

Lessons Learned:

City's response to protests exposed vulnerabilities in Portland's police accountability system

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PORTLAND
CITY AUDITOR

Independent
Police Review



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Portland’s police accountability system

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Thousands of Portlanders took to the streets in 2020 to protest racial injustice. Protesters and law enforcement officers from various agencies interacted night after night in downtown Portland and other locations. Police officers used force at unprecedented levels. Community members filed hundreds of complaints with Independent Police Review, and it initiated additional investigations. This report looks back at 2020 and what the protests taught us about the City of Portland's police accountability system. We make recommendations to the Police Chief for operational and policy improvements to strengthen the accountability system.

Police killing in Minneapolis ignited reckoning in Portland

The May 2020 killing of George Floyd by a police officer on a Minneapolis street set the Portland protests in motion. For more than 100 consecutive nights, people gathered and marched in different locations to object to law enforcement policies and tactics that disproportionately harmed Black Portlanders. Many nights ended with clashes between protestors and officers as warnings to disperse and tear gas wafted through the air, people were arrested, and injured community members were whisked away for medical care by other protestors. Officers also were injured during chaotic exchanges with the crowds.

More than 160 police misconduct investigations have been initiated of Portland Police Bureau officers based on incidents that occurred between May and November 2020. Many are still working their way through the discipline system, and Independent Police Review continues to open investigations as information becomes available from community members, tort claim notices, or other sources.

Looking back, we identified areas that hindered the City's ability to hold officers accountable, including:

- The breadth and frequency of force used by Portland officers was unprecedented;
- Dynamic conditions and inadequate documentation of force incidents limited accountability;
- Investigators' lack of direct access to Bureau records slowed misconduct investigations; and,
- Enforcement policies to manage crowds were perceived as misconduct by community members.

Unprecedented levels of physical force used during protests

Officers documented more than 6,000 uses of force during the protests. Night after night, the Bureau and other law enforcement agencies cited crowd behavior as the rationale for using force but struggled to build prosecutable cases of criminal conduct by individuals. If people in the crowd threw rocks or other harmful projectiles at officers, commanders declared the protest to be an unlawful assembly or riot and ordered the crowd to disperse. Officers lined up, side-by-side, and began walking toward or running at and pushing the protestors away from the gatherings. Many non-violent protestors and bystanders got caught in the sweeping motion, and some were arrested. The tactic was sometimes paired with the use of chemical irritants and less-lethal munitions to force people out of an area.

Bureau directives require officers to de-escalate tense situations and use physical force only when needed. During the protests, officers seemed to interpret unlawful assembly and dispersal orders amplified by a sound truck as de-escalation, and subsequent force used against anyone who did not appear to obey them as justified. Hundreds of hours of video footage showed repeated incidents of officers resorting to physical control methods with both passive protestors and aggressive resisters.

It was not unusual for tension between officers and protesters to escalate after dispersal orders were announced. Attempts to disperse the crowd often led to increased resistance by protestors followed by increased uses of force by officers. This dynamic over time eroded protestors' confidence that City leaders respected their Constitutional right to free speech and assembly. It also further hardened the protestors' relationship with the police.

Some protestors turned to the courts to object to the police response. Judges issued restraining orders against the City and the Bureau to stop the use of CS gas and impact munitions, which are less lethal but can cause serious harm. The courts also ordered the Bureau to respect the role of journalists during protests and required additional training for officers.

The backlash against the Bureau's use of CS gas was profound. Numerous community members and protestors condemned its indiscriminate effects on anyone in proximity to a protest, including unhoused Portlanders, residential and commercial neighbors, drivers, transit riders, bicyclists, and pedestrians. Elected representatives on behalf of their North Portland constituents registered objections to the use of CS gas to City Commissioners and the media.

When the Mayor in response banned its use, Bureau leaders and the Portland Police Association said they were being deprived of a "valuable tool" for crowd control and to expect higher uses of force to disperse crowds. A Police Bureau statement said banning CS gas would make it difficult for officers to make arrests for criminal acts during demonstrations "without resorting to much higher levels of physical force," and increased risk to officers' safety.

