

Annual Report of the Board of Police Commissioners to  
the Burlington City Council

July 27, 2021

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# Annual Report of the Board of Police Commissioners to the Burlington City Council

## I. Burlington Police Commission Duties and Authority

The events of 2020, following the murder of George Floyd and protests in Burlington, have exposed the public to the limitations of the Police Commission's powers and authority.<sup>1</sup> In FY21, several steps have been taken to ensure to the extent possible the Commission's independence in decision-making to support its ability to effectively serve as the community oversight body of the BPD.

Community efforts to create a separate independent complaint and misconduct review board also continue, with a petition drive underway to hold a special election in November for the community to vote on the charter change proposal whereby the City would establish such a body. Regardless of the outcome of that petition and vote, it has become clear over the last year that Burlington residents desire: a) increased community oversight of policing and b) greater transparency in policing, and c) a change in the approach to policing as relates to mental health, race, and disability.

The Commission has responded to those community demands in a variety of ways over the past year, adopting several new policies that provide a framework for oversight, reviewing data, and making requests of BPD to consider policy changes in policing practices.

The authority for the latter stems from Department Directive 01 (p. 5) which states that the Commission reviews and approves of all department directives, and "is the sole and final authority relating to the approval, revision, issuance, or purging of any departmental rule,

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<sup>1</sup> The City Charter (S.84 of the Vermont Statutes) states: "The board of police commissioners shall have such authority and responsibility related to the management of the police department, its services and facilities, as may be delegated from time to time by resolution of the city council." Further, the Commission's mission statement is to ensure "the Burlington Police Department ("BPD") polices with the citizens of Burlington to achieve a safe, healthy, and self-reliant community" (*Burlington Police Commission Annual Report 2018-19*).

regulation, or directive governing employees of the Burlington Police Department.”

## II. Police Commission Activities in FY21

### A. Policies

The Commission developed several policies this year, one of which has been approved and finalized, while two others are in progress. (See appendix for the complete language of the policies).

- *Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees*, adopted August 25, 2020, under review
- *Police Misconduct and Misconduct Investigations Information Release Policy*.
- *Body-worn Camera Footage Release Policy*, in progress.

In addition, the Commission voted to approve a revision to the Grooming Standards Uniforms, Equipment, Inspections & Use of Tobacco Policy (DD 02.02) to permit officers to wear beards.

### B. Recommendations/Requests

The Commission made several recommendations to the BPD this year, as well as a request to the Innovations Office with regard to annual reports of traffic stop, pedestrian stop, arrest, and use of force data. These are detailed below:

- *The Commission voted to approve an increase in the cap on the number of officers from 74 to 82, in light of the long lead time to train and hire new officers, and submitted this recommendation to the mayor and City Council.*
- *In light of the significant racial disparities in use of force,<sup>2</sup> the Commission voted unanimously in December 2020 to request that the Burlington Police Department develop a*

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<sup>2</sup> 2019 Use of Force Report,

<https://www.burlingtonvt.gov/sites/default/files/u585/Reports/BPD%20Use%20of%20Force%20Report.pdf>

*strategic plan on how the Department would address and reduce racial disparities in use of force.*

To underscore the severity of racial disparities, about 7% of residents of Burlington are black. In 2016, however, black persons were 17% of those the BPD used force on. By 2021, that figure rose to 31%. This implies that blacks are 4.5 times more likely to have forced used on them by BPD than would be expected, given their population share.

The BPD was requested to present its strategic plan to the Commission in February 2021. The BPD presented its plan, which, however, fell well short of the Commission's expectations in terms of an analysis of the underlying causes for racial disparities. The Commission further believes the report lacked sufficient detail with regard to how the BPD would act to reduce disparities. The BPD has indicated that it believes there is no bias in use of force incidents. The Commission in contrast notes that the disparities are extremely wide and that, coupled with disparities in traffic policing and arrests, the evidence is indicative of the need for greater efforts at BPD to address unjustified disparities and to continue implicit bias training.<sup>3</sup>

