

I. THE BACKLOG AND ITS RESOLUTION

(Note: For the purposes of this document, *Case* refers to a single signed complaint regardless of the number of officers accused or the number of allegations against them. *Panel* refers to a scheduled block of time where the same three Board members hear one or more cases.)

Introduction

In December of 2003, when the Operations Committee of the Civilian Review Board first met to plan for the elimination of our backlog, 74 cases had completed investigations and were waiting for a Panel hearing. The oldest complaints awaiting hearings were made in 2001.

That number, 74, was *higher* than those awaiting Panels in mid-November when our Administrative Rules were passed and we were set to begin. Obviously, we needed to determine how, over time, we could not just break even but do much better and become current.

The CRA Manager has estimated that 10-12 cases are initiated each month that will end up having a hearing, and the same number have investigations completed each month. Over a twelve month period, that equals 120-144 cases. Add that to a backlog of 74, and one can calculate that the elimination of the backlog over a twelve month period would require panels for, at minimum, 194 cases.

At this point, we have determined that it is not possible to hear more than 2 cases at any scheduled Panel. If the case has extensive paperwork, for instance if several officers are accused and each is entitled to speaking time, the likelihood is that only one case could be scheduled for that Panel. Additionally, it is inevitable that scheduled cases need occasionally be postponed. (In the first month this happened twice; once a Board member had to disqualify herself but didn't have the information informing her of that necessity until immediately prior, and another time an Officer received a subpoena to testify at a trial and couldn't appear before the Panel. Due to notice requirements, we cannot substitute other cases when this happens; the designated time slot is simply lost.)

In any event, if all 194 cases could be heard at two per Panel, it would require 97 Panels to get caught up over a twelve month period, which breaks down to eight per month, or 2 per week.

ORDINANCE CHANGES

STAFF

The current ordinance requires the CRA Manager's attendance at every hearing. Currently, there is one one Case Manager. Given our desired hearing schedule, it is not advisable for one employee to shoulder the burden of two hearing slots per week (nor could this pace be maintained when one considers vacations, and weeks containing major holidays).

The Board recommends that section 172.100 of our ordinance be changed to allow *either* the CRA Manager, *or* a CRA Investigator to be present for Hearings. This would allow the burden to be spread within the staff. (Most Board members cannot routinely attend daytime hearings, and the Chair is reluctant to expect the Staff Manager to work beyond regular hours more than once per week.)

Neither the Board nor the Staff believe the Manager's presence is necessary. The Board has adopted the practice of reading through the entire file for each case, rather than rely on a summary (see Part 3 for more detail about our Hearing Panel process). At this point, the primary role of CRA staff at a hearing is to maintain control over the official file, and to be a resource to the Board for questions about the investigation. The Board and Staff Manager agree that Investigators could properly serve this function.

To allay any concerns, it should be noted that the Manager would continue to review every case prior to a hearing, and that the Panel would have access to the Manager after a hearing and before a determination need be filed (not due until 30 business days after the hearing).

We also recommend that the Community Outreach Advocate's presence at hearings be authorized (but not required) by ordinance, to provide personal support for the complainant when needed as consistent with overall job description.

BOARD

Eight Panels a month would require 24 Board assignments (three per Panel). Assuming a full board of seven, that would require each member of the Board to average three and one half per month. This presumes no vacation time, and immediate replacement when a board vacancy occurs -- neither realistic. Regardless, the Board believes that averaging nearly one Panel per week, and between two and three written determinations each month, on top of our other

responsibilities outlined in the ordinance -- is a recipe for burnout, and likely, turnover. If turnover indeed results, the goal of catching up with the backlog becomes even more elusive.

Therefore, the Board wishes to present two options to the Council. You may presume our unified willingness to work with the alternative you feel is best.

Adding Board Members

The simplest, and most obvious, solution would be to add four CRB members. The city attorney who drafted the ordinance said there was nothing magical about originally choosing seven as the number of CRB members. It could just as easily become 11. A current CRB member served on the Civil Rights Commission, an even larger body, and did not find the greater numbers at business meetings to be a problem.

Supporters of this solution further argue that it's possible to apportion interest internally, allowing some on the CRB to emphasize Panel work, and others to focus on accomplishing our other work. Unlike the other proposed solution, no potentially divisive difference in status would result.

