

Minneapolis
City of Lakes

CIVILIAN POLICE REVIEW AUTHORITY

**CRA PARTICIPATION IN PERFORMANCE REVIEW
OF MPD CHIEF DOLAN**

December 2011

Serving citizens and police officers with honesty and integrity

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Executive Summary

The Minneapolis Civilian Police Review Authority Board members are residents of Minneapolis appointed by the Minneapolis City Council and Mayor to fairly, objectively and independently consider complaints of misconduct by members of the Minneapolis Police Department, and to issue determinations based on findings of fact and evidence to promote adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis.

This document presents in detail the Minneapolis Civilian Police Review Authority's input and participation in the performance review of the Minneapolis Chief of Police. It addresses problems and issues as well as gives feedback, suggests areas of improvement and makes recommendations of actions which should be undertaken to preserve, improve and expand upon the relationship between the Minneapolis Police Department and the Minneapolis Civilian Police Review Authority.

Improvements were made since the last evaluation period addressed by the Minneapolis Civilian Police Review Authority, but little or no progress was made in some of the most critical areas of evaluation—primarily the issuance of discipline on sustained allegations of misconduct. In total, the Minneapolis Civilian Police Review Authority Board found:

Unsatisfactory performance in the following areas:

- ISSUANCE OF DISCIPLINE IN SUSTAINED CASES
- DE NOVO REVIEW OF SUSTAINED CASES
- REASONS GIVEN FOR DISCIPLINE DECISIONS
- MPD RESPONSE TO LACK OF OFFICERS' TRUTHFULNESS

Improvement desired in performance in the following areas:

- USE OF RECONSIDERATION OPTION
- RESPONSE TO POLICY RECOMENDATIONS

Satisfactory performance in the following areas:

- COMMUNICATION OF DECISIONS
- PACC PROCESS AND MEETINGS
- EARLY INTERVENTION SYSTEM

Good performance in the following areas:

- AVAILABILITY OF VIDEOS
- OFFICER AVAILABILITY FOR MEDIATION
- OFFICER AVAILABILITY FOR INTERVIEWS
- NOTIFICATION OF FINAL DISPOSITION OF DISCIPLINARY DECISION
- TIMELINESS OF DISCIPLINARY DECISIONS
- REVISION OF CRA DETERMINATION
- AVAILABILITY OF POLICE REPORTS AND OTHER EVIDENCE
- POLICE TRAINING FOR CRA MEMBERS

Performance in the following areas was **not applicable** during the evaluation period:

- RESPONSE TO POLICY INQUIRIES
- NOTIFICATION OF OFFICER REINSTATEMENT
- OFFICER AVAILABILITY FOR HEARINGS

Each performance area is detailed below and specifically conforms with Minneapolis Code of Ordinance Title 9, Chapter 172, Civilian Police Review Authority, and the 2006 CRA Working Group Final Report.

Introduction

It is generally accepted that all employees should have a regular performance review, for the employer to convey expectations, give feedback on performance, and suggest areas of improvement. It is not the role of the Minneapolis Civilian Police Review Authority (CRA) to provide a comprehensive performance review for Police Chief Dolan, but the CRA Ordinance recognizes that the CRA does have the duty, power and responsibility to “participate in the performance review of the chief of police.”¹ The CRA Board believes that its role is to participate in the evaluation of those actions of the Chief that directly bear on the ability of the CRA to function efficiently and accomplish its mission.

Timothy Dolan joined the Minneapolis Police Department (MPD) in 1983 and was appointed Interim Chief in April 2006 after the departure of Chief McManus. He was appointed Police Chief in October 2006 for a term that expired January 4, 2010. He was re-appointed at that time for a new term that expires January 4, 2013.

The CRA Board offers this participation in the performance review of MPD Chief Dolan so that its conclusions may inform the public and any decision makers who are interested in evaluating or improving the cooperation between the MPD and the CRA. The CRA has chosen an evaluation period of July 1, 2010 through June 30, 2011. This evaluation considers not only the personal actions of Chief Dolan, but also the record of the MPD as a whole. Chief Dolan is ultimately responsible for the performance of the MPD and its officers.

Former Minneapolis Police Chief Anthony Bouza (Ret.), in his book; *THE POLICE MYSTIQUE: AN INSIDER'S LOOK AT COPS, CRIME AND THE CRIMINAL JUSTICE SYSTEM* (Plenum Press, New York, 1990) has this to say about police chief responsibility and police accountability:

“It is not too grand a statement to say that chiefs' control over their agencies is determined by how they respond to the 1 or 2 percent who test the outer perimeters of their tolerance on the issues of brutality and corruption.” (p. 54)

“[Police] work is peculiar in that the greatest power and autonomy exists at the lowest rank level. ... The system, in order to accommodate the need for action, is notably understanding of the errors that are bound to occur. Thus cops develop the sense that they can exercise power without too great a risk of being called too strictly into account for its use.” (p. 3)

“Obviously mistakes will occur but there must be accountability. It is not enough to say that the purposes of government are high-minded and beyond measuring. Commanders must be held responsible for the state of their commands. There is not an insurer's responsibility, but a steward's. They have to be held responsible for the conditions in their commands that they should or could have known about--and corrected. The commanders set the tone and establish the climate. The distinction between command failures and the occasional and unavoidable mistake is critical if the chief is to avoid the panicky overreactions of the martinet.” (pp. 265-66).

This evaluation includes a review of the 52 CRA sustained allegations for which the Chief made disciplinary decisions during the period of July 1, 2010 through June 30, 2011. The CRA also reviewed the Chief's and the MPD's interaction with the CRA, including but not limited to, the level of cooperation with the CRA Board and staff, the availability of evidence, the adherence to the CRA ordinance, and the MPD's overall willingness to operate within the spirit of the CRA ordinance.

