

**City of Portland**  
**Police Accountability Commission**  
**DRAFT Areas of Agreement on Access to Information**

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**Definitions**

Garrity warning	An advisement given to a member who is the subject of an internal administrative investigation or review. A Garrity warning appries the member that they are required to answer questions asked by investigators and are subject to discipline, up to and including termination, for failing or refusing to answer the questions.

The Police Accountability Commission is tasked with developing the functions of the new police accountability system in Portland, including the new community police oversight board. As part of ensuring the oversight board and staff shall be able to complete their other duties, the commission was also tasked with ensuring the oversight board and staff have sufficient access to information to complete their duties.

The Police Accountability Commission has developed the following Areas of Agreement on Access to Information. These agreements are not formal recommendations of the Police Accountability Commission, but will be built upon by the commission to create City Code recommendations for Council.

**Commented [PAC 01-191]:** Sub-Committee Co-Chairs:  
Suggest moving to footnote.

**The oversight board shall have the authority to obtain information to administratively respond to allegations of misconduct, and conduct structural oversight effectively.**

City Charter 2-10 requires the oversight board to meet certain obligations it has to the City and the residents of Portland, including receiving complaints of officer misconduct and responding to them as well as structural oversight such as policy and directive recommendations. To effectively fulfil these obligations, the board must have sufficient information to make decisions.

Charter 2-10 already states that the board has:

- “the power to the full extent by law [...] to subpoena and compel documents” (Section 2-1007a)
- “the authority and ability to gather and compel all evidence” (Section 2-1007c)
- “the authority and ability [...] to access all police records to the extent allowed by federal and state law” (Section 2-1007c)
- “the ability to compel statements from witnesses including officers” (Section 2-1007c)
- “the power to compel sworn members of the Portland Police Bureau, and their supervisors to participate in investigations and to completely and truthfully answer all questions. Refusal to truthfully and completely answer

all questions may result in discipline up to and including termination.”  
(Section 2-1007d)

Other parts of the City of Portland government are required by the Charter to refrain from withholding information from the oversight board:

- “The Board shall have authority to exercise independent judgment in performing all legally assigned powers and duties. The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board’s independent judgment.”  
(Section 2-1006)

**Commented [PAC 01-192]:** Sub-Committee Co-Chairs: Suggest moving to footnote.

## A. Compelling Testimony

**A1. The Board shall have the authority and ability to compel all evidence during the course of an investigation. The Board shall have the power to compel sworn members of the Portland Police Bureau and their supervisors to participate in investigations and to completely and truthfully answer all questions. The Board is authorized to direct Bureau members to cooperate with administrative investigations.**

This requirement currently exists under City Code (Code 3.21.210) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-193]:** Sub-Committee Co-Chair Proposal: Move to Footnote.

**Commented [PAC 01-194]:** First part of proposed change (Sub-Committee Co-Chairs)

The first sentence of this agreement is a direct quote from Charter Section 2-1007c. The second sentence of this agreement is a direct quote from Charter Section 2-1007d. The Police Accountability Commission is committed to implementing the voter-approved text of the Charter.

**Commented [PAC 01-195]:** Sub-Committee Co-Chair Proposal: Put this into a footnote as: "both concepts come from the City Charter (Sections 2-1007c and 2-1007d)."

- **Alternatively, if necessary, the Bureau of Human Resources shall act on the Board’s behalf to compel the officer.**

**Commented [PAC 01-196R5]:** Approved 01-19 to move to footnote.

The Charter (Section 2-1006) requires the City government to support the oversight board’s ability to access enough information to exercise independent judgment:

**Commented [PAC 01-197]:** Commissioner proposed change (Katherine)

“The Mayor, City Council, Auditor, and City departments, bureaus and other

administrative agencies shall not interfere in the exercise of the Board’s independent judgment.”

