



CITY OF PORTLAND

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MEMORANDUM

Date: November 8, 2010

To: Police Oversight Stakeholder Committee

From: LaVonne Griffin-Valade, City Auditor

Subject: Response to September 21, 2010 final report from the Stakeholder Committee

I appreciate the opportunity to respond to the recommendations put forward by the Police Oversight Stakeholder Committee in its final report. Recommendations and my responses are listed below. In most cases, I have included only the summary recommendation as presented in the Committee's report. It may be helpful for readers to refer to the Committee's full report when reviewing my responses.

I want to acknowledge the commitment and dedication of the individuals and groups actively involved in strengthening police oversight in our community, including the Police Oversight Stakeholder Committee. I want to also extend my appreciation for the ongoing work of the Citizen Review Committee (CRC), the volunteer body that advises and monitors the Auditor's Independent Police Review division and hears appeals of complaint decisions.

RECOMMENDATIONS & RESPONSES

I. IPR authority & structure

A. Repair community distrust of use-of-force investigations (up to and including shootings and in-custody deaths). I agree. I have undertaken such efforts over the past eighteen months and will continue to do so. For example, the March 2010 changes to the ordinance authorizing the work of the Auditor's Independent Police Review (IPR) division in my office, as well as the changes to the Police Review Board, strengthened the civilian oversight role of IPR considerably. In addition, IPR's community outreach function expanded greatly through the hiring of a coordinator. As a result, IPR now has a more effective and positive link to the community.

B. Ensure that IPR investigations include specified more serious complaints. I agree. However, decisions regarding any investigations conducted by IPR will be made on a case-by-case basis and will be subject to available staff resources and to budget constraints.

C. Ensure that IPR has, and exercises, the power to conduct or participate in investigations (from time zero) of specified serious incidents...including police shootings, deaths in custody, and other serious injury incidents... I agree. This is largely current practice in IPR. Regarding IPR's participation in investigations of officer-involved shootings and in-custody deaths, we are currently developing a process to participate "from time zero" in the investigations of any such future incidents involving Portland Police Bureau members.

D. Ensure that IPR has the authority to compel officer testimony and directly interview police officers in administrative investigations. I do not disagree, but this matter is up to Council and subject to collective bargaining.

E. Ensure investigations conducted by IPR or IAD and reviews by CRC can proceed in a manner that is consistently and objectively independent. I agree. As the independently elected Auditor, I am responsible to the public and to the Police Bureau for ensuring a high level of consistency, objectivity, and neutrality in the investigations IPR conducts, the audits of the Audit Services Division in my office, and any other review of the Police Bureau conducted under my authority.

F. Make it easier for the Auditor to hire outside counsel at the Auditor's discretion. I agree that the City Auditor needs the authority to hire outside legal counsel where potential conflicts of interest exist. The responsibilities of the Auditor's Office were established as part of the City Charter and through the mutual agreement of Council and the Auditor. This allows for independence regarding the management and operations of those accountability programs and divisions in the Auditor's portfolio. Some decisions made by the Auditor directly or through the various oversight functions within the Auditor's Office, are in conflict with the decisions made by other City bureaus also represented by the City Attorney's Office. My position on this matter should not be viewed as a criticism of the City Attorney's Office. However, from my perspective, instances of actual or perceived conflict of interest have occurred, and I plan to ask the Charter Review Commission to take up the issue when they convene in 2011.

G. Require that IPR investigate or actively participate in the investigation of all complaints of those with the rank of captain or higher. I agree that IPR should actively participate in investigations of sworn Police Bureau members at the rank of captain or higher, and such participation is current practice. Decisions to investigate any sworn Police Bureau members of any rank must be made on a case-by-case basis and must be subject to available resources.

H. Diversify the pool of investigators at both IPR and IAD... I agree, and as future opportunities become available, I will make every effort to ensure that the pool of investigators at IPR is demographically diverse and from diverse experiences.

I. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response. I disagree. Doing so would not contribute to the neutral, objective tone that IPR is responsible for establishing and maintaining with complainants and with the Police Bureau throughout the complaint intake, review, and decision-making process.

J. If complainant opinions support doing so, increase investigative resources at IPR. I do not disagree. However, there may be many reasons for increasing investigative resources at IPR, including greater workload demands, diversifying the workforce, and adding staff with specialized skills and training. Any effort to increase investigative resources is subject to funding approval by Council.

