using and reporting Constitutional force.

Additionally, we saw no real evaluation of the force used by PPB members throughout the protest events. For example, despite being the subject of a legal ruling as well as DOJ and COCL admonishments, the assessments remain surprisingly silent on whether members were consistent (and accurate) in their definitions of active aggression. Additionally, the assessments do not provide any evaluation of the types and number of force applications used or their effectiveness in achieving a lawful objective. The fact that the evaluations was overall silent on whether PPB's use of force was constitutional and effective is of great concern given the presumed goal of the review.

Related to this, PPB does not provide any assessment of their successes/failures in holding officers accountable as a result of

unconstitutional force or administrative responsibilities in reporting and reviewing force. **Accountability is at the heart of police reform and is a significant component of the Settlement Agreement**; however, based on a reading of the evaluation, one might come to the conclusion that PPB experienced no issues in holding officers accountable. At a minimum, we would expect to see an exploration of the accountability issues resulting from the protests.

As another area where a careful assessment was lacking is documentation of force events and accountability for documentation. PPB has admitted that throughout the protests, documentation of force events was consistently problematic. **In the absence of strong supervision, PPB was unable to document the number and types of force applications, leading to an inability to account for all force events. Yet despite this being known, no evaluation of the scope of the problem was conducted and no pre-deployment suggestions were made to remedy the issue.** For example, if PPB counted the total number of munitions possessed by officers at the start of any shift, they should then be able to determine the number of munitions used during the shift by conducting a count at the end of the shift.

Finally, although de-escalation is required by the Settlement Agreement, and has been emphasized by COCL and DOJ for years as the primary mechanism to avoid or minimize the use of force, **there is no evaluation of the de-escalation tactics used by PPB members nor their effectiveness.** For instance, while a small portion of the report touches upon attempts at communication with peaceful protestors, no discussion is found about the failures of communication with others in the crowd. Similarly, **there is no discussion about the effectiveness of other de-escalation tactics**, including the use of warnings by individuals, verbal and non-verbal communication (including stance and militaristic dress), or attempts to create rapport (among other tactics). While some of these may be inappropriate during combative engagement, other opportunities existed during natural cooling-off periods and PPB should have evaluated whether officers took advantage of these opportunities and the level of success achieved.

#### **Insufficient Assessments**

*Too Many Reports:* PPB defines the problem as too many After Action Reports (AAR) and Force Data Collection Reports (FDCR). The main solution taken in 2020 was to assign two sergeants to assist. While perhaps a short-term solution related solely to timelines, we note that this did not solve the actual problem of critical review, particularly given PPB's admission that "the sergeants doing the AARs for RRT were not present during the events and therefore relied on reports rather than interviews to analyze force events." PPB also suggests "longer timelines" for review though this has serious implications for member recall and more so if protests occur repeatedly on a nightly basis.

*Video that couldn't be used:* PPB admitted that during the AAR process, they received external video evidence "that was not used to analyze force events because there is currently no system in place to link the video to an AAR." As a result, PPB may "look for ways" to incorporate such video evidence into existing AARs but provided no specific recommendations. The proper review of force is all about the availability of good evidence, and it appears to be short supply in

Portland. Since 2016, COCL and others have recommended body worn cameras (BWCs) to address this and other evidentiary problems. Of the largest 75 municipal police agencies in the U.S., Portland is the only city without body worn cameras. This report recommends BWCs but does not include any current plans to request funding.

*Missing, incomplete, or incorrectly numbered FDCRs and AARs:* The proposed solution here is using SharePoint Enterprise to track force-related reports. While this tool would be a good start, it not responsive to the actual problem which is one of accountability. **No amount of technology will solve this problem without concurrent organizational will.** Therefore, suggestions related to ensuring officers and supervisors write FDCRs and AARs in a complete, accurate and timely manner are more appropriate. While software might ultimately help to accurately track force reports after the fact, members will need to do the work upfront.

*AAR and FDCR forms don't allow for accurate documentation of crowd control:* PPB's solution is to redesign the forms for this purpose, but specific changes were not proposed. In any event, we are not convinced that the issue at hand is the form as officers have always had the opportunity to provide the details about force applications in the narrative section of the current forms. The issue at hand is that in 2020, that task was poorly done in many cases.

