

**CITY OF PORTLAND  
CIVIL SERVICE COMMISSION**

**POLICE CITIZEN REVIEW SUBCOMMITTEE**

**FIRST ANNUAL REPORT**

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**I. ESTABLISHMENT OF POLICE CITIZEN REVIEW SUBCOMMITTEE**

A. Established by Ordinance.

In November, 2001, by Council Order 83, the Portland City Council established the Police Citizen Review Subcommittee as a subcommittee of the Civil Service Commission, which also has an Employment Subcommittee for sworn Police and Fire personnel. The Police Citizen Review Subcommittee was set up to address the issue of public confidence in the Portland Police Department, following a highly publicized case alleging police brutality.

B. Background to Ordinance.

In order to craft its proposal, City administration requested an Interpretive Ruling from the Maine Labor Relations Board as to whether the establishment of such a Subcommittee would be a mandatory subject of bargaining with the City's two police unions. In general, the Board's answer was that such a committee was a mandatory subject of bargaining and therefore could be established only upon agreement of the police unions. The Board's decision, however, carved out the possibility of a limited exception to this general rule, stating:

“At the other end of the spectrum is a review committee that looks over the work of the internal affairs investigation after everything has run its course: after discipline has been imposed or the decision not to impose discipline has passed, and after any grievance filed has completely run its course. Such a review would not be to pass judgment on Internal Affairs’ handling of a particular case, but to perform a general audit of their investigative methods and the integrity of the disciplinary process. The target of

that review would be Internal Affairs and Police Administration, rather than the officer who was investigated. In such a model, the relation of the process to working conditions or contract grievance arbitration procedures would be remote.”

C. Duties and Functions. The City Ordinance which established the Police Citizen Review Subcommittee follows these guidelines:

The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department’s internal affairs’ methods and procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

The Ordinance further provides the following duties for the Subcommittee:

- (1) To determine whether police investigations into citizens’ complaints against police officers are thorough, objective, fair and timely by auditing the police department’s internal affairs’ unit investigative methods and procedures;
- (2) To report in writing to the city manager periodically, but no less than annually beginning in January 2003, as follows:
  - a. on the subcommittee’s determination as to the thoroughness, objectivity, fairness and timeliness of the police internal affairs’ investigation of citizen complaints against police officers;
  - b. a statistical analysis of all cases reviewed, including an analysis of trends and patterns of complaints or results of investigations of complaints; and
  - c. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.
- (3) To hold a public hearing at least annually to receive

comments upon the police citizen complaint process.

The complaints to be reviewed by the Subcommittee are as follows (effective with investigations completed after January 1, 2002):

1. complaints alleging excessive force;
2. complaints alleging civil rights violations;
3. complaints alleging conduct that would constitute a criminal offense; and
4. any other complaint which the subcommittee deems necessary to review in order to carry out its duties hereunder.

In addition to the foregoing, the Subcommittee will review any complaint upon request of the complaining party. A complete copy of the Ordinance governing the appointment and work of the Subcommittee is attached to this report.

The City Council appointed the members of the Subcommittee on March 18, 2002, and the Subcommittee's first meeting was held on April 30, 2002.

## **II. WORK OF THE SUBCOMMITTEE**

The Subcommittee set the fourth Tuesday of the month as its regular meeting time, and has met as follows::

April 30, 2002  
June 1, 2002 (all day training)  
June 25, 2002  
July 23, 2002  
August 27, 2002  
September 24, 2002  
October 22, 2002  
November 26, 2002  
January 14, 2003

A. Organizational and training meetings.

The initial meeting of the Subcommittee was organizational, with introductions by the Department of Human Resources, the Corporation Counsel's office, which is charged with staffing the Subcommittee, and the Police Department. In addition, an outside consultant, William McClaran, from Southern Maine Technical College, a former Portland Police Chief and a professor in Law Enforcement Technology at SMTC, was introduced as a Subcommittee resource person.

Training occurred on the following topics:

- Ordinance and its background
- Confidentiality requirements
- Training of Police Officers
- Current Police Citizen Complaint process
- Police Standard Operating Procedures
- Police Internal Affairs procedures

In addition, Subcommittee members scheduled "ride-alongs" with Portland Police officers.

The Subcommittee discussed its proposed procedural rules over the course of 4 meetings. There was public input regarding those rules, with dissension as to the scope of the Subcommittee's jurisdiction and the confidentiality requirements for discussion of individual Internal Affairs Reports. Rules were finalized on October 22, 2002, however, and approved by the Portland City Council on November 18, 2002. A copy of the Subcommittee's procedural rules is attached to this Report.

