

Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, December 3, 2008
333 City Hall
~~6:30 p.m.~~ **6:00 p.m.**

Board Members Present: Bellfield, Benson, Bicking, Franklin, Kvidera, Terrell, Zuege
Board Members Absent: Hall, Turner

Also Present:

CRA Manager Samuel L. Reid, II
Assistant Chief Sharon Lubinski
Assistant City Attorney Peter Ginder
Assistant City Attorney Tom Miller
Sherman Patterson, Office of the Mayor
Michelle Gross, CUAPB
Michael Salchert, Minneapolis Police Federation

The meeting was closed for a reconsideration hearing at 6:00 p.m.

I. Call to Order

Chair Bellfield called the meeting to order at 6:30 p.m.

II. Approval of Agenda

Zuege **moved** the Agenda be adopted. Terrell seconded.
Motion passed unanimously.

III. Acceptance of the minutes of the regular board meeting of November 5, 2008

Terrell **moved** the November 5, 2008 minutes be accepted. Benson seconded.
Motion passed unanimously.

IV. Reports

Chair

Bellfield reminded members to arrange for substitutes if they cannot attend the hearings for which they are scheduled on 12/9, 12/11, 12/13, 12/16 and 12/18.

Manager

- Reid explained that due to a family emergency he was out of the office for several weeks in November, so the hearings scheduled for November were not held.
- Reid reviewed the [CRA Workload Report](#) for November 2008.
- Lubinski advised that she signed off on a disciplinary decision concerning a CRA complaint last week.
- The City Council will begin to look at changes to the CRA ordinance related to the IPAD opinion. Reid has presented a draft of a [memo](#) he has written, to encourage the board to start discussing these issues.
- Data is being gathered for 2008 statistics and preparation of the annual report.

CRA Members

There were no member reports.

Committee Reports

- Outreach Committee - Terrell
The committee met in November and set up a date to go to the Brian Coyle center in March 2009. The committee will meet again in December to continue to discuss outreach opportunities.
- Policy Committee - Bicking
The committee met November 20 and discussed a number of issues:
 - They discussed the viability of submitting policy recommendations or questions through the Police Accountability Coordinating Committee. They will be bringing some ideas to the board to decide upon and will start bringing concerns to that process.
 - They are assembling statistics to see what sort of issues surround the MPD Taser policy and are looking at changes made to the MPD Policy & Procedure manual regarding the Taser policy.
 - They are looking at changes to squad car video policy.
 - Changes to the MPD Policy & Procedure manual have involved putting things into training instead of the policy manual. The committee wants to become familiar with that training.Bicking invited board members to submit comments on these issues to the committee.

V. Business

Bellfield stated a motion made by Bicking and adopted by the board at its July 2, 2008 meeting:

...(T)he board recommends the city council amend Section 172.50(a) to add, "In the absence of a chairperson, the board shall appoint an acting chairperson by a majority vote to serve until the next board meeting or until a chairperson is duly appointed. The acting chairperson shall have full authority to conduct actions of the chairperson."

Bellfield stated a motion made by Bicking and adopted by the board at its October 1, 2008 meeting:

...1. The CRA board withdraws their recommendation passed on August 6, 2008 regarding an ordinance change to provide for an acting chair; 2. The CRA board recommends that the HE&E agenda item currently on the October 16, 2008 agenda be postponed until such time as other ordinance changes are ready for consideration by the City Council, and; 3. The CRA Steering Committee prepare suggested wording for an ordinance change regarding an acting chair or vice-chair by the December CRA board meeting.

Bicking suggested that the board submit a comprehensive statement of changes the board would like to see and a statement of rationale to be considered at the HEE Committee meeting of December 15. Bicking would like to work from Reid's memo, make decisions on the issues contained in the memo, and then draft a complete recommended ordinance change, with another memo explaining the board's rationale.

Ginder explained that an ordinance is introduced at a full Council meeting. The Council may then refer it out to the respective committee for study of that ordinance and to hold a public hearing. It is not an ordinance study yet because it hasn't been introduced at the council level.

The subject matter would have to be introduced at the next full Council meeting of December 12 or the following meeting on January 9. He advised the board that they don't need to have the ordinance written to introduce the subject matter. Bicking added that the board would need to have a Council member introduce the matter at a Council meeting. Bicking does not have a sense of how quickly the Council wishes to work on this issue. If it was introduced as a subject matter on December 12, it could be discussed by HEE on December 15, with a public hearing in January. Or, the board may wish to have it introduced as a subject matter at the December 30 Council meeting. Bellfield suggested the matter be introduced at the December 30 Council meeting and Kvidera and Bellfield suggested the board have their recommendations available by December 30.

Zuege suggested sending the Council a short communication that says the board is considering these issues and outlining the issues, without laying out any positions.

Bicking has serious reservations about the IPAD opinion and hopes the board will find some manner to challenge it. He doesn't see how the board can do anything but comply with it at this point. It is not just personal risk of civil and criminal penalties, which is considerable, but also, if as a board, they try to do something different from the IPAD opinion, they would be jeopardizing whatever cases were involved. That would be unfair to the complainant and the officers. The CRA board is not the only organization that has standing to challenge the IPAD opinion. Any member of the public would also have standing.

The possibility still exists to lobby for some change in the Data Practices Act to make it more clear, or getting some exemption from it for particular cases, as the CRA has exemptions from one or two other state statutes, in order to be able to function as it's intended and to achieve its goals. If the board were to challenge the IPAD opinion in any way, the board would have to assume that the city attorney would not be providing any legal assistance or indemnification on the part of the city. At this time, he sees only one option that is viable and ethical – to comply with the letter of the IPAD opinion in proposing ordinance changes.

Kvidera believes the board should not defy the IPAD opinion. He suggests the board write a letter to IPAD stating that their opinion appears to be based on things not germane to what the CRA is looking at as status of a decision, and the board requests the recommendations be reconsidered based on this material. The cases they referenced were far-fetched compared to what the CRA's procedures are.

Michelle Gross asked to be recognized by the chair. Bellfield advised Gross to wait until the public invitation item of the agenda to address the board. Bicking asked that the chair recognize Gross at this point because she has thought about this issue considerably and has input from other people. He thinks her input might be helpful at this time.

Gross said that will be too late to make her feelings known at Public Invitation, so she will leave the meeting at this time. She added that it is inappropriate to have the public comment section at the end of the meeting when it can do no good.

Bicking stated that Gross has suggested that if the board asks for a change to the CRA ordinance before they have had an opportunity to challenge the IPAD opinion, the board will be codifying the IPAD opinion. If the ordinance is changed, the board would have to work on challenging the IPAD opinion and also changing the ordinance that has been amended. Bicking asked Gross what she sees as the possibilities of challenging the IPAD opinion and what the timeframe might be and any potential ways of doing that.

Bellfield asked Gross to make her answer brief, because the public invitation item on the agenda is limited to two minutes. Gross said the community is discussing the possibility of challenging the IPAD opinion. This data generated by the CRA is extremely important to the community. The community has a right to the data and the issue is not the Data Practices Act, but the IPAD ruling. The opinion needs to be challenged. She is not clear on a timeframe. She believes it would take a few months to half a year.

Zuege noted that he found a number of factual characterizations in the IPAD opinion to be somewhat questionable: they stated certain things to be in the opinion of the board and in Zuege's discussions with other board members, it seems very much to not be the position of the board on numerous facts that IPAD took as the basis of their opinion. Two months ago this was discussed at the Policy Committee meeting. The substance of what was submitted to IPAD comes into question. Materials were primarily prepared by the City Attorney's Office and also materials were solicited from certain individuals by IPAD. A limited number of persons were able to submit information to IPAD. His main concern is whether IPAD received accurate information. He has serious reservations about the ethical behavior of the City Attorney's Office in submitting materials to IPAD and whether those were submitted in accordance with the best interest of the board.

Bicking read a statement submitted by Gross, "It is a huge mistake for the CRA board to codify the IPAD decision by requesting ordinance changes."

