

INTRADEPARTMENTAL CORRESPONDENCE

June 13, 2024
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BPC# 24-106

TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: Board of Rights Reforms Report on Moving Clause 5, Council File Number 23-0187-S5

RECOMMENDED ACTION

APPROVE the Office of the Inspector General's (OIG's) Report on Moving Clause 5 and TRANSMIT to the Public Safety Committee.

DISCUSSION

On March 20, 2024, the Los Angeles City Council approved a motion, including Council File No. 23-0187-S5, which aims to improve the overall disciplinary process for the Los Angeles Police Department (LAPD or Department) and addresses various reforms to the Board of Rights system. Moving Clause 5 of the City Council motion attempts to address additional reforms connected to LAPD's complaint process that are inherently related to transparency and accountability.

Clause 5 specifically requests that the Office of the Inspector General (OIG), along with the Chief Legislative Analyst (CLA) and the Civil and Human Rights and Equity Department (CHRED), work together to "report [...] on additional recommendations for affirmatively furthering Angelenos['] [sic] rights against misconduct by law enforcement, and for increasing accountability when such misconduct occurs[.]"

In responding to this particular clause of the City Council motion, it is useful to address the significant number of existing processes and mechanisms currently in place that serve to enhance public accountability when misconduct by Los Angeles Police Department employees is alleged. While serving to bolster accountability, the processes highlighted herein are also designed to preserve confidentiality of personnel records that are protected by California state law.

Six recommendations are enumerated that may enhance transparency around the complaint process, and that may also enhance the rights of constituents when it comes to police officer misconduct. Furthermore, these recommendations may even contribute to reducing instances of officer misconduct.

I am available to provide any further information the Commission and may be reached at (213) 893-6400.



FLORENCE YU
Acting Inspector General
Police Commission

Attachment

LOS ANGELES POLICE COMMISSION
BOARD OF RIGHTS REFORMS
REPORT ON MOVING CLAUSE 5,
COUNCIL FILE NO. 23-0187-S5

2024



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

Florence Yu

Acting Inspector General

LOS ANGELES POLICE COMMISSION

June 18, 2024

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I. BACKGROUND

On March 20, 2024, the Los Angeles City Council approved a motion, including Council File No. 23-0187-S5, which aims to improve the overall disciplinary process for the Los Angeles Police Department (LAPD or Department) and addresses various reforms to the Board of Rights system. Moving Clause 5 of the City Council motion attempts to address additional reforms connected to LAPD’s complaint process that are inherently related to transparency and accountability.

Clause 5 specifically requests that the Office of the Inspector General (OIG), along with the Chief Legislative Analyst (CLA) and the Civil and Human Rights and Equity Department (CHRED), work together to “report [...] on additional recommendations for affirmatively furthering Angelenos[?] [sic] rights against misconduct by law enforcement, and for increasing accountability when such misconduct occurs[.]”

II. INTER-DEPARTMENTAL COLLABORATION

On April 2, 2024, representatives from the OIG, CLA, and CHRED met to discuss our respective roles in the report-back process, specific to Clause 5 in the City Council motion. It was established that the OIG would take the lead on drafting the report, and that the other departments would provide input into the process of developing it.

OIG staff subsequently met with both City Council Offices for Council Districts 13 and 15 to obtain further input regarding Council expectations specific to Moving Clause 5. Both Council offices received a brief preview of the content expected to be contained in this report, and both offices indicated a willingness for the OIG to move forward with drafting the report in a manner consistent with the ideas discussed.