B. Case review.

While discussing its procedural rules, the Subcommittee began to receive completed Internal Affairs (also abbreviated herein as "IA") investigations from the Police Department. The first case reviewed was a 4 volume file which was discussed

over two meetings by the Subcommittee in executive session. Portland Police Department staff, by mutual agreement, do not attend the executive sessions. Over subsequent meetings, the Subcommittee reviewed a total of 15 Internal Affairs investigation (a list of the cases reviewed by PPD number is attached). The Subcommittee has reviewed only the complaints mandated for review by the Ordinance and has not had any outside requests for reviews nor requested any additional reviews on its own motion.

### **III. RECOMMENDATIONS**

#### **A. General Comments**

Based upon its case review, the Subcommittee did not identify any significant systemic weakness in the Portland Police Department's investigations of formal citizen complaints against Portland Police officers. Applying the standards of the Ordinance, the Subcommittee concluded that the IA procedures used in each of the 15 cases was, in general terms, timely, fair, thorough and objective, based upon the information provided by the Portland Police Department.

There were, however, questions and issues which were raised in regard to some of the cases as reflected in the following recommendations.

#### **B. Specific Recommendations**

**Recommendation 1. The Subcommittee recommends that superior officers who participate in an incident requiring use of force not evaluate the use of force reports of the police officers he or she supervised, nor be involved in review of any IA report resulting from the incident.**

This issue arose in the first case reviewed by the Subcommittee. The Subcommittee was very troubled by having the Sergeant who was called to the scene of

an incident and who participated in the incident also signing off on the "use of force" reports of the police officers at the scene. This seemed an obvious conflict for the superior officer.

The Department explained that this process was intended only to be a factual review as to what happened, not a final evaluation as to whether the use of force was justified. The Department agreed, however, to change the process so that a superior officer who was not involved in the incident would review all of the "use of force" reports for that incident. The Department further agreed that the superior officer involved in an incident would not be involved in the IA review process, except to the extent that he or she might be involved as a participant or witness.

**Recommendation 2. The Subcommittee recommends that the Chief review the training provided to the persons selected as IA officers and ensure that professional training is provided in investigative and interviewing techniques.**

In some cases, the Subcommittee felt that the IA reports showed inconsistency in questioning complainants or witnesses, including the use of leading questions in the interviews; and particularly in one circumstance, in the interview of the police officers involved in the case. While the standard for interviewing is certainly not that which would be used in a courtroom, the Subcommittee felt that more open-ended interviewing techniques should generally be used. In addition, more consistent training and organization of the IA reports themselves would ensure the better application of procedure in each case, regardless of which IA officer conducts the investigation.

**Recommendation 3.** The Subcommittee recommends that the IA officer document in his or her report all of the contacts made or attempted as part of the investigation, and if a potential witness is mentioned by someone interviewed, or otherwise identified, whether an attempt was made to contact that person and if so, what the result was.

In some cases, a person interviewed mentioned that another person was present and could be used as a potential witness. In some case records, there is documentation that these leads were followed and an effort was made to contact the potential witness. In other cases, there is no follow-up on these leads. It is not possible to know on the written record whether the IA officer concluded that other person should be contacted or not. The Subcommittee recommends that there be consistent documentation as to who was contacted, how many times contact was attempted if not successful, or, if a decision was made not to interview a person named by another, why not.

**Recommendation 4.** The Subcommittee recommends that the reviewing officer(s) state his or her reasons for agreeing or disagreeing with the recommendations as to the findings and/or recommendations of the IA officer.

The Subcommittee members noted that once the IA Officer reached a decision on the particular merits of a complaint, the Police administration and the Office of the Chief had the ability to concur or disagree with the findings. In most circumstances, this decision was made without benefit of a written explanation, meaning that there is no way to understand the decision-making rationale. The Subcommittee recommends that the reviewing officers, including the Chief, state their reasons in writing when responding to IA case findings, particularly when they are in disagreement with the original recommendations.

**Recommendation 5. The Subcommittee recommends that the Department make sure that citizens who are called in to be interviewed in connection with their complaint be informed that they can bring along a friend or relative to sit in on the interview. We further recommend that the Department offer the use of a neutral site for interviewing when possible.**

The Department currently allows citizens to have someone with them when they are interviewed by IA. This is not intended to be a right to bring a legal representative, but rather a support person to help them through the process. The Subcommittee is recommending that this ability to bring a support person to the interview be made explicit by the IA officer when setting up the interview.

#### **IV. STATISTICAL SURVEY**

With the limited experience of the Subcommittee, it is not possible to present any meaningful statistical analysis of the cases reviewed, as called for by the Ordinance. There is a summary attached, however, of the nature of each case we reviewed and whether the citizen's complaint was sustained or not.

