

Burlington Police Commission Presentation to Joint Committee

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Members of the Joint Committee, thank you for the opportunity to share the Commission's perspective on what is and is not working well under our current authority. The comments I am sharing with you reflect input from current Commissioners and of those who stepped down in the past year.

What is working well

Steps taken to become an independent review body have been positive.

- The hiring of a staff person
- Meetings moved to City Hall
- Independent legal counsel
- A SharePoint site for document sharing
- A more organized complaint review process
- Excellent working relationship among Commissioners

What is not working well

1. **Access to information** – The Commission continues to face impediments to unfettered access to materials BDP uses in its investigations, which the Commission also needs to perform its oversight role.
2. **Due process for officers** – Officer grievances on discipline should be heard by different body than the Commission which gives input on discipline. Alternatives include HR, Public Safety Committee, or designees of City Council.
3. **Workload** – The Commission's workload is unsustainable. A creation of a monitor position would address this (see draft job description below). The expertise of a monitor can also improve Commission practices and procedures, and help to integrate new Commissioners into their oversight role.
4. **Complaint process** – This needs substantial revision.
 - a. The timeline to close complaints is far too long and needs to be streamlined (a monitor could help shorten this).
 - b. A general comment of Commissioners is that the Commission should have more voice in the disposition of complaints. Currently, the Commission's role in resolving complaints is advisory. We theoretically make recommendations that relate to discipline, training, and the role of leadership in supervision, as well as policy recommendations. In reality, the Commission has thus far not

recommended officer discipline on any complaints, observing instead that problems have emerged largely due to lack of appropriate training or supervision or because of policy deficiencies. Our goal is to provide oversight and input in a way that helps BPD do better by Burlington residents in their policing. Thus, many of our recommendations relate to policies that may need to be revised or created, training, and supervision. Because complaints and their disposition are confidential in current policy, however, the Chief is able to ignore Commission input and recommendations. Often, the Commission receives no feedback on the response to its recommendations. This secrecy is a serious problem, rendering the Commission's role ineffective. A remedy is for complaints and Commission recommendations to be made public, appropriately anonymized. If the Chief disagrees with the Commission, a written report should be submitted by the Commission explaining why and this report should also be made public. This practice already exists in other civilian oversight bodies, including Boulder, CO and New Haven, CN. Moreover, the VSP in an effort to further increase transparency in operations, with the support of the independent State Police Advisory Commission, began releasing synopses of all internal and external investigations and their disposition. Making complaints and their disposition public is also a CNA recommendation. CNA noted in its final report that many cities allow for the release of overall complaint information and the disciplinary findings of officers, regardless of the stipulations of the union contract.

- c. The Commission should be able to speak publicly about complaints, including discussing patterns of complaints. For example, currently we are seeing numerous complaints on failure to de-escalate and problems with dispatch.
- d. The current process is set up in way that leaves complainants feeling frustrated and unheard. A remedy is for complaints to come directly to the Commission, with the possibility of close-out meetings for high-level complaints (such as abuse of authority) that include a member of the Police Commission. In complaints that are low-level, other mechanisms may be possible, including mediation, such as the program in New Orleans PD.
- e. Currently, the Chief determines the level of complaint (low, medium, or high) rather than the Commission and on that basis, the Chief makes the decision about which complaints to investigate. (We had an experience in the past where a complaint of excessive use of force was submitted. The Chief claimed it was a low-level complaint, thereby not requiring an investigation). A remedy is for the Commission to have the authority to determine which complaints are low-, mid-, or high-level, and accordingly decide on whether or not to investigate.
- f. A near exclusive focus on discipline in the complaint process ignores the role that oversight can play in helping BPD become a learning organization. The Commission's focus has been on providing its perspective on how the BPD can do better. To move us in that direction, the Department could be

required to conduct a post-incident analysis on how things could have been done differently, and submit this report to the Commission after every incident review. Moreover, in some instances, no policy is violated (or there may be incidents in which something is not even covered by policy). Even in those cases, the question should be “what is the learning here?” This could be part of the close-out of complaints with complainants.