Bicking believes the board has two options: to challenge the IPAD opinion right now or to comply with it and request ordinance changes in compliance with it. The third option is to wait until it is challenged in whatever fashion, before the changes are codified. It is true that if the ordinance is changed and if the IPAD opinion were changed or successfully challenged, the CRA cannot go back to releasing status data unless the city ordinance is changed. If the change is that status data is public data, then the CRA has to go back to releasing it and another ordinance change must be made.

Reid believes there is a strong possibility that there is going to be an ordinance change soon. The discussion about whether to challenge the IPAD opinion is not necessary now. At this time the board knows where this is going. The real question is, what does the board want to see the ordinance look like. Assistant City Attorney Needham has provided suggestions and Reid has responded to those suggestions. He is hoping to get some discussion on some of the suggested changes. The board needs to focus on weighing in on how they want the changes to look. Areas of change are:

- Elimination of reconsideration hearings
- Requirement to forward all files to the Chief
- Portions of the ordinance that makes reference to providing the outcome of the hearing panel as final disposition
- Other modifications to the reconsideration process

Kvidera asked Assistant City Attorney Ginder to advise the board.

Ginder stated that he thinks there is some confusion and misapprehension about the role of the City Attorney's Office as an advisor for the board. Their role is to give the best advice that they can and also meet the greater need of the city and the public at large. They take a look at the concerns the board has expressed, such as the need to be public, balanced against what the statutory requirements are under the Data Practices Act. They try to give their best advice on what the issues are and it may not always be the advice the board wants to hear. When Needham submitted this to IPAD she tried to put it in a favorable light for the city and

for the board, relying primarily upon the CRA's ordinance and administrative rules. The IPAD opinion comports with the City Attorney's understanding of the Data Practices Act. The best thing to do is to try to come into compliance with the current interpretation of the law from IPAD. The board will be best served by trying to figure out what it wants to put into a recommendation to the Council.

Bellfield said that the board agrees it is not good to challenge the IPAD opinion. The board wants to see some ordinance changes. Bellfield does not look at this as codifying the IPAD opinion. The board can question the opinion and make some recommended ordinance changes. The board has to respond to the opinion.

Terrell thinks the board must follow the IPAD opinion and make changes to the ordinance, but there must be a way to communicate with the public. He suggested the officer be asked at the initial interview if he would be willing to inform the complainant of the status of the complaint, so that the complainant can have the right to reconsideration if they disagree with the panel's findings.

Reid doesn't believe there is a restriction on an officer wanting to release his own private data on a complaint filed against him. That would be something that only an individual officer could decide. It would add to the integrity of the CRA process and goes towards openness and public relations of how police officers interact with citizens and how the city values police accountability.

Kvidera suggested an authorization for release of medical information could serve as a template for release of information by a police officer. After the hearing panel determination is done, the determination goes to the officer with the release of information authorization. The officer can authorize it or not.

Zuege stated that the board is getting off track from discussing issues raised in the memos before the board tonight. He suggests Terrell's suggestion be placed on a committee agenda. Bicking recommends tabling Terrell's suggestion for now, but suggests it might be something to be considered within the CRA's Administrative Rules.

Zuege asked to start discussion with Reid's memo at, ["II. CRA's position on the City Attorney's ordinance revisions."](#)

Bicking referred to a memo he placed before the board "Comments on Proposed CRA Ordinance Revisions."

Referring to Pages 1 and 2 of the October 15, 2008 memorandum written by Assistant City Attorney Lisa Needham, "Civilian Review Authority Ordinance Changes," Bicking **moved** the board comply with the IPAD decision in the respect of no longer notifying points 7, 8 and 9 and that the board recommends the obvious ordinance changes that would implement that particular point.

Kvidera seconded.

Motion passed unanimously.

Referring to Page 14 of the November 10, 2008 memorandum written by CRA Manager Lee Reid, "CRA Response to City Attorney's October 15, 2008 Memorandum regarding Civilian Review Authority Ordinance Changes," Bicking **moved** the board support the change to Administrative Rule 7, "The fact that a Complaint has concluded within the CRA process," and similar wording where it belongs in the ordinance.

Kvidera seconded.

Motion passed unanimously.

Bicking suggested options to dropping the reconsideration entirely:

Two suggested by Needham:

1. No reconsiderations at all
2. Have all hearings done by entire board
3. Offer reconsiderations on all cases

Reid suggested:

4. Reconsideration based on grounds that new evidence has come up

Bicking **moved** that options Number 2 and Number 3 be eliminated from discussion, leaving only Number 1 and Number 4. Zuege seconded.

Motion passed unanimously.

Bicking clarified that Reid's memo also discusses the option of the Chief of Police to request a reconsideration. That is not what the board is discussing at this time. What is being discussed is what Reid has proposed be available to the complainant and the officer, in the case they wish to present new evidence.

Bicking **moved** the board end all reconsiderations. Terrell seconded.

Discussion

Reid said that the option of providing more evidence may be beneficial to complainants and officers. The panel chair will determine if the evidence presented is new and warrants a reconsideration. Historically, there have been few reconsiderations. Ending the reconsideration option will probably not have a great impact on the process.

Bellfield supports reconsiderations based on grounds that new evidence has come up. It is important to allow new evidence to be considered.

Bicking added that Reid's suggestion is a creative way to allow new information to be considered without violating the IPAD opinion. He has some concerns and recommends that no reconsiderations be offered. He laid out his reasons in his **memo**. He feels the problems are pragmatic rather than principled. It is not easy for a complainant or officer to know that the new information he has has not already been considered. The investigator may have obtained the evidence without the knowledge of the complainant or officer. The process is time consuming and difficult. There would be fewer reconsiderations than there are now as a number of the reconsiderations held were based on reasons other than new evidence. The board is trying to get determinations done in less than 30 days. Given a 30 day window for the request for reconsideration, the panel may have already made their determination. The board may be getting into this for not much benefit.

Reid clarified that neither complainant nor officer have access to the CRA investigative file before the completion of the process.

The chair stated the question.

Yes – Bicking

No – Bellfield, Benson, Franklin, Kvidera, Terrell, Zuege

Motion failed.

Bicking **moved** the board adopt Reid's position in opposition to Needham's recommendation that the board drop the reconsideration that is an option for the Chief of Police. (item II.A.2.) Benson seconded.

Yes: Bellfield, Benson, Bicking, Franklin, Kvidera, Terrell

Abstain: Zuege

Motion passed.

Kvidera **moved** the board recommend the Chair and Vice Chair be appointed to staggered terms.

Discussion

Bicking would rather see an acting chair than Kvidera's motion. He suggests that if the board does not have a chair there be an acting chair in any case where the chair is not available. The board can choose an acting chair whenever they need someone to function as a chair under the ordinance. That way, this only takes effect when it is needed and the board is independent of requiring an action by the Mayor. It means the CRA can function as the truly independent board that it is supposed to be. That does not in any way reduce the prerogatives of the Mayor or his ability to appoint a chair. He can simply appoint. Until he does that, the board can still function.

Bicking is concerned is that it is difficult for the Mayor to make these appointments. It can be hard to find a chair and perhaps even a vice chair. He would support a chair, vice chair and a provision for someone to step in on an acting basis.

Kvidera proposes the board give the Mayor his second choice: another board member. Then he would add Bicking's motion as a third choice, so that the board can still act in the absence of both. This gives the Mayor two chances to get his choice appointed.

Bellfield opposes Kvidera's proposal. Bellfield agrees with the Reid's proposal. There is no need to stagger terms between chair and vice chair.

Zuege's concern is that if the board recommends the Mayor be bound to appoint chair and vice-chair by staggered terms, that presents limitations on who the Mayor can select. If there are problems finding someone willing and acceptable to the Mayor, adding the requirement that the person must have a staggered term from the chair will add to the difficulty of making an appointment.

While having a vice chair reduces the chance the board will be without someone to conduct board business requiring a chair, it does not eliminate the chances. Long term, there could be a mayor who will not appoint a chair or vice chair. Having a vice chair and the Bicking suggestion or an acting vice chair until the Mayor makes an appointment gives the Mayor every opportunity to make the appointments but still allows the board to conduct business. If the Mayor doesn't like the selection of acting vice chair, the Mayor can make an appointment any time to overrule that.

