CITIZEN REVIEW COMMITTEE

Community Oversight of Portland Police Bureau

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To: Members of the Portland City Council
Re: Police Accountability Stakeholders' Report

On December 1, 2010, you will be asked to receive the report from the Police Accountability Stakeholders Group. The Citizens Review Committee was honored to participate in the group process and we generally are pleased with the recommendations. The Stakeholders group has endorsed some of our earlier recommendations from our PARC and Structure Review Workgroups. I will comment on those specific recommendations and urge you to put them into an ordinance updating police accountability.

1. City Council should expand the role and authority of IPR in officer-involved shootings and in-custody deaths—including the ability to conduct independent investigations of these cases as needed. The expanded authority should also include monitoring roles such as oversight of crime-scene procedures, evidence collection and preservation, witness
   Identification and interviewing, investigative file integrity, and presentation of evidence to Review Boards.

   Community feedback has told us that citizens do not trust the police investigations into shootings and deaths in-custody. The best remedy for this problem is to have the Independent Police Review oversee those investigations from initial 'roll out' to the crime scene to the final case closure, much as they do now with complaints against police officers. However, at this time we do not believe that the IPR has the resources or expertise to investigate these cases by themselves and would encourage that their role would be that of monitoring the investigation.

   This recommendation has been endorsed by the Stakeholders' group. Reference Stakeholders Report Section I (C).

2. Establish guidelines to require IPR to conduct an independent investigation in certain types of cases.

The community is also concerned with the fairness and objectivity of certain type of IAD investigations. The Stakeholders' report agrees with the Luna-Firebaugh recommendation that IPR be required to participate in all investigations involving all complaints of those with the rank of Captain or higher and that the IPR should monitor any associated criminal investigation as well. IPR should conduct other investigations involving allegations of racial profiling, illegal searches, conflicts of interest, or other "high emotion in the community" issues. Though, the CRC does not recommend which specific classes of cases should be investigated by IPR, this list of cases is a good starting point for discussion. The IPR has the authority to perform independent investigations, but has never done so. We believe that mandating IPR to conduct certain investigations would enhance community trust in the police accountability system.

This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report, Section I (B)

3. Require Bureau members to cooperate with IPR investigations.

   Under the current labor agreement, IAD investigators must interview Bureau members and though IPR personnel may be present, questions must be relayed through IAD. If IPR were to conduct independent investigations, this should be changed to make the process more efficient.

   This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section I(D)

4. Change the standard of review for appeals from "Reasonable Person" standard to "Preponderance of Evidence" standard.

   Under the current ordinance, a finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding. The reasonable person standard applies whether the appeal is taking place before the CRC or City Council. The proposed change would apply to both CRC & Council appeals.

   The reasonable person standard is not used in many other police oversight systems across the country. The Luna-Firebaugh report critiqued our use of this standard noting it is overly legalistic and difficult for a lay person to understand and implement, that it differs from the standard used by IAD in its investigations, and from the standard often used in civil law. She recommended the standard be modified to remove reasonable person and include preponderance of the evidence. This

substitution would mean that the party challenging the bureau's finding would have to present evidence which is more credible and convincing than the bureau concluded and would have to prove it is more probable than not that bureau policy was violated.

The CRC spent 19 months reviewing its structure and our police oversight system and presented a Structure Review report earlier this year. The process for that review included personnel from IPR. That report endorsed following this recommendation.

Not all appeals that come before the CRC have first gone through a Police Review Board (PRB). IPR now has subpoena power and parties are able to bring material witnesses to their appeals. This creates the potential for new information to be considered by the CRC not considered by the commander or PRB. Because of these aspects of our own, unique system of oversight, individuals hearing appeals should be granted more power to judge the evidence and draw their own conclusions as to whether or not PPB policies have been violated. The overly deferential and difficult-to-understand-and implement standard of review should be changed to replace the reasonable person with preponderance of the evidence. It should also be emphasized that this standard of review is also to be used by the City Council when you hear an appeal.

This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section II(A)

5. Return to the findings *unfounded, insufficient evidence, exonerated,* and *sustained*, and add three new findings of *policy failure, training failure, and supervisory failure*.

   The findings of *unfounded, insufficient evidence, exonerated,* and *sustained* are much easier for citizens to understand and more precise in determining the outcome of an investigation. Addition of the new findings would help the Bureau make needed adjustments to policy, training and supervision issues that arise during the review of the case.

   This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section III (A)

6. Allow CRC to make policy recommendations directly to the Bureau.

   Currently, CRC recommendations must be funneled through IPR before being presented to the Bureau. A more efficient and effective process would be for the CRC to present their recommendations directly. We would still endeavor to get input from IPR before presenting our recommendations to the Bureau.

   This recommendation has been endorsed by the Stakeholders' Report.

Reference Stakeholders Report Section II (B)

7. Hire outside counsel, when necessary, to avoid both actual and perceived conflicts with the City Attorney's Office when representing the CRC, IPR and the Bureau.

   The CRC holds the City Attorney's Office in high esteem and appreciates having them as a resource, but we also recognize that the City Attorney's Office primary duty is protect the interests of city government and there is a possibility that the duty may conflict with the interests of CRC and/or police accountability. We ask for the ability to hire outside counsel when we deem necessary.

   This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section I(F)

8. Provide funding for a dedicated staff person for CRC committee and workgroup support.

   There have been at least two occasions when IPR has withheld or threatened to withhold staff support when they disagreed with a proposed action by the CRC. The last time this happened was when we held the Police Accountability Forum regarding James Chasse in March of this year. One of our primary tasks is to audit the performance of the IPR, but it is difficult do it when staff support can be removed at any moment. To be transparent, with the passage of time, the CRC had received more support from IPR and we applaud that, but the cloud remains. How can we be effective when staff support is denied to us when we do something that IPR does not endorse? Though a dedicated staff person would be helpful, what is more important is that staff time be dedicated to the CRC without preconditions or threat of removal.

   This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section II (L)

9. Increase the length of CRC members' terms to three years.

   This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section II(C)

10. The CRC opposes the Stakeholders' recommendation that the CRC be expanded to 11 members from the current nine members. We feel that adding extra members would make our meetings overly long and unwieldy especially during appeals hearings that now can last several hours.

11. IPR and CRC should establish a protest process for non-investigated complaints. Complaints can be dismissed by IPR or Internal Affairs or assigned as Service Improvement Opportunities (SIO) which are non-disciplinary.

    While the CRC has found that generally, dismissals and SIO assignments by IPR and the Bureau have been proper, public trust in the system would be strengthened with further safeguards added for fairness and community satisfaction.

    This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section II (J)

12. IPR and CRC should establish an effective review process for the formulation of allegations.

    As they prepare a complaint for investigation, IPR and IAD reduce the complainant's claims to a series of allegations that correspond to the specific rule violations claim. In appeal hearings, the CRC has found that some allegations do not specify misconduct or that multiple claims of misconduct have been consolidated into one allegation when they should have dealt with separately. The CRC recommends that either a quick and timely review of allegations be instituted by the CRC at the time or formulation or that the CRC be empowered to reformulate and/or reclassify allegations at the time of an appeal.

    This recommendation has been endorsed by the Stakeholders' Report. Reference Stakeholders Report Section II (I)

The Citizen's Review Committee would like to thank the members of the Council for their continued support and for taking the time to establish the Stakeholders Group on Police Accountability. We feel it is an important step in strengthening public trust and regaining credibility in the community.

Very truly yours,

Michael Bigham
Chairperson
Citizen Review Committee