

**IMPROVING POLICE-COMMUNITY RELATIONS
THROUGH DIVERSION OF SOME CITIZEN
COMPLAINTS TO A RAPID RESPONSE PROGRAM**



**REPORT AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD**

TO

**MAYOR ADRIAN M. FENTY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA,
MPD CHIEF OF POLICE CATHY L. LANIER, AND
DCHAPD CHIEF OF POLICE WILLIAM L. PITTMAN**

September 24, 2008

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

The Office of Police Complaints (OPC) continues to receive a steadily increasing number of citizen complaints alleging police misconduct each year. During fiscal year 2007, OPC received 440 complaints against officers of the Metropolitan Police Department (MPD) and the D.C. Housing Authority Police Department (DCHAPD), a 6% increase over the year before. This increase followed 27% and 24% increases in fiscal years 2006 and 2005, respectively.

Complaints that are resolved by OPC are mostly investigated or mediated. Consistent with national statistics, in any given year, OPC dismisses more than 80% of all complaints investigated by the agency. In a significant majority of the cases, the officer followed the law and Departmental procedures, and did not engage in police misconduct. However, the dismissal of cases sometimes proves dissatisfying to the individuals who filed those complaints because the process does not afford the citizen the opportunity to get an explanation from someone within the police department about the reasons for the subject officer's actions in the incident that led to the filing of the complaint. Likewise, citizens in dismissed cases are deprived of the chance to provide input directly to the police department on how the incident affected them. From the citizen's standpoint, there is often an emotional undercurrent that the dismissal of the case fails to address in a satisfactory manner.

To help improve police-community relations and encourage public faith in MPD's and DCHAPD's ability to hold officers responsible for misconduct, the Police Complaints Board (PCB) recommends the enactment of legislation that would modify OPC's current investigative authority to allow the agency, through a new "rapid resolution" process, to refer some relatively minor or service-oriented citizen complaints to MPD and DCHAPD for resolution.¹

II. OPC CASELOAD AND CURRENT PROCESS

Over the past several years, there has been a substantial increase in the number of complaints received by OPC. In fiscal year 2007, OPC received 440 complaints, a 6% increase over the year before. This increase followed 27% and 24% increases in fiscal years 2006 and 2005, respectively. As of September 4, 2008, with less than a month remaining in fiscal year 2008, OPC had received 556 complaints from citizens, up from the 416 complaints filed at the same point a year ago during fiscal year 2007, which translates into a sizeable increase of 33.6%.

Pursuant to OPC's governing authority, citizen complaints that are resolved by OPC are either investigated or mediated. In order to dismiss a complaint following an investigation, a member of PCB must concur in the executive director's determination that a complaint should be dismissed. However, if the executive director determines from the investigation that there is

¹ PCB is making these recommendations pursuant to D.C. Official Code § 5-1104(d), which authorizes the Board to recommend changes to the Mayor, the Council of the District of Columbia, and MPD's and DCHAPD's Chiefs of Police if the reforms may reduce the incidence of police misconduct or lead to improvements in the citizen complaint process. OPC's executive director, Philip K. Eure, supervised the project. He was assisted by the agency's special assistant, Nicole Porter. These recommendations are supported by four of the five members of PCB, Kurt Vorndran, Karl M. Fraser, Victor I. Prince, and Margaret A. Moore. The fifth member of the Board, MPD Assistant Chief Patrick A. Burke, does not support these recommendations at this time.

reasonable cause to believe that police misconduct occurred, the matter is referred to an independent complaint examiner to determine the merits of the complaint.² If the complaint examiner sustains one or more allegations in the complaint, the executive director then transmits the complaint examiner's merits determination and the complaint file to the chief of police for the imposition of the appropriate amount of discipline.³

With respect to dismissed complaints, the citizen receives a brief letter from OPC with a notification about the determination. In the vast majority of these dismissed cases, the complainant receives a letter indicating that, after an investigation, OPC determined that no police misconduct occurred.⁴ As a result, many complainants whose cases are dismissed are ultimately dissatisfied by a process that leaves them in the dark about the precise reasons why their complaints were not sustained. The inability to engage directly with a police department official about concerns over the incident that led to the filing of the complaint can also frustrate some complainants. As police accountability expert Sam Walker notes, "From a procedural justice standpoint, the lack of information is probably a greater source of discontent than the actual outcome of cases."⁵

