

# City of Portland

## Police Accountability Commission

### Areas of Agreement on Barriers to Police Accountability, and Best Practices, in the Current System in Portland

The Police Accountability Commission agrees that the following items are **barriers to police accountability** in Portland's current system. The Police Accountability Commission will, in future phases of its work, develop a proposal for a system that overcomes these barriers.

During the Fact-Finding Phase, the Police Accountability Commission heard from a number of individuals with key roles in the city's oversight and public safety systems:

1. Commissioner Jo Ann Hardesty (April 26)
2. Independent Police Review Director Ross Caldwell and Deputy Director Dana Walton-Macaulay (May 23)
3. Citizen Review Committee Chair Candace Avalos and Vice Chair Yume Delegato (May 23)
4. Mayor Ted Wheeler (May 26)
5. Commissioner Mingus Mapps (June 6)
6. Portland Police Bureau Chief Charles Lovell and Deputy Chief Mike Frome (June 16)
7. PPB Internal Affairs Acting Captain Greg Pashley and Professional Standards Division Commander Jeff Bell (June 23)

8. PPB Police Review Board Coordinator Christopher Paillé (June 30)
9. Mental Health Alliance spokespersons K.C. Lewis and Amanda Marshall (July 11)
10. Commissioner Carmen Rubio (July 21)
11. Albina Ministerial Alliance Coalition Chair Rev. Leroy Haynes and Steering Committee member Rev. Mark Knutson (July 21)
12. Portland Police Association President Aaron Schmautz (July 28)
13. Commissioner Dan Ryan (July 28)

This was required by City Council Resolutions 37527 and 37548. The following document summarizes the commission's reflections on what it heard, the conclusions it drew, and also includes members' own observations and ideas.

### Lack of Transparency

The system lacks transparency for complainants. There is little information available for complainants to understand how the system works, and to know where their complaint status is in the process. Further, full and necessary transparency for community accountability does not exist.

#### **1. Community members have difficulty understanding the administrative complaint process and receive little or no support from the current system.**

**Intake:** Complainants may not know when, where, or how to file a complaint. Prior to filing the complaint, complainants do not know how many times they will have to tell their story. Complainants are not offered access to an advocate during the intake process.

**Investigation:** Investigations do not follow transparent timelines, so it is impossible for complainants to know how this process will affect their schedules and day-to-day lives. Complainants, including families of victims filing on behalf of their loved ones, are not given regular updates about the status of their investigation; they have to go online to find such updates. Additionally, impacted communities are not given information about the status of an investigation which affected a member of their community directly and the community indirectly. Community members are not offered an advocate during the investigative process.

Complainants have difficulty getting real answers from knowledgeable staff about the status of their complaint investigation, or what they need to do next. When a complainant calls to get information about their case, they often must “start from the beginning” each time they call. Complainants encounter the equivalent of “poor customer service” when interacting with the current system.

"No one should have to wait months to receive word from the city about what the progress of their complaint is."(City Commissioner Rubio, 23:05)

"[T]he public deserve[s] to know what the investigation process is, and that it is firmly grounded in truth-seeking." (PPA President Schmautz, 14:15)

## **2. Important parts of the accountability process are inaccessible to the public.**

**Investigation:** Complainants are not given access to their case file. The case file may contain useful information, including information which can prove the complaint itself.

**Public Nature of Meetings:** The advisory process and deliberations of the Police Review Board are not open to the public. The complainant or survivor is not involved in the Police Review Board process. While officers can attend the PRB meetings, like the community, they are not allowed into PRB Executive Sessions. For the community this makes those sessions double-closed-door meetings.

**Law and Policy:** The PPA President, when asked directly, generally objected to public hearings in most misconduct and deadly force cases. These objections were made primarily on the basis of “Loudermill rights,” “constitutional due process

rights,” and “internal procedural justice” for the subject officer, all of which are also barriers to transparency. (Schmautz, 19:25 – 24:24)

During administrative investigations, officers may be compelled to speak by their employer. If there is a reasonable prospect of criminal prosecution, the compulsion to speak renders the statement of the officer inadmissible in a criminal prosecution. Police officers and other public employees retain the fifth amendment right, incorporated to local and municipal governments through the 14<sup>th</sup> amendment, to be free from self-incrimination in criminal cases. *See Garrity v. New Jersey*, 385 U.S. 493 (1967). With some exceptions, compelled statements are not made public.

**Reporting of Administrative Outcomes:** It is unclear the extent to which complainants are informed about the findings from their complaint. Complainants do not receive any information regarding discipline imposed. Data reporting is inconsistent. Results of administrative investigations are not published, or if published, are heavily redacted.