We hope that this report will be helpful to all those with an interest in the Chief's performance and in the relationship between the MPD and the CRA.

¹ Minneapolis Code of Ordinances, Title 9, Sections 172.60(h) and 172.130(d). See Appendix C for text.

Performance of Chief Dolan Relevant to CRA

172.130 DISCIPLINARY DECISIONS

ISSUANCE OF DISCIPLINE IN SUSTAINED CASES

PERFORMANCE GOAL: The Police Chief is given discretion in the imposition of discipline in cases that have been sustained by the CRA.² Nevertheless, the CRA expects that, once a case has been fully investigated, and a hearing panel of three members has voted to sustain a complaint, that the MPD will impose appropriate discipline. The CRA can only accomplish its mission, and the public can only have confidence in the fairness and effectiveness of the CRA process, if sustained cases result in consistent discipline of officers who violate MPD policy.

OBSERVATIONS: Issuance of discipline on allegations sustained by the CRA is unsatisfactory. This remains a primary area of concern of the CRA Board.

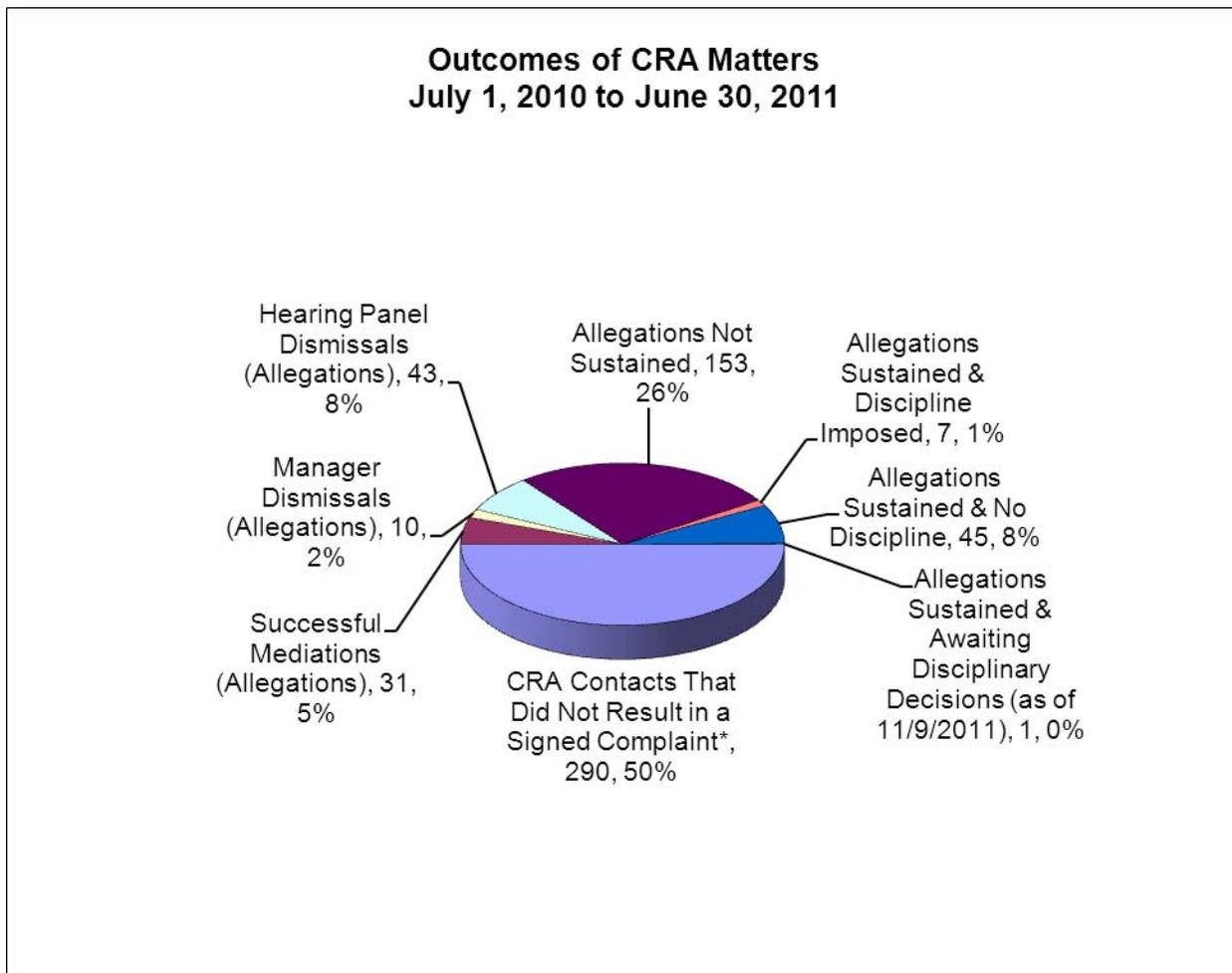


Figure 1.

Figure 1 illustrates the outcomes of all CRA actions taken during the evaluation period.³ Of all citizen contacts with the CRA, an allegation of misconduct was sustained by the CRA and

² The CRA can sustain, not sustain or dismiss an allegation of misconduct, provided mediation was not successful. See Appendices C and D for further information on the CRA process.

³ Data in Figure 1 (and Figure 2 below) is considered part of the evaluation if the date of the CRA hearing, mediation, dismissal or last citizen contact occurred within the evaluation period.

sent to the Chief for a disciplinary decision only 9% (53 of 580) of the time. Only 1% (7 of 580) of citizen contacts with the CRA resulted in officer discipline during the evaluation period.