Oregon legislators were unmoved. They proposed and passed bills in the 2021 session to limit the use of chemical irritants and impact munitions to manage crowds.

CS gas deployed at five locations



**Dynamic conditions,
inadequate
documentation
undercut
accountability**

Investigations into police misconduct complaints are built on evidence to determine if officers acted within directives established by the Bureau. Evidence may include statements from complainants and witnesses, officers' written reports, recorded emergency radio communication and other data, and videos submitted by participants or posted to social media. The quality of the evidence and timeliness in collecting it matters to the outcome of investigations. Both quality and timeliness suffered during the months of protests.

The anonymity that crowds afford individuals added to the difficulty of developing evidence to determine if and what type of police misconduct occurred. The most violent and chaotic incidents between law enforcement and community members took place at night while gas, smoke, fireworks, projectiles, and laser-pointer beams filled the air. Officers from multiple agencies wore similar riot gear and were difficult to distinguish from each other. Rather than nametags, they often wore numbers after their supervisors allowed them to shield their identities from the public. Community members were often masked – because of Covid-19 or to shield their own identities -- and dressed similarly in dark clothing, helmets, and makeshift gas masks.

Independent Police Review opened dozens of cases on its own initiative based on incidents captured on videos posted on social media. When an investigation starts with a video instead of information provided by a complainant, the first step for investigators is to identify both the officer and the community member. In many cases, neither party could be identified. Independent Police Review erred on the side of opening investigations even without a complainant, but those cases often stalled for lack of enough information to determine who was involved in the interactions or understand the context.

The volume of complaints and incidents involving physical force during the protests quickly overwhelmed the intake and investigative system in Independent Police Review and the Bureau's Internal Affairs. It also choked the review process that is triggered when officers use force, which required by the City's settlement agreement with the Justice Department. That agreement was intended to interrupt the Police Bureau's history of using excessive force against people experiencing mental health crises.

Written force reports from the protests regularly made it through the review process with scant details or identical text for different interactions. Officers who provided limited information or skipped the reports altogether were more likely to skirt accountability, because their documentation was less likely to trigger an investigation.

Poor documentation of force incidents impeded the investigators' ability to reconstruct officers' interactions with protesters and discredited the Bureau's stated commitment to accountability. The type and frequency of force incidents and officers' inadequate documentation of them also drew rebukes from the Justice Department and the settlement agreement's Compliance Officer. In February 2021, the Justice Department announced that it considered the City out of compliance with the agreement in a number of areas, citing its failure to critically assess uses of force and conduct timely investigations.

Lack of direct access to Bureau evidence slowed investigations

Police reports and other digital evidence stored in the Bureau's computer servers are routinely sought by investigators as they develop their cases. Unlike their counterparts in Internal Affairs, Independent Police Review investigators cannot access that information directly or assure themselves that they've gathered all available documentation.

The barriers to direct access for investigators outside of the Bureau existed before the protests. They included state law and federal requirements intended to protect sensitive law enforcement data. The combination of an unprecedented number of complaints and investigations stemming from the protests and the access delays contributed to Independent Police Review missing the investigative timeliness standards required by the settlement agreement.

Independent Police Review investigators request information they need from the Bureau and then wait for it to be provided. The volume of records produced during the protests caused the records system to become backlogged and delayed delivery. That was especially true for reports related to force incidents, which are subject to levels of review within the Bureau before they become available. Investigators had to make multiple records requests over time to get all records of a given night. The iterative nature of the investigators' requests took time until they were confident they had all the records they needed.

The Auditor's Office proposed and successfully advocated for Senate Bill 204 in the 2021 legislative session, which added civilian police oversight agencies to the list of entities that can directly access law enforcement data. This problem will be resolved once the Oregon State Police complete procedures to enable access by Auditor's Office employees.

Community members perceived approved tactics as misconduct

The landscape of acceptable policing changed rapidly in the wake of George Floyd's murder. The national reckoning that followed caught law enforcement agencies and local governments off-guard and ill-prepared, and Portland was no different. The ferocity and commitment of protesters and the Bureau's response to them showed that its approach to enforcement must evolve with community expectations if it is to regain the public's trust.