Sherman Patterson stated that the Mayor would be appointing a vice chair from the current board members, which simplifies the appointment process. The candidates' backgrounds are already known.

Terrell called the question.

The chair stated the question:
Yes: Kvidera, Bicking
No: Bellfield, Benson, Franklin, Terrell, Zuege
Motion failed.

Bicking **offered a substitute motion:**
That the board accept Reid's recommendation as in his memo, pages 6 and 7, [III.A. Vice Chairperson](#).
Kvidera seconded.
Motion passed unanimously.

Bicking **moved** the board recommend the following language be added to section 172.30: In the absence of a chairperson and a vice chairperson, the review authority may, by majority vote, select one of its members to be acting chairperson, which person shall assume all the powers and responsibilities of the chairperson of the review authority until the next regular monthly meeting or until a chair or vice chair is available. Benson seconded.
Yes – Benson, Bicking, Franklin, Kvidera, Terrell, Zuege
No – Bellfield.
Motion passed.

Bicking **moved** the board accept Reid's suggestion in his memo (Page 7, III.B. enlarge the Preliminary Review Timeline) to modify 172.80, striking 7 days and inserting 30 days for a preliminary review. Benson seconded.
Motion passed unanimously.

Bicking **moved** the board accept Reid's suggestion in his memo (Page 7, III.C. Enlargement of Investigative Timeframe) to modify 172.90, striking 60 days and inserting 120 days, and striking 30 days and inserting 60 days. Zuege seconded.
Motion passed unanimously.

Bicking **moved** the board accept Reid's suggestion in his memo (Page 9, III.E. Negotiating Authority of CRA complaints) regarding an amendment to the ordinance in anticipation of the outcome of *Police Officer's Federation of Minneapolis v. City of Minneapolis* lawsuit or Collective Bargaining Agreement negotiations with the Police Federation. Zuege seconded.

Discussion

Reid stated that having someone outside the CRA process negotiating the outcome that the panel has determined seems to negate the board's authority. That could happen for each case that comes before the board. That would have the hearing panel merely going through the motions of sustaining a complaint. If anyone would have that authority, it should be in line with the thought behind civilian oversight to have either the board chair or CRA manager or Civil Rights director have the authority to negotiate those grievances regarding a hearing panel decision. Regardless of what happens with the litigation the board should take an opportunity to weigh in on this.

Zuege likes the provision suggested by Reid. It is unfortunate that this would come into play and is disappointing that the city would negotiate a contract that would make this a necessity, but since they may, it is good to have this in the ordinance.

The chair stated the question.
Motion passed unanimously.

Reid asked that the board make changes to the Administrative Rules in a timely manner after changes are made to the Ordinance. Some of the changes needed go back to ordinance changes made in 2003.

Zuege requested CRA staff present a revised list of Administrative Rules changes for the next board meeting.

Bicking **moved**:

- A) That the Steering Committee meet during December to compile the complete revised ordinance in accordance with the substantive decisions made at the December board meeting and that the Steering Committee also prepare a document stating the board's rationale for these changes.
- B) That the Steering Committee's recommendations be ready for approval, disapproval or modification at the January CRA board meeting.
- C) That the chair of the board notify City Council of our progress and intentions.
- D) That the chair of the board notify the City Council that the board is prepared for the introduction of the ordinance change at the last full City Council meeting in 2008.

Terrell seconded.

Motion passed unanimously.

VI. Public Invitation (speakers limited to two minutes)

Bellfield stated that the issues just completed were for board discussion. He did not intend to upset Ms. Gross, who wished to speak to the board about those issues, and who has left the meeting before public invitation.

Michael Salchert

- He supports the chair's view on denying Gross's ability to speak during board discussion. He objects to her being able to speak and thinks it is inappropriate that she did get to speak. She could communicate with Bicking, who does have standing to speak, in writing. To treat her with any kind of preference over other members of the public is inappropriate.
- He suggests the board take a recess when it has a meeting of this length.

VII. Announcements

There were no announcements.

VIII. Adjournment

Terrell **moved** the meeting be adjourned. Kvidera seconded.

Motion passed unanimously.

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
301 4th Avenue South, Suite 670
Minneapolis MN 55415
(612) 673-5500

TO: CRA Board

FROM: Samuel L. Reid, II
Manager

DATE: December 3, 2008

SUBJ: Monthly Report – **NOVEMBER 2008**

1. Intake – 36
2. Signed Complaints – 10

By Ward	By Police Precinct	Repeat Officers – 10
Ward 1 – 1	Precinct 1 – 4	New Officers – 1
Ward 3 – 1	Precinct 2 – 2	
Ward 4 – 1	Precinct 3 – 1	
Ward 5 – 2	Precinct 4 – 3	
Ward 7 – 4		
Ward 12 – 1		
- Allegations

Excessive Force – 5
Inappropriate Language – 9
Harassment – 2
Inappropriate Conduct – 6
Failure to Report Use of Force – 1
3. Completed Investigations – 6

Complaints in Investigation	2006 – 1
	2007 – 22
	2008 – <u>35</u>
	58
4. Mediations Scheduled – 2

Mediations Heard – 2
Successful Mediations – 1
5. Complaints awaiting Hearing as of 11/28/08 – 38

Scheduled for hearing in December – 14
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6. Hearing Panels
 - Complaints heard – None
 - Determinations Completed – 1
 - Not Sustained – 1
 - Determinations Pending – 23
 - Hearings held in 2006 – 1
 - Hearings held in 2007 – 2
 - Hearings held in 2008 – 20
7. Discipline Decisions Received From Chief of Police – None
8. Complaints Awaiting Discipline Decision – 5

Minneapolis Civilian Police Review Authority
301 4th Avenue South – Suite 670
Minneapolis MN 55415

Memorandum

Date: November 10, 2008

To: Michael Jordan, Civil Rights Director

From: Lee Reid, CRA Manager

RE: CRA Response to City Attorney's October 15, 2008 Memorandum regarding
Civilian Review Authority Ordinance Changes

Introduction

This memorandum is the Minneapolis Civilian Police Review Authority's (CRA) response to the memorandum the City Attorney's Office (CAO) provided to HE&E Chair Benson proposing CRA Ordinance and Administrative Rules changes in response to the Information Policy Analysis Division's (IPAD) advisory opinion. This memorandum provides the CRA's position on the CAO's recommended CRA Ordinance and Administrative Rules changes and provides the CRA's recommended ordinance and administrative rules changes.

On or about October 15, 2008, the CAO provided the above-referenced memorandum to Council Member Benson. The CAO also provided the memorandum to the CRA and the full City Council on October 29, 2008. The CAO memorandum analyzes the IPAD advisory opinion regarding the CRA process, specifically, the notification provided to citizens regarding hearing panel determinations and the CRA's ability to offer citizens reconsiderations. Additionally, the memorandum makes recommendations to City Council concerning the issues raised by the IPAD.

The CAO memorandum makes three recommendations to the City Council. First, the CAO recommends the revision or elimination of the reconsideration hearings. Second, the CAO recommends the elimination of all portions of the ordinance and rules that make reference to providing the outcome of hearing panels prior to final disposition of the complaint. Third, the CAO recommends amending the ordinance to only require the CRA to only send sustained complaints to the MPD.

The CRA did not provide the CAO any information related to the CRA process prior to the drafting of the CAO memorandum. As such, this response memorandum will first provide clarification on two assertions presented in the CAO memorandum. Next, this

memorandum will present the CRA's position on each of the CAO's recommendations. Lastly, this memorandum will provide the CRA's recommended ordinance and administrative rules revisions and additions.

Discussion

I. Clarification of information provided by the City Attorney Office

The CAO makes two assertions related to the CRA process and the CRA Ordinance that require clarification. The first clarification is related to the CAO's assertion that the elimination of reconsideration hearings will have the desirable effect of shortening the CRA process or relieving the considerable difficulty of maintaining the timeframes required by the ordinance. The second clarification concerns the CAO's assertion that the chief must meet a special requirement to request reconsideration of a sustained complaint from the CRA Board.