In addition, we have reviewed the analysis which is produced by the Portland Police Department in an Annual Report, comparing the previous four years. We have compiled this information into a single document for the benefit of comparison and included it as an attachment to this Report. This process was complicated by the fact that the Department used different reporting categories for each of the years reviewed. These changes make it very difficult to complete a meaningful analysis of the data. We note that there has been a decrease in the total number of complaints in 2002, but an increase in the number of complaints involving use of force; this warrants further review by this Subcommittee. **We recommend to the Department that it keep these statistics in a consistent manner from year to year so that they can be readily compared.**

## V. SUBCOMMITTEE JURISDICTION

The Subcommittee members have made their best effort throughout their work to follow the guidelines of the Ordinance as to their duties and jurisdiction. Those guidelines require the Subcommittee to focus entirely on process, and to disregard the results, i.e. whether the Subcommittee agreed or disagreed with the final outcome of the internal affairs process in a given case. Outcome was relevant only to the extent that there was sufficient evidence in the IA report to support that outcome. This disconnect between process and outcome, and the resulting public confusion as to the Subcommittee's role, was discussed at length. On January 28, 2003, the Subcommittee voted to make the following recommendation:

**That the City negotiate with its police bargaining units as to the role and jurisdiction of the Police Citizen Review Subcommittee, to permit the Subcommittee to play a more pro-active role in the investigation of police citizen complaints, in interacting with the public about those complaints, and in evaluating the appropriate outcome of the investigation.**

The Subcommittee is not prepared to make a detailed recommendation as to the precise scope of what should be bargained; however, we do want to go on record in this first report as supporting an increased role for the Subcommittee in the review and handling of citizen complaint investigations, beyond that of a "paper audit". The Subcommittee requested a summary of one model for a police citizen review committee in Albany, New York, and we are attaching it as an example of what other communities as doing, noting, however, the fiscal note which is included.

We want to recognize the efforts previously taken by the Portland Police Department to improve the citizen complaint filing process, including the ability to file complaints electronically (a copy of the citizen complaint process is attached), and

applaud the Chief's willingness to implement some of the above recommendations prior to release of this Report. However, we believe there continues to be a problem in the some parts of the community as to the perception of the Portland Police Department, and its ability to investigate allegations of wrongdoing by fellow police officers. The Subcommittee would like to play a positive and active role in helping to improve and enhance the public's perception of the Police Department and its ability to conduct fair and impartial investigations of citizen complaints of wrongdoing. As currently structured, however, the Subcommittee believes that it can only be of limited utility in accomplishing this goal. The ability of citizens such as ourselves to play a more active oversight role in regard to citizen complaints would, we believe, be a good step in the direction of ensuring that the community has an accurate view of the Portland Police Department as a professional and caring group of men and women committed to protecting the community and its citizens. Ensuring that level of public confidence in the Portland Police Department would be good for the community, and good for every dedicated member of the Department.

Respectfully submitted,

Dr. Robert McAfee, Chair  
Joshua Dolby  
Lucky Hollander  
Alan King  
Sharon Orlando  
Gary Prolman  
James Northrop (Alternate)

January 28, 2003

Last but not least, we want to acknowledge the superb staff assistance we have had this first year of operation. The training provided by the City was professional, intensive and well-organized. We thank Bethanne Poliquin, Police Legal Advisor, who has attended most of our meetings and educated us about the Department's procedures, and has responded to all of our requests for additional information. Clarkson Woodward has made sure that we had copies of all of the cases and has helped particularly with the statistical analysis attached to this Report. William McClaran, former Portland Police Chief and currently professor at SMTC, has attended all but 1 of our meetings and has enlightened us about appropriate investigative techniques, different approaches to training of police officers, and the unique and powerful stresses which police officers encounter daily. He has done all this as a volunteer. Elizabeth Boynton, Associate Corporation Counsel, has been our primary support person, has enabled us to get the Subcommittee up and running, has provided legal advice on related issues such as collective bargaining and state confidentiality requirements, and has helped to put together this first Report. The Corporation Counsel's support staff have diligently ensured both the availability and the confidentiality of the IA reports. Finally, the timeliness of the follow-up to our various requests for information has been extraordinary.

We thank them all for their energy, time, insight and assistance.

### **List of Attachments**

1. Excerpt: Portland City Code re: Police Citizen Review Subcommittee
2. Rules of Procedure Police Citizen Review Subcommittee
3. List of Cases reviewed by Police Citizen Review Subcommittee (by PD number)
4. Summary of cases reviewed - Comparison of 2001-2002
5. Portland Police Department 2002 Annual Report - Internal Affairs
6. Subcommittee Charts Comparing 1999-2002
7. Summary Description of Citizen's Police Review Board - Albany, New York

Note: A copy of the Report, with the above attachments, is available at the Portland Public Library and in Room 211, Portland City Hall.