



**IMPLEMENTATION UPDATE ON THE
REPORTS AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD
FROM FISCAL YEAR 2020
FEBRUARY 14, 2022**

Executive Summary

The Police Complaints Board (PCB) is authorized by D.C. Code §5-1104(d) to make recommendations to the Mayor, the DC Council, and the chiefs of the Metropolitan Police Department (MPD) and District of Columbia Housing Authority Police Department (DCHAPD) in any areas affecting police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers. The PCB issues policy recommendations that address large-scale concerns about District law enforcement policies, training, or supervision. In addition, the PCB issues policy reports that address substantive or procedural law enforcement matters, which, if corrected, could greatly improve community trust in the police. At the close of fiscal year 2021, the PCB had issued 61 detailed reports with recommendations for police reform since its inception. All reports and recommendations are available on the Office of Police Complaints' (OPC) website.

Annually, OPC reviews the actions that have been taken by the Mayor, the DC Council, and/or the chiefs of MPD and DCHAPD in response to the PCB's previous recommendations. Beginning on February 1, 2018, at the request of the DC Council, OPC published an update on the implementation of reports and recommendations made by the PCB in fiscal years 2015 and 2016. OPC continues these periodic reviews to promote transparency and ensure that all parties, including community members, are informed of the policy changes that are and are not being made each year in response to recommendations made by the PCB. OPC published these additional implementation updates:

- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2017; *published December 18, 2018*
- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2018; *published February 6, 2020*
- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2019 and a Reexamination of Implementation Updates from Fiscal Years 2015-2018; *published February 8, 2021*

The current report tracks the three reports with 8 separate recommendations made to MPD in fiscal year 2020. These reports were:

- Personal Use of Social Media; *Issued February 10, 2020*
- Lawful Firearms; *Issued June 1, 2020*
- Automated License Plate Readers; *Issued September 25, 2020*

OPC's review process includes requests to MPD to determine the status of the recommendations within the department. In addition to this, OPC also considered other information gleaned from interactions with MPD, media reports, and any other additional pertinent information.

Based on the review of all relevant information, OPC found that of the 8 recommendations made in fiscal year 2020, none have been fully implemented, one has been partially implemented, and seven are not implemented. These findings are further explained in the contents of this report.

Personal Use of Social Media

Issued February 10, 2020

Recommendation 1:

MPD should issue a comprehensive new stand-alone general order on social media. The comprehensive new general order should provide more express guidance to members on what they can and cannot post. Based on the complaints OPC receives surrounding members' uses of social media, it appears that some members believe that any post is within their First Amendment rights. While First Amendment considerations are undoubtedly important, MPD must clearly show that these rights do not permit a "free-for-all" on social media. Instead, MPD needs a clear policy outlining that the department promotes the professional use of social media. A proposed general order and several other social media policies of other departments were attached as appendices to the policy recommendation for possible examples to create the general order.

Status According to MPD, January 2022¹:

Agree in Part, Implementation is in Progress

As noted in our initial response, we found no indication in OPC's report that our current policy fails to hold members accountable for inappropriate conduct on social media. In the examples provided, the allegations that members violated Department policy were thoroughly investigated; members were found to be in violation and were disciplined accordingly. MPD's longstanding policy on the duties and responsibilities of members, General Order 201.26, requires members to, "...conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves, MPD, or the District of Columbia." This requirement applies broadly to all on-duty and off-duty conduct, including members' conduct while online. That being said, we are working on a stand-alone order on the personal use of social media that will reinforce our existing policy and provide additional guidance to members while ensuring that we do not infringe on their First Amendment rights.

OPC Response:

OPC considers this recommendation **not implemented**. OPC is encouraged that MPD is currently drafting a standalone general order on the personal use of social media for its members. However, the general order should not merely reinforce the current policy but should also provide explicit guidance to its members. Although General Order 201.06 states "Members shall conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves, the MPD, or the District of Columbia," the discussion of social media in General Order 302.08 is limited to situations involving the posting of confidential or privileged MPD information on social media platforms by its members, prohibitions on posting while on duty, and attributing members' "personal viewpoints" to MPD. The standalone general order should provide explicit guidelines for posting "personal viewpoints" that are not attributed to MPD but could still fall into the category of conduct unbecoming of police officers.

