

April 30, 2015

A meeting of the Research Committee of the Board of Fire and Police Commissioners was held on the above date at Hillside Family Resource Center, 1452 North 7th Street, commencing at 11:35 a.m.

PRESENT: Commissioners: Michael M. O'Hear, Chair
Ann Wilson
Marisabel Cabrera
Steven M. DeVougas

ALSO PRESENT: Katrina Warren, Community Relations Manager; Cheryl Patane and Susan Bodden-Eichsteadt, FPC Investigator/Auditors

The Chair introduced the committee members and staff to the public present. The Chair presented for adoption the minutes of the March 27, 2015 meeting. Commissioner Wilson moved approval of the minutes as presented, seconded by Commissioner DeVougas. The motion carried unanimously.

The Chair stated the committee had decided to focus its initial efforts on the citizen complaint process. A citizen can file a complaint with either the Fire and Police Commission (FPC) or the Police Department (MPD) or both. This meeting will focus on the FPC's complaint process, and the next meeting will focus on the MPD's process.

The FPC website pages concerning complaints were identified, and the forms and related information were examined. Formal complaint forms have to be notarized and can be notarized at the FPC office at no cost. A photo ID is required for notarization. Packets of information containing complaint forms and other information on the complaint process were available at the door for the public. Complaint forms and brochures can also be obtained at the FPC's partner locations listed on the website. The partner locations have personnel available to assist in filling out the form, but the complainant must file the form.

Ms. Warren gave a PowerPoint presentation on how to file a complaint, starting with the formal complaint process. The FPC has full authority to independently investigate and discipline Fire Department and Police Department employees for misconduct but not for a criminal act. Complainants alleging criminal activity are referred to the MPD Internal Affairs Division (IAD) for police employees or the Fire Chief's office for Fire Department (MFD) employees. A complaint can be filed by anyone who observes or experiences inappropriate conduct at the hands of an MPD or MFD employee. Ms. Warren explained how to fill out the complaint form and return it to the FPC, where it will be referred to one of its investigators. The complaint form contains the complainant's name, address and phone number, the date, time and place of the incident, and a description of the incident. A complaint can be initiated in writing; in person, by email, telephone, or fax; or through one of the community partners. The complaint form can be obtained from the FPC office, through the FPC website, or from one of the community partners. The community partners are listed on the website and on the brochure. After the complaint is filed, an investigator will contact the complainant. If the investigator determines that the FPC has authority over the complaint, it will be thoroughly investigated. There are several ways the complaint can be resolved depending on whether the allegations can be proven. Some resolutions can include, but are not limited to, referral to the mediation program, referral to the chief of the employee's department for action, or referral to the citizen board (Fire and Police Commissioners) for a complaint trial. Ms. Patane outlined the broad discretion the investigators, in conjunction with the Executive Director, have to determine how a complaint will be resolved. The criteria to determine the resolution depends on whether the allegations can be proven and what steps of the process the complainant is willing to undergo, always keeping the wishes of the complainant in mind.

Ms. Warren discussed the mediation process, which is a meeting between the employee, the complainant, and a trained, professional mediator who will try to resolve the issues that led to the complaint. A complaint trial is a quasi-judicial, administrative hearing to determine whether the employee violated a rule or standard operating procedure. The complainant, employee, and witnesses to the incident tell a panel of the citizen board what happened. If the allegations can be proven, the FPC can suspend, demote or discharge the employee from the department. The FPC can also issue policy training directives to ensure the employee is made aware of job performance deficiencies that are identified for improvement. If there is no way to prove that an officer committed an act of misconduct, the complaint will be designated as unsubstantiated. However, the MPD's Early Intervention Program (EIP) has a database that keeps track of complaints made against an officer whether they were proven or not. Officers who consistently have complaints filed against them are identified and monitored. The FPC has no authority to grant monetary damages to a complainant. Such claims must be filed with the City Clerk's office.

Ms. Warren then outlined the informal complaint process, which usually starts with a phone call from a complainant. The investigator fills out an informal intake form. In order to attempt resolving the complaint quickly, the investigator reviews open records, the computer aided dispatch (CAD) system reports, and in-squad video, and/or contacts an MPD supervisor. If the complaint cannot be resolved, the investigator mails a formal complaint form to the complainant. When the complaint is returned, a more thorough and complete investigation is conducted. When the investigation is finished, a determination of sustained, not sustained, exonerated or unfounded is made, and the complainant is informed of this in writing. Ms. Boddien-Eichsteadt stated that of the formal complaint forms mailed out, only about 50% are returned. Of the complaints that start out as phone calls, only 1/3 become formal complaints. The difference between the terms sustained (sufficient evidence to prove the allegation), not sustained (insufficient evidence to prove the allegation), exonerated (the incident did occur but the actions taken by the employee were lawful and proper), and unfounded (the allegation is false/not factual) was explained.