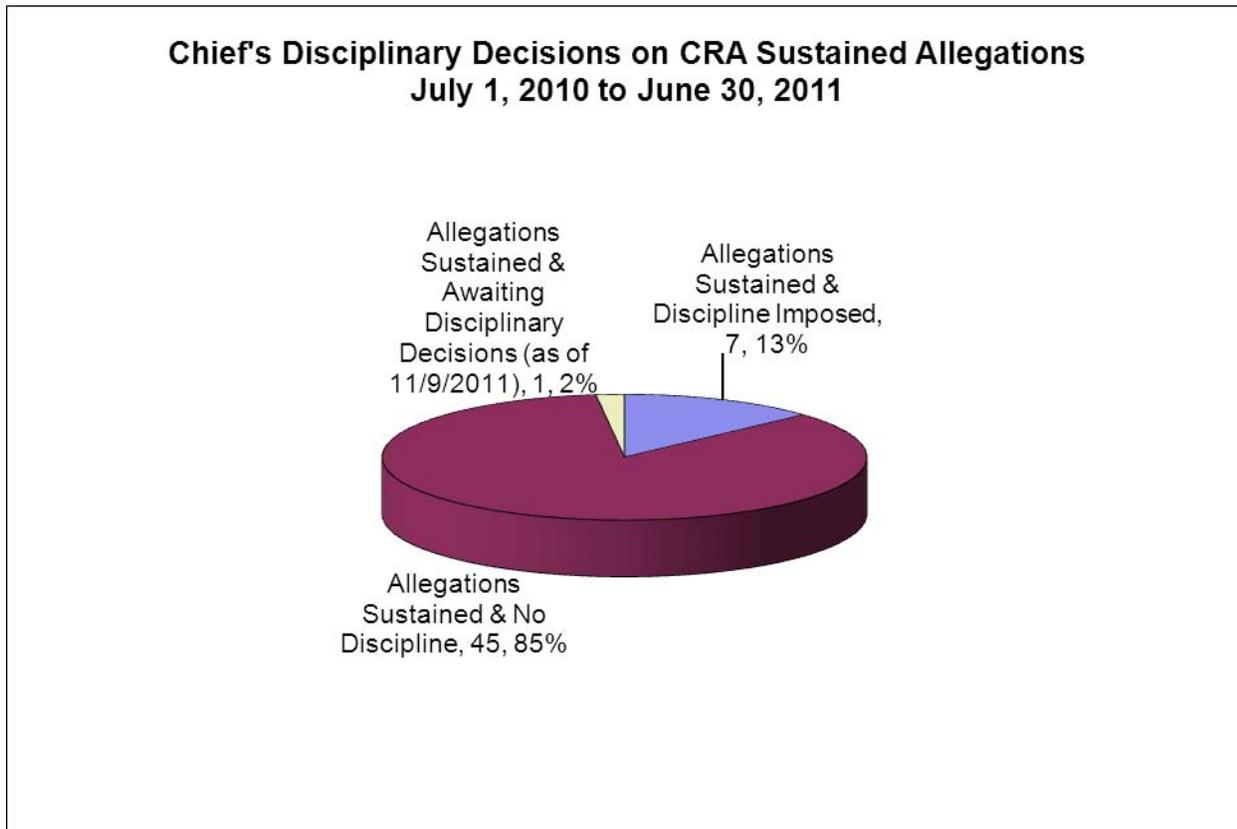


Figure 2.

A total of 53 allegations were sustained by the CRA and sent to the Chief for a disciplinary decision during the evaluation period. Figure 2 illustrates action by the Chief on allegations sustained by the CRA during the evaluation period. The Chief issued discipline on only 13% (7 of 53) of the allegations sustained by the CRA. As of November 9, 2011, the Chief had not yet issued a disciplinary decision on one (1) of the allegations sustained by the CRA during the evaluation period. This outstanding disciplinary decision has passed the 30-day deadline established by ordinance.⁴

Last year, the CRA stated that “[c]onsistent and meaningful discipline in cases of documented misconduct is important to deter future misconduct. The MPD has seriously undermined the most important function of the CRA by nearly always refusing to discipline its officers in response to sustained civilian complaints.” This concern has not been redressed in 2010. The MPD under Chief Dolan has not made discipline of officer misconduct a priority, and the CRA Board has no confidence that Chief Dolan and the MPD command staff will issue discipline on sustained allegations of misconduct going forward. Discussions between the CRA and the MPD have also revealed that the MPD places great concern about the negative of discipline on officer’s records, but little or no corresponding concern for the effects of officer misconduct on citizens bringing complaints before the CRA. In some instances, the MPD has acknowledged problems with officer conduct, yet in response has chosen to pursue only officer training instead of discipline.⁵ In sum, this means that citizens of Minneapolis cannot expect the

⁴ Minneapolis Code of Ordinances, Title 9, Section 172.130 (b). See Appendix C.

⁵ While the CRA Board does believe additional or improved training is often a desirable response to incidents of misconduct, it should not wholly displace disciplinary measures.

city's police officers to be held to MPD policies—throwing the legitimacy of those policies in doubt. A lack of discipline in the MPD fosters a culture of impunity, which will likely lead to further cash payouts related to police misconduct lawsuits for the foreseeable future. While the CRA is in a position to call attention to these issues and sustain allegations of misconduct supported by the CRA's investigations, current city ordinances do not allow the CRA to remedy unwillingness by the Chief to impose discipline. The MPD has not demonstrated a desire or ability to change its disciplinary practices of its own accord. Only with action by the Mayor and City Council, and with continued concern and input from citizens of Minneapolis, will this situation improve.