- *The Commission requested that the BPD focus traffic policing on driving behavior that undermines public safety and not use traffic policing for pretextual stops.* There was no response from the chief on this recommendation. It is noteworthy that policing researchers have linked pretextual stops to racial disparities in traffic policing.<sup>4</sup> That is because pretextual stops are often based on suspicion of criminal behavior, with research showing that such suspicion is heightened when the driver is black. The Oregon Supreme Court recently banned pretextual stops.
- In response to the 2020 first annual (combined) report on traffic stops, arrests, and use of force<sup>5</sup> presented at the May 2021 meeting, *the Commission requested that BPD*

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<sup>3</sup> For data on disparities in traffic stops and arrests for 2020, see:

<https://www.burlingtonvt.gov/sites/default/files/u585/Reports/Burlington%20Police%20Department%20Annual%20Report%202020.pdf>

<sup>4</sup> See, for example, Epp, Maynard-Moody, and Haider-Markel (2014), *Pulled Over: Pulled Over: How Police Stops Define Race and Citizenship*. University of Chicago Press. Since the time that book was published, several states have moved to ban pretextual stops.

<sup>5</sup> The full report can be found at:

<https://www.burlingtonvt.gov/sites/default/files/u585/Reports/Burlington%20Police%20Department%20Annual%20Report%202020.pdf>

*evaluate and consider revising policies on issuing citations for driving with civilly suspended licenses, as well as the department policy that requires guns be drawn in serving all warrants.* These requests were made as a result of racial disparities in citation rates and use of force.<sup>6</sup> The Commission notes that in other law enforcement agencies in Vermont, officers have discretion based on the circumstances. The BPD has not indicated it would consider these requests.

- *The Commission approved a timeline for annual and monthly data reports to the Commission on traffic and pedestrian stops, arrests, and use of force.* The City's Innovation Office will produce a single annual report in April of each year, with the first report received. Starting in 2021 also, the BPD will begin to collect and record pedestrian stop data (officer-initiated stops) in a format similar to traffic stop data. Monthly use of force reports to the Commission were also requested.

### C. Reports

In line with its oversight role, the Commission will issue periodic reports. In FY21, the Commission issued two reports:

- In response to a request from the mayor, the Commission issued a report on impediments to stronger disciplinary measures in police encounters. That report can be found here: [BPC Report to City Council](#)
- In response to the Innovation Office's annual 2020 report on Burlington policing, the Commission issued a report summarizing the 2020 annual report on traffic stops, arrests, and use of force and the Commission's response to that report. That report can be found here: [Burlington Police Commission Summary of and Comments on 2020 Annual Report.](#)

### D. Training

As part of its work to serve as an independent oversight body, the Commission engaged the services of the National Association for Civilian Oversight of Law Enforcement for training in civilian oversight. These trainings took place over 4 sessions in May-June 2021, and

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<sup>6</sup> See footnote 5 for the reference to the data report on racial disparities in citation rates and use of force.

recordings of these training are posted on the BPD website for any person wishing to view them. See <https://www.burlingtonvt.gov/police/Commission/NACOLE>

## E. Operational Changes

The NACOLE training yielded a variety of ideas and recommendations for operational changes that improve the independent oversight capacity of the Commission:

- The Commission has sought independent legal counsel to support its work independently reviewing complaints and discipline cases. The Commission has engaged the *pro bono* services of a lawyer on a temporary basis, and will work with the City to fund paid legal counsel as well as a staff person for the Commission.
- The Commission has determined that holding its meetings in venues outside the BPD would improve community access and understanding of the Commission's independent oversight. We are working to identify locations for our future meetings.

## F. Joint Committee

In July of 2020, the City Council passed a resolution creating the Joint Committee, comprised of the City Council's Public Safety Committee members as well as all Police Commissioners. The Joint Committee was tasked with investigating how to build a safe community and identifying the institutions needed to do so. As part of its work, the Joint Committee was asked to take responsibility for developing Requests for Proposals (RFPs) for two projects: 1) to assess the community's vision for public safety and 2) to provide a full operational and function assessment of the Burlington Police Department along with alternatives for providing for public safety.

