

POLICE OVERSIGHT STAKEHOLDER COMMITTEE

FACILITATION DRAFT

JULY 1, 2010 WORKING DRAFT 2

Text shown in blue has been added or substantially modified since the June 10 meeting.

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Committee membership

[List to be provided here]

Facilitator's introduction

The following thematic observations by the facilitator may assist in interpreting the meaning and intent of this draft.

- ▶ **This facilitation draft is an attempt to summarize areas of committee consensus.** Where full committee consensus is not available, the consensus of those on the committee who are not employed by the City of Portland — referred to in this report by the umbrella term “community stakeholders” — is summarized. The descriptions used in the recommendations provided are intended to indicate the degree and type of consensus for each recommendation.
- ▶ **The question of whether a *lot* has been done to improve the oversight system is not the same as the question of whether *enough* has been done.** It is important to understand that there is a difference between the level of agreement on the committee for what should be recommended and the level of agreement on the committee regarding the current state of the oversight system. On the one hand, an argument can be made that changes in code, policy, and practices have done much to improve the potential of the complaint system for producing better results — that those involved in shepherding such changes, whether operating from positions in the Bureau, the Auditor's Office, the City Council, or as involved community activists, have made a positive difference. However, the ultimate question of effectiveness in government is neither “have we done a lot?” or “have we done more than most cities?” The question that matters most is, “Have we done enough?” By that measure, it is the consensus of community stakeholders that more needs to be done.
- ▶ **Police-community trust levels, critical to ensuring effective public safety partnerships, can be harmed as badly by perception as by reality.** Many who have close familiarity with the IAD and IPR investigation procedures describe the system as appropriately objective. Those with less day-to-day familiarity are more likely to question the system's objectivity. However, when attempting to build community trust, the factual degree of objectivity is not the only question that matters — community concerns/perceptions over objectivity are a critical and relevant component as well. A theoretically perfectly objective judge who presides over a case that involves a long-time colleague will find his or her objectivity questioned if the case is decided in the colleague's favor. Such questions are unavoidable, regardless of the actual objectivity of the judgment. Current practices, even though they have been improved over time, still present the community with similar, compelling reasons to distrust the outcome.
- ▶ **Ultimately the oversight system must be trusted as one that, when the choice must be made, will place the benefit of full and prompt disclosure to the citizenry ahead of the need to minimize legal exposure for their government.** Openness, along with a willingness to accept administrative responsibility for tragic outcomes, are critical components to the work necessary to build or maintain community trust. Yet the understandable concern over increased liability risk to City government can result in a reduction in forthright disclosure, longer waits for information, or a reluctance to plainly and specifically acknowledge administrative responsibility for a harmful outcome. On the other hand, case-review procedures that result in multi-year delays or in less-than-forthright disclosure also come at a steep price in lost community trust. As facilitators, we see no perfect resolution. Nevertheless, we believe it is appropriate to point out that the balance point between these two concerns is an important one and that, in the interests of better serving the citizens, there may be a need to more frequently accept the potential of some elevated risk in order to keep faith with the value of accountable, and timely disclosure.

Overall Outcomes Desired

The following outcomes were discussed at the meeting on June 3rd, with adjustments to reflect that discussion shown.

1. Increase community faith that the oversight system is independent, fair, appropriate, worthwhile.
2. Reduce use-of-force incidents generally and use of deadly force incidents, specifically. Prevent all shootings of unarmed subjects and achieve fewer injuries to unarmed subjects who have mental illness or are in crisis.
3. Improve City's response to people who are mentally ill.
4. Demonstrate clearer Bureau commitment to improving trust & partnership relationships with communities served.
5. Increase percentage of community members experiencing officers as welcome, safe to call and interact with.

Key Method Results

The following method results are recommended as a working definition of the type of specific structural or procedural changes stakeholders have expressed a desire for.