Recruitment of Panel-Only Board Members

As the Council knows, it has been difficult to recruit CRB members, in particular from diverse communities. Some on the CRB believe that the full plate of Board responsibilities might be an obstacle to such interest, but it might be otherwise be enticing to some if a category of Board member was created that only did Panels (and, of course, received sufficient training to do so).

Supporters of this solution envision the addition of five such Panel-Board members. That would allow the seven CRB members to devote proper attention to outreach, policy and training research, and police chief evaluation -- the other parts of our responsibilities. Unlike the other proposed solution, there's no potential for too many voices at our business meetings rendering them less efficient.

Budgetary Implications

The ordinance changes do not entail any financial considerations.

Hearing all of the backlogged cases and becoming current within a 12 month period means the budget for CRB activities must be raised. Under any

structure, eight panels per month would cost the city \$1,200 per month or \$14,400 per year.

Other costs would vary depending in which of the above solutions the council chose:

A. Total Board Costs Under plan for adding four members to the CRB

- Start up Training (first year only; includes required Citizens Academy): \$800
- CRB Business Meetings \$6,600
- Other Meetings (i.e. Outreach) and Voluntary Training (estimate) \$3,300

Total (Including Panels): \$25,100

B. Board Costs under plan for 5 Panel-Only Board members

- Start up Training (first year only; includes required Citizens Academy): \$1,000
- Semi-Annual Meetings (twice a year, the Panel-Only and CRB would meet together for business and training. Costs include CRB presence.) \$1,200.
- CRB Business meetings (same as current) \$4,200.
- Other Meetings (i.e. Outreach) and Voluntary Training (estimate) \$2,500

Total (Including Panels): \$23,300

The current allocation for CRB costs within the Civil Rights Department budget is \$18,000. Given the commitment of Board members for the task the city has given us, asking for \$7,000 additional (at most) to ensure per diems, appropriate training, and desired outreach, should not be seen as unreasonable, given that the total adds up to the equivalent of one part time employee. The Council should recognize the added costs as the delayed expenditure of what would have been spent in 2002 and 2003 had there been no redesign. Moreover, the Council should understand that the level of

expenditure sought will not create a floor for future requests because the number of panels will drop in future years once the backlog is cleared.

II. STAFFING LEVELS

The CRA Redesign provided three structural options to Council, the least expensive of which incorporated the CRA into the Civil Rights Department. All three models listed four investigators, in addition to someone in a managerial role and two other staffers. Though the support data was not included, we have no doubt that the number of investigators needed reflected an analysis of past complaint statistics.

The current CRA staff includes two FTE Investigators, one Manager, one FTE Program Assistant, and a 25 hour per week contract Community Outreach Advocate just approved for hiring (to replace a full time Investigator who exclusively did intake). For several months, another Investigator has been on temporary contract. With no staff provided for transcribing investigator interviews, twenty hours per week for temp service has been contracted for.

The CRB recognizes the city's current financial situation and respectfully requests only the basic funding that will enable us to fully meet the goals mandated by ordinance, and the needs of the citizens and police officers who expect, and deserve, timely determinations. At the same time, we hope the Council recognizes the need for CRA staffing to be fully restored alongside other city functions whenever that may be possible.

The CRA believes it can maintain some semblance of control over its workload with three FTE Investigators. Having a third Investigator always on "contract" status is not efficient given the training resulting from automatic turnover, nor is it a way to ensure long term quality work. When the CRB Chair spoke at a police command staff meeting in December, most of the concerns raised were about the qualifications of the Investigators. The Federation has reflected this concern by requesting full background information about all CRA Investigators. And as noted, Chief Olson made reference to the importance of "quality" investigations. While staff stability can never be guaranteed, the CRB feels that entrenching distinct employee classes of investigators within CRA potentially harms the confidence in our staff putting forward consistently good work. Ideally, we will continue to be able to have all our Investigators be either attorneys or former police officers with several years investigative experience.

To support our need for a minimum of three FTE investigators, we draw your attention to comparative data from 2003 between CRA, Internal Affairs (IAU) and Civil Rights. We recognize that different staffing structures as a whole

make this not a perfect comparison, for instance IAU investigators work exclusively on the more serious complaints (brought internally or externally), referring many complaints comparable to CRA's directly to the precincts.