In an attempt to address these problems while at the same time streamline the handling of many OPC cases, PCB is proposing a new process, the Community Policing Rapid Response (CPRR) program,⁶ designed to resolve complaints more quickly by putting complainants in direct contact with first-line supervisors of subject officers in appropriate cases. By creating a process where these supervisors speak directly with complainants about largely service-oriented concerns or to explain police department policies, citizens will have the opportunity to engage with police officials in a way that, over time, can be expected to improve public perceptions about the citizen complaint process and build greater police-community trust. This is the essence of community policing.

To provide an illustration of the types of cases that might be better resolved through a new "rapid resolution" process, the following are examples based on fact patterns of recurring complaints filed with OPC over the years:

- The complainant alleged that the subject officer followed him and conducted a traffic stop after the complainant failed to come to a complete stop at a stop sign. The subject officer issued the complainant a ticket for failing to stop at the stop sign. The complainant acknowledged that he failed to come to a complete stop. However, the complainant believed that the subject officer harassed him by following him before he made the stop.
- The complainant, an elderly woman, alleged that the subject officer harassed her by entering her home and conducting a search for contraband. Nothing was

² D.C. Code § 5-1111(2008).

³ *Id.*

⁴ Some letters, however, state that the complaint was dismissed due to the complainant's lack of cooperation with OPC in investigating or mediating the matter.

⁵ Samuel Walker, *The Role of Citizen Oversight* 135 (Wadsworth 2001).

⁶ The CPRR program is based on similar models established by citizen oversight agencies in Portland, Oregon, and Boise, Idaho.

seized during the search. OPC dismissed the complaint after obtaining a copy of a valid search warrant for the premises that indicated that the complainant's adult son, who also lived in the home, may have been engaged in illegal activity involving drugs.

- The complainant was pulled over in his car by the subject officer during a nighttime traffic stop. The complainant alleged that when the officer emerged from his police cruiser and approached the car, the complainant could see the officer's hand on his weapon, which remained in the holster. The case was dismissed because the officer's actions were deemed consistent with MPD training and procedures adopted to address officer safety concerns.
- The complainant, a restaurant owner, filed a complaint against two subject officers alleging that their routine, unannounced visits to his eating establishment evidenced an intention to harass the complainant by finding violations of the law and reporting his restaurant to District licensing authorities. As it turned out, the visits by the officers were part of law enforcement effort to keep the peace in bars and restaurants located in that neighborhood. It was further revealed that the few times the officers had reported violations stemming from activity in or near the premises, the officers were required by law to report them. OPC dismissed the complaint.

III. PRACTICES IN OTHER JURISDICTIONS

OPC has identified two other citizen oversight agencies in the United States that have established processes to resolve, in a more expeditious and satisfying manner, complaints similar to the OPC examples describe above. Those agencies are in Portland, Oregon, and in Boise, Idaho.

1. *Portland*

The Portland Independent Police Review Division's (IPRD) expedited investigation process focuses on service complaints, which are defined in the agency's administrative regulations as "complaint[s] received from a citizen regarding quality of service or minor rules violations that would not result in discipline."⁷ Under IPRD's model, all service complaints are referred to an internal affairs captain. Upon receipt of the IPRD referral, the Internal Affairs Division (IAD) captain "shall independently determine whether a case may appropriately be resolved as a *service complaint*."⁸ The regulations state that if the IAD captain disagrees with the IPRD director's categorization of the complaint as a service complaint, the IPRD director "may" then independently investigate the complaint.⁹ The time limit on resolving all service complaints is ten calendar days.¹⁰

⁷ PSF-5.08 –IPRD-IAD Protocols & Procedures – Service Complaint Protocol, para. 1, available at <http://www.portlandonline.com/auditor/index.cfm?c=27455&a=9039>.

⁸ *Id.* at para. 2.

⁹ *Id.* at para. 4.

¹⁰ *Id.* at para. 5.

Upon resolving the complaint, IAD prepares a resolution memo documenting efforts to resolve the matter. An IAD supervisor will also contact the complainant, if possible, to explain how the complaint was handled. IAD must then send paperwork to IPRD, which then closes out the complaint with a letter to the complainant. Citizen appeals of service complaints are not permitted.