The process for complaints submitted in writing was outlined. The complainant is notified that the complaint has been received and its contents are fully discussed with the complainant. A complete and thorough investigation is conducted, and a determination is made (sustained, not sustained, etc.). If the charges are sustained, a notarized complaint is required to proceed to a hearing. If a complaint is filed with both the FPC and MPD, the MPD will conduct the investigation and the FPC will audit the case upon completion.

To audit complaints filed with the MPD, the investigators will go to the MPD IAD office about once a month and audit complaints they select at random to ensure that all segments of the investigation were thorough, impartial, accurate and complete with the appropriate disposition. The FPC investigators have full access to the MPD complaints. There have not been many issues found in these audits, but if any issues do arise, the Executive Director will talk to the Chief of Police about them.

In 2013, the FPC received 93 formal complaints and 165 informal complaints. In 2014, 74 formal complaints were received and 158 informal. Complaints are logged into the tracking software but reports must be requested from the MPD at the present time due to a vacancy at the FPC in the position that was responsible for generating complaint reports. The data base is updated as complaints are resolved. Commissioner Cabrera would be interested in a report that detailed not just the number of complaints but the type of complaint received.

The last complaint trial was held in 2012 and resulted in the officers receiving five-day suspensions, which were later overturned on appeal to Circuit Court. It is then up to the City Attorney to decide whether to appeal the Circuit Court decision. Commissioner Wilson expressed concern that an officer usually has legal representation at a complaint trial but a complainant may not, which is not a level playing field. Tentative plans to contact the Marquette Law School about doing pro bono work have been placed on hold until the Executive Director vacancy is filled. For the last complaint trial, Ms. Patane

prepared a binder of her whole investigation, which included police reports and evidence from the scene, and provided that binder to the citizen for use at the hearing. It would be a conflict of interest for investigators to assist a complainant during the trial as they are impartial fact finders and not advocates. However, the hearing examiner gives wide latitude to a complainant who is not represented in order to assure that both sides receive a fair trial.

Challenges citizens face during the trial include uncertainty of trial procedures, knowledge of general police duties and procedures, and cross examination of officers. The bulk of an investigator's time is taken up with conducting the actual investigation, which can be different for each case. After the complaint intake process is over, the investigation generally consists of obtaining CAD reports, police reports, in-squad videos, and open records documents; reviewing standard operating procedures (SOPs) and the Code of Conduct; interviewing the complainant, witnesses and officers; contacting supervisors, etc.

Ms. Warren then continued with her presentation on how the complaint process can be improved. Complaint forms are easily accepted at the FPC via mail, email, fax or in person and can be obtained at the community partner locations. Complaint investigations are conducted in a timely manner, and complainants are kept advised of their progress. At the conclusion of the investigation, the complainant is notified verbally and in writing of the disposition of the complaint. One suggestion to improve the process is to increase education of the public on the process. Complete complaint instructions are contained on the FPC web pages. Ms. Warren stated at the last meeting someone said they had contacted some of the community partners who said they didn't know anything about the process. The brochure was updated before the Executive Director left. She has just contacted each and every partner agency since the last committee meeting, and each said they are aware of the process, where to get the forms, what the process is and that they can assist the complainant. If anyone contacts a partner who says they are unaware of the process, Ms. Warren would like to be contacted about that. She suggested having a space available at each partner agency, readily available to all who walk in, with a stand containing brochures and complaint forms. The Chair asked if signing the complaint before a notary is required by state law, and whether that requirement would discourage someone from filing a complaint. Ms. Warren replied that some partners do have notaries available. Regardless, the complaints have to come back to the FPC office and notarization could occur there. Ms. Patane suggested that notarization at the beginning of the process could possibly be delayed for awhile if necessary. The Chair stated we would want our partners to provide information on where to get signatures notarized. Ms. Bodden-Eichsteadt reminded the committee that staff cannot help complainants fill out the form. They either have to fill it out themselves or go to the partners for help, which is one reason the partners were established. Commissioner Cabrera suggested updating the complaint brochure with information about which partners can notarize a complaint.

Commissioner Wilson asked what the mediation process consists of. Ms. Patane explained that the chief has encouraged his officers to agree to mediation which will not result in discipline, but the complainant has to agree as well. Mediation takes place at a mediation center with a trained mediator. No one from the FPC is involved in that meeting at all. The mediator will contact both parties before the meeting to hear what the allegations are. After the mediation, the mediator will contact the FPC with a summary of the meeting. If the complainant doesn't want to go to mediation, the complaint is dropped if staff cannot sustain the allegations. If the complainant participates in mediation but is not satisfied with the outcome, the officer is still not charged. If a complainant is unable to prove an allegation because it is just their word against the officer's, and then is asked to go to mediation where there will be no discipline for the officer, Commissioner Cabrera opined that it is easy to see why people would not want to file a complaint. Ms. Patane stated mediation is just one option. By bringing a complaint to the FPC's attention, it gets the officer into the EIP system and allows the complainant to see the issue from a different viewpoint. Commissioner Cabrera asked if the officer has multiple complaints in the system but they were all not sustained, how is that going to help with the new complaint. Ms. Patane replied that it starts showing a pattern that can then be addressed through training or discipline. The majority of

complaints are one-on-one incidents which are difficult to prove. After a certain number of complaints, even if they were not sustained, the department would still take some corrective action or look into it more closely.