CRA: 157 signed complaints (i.e. investigations) as well as 608 intake contacts

IAU: 35 investigations

Civil Rights: 238 total cases, 86 investigated by the EEOC, 152 investigated by Civil Rights

Number of investigators, case rate:

CRA: 2 FTE, 1 contract ; 51.67 per investigator

IAU: 3 FTE; 11.67 per investigator

Civil Rights: 4 FTE; 38 per investigator

CRA staffing is not currently on par with the rest of the Civil Rights department, despite the fact that we have a legally mandated turnaround time and they do not. And the existence of a mandated turnaround time is not an accident, but a reflection of community pressure that, in all honesty, Civil Rights investigations don't face to the same degree.

In essence, CRA work has far more in common with IAU than with Civil Rights. Even though IAU Investigators may have more responsibilities than CRA Investigators, and more frequently handle higher profile, more detailed, cases, the resource allocation speaks for itself. (We hope, too, that this data encourages you to recognize that CRA caseloads are really too high even for 3 FTE investigators, and our reason for not asking for a fourth reflects our recognition that for now the city can only afford to provide us with stopgap funding.)

Furthermore, despite their significantly lower caseload, IAU has two support staffers, one of whom is a typist. CRA badly needs its own clerk/typist as well. Currently, our staff must expect a delay of about 45 days for an interview to be transcribed. If this were to continue past the point our backlog is resolved, it would make impossible the carefully considered deadlines of completing an investigation within 60 days (90 allowed only when essential). While the backlog is being whittled down, this position could also provide necessary administrative support that comes with the additional panels, for instance mailings of notice, and communications with the Chief's office.

The newly listed contract Community Outreach Advocate will be expected to provide significant intake support due to the lack of a fourth investigator, which will slow the progress of the outreach development originally envisioned for this position. The CRB considers it acceptable for a Community Outreach Advocate to begin with such a role, given that it provides a large learning curve

that would help inform the outreach and advocacy aspects of the job later on. However, we believe the numbers of intake contacts support that this position be relisted as FTE. Additionally, as the position in large part is about building community trust, neither part-time nor contract positions seem to us appropriate.

In summary, for this year our staffing request is one Manager, three FTE Investigators, and three FTE staffers, with another part or full time investigator envisioned for the following year. Our requested changes, including the converting of contract positions to FTE benefit-earning positions, would amount to approximately a 2004 budget increase of \$32,000.

We do not assert our needs in such manner as to imply any comment about the budgeting provided by the Civil Rights Department. In 2001, the combined budgets of CRA and Civil Rights was: \$2,351,193. In 2004 the combined allocation is: \$1,979,960. We cannot assume under these circumstances that Civil Rights has excess_funds that could, or should, be redirected to CRA.

III. OTHER RECOMMENDED ORDINANCE CHANGES

HEARING PANEL PROCESS

Panel Questioning and Officer Participation

The CRB has consistently maintained that we'll leave the numbers watching regarding Sustained versus Not Sustained (complaints) to others. Our sole internal concern is to provide consistently fair determinations. We consider it our obligation to seek any improvements that will help make this more attainable. As Chief Olson also addressed the critical importance for Officers that the CRB avoid mistaken decisions, we are confident that all parties to the CRA process should support anything we believe would help us improve the "accuracy" of our Hearing Panel determinations.

In part, some of the changes requested provides authority for what the CRB has chosen itself as its best practice. For instance, the current ordinance does not expect Panel members to have familiarity with the investigation file, but only a summary orally provided by the Manager immediately prior to a hearing. The CRB has determined that confident determinations are only possible if we are familiar with the complete file, and that appropriate due process for the Officers should require that level of Panel participation. An attorney for the Federation has also indicated support for that practice. Consequently, the Panels have read the entire investigation file before hearings. Given the time

required for this, and the fact that an oral summary is rendered unnecessary under this structure, the actual role of the CRA Manager at this first stage of the hearing has been limited to answering questions upon request. The ordinance should be revised to reflect this -- along with the provision that an Investigator can be present (instead) as staff representative, as indicated in Part 1 of this document.

The next part of the process is when the Complainant and Officers have ten minutes to speak in front of each other. The Officers are notified that their speaking may entail waiver of rights of privacy, and failure to speak will not be held against them. Over the first three months of hearings, in only a few instances did an Officer choose to provide a statement regarding the incident. On several occasions, the attorney for the Officer has read a statement accusing the ordinance/city of being coercive for aiming to violate a Data Practices right.