III. EXISTING ACCOUNTABILITY MECHANISMS

From the OIG’s standpoint, in responding to this particular clause of the City Council motion, it is useful to address the significant number of existing processes and mechanisms currently in place that serve to enhance public accountability when misconduct by Los Angeles Police Department employees is alleged. While serving to bolster accountability, the processes highlighted below are also designed to preserve confidentiality of personnel records that are protected by California state law. These accountability-related mechanisms include the following:

1. Filing a Complaint

Members of the public can file a complaint against any LAPD employee in a number of ways – in person at any LAPD station or with the Office of the Inspector General; online via email, website, or mobile app; through social media; and by phone, fax, or regular mail. If someone prefers not to file their complaint with LAPD directly, the OIG is available to conduct the intake of any complaint. Complaints may be filed anonymously, and there is no time limitation governing how soon after alleged misconduct occurs a complainant must file their complaint (although, it should be noted, there is a statute of limitations with regard to how soon discipline

must be issued, if any, after the Department becomes aware of alleged misconduct). While the OIG generally handles the investigation of allegations of misconduct raised against the Chief of Police, the Department's Internal Affairs Division or the Chain of Command of the accused Department employee generally handles the investigation of all other complaints. As is indicated further below, the OIG monitors LAPD investigations of complaints of misconduct to ensure impartiality and thoroughness.

Filing a complaint serves a valuable purpose when it comes to holding the Department accountable for its actions. First, any complaint will go through a rigorous process of tracking, investigation, and adjudication. Second, from a qualitative standpoint, the filing of complaints allows for a broad analysis of the aggregated concerns the public is raising with its police department. There cannot be an assessment of how the Department is conducting its operations or investigating complaints unless complaints are filed, entered into the appropriate Department database, and, thus, tracked and further analyzed.

2. Requesting a Case Review

If a complainant is not satisfied with the results of his/her investigation, they are able to request a case review of that investigation by the OIG. When the Department completes its internal investigation into the complaint, the Complainant will generally receive a letter informing them of the Department's adjudication. In addition to the adjudication, the letter informs the Complainant that they are able to contact the OIG for an independent review of the LAPD's completed complaint investigation. When conducting a case review, the OIG obtains the entire investigative case file, including all evidence gathered during the investigation, and evaluates whether or not the investigation was thorough and fair, and whether it reached the right conclusion based on the available evidence.

There are some limitations around when the OIG can conduct case reviews. For example, if a complaint is out of statute – which essentially means that any discipline deemed appropriate as a result of the complaint can no longer be imposed – the OIG may decline to conduct a case review or may prioritize more urgent/timely reviews first. Generally, however, a case review remains an option that is available to any complainant to help objectively ensure their matter was handled appropriately.

3. Major Case Briefings and Case Signings

Among its responsibilities, the OIG is tasked with overseeing the Department's overall disciplinary system. Accordingly, the OIG is involved in the oversight of complaints from a holistic standpoint, which means being involved in high level, confidential discussions about complaints, investigations, and discipline.

The OIG has had a longstanding practice of sitting in on LAPD's most significant discipline-related meetings; these are commonly known as "major case briefings" and "case signings." Major case briefings involve a weekly meeting where the Professional Standards Bureau is briefed by Internal Affairs Division on the most high-priority, high level complaint investigations

being conducted within the Department. Case signings is a separate, recurring meeting where the Chief actually signs off on the discipline of Department employees who were determined (through the investigation of a complaint against them) to have committed misconduct.

Although these meetings are confidential in nature, and the OIG does not have an authoritative role regarding outcomes and dispositions, it is crucial that there is an objective, independent voice at the table when these critical disciplinary decisions are being made. The Chief will regularly ask the OIG representative who is present to weigh in with specific thoughts about cases, and OIG staff are often asked to provide an informal opinion regarding the sufficiency of the evidence. The OIG's input typically carries weight with the Chief in his/her assessment of the issues being decided. Further, it is understood that the OIG regularly reports on its observations of the Department to the Board of Police Commissioners to whom the Chief reports.

The OIG also regularly reviews the Department's decisions regarding discipline and opines as to whether or not the intended discipline, plan for officer training, etc. is supported by the evidence as laid out in the investigation.

