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February 10, 2015

The Honorable Paul D. Lopez
Safety & Wellbeing Committee Chairman
District 3 Council Office
4200 Morrison Road #7
Denver, CO 80219

Re: Ordinance Changes Recommended by the Denver Police Protective Association

Dear Councilman Lopez:

I write to you regarding the February 6, 2015, letter from the Denver Police Protective Association (“PPA”), which requests changes to the OIM Ordinance. I respect the role of the PPA as an organized labor association in advocating for the interests of its members, and I have no objection to the PPA’s request for a public hearing on your proposed amendments of the OIM Ordinance. Yet, I believe that the PPA’s requested changes should be rejected for several reasons.

A. The PPA’s Requested Changes Would Substantially Decrease Transparency in Denver Law Enforcement.

As you have noted repeatedly and publicly, your aim in amending the OIM Ordinance is to increase transparency in Denver law enforcement. The PPA’s proposal would do the opposite. Under the existing OIM ordinance, the OIM has “complete access to . . . IAB files, *personnel files*, and other evidentiary items.” See Art. XVIII § 2-388 (emphasis added). This grant of access to both IAB files and personnel files was adopted by the Denver City Council in 2004. Personnel files, by their very nature, contain substantial amounts of “personal information” about officers.

If enacted, the PPA’s requested changes would prohibit the OIM from receiving any “personal information” about officers, which under the PPA’s definition would include but not be limited to dates of birth, medical information, information regarding reasonable accommodations, and workers compensation information. See PPA Letter at § C. In the past year, the OIM has monitored the Denver Police Department’s (“DPD”) investigation of allegations of sexual misconduct, fraud, and criminal conduct of various kinds by officers. These serious investigations are inherently personal in nature, and monitoring them requires access to personal information. Adopting the PPA’s recommended changes could result in the OIM no longer being able to access the materials necessary to assess the DPD’s handling of these matters. This loss in transparency is antithetical to your proposal, and would both weaken civilian oversight and reduce transparency in Denver law enforcement.

B. The PPA's Recommended Changes Would Create Bureaucratic Gridlock that Could Cripple the Operations of the OIM.

The PPA has recommended the establishment of a new process whereby whenever the OIM makes a request for information that could include "personal information" about officers, the OIM would be required to provide written notification to all affected employees, who would then have seven days to file written objections. The City Attorney's Office would then prohibit sharing the information with the OIM unless these objections were determined by the City Attorney to be "frivolous."

Last year, the OIM monitored approximately 614 investigations by the DPD, and 180 investigations by the Denver Sheriff Department ("DSD"). Many, if not most, of these investigations contained records that included "personal information" about officers or deputies. Were the PPA's requested changes adopted, the OIM would be required to put all of these officers and deputies on notice of our requests for their internal affairs files. The City Attorney's Office would then be required to adjudicate potentially hundreds of objections to the disclosure of investigative files to the OIM. This bureaucratic tangle would create massive delays in case handling efficiency, and could require the dedication of additional city resources to fund new staff positions in the City Attorney's office to adjudicate these objections. I do not believe that this would be a wise use of city resources, nor do I believe it is necessary to protect the privacy interests about which the PPA is concerned.

C. The PPA's Privacy Concerns are Already Addressed by the Existing OIM Ordinance and your Proposed Amendments.

Both the existing ordinance, and your proposed amendments, contain provisions that ensure that legally-protected information is kept secure and is handled appropriately. For example, the existing OIM Ordinance requires confidentiality about pending investigations by the Independent Monitor, the Citizen Oversight Board ("COB"), and OIM staff. See Art. XVIII § 2-376. Similarly, your proposed amendments would protect from disclosure to the OIM "documents protected by the attorney-client privilege or the attorney work product privilege or any document that must not be disclosed to the monitor's office pursuant to federal, state, or local law or federal or state regulation." Together, these provisions establish that certain sensitive information may not be disclosed to the OIM, and ensure the proper handling of information that is disclosed.

Your proposed amendments fairly balance transparency with appropriate protections of sensitive information. While it would be entirely appropriate to honor the PPA's wishes for a public hearing on these matters, I respectfully suggest that the PPA's recommended changes to the OIM Ordinance should not be adopted into law.

Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'N. Mitchell', with a stylized flourish at the end.

Nicholas E. Mitchell
Independent Monitor

cc: Mayor Michael B. Hancock
Members of Denver City Council
Citizen Oversight Board Members
D. Scott Martinez, City Attorney



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February 10, 2015

The Honorable Paul D. Lopez
Safety & Wellbeing Committee Chairman
District 3 Council Office
4200 Morrison Road #7
Denver, CO 80219

Dear Honorable Councilman Lopez:

We, the members of the Citizen Oversight Board, write to you in response to the Denver Police Protective Association's (PPA) letter regarding your proposed amendment of the OIM ordinance. The COB was created to make policy recommendations regarding the Denver Police and Sheriff Departments (and certain Fire Department employees), to assess the effectiveness of the OIM, and to address other issues of concern to the community. As community leaders, we are extremely concerned about the changes to the OIM ordinance recommended by the PPA, and we strongly urge that you prevent the PPA's recommendations from becoming law.

The Denver community is crying out for greater transparency in law enforcement. We know that you have heard this cry, which is why you have sponsored a bill to strengthen civilian oversight. We greatly appreciate and support your amendment of the OIM Ordinance. Yet, as stated in Independent Monitor Nicholas Mitchell's February 10, 2015, letter to you, rather than enhancing transparency, the PPA's proposal would significantly undermine the effectiveness of the OIM and diminish transparency.

In addition, the PPA's recommended changes would also substantially hinder the COB from performing its work. Under the existing ordinance, the COB is allowed to review "pertinent portions of the personnel files of uniformed personnel and IAB files." OIM Ordinance Sec. 2-383. If the PPA's proposed amendment were to become law, denying the OIM access to any and all "personal information" about officers, it could also prevent the COB from accessing critical information that is necessary for the COB to fulfill its functions.

We commend the Mayor, and the City Council Safety Committee for moving to strengthen the OIM, and we strongly urge that all necessary steps should be taken to ensure that the PPA's damaging language should be kept out of the OIM ordinance.