The CRC Vice-Chair described the system, from an appellant’s point of view, as “maddeningly opaque.” (Delegato, 1:48:33)

**Reporting of Criminal Outcomes:** Criminal investigations of police misconduct rarely result in criminal charges or prosecutions, and the explanations for the failure to prosecute criminally are unsatisfactory. The public cannot easily determine whether an event which triggered an administrative investigation has had any parallel criminal investigation, or criminal outcomes.

## Complexity Within Current System

The current system is far from easy to navigate. Multiple entities and reviewers can contribute to recommended findings at different phases. Complainants have little information to advocate for themselves and are not offered access to an advocate until the end of the process. Community and law enforcement, including both the PPA and PPB leadership, agree that the current system is too complex.

"[It's] a very complex process and it tends to take a lot of time [...] If you draw a flowchart of our system, I think most people will just shake their

heads [and ask] 'Why are there so many steps?'" - Deputy Chief Mike Frome, PPB (06/16/22, 23:00)

"I've always felt that [...] PPB's discipline system was [...] too complex and too layered [...] It seems like we are not ever removing any of the layers, we are just adding more [...] The length and complexity [of the process] deprives [the community] of closure." - PPA President Aaron Schmautz (07/28/22, 10:10)

### **3. Some parts of the current system are duplicative, confusing, and contradictory.**

**Recommended Findings:** Multiple reviewers can recommend findings, and those recommendations sometimes contradict each other.

For example, unofficial recommended findings come from IA or IPR, then go to the commanding officer who makes the official recommended findings. Then the Branch Assistant Chief, the Internal Affairs Captain, and the IPR may choose to recommend findings that are different from the commanding officer (known as controverting). If the findings are controverted, or if the findings are sustained, or if the case involves deadly force, the Police Review Board then reviews the investigation and again recommends findings. PRB has no obligation to form a majority opinion, so the PRB may send multiple sets of recommended findings to the Chief. The case may then be appealed to CRC, which makes a majority-opinion recommendation on findings. If the Bureau disagrees with the CRC's recommendation, the appeal goes to City Council. With the exception of cases which go to City Council, as provided in City Code, the Police Chief or Commissioner-in-Charge makes the ultimate final decision on findings.

### **4. Complainants are not offered access to an official advocate to help them navigate the process until close to the end of the process, during the Appeals phase.**

**Complainant Experience:** The complaint process can move among up to five entities – Independent Police Review (IPR), PPB Internal Affairs (IA), Police Review Board (PRB), the Citizen Review Committee (CRC), and the Portland City Council.

The entity that does the investigation and the entity that does the discipline are different, which creates complexity. Complainants may not know which part of the system to query regarding their complaint at any given time, because most of these entities do not give proactive updates to community members. There are also many steps within the process.

The process is so complex, there are multiple conflicting flowcharts attempting to explain it. The complainant is not offered an advocate at the beginning of the complaint process to help them navigate the complexities of the system, or to keep them abreast of updates. If the complainant can remain engaged with the system for long enough, they can eventually file an appeal with the CRC. CRC offers an “Appeals Process Advisor,” who is generally a former CRC member who has access to investigative files and who acts as an appellant advocate. While the matter is on appeal with CRC, the complainant may have an advocate and generally receives better communication and updates about their case. When a case moves from CRC back to PPB, the amount of information available decreases.

### **5. Officer-involved shootings, and other deadly-force cases, are treated differently from other misconduct investigations.**

**Policy:** A person or surviving family member cannot file a complaint about a police shooting, nor can they file an appeal. Investigations of allegations of deadly force are called “reviews,” and have a different set of findings than other misconduct investigations. IPR cannot conduct investigations of deadly force cases. A person or surviving family cannot appeal a deadly force case. The Citizen Review Committee, which is an important part of many other administrative accountability processes, is not directly involved in officer-involved shootings and other deadly-force cases.

### **Accessibility and Equity**

The system’s complexity and lack of transparency are already acknowledged barriers. These barriers are exacerbated for members of historically excluded

communities, such as people with disabilities and those experiencing mental illness. The structural and logistical barriers create inequitable access.

**6. There are direct barriers to participation in all aspects of the current accountability system to people based on their ability, housing status, mental health, socioeconomic status, and more.**

"[The current system] is broken from top to bottom." - K.C. Lewis, J.D.,  
Mental Health Alliance (07/11/22, 18:25)

**Usability:** People with disabilities and people experiencing mental illness in particular are failed by the system; they are faced with navigating a system that is not created to be “user friendly.”