PERFORMANCE RATING: *Unsatisfactory*.

DE NOVO REVIEW OF SUSTAINED CASES

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.130(a): "The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division." If the Chief does not agree with the adjudicated facts, the Chief may request reconsideration under Ordinance Section 172.130(b) (3) and present additional evidence and argument.

OBSERVATIONS: In this reporting period, as mentioned in the last report; discipline is still not being imposed where CRA investigations reveal conclusive evidence of misconduct. Disciplinary decisions are not being made based on the adjudicated facts as determined by the civilian review authority board, but on independent review of allegations by the MPD. In some instances, the MPD has directly disputed CRA findings of fact.

PERFORMANCE RATING: *Unsatisfactory*.

REASONS GIVEN FOR DISCIPLINE DECISIONS

PERFORMANCE GOAL: The CRA ordinance anticipates that the Chief has cause to impose discipline once the CRA has sustained an allegation of misconduct.

OBSERVATIONS: The MPD has reduced its reliance on "insufficient evidence" as grounds for not issuing discipline on sustained CRA complaints. The MPD has also acknowledged in some cases that officer conduct was problematic and that a training response would be pursued rather than a disciplinary action. While these are positive steps, the reasons given for not imposing discipline on sustained cases are often inadequate and unconvincing. For example, as mentioned in the previous reporting period the MPD continues to dispute CRA findings of fact, which is not permitted under the CRA ordinance. Moreover, the MPD continues to demonstrate a fundamental reluctance to utilize the disciplinary process, as a matter of principle, which runs counter to the procedures established by the CRA ordinance.

PERFORMANCE RATING: *Unsatisfactory*,

REVISION OF CRA DETERMINATION

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.130(a): “In cases where the civilian review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.”

OBSERVATIONS: The MPD has complied; in no case has it attempted to alter a finding of “sustained.” There has been no incentive for the MPD to alter a CRA finding because under the state Data Practices Act a CRA “sustained” finding never becomes public if no discipline is issued.

PERFORMANCE RATING: *Good.*

USE OF RECONSIDERATION OPTION

PERFORMANCE GOAL: Under Section 172.130(b)(3) of the CRA Ordinance, the only alternative to disciplining in a sustained case, or not imposing discipline for a valid articulated reason, is for the MPD to “Make a one-time written request that the review authority reconsider the sustained finding.”

OBSERVATIONS: The MPD has again utilized the reconsideration option under the CRA ordinance. While the CRA Board views this as a positive step, the MPD’s use of the reconsideration option still needs improvement. The MPD appears to make a decision before they ask for a reconsideration, which in the CRA’s view is problematic and worrisome and runs counter to the purpose of the reconsideration option. This cannot be considered a good faith exercise of the reconsideration option by the MPD.

PERFORMANCE RATING: *Improvement Desired.*

COMMUNICATION OF DECISIONS

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.130(b) (1) & (2): The chief of police shall notify the CRA of the disciplinary decision. Compliance with CRA Ordinance Section 172.130(b) (4): “the review authority may require the chief (or his/her designee) to appear at a meeting of the full board ... to discuss the basis for the determination.”

OBSERVATIONS: The MPD continues to be willing to discuss disciplinary decisions upon CRA request.

PERFORMANCE RATING: *Satisfactory.*

NOTIFICATION OF FINAL DISPOSITION OF DISCIPLINARY DECISION

PERFORMANCE GOAL: The CRA has the affirmative duty to notify the Complainant of the final disciplinary decision. Because officers have certain appeal rights under their collective bargaining agreement, the CRA depends on the MPD to notify the CRA of the stage of the grievance or the completion of the grievance process.

OBSERVATIONS: The MPD process of notifying the CRA of appeals and the disposition of grieved disciplinary has been timely.

PERFORMANCE RATING: *Good.*

TIMELINESS OF DISCIPLINARY DECISIONS

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.130(b): The chief of police shall notify the CRA of the disciplinary decision within thirty (30) days (except where noted) of receipt of the case from the CRA.

OBSERVATIONS: Most disciplinary decisions have been made in a timely fashion during the evaluation period, but decisions in some cases have taken significantly longer than the thirty (30) day period specified by ordinance.

PERFORMANCE RATING: *Good.*

172.180 COOPERATION

OFFICER AVAILABILITY FOR INTERVIEWS

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.180: “The Minneapolis Police Department ... shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in hearings and mediations, and for access to data and records...”

OBSERVATIONS: Officers have continued to appear for interviews with CRA investigators. Delays by even a few officers can impact the efficiency with which CRA staff can complete investigations, due to time wasted in scheduling and related follow-ups, however there has been improvement.

PERFORMANCE RATING: *Good.*

OFFICER AVAILABILITY FOR HEARINGS

PERFORMANCE GOAL: Same as above for CRA Ordinance Section 172.180.

OBSERVATIONS: As mentioned in the last reporting period officers are not required to appear for CRA hearings. Many officers choose not to appear. However, because hearings afford CRA Hearing Panels the opportunity to ask questions to both the Complainant and Officer(s), they serve a valuable function in providing clarification and assessment of credibility. Again, it is desired to see greater attendance by officers at hearings.

PERFORMANCE RATING: *Not applicable.*

OFFICER AVAILABILITY FOR MEDIATION

PERFORMANCE GOAL: Same as above for CRA Ordinance Section 172.180.

OBSERVATIONS: Officer availability for mediation has been adequate. In order for mediation to be as useful a tool as it should be, all officers must make a good faith effort to participate. Again it must be noted that the CRA mediation program has the potential to resolve many more complaints than it presently does. A significant number of complainants have noted that they would be satisfied if the officer involved, or his or her supervisor, offered an apology. These complainants merely wish for some acknowledgement of the misconduct in the particular instance with the hope that such acknowledgement discourages such conduct in the future.