We would be happy to discuss this matter with you or answer any questions that you might have.

Sincerely,

A handwritten signature in cursive script that reads "Mary Davis".

Dr. Mary Davis, Chair
Cisco Gallardo, Vice-Chair
Cathy Reynolds
Pastor Paul Burleson
Rabbi Steven Foster
Nita Gonzales
Mark Brown

cc: Mayor Michael B. Hancock
Denver City Council Members
Mr. Nicholas E. Mitchell, Independent Monitor

From: RickrnlDs2 [rickrnlDs2@aol.com]

Sent: Tuesday, February 17, 2015 12:45 AM

To: Brooks, Albus - City Council District 8; Brown, Charlie - City Council District #6; Herndon, Christopher J. - City Council District 11; Ortega, Deborah L. - City Council; jeanna.faatz@denvergov.org; kneichatlargo@denvergov.org; Montero, Judy H. - City Council District #9; Nevitt, Chris - City Council Dist #7; Lopez, Paul D. - City Council Dist #3; Lehmann, Peggy A. - City Council Dist #4; jeane.robb@denver.org; susan.sheppard@denvergov.org; Susman, Mary Beth - City Council
Cc: Mary Davis; Francisco Gallardo; Steve Foster Temple; Pastor Paul Burlison 2; Nita Gonzales 2; Mark Brown; Mitchell, Nicholas - OIM; shelly.smith@denvergov.org
Subject: Citizen Oversight Ordinance CB15-0067

Dear Council Members,

I rarely offer you unsolicited advice, but this may be a final opportunity before I am no longer an official member of the City family! And the issue is crucial. I am regretful that I am not able to testify in person, but it is my hope you will take this missive in lieu of an appearance.

Denver's citizen oversight of local law enforcement is much too often hampered and delayed, if not altogether thwarted, ignored, and belittled. Often, this is enabled by protracted debates and differences regarding what information the IM can access. Clearly, productive oversight requires all non protected information be readily available to the Monitor.

The current ordinance and the Committee approved amendment absolutely acknowledge and protect all State and Federal regulations regarding privacy and confidentiality.

The amendment to the existing ordinance, as proposed by Councilman Lopez and approved by Committee, is a reiteration and clarification that full access by the Monitor is the cornerstone of effective oversight. It is needed and cannot be diluted.

The suggested changes to the amendment, as proposed by the Police Protective Association, would be a huge step backwards for the work of the Independent Monitor and for transparency, accountability, and meaningful improvement in law enforcement/community trust in Denver.

The members of Denver's uniformed services have a long and proud history of serving and protecting our community. The Denver Department of Safety has evolved, as all successful organizations must, to fit the times while maintaining faith with its mission and public trust.

I urge you to adopt this proposal. It's common sense, good government, and a needed step.

Please feel free to contact me with any questions or concerns.

Thank you.

Cathy Reynolds



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

February 11, 2015

The Honorable Paul D. Lopez
Denver City Council
Chair, Safety & Wellbeing Committee
District 3 Council Office
4200 Morrison Road #7
Denver, CO 80219
By email to: paul.lopez@denvergov.org

Re: Draft of Possible Amendments to OIM Ordinance

Dear Councilman Lopez:

I write in regard to the letter from the Denver Police Protective Association (PPA), dated February 6, 2015, which requests modifications to the “Draft of Possible Amendments to OIM Ordinance” (“Draft Amendments”).

The PPA asks that additional text should be added to protect significant privacy interests. The American Civil Liberties Union is a longtime defender of the right of privacy. We have argued for its protection, as well as its expansion, in the courts, in the legislature, and before the Denver City Council. In this case, however, we do not believe that the Draft Amendments, if adopted, pose any significant risk of endangering any right of personal privacy. Nor is the PPA’s proposal needed for the protection of personal privacy.

The PPA expresses a concern that adopting the Draft Amendments could result in loss of privacy rights. The PPA notes that in *Whalen v. Roe*, 429 U.S. 589 (1977), the Supreme Court recognized that the Constitution provides some protection to a person’s interest in preventing disclosure of personal information. The PPA’s reliance on the *Whalen* case is not well taken.

The *Whalen* decision is often cited as the Supreme Court’s recognition that the Constitution may protect the privacy of personal information, and the ACLU certainly agrees with that general premise. In *Whalen*, the plaintiffs challenged a statute that required physicians prescribing schedule II substances to provide copies of the prescriptions to the state, which would keep them in a central computer database. The Court did not view that requirement of disclosure to the government in that case as problematic. The risk to privacy that the Court considered potentially serious was the risk that the challenged statute would result in disclosure of the private information from the government to the public. The Court noted that the challenged statute prohibited such disclosure. The Court further noted that a study of the experience of two states that had enacted similar statutes had failed to reveal a single case in which the reporting

requirement had resulted in the disclosure of private patient information to the public. The Court upheld the challenged statute.

The personal information for which the PPA seeks extra protection is information that is already in the files of Denver agencies. The disclosure to which the PPA objects is not disclosure to the public; it is disclosure from an office of Denver government to another office within Denver government. The Independent Monitor is already required by ordinance to maintain the confidentiality of the personal information to which he obtains access. Indeed, the current OIM ordinance already authorizes the Monitor to obtain access to the kinds of personal information the PPA seeks to protect, including personnel files. I don't believe that there has ever been any allegation, in the history of the Office of Independent Monitor, of unauthorized disclosure of confidential personal information to the public.

In *Whalen*, the Court determined that the challenged statute, which prohibited disclosure to the public, did not pose a risk to any right of informational privacy. Similarly, the transfer of personal information from one Denver agency to another Denver agency, with both bound to keep the information confidential, does not pose a sufficient risk to warrant the amendments the PPA seeks.

The ACLU is a strong supporter of civilian review, and it supports the Draft Amendments that are designed to strengthen the Monitor's ability to obtain the documents he needs to do his job. The PPA's proposed amendments are not only unnecessary to protect personal privacy, they would also impede and thwart the Monitor's ability to obtain necessary information. The PPA's suggested amendment should be rejected.

