



# The League of Women Voters of Portland

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October 30, 2012

Mayor Sam Adams, City Commissioners, Auditor LaVonne Griffin-Valade  
Portland City Hall  
1221 SW 4<sup>th</sup> Ave.  
Portland, OR 97204

## **RE: Department of Justice/City of Portland Settlement Agreement**

Dear Mayor Adams, Commissioners, and Auditor Griffin-Valade:

The League of Women Voters of Portland has been involved in the city's police oversight system since its membership on the Storrs Committee that led to the creation of our first oversight agency, the Police Internal Investigations Auditing Committee, in 1982. A League representative regularly attends the full Citizen Review Committee (CRC) meetings and many of its workgroups.

We agree wholeheartedly with the following statement from the Department of Justice letter of findings: "An open, fair, and impartial process of receiving and investigating citizen complaints serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence in and respect for PPB." (p. 26) In addition, the League places a high value on public participation and the public's right to know. Our comments on the draft settlement agreement focus primarily on issues related to Portland's oversight system, public involvement and transparency.

## **Oversight system**

The Department of Justice (DOJ) letter of findings called Portland's accountability system "self defeating." Unfortunately, the remedies outlined in the agreement do little to address many of the long-standing community concerns related to the system as it currently operates. The agreement also lacks clarity and specificity in several of its recommendations and we urge the city and DOJ to correct those.

It is encouraging to note that the agreement calls for all allegations of excessive use of force to be investigated unless IPR believes there is clear and convincing evidence that no misconduct occurred. We assume this means that use of force cases will no longer be eligible for mediation and suggest that this be added to the document.

Unfortunately, DOJ did not include in the agreement a recommendation from its letter of findings that states, "All allegations which, if true, would amount to a violation of policy should be investigated." (p. 28) IPR currently decides on the merit of a complaint without the information it would garner from a full investigation. A requirement to investigate all potential violations of policy should be added to the agreement.

In the letter of findings, the DOJ raised concerns about the large number of complaints resolved through the Service Improvement Opportunity designation, yet there is no mention of this issue in the agreement. The community has recommended that, at a minimum, these types of cases be eligible for appeal or reconsideration. This should be addressed in the agreement.

The DOJ points to the confusion over possible findings in misconduct cases in its letter of findings, yet does not provide explicit direction in the agreement. Several years ago, the Portland Police Bureau (PPB), with no public input, changed the possible findings of sustained, exonerated, insufficient evidence and unfounded to the current findings of sustained, unproven and exonerated. According to Eileen Luna-Firebaugh's expert review, the new findings took Portland outside the norm and she recommended returning to the original findings. We urge the DOJ to add this to the agreement.

The agreement calls for improvements that will be of benefit to the complainant in filing and tracking his or her complaint. It also requires the city to provide case-related documents to the complainant. Given the resistance the city has exhibited in the past to a similar suggestion from the community to provide items like police reports and other public records to the complainant, more specific direction should be included in the final agreement.

In the spirit of making the system more accessible and easier to navigate for the complainant, complainants should have the right to attend the Police Review Board hearing related to their case and survivors or the families of individuals involved in shootings or deaths in custody cases should have the right to appeal findings to the Citizen Review Committee (CRC).

Auditor LaVonne Griffin-Valade has stated that she is amenable to an expert review of the oversight system sometime in the next year. We hope that the DOJ investigation will not end up serving as a substitute for such a review. Although some

attention was devoted by the DOJ to the workings of the IPR and CRC, the oversight system did not receive the scrutiny it deserves.

### **Citizen Review Committee**

The CRC performs an extremely important function in our community by hearing appeals of misconduct cases and serving as a window into the workings of the Police Bureau through its reviews and audits of closed cases. In the years since its creation, the community has recommended that CRC's role be strengthened. Instead, the agreement fails to address the most troublesome issues and creates a degree of uncertainty around others.

The CRC operates under the "reasonable person" standard of review in its appeal hearings. In her extensive examination of the system, Eileen Luna-Firebaugh recommended changing this deferential standard to something more appropriate. The Police Oversight Stakeholder Committee, CRC and community organizations have echoed that recommendation. It is disappointing that the agreement maintains the status quo.

In cases where the CRC believes it needs more information to make a good decision at an appeal hearing, it can request that Internal Affairs (IA) conduct additional investigation. IA is under no obligation to carry out that request and the ordinance does not provide clarity on how to resolve the resulting impasse. The provision in the DOJ letter of agreement that entitles CRC to make one request for additional investigation only muddies the water. The confusion and wrangling that occur during appeal hearings in the presence of the complainant and public over this issue and the standard of review only serve to erode trust in the system.

We appreciate the DOJ's desire to shorten the length of time it takes for a complaint to work itself through the appeal process, but think it is unrealistic to ask the CRC to complete the entire process in 21 days. CRC members are volunteers, most have jobs and families and the city is fortunate to have such talented and hard working individuals willing to serve. Each appeal hearing requires substantial preparation by CRC members and considerable discussion and deliberation at both the case file review and the full hearing. A more realistic timeline should be established.

