

April 8, 2019

Dear Chief Brackney:

Thank you for attending our March 12, 2019 Police Civilian Review Board meeting and presenting us with information regarding the current Internal Affairs process and the complaint process. At the end of your presentation, you took some questions from the Board. When you left, you encouraged us to ask you the remainder of our questions at a later time. That is the intention of this letter. We apologize for the delay in getting these questions to you. We have been hard at work with our charge of developing bylaws and other documents for the CRB.

Please let us know when we can expect a response. We realize we have a lot of questions and that you have an important job to do in this City, so we certainly want to ensure that you have the time you need to respond thoughtfully.

**Questions regarding the IA process:**

- Who conducted the audit into your Internal Affairs Process?
  - We appreciate efforts to own up to prior mistakes within the Department. In that vein, when will the results of that audit be made public?
- Did you seek community input regarding how the IA process could be improved (once you were made aware that the process was not going according to your written procedure and expectations)?
  - If you sought community input, please let us know what the findings were from the community.
  - Why was the CRB not invited to be involved in that process and/or the community engagement about the complaint process and IA?
- What *systems* are in place to ensure that the prior problems with the IA process are no longer going to occur?
  - You mentioned that there was a verbal understanding that you—as the Police Chief—would get what you asked for from your officers, but we want to see written documentation of the expectations you have of your IA team moving forward.
- What new information, data, or communications (if any) are going to be tracked and monitored with your improved process?
- With what frequency do you intend on providing the public with information about IA status and complaints?
- As part of the audit or as part of your general review of the IA process, did you gather information as to whether the IA Department was conducting its "early intervention" process appropriately? If so, we ask that you share that information with the CRB and the public.

- You mentioned that you are making changes to the "Early Intervention System" in your General Orders to streamline it and make it more appropriate.
  - When can the public expect to see those changes in writing?
  - Will the public's input be sought prior to making those changes?

**Questions regarding General Order 517.01:**

- Currently, GO 517.01 does not provide a specific timeline by which the receiving supervisor must provide the complainant with a copy of the Complaint Form (along with the phone number for IA). In your opinion, what is an acceptable timeline for this communication and how will this timeline be documented and monitored?
- It is not explicitly stated in the GO 517.01 that an IA investigation stops when a criminal investigation begins.
  - What is the current policy?
  - Does all investigation into possible criminal-conduct get referred outside of IA?
  - When does the case return to IA?
- Similarly, what is the process by which IA refers cases to the Commonwealth Attorney's Office and communicates with the CWA when there may be a criminal basis for prosecution of an officer?
- GO 517.01 states that the department must maintain a log of all complaints.
  - What format is this log kept in?
  - Is it a machine-readable document?
  - Who maintains it?
  - Are complainant communications part of this log?
- How is the Department keeping track of officers who receive numerous complaints against them (whether the complaint was sustained or not)?
- We also were not provided with information about if IA has had to refer cases to the Chief when an officer has numerous complaints filed against him (as is stated in the GO), and whether action has had to be taken, including corrective interviews or other possible actions. (Note: we are aware that specific disciplinary action will not be provided. But we don't even know if the IA department and CPD in general is implementing their own Early Intervention tactics.)
  - Can that information be provided to us and the public? If so, when?
- Furthermore, the GO states that "justified and/or unfounded complaints will be counted when reviewing an employee's records to determine if the established criteria have been met."
  - What system is being used to track these "unfounded" complaints against officers?
  - Do unfounded complaints stay in the officer's personnel file? If not, how are they aggregated when determining if an officer is engaging in a pattern of behavior, even if he is not formally disciplined?

### Questions regarding IA and Complaint Data that was recently provided:

- When collateral violations are found in an IA investigation, is the complainant notified of such findings?
- Will the CPD provide data regarding Investigative Detentions and IA complaints in a machine-readable medium similar to the way the arrest data is now provided via the Open Data portal?
  - If not, why not?
- There are obvious errors in the data. For example, one complaint supposedly was resolved prior to the date the complaint itself was filed, another was supposedly resolved in May 2019 (a date that is obviously in the future), while others are still pending final resolution but have a "closed date."
- Again, regarding possible errors in data or in tracking data:
  - Sarah Burke sent a FOIA to CPD for information about the number of civilian complaints filed in 2018. She was told in April 2018 that there was **one** complaint filed to date. This document indicates that, by that date, **five** complaints had actually been filed.
    - What accounts for the difference in these numbers?
    - And how, specifically, is the process ensuring that complaints are being tracked properly?
  - The total number of 2017 complaints in your report also differs from the number Sarah was previously provided with through FOIA (On 4/10/18, Sarah was told that 19 complaints were taken in by the CPD and 5 were investigated by IA in 2017). Why are these numbers different? Even if you (1) remove the "internal investigations", which were not part of my 2018 FOIA request; remove Case 2017-02 (due to the fact that it was technically received in 2016); and remove the two cases that were improperly classification as a complaint, there are still **23** remaining IA investigations in this list.
    - How is it possible that the number of IA investigations that stemmed from civilian complaints (23) **outnumbers** the total number of complaints Sarah was told were filed in that year (17)?
- In 2018, **eight** of your IA cases are listed as "Internal Investigation." **Five** are listed as such in 2017. Please explain what this term means and what areas of investigation it covers?<sup>1</sup>

