

December 21, 2015

VIA ELECTRONIC MAIL

Mayor Martin J. Walsh
1 City Hall Square, Suite 500
Boston, MA 02201 - 2013

Dear Mayor Walsh,

Upon our appointment this past spring, your administration challenged us to assess the CO-OP's effectiveness as a civilian oversight mechanism and, if needed, to make recommendations for its improvement. Since that time, we have solicited input from criminal justice experts, practitioners, clergy, and other key stakeholders. Our outreach efforts also included going out into the community to gauge public sentiment about the police department generally and citizen complaint investigations specifically. Not surprisingly, we found that the City of Boston is not immune to the long-simmering frustration and mistrust of police highlighted by recent tragic events across the country. It became clear to us that the existing oversight model, alone, is incapable of enhancing community confidence in the internal affairs process. We believe that the need to expand the community's role in the citizen complaint process has never been more acute.

With that in mind, we evaluated national police review and accountability systems, best practices, and emerging trends. We debated thoughtfully, and oftentimes passionately, about how best to tailor those models to the City of Boston. The resulting recommendations represent what we believe is an appropriately measured first step. We do not anticipate nor do we advocate for the proposed model to be the final stop on this journey. Rather, our hope is that this is the start of a process aimed towards achieving a system of police accountability and transparency that best serves the City of Boston.

We thank you for inviting us to conduct this review and welcome the opportunity to speak with you in detail about our recommendations.

Respectfully submitted,



Judge Regina Quinlan (Ret.)

J. Larry Mayes

Natashia Tidwell, Esq.

cc: Daniel Koh, Chief of Staff, Office of the Mayor
William Evans, Police Commissioner
Eugene O'Flaherty, Corporation Counsel

Civilian Review and Police Oversight in Boston

Review and Recommendations

COMMUNITY OMBUDSMAN OVERSIGHT PANEL

December 21, 2015

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Acknowledgments

Our efforts were aided considerably by the support of several representatives of Boston's faith community, civil rights advocates, and other key stakeholders. We also benefited greatly from training and materials provided by the National Association of Civilian Oversight of Law Enforcement (NACOLE). We owe a tremendous debt of gratitude to Northeastern University's Institute on Race and Justice (IRJ), which undertook a similar yet far more comprehensive review in 2003. The resulting report, released in 2005, provided us with a solid foundation from which to build. We wish to thank IRJ's director, Jack McDevitt, and Brian Corr, Executive Secretary of the Cambridge Police Review & Advisory Board, for their time and insightful commentary. Zachary Eckert provided invaluable research assistance for this project.

Executive Summary

This memorandum offers our review of the City of Boston's oversight model and recommendations for the expansion of the community's role in the city's system of police accountability. While Boston is one of several major cities undergoing such an evaluation, it has a unique opportunity to implement meaningful changes without federal intervention and in the absence of a major incident. Unfortunately, for many jurisdictions, reform has come in the wake of tragedy. We commend Mayor Walsh for having the foresight to undertake this effort at an unprecedented time for policing in the United States.

Late last year, President Obama convened the Task Force on 21st Century Policing, a collection of police executives, academics, community leaders, and legal practitioners tasked with drafting a specific set of recommendations for "building trust and nurturing legitimacy on both sides of the police-citizen divide."¹ In its final report, the Task Force recognized the importance of civilian oversight to the fostering of trusting relationships. While stopping short of recommending a one-size-fits-all approach, the Task Force urged police departments to adopt procedural justice as a guiding principle when defining the appropriate form and structure of their oversight mechanisms.² As applied to citizen complaints, research indicates that a complainant is more likely to accept an outcome, even one that results in an adverse finding, if he or she believes that the process was procedurally just.³

Although the CO-OP's review of internal affairs investigations for fairness and thoroughness offers some measure of legitimacy, the number and type of cases referred falls far short of a representative sample. Further, the appeal structure renders the CO-OP ineffective in addressing and remediating those factors that tend most to erode trust in the process. Specifically, the existing structure denies the community a contemporaneous voice in the complaint resolution process, one that ensures investigations are conducted in a timely and procedurally just manner.