K. Formalize/mandate what is current practice to not use mediation in serious use-of-force cases. I agree. I have directed IPR to confer with other jurisdictions on this matter and to develop language that formalizes current practice.

II. CRC and Council oversight authority/structure

A. Change the definition of "supported by the evidence" as that term is used in Portland City Code 3.21.160 Hearing Appeals. The definition should change from the "reasonable person" standard ...to a "preponderance of the evidence" standard... I disagree. The "preponderance of the evidence" standard is used by those responsible for deciding whether it is more likely than not that a complainant's allegations are true based on the facts of a case. In our system, the commander and voting members of the Police Review Board (PRB) are the fact finders, and they determine whether that standard has been met and make a recommendation to the Chief of Police.

The purpose of an appeal is to allow a complainant or Police Bureau member to challenge fact finder recommendations. The role of the CRC in an appeal hearing is to assess whether or not recommendations made to the Chief were reasonable. It is not the role or responsibility of CRC to make independent judgments regarding the facts of the case or the efficacy of allegations. Rather,

the role of CRC is to determine whether the fact finders acted reasonably in making recommendations. Therefore, the “reasonable person” standard is the appropriate standard.

B. Give CRC the authority/permission to make policy recommendations directly to PPB. I agree.

C. Increase the length of term for CRC members from two years to three years. I agree.

D. Ensure CRC may hold hearings on all appeals requested by complainants or Bureau members. Ensure that CRC may conduct hearings on all appeals within its purview without delays associated with concerns that the outcome of their review could have an impact on a civil claim against the City. I agree, and this is current practice.

E. Clarify CRC authority to present directly to Council. I agree.

F. Permit CRC to compel testimony. I disagree. The appeal of a Police Bureau decision is not an opportunity to re-investigate a case. Rather, CRC has the authority to assess the quality and appropriateness of the Police Bureau’s decision on a complainant’s allegations and recommend that the Chief of Police or City Council take an alternative action. Further, there is no requirement for anyone to attend or participate in an appeal, including the complainant, and there is no sanction for not testifying in such instances.

G. If the CRC is not given authority to compel testimony, then grant City Council the power to hear new evidence. I disagree. City Council’s role is to provide the final avenue for an appellant. It would be counter to Council’s role to hear new evidence that was unavailable to the commander or Police Review Board during the finding of facts. Further, it would not be appropriate for Council to hear new evidence that also was not available to CRC during its review of fact finder recommendations in an appeal hearing.

H. Increase the size of CRC. CRC members recently discussed this issue at length and the consensus opinion was not to increase the size of this body, citing concerns about the practicality of doing so. As such, I will defer to the judgment of CRC.

I. Allow CRC to review proposed allegations prior to investigation. I disagree. One of CRC’s roles is to review IPR’s case handling process and raise potential policy or procedural issues identified in that review. However, it is not CRC’s role to make case handling decisions or factual determinations on individual cases. Allegations are formed based on the facts of the case. Allegations are also fluid and may change over the course of an investigation as more facts come to light.

In addition, the workload for these volunteers is considerable, and timeliness of completing investigations, already an issue for the civilian oversight system, would be further impacted by the need to accommodate CRC members’ schedules.

J. Increase CRC authority to act on dismissed complaints, “service improvement opportunities,” and formulation of allegations. I disagree. IPR already has an internal process in place to provide complainants with an avenue for reconsideration of dismissals.

Also, in addition to reviewing IPR’s case handling process, it is CRC’s role to monitor and advise IPR, and as such, CRC established the recurring audit work group. That work group is currently conducting a review of closed service improvement opportunities and will release its assessment and recommendations to the public in the coming months. Once that report is issued, the recurring audit work group plans to review IPR’s dismissal decisions and again release its assessment and recommendations.

K. Establish an avenue for appeal or reconsideration for cases involving quality-of-service or minor rule violations. I disagree. Again, this is not the role of CRC for those reasons outlined in responses to I. and J. above.

L. Provide dedicated staff to support the CRC. I disagree. IPR currently provides CRC with extensive support including the following: the analyst on staff assists a number of work groups with data collection and analysis; the outreach coordinator assists the outreach work group and works with CRC members on a variety of projects; the Director and Assistant Director assist multiple work groups; and two administrative support staff, one of whom is the CRC’s designated point person at IPR, assist CRC members on an ongoing basis.