4. Police Commission's Performance Evaluation of the Chief of Police

The Police Commission has the authority under the City Charter to evaluate the Chief of Police annually. Although members of the public do not have a direct role in the performance evaluation in closed session, the item is agendaized by the Commission such that the public has an opportunity to provide comment on the item in open session, and comments can then be taken into consideration by the Commissioners upon their conducting the evaluation in closed session.

Aside from the performance evaluation, a right to initiate termination proceedings specific to the Chief's performance rests with the Commission as well under the City Charter. If the annual performance evaluation of the Chief leads the Commission to determine that his/her continued employment was not possible, termination proceedings could be initiated. Termination proceedings of a Chief of Police are rare, but it is notable that the civilian-led Police Commission has the power to initiate such proceedings, with other City stakeholders possessing a role as well.

5. Risk Management Executive Committee

The Department's Risk Management Executive Committee (RMEC) is comprised of LAPD executives tasked with providing the Chief of Police with recommendations on how best to mitigate risk and liability within Department operations. The Committee reviews, processes, and makes recommendations to the Chief of Police regarding Department-wide risk and liability issues that arise in connection with specific officers. While the Chief of Police is the reviewing officer for all decisions that come before the committee, the OIG again has the ability to, and does, observe the proceedings.

In this setting, similar to major case briefings and case signings, the OIG represents an important independent presence at a critical LAPD administrative proceeding where significant decisions are being made that have critical risk management impacts.

6. Unfettered Access to Department Records, Personnel, and Facilities

The OIG maintains direct and completely unfettered access to all Department records – including documents, video and audio files, and electronic databases – as well as access to all LAPD buildings and personnel. OIG staff are able to directly login to LAPD systems and databases from our own workstations, without having to ask permission or otherwise utilize the Department’s computers.

The OIG is also able to audit any aspect of the Department’s operations at our discretion. Some recent examples include a review of Department vehicle and pedestrian stops and an assessment of how the Department measures up to recommendations set forth by the President’s 21st Century Task Force on Policing. Our office has also examined the 2021 27th Street Explosion incident, various new technologies employed by the LAPD, the Department’s implementation of de-escalation principles and practices, various Department trainings, and more.

From a disciplinary standpoint, there is another advantage to the OIG having full access to all Department records. Such access means that the OIG is well-situated to ensure that discipline is consistently meted over time and across all levels and areas of the Department. Decentralized LAPD commanding officers who are making disciplinary recommendations and decisions are, by definition, not in a position to make such broad comparisons and to ensure that discipline is appropriately fair, equal, and balanced throughout the LAPD.

7. Complaints Against the Chief of Police

The OIG has the responsibility of initiating and investigating complaint investigations concerning allegations of misconduct that arise against the Chief of Police. The idea behind this responsibility lying with the OIG is to remove these investigations from the Chief’s own chain-of-command and, therefore, to remove any systemic conflicts of interest when the Chief is being investigated for alleged misconduct. The OIG’s role in this sense is meant to insulate investigations of the Chief, which are adjudicated by the Commission, from any internal Department biases. Once the OIG completes its investigation, the investigation is given to the Police Commission for adjudication.

8. Online Complaint-Related Data

LAPD posts a significant amount of complaint-related data on its public website.¹ There are several different types of complaint-related data currently available online. The information is located on several different screens on the Department website.

¹ Efforts to further enhance the user experience of the website are currently in the initial planning stages. The Department is hopeful that it will be able to eventually transition a significant amount of the reference material

First, the Department posts disciplinary penalties on its website. This data is posted monthly and is broken down both by penalty and by allegation type, so there are two ways to sort through the information. Although no specific details identifying Department officers are included, there is a short narrative description for each complaint investigation. This information could be helpful to complainants who might be trying to track their own case(s). It could also be helpful for non-complainants, for the purposes of tracking and analyzing categories of complaints and discerning what similar complaints have in common versus how they might differ from one another.