As described in further detail below, we offer two recommendations: 1) the establishment of a community-based office of citizen complaint intake and resolution; and 2) an increase in the number and nature of internal affairs and use of force investigations eligible for CO-OP review. We believe that these improvements, coupled with the implementation of the proposed Complaint Mediation Program, represent significant first steps towards restoring the community's trust in the police department's internal affairs process.

¹ See President's Task Force on 21st Century Policing, *Final Report of President's Task Force on 21st Century Policing*, 9 (2015)

² See *id.* at 26.

³ See *id.* at 9-11.

The History & Evolution of the Existing Oversight Model

In the early 1990's, Mayor Raymond L. Flynn convened a special committee, led by attorney James D. St. Clair, to review management and supervisory practices within the Boston Police Department in the wake of the Charles Stuart scandal. The St. Clair Committee's comprehensive review of the Internal Affairs Division (IAD) revealed "a wide range of problems,"⁴ including significant and unnecessary investigatory delays and a process that was "unfairly skewed" against complainants.⁵ As a result, the police department had lost the public's confidence in its ability to conduct investigations and hold individual officers accountable for misconduct. Among several key recommendations for regaining the public trust, the St. Clair Committee urged the City of Boston to create a model for community involvement in the complaint investigation process.⁶ Specifically, the St. Clair Committee recommended the establishment of a limited Community Appeals Board, comprised of police officers and community members, to ensure that IAD investigations were conducted in a thorough and timely manner.⁷

Since that time, competing models of civilian oversight and review have been proposed or implemented in Boston. In 2003, Police Commissioner Kathleen O'Toole partnered with Northeastern University's Institute on Race and Justice (IRJ) to assess the police department's existing complaint investigation process and to review national best practices for civilian oversight. In addition to providing a detailed history of the roots and evolution of civilian oversight in the United States, IRJ identified eight (8) U.S. cities that had adopted some form of community participation in the internal affairs process.⁸ IRJ then conducted an in-depth review of each jurisdiction through site visits, focus groups, and interviews with police officers and key community stakeholders. In its analysis of existing Boston Police department practices, IRJ developed a survey for citizens and officers who had utilized the complaint investigation process in recent years and solicited community input on both the citizen complaint and use of force review processes.⁹

In its 2005 report, IRJ noted both the strengths of the existing complaint investigation and use of force review systems and their significant challenges. It observed that among the chief

⁴ See James D. St. Clair et al, *Report of the Boston Police Department Management Review Committee* ("St. Clair Report"), January 14, 1992 at 99.

⁵ St. Clair Report at 128.

⁶ See St. Clair Report at 132. "Unfortunately, our review of IAD cases and our discussions with both police officers and community members convince us that [review by the Department's Legal Advisor] is insufficient to ensure fairness and completeness in resolving citizen complaints. Only by bringing community members into the process can IAD hope to regain credibility and restore the public's confidence that the Boston Police can be trusted to investigate themselves." *Id.*

⁷ See St. Clair Report at 131.

⁸ See Northeastern University Institute on Race and Justice, *Enhancing Citizen Participation in the Review of Complaints and Use of Force in the Boston Police Department* ("IRJ Report"), December 2005. The IRJ report includes a case study for each reviewed agency.

