



**COMMUNITY OMBUDSMAN
OVERSIGHT PANEL**

**OF THE INTERNAL AFFAIRS DIVISION OF
THE BOSTON POLICE DEPARTMENT**

ANNUAL REPORT

July 31, 2008



City of Boston
Community Ombudsman Oversight Panel

July 31, 2008

Dear Mayor Menino and Commissioner Davis:

The Community Ombudsman Oversight Panel (CO-OP) hereby submits our first Annual Report for your consideration and distribution. The Executive Order issued by the Mayor requires us to submit an annual report and provide other periodic reports. We are glad to be able to provide the information, observations and recommendations contained herein, and we believe that this report can play a critical role in enhancing the accountability and operations of the Internal Affairs Division of the Boston Police Department.

Though we were appointed in January 2007, we did not actually begin reviewing cases until October 2007. During the time between January and August we received extensive training from the Internal Affairs Division (IAD) of the Boston Police Department (BPD), the Boston Police Academy, and from the National Association of Civilian Oversight of Law Enforcement (NACOLE), a national association of professionals who lead and manage civilian review boards.

This report summarizes our observations of the Internal Affairs Division process, provides an overview of important statistics in regards to complaints and their outcome, and offers recommendations for improving the IAD process and for enhancing the effectiveness of the Community Ombudsman Oversight Panel process and structure.

An important underlying theme of this first report is the creation of a culture of transparency. We believe that it is extremely important that the public is aware of the process for filing complaints, the rules and procedures that govern the IAD, and an objective assessment of the number, type and results of citizen complaints. This is an important feature and function of any citizen review board, and we hope that this will become a major function of this panel.

We want to thank the Mayor for creating this structure of civilian accountability and for appointing us to this important role. We look forward to discussing the report with both of you, and with members of the Boston community.

Sincerely,

Community Ombudsman Oversight Panel
David Hall, Chair
Ruth Suber, Ombudsman
John O'Brien, Ombudsman



Community Ombudsman Oversight Panel Members

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Ruth Suber

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Executive Summary

This first annual report of the Community Ombudsman Oversight Panel (CO-OP) provides an overview of the history and purpose of the Panel, including the relevant aspects of Mayor's Menino's Executive Order which created the Panel. The report also describes the community outreach activities of CO-OP members since its inception. Panel members met with twenty-five community organizations to explain its mission and to hear concerns and suggestions from residents of Boston.

The report provides a comprehensive overview and analysis of Internal Affairs Division (IAD) data for 2007 and portions of 2008. Charts and graphs reveal trends in regard to the number, type and resolution of complaints against Boston Police personnel. The data is broken down according to whether the complaint was initiated by a citizen or by a member of the Boston Police Department. For example in 2007 there were 227 complaints filed against members of the Boston Police Department. Of that total, 116 were filed by citizens. Lack of respectful treatment and the improper use of non-lethal force were the most common violations that citizens alleged in 2007. The data also indicates that neglect of duty and unreasonable judgment were the most common type of internal complaint. During 2007, 13% of the citizen complaints were sustained, whereas 84% of the internal complaints were sustained. The report provides data in regard to the racial make-up of the complainants and the officers against whom the complaint was made. The geographic locations of the complaints are also detailed in the report.

The data portion of the report also indicates the number of cases that were reviewed by CO-OP, including their outcome and recommendations. (A more detailed review of each reviewed case is contained in Appendix A) The Panel reviewed 14 cases from 2007. Only 2 of those cases were a product of citizens appealing the decision by IAD. The others were a result of a random audit of cases pursuant to the Mayor's Executive Order. Of those 14 cases reviewed, 11 were deemed to be fair and thorough. Various concerns were raised by the Panel in regard to the 3 cases that were not fair and thorough and also in regard to those that were fair and thorough. The report also provides data for a portion of 2008. The trends for 2008 are very similar to those of 2007 with a few minor fluctuations.

The core aspect of the annual report contains observations from the Panel in regard to the cases they reviewed, and recommendations for changes in the investigative practices of the Internal Affairs Division. The Panel also provides recommendations in regard to the future structure of the CO-OP.

The following are some of the observations of the Panel:

- The vast majority of the cases reviewed seem to reach results that were consistent with the facts presented.
- There were instances where the investigations did not appear to be thorough.
- The investigative reports sometimes included conclusive statements without any facts to support the conclusion.

- There were many instances where the investigators used “leading” questions while interviewing the complainant or the officer.
- The final letter sent to complainants from the Superintendent indicating that the complaint was not sustained, does not provide any rationale or summary of the findings upon which the decision was based.
- There was at least one instance of what one reviewer describes as an “escalation” of the event by the officers.
- There were numerous citizens who had a right to appeal the decision of IAD to the CO-OP who chose not to pursue their right to appeal.
- Based in large part on comments from various individuals at community meetings and from community leaders, it became clear to the Panel that there is a strong perception that citizens do not have easy access to filing complaints in supportive and non-intimidating environments.

The following are some of the recommendations of the Panel in regard to the policies and practices of IAD:

- All conclusions contained in an investigative report should be substantiated by facts obtained during the investigation.
- There should be a more serious and concerted attempt to follow-up with witnesses or complaining parties when there is no response to notices that are sent to them. This follow-up should include a visit to the home if necessary.
- A statement of the reason for not sustaining a complaint should be provided to the complainant in the final letter they receive from the Superintendent.
- A study should be conducted by an independent researcher to determine the reasons numerous individuals are not exercising the right to appeal.
- Complaint forms should be made available at locations other than a police station. Serious consideration should be given to the complaint form being translated into languages other than English.

The above observations and recommendations were shared with the Commander of IAD, and many of them have already been accepted and implemented. Others remain outstanding and are delineated in the report.

There were some recommendations of the panel that relate more directly to police conduct and training.

- Officers should be trained and instructed to avoid actions which may “escalate” encounters with citizens or create unnecessary dangers.
- Citizens should be made aware of the reason an officer has stopped them when that information is requested.

The following are some of the recommendations in regard to the structure of CO-OP:

- It is important that investigators respond in a timely and thorough manner to questions raised and inquiries made by panel members.

- The Superintendent should regularly monitor the implementation of recommendations from the Panel and provide periodic updates to the Panel.
- If the number of cases appealed remains low, some adjustment upward in the number of random cases that are reviewed should be considered.
- The Panel should be able to review a limited number of sustained cases so that they can obtain a more balanced perspective of the entire operation in IAD.
- There should be a clear understanding of the need for transparency of data in regard to number, types and outcome of complaints.
- The Complaint Mediation Program that was originally envisioned and incorporated into the Mayor's Executive order should be implemented.
- The Community Ombudsman Oversight Panel should have an operating budget so that basic decisions in regard to training, research, communications, public relations, and data collection can be done in a more efficient and independent manner.

The report also contains important materials in the appendices. Of particular note are the Boston Police Department Rules and Procedures Rule 109, included under Appendix B. These materials contain the rules governing police conduct and the policies governing the complaint process. The Panel has specifically included the Rule because of numerous concerns raised during the community outreach process about the lack of available information in these areas.

History, Purpose and Process

The Community Ombudsman Oversight Panel is charged with reviewing accusations of misconduct against Boston police officers that the Boston Police Department's Internal Affairs Division (IAD) has held not to be viable. Cases can be appealed to the Panel by citizens if they are not satisfied with IAD decisions. Other cases are reviewed by the Panel through a random selection process and others because of the serious nature of the complaint.

History

In 2004, Kathleen M. O'Toole, then Boston's Police Commissioner, pledged to establish a Boston police conduct review board. She was spurred by the emergence of similar panels in other cities and by the death that year of Emerson College student Victoria Snelgrove, who was killed by police firing pepper-pellet guns during unrest following the Red Sox World Series victory. The appointments to the Community Ombudsmen Oversight Panel were made after nearly two years of research on police conduct panels across the country. The board met for the first time in March 2007 and began reviewing case files in October 2007.

Panel Members

The board members, appointed by Mayor Thomas M. Menino, are David Hall, former Dean and now professor at Northeastern University School of Law; John F. O'Brien, Dean of New England School of Law; and Ruth Suber, a former member of the parole board who served in that position for 12 years. Each member serves a term of three years, which may be renewed at the Mayor's discretion. The Panel has selected David Hall to serve as its chair.

Under the Mayor's Executive Order, members, also referred to as Ombudsmen, are selected because of their extensive knowledge and experience in law enforcement, the criminal justice system and/or the judicial process. Prior to reviewing cases the Panel received training at the Boston Police Academy to achieve a better understanding of such topics as use of force, race and community relations, constitutional law and internal investigation and disciplinary processes, among others. The Panel received external training from NACOLE, and one member attended the NACOLE national conference for civilian review professionals.

Duties of the Panel

It is the responsibility of the panel to:

- Provide external oversight of Boston Police Internal Affairs investigations to monitor thoroughness and fairness;
- Receive appeals from aggrieved complainants;
- Participate in outreach to the community as to the Panel's purpose and procedures;

- Periodically review policies and procedures and provide a report to the Mayor and the Police Commissioner documenting cases reviewed, the outcome of the Panel's review for each case and the Complaint Mediation Program's participation level and effectiveness.

Powers of the Panel

The Panel, when reviewing Internal Affairs cases:

- Reviews completed cases as presented by the Boston Police Department's Internal Affairs Division, without the power to subpoena. It cannot interview its own witnesses nor do its own independent investigation.
- Has access to all materials contained in the completed Internal Affairs files subject to review, except those documents protected from release by statute.
- Makes recommendations to the Chief, Bureau of Professional Standards and Development (Chief, BPSD), for further investigation or clarification and recommendations to the Police Commissioner regarding the reviewed cases.

Cases reviewed by the Panel

The Panel reviews the following categories of cases:

- A. Not sustained, exonerated, or unfounded cases involving allegations of serious misconduct and unjustified use of force. The following is the definition of serious misconduct cases developed by the Chief, Bureau of Professional Standards and Development, in CO-Operation with the Legal Advisor.
 1. Not sustained, exonerated, or unfounded cases involving an in custody death or serious bodily injury that occurs while in Boston Police custody.
 2. Not sustained, exonerated or unfounded cases involving use of force by a Boston Police officer which results in death or serious bodily injury.
 3. Not sustained, exonerated or unfounded cases involving allegations of perjury by a police officer.
 4. Not sustained, exonerated or unfounded cases involving allegations that the actions of a Boston Police officer were motivated by a discriminatory intent. The allegation must include specific actions taken by the police officer that led the complainant to believe the action was discriminatory.
 5. Any other not sustained, exonerated or unfounded internal affairs case deemed appropriate for review by the Chief, Bureau of Professional Standards and Development.
- B. A random sample of all not sustained, exonerated or unfounded complaints;
- C. Not sustained, exonerated or unfounded findings appealed to the Panel by complainants who allege that the investigation of their complaint was either

not fair and/or not thorough.

Panel Review Process

For cases in category A or B above, the review process is as follows:

1. The Chief, BPSD, and the Legal Advisor determine those cases to be reviewed pursuant to categories A and B above. To insure the integrity of the IAD process, the panel reviews approximately ten percent of all cases with a finding of either not sustained, exonerated or unfounded.
2. The Executive Secretary to the Panel compiles the cases for review, and presents them to the reviewing Ombudsman. The Executive Secretary assigns case numbers to the reviewed cases. The entire investigative file is provided to the reviewing Ombudsman; however, a staff attorney from the Legal Advisor's Office redacts the file to prevent the unauthorized release of privileged or protected information pursuant to Massachusetts General Laws (Criminal Offender Record information, information protected by the rape shield statute, etc.). The cases are assigned to panel members on a rotating basis based on the order in which they are received.
3. The Executive Secretary notifies the police officer(s) named in the reviewed cases that the case is under review by the Panel.
4. One Ombudsman reviews each case, and the reviewing Ombudsman either finds the investigation to be thorough and fair, or sends feedback to the Chief, BPSD, requesting clarification or further investigation. The Chief, BPSD, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The Ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he makes a determination as to the appropriate finding.
5. If the reviewing Ombudsman determines that a case was investigated fairly and thoroughly, he/she notifies the Police Commissioner, the Chief, BPSD, the Legal Advisor and the named officer(s) of the determination.
6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he notifies the reviewing Ombudsman, the Chief, BPSD, the Legal Advisor and the named officer(s) of the determination.
7. The Executive Secretary maintains all files for the Panel. The files of the Panel are regarded as confidential and are examined only by Panel members, the Executive Secretary and Boston Police Department employees as designated by

the Police Commissioner. The Panel is barred from duplicating documents provided by the Police Department. The files are not available for inspection by the public. The investigative files are returned to IAD within fourteen (14) days of the final determination.

For cases in category C above, the review process is as follows:

1. Upon final determination of a finding on an internal affairs case, notification is sent to the complainant by the Chief, BPSD of the Police Commissioner's finding. If the Police Commissioner's finding is not sustained, exonerated or unfounded, the complainant is informed of his/her ability to seek an appeal of this finding to the Community Ombudsman Oversight Panel. A complainant, who wishes to appeal, must do so in writing within fourteen (14) days of the mailing date of the notice from IAD. If the appeal is sent via mail, the appeal must be postmarked within fourteen (14) days from the date the notice from IAD is mailed.

The appeal can be e-mailed to the following address CO-OP.bpd@cityofboston.gov.

Hand-delivered appeals must be received by close of business on the fourteenth day from the date on the notice from IAD.

Appeals may be hand delivered to:
Community Ombudsman Oversight Panel
Attn: Yola Cabrilla
City of Boston Law Department
City Hall
Room 615
Boston, MA 02201

Appeals sent by mail must be postmarked by close of business on the fourteenth day from the date on the notice from IAD.

Appeals may be mailed to:
Community Ombudsman Oversight Panel
P.O. Box 190189
Roxbury, MA 02119

2. The Executive Secretary stamps the appeal upon receipt and assigns a case number to the appeal. The Executive Secretary notifies the police officer(s) named in the case of the appeal, and provides a copy of the appeal to the Police Commissioner, the Chief, BPSD, and the Legal Advisor. The Executive Secretary prepares the case for the Panel, and assigns the appeal to one Ombudsman. The entire investigative file is provided to the reviewing Ombudsman; however, a staff attorney from the Legal Advisor's Office redacts

the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).

3. One Ombudsman reviews each case, and the reviewing Ombudsman either finds the investigation to be thorough and fair, or sends feedback to the Chief, BPSD, requesting clarification or further investigation. The Chief, BPSD, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The Ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he makes a determination as to the appropriate finding.
4. If the reviewing Ombudsman determines that a case was investigated fairly and thoroughly, he/she notifies the Police Commissioner, the Chief, BPSD, Legal Advisor and the named officer(s) of the determination.
5. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he notifies the reviewing Ombudsman, the Chief, BPSD, the Legal Advisor and the named officer(s) of the determination.
6. The Executive Secretary notifies the complainant of the determination by either the reviewing Ombudsman or the Police Commissioner. All notifications made to the complainant are sent by certified mail, return receipt requested, and 1st class mail.
7. The Executive Secretary maintains all files for the Panel. The files of the Panel, and the statements of appeal, are regarded as confidential and are examined only by Panel members, the Executive Secretary and Boston Police Department employees as designated by the Police Commissioner. The Panel is barred from duplicating documents provided by the Police Department. The files are not available for inspection by the public. The investigative files are returned to IAD within (14) days of the final determination.

Final Decision on Appeals

As stated earlier, the Boston Police Commissioner makes the final decision on appealed cases. Recommendations by the Ombudsmen and the Chief of the Bureau of Professional Standards and Development are considered in addition to case file documents. The Police Commissioner's determination is final and no other appeal is available.

Given the time-consuming nature of reviewing an entire case file—especially a case containing several alleged violations—there is no specific time limit allotted for an appeal. Each Ombudsman may be assigned more than one case file for review at a time.

Community Outreach

The Community Ombudsman Oversight Panel or CO-OP has launched an aggressive outreach program to raise awareness about civilian oversight along with a comprehensive plan to interact with community residents.

The first of many activities to reach various neighborhoods and residents of the City of Boston began in 2007, with the CO-OP's appearance on a weekly public access program. "Talk of the Neighborhoods," a local cable television program focuses on politics and public affairs issues in and around the City of Boston. This program provided CO-OP the opportunity to inform the community about the establishment of the complaint review process.

- **Brochures:**

On July 26, 2007, the Community Ombudsman Oversight Panel published a brochure available to the public. The brochure provides an introduction and information on how to file an appeal. The brochure is given out at meetings and is available upon request.

- **Website:**

A website has been established to give information to the public about CO-OP, its purpose, and the complaint appeals process. The website provides a link to the Executive Order, to a downloadable version of the CO-OP brochure, e-mail address, biography of each panel member, and contact information.

- **Conference:**

In September, 2007, one CO-OP member attended the 13th National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference in San Jose, CA. The panel member returned with a wealth of information from other boards across the country. NACOLE provides information and support for member agencies in this country and around the world. The annual conference provides members with opportunities to learn and network with others who are engaged in the same type of oversight responsibilities.

Outreach activities also included a meeting with members from the professional and legal communities and the press. At the Panel's first outreach meeting, representatives from the following organizations were present - The NLG Lawyers Committee, American Friends and Lawyers' Committee for Civil Rights, Urban League of Eastern Massachusetts, and the Dorchester Youth Collaborative. The Panel also met with the Greater Boston Civil Rights Coalition (Co-sponsored by National Lawyers Guild & American Friends Service Committee) in order to gain additional insights and perspectives from community leaders who have been active in advocating for the creation of a civilian review process in Boston.

As a first step to inform community members of the CO-OP, those areas of the city most affected by police complaints were identified. These areas were primarily in the minority and low income sections of the City and were given priority regarding outreach presentations.

Since February 2008, outreach presentations, designed to educate the public about filing complaints and appeals, have been ongoing. These meetings with members of the community also allowed panel members to listen to the concerns, perspectives and opinions that individuals have about possible police misconduct and about the CO-OP appeals process.