5. **Commission role in policy-making** – The Commission’s role in policy-making should be memorialized. Currently, the Commission is consulted when BPD revises policies. Any ordinance should make it clear that the Commission can itself initiate policy revisions and independently seek stakeholder input on policy revisions.
6. **Data analysis** – Currently, the Commission does not have the resources to independently analyze data. It relies on the city data analyst to present an annual report on traffic stops, use of force, and arrests. This is prepared in consultation with the Chief. As a result, this is not an arm’s length, independent analysis. A remedy is for the Commission to have input into the types of analysis included in reports analyzing use of force, stops, seizures, and searches, among other issues relating to community and police interactions. Further, there are other areas of analysis that would be useful to inform the Commission’s work. A remedy is for the Commission to have independent data analysis resources.
7. **Composition of the Commission** – Regardless of the method for appointing Commissioners, the process should consider the needs of the Commission in terms of expertise and experience. Currently, Commissioners are appointed without reference to the needs of the team (the Commission) as a whole. A remedy is for the Commission to be consulted in advance of appointing new Commissioners to identify the skills and experience needed to support the Commission’s work.
8. **Use of force incidents** – The Commission currently reviews use of force incidents – and that is all. We are mistakenly portrayed as therefore “approving” uses of force because we have reviewed a synopsis of the incident and videos. The Commission should be able to not only review all incidents of use of force for policy violations, but also initiate investigations and make recommendations regarding training and/or discipline as warranted.
9. **Commission role in reviewing officer training** – The Commission currently does not have the resources to initiate reviews of training nor does BPD give access to the information required to conduct such reviews. A remedy is for the Commission to have the resources to hire outside consultants to review the quality of BPD trainings.
10. **Investigations** – Currently, the Commission has no authority to conduct its own investigations. The Commission receives heavily redacted investigative reports, and may comment on their inadequacies and lacuna but the Chief is not required to address those recommendations. There are three remedies here. First, the Commission should have the authority to review investigations for thoroughness, consistency, and accuracy, as recommended by CNA, rather than the Chief serving as the final authority on the facts of an investigation. Second, the Commission should have the authority to conduct investigations if BDP declines to do so, with resources in its budget to conduct external investigations. Third, the Commission

- should have direct control and authority over an automatic external investigation whenever an officer uses a weapon, discharges firearm, or discharges a Taser.
11. **Currently, the Commission has no role in hiring or promotions.** The Commission should sit in on hiring and promotion committees and in so doing, can help to improve interview questions.
 12. **Audits** – In addition to reviewing complaints and uses of force, the Commission should have authority to conduct audits. Once the Commission completes its audits, it should have the authority to make formal recommendations of policy reforms to the Mayor, Police Chief, and City Council with the findings of the audit made public.
 13. **Commission relationship with City Council** – The Commission is appointed by the City Council and currently interacts with it via the Public safety Committee. That said, there should be broader lines of communication, including for the Commission to have the discretion to report complaints and Commission findings directly to the City Council.
 14. **Secure funding** – For the Commission to be free from political manipulation that could weaken it, its funding must be both secure and sufficiently robust. Otherwise, a hostile administration could deprive the Commission of its ability to perform its duties by cutting its funding. One way to insulate the Commission from cuts to funding from politically unpopular decisions is for its budget to be tied to a fixed percentage of the police department’s non-capital budget.
 15. **Commission role in oversight of non-sworn officers and professional personnel** – The Commission’s role in providing oversight of non-sworn officers – CSOs, CSLs, and members of the CAREs team – should be made explicit.
 16. **Community engagement** – This aspect of the Commission’s work has not been fully developed, in part due to time constraints. Nevertheless, it is an important part of building trust between the community and BPD.

An overarching issue in public debates has been the question of who has final authority over discipline and the resolution of complaints more generally. As noted by the Mayor in his 2021 memo, there need to be checks and balance. At the end of June, the Commission will provide the Joint Committee with recommendations on how to achieve this.

As we work to define the contours of authority in police oversight, it should be understood that a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but actually provides little to no accountability. Further, it can lead to an increase in community resentment, as residents come to the Commission to seek redress yet end up with little.

Ultimately, what the community wants is meaningful oversight coupled with a willingness on the part of BPD to acknowledge when mistakes have been made and a commitment to do better. The Commission can play an important role in identifying where policing actions could be improved and be an important interface with the community. For this role to be impactful,

however, Burlington requires a police chief who not only accepts civilian oversight, but is also a willing partner in this work.

Draft Job Description of Monitor/Independent Reviewer

1. The Monitor (alternatively called an Independent Reviewer, a position that has a more restricted role than monitors) will receive, review, catalogue and track citizen and internally generated complaints.
2. The Reviewer will monitor the complaint investigation to ensure the review is complete, thorough and complies with any existing police procedures, policies or other requirements state, or city requirements or laws.
3. The Reviewer will identify any inefficient and unlawful police operations.
4. The Reviewer will report on complaints to the Police Commission, presenting findings and recommendations and participating in executive sessions that discuss complaints, investigations, and the disposition of complaints.
5. The Reviewer may provide guidance for best practices for investigation of complaints and analyze and verify reporting trends in completed police employee disciplinary decisions, all with the goal of identifying systemic changes that will improve police services to the community.

There are several reasons such a role is beneficial. First, this offers a mechanism to develop standards of work. Investigating citizen complaints thoroughly and efficiently helps identify trends and inform departments of possible approaches that may or may not be working well in a particular community. By having a monitor/independent reviewer in place to identify these trends, police departments can stay flexible and open to addressing training needs and community needs.

A monitor also supports the creation of a record and preserves evidence. Proper investigation of police complaints can provide a means of creating a record, should the complaint lead to formal investigation and a determination of whether there is a violation of federal or state laws that address police misconduct.

See also CNA recommendations 17.1 and 1.18.1-1.18.3 (p. 11), calling for revision to the investigation process and a role for the Commission to review investigations. The Burlington Police Commission requires the expertise to carry out this function, a role the monitor/independent investigator would hold.