⁹ Prior to the release of IRJ's report, Commissioner O'Toole convened a committee, led by former United States Attorney Donald K. Stern, to review the police department's actions leading up to and immediately following the death of Victoria Snelgrove. Ms. Snelgrove, a 23-year old college student, died after being hit with a projectile fired from a BPD-issued FN303 less-lethal device outside Fenway Park in October 2004. The Stern Commission recommended that the police department establish a police-civilian board to review uses of force resulting in injury. Based on the Stern Commission's report, IRJ expanded the scope of its review to include an assessment of the need for external oversight of use of force investigations.

concerns raised by community members and focus group participants were the community's limited role in police oversight, a lack of transparency in the IAD process, and significant delays in completing investigations which led to the perception that complaints "disappeared into a black hole."¹⁰ IRJ issued three recommendations for improving the existing complaint resolution process: 1) establishment of a complaint mediation program; 2) increased community access to IAD including improvements to IAD's communications with complainants; and 3) expanded community involvement in police oversight.¹¹

IRJ's recommended approach to civilian oversight included the appointment of a Professional Ombudsperson to review all IAD and use of force investigations resulting in a finding of Not Sustained. Additionally, IRJ recommended that the Ombudsperson be empowered to designate for review all such cases rising above "a designated threshold of severity" to a panel comprised of community members and police personnel.¹² Two years later, Mayor Thomas M. Menino established the Community Ombudsman Oversight Panel (CO-OP), Boston's longest standing model of civilian oversight. While the CO-OP provides a mechanism for ensuring fairness and thoroughness in the IAD process, it lacks many of the components the IRJ identified as critical to restoring community confidence in the complaint investigation process.

First, the scope of cases referred to the CO-OP falls far short of IRJ's recommendation for the Professional Ombudsperson. Since 2011, the CO-OP has reviewed less than 20% of internal affairs investigations resulting in a finding of Not Sustained, Exonerated, or Unfounded - considerably less than IRJ's recommendation that all such matters be subject to review by the Professional Ombudsperson. Further, despite IRJ's recommendation that the Professional Ombudsperson be empowered to conduct a random review of sustained complaints, the CO-OP lacks the authority to review such cases. Finally, while the 2007 Executive Order provides that the CO-OP has the authority to review cases involving allegations of serious misconduct and justified use of force, the police department maintains sole discretionary authority in identifying matters for referral.¹³ To date, zero cases have been referred to the CO-OP under this provision.

Structurally, the CO-OP is ill-equipped to address two main criticisms of the IAD process, first identified by the St. Clair Commission, that still persist today: 1) delays in the investigatory process; and 2) perceived bias against complainants. One year after the CO-OP was established, the City commissioned the Harvard Kennedy School Program in Criminal Justice Policy and Management to study and investigate the low rate of citizen appeals to the CO-OP. At the time, only seven (7) of an eligible 116 complaint investigations had been appealed. Researchers formulated and undertook a 3-month mail and phone survey of eligible complainants, receiving responses from approximately 25%.¹⁴ When asked why they didn't appeal, two-thirds of the

¹⁰ See IRJ Report at 10.

¹¹ See IRJ Report at 12-13.

¹² See IRJ report at 14-15.

¹³ See Mayor Thomas M. Menino, *Executive Order Establishing a Community Ombudsman Oversight Panel and Complaint Mediation Program*, Article VI.A (March 2007).

¹⁴ See Harvard Kennedy School Program in Criminal Justice Policy and Management, *"An Assessment of the Community Ombudsman Oversight Panel*, ii. (April 2009).

respondents stated that their complaint was not investigated in a timely manner.¹⁵ It stands to reason that protracted and unexplained delays in completing an investigation would impact a complainant's willingness to file an appeal.

As detailed in numerous CO-OP annual reports, the issue of timeliness continues to plague internal affairs investigations. In soliciting community input for this report, we found timeliness to be the most complained-of aspect of the internal investigation process. A review of matters referred to the CO-OP since 2011 reveals that most appeals resulted from investigations spanning more than two years. In some instances, cases referred to the CO-OP via the random audit process lingered in IAD for up to four (4) years. While many of these delays were attributable to extenuating circumstances, some were merely the result of administrative logjams in the police department's chain of review structure. Because the appeal process is, by its nature, a post-investigatory review, the CO-OP has no contemporaneous role in complaint investigations. As such, there is no one outside the police department in a position to advocate on behalf of complainants seeking timely completion of investigations and better communication from IAD about the status of a complaint.