The following is a list of organizations that have held community meetings that the CO-OP participated in during the past five months:

1. Joe Heisler, "Talk of the Neighborhoods."
 2. Lawyers Committee for Civil Rights/American Friends Service Committee and other community leaders
 3. Grove Hall Town Meeting "Project Right."
 4. Roxbury Community College (Reggie Lewis Center)
 5. Multi-Service Center
 6. GBCRC (National Lawyers Guild & American Friends Service Committee)
 7. Boston YMCA
 8. DSOI/Dimock Community Center
 9. Whittier Health Center
 10. Lawyers Committee for Civil Rights/American Friends Service Committee and other community leaders
 11. Egleston Square YMCA
 12. United South End Settlements
 13. Roxbury YMCA
 14. Cooper Community Center
 15. Shelburne Center
 16. Boys/Girls Club Roxbury
 17. Roxbury Comprehensive Health Center
 18. Tobin Community Center
 19. Holland School Cluster
 20. Orchard Park Community Center
 21. Safe Neighborhood Initiative
 22. Boys/Girls Club Roxbury
 23. Perkins Community Center
 24. Area B-3 Dorchester/Mattapan Neighborhood Association
 25. Race and Justice Institute, Northeastern University
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Overview and Summary of Data

As part of the mandate of the Community Ombudsman Oversight Panel we have attempted to compile, analyze and distribute information in regard to the amount, type and resolution of complaints against Boston police officers. The following data was compiled from the IAD IA PRO database and case files. It has been certified as being accurate to the best of their knowledge by the Administrative Assistant for CO-OP, Yola Cabrillana and by Superintendent Kenneth Fong. Members of the Panel have also reviewed how the data is compiled and stored and also believe that it is accurate based on our process of review.

The following is a brief overview of what the data reveals. Chart #1 demonstrates that there were 227 total complaints filed against Boston Police personnel during 2007, 116 of which were filed by citizens. The total number of complaints for 2007 is lower, but within range of the total number of complaints within the previous five years (ranging from a high of 284 to a low of 234). Charts #2 and #3 indicate the type of complaints filed by citizens and by BPD personnel. The data for 2007 indicates the type of citizen complaints fall primarily in the areas of use of force (26%); respectful treatment (27%); conduct unbecoming an officer (16%) and neglect of duty (12%). Internal complaints fall primarily in the categories of neglect of duty/unreasonable judgment, conduct unbecoming and attendance.

Chart #4 indicates the sustain rate for internal complaints (complaints generated by BPD personnel) was 84% in 2007. Chart #5 indicates that for 2007 the sustain rate for citizen allegations was 13%. This means that 71% of the time that an allegation was filed against an officer the allegation was deemed to be unfounded, not sustained, exonerated or withdrawn. There are still 16% of the cases pending final review. Because of the pending cases the numbers above will ultimately change. For 2008 (January through May) the number of sustained citizen allegations increased to 16%. These numbers of 13% and 16% appear to be well within the range of sustain rates of internal affairs departments in other cities. The data on this topic is not uniform, readily accessible or up to date.¹ Chart # 6 demonstrates that for 2008 (January through May) the sustain rate for internal complaints was 80%, and Chart # 7 demonstrates that citizen complaints were sustained at a rate of 17% for the same time period.

Chart # 8 and 9 provide a racial breakdown of the complainant and the accused officer. In 2007 64% of the complainants were persons of color, and 50% of the accused officers were white. Chart 10 shows the geographical location of the complaints during 2007. Mattapan, Roxbury, Dorchester and the South End were the major areas within which

¹ A Study in 2002 indicates that for municipal department the rate was 9%. Another study that focused solely a police use of force cases in 2002 had a range from 8-14%. Source: U.S. Department of Justice, Bureau of Justice Statistics, *Citizen Complaints about Police Use of Force*, Special Report NCJ 210296 (Washington, DC: U.S. Department of Justice, June 2006), p. 3. Table adapted by SOURCEBOOK staff. Some criminal Justice advocates argue the range varies between 10 – 30%. Phone conversation with Jack McDevitt, Northeastern University, July 3, 2008.

complaints were initiated during that year. Chart #11 provides a breakdown of the types of cases the members of CO-OP reviewed in 2007. Of the fourteen (14) cases reviewed only two (2) were from citizen appeals. Eighty-six (86%) percent (12 cases) were randomly selected. Chart # 12 shows the determination of the panel members for those 14 cases. The Panel concluded that 11 of the cases were conducted in a fair and thorough manner. One case was held not to be fair and thorough and 2 cases were held to be fair but not thorough. Charts # 13 and #14 provide the same data in regards to CO-OP cases for 2008. Again, only 2 cases were appealed and the rest were either random or serious misconduct cases. One of those cases was held to be not fair, another not fair and not thorough.

CHARTS AND DATA OF IAD AND CO-OP PROCESS

IAD Complaint Investigations

The following graph illustrates the number of complaints handled by the Internal Affairs Division for the years 2002 through 2007. Complaints are also broken down by those cases which were externally generated and those internally generated.

CHART #1



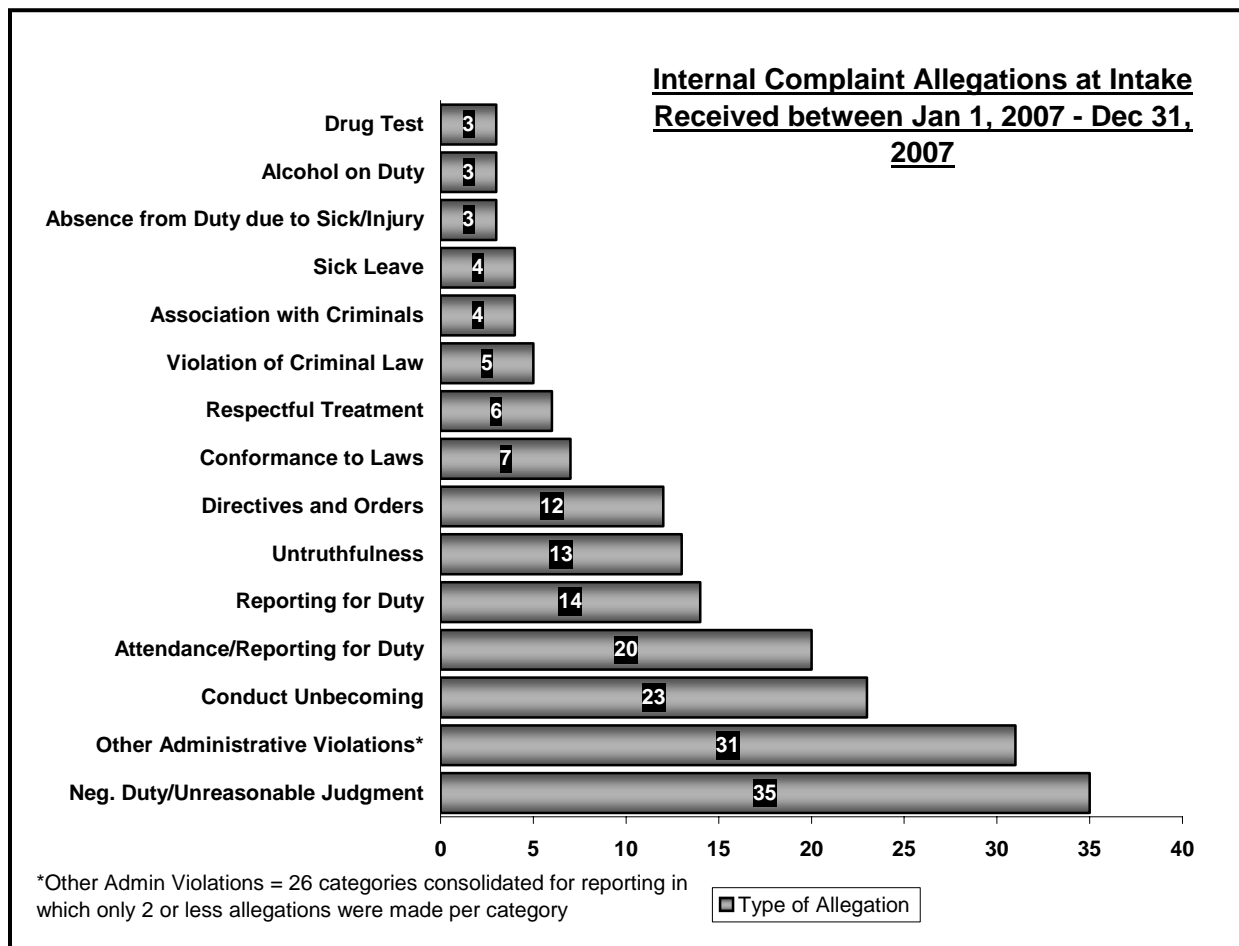
Internal Complaints

Internal complaints are generated by complainants employed by the Boston Police Department. A complaint investigation may contain one or more allegations. Allegation refers to a suspected violation of a rule or procedure that is brought by the complainant against a civilian employee or police officer.

The graph below illustrates a breakdown of allegations by type brought by complainants within the police department during an intake period of January 1st through December 31st in 2007. Allegations at intake are subject to change. Allegations, additional complainants and target personnel may be added during the investigative phase of an internal investigation case.

In 2007, Neglect of Duty/Unreasonable Judgment was internally the most complained of violation brought to the attention of Internal Investigators.

CHART #2



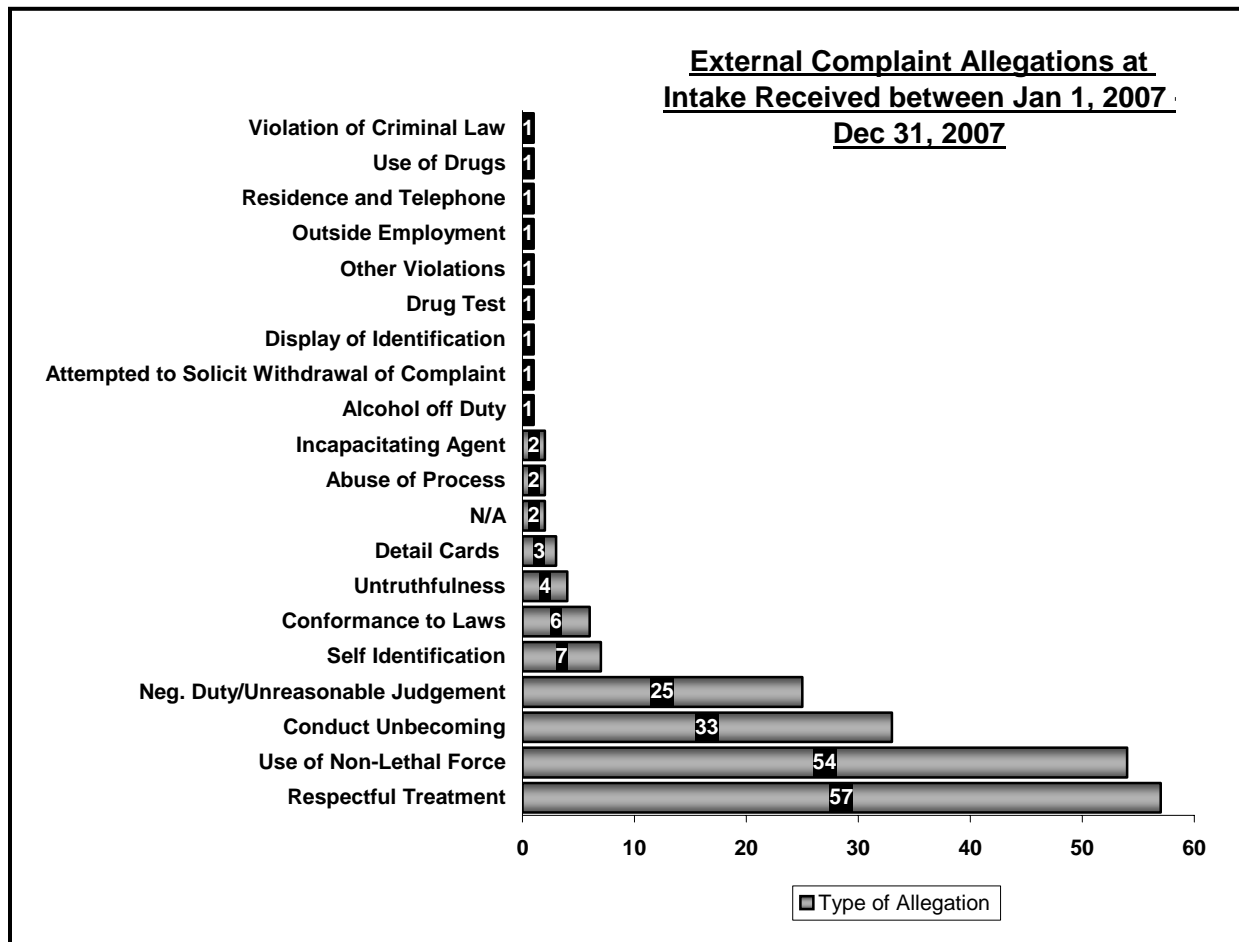
External Complaints

External complaints are generated by complainants not employed by the Boston Police Department. A complaint investigation may contain one or more allegations. Allegation refers to a suspected violation of a rule or procedure that is brought by the complainant against a civilian employee or police officer.

The graph below illustrates a breakdown of allegations by type brought by complainants external to the police department during an intake period of January 1st through December 31st in 2007. Allegations at intake are subject to change because new allegations, additional complainants and personnel may be added during the investigative phase of an investigation.

In 2007, Respectful Treatment was the most complained of violation brought to the attention of IAD by citizen complaints.

CHART #3



IAD Findings

Complainants are notified of complaint findings once the Police Commissioner has made a determination based upon the case investigation and recommendations by members of the Bureau of Professional Standards and Development, the Office of the Legal Advisor and the Internal Affairs Division.

A complaint may result in any of the following findings defined below:

SUSTAINED: Investigation disclosed sufficient evidence to support allegations in the complaint. If it is a criminal case, it is presented to proper prosecuting authorities.

NOT SUSTAINED: Insufficient evidence available to either prove or disprove the allegations in the complaint. The police officer is considered innocent until proven guilty.

UNFOUNDED: The complaint was not based on facts, as shown by the investigation, or the incident complained of did not occur.

EXONERATED: The action complained of did occur, but the investigation disclosed that the actions were reasonable, lawful, and proper.

FILED: A case is placed on file but can be re-opened at any time. Examples for which a case may be filed would be that the investigation was inconclusive due to one or more reasons beyond the control of the investigator or due to a lack of cooperation on the part of the complainant.

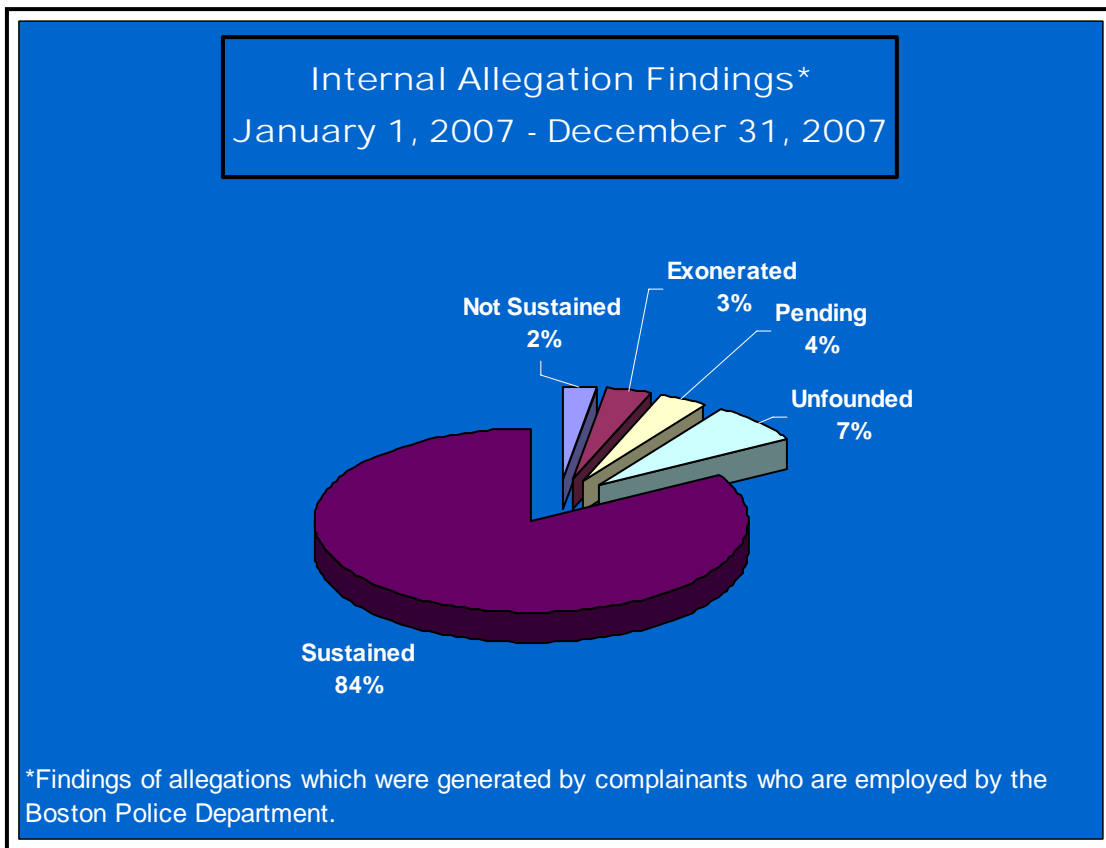
WITHDRAWN: The complainant comes to IAD to sign a withdrawal form to withdraw a complaint. On occasion, the police department may choose to continue with the investigation despite the complainant's desire to withdraw the complaint.

External and Internal Allegation Findings in 2007

The next two graphs illustrate the various findings by the Boston Police Department in regard to allegations during the period of January 1st through December 31st in 2007.

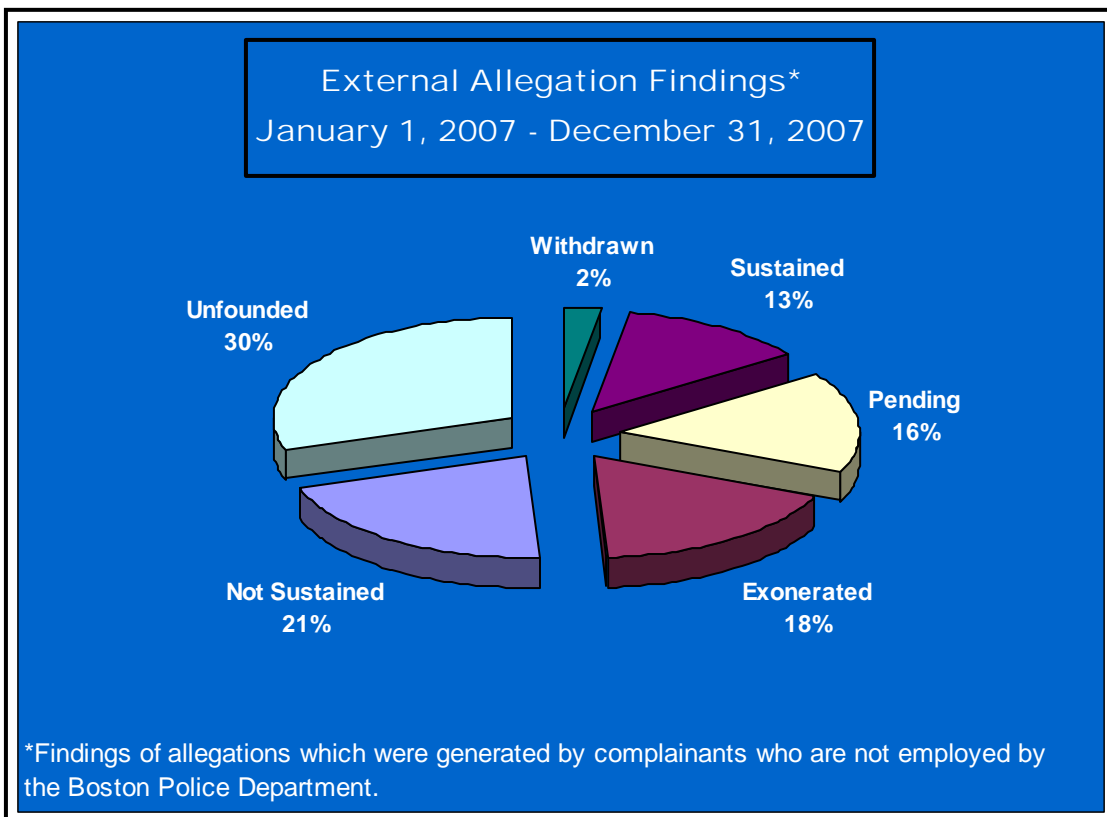
This first graph demonstrates the allegation findings brought forth by personnel employed by the police department. Eighty-four (84%) percent of these allegations were sustained, seven (7%) percent unfounded, three (3%) percent exonerated and two (2%) percent not sustained. Four (4%) percent of cases are still pending from 2007.

