

# ATTACHMENT 5

## Comments in response to Attachment 5

Dec  
Nov 8 Agenda packet

1. There was no attribution, unlike Attachment 4, although the oral presentation established that Jan Rus was the author.
2. Executive Summary: The new agency created by Measure LL will be called the Community Police Review Agency (CPRA), not the Citizens' Police Review Agency. The recommendations stated below are from Staff, not from the CPRB as stated.

### Background:

The struggle against "institutional and bureaucratic hurdles" is what prompted the community's efforts to create a police commission that had the authority to remove those hurdles. The City Administrator will no longer be able to 'ignore or treat as an afterthought' the disciplinary recommendations presented; the City Administrator will have no role in discipline, under Measure LL. The Commission will be the decider of discipline which shall be final, subject only to appeal to an arbitrator or the Civil Service. Again, the cooperation based on "ad-hoc personal ties" without a "firm institutionalized structure" will also be ended by Measure LL. The Commission will be able to compel cooperation from OPD by virtue of its ability to terminate the Police Chief for cause.

It is unclear to me why Mr. Rus felt the need to describe all of these historical un-met needs since they provided the rationale for the proposal that provides the desired remedies in the relevant provisions in Measure LL.

### Recommendations:

1. The training and policy failure findings are unclear to me. Complaints are generated against subject officers who cannot be held accountable for either of these failings, so who is being held accountable and what is the proposed remedy?
2. Ongoing continuing education should include briefings not only from OPD but also from civil rights attorneys and/or organizations that can comment on relevant case law and recent rulings that may relate to some of the allegations that come before the body. Not all policy and trainings put on by OPD are necessarily following "21<sup>st</sup> Century standards" and should be subject to critiques.
3. More systemic policy compilation etc--- agreed. This is already provided for in Measure LL.

### Relationship between CPRB and OPD

1. Formalization of information.....

Timely production of requested and/or subpoenaed documents, etc. has already been provided for in Measure LL. Failure to adhere to this provision is one of the 'causes' for termination of the Police Chief. Likewise, failure to respond to requests for information about the implementation of policy directives would also be considered in the performance evaluation of the Chief.

2. CPRB/OPC/CPRA involvement in OPD functions and training

We strongly disagree with the premise that civilian oversight agencies should be “involved in a formal way in relevant police functions including the Oakland Police Academy graduation.” Civilian oversight must be perceived to be neutral and not part of the system they are tasked with overseeing. The point of civilian oversight is that it must be seen as a ‘3<sup>rd</sup> party’ with respect to community complaints and concerns and the police functions, duties and role. As such, they cannot afford to be seen as advocates, supporters of the police in order to have any credibility with those who are bringing complaints, issues and concerns about the way they are discharging their duties.

**Relationship between CPRB and CAO**

Measure LL anticipates a close relationship between investigator/attorneys who are assigned high profile/Level 1 cases ( in which the allegations, if sustained and result in significant discipline, will most likely be appealed to an arbitrator) and the City Attorney’s Office’s designated attorney for the arbitration hearing. The intention is to provide to the City Attorney’s office expertise and specific knowledge of the training, policy, MOR, that would increase the likelihood of the City’s imposed discipline to be upheld by the arbitrator.

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**To summarize:**

It is unclear why this work was undertaken at this juncture, given the passage of Measure LL which addresses most of the concerns expressed in this presentation.

We suggest that Mr. Rus peruse Measure LL and delete the portions of his proposal that are already covered by this change in the City Charter. Additional recommendations might be best proposed as elements of the governing ordinance that will be passed by the City Council in the near future.

*Rashidah Grinage*

Coordinator, Coalition for Police Accountability

December 9, 2016

# CPRB New Policy Recommendations Report

## **EXECUTIVE SUMMARY**

### **Recommendations:**

- I) CPRB (or successor agency) Policy Proposals
  1. Use of Failure of Policy and Failure of Training findings in response to citizen complaint investigations;
  2. Continuing Education of CPRB board members and interested Oakland citizens on OPD policies and training;
  3. More systematic compilation and presentation of CPRB policy proposals, to include formal responses and follow-up from appropriate authorities within the OPD.
- II) Relationship between the CPRB (or successor agency) and the OPD
  1. Formalize information sharing with respect to active CPRB investigations;
  2. Involve CPRB board and staff in OPD functions and training
- III) Relationship between the CPRB and other city departments
  1. Consultation between CPRB investigators and the OCA with respect to City Of Oakland litigation and arbitration related to CPRB investigations and findings

