

July 28, 2015

A meeting of the Research Committee of the Board of Fire and Police Commissioners was held on the above date, commencing at 5:43 P.M.

PRESENT:	Commissioners:	Michael O'Hear, Chair Marisabel Cabrera Steven M. DeVougas
ABSENT:	Commissioner:	Ann Wilson (Excused)

The Chair presented for adoption minutes of the meeting of June 20, 2015. Commissioner DeVougas moved approval of the minutes as presented, seconded by Commissioner Cabrera. The motion carried unanimously.

Members of the audience introduced themselves as Mary Watkins, Dougan Meyer, Jeannette and Jared English. (Eugene from the NAACP arrived mid-way through the meeting.)

1. UNFINISHED BUSINESS:

The Committee continues to review the Citizen Complaint process and plans on preparing an Interim Report to the full Commission with its recommendations at the next regular meeting. This will be a two-step process in which the Research Committee sets forth its objectives, obtains feedback from the full Commission and then works through implementation. It is anticipated that there will be significant challenges in implementing some of the recommendations due to resources, funding, staffing and legal considerations.

2. NEW BUSINESS:

The Chair circulated a four-page document outlining general and specific objectives for the citizen complaint process. He reviewed each of the objectives and requested feedback from the audience.

General Objective 1: Initiating a complaint should be made as easy and convenient as possible.

Specific objectives are 1) a prominent "complaints" link on the home page of the FPC and MPD websites; 2) ability to initiate a complaint electronically on a web form; 3) complaints should also be initiated by phone, mail or in person at the FPC, District Stations or Internal Affairs Division (IAD); 4) notarized signatures can be obtained at a later date by investigators; 5) complaint brochures should be placed in easily visible locations at all district stations; 6) the MPD should periodically remind District personnel of their responsibilities under S.O.P. 450; and 7) FPC staff should work with community partners to ensure they have forms and can assist citizens who want to file a complaint.

Commissioner Cabrera stated she researched whether the complaint document needed to be notarized or not, and it was her conclusion that it did not if it included a statement on the form that the individual affirmed they were certifying the content of the document under penalty of perjury. Also, the individual needed to be advised of the consequences or penalty for committing perjury. She did not believe notarizing the document was a requirement under state statute.

Mary Watkins suggested that the Milwaukee Justice Center at the Milwaukee County Courthouse be included as a community partner because they were experienced in assisting citizens with completing legal documents and forms. She was slightly concerned, however, that certain citizens would not want to enter the courthouse to engage the assistance of the Milwaukee Justice Center.

Dougan Meyer suggested that the District Stations have regular meetings with the community and offer an opportunity for the citizens at those meetings to file or voice complaints. The meetings should also

be an opportunity to educate the public on the complaint process. Mr. Meyer also noted that the Districts do not list upcoming Community Meetings, and what is posted is out of date.

Jeanette recommended that complaints be translated in Spanish and Hmong on the web site, as well as on the printed form.

General Objective 2: There should be a transparent, uniform screening process to determine the most appropriate investigation and resolution process for each complaint.

Specific objectives included 1) the FPC and MPD should have clear, uniform screening criteria, which should be stated on the complaint brochures and the website; 2) all complaints should be logged into a central database regardless of whether it was deemed appropriate for investigation; 3) investigators should make allowances for difficulties citizens may have in communicating their complaint; 4) complaints filed with the MPD should be screened by IAD and not District-level personnel; 5) some "mid-range" complaints may be satisfied by a quick and informal resolution; however, all complaints should remain a part of the member's record; and 6) mediation should be explored as a helpful alternative in some types of cases.

The FPC currently uses Rapid Resolution as an informal resolution. There was some discussion as to whether or not it should be mandatory for officers to attend mediation. Commissioner Cabrera was under the impression that officers did not attend mediations because they were not required to do so. In the past, the FPC had mandatory conciliation proceedings. The Commissioners wondered if it would be helpful to order people into conciliation and if the end result would really result in an agreeable resolution.

Jared English (ACLU) took this opportunity to remind the Commissioners that a State Supreme Court decision gives the Commission wide latitude on how to rule the Police Department, and that in fact the Supreme Court orders the Commission to make rules.

Ms. Watkins wanted officers to be investigated and have other similar complaints filed against them reviewed, regardless of whether the subject complaint was substantiated or not. Commissioner O'Hear stated that this suggestion would fall under the Early Intervention Program (EIP) objective.

