



The League of Women Voters

OF PORTLAND OREGON

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February 25, 2008

TO: Mayor Potter
Commissioner Adams
Commissioner Leonard
Commissioner Saltzman
Commissioner Sten

FROM: League of Women Voters of Portland
Carol Cushman, president
Debbie Aiona, action chair

**RE: Performance Review of the Independent Police Review Division,
January 23, 2008**

The League of Women Voters of Portland has taken a keen interest in the city's police oversight system for over 25 years. As an organization that believes in informed and active participation in government and the citizen's right to know, we support effective police oversight. The *Performance Review of the Independent Police Review Division*, authored by Eileen Luna-Firebaugh, offers City Council and the public a wealth of information and numerous recommendations for making significant improvements to the Independent Police Review Division (IPR) and its Citizen Review Committee (CRC). We would like to thank both Mayor Potter and Commissioner Adams for their leadership in ensuring that this review was completed.

The 2001 National Institute of Justice report, *Citizen Review of Police: Approaches and Implementation*, explains that civilian oversight benefits communities by providing a window into the police bureau; increasing public understanding of police policies, procedures, and behavior; discouraging misconduct through retraining and discipline; and improving police procedures by recommending policy changes. Successful systems have a commitment to transparency and a belief in the right of the public to know the public's business. As Ms. Luna-Firebaugh writes, "Civilian oversight takes a lot of effort. It takes routine maintenance. It takes the willingness of city administrators to pay attention to issues as they present themselves. It may take a willingness to change." (p.34)

Auditor Model

Portland employs the Auditor model of civilian oversight. This type of system can be effective, but can lack transparency because its structure is based on a relationship between the agency director and the police bureau. Portland places a high value on community involvement and transparency, so our system must contain features that take those values into account. Ms. Luna-Firebaugh points out that many progressive cities have been successful by taking a hybrid approach that incorporates independent investigations of complaints and an empowered citizen board. Portland included these features in the IPR ordinance, but the IPR has never used its authority to conduct independent investigations and the CRC has not lived up to its potential.

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Recommendations

The League supports the recommendations outlined in the Performance Review with a few minor variations. We hope this report and the City Council hearing will be the beginning of a community effort to bring positive change to the IPR. There are over 30 recommendations included in the report and the issues are much too complex to resolve at a Council session. Therefore, we recommend that Council create a stakeholder group charged with drafting the code and protocol language necessary to enact the report's recommendations.

Citizen Review Committee

- Assign a staff member to support the work of the CRC.
- Increase size of committee from nine to eleven or thirteen members. (LWV)
- Improve training for CRC members using National Association for Civilian Oversight of Law Enforcement (NACOLE) guidelines.
- Increase length of term from two to three years. (LWV)
- Each city council member should be responsible for appointing one CRC member.
- Report annually on CRC activities at a city council hearing.
- Review the selection process for CRC members and align it with NIJ guidelines. (contextual)
- Include on the selection committee both those individuals who more broadly represent the community and who know the system. (LWV)
- The powers of the CRC should be broadened to include oversight of the IPR and the appeals process.

Discussion: The Performance Review envisions a much more active CRC, assuming a greater role in monitoring the work of the IPR staff, doing more policy work, interacting with the public, and hearing appeals. The CRC as currently configured requires considerable commitment from its members. Assigning a staff member to support the work of the CRC as recommended by the consultant would enable the volunteer board to accomplish more work. Further, we think increasing the size of the board to 11 or 13 members would give the CRC the ability to carry out more policy work, outreach, and if the number of appeal hearings increases, would make feasible splitting into smaller groups for appeal hearings.

The consultant points out that CRC training primarily is done from the police perspective and at the Citizens Training Academy. She recommends using the NACOLE standard that requires a balance of training from both inside and outside law enforcement and highlights the four hours of civil rights training received every year by the Albuquerque citizen board. We have observed that when representatives from outside law enforcement are invited to speak to the CRC for training purposes, the subject of police accountability is seldom mentioned.

The City Council needs to take more responsibility for making the IPR successful in its work. With that in mind, each Council member should have an appointee on the CRC. Currently, Council members are each entitled to forward a nominee to fill one seat; there are two Council-nominated members on the current CRC. Under the ordinance as written, there is no guarantee a Council nominee will be selected. Having an appointee on the board would give each Council member a direct connection to the oversight system. Additionally, the CRC should schedule an annual presentation before Council to report on its work.

The NIJ report states that to be effective an advisory board must represent the diverse composition of the local population. Adjustments to the selection process should be made to include stronger efforts to reach out to groups within the community to achieve more diverse representation on the committee.