Sincerely,



Mark Silverstein
Legal Director, ACLU of Colorado

Cc: Nicholas Mitchell, Office of the Independent Monitor: nicholas.mitchell@denvergov.org



February 17, 2015

The Honorable Paul D. Lopez
Denver City Council
Chair, Safety & Wellbeing Committee
Denver City and County Building
1437 Bannock St.
Denver, CO 80202
By email to: paul.lopez@denvergov.org

RE: Draft of Possible Amendments to OIM Ordinance

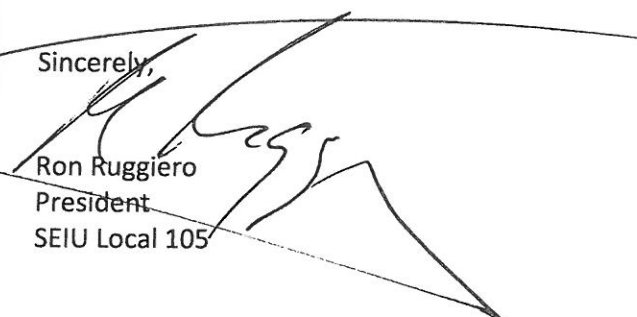
Dear Councilman Lopez,

On behalf of the over 6,000 members of the Service Employees International Union (SEIU) Local 105, I'm writing to you today to offer our support for your ordinance providing better transparency and accountability of the Denver Police Department and coordination with the Office of the Independent Monitor (OIM).

Our union is committed to economic and racial justice in our community, and thus we support this proposal that will bring greater transparency, accountability, and cooperation between law enforcement agencies as the Office of the Independent Monitor performs its investigations. This isn't about taking sides because there is no doubt that law enforcement officers have a very difficult job to perform. This is also not a labor issue but instead it's about ensuring that our system of law enforcement agencies are performing at the highest levels of transparency and accountability and creating greater trust within the Denver community between residents and law enforcement.

The Office of the Independent Monitor plays a critical role in safeguarding the rights of Denver residents and in providing the much needed transparency in investigations involving alleged law enforcement misconduct. We believe that any amendments to the original ordinance should include greater accessibility of the OIM to conduct their investigations.

Sincerely,



Ron Ruggiero
President
SEIU Local 105

LOCAL 105
SERVICE EMPLOYEES
INTERNATIONAL UNION
CLC

2525 W. Alameda Ave.
Denver, CO 80219
303.698.7963
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Cc: Nicholas Mitchell, Office of the Independent Monitor:
Nicholas.mitchell@denvergov.org

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Melanie Sedlak

February 2, 2015

Honorable Paul D. Lopez
Denver City Council

Dear Councilman Lopez,

The Colorado Criminal Defense Bar fully supports the proposed Ordinance to strengthen the Denver Independent Monitor's investigatory and oversight authority over local law enforcement.

The Office of the Independent Monitor was established to provide civilian oversight of law enforcement and to work with the departments to enhance public safety. The proposed amendments are necessary to streamline cooperation and allow the Independent Monitor to fulfill his responsibilities.

CCDB is acutely aware of many of the problems in law enforcement that stem from lack of oversight and insularity -- the clients that CCDB's members represent are often the individuals subjected to improper force accusations by the Denver Police and Sheriff's Departments. Increased accountability and transparency which will result from this Ordinance is sorely needed to restore public trust in the Denver Police, Sheriff, and Fire Departments

The Colorado Criminal Defense Bar is a professional association of nearly 1,000 attorneys, investigators and paralegals statewide who are dedicated to protecting the rights of Coloradans.

Sincerely,



David M. Beller
President
Colorado Criminal Defense Bar

CC: Nicholas E. Mitchell



February 16, 2015

The Honorable Paul D. López
& Denver City Council
City and County Building
1437 Bannock St., Rm. 451
Denver, CO 80202

Dear Councilman López and Distinguished Members of City Council:

As President of the National Association for Civilian Oversight of Law Enforcement (NACOLE), I write to strongly encourage you to strengthen the investigatory and oversight authority of the Office of the Independent Monitor (OIM). Strengthening the OIM will help to ensure greater transparency, trust, and communication between the Denver Police, Sheriff, and Fire Departments and the public. Further, more robust, effective oversight will lead to greater cooperation between Denver law enforcement and the public in achieving the ultimate goal of decreased crime and increased public safety.

Established in 1995, NACOLE is a 501(c)(3) not-for-profit association of law enforcement oversight agencies and practitioners that works to enhance accountability and transparency in policing and build community trust through civilian oversight. To further our mission, we hold an annual conference that brings together the growing community of civilian oversight practitioners, law enforcement officials, journalists, elected officials, students, community members, and others to meet and exchange information and ideas about issues facing civilian oversight and law enforcement. In addition to the annual conference, NACOLE offers year-round training, support, and professional growth and development opportunities for oversight practitioners across the nation, as well as in other countries. More information about NACOLE can be found on our website, www.nacole.org.

Our experience over the last 20 years has shown us that strong, independent oversight builds legitimacy and public trust through increased police transparency and accountability to communities. Oversight fosters accountability through independent investigations or auditing of police misconduct complaints, and can also identify needed changes in police practices and training, provide a meaningful voice or forum for the public, and form a crucial bridge between the public and the police. For oversight to be truly effective, the oversight entity must have unfettered access to the agency's personnel, as well as its internal reports, investigations, related documents, and decision-makers.

Civilian oversight provides a mechanism to bring together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. Oversight breaks down the walls between police and the public, enhancing understanding by reminding police that they ultimately serve the public's interests and educating the community on the unique and difficult

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Citizen oversight of law enforcement is a critical facet of any well-founded effort to strengthen the relationship between police and communities and to build public trust, all while promoting effective policing. And it is one of the only mechanisms proven to ensure sustainable reforms. Civilian oversight alone is not sufficient to yield the legitimacy in which both the public and law enforcement share an interest; without outside oversight, however, no collection of efforts to secure such legitimacy can be considered complete or directly responsive to the public's demands for greater participation in, and understanding of, their local law enforcement.

