

POLICE ACCOUNTABILITY PRINCIPLES AND RECOMMENDATIONS FOR THE MINNEAPOLIS POLICE DEPARTMENT

Communities United Against Police Brutality November 2022

As part of our work to center the community and inform the Minnesota Department of Human Rights consent decree, we prepared a document on principles and recommendations for accountability for the Minneapolis Police Department and its officers. Many of the principles apply to all departments but these recommendations are specific to Minneapolis.

Understanding the Problem

In 2011, City Councilmember Don Samuels and then-Civil Rights Director Velma Korbil began a secret process to gut the Civilian Review Authority and replace it with the Office of Police Conduct Review. Much like that process, the current process to implement the Community Commission on Police Oversight has involved no input from the community in the development of the proposal.

The Office of Police Conduct Review has proven to be an unmitigated disaster in terms of police accountability. **From its onset in October 2012 through the end of June 2022, the organization has taken in over 4000 complaints from members of the public. Of those, 28 have resulted in some form of discipline – well under 1%.**

The Office of Police Conduct Review is controlled at all levels by Minneapolis police and city staff. At each level, staff are empowered to dismiss complaints. Thus, only a small percentage of complaints is even investigated and an even smaller number is sent to the review panel. The review panel is 50% Minneapolis police.

In addition to the secretive review panel, the Police Conduct Oversight Commission is the “public facing” part of the agency. This group of community members has never been allowed to see the actual complaints but has been tasked with recommending policy changes. Some of the commissioners tried valiantly to raise important policy issues. However, the City Council has refused to appoint members to this commission since December 2020. As a result, the number of commissioners has dropped below quorum so they haven’t held a meeting since April 2022.

Will the Community Commission on Police Oversight Solve the Problem?

Unfortunately, no. The Community Commission on Police Oversight proposal being presented does not change anything about the underlying Office of Police Conduct Review structure. The ONLY thing that will change is that the hearing panel pool will include more people and those same people will hold occasional meetings the community can attend. **The current process that leads to an extremely small percentage of sustained complaints will remain the same.**

What Will Solve the Problem?

The Office of Police Conduct Review cannot be salvaged. The only solution is to scrap it in favor of an independent agency that is not dominated by city staff and Minneapolis police.

Basic Principles of Police Accountability Systems

- Separate from and independent of the police department and other city agencies
- Adequately resourced (staffing, funds) to perform function
- Complaints are easy to make and freely accepted--through multiple channels (online, phone, office, community groups, libraries, churches, shelters, other agencies)
- Investigations are fair, complete and timely
- Appropriate standard of proof (preponderance of the evidence)

- Complainants, witnesses and subject officers are treated with dignity
- Complainants are informed of progress of the investigation and outcome of complaint
- Witnesses will be interviewed. Interviews will be audiotaped or videotaped
- Community members adjudicate complaints; those community members are trusted by the community and they meet regularly in meetings open to the public
- Thorough documentation of investigation and basis for any findings
- Consistently holds officers who engaged in misconduct accountable regardless of rank
- Bases disciplinary decisions on a detailed discipline matrix that includes mitigating and aggravating factors
- Makes use of a disciplinary reset to overcome past practices, so discipline survives the grievance and arbitration process.
- Regular review of problem police conduct informs policies and practices
- Use of an early intervention system
- Must include an outreach function

Specific Recommendations

Recommendation	Notes
Independent commission within its own department.	
Civilian review must be entirely civilian, with dedicated city staffing.	No involvement by police officers, former police officers, other law enforcement employees, past or present. No involvement by Civil Right Department or its present or former staff.
Investigatory model, as defined by NACOLE	As opposed to audit model.
Task force must be established to create civilian oversight body	The formation of any civilian review should be by an open process driven by community input.
Qualifications: Members must be city residents and remain so during service. Members may not be former law enforcement employees, either with MPD or other agencies, whether sworn or civilian staff. Members must not be city employees. Members must have some documented previous experience and interest in police reform and accountability. No disqualification for having filed a complaint. Four-year terms, staggered for continuity. Odd number of members, minimum 15.	This expands on current restrictions.
Chair and Vice Chair elected by the Commission members.	Appointment by the mayor was used to disempower the CRA.
Commission members must have proper training to do the work--including training from and in the community.	
There must be enough investigators to handle the workload.	This is a major failing of both the CRA and OPCR. The nine investigators on the OPCR is clearly insufficient based on the backlogs and the cursory nature of some investigations. Probably 12 is the absolute minimum to start, with number and budget adjusted as needed to keep investigations timely.
Intake personnel must be empathetic--social workers, legal workers, etc.	Intake workers should be the ones to coordinate with complainants, keep them updated, and answer questions.