The CRC needs to take a more active role in overseeing the work of the IPR. This includes increasing their review of selected case files for quality, thoroughness, and impartiality of investigation. The CRC should direct the IPR director to conduct independent investigations as described in the ordinance when IAD investigations have not met timeliness or quality standards.

Policy

- Form a CRC work group that focuses on policy issues arising from appeal hearings, the review of closed files, and community outreach.
- The CRC should hold public meetings to discuss policy issues.
- Interested citizens with expertise in policy issues and students of law, criminal justice and public policy should be included in policy meetings and invited to serve on CRC work groups. Enlist students to assist with research in exchange for credit hours.
- IPR should monitor adherence to new police policies by PPB members.

Discussion: The Performance Review points out that one of the strengths of the Auditor model is its ability to contribute to improvements in police policy. The CRC has produced three reports on policy issues and forwarded recommendations to the Bureau. The consultant points out that over six years, one would have expected a larger number of policy recommendations from a citizen board. Assigning a staff person to facilitate policy and other CRC work would increase its ability to make more progress in this area.

The League has raised concerns about the lack of contact between the CRC and the public and the diminished number of appeals, because both functions offer opportunities for the CRC to learn about the public's experience with the police. Out of those interactions, the CRC can be expected to identify patterns that ultimately will lead to policy research and recommendations.

The IPR Director and City Auditor express a preference for working behind the scenes with the Police Bureau on policy matters. The Consultant points out, however, that, "An effective policy review role pre-supposes a public dialogue... To conduct this function behind the scenes, in order to avoid 'the posturing that comes with a public "wrestling match",' shortcuts this essential learning process. It fails to build public confidence in the civilian oversight process while it also fails to build understanding by the police rank and file of the proper role of citizens in a democracy." (p. 57)

Investigations

- CRC, in conjunction with IPR, should develop criteria spelling out the types of cases that should be investigated routinely by IPR. (contextual)
- Return to nationally accepted findings of Unfounded, Exonerated, Insufficient Evidence, and Sustained. Add Policy Failure, Supervisory Failure, and Training Failure to the list of options.
- Require PPB members to cooperate in IPR investigations as a condition of employment.

Discussion: When discussing the role of independent investigations in an Auditor model, the Consultant states, "As comparable Auditor models have found, an Auditor model can be both highly

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effective and have a high community satisfaction level, if the possibility of independent investigation is actual, rather than just in writing.” (p. 114) Although it has the authority, the IPR never has conducted an independent investigation.

The Consultant analyzed a sample of PPB Internal Affairs investigations and found about one-third to be deficient. She further noted that the instances in which an independent investigation may be conducted are vague and recommends that IPR conduct independent investigations in cases of “public import.” There are a number of suggestions for how to determine which cases fall into that category. We suggest that the IPR director work with the CRC and the public to decide what types of cases should be investigated automatically by IPR. Changes will need to be made in order to require PPB employees to cooperate with IPR as a condition of employment.

Having the IPR conduct independent investigations in specific cases not only will increase community confidence; it should help ameliorate the feeling of favoritism within the PPB when discipline is applied unevenly.

Last summer, Internal Affairs announced a change in the findings available to the Bureau in complaint cases. Findings of Exonerated, Unfounded, Insufficient Evidence, and Sustained, were replaced by Exonerated, Unproven, and Sustained. The Consultant points out that these new findings have taken Portland away from the standard in the field, and as specifically set forth by the U.S. Department of Justice. The PPB should return to the original findings and add Supervisory Failure, Training Failure, and Policy Failure to the options.

Appeals

- Explore community perception of the IPR process and changes in IPR protocols for their role in decreasing the number of appeals heard by CRC. (LWV)
- Change standard of review from Reasonable Person to Preponderance of Evidence. (contextual)
- City Council should order that PPB members testify as a condition of employment.

Discussion: Appeal hearings have declined dramatically since the system has been in place. IPR protocols regarding service complaints and dismissals were changed. The consultant found that some community members thought filing appeals was a waste of time. These and other factors may have contributed to the decrease. This issue deserves evaluation. As mentioned above, appeal hearings give the CRC the opportunity to learn from police/public interactions.

The Reasonable Person standard of proof used by the CRC in appeal hearings is more difficult for the layperson to understand than the Preponderance of Evidence standard used by the Portland Internal Affairs Division in its investigations, by other civilian oversight agencies, and in Civil Law. The standard of proof in the IPR ordinance should be changed to Preponderance of Evidence.