II. Background of civilian oversight of law enforcement and NACOLE

In its simplest meaning, civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions. Contrasted with internal accountability mechanisms commonly found in law enforcement (i.e., internal affairs), independent police review offers a method of civilian involvement in accountability that is often, but not always, external to the department. Its independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

Civilian oversight may be established in response to recurring problems in a particular law enforcement agency, such as a pattern or practice of the use of excessive force or repeated complaints of racial profiling. Sometimes oversight is initiated proactively by a local municipality to identify and correct such issues before they become more widespread and difficult to rectify. Often, however, oversight is generated in response to a single, particularly high-profile allegation or incidence of police misconduct. Whatever the circumstances, police oversight is now found in cities and counties both large and small, and in every geographic region of the nation, as well as in other countries.

While practices vary according to the roles of the oversight entity or the laws of its jurisdiction, it is common for civilian oversight agencies to be both an independent source and a repository of qualitative and quantitative data. Oversight agencies may issue public reports on the number, type, and outcome of misconduct investigations; lawsuits; uses of force; or detentions and arrests. They may provide on-scene monitoring of critical incidents, such as officer-involved shootings, or of mass social gatherings, including protests and demonstrations; and they may subsequently provide the public with a singularly independent account of the actions taken by the police, evaluating whether those actions were appropriate under the circumstances or showed a need for some measure of reform. In addition to the issuance of public reports, qualified and experienced oversight entities may also assess a police department's policies, training curricula, and recruitment standards, among other procedures, in order to compare them against the prevailing standards in a perpetually dynamic profession. The effectiveness of oversight in any particular community is dependent on a host of factors including political and budgetary support, ready access to information including police files, records, and performance data, the training and expertise of oversight personnel, and acceptance by the local law enforcement agency and community.

In 1995, as citizen oversight experienced significant growth and expansion across the country—one of several growth periods in the last thirty years—the National Association for Civilian Oversight of Law Enforcement (NACOLE) was established as the nation's only professional

association of organizations and individuals working directly in oversight. With hundreds of members across the nation and around the world, NACOLE has legitimized police oversight as a professional field of study and practice and facilitated the development of professional standards, including a Code of Ethics, as well as core competencies and training guidelines for oversight practitioners. NACOLE also hosts an annual training conference where civilian overseers and other interested stakeholders meet and exchange information and ideas about issues facing law enforcement oversight.

III. Defining the role of police in a democratic society

In a democratic society, the principle obligations of the police are to protect citizens' fundamental rights and freedoms and to prevent crime and disorder. Sir Robert Peel recognized that police must maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police. Peel's principles form the basis of American law enforcement, and comprise an approach to policing derived almost exclusively from public cooperation, continuously earned and maintained through public approval, trust, and perceptions of legitimacy.

The proper role for police, thus generally defined, is not static. As society changes, what the public expects from police changes. Broadly, the U.S. Constitution provides a framework of limitations for the police, and state legislatures may also pass laws dictating police roles and conduct; but ultimately, the police are required to be responsive to their specific community. However, the needs and views of that community may change over time. Through active dialogues with the public and law enforcement, civilian oversight brings stakeholders together and provides valuable feedback to law enforcement about how their policies and practices are perceived by their specific community, avoiding divisive discourse and toxic rhetoric. Through review of police practices and training, outside auditors and practitioners can help law enforcement identify areas where their perception of their role has become outdated. Oversight also communicates back to the public about how their police force is performing and whether the department's policies and programs maximize the public's interests and reflect local values.

IV. Building a culture of transparency

Civilian oversight, in even its most basic forms, inherently enhances transparency – it allows individuals from outside a law enforcement agency's sworn chain of command access to the inner workings of that agency, albeit to different degrees. A primary focus of civilian oversight is using this expanded transparency to increase accountability and also to advance community understanding of the work of law enforcement. Police departments are often accused of having an insular culture; those departments that have embraced civilian oversight have been able to neutralize this criticism, and ensure appropriate information is made available for public review. Moreover, in those jurisdictions where strict laws prevent public disclosure of significant amounts of information, a properly designed oversight entity can be the eyes and ears for the public, even if unable to release specific, identifiable information itself.

V. Procedural justice

Central to police legitimacy is the idea of procedural justice: perceptions of fairness in the administration of justice and the fair and impartial exercise of police discretion. And, while officers have an obligation to be impartial and enforce the law fairly, procedural justice also calls upon officers to treat people with dignity and respect, as doing so is equally as important, if not

more so. Procedural justice encompasses not only the way an officer interacts with the public, but also requires that members of the public have an effective procedure to raise concerns about police conduct. Unfortunately, individuals who feel they have been wronged by a police officer are often hesitant to approach the department that employs the officer with their concerns. They may feel intimidated, or doubtful that the department will be interested in, or even capable of, taking a truly unbiased look at their concern. Without an alternative procedure to raise concerns about officer behavior, some members of the public are left to conclude that they have no trustworthy, legitimate avenue for such redress and, even more troublingly, view the entire law enforcement "system" as structured in a way for the police to avoid being held accountable.

Outside review of the police provides an opportunity for those who seek to complain against the police to raise their concerns with fellow citizens, who do not fall within the sworn chain of command of the police department. Acknowledging that oversight agencies' authorities vary from place to place, it is often these agencies that skeptical complainants can turn to in order to feel that their concerns will truly be heard and responded to fairly. Beyond providing procedural justice for specific complaints, overseers can also establish a procedure for review of critical and high profile incidents, such as officer-involved shootings, in-custody deaths, and uses of a TASER, all of which can leave a community clamoring for justice and, potentially, lacking faith in the involved police department's ability to remain unbiased. Furthermore, as civilian overseers look at individual complaints or critical incidents, they gain unique insights and perspectives that put them in a position to identify systemic issues that are most effectively addressed through a change in department-wide policy or training. Ultimately, this impact on systemic issues can further improve police-public interactions and strengthen the community's belief that their police are procedurally just.

Finally, as law enforcement agencies work to adopt a culture of procedural justice, civilian oversight can help communicate to the public the steps being taken and why they are worthy of trust and will serve legitimacy. Police oversight also can audit such efforts to provide the community with reliable information about police agency progress. Law enforcement agencies that are proactively and genuinely striving to provide constitutional policing that is responsive to community needs can find that their own attempts to communicate their efforts to the public are futile because the agency has lost credibility with the public. However, when independent overseers who are charged with looking critically at the department communicate the same message about the department's reform efforts, the public may be more receptive to the message. This is one more illustration of how civilian oversight acts as a bridge connecting, or in some cases reconnecting, law enforcement agencies with the communities they serve.