CHART #4



The following graph demonstrates the allegation findings brought forth by citizens external to the police department. Thirty (30%) percent of allegations were unfounded, twenty-one (21%) percent not sustained, eighteen (18%) percent exonerated, thirteen (13%) percent sustained and two (2%) percent withdrawn. Sixteen (16%) percent of cases are still pending from 2007.

CHART #5

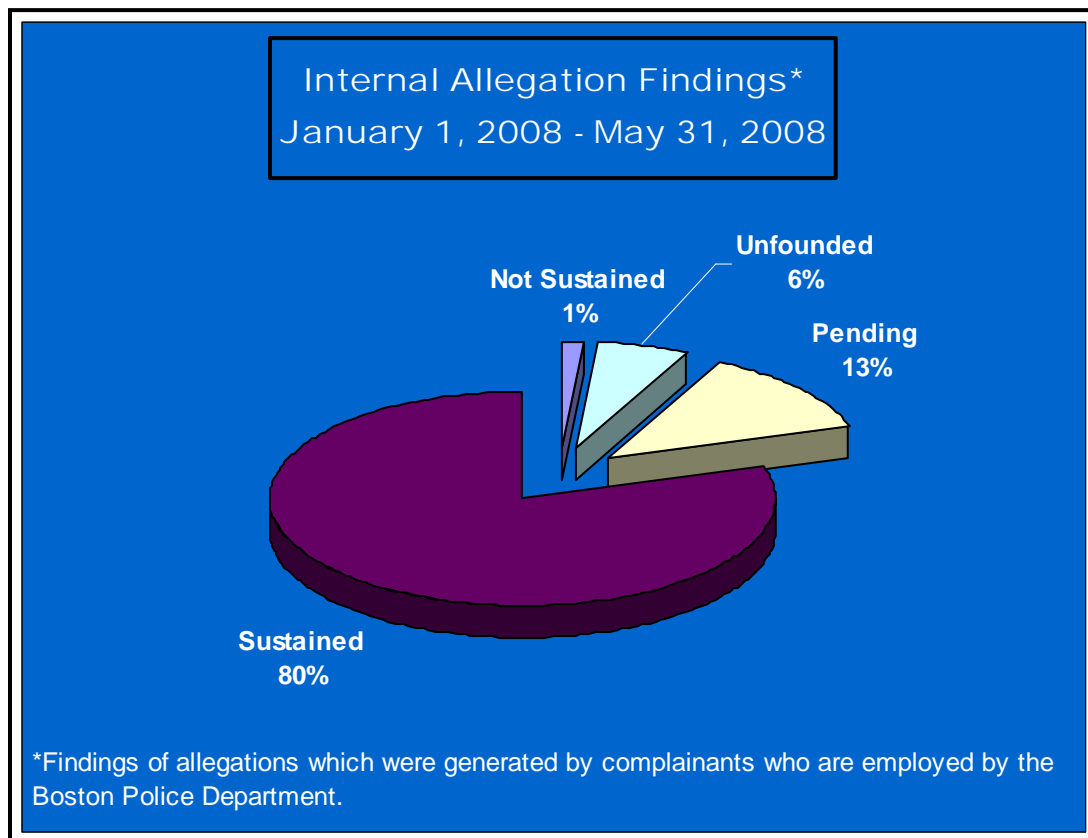


External and Internal Allegation Findings in 2008

The next two graphs illustrate a breakdown of allegations by findings published by the Boston Police Department during the period of January 1st through May 31st in 2008.

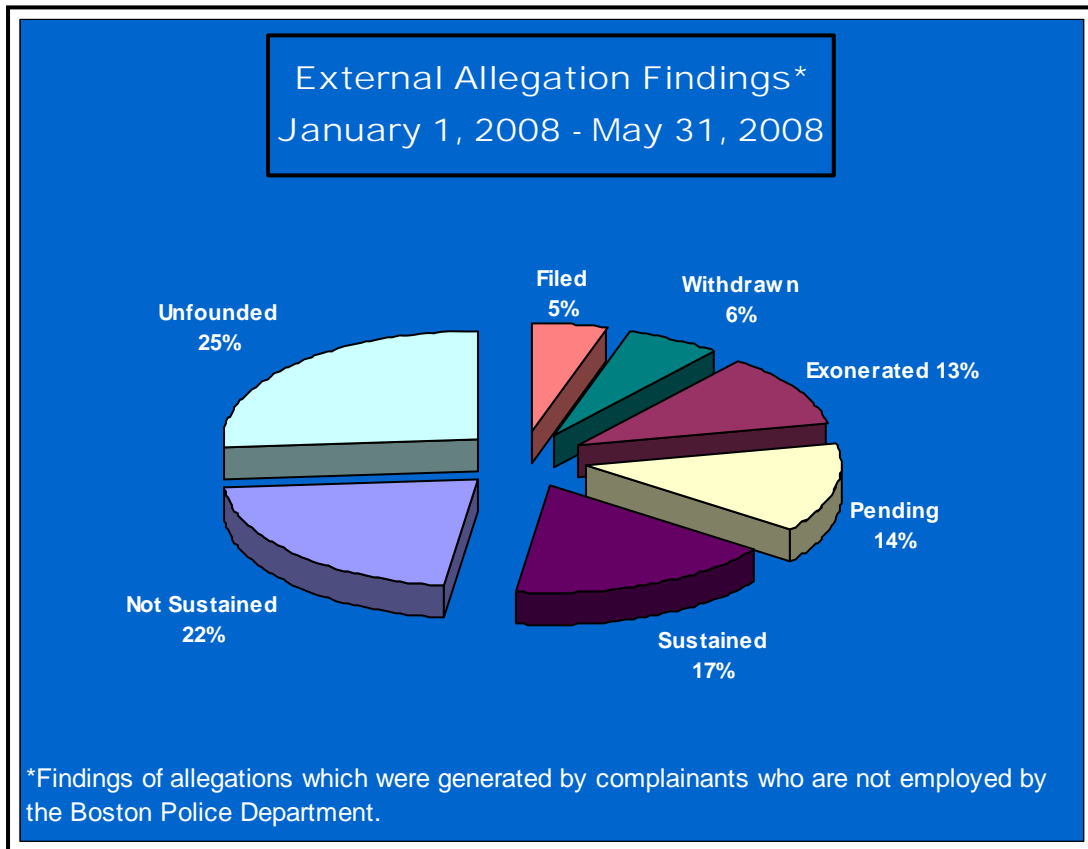
The first graph demonstrates the allegation findings brought forth by personnel employed by the police department. Eighty (80%) percent of these allegations were sustained, six (6%) percent unfounded, and one (1%) percent not sustained. Thirteen (13%) percent of cases are still pending in 2008.

CHART #6



The next graph demonstrates the allegation findings brought forth by citizens external to the police department. Twenty-five (25%) percent of allegations were unfounded, twenty-two (22%) percent not sustained, seventeen (17%) percent sustained, thirteen (13%) percent exonerated, six (6%) percent withdrawn and five (5%) percent filed. Fourteen (14%) percent of cases are still pending in 2008.

CHART #7



The charts below indicate the racial make-up of the complainant and Boston Police personnel involved in complaint filed in IAD in 2007.

CHART # 8

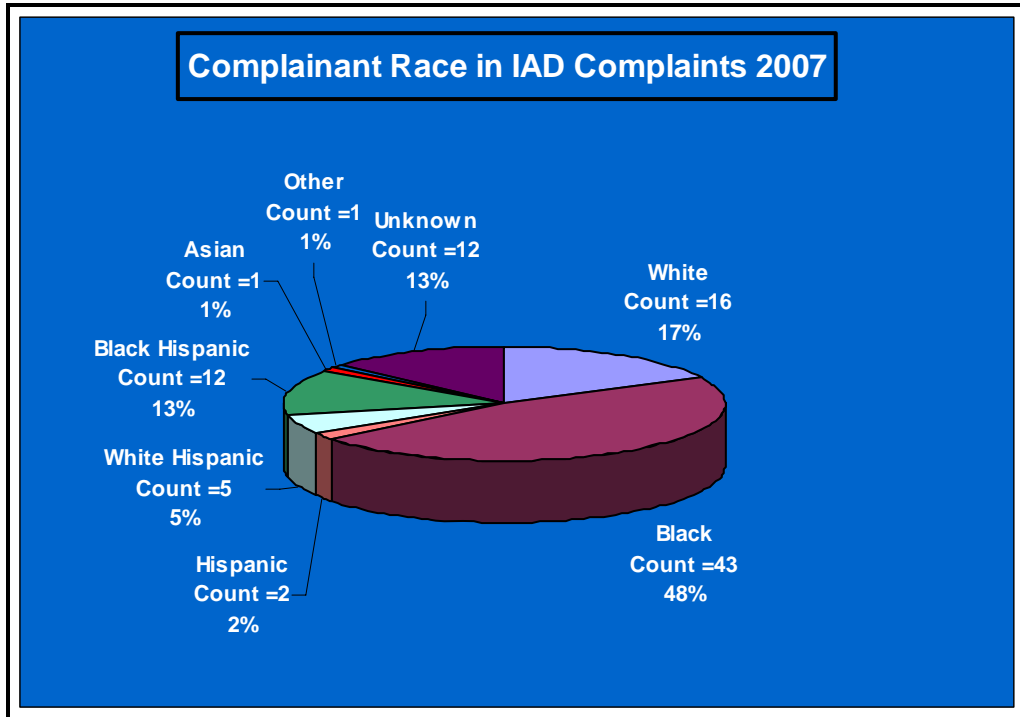
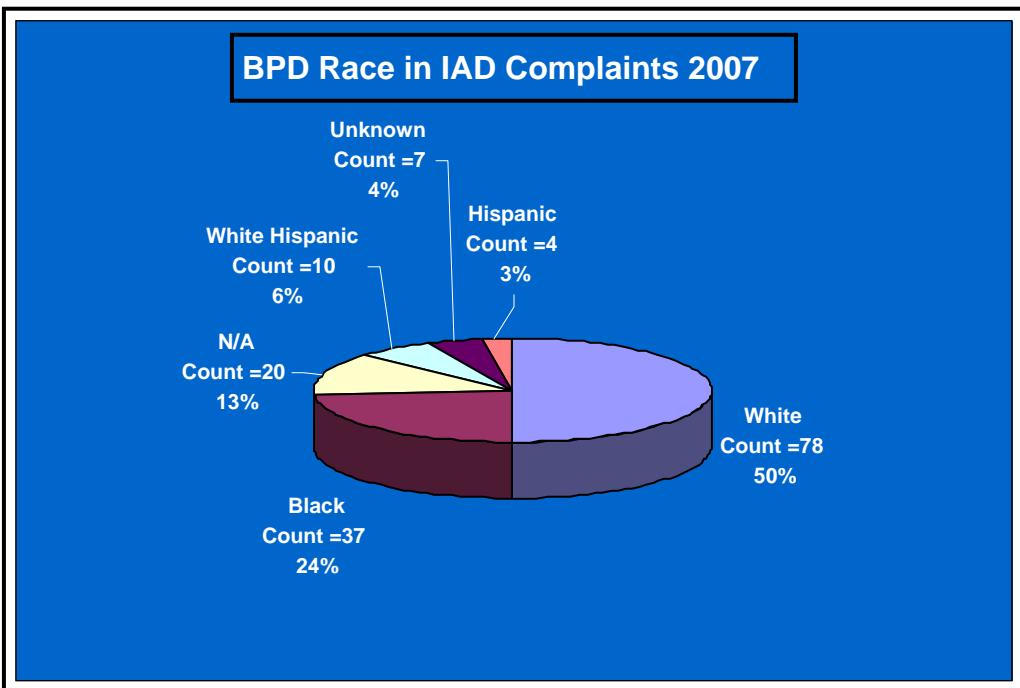
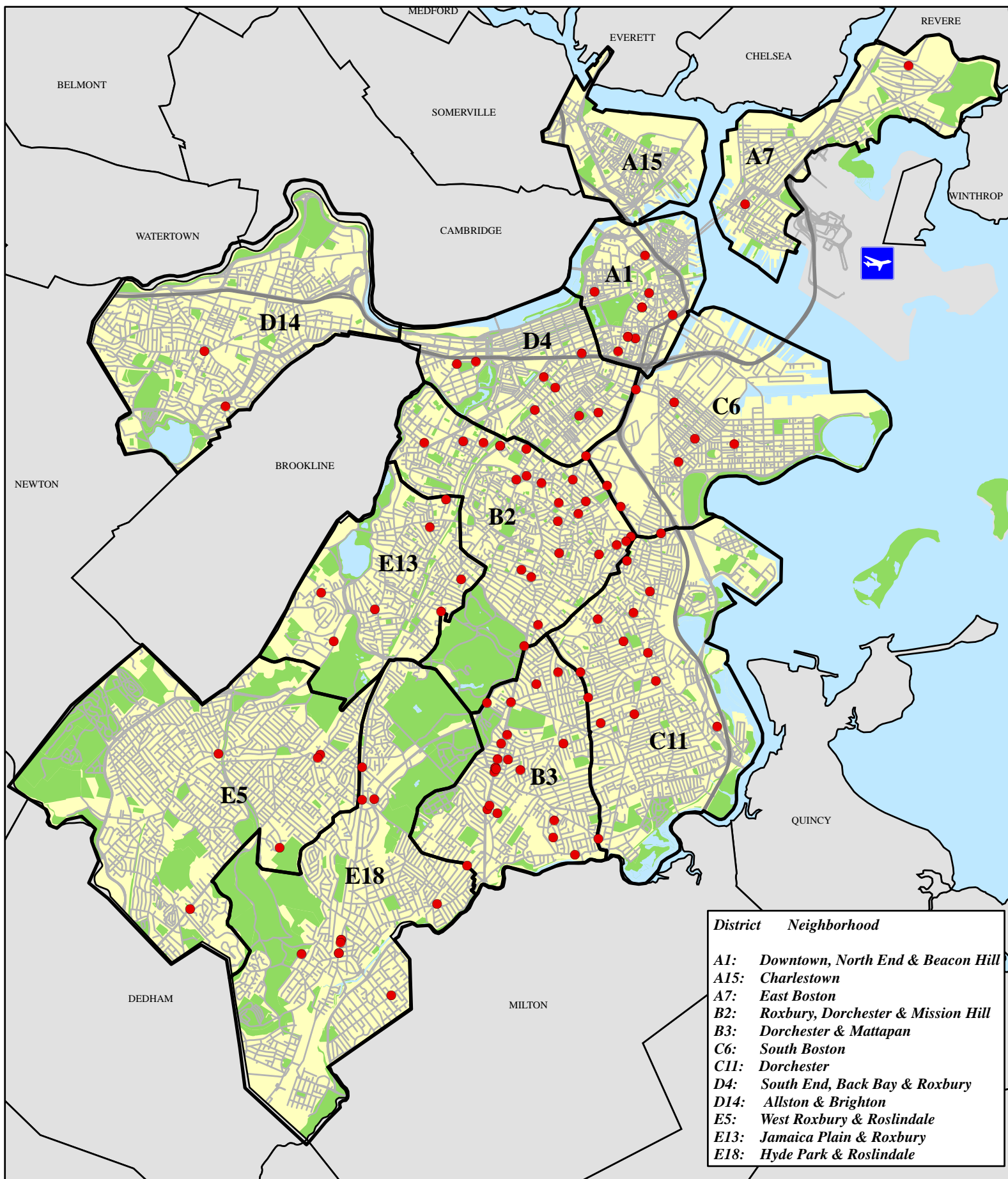
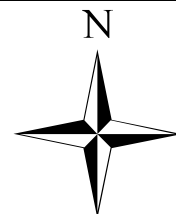


CHART # 9





IAD Complaint Incident Locations 2007

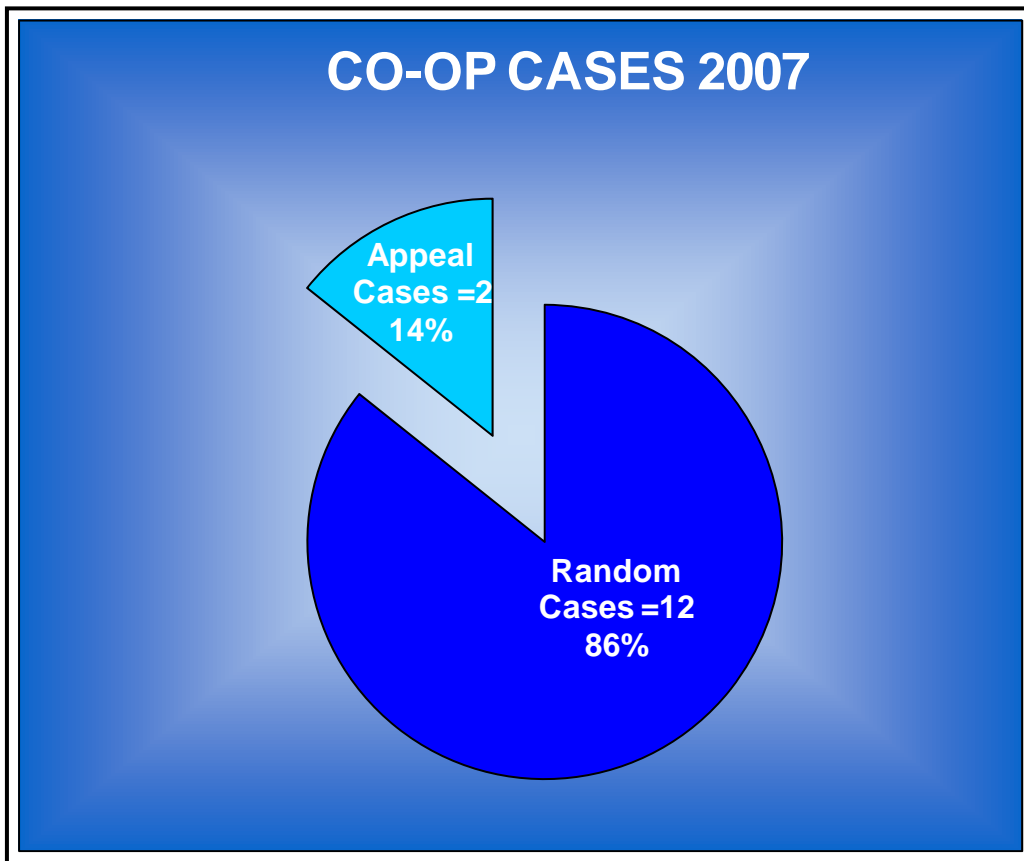


CO-OP Cases 2007

The Community Ombudsman Oversight Panel, also known as CO-OP, first began its review of cases in October of 2007. Fourteen (14) cases were assigned to the CO-OP for review, twelve (12) of which were part of a random audit and two (2) of which were appealed by complainants.