**Commented [PAC 01-198]:** Sub-Committee Co-Chair Proposal: Put in footnote

**A2. A Bureau employee whose testimony is requested or compelled shall attend investigative interviews conducted by the Board, cooperate with and answer questions asked by the investigators, truthfully, during an administrative investigation. Officers who are compelled to testify shall receive a Garrity warning prior to [their/compelled] testimony, and provide a signature confirming they have received the warning.**

**Commented [PAC 01-199R8]:** Approved 01-19 to move to footnote.

**Commented [PAC 01-1910]:** Commissioner proposed change (Katherine)

**Commented [PAC 01-1911]:** Commissioner proposed addition (“whose testimony is compelled”) (Dan)

**Commented [PAC 01-1912]:** Commissioner proposed change (KC)

This requirement currently exists under City Code (Code 3.21.220a) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-1913]:** Sub-Committee Co-Chair Proposal: Put in footnote

- If an employee refuses to attend an investigative interview after being notified to do so, or refuses to answer a question or questions asked during an investigative interview, the Police Chief or appropriate City authority shall direct the employee to attend the interview and answer the question or questions asked.**

**Commented [PAC 01-1914R13]:** Approved 01-19 to move to footnote.

**Commented [PAC15]:** Staff Suggestion: Because this is the same section of City Code and would have the same explanatory sentence, it might make sense to combine this up into the main part of #3.

This requirement currently exists under City Code (Code 3.21.220a) and would only be amended to reflect the change from Police Commissioner to Mayor under the 2022 Charter Reform.

**Commented [PAC 01-1916]:** Sub-Committee Co-Chair Proposal: Put in footnote

**Commented [PAC 01-1917R16]:** Approved 01-19 to move to footnote.

**A3. Refusal to truthfully and completely answer all questions may result in discipline up to and including termination.**

The first sentence of this agreement is a direct quote from Charter Section 2-1007c. The Police Accountability Commission is committed to implementing the voter-approved text of the Charter.

**Commented [PAC18]:** Commissioner Comment: a. Refer to Pirozzi v. City of NY

~~**A4. The Board is authorized to direct Bureau members to cooperate with administrative investigations.**~~

~~This requirement currently exists under City Code (Code 3.21.210) and would only be amended to reflect the change from IPR to the oversight board.~~

**Commented [PAC 01-1919]:** Sub-Committee Co-Chair Proposal: Put in footnote along with Pirozzi v. NY reference.

**Commented [PAC 01-1920R19]:** Approved 01-19 to move to footnote.

**Commented [PAC 01-1921]:** Sub-Committee Co-Chair Proposed removal.

**As a separate source of information for the Board’s administrative investigations, the Board shall have access to Bureau members’ statements from any criminal investigation, as well as relevant police reports.**

**Commented [PAC 01-1922]:** Second part of proposed change (co-chairs)

**A5. Compelled or requested testimony ~~can~~ may be done in an in-person or in a virtual setting when the Board deems it appropriate.**

**Commented [PAC 01-1923]:** Sub-Committee Co-Chairs' Comment:  
This idea came from Commissioners as a means to improve the process and make it more accessible and efficient for all parties involved.

**A6. In addition to investigator interviews, compelled testimony of sworn officers ~~may~~ also be done in a hearing of the Board, in which the community members on the board will have direct access to the officer.**

- **If necessary, the Bureau of Human Resources shall act on the Board's behalf to compel the officer.**
- ~~Proposed add: As with Section A1, alternatively, the Bureau of Human Resources shall act on the Board's behalf to compel the officer.~~

**A7. Prior to being interviewed, a Bureau employee whose testimony is requested or compelled will ~~be~~:**

- Be ~~N~~otified of the time, date, and location of the interview and that this is an administrative investigation.**
- Be ~~i~~nfirmed of the right to bring a collective bargaining unit representative and other support persons as allowed to observe, but not take part in, the interview.**
- Be ~~r~~ead a statement, that the employee is directed to attend the interview, cooperate during the interview and answer all questions fully and truthfully.**
  - ~~and~~, if the employee fails to attend the interview, cooperate during the interview or answer any questions fully and truthfully, the employee will be subject to discipline or discharge.
- Receive a Garrity warning prior to compelled testimony, and provide a signature confirming they have received the warning.**
- Be ~~p~~rovided with any other information or protections required by any applicable collective bargaining agreement.**

These policies currently exist under City Code (Code 3.21.220c) and would be changed to update wording and clarify representatives' role.