**Logistical barriers:** The system has logistical barriers for many to navigate the system equitably. For example, if you don’t own a phone, you can’t get a call back.

**Public Involvement:** The public comment period window is two weeks to comment on PPB policy changes. This is not enough time for the public to engage. Members of the public have little opportunity to engage with the current system of accountability in meaningful ways.

**Hours of operation:** Most City offices, including most of the City’s current accountability system, operate between 8 AM-5 PM. For complainants with less flexible schedules, who often are lower- and middle-income individuals, this is a direct barrier to participation as well as to receiving information and updates.

**7. Burdensome parts of the accountability system disproportionately impact community members who are part of historically excluded groups.**

**Policy:** The standards which officers are expected to maintain do not expect enough of law enforcement in their interactions with historically excluded groups, including based on mental health or illness, race, gender identity, socioeconomic status, and housing status. As a result, the standards police are held to on these issues are too low.

**Culture:** Police culture and history are rooted in racism, ableism, and discrimination towards historically excluded groups. As a result, current

accountability systems structurally fail to address or even take seriously the impacts of policing on historically excluded groups or the disproportionate level of effort it takes for those community members to participate in the accountability system as they attempt to pursue individual misconduct complaints.

## Perception and Trust

The system does not work to repair community trust. Community members already experiencing harm by police must then attempt to navigate accountability in a system that prioritizes the protection of law enforcement. This deterrent results in many community members choosing not to interact with the accountability process at all.

**8. There is a current perception by both community members and law enforcement that the accountability system is opaque, unfair, and unjust.**

**Community trust is broken:** The public has a sense that “the deck is already rigged” to favor law enforcement, resulting in the whole system feeling pointless to many. The current system does not earn the trust of the public because the public does not believe that officers are meaningfully held accountable. Additionally, there is minimally available public information, and a lack of communication to complainants.

**Investigative process:** If an investigator is former law enforcement, community members may still see them as members of the police department. Further, community members do not differentiate between civilian and sworn members of PPB. It is confusing, frustrating, and intimidating to discuss your complaint about PPB with a current or former employee of PPB.

## Current Laws and Policies

The system is deeply entangled by multiple levels of law and policy. This can be seen in the collective bargaining process between City government and the police collective bargaining units or associations (also known as “police unions”) as well as in the current standards of conduct and discipline.



**9. The current system is governed and protected by several layers of local, state, and federal law and policy, including and especially labor law.**

**Collective bargaining:** The current system is subject to collective bargaining between the City government and the collective bargaining units. Most of the collective bargaining process is not open to the public. No representatives from either the volunteer or staff portions of the current community oversight system are part of collective bargaining processes. What currently exists is the result of many years of collective bargaining by the collective bargaining units.

**Law:** Current labor laws do not take into consideration the input of the community, but rather favor the police collective bargaining units' input.

**Policy:** Many investigations are closed by IPR because, even if true, the complaint is not a violation of policy. This is because the current standards of conduct are too lenient. Although new tools intended for accountability may be introduced, such as body-worn cameras, those tools cannot be used effectively to increase accountability without sufficient buy-in and coordination by multiple decision-makers at multiple levels to ensure law and policy align.

**10. The standard of review is too deferential to police in the appeal process.**

**Appeal:** The Citizen Review Committee is required to look at the decision made by the commanding officer using a “reasonable person” standard, not a “preponderance of evidence” standard. The Citizen Review Committee’s membership would like to see the standard of review for appeals changed to “preponderance of evidence.”

## Effectiveness

The system is unable to demonstrate that it is working. By design, the lack of transparency bleeds into the inability to monitor for effectiveness, improvement, or challenges. The data that are available are limited and do not summarize the impact made to accountability. A decrease in complaints does not necessarily

mean the system is reducing misconduct; it could reflect the public's aversion to the system.

### **11. The current system does not reduce misconduct.**

**Discipline:** Current options for discipline are limited, and due to definitions and requirements created in closed-door bargaining sessions, are often insufficient to reduce misconduct. The current system does not rely on evidence-based practices to reduce misconduct. Letters of reprimand, or suspensions without pay, are not always enough to alter behavior. Command counseling, when offered as a corrective action, does not necessarily alter behavior.

**Limitations of Discipline:** Discipline, while a form of accountability, only directly addresses the specific subject officer involved; it does not make systemic changes, nor change underlying culture.