1. More true independence, fewer real or perceived conflicts of interests
2. Reporting that is more coherent, transparent, and prompt
3. More evidence/reality of IPR commitment to purpose
4. More evidence/reality of responsive change at Police Bureau

Discussion Categories

The following pages are intended to provide a method to categorize the broad range of subject areas that stakeholders have raised in advance surveys, during the meetings, and in follow-up discussions.

Please note that this is only an attempt to summarize, in very compact form, the nature of the comments offered. *It is possible that some comments offered are based on inaccurate or outdated information about process or policies, which issues we assume will be clarified during the meetings to come.*

At the meeting on the 10th of June we began discussion of the individual points. We have attempted to show results of that discussion in this draft (shown in blue text) and expect to continue that discussion in future meetings.

I. IPR authority & structure

Issue statement: Community trust in the oversight system is a function of the fairness and professionalism of the individuals tasked with making it work *as well* as the likelihood that community members, when considering the design of the system, would conclude that conflicts of interests and historically perceived biases have been designed out of the approach.

From the community stakeholders on the committee, there appears some consensus around the need for the following direction of change:

- 1. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response.** IPR can immediately begin measuring complainant faith in the system by asking each complainant their opinion of whether they would prefer to have the complaint investigated by the Auditor’s Office or by the Portland Police Bureau.
 - A. If the results of such measurements indicate a substantive preference for investigations by IPR, move investigative resources from IAD to IPR.
- 2. Repair community distrust of use-of-force investigations (up to and including shootings and in-custody deaths).** There is consensus from community stakeholders around this concept: Public faith in the oversight system is critically important and, regardless of the steps taken in the past to improve public faith in the investigation of police use-of-force incidents, public faith has not improved. The specific steps recommended to accomplish this have generated less consensus, with recommendations along the following lines mentioned more frequently:
 - A. Have IPR conduct all administrative investigations of use of force complaints, and in particular, all shootings, deaths in custody, and other serious injury incidents. Monitor any associated criminal investigation as well. Have IPR conduct all other investigations involving allegations of racial profiling, illegal searches, conflicts of interest, or other “high emotion in the community” issues.
 - B. Ensure that IPR has, and exercises, power to conduct the above described investigations with no waiting period.
- 3. Diversify the pool of investigators at both IPR and IAD to include:**
 - A. People with investigative skills who have not been police officers in general, nor Portland officers specifically, per Luna-Firebaugh recommendations¹.
 - B. A much greater demographic (racial, ethnic, cultural) diversity and competency. (One suggestion is to apply the diversity and conflict-of-interest guidelines already existent for the CRC.²)
- 4. Make it automatic that IPR investigates all complaints of those with the rank of captain or higher.**

¹ “...In order to balance the IPR office, these new investigators should not have a police background. While it is important to retain existing staff, it is also important to broaden the recruitment, and selection process. Outreach for new staff positions should include civilian investigative arenas, for example, organizations that have investigators (e.g. OSHA, Housing authorities, health care programs and others), Public Defenders, Private Investigators, attorneys and legal workers. This will enhance public confidence in the office, while preserving dedicated staff in their positions.” From Luna-Firebaugh report, Recommendation 4 shown on page 117.

² 3.21.080 A3: “Selection criteria shall include...[the] absence of any real or perceived conflict of interest.” And 3.21.080 A6: “...consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.”

- 5. Ensure investigations by IPR and CRC are neither delayed nor prevented by liability concerns of the City as a corporation.** There is a consensus among community stakeholders that both IPR and CRC should be able to “go where the investigation takes them,” to do so without delay, and to appropriately publicly disclose the result unimpeded by liability concerns to the City of Portland as a corporation. In other words, there is a desire to make sure that, in the event of diverging interests, the process will be designed to serve the citizens/community members first. Concepts offered in support of the above consensus statement include:
- A. Make it easier for the Auditor to hire outside counsel at the Auditor’s discretion.
 - B. Ensure that the CRC may conduct all investigations within its purview at its own option exclusively.

