



The League of Women Voters of Portland

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November 15, 2011

RE: Proposed Policy Changes for Independent Police Review Division, Citizen Review Committee, and Portland Police Bureau

Dear Mayor Adams, Police Chief Mike Reese, and Auditor LaVonne Griffin-Valade:

The League of Women Voters of Portland thanks Mayor Adams and Auditor Griffin-Valade for responding to all of the recommendations made by the Police Oversight Stakeholder Committee, the Citizen Review Committee's (CRC) Structure Review and PARC Report Work Groups, and the Albina Ministerial Alliance (AMA). Given the volume of material under consideration, City Council should extend the comment period, group the recommendations by issue and hold a series of hearings to discuss each group separately. This would allow for a more thoughtful and systematic approach to consideration of these issues of vital importance to the city.

It is disappointing to see that the Mayor and Auditor disagreed with a number of recommendations inspired by nationally recognized independent experts and overwhelmingly supported by community representatives on the Stakeholder Group, the AMA and the body most familiar with the inner workings of the system, the CRC. Furthermore, some responses reflected a misinterpretation of the recommendations and should be revisited.

Public Involvement

The League strongly agrees with the Mayor Adam's/Police Chief Reese's statement, "Thoughtful citizen involvement in public safety is a key component of community policing, particularly when it comes to improving police accountability." (Report on Recommendations Regarding the Portland Police Bureau, p. 6) Making appropriate task forces open to public observation (III.H) would promote thoughtful citizen involvement by giving the public access to the detailed information presented and discussed at task force meetings. This would result in more informed feedback and likely improve the quality of Bureau reports and recommendations. This is not intended to apply to informal consultation, but to longer-term task forces like the Use of Force Task Force. The Auditor agreed with this recommendation; we hope she and the Chief will work together to identify committees that are appropriate for public observation in spite of the Bureau's current opposition to this recommendation.

Providing drafts of Bureau policy changes to the CRC for review (V.A) would provide another opportunity for thoughtful citizen involvement. The CRC

members, through their detailed review of investigative files, appeal hearings and audits of closed cases, have extensive knowledge of current policies and their implementation and would provide valuable advice to the Bureau. CRC meetings are open to the public so interested community members also would have the opportunity to comment. When timeliness is an issue, consultation with the CRC chair would be an appropriate substitute.

Appeal Hearings

In addition to providing complainants an avenue for appealing findings in a misconduct case to a trained and informed committee, appeal hearings contribute to transparency and public understanding of the workings of the Bureau and the Independent Police Review Division (IPR). It is vital that the regulations governing these hearings provide for a fair and sensible process. The hearings also bring to light problematic policies that may benefit from examination and revision. In the last year the dearth of appeals should lead to serious consideration of increasing the opportunities for appeals or public evaluation by the CRC of closed cases. This would allow the objectives of transparency and policy improvement to continue even when fully investigated complaints are not appealed.

Changing the CRC's Standard of Review from "reasonable person" to "preponderance of the evidence" is one of the recommendations inspired by an independent expert and supported by stakeholders, including those who monitor the CRC on a regular basis. Most importantly CRC, the body responsible for operating under the current standard, finds it unworkable and recommends changing it.

At the last CRC meeting City Attorney Linda Meng, CRC Chair Jamie Troy and other CRC members engaged in a constructive dialogue about the standard. The League urges Council to direct the parties to continue this discussion. Common ground may exist, but it will take thoughtful exploration of the nuances of the system and the law to reach a satisfactory conclusion.

The Auditor disagrees with the CRC Structure Review and Stakeholder (II.I) recommendations that would allow the CRC to review proposed allegations prior to investigation. This proposal is intended to save time by preventing the confusion that occurs at appeal hearings when allegations have not been formulated accurately. At a minimum, language should be added to the code that makes it clear CRC members have the authority to reformulate allegations at an appeal hearing. There has been disagreement in the past about CRC's authority to do so. Having clearly stated allegations that accurately represent the policies that may have been violated is essential and this addition would provide an additional safeguard.

The Stakeholder Group recommended making certain CRC review documents available to the public at appeal hearings (III.F). The Bureau and Auditor disagree. This recommendation does not mean that all files would be available to public observers at a hearing, but that some select items such as photographs, diagrams or redacted documents should be made available when appropriate. As it stands now the public receives a summary sheet with helpful information, but nothing else. It is sometimes difficult to follow the CRC discussion when a critical photograph or other items cannot be shared.

If at the conclusion of the CRC's appeal process, the Bureau does not accept CRC's recommended changes to the findings the case goes to City Council. Under the current code, City Council has subpoena power but cannot consider new evidence. CRC, on the other hand, can consider new evidence, but does not have subpoena power (II.F and G). This has the potential to cause problems in the future and deserves a resolution after careful consideration by IPR and the CRC.

The CRC's Structure Review Report recommends that IPR "monitor and report to the CRC cases that have not been appealed, but illustrate questionable police responses or possible policy, supervision or training failures." Recently, the Chief and IPR brought a closed case (Lindsay Hunt, a former PPB trainee who reported officer misconduct) to the CRC for review. This was an excellent approach to examining an important case in a public setting. If the low incidence of appeals continues, this should be done on a more frequent basis. IPR and Internal Affairs (IA) should incorporate a systematic way to review these cases in their protocols.