A. Elimination of the reconsideration hearings will not have the desirable effect of shortening the CRA process or relieving the considerable difficulty of maintaining the timeframes required by the ordinance.

Contrary to the CAO's assertion, the elimination of the reconsideration will not provide any recognizable reduction in the CRA process. Reconsideration is a minor part of the CRA process. The impact of reconsiderations on the CRA process is reflected in the 2004 – 2007 reconsideration statistics.

From 2004 through 2007, twenty-two (22) complaints out of the 258 complaints that could have qualified for reconsideration received a reconsideration hearing. Of those 22 complaints, the full board only reversed the determination of one complaint and remanded one complaint for additional investigation. As the statistics indicate, very few citizens use the reconsideration option. Moreover, the reconsideration option does not enter the CRA process until after the investigation and hearing stages. For the overwhelming majority of reconsideration complaints, the reconsiderations hearings were held the following month after receipt of the requests.

The overall length of the CRA process is attributed to the length of time required to thoroughly and fairly investigate citizen allegations of police misconduct relative to the CRA resource capacity. As a result, the difficulty associated with maintaining the timeframes required by ordinance are directly related to the length of investigations. The length of an investigation depends on the complexity of complaint and is affected by the number of intakes received during a month. A second and lesser impact on the CRA process was a recent backlog of complaints awaiting hearings and complaints awaiting a hearing panel determination. This backlog was associated with the eight months that the board did not conduct hearings due to a partial board and the absence of a board chair. This concern has been resolved with the appointment of new board members and a new chair, and the resumption of complaint hearings.

Enlarging the investigative timeframe or adding an investigator would have a significant impact on the CRA process. Enlarging the timeframe would allow the CRA to operate under timeframes more realistic to the resource capacity. This would also ease the compliance concern. It should be noted, however, that enlarging the timeframe will not address officer and citizen concerns that the CRA process is too long.

The addition of an investigator would shorten the CRA process for the complainant and officer. An additional investigator dedicated to intakes would address citizen and officer concerns related to the length of the CRA process. CRA investigators would then be able to concentrate fully on working cases – interviewing and writing summaries and recommendations, which would reduce the overall CRA process time.

As stated above, in regards to the backlog of complaints awaiting hearing and complaints awaiting a hearing panel determination, since September, the CRA board has worked steadily to reduce the number of cases waiting for hearing and cases waiting for determination.

B. Chief does not have to make a showing of a legal or factual basis to receive a reconsideration of a sustained CRA complaint.

Contrary to the CAO's assertion that the chief has to show a legal and factual basis to requests a reconsideration of a sustained CRA complaint, the chief only has to request a reconsideration from the board. There is no other requirement to be met by the chief in order to have a reconsideration; however, the chief would need to provide a factual or legal basis to support the board's reversal of a hearing panel sustained complaint. Under M.C.O. §172.130, "the chief or his/her designee shall appear before the entire board to present the factual and legal basis on which the chief asserts that the complaint should be not sustained." Further, the ordinance provides that:

After the review authority has reconsidered the matter [the sustained complaint], the decision of the review authority shall be provided to the chief in writing. If the review authority again determines that the complaint should be sustained, the chief may then take one of the actions specified in subparagraphs (1), (2), or (4) above. M.C.O. §172.130 (b).

Therefore, the chief, like the complainant, only has to notify the board that he would like a reconsideration. The legal and factual basis that the CAO refers to only applies to what is required of the chief to have the board reverse a hearing panel sustained determination.

II. CRA's position on the City Attorney's ordinance revisions

The CRA supports the following CAO recommendations:

- Ordinance change that eliminates reconsideration hearings for the complainant
- Ordinance change that eliminates the CRA requirement to forward all files to the Chief of Police

- Eliminate all portions of the ordinance and rules that make reference to providing the outcome of hearing panels prior to final disposition of the complaint

The CRA does not support the following CAO recommendations:

- Ordinance change that eliminates reconsideration hearings for the chief
- Ordinance change modifying reconsideration hearings to full CRA board hearings on all complaints or offering reconsideration hearings to all complainants

A. Revise or eliminate reconsideration hearings

1. Ordinance change that eliminates reconsideration hearings for the complainant

In general, the CRA supports the elimination of the reconsideration option.

While the CRA supports the elimination of the reconsideration, the CRA recommends that the City Council consider offering reconsideration for the officer and the complainant with the requirement that an offer of new evidence be presented before the granting of a reconsideration hearing. This may be accomplished despite the restriction of data practices. This recommendation will be discussed in the section of CRA recommended ordinance revisions.

2. Ordinance change that eliminates reconsideration hearings for the chief.

The CRA does not support the elimination of the chief's option for reconsideration of a not sustained complaint.

While the chief has not taken advantage of this option, the option provides the chief an opportunity to communicate directly with the board, which would provide the board with a greater understanding of the chief's disciplinary philosophy and provide the board with additional learning opportunities with regard to evaluating police misconduct cases. Moreover, in October 2006, the City Council amended the CRA Ordinance to include a reconsideration option to provide the chief an opportunity to present argument to the board to reverse a hearing panel's sustained complaint to a not sustained complaint. Amending the ordinance to include the chief's ability to have a reconsideration provides the chief an opportunity to avoid having sustained complaints that the chief believes do not satisfy a legal or factual basis for discipline held against the chief when considering the chief's record of discipline on CRA sustained complaints.

Furthermore, in considering the fairness of the chief's reconsideration option, the chief has the ability to receive advice from various sources and receives a complete copy of the sustained complaint file to assist the chief in his argument against a sustained CRA complaint during the reconsideration hearing. Moreover, because the chief's reconsideration is held outside of the presence of the complainant, the chief is afforded an exclusive opportunity to present to the board. The complainant, however, is limited to a

guess, at best, as to what the CRA's not sustained allegations were and whether he or she was presenting information germane to the board's decision on his or her reconsideration.

3. Ordinance change modifying reconsideration hearings to full CRA board hearings on all complaints or offering reconsideration hearings to all complainants.

The CRA does not support the options that the CAO put forth to retain full board hearings.

Because nearly every CRA investigation receives a hearing, arranging the schedules of eleven volunteers to meet to discuss individual cases would be time-consuming to arrange scheduling, would reduce the effectiveness of the board, cause a backlog of complaints waiting for hearing, and would be costly. Under normal circumstances, the CRA averages one hearing night a week. The three-member hearing panels typically hear a maximum of two full hearings. The panel members must read all statements and review the complaint files prior to the hearings. Trying to arrange the schedules of eleven members for hearings and file reviews would be extremely difficult. More importantly, the Civil Rights Department's board member compensation budget allocation would substantially increase if the full board heard every complaint. Each CRA board member receives \$50.00 per day for attending CRA hearings. For example, a three-member hearing panel can effectively managed a maximum of two full cases a hearing night, which costs the Civil Rights Department \$150.00 per hearing panel. In contrast, if the ordinance required the full board to sit for every hearing, the cost for a two complaints would more than triple to \$550.00 per every two hearings.

The suggestion that a reconsideration be offered to all complainants would also be inefficient. Not every complainant needs a reconsideration and the offering of a reconsideration to everyone would further complicate the process and add to the citizens and officer frustration with the CRA process.

The CRA suggests that if the City Council wishes to retain reconsideration hearings that the granting of a complaint hearing be based on the pre-2003 CRA requirement of new evidence. Further, the CRA would suggest that the reconsideration option be expanded to include the officer. This suggestion will be addressed in part three of the memorandum.

B. Eliminate all portions of the ordinance and rules that make reference to providing the outcome of hearing panels prior to final disposition of the complaint.

The CRA supports the elimination of notice to the complainant concerning the hearing panel determinations, unless permitted by the Minnesota Data Practices Act, Chapter 13 of Minnesota Statutes.

Although the CRA supports the above ordinance change, the CRA suggests that the citizen receive a notice that informs the citizen that the CRA process concludes with the

conclusion of the CRA hearing. This suggestion will be addressed in part three of the memorandum.

C. Ordinance change that eliminates the CRA requirement to forward all files to the Chief of Police.

The CRA supports this CAO recommendation.