VI. Protection of civil rights

Police oversight is an important mechanism for ensuring civil rights protections. Civilian oversight has its roots in the Civil Rights Movement. Issues of race and policing are central to the history of oversight, as well as NACOLE. Thus, the oversight community recognizes the important role it plays in identifying, understanding, and addressing discriminatory and unconstitutional police practices. Accordingly, oversight practitioners are at the forefront of investigating, reviewing, and auditing individual cases or patterns of potential civil rights violations, foremost amongst them allegations of racial profiling and biased policing, as well as complaints of illegal searches, excessive force, or unlawful detentions and arrests.

Citizen oversight also helps to ensure police engage in long-term, meaningful outreach to historically disenfranchised and marginalized communities, such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities. Additionally, independent overseers provide a voice and a forum for these communities, both before and after major incidents involving them and the police have occurred. As with other types of complaints, police oversight entities improve the overall quality of internal investigation of allegations of bias and discrimination in police encounters. With the backing of civilian oversight, many law enforcement agencies across the nation support and vigorously protect the rights of minority and marginalized communities in their jurisdictions.

VII. Recommendations

1. Ensure that police officers continue to have the proper tools, guidance, training, and supervision to carry out their law enforcement responsibilities safely and in accordance with individuals' constitutional rights.
2. Make constitutional policing and transparency core values of policing, as well as building systems of accountability that include independent oversight to carry out those values to support the many police officers who uphold their oaths, engendering greater public trust.
3. Ensure police continue to function as a part of the community; that police continue to work to cultivate legitimacy by engaging with the community fairly, impartially, and respectfully; and, that the police become more directly responsive to the community.
4. Improve the quality and integrity of police disciplinary systems, including investigations of misconduct complaints and uses of force, while vigilantly safeguarding the rights of officers.
5. Ensure that independent oversight is a part of efforts to identify and resolve underlying systemic problems within law enforcement, with a primary focus on reducing and preventing misconduct and enhancing accountability, as well as promoting effective policing and developing strategies for positive organizational change.

Respectfully submitted,



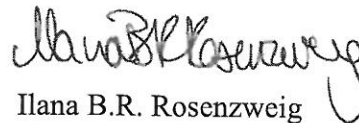
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Ilana B.R. Rosenzweig
NACOLE Past-President



Mark P. Smith
NACOLE Board Member At-Large

Provide better access for Denver police monitor

By The Denver Post Editorial Board

Updated: 02/02/2015 03:58:39 PM MST

DenverPost.com

For Denver's Office of the Independent Monitor to have effective oversight of the city's safety department, it must have better access to records and more cooperation from agencies.

A bill being discussed by the City Council would legislate exactly those provisions, which is a step in the right direction.

Former Mayor John Hickenlooper created the independent monitor position in 2004 to review police actions in the wake of controversial shootings.

Current monitor Nick Mitchell has issued many substantive findings, notably being the first to reveal the Sheriff Department's failure to investigate dozens of serious allegations.

That report released in December 2013 spurred a major overhaul of the agency that is ongoing.

Regrettably, Mitchell has had pushback from the agencies, getting stonewalled when he requested records essential for his job.

Last year, the Citizen Oversight Board, which assesses the effectiveness of the Office of the Independent Monitor, asked the council to rewrite policies to mandate safety agencies provide access to documents, electronic records, personnel and other information not protected by law.

"There should be cooperation," said Councilman Paul Lopez, chair of the council's safety committee. "I understand it is a contentious relationship. But at the end of the day, it is about safety, creating trust between the public and Denver city government."

Mayor Michael Hancock supports the changes that would require the police, sheriff and fire departments to cooperate with the monitor's participation in internal investigations and disciplinary proceedings.

The changes also would ensure all safety records be provided within a "reasonable amount of time" — except those protected by attorney-client privilege.

Greater access and transparency for the independent monitor are necessary for continued sheriff reforms and to help police keep pace with national standards.

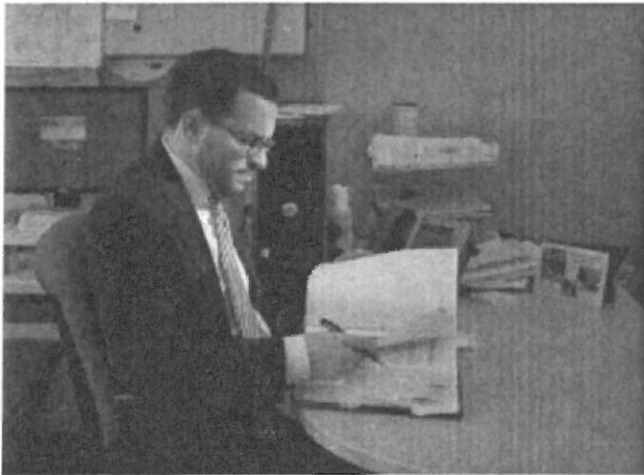
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Denver's independent monitor needs full access

By The Denver Post Editorial Board

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DenverPost.com



Nicholas Mitchell, Denver's independent monitor, looks over case files at his office in the Webb Building in December 2012. (Cyrus McCrimmon, Denver)

Denver should fully recognize the benefit of the Office of the Independent Monitor and stop restricting access to information essential for the position's duties.

It is astonishing this is even a topic for discussion. A recent letter by the Citizen Oversight Board admonished the city for continuing to deny access "to certain records in the departments."

The 10-year-old ordinance that created the monitor position mandates that the office should have complete access to witness interviews, internal affairs files and other evidentiary records.

The city apparently believes anything else requested should be denied.

Current monitor Nick Mitchell had to scratch and claw to gain information on grievances filed by inmates that became the basis for a report in December that revealed the sheriff's department failed to investigate dozens of inmate allegations against deputies.

Additionally, the sheriff's department would not give the monitor a 2010 memo for the report, which was later obtained by a Denver Post reporter through a formal open records request.

More recently, the city decided the independent monitor will not have unfettered access to video from newly implemented body cameras on police officers.

When asked whether the monitor should be allowed more overall access, Safety Manager Stephanie O'Malley said that "there are legal considerations that have to be taken into account."