Here are several other resources where additional complaint-related information is available online and where members of the public are able to sort through such publicly available information –

- The Department’s RIPA dashboard, which enables searches of data collected pursuant to the Racial Identity and Profiling Act. (Available on the Department’s website);
- The Department’s Reference Library, which contains categories of complaints that are posted publicly under California Senate Bills 1421 and 16 (mandating that sustained complaint investigations involving dishonesty or sexual assault, excessive force or failure to intervene, prejudice, discrimination, or unlawful arrest/unlawful search be posted online). (Available on the Department’s website); and
- The City of Los Angeles’ data portal, which enables members of the public to sift through existing public information requests, which may contain complaint-related information. (Available on the City’s website).

9. De-Certification²

currently posted on its public website to a more user-friendly, searchable format. The new format would ultimately make Department policies, procedures, statistical data, and other reference material more organized and more easily found. While the concept for the new format is in the early research stages, it is anticipated that it could take up to two to three years to implement given that there are multiple Department entities involved, a vendor selection process required, and there are multiple complex elements to consider – ranging from budgetary considerations to security elements, as well as decision-making around what content to include and how it should be organized.

² When a peace officer is decertified, POST shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation. There are four decertification types: ineligible, revoked, voluntary surrender or surrender, immediate temporary suspension or temporary suspension, and suspension.

Peace officers decertified with an immediate temporary suspension or temporary suspension status may be issued under the following circumstances:

- When a peace officer is arrested or indicted for a felony or other crime listed in Government Code § 1029,
- When a peace officer is discharged from a law enforcement agency for serious misconduct, or
- When a peace officer has separated from employment as a peace officer during pending investigation into allegations of serious misconduct.
- The temporary suspension remains in effect until either a final determination is made by the Commission or the Executive Director withdraws the “temporary suspension” if a withdrawal is deemed to be warranted.

The state of California recently instituted a process for de-certifying officers, which serves to further the public goal of accountability for misconduct by peace officers when serious complaint allegations have been sustained.

The California Code of Regulations (11 CCR § 1205) identifies the following types of police officer conduct as “Serious Misconduct” and potential grounds for decertification:

- dishonesty (job-related),
- abuse of power, physical abuse (excessive or unreasonable force),
- sexual assault (propositioning or committing any sexual act while on duty),
- demonstration of bias,
- egregious or repeated violations of the law,
- participation in a law enforcement gang (Penal Code § 13510.8),
- failure to cooperate with an investigation into potential police misconduct,
- failure to intercede when present and observing another officer using unreasonable force.

There is a complex process that occurs prior to an officer being de-certified, which includes the following steps –

- The California Commission on Peace Officer Standards and Training (POST) will first rely on the employing agency to complete its investigation.
- Agencies must notify the Peace Officer Standards for Accountability Division (POSAD) when there is a final disposition and provide the entire investigation, regardless of the disposition, in qualifying cases. This will permit POSAD to review the thoroughness of the agency’s investigation and determine if there is clear and convincing evidence to support de-certification.
- If POSAD believes there is clear and convincing evidence to support a recommendation for decertification, it will notify the involved officer of the pending decertification proceedings.
- The officer will have 30 days to complete a written request for appeal.
- POSAD will present its recommendations to a nine-member Peace Officer Standards Accountability Advisory Board at a public hearing. The officer or his/her representative may make a written or oral presentation to the Board. The Board will then make a recommendation to the Commission on Peace Officer Standards and Training (POST Commission).
- If the POST Commission recommends decertification, the case is moved to an Administrative Law Judge for review before returning to the POST Commission for final determination.

While this process is relatively new and will inevitably go through some changes as more time passes and more instances of decertification are handled, the public should take some solace in the fact that officers who have Sustained allegations of the most serious types of misconduct are now more likely to face serious consequences for their actions—specifically including revocation of their eligibility to be employed as a peace officer within the State of California.