It should be noted that if the Federation believes this portion of the ordinance is illegal, they have the right to seek an administrative ruling that would enjoin this part of the hearing Panel process. The Federation attorneys are undoubtedly aware of this.

It does concern several members of the CRB that the legal announcements at hearings create at worst a hostile environment for complainants, at best an impression of indifference to the process. However, we are aware that, when the ordinance was passed, both the legality and desirability of this particular structure was very carefully considered. We also feel hesitant to act based on an assertion of a legal problem that has not been verified by a court. Therefore, we do not recommend any change in this part of the ordinance. This discussion has been included both to make Council aware of the issue, and also because it might provide helpful context to our next recommendation: *providing specific authority for Panels to ask questions.*

Consistent with the CRB's assessment that reading entire files is necessary to make the most accurate determinations, we also believe it is highly beneficial for the Panel to ask questions of the parties at the hearing. Often, we are faced with very difficult decisions regarding credibility that would be made easier if aided by direct testimony. Sometimes we consider it beneficial to have clarification of facts or motivations provided in the statement to the Investigator. Most critically, a common guideline for many of our cases is that we must examine the "totality of the circumstances". The investigator's role is principally to elicit the facts; in contrast, we are best positioned to know what needs to be answered before we have the total picture necessary to proceed with a determination. And not to be forgotten, we have responsibilities that go beyond determinations of individual cases, for instance recommendations for policy and training. Sometimes questions aren't crucial for *reaching* a determination, but for *writing it* -- in a way which reflects these larger

concerns. We also wish to take advantage of every opportunity to better understand policing issues, in some instances for the later purpose of writing reports independent of determinations.

Initially, the Federation was supportive of our asking questions, rightfully assuming it to be consistent with the CRB doing whatever is necessary to reach the proper decision. However, due to the data privacy concern, they insisted that questions be outside of the presence of the Complainant. More recently, the Federation has most often supported Officers declining to answer any questions at all, suggesting Panels can remand all cases in which not enough information to reach a determination is in the file.

The issue of questions has been difficult for us to address because the Ordinance neither requires nor forbids them; it's not mentioned at all. Our City Attorney advised us questions were permissible, but we should seek an ordinance change to properly reflect what we are doing.

The City Attorney also supported our temporary agreement that we could question Complainants and Officers separately. We believe that the community interest in having everyone at the same table is sufficiently served at the point of the 10 minute statements. We also suspect that most Complainants would actually prefer to be interviewed separately, given the tension endemic to the formal process with all assembled.

Putting all this together, we ask the ordinance to be revised to provide specific authority for Panels to ask questions of the Complainant and Officers, separate from each other. Given that no contentious data privacy issue is present (compared to the 10 minute statements), we ask that the officers participation in this part of the process be *required*, with failure to do so itself an act of misconduct. In order to fairly (and legally) make this change, it is necessary that the Garrity warning specifically cover this part of the CRA process (the lack of certainty about Garrity's applicability at the hearing might be one reason most Officers are often not allowing themselves to be questioned).

Finally, it has not yet been noted that the Federation's alternative solution -- remand -- is not at all practical, and would serve to further compound the backlog and work pressures on our minimal staffing level. Furthermore, it's just as likely that Panel members will have questions after the remand as before, as answers sometimes beg for follow up. Nor does remand address all the reasons stated above for why the CRB wants to ask questions at a hearing. (Though we most certainly will remand when an investigation is insufficient, or if further interviews with a witness not present is required.)

Overall, so long as Garrity and data privacy protections are in place, the CRB sees no reason why the Federation should oppose the CRB's interest in directly

acquiring information it believes helpful to making better determinations, or which would better inform our larger mission.

Complainant's Appeal Rights

This is a very small matter relative to the rest of this document, but it regards a change the CRB decided to request from the Council whenever we next revisited the Ordinance. Currently, a complainant only has 5 days to request reconsideration from (i.e. appeal to) the full CRB. It was pointed out at our public hearing for Rules that this is an unusually narrow time frame for a legal notice. In comparison, a police officer has 30 days to grieve an imposition of discipline.

We believe it would be fair and appropriate to change the ordinance 172.120 to allow 30 days for a complainant to request reconsideration.