2. *Boise*

Since April 2005, the Boise Office of the Community Ombudsman has used an expedited process, the “Rapid Resolution Inquiry,” to resolve formal cases that are classified as “inquiries.” Cases that are handled through this process “can include inquiries into the quality of service provided by an officer or the propriety of an officer’s actions that do not appear to be a violation of policy.”¹¹

When an inquiry is filed with the agency, the ombudsman refers the complaint to the Boise Police Department (BPD). A division captain (or the appropriate supervisor) then contacts the complainant to address the person’s concerns, and then follows up with the ombudsman’s office with the results of that conversation. Although there is no statutory timeframe in which the division commander must resolve the matter, inquiries are generally resolved within seven days of the division commander receiving the inquiry.

After receiving an e-mail from the division captain informing the ombudsman how the matter was resolved, the ombudsman’s office sends the complainant a letter detailing the agency’s understanding of how the matter was resolved and requesting that the individual contact the agency within 30 days if the person is not satisfied with the police department’s response.

In its 2007 annual report, the ombudsman’s office notes that “special care” is taken to ensure that complainants “understand the process and are comfortable speaking with a BPD supervisor.”¹² However, when the agency learns that a complainant might not feel comfortable speaking with someone from the police department, which is rare, the ombudsman will “look into” the inquiry.¹³

To help gauge the effectiveness of the process, the ombudsman’s office also sends out a community satisfaction survey to complainants asking them to rate their experiences. Sixty-eight percent of surveyed complainants who participated in Boise’s rapid resolution process between April 2005 and August 2006 stated that the police officers looking into their complaint treated them “somewhat fairly” or “very fairly.”¹⁴

¹¹ 2007 Annual Report of the Office of the Community Ombudsman at 11.

¹² *Id.* at 17.

¹³ *Id.*

¹⁴ Powerpoint, Rapid Resolution, Office of the Community Ombudsman, Boise Police Department.

IV. COMMUNITY POLICING RAPID RESPONSE

Currently, OPC has jurisdiction over citizen complaints filed with the agency that allege abuse or misuse of police powers by MPD or DCHAPD officers, specifically, those alleging the use of unnecessary or excessive force, harassment, discriminatory treatment, the use of language or conduct that is insulting, demeaning, or humiliating, retaliation for filing a complaint with OPC, and the failure to wear appropriate identification or provide name and badge number when requested to do so by a member of the public.¹⁵

If OPC were given “rapid resolution” authority, the agency would, at the outset, divide all complaints falling within its jurisdiction into two groups, and provide different resolution processes for each group. Group I complaints would be handled in accordance with current law and procedures. Group II complaints, based on the new rapid resolution authority, would be handled outside of OPC’s current processes.

In order to be classified in Group II, OPC would first have to determine that the complaint, on its face, alleged conduct by an officer that falls into at least one of the areas of OPC’s jurisdiction. After passing this test, OPC would further need to determine that the matter related primarily to the quality of service provided by the officer or to the propriety of an officer’s actions that does not appear to be a violation of MPD or DCHAPD policies. This last point is a prominent feature of the programs in Portland and Boise. The combined effect of these determinations would be to limit the agency’s use of the rapid resolution program to relatively less serious complaints that could be more appropriately and more quickly resolved by a first-line police department supervisor speaking directly with the subject officer and the complainant, all the while providing that officers are held accountable for any police misconduct that occurs.

Despite these safeguards, we acknowledge that there could be concerns about OPC’s use of discretion in diverting some complaints to the CPRR program rather than having these matters fully investigated as current law provides. However, it should be noted that with little guidance, the current statute already grants OPC a great deal of discretion in resolving citizen complaints. For instance, the law allows OPC’s executive director to dismiss, conciliate, mediate, or investigate a complaint.¹⁶ These are among the tools in OPC’s toolbox that provide the agency with an array of options for resolving complaints while furthering police accountability in the District.¹⁷ By furnishing OPC with rapid resolution authority, the agency would have an additional method to resolve some disputes between members of the public and the police in a manner that would promote the twin goals of greater police accountability and community policing.