*Reporting requirements of Force directives:* PPB provides an insufficient definition of this problem by simply referring to: "Reporting requirements in Directive 1010.00 Use of Force, 635.10 Crowd Management/Crowd Control, 905.00 Non-Force After Action Reporting, and 900.00 General Reporting Guidelines." The proposed solution was also insufficient: "Review of all above listed Directives for possible amendments for large-scale and/or long-term crowd management events." The COCL team is left wondering what the detailed plan is - what is the problem that requires revision of the directives? What does PPB plan to change about these directives that will resolve the problem with reporting requirements? Some changes might be needed, but in the current context, we hope that revisiting the directives will not be used to justify current crowd control tactics or be more permissive in these settings, but rather to improve them. **We believe such changes to directives are less important than ensuring that officers follow the current directives when responding to protests - policies that have been revised by PPB and approved by DOJ and COCL during this Settlement Agreement.**

*Shortage of Communication staff:* PPB has added two members and would like backups. Although staffing is important, the content of the messages are equally important. **The Chief's office must take control of the messaging, and the** PIO must be able to release factual information about protests in a timely manner. However, if the PIO does not have complete and accurate information about what is happening, where it is happening, and why it is happening, then PPB's communications agenda is compromised. **Collecting and disseminating complete and accurate information is essential to demonstrate transparency.**

*Justifying Use of Force:* As we note above, PPB needs to better justify the use of force against a crowd or individual. Where PPB does propose solutions, they propose training, Sharepoint, and video data. We do not object to any of these ideas, but they should not be presented as complete solutions, and PPB should begin with clearer

problem definitions. Additionally, while we believe that training is critical, PPB has yet to develop any lesson plans for proposed crowd control training, nearly seven months after the protests ended and more months when considering that some of these issues were immediately identifiable in June and July of 2020. Furthermore, training only goes so far when subsequent steps are inconsistently applied. After officers have been trained on policy, there must be consistent supervision, intervention, and discipline for those who violate policy – critical issues not covered in PPB's report.

Other solutions require a major investment of additional resources and personnel and, while we do not object to PPB's conclusion that additional resources may be needed, we do not believe that additional resources represent the only viable solution.

To be clear, we do not want to be dismissive of PPB's resource concerns if they have a direct impact on their ability to meet the terms of the Settlement Agreement. Several of the current problems, as defined by PPB, are indeed beyond their control, and therefore, require intervention beyond the walls of the organization. But as we noted in our 2020 Q3 report, the Settlement Agreement (Par. 7) is unambiguous: "The City shall be responsible for providing necessary support and resources to enable PPB to fulfill its obligations under this Agreement. The improvements outlined in this Agreement will require the dedication of additional funds and personnel." A complete remediation plan should specify the exact request for assistance and the timeframe. Additionally, PPB must ensure that the City agrees with the remediation being sought. If the City refuses to provide the resources, then other solutions must be developed and implemented.

Finally, we see little discussion of metrics for implementing the remediation plan or ensuring the effectiveness of solutions. As noted above, the major recommendations have not been approved and we are unaware of any concrete plans for policy revisions or corresponding training. When the Bureau goes to approve such recommendations, a solid implementation/evaluation plan will be beneficial in making such determinations.

### Closing Comments

COCL's analysis does not examine all of the "challenges" and "solutions" presented in these documents but should communicate to PPB and the City our main concerns with this self-assessment. Unfortunately, the evaluations do not leave us assured that PPB was sufficiently self-critical in reviewing their response to the 2020 protests. The Addendum to the After Action begins by stating that the PPB "did an excellent job handling the nightly protests," a potentially tone-deaf position given the sentiments of various community members, City representatives, courts, and COCL/DOJ.

Furthermore, the evaluation does not provide sufficient evidence to make such a claim, leaving absent evaluations related to force, force avoidance, force documentation, and accountability. Where issues are explored in the evaluation, many proposed solutions either are overly vague or require actions by external actors. This does not provide evidence of PPB being self-critical.

In all, the assessments appear largely inconsistent with the technical assistance provided by COCL and DOJ, as well as the expectations created heretofore with respect to problem-solving approaches necessary to comply with the Settlement Agreement. We are open to further discussion of our concerns; however, we recommend that PPB take our comments and revise these assessments to create a (1) single assessment which (2) covers all issues relevant to the Settlement Agreement, including uses of force and accountability, in order to (3) identify articulable and plausible solutions, (4) propose a timetable to implement these solutions with fidelity, and (5) offer a plan to measure their effectiveness. We note that this will likely require significant new training (including supervisors), as well as the implementation of Sharepoint Enterprise software to properly track all crowd control incidents, followed by the proper analysis of force incidents. We continue to strongly recommend that PPB request body worn cameras to demonstrate evidence-based policing, improve training and supervision, and dramatically increase accountability to the public. We are willing to working with PPB to discuss remediation plans and provide additional technical assistance as needed.