All cases assigned or appealed to CO-OP contained allegations against Boston Police personnel which were not sustained, exonerated or unfounded by IAD.

CHART # 11

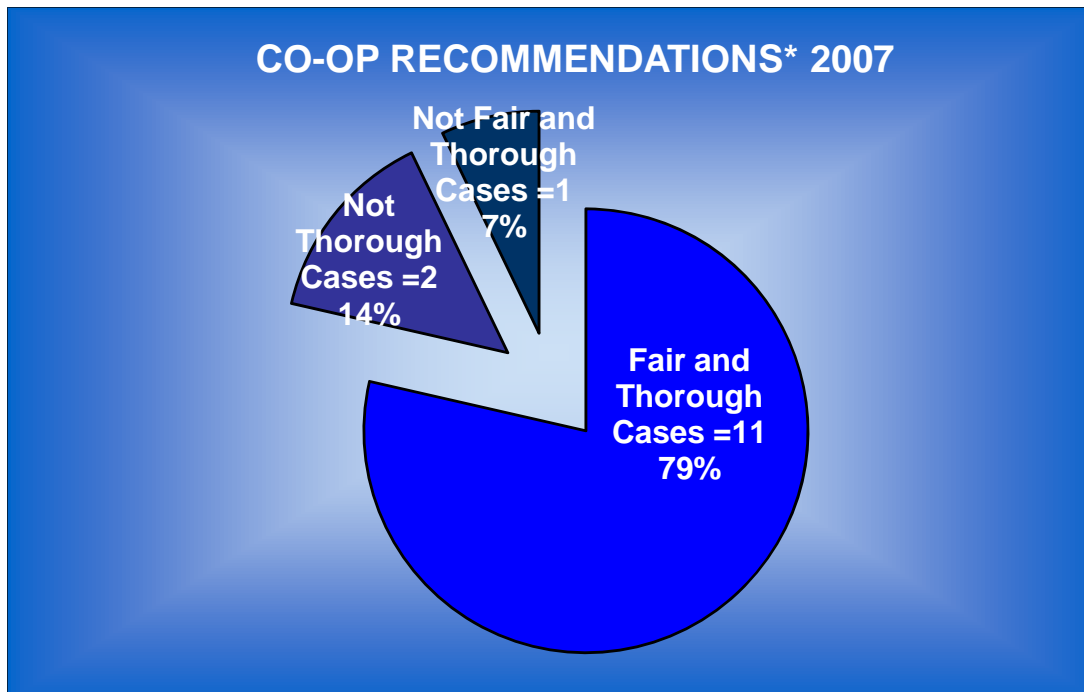


CO-OP Recommendations 2007

Each case is assigned to an individual Ombudsman for review. The Ombudsman then reviews the entire Internal Investigation case file to make a recommendation to the Chief of the Bureau of Professional Standards and Development.

Of the fourteen (14) cases which were assigned to the CO-OP for review, eleven (11) cases (or 79%) were found to be fair and thorough, two (2) cases (or 14%) fair but not thorough, and one (1) case (or 7%) not fair and not thorough.

CHART # 12



***Definitions of CO-OP Case Recommendations:**

Fair and Thorough: Investigation of case was fair and thorough.

Fair But Not Thorough: Investigation of case was fair; however, investigation was not thorough.

Not Fair But Thorough: Investigation of case was not fair, however, investigation was thorough.

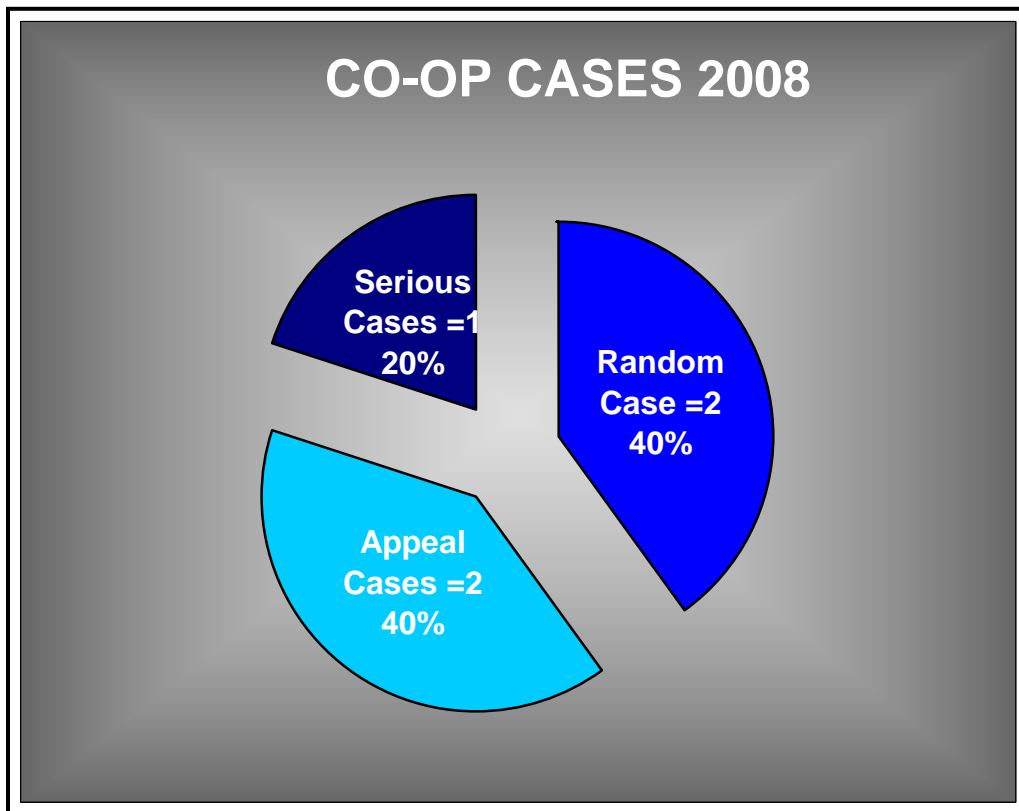
Not Fair and Not Thorough: Investigation of case was not fair and not thorough.

CO-OP Cases 2008

Thus far in 2008, the CO-OP has received two (2) appealed, one (1) serious misconduct and two (2) random cases for review.

All cases assigned or appealed to CO-OP contained allegations against Boston Police personnel which were not sustained, exonerated or unfounded.

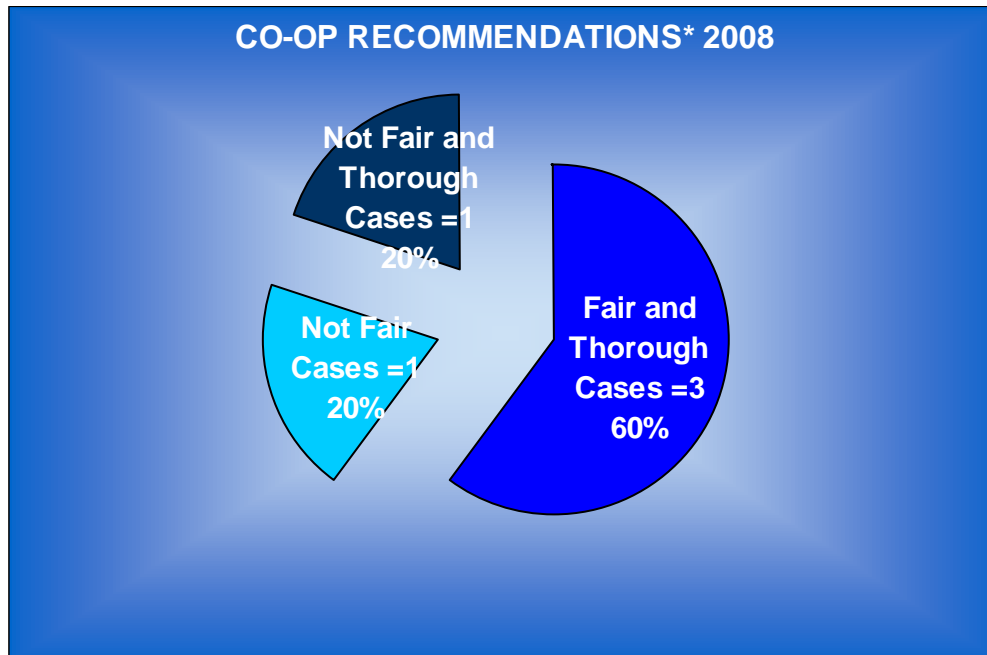
CHART # 13



CO-OP Recommendations 2008

Of the five (5) cases which were assigned to the CO-OP for review, three (3) cases (or 60%) were found to be fair and thorough, one (1) case (or 20%) was found to be not fair but thorough, and one (1) case (or 20%) was found to be not fair and not thorough.

CHART # 14



***Definitions of CO-OP Case Recommendations:**

Fair and Thorough: Investigation of case was fair and thorough.

Fair But Not Thorough: Investigation of case was fair; however, investigation was not thorough.

Not Fair But Thorough: Investigation of case was not fair, however, investigation was thorough.

Not Fair and Not Thorough: Investigation of case was not fair and not thorough.

Observations by the Panel

During this ten month period of reviewing complaints (appeals, random and serious misconduct) we have observed certain patterns that exist in the initial stages of complaints, and in the process of conducting and concluding investigations. Our observations are based on a limited sample of cases and thus may not represent an accurate and complete picture of the entire process. However, these observations were important enough to raise because some of them relate to changes that are recommended for the IAD process. Others may be relevant in regard to how officers are trained and instructed about their interactions with citizens. The following is a summary of the major observations during this initial period.

1. The vast majority of the cases reviewed seem to reach results that were consistent with the facts presented and were probably the right result based on the evidence contained in the files.
2. In general, it appears that the IAD personnel conducted both external and internal investigations in a thoughtful and professional manner.
3. There were instances where the investigations did not appear to be thorough. Individuals who were important to the investigation were sent a notice, but if they did not respond to the notice there was no attempt to follow up with them or go to their place of residence. In order to satisfy the standard of thoroughness, which we are charged to apply, it is important that every reasonable effort be made to secure information from witnesses and complainants.
4. The investigative reports sometimes included conclusive statements without any facts to support the conclusion. This would sometimes occur in regard to a description of a complainant's motive for filing the complaint, or their behavior during the incident or the investigation. Even in cases where the right result was reached, these types of unsubstantiated statements detracted from the appearance of objectivity.
5. In one instance the audio tape of the interview with the subject officer was not available to the reviewer. In another instance, the tape provided was blank.
6. There were many instances where the investigators used "leading" questions while interviewing the complainant or the officer. There was at least one example of the investigator providing answers to the officer and cross-examining the complainant. Though the complainant had a weak case based on the facts presented, it was still unacceptable for the questioning of the complainant to be qualitatively different from that of the officer.
7. The final letter sent to complainants from the Superintendent indicating that the complaint was not sustained, does not provide any rationale or summary of the findings upon which the decision was based. Therefore the citizen does not have a

clear understanding of why their complaint was denied or whether they should appeal the decision.

8. There was at least two instances of what one reviewer describes as an “escalation” of the event by the officers. In one case a “weapon” (box cutter) which the officers seized while stopping the complainant for a routine traffic violation was placed within reach of the complainant instead of being secured. Later, during the stop, when the complainant appeared upset, the fact that the “weapon” was still within his reach served as the basis for the officers arresting the complainant, which generated the accusation of abuse of force. If the “weapon” had been placed in a secure location beyond the reach of the complainant, the justification for the arrest, and thus the complaint, may have been avoided. This observation may be relevant in regard to how officers are trained and instructed. In another case, the officers may have been able to de-escalate a racially charged situation by providing more information to the complainant about the reasons for their intervention.
9. There was one incident where it was alleged by the complainant that the officer refused to indicate the reason for the stop. In response to this concern the panel was informed that it is not police policy to inform individuals of why they are being stopped. If this is standard policy, then this policy may also contribute to the escalation of incidents, which may also lead to allegations of abuse or misconduct.
10. There were instances where questions from the members of the Community Ombudsman Oversight Panel were not answered in a thorough and timely manner. Though we understand and appreciate that there are numerous demands on the IAD investigators, this oversight model is very dependent upon timely and thorough responses.
11. There were numerous citizens who had a right to appeal the decision of IAD to the CO-OP who chose not to pursue their right to appeal. Some of them never signed for the certified letter informing them of the decision in regard to their case and their right to appeal, while others signed for the letter and still chose not to appeal. Though there are numerous legitimate reasons for not taking advantage of this process, the Panel was still concerned about this pattern.
12. Based in large part on comments from various individuals at community meetings and from community leaders, it became clear to the panel that there is a strong perception that citizens do not have easy access to filing complaints in supportive and non-intimidating environments. Whether this perception is accurate or not, it creates an atmosphere of distrust that requires serious attention.

Recommendations Made by the Civilian Review Board to Date

In regard to the observations in the overall process, the Panel made the following recommendations to the Chief, Bureau of Professional Standards and Development.

1. All conclusions contained in an investigation report should be substantiated by facts obtained during the investigation.
2. Specific descriptions should be provided of actions or behavior attributable to the complainant. General terms like “abusive,” without specific details of what the person said or did are insufficient, and can be prejudicial to the decision making process.
3. There should be a more serious and concerted attempt to follow-up with witnesses or complaining parties when there is no response to notices that are sent to them. This follow-up should include a visit to the home if necessary.
4. A statement of the reason for not sustaining a complaint should be provided to the complainant in the final letter they receive from the Superintendent.
5. A separate letter should be sent from the CO-OP indicating to the complainant of his/her right of appeal. This serves to indicate the independence of the CO-OP process and may make citizens more willing to pursue their right to appeal.
6. A study should be conducted by an independent researcher to determine the reasons numerous individuals are not exercising the right to appeal.
7. Complaint forms should be made available at other locations other than the Police Station. Serious consideration should be given to the complaint form being translated into languages other than English.

Actions Taken in Regard to Recommendations

The Panel met with Superintendent Fong and other members of IAD to convey our concerns and suggest ways in which the process could be improved. We also included in our case forms suggestions for addressing problems we identified while reviewing the cases. Many of these suggestions and recommendations were accepted and implemented. The letter in Appendix D from Captain Detective Mark Hayes was sent to all IAD investigators instructing them to follow many of our recommendations. Below is an excerpt from that letter which indicates the type of action that was taken based on our recommendations.

“Below are some of the issues and concerns that were raised by the Community Ombudsman Oversight Panel (CO-OP) during their IAD case reviews. On October 24, 2007 and January 2, 2008, I sent you emails that listed these points of concern. I want to reiterate them to ensure they are implemented and complied with.

- Investigator’s Conclusions: If you make a statement or conclusion, or an assessment of someone’s credibility or motivation for filing a complaint, then support that with specific underlying facts and rationale to justify it. Don’t just make broad statements.
- Unknown Officers: Document in your report why the officers are Unknown. Either the complainant and/or witnesses cannot identify them, cannot provide an adequate description, or cannot identify them from photo arrays, etc. Document all the steps you have taken to identify any unknown officer.
- Terms and Labels: Factually describe terms and labels that you use in your investigative reports. For example, if you state that someone “verbally abused” the officer, then factually describe that verbal abuse. What did the person say? Be specific!
- Ensure that the complainant and all other witnesses have been identified and interviewed. If you are unable to establish contact with a complainant or witness, then document all of your attempts to establish that contact. Ask the complainant and witnesses if there were any other witnesses to the incident. If they say “yes” but refuse to provide you with the names and other contact info for those alleged witnesses, then document those facts in your report. (Dates and times were telephone messages left, Certified and First Class letters mailed to their residence, and any home visits.)
- Home Visits: If a complainant or witness refuses to cooperate or contact you, then you may have to proceed to their residence in order to establish contact and their cooperation. If there is no response at their residence, leave one of your business cards and request that they contact you.”

In addition to those recommendations listed above in Captain Hayes' letter, there have been numerous meetings where the investigators have been made aware of the concerns raised by the Panel. The CO-OP website also now contains a link to the complaint form. Additionally, a separate letter is now being sent from CO-OP informing individuals of their right to appeal.

Important Recommendations Made In Regard to IAD Process That are Not Yet Implemented

As of the writing of this report there are recommendations of the Panel that have not been implemented.

1. Though there has been positive discussion about the inclusion of a summary sentence or paragraph in the complainant final letter indicating why the case was not sustained, the letter still does not provide an explanation for the decision.
2. In regard to the study of the appeals process, a proposal has been developed and approved, however the study has not yet been conducted.
3. Though the CO-OP link makes complaints more accessible, the complaint forms need to be made available at additional locations and in different languages. In addition, based on a survey of the complaint intake process of a few selected cities conducted by CO-OP, it is clear that the Boston intake process could be more accessible and transparent. It is recommended that some of the features of these other cities, like multiple intake locations and modes; easily accessible public information about the complaint process; and clear guidelines for those taking complaints, be considered and adopted by the Boston Police Department. Though these more “citizen friendly” approaches have been embraced by cities that have independent boards that conduct the investigation, these features become even more important when the police department is in control of the initial intake procedure. Appendix F contains a summary of the practices within the cities surveyed.

Recommendations in Regard to Police Conduct

The Executive Order (Article IV, D) requires the Panel to “periodically review policies and procedures and provide a report to the Mayor and the Police Commissioner on the integrity of the complaint and internal affairs process.”