PERFORMANCE RATING: *Good*

AVAILABILITY OF VIDEOS

PERFORMANCE GOAL: Same as above for CRA Ordinance Section 172.180. In this case, good cooperation would mean consistent availability of squad car and Safe Zone videos within a week of request.

OBSERVATIONS: Video evidence has been made available to the CRA staff upon request. Because audiovisual evidence is often extremely helpful to the CRA in verifying an officer, complainant or witness's statement or capturing events that went unnoticed by persons on the scene, the available of this kind of evidence is of great concern to the CRA, and as mentioned the requests have been timely.

PERFORMANCE RATING: *Good*

AVAILABILITY OF POLICE REPORTS AND OTHER EVIDENCE

PERFORMANCE GOAL: Same as above for videos.

OBSERVATIONS: Reports from the MPD have generally been available. The MPD uses a system called CAPRS (Computer Aided Police Reporting System) that greatly assists in the storage and retrieval of relevant reports. However, some legacy issues have remained due to inadequate availability of reports and evidence from the Metro Gang Strike Force (MGSF), from which reports and other evidence were frequently lost or unable to be located.

PERFORMANCE RATING: *Good*.

RESPONSE TO LACK OF OFFICERS' TRUTHFULNESS

PERFORMANCE GOAL: Cooperation in accordance with CRA Ordinance Section 172.180 means officers' full compliance with MPD Policy 5-101.01, Truthfulness,⁶ and consistent discipline for those who do not comply.

OBSERVATIONS: Officer Truthfulness is a critical issue. Examples of problematic behavior include officer reports or statements that directly contradict video or other evidence, and a "code of silence" by which officers withhold relevant information.⁷ The MPD has acknowledged the seriousness of this issue, but responses to particular instances where the CRA has raised concerns about officer truthfulness have been inconsistent and inadequate.

PERFORMANCE RATING: *Unsatisfactory*

RESPONSE TO POLICY INQUIRIES

PERFORMANCE GOAL: Compliance with CRA Ordinance Section 172.180. In this case, includes compliance with process and timelines outlined in recommendation #6 in the 2006 CRA Working Group Final Report.

OBSERVATIONS: The CRA did not make any policy inquiries during the relevant evaluation period.

PERFORMANCE RATING: *Not Applicable*.

⁶ MPD Policy and Procedure Manual, Section 5-100, at <http://www.ci.minneapolis.mn.us/mpdpolicy/>

⁷ See, e.g., Michael W. Quinn, WALKING WITH THE DEVIL: THE POLICE CODE OF SILENCE (Quinn & Associates, Minneapolis 2005) (written by a former Minneapolis police officer of over twenty-three years).

RESPONSE TO POLICY RECOMMENDATIONS

PERFORMANCE GOAL: Same as above for Policy Inquiries.

OBSERVATIONS: The CRA made a number of policy recommendations in April 2011. The MPD responded in August 2011 to those recommendations, incorporating one of the recommendations into its policies. The CRA desires that such recommendations be acted upon by the MPD within the 60-day period outlined in the 2006 CRA Working Group Final Report.

PERFORMANCE RATING: *Improvement Desired.*

172.185 NOTIFICATION OF OFFICER REINSTATEMENT

TIMELINESS OF NOTIFICATION

PERFORMANCE GOAL: “In the event that a dismissed officer has been reinstated to the Minneapolis Police Department, the chief of police shall provide notification to the civilian review authority of the officer's return to the department within thirty (30) days of the officer's reinstatement.”

OBSERVATIONS: There was an officer reinstatement that the CRA did not learn about in a timely manner causing concern. The CRA should be informed in a timely manner.

PERFORMANCE RATING: *Unsatisfactory*

CRA WORKING GROUP REPORT⁸

POLICE TRAINING FOR CRA MEMBERS

PERFORMANCE GOAL: Implementation of Working Group recommendation #8, more training on police accountability issues for CRA Staff and Board.

OBSERVATIONS: The MPD has offered “Citizen’s Academy” training to CRA Board Members for many years. This program continues to provide excellent training to Board Members and other citizens of Minneapolis. The MPD has also been willing to provide additional information and training to the CRA as needed.

PERFORMANCE RATING: *Good.*

PACC PROCESS AND MEETINGS

PERFORMANCE GOAL: Implementation of Working Group recommendation #5, form and work with the Police Accountability Coordinating Committee (PACC).

OBSERVATIONS: The MPD has participated in PACC meetings, though consistent scheduling remains an issue. The closed-door nature of PACC meetings has raised concerns from the public.

PERFORMANCE RATING: *Satisfactory.*

⁸ CRA Working Group Final Report (2006). See Appendix F for link.

EARLY INTERVENTION SYSTEM

PERFORMANCE GOAL: Implementation of Working Group recommendation #2, improve Early Intervention System (EIS) for MPD. The CRA would like to see its data and experience used in a proactive way to prevent misconduct, not just punish it after the incident.

OBSERVATIONS: The MPD EIS program has adopted a policy of avoiding written records, which could cause continuity problems such as if there is a change in staffing in the EIS program an insufficient documentation exists to provide institutional memory we encourage the MPD to correct this issue.

