



October 26, 2016

**Via Email and U.S. Mail**

Matthew Barge, Monitor  
Cleveland Monitoring Team  
c/o Lutheran Metropolitan Ministry  
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**Re: ACLU of Ohio Recommendations for Investigations Policies and Procedures**

Dear Matthew,

Although draft policies covering the investigation of complaints against the Cleveland Department of Police (“CDP”) have not yet been circulated, we believe it will be helpful at this point to provide a set of recommendations and concepts that should be considered in the drafting process. Accordingly, our recommendations for the internal and external investigation of police misconduct appear below. We will provide more specific responses to the draft policies themselves once they are circulated.

**I. Internal Investigations Policy**

**a. General Operations**

The internal investigations policy should include a clear statement that Internal Affairs (“IA”) will accept and investigate every complaint against any member of the Department, including anonymous complaints for all non-required reporting. The policy should include a description of each step of an investigation.

IA should investigate all police shooting incidents, regardless of whether anyone is hurt or killed.

Investigations should be conducted by an officer of higher rank than the officer who is the subject of the investigation. Interviews must be recorded and preserved as evidence. The preponderance of the evidence standard should govern in determining whether an officer’s actions violated policy.

IA should be required to complete investigations within a reasonable, specified amount of time. If extenuating circumstances prevent completion within that

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timeframe, the investigator should be required to seek approval for extra time to extend the investigation to its conclusion, and should be required to inform the complainant and accused officer of this delay.

The policy should include articulated standards as to the qualifications and required experience of investigators, and mandate adequate training for them.

The use of independent, external investigators should be mandated in all cases in which police kill or seriously injure a civilian, and in cases of in-custody death or serious injury.

#### b. Data, Information, and Review

CDP should release as much information as possible to the public after an officer-involved shooting or other serious use of force incident, as it would with other serious incidents of public interest. As soon as possible after an incident, i.e. within hours, the Department should release the available information, and should provide updates as new information becomes available.

CDP should be required to post on its website when an officer is found to have willfully violated department policy or the law, committed official misconduct, or resigned while under investigation for these offenses.

IA should make public each complaint received as promptly as possible, listing the types of offenses.

CDP must track and compile data relating to the number and types of complaints filed, the type of force used in each incident, the number and outcomes of administrative reviews, and the number of officers who regularly use force. This data should be disaggregated by geographic area, type of arrest, age, race, gender, and ethnicity.

## **II. Community Oversight Policy**

Community oversight must be structured so that the filing and handling of complaints is transparent to the public. All officers must know how and where to refer any member of the public who wishes to lodge a complaint.

#### i. Office of Professional Standards

##### a. General Operations

To carry out its duty of investigating all non-criminal complaints by civilians, the Office of Professional Standards ("OPS") requires adequate funding and staffing. While the Cleveland city charter requires only that OPS consist of "one or more investigators," we recommend that the policy mandate a minimum ratio of investigators to police officers, as well as a minimum ratio of OPS budget to entire CDP budget, in order to ensure realistic resources for OPS to carry out its important duties.

To avoid real or apparent partiality, OPS investigators must not be current or former Cleveland police officers, or related to the officer under investigation. By the same token, there should be a process for complainants and residents to request that an OPS investigator recuse himself if there are concerns of bias or a conflict of interest.

OPS must be required to investigate each complaint it receives, as is currently the policy. To help the public understand what can be expected, the policy should clearly describe each step of the investigation process.

A variety of avenues should be provided for civilians to submit a complaint, including anonymously, in-person, over the phone, by email, and online, with means provided for complainants to upload photo and video documentation.

b. Powers and Duties

OPS should be required to resolve each civilian complaint within a reasonable, specified amount of time, absent the documentation of specific extenuating circumstances. This is imperative in order to avoid the massive backlog of unresolved complaints that accumulated in the past.

OPS should be immediately notified and required to send an investigator to the scene of any police shooting, in-custody death, or use of force that results in serious injury.

c. Data and Review

OPS should make public each complaint received as promptly as possible, listing the types of offenses and redacting complainants' names.

ii. Police Review Board

a. Appointment Process

Given the current power of the Mayor (or of the Mayor and City Council after passage of the new charter amendment) to appoint Police Review Board ("PRB") members we recommend that the PRB policy include provisions for transparency in the appointment process, to ensure the PRB remains independent of the Mayor and City Council.

b. Powers and Duties

We affirm the necessity of the PRB retaining subpoena power, as currently provided for in Cleveland's city charter (§ 115-4).

Beyond being authorized, the PRB should be mandated to investigate every use of deadly force and every in-custody death or serious injury.

The PRB should have the authority to conduct regular audits of CDP's internal investigations and disciplinary process, as well as review department policies and trainings and make recommendations.

**c. General Operations**

The PRB should be required to provide status updates of its investigations to the complainant, and give notice of its findings to the public.

In addition to receiving a report of findings from OPS upon completion of each OPS investigation (Charter Section §115-4), the PRB should also have access to all files and data that were used by OPS to create the report.

The PRB should hold open meetings, to aid in transparency and accountability, except when properly convened in executive session. The meetings should be held at a time convenient for working members of the public, with meaningful advance notice provided. The open meetings should be videotaped, and the recordings preserved and available for public viewing.

**d. Data and Review**

The PRB shall provide, on a periodic basis, public reports that summarize relevant data on complaints received. This data should include the type of complaint; the race, gender, and age of the complainant; the race and gender of the accused officer, and the disposition.

**III. Discipline**

Whether appearing in this policy or instead included in companion policies, there must somewhere be guidelines as to when officers will face discipline, and what that discipline will be. The policy should include a clear statement that officers who violate policy—whether, for example, for excessive use of force, omissions or misrepresentations in reporting, tampering with or planting evidence, discouraging civilians from filing a complaint—will be subject to discipline up to and including termination, in addition to any otherwise-possible civil or criminal liability.

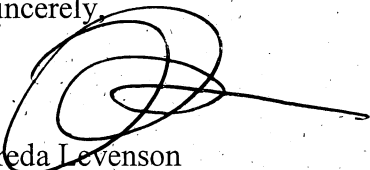
Sanctions for officers who violate policy should be proportional to the seriousness of the offense and should progressively increase with each subsequent offense. The imposition of such sanctions should be made public and the records of the sanctions shall be maintained for a reasonable period.

**IV. Related Matters**

These recommendations, of course, must be embodied within a coherent scheme of activating policies (such as ones regarding data, training, and resources) because there are other factors not discussed in this letter that bear upon the forgoing recommendations. For example, it is crucial that CDP continue to employ its Early Intervention Program (EIP) to detect which officers have received multiple complaints, and that it continue to take corrective action accordingly.

Please do not hesitate to get in touch with any questions or requests for clarification regarding the content of this letter.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Freda Levenson  
Legal Director  
ACLU of Ohio

cc: Mr. Mario Clopton; Dr. Rhonda Williams; Mr. Charles See