In addition, I would not be able to hold a "direct staff person assigned to the Committee" accountable for his/her performance, and that is unacceptable. Finally, no other City commission, committee, or board is given the budget or supervisory authority to hire and direct the work of City employees.

III. Openness, usefulness, and speed of reporting

A. Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three. I do not disagree, but this is a matter for the Police Bureau to address.

B. Ensure that findings indicate a separate ruling regarding the overall incident that would identify the presence of any *policy-related issues* as that term is defined in Portland City Code. I do not disagree, but this is a matter for the Police Bureau to address.

C. Replace the term "service improvement opportunity" with the term "non-disciplinary complaint." I do not disagree, but this is a matter for the Police Bureau to address.

D. Ask opinion on complaint-handling preference. I disagree. IPR management must base case handling decisions solely on the facts in any given case. Asking a complainant his or her preference on how their case is handled would interfere with IPR's responsibility to make neutral and independent decisions.

E. Make it easier for complainants to get publicly available records. Direct IPR and PPB to establish an interagency agreement that would allow the Director discretion to release case-specific records... I disagree, and as the elected Auditor in charge of IPR, I would not be willing to authorize or sign an interagency agreement allowing the Director to release any Police Bureau records. Case-specific records that are generated by and/or are the custodial property and responsibility of the Police Bureau can only be released by the Police Bureau. It would be inappropriate for the Auditor or any staff employed by the Auditor to release any documents made available to them by the Police Bureau during the course of a review, audit, or other analysis.

F. Make certain CRC review documents available to the public. I disagree. Generally, items reviewed by CRC are either Police Bureau documents or IPR case files containing complainant information, correspondence, or Police Bureau generated materials. IPR and CRC are not at liberty to release these confidential records, and as discussed above, Police Bureau documents are the custodial property and responsibility of the Police Bureau, even while being reviewed by CRC.

G. Required reporting on reasons for long investigations. I agree. IPR is currently developing a process for this.

H. Make certain task forces public. I agree. High levels of transparency strengthen accountability and improve public perception.

I. Mandate investigative resource levels. I agree as long as this is not an unfunded mandate.

J. Require prompt explanation for decisions that differ from the Police Review Board's recommendations. I agree, but this is a matter for the Police Bureau to address.

K. Require more specific reporting on the relationship between sustained findings and discipline. I will consider reporting on this in future reports. However, this matter should not be a requirement placed in the ordinance since decisions about the scope and content of any report released by the Auditor's Office are at my discretion and are based on a number of factors.

L. Report on aspects of the "mitigation" process. I do not disagree, but this is a matter for the Police Bureau to address.

M. Order another expert review in 2012. I have already committed to an independent review of the revised Police Review Board processes one year after implementation and barring budget constraints.

N. Hold another stakeholder review. I do not disagree, but Council will need to be prepared to fund facilitation of such a review.

IV. Police Review Board structure/process

A. Do not permit the supervising RU (Resource Unit) commander to vote as a member of the Police Review Board (PRB) in specific situations. I disagree. I support the view of Police

Bureau command staff and the Commissioner-in-Charge that as the direct supervisor, the RU commander's participation on a PRB creates greater accountability and transparency regarding the RU commander's performance as a supervisor. Further, IPR managers are active participants in investigations and are now voting members during PRB sessions. Any concerns they observe regarding the participation of RU commanders or any other voting member on a PRB will be reported to the Auditor and brought before Council for further revisions of PRB processes if needed.

B. Add another citizen member to PRB for use-of-force incidents. I do not disagree, but this is a matter for the Police Bureau to address.

V. Complaint-driven PPB policy improvement process

A. IPR & CRC to be provided drafts of certain policy-change decisions. I agree; however, this is a matter for the Police Bureau to address.

VI. Non-complaint-driven PPB improvement process

A. Request that the Auditor's Office provide regular reports on the status of the Bureau's Employee Information System and on independent analysis of police stop data. I agree. IPR is in the process of doing this.

cc: Mayor Adams
Commissioner Leonard
Commissioner Saltzman
Commissioner Fish
Commissioner Fritz