### **12. The current civilian accountability system lacks the comprehensive power necessary to be effective at reducing misconduct.**

**Limitations of Scope:** Some complaints have no avenue for resolution outside of private litigation. Importantly, not everyone has the capability to pursue private litigation. The system's limitations direct some potential complaints to be resolved in civil court, instead of through an administrative system. Civil courts focus on violations of rights, not of policy, and as a result are not the appropriate place for all types of complaints. For example, officer rudeness would not rise to the level of a civil rights violation but should be addressed by the administrative process. This results in some officer misconduct being excused that would not have been excused by a more comprehensive administrative accountability system.

**Participation and fact-finding:** The system does not encourage, compel or require officers to participate in hearings about misconduct they have allegedly committed or witnessed, nor does it provide consequences when officers do not participate. As a result, in the current system, officers generally don't show up for public hearings; they have only attended CRC hearings 11 times in over twenty years.

### **13. The current system does not demonstrably meet its required timelines.**

**Investigations:** The Portland Police Bureau's presumptive deadline is 180 days from the date the complaint is assigned, but investigations often stretch out for months longer.

**Communication:** Complainants are not always notified of the outcomes of their complaints in a timely fashion. Additionally, the public is not aware of *when* complainants are notified.

## Conflicts of Interest / Bias

The current system of accountability allows opportunity for bias and conflicts of interest. This is demonstrated by the prioritization of ensuring that police hold and maintain decision-making power in the investigative and discipline process. The system relies on PPB to investigate itself and upholds deference to involved officers.

**14. Numerous parts of the system are designed to ensure police, rather than community members, can shape investigations and hold decision-making power.**

**Recommendation of Findings:** The Police Review Board, which is tasked with recommending findings and proposed officer discipline in certain cases, has more representation from PPB than from community members. One CRC volunteer along with one member from a volunteer pool may sit on the Police Review Board. There is also one other non-police representative (one IPR staff member), but the remaining members of the PRB are police officers. Since the PRB generally meets to hear and review cases during the day, this greatly limits the ability of community volunteers with daytime obligations to participate in the PRB process.

**15. People who are making decisions about and within the system have a vested interest in the system being upheld.**

**Investigations:** The current system relies on the Portland Police Bureau to investigate itself in most cases for both administrative and criminal allegations. IPR was created in 2002 but didn't do their first investigation until 2013. IPR can't compel testimony and is still reliant on police to do so. This demonstrates that the police are still involved in nearly all cases.

**Internal Affairs:** PPB IA investigations give a tremendous amount of deference to involved officers. PPB officer judgement receives wide latitude from PPB IA investigators. PPB IA Investigations are not rigorous enough, especially when officer statements and physical evidence do not match up.

## Culture

Multiple experts spoke on how the culture of policing creates a barrier to police accountability. Systems and culture work in relationship with one another. To understand the barriers in the system it is necessary to also investigate the culture of policing.

**16. Police culture values other police officers and the institution of police above the concept of accountability or community concerns.**

**Collective Bargaining:** Collective bargaining agreements related to police generally require the agreement of the PPA and PPCOA, which work to advance the interests of police and policing. The PPA and PPCOA's core functions include resistance to accountability for police, which causes decision-making processes to be biased towards defending the interests of police officers even when found to have committed misconduct.

**Investigations:** Portland police, like most police around the country, have a "blue wall of silence," which is a cultural norm that police do not talk about the misconduct or wrongdoing of other officers. This often leads to officers not serving as witnesses or reporting on other officers.

**Reprisal:** Community groups often report encountering intimidation, harassment, and retaliation by police when filing reports or asking for them to be held accountable. Calls for racial justice in policing have resulted in defensive posturing, which includes non-participation in accountability processes, and racial harassment and violence from police, which itself are acts that police are not held accountable for.

**History:** Because of a power imbalance, the requests of historically marginalized community members have often been ignored or overlooked. Calls for "restorative" justice between police and community is not possible because we cannot "restore" what we have never had. There has not historically been a

perfect or even acceptable policing structure that can be identified as a target for achieving once more.

### **17. There is an adversarial relationship between police and the public.**

**Service to institution:** Police culture views the public as separate, and often in conflict with, the police. This promotes an “Us vs. Them” relationship and valuing the institution of police over the rights of the public.

**Lack of bias reduction:** Despite officers receiving training on bias, there is no apparent reduction in disparate treatment and little change in officer behavior. Short mandatory trainings for people who already harbor biases may reinforce their already held bias.

### **Inadequate Resources for Community Oversight**

The system has opportunity for civilian staff and community members to participate in holding police accountable. Volunteer members give their time, resources, and emotional labor without many resources offered in return. The commission heard from members of the Citizen Review Committee detailing the barriers they’ve experienced to participating meaningfully. The system also relies on City Council to make decisions when they are not specialists in this type of work.