Other possible recommendations within this discussion area about which a consensus has not been reached include the following:

- ▶ Grant IPR authority to compel officer testimony and to directly interview police officers.
- ▶ Ensure sufficient investigation resources by mandating a per-officer ratio (e.g. one investigator for every 100 officers)
- ▶ Consider methods to prevent or address the possibility that a future appointed IPR director could be unsympathetic to the purpose of Independent Police Review.
- ▶ Establish an avenue for appeal or reconsideration for cases involving quality-of-service or minor rule violations. For example, allow citizens to appeal dismissed complaints or low-level, so-called “service” complaints against officers to the Citizens Review Committee.
- ▶ Provide more clarity, definition or limits to the IPR Director’s discretion to dismiss complaints when “it is more likely than not that no misconduct was committed.”

II. CRC and Council oversight authority/structure

- ▶ **Expand/change the powers of the CRC or make it more independent of IPR.**
 - ✓ Give CRC more control over hearings, make explicit CRC's authority to send back allegations for reformulation
 - ✓ Give (or strengthen) CRC authority to:
 - Compel officer testimony and the testimony of other witnesses
 - Present appeals cases directly to City Council without IPR staff involvement
 - Send complaints back for further investigation or to re-categorize allegations
 - Review dismissed and declined complaints
 - ✓ Change the standard for determining whether a finding is "supported by the evidence" from "reasonable person" standard to a "preponderance of the evidence"

- ▶ **Make changes to the CRC structure.**
 - ✓ Increase the size of the CRC from 9 to 11 members to encourage more diversity and spread out the workload.
 - ✓ Increase the length of term from two years to three years.
 - ✓ Modify the member selection process to improve transparency, inclusiveness.
 - ✓ Provide CRC with its own staff person.

- ▶ **Have CRC more directly involved in policy review and recommendations.**
 - ✓ Give CRC the authority to make policy recommendations directly to PPB.
 - ✓ Consider creation of a separate civilian committee within IPR, perhaps made up of former CRC members, to focus on policy review as its sole duty. There should be overlap with the CRC because in many cases of civilian complaints about officer conduct there is no violation of policy, but those complaints help identify policies that need to be revised or improved.

- ▶ **Strengthen, adjust, or clarify the City Council's role.**
 - ✓ Reconcile situation where Council can subpoena witnesses but not hear new evidence, while the CRC can hear new evidence but not compel witness testimony.
 - ✓ Change the fact that while Council is given the "final" vote on whether an officer is in or out of policy, the officer still has the ability to overturn the finding in "mitigation."
 - ✓ Have City Council require another stakeholder review one year after the effective date of the implementation of the ordinance.

III. Openness, usefulness, and speed of reporting

- ▶ **Get a faster timeline for public release of investigative results.**
 - ✓ More stringent timeframes in which investigations of controversial deaths or shootings from police officers should be completed.
 - ✓ Reexamine the need to pause the clock when cases are in civil litigation. This can lead to a years-long delay. Holding an officer accountable for his/her actions and identifying policy and training issues as soon as possible will improve police services in Portland.
- ▶ **Allow more information to be released.**
 - ✓ The chain of ownership on documents should be changed so that IPR can make reasonable decisions to release public information such as police reports, even if the code requires them to block out names and other personally identifiable information.
 - ✓ Documents utilized by the CRC in reviewing complaints should be accessible to the public. Decisions made that rely on “secret” documents will not help establish public trust in the oversight process. It may that some documents will require redaction to protect the security of complainants and witnesses, but most information should be available for public review.
- ▶ **Identify currently closed meetings that would benefit from being open to the public.**
 - ✓ Open police bureau/IPR task force meetings such as the Use of Force Task Force to public observation.
- ▶ **Revise the definition/categories of findings**
 - ✓ Return possible findings to: *exonerated, unfounded, sustained, and insufficient evidence.*
 - ✓ Add *supervisory failure, training failure, and policy failure* as possible findings. The added findings would give options to those making the decisions who may find officers were within policy, but the policy itself needs to change, the training is inappropriate, or the supervisor should have intervened differently.
 - ✓ Use a better term for minor complaints (currently called “Service Improvement Opportunities”).
- ▶ **Provide more public disclosure of discipline information.**
 - ✓ Require the Chief or Commissioner to explain in writing, publicly, how and why they made their decision when it differs from the PRB’s recommendation and to do so in 30 days.
 - ✓ Provide more disclosure of the discipline, perhaps in aggregate, that takes place in the Police Bureau.
- ▶ **Give complainants the same rights as officers to waive the time limits and to receive written notification of time extensions.**