**Commented [PAC 01-1924]:** Sub-Committee Co-Chair Proposal: Put in footnote

**A89.** In use of deadly force and death in custody cases, responding administrative investigators shall have the ability to compel testimony once the criminal investigators have completed their interview.

**Commented [PAC 01-1925R24]:** Approved 01-19 to move to footnote.

**Commented [PAC 01-1926]:** Sub-Committee Co-Chair Proposal: add text, and swap order of A8 & A9.

**A98.** The Bureau employee shall comply with a request for compelled testimony within 48 hours.

These policies currently exist under PPB Directive 1010.10 ("Deadly Force and In-Custody Death"):

- PPB Directive 1010.10:
  - "2.2.5.1. The PSD Captain or designee shall ensure that the involved member(s) provides a compelled statement as soon as practicable, but no later than within 48 hours of the event, unless the member is physically incapacitated and unable to provide a statement.
  - 2.2.5.2.1. If an involved member provides a voluntary statement to the Homicide Detective within 48 hours of the event, the PSD Captain shall determine when any further administrative interviews will be scheduled.
  - 2.2.5.3.1. The PSD Captain or designee shall schedule an interview with the involved member as soon as practicable, but no later than within 48 hours of the event, unless the member is physically incapacitated and unable to provide a statement."

**Commented [PAC 01-1927]:** Sub-Committee Co-Chair Proposal: Put in footnote

This agreement is to expand the scope of these requirements within City Code to all oversight board requests for compelled testimony.

**Commented [PAC 01-1928R27]:** Approved 01-19 to put in footnote.

**Commented [PAC 01-1929]:** Sub-Committee Co-Chair Proposal: Put in footnote

## B. Subpoena Power

**Commented [PAC 01-1930R29]:** Approved 01-19 to put in footnote.

**B1. The oversight board shall have the authority to issue subpoenas for the purpose of compelling *witness* testimony to fully and thoroughly investigate a complaint or conduct a review.**

This requirement currently exists under City Code (Code 3.21.210) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-1931]:** Sub-Committee Co-Chair Proposal: Put in footnote

**B2. The board shall have the authority to issue subpoena for the testimony and the production of records, including and not limited to *video recordings*, audio, reports and *all* evidence pertinent to an investigation.**

(Currently practiced in San Francisco: San Francisco Administrative Code Section 96.6).

**Commented [PAC 01-1932R31]:** Commissioner comment (Dan, 12-29): Add reference to 2-1007a for this.

**Commented [PAC 01-1933R31]:** Approved 01-19 to move to footnote.

**B3. The oversight board, with the assistance of legal counsel, shall have the authority to subpoena witnesses, administer oaths and require the production of evidence. Through legal counsel, the board shall apply to Multnomah County Courthouse (or to the appropriate court) for the enforcement of a subpoena or to impose the penalties for failure to obey a subpoena or order.**

(Currently practiced in Cambridge, MA Cambridge Municipal Code 2.74.070)

**Commented [PAC 01-1934]:** Sub-Committee Co-Chair Proposal: Put in footnote

**Commented [PAC 12-2935]:** Commissioner comment (Dan):  
The idea is not to incarcerate people, but to get their testimony. It may be helpful to define how the Board will obtain testimony from witnesses without putting them in legal jeopardy.

**B4. In general, initial efforts to compel officer testimony shall be made through the administrative process. At its discretion, the oversight board can subpoena a sworn Bureau member.**

**Commented [PAC 01-1936]:** Sub-Committee Co-Chair Proposal: Put in footnote, add "MA".

**Commented [PAC 01-1937]:** Sub-Committee Co-Chair Proposed addition:

**B5. The oversight board shall maintain the confidentiality of any confidential records. To remain as transparent as possible, records available in the public sphere shall be openly accessible. All members of the oversight board shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure.**

The PAC agrees that the oversight board should maintain confidentiality where required to do so, and support transparency where allowable. The third sentence currently exists under City Code (Code 3.21.070j) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-1938]:** Sub-Committee Co-Chair Proposal: Put in footnote, not sure first sentence is needed.

