

**Chicago Council of Lawyers
Recommendations on
Police Accountability**

07/23/16

In April 2016, the Police Accountability Task Force (“**PATF**”) issued a report entitled “Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve.” The Report addresses many subjects, ranging from how to improve police-community relations to how to respond to persons with mental health problems. Rather than attempting to review the entire Report, the Chicago Council of Lawyers limits its review to the need for legal oversight and accountability of the Chicago Police Department (“**CPD**”). We list below the reforms that should be made. Unless otherwise indicated, the positions we take are the same as those that the PATF recommended.

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

1. CPD’s Bureau of Internal Affairs (“**BIA**”) and the Independent Police Review Authority (“**IPRA**”) should have the power to investigate unsworn or anonymous complaints because such an investigation may lead to independent evidence of the officer’s conduct (*e.g.*, a video recording, ballistics evidence, DNA evidence, or witness statements) that corroborates the complaint and could lead to a sustained finding. Moreover, 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 exists. (Whenever we refer to IPRA, we mean it or its successor agency, if one is created.) Both Illinois law and the collective bargaining agreement (“**CBA**”) with the Fraternal Order of Police (“**FOP**”) generally 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 CBAs with the police unions authorize IPRA and the BIA to override the affidavit requirement after reviewing “objective verifiable evidence” and finding that an investigation into the officer’s conduct should proceed. The PATF recommended that this rarely used authority be used more frequently.
2. Police officers, however, should not be penalized solely on the basis of an anonymous or unsworn complaint. Such complaints should not be the basis of a sustained finding and 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. (As noted above, however, the investigation of an unsworn complaint may find evidence corroborating the complaint.)
3. Moreover, although the name of the complainant may be withheld from the police officer for a while (in order to reduce any possibility of retaliation), police officers 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. (The PATF recommends that the name of a complainant need not be disclosed until **after** a sustained finding of misconduct has been made.)

4. IPRA should have authority to 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. The Chicago Municipal Code should be amended to grant IPRA this authority.
5. A hot-line should be created to encourage persons (including whistle-blowers) who might fear retaliation to file complaints anonymously.
6. The provision in the CBA with the FOP that prohibits the CPD from rewarding officers who come forward as whistle-blowers should not be renewed.
7. 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.” The words “of violence” should 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. (The PATF did not address this issue.)

B. An independent agency should investigate complaints of police misconduct

1. IPRA, or its successor agency, should have jurisdiction to investigate complaints of unlawful searches and seizures, false arrests, and denial of access to counsel. Such complaints are currently referred to BIA and investigated by Chicago police officers. Such complaints should be investigated by an agency that is independent of the CPD.
2. IPRA, or its successor agency, should have guaranteed funding that is a fixed percent of CPD’s budget, or based on a formula relating to the number of police officers, so that its funding is insulated from the political process. (The PATF recommended that the agency’s funding should be either one percent of CPD’s budget or an amount that will fund one investigator for every 250 sworn police officers.)

C. An unbiased decision-maker should resolve complaints.

IPRA's Chief Administrator and its investigator must be screened carefully to ensure that they could perform their duties for IPRA without being influenced by their former employer. (The PATF 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. (We note that former IPRA investigator Lorenzo Davis was previously a Chicago police officer.)

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

IPRA should exercise its authority to investigate patterns of police misconduct and identify officers whose records shows repeated examples of misconduct and bias. Not doing so shields illegal practices from scrutiny.

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

1. IPRA and BIA should use a standardized discipline matrix in determining what the appropriate discipline should be for a police officer who has 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. This should promote discipline that is fair, predictable, and consistent.

2. CPD should fire any police officer who lied about a material fact during a misconduct investigation or who retaliated against any person reporting police abuse.

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

1. In order to restore public confidence, every major step in the disciplinary process should be made publicly available so that a citizen can track a complaint from start to finish. IPRA should post summary reports of each completed investigation and publish comprehensive annual reports of its work.

2. Records of complaints against police officers should never be destroyed. The CBA provision with the FOP that requires that they be destroyed after five years should not be renewed, and the City Council should mandate that no records of complaints against and discipline imposed on police be destroyed.

G. Provisions in the collective bargaining agreements that interfere with police accountability should 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 (See Section A1 and footnote 1);
- Mandate the destruction of records of complaints against police officers after five years (See Section F2); and
- Prohibit the Chicago Police Department from rewarding whistle-blowers (See Section A6).

The following CBA provisions also must not be renewed for the reasons discussed below.

1. The provision that provides that officers involved in shootings cannot be required to provide a statement to IPRA until after at least a 24-hour period must not be renewed. The waiting period provides officers time to agree on a false story they will later tell investigators. We note that several 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.

2. 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. This provision should not be renewed because it may discourage some police from telling the truth the first time. 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.

3. The CBA provisions that micromanage how investigators may ask questions must not be renewed. 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.”