III. CRA's recommended CRA Ordinance and Administrative Rules changes.

The CRA's recommended Ordinance and Administrative Rules changes address issues raised by the IPAD opinion, the CRA board, and CRA staff.

The following recommended ordinance and administrative rule changes will be discussed in this section:

- A. Vice Chairperson appointed by the Mayor
- B. Enlargement of Preliminary Review Timeframe
- C. Enlargement of Investigative Timeframe
- D. Notification of conclusion of the CRA process
- E. Negotiating Authority of CRA complaints
- F. Removal of notification of hearing panel determination
- G. Reconsideration (with new evidence provision)

It should be noted that the current ordinance and administrative rule language proposed to be eliminated is denoted by ~~striketrough~~ and the CRA's suggested language is denoted by underlined text.

A. Vice Chairperson

The purpose of this recommended change is to provide the CRA board with a mechanism to continue operating in the absence of the chairperson. The appointment of a vice chairperson by the mayor for a term corresponding to the chairperson's two-year appointment would allow the CRA to continue its most critical function of conducting hearings. Conducting timely hearings is critical to citizen's perceptions of the integrity of the CRA process and the City's commitment to police accountability. A vice-chairperson would also reduce the likelihood of a growing backlog experienced recently.

The CRA Ordinance provides that the chairperson is responsible for appointing members to hearing panels. In addition, the chairperson is the board's representative on the Police Accountability Coordinating Committee (PACC). It is important that the board's relationship-building efforts continue in the absence of a chairperson, particularly at PACC meetings. Lastly, and most importantly, the addition of a Vice Chairperson appointed by the Mayor does not infringe on or usurp the mayor's current ability to have oversight with regard to the board functions and the leadership of the board.

There are no budget implications associated with this ordinance change.

172.30. Review authority membership. (a) *Composition.* The review authority shall be comprised of eleven (11) members, six (6) of whom shall be appointed by the city council, and five (5) of whom shall be appointed by the mayor, subject to the approval of a majority of the city council. The members shall serve for terms of four (4) years. From the members, a chairperson and vice-chairperson of the review authority shall be appointed by the mayor, for a term of two (2) years, subject to the approval of a majority of the city council. The vice-chairperson shall only have chairperson duties in the absence of the chairperson. All members shall continue to serve until their successors have been appointed. A majority of the members shall constitute a quorum.

(b) *Qualifications.* All members shall be residents of the city. Residents currently or previously employed by the Minneapolis Police Department are ineligible to serve as members of the authority.

(c) *Minimum training requirements.*

(1) All members must participate in an annual training session as arranged by the Minneapolis Department of Civil Rights.

(2) All new members must complete training in the following subject areas as arranged by the Minneapolis Department of Civil Rights: police use of force, Minnesota Government Data Practices Act, Open Meeting law and Minnesota Public Employee Labor Relations Act, conflict of interest.

(3) Within two (2) years of appointment, all new members must complete the portions of the Citizen's Academy as determined by the Minneapolis Department of Civil Rights. Members will be compensated fifty dollars (\$50.00) for each Citizen's Academy session attended.

(d) *Removal.* Any member of the review authority may be removed, by vote of a majority of the city council and approval of the mayor, for incompetence, neglect of duty, misconduct or malfeasance, failure to participate in and complete minimum training requirements. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the mayor subject to approval of the city council. A member who has three (3) absences from meetings or complaint hearings in a calendar year shall automatically cease to be a member of the authority.

(e) *Compensation--Limitation.* Each member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings or hearings, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members. The total amount of per diem, payment for file review, and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 3, 3-21-03; 2003-Or-112, § 1, 9-12-03; 2004-Or-068, § 1, 6-18-04)

B. Enlarge the Preliminary Review Timeline

The CRA recommends that the City Council consider enlarging the preliminary review timeframe. Currently, the CRA sends a significant number of complaints to the board for dismissals due to information received after the 7-day preliminary review date. This often occurs when the CRA is waiting on video tape from the MPD or waiting to establish the

identity of an unknown officer. Under the current timeframe, if after 7-day preliminary review period, a complainant is unable to identify an officer, or a squad or Safezone video clearly shows that the citizen's account of an incident does not support the citizen's allegations, the CRA has to schedule the complaint for a dismissal hearing.

Enlarging the timeframe to 30 days would allow the CRA additional time to receive squad and Safezone videos and complete photo identifications of unknown officers. The CRA's ability to dismiss unwarranted complaints or complaints with unknown officers where the identification efforts have failed to established the identity of the unknown officer within 30 days would allow the CRA reduce the hearing load of the CRA board. Moreover, the 30-day timeframe will provide a cost savings to the Civil Rights Department because each complaint that warrants a dismissal and is within the 30-day preliminary review period is a case that does not have to go before the board.

172.80. Preliminary review. Within ~~seven (7)~~ thirty (30) days of the date that a complaint was filed, review authority staff shall make a preliminary review of each complaint and determine whether an investigation of the alleged misconduct is warranted, whether mediation is appropriate or whether no further action is necessary. All complaints shall be kept on file regardless of whether an investigation is initiated. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 9, 3-21-03)

C. Enlargement of Investigative Timeframe

As mentioned earlier, enlarging the ordinance timeframe to complete an investigation from 60 days to the pre-2003 ordinance requirement of 120 days with a one-time 60-day extension would allow the CRA to operate under timeframes that are more realistic to the resource capacity. This also would ease the compliance concern.

172.90. Investigations. If review authority staff determines that further investigation is warranted, the complaint shall be investigated by a review authority investigator. The investigator shall prepare recommended findings of fact and a recommendation of sustained or not sustained in a written summary. Such investigation shall be completed within ~~sixty (60)~~ one hundred and twenty (120) days of the date that the complaint was filed. The review authority manager may once extend this deadline by an additional ~~thirty (30)~~ sixty (60) days, with a written explanation of the reason(s) for the extension. The application of this deadline may be held in abeyance during such time as the complainant and officer are participating in mediation or the review authority staff determine that an investigation might impede or harm a criminal investigation. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 10, 3-21-03)

D. Removal of complainant notification of hearing panel determinations and adding notification of conclusion of the CRA process

In order to comply with the IPAD opinion restricting the notification of the hearing panel's decision to the complainant, the CRA recommends removing the complainant from the notification of the hearing panel decision. Despite the restriction on the CRA's ability to notify the citizen of the hearing panel's decision, the CRA recommends an ordinance change that provides the complainant with notification that the CRA process

has concluded. Without notification that the CRA process has concluded, citizens are left to wonder if the CRA took any definitive action on their complaints. Citizen's perception of the CRA's ability to provide the City of Minneapolis an effective independent oversight mechanism is intricately related to the public's belief that the CRA is credible, impartial, and timely. The CRA primarily demonstrates its effectiveness through its ability to communicate with the complainant. More importantly, notification that the CRA process has concluded does not violate officers' rights under the Minnesota Government Data Practices Act. This notification does not inform citizens of the hearing panels' actions on the complaints.

172.100. Hearings related to complaints. (a) Upon the completion of the investigation of a complaint, a three (3) member panel of the review authority shall weigh and consider all reliable and credible evidence presented. The review authority shall make reasonable efforts to conduct hearings related to complaints within thirty (30) days of the completion of the investigation.

(b) Prior to the hearing, a review authority investigator or the manager shall present the investigatory findings of fact and recommendations to the panel. No person other than a review authority investigator or the manager and the panel members shall be present during the presentation and discussion of the case.

(c) At the hearing, the complainant and the police officer, or their representatives, shall each be permitted ten (10) minutes to address the review authority, in the presence of each other, regarding the complaint. Other paid or volunteer review authority staff may attend with and assist the complainant, but will not otherwise participate in the hearing.

(d) Within thirty (30) days of the completion of a hearing, the hearing panel shall either remand the complaint to review authority staff for further investigation or issue a written report containing findings of fact and a determination of whether the complaint is sustained. This report shall be made public when permitted by the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes.

(e) Notice.

(1) At least ten (10) days prior to the scheduled hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the hearing.