Since it opened to the public in 2001, OPC’s track record shows that the agency has consistently used sound judgment in selecting appropriate mechanisms to resolve hundreds of

¹⁵ See D.C. Code § 5-1107.

¹⁶ See D.C. Code § 5-1107(g).

¹⁷ Indeed, the agency’s enabling statute already recognizes that “an effective and efficient review mechanism should encompass a variety of procedures for dealing with different complaints in an appropriate manner.” D.C. Code § 5-1101(5).

cases. And there is every reason to believe that the agency would continue to use good judgment, under the general guidance of PCB, in diverting appropriate cases to the CPRR program. As a further check on OPC's use of discretion in the CPRR context, MPD could be authorized under the new statute to investigate the complaint if MPD disagrees with OPC's diversion of the complaint to the CPRR program, as is the case in Portland.

To make this new process transparent and understandable to all stakeholders, including the public and those within MPD, the agency may wish to develop a policy setting forth with some precision what types of "less serious" and "service-oriented" complaints from citizen would be eligible for the CPRR program. The agency could even adopt regulations incorporating the policy.

Under the new OPC program, the complainant would be notified by letter that the complaint has been diverted into the CPRR process. As in Boise, if the complainant makes it known to OPC that he or she is uncomfortable with the prospect of speaking to an MPD or DCHAPD supervisor to resolve the complaint, the matter would thereafter be treated as an ordinary Group I complaint.

Group II complaints will be forwarded to the appropriate police department supervisor through a procedure that will need to be developed in conjunction with MPD and DCHAPD. The supervisor will have 21 days to contact the subject officer and complainant to discuss and resolve the complaint. Within that time period, the supervisor would be required to notify – by telephone or letter – the complainant of how the matter was resolved. Upon resolution, the supervisor would send OPC a short e-mail detailing his or her efforts to resolve the matter. Thereafter, OPC would send the complainant a letter summarizing the agency's understanding of how the police department resolved the matter. If, for whatever reason, the police department supervisor did not or could not resolve the matter within 21 days, OPC could be given the authority to divert the underlying case back to OPC, which would then launch its own investigation of the complaint. In this way, OPC would convert the matter from a Group II to an ordinary Group I complaint.

There would be no formal right of appeal for those complainants who are dissatisfied with the resolution of a complaint diverted to the CPRR program.

In order to track the program, OPC would maintain a database that contains all of the complaints that are handled through the CPRR process. OPC would review this data periodically for patterns and trends related to police misconduct, and would notify MPD or DCHAPD either directly or by issuing recommendations for any changes needed in police department policies or procedures. OPC could also send out a survey to complainants and officers who participated in the CPRR program in order to measure its success.¹⁸

¹⁸ In an email sent to OPC executive director Philip K. Eure on September 12, 2008, MPD Chief of Police Cathy L. Lanier indicated that MPD has "some significant concerns" related to the rapid resolution recommendations. However, MPD has not yet described the nature of these concerns to OPC.

V. CONCLUSION

The CPRR program is designed to improve the level of communication, trust, and understanding between the police and the public. Through OPC's diversion of some relatively minor complaints into the CPRR program, MPD and DCHAPD supervisory officials would effectively be conducting one-on-one outreach to District residents and other complainants. Based on the experiences in Portland and Boise, the program can also be expected to increase citizen satisfaction with the complaint process by significantly decreasing the amount of time that it takes OPC to investigate and resolve less serious complaints against officers.

In addition to benefitting the public, the District's rapid resolution process would provide some MPD and DCHAPD officers who are the subjects of complaints with an attractive alternative to a full-length investigation that might otherwise carry on for months. Instead of being summoned to OPC's downtown offices for investigative questioning, officers eligible for the CPRR program would be counseled by police department officials in their own police districts, thereby freeing up valuable officer time for patrol-related duties on the streets.

Beyond these advantages, OPC would also benefit. Because resources would be conserved by not having to launch a full investigation into every minor complaint, OPC could devote more time and attention to investigating the most serious matters, in addition to developing more recommendations for police reform and carrying out OPC's other responsibilities designed to increase police accountability in the District.

For all of these reasons, we request that the District Council enact legislation to give OPC the authority to resolve some less serious complaints through a new Community Policing Rapid Response program.