**B6. Any person who fails to comply with a subpoena may be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.**

**Commented [PAC 12-2939]:** Co-chair comment (Obi): Referenced above – we should look at this and discuss it, because the intent is not to criminalize or penalize community members for their own testimony or lack of testimony.

The Board may take into consideration the repercussions of a contempt finding after a person refuses to cooperate.

This requirement currently exists under City Code (Code 3.21.210).

**Commented [PAC 01-1940]:** Sub-Committee Co-Chair Proposal: Put in footnote

## C. Access to Police Records

**C1. The oversight board should have direct access to all bureau information and records, including confidential and legally privileged information.**

Currently, IPR has a protected right, under City Code, to access police records. The oversight board should expand that right to make it clear that it is a right to direct access.

This would include the amendment of City Code 3.21.070J in a manner similar to:

“Notwithstanding any other provision of City law, the Board shall have **direct** access to and be authorized to examine and copy, without payment of a fee, any bureau information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, and police databases, subject to any applicable state or federal laws.”

**Commented [PAC 01-1941]:** Sub-Committee Co-Chair Note: **Not** a footnote, this includes a substantive proposal.

**C2. In performing their duties, the Board shall have access to Bureau data and records, including but not limited to, raw data, tabulated summary statistics, other source materials, and any other format source necessary for the board to perform its duties. The oversight board shall also have direct access to original database sources as permitted by state and federal law.**



This requirement currently exists under City Code (Code 3.21.070b) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-1942]:** Sub-Committee Co-Chair  
Proposal: Put in footnote

**C3.** For the improvement of both the efficiency of the oversight board as well as the police bureau, direct access should be available to the Board and its staff in situations where the Bureau is the custodian of record. This includes, but is not limited to:

- a. Police Reports
- b. Digital Information Management System (DIMS)
- c. Versaterm Computer-Aided Dispatch (VCAD), or other, future CAD systems
- d. After Action Reports
- e. Training Records
- f. Global Positioning System (GPS) data
- g. Discipline and complaint history of individual officers

**C4.** To the extent of state and federal law, the oversight board should have direct access to all relevant database networks to which the Bureau subscribes. This includes, but is not limited to:

- a. Regional Justice Information System (RegJIN)
- b. Criminal Justice Information Systems (CJIS)

**C5.** Bureau responses to public records requests shall prioritize the oversight board's requests above all other similar requests, and should respond within five (5) business days with either records or a notice of why records have not been sent over.

**Commented [PAC 01-1943]:** Sub-Committee Co-Chair  
Proposed removal.

**C6.**

- In the event that requests for records or other evidence are not complied with, the oversight board may issue a subpoena.

City Charter Section 2-10 already protects the ability of the Board to issue subpoenas: “The Board shall have the power to the full extent allowed by law to receive and investigate complaints including the power to subpoena and compel documents”. [2-1007a](#).

**Commented [PAC 01-1944]:** Sub-Committee Co-Chair Proposal: Put in footnote

**C6. For records accessed within the Portland Police Bureau system, the oversight board should not be required to submit a fee.**

This requirement currently exists under City Code (Code 3.21.070b) and would only be amended to reflect the change from IPR to the oversight board.

**Commented [PAC 01-1945]:** Sub-Committee Co-Chair Proposal: Put in footnote

**C7. The City shall ensure a discrete source of adequate funding, in addition to that required for oversight board operations, to fully pay for any fees the oversight board incurs when accessing information from a non-PPB source.**

The PAC agrees that the principle that the oversight board should not have to submit a fee or use any of its budget to access police records is broader than only records accessed within the Portland Police Bureau system, and that the City should support the board’s independent judgment by ensuring that any fees required by non-PPB sources of information are paid out of funds separate from those required for oversight board operations.

**Commented [PAC 01-1946]:** Commissioner Proposed Removal (Dan):

**C8. The oversight board shall establish a standard by which the PPB reports to the board, including required aggregated information (e.g. use of force cases) and frequency (e.g. monthly, quarterly, annually).**

**Commented [PAC47]:** Commissioner comment (Monica): Like Berkeley, Philadelphia also has the same provisions. The Board requires the police bureau to present reports on all cases that had to go to investigation, what the findings in those investigations are, and the discipline imposed on officers if there was any. They are also mandated to make these reports public. Philadelphia also publishes on their website an interactive map that has all of the police bureaus and the different types of calls that police responded to in each bureau.