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<sup>1</sup> In February 2019, Sarah Burke emailed the Chief and City, asking for "the total number of internal affairs investigations in 2018. Specifically, I was asking for the number of investigations that were initiated by someone other than a civilian (including internally-made allegations within the CPD). Again, I'm not asking for specific details regarding these internal investigations or their outcome. " Chief Brackney replied, "IA addresses external complaints against the officers. If there is an internal conflict, it is rerouted to HR or to a higher ranking supervisor." We also note that your General Orders specifically state that the "above procedure (regarding complaints

- *Note: we decided not to get into questions of delays in IA investigations from 2017 and 2018 due to the fact that the City has already taken ownership of those failures. Thank you for taking that ownership.*

### **Use of Force Data:**

- The 2018 report indicates that the CPD “deployed force on twenty (20) occasions.” But it doesn’t seem like all incidents are included. For example, why isn’t the following instance of use of force not included?
  - <https://wtvr.com/2018/08/12/charlottesvilleofficerattackedduringprotest/> (This would clearly qualify as a “hands on” and “take down,” right?)
- Sometimes, the Use of Force report includes factual assertions.
  - Where do these factual assertions come from?
  - Is the officer who used force taken at his/her word?
  - Are these facts products of a factfinding process (including, but not limited to, IA investigations)?
- With respect to factual assertions, sometimes facts are conclusive and fairly non-descriptive (e.g., “June 18, 2018: Officer attempted to take a suspect into custody for domestic violence. During the arrest, the suspect resisted and was taken to the ground”), but sometimes facts are more descriptive (“During the detention of an individual attempting to elope [sic] from a treatment program, the officer took the suspect who attempted to stab him with a pen and bite him to the ground”).
  - Why are we sometimes given more facts and sometimes fewer?
  - How are decisions made about what facts ought to be included—and at what level of granularity?

### **Reiterating general data concerns:**

We have been talking about data for months. And there has been some confusion, poor reporting, and miscommunication on all ends. We apologize for any role we've played in that. We want to be clear that there is concern amongst the Board and in the community that the data that has been reported appears to be incomplete or incorrect. (See examples above.) We are also concerned with the lack of transparency about the processes and systems used, yet we do appreciate a move toward greater transparency.

First and foremost, the CRB does not believe that the Police Department is the only department that should have eyes on their own data. Second, when that data is presented as complete but is not *actually* complete/accurate, it begs the question of what exactly was missed and *how* or *why* those key data points were missed. In turn, that makes us question the systems and processes in place. This is one of the many roles of oversight of law enforcement that can and should be done by the public, by the City government, and by City Council with a critical eye toward areas that need improvement.

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and IA process) may also be used when department employees desire to enter a complaint against any other employee governed by this order."

In conclusion, we applaud efforts toward having a more transparent Charlottesville, including within the CPD. But providing incomplete or incorrect data (and not providing information about the way in which data is collected in the first place) can actually further harm community/police relations. It can lead to deeper mistrust when the aggregate findings presented by the CPD are not inclusive of all known cases or aren't accurately reported. Therefore, we ask that more care be taken in the future when presenting data. We also ask—and this will be reiterated in our bylaws and/or MOU—that the CRB get access to more complete and closer-to-the source data from the CPD, to have significantly more information and knowledge about the systems and processes in place, and to be a policy and data partner of the CPD in the future.

Thank you for taking the time to review and respond to our questions.

Sincerely,  
Members of the Police Civilian Review Board

Cc: Nikuyah Walker, Mayor (by email)  
Heather Hill, Vice Mayor (by email)  
Wes Bellamy, Councilor (by email)  
Kathy Galvin, Councilor (by email)  
Mike Signer, Councilor (by email)  
Kyna Thomas, Clerk of Council (by email)  
Mike Murphy, Interim City Manager (by email)