

DRAFT: 5/31/16

**The Chicago Council of Lawyers
Supports Recommendations Made by the
Police Accountability Task Force**

In April 2016, the Police Accountability Task Force (“**Task Force**”) issued a report entitled “Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve” (“**Report**”). The Report addresses a broad array of subjects, ranging from how to improve police-community relations to how to respond properly to persons with mental health problems. Rather than attempting to review the entire Report, the Chicago Council of Lawyers has focused its review on the topic where it has the most experience – the need for legal oversight and accountability of the Chicago Police Department (“**CPD**”).

In our view, any system to provide oversight and accountability to the CPD should contain the following elements:

- A. Impediments to complaints of police misconduct should be removed so long as police officers are adequately protected against false complaints.
- B. Complaints of police misconduct should be investigated thoroughly by an independent agency.
- C. Complaints should be resolved promptly by an unbiased decision-maker.
- D. IPRA should investigate patterns of police misconduct and keep track of the number of complaints against and discipline imposed on each officer.
- E. When police misconduct is found, appropriate discipline should be imposed.
- F. The entire disciplinary process should be transparent to the public.

We discuss each of these elements below, followed by a separate section discussing the need to revise certain provisions in the current police union collective bargaining agreements (“**CBAs**”) that interfere with proper oversight and accountability.

A. Impediments to complaints of police misconduct should be removed so long as police officers are adequately protected against false complaints.

Both Illinois law and the CBA with the Fraternal Order of Police (“**FOP**”) require that complaints against police officers must be supported by a sworn affidavit, and that police officers be advised of the names of complainants. The purpose of these requirements is to protect police officers from false complaints.

The Task Force Report recommended that persons should be allowed to file unsworn and anonymous complaints against police officers because the affidavit requirement and the requirement that the complainant’s name be disclosed to the officer deter some persons from filing truthful complaints. The Council of Lawyers supports these recommendations, provided

that a police officer is not penalized solely on the basis of an anonymous or unsworn complaint. Such a complaint can be used to start an investigation into the officer's conduct, and the investigation may lead to independent evidence of the officer's conduct (*e.g.*, a video recording, ballistics evidence, DNA evidence, or witness statements) that may corroborate the complaint. If that occurs, the CPD's Bureau of Internal Affairs ("**BIA**") or the Independent Police Review Authority ("**IPRA**") may sustain a complaint of misconduct against the officer based on the independent evidence; the anonymous or unsworn complaint should not be used as evidence against the officer.

The Report recommended that the name of a complainant need not be disclosed until **after** a sustained finding of misconduct has been made. We disagree. The officer should be advised of the name of the complainant **before** a finding of misconduct has been made, so that the officer may challenge the credibility of the complainant, and so that the officer is fully advised of the charge against him, which is especially important when the officer has stopped or arrested several people, but only one of them complains.

In order further to protect police officers from anonymous or unsworn complaints that are not corroborated by independent evidence, such complaints should not be placed in an officer's personnel file nor considered for purposes of the officer's transfer, promotion, demotion, or other employment status change. However, such complaints should be entered into the appropriate CPD and IPRA databases, with a notation that they are anonymous or unsworn, so that they can be used for statistical studies to determine whether a pattern of alleged misconduct may exist.

The Task Force observed that the CBAs with the police unions authorize IPRA and the BIA to override the affidavit requirement after reviewing "objective verifiable evidence" and finding after such review that an investigation into the officer's conduct should proceed, but that this authority was rarely used. The Report recommended that IPRA should start an investigation whenever it obtains information from any credible source, including media accounts of an incident, information from civil lawsuits alleging police misconduct, and motions to suppress filed in criminal cases based on allegations that an officer failed to comply with constitutional search and seizure requirements. We support this recommendation, and further recommend that the Chicago Municipal Code be amended to grant such authority to IPRA in case these sections of the current CBAs are not renewed

The Report recommended that a hotline should be created to encourage persons (including whistleblowers) who might fear retaliation to file complaints anonymously. The Report also noted that the current CBA with the FOP expressly prohibits the CPD from rewarding officers who come forward as whistleblowers and recommended that that provision not be renewed. We support these recommendations.

The ordinance establishing IPRA authorizes it to investigate complaints of coercion against police officers and defines "coercion" as "the use of express or implied threats of violence that puts a person in immediate fear of the consequences in order to compel that person to act against his or her will." We recommend that the words "of violence" be deleted so that persons who file complaints against police are protected against nonviolent threats, such as a threat to have the Department of Children and Family Services take one's children away.

B. Complaints of police misconduct should be investigated thoroughly by an independent agency.

The Task Force concluded that IPRA should be replaced with a new police investigative agency. The Council of Lawyers does not take a position on whether IPRA should be replaced. As a result, when we refer to IPRA in this statement, we mean IPRA or any successor agency.