The city should value the position of a monitor that holds its safety departments accountable and ferrets out problems, such as a faulty grievance process.

The oversight board provided a resolution with language that could be added to the law that defines the monitor's role — reiterating that the position is bound by confidentiality restrictions that protect against unauthorized disclosures and that the monitor should be given full access to records.

Of course it should.

Denver sheriff revamps policy on inmate grievances after harsh report

By Sadie Gurman The Denver Post

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DenverPost.com



Jamal Hunter, a former inmate of the Downtown Denver Detention Center, says the Denver Sheriff's Department did not properly handle his grievances

The Denver Sheriff's Department has revamped its policies on dealing with inmate allegations of deputy misconduct, days after the city's independent monitor criticized officials for failing to formally investigate dozens of serious complaints of excessive force, sexual abuse and bias.

All inmate grievances alleging "serious deputy misconduct" must be forwarded to the department's internal affairs unit "for immediate review," Undersheriff Gary Wilson wrote in a memo to employees issued Wednesday. "If you are in doubt about whether the complaint meets the standard of serious officer misconduct, contact the Internal Affairs Unit."

In response to an open-records request, the sheriff's department provided The Denver Post with a copy of a 2010 memo that had been sought by the independent monitor saying supervisors needed approval from higher ranking officials before initiating an internal affairs inquiry. Excluded were cases in which internal affairs should automatically be informed, which the memo specifies only as "death in the facility, officer involved shooting, escape, etc."

That memo did not specifically list sexual misconduct, inappropriate force and racial or ethnic bias allegations, which Wilson's new policy states must automatically trigger an internal probe.

The monitor, Nicholas Mitchell, cited the 2010 memo as one of the possible reasons why the department's internal affairs bureau investigated just nine out of 54 grievances he said were serious enough to warrant such a probe. Mitchell did not say which, if any, of the grievances were true.

The Sept. 13, 2010 memo was sent to department supervisors by former Division Chief Phil Deeds, who reiterated the policy in another e-mail about a year later, telling supervisors, "Please do not contact IAB with a complaint without first notifying myself, Major Than or Major Horner."

Deeds resigned in 2012 while under investigation for failing to act after a sheriff's captain alleged that off-duty deputies raped her.

Mitchell's report said the department told him it was unable to confirm the existence of the Deeds memo. Maj. Frank Gale, a department spokesman, said he did not know why that was the case.

"DSD policy allows any staff member to forward complaints to the Internal Affairs Unit without permission from a supervisor or commander," Wilson wrote in the new policy. "Any memo,

letter or e-mail which states otherwise should not be followed and deemed invalid."

Acknowledging problems with the grievance process, Wilson told The Post he plans to open internal investigations into 47 of the cases Mitchell reviewed and form a "work group" to find ways to improve the system. Wilson said he has assigned additional resources to internal affairs to handle the cases, some of which are more than two years old.

"We take this very seriously. We're going to look at this entire process and see if there should be changes," Wilson said, speaking publicly for the first time in response to Mitchell's report.

The Deeds memo, he said, was not intended to suppress inmate complaints. Rather, the department believed it was in compliance with a process of triaging inmate grievances at the facility level to ensure that only the most serious were sent to internal affairs so as not to overwhelm the unit. He said that method was recommended by former independent monitor Richard Rosenthal.

However, Rosenthal said Thursday that Wilson's interpretation of his suggestion was "utterly contrary to the program I put together."

"It was a triage to be done by internal affairs and the monitor's office, not the jail without any oversight whatsoever," Rosenthal said. "The idea that grievances alleging misconduct would not be referred to IAB at a minimum is completely against best practices."

But Gale insisted Rosenthal helped develop the way the department was triaging complaints and had signed off on the policy.

Rosenthal said he also told the department to track every case, even minor discourtesy complaints, in an internal affairs database to better track patterns.

Mitchell's report said he found serious allegations that were never assigned an internal affairs case number, including a grievance filed by Jamal Hunter, who claimed a deputy attacked him without provocation while he was in his cell.

Wilson said the department's new review will also determine whether discipline is warranted against any deputies.

Sadie Gurman: 303-954-1661, sgurman@denverpost.com or twitter.com/sgurman



**CITY AND COUNTY OF DENVER
DENVER SHERIFF DEPARTMENT
DOWNTOWN DIVISION**

INTER-OFFICE CORRESPONDENCE

TO: All DSD Supervisors
FROM: Chief P. Deeds
DATE: September 13, 2010
SUBJECT: Referrals to Internal Affairs

Effective immediately, all supervisors must receive authorization from myself, Major Than or Major Horner prior to initiation of an inquiry or complaint to the Internal Affairs Unit. This does not include instances in which IAB is notified according to protocol, (i.e. death in the facility, officer involved shooting, escape, etc.).

Than Sr., Michael T. - Undersheriff

From: Deeds, Phil - DSD
Sent: Tuesday, September 27, 2011 7:54 AM
To: Casorla, Tim - DSD; Conway, Stanley - DSD; Penson, Theresa - DSD; Brown, Jamison - DSD; Collier, Loren - DSD; Neubert, James - DSD; Ingraham, Ken - DSD; Burris, Dwayne - DSD; Austin, Lawrence - DSD; Blair, Jodi, Capt. - DSD; Brown, Chris W. - DSD; Brown, Ella - DSD; Bruning, Kelly - DSD; Burris, Dwayne - DSD; Clark-Martin, Charles - DSD; Daugherty, Donald - DSD; Denovellis, Chuck - DSD; Duffy, Shawn - DSD; Espinoza, Cuauhtemol - DSD; Gabel, Patricia - DSD; Gioso, Paul - DSD; Gutierrez, Marshall - DSD; Gutierrez, Silver - DSD; Hall, Bobby - DSD; Ingraham, Ken - DSD; Jochem, Wayne - DSD; Johnson, David - DSD; Juranek, Kenneth - DSD; Koch, Stephen V. - DSD; Martinez, Mark - DSD; Mazzei, Anthony - DSD; McCall, Gina - DSD; McManus, Steph - DSD; Medina, Carrie - DSD; Minter, Harold Sgt. - DSD; Neubert, James - DSD; Ortega, Paul - DSD; Penson, Craig - DSD; Petit, Stephen - DSD; Robirds, Lori - DSD; Romero, John - DSD; Russell, Robin - DSD; Sauer, Dan - DSD; Sims, Earl - DSD; Smith, Jeff - DSD; St. Germain, Ned - DSD; Tribble, Garry - DSD; Frank, Thomas - DSD; Hill, Glen - DSD; Kafati, Jaime E. - US Court Services - Uniform; Shannon, Byron - DSD; Swift, Philip - DSD; Zarnow, Steven P. - US DDC - Uniform
Cc: Horner, Michael J. - DSD; Than, Michael - DSD
Subject: Contacting IAB

There have been some personnel movement and I would like to remind everyone of the order that was issued a few months ago. Please do not contact IAB with a complaint without first notifying myself, Major Than or Major Horner.