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Investigators may not be current or former employees of MPD or other agencies that work within Minneapolis.	
The director of the department must be confirmed by the City Council with a public hearing.	
Investigations and other functions other than mediation must not be outsourced to private contractors or law firms.	
All complaints by members of the public are to be adjudicated by civilian review. No discipline is determined at the precinct or supervisor level.	
Coaching or training may be an outcome recommended by the civilian review panels, and it is non-disciplinary. The civilian review panel receives a report as to the nature of coaching or training that actually happens.	Coaching and training are valid corrective measures for some types of misconduct or misunderstandings by a complainant. Coaching is not to be used as a substitute for discipline or as a way to hide information from the public.
Civilian oversight must include policy research and recommendations. There shall be at least one FTE dedicated to helping with policy research and development.	
Civilian review must have an outreach function, both by Commissioners and staff. The public must have access to contact information for members.	It was a long fight just to get emails for PCOC members.
Civilian review members should regularly view and audit random footage from body-worn cameras and squad cameras.	
The civilian review body should hold monthly public meetings with public comment. These meetings should be held at times accessible to the public and well publicized.	
Complaints can be received at office, online, by mail. Forms available in multiple languages. Officers and precincts provide information on filing. Forms also available at community groups and libraries. Office will help with filling out of complaint forms as needed. Anonymous complaints will be accepted, with codes for contact as necessary.	NOT at precincts. Too intimidating, and no guarantee complaint will not be thrown out.
Office will inform complainant as to process, what to expect, timeline, copy of complaint, complaint number.	
Office will inform complainant if complaint is about another agency or otherwise not in jurisdiction, and give referral information.	
If complaint clearly involves discrimination based on protected class, office will inform complainant of the opportunity to also file with the Civil Rights Department or Minnesota Department of Human Rights.	At the Civil Rights Department and MDHR, complainant can win a financial settlement, rather than just discipline of the officer(s).
Statute of limitations is at least one year.	
Complaints will be assigned to one of three paths: dismissal, mediation, or investigation. None will be assigned to coaching, or to the precinct or supervisor, at this time.	
Though all complaints should be handled in a timely fashion, some important complaints may be flagged for higher priority.	
All dismissals other than for jurisdiction must be sent to a review panel for a final decision, either to confirm the dismissal	This was the policy at the CRA and it worked well. It is not the case for the

Recommendation	Notes
recommendation, or to send back for further investigation. The panel will receive the file as it exists at this point.	OPCR. This increases independence from city staff.
Officers will be compelled to testify under the provisions of Garrity. Review agency may pause an investigation if the officer may be subject to a criminal investigation.	This is current practice.
MPD and CAO are required to cooperate with all work by the civilian review agency.	This is current practice.
Investigators will have subpoena power. Subpoenas give access to testimony and documents from other law enforcement agencies, access to private video, such as from bars, and witness testimony.	This is very important, and goes far beyond the requirements for officers and MPD to cooperate. Lack of subpoena power frequently hampered CRA investigations.
All relevant witnesses must be interviewed, especially those identified by the complainant. All documentation submitted by the complainant must be reviewed and included in the file. All reasonable efforts must be made to contact complainant and witnesses, by phone, mail, etc.	We frequently hear that witnesses are not interviewed by the OPCR.
If the complainant is anonymous or no longer available, the investigation should continue with the information already received. If sufficient information is available, the case is not to be dismissed for "lack of cooperation".	
If the focus officer leaves the Department, investigation should continue, even though it can't lead to discipline. Similarly, even if no individual officer can be identified, there may be value in continuing the investigation.	Investigations are important not just for discipline of an individual officer, but to identify failures in policy, trends in misconduct, and identify need for greater supervision or training regarding certain types of misconduct. Further, such information can be shared as part of background checks done by other law enforcement agencies.
All interviews are to be audiotaped at a minimum. All interviews of officers are to be videotaped. All persons being interviewed are entitled to representation, including a union representative for officer(s).	
All investigations are to be completed in a timely fashion unless important witnesses or the complainant are temporarily unavailable, or officer is unavailable for reasons beyond their control, such as military leave, or investigation is paused pending criminal investigation.	
The quality and thoroughness of the investigation and its documentation must be sufficient to survive the grievance and arbitration process.	
The investigator may recommend dismissal at any stage in the investigation. The file must be submitted to a review panel which upholds the dismissal or sends the case back for investigation.	
The investigatory file must contain analysis as well as raw data such as transcripts, recordings, physical evidence.	
The investigatory file sent to the panel should include a recommendation by the investigator of merit or no merit.	
Review panels consist of 3 members, chosen on a rotating basis by the Chair. Chair chooses chair of the panel, who is responsible	

Recommendation	Notes
for facilitating the meeting and ensuring that the report is written and submitted timely.	
Review panels get the complete investigation file at least one week before meeting.	
Panel meetings include a city staff member who sets up logistics, notification, etc., and answers questions from the panel. One meeting may hear more than one case if the cases are simple, and particularly for recommended dismissals.	
Complainant and focus officer(s) are invited to speak (separately) to panel members at their meeting. They may be accompanied by representation.	This was done by the CRA and was very helpful. The OPCR does not allow this.
Standard of evidence is preponderance of the evidence. Decision of the panel is by majority vote.	
The review panel writes and submits a report showing the vote of each member for a merit or no merit recommendation, facts and reasoning supporting their decision, and a minority position if desired. The review panel also recommends a level of discipline, based on the disciplinary matrix. Report is due within two weeks.	
A Loudermill hearing is required by law for all discipline that can result in loss of wages, demotion, or termination (not for coaching or training). The employee has the opportunity to present their case, including reasoning, factual differences, documentation, and past practices. For this right to be substantive, the employer must be able to change the merit recommendation and/or level of discipline. Currently the Loudermill hearing is conducted by Internal Affairs but could be conducted by HR.	
If the Chief's decision on merit or the level of discipline differs from the civilian panel, the Chief must report back to the Commission, in closed session, the reasons for the difference.	This was the case for the CRA, but not the OPCR.
The Commission's website will report, in the aggregate, the number of the Chief's decisions, and the nature, upward and downward of the Chief's departures from Commission recommendations.	