10. Claims for Damages that Result in Complaints

Every claim for damages filed with the City of Los Angeles against the LAPD or its employees is reviewed by LAPD to determine whether or not a complaint of misconduct will be generated as well. In the vast majority of cases, where a claim for damages has been filed, sometimes indicating that litigation has been initiated,³ an administrative complaint does get generated.

This process ensures that there is an added layer of accountability when lawsuits are filed against the City of Los Angeles involving the LAPD. In other words, members of the public who file lawsuits do not have to initiate their own complaints in these situations; in most cases, a complaint will automatically be generated on their behalf.

Complaints that are automatically generated on behalf of members of the public provide yet another built-in layer of protection specific to the existing disciplinary system. Such complaints also warrant mention due to their connection to further fostering public accountability when wrongdoing is alleged.

11. OIG Participation in Use of Force Proceedings

Finally, OIG staff is responsible for responding to the scenes of categorical uses of force (including officer-involved shootings and other high-level uses of force) and ensuring that the on-scene investigations are being conducted in an objective and impartial manner.

OIG staff also take part in all significant use of force proceedings between the time the incident occurs and the time the Department investigation into it is adjudicated (with regard to whether the substantially involved officers' actions comported with applicable policy and training). These proceedings include a 72-hour briefing, a Use of Force Review Board, and multiple other meetings with the Department's Force Investigation Division, which is the specialized division of detectives that oversees the investigation of all major use of force incidents by LAPD.

IV. RECOMMENDATIONS

The OIG is currently working with the Board of Police Commissioners on a variety of recommendations to improve the broader disciplinary system processes specific to LAPD. These efforts aim to increase protections of transparency, accountability, and fairness in all processes connected to police-related discipline, both for members of the public and also for Department employees.

³ The City of Los Angeles will review the Claim for Damages first to determine whether it's something that should be paid out immediately. If the City declines to do so or if they don't respond within the statutory time period, then the filer may choose to commence litigation.

In addition to these efforts, here are six enumerated recommendations that may enhance transparency around the complaint process, and that may also enhance the rights of constituents when it comes to police officer misconduct. Furthermore, these recommendations may even contribute to reducing instances of officer misconduct.

- 1. Recommend that the OIG, Police Commission, and Department continue public outreach regarding the overall complaint process and role of civilian oversight in overseeing the broader disciplinary system.**

While there is a constant effort afoot to educate the public regarding the rights that they have within the complaint system that currently exists, it is important to continue to place proper emphasis on this outreach function. Specific topics to address might include educating the community that they have the right to file complaints, request case reviews, and have their complaints addressed in an unbiased and objective manner. It is also important to emphasize that the OIG is available to answer questions regarding complaints or other Department issues that may arise.

- 2. Recommend that public education continue and expand specific to “knowing your rights” campaigns in addition to the principles of procedural justice.**

Although resources do currently exist around these topics, more time and resources focused on public education about the concepts of procedural justice as well as “knowing your rights” in law enforcement encounters are recommended.

First, the OIG believes that the public would be well-served by a heavier focus on education around individuals knowing their rights specific to law enforcement encounters. Such education might include people knowing their basic *Miranda* rights, that they can request the presence of a supervising officer, and that they can ask a police officer to identify him/herself and provide a business card.

Second, the OIG also believes that the public would benefit from more education around the concepts of procedural justice, which focuses on the connection between police legitimacy and the perception by members of the public that they are being treated fairly and respectfully during a law enforcement encounter. The four main principles of procedural justice are as follows –

- a. treating people with dignity and respect;
- b. giving individuals a voice, or opportunity to explain their perspective, during encounters;
- c. being neutral and transparent in decision-making, indicating that rules are applied consistently and fairly; and
- d. conveying trustworthy or well-intentioned motives, in that the person can understand why the action is being taken.