IV. Police Review Board structure/process

- ▶ Increase the number of citizens on Police Review Board by at least three additional community members.
- ▶ Clarify process to ensure that voting PRB members have access to all information pertaining to the incident. For example, clarify the process for determining which documents are “necessary and relevant” and thus available for voting PRB members to review.
- ▶ Consider revisiting issue of including an involved officer's supervisor as a voting member of the Police Review Board. (Issue added by request of a committee member prior to the July 1 meeting.)

V. Complaint-driven PPB policy improvement process

- ▶ **Provide better reporting of policy recommendations received, and policy changes made, by PPB**
 - ✓ Public reports summarizing statements of findings and concerns about training and investigations should include summaries of policy recommendations the Police Review Board submitted to the Chief.

- ▶ **Establish a more public process for involvement in new Bureau policies.**
 - ✓ Incorporate more transparency and public participation in development of police policy. When the Bureau establishes task forces or committees to work on policy issues, such as the Use of Force Task Force, the meetings should be open to public attendance.
 - ✓ CRC and the public should be involved in advising PPB on bureau policies. When new/revised PPB directives are in draft form, they should be presented to CRC for their review and for public comment.
 - ✓ Bureau policies related to the use of force should be reviewed with input from an independent oversight body (e.g., IPR or CRC) so policies will give officers clearer and more specific rules to follow and less discretion than current policies.

- ▶ **Other complaint-specific policy change.**
 - ✓ Preserve investigation information throughout the entire career of each officer investigated.
 - ✓ Limited use of mediation with certain complaints, such as use of force, when a person is hospitalized or a racial, ethnic, gender or sexual-orientation-related epithet is used.

VI. Non-complaint driven PPB improvement process

- ▶ **Have IPR and/or CRC monitor the “Employee Information System” and other data**
 - ✓ Improve use of a tracking system, with nothing off record, in order to identify trends and problem officers.
 - ✓ Consider having IPR’s authority expanded to include analysis and reporting on police stop data regarding issues such as race, ethnicity, and language spoken.
- ▶ **Enhance Bureau’s QA/ “curiosity” methods to improve Bureau’s ability to make changes before issues become complaints.**
 - ✓ Implement a Quality Assurance program to better identify, correct, and improve institutional practices through a system that is not based on determining blame, but based on finding and correcting errors. (Would not replace complaint-based oversight tools, but provide a alternate method to ensure responsive change regardless of whether specific proof of wrong-doing has been established.)
- ▶ **Develop and expand more effective two-way trust and understanding steps between police and communities served.**
 - ✓ More recruitment of minority officers and those with particularly high cultural competency.
 - ✓ Consider other proactive options, such as ride-along expansions.
 - ✓ Adopt technology that would video (or at least audio) record every interaction with citizens.
- ▶ **Ensure Bureau’s commitment to various specific recommendations and programs already in place or recommended.**
 - ✓ More training of police about mental health and other problems that need to be addressed some other way than lethal force.
 - ✓ Expanded training on de-escalation techniques.
 - ✓ Keep the Crisis Intervention Training program intact.