In the future, the CO-OP plans to conduct a more systematic and thorough review of the policies and procedures governing police conduct, to see if there are changes that can be made to decrease the number of citizen complaints. Nevertheless, based on a review of the cases handled, the following recommendations are made.

1. Though we observed only two cases in which this may have been a serious problem, officers should be trained and instructed to avoid actions which may “escalate” encounters with citizens or create unnecessary dangers. The escalation of events through poor choices, overreaction and overly harsh tones can transform normal interactions with citizens into problematic and traumatic ones.
2. Citizens should be made aware of the reason an officer has stopped them when that information is requested. If the following statement provided to the panel is correct, that “Police officers are not required to answer questions by operators,” then it is certainly possible that this policy can contribute to negative citizen/police interaction. Though there may be legitimate reasons for the existence of this policy there are also potential downsides that must be considered and addressed.
3. Though racial and cultural diversity training is already a part of the Police Academy curriculum, based on the racial breakdown of complainants and accused officers, and one case where this was a major issue, greater and more systematic emphasis should be placed on this sensitive aspect of community policing.

Recommendations in Regard to the Structure and Operation Of the Community Ombudsman Oversight Panel

This first year of the existence of the Panel has provided us with an opportunity to assess its strengths and weaknesses. The City of Boston has chosen to pursue a more limited model of civilian review than some other jurisdictions. Some other jurisdictions have chosen a similar approach; others a more expansive model. This more limited model is highly dependent upon the cooperation of the Superintendent, the Commissioner of Police and the Mayor's Office. If these entities take seriously the recommendations and suggestions made by the Panel in a prompt, thoughtful and reasonable manner then this model can create productive change. There have been instances where that cooperation has been forthcoming, and there have been times when it has been slow and difficult.

If this approach to civilian review continues to be the model in Boston, we offer the following recommendations which we believe would enhance its effectiveness and viability.

1. It is important that investigators respond in a timely and thorough manner to questions raised and inquiries made by panel members.
2. Recommendations by the Panel should be taken seriously. It is recommended that the Superintendent regularly monitor the implementation of recommendations from the Panel and provide periodic updates to the Panel. Though all recommendations made by the Panel may not be accepted, it is important that a thoughtful and timely response be provided to all recommendations.
3. Due to the limited number of cases appealed, there was no instance in which the Panel recommended a different result than the one reached by the Superintendent. The real test of this model will occur when different results are reached by a panel member and the Superintendent. The development of criteria, processes and time frames for the resolution of those types of decisions should occur as soon as possible.
4. The Community Ombudsman Oversight Panel should have an operating budget so that basic decisions in regard to training, research, communications, public relations, and data collection can be done in a more efficient and independent manner. This is especially critical under this model where concerns have been expressed about the Panel's autonomy.
5. If the number of cases appealed remains low, then some adjustment upward in the number of random cases that are reviewed should be considered. Otherwise, the Panel will only be able to view a very limited number of cases, which may detract from the credibility of our observations and recommendations.
6. The Panel should also be able to review a limited number of sustained cases so that we can obtain a more balanced perspective of the entire operation in IAD.

7. There should be a clear understanding of the need for transparency of data in regard to number, types and outcome of complaints. The type of data contained in this report should continue to be provided to the public on a regular basis. This data should be compared to other similarly situated police departments around the country when such comparisons are possible. This process should be an on-going responsibility of the CO-OP and incorporated into its mandate. This first annual report has attempted to embrace this ideal and received very good cooperation from IAD. However, there are other areas of data collections which must be added in the future.
8. Though the Executive Secretary to the CO-OP has been extremely responsive and committed to the panel members, we must be systematically incorporated into the supervision and evaluation of the Executive Secretary. The autonomy and independence of the panel requires this type of accountability.
9. Though panel members attended numerous community events, we understand that community outreach must remain a cornerstone of the CO-OP and as such, recognize a need for additional outreach efforts to inform and educate the citizens of the existence, functions and services offered by the Civilian Review Board. We especially want to reach out to organizations that serve youth in the Boston area; and increase our outreach to residents who do not speak English as their primary language. We also want to convene meetings with a broader membership of the Boston Police Department. We believe that these efforts and others can help to build more trust in the community for this process.
10. The Complaint Mediation Program that was originally envisioned and incorporated into the Mayor's Executive order should be implemented. Additional resources must be provided so that experienced mediators can be hired to institute and conduct this program.

APPENDIX A

TO: Superintendent Kenneth Fong
Chief, Bureau of Professional Standards and Development

CC: David Hall, John O'Brien and Ruth Suber
Community Ombudsman Oversight Panel

FROM: Yola Cabrillana, Executive Secretary
Bureau of Professional Standards & Development
Liaison to the Community Ombudsman Oversight Panel

RE: Summary of Reviewed Community Ombudsman Oversight Panel Cases

DATE: 7/31/2008

Please find below, an updated summary list of CO-OP cases reviewed and filed in our office.

2007 Completed Cases with CO-OP Determinations

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-01R	Random	Hall

Finding: Fair and Thorough.

Violation: 102-3 Conduct, 102-35 Conformance to Laws

Summary: Complainant alleged that while handcuffed and placed in the rear of the patrol wagon, police officer grabbed her right breast and pinched her right buttocks.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-02R	Random	O'Brien

Finding: Fair and Thorough. Additional efforts made by Investigator are commended.

Violation: 304-2 Excessive Force, 102-4 Judgment

Summary: Woman alleged that police officer was verbally and physically abusive towards her son. Also that he illegally arrested woman.

Note: Addendum Investigative Report from Investigator documenting further attempts made to contact witnesses in January 2008 was forwarded to O'Brien on 3.07.08 as a response to 'Other' Preliminary Finding submitted by O'Brien on 11.12.07. [Initial Comments: Case resulted in proper determination but more effort could be made to find potential witnesses.]

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-03R	Random	Suber

Preliminary

Finding: Other: Not Fair and Not Thorough. More effort should have been put into case to question possible personnel involved. Case should have remained open until complainant was re-located after moving out of reported residence.

Status: Under review by Chief, Bureau of Professional Standards and Development. Chief will meet with Ombudsman to discuss finding and recommendations.
Final determination to be made by Police Commissioner if necessary.

Violation: 302-4 Excessive Force

Summary: Complainant witnessed officers fighting with a man they were trying to arrest in front of the Roxy Nightclub. Complainant alleged that officers threw suspect against his car causing damage to his mirror and fender. Complainant stated when he attempted to inform officers of damage; he was pushed to the ground and sprayed with mace.

Note: Addendum Report from Investigator was forwarded to Suber on 4.10.08 as a response to Information Inquiry submitted by Suber on 11.13.07.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-04R	Random	Hall

Finding: Fair and Thorough.

Violation: 102-9 Respectful Treatment

Summary: Complainant claimed he was verbally assaulted by officers who were investigating an assault and battery. Officers threatened to arrest him for coming into the station. Sgt reported none of the officers working at the time fit the description by the complainant.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-05R	Random	O'Brien

Finding: Fair and Thorough.

Violation: 102-3 Conduct, 102-35 Conformance to Laws

Summary: BPD Lt. involved in a domestic incident.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-06R	Random	Suber

Finding: Fair and Thorough.

Violation: 102-4 Neglect

Summary: On 12.02.06, officer refused to get personal information of a suspect that had assaulted her while she was at the farmer's market.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-07R	Random	Hall

Preliminary

Finding: Other: Not Thorough. More effort should be made to contact primary witnesses; Home visits if necessary. Conclusionary statements should only be made when there exist facts to support it.

Status: Under review by Chief, Bureau of Professional Standards and Development. Chief will meet with Ombudsman to discuss finding and recommendations.
Final determination to be made by Police Commissioner if necessary.

Violation: 102-4 Neglect

Summary: Complainant stated unknown white male identified self as state trooper in a bar. Complainant alleged supposed trooper showed a firearm and threatened to hurt him. He told an officer that this guy had threatened him and officer did nothing.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-08R	Random	O'Brien

Finding: Fair and Thorough.

Violation: 304-2 Excessive Force

Summary: Complainant stated after misunderstanding with clerk at gas station over price of bottle of window washer, police arrived and complainant states that officer kicked him on the legs and one officer punched him in the face while in handcuffs.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-09R	Random	Suber

Finding: Fair and Thorough.

Violation: 102-3 Conduct

Summary: Complainant alleged that on 6.30.07 while backing her vehicle into a parking space she was threatened by the operator of a vehicle with a specific license plate. Operator claimed to be a police officer.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-10A	Appeal	Hall

Preliminary

Finding: Other: Not Thorough.

Status: Under review by Chief, Bureau of Professional Standards and Development. Chief will meet with Ombudsman to discuss finding and recommendations.
Final determination to be made by Police Commissioner if necessary.

Violation: 304-2 Excessive Force

Summary: Complainant alleged that officer used excessive force when he was placed under arrest.

Note: Addendum Report from Investigator was forwarded to Hall on 4.25.08 as a response to Information Inquiry submitted by Hall on 01.16.08.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-11A	Appeal	O'Brien

Finding: Fair and Thorough.

Violation: 304-2 Excessive Force

Summary: Complainant alleged that officer used excessive force during her arrest when he grabbed her arm and pulled her from the motor vehicle causing bruising and abrasions.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-12R	Random	Suber

Finding: Fair and Thorough.

Violation: 304-2 Use of Non-Lethal Force

Summary: Complainant alleged that after bouncers at the Avalon Nightclub on Lansdowne Street assaulted him, an unknown police officer kicked him while he was on the ground.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-13R	Random	Hall

Finding: Fair and Thorough.

Violation: 102-40 Residency

Summary: Anonymous complainant alleged that officer is in violation of the City of Boston residency ordinance requiring that all police department hires comply with living in the City of Boston.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
07-14R	Random	O'Brien

Finding: Fair and Thorough.

Violation: 102-8 Directives and Orders

Summary: Supervising Sergeant alleged that on 3.14.07, two 911 Call Takers signed off their positions and left the floor without being properly relieved, resulting in a shortage of 911 Emergency Call Takers and lost calls.

2008 Completed and Pending Cases with CO-OP Determinations

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
08-01A	Appeal	Suber

Finding: Fair and Thorough.

Violation: 102-9 Respectful Treatment

Summary: Complainant alleged that she went to D-4 to obtain information on license plate of motor vehicle that was involved in accident with her. Complainant alleged that civilian clerk would not give her that information, was rude and refused to get her supervisor.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
08-02S	Serious Misconduct	Hall

Preliminary

Finding: Not Fair and Not Thorough.

Status: Under review by Chief, Bureau of Professional Standards and Development. Chief will meet with Ombudsman to discuss finding and recommendations.

Final determination to be made by Police Commissioner if necessary.

Violation: 102-3 Conduct Unbecoming, 102-9 Respectful Treatment

Summary: Complainants alleged that one officer verbally and physically assaulted them. They also alleged that another officer yelled obscenities and made racial remarks.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
08-03A	Appeal	O'Brien

Finding: Fair and Thorough.

Violation: 304-2 Use of Force

Summary: Complainant alleged that after being placed into handcuffs, officer grabbed him from behind by the collar or his jersey and slammed his head and face onto the hood of a police vehicle.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
08-04R	Random	Suber

Finding: Fair and Thorough.

Violation: 102-3 Conduct, 102-9 Respectful Treatment

Summary: Complainant alleged that while assisting in the dismissal of students from school to board the buses parked on School Street, officer who was stopped to allow students to board safely, exited his motor vehicle and harassed her because he could not proceed up the street.

<u>Case #</u>	<u>Type</u>	<u>Ombudsman</u>
08-05R	Random	Hall

Preliminary

Finding: Other: Not Fair. Investigators should never offer leading statements in correspondence or interviews. Investigators should always conduct interviews in an objective manner and never be combative with complainants or witnesses.

Status: Under review by Chief, Bureau of Professional Standards and Development. Chief will meet with Ombudsman to discuss finding and recommendations.
Final determination to be made by Police Commissioner if necessary.

Violation: 304-2 Use of Force

Summary: Complainant alleged that while riding his dirt bike on Wendover Street, one individual who he believed to be a police officer struck him on the top of the head with a baton.

APPENDIX B

Boston Police Department Rules and Procedures Rule 109 April 12, 1983 DISCIPLINE PROCEDURE, AMENDED

Sec. 1 This rule is written and promulgated to be used in conjunction with Rule 102, which defines the conduct, general rights and responsibilities of Police Department Personnel. It is designed to provide maximum flexibility in the discipline process and to increase the responsiveness of the Department to the needs of the individual member and of the community.

Sec. 2 "Discipline" has too long had the connotation of simple punishment; this rule envisions a disciplinary process which incorporates the idea of training both for effective self-discipline and for a group discipline, or esprit de corps. To accomplish this design, the rule recognizes the wide spectrum of discipline and through such provisions as the five-day suspension program and the district personnel records places discipline at a level where it can respond better to the individual member.

Sec. 3 Scope: This rule is designed strictly to be procedural in nature, and is not meant to create new rights or duties not previously granted by law or contract.

For example, CETA employees, probationary employees, and provisional employees shall continue to be governed by the respective rules and laws pertaining to them, and this rule shall not apply to them where inappropriate or inconsistent with those rules or laws. This rule is also not meant to change the working conditions of members of the Department, but instead is a managerial guideline controlling administration. It does not necessarily promulgate a new set of procedures, but in most cases simply compiles existing departmental policy and practice. In addition, the special procedures relating to written reprimands, ss. 21-27 apply only to police officers covered by the Agreement between the City of Boston and the Boston Police Patrolmen's Association. Finally, if any substantive changes in the rights and duties of employees or the Department made by future changes in the law or the contract affect sections of this rule, such changes shall notwithstanding override the affected sections.

Sec. 4 Part I of this rule, "Spectrum of Discipline," defines the outlines of the Department's disciplinary program. It contains a general discussion of the sanctions which may be used by the Department followed by a discussion of the concept of "Progressive Discipline." Section C of Part I establishes district personnel records which are to be utilized in connection with progressive discipline; finally, the procedures used in three types of sanctions-written reprimands, five-day suspensions, and punishment duty are specifically detailed, to provide for uniformity of treatment under the discipline rule.

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Sec. 5 Parts III through V of the rule state the procedures to be used by the Department in handling complaints, administrative investigations of allegations of misconduct by Department members, and hearings.

The complaints section creates a unified procedure for the handling of all complaints made the Department either from inside or outside. The section on investigations seeks to promote quick, thorough investigations without abridging the rights of Department members or injuring the reputations of members unjustly accused. It should be noted that the provisions governing investigations are strictly limited to investigations of allegations against Department personnel and are not to apply to criminal investigations or administrative studies or surveys concerning policy or practices. The hearings section deals with the three different types of administrative hearings: disciplinary hearings, appeals from punishment duty or five-day suspensions, and detective hearings--and sets up uniform practices designed to arrive at just decisions efficiently.

PART I: SPECTRUM OF DISCIPLINE

A. TYPES OF SANCTIONS used by the Boston Police Department include the following:
Sec. 6 Oral Reprimands: Oral reprimands, given by supervisors for minor violations of the Rules and Procedures, such as improper uniform or reporting late for duty, are simply spoken censures or reproofs. While a notation that an oral reprimand was given is entered into the district permanent personnel record, no record of the reprimand goes into the permanent personnel file. The rule contemplates that such reprimands will be given on an informal basis without any form of prior notice.

Sec. 7 Written Reprimands: Written reprimands are issued either for minor offenses committed by employees for whom oral reprimands have proven ineffective, or for other offenses under Rule 102 which are accompanied by ameliorating circumstances. The reprimand is entered into the permanent personnel file. In situations in which an employee has the right to a hearing with respect to a written reprimand, the procedures for such a hearing are described below in part D, ss. 21-27. Section 21 of this rule establishes the guideline for determining which employees have such a right. Sec. 8 Disciplinary Probation: At the option of the Commissioner, disciplinary probation may be imposed upon an employee for violations of the Rules and Procedures. If just cause is found in any disciplinary action taken against an employee while on such probation, the probation shall be taken into account in determining the severity of the sanction imposed.

Where the employee is a police officer, covered by the Collective Bargaining Agreement, the procedures which are used for written reprimands (ss. 21-27) shall be followed prior

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to imposition of disciplinary probation unless the employee on probation shall fulfill such conditions as the Commissioner may order, and failure to fulfill such conditions shall render the employee liable for further disciplinary action.

Sec. 9 Punishment Duty: Massachusetts General Laws, C. 31, s. 62 authorize the imposition of punishment duty upon sworn personnel. Such duty is extra, unpaid duty assigned above and beyond an officer's normal hours by the officer's commander for violations of the Rules and Procedures. Such duty shall not be demeaning, unduly fatiguing, nor outside of the scope of the officer's job classification. The procedures used for punishment duty are described below in part F, ss. 36-39.

Sec. 10 Suspensions: Suspensions are periods of time during which an employee is relieved of duty and for which the employee is not paid. Suspensions for a period which does not exceed five days may be imposed without a prior hearing either by the Commissioner or by persons designated this authority by the Commissioner. In addition, if the employee to be suspended is tenured under the Civil Service Law, such a suspension may only be imposed for specific offenses, as outlined below in part E, ss. 28-35. Only the Commissioner may impose a suspension of more than five days, and then only after the procedures designated in part V, ss. 56-63 below, have been followed. Employees of the Boston Police Department may also be relieved from duty with pay. Such action is not a disciplinary action, but is designed to maintain the efficiency of the force if for some reason an employee is rendered unfit for duty. In such a case, the Commissioner may relieve the employee from duty with pay.

Sec. 11 Discharge or Reduction in Rank: An employee may be discharged or reduced in rank only by the Police Commissioner, and then only after a hearing as described in ss. 56-63 or waiver of such a hearing by the employee.

B. PROGRESSIVE DISCIPLINE

Sec. 12 Persons who utilize this disciplinary rule shall apply the concept of progressive discipline. Progressive discipline means that progressively stricter disciplinary action shall be taken against persons who persist in violations of the Rules and Procedures. Such a program serves a training function, in that, for a first time violation, an employee may be warned or given a relatively light sanction as an indication that the Department does not condone such action. Upon repetition, then, it is assumed that the employee knows that the violation is wrong, and will receive more harsh sanction.

Sec. 13 It is not necessary for the proper implementation of progressive discipline that all stages of discipline be exhausted, nor that progressive discipline start at any one level or proceed with any particular incrementation. Much is left open to the discretion of the person imposing the discipline, it is simply to be recalled that progressive discipline be used as a guiding precept.

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C. DISTRICT PERSONNEL RECORD

Sec. 14 General Considerations: Commanding officers are often called upon to make evaluations of employees assigned to them. Such evaluations are necessary for applying progressive discipline, and are also used in connection with promotion and reassignment. Accurate evaluation must be based on recorded personnel histories, such as those established by this rule.