The police department must also confront the community's perception of bias in the internal investigation process. While the St. Clair Committee found actual and systemic issues of unfairness in complaint investigations, the police department has undertaken tremendous effort to eliminate those practices that tend to foster bias. Data collection methods and interview techniques have improved dramatically in the last 20 years. However, in the sampling of cases the CO-OP has reviewed since 2011, roughly 25% were deemed not fair, not thorough, or both. This number does not include so-called "he-said/he-said" matters, cases that typically result in "Not Sustained" findings despite the existence of circumstantial evidence that tends to support the complainant's version of events. Such findings, while technically "fair," lend credence to the community's belief that the scales are tipped in favor of the police.

Despite these structural and procedural shortcomings, the CO-OP has established and maintained a strong working relationship with the police department. The police department has adopted and instituted several of the CO-OP's recommendations for improvements to the internal affairs process and amendments/clarifications of departmental policies. On a number of occasions, IAD has reversed its findings based on the CO-OP's review of a complaint investigation. Community outreach, while sporadic, has also helped to legitimize the CO-OP's role in providing a measure of transparency to the internal affairs process. However, an external oversight model, no matter how strong, cannot repair the police department's fractured relationship with a sizable portion of its community. For that reason, we recommend that the City of Boston institute a community-based complaint resolution process.

¹⁵ Kennedy School Report at 15. Among the recommendations in the Kennedy School's report were increasing the CO-OP's outreach to potential appellants; clarifying the appeal process; streamlining the appeal process to make it less burdensome; and extending the deadline for filing appeals. Many of these have been adopted.

Recommendations

In addition to the reports cited within, we examined existing civilian oversight models in several jurisdictions, national best practices, and emerging trends. Ultimately, we determined that the City of Boston would best be served by an oversight model that keeps much of the existing Internal Affairs and CO-OP processes intact while adding a community-based civilian review component to complaint intake and resolution.

Establishment of City of Boston Community Office of Police Accountability (COPA)

We recommend that the City establish an independent community-based police complaint review body, the Community Office of Police Accountability (“COPA”). In its initial operating stages, the COPA should be headed by an **Executive Director** (“Director”), an attorney with significant related experience and a demonstrated history of working with individuals of diverse ethnic, cultural, and socioeconomic backgrounds. The Director will oversee the COPA’s budget and operations, supervise employees, liaison with the police department, and coordinate the activities of the COPA board members. We recommend that the Director have direct reporting authority to the Mayor.

The City should provide the Director with administrative support and sufficient budgetary flexibility to staff the COPA in a manner that ensures provision of services to the community in a timely and professional manner. Although hiring authority should rest with the Director, we recommend that the COPA staff include, at a minimum, the following: 1) an **Information Specialist** to enhance the COPA’s smart communication capabilities and to help streamline the complaint intake process between COPA and its various satellite intake centers; 2) an **Interpretive Services Specialist** to connect the COPA with Boston’s numerous diverse communities and ensure that language does not create a barrier to accessing COPA’s services; and 3) at least **seven (7) Complaint Analysts** with legal or similar training and experience to assist the Director in generating periodic public reports and to facilitate the process of communicating board decisions and inquiries to the police department. The City should also consider including a **Mediation Specialist** to coordinate and supervise the flow of COPA complaint investigations to the police department’s upcoming mediation program.

To maintain actual and perceived independence, the COPA must be located outside of the police department. The City should provide suitable office facilities for the Director and staff in a location convenient for the public. If the City determines that City Hall is the best location for the COPA, a process should be established that would permit complaints to be received in other city buildings such as libraries, youth centers, places of worship, etc.