## **BACKGROUND**

The Citizens' Police Review Board (CPRB) was originally created by Ordinance No. 9916 C.M.S., on April 15, 1980, for the purpose of reviewing certain complaints of conduct by police officers, conducting fact-finding investigations of these complaints, and thereafter making advisory reports to the City Administrator of the facts of these complaints. It was constituted in its current form on November 12, 2002, by City Ordinance No. 12454 C.M.S.

From its first creation, the board has faced challenges. Its very existence is a testament to Oakland citizens' expressed desire for meaningful independent oversight of the Oakland Police Department (OPD), and the continuing hard work of the appointed volunteer board members demonstrates the willingness of community leaders to participate in the role of monitoring police practice. The work product of the board, from its recommended disciplinary findings related to specific citizen complaints, to its proposals for changes in existing OPD policy and practice in order to improve both police outcomes and the important citizen-police relationship, have served as an important record of citizen opinion and input in response to citizen complaints. Likewise, CPRB staff, largely consisting of a dedicated group of professional investigators and support personnel, has performed a yeoman's job of independently reviewing OPD work product, interviewing witnesses, compiling and preparing thorough case files, and proposing findings for the 500+ individual citizen complaints that the board receives each year. However the impact of this large body of work on both OPD practice and the relationship between the citizens of Oakland and their government and police is often perceived in the community as insufficient with respect to the challenges of the relationships involved.

Ideally the CPRB should be perfectly situated to perform dual roles for the City of Oakland. In terms of practical work product, it has a mandate to perform thorough investigations of citizen complaints with respect to specific police incidents and to formulate independent recommendations for disciplinary action with respect to the officers involved in the incidents that generate these complaints. Furthermore, through its existing enabling ordinance (City Ordinance No. 12454 C.M.S.) it has the ability not only to recommend specific disciplinary findings, but to also offer broader policy and training recommendations to the Oakland Police Department and the City Administrator's Office. It is thereby meant to provide the OPD an extra layer of accountability to the citizens of Oakland and to serve as a bridge between the community and the Police.

In addition to its formal authority, the Board has the potential to serve an important symbolic role as the embodiment of the relationship between the citizenry of Oakland and the police whose role is to protect and serve these citizens. By exercising an independent citizen review process that runs parallel to the OPD's own Internal Affairs Department investigations, the CPRB allows the City's Citizens to feel like they have a meaningful advocate when dealing with Police abuses and a real voice in support of their interests in police processes and outcomes.

Therefore, the success of the CPRB should be judged through its actual work product in the form of formal findings in response to specific Citizen Complaints and formal proposals to reform Police procedures that have had problematic impacts for those same Citizens. And, it should also be judged according to its ability to serve and reinforce the community's professed desire to have a meaningful role in police oversight and accountability measures, and to provide the Citizens of Oakland a credible belief that there are official city structures in place that hear their voices and represent their interests vis-à-vis the real power and authority of the City's Police Department. In practice, the CPRB has sometimes struggled to perform either of these roles.

While the practical investigatory work of the CPRB has usually preceded relatively smoothly, it has often found itself struggling against institutional and bureaucratic hurdles to effectively exercising its mandated tasks, and has felt isolated and disconnected from the actual practice of police oversight and police-community relations in Oakland. Because of its advisory nature, it has historically often seemed as if the central function of the Board – recommending disciplinary action against police officers in response to citizen complaints through an independent investigation and hearing process – has been ignored or treated as an afterthought in the actual determination and imposition of such disciplinary action by the Department and City Administrator's Office.