Mr. Meyer did not want any pressure siphoned off of the Police Department and wanted all complaints to be treated equally. Commissioner O'Hear explained that complaints could range along a spectrum of seriousness and did not believe all complainants should be forced to go through a full-blown disciplinary process. From the complainant's perspective, it may be more desirable to have a more expeditious resolution. According to FPC staff, about one-third of complainants fail to participate in the follow-up investigation regarding their complaint. Commissioner Cabrera added that FPC staff informed them that there are quite a few people who call in and complain, but don't want to go through a big ordeal, and just want to bring the matter to the FPC or supervisor's attention. The complainant may just want the officer to be talked to, told the conduct is unacceptable and advised of the consequences. She does not believe that complainants should be forced into something more elaborate and told they must do this if they want to file a complaint. Mr. Meyer believed that going into mediation, conciliation or Rapid Resolution would in essence be talking a complainant into giving up. Commissioner O'Hear pointed out that all of these complaints would be preserved and tracked so there would be oversight, regardless of whether there was a hearing or Rapid Resolution.

The current tracking system is through the EIP and is triggered by three events in a six-month period. Commissioner O'Hear is not presently satisfied with the current triggers for intervention and feels it is something that needs to be looked into further. The Commissioners do not have access to the EIP system. Mr. English admonished that this was something that the Commissioners must demand to have access to, and that the State Supreme Court decision allows them to do this.

Ms. Watkins is glad to hear that Commissioner O'Hear is not satisfied with the EIP because there are a lot of problems with it in her opinion. She states that Detective Gomez had five pages of allegations of excessive use of force and he was not disciplined. She claims that there are lots and lots of examples that EIP is not working. She believes that it is critical for the Commissioners to have access to the same type of information that the MPD does through the EIP program.

Commissioner O'Hear pointed out that the program was redesigned in 2014 and the incidents Ms. Watkins is referring to pre-date the current EIP program. Mr. English wants the FPC to randomly review complaints, and perhaps randomly review 50-100 officers every couple of months. Commissioner O'Hear confirmed that FPC staff does audit citizen complaints. He is more interested in improving the EIP program and having the EIP tracking system identify the top "30" problem officers, rather than having FPC staff manually attempt to do this. The type of review Mr. English wants could more efficiently be captured by the EIP system. Mr. English questioned whether the EIP was actually capturing all of the relevant data. Commissioner O'Hear suggested that perhaps audits could be conducted by FPC staff of the program to assure that relevant data was being captured.

General Objective 3: The Commission should provide a fair hearing to all complainants who wish to have one and whose allegations, if proven, would establish a rule violation.

Specific objectives include 1) once a decision has been made regarding discipline, the complainant should be informed of that decision and of the opportunity to have a trial in front of the Commission; 2) if an investigation thoroughly discredits a complaint, there should be a mechanism for an expedited resolution eliminating the need for a trial; and 3) complainants should receive representation or assistance at the trials in front of the Commissioners.

Commissioner O'Hear stated that all complainants could request a hearing in front of the Commissioners. However, if there was a complaint that was discredited, there should be some type of mechanism to end the proceeding, similar to a motion for summary judgment. There should be a mechanism to look at the evidence quickly and reach a ruling without a full-blown trial, if the evidence does not warrant it.

Ms. Watkins protested how do you determine if the complaint or evidence does not warrant a trial? It appears to her that there is a pattern of wanting to avoid disciplining officers. She feels that if a complaint is filed against an officer, his history of complaints should be looked at to see if he has any similar complaints. If a pattern is detected, then the officer should be disciplined. She was concerned that a sole complaint might not rise to the level of discipline, but in conjunction with a pattern it would, and without reviewing the history, the pattern would not be detected. Commissioner Cabrera pointed out that there would still be an investigation, even if there wasn't a trial. If after the investigation, the evidence conclusively showed that the complaint was without merit, the FPC should not have to continue with a trial. Ms. Watkins questioned how do you determine the complaint is without merit? Commissioner O'Hear clarified that the biggest barrier in imposing discipline is the "he said/she said" situation and that those kinds of situations would still go to trial. For the edification of non-lawyers, the summary judgment process is not a time and legal process where credibility determinations are made, which is done at a trial. So the "he said/she said" situations would go to a full-blown trial.

Mr. English complained that there is no oversight of the IAD investigating citizen complaints and that matters would not go to trial because the MPD is hiding things. Commissioner O'Hear responded that complainants have their choice of agencies (MPD or FPC) to file their complaint. Complainants who are unhappy with MPD's decision or resolution can appeal to the FPC. Commissioner O'Hear is not certain that complainants currently are aware that they have that right.

Eugene (NAACP) complained that waiting six months to have a trial before the Commissioners is too long to wait. People forget what they saw or heard and witnesses cannot be found. He suggested a trial be

held within 60 or 90 days of filing the complaint. Commissioner O'Hear indicated that he would note the suggestion that trials should be expeditious.