Mediation

- Limit types of cases eligible for mediation to minor misconduct or officer discourtesy.
- IPR staff should offer mediation on all complaints with allegations of discourtesy and procedure.

Discussion: The Consultant raises the concern that under Portland’s system, any complaint may go to mediation, regardless of category, if the IPR staff person feels it is appropriate. She points out that the

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NIJ states that mediation is suitable only for cases involving allegations of officer discourtesy or other minor misconduct. IPR protocols should be adjusted to comply with the NIJ recommendations.

IPR Division

- Produce annual reports in a timely manner.
- Present annual reports to City Council at a public hearing. (LWV)
- Monitor the Early Intervention System in conjunction with the CRC.
- Include information on the Early Intervention System in the annual report. (LWV)
- Hire additional staff to handle independent investigations. New investigators should not have law enforcement backgrounds.
- Civilianize training for existing staff, using NACOLE standards.
- Provide routine and regular notice of status of complaints to officers and complainants.

Discussion: The Performance Review found that the IPR staff prefers to do its policy work behind the scenes by going quietly to the Bureau. According to the Consultant, “the ‘behind the scenes’ approach subverts transparency that is the fundamental premise of civilian oversight.” (p. 56)

Due to a number of factors, the IPR has not issued an annual report since its 2004 edition. A 1998 Human Rights Watch report, states that, “Perhaps the best way to judge citizen review mechanisms is by the amount and quality of information they provide the public and the quality and implementation of their disciplinary and policy recommendations.” (p. 57) The Consultant commended IPR’s 2004 annual report for its thoroughness and the quality of the information in it. The staff needs to place a high priority on completing the annual reports on a regular basis and present them at a Council hearing.

PPB’s Early Intervention System tracks individual officer behavior and flags specific officers for retraining or counseling. Based on staff interviews, the Consultant concluded that the IPR has little role in the oversight of the system and no role in its operation. The NIJ report states that citizen oversight programs can be involved with an early warning system in a several ways, including auditing the Bureau’s system. In the interest of transparency, IPR should monitor the Bureau’s system and include information on its performance in the annual reports.

Additional IPR investigative staff will need to be hired once it is determined which cases will be investigated by IPR. The Consultant points out that a number of the IPR staff have a history in law enforcement and recommends that new investigators come from areas outside law enforcement, such as OSHA, housing authorities, public defenders, private investigators, and attorneys. Training for all staff should be balanced by training from both inside and outside the law enforcement community.

The Performance Review found that both police officers and complainants do not receive regular notice of the status of their cases.

Outreach/Education

- Engage in outreach to all communities for the purpose of explaining the police complaint process. This should include presentations and widely distributed brochures.
- CRC should form a speakers’ bureau and request time for presentations before community organizations, churches, youth groups, etc.

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- IPR staff should regularly request and schedule monthly presentations with community and business groups, including communities of color, church groups, neighborhood associations, and youth groups.
- IPR should develop a “Know Your Rights and Responsibilities” card to distribute at community meetings and youth groups.
- The “Know Your Rights and Responsibilities” card should be drafted in consultation with civil rights experts. (LWV)
- IPR should develop an easy to understand poster that explains the process for filing a complaint and provides IPR office contact information. This poster should be displayed in high traffic areas.
- IPR should ensure that its brochures are available in Neighborhood Association offices, community centers, and other high traffic locations.
- Televisе CRC meetings on Portland Community Media. This would increase community awareness and understanding of the system.

Discussion: The Performance Review found that the IPR has adopted a number of community outreach strategies, but had limited success. For the most part, the public is unaware of the IPR’s existence. Many who use the system do not understand it. A number of citizen complaints are registered through locations other than IPR. Communities of color lack faith in the system, experience a lack of cultural competence, and do not feel that the IPR and CRC make an effort to reach out to them.

The Consultant makes a number of suggestions of outreach techniques designed to remedy the public’s perception and experiences with the system. A staff person assigned to the CRC could assist with setting up speakers’ bureau presentations. The IPR outreach coordinator position is currently vacant. Once it has been filled work should begin immediately on the recommendations listed above.

Conclusion

The Performance Review makes a number of excellent suggestions tied to best practices, national standards and reports. Most of these suggestions are aimed at making Portland’s civilian oversight system more transparent and accountable. These values fit well with Portland’s culture of public involvement and the work the city has devoted to community policing. The League urges Council to appoint a stakeholder group and assign it the task of drafting code and protocol language that will make the Consultant’s recommendations a reality.