**D. Data**

**D1. If the board requests medical information of any individual in an investigation, the requested information should be limited to the scope of the complaint. All requests should comply with federal HIPAA laws, as well as state laws.**

**Commented [PAC 01-1248]:** “Berkeley has a similar policy in their city charter (Article XVIII, Section 125, 24) / also seen in another city”

**Commented [PAC 01-1949R48]:** Sub-Committee Co-Chair Proposal: Put in footnote

**Commented [PAC 01-1950]:** Sub-Committee Co-Chair Note: Commissioners added this provision for clarity.

■

**D2. The board shall be provided with means of safely securing both physical and electronic information during its consideration of complaints. Electronic access to sensitive materials should have a security or encryption that abides by city, state, and federal standards. The members of the board will abide by the applicable retention schedule set for sensitive information acquired throughout the course of an investigation, as well as after an investigation has been completed.**

**Commented [PAC 01-1951]:** Sub-Committee Co-Chair  
Note: Commissioners added this provision for clarity.

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**D3. Information given to the board: The board will become the custodian of information given directly to the oversight board by external sources (e.g. volunteered testimony, electronic information), and will set their own retention schedules for safe disposal of the information.**

**Commented [PAC 01-1952]:** Sub-Committee Co-Chair  
Note: Commissioners added this provision for clarity.

**D4. Other information: Information that the board acquires from external media sources (uploaded videos, images, social media) that has not discretely been given by the owner will be treated as public records with the understanding that the board does not own or have the ability to grant further publication rights to media not generated by the city or obtained through the above-mentioned process.**

**Commented [PAC 01-1953]:** Sub-Committee Co-Chair  
Note: Commissioners added this provision for clarity.

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## **E. Body Camera Footage**

The Police Accountability Commission is aware that the City has not currently implemented police body cameras, but anticipates that the City will have fully implemented or be close to fully implementing police body cameras by the time the oversight board begins its work.

**E1. The oversight board shall have automatic access to all body camera video footage, without having to request it separately.**

**E2. The oversight board shall have immediate access to all body camera footage.**

The Charter (Section 2-1006) requires the City government to support the oversight board's ability to access enough information to exercise independent judgment:

"The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board's independent judgment."

**Commented [PAC 01-1954]:** Sub-Committee Co-Chair  
Proposal: Put in footnote

**E3. All recorded footage of every event that comes to the oversight board for review shall be available in full without any editing or tampering.**

The Police Accountability Commission, having evaluated body camera structures and proposals, agrees that the following items are necessary to ensure the community police oversight board's success. The Police Accountability Commission's mandate from City Council does not include addressing these items. Nonetheless, these proposals support the oversight board's ability to fulfil its mandate.

**1. The oversight board should be the owners of the body camera footage, and ensure that the Bureau has access to view footage.**

This will limit misuse, and presumably focus the body camera program on its main intent: police accountability. There should not be a presumed use for prosecuting community members or conducting surveillance.

- **If the oversight board is unable to be the owner of the body camera footage, at a minimum the board should be co-owners with the bureau, and digital access to the body camera footage will always be turned on for the board and its staff.**
2. **The retention schedule should be at least as long as the timeline to make and resolve a complaint, and resolve any civil action.**

The new body camera system for the City of Portland should ensure that if a possible complainant has a certain amount of time to file and resolve a complaint (including any appeals or civil actions), that relevant body camera footage is maintained by the City for at least the same length of time, in instances that could reasonably be interpreted to include potential misconduct. This ensures that investigations always have access to relevant body camera footage.

3. **The police officers involved in the incident should write their report have given a full and thorough statement about the incident or the event before viewing the video footage.**

The PAC agrees that having multiple independent sources of information for consideration during evaluation of misconduct complaints will help the oversight board more effectively investigate and make findings on those complaints. This would ensure the report is the most accurate representation of the officers' memory of the events being recorded.