Likewise, because the Board is an independent appointed body whose role is separate from the tasks of day-to-day policing, it can feel detached from many of the most important decisions and conversations about police accountability, reform, and the citizen-police relationship. It consults with the Office of the City Attorney (OCA) when it needs specific legal advice with respect to its role vis-à-vis the city; with other city departments and the City Administrator's Office (CAO) when it requires assistance in matters that touch on their specific functions, and with the City's elected leadership in the form of annual reports to the City Council's Public Safety Committee or when it has a specific request or need that requires Council or Mayor approval. But these relationships have historically been initiated mostly by

the CPRB in reference to specific issues or needs. Despite its demonstrated competence in providing professional independent investigation of Citizen Complaints, the CPRB is very rarely consulted by these other city actors when issues arise that clearly touch upon its core competencies or experience. It is largely disconnected from city decision making; it is rarely mentioned in the City's extensive public record of official City Council conversations about Police reform or the numerous independent investigations of police practice that the city has contracted in recent years; it has played no meaningful role in the ongoing Federal Monitoring of the OPD; and often takes a secondary role to outside police reform groups in press coverage of the often fraught relationship between the OPD and the Citizens of Oakland.

And finally, in part because of what has often been perceived as its adversarial role vis-à-vis the OPD, and mixed feelings about citizen oversight within the law enforcement community, the CPRB has had what can best be described as a complicated working relationship with the Oakland Police Department itself. The department is mandated to respond to inquiries it receives from the CPRB Board and investigators related to open investigations of citizen complaints (OPD Department General Order M-3.2 – Citizens' Police Review Board 12/6/05), and the CPRB participates in discussions about disciplinary action with Department leadership and the City Administrator when there are differences between its recommendations and those of OPD's Internal Affairs Division (IAD). Likewise, CPRB staff has often had close working relationships with their counterparts in the IAD and OPD Command Staff. However, these working relationships are built on ad-hoc personal ties, not on a firm institutionalized structure of document sharing and collaboration between sworn personnel and citizen oversight.

While CPRB Staff continues to perform investigations professionally and in a timely manner, and the volunteer appointed Board members serve faithfully and admirably – not only attending the 20-25 regularly scheduled board meetings and hearings that are scheduled throughout the year (some of which can stretch to many hours, thereby constituting a significant unpaid contribution of time and effort), but also actively participating in administrative aspects of the CPRB's work and serving as community leaders and ambassadors of the Board to their constituencies – there is often a palpable feeling that all of this hard work has limited real effect.

Thus, while as mentioned, the ideal role of the CPRB includes its symbolic value as a representative of the interests of Oakland's citizens in the accountability and oversight of the City's public safety community that ostensibly serves them, in practice the challenges faced by the CPRB has led some observers – both those who have actively participated in the CPRB's work and other concerned Citizens and groups – to question the board's work and by extension the City's commitment to civilian oversight. Where the Board should provide a mechanism for positive engagement between the Police and the Citizens of Oakland, it unfortunately has – whether deserved or not – been perceived by some as simply another way to distract and marginalize citizen input and maintain the status quo.

On November 8, 2016, the voters of Oakland sent an unambiguous message that they would like to increase the role of citizen oversight of the OPD through the overwhelming passage of Measure LL, a

measure placed on the ballot by the Oakland City Council, which will eventually empanel a new more powerful Police Commission which will replace the CPRB. City leadership and the Oakland City Council will undoubtedly have much to say in the coming months and years as to the exact constitution and scope of authority of this new oversight body. However, until the institutional structure of the new body is in place, Commissioners are empaneled, and the CPRB is officially disbanded by the dissolution of its enacting ordinance, the CPRB will continue to play its role.

Moreover, as negotiations about the ongoing constitution of the successor agency to the CPRB begin, it seems appropriate that the Board – which has served its function faithfully in one form or another for 30+ years – should proactively advise City Of Oakland decision makers on small policy changes with respect to its own function which could have immediate beneficial effects on its ability to perform its role, both practical and symbolic, in serving as an intermediary between the Citizens of Oakland and the City's Police Department and public safety establishment. These proposals are such that if they were to be negotiated or implemented in any part, they could easily be transferred to the Oakland Police Commission when the work of the current board is phased out, and would help provide a solid base for this successor agency to get off the ground running.

The recommendations fall roughly into three (3) categories that correspond to each of the institutional challenges mentioned above – the role of the CPRB in recommending changes in Police policy and practice with respect to Oakland's Citizens; the relationship between the CPRB and OPD; and an expanded working relationship between the CPRB and other City departments and bodies, especially the Office of the City Attorney, in ways that could provide important benefits for both parties by leveraging the Board's current expertise to expand its impact and usefulness.