Thanks,

Chief Phil Deeds | Downtown Division | Denver Sheriff Department
490 W Colfax | Denver, CO 80204
Phone 720.337.0190 | Cell 303.435.2195
Phil.Deeds@DenverGov.org

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Presentation to the Safety and Wellbeing Committee

Nicholas E. Mitchell
Independent Monitor



OIM MISSION

Promoting accountability and transparency in the Denver Police and Sheriff disciplinary processes:

1. Receive citizen complaints and commendations;
2. Review all internal affairs investigations into sworn personnel; make recommendations on investigations and disciplinary outcomes;
3. Evaluate DPD and DSD policies, practices and training to ensure constitutional law enforcement that is consistent with national standards;
4. Issue reports that address patterns in complaints, investigations, and discipline; and
5. Conduct outreach to communities throughout Denver.

EXISTING ORDINANCE – THE NEED FOR CHANGE

- Existing ordinance:
 - The OIM has access to Internal Affairs files, personnel files, and “other evidentiary items” in investigations.
 - Access to other records is subject to varying interpretations.
- Recurring disagreements over OIM access to DPD/DSD records create conflict between organizations and drain resources. They also hinder the proactive assessment and improvement of polices and practices.

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BEST PRACTICE—ACCESS TO RECORDS

National Guidelines for Police Auditors:

“A police auditor must have *unfettered access to all documents and data* in the law enforcement agency.”

Boise Community Police Ombudsman

The Office of Community Ombudsman *is to be given full, unrestricted and complete access to any and all information, files, evidence or other material which the Community Ombudsman shall deem necessary* in the performance of the duties specified and responsibilities set forth in this chapter. Sec. 2-22-06(B)

Office of Citizen Complaints, San Francisco, CA

“In carrying out its objectives, the Office of Citizen Complaints shall receive prompt and full cooperation and assistance from all departments, officers and employees of the City and County *which shall promptly produce all records requested by the Office of Citizen Complaints* except for records the disclosure of which to the Office of Citizen Complaints is prohibited by law.” Sec. 4.127.

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Portland Independent Police Review Division

Notwithstanding any other provision of City law, IPR *shall have access to and be authorized to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law, and police databases*, subject to any applicable state or federal laws. Sec. 3.21.070(J)

Office of Inspector General, Los Angeles, CA

The Inspector General shall report to the Board of Police Commissioners and *shall have the same access to Police Department information as the Board of Police Commissioners*. Article V, Sec. 573.

Office of Citizen Complaints, King County, WA (Seattle)

"shall be given by each administrative agency the assistance and information he deems necessary for the discharge of his responsibilities; he *may examine the records and documents of all administrative agencies*; and he may enter and inspect premises within administrative agencies' control." Sec. 2.52.090(C)

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THE PROPOSED AMENDMENTS

- Set forth clearer expectations about the exchange of information between Safety agencies and the OIM.
- Would help forestall future disagreements over records access, and promote collaboration on the proactive improvement of policies and practices.
- Ensure the security of legally-protected information.
 - The proposed amendments explicitly exclude "documents protected by the attorney-client privilege or the attorney work product privilege or any document that must not be disclosed to the monitor's office pursuant to federal, state, or local law or federal or state regulation."

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QUESTIONS?

STATEMENT OF PRACTICAL IMPACT OF ADOPTING PROPOSED AMENDMENT TO OIM ORDINANCE

If the proposed amendments to DRMC sections 2-388 and 2-389 are adopted and new section 2-390 is created, OIM's access to the records it needs to perform its job duties will be established legislatively. The change to sections 2-388 and 2-389 would legislatively require that DPD, DSD, and DFD cooperate with the monitor in actively monitoring and participating in internal investigations (section 2-388) and disciplinary proceedings (section 2-389). The current versions of 2-388 and 2-389 provide only that DPD, DSD, and DFD establish departmental policies that require such cooperation.

New section 2-390 would require that the Safety departments provide to OIM within a reasonable amount of time complete access to all Safety records – whether paper, electronic, or otherwise – that OIM requests in order to perform its job duties except for documents protected by the attorney-client privilege or attorney work product doctrine or documents that must not be disclosed to the monitor's office pursuant to federal, state, or local law or federal or state regulation. If a Safety agency cannot produce the documents or cannot do so within a reasonable amount of time, the agency shall provide OIM, within a reasonable amount of time, with an explanation therefor, sufficiently detailed for an understanding of why the documents are not being produced or are not being timely produced. Section 2-390 also provides that OIM need not pay Safety agencies for producing documents, but OIM may not use Safety agencies as a printing service to print as many copies as OIM wants.

ARTICLE XVIII. OFFICE OF THE INDEPENDENT MONITOR

Sec. 2-371. Office created.

(a) There is hereby created the office of the independent monitor ("monitor's office") for the City and County of Denver. This office shall consist of a full-time monitor with appropriate professional and support staff. For purposes of this article, "monitor" means the head of the office of the independent monitor.

(b) The monitor's office shall actively monitor and participate in certain investigations of uniformed personnel; make recommendations to the manager of safety regarding administrative action, including possible discipline, for such uniformed personnel; make recommendations regarding policy issues; and address any other issues of concern to the community, the members of the citizen oversight board ("board") created pursuant to section 2-377, the manager of safety, the chief of police, or the undersheriff. For purposes of this article, "uniformed personnel" means all members of the classified service of the Denver police department, all sworn members of the Denver sheriff department, and members of the Denver fire department who are authorized to carry and use firearms on duty.