Citizen Complaints: Filing, Intake, and Screening

Right now, an individual who wishes to lodge a complaint against a member of the Boston Police Department has one option. We recommend that, in addition to the existing methods for filing citizen complaints against BPD personnel, individuals be permitted to file complaints directly to the COPA, thereby creating two mechanisms for resolution of citizen complaints in Boston. The COPA will accept written complaints filed within 60 days of the alleged misconduct. However, the Director should maintain the discretion to extend the deadline for good cause. The COPA will distribute complaint forms in languages and formats accessible to

all citizens, educate the community on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.

The Staff will conduct an initial screening of all citizen complaints received by the COPA and will classify the nature of the alleged misconduct. Subject to the Director's final approval, the Staff will recommend one of the following actions:

1. Dismissal – if the complaint is untimely, fails to allege misconduct, or is otherwise incapable of review.
2. Refer to Mediation – subject to the procedures detailed in the police department's complaint mediation program.
3. Screened Out – if the complaint alleges criminal conduct or misconduct by an employee of another agency.
4. Refer to Bureau of Professional Standards - the complaint warrants a full internal affairs investigation.

Investigation of Citizen Complaints

The COPA provides individuals with an alternate avenue for filing and resolving complaints against BPD personnel, but complaint investigations will continue to be handled by IAD. While a number of citizen complaint models we reviewed included an external investigation component, we recommend that the Bureau of Professional Standards (BPS) maintain jurisdiction over citizen complaint investigations. As part of our outreach efforts, we heard from many community members who advocated for the City to adopt a fully external investigation and review process with subpoena power vested in the external investigator. There exists, among many within the community, a deep and entrenched lack of trust in the police department and the internal affairs process. Although room for improvement exists,¹⁶ we believe that BPS does an admirable job of investigating citizen complaints given the volume of complaints it receives and the difficulties it faces in maintaining adequate staffing levels. As such, we adopt the position of the IRJ and recommend that IAD continue to investigate all citizen complaints regardless of source. However, we encourage the City to empower the Director, in consultation with the Mayor, to engage the services of an independent investigator in cases of significant magnitude.

While delays in completion of investigations remains a concern, we believe that removing investigatory authority from the police department is not the solution to the timeliness problem. After giving the questions of external investigations and subpoena power our full consideration, we ultimately share the IRJ's view that the drawbacks of vesting subpoena power in an external agency outweigh its potential benefits.¹⁷ We believe that the addition of a civilian review component to the existing complaint resolution process will be an important first step in restoring the community's trust in the police department. But it is only one step. Its ability to achieve its stated goals will depend on substantial cooperation from the police department to include a

¹⁶ Since 2011, roughly 25% of the internal affairs investigations referred to the CO-OP were found to be not fair, not thorough, or both. See [2014 CO-OP Annual Report](#).

¹⁷ The IRJ cited the potential for subpoena power to "make[] a difficult situation worse by setting up an adversarial process from the outset." See [IRJ Report](#) at 18. These concerns were echoed by other communities. During our review, we found that even amongst those boards authorized to subpoena witnesses and documents from the police department, the power is rarely used.

commitment to maintaining adequate staffing levels in IAD and the institution of and adherence to benchmarks for timely completion of investigations.

Resolution of Complaints

We recommend that the City establish a Police Review Board and appoint at least seven (7) but no more than eleven (11) members (“Board Members”), working under the auspices of the COPA, to review and resolve COPA complaints. The Board Members will only participate in the resolution of complaints filed with the COPA. Complaints filed with the police department will continue to be resolved by BPS unless the City determines that it is in the community’s best interest for the Police Review Board to consider and make recommendations on a particular matter. Board Members will be appointed by the Mayor in consultation with a cross-section of community stakeholders. The selection criteria for Board Members should include a record of community involvement, the passing of a criminal background check performed by an agency other than the Boston Police Department, and absence of any real or perceived conflict of interest. Board Members should be appointed to staggered multiple-year terms.¹⁸ Upon appointment, Board Members will undergo training formulated by the Mayor, the COPA Director, and the Police Commissioner’s designee(s).