## **RECOMMENDATIONS:**

### **POLICY PROPOSALS WITH RESPECT TO CPRB FUNCTION**

#### **1. Use of "Failure of Policy" and "Failure of Training" findings in response to citizen complaint investigations**

According to OPD DGO M-3.2 Citizen's Police Review Board (12/6/05), the range of findings that the CPRB is enabled to forward in response to each allegation of an investigated complaint include Policy Failure and Training Failure (DGO M-3.2 Section VI E&F). The details of these two potential findings are as follows:

E. Policy Failure – A preponderance of the evidence proves that the alleged conduct occurred but that the conduct was justified, lawful or proper; however, the CPRB recommends the policy or procedure be changed.

F. Training Failure – A preponderance of the evidence proves that the alleged conduct occurred and was the result of inadequate or inappropriate training.

However, while the CPRB has often proposed policy changes that arise out of investigations into complaints as an addendum to formal findings that are forwarded to the City Administrator's Office, there is no documentation that it has ever sustained a finding of Policy Failure or Training Failure to specific allegations.

In future cases, the CPRB should take advantage of the existence of these potential findings and make positive findings of Training and Policy Failures to specific allegations as opposed to merely documenting policy proposals in an addendum. The discretion to forward these findings to the CAO by CPRB Board and Staff should be used sparingly and with great care; as they could potentially play an important role in litigation or arbitration against the City arising out of a specific complaint and therefore hold some jeopardy for city finances and legal strategy. However, where they are merited, they provide an important additional tool to focus attention on specific breakdowns in existing police practice, and a useful citizen response to such problems.

#### **2. Continuing education of CPRB/OPC board members and interested Oakland citizens on OPD policies and training.**

CPRB board members are currently required to participate in the OPD Citizens' Police Academy and Ride Along program within the first 6 months of their appointed terms by the CPRB's enabling Ordinance 12454 C.M.S. Additionally, board members receive extensive documentation as to the formal basis for staff recommendations with respect to specific allegations that arise out of citizen complaints and are able to request additional information and clarification about OPD rules, training, and practice from CPRB staff both during the board hearing process and as part of their regular duties. Together, these opportunities provide Board Members the baseline competence they need to judge the merits of the complaints they adjudicate. While professional CPRB staff is able to provide the legal framework for

board findings as they relate to specific violations of the OPD Manual of Rules, and can investigate and report on more detailed aspects of OPD policy, procedure and training upon request, the board would benefit from the opportunity to interact more directly with those tasked with implementing policy within the OPD.

On a periodic basis (quarterly?), OPD training officers and appropriate members of the OPD command/policy staff should attend regularly scheduled board/commission meetings. The purpose of these visits should be two-fold, both facilitating the ongoing relationship and conversations between the OPD and the board/commission members and interested Oakland citizens who attend CPRB meetings; and providing ongoing training to board members/commissioners on current police training tactics and policies.

Such participation should include both 1) A Q&A period allowing board members to seek additional guidance as to the OPD interpretation and training with respect to issues that have arisen out of specific citizens' complaints; and 2) A period set aside for OPD staff to make presentations on new or relevant police policy and training either to provide an extended formal response to questions raised by the board in previous Q&A sessions or to present information that OPD believes is relevant to the duties and ongoing investigations and hearing of the board/commission.

### **3. More systematic compilation and presentation of CPRB policy proposals to include formal responses from the appropriate authorities within OPD.**

To date, CPRB authority to recommend changes to OPD policy, procedures and training has been accomplished on an ad-hoc basis as issues arise with respect to findings associated with specific complaints, investigations and hearings. Historically, it appears that this approach has been driven both by the idiosyncratic nature of the complaint process (problems with existing police policy and procedures only become salient when incidents that generate citizen complaints rise to the attention of the board) and by limited resources with respect to policy-analytic staff and infrastructure within the CPRB (policy proposals have typically been generated by CPRB investigators as part of their recommendations with respect to findings in specific complaints, and have been passed to the CAO/OPD through incident reports and letters to OPD/CAO leadership without formal mechanisms for receiving responses from OPD or a mechanism to follow up on implementation).

