



26 September 2016

To: Anna Kanwit, Bureau of Human Resources director

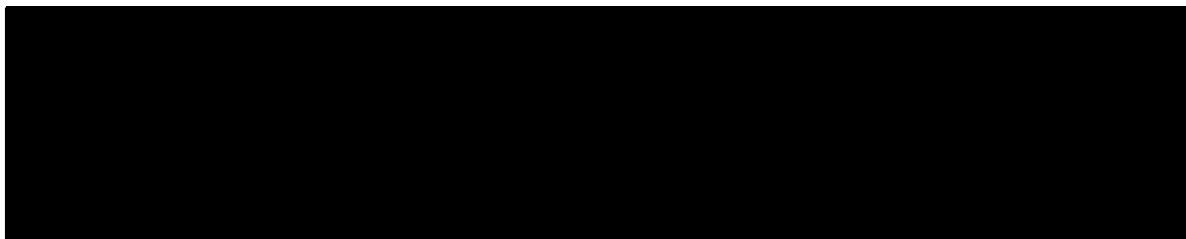
From: Mary Hull Caballero, City Auditor *M. Hull Caballero*

Re: Response to fact-finding report for Capt. Mark Kruger's complaint

I take issue with four matters in the fact-finding report.

The fact-finder made a fundamental error by interpreting a Police Bureau directive to mean that perceived threats to the integrity of the police accountability process should be kept confidential. The language in the directive protects "discussions and deliberations" of the complaint under review, but it is unreasonable to infer it binds participants from taking action when they observe improper behavior that could undermine the outcome.

The fact-finder's interpretation fails to appreciate that it would be untenable for any Auditor's Office employee to observe inappropriate conduct and remain silent given that the purpose of the elected Auditor is to ensure the City is accountable and transparent. In fact, it's not just employees in my office. Under HRAR 11.03, all City employees have a duty to report improper actions by City officials, and "retaliation is prohibited even if the underlying complaint or report is not substantiated."




Directive 336.00(12.2) requires all individuals involved in the Police Review Board process to "strictly maintain the confidentiality of all case file information and...discussions and deliberations as necessary for purposes of the...process or *as otherwise authorized in accordance with their position within the City.*" The fact-finder seemed to apply the last clause to [redacted] actions but not to Mr. Severe's actions.



City Code 3.21.070 enumerates the powers and duties of the Auditor's Independent Police Review, one of which is to issue a variety of public reports. It also requires all Police Bureau employees to "be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint."

Mr. Severe's actions were in compliance with this section of City Code, given the fact that Capt. Kruger asserted in writing and during the Police Review Board hearing that the underlying complaint should never have been investigated. The judgment whether to investigate a case rests solely with IPR and Internal Affairs. The decision to investigate was not appropriate for discussion during the Police Review Board, the purpose of which was to assess the validity of the *captain's* findings.

My third objection is that the fact-finder concluded the proper course for Mr. Severe was to file a professional conduct complaint against Capt. Kruger. That logic falls down in a couple of ways. First, filing a complaint would have personalized the exchange between the two men by exposing Capt. Kruger to possible discipline. Instead, Mr. Severe chose to keep the focus on the underlying case while at the same time alerting the Citizen Review Committee and public that improper conduct had occurred during the internal Police Review Board.¹ Second, filing a complaint against a captain would have set up a conflict of interest for IPR, because it investigates all complaints against Police Bureau members with the rank of captain or above.

 The appropriate course was to forward the case to the Citizen Review Committee as an appeal, which was the established next step in the oversight system, and that is what Mr. Severe did.

Mr. Severe's judgment was considered and his actions were sound.

The fact-finder was persuaded that Mr. Severe took the action he did in response to a personal slight and to place "negative comments about Kruger into the public record." Mr. Severe has participated in Police Review Board cases for years. He has voted to uphold Capt. Kruger's findings in some cases and voted against them in others. What set this case apart was Mr. Severe's belief that Capt. Kruger acted in a way to delegitimize the community member's complaint, undermine the entities responsible for investigating complaints, and possibly alter the outcome of the Police Review Board's decision.

Perhaps the most dismaying aspect of the fact-finding report is the dismissal of Mr. Severe's "perceptions of Kruger's behavior and demeanor" during the hearing, because they were "not substantiated by the (other) witnesses" as unprofessional. That other witnesses had different perceptions is not proof that Mr. Severe's perceptions were somehow invalid or incorrect.

¹ At the appeal, the Citizen Review Committee also challenged Capt. Kruger's findings.

People's views of events are based on their individual experiences, backgrounds, and privileges. As a person of color and an expert in police accountability, Mr. Severe is entitled to his perceptions and to act on them in good faith. Corroboration from other witnesses would be relevant if Capt. Kruger's professionalism had been the subject of a misconduct complaint. It is wholly irrelevant to the fact that Mr. Severe acted in good faith to report what *he* judged to be improper conduct by a high-ranking official of the Police Bureau.

This incident exposed the need for a better mechanism for participants in the Police Review Board to report what they believe to be improper conduct without being subjected to retaliatory investigations for doing so. I will work with the Mayor-elect and others to determine if safeguards can be devised to better protect City employees in such instances.