2) The review authority shall provide written notification of the hearing panel's decision to ~~complainant and~~ officer. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 12, 13, 3-21-03; 2004-Or-068, § 3, 6-18-04)

(3) At the conclusion of the CRA hearing, the review authority shall provide written notification of the review authority's completion of the CRA process to the complainant. This notification shall provide an advisement that the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes, governs the release of public employee private data.

E. Negotiating Authority of CRA complaints

This amendment to the ordinance is in anticipation of the outcome of *Police Officer's Federation of Minneapolis v. City of Minneapolis* lawsuit or Collective Bargaining Agreement negotiations with the Police Federation. The CAO has advised the CRA that the status of this lawsuit is not within the privy of the CRA. Nevertheless, the CRA

believes that the outcome of this litigation may have an immediate impact on the ability of the CRA to offer a meaningful service to the citizens of Minneapolis.

172.115. Officer Grievance Negotiating Authority. The manager of the review authority has the sole authority on behalf of the City of Minneapolis to negotiate and enter into a final and binding grievance settlement agreement of CRA findings and determinations.

The CRA's concern centers on the potentiality of a third party having the ability to negate the citizen board's decisions, which would remove the citizen board as the final arbiter of CRA complaints, and which would be in direct contradiction to the intent of the original drafters of the ordinance. The CRA suggests that the manager be vested with the authority to enter into a final and binding grievance settlement agreement of CRA findings and determinations because the manager is a City employee, and by ordinance must be a licensed attorney, and is in the position to be held accountable for the negotiating in good faith.

F. Reconsideration (with option expanded to the officer and new evidence provision)

The CRA believes that the reconsideration should be expanded to allow the officer the ability to request reconsideration. The CRA believes that the new evidence provision should be limited to evidence that the complainant or officer did not know about or could not have known about during the investigation and hearing panel stage. The reconsideration option offers the citizen and officer the ability to present new evidence that may have been discovered after the hearing panel has asked questions of the complainant and officer. However, the officer and witness will not be on equal footing during the reconsideration because the officer is notified of the hearing panel's determination on the allegations, whereas the complainant does not receive knowledge of the hearing panel's determination.

It should be noted that prior to the 2003 ordinance change, officers and complainants had an opportunity to present new evidence to the same hearing panel that heard the original case.

172.120. Request for reconsideration by complainant and officer. (a) Within thirty (30) days of receipt of the hearing panel's notification letter of completion of the review authority process, a complainant may submit a written request for reconsideration to the review authority, which shall state that new evidence has been uncovered and explicitly states the nature of the new evidence decision to not sustain a complaint, a complainant may submit a written request for reconsideration to the review authority. Within thirty (30) days of receipt of the hearing panel's determination letter, an officer may submit a written request for reconsideration to the review authority, which shall state that new evidence has been uncovered and explicitly states the nature of the new evidence.

(b) The chairperson shall review the new evidence to determine whether the evidence is new to the file. If the chairperson determines that the evidence is new, the request for reconsideration shall be forwarded to the review authority board. If

chairperson determines that the evidence is not new evidence, the complainant or officer shall receive a notice of denial of request for reconsideration.

(b) The review authority shall reconsider the complaint at its next regularly scheduled meeting that is not less than ten (10) days after the filing of the request. If the review authority determines that the request for reconsideration alleges newly discovered evidence, the complaint should be remanded to authority staff to investigate and resubmit findings within thirty (30) days. The review authority may sustain or reject the prior hearing panel decision regarding the complaint.

(c) The complainant and the police officer, or their representatives, shall be permitted ten (10) minutes each in the presence of each other to address the review authority regarding the request for reconsideration.

(d) Notice.

(1) The review authority staff shall provide written notification to the officer of the request for reconsideration.

(2) At least ten (10) days prior to the reconsideration hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the reconsideration hearing.

(3) The review authority shall provide written notification of its reconsideration decision to ~~the complainant and~~ officer. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 16, 17, 3-21-03; 2004-Or-068, § 4, 6-18-04)

(4) At the conclusion of the reconsideration, the review authority shall provide written notification of the review authority's completion of the CRA process to the complainant. This notification shall provide an advisement that the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes, governs the release of public employee private data.

Below are the corresponding administrative rules changes. The rules changes also include updated changes associated with previous CRA Ordinance changes.

Minneapolis Civilian Police Review Authority Administrative Rules

Source of Authority

This revision reflects the change in the number of board members currently authorized by the CRA Ordinance.

Rule 1.

A. Source of Authority. The Minneapolis Civilian Police Review Authority, hereinafter referred to as the "Authority," was established by Ordinance of the City of Minneapolis March 21, 2003. The Authority includes a Board of ~~seven~~ eleven members and an administrative staff consisting of a Manager, a Community Outreach Advocate, investigators, and other support staff as necessary. (Minneapolis Code of Ordinances. Title 9 Chapter 172.)

Scope of Authority.

This revision reflects the 2006 ordinance change that added MPD policy violations to the CRA's Scope of Authority.

Rule 2. Scope of Authority. The authority shall receive complaints that allege misconduct by an individual police officer or officers acting in their own discretion, including, but not limited to the following:

- a. Use of excessive force.
- b. Inappropriate language or attitude.
- c. Harassment.
- d. Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age or sexual orientation.
- e. Theft.
- f. Failure to provide adequate or timely police protection.
- g. Retaliation for filing a complaint with the review authority.
(Ord. §172.20)
- h. Any violation of the Minneapolis Police Department's policy and procedure manual.

Definitions.

The revisions in this section include changes associated with the 2006 ordinance change (Authority, Board, Complaint, Deputy Chief, Hearing Panel, Misidentified Officer, Preponderance of the Evidence, and Representative) and the recommended change (New Evidence).

Rule 3. Definitions. Whenever used in these Rules, unless plainly evident from the context that a different meaning is intended, the following terms mean:

Authority. The Minneapolis Civilian Police Review Authority. The Authority includes a Board of ~~seven~~ eleven members, a Manager, Community Outreach Advocate, Investigators and Administrative Staff (Minneapolis Code of Ordinances, Title 9, Chapter 172.)

Board. The Board of Directors of the Minneapolis Civilian Police Review Authority, which consists of ~~seven~~ eleven members.

Preponderance of the Evidence. (Moved to proper place in alphabetical order)

Complaint. ~~The allegation, signed and sworn, by a complainant regarding an Officer or Officers of the Minneapolis Police Department.~~ The form generated by the Authority containing the allegations regarding an officer or officers of the Minneapolis Police Department, signed and sworn by the Complainant.

Deputy Chief. The appropriate deputy chief assigned to the division of the accused officer, as designated by the Chief.

Hearing Panel. The hearing panel consists of three (3) ~~persons~~ board members appointed by the Authority Chairperson to weigh and consider all reliable and credible evidence presented and file a report containing findings of fact and a determination of whether the complaint is sustained.

Misidentified Officer. A misidentified officer is an officer whose identity was misidentified by the complainant, and where staff has verified by documentation and other means that the misidentified officer was not involved in the events of the complaint.

New Evidence. Evidence found after the hearing panel determination that the Complainant or Officer did not have access to, control of, or knowledge of during the staff investigation.

Preponderance of the Evidence. The greater weight of the evidence supports the decision.

Representative. A person selected by the officer and a person selected by the Complainant, familiar with the facts of the complaint, who may attend with and/or represent their respective parties at the hearing.

Conduct of Monthly Meetings.

The revision in this section allows the board to adjust to vacancies on the board. The revisions also reflect changes in the lettering of the section.

Rule 5. Conduct of Monthly Meetings.

A. Regular Meeting. The Board shall meet once every month at a regularly scheduled time and place. The meeting shall be for the purposes of discussing, deciding or receiving information as a group on issues relating to the official business of the Authority.

B. Notice. A schedule of the regular meetings shall be on file in the City Clerk's office and available to City staff and the public. If there is a deviation in the meeting time or place, notice must be provided as required for a special meeting.

C. Quorum. A quorum of the Board shall be ~~four (4) members.~~ a majority of the members actually holding office. A quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.