The Task Force Report recommended that the investigating agency's jurisdiction should be expanded to include unlawful searches and seizures, false arrests, and denial of access to counsel. We agree because we believe that such complaints should be investigated by an agency that is independent of the CPD. Such complaints currently are investigated by Chicago police officers and referred to BIA. We note that BIA does not file quarterly report or annual reports on its web site as to the findings of its investigations, and when it reports statistics on its findings to the Chicago Police Board, it does not report separately on its findings on complaints filed by civilians and complaints filed by police supervisors against police officers.

The Task Force stated its view that IPRA (or its successor) should have sufficient resources to meet its expanded responsibilities and that IPRA's funding should be insulated from the political process. Accordingly, the Task Force recommended that the agency's funding should be equal to one percent of CPD's budget so that the agency cannot be defunded. We support the concept of guaranteed funding for IPRA although we express no opinion as to whether one percent of CPD's budget is the correct amount.

C. Complaints should be resolved promptly by an unbiased decision-maker.

The Task Force recommended that former employees of the CPD and the Cook County State's Attorney should be prohibited from serving as Chief Administrator or as an investigator for IPRA. We disagree, because some former employees of the CPD or the State's Attorney's office have relevant experience that could be very useful in investigating police misconduct. Of course, such persons must be screened carefully to ensure that they could perform their duties for IPRA without being influenced by their former employer.

D. IPRA should investigate patterns of police misconduct and keep track of the number of complaints and discipline against each officer.

The Task Force recommended that IPRA exercise its authority to investigate patterns of police misconduct and identify officers whose records shows repeated examples of misconduct and bias. It stated that IPRA's failure to do so perpetuates the status quo by shielding illegal practices from scrutiny. We agree and urge IPRA fully to use its authority to investigate patterns of police abuse.

E. When police misconduct is found, appropriate discipline should be imposed.

The Task Force recommended that IPRA and BIA should use a standardized discipline matrix in determining what the appropriate discipline should be for a police officer found to have engaged in misconduct. The matrix would set forth a fixed list of penalties based on the nature of the offense and taking into account any aggravating or mitigating circumstances. We support this

recommendation because it is necessary for disciplinary decisions to be fair, predictable, and consistent.

The Task Force recommended that the CPD should fire any police officer who lied during a misconduct investigation or who retaliated against any person reporting police abuse. We support this recommendation with the caveat that the lie must relate to a material fact in order to require the officer's dismissal.

F. The entire disciplinary process should be transparent to the public.

The Task Force emphasized that, in order to restore public confidence, the disciplinary process must be made fully transparent. That means that every major step in the disciplinary process should be made publicly available so that a citizen can track a complaint from start to finish. In addition, IPRA should post summary reports of each completed investigation and publish comprehensive annual reports of its work. We support these recommendations.

Records of complaints against police officers should never be destroyed. The CBA with the FOP requires that they be destroyed after five years. (FOP is currently seeking to have them destroyed.) This CBA provision should not be renewed, and the City Council should mandate that no records of complaints against and discipline imposed on police be destroyed.

Certain Provisions in the Collective Bargaining Agreements Need to be Removed.

We have discussed above several provisions in the current CBAs with police officers that must not be renewed because they interfere with proper oversight and accountability. They are the provisions that:

- Prohibit unsworn and anonymous complaints;
- Mandate the destruction of records of complaints against police officers after five years; and
- Prohibit the Chicago Police Department from rewarding whistleblowers.

Other provisions in the CBAs also must not be renewed for the reasons discussed below.

- The Report stated that under the CBAs, officers involved in shootings cannot be required to provide a statement to IPRA until after at least a 24-hour period. It noted that critics contend that the waiting period provides officers time to agree on a false story they will later tell investigators – a view that has gained support after the officers present at the shooting of Laquan McDonald gave remarkably similar reports of incident, while the video of the shooting made clear that their reports were untrue. We agree that the 24-hour waiting period should not be renewed.
- The Report stated that the FOP contract gives a police officer who already has given a statement about an incident the right to clarify and amend it after later reviewing an audio or video recording of the incident. The contract also provides that officers cannot be charged with filing a false statement unless they are given an opportunity to review the

recording. The Report recommended that such provision not be renewed. We agree and note that we have not found a similar provision in the CBAs of other employees of the City of Chicago who are required to provide statements about incidents they have observed. Nor are civilians who are questioned about an incident by the police given the right to amend their statements after observing a video of the incident.

- The Report noted that the CBAs have provisions that micromanage how investigators may ask questions. For example, the FOP contract provides that: “Generally, the secondary interrogator will ask follow-up questions for clarification purposes. The primary interrogator will not ask any questions until the secondary interrogator has finished asking questions and invites the primary interrogator to ask follow-up questions.” The Report recommended that this provision be eliminated. We agree because it interferes with the discovery of the truth.

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