This ad-hoc presentation of policy ideas as they pertain to specific complaints and investigations serves a purpose in that it attaches each proposal to a specific incident in which the Board and its investigators have identified a systematic policy problem. However it also dilutes and distracts from the important differentiation between proposals to change broader Department policy/training and proposals to sustain specific findings with respect to officer discipline. Furthermore, the lack of any separate institutional structure or documentation associated with the CPRB's authority to recommend policy and training changes to the OPD leaves an inconsistent and difficult to track history, thereby limiting the ability to follow-up on past recommendations, to identify issues and/or classes of related issues that

arise in multiple cases, or to establish a clear record of policy accomplishments (as separate from disciplinary accomplishments)

The CPRB/Oakland Police Commission (OPC) should institute a more regular schedule for discussing and preparing policy proposals; formalize guidelines for presenting such proposals to OPD/CAO; and create mechanisms to better track the responses of OPD policy and training personnel to proposed changes including steps taken to implement them where appropriate. Oakland City Ordinance No. 12454 C.M.S., which authorizes the CPRB in its current form, provides the board authority to present recommendations for changes to OPD policy up to four times a year, but places no limits on the number or types of recommendations that the board is able to advance within the 4-time proposal limit. It therefore makes sense that the formalized policy-recommendation function should not only be appended to specific investigator reports, but should be compiled from these and reviewed on a quarterly basis through a regularly scheduled agenda item on the board's agenda. This agenda item should be comprised of 1) a discussion of any policy/training changes currently under consideration for formal proposal; 2) a formal vote/adoption of policy recommendations that are ready to be presented to the appropriate authorities at the OPD/CAO; and 3) a presentation with respect to OPD/CAO responses to previous recommendations including the nature and timing of their implementation (issuance of DGOs, Training Bulletins, etc.) or a formal response from the OPD or CAO describing the reasons they have not been adopted or adopted only in part. By formalizing the timing and nature

#### **RELATIONSHIP BETWEEN CPRB and OPD**

##### **1. Formalization of information sharing with respect to active CPRB investigations.**

Historically, the relationship between the CPRB and the OPD with respect to the sharing of information relevant to ongoing investigations has occurred on the basis of specific relationships established between CPRB staff and appropriate staff within the OPD. Notwithstanding the affirmative duty of OPD personnel to respond promptly to requests from CPRB investigatory staff requests for documents or in-person testimony as to open cases (DGO M-3.2 – Citizens' Police Review Board 12/6/05), the timeliness of OPD responses to document requests has largely been a function of the personal relationships between CPRB staff and the appropriate OPD staff and supervisors. When the police chief or supervising officers within IAD or operational sections involved in specific investigations have had especially good relationships with CPRB staff, or have informal understandings as to the need for prompt delivery of these responses, the flow of information between the department and the board have facilitated timely and relatively seamless investigations into citizen complaints. However CPRB investigators have consistently commented that where such informal understandings don't exist, or when the specific chief or supervisor who facilitated such communications departs or moves to a different role within the department, requests for documents that are necessary to the investigatory process have been delayed by up to several months. This lack of timely document sharing has, upon occasion, adversely impacted the ability of the Board and its investigative staff to fully address citizen complaints and formulate recommendations within statutory time limits. And in some cases has led to problems in conducting

interviews and other fact finding while memories, chains of custody, and other investigatory details are still fresh.

In order to improve the investigatory record and facilitate the timely disposition of citizen complaint investigations, the CPRB and OPD should institutionalize formal procedures and timetables for the sharing of pertinent police records, interview transcripts and other documentation of the official investigatory record with respect to cases actively investigated by CPRB staff. These procedures and timetables need not be so strict as to potentially compromise active investigations through arbitrary deadline pressures, however neither should they allow document and evidence requests from the CPRB to languish for weeks or months through either neglect or obstruction. Likewise, the nature of this cooperation could take a variety of forms including but not limited to allowing authorized CPRB staff direct access to selected police data systems where not prohibited by law; a requirement that OPD provide positive acknowledgement of CPRB requests and periodic mandated updates when there are external factors delaying full responses; or strict reporting deadlines which could vary by the nature of the documents and requests involved.