Sec. 15 The Record Card: The commanding officer of each unit shall establish a personnel file consisting of a file card for each employee in the command. When an officer is assigned to a command, the commanding officer shall have a new card prepared for that officer. Each card shall have the officer's name and I.D. number at the top, and shall be kept in an alphabetical file.

Sec. 16 Maintenance of the Record: Maintaining the unit personnel file is the joint responsibility of the commanding officer and the supervising officer. Whenever an incident which merits entry in the record takes place, the supervisor of the individuals involved shall report the incident to the commanding officer or person designated by him in his absence. The commanding officer or person designated by him shall make an entry in the card, including the date, subject matter, and reporting officer's name. Sec. 17 The record file shall be kept in the commanding officer's office or other secure place, and shall be available only to the Office of the Police Commissioner, the commanding officer, the respective bureau chief, and the Bureau of Professional Standards and Development. Sec. 18 Subject Matter of the Record: The record shall maintain a notation of all minor offenses, all praiseworthy conduct and all oral reprimands. In addition, the cards shall also contain notations of any disciplinary actions taken or any commendations received from the Department. The notation need not go into specific detail; it shall suffice for the record simply to state that the employee was the subject of a type of incident (e.g., that the employee was reprimanded for a particular incident).

Sec. 19 Periodic Review: The Bureau of Professional Standards and Development shall make periodic random reviews of the District Personnel Records to make certain that accurate up-to-date records are maintained.

Sec. 20 Disposal of the Record: The records shall be maintained by the Unit until the reassignment to another unit of an officer, or upon an officer's retirement or termination, whichever occurs first. At that time, the record card for that officer shall be sent to the Bureau of Professional Standards and Development.

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D. WRITTEN REPRIMANDS

Sec. 21 The collective bargaining contract between the Boston Police Patrolmen's Association and the City of Boston, effective July 1, 1974, provides:

No material which contains an allegation of misconduct against an employee shall be included in his/her personnel file until the charges have been verified by affidavit and a hearing held. If a determination is made that the allegation is without substance, then the allegation shall not be included in the employee's personnel file.

Therefore, a letter of reprimand may not be placed in the personnel file of a police officer covered by the collective bargaining contract, unless the allegations in the letter are supported by affidavit and the police officer is given a hearing or unless the police officer waives the right to verification and a hearing. The following procedures are established for letters of reprimand.

Sec. 22 The commander of the bureau or unit to which a police officer is assigned, or the Commander of the Internal Affairs Division, or the Commander of the Staff Inspection Division may recommend that the procedures for a letter of reprimand be initiated, and must submit a report to the Police Commissioner detailing the circumstances surrounding the subject of the letter. The report shall include the names of all witnesses and Superior Officers involved, and the dates and times of the incidents. The report must detail the facts of the incident and not rely on conclusory phrases.

Sec. 23 The Commissioner shall have the proposed letter of reprimand prepared, and then the original shall be sent back to the bureau or unit initiating the letter for verification. Such verification shall consist of either an affidavit of the complaint or the signature of the commander so verifying.

Sec. 24 The proposed letter shall then be forwarded to the chief clerk and to the Bureau of Professional Standards and Development. When the police officer has a right to a hearing the Bureau of Professional Standards and Development shall schedule a hearing and the Commissioner shall designate a hearing officer. The police officer who is the subject of the proposed letter shall be notified by the Bureau of Professional Standards and Development of the time and date of the hearing. Sec. 25 The hearing shall be conducted pursuant to part V, ss. 59-62 below. No later than five days after the conclusion of the hearing, the hearing officer shall submit a report which briefly summarizes the evidence and recommends whether the letter should be signed by the Commissioner. Also, the hearing officer may recommend changes in the proposed letter.

Sec. 26 A police officer may waive a hearing and consent in writing to having the letter placed in the personnel file.

Sec. 27 If the Commissioner signs the proposed letter, that letter shall be served on the

police officer and a copy placed in the personnel file. A copy of the letter shall also be placed in the Internal Affairs Division file.

E. SUSPENSION FOR FIVE DAYS OR LESS

Sec. 28 General Procedures. The Civil Service Laws, M.G.L. c. 31, s. 41 permits the Police Commissioner to delegate the authority to immediately impose suspensions of five days or less without first providing a hearing to a tenured civil service employee. The law requires that within twenty-four hours after such a suspension the subordinate be given a copy of sections 41 to 45 of Chapter 31 of the General Laws and a written notice which states the specific reasons for the suspension. That notice must inform the subordinates that they may within forty-eight hours of the receipt of such notice request in writing a hearing by the appointing authority. Such a hearing must be given within five days of the receipt of such a request. Procedures for such a hearing are detailed below in Part V, Section 65.

Sec. 29 Delegation. The Police Commissioner may delegate any member of the department the authority to impose immediate suspensions of five days or less. That delegation shall be in writing and shall specify the name or position of the member to whom the authority has been delegated and shall specify whether the authority is limited to a particular division or bureau of the Department. The delegation shall be in full force and effect unless and until it is revoked by a subsequent written notice by the Police Commissioner. PART II: PROCEDURES

Sec. 30 Specific Procedure:

1. When an offense of the type covered by Section 32 of this rule comes to the attention of a person who has been delegated the authority, he or she may immediately impose a suspension without pay of five working days or less. The suspension is effected by orally informing the subordinate of the period of suspension. Where feasible the oral suspension shall be effected in the presence of another superior officer. If the subordinate is a sworn member, the officer shall immediately turn in the police badge and gun.
2. The Civil Service Laws require that the employee who is suspended without a prior hearing shall be given within twenty-four hours of the suspension a copy of the Notice of Suspension (BPD Form #1919). However, the notice should, if possible, be handed to the offender at the time of the imposition. The written notice must be a formal statement of the reasons for the suspension, the number of working days the suspension lasts, and the date the suspension commences. Copies of M.G.L. c. 31, s.s. 41 to 45 shall also be included. The written notice will have five copies, to be routed as follows:
 - a. original to the disciplined subordinate;
 - b. one copy retained by the commanding officer;
 - c. one copy to the Bureau of Professional Standards and Development;

- d. one copy to the appropriate departmental bureau (Bureau of Field Services, etc.);
- e. one copy to the Personnel Division.

It is important that all copies be routed as quickly as possible so the payroll division can be notified and the employee taken from the payroll for the suspension period. Whenever problems or questions arise in completing the notice, the person suspending should feel free to contact the Office of the Legal Advisor.

Sec. 31 Acceptance of Discipline: It should at all times be kept in mind that the most effective discipline is that which is accepted by the individual. Therefore, where practicable the person delegated the authority to suspend should discuss the infraction and the contemplated discipline with the individual.

A subordinate may waive the right to request a hearing before the appointing authority. In such a case, the subordinate waives that right by signing a statement to that effect on the copies of the Notice of Suspension.

Sec. 32 Offenses Covered by the Five-Day Rule: The following offenses are subject to the Five-Day rule, and may be disciplined by imposition of immediate suspension of not more than five days. If an employee commits an offense not on this list, that offense may not form the basis of an immediate suspension.

1. Rule 102 s. 3:

- a. Fighting or quarreling with members of the force;
- b. Negligent use of a firearm, providing no injury or death resulted from the misuse;
- c. Negligent discharge of a firearm, providing no injury or death resulted from the discharge;
- d. Participation in unlawful games of chance or gambling.

2. Rule 102, s. 4:

- a. Failure to properly patrol beat or section;
- b. Failure to properly cover school crossings;
- c. Failure to properly care for assigned equipment, damaging or losing same due to carelessness;
- d. Willfully damaging police department property;
- e. Interference with police radio broadcasting;
- f. Improperly turning off police radio;

- g. Failure to remove keys from patrol car when left unattended;
 - h. Failure to report as witness when duly notified or subpoenaed;
 - i. Failure to notify Operations Division of availability for assignment
- 3. Rule 102 s. 5: Failure to properly maintain a copy of the rules book.
- 4. Rule 102 s. 6:
 - a. Failure to properly supervise subordinates;
 - b. Failure to prefer disciplinary charges or take appropriate disciplinary action.

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5. Rule 102 s. 7: Failure to report their place of residence and telephone number or change in either of them.
6. Rule 102 s. 8: Failure to obey and comply with all rules, orders and other directives of the Department and of superior officers, whether written or oral.
7. Rule 102 s. 9:
 - a. Failure to be civil and respectful, courteous and considerate toward all members of the Department and the general public;
 - b. Use of epithets or terms that tend to denigrate a particular race or ethnic group except when necessary in police reports or testimony.
8. Rule 102 s. 10:
 - a. Failure to report for duty;
 - b. Unauthorized absence from duty;
 - c. Failure to be mentally and physically fit to perform duty;
 - d. Failure to be in proper uniform and properly equipped.
9. Rule 102 s. 11: Failure to be properly groomed.
10. Rule 102 s. 12: Failure to remain awake and alert while on duty.
11. Rule 102 s. 13:
 - a. Drinking of alcoholic beverages while on duty unless it is necessary to gain evidence and is under the order of a superior officer;
 - b. Reporting for duty while under the influence of alcoholic beverages to any degree whatever or with an odor of alcohol on one's breath.
12. Rule 102 s. 14:
 - a. Consumption of alcoholic beverages while off duty to the extent that it results in obnoxious behavior that would tend to discredit the officer of the Department or would render the officer unfit to report for the next regular tour of duty.
 - b. Consumption of alcoholic beverages while in uniform or while wearing any part of the uniform.
13. Rule 102 s. 17: Failure to respond to a radio call or to the request of a civilian.

14. Rule 102 s. 18: Engaging in personal business while on duty.
15. Rule 102 s. 20: Failure to give prescribed identification.
16. Rule 102 s. 21: Soliciting from the general public money, gifts, or other things of value for charitable or testimonial purposes, or otherwise using identity as a police officer for such purposes.
17. Rule 102 s. 22: Seeking or accepting food and/or drink from any individual, merchant or business establishment, when it can be construed to involve the position as an employee of the Boston Police Department.
18. Rule 102 s. 23: Submitting false information in an oral or written report or in response to a B.I.S. inquiry.
19. Rule 102 s. 25: Failure to report any serious felonies or less serious crime that comes to the employee's attention.
20. Rule 102 s. 28: Recommending any employment or procurement of a particular service or product except in the transaction of personal business or when proceeding in accordance with established Departmental procedure.

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21. Rule 102 s. 34: Failure to come to the aid of a fellow officer in an emergency if, in the course of carrying out his official duties, that officer is in need of assistance.
22. Rule 102 s. 35: Receipt of excessive moving vehicle violations or excessive unpaid parking violation tickets.
23. Rule 102 s. 37: Intervening in a situation requiring police attention when the officer's family and/or friend(s) are involved except in the case of an emergency.
24. Rule 102 s. 38: Failure to report the questionable behavior of a fellow officer.
25. Miscellaneous offenses:
 - a. Reckless driving;
 - b. Unreported paid details;
 - c. Failure to maintain proper records, such as the district control log;
 - d. Misuse of sick time;
 - e. Overtime abuses.

Sec. 33 Subsequent Offenses: If the employee persists continually in the violation of the rules, then the person delegated the authority to suspend shall recommend the matter for a disciplinary hearing. Furthermore, certain offenses are considered major if repeated within certain periods and are to be immediately recommended for disciplinary hearing. The offenses are:

1. Two offenses within one year:
 - a. Negligent handling of a firearm;
 - b. Willfully damaging police equipment;
 - c. Interfering with police broadcasting;
 - d. Failure to remain awake while on duty;
 - e. Seeking and/or accepting food or drink when it can be construed to involve position as Department employee;
 - f. Untruthfulness in written or oral reports or in response to B.I.S. investigations;
 - g. Failure report felonies.
2. Two offenses within two years:

a. Negligent discharge of a firearm;

b. Failure to come to the aid of a fellow officer in an emergency.

3. Third offense in one year:

Failure to report as a witness when duly notified or subpoenaed.

Sec. 34 Periodic Review: The Chief of the Bureau of Professional Standards and Development shall periodically review the actions taken by persons delegated authority under this Section and the list of offenses provided for in Sections 32 and 33 in order to determine whether additional offenses should be included or offenses deleted from this rule. In addition, the Chief of the Bureau of Professional Standards and Development shall submit to the Police Commissioner periodic reports detailing the action taken pursuant to this rule.

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Sec. 35 A suspension under this Section does not preclude the possibility of further punishment; however, before the Department can take further action, a hearing must be held following the procedures outlined in Part V, ss. 56-63.

F. PUNISHMENT DUTY:

Sec. 36 Punishment duty may be assigned to any officer of the Department by his commanding officer or by the Police Commissioner. Such duty shall be performed under the direction of the officer's commanding officer.

Sec. 37 Punishment duty must be useful work, whether as an addition to the strength of the force, or as a relief for other employees who have worked hard and faithfully. No suggestion of favoritism shall attach to either the assignment of the duty or to the reliefs created by the duty. Punishment duty must be assigned so that the employee under punishment shall not suffer undue fatigue or be otherwise unfit for regular or extra work; and except with the employee's written consent no more than seven consecutive hours of punishment duty shall be performed at any one time, or more than fourteen hours in four consecutive days, or more than twenty-one hours in seven consecutive days. Neither shall the employee be compelled, without written consent, to perform such duty within two hours before or after a tour of regular or special duty.

Sec. 38 Whenever any portion of the punishment duty as ordered has been performed, the officer in charge of the punishment assignment shall report to the Bureau of Professional Standards and Development the name of the employee, the number of hours and the character of the work done. When the punishment duty assignment has been completed, the officer in charge shall so certify in such form as the Bureau of Professional Standards and

Development shall prescribe. Sec. 39 Whenever punishment duty is assigned, the employee under punishment shall have the right of appeal from such duty as described below in Part V, Section 65. **PART III: COMPLAINTS**

Sec. 40 Complaint Control Form: A Complaint Control Form (B.P.D. Form #1920) shall be used to record all complaints against Department personnel, whether from citizens or members of the Department. Each Complaint Control Form shall have an identifying number so that the processing of complaints can be monitored.

Sec. 41 Manner of Recording Complaints:

- a. All complaints shall be received and recorded courteously. No citizen shall be denied an opportunity to register a complaint, nor shall any complainant be directed to another building to register a complaint.
- b. Known Complainants: When the information received from the complainant includes the complainant's name and address, the officer taking the complaint shall inform the complainant that he or she will be contacted by a member of the

Department assigned to investigate the complaint. The complainant shall be instructed to telephone the Bureau of Professional Standards and Development if not contacted by the Department within seventy-two hours of making the complaint.

- c. Walk-in Complaints: Whenever a person indicates a desire to make a complaint concerning a Department employee, that person shall be directed to the nearest available superior officer. If necessary the complainant shall be assisted in making contact with a superior officer. The officer recording the complaint shall complete a Complaint Control Form, after obtaining as much information as possible from the complainant.
- d. Letter Complaints: Letters alleging misconduct by a Department employee shall be forwarded to the Bureau of Professional Standards and Development. An officer assigned to the Bureau of Professional Standards and Development shall complete a Complaint Control Form. Copies shall be distributed as indicated in section 44 of this rule, save that the complainant's copy shall be mailed to the complainant if the name and address are known.
- e. Telephone Complaints: Complainants contacting the Department by telephone shall be transferred to a superior officer if immediately available who will obtain as much information as possible from the complainant and complete a Complaint Control Form. In no case shall a telephone complaint be refused because a superior officer is unavailable, or because the complainant is not identified. All copies of the Complaint Control Form shall be forwarded to the Bureau of Professional Standards and Development, which shall distribute copies as indicated in Section 44 of this rule, save that the complainant's copy shall be mailed to the complainant if the name and address are known.
- f. Departmental Complaints: Whenever a member of the Department desires to initiate a complaint against another member--including complaints by superior officers against subordinates and subordinates against superior officers--that member shall complete a Complaint Control Form. The Complaint Control Form shall be used whenever a supervisor or superior officer seeks to initiate formal charges against department personnel.
- g. Governmental Agencies: When information is received from governmental agencies alleging specific acts of misconduct by a Department employee, the information shall be forwarded to the Bureau of Professional Standards and Development. An officer assigned to the Bureau of Professional Standards and Development shall complete a Complaint Control Form and distribute copies as indicated in Section 44 of this rule, save that the complainant's copy shall be retained by the Bureau of Professional Standards and Development.
- h. Policy Complaints: Complaints concerning Departmental Policy, performance, or practice and not alleging misconduct by specific employees, known or unknown, shall be recorded on a complaint form. One copy will be retained at the unit and the other three routed to the Bureau of Professional Standards and Development for appropriate distribution.

- i. The completed form should contain a detailed description of the alleged act(s) of misconduct, including date, time and place; names or descriptions of Department

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employees involved in the incident; the names and addresses of witnesses, if known; and any other relevant information.

Sec. 42 Signing of the Complaint Control Form: If the complaint is made in person, when the officer has completed the complaint form the complainant shall read it and make any necessary corrections. The officer shall request the complainant to sign the complaint. If the complainant refuses to sign, a notation to that effect shall be made on the form. In all other respects unsigned complaints shall be processed in the same manner as signed complaints.

Sec. 43 Immediate Resolution of Complaints: Complaints resolved at the time of the complaint to the complainant's satisfaction shall be recorded on a Complaint Control Form with a notation that the complaint was resolved. Where possible, the complainant should acknowledge the resolution in writing, and such acknowledgment should be attached on the Complaint Control Form.

Sec. 44 Routing the Complaint Form: If the employee complained of is attached to the unit which receives the complaint, copies of the Complaint Control Form shall be distributed immediately as follows:

- a. One copy to the complainant;
- b. One copy to the commanding officer of the unit;
- c. One copy to the superior officer investigating the complaint;
- d. One copy to the Bureau of Professional Standards and Development.

If the employee complained of is not assigned to the unit which receives the complaint, copies of the Complaint Control form shall be distributed immediately as follows:

- a. One copy to the complainant;
- b. Three copies to the Bureau of Professional Standards and Development. The Bureau of Professional Standards and Development shall retain one copy and may distribute, upon the discretion of the Chief of the O.I.I., the remaining copies as follows:
- c. One copy to the commanding officer of the unit to which the employee complained of is attached;
- d. One copy to the superior officer investigating the complaint.

Sec. 45 Notification of Internal Affairs Division: The Internal Affairs Division shall be notified immediately upon receipt of a complaint alleging:

- a. Brutality, death or serious injury caused by a Department employee;
- b. Firearm discharge resulting in personal injury or property damage caused by a Department employee;
- c. The commission of a felony by a Department employee;

d. Possible corruption or bribery of a Department employee;

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- e. When in the judgment of the superior officer receiving the complaint an immediate investigation by the Internal Affairs Division is justified;
- f. If the employee against whom the complaint is rendered so requests.

This immediate notification will be in addition to and separate from the regular distribution outlined in Section 44.