The two RFPs were issued, and two firms were approved to fulfill the scopes of work. Talitha has completed its report on the community's vision for public safety while CNA is continuing its operational assessment of BPD. CNA's report is due in September 2021.

### III. Summary of FY21 Complaints

The Police Commission's authority with regard to reviewing BPD investigations into complaints and the disposition of those complaints has evolved since July 2020. In October, the Commission adopted a new policy (discussed above with full text in the appendix), giving the Commission access to materials related to complaints, including body-worn camera videos, officer reports, and other investigative materials. A recurring challenge in the Commission's review of complaints concerns limited access to those materials. The Commission plans in the near future to develop an MOU with the BPD on the information that will be shared.

The Commission's role is to review and provide feedback on the BPD's investigations into complaints to ensure they are competently and fairly carried out. The Commission may also evaluate the circumstances of the complaint, and may make a recommendation to the chief as to the disposition of the complaint. This is a new function of the Commission. In FY22, the Commission's annual report will include additional information on complaints, including the Commission's recommendations with regard to the disposition of complaints. Those recommendations may also include recommendations on policy changes.

Figure 1 summarizes the number and types of complaints submitted to BPD in FY21. Table 1 provides the same information as well as the disposition of complaints. In total, there were 38 complaints in FY21, with 29 complaints pertinent to the role of police officers. Some complaints, for example, were related to parking issues or were complaints against non-police individuals. Also, in some cases, we report Administrative Reviews (ARs) and Bureau of Internal Affairs (BIA) investigations which may or may not originate from a citizen complaint.



Figure 1. FY21 Complaints by Type

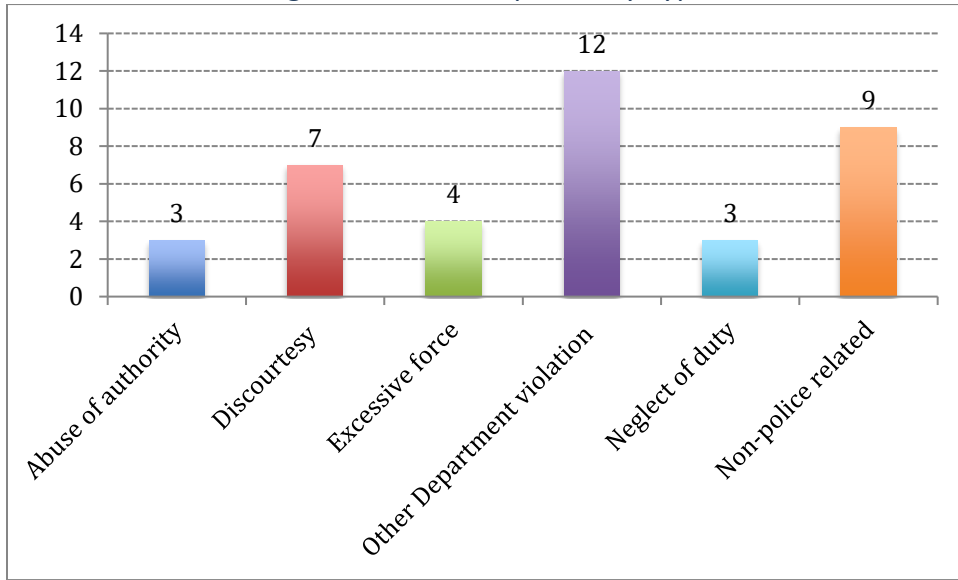


Table 1. Summary of FY21 Citizen Complaints

Summary by type	Number of complaints	Share of total complaints	Disposition of complaints			
			Unfounded	Exonerated	Sustained	Pending
Abuse of authority – racial profiling or other biased policing, unauthorized	3	7.9%	1	2		
Discourtesy – rude or unprofessional manner, rude or offensive gestures, or general profanity	7	18.4%	1	5	1	
Force – whether extent and/or use of force was justified	4	10.5%		3		1
Other Department violation – other violation that is breach of Department Directives not fitting into above categories	12	31.6%	1	7	4	
Neglect of duty	3	7.9%		2		1
Non-police related complaints	9	23.7%				
<b>Total</b>	<b>38</b>	<b>100.0%</b>	<b>3</b>	<b>19</b>	<b>5</b>	<b>2</b>

The response to complaints may fall into any of several categories:

- Unfounded - The investigation indicates that the act or acts complained of did not occur or failed to involve police personnel.
- Exonerated - The acts reported did occur, but were justified, lawful, and proper.
- Non-sustained - The investigation fails to disclose sufficient evidence to prove clearly or disprove the allegations made in the complaint.
- Sustained- The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.