The current limited language with respect to police response to CPRB investigations as set forth in DGO M-3.2 – Citizens' Police Review Board 12/6/05 is as follows:

E. All Departmental records relating to the incident under investigation, with the exception of personnel records, shall be made available to CPRB investigators.

F. The release of Departmental records shall comply with all restrictions enumerated by local, state and federal law or appropriate contractual agreements.

## **2. CPRB/OPC/CPRA Involvement in OPD functions and training**

While the power of the current CPRB and future OPC/CPRA to investigate citizen complaints and weigh in on OPD discipline and policy constitute one important part of the body's function as representative of the interests of the citizens of Oakland in the function of the City's police, these bodies also serve a symbolic role in providing a forum and formal embodiment of this citizen-police relationship. It is therefore important not only that the CPRB conduct investigations into citizen complaints, but equally that *it must be seen to be performing this function by both the citizens and the police* (italics added for emphasis). In years past, through individual ad hoc agreements between CPRB staff and OPD chiefs, certain CPRB staff including the Director and Investigators were introduced to new OPD personnel at the graduation ceremonies of the Oakland Police Academy. This served the important role of both establishing early relationships between incoming officers and CPRB staff, and emphasizing early-on in the careers of incoming sworn personnel the legitimacy of citizen oversight and need for responsiveness of the Department and individual officers to CPRB requests.

The CPRB (and any successor agencies) and the OPD should renew and formalize this former ad-hoc practice. Moreover, it is recommended that the appointed members of the CPRB and future appointed Police Commissioners should be involved in a formal way in relevant police functions including the Oakland Police Academy graduation. Establishing and formalizing more opportunities to emphasize the

relationship between civilian oversight and police function is both practically useful in fostering personal connection and better working partnerships and a relatively low-cost opportunity to highlight the important symbolic value of this institutional arrangement to both the Department and to the Citizens of Oakland.

## **RELATIONSHIP BETWEEN CPRB AND THE OFFICE OF THE CITY ATTORNEY**

### **1. City Attorney consultation with CPRB investigators on City litigation and arbitration related to CPRB investigations and findings**

In many instances, cases which begin as citizen complaints, or which are forwarded for investigation by CPRB staff because they involve officer use of force or the potential for major disciplinary action, later become the subject of legal action either through litigation brought against the City by complainants or through arbitration related to disputes about officer discipline. Oakland's Office of the City Attorney (OCA) is tasked with representing the interests of the City in all such legal matters either by serving directly as counsel or by contracting with outside legal representation. The actions of the OCA in such matters has come in for some criticism in the past, most recently with the publication of the Swanson Report on Arbitration conducted on behalf of the Federal Monitor appointed to oversee police reforms in Oakland. The basis for the criticisms of the arbitration process and the OCA's role as reported in the Swanson Report was largely centered on a perceived lack of preparation and experience of counsel representing the City's interests in these forums.

In many of these legal matters, and despite the fact that the issues being litigated have been the subject of extensive investigation, discussion and hearings by CPRB staff and appointed members – investigations which in some cases discover pertinent independent facts not included in police records – there is no record of contact between OCA attorneys and staff and the staff of the CPRB or its work product. While it clearly has no formal statutory role in City litigation, the complete exclusion of the CPRB in these cases makes little practical sense. Trained CPRB investigators have in many cases spent up to a year investigating the claims at issue in each citizen complaint: interviewing witnesses, perusing records, and watching PDRD and other video and audio evidence related to each investigation. As such, these investigators, several of whom are themselves experienced litigators, are in a position to provide invaluable background information and investigative leads to City Attorneys and outside counsel defending the City's interests.

It is therefore recommended that the OCA and CPRB (or successor agency) formalize the consultation process between City Attorneys involved in litigation and arbitration related to existing CPRB investigations and the principal investigators within the CPRB tasked with these investigations. This should minimally take the form of background briefings as to the elements of the complaint, investigation, and any findings that form the basis of formal CPRB recommendations. In cases where it fits the City's legal strategy, or could be considered an integral part of the litigation in question (as when officers contest disciplinary action through arbitration), this could potentially extend to the inclusion of official CPRB findings (as documentation of an impartial independent investigation into the facts of the

case) or the provision of expert testimony by CPRB investigative staff within the arbitration hearing itself.