The League supports the increase in the size of the CRC from nine to 11 members, but is puzzled by the provision that calls for maintaining the quorum at its current size of five members.

## **Independent Police Review Division**

Since its inception, the IPR has had the authority to conduct independent investigations, although it never has. Many in the community do not trust a system in which the police investigate other police and have called repeatedly on IPR to begin conducting independent investigations, perhaps starting with certain types of cases. The DOJ letter of agreement points out that currently, both IPR and IA have the authority to conduct investigations, provided that IPR interviews of PPB officers are conducted jointly with IA. We are encouraged to see that the DOJ has directed the city to develop a plan that eliminates the redundant interviews in order to enable IPR to conduct meaningful independent investigations when it determines they are necessary. With the addition of three new IPR investigators, we hope to see a time when IPR utilizes its authority to conduct independent investigations.

There are two instances in the letter of agreement where it is not clear that IPR will retain the power to monitor IA investigations. In the definitions section, the Professional Standards Division (PSD) definition (p. 13) states that one of PSD's responsibilities is "conducting or overseeing all internal and administrative investigations of PPB officers, agents, and employees arising from complaints," but is silent on the role of IPR in misconduct cases. Furthermore, on p. 27, the agreement states that if audits of After Action Reports show evidence of misconduct those cases should be reported to PSD. It should be made clear that IPR will retain its ability to participate in and monitor all misconduct cases led by IA.

## **Public involvement, transparency and reporting**

The League strongly supports measures that ensure the public's right to know the public's business. The letter of agreement contains a number of requirements for audits and reporting that will serve to keep bureau staff, decision makers, advisory committees and the public informed. The agreement states quite clearly that all audits and reports related to the implementation of this agreement be publicly available. (p. 57) We are concerned, however, that in some cases this is spelled out in regards to a specific audit or report and in others the document is silent.

In light of the importance of effective training, it is encouraging to see that the training plan will be reviewed and updated annually. It is essential that solicitations for public input go beyond the Training Advisory Council and also include the public at large, CRC and other interested parties. This is especially critical because, from what we understand, Training Advisory Council meetings will not consistently be open to the public. With this in mind, the letter of agreement should stipulate that the Training Advisory Council meetings must be open to the public when draft training plans and data from quarterly reports on patterns and trends in officers' use of force are presented.

The Portland Police Bureau annual report also will be a valuable tool for the public and we appreciate the fact that community members will have the opportunity to provide input to the Community Outreach Advisory Board (COAB) before it is finalized. In addition to presenting the report in each precinct area, it also should be presented at a City Council hearing with an opportunity for the public to offer testimony.

The COAB will provide community oversight of the implementation of the agreement and we appreciate the effort to offer more than one avenue for gaining membership. The police officer members of the board should serve in a truly advisory capacity and limit their participation to requests for information. We are concerned, however, about what will happen to the work of the Community Police Relations Committee. It is making headway on its project to address institutional racism within the PPB and also is charged with analyzing traffic and pedestrian stop data for evidence of biased-based policing. These efforts need to continue.

The requirements to enhance the Employee Information System are welcome, but given the long-standing lack of information and general confusion about the system, we suggest building in some level of outside monitoring and reporting to ensure that it is operating as intended.

In its letter of findings, the DOJ pointed to a number of serious deficiencies in PPB policies and training. These deficiencies lie at the heart of the DOJ's finding that PPB engages in unnecessary and unreasonable force during interactions with people who have mental illness. While we welcome the many opportunities for public information and participation outlined in the letter of agreement, there should be greater involvement by the community in development of bureau policies. In the past the League has suggested that draft directives be presented at monthly CRC meetings with the public in attendance given time to comment. Chief Reese recently requested public comment on new policies related to force and the Crisis Intervention Team. Perhaps the COAB would be an appropriate venue for this to occur. Regardless of how it is accomplished, the public must have input in Bureau policy development.

## **Other issues**

As long time monitors of the CRC we have read and heard disturbing reports about absent or delayed medical care for individuals involved in encounters with the police. The findings letter points this out in stark terms, but it is not addressed adequately in the settlement agreement. We concur with the statement from the findings letter and urge inclusion of this in the settlement agreement.

Instead, there should be a bright line rule that whenever an injury occurs or whenever a subject complains of an injury, EMS is summoned. PPB should review its data to determine if officers are routinely procuring medical care at the earliest opportunity and, if not, revise its policies and training accordingly. (p. 37)

## Conclusion

The League appreciates and supports the many elements in the settlement agreement that will bring greater transparency and accountability to our Police Bureau and oversight system. There are a number of issues that need clarification and strengthening including public participation in policy development and a stronger role for the CRC.

Yours truly,



Mary McWilliams  
President



Debbie Aiona  
Action Committee Chair

cc: Department of Justice  
Mary-Beth Baptista  
Citizen Review Committee