### **18. The current system relies heavily on volunteers, and then does not provide them with sufficient support.**

**Board Compensation:** Civilian oversight is provided by community members who serve on a volunteer basis, and do not receive compensation other than limited stipends.

**Time:** Civilian volunteers often have other commitments, but the system is not built around understanding their limited time. As a result, civilian volunteers are asked to handle large case files and large caseloads on short timelines. Additionally, the brief window for submitting comments on PPB policy/directives is also a barrier for advisory committees that meet only every month or two.

**Training:** Civilian volunteers have asked for more training, but training resources are not always available. As a result, civilian volunteers do not receive sufficient ongoing training.

**Mental Health:** Doing civilian oversight, including reviewing alleged police misconduct, is taxing on the emotional and mental health of volunteers. Community members who volunteer as part of Portland's current police accountability system do not receive adequate mental health support. This inadequacy is exacerbated for those who, due to their own lived experience, may be more affected by the work of civilian oversight.

### **19. Community volunteers who participate in the current system often feel their work is ineffectual because it lacks real authority.**

**Final decision-making:** The final decision-making power is vested in entities other than the Citizen Review Committee, which makes members of that committee often feel their input is not heard when their recommendations are not taken. Community volunteers on the Police Review Board, which also only makes recommendations, are outnumbered by police.

**Lack of response and implementation:** Policy recommendations from community entities often do not receive a response from decision-makers in a timely fashion. Even when they are responded to, community input is regularly not taken. Public input and testimony from the Citizen Review Committee indicates that volunteers often feel like their work is meaningless because their recommendations are often ignored by the City and the police.

**Communication to volunteers in current system:** CRC reports that they do not receive updates about cases which have come before them on appeal. CRC reports that they only learn the outcome of a case when IPR publishes an annual report.

### **20. When cases go to City Council, City Council is underequipped to make effective decisions.**

**Expertise:** The City Council does not have the specialized knowledge necessary to make detailed decisions on administrative accountability cases.

"The City Council is not the right place to adjudicate these complex cases. It really is better served through bodies that have the technical knowledge, and the time and the energy, to focus on these cases, because they deserve that focus [...] The City Council does not have the capacity or the technical knowledge to do these cases justice. It's like sending circuit court appeals to the DMV. It's just the wrong place." (Mayor Wheeler, 1:24:10)

The Police Accountability Commission agrees that the following items are best practices in Portland's current system. The Police Accountability Commission will, in future phases of its work, develop a proposal for a system that retains the positive impacts of these best practices.

### Transparency

There are elements of the current system that prioritize transparency. First, the current system holds public meetings. Meetings of the CRC are open to the public and offer time for public comment. Additionally, CRC appeal hearings are done in public and allow for community input. The current system publishes data and regular reports (even if imperfect).

### Accessibility and Equity

The current system prioritizes access and equity through language access as investigators speak and can complete intake in multiple languages. As one of the multiple points of entry, employees of PPB may make complaints outside their chain of command. Finally, the current system has its own outreach coordinator.

### Civilian Staff Involvement

The current system has multiple avenues for frontline staff to be involved in the investigative process. For example, IPR staff can go directly to the scene of officer deadly force incidents. Additionally, civilian staff can complete intake and intake investigations. Staff can do (mostly) independent investigations and have nominal subpoena power for documents and people.

### Qualifications of Investigators

The current system has experienced investigators. IPR and Internal Affairs investigators collaborate, team up, advise, consult, share information, knowledge, and experience about how to conduct investigations. All of these investigators have prior investigative experience, including experience with sex abuse, homicides, criminal, personnel, and administrative investigations.



## Review and Rigor

The current system offers multiple points of review and opportunity for appeals. At any point, investigation can be sent back to investigator for further work. There is an appeals system in place for both employee (CRC appeal process and Loudermill hearing) and for community members (CRC appeal process).

There is rigor in the investigative process in the current system. IA always finishes the investigation, even if the employee accused of misconduct resigns while the investigation is ongoing. Further the separation of the investigation phase and corrective action/discipline phase can remediate potential conflicts of interest in investigation.

## Mediation

The system allows for voluntary mediation as an alternative to investigations for some complaints, and also allows for investigations to continue if mediation fails.

## Outcomes

Beyond discipline or corrective action for the subject officer, the current system has capacity for other outcomes. For example, there are "Supervisory investigations" for low-level complaints which cannot lead to officer discipline. Also, if mediation is chosen rather than investigation, the complaint does not lead to discipline. The current system can make policy recommendations.