- Non-involved - The investigation established that the individual named in the complaint is not involved in the alleged incident.

Of the 38 complaints, 24% were non-officer related. Of the remainder, 14% were related to excessive use of force and 24% were related to discourtesy. In approximately 65% of all non-police involved complaints, officers were exonerated. In the 3 complaints alleging excessive use of force that have been closed out, officers in each case were exonerated.

#### **IV. Commendations and Awards**

From July 1, 2020 through June 30, 2021, officers of the Burlington Police Department received approximately 31 commendations. Many of these commendations were for more than one officer or staff member.

The commendations ranged from community members expressing gratitude for understanding, respectful, and professional demeanors, the use of de-escalating techniques, care given during challenging mental health calls, for help during numerous medical episodes, for the return of stolen property, compassion and support given when helping with domestic violence situations.

Below are two examples of commendations received in FY21.

1. Officer \*\*\* assisted with a trespass order and was extremely calm, professional, and helpful in the face of a person screaming at her, acting irrationally, and throwing out bizarre insults that were directed at the officer. (12/20).
2. Several people involved in physical and verbal altercation out on the street. Burlington police officers response was verbally firm and effective. They arrived quickly and resolved the incident in a professional manner. We are thankful for having this obviously trained and cool headed police team response to a tense situation in our usually quiet neighborhood. (8/20)
3. I was working in my study this morning, and I looked outside when I heard three young kids walk by our house with their mother. They were climbing the frozen piles of snow and laughing. I then noticed a police car pull over with lights on in front of our house, and Officer \*\*\* got out of his car to offer BPD stickers to the kids. The kids were super excited, and there was such simple kindness and friendliness in the encounter. It was an excellent example of community policing! (3/21)

## APPENDIX

Policies proposed and adopted in FY201:

### I. **Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees (adopted August 25, 2020).**

**Purpose:** The purpose of this policy is to support principles of fair and impartial policing within the City of Burlington Police Department by adopting a procedure that defines the role of the Burlington Police Commission in reviewing complaints against agency members.

**Policy:**

1. When a complaint is received by the Burlington Police Department about the conduct of an employee of the Burlington Police Department, the Chief of Police shall cause that complaint to be investigated as soon as practical by an individual or individuals with no interest in or attachment to the issue or officer(s) being investigated. When a complaint is received by members of the Burlington Police Commission, the member of the Burlington Police Commission should encourage the person making the complaint to submit it via the Burlington City website or should personally take the complaint, attempting to capture all the information otherwise contained in the Citizen's Complaint Form. [See Appendix A]
  - a. All complaints, whether generated externally or internally, are referred to as Citizen's Complaints.
  - b. All Citizen's Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
  - c. Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Citizen's Complaints.
  - d. Some mid-level complaints may be escalated to an Administrative Review (AR). An AR is designed to determine if a complaint needs to be elevated to a Bureau of Internal Affairs investigation or if it is able to be handled without a robust personnel investigation.
  - e. Higher-level complaints will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation.
  - f. Lower-level, mid-level, and higher-level complaints will be categorized consistent with the Burlington Police Officers' Association Contract, Article XV, section 15.2. [See Appendix B]
2. The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint. That written record will at a minimum include:
  - a. The name(s) of the employee(s) involved.
  - b. The date of receipt of the allegation.
  - c. The date of the alleged incident, if known.
  - d. The type or nature of the allegation.

- e. The name(s) of the person(s) who investigated.
- f. The final disposition of each complaint.
- g. How the matter was closed out with the complainant.