Sec. 46 Monitoring of Complaint Control Forms:

- a. The Bureau of Professional Standards and Development shall maintain a log of all Complaint Control forms issued to all districts and units. The log shall record the date each form was issued and the district or unit to which the form was issued. The log shall also record the date the form was used and the name and rank of the officer who completed the form.
- b. The Bureau of Professional Standards and Development shall maintain a file of all cases investigated.
- c. Access to the complaint file shall be authorized in writing by the Police Commissioner, the Superintendent of the Bureau of Professional Standards and Development or the Commanding Officer of the Special Investigations Unit.

Sec. 47 An employee against whom a complaint has been made shall not attempt, directly or indirectly, by threat, appeal, persuasion or the payment of promise of money or other things of value, to secure the withdrawal or abandonment of the complaint. Such actions shall be dealt with very strictly by the Department.

PART IV: INVESTIGATIONS

Sec. 48 Confidentiality of Disciplinary Process: Prior to the completion of the investigation of a complaint, information concerning such an investigation shall not be released unless authorized by the Commissioner.

However, the fact that a complaint was received and a departmental investigation is under way may be disclosed unless the Chief of the Bureau of Professional Standards and Development determines that for security reasons it should remain confidential.

Sec. 49 Initiating Investigation: Where practicable in investigations initiated by complaints, the complaints shall be verified before the investigation commences; however, the absence of verification shall not impede the registration and investigation of a complaint.

If the complaint is received at the unit to which the complainee is assigned, the commanding officer of the unit shall determine whether the matter can be appropriately dealt with at the unit level. In such cases commanding officers shall appoint an investigating officer, although the Bureau of Professional Standards and Development may intervene at any time and assume control of any investigation.

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If the commanding officer determines that the complaint is not appropriate for investigation at the unit level, it shall be referred to the Bureau of Professional Standards and Development for investigation. In such cases, the chief of the Bureau of Professional Standards and Development shall appoint an investigating officer, or return the complaint to the commanding officer of the person who is the subject of the complaint for investigation at the unit level. If the complaint is received at a unit to which the complainee is not assigned then the Bureau of Professional Standards and Development shall initiate the complaint at either the unit level or through the Bureau. The Bureau of Professional Standards and Development may also initiate investigations into such matters as it sees fit, whether or not a complaint has been received. Sec. 50 Investigative Techniques: The investigating officer may use any lawful investigative techniques, including, but not limited to, inspecting public records, questioning of witnesses, interrogation of the member complained of, questioning of fellow employees and surveillance.

Sec. 51 Interrogation of Members of the Department: The following provisions shall apply whenever, as part of an investigation of alleged violations of the Rules and Procedures, a member of the department is ordered to submit a report or to an interrogation.

- a. An interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise. No member shall suffer loss of pay for the time spent under interrogation.
- b. The interrogation shall take place at a location designated by the investigating officer. Usually it will be at the command to which the investigating officer is assigned or at the district station within which the incident allegedly occurred.
- c. The member of the department shall be informed of the rank, name and command of the interrogating officer and all persons present during the interrogation. If a member of the department is directed to leave his/her post and report for interrogation to another command, the commanding officer shall be promptly notified of the member's whereabouts.
- d. Whenever a member of the department is ordered to submit a report or to an interrogation pursuant to this Rule, the member may be informed of the nature of the investigation, including the name of the complainant. The address of the complainants and/or witnesses need not be disclosed; however, sufficient information to reasonably apprise the member of the allegations should be provided. If the complaint is filed in writing, a copy may be furnished to said member(s). If it is known that the member of the department being interrogated is a witness only, he should be informed at the initial contact.
- e. Questioning during an interrogation shall not be overly long. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.

- f. The member of the department shall not be subjected to any offensive language, nor be threatened with transfer, dismissal or other disciplinary punishment.
- g. Whenever a member is ordered, pursuant to these rules, to submit a report or to interrogation, that member shall be advised that any such report or interrogation cannot be used by the Department as evidence in criminal proceedings against that member. When a member of the department is complained against and is directed by a superior officer to submit a report or to an interrogation relative to such complaint, that member is required to reply.
- h. In any case, the refusal by a member of the force to answer pertinent questions may result in disciplinary action.
- i. The law imposes no obligation, legal or otherwise on the department to provide an opportunity for a member of the department to consult with counsel or anyone else when questioned by a superior officer about his or her employment or matters relevant to his or her continuing fitness for police service. Nevertheless, the department shall afford an opportunity for a member of the department, if so requested, to consult with counsel before being questioned concerning a serious violation of the rules and regulations, provided the interrogation is not unduly delayed. However, in such cases the interrogation may not be postponed for purpose of counsel past 10 a.m. of the day following the notification of interrogation. Counsel, if available and a representative of a certified employee organization may be present during the interrogation of a member of the department. Requests for an opportunity to consult with counsel in connection with minor violations will be denied unless sufficient reasons are advanced.
- j. In the event that an employee claims that there have been violations of any provisions of this Section, such employee, either alone or together with the employee organization representative, may file a signed, written complaint with the Police Commissioner against the person committing the alleged violation. The Police Commissioner shall cause such complaint to be investigated and render a decision with respect to any such complaint. The decision shall be in writing and shall state with particularity the consideration and reasons in support thereof including a statement of the facts found. A copy of the decision shall be given forthwith to both the person who is the subject of the complaint and the employee organization representative.

The Police Commissioner in his discretion may endeavor to eliminate any unlawful act or practice which constitutes a violation of this Section by informal methods or conference, conciliation and persuasion.

Sec. 52 Investigation Report: As soon as practical, though not the expense of a thorough investigation, the investigating officer shall bring the investigation to a close and prepare an investigation report. The report shall summarize all evidence gathered during the investigation and shall contain the investigating officer's recommendation that the complaint be found:

- a. sustained (investigation disclosed sufficient evidence to support allegations in the complaint);

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- b. not sustained (investigation failed to prove or disprove the allegations);
- c. exonerated (the action complained of did occur, but investigation revealed that action was proper, legal and reasonable); or
- d. unfounded (investigation revealed that conduct did not occur).

In addition, if the investigating officer has discovered misconduct not based on complaint, he shall so state in his report.

The report shall then be forwarded to the commanding officer if a unit-level investigation, or to the chief of the Bureau of Professional Standards and Development. The commanding officer or the chief of the Bureau of Professional Standards and Development shall then make recommendations for disciplinary action or shall impose an immediate suspension for five days or less if the complaint has been sustained. If a unit-level investigation, a copy of the report along with the commanding officer's disciplinary action will be sent to the Bureau of Professional Standards and Development for confirmation.

If the investigation was inaugurated by a complaint from outside the department, upon completion of the investigation a letter shall be sent to the complainant informing him or her of the results of the investigation.

PART V: HEARINGS

A. FORUMS

Sec. 53 The Police Commissioner is the appointing authority pursuant to the provision of M.G.L. c. 31, s. 41 and as such may hear cases relating to discharge, removal, transfer to another agency, suspension, lowering in rank or compensation, abolition of office or punishment duty. In addition, he may appoint either a hearing officer or a trial board to hear such cases.

Sec. 54 Trial Boards: Pursuant to the Acts of 1962, Chapter 322, the Police Commissioner may from time to time convene a Trial Board to be composed of three captains, to inquire into such matters as the Commissioner directs. No member of a Trial Board may sit on any matters involving the member's district, or with which the member has direct personal contact. In such cases the member must be disqualified, and the Commissioner shall appoint another captain to the Board.

Pursuant to the Acts of 1950, Chapter 735, a Trial Board must be convened at the request of any person who has been reassigned from duties as a detective after his probationary period. For rules governing such hearings, see Section 65, "Detective Hearings" below.

Sec. 55 Hearing Officer: The Police Commissioner may, pursuant to M.G.L. c. 31, s. 41, appoint a hearing officer to hear any cases concerning proposed discharge, removal from office, transfer to another agency, suspension, lowering in rank or compensation, abolition of office, or imposition of punishment duty. In such a case, the Commissioner shall send to the Bureau of Professional Standards and Development and the Chief Clerk a designation in writing containing the name of the hearing officer and the employee who

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is the subject of such action. The Hearing Officer shall follow the general rules of procedure outlined below. B. PROCEDURE

Sec. 56 Notice: Before any action affecting employment or compensation of a tenured employee as delineated in M.G.L. c. 31 s. 41, is taken, the officer or employee involved shall be given a written statement of the specific reason or reasons for the contemplated action, together with a copy of M.G.L. c. 31, ss. 41-45. The employee then may consent in writing to the imposition of discipline and waive the right to a hearing on the specific reason or reasons given. If no such waiver or consent is executed, the Police Commissioner shall determine whether the hearing is to be before the Commissioner, Hearing Officer, or Trial Board, and shall notify the Bureau of Professional Standards and Development in writing of the hearing, the forum, the employee and the proposed action.

The Bureau of Professional Standards and Development shall then set a time and date for the hearing, and shall cause notice to be served upon the employee as to time, date and forum. The notice of the hearing must be served at least three days before the hearing except in cases involving abolition of position, in which case the notice must be served at least seven days before the hearing.

Sec. 57 Postponement: Postponement of a hearing to another date may be allowed by the Commissioner, Trial Board or Hearing Officer for an adequate reason presented either by the complainant or the defendant. However, the request for such postponement must be received before the day set for the hearing. In case of such postponement, both parties shall be notified of the new hearing date at least three days in advance of the hearing. A request for a postponement for medical reasons requires a doctor's statement from a department appointed physician.

Sec. 58 Attorneys: Both the complainant and the defendant may have attorneys present to represent them at a hearing. In addition, the defendant may be accompanied by an employee organization representative.

Sec. 59 Evidence: The hearing shall be informal and administrative. The purpose of a hearing is to determine the facts and situations surrounding a case, and members of a hearing forum, especially when counsel is not present, shall protect the rights of all parties involved whenever through the lack of ability, inexperience, or oversight, either side's case may seem to be improperly prejudiced. The rules of evidence observed by law need not be applied. Evidence which reasonable persons are accustomed to rely on in the conduct of their affairs may be considered. Unduly repetitious evidence may be excluded, and documentary evidence may be admitted in the form of copies or excerpts or by incorporation by reference. All evidence, written, oral and real, offered by the parties which is relevant to the statement of reasons shall be considered.

Sec. 60 Witnesses: Both parties may bring witnesses before the hearing. The complainant and the defendant shall be responsible for the attendance of their respective witnesses, but the Bureau of Professional Standards and Development may be requested to give

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reasonable assistance in securing such attendance. Witnesses, before testifying, shall be sworn or shall make an affirmation. Examination of each witness shall be made separately and apart from other witnesses, and each side shall have the opportunity to cross-examine all witnesses. Sec. 61 The Record: The Bureau of Professional Standards and Development shall designate an employee prior to the date of the hearing to serve as clerk during the hearing. The clerk shall make a record of all testimony before the hearing and shall be responsible for marking and preserving all other evidence for the sole use of the hearing body and the Commissioner. Sec. 62 Other Procedural Rules: The hearing forum may establish further reasonable rules to expedite the hearing. In addition, several hearings may, if appropriate and at the discretion of the Commissioner, be consolidated into one general hearing. Sec. 63 Finding: Upon completion of the hearing, the hearing forum shall forthwith submit a written report to the Police Commissioner, with a copy to the Bureau of Professional Standards and Development. That report shall summarize the evidence introduced by the parties, make specific findings of fact, and make recommendations as to the disposition of the charges including recommendations as to the appropriate discipline if any. The Police Commissioner shall immediately review the report of the hearing forum. He may return it for elaboration, further explanation or further hearings and findings of fact if necessary and practicable within the time limits required by law. Recommendations made by the hearing forum will not be binding on the Police Commissioner. Within seven days after the filing of the report of the hearing officer, the Police Commissioner shall give to the employee a written notice of his decision stating fully and specifically the reasons therefor.

Sec. 64 Detective Hearings:

- a. Whenever a detective is reassigned to the regular police staff, that detective shall have the right to appeal the reassignment, pursuant to the Acts of 1950, Chapter 735. A detective who wishes to appeal must submit a notice in writing to the Police Commissioner requesting such an appeal within thirty days of the effective date of the order or reassignment.
- b. When such a notice is received, the Police Commissioner shall designate three captains to sit as members of the Trial Board after the expiration of the thirty day period following the effective date of the order or reassignment. One of the captains shall be designated as chairman and another as clerk, and an order designating the members of the Board and their duties served shall be transmitted to the Chief Clerk and to the Bureau of Professional Standards and Development.
- c. Upon receipt of the designation, the Bureau of Professional Standards and Development shall schedule the hearing and notify all interested parties of the place, date and time for the commencement of the hearing. Such notice must be received by the parties at least three days prior to the date set for the hearing.

- d. In cases where more than one member has appealed a reassignment, the appeals may be consolidated and heard by one Trial Board.
- e. The Trial Board sitting on a detective hearing shall apply the same rules governing evidence and witnesses as provided above (Sections 59 and 60), and in addition, shall also have the power to make such rules as it deems necessary to expedite the hearing.
- f. Where the assignment was the result of a complaint of misconduct or due to reasons which might impose a stigma, such as allegations of illegal conduct, the member shall be given, at the time the notice of hearing is served, a statement of charges which fairly summarizes those allegations. In addition, if the name of the complainant is known, the member shall be informed of that name. In such case, the reassignment shall be affirmed if the board finds that there is substantial evidence that the allegations are true and are sufficiently serious to reflect upon the ability of the member to perform the duties of a detective.
- g. Where the reassignment was not due to such aforesaid reason, but was an attempt to increase efficiency or economy of the Department by means of a reorganization or reallocation of manpower, or because of a member's lack of investigative ability, the reassignment shall be affirmed if the board finds there is substantial evidence that the reassignment is a good faith attempt to promote the efficiency or economy of the Department.
- h. No later than ten days after the conclusion of the hearing the board shall file its notice of decision with the Chief Clerk and the Bureau of Professional Standards and Development. If the hearing results in a change in status of the employee, the Personnel Division shall be notified by the Bureau of Professional Standards and Development. The decision shall be supported by a memorandum which shall specify reasons in support of its decision. The decision of the board as to the reassignment is final, and no provisions of Chapter 31 of the Massachusetts General Laws shall be applicable to any such hearing or determination made thereunder.
- i. The Bureau of Professional Standards and Development shall notify the parties of the result. The decision and the reasons thereof shall remain on file with the Chief Clerk and the parties may, upon reasonable notice, inspect and copy that decision.

Sec. 65 Review From Imposition of Immediate Suspension or Punishment Duty: When an employee is suspended for five days or less or is assigned punishment duty by a commanding officer, that employee receives a written notice concerning the action within twenty-four hours. The employee may then, if so wished and within forty-eight hours of the receipt of the notice, request a hearing to determine whether there is just cause for such an action. If such a request is made, then a hearing must be held within five days of the receipt of the request by the Police Commissioner. The hearing shall be conducted using the rules procedures outlined above (Sections 56 through 62).

Within two days after the conclusion of the hearing, the Police Commissioner shall give the employee concerned a written notice of the decision. Where just cause has not been found, the discipline shall be deemed not to have been imposed and the employee shall be compensated for lost time or extra hours worked. If it is decided that just cause did exist

and the employee refuses to accept such a finding, the employee shall have the right of appeal pursuant to the Massachusetts General Laws.

NOTES: Rule No. 109 was amended September 14, 1979, at which time the Bureau of Inspectional Services assumed control of procedures which the Bureau of Professional Standards and Development had previously administered.

In February, 1983, The Bureau of Professional Standards and Development was given those duties which they had originally administered.

In addition, Section No. 22 was rewritten so that the Commander of the Staff Inspection Division was given the authority to initiate procedures for a letter of reprimand to be issued.

In April, 1983, violations of Rule No. 102, sections 7 and 11, were added to Section 32 of this rule as offenses covered by the five-day suspension rule. This resulted in a renumbering of section 32.

Notes: Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Sections 17, 19, 20, 24, 30, 34, 38, 41 (b,d,e,g,h), 44 (b,c,d), 46 (a,b,c), 48, 49, 52, 55, 56, 60, 61, 63, 64 (b,c,h,i).

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APPENDIX C



One Schroeder Plaza
Boston, MA 02120

July 31, 2008

To: David Hall, John O'Brien and Ruth Suber
Community Ombudsman Oversight Panel

From: Superintendent Kenneth Fong
Chief, Bureau of Professional Standards and Development

Subject: CO-OP Annual Report

Sirs and Ma'am,

I respectfully submit the information you have requested from the Internal Affairs Division of the Boston Police Department for your Annual Report.

All the information provided to you regarding Internal Affairs statistics was gathered directly from our IA PRO case management system. Any breakdown of data that was not compiled on computer was gathered directly from our investigation case files. This process was handled with the utmost care and propriety in order to give you the most accurate information available to date.

I thank you for the time and attention you have put into case review this past year; every recommendation you have sent to my office has been reviewed and considered carefully.

I look forward to your report.

Respectfully submitted,

Superintendent Kenneth Fong
Chief, Bureau of Professional
Standards & Development

APPENDIX D

TO: All Internal Investigations Unit Investigators

THRU: Yola Cabrillana, Executive Secretary
Bureau of Professional Standards & Development
Liaison to the Community Ombudsman Oversight Panel

FROM: Captain Detective Mark Hayes
Commander, Internal Affairs Division

RE: Report of CO-OP Suggestions Implemented Into IAD Case Investigations

DATE: 04/18/2008

Below are some of the issues and concerns that were raised by the Community Ombudsman Oversight Panel (CO-OP) during their IAD case reviews. On October 24, 2007 and January 2, 2008, I sent you emails that listed these points of concern. I want to reiterate them to ensure they are implemented and complied with.

- Investigator's Conclusions: If you make a statement or conclusion, or an assessment of someone's credibility or motivation for filing a complaint, then support that with specific underlying facts and rationale to justify it. Don't just make broad statements.
- Unknown Officers: Document in your report why the officers are Unknown. Either the complainant and/or witnesses cannot identify them, cannot provide an adequate description, or cannot identify them from photo arrays, etc. Document all the steps you have taken to identify any unknown officer.
- Terms and Labels: Factually describe terms and labels that you use in your investigative reports. For example, if you state that someone "verbally abused" the officer, then factually describe that verbal abuse. What did the person say? Be specific!
- Ensure that the complainant and all other witnesses have been identified and interviewed. If you are unable to establish contact with a complainant or witness, then document all of your attempts to establish that contact. Ask the complainant and witnesses if there were any other witnesses to the incident. If they say "yes" but refuse to provide you with the names and other contact info for those alleged witnesses, then document those facts in your report. (Dates and times were

telephone messages left, Certified and First Class letters mailed to their residence, and any home visits.)