Upon completion of an investigation of a COPA complaint, BPS will notify the Director and forward the entire investigatory file, including reports, transcripts, and recorded interviews to the COPA. To prevent undue influence on the Board Members’ decision-making process, BPS will not reveal its recommended finding to COPA nor will BPS notify the complainant or the subject officer of its recommended finding. The Director will notify the Board of the completed investigation and deliberation on the matter will be put on the agenda for the next COPA meeting. The Board Members will be notified at least fourteen (14) days in advance and will have the opportunity to review the case file prior to the full meeting. The complainant will also be notified of the investigation’s conclusion and will be given an opportunity to address the Board Members at the full meeting. The complainant need not address the Board nor be present at the full meeting in order for the Board to vote on the complaint’s resolution.

The COPA will hold public meetings each month. While the Director has sole responsibility for setting the agenda, each meeting will include an opportunity for public comment on issues relating to the police department. At the conclusion of the public portion of each meeting, the Board will retire to Executive Session. In Executive Session, a representative of BPS will present the facts of each investigation to the Board and respond to questions. The Board will deliberate and make one of the following findings:

1. Sustained – the investigation proves, by a preponderance of the evidence, that the complained of action did occur.
2. Not Sustained – the investigation cannot establish, by a preponderance of the evidence, that the complained of action occurred.
3. Exonerated – the investigation established that the complained of action did occur, but said action was reasonable, legal, and proper.

¹⁸ We debated the issue of whether Board Members should be paid or unpaid. In most of the jurisdictions we surveyed, service is voluntary. The sole exception, Denver, pays its Community Oversight Board members \$1200 per year along with reimbursement for reasonable expenses incurred from their work for the board. Ultimately, we decided that the compensation question was best left to the Mayor.

4. Unfounded – the investigation established, by clear and convincing evidence, that the complained of action did not occur.
5. Information Inquiry – additional information or investigatory steps are needed.

The Board, with assistance of Staff, will submit its recommended finding, in writing, to the head of BPS. If the Board's recommended finding differs from the BPS recommendation, the matter will be forwarded to the Police Commissioner for final determination. Once a final decision is reached, the COPA will notify the complainant via certified mail. BPS will notify the subject officer. Because the resolution process includes community review, we do not recommend a right of appeal for citizen complaints filed with the COPA.

Civilian Oversight

As detailed above, the COPA provides an alternate track for resolution of citizen complaints against BPD personnel. For those complaints filed with the police department rather than the COPA, we recommend that the CO-OP continue to accept appeals of complaint investigations resulting in findings of Not Sustained, Exonerated, or Unfounded. The CO-OP will continue to review these investigations for fairness and thoroughness. Despite the recent downturn in the number of complaints filed, we believe that a decline in the number of complaints is hardly indicative of citizen satisfaction. In fact, it can mean quite the opposite. As such, rigorous external oversight of completed investigations remains critically important.

In addition to those matters referred to the CO-OP via direct appeal, we recommend an increase in the number of cases referred through the random audit process. Currently, one in every ten complaint investigation resulting in a finding of Not Sustained, Exonerated, or Unfounded, where the complainant does not exercise his/her right to appeal, is referred to the CO-OP (10%). We recommend that the City expand that to two out of every ten investigations (20%). Finally, we recommend the random selection of one out of every ten internal affairs investigation resulting in a Sustained finding for referral to the CO-OP for review (10%).

Use of Force Investigations

Although BPS has reported a decline in the number of Use of Force complaints in recent years, cases involving force, particularly force resulting in death or serious bodily injury, remain the most controversial and most in need of transparency and community input. As previously discussed, the 2007 Executive Order designates to the CO-OP the authority to review all not-sustained, exonerated, unfounded use of force and serious misconduct cases but vests the police department with the authority to identify those cases for referral. We recommend that these cases become eligible for referral to the CO-OP via the random audit process.