In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:

- a. All action taken in response to the complaint.
  - b. Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.
2. The written record of each complaint will be considered confidential. Each Commissioner shall have access to the written records of all complaints upon request to the Chief, subject to the Vermont Public Records Act, and the Burlington Police Officers' Association agreement.

Further information may be available to the Commissioner receiving the records upon the completion of a fingerprint-supported background check and the execution of a confidentiality agreement.

3. The Chief will report to the Police Commission on all complaints against members of the department as follows:
- a. Updates about complaints against employees will be shared with the Commission in Executive Session at the first meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. Status updates on the progress of complaints under investigation will be provided to the Commission, as appropriate, and further detail and access to reports/video/etc. shall be provided to the Police Commission in Executive Session at the first meeting after the investigation has been completed.
  - b. For lower- and mid-level complaints, the Chief will provide a verbal or written summary of the complaints and their status or disposition in Executive Session.
  - c. For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.
  - d. The Chief of Police, or his/her designee, will report to the Police Commission in Executive Session on a monthly basis regarding any Use-of-Force incidents. The update shall include demographic data about the officer(s) and subject(s) such as gender, age, and race, and also provide a description of incident.

## II. **Body-worn Camera Footage Release Policy (5/23/21 draft, in process)**<sup>7</sup>

1. The Burlington Police Department will proactively release to the public primary or representative body-worn camera footage within 30 days of an incident, unless a criminal inquiry would prevent release, related to the following types of incidents:
  - a. An incident that involves police use of force resulting in serious bodily injury or death to any person.
  - b. An incident of police force that involves the use of aerosol agents, Conducted Electrical Weapons (CEW), police batons, Less Lethal Impact Munition (LLIMs), firearms, or other lethal force.
  - c. Any incident for which the Chief of Police, Mayor and/or the majority of the Police Commission determines that the release of body-worn footage will address significant public attention or concern, or will help enforce the law, preserve the peace, and/or maintain public order.

Note: To provide citizen oversight, the Police Commission can and does view unredacted body-worn camera footage upon requesting it from the Burlington Police Department, even if it does not fit the above categories.

2. In some rare cases, a release may be delayed beyond 30 calendar days if necessary under specific circumstances, such as to protect individual privacy of a victim or witness, the right to a fair trial, continuing investigation of criminal conduct, ongoing litigation related to an incident, or a continuing internal investigation. The Department may consult with a prosecutor before releasing a video that may adversely impact a criminal trial.
3. In cases that require the Police Department to redact footage, for example, to protect the privacy of individuals or a defendant's right to a fair trial, the Department may, in its discretion, blur the video footage so that individuals cannot be identified and/or redact audio data.

Any member of the public who wishes to view the blurred footage or redacted audio may request that information in accordance with the Vermont Public Records Act. Relevant body camera footage will be posted to a YouTube channel and sent to the media through a routine press release.

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<sup>7</sup> Commissioners requested several changes to this policy at the April 2021 meeting, and it is now in the hands of the City Attorney to incorporate the requested changes. These include: a) amend the document to delete the note after paragraph 1C from the policy and address the release/viewing of video to Commissioners separately, b) revise the language in 1B for video footage to be proactively released in incidents involving the discretionary display or discharge of a firearm or discharge of a CEW, LLIM, etc., and c) amend the policy to state that the Commission will revisit and evaluate the policy in October 2021.

### III. **Police Misconduct and Misconduct Investigations Information Release Policy** (4/22/2021)<sup>8</sup>

**Purpose:** In policing, transparency is a cornerstone of building community trust. The timely release of information pertaining to officer misconduct is vital in maintaining that trust. This policy addresses the disclosure to the community regarding alleged officer misconduct.