- Home Visits: If a complainant or witness refuses to cooperate or contact you, then you may have to proceed to their residence in order to establish contact and their cooperation. If there is no response at their residence, leave one of your business cards and request that they contact you.
- Insert page #'s on your reports.

All of these suggestions will ensure that your investigations are thorough and complete. Your attention and cooperation in these matters will be greatly appreciated.

Respectfully submitted,

Captain-Detective Mark Hayes
Commander, Internal Affairs Division

CC: David Hall, John O'Brien and Ruth Suber
Community Ombudsman Oversight Panel

TO: All Internal Investigations Unit Investigators

THRU: Yola Cabrillana, Executive Secretary
Bureau of Professional Standards & Development
Liaison to the Community Ombudsman Oversight Panel

FROM: Captain Detective Mark Hayes
Commander, Internal Affairs Division

RE: Report of CO-OP Suggestions Implemented Into IAD Case Investigations

DATE: 06/30/2008

Below are some more issues and concerns that were raised by the Community Ombudsman Oversight Panel (CO-OP) during their IAD case reviews. Please ensure that you avoid these issues in the future. Our goal is to conduct complete, fair and thorough investigations.

Investigation was Not Fair and Objective for the following reasons:

- The complainant was characterized as “rambling and illogical, which appears to have influenced the way in which the investigator pursued the investigation.
- Conclusions were made that were not supported by the evidence.
- The investigator described the primary witness as “forthright and his version of events more believable.” However, the investigator then “Unfounded” the case. If the person who the investigator describes as believable says the incident occurred, how can the investigator then conclude that it didn’t occur?”
- Investigator sent a memo to a supervisor that is leading that supervisor to a certain conclusion. “If they weren’t there and they don’t know anything then your report will close the case out.” Each officer should have been interviewed and/or asked to submit reports, rather than having their supervisor ask them. An objective investigator should seek information but not indicate the impact of that information on the outcome of the case.
- Recorded Interviews Were Not Objective: When the investigator interviewed the complainant the interview was more like a cross examination and combative. When the investigator interviewed an officer, he asked more leading questions that also provided the officer with information. The investigator placed certain

facts on the record instead of asking the officer questions and eliciting the information from the officer first.

- These taped interviews contribute to the public perception that the investigatory process is biased and not fair and objective.
- In hindsight, this case should probably have been classified as Not Sustained rather than Unfounded.

Respectfully submitted,

Captain-Detective Mark Hayes
Commander, Internal Affairs Division

CC: David Hall, John O'Brien and Ruth Suber
Community Ombudsman Oversight Panel

How do I contact the Community Ombudsman Oversight Panel?



If you want further information, you can contact the Executive Secretary to the CO-OP in writing:

By mail:

The Community Ombudsman Oversight Panel

Attn: Yola Cabrillana

P.O. Box 190189

Roxbury, MA 02119

By email:

COOP.bpd@cityofboston.gov

Or by phone:

617-594-9216

"Such oversight will serve to promote the professionalism of the Boston Police Department."

Excerpt from Mayor Thomas M. Menino's Executive Order

What else should I know?

The entire process is confidential. Personal information will not be released. Your appeal and any correspondence will be filed by the Executive Secretary and kept secure.



City of Boston Community Ombudsman Oversight Panel

P.O. Box 190189

Roxbury, MA 02119

Phone: 617-594-9216

www.cityofboston.gov/POLICE/CO-OP

APPENDIX E



Mayor Thomas M. Menino

City of Boston Community Ombudsman Oversight Panel

"It is in the best interest of the City of Boston and the Boston Police Department to have an oversight mechanism to build trust and confidence within the community."

Excerpt from Mayor Thomas M. Menino's Executive Order

Panel Members

- John O'Brien, Ombudsman
- David Hall, Ombudsman
- Ruth Suber, Ombudsman



What is the CO-OP?

The Community Ombudsman Oversight Panel, or CO-OP, is a three person independent civilian board appointed by the Mayor that is empowered to review Boston Police Internal Investigations cases appealed by complainants.

What cases are eligible for appeal?

Cases eligible for appeal include those with a finding of not sustained, exonerated or unfounded that you feel were not fairly and/or thoroughly investigated.

How do I file an appeal?

You, or your legal representative, can file an appeal once you have received the Notice of Finding from the Boston Police Internal Investigations Unit. You must file your appeal in writing within fourteen (14) calendar days of the date on the Notice of Finding. If your appeal is sent via mail, the appeal must be postmarked within fourteen (14) calendar days of the date on the Notice of Finding.

Please mail appeals to:

Community Ombudsman Oversight Panel
Attn: Yola Cabrilla
P.O. Box 190189
Roxbury, MA 02119

If your appeal is hand-delivered, it must be delivered to the address below by the close of business of the fourteenth (14th) day from the date on the Notice of Finding.

Please hand deliver appeals to:

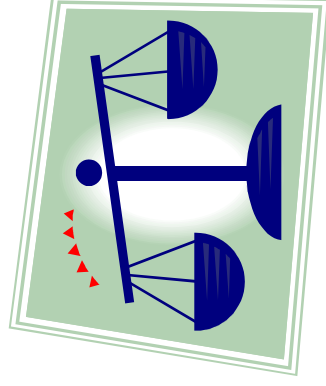
Community Ombudsman Oversight Panel
Attn: Yola Cabrilla
City of Boston Law Department
City Hall
Room 615
Boston, MA 02201

What is the process of appeal?

When an appeal is received within the allotted time-frame, it is assigned to an Ombudsman. The Ombudsman will then review the entire Internal Investigations case file and make a recommendation. Once a final decision has been made, the Executive Secretary will notify you by mail.

Who makes the final decision?

The Boston Police Commissioner makes the final decision on an appealed case. Recommendations by the Ombudsman and the Chief of the Bureau of Professional Standards and Development are considered in addition to case file documents. The Police Commissioner's determination is final and no further appeal is available.



How long will this appeal take?

There is no specific time limit allotted for an appeal. It will take time for the Ombudsman to review the entire case file, especially when a case contains multiple violations. Ombudsmen will be assigned more than one CO-OP case file for review at a time.

What training has the Panel received?

Each of the Ombudsmen has extensive knowledge and experience in law enforcement, the criminal justice system and/or the judicial process. However, prior to reviewing any Boston Police Department Internal Investigation case, the Panel members received training at the Boston Police Academy to better their understanding of how police officers are trained while in the Academy. Topics discussed at this training included Constitutional Law, Race and Community Relations, and Use of Force, among others. A second day of training was also given by the Department to educate the Panel members on the Internal Affairs Investigation process, the disciplinary process and other related topics. The Panel members are in the process of receiving external training from N.A.C.O.L.E., the National Association for Civilian Oversight of Law Enforcement.

Will the Panel be reviewing cases other than civilian complaints?

The Panel will also be reviewing a random sample of not sustained, exonerated or unfounded cases that *have not* been appealed by complainants. This external oversight of cases will help ensure that current Internal Investigation practices are fair, thorough and complete even when an appeal is not filed. Not sustained, exonerated, or unfounded cases involving allegations of serious misconduct or unjustified use of force will also be reviewed by the Panel at the discretion of the Department.

APPENDIX F

Intake Procedures

Intake Procedures

In order to determine the adequacy of the intake process employed by the Boston Police Department's Internal Affairs Division (the "IAD"), an examination of the policies and procedures employed by similarly situated review boards was undertaken.² In completing this review, information was gathered from the annual reports of three oversight boards: The Chicago Independent Police Review Authority (the "Chicago IPRA"), the San Jose Office of the Independent Police Auditor ("the San Jose IPA"), and the Washington, D.C. Police Complaint Board ("the D.C. OPC").

While no two police oversight boards are identical, the procedure for lodging grievances appears to be the one area that is consistent among the various state agencies. A review of the procedures employed by the Chicago IPRA, the San Jose IPA and the D.C. OPC reveals that all complainants are required to file a complaint form summarizing the alleged incident and providing information about how to contact the complainant when a decision has been made. Moreover, each complaint form provides an explanation of the complaint process.

Instructions to Complainant

The Chicago IPRA, San Jose IPA and D.C. OPC each have established protocol that must be utilized when filing complaints and has made this information available to its citizens. Specifically, the Chicago IPRA provides information in a document entitled, "How to File a Complaint." It gives the telephone number of the agency, the days of the week that complaints can be made, and informs citizens that they can make complaints by visiting the office or by mail.

The San Jose IPA appears to provide the most specific information for complainants. While the Chicago IPRA only provides the most basic information, San Jose's citizens are also given information about which parties have standing to file complaints, deadlines, and the exact procedures for lodging grievances. The specific duties of the San Jose IPA investigators are also listed, along with information concerning the manner

² It should be noted that the Community Ombudsman Oversight Panel (CO-OP), has no involvement in the initial processing of complaints which often includes an initial interview with the complainant. Unlike many other review boards that have staff that are responsible for intake, CO-OP must rely on the IAD for information regarding initial complaints. This is especially difficult because written policies regarding intake procedures are not readily available to the public.

in which investigation should be conducted.³ Lastly, rules by which investigators are to abide are listed.⁴

Although the D.C. OPC's policies and procedures are not as detailed as the Chicago IPRA, in addition to outlining the procedures for filing a complaint, it explains the process that occurs after a complaint is received. Moreover, information is provided regarding how complaints are assigned, the role of the investigator and the procedures used in the agency's attempt to locate witnesses.

The IAD

Unfortunately, the IAD has not done a satisfactory job in informing Boston's citizens about the methods that should be employed when filing a complaint. The study, *Enhancing Citizen Participation in the Review of Complaints and Use of Force in the City of Boston Police Department*, found that Boston residents generally did not know how to file a complaint.⁵ Currently, there is confusion in the community about how and where to file a complaint and what to expect when doing so. Although the study was conducted 3 years ago, it appears that the complaint process is still largely unknown to most residents in the city of Boston.

It has also been reported, and should be noted, that the IAD does not do enough to accommodate people who speak different languages. Written communication, including brochures, websites, letters and forms are only provided in English. It is crucial that such documents be accessible to non-English speakers and people with limited English proficiency.

³ For example, it is made clear that complainants are to be permitted to give an uninterrupted account of their complaint before investigative questioning is commenced.

⁴ Inclusive within these rules is the requirement that investigators refrain from alienating or offending complainants by requesting or referring to any criminal history. Moreover, investigators must not check for outstanding warrants, inquire about a complainant's citizenship, immigration status, or make reference to other unsubstantiated complaints.

⁵ Dean Jack McDevitt, Dr. Amy Farrell and Dr. W Carsten Anderson, *Institute on Race and Justice*, December 2005



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

EXECUTIVE ORDER

March 14, 2007

Establishing a Community Ombudsman Oversight Panel and Complaint Mediation Program

WHEREAS, civilian oversight and review of internal investigations have become a standard practice for many law enforcement agencies;

WHEREAS, it is in the best interest of the City of Boston and the Boston Police Department to have an oversight mechanism to build trust and confidence within the community;

WHEREAS, such oversight will serve to promote the professionalism of the Boston Police Department, and to enhance community relations; and

WHEREAS, such oversight will be established to demonstrate that the Boston Police Department internal affairs process is fair and thorough;

NOW, THEREFORE, pursuant to the authority vested in me as chief executive officer of the City of Boston, St. 1948, c. 452 § 11, and every other power hereto enabling, I hereby order and direct the establishment of the Community Ombudsman Oversight Panel and Complaint Mediation Program.

ARTICLE I. PANEL MEMBERSHIP.

The Panel will be composed of three members appointed by the Mayor, and each will serve a term of three years. This term may be renewed at the Mayor's discretion. Each ombudsman will have extensive knowledge and experience in law enforcement, the criminal justice system and / or the judicial process.

ARTICLE II. PANEL MEMBER COMPENSATION.

Each ombudsman will be paid one hundred dollars (\$100.00) per hour for his / her service, not to exceed fifty thousand dollars (\$50,000) per year.

ARTICLE III. PANEL MEMBER TRAINING.

Ombudsmen will attend a preliminary training session prior to beginning their review of internal affairs cases. This training will be formulated by designees of the Boston Police Commissioner, and approved by the Mayor. The training will include, but is not limited to, the internal affairs process, Boston Police Department Rules and Regulations, constitutional law, and general police procedures.

ARTICLE IV. DUTIES OF THE PANEL

The panel will:

- A. Provide external oversight of Boston Police internal affairs investigations for thoroughness and fairness;
- B. Receive appeals from aggrieved complainants;
- C. Participate in out reach to the community as to the Panel's purpose and procedures;
- D. Periodically review policies and procedures and provide a report to the Mayor and the Police Commissioner on the integrity of the complaint and internal affairs process;
- E. Produce an annual report to the Mayor and the Police Commissioner documenting cases reviewed, the outcome of the Panel's review for each case, and the Complaint Mediation Program's participation level and effectiveness.

ARTICLE V. POWERS OF THE PANEL.

The panel will have the following powers when reviewing internal affairs cases:

- A. To review completed cases as presented by the Boston Police Department's Internal Affairs Division ("IAD"). The Panel will not have subpoena power, it cannot interview witnesses, or do its own independent investigation;
- B. To have access to all materials contained in the completed internal affairs files subject to review, except those documents protected from release by statute;
- C. To make recommendations to the Chief, Bureau of Internal Investigations ("BII"), for further investigation or clarification; and
- D. To make recommendations to the Police Commissioner regarding the reviewed cases.

ARTICLE VI. CASES REVIEWED BY THE PANEL.

The panel will review the following categories of cases:

- A. Not sustained, exonerated, or unfounded cases involving allegations of serious misconduct and justified use of force;

- B. A random sample of all not sustained, exonerated or unfounded complaints; and
- C. Not sustained, exonerated, or unfounded findings appealed to the Panel by complainants who allege that the investigation of their complaint was either not fair and / or not thorough.

ARTICLE VII. PANEL REVIEW PROCESS.

A. For cases in category A or B in Article IV, the process will be follows:

1. The Chief, BII, and the Legal Advisor shall determine those cases to be reviewed pursuant to categories A and B of Section IV. The Panel will review approximately ten percent (10 %) of all cases with a finding of either not sustained, exonerated, or unfounded.
2. The Executive Secretary to the Panel will compile the cases for review, and present them to the reviewing ombudsman. The Executive Secretary shall assign case numbers to the reviewed cases. The entire investigative file will be provided to the reviewing ombudsman; however, the Executive Secretary shall redact the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).
3. The Executive Secretary shall notify the police officer(s) named in the reviewed cases that the case is under review by the Panel.
4. One ombudsman will review each case, and the reviewing ombudsman will either find the investigation to be thorough and fair, or send feedback to the Chief, BII, requesting clarification or further investigation. The Chief, BII, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he will make a determination as to the appropriate finding.
5. If the reviewing ombudsman determines that a case was investigated fairly and thorough, he/she shall notify the Police Commissioner, the Chief, BII, Legal Advisor and the named officer(s) of the determination.
6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he shall notify the reviewing ombudsman, the Chief, BII, the Legal Advisor and the named officer(s) of the determination.

7. The Executive Secretary shall maintain all files for the Panel. The files of the Panel shall be regarded as confidential and shall be examined only by Panel members, the Executive Secretary, and Boston Police Department employees as designated by the Police Commissioner. The Panel shall not duplicate documents provided by the Police Department. The files shall not be available for inspection by the public. The investigative files shall be returned to IAD within fourteen (14) days of the final determination.

B. For cases in category C of Article VI, the process will be as follows:

1. Upon a final determination of a finding on an internal affairs case, notification shall be sent to the complainant by the Commander of IAD of the Police Commissioner's finding. If the Police Commissioner's finding is not sustained, exonerated, or unfounded, the complainant shall be informed of his/her ability to seek an appeal of this finding to the Community Ombudsman Oversight Panel.
2. A complainant who wishes to appeal, must do so in writing within fourteen (14) days of the date of the notice from IAD is mailed. If the appeal is sent via mail, the appeal must be postmarked within fourteen (14) days from the date the notice from IAD is mailed. If the appeal is hand delivered, it must be delivered to the address below by the close of business of the fourteenth day as described above.

Appeals may be mailed or hand delivered to:

Executive Secretary, Community Ombudsman Oversight Panel
Bureau of Internal Investigations
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

3. The Executive Secretary shall date stamp the appeal upon receipt and shall assign a case number to the appeal. The Executive Secretary shall notify the police officer(s) named in the case of the appeal, and provide a copy of the appeal to the Police Commissioner, the Chief, BII and the Legal Advisor. The Executive Secretary shall prepare the case for the Panel, and assign the appeal to one ombudsman. The entire investigative file will be provided to the reviewing ombudsman; however, the Executive Secretary shall redact the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).

4. One ombudsman will review each case, and the reviewing ombudsman will either find the investigation to be thorough and fair, or send feedback to the Chief, BII, requesting clarification or further investigation. The Chief, BII, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he will make a determination as to the appropriate finding.
5. If the reviewing ombudsman determines that a case was investigated fairly and thoroughly, he/she shall notify the Police Commissioner, the Chief, BII, Legal Advisor and the named officer(s) of the determination.
6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he shall notify the reviewing ombudsman, the Chief, BII, the Legal Advisor and the named officer(s) of the determination.
7. The Executive Secretary shall notify the complainant of the determination by either the reviewing ombudsman or the Police Commissioner. All notifications made to the complainant shall be sent by certified mail, return receipt requested.
8. The Executive Secretary shall maintain all files for the Panel. The files of the Panel, and the statements of appeal, shall be regarded as confidential and shall be examined only by Panel members, the Executive Secretary, and Boston Police Department employees as designated by the Police Commissioner. The Panel shall not duplicate documents provided by the Police Department. The files shall not be available for inspection by the public. The investigative files shall be returned to IAD within fourteen (14) days of notification to the complainant of the final determination.

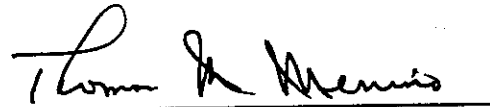
ARTICLE VIII. COMPLAINT MEDIATION PROGRAM

The Police Commissioner may establish a Complaint Mediation Program. This program will serve as a voluntary alternative to the formal complaint process, and will be available to those officers and complainants involved in less serious incidents. The Police Commissioner, or his designee, will determine what complaints are appropriate for the Complaint Mediation Program.

The Executive Secretary will compile data regarding the program, its participation, and its effectiveness, and provide the information to the Community Ombudsman Oversight Panel upon request.

I order and direct that all Cabinet members, Department Heads and City of Boston employees take all necessary steps to implement the above directives.

I further order and direct that one copy of this Order be delivered to the Commissioner of Police of the City of Boston and that another be filed with the Clerk of the City of Boston.

A handwritten signature in black ink, appearing to read "Thomas M. Menino", written over a horizontal line.

Thomas M. Menino
Mayor of Boston

Dated: 3/14/07