PERFORMANCE RATING: *Satisfactory.*

SUMMARY OF PERFORMANCE EVALUATIONS

The CRA's evaluation of Police Chief Dolan has revealed progress during the current evaluation period, with overall performance good to satisfactory in most areas that impact the ability of the CRA to function effectively and to accomplish its mission. The most crucial aspect again of the Chief's performance is the issuance of discipline on allegations of misconduct sustained by the CRA. The issuance of discipline by the Chief remains unsatisfactory. The CRA stands by its determinations, which are in all instances based on thorough investigations and careful analysis of all the relevant facts. The CRA is concerned that no improvement will be made in this area without intervention from key policy makers and the general public. Under the current CRA ordinance and state Data Practices Act, and given the imbalance of power between the MPD and CRA, there is little the CRA can do on its own to remedy this situation. As mentioned in last year's report, the City of Minneapolis may wish to pursue an external audit of the disciplinary process, meaning one performed by an entity outside of the MPD and Minneapolis City Attorney's Office, which the CRA is confident will support the conclusions of this evaluation.

The CRA wishes to see improvement in the performance of the MPD and Chief Dolan, while simultaneously striving to improve the CRA's own performance. All parties should seek continuous improvement. The CRA again wishes to establish a relationship of cooperation and mutual respect with the MPD, so that the CRA can achieve its mission "to promote the adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis." In that spirit, the CRA offers the recommendations that follow.

Recommendations for Performance Improvements

172.130 DISCIPLINARY DECISIONS

- Discipline of officer misconduct in sustained CRA cases in the manner specified in the CRA ordinance needs to be a priority. Thus far in Chief Dolan's tenure, it has not been. The following recommendations are made by the CRA Board in this regard:
 - In cases where discipline is initially issued, the MPD needs to stand by those disciplinary decisions even if a grievance is filed by the affected officer(s). The MPD has reduced or removed discipline without even requiring arbitration when evidence of misconduct is clear and no reasonable basis for reducing/eliminating discipline is apparent.
 - Again the MPD should place equal concern on the effect of CRA complaints on both officers and complainants. Currently, more concern is paid to the negative effects on officer's records than to the need for redress of citizen complaints. Citizen complaints supported by the evidence and sustained CRA finding are routinely ignored. This creates an unequal

playing field and places citizens at a disadvantage, and destroys public confidence in the MPD. Many complaints appear before the CRA to say that they hold no particular ill will against the officer, but are pursuing their complaints merely to try to ensure that similar officer misconduct does not reoccur and affect other citizens. Such reasonable efforts are frustrated when the MPD undermines the process by refusing to consistently and effectively issue discipline on sustained allegations of misconduct.

- Officer training in response to CRA complaints is a valuable tool and should remain in use, but should not displace disciplinary action.
- Although the reconsideration option under the CRA ordinance has been used a couple of times it should be used more frequently and in good faith. Such limited use of the reconsideration option is not in keeping with the CRA ordinance.
- In the 2009 and 2010 participation in the performance review of Chief Dolan, the CRA Board raised concerns about *de novo* review of CRA findings in sustained cases. This continues to be the case today, the MPD has avoided using “insufficient evidence” as the sole rationale for not imposing discipline in sustained cases, and the underlying substantive problems of *de novo* review have not been resolved. The CRA stands by all its previous concerns in this regard and considers it imperative that this be addressed by policymakers.⁹
- Also in the last reporting period participation in the performance review of Chief Dolan, the CRA Board raised concerns about a statute of limitations imposed on disciplinary decisions on CRA cases applied under the guise of a disciplinary “reckoning period.” No change was made in 2010 or during this reporting period, and all of the CRA’s previous objections to this policy remain. The semantic games regarding this policy should not obscure the fact that MPD policy and practice was changed in 2009 to impose a statute of limitations (under banner of the “reckoning period”) that is inconsistent with the CRA ordinance and contrary to best practices and long-standing MPD policy regarding progressive discipline for repeat offenses (the traditional and accepted meaning of “reckoning period”). The CRA Board continues to stand by its previous recommendations that this “statute of limitations” policy should be eliminated.

172.180 COOPERATION

- Chief Dolan should take a greater and more proactive role in the CRA process. The Chief’s denial of disciplinary or corrective actions on many of the CRA complaints gives the impression that officer discipline in general needs to be a greater priority.

172.185 NOTIFICATION OF OFFICER REINSTATEMENT

- The Chief should move judiciously on making sure that the CRA is aware of all officer reinstatements.

CRA WORKING GROUP REPORT

- The CRA made a recommendation during the evaluation period regarding adoption of an “onlooker policy.” The MPD declined to adopt such a policy, responding that state and federal laws provide citizens with protection of their rights as they relate to citizens’ ability to witness officers’ actions. While the CRA does agree that state and federal laws and constitutional provisions do govern the rights of onlookers, the CRA continues to receive complaints in this area. MPD training in this area does not appear to be sufficient. Furthermore, the MPD has refused to issue discipline on at least

⁹ See Appendix D for link to 2010 CRA Participation in Performance Review of MPD Chief Dolan.

one sustained allegation regarding an onlooker, and therefore it does not appear that the MPD consistently honoring state and federal rights relating to onlookers.

Approval

This report was approved by the CRA Board at a meeting on December 7, 2011. The CRA Board consists of the following volunteer members, appointed by the Mayor and the City Council:

Donald Bellfield, <i>Chair</i>	Ward 8	Mary Pargo	Ward 2
Patrick Kvidera	Ward 1	Vernon Wetternach	Ward 6
Justin Terrell, <i>Vice-Chair</i>	Ward 8	Austen Zuege	Ward 8

APPENDICES

Appendix A: Definition of Performance Ratings

Good: Performance helps the CRA accomplish its mission. Meets or exceeds all legal requirements or expectations.

Satisfactory: Meets all Ordinance requirements and meets all reasonable expectations of the CRA in those areas that are important for the CRA to accomplish its mission.

Improvement Desired: Meets minimum standard required by the CRA Ordinance, but performance is a hindrance to the success or functioning of the CRA.