Recommendation 2:

MPD should create training for members on social media usage to support the new general order. A new general order alone will not sufficiently guide members in their personal uses of social media. Many members retain a professional presence on social media and represent MPD in a way that reflects positively on the community. Even one errant or flagrant post by an MPD member has the potential to destroy the hard work that many members and citizens put in to mend community relations and trust. Trainings regarding the use of social media are necessary to ensure every single member adheres to

¹ All responses attributed to MPD, throughout this report, are verbatim as received from the department.

ethical and professional standards whenever they post. The training should emphasize the common sense need to “think before you post” on social media. Discouraging personal squabbles, disputes, or harassment on social media should be a significant emphasis, as these posts reflect poorly on MPD and are not protected by the First Amendment. OPC has received several complaints of this nature, where citizens claim members harass, defame, or threaten them on social media as a result of personal relationships. Members may not understand that matters of private concern are usually not protected as free speech. Another emphasis of training should examine what the First Amendment protects. Even while speaking on matters of public concern, courts have found exceptions to the general “free speech” rule for obscene posts; threatening posts; posts that condone or solicit imminent lawless action or crimes; posts intended to blackmail others; posts that would bring a reasonable person to fisticuffs; or any posts defaming another individual. MPD must educate and train its members on how their uses of social media are sometimes intractably intertwined with their reputation and the reputation of MPD. Therefore, members must adhere to standards of ethically professional behavior, particularly in their private lives on the world-wide-web. Members must be made aware that social media is a permanent and public domain, where journalists are actively seeking posts that are unbecoming of officers.

Status According to MPD:

Agree in part. Implementation is in Progress.

MPD will provide training regarding any changes to our policy governing personal use of social media. As noted in our initial response, MPD has recruit training in place that addresses the appropriate use of social media. MPD also conducted refresher training in roll call on the personal use of social media in April of 2021.

OPC Response:

OPC considers this recommendation **not implemented**. This recommendation is related to providing additional training in support of MPD’s standalone general order on social media use by its members. This recommendation will not be fully implemented until MPD’s standalone general order is published and MPD has implemented the accompanying training module for the use of social media by its members.

Lawful Firearms
Issued June 1, 2020

Recommendation 1:

MPD should update General Order 902.01: Firearms Registration and Receipt of Abandoned or Found Weapons to reflect current firearms registration laws and regulations in the District. This updated guidance should specifically include that firearms registrations do not expire, and that concealed-carry permits are lawful, among any other changes that MPD incorporates into the updated guidance.

Status According to MPD:

Agree. Implementation is in Progress.

MPD is in the process of modifying GO 902.01 (Firearms Registration and Receipt of Abandoned or Found Weapons) regarding enforcement procedures for firearms registration and concealed carry permits to further support the ongoing training we have provided on these topics as outlined below.

OPC Response:

OPC considers this recommendation **not implemented**. This recommendation will not be fully implemented until MPD updates General Order 901.02 to include the guidance provided in the

recommendation. The revised general order should educate members about the lack of an expiration date for firearms registrations in the District, the lawfulness of concealed-carry permits, and any additional changes that MPD has incorporated into its regulations.

Recommendation 2:

The updated lawful firearms training should be provided for all MPD members to ensure they are familiar with the current firearms laws and regulations and the changes that are made to General Order 902.01, so that the members can perform their duties in accordance with current law.

Status According to MPD:

Agree. Implementation is in Progress.

MPD will ensure that training is provided to our members once the policy is updated. However, as noted in our original response, MPD has continually provided updates to our members regarding changes to the firearms laws through multiple teletypes, circulars, and trainings since the initial decision in *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). Most recently, MPD conducted roll call training in October, 2020, regarding the lawful transportation of firearms. MPD also devoted a portion of our 2019 annual professional development training (PDT) to a refresher on the laws surrounding firearms in the District. The training emphasized that firearm registrations do not require a renewal, and that any officer who comes in contact with a firearm registration that has expired should take no action, treat the registration as active, and treat the firearm as lawfully registered. The training also included a review of the provisions of DC Official Code §7-2500 and § 22-4500 including the requirements and documentation required for legally carrying a pistol in the District, the duties of licensees during investigative stops, and prohibited places for carrying pistols.

OPC Response:

OPC considers this recommendation **not implemented**. OPC is encouraged by the training MPD provided to its members during the annual PDT, which was also attended by members of OPC's staff. However, this recommendation will not be fully implemented until MPD revises General Order 901.02 to provide *written* guidance for its members and subsequent trainings on the revisions to the general order.

Automated License Plate Readers

Issued September 25, 2020

Recommendation 1:

MPD must ensure there is an easily identifiable and clear process for community members to obtain ALPR collected information about themselves. This can be accomplished through the existing FOIA process or some other means. The process should be outlined publicly on the MPD website, as the process for obtaining BWC footage currently is.