Similar to how law enforcement personnel are educated about the four principles of procedural justice, the OIG also recommends that members of the public be educated about these concepts

as well. In addition, community members should be informed about how officers may not always possess all known details and dangers about a particular situation when they initially conduct a stop or arrive at a location.

The OIG believes that additional public education specific to these topics could yield significant results. It could provide a valuable and protective impact by ensuring that people know what to expect from law enforcement encounters, and it could possibly even minimize the chances of a law enforcement encounter escalating to the point where misconduct would occur in the first place.

3. Recommend that the Department codify the existing practice of a representative of the OIG participating in all Department internal complaint functions, including meetings about high level complaints and signings.

As discussed, the OIG serves an important role in various complaint-related meetings and proceedings. The OIG should be able to maintain its current ability to observe, monitor, and report back on all disciplinary proceedings, including but not limited to, Boards of Rights hearings, arbitration proceedings, administrative appeals, and all other legal and administrative hearings that may be applicable to the OIG's responsibility to effectively monitor how the Department is disciplining its employees.

The OIG's continued ability to monitor the Department's disciplinary system is also critical to the key tenants of internal procedural justice being preserved – principles of fairness, trust, and the consistent administration of discipline throughout all levels of the Department. The OIG must be able to maintain access to such proceedings in order to continue monitoring these Department functions effectively.

Given the importance of a civilian voice being heard in these settings from a risk management perspective, we recommend that there be a codification of these longstanding practices and responsibilities.

4. Recommend that the Department continue to work on its public website to make it more user-friendly and informative.

As mentioned, the Department is in the process of researching options for updating its public website to make it more user-friendly, specifically with regard to where certain items are located. Currently, as discussed, complaint-related data is located under several different menus on the website that are not as useful or easy to navigate as they could be. The anticipated updates to the website—one concept being the creation and addition of a new searchable format – will hopefully improve this resource for the public, thereby making it easier to find information related to discipline of officers and other data. This more searchable format will be especially useful for purposes of locating sustained complaints of serious misconduct, which are disclosable to the public and posted online pursuant to California Senate Bills 1421 and 16.

5. Recommend that the Chief have a more direct role specific to disciplinary decisions.

As previously reported in the OIG’s November 2022 evaluation of the Board of Rights, we reiterate our position that the Chief of the LAPD currently faces some undue constraints with regard to disciplinary decisions, and that such constraints impact the Department as a whole when it comes to effectively dealing with risk management issues.

As we previously stated in our report, the BOR system as it presently stands constrains the Department’s crucial ability to effectively police itself. A system that allows for the outright and unchallengeable overruling of a Chief’s disciplinary decisions detracts from the Department’s appropriate efforts in furtherance of internal accountability. The Chief can be forced to retain an employee with whom the Chief feels is unworthy of being an LAPD officer and is without any opportunity for recourse. The OIG believes that this outcome reflects an imbalance of power between the COP and the BOR that significantly undermines the ability of the Department to police itself.

We also recognize the important role of oversight in this process. Given difficulties in evaluating the actions of officers as they face dynamic, and sometimes life-threatening, challenges, as well as the difficulty for any organization as complex as a large police department to eliminate all partiality as it looks inwardly at itself, effective and independent oversight – which comes in a variety of forms including, though not limited to, the OIG – is necessary to help ensure that police departments are indeed policing themselves effectively and that they course-correct whenever they are not.

6. Recommend that the OIG Conduct a Follow-Up Review of Any Newly Constituted Board of Rights.

If the proposed Charter amendment to reconstitute the Board of Rights goes forward, and a new/different combination of hearing examiners is implemented specific to the number of sworn command staff and civilians on each BOR panel, the OIG recommends that a follow-up review assessing the performance of such Boards be conducted. Such a review should occur after a reasonable period has passed, thereby affording the OIG time to monitor Boards of Rights helmed by the new constituted Board composition and allowing for the creation of sufficient data for the OIG to evaluate.