Unsatisfactory: Performance does not meet minimum standards and/or does not comply with city ordinances. Performance may constitute misconduct.

Appendix B: CRA Mission Statement

The Minneapolis Civilian Police Review Authority Board are citizens of Minneapolis appointed by the Minneapolis City Council and Mayor to fairly, objectively and independently consider complaints of misconduct by members of the Minneapolis Police Department, and to issue determinations based on findings of fact and evidence to promote the adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis.

Appendix C: Full Text of Relevant Sections of CRA Ordinance

Minneapolis Code of Ordinance, Title 9, Chapter 172, Civilian Police Review Authority, available online at: http://www.ci.minneapolis.mn.us/cra/docs/CRA_ORDINANCE_CHAPTER_172_03-27-09.pdf.

172.60. Review authority--Substantive duties and powers.

- (a) Receive complaints alleging misconduct on the part of a Minneapolis police officer and conduct such investigations and inquiries as may reasonably appear necessary to find the facts with respect to the complaints.
- (b) Conduct hearings related to complaints as provided in this chapter.
- (c) Forward all investigatory findings and case recommendations to the chief of police.
- (d) Conduct a program of research and study for the purpose of ascertaining how the objectives of this title may be attained and sustained.
- (e) Compile statistics relating to complaints of police officer misconduct and present results of such analysis on a quarterly basis to the Public Safety and Regulatory Services Committee.
- (f) Review Minneapolis Police Department policies and training procedures and make recommendations for change.
- (g) Facilitate, along with Minneapolis Police Department, appropriate cultural awareness training for sworn officers as determined by the review authority.
- (h) Participate in the performance review of the chief of police.
- (i) Create and implement a community outreach program. Coordinate outreach activities with the Minneapolis Commission on Civil Rights.
- (j) Submit quarterly reports to the public safety and regulatory services committee as to the activities of the review authority.

172.130. Disciplinary Decision.

- (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police. The

Chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division. In cases where the civilian review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.

- (b) In all cases where the review authority sustained the complaint, the chief of police shall do one of the following within thirty (30) days (except where noted) of receipt of the case from the review authority:
- (1) Impose discipline and notify the review authority in writing that discipline has been imposed; or
 - (2) Determine that no discipline will be imposed and notify the review authority in writing of such determination and the reasons for such determination; or
 - (3) Make a one-time written request that the review authority reconsider the sustained finding; or
 - (4) Submit in writing to the review authority a request for an extension of time, not to exceed an additional thirty (30) days, to take one of the actions in subparagraphs (1) through (3) with a statement of the reason for the extension and a proposed date by which one of such actions will be taken. If the chief has determined that no discipline will be imposed pursuant to subparagraph (2), the review authority may require the chief (or his/her designee) to appear at a meeting of the full board, which shall be closed to the public pursuant to Minnesota Statutes Section 13D.05, subdivision 2, to discuss the basis for the determination. If the chief has requested that the review authority reconsider a sustained finding, the chief or his/her designee shall appear before the entire review authority board to present the factual and legal basis on which the chief asserts that the complaint(s) should be not sustained. After the review authority has reconsidered the matter, the decision of the review authority shall be provided to the chief in writing. If the review authority again determines that the complaint(s) should be sustained, the chief may then take one of the actions specified in subparagraphs (1), (2) or (4), above.
- (c) The review authority shall provide notice to the complainant of the final disciplinary decision.
- (d) The level of compliance with this section shall be included as an element of the chief's annual performance evaluation, pursuant to section 172.60(h) of this section. The civilian police review authority chairperson shall notify the executive committee of the chief's failure to comply with the requirements of this section, and such failure may subject the chief to disciplinary action.

172.180 Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials with the review authority. The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in hearings and mediations, and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct. The police officer identified in the complaint may, but shall not be required to, attend the public portion of the scheduled hearing.

172.185 Notification of officer's reinstatement. In the event that a dismissed officer has been reinstated to the Minneapolis Police Department, the chief of police shall provide notification to the civilian review authority of the officer's return to the department within thirty (30) days of the officer's reinstatement.

Appendix D: Relevant Text of Assistant City Attorney's April 29, 2011 Memorandum

As found on Pages 3 and 4 of the memorandum, this portion of the memorandum discusses the Chief's disciplinary powers.

- Section 172.130: Perhaps not surprisingly, the proposed amendments to this section related to disciplinary decisions implicate the most serious legality concerns, in light of the numerous sources of authority which speak to disciplinary jurisdiction in the Minneapolis Police Department and their complex interaction. I will address each in turn:

I. Among the proposed amendments to section 172.130 is the following:

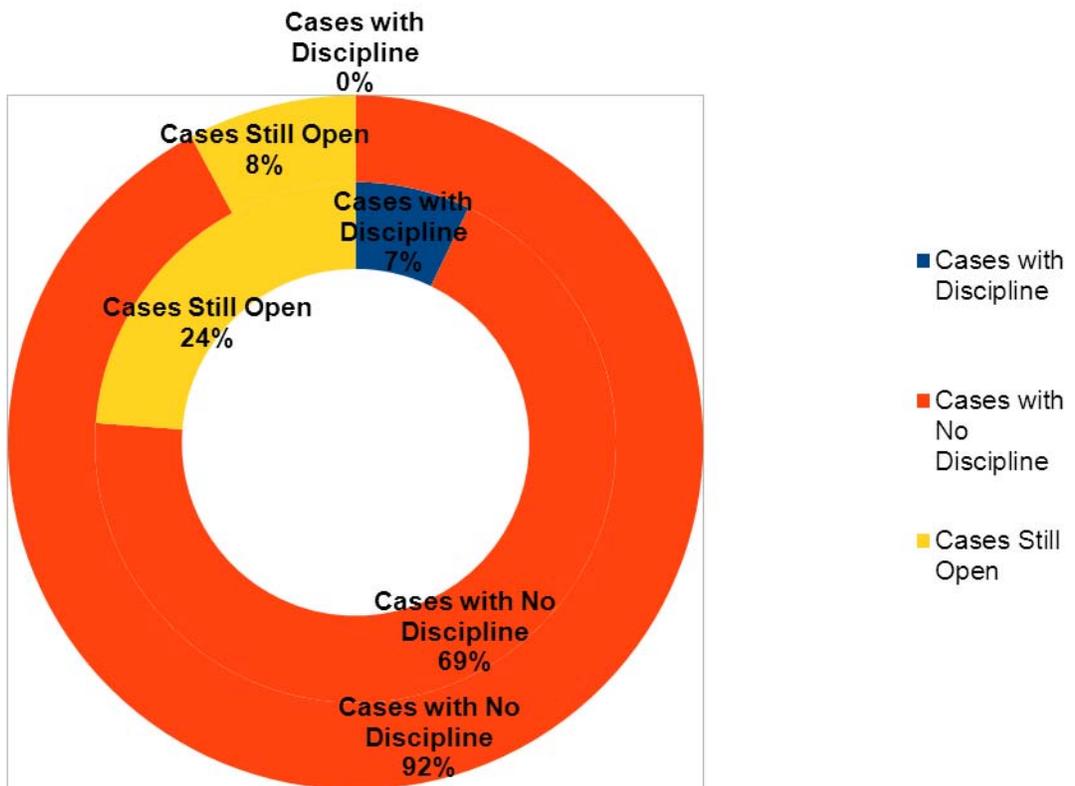
~~The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division. For purposes of assessing whether misconduct occurred, the civilian review authority's findings of fact and panel determination shall be taken as conclusive in the chief's disciplinary decision.~~

Historically, the City Attorney has advised that the city charter vests all disciplinary powers over the police department in the hands of the mayor. See City Charter, Chapter 6, § 1; Rees v. City of Minneapolis, 177 N.W. 432 (Minn. 1908) (holding that the “charter places in the hands of the mayor of the City complete supervision over the police department”). As detailed in the June 27, 1989 report of Mark Wernick (at that time chair of the CRA Technical Advisory Committee and currently Judge of Hennepin County District Court), and as subsequently and consistently presented to the city council over the years, the CRA—absent a state law or charter change at a minimum—can possess no disciplinary authority. Judge Wernick concluded that the mayor possesses such disciplinary authority, which has been duly-delegated to the Chief of Police pursuant to M.C.O. § 171.20 and Article IV of the collective bargaining agreement with the Police Officers' Federation. In essence, the CRA may possess the authority to recommend discipline but may possess no authority requiring the imposition of discipline. This axiom is partially predicated, although not exclusively, on respective but divergent lines of municipal authority. The disciplinary power in the police department is derived through the mayor and the chief of police, while the rulemaking and ordinance power of the CRA is derived through the city council. Therefore, neither the CRA nor the city council possesses authority or jurisdiction over the disciplinary power of the police department.

With regard to the proposed sentence to be struck which prohibits the police department from conducting a “de novo review of the facts,” it has been the expressed opinion of the City Attorney that the “language prohibits the police department ... from looking at the facts from a complete fresh start ... nothing in the proposed language prohibits the Chief from conducting further investigation if he or she believes the record provided by the Civilian Review Board is, for some reason, incomplete or if he or she believes that other evidence is or may become available and is relevant to the complaint.” See Memorandum of Deputy City Attorney Peter Ginder to the Civilian Review Authority Task Force (July 7, 2006). For these reasons, the newly-proposed language which would require the chief to take the CRA “findings of fact and panel determination” as “conclusive” likely would serve to impermissibly abrogate the inherent and unrestricted disciplinary discretion that is afforded the chief under law.

Appendix E: 2010 MPD IAU Outcomes

**2010 MPD IAU Outcomes
Comparison of Internal (inner ring) and External (outer ring) Complaint Outcomes**



Appendix F: Listing of Additional Resources

CRA Web Site:

<http://www.ci.minneapolis.mn.us/cra/>

2009 CRA Annual Report available online at:

<http://www.ci.minneapolis.mn.us/cra/docs/2009-Annual-Report043010.pdf>

CRA statistics available online at:

<http://www.ci.minneapolis.mn.us/cra/members-reports.asp>

Minneapolis Civil Rights Department Results Minneapolis Report, September 13, 2011 available online at:

<http://www.ci.minneapolis.mn.us/results-oriented-minneapolis/docs/civilrights-results.pdf> (pp. 12-21)

2010 CRA Participation in Performance Review of MPD Chief Dolan available online at:

http://www.minneapolismn.gov/cra/docs/CRA-Dolan-review-2010_120110.pdf

Monthly statistical summaries are available as part of CRA Board meeting minutes, available online at:

<http://www.ci.minneapolis.mn.us/cra/meeting-minutes.asp>

CRA Working Group Final Report available online at:

http://www.ci.minneapolis.mn.us/cra/docs/CRA_WorkingGroupReport.pdf

PERF Audit of MPD Internal Affairs, December 2008, available online at:

<http://www.ci.minneapolis.mn.us/council/2009-meetings/20090123/docs/Internal-Affairs-Rpt.pdf>

2010 MPD Internal Affairs Unit Statistical Summary available online at:

<http://www.ci.minneapolis.mn.us/police/about/docs/2010InternalAffairsStatisticalSummary.pdf> (annual reports not published for 2009 or 2010)