Officers have wide latitude in how they enforce the law and work within Bureau directives that guide their conduct. Community members may object to an officer's conduct, but it will only be found to be misconduct if a preponderance of the evidence shows the officer violated a directive. Complaints about police actions during the protests often described behavior permissible under the Bureau's directives, illustrating a disconnect between community members' expectations and crowd-control tactics acceptable as Bureau policy.

For example, Oregon statutes and Bureau directives allow incident commanders to decide when to declare a protest an unlawful assembly or a riot even when organizers objected to that characterization of their event. Directives also allowed individual officers to use a variety of methods, tools, and tactics, including physical force, to control the movements of those gathered. Officers are trained to push people with a baton to get them to leave an area, so long as the level of contact is reasonable for the circumstances. Some community members who objected to the tactic were disappointed to learn that often it was not misconduct.

Most directives were not written with large protests in mind. The events of 2020 exposed a gap between how people expect to be policed during street protests and how they were policed.

Legislation and judicial decisions that were a direct response to the force used in the 2020 protests have altered the tactics and tools the Bureau can use to engage with protesters. The City and the Justice Department agreed on several remedies for the City regain compliance with the settlement agreement that also could have a profound effect on accountability, including the adoption of body-worn cameras and putting a professional civilian educator in charge of training.

Recommendations

To improve policies and operations and ensure accountability related to protest events, the Police Chief should:

1. Include and prioritize accountability in policy setting, related procedures, and training, especially those to be developed for body-worn cameras.
2. Review and amend directives to be relevant criteria for determining policy violations stemming from large dynamic events; especially Directive 1010: Use of Force and 635.10: Crowd Management/Crowd Control
3. Ensure officers understand and use de-escalation techniques as required by directives, including the role of dispersal orders and whether protestors are passively or aggressively resisting them.
4. Adapt record-keeping procedures and review processes for force incidents to ensure investigators can recreate events and officers' omissions or superficial information do not undermine accountability.
5. Expedite direct access to Bureau records and other law enforcement data once the Oregon State Police complete procedures to implement Senate Bill 204 for civilian oversight agencies.
6. Reassess and adapt crowd management techniques in light of community members' perception of them as misconduct and court orders and legislation restraining them.

View the Police Bureau's response to our report

View the response to the report from Portland Police Chief Chuck Lovell at the end of this report.



CITY OF PORTLAND, OREGON



Bureau of Police

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Charles Lovell, Chief of Police

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April 7, 2022

Mary Hull Caballero
City Auditor
1221 SW 4th Avenue, Room 140
Portland, OR 97204

Dear Auditor Hull Caballero,

The Portland Police Bureau thanks you for the work done by the Independent Police Review in their policy review regarding the City's response to the 2020 civil unrest. As a city, it is critical that we review our actions during such unforeseen circumstances with an eye towards improving outcomes in the future. To this end, as you are probably aware, we are working on a contract with Independent Monitor LLC to do a critical assessment of the Police Bureau's 2020 crowd management response. This assessment will include an extensive review of reports, feedback from city employees and members of the community, and analysis of available video. We anticipate that the findings of this critical assessment will also contain recommendations to policy and training.

There have been several reviews of the events of 2020 which include this IPR policy review, an internal after action, and a review authored by the Citizen Review Committee. We are going to be forwarding all of these documents to Independent Monitor, and this broad spectrum of analyses will help inform Independent Monitor's comprehensive assessment. We agree in principle with the recommendations provided in the IPR policy review; however, as we don't currently have a full time crowd control team we are going to defer to the results of upcoming critical assessment before we commit to any specific actions. This will ensure we use our valuable training resources most efficiently by minimizing the number of times we make changes to our policies.

Thank you again for this opportunity to assess our actions during 2020. We are looking forward to implementing changes which will enhance community safety, protect the expression of free speech, and ensure officer accountability.

Sincerely,

CHARLES LOVELL III
Chief of Police

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View this report online: www.portland.gov/ipr/2020-protest-report

Independent Police Review

The City Auditor's Independent Police Review provides impartial oversight of police conduct, practices, and policies to increase accountability and public trust.

Independent Police Review | 1221 SW 4th Avenue, Room 140, Portland, OR 97204