Mr. English wanted to know what the data is on the number of complaints that are not pursued or complainants that drop out of the process. He wanted to know whether or not the FPC reviewed those complaints. He also wanted to know how many cases are not sustained by the IAD, and if the FPC ever reviews those cases. Commissioner O'Hear replied that the FPC does not re-review all citizen complaints investigated by the MPD. If there is no appeal to the FPC, then the FPC would not be aware of the case unless they came across it during one of the monthly audits. Mr. English commented that it seems very simple for the FPC to review citizen complaints investigated by the MPD. He believes FPC staff could just peruse through those complaints. Commissioner O'Hear pointed out that FPC investigators already audit citizen complaints filed with the MPD on a monthly basis. Mr. English asked if the investigators had access to the data on pending citizen complaints with the MPD. Commissioner O'Hear affirmed that the investigators and the Research Analyst do have access to this information; however, the position for Research Analyst is currently open and will be filled when an Executive Director is hired. Commissioner O'Hear believes when the Research Analyst is hired, there will be more access and analysis of this information. Mr. English told Commissioner O'Hear that he needed to demand that the Executive Director give him a timetable as to when the Research Analyst will be hired and to have the answer available by the next Research Committee meeting.

General Objective 4: The Commission and the public should be given regular updates on the complaint process.

Specific objectives include 1) the Commission should receive detailed annual reports on the number of complaints filed with the FPC and MPD, stating the nature of the complaint and how they were resolved; and 2) the MPD should consult with the Commission regarding the data it collects on complaints.

Commissioner Cabrera indicated that she would like to receive reports more frequently than on an annual basis regarding the number and nature of citizen complaints. She would like to receive this report on a quarterly basis, so if changes had to be made, they could address this in a timely fashion. Eugene suggested that organizations such as the NAACP could help distribute this information. He doesn't believe that putting that information out over the internet or on a website really "does it". He believes the organizations should receive this information directly. Commissioner DeVougas expressed a concern that if they receive the numbers directly from the MPD that it should be in a format they understand. Mr. English questioned that, as part of their oversight responsibility, the Commissioners should know more than the police do, so why don't they receive that type of training? Mr. English insisted that not having staff, resources or an Executive Director is no excuse for not performing oversight. The Supreme Court decision he distributed earlier demands that the Commission do it anyway. Commissioner Cabrera is confident that if the Commissioners request the data in a certain format, the Department will provide it to them. Mr. Meyer inquired if this is what the FPC data analyst did before. Commissioner O'Hear responded that this was one thing the analyst did, and that the analyst had expertise in MPD's management system.

General Objective 5: The MPD should continue to refine its EIP and keep the Commission and the public informed of its progress.

Specific objectives are 1) the MPD should conduct a thorough review of its EIP to determine, among other things, whether the program is successful in reducing patterns of rule violations, the results of which should be presented at a regular meeting of the FPC; 2) In cases in which a department member is suspended, terminated, convicted of a crime, or found civilly liable for job-related misconduct, the MPD should determine whether the member had triggered any EIP warnings and whether there are any lessons that might be drawn from the case regarding the way that the EIP was administered; and 3) The MPD should provide an annual report on the EIP to the Commission.

Commissioner O'Hear summed up this objective as continuous review and improvement of the EIP and annual reporting. Mr. Meyer wants the FPC and not the MPD to investigate members convicted of a crime. Mr. English believes that the Commissioners should demand quarterly reports of the EIP data as well, so they can see trends. Commissioner Cabrera concurred. Based on the presentation the Commission received, it seemed to her that the Department was not following up on people who had triggers or red flags. The Department did not seem to be recommending training or counseling for people who had triggers. She came away from the presentation wondering if the EIP was serving any purpose at all.

Commissioner O'Hear will make modifications to the preliminary objective list. It is his intention to present the revised document at the next regular FPC meeting and receive the backing of the full Commission.

A discussion was held about how to better inform the public about the work the FPC is doing and of its regular bi-monthly meetings and committee meetings. In addition to sending out 647 e-mail notifications, 25 fax notifications to media, and posting on the FPC's website and City Hall's Announcement Board, it was suggested that the FPC provide this information on Facebook because no one is aware of the FPC meetings.

3. ADJOURNMENT:

Commissioner DeVougas moved to adjourn the meeting, seconded by Commissioner Cabrera. The motion carried unanimously.

The meeting concluded at 6:55 P.M.

Respectfully submitted,



Michael M. O'Hear
Commissioner

MMH:js