D. Public Access. In any open meeting, the public must have access to at least one copy of any printed materials, excluding data classified as not public, relating to the agenda items of the meeting. This includes information prepared or distributed by or at the direction of the governing body or its employees and which are:

- distributed at the meeting to all members of the governing body
- distributed before the meeting to all members
- available in the meeting room to all members

E. Closed Meetings. Before closing a Board meeting, the chair shall state on the record the specific statutory grounds permitting the meeting to be closed and describe the subject to be discussed.

F. Vote Recording. Votes of the members of the Authority on any action taken in an open meeting must be recorded in a journal kept for that purpose and that such journal be open to the public during normal business hours.

FG. Robert's Rules. Robert's Rules of Order Newly Revised shall be the parliamentary authority for all matters not specifically set forth in these rules.

Collection and Dissemination of Data

The revisions in this section reflect the changes necessitated by the IPAD advisory opinion.

Rule 6. Collection and Dissemination of Data

- 4. Public Data.** The following data created and collected by the Authority shall be public:
- a. The name and address of the Complainant;
 - b. The name, badge number, rank and job description of the Officer;
 - c. The fact that a complaint has been filed against the Officer;
 - d. The status of a Complaint. The following shall be considered status information:
 1. The fact that a complaint has been withdrawn by the Complainant.
 2. The fact that a Complaint has been dismissed.
 3. The fact that a Complaint is in mediation.
 4. The fact that a mediation agreement has been reached.
 5. The fact that a Complaint is being investigated.
 6. The fact that a Complaint has been referred to a panel of the board for hearing;
 7. The fact that a Complaint has concluded within the CRA process.
 - ~~8. The fact that a Request for Reconsideration to the full board is pending.~~
 - ~~9. The fact that a complaint was not sustained, or that a complaint was sustained.~~
 - ~~10. The fact that a Complaint has been referred to the Chief.~~

- e. The final disposition of any disciplinary action, together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the City of Minneapolis.

Filing a Complaint.

The revisions in this section reflect 2006 ordinance changes (Complaint Dismissals), the signed statement requirement, and the re-lettering of sections within the Rule 7.

Rule 7. Filing a Complaint.

F. E. Information Required. The complainant must provide at a minimum, the following information:

1. Name, address, telephone number, date of birth; if a complaint is filed on behalf of someone else, this information concerning the minor, deceased person or the vulnerable adult must also be filed.
2. Alternate means of contact; if a complaint has been filed on behalf of someone else, this information concerning the minor, or the vulnerable adult must also be filled;
3. Written and signed statement setting forth the allegation(s), including: date, time, and location of the alleged misconduct and any other pertinent details;
4. Identification of police officer (badge and/or name and/or description). The assigned investigator will assist the complainant with identification in the event that a complainant is unable to produce a badge number or name.

G.F. Amendment of Complaint. A signed complaint may be amended throughout the course of the investigation. Circumstances under which a complainant may amend his/her Complaint include, but are not limited to, new evidence having been obtained such as a new witness coming forward or the recollection of pertinent information. This amendment must also be in written form and signed under penalty of perjury.

H.G. Withdrawal of Complaint. A Complainant may withdraw from the review process at any point in the proceedings by submitting a written, date and signed notice to the Authority of the complainant's intention to withdraw. The signed withdrawal statement must include an affirmation that the Complainant has not been coerced or intimidated into withdrawing the complaint.

In the case of such withdrawal, The Manager may give the case file to the chief, if:

- a. The Manager determines that the file contents could be material in a criminal case; or
- b. The Chief makes a request for the file.
- c.

I.H. Refiling of the Complaint. The stopping of the complaint process does not prevent the Complainant from filing another complaint within the prescribed limitations

period of the Minneapolis Code of Ordinances, Title 9, Chapter 172, §172.60, and these Rules.

I. Complaint Dismissal

1. Dismissal After Preliminary Review.

- a. If the Manager finds that further investigation is not warranted at any time after the preliminary review stage or that a complainant has failed to provide the information identified in Rule 7(E), the Manager may request a dismissal of the complaint.
- b. When the Manager requests a dismissal, the request must include the basis of the dismissal and any supporting documentation, the Manager shall present the request for dismissal to a three-member hearing panel for final disposition.
- c. When a complaint is dismissed, the complainant may request a Reconsideration Hearing to reactivate the complaint.
- d. Upon dismissal of a complaint under this section, a notice of dismissal setting forth the basis for the dismissal will be sent to the Chief of Police.

2. Administrative Dismissal

- a. If the Manager finds that the complainant has filed a complaint against a misidentified officer, an officer outside of the Review Authority's jurisdiction, or an officer no longer with the Minneapolis Police Department, the Manager may dismiss the complaint.
- b. The Manager shall forward an administrative dismissal form to the Director of Civil Rights for signature.
- c. When a complaint has been dismissed by administrative dismissal, the Manager shall present a copy of the administrative dismissal form to the entire Board.
- d. In the event that an officer has been reinstated to the Minneapolis Police Department, the Manager shall have the authority to reactivate the complaint. The Minneapolis Police Department shall provide the Review Authority with notification of all officers who have been reinstated pursuant to Section 172.185. This notification shall include the officer's date of reinstatement.
- e. Nothing above shall prohibit the generation of a complaint in the name of the correctly identified officer's name.

Mediation.

The revisions in this rule reflect the 2005 ordinance change from voluntary mediation to mandatory mediation.

Rule 10. Mediation.

~~**A. Availability.** The Authority shall inform all complainants and Officers of the possibility of mediation as an alternative to the Authority's processes. Such~~

~~information shall be included with the notice of the receipt of the signed complaint pursuant to Rule 8.B.4.~~

A. Notice. Minneapolis Code of Ordinances, Section 172.150 establishes a program of mediation of cases meeting the guidelines in Section 172.150, in which participation in mediation in good faith is mandatory. The program applies to complaints filed on and after 9-23-05. The Authority shall inform all complainants and officers of the possibility that the complaint may be referred to mediation, and if so, that participation in the mediation process in good faith is mandatory. Such information shall be included with the notice of receipt of the signed complaint pursuant to Rule 8.B.4.

B. Agreement Required. ~~Both the Complainant and the Officer must agree to mediation for mediation to proceed. If at any point during the investigation or while a complaint is pending before the Board, a party requests mediation, the Authority shall inform the other party of the request for mediation and shall inquire as to the other party's interest in mediation.~~

B. Manager Review. Upon receipt of a signed complaint, and at such other times in the course of an investigation as the Manager deems appropriate, the Manager shall determine whether a complaint qualifies for mandatory mediation under Minneapolis Code of Ordinances, Section 172.150.

C. Scheduling. ~~If the Complainant and Officer agree, the Authority shall schedule a mediation session at the earliest convenient time. Written notice of the time, date and location of the first mediation session shall be provided each party and the Chief of Police.~~

C. Notice and Scheduling. If the Manager determines that a complaint meets the standards for mediation in Minneapolis Code of Ordinances, Section 172.150, the Authority shall notify the complainant and officer. The parties shall be notified in writing that participation in mediation in good faith is required, and of the consequences of failure or refusal to participate in good faith. The Authority shall schedule a mediation session at the earliest convenient time. Written notice of the time, date and location of the mediation session shall be provided to each party and the Chief of Police.

D. Procedure.

1. The mediation session(s) will consist of the Complainant, the Officer, and the Mediator. In the case of a minor, a parent or legal guardian may be present. In the case of a vulnerable person, a family member, conservator or legal guardian must be present. If an interpreter is requested, arrangements will be made to have one present upon request by either party. No other person may be present. No record of the proceeding will be taken.