#### **Policy:**

1. **Categorization of Complaints.** All complaints, whether generated externally or internally, are referred to as citizen complaints. Citizen complaints are categorized on a continuum as either lower-level, mid-level, or higher-level infractions, in accordance with the Burlington Police Officers' Association Contract, Article XV, section 15.2.
2. **Monthly Reporting.** On a monthly basis, the Deputy Chief of Administration, or designee, shall post to the BPD website an anonymized summary of all citizen complaints for the fiscal year, along with all resolutions to date.
3. **Quarterly Reporting.** On a quarterly basis, a report with the following information shall be posted:
  - a. The number of incidents per officer (with individual officer identity suppressed)
  - b. The number and nature of complaints against officers who have Internal Affairs (IA) complaints against them within that time period (with individual officer identity suppressed)
  - c. Statistics on discipline taken in response to IA complaints (with individual officer identity suppressed) over time.
4. **Higher-Level Complaints.** When a citizen complaint alleges a higher-level infraction, the Chief of Police, or a designee, shall disclose via BPD's website, within ten (10) days of receipt of the complaint, the following:
  - a. The alleged infraction;
  - b. Whether the alleged charge is "dismissed," "unfounded," to be investigated further via a Bureau of Internal Affairs (BIA) investigation; or is being grieved/appealed, and
  - c. Whether the officer has been placed on administrative duty or leave.

BIA investigations shall take no more than X days to complete. If the investigation is not complete in X days, the Chief of Police, or designee shall inform the Police Commission of the reason for the delay and the expected completion date of the

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<sup>8</sup> The Commission voted to advance this misconduct policy as written to the City Attorney's Office to discuss with the BPOA for any conflicts with the current contract, and if necessary to bargain with the BPOA.

investigation. The website disclosure may be delayed beyond ten (10) days if the officer is unable to participate in the investigation because of illness, military deployment, or other circumstances beyond the officer's control. In those cases, the above information will be posted immediately following completion of the investigation.

**BIA Investigations.** Upon completion of the BIA investigation of any higher-level complaint and any appeal process, the Chief of Police, or designee, shall issue a summary report which must include the following:

- a. The alleged conduct, redacting all information pertaining to victims and non-police witnesses;
- b. Names of officer(s) involved;
- c. Number of officers directly involved in "High Level" infraction allegation;
- d. The officer's or officers' initial Use of Force report(s) (when applicable), redacting all information pertaining to victims and witnesses other than on-duty police officers;
- e. Body-worn camera footage (if available), redacting all information pertaining to victims and non-police witnesses;
- f. Whether or not the charges against the officer have been sustained or the officer has been exonerated of the alleged "High Level" infraction; and
- g. Any discipline imposed on the officer (if charges were sustained).

The summary report shall be published on the BPD's website in addition to being distributed via press release within 10 business days from the final determination, including any appeals process. The report's release may be temporarily withheld from public disclosure if its release would jeopardize any pending investigation, criminal proceeding, or litigation.

4. **Release of Disciplinary Records.** Going forward, disciplinary records of officers shall be released in response to a Public Records request, except that:
  - a. Any information the release of which would violate or be inconsistent with the then-current collective bargaining agreement with the Burlington Police Officers'
  - b. Any medical, private, or family information about the officer will redacted:
  - c. Any information that would affect a pending criminal case or criminal investigation will be redacted;
  - d. Any identifying or private information related to the complainant, witnesses who are not on-duty police officers, victims, or family members of those individuals may be redacted;
  - e. Information concerning any technical infraction (as defined below) may be redacted and
  - f. Any information the release of which would violate a statutory or common law privilege or other legal obligation will be redacted.

The term "disciplinary record(s)" is defined as: any record created in furtherance of a law enforcement disciplinary proceeding, including, but not limited to:

- a. the complaints, allegations, and charges against an employee; the name of the employee complained of or charged;
- b. the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing, if any;
- c. the disposition of any disciplinary proceeding; and
- d. the final written opinion or memorandum supporting the disposition and discipline imposed, including BPD's complete factual findings and its analysis of
- e. the conduct and appropriate discipline of the covered employee.

The term "technical infraction" is defined as: a minor rule violation by a police officer, solely related to the enforcement of administrative departmental rules, that (i) does not involve interactions with members of the public, (ii) is not of public concern, and (iii) is not otherwise connected to such person's investigative, enforcement, training, supervision, or reporting responsibilities.

7. **Retention of Records.** Records related to officer misconduct and discipline shall be retained in accordance with the Burlington Police Officers' Association contract, Article XV, section 15.3 and any applicable state or federal retention schedule or law.