Another option for increasing the number of cases eligible for appeal is to allow complainants to appeal non-disciplinary complaints and dismissals (II.J and K). This would increase the number of cases appealed to the CRC and further open the process to public scrutiny.

Complaint Process

The CRC and Stakeholder Group recommend that possible findings in misconduct cases return to those commonly used in other agencies: unfounded, insufficient evidence, exonerated and sustained (III.A). An independent expert recommended a return to these findings and CRC listed it as one of its priorities. The findings were changed several years ago without consultation with the CRC or public. The "unproven" finding eliminates the distinction between "unfounded" and "insufficient evidence" and has resulted in lengthy discussions and confusion at appeals hearings.

A Findings Cover Sheet attached to the RU manager's recommended findings now includes a space to indicate whether policy, training or supervision review needs to take place. This responds in part to a Stakeholder Group recommendation (III.B). It is not clear, however, if information on the cover sheets will be included in the Police Review Board semi-annual reports, whether they will be shared with CRC or if CRC will have the opportunity to recommend adding them when evaluating findings in a case on appeal.

The recommendation to make it easier for complainants to get publicly available records (III.E) is intended to make the process less onerous for the complainant. Currently, if a complainant wants a copy of his/her police record it is necessary to go to the Bureau and purchase a copy. Complainants who feel the police have harmed them may find this intimidating. It would make the system more user friendly if the IPR could provide a copy. There are issues with public records laws, but the Bureau and IPR should try to implement this. Government gets a bad name when it makes processes more complicated than they need to be.

The recommendation by the Stakeholder Group (I.I) to ask each complainant whether they would prefer IPR or the Bureau to investigate their case is meant only to gauge public preference. It

appears the Auditor and Chief misinterpreted this recommendation. There has been an ongoing debate since the system was created about whether people trust the police to investigate other police. By asking this survey question the city will get a better idea of public preference and might consider adjusting resources accordingly.

Investigations

The authority to ask questions of police officers in investigative interviews rests with IA. There is a mechanism by which IPR can address questions to officers, but there are lingering questions about what will happen when IPR eventually conducts its first independent investigation. These concerns can be laid to rest by securing IPR's authority to compel officer testimony (I.D). This should be included in the next union contract negotiations.

The recommendation to diversify the pool of investigators at IPR and IA was intended to encourage recruitment of individuals with investigative skills who are not retired police officers (I.H). The PPB response appears to focus on cultural diversity, which also is important, but not the point. In addition to diversifying the workforce by ethnicity and gender, it will help build trust in the system if investigators do not have long careers in law enforcement.

Citizen Review Committee

The CRC members are dedicated, hard working volunteers selected for their willingness to devote long hours to the work and for their objectivity. Although we disagree with the CRC on the issue of expanding its membership (II.H), we urge you to pay particular attention to the priorities it identified. Its members work within the system and have firsthand knowledge of areas in need of improvement and change.

One of those priorities is dedicated staff support (II.L). For the most part Director Baptista has been very responsive to the needs of the CRC and its work groups and provides adequate staff support. There was an incident in the past in which support was withheld because of a disagreement with the CRC. The League agrees with Ms. Baptista's point that assigning one staff person to the CRC is not practical. Different work groups need different types of expertise and the administrative staff should provide administrative support. However, language should be added to the city code stating that IPR will provide CRC with the staffing it needs to carry out the functions described in the code.

Auditor's Proposed Revisions to City Code Chapter 3.21

Increasing CRC members' term of service and establishment of CRC authority to make policy recommendations directly to the Bureau will improve CRC's ability to do its work. Other changes proposed by the Auditor need more specificity or discussion.

The proposed language in the Hearing Appeals section (3.21.160[A][1][b]) states that if the Committee challenges Bureau findings "the Director shall formally advise the Bureau in writing of the Committee recommendations." It needs to be made clear that the CRC must approve the written notification to ensure that it accurately reflects CRC's rationale for issuing the challenge.

Furthermore, the first IPR director instituted the conference committee (3.21.160[A][1][b][i][a]) without consulting the CRC or the public. Before adding this to the code, the need for this step in the process should be reexamined. When an appeal does go to City Council, CRC should take the lead in presenting it since it is the body challenging the findings. The code language should reflect this accurately (II.E).

Nationally Recognized Expert Recommendations

A number of the recommendations forwarded by the CRC, the Stakeholder Group and the AMA were inspired by reports authored by nationally recognized experts. When a recommendation coming from independent experts has the support of the CRC and public stakeholders, Council should pay careful attention. Examples include limiting Taser use (PARC), revision of the medical treatment directive to require provision of medical aid as soon as possible (PARC), renegotiating the union contract to allow contemporaneous interviewing of officers after a police shooting (OIR), and prohibition of the supervising RU commander serving as a voting member of the Police Review Board (PARC).

Conclusion

Thank you for the opportunity to comment on the numerous recommendations forwarded by the CRC, Police Oversight Stakeholder Committee, AMA and the Auditor's proposed code changes. We urge you to extend the comment period, break up the recommendations into logical groupings, and hold a series of hearings to examine the recommendations and city responses in a systematic manner. Pay particular attention to the recommendations inspired by nationally recognized independent experts and supported by the CRC and community stakeholders.

Yours truly,



Mary McWilliams
President



Debbie Aiona
Action Chair

cc: Independent Police Review Division
Citizen Review Committee
City Commissioners