Commissioner Wilson asked if a complaint investigation from the FPC goes to the MPD, does someone talk to the accused officer? Ms. Patane stated in a Rapid Resolution Complaint, a complainant may not want to file a complaint against an officer or have him disciplined, but wants a supervisor to know that the officer was unprofessional. Ms. Patane calls the supervisor who will call the officer, discuss it with the officer, and let the complainant know about the outcome. Ms. Patane will also follow up with the complainant. Commissioner Wilson suggested that this process of having a supervisor follow up with a complainant should be publicized more because a number of people say that they file a complaint and hear nothing back. Ms. Bodden-Eichsteadt stated on a number of complaints there is a lot of missing information. After contacting the complainant and advising them of the areas that are incomplete, the complainant never calls back. If the investigator calls again and gets no further information from the complainant, the complaint cannot be processed further.

The Chair asked about the way complaints can be dismissed if they reference incidents that are over 60 days or 6 months old. Ms. Patane said that for minor allegations like discourtesy or department procedure violations, the time limit for filing a complaint from the date of the incident is 60 days. For serious misconduct like excessive use of force or substantial physical injuries, the time limit is 6 months. Complainants are advised that the MPD IAD does not have time limits. Some complainants only tell half the story about an incident and when they realize the investigators have the rest of the story, they decide not to pursue. Some complaints come from inmates who are trying to file a complaint as a last resort to get out of sentencing. If a complaint alleges criminal activity on an officer's part, the complaint is forwarded to IAD.

A member of the public said it would be interesting to see a breakdown of the complaints by resolution in each of the four categories that have been talked about today. For example, if only two percent of complaints are sustained, that might influence someone not to file a complaint, especially if it is a case of the complainant's word against the officer's. Ms. Patane said even if the officer did not have a camera running, there might be a security camera near the scene, witnesses, etc. Commissioner Cabrera still wants the public to file complaints because it will get the officer into the EIP data base. The Chair stated while officers may not be wearing body cameras, the squads have cameras. Commissioner Wilson asked if Ms. Warren could put her PowerPoint presentation on the website. She is concerned about people not having enough information about the process, and whether the community partners had all of this information. Commissioner Cabrera felt the presentation was clearer than the information on the website. Commissioner DeVougas suggested putting together an FAQ sheet and updating the brochure. The Chair asked if there could be a meeting with the community partners. Commissioner DeVougas suggested doing a refresher course for them. Ms. Warren stated all of the community partners existing today were established before she was hired, but each partner receives training. The Chair stated a refresher course every few years would be a good idea since new people are hired all the time and may not know about the process. Commissioner Wilson asked if there are attorneys who would be willing to do pro bono work. Commissioner Cabrera suggested developing a list of different organizations that would be willing to assist complainants with free legal representation at the hearing. The Chair is keeping track of these suggestions and will work through a sheet of specific recommendations.

Commissioner Cabrera asked when a complaint would go to trial. Ms. Patane answered if the investigation showed serious allegations of misconduct and enough evidence to sustain the charges, it is brought to the attention of the Executive Director. At that point, it is at the Director's discretion whether to advance it to trial or forward it to the chief for discipline. If it goes to the chief, the complainant does not have to present the case before the FPC. If the officer appeals the discipline given by the chief, it will

come back to the FPC for a hearing, and the complainant's case will in effect be presented by the City Attorney's office on behalf of the chief. The complainant does get a say in whether the complaint goes to the chief.

In response to a question from Commissioner DeVougas, Ms. Bodden-Eichsteadt stated that complaints filed with the FPC and MPD are entered into a common software program but each department has its own files. The investigators can view the notes MPD puts into the system and can tell if a complaint has been filed with both departments. The Chair thanked Commission staff for the education they provided today on the complaint process.

The Chair stated he had a conversation recently with former Executive Director Michael Tobin about proceeding with a second citizen satisfaction survey. Now that he is aware of the complexities of the process, he feels the committee should not proceed until a new Executive Director is in place to handle the contracting process. The other Commissioners concurred with his recommendation.

The Chair thanked Commissioner Wilson for hosting the meeting and the public for coming. Commissioner Wilson moved to adjourn the meeting, seconded by Commissioner DeVougas. The motion carried unanimously.

The meeting concluded at 12:50 P.M.

Respectfully submitted,



Michael M. O'Hear
Commissioner

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