Status According to MPD:

Agree, Fully Implemented

MPD recognizes the importance of transparency in our operations and is committed to ensuring members of the public have a clear and easily accessible process for obtaining available records. It should be noted that MPD has previously provided responses to requesters regarding LPR data through our existing FOIA process. FOIA requests can be submitted easily through the MPD website, by mail, or in person, and information about submitting FOIA requests can be found on our website at <https://mpdc.dc.gov/page/open-government-and-foia-mpdc>. Accordingly, we will continue to process any requests for LPR information through our existing FOIA process.

OPC Response:

OPC considers this recommendation **not implemented**. This recommendation is related to providing and publishing a transparent and easily accessible process similar to MPD's Citizen BWC Viewing Process for community members to obtain ALPR information collected about themselves through FOIA. To date, MPD has not updated its website to explicitly address the process of obtaining ALPR information through FOIA or through any other means.

Recommendation 2:

MPD must publicly identify any third parties that have access to the ALPR data and information, including other law enforcement agencies and private parties, and ensure all third parties adhere to the same principles as MPD in obtaining and deleting this information. MPD must also share publicly any ALPR databases, other than their own, to which MPD has access.

Status According to MPD:**Agree in Part. Fully Implemented.**

MPD understands the importance of sharing how we use LPR technology with the public, and we believe our LPR general order, which is available on our public website, provides the public with the necessary information on how we use our systems and on authorized access to the information we collect. MPD does not share its LPR data with any private entities, nor do we currently have access to any private LPR databases. With the exception of the memorandum of understanding (MOU) that we have with the United States Secret Service (USSS), and a forthcoming MOU with the United States Capitol Police (USCP), other law enforcement agencies do not have direct access to our LPR database. The MOUs require USSS and USCP to adhere to our LPR policies. We only share LPR information with other law enforcement agencies upon request regarding ongoing criminal investigations and subject to the restrictions outlined in our policy.

OPC Response:

OPC considers this recommendation **not implemented**. Although MPD published General Order 303.09, which contains instructions for the use of ALPRs by its members and its ALPR data retention policy, on its website, there is no information in the general order or on the MPD website about how or what information is shared with other entities, whether private or public. For instance, MPD acknowledged in its response that it does not share ALPR information with private entities and that MPD has entered into memorandums of understanding (MOU) with other law enforcement agencies for sharing its ALPR data. However, this information has not been published on the MPD website or in the general order. Further, there is no information in the general order or on the MPD website about whether the MOUs restrict the usage of MPD's ALPR data by other law enforcement agencies.

Recommendation 3:

MPD must be transparent with the community about all aspects of ALPR data collection. MPD must disclose how many systems and collection point receivers MPD has and what types; what, if any, safeguarding systems are in place to prevent the misuse of data (such as an audit schedule to detect any unauthorized access or sharing); whether any persons have been investigated and disciplined for noncompliance with ALPR policies, and costs associated with the purchase, operation, maintenance, and any data sharing. This information should be posted on the MPD website.

Status According to MPD:**Agree in Part. Fully Implemented.**

As described above, we believe MPD's general order regarding the use of our LPR system provides the public with an appropriate overview of our LPR program. The policy discusses authorized use of the system and the types of LPRs that the department uses. While we believe it

is important to share our policies so that the public understands MPD operations, we do not believe the specific items mentioned in OPC's recommendation would be of benefit.

OPC Response:

OPC considers this recommendation **not implemented**. This recommendation is related to providing the public with information about the data collected by MPD through its ALPRs; MPD's assurance to the public that there are safeguards in place to prevent the misuse of ALPR data; whether any MPD employees have been disciplined for misuse of ALPR data; and the costs associated with the program by posting the information on the MPD website. None of this information is currently available on the MPD website.

Recommendation 4:

MPD must revise General Order 303.09 to further define "official law enforcement purpose." Given that multiple protests occur constantly in the District, MPD must specifically state in the General Order that using ALPR data to track those at a protest is not an acceptable "official law enforcement purpose."

Status According to MPD:

Agree in Part. Fully Implemented.

MPD provides multiple examples of official law enforcement purposes in our general order to provide guidance on the appropriate use of LPRs. While we do not agree that a specific definition for "official law enforcement purposes" is necessary, we updated GO 303.09 (License Plate Reader Program) in October, 2020, to affirm that we do not use LPRs for the purpose of tracking or identifying the presence of individuals participating in First Amendment assemblies who are not engaged in unlawful conduct.

OPC Response:

OPC considers this recommendation **partially implemented**. OPC is encouraged by MPD's recent revision to General Order 303.09, which includes a prohibition on using ALPR information to track individuals at First Amendment assemblies. However, this recommendation will not be fully implemented until MPD clearly defines the phrase "official law enforcement purpose," as it is used in General Order 303.09. Although the general order contains examples of an "official law enforcement purpose," it still does not contain a definition. Although examples are useful, they are no substitute for clearly defined policies and procedures.