2. Procedures and guideline for mediation will be established at the beginning of the mediation process through agreement of all participants.
 3. The mediation session(s) will continue as long as the mediator and the parties feel progress is being made in the resolution of the issues. The mediation process shall terminate when either party announces its unwillingness to continue mediation or when the parties sign an agreement setting forth the resolution of the disputed issue(s).
 4. No record will made of the mediation proceedings, and no information discussed will be used in subsequent proceedings. (Minn. Stat. 595.02. Subd. 1(k) (1989).
 5. A notice shall be sent the Chief informing the Chief either that the mediation was successful and the Complaint was ~~dismissed~~ closed as successfully mediated or that mediation was unsuccessful and the matter has been reactivated before the Authority.
 6. A copy of the mediation agreement will not be sent to the Chief.
 7. ~~The Authority shall monitor the mediation process and the implementation of a mediation agreement.~~
 8. ~~If one party fails to abide by the mediation agreement, the aggrieved party may contact the Authority within 15 days of violation of the agreement to reactivate the matter before the Authority.~~
- E. **Tolling of Time.** ~~In no case shall the time for mediation extend beyond thirty (30) days from the date the Authority has received notice of willingness to participate in mediation from both the complainant and the Officer~~ The Authority shall schedule mediation as soon as possible after the complaint has been referred to mediation. In order to facilitate and encourage mediation, the Authority time limitations and deadlines will be tolled during mediation.
- F. Failure or Refusal To Participate in Good Faith.** If a Complainant fails or refuses to participate in mediation in good faith and without a valid excuse, the Authority shall dismiss the complaint. If an Officer fails or refuses to participate in mediation in good faith, the complaint shall be reactivated before the Authority for further proceedings, and the Authority shall notify the Chief of Police of facts and circumstances of the Officer's failure or refusal to participate.
- G. Complaints Filed Before 9-23-05.** Complaints filed before 9-23-05 may be referred to mediation with the agreement of the complainant and Officer, and the procedures herein consistent with voluntary mediation shall be followed.

Hearings by Board.

This revision reflects the 2006 ordinance changes and the current CRA hearing process.

Rule 11. Hearings by Board.

I. Complainant's and Officer's Role in the Hearing.

1. Neither the Complainant nor the Officer will be present when the Manager presents the investigatory findings of fact and recommendations to the Hearing Panel.
2. **Order of Speaking.** The Complainant shall address the panel first. The Complainant and the Officer shall have the opportunity to reserve up to five minutes in order to respond to comments made by the other. Should the officer not address the panel, the time reserved by the complainant is waived.

The officer and his/her representative shall be permitted to remain in the room when the Complainant or his/her representative presents to the panel. The Complainant and his/her representative shall be permitted to remain in the room when the Officer or his/her representative presents to the panel.

3. Questions. Following the presentations, panel members may address questions to the complainant or his/her representative outside the presence of the officer and his/her representative and panel members may address questions to the officer or his/her representative outside the presence of the complainant and his/her representative.

~~K.~~J. Findings of Fact and Determination.

~~L.~~K. Submission to Chief for Disciplinary Action.

L. Dismissal.

1. If the panel finds that the complainant failed to provide the information identified in Rule 7(E), and that such information cannot be discovered by remanding the case for further investigation, the panel may dismiss the complaint.
2. Upon dismissal by a panel under this section, the complainant may request a Reconsideration Hearing to reactivate the complaint.
3. When a complaint is dismissed under this section, a letter of explanation will be sent to the Chief.

Reconsideration Hearings

The changes to this rule reflect previous ordinance change and the requirement for a statement of new evidence, an offer of the new evidence, and a review of the officer of new evidence before the CRA grants a reconsideration.

Rule 12. Reconsideration Hearings

A. Time. Within ~~five (5)~~ thirty (30) days of receipt of the Hearing Panel's Findings of Fact and ~~Disposition~~ Determination, the Complainant may submit a written request for Reconsideration to the Board.

B. Content. The Request for Reconsideration must state ~~the reasons for reconsideration and any other special circumstances, including but not limited to~~ the availability of new evidence that was not known to the Complainant or could not have been discovered by that Complainant by the exercise of due diligence and must provide the nature of the new evidence.

C. Procedure.

1. Acceptance of a Request for Reconsideration. Upon receipt of a Request for Reconsideration the Board Chair shall determine whether the request contains new evidence. If the request contains new evidence, the Board Chair shall schedule a Reconsideration Hearing. If the request does not contain new evidence, the Board Chair shall notify the party requesting the Reconsideration with a denial of request.

1.2. Scheduling the Reconsideration Hearing. The Board shall reconsider the complaint at its next regularly scheduled meeting that is not less than ten (10) days after the filing of the request.

2.3. Disqualification of Board Member. A Board member shall be disqualified from sitting on that Hearing Panel if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in the outcome of the complaint as described in Rule 11. A Board member may withdraw from hearing the case as provided in Rule 11 or a party may request withdrawal as provided in Rule 11.

3.4. Time. The Complainant, the officer, or their respective representatives, shall each have 10 minutes to address the Board regarding the case before the panel.

4.5. Order of Speaking. The Complainant shall address the panel first. The complainant shall have the opportunity to reserve up to five minutes in order to respond to comments made by the officer. Should the officer not address the panel, the time reserved by the complainant is waived.

The officer and his/her representative shall be permitted to remain in the room when the Complainant or his/her representative presents to the panel. The Complainant and

his/her representative shall be permitted to remain in the room when the Officer or and his/her representative to the panel.

D. Notice.

1. Notice of Appeal. The review authority staff shall provide written notification to the officer of the request for reconsideration.

2. Notice of Reconsideration Hearing. At least ten (10) days prior to the reconsideration hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the reconsideration hearing.

3. Notice of Reconsideration Decision. The review authority shall provide written notification of its reconsideration decision to the ~~complainant and~~ officer.

4. Notice of Conclusion of the Review Authority Process. The review authority shall provide the complainant notification that the review authority process has concluded. The notification must include an advisement to the Minnesota Government Data Practices Act.

E. Reconsideration Decision. For the Reconsideration Decision, the Board shall make one of the following decisions:

1. The Board may sustain the prior hearing panel decision regarding the complaint.
2. The Board rejects the prior hearing panel decision regarding the complaint and forward the matter to the Chief for discipline as provided in Rule 11.L.
3. If the review authority determines that the request for reconsideration alleges newly discovered evidence, the complaint should be remanded to authority staff to investigate and resubmit findings within thirty (30) days. The Board may sustain or reject the prior hearing panel decision based upon the resubmitted findings.
4. If the Reconsideration Hearing concerns dismissal of a complaint, the Board may:
 - (a) reactivate the complaint; or
 - (b) sustain the dismissal

F. Time Limit. Within thirty (30) days of the Reconsideration Hearing the Board shall issue the Reconsideration Decision except where a case has been remanded, the Board shall issue the Reconsideration Decision within 30 days of the receipt of the resubmitted findings.

Repeat Officers

This revision reflects the 2006 ordinance change.

Rule 14. Repeat Officers

- 1) The Review Authority may provide research and study into officers who have received multiple complaints filed at the Review Authority when any of the following criteria has been met:
 - a) 2 sustained Complaints within a four year period
 - b) 1 sustained Complaint and 2 not sustained Complaints within a three year period
 - c) 3 not sustained Complaints within a two year period

The date for which the above period is calculated will be the date of the incident giving rise to the filed Complaint. But no study will commence until each Complaint has received a Board determination.

- 2) The Review Authority Manager may review the multiple Complaints and prepare a draft Study that outlines issues of concern appropriate for an MPD Professional Standards review (if any).
- 3) The Review Authority Manager may submit the draft Study, along with the original Findings of Facts and Determinations to the subject officer with notice that they (or their representative) may submit a written Response for the record within 30 days.
- 4) At a scheduled Board Meeting, the full Board may review the Manager's Recommendation, the officer's Response, and the findings of facts and determinations of the complaints used for the Study, and either:
 - a) adopt the Study
 - b) request changes pending future adoption
 - c) table the Study
 - d) or take other action as voted by the majority of the Board
- 5) The Chairperson of the Review Authority may designate a Board member to supplement the Study by writing an Introduction that states the action of the Board.
- 6) All documents pertaining to this Study will be kept in all the original complaint files at the Review Authority, and in a separate file specific to this program. All documents will be private data unless discipline has been finalized in the original complaints as per the MGDPA.
- 7) The Study and all relevant documentation may be forwarded to the Chief of Police. The Review Authority requests that the Chief of Police notify the Review Authority regarding the status and results of any Professional Standards review that has been undertaken pursuant to this program.

Please contact me if you have any questions.