(c) The monitor shall establish standards of professional conduct and a comprehensive training program for its own staff in order to evaluate whether internal investigations have been properly conducted and to make recommendations as to the sustaining of rule violations, the imposition of disciplinary sanctions, and changes in policy and training. (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-372. Appointment, qualification, and removal of monitor and staff.

(a) The mayor shall direct the recruitment for the monitor's position with the assistance of the career service authority or other entity designated by the mayor.

(b) Prior to the appointment of any person to the position of monitor, the mayor shall appoint a screening committee to interview and evaluate candidates for the position. The screening committee shall consist of the following five (5) persons:

(1) The chairperson of the board, who shall be the chairperson of the screening committee;

(2) A member of city council as selected by the city council president;

(3) A current or retired judge as selected by the mayor;

(4) The director of the career service authority; and

(5) A person with extensive knowledge of internal police investigations or the monitoring of internal police investigations but who has never been employed by the Denver police, sheriff, or fire departments as selected by the mayor.

(c) The screening committee shall forward to the mayor the names of up to three (3) candidates, whose names shall be available to the public.

(d) The mayor shall appoint the monitor from the list of names submitted by the screening committee, unless the mayor decides not to appoint any of those candidates, in which case the mayor shall request the screening committee to provide additional names.

(e) The appointment of the monitor by the mayor shall not be effective unless and until confirmed by the city council acting by ordinance.

- (f) The monitor shall serve at the pleasure of the mayor. Prior to any removal of the monitor by the mayor, the mayor shall consult with the city council and the board regarding his or her intention to remove the monitor.
- (g) The staff of the monitor's office shall be hired by the monitor and shall serve at the pleasure of the monitor.
- (h) Neither the monitor nor any employees of the monitor's office shall have formerly been employees of the Denver police, sheriff, or fire departments.
- (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-373. Mandatory oversight by the monitor's office.

- (a) The monitor's office shall actively monitor and participate in any criminal investigation of the incidents set forth below when the investigation is conducted by any law enforcement agency of the City and County of Denver. For criminal investigations conducted by the Denver district attorney or law enforcement agencies of any other jurisdiction, the monitor's office shall actively monitor and participate in such investigations to the extent permitted by the agency. In addition, the police, sheriff, or fire internal affairs bureaus ("IAB") shall investigate any incident set forth below and the monitor's office shall actively monitor and participate in such IAB investigations:
- (1) Any shooting involving uniformed personnel, whether duty related or not;
 - (2) Any in-custody death;
 - (3) Any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury as that term is defined in C.R.S. § 18-1-901(3)(p), as it may be amended from time to time;
 - (4) Any incident whether or not duty related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a felony;
 - (5) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged with, any crime set forth in C.R.S. tit. 18, art. 3 (offenses against the person, which includes homicide, assault, kidnapping, and unlawful sexual behavior) as they may be amended from time to time; or
 - (6) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a misdemeanor or local law violation in which a use of force (defined as assaulting, beating, striking, fighting, or inflicting violence on a person) or threatened use of force is an element of the offense.
- (b) With respect to paragraphs (4), (5), and (6) of subsection (a), if no criminal charges are filed subsequent to an investigation or such criminal charges are dismissed, the monitor's office shall nevertheless have the discretion to monitor any internal investigation arising from the subject incident.
- (c) Any uniformed personnel involved in any of the incidents described in subsections (4), (5), or (6) of subsection (a) shall self-report such involvement to the monitor's office and the manager of safety within three (3) business days of becoming aware that he or she is under investigation for, or charged with, any of the designated offenses. If the manager of safety, chief of police, undersheriff, or any other manager within the department of safety becomes aware of any such incident, that person shall report such

incident to the monitor's office within three (3) business days of becoming aware of the incident.

(d) In addition, the monitor's office shall monitor any other internal investigation of possible misconduct by uniformed personnel when requested to do so by the board or manager of safety. The board or manager of safety shall advise the monitor's office of the reasons why the board or the manager of safety believes the monitor's office should monitor the investigation. Within three (3) business days of determining to monitor an investigation or of receiving the request from the board or the manager of safety, the monitor's office shall advise the police, sheriff's, or fire's IAB only that the monitor's office will monitor the investigation pursuant to this paragraph.

(e) The police, sheriff's, or fire IAB shall forward to the monitor's office, the board, and the manager of safety:

(1) Within three (3) business days of opening a new internal investigation, information regarding that investigation; and

(2) Within three (3) business days of closing an IAB case where no disciplinary action was taken, information regarding that investigation.

(f) Upon a request by the board or the manager of safety, the monitor's office shall review closed IAB cases in which the IAB investigation has already been completed and the monitor's office did not monitor the investigation. For purposes of this article "closed IAB cases" means cases in which IAB has completed its investigation and either:

(1) The case was pending before the PSRC on May 2, 2005; or

(2) A complaint regarding the matter was filed with IAB, the monitor's office, or the citizen oversight board on or after November 2, 2004, and no complaint alleging the same alleged misconduct had previously been filed.

Based upon that review, the monitor's office may conduct additional investigation. The monitor's office may also make any recommendations to the manager of safety regarding the sufficiency of the investigation, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. The board may also review citizen complaints for which the monitor did not monitor the investigation and for which the outcomes were unfounded, exonerated, or not sustained. Those complaints reviewed by the board may be referred back to the appropriate department with recommendations from the board pertaining to the outcome of that particular complaint and/or with recommendations pertaining to the department's policies and procedures. For purpose of this article, "unfounded" means the complaint was not based on facts, as shown by the investigation, or the alleged violation or action did not occur; "exonerated" means the alleged action did occur, but the action was reasonable, lawful, and proper; and "not sustained" means insufficient evidence is available to either prove or disprove the allegation.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-374. Discretionary oversight by the monitor's office.

(a) The monitor's office shall have the discretion to monitor any internal police or sheriff department investigation of any citizen complaint alleging:

(1) Improper use of force;

(2) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion, or political affiliation;

- (3) Retaliation for making a complaint against the police or sheriff department or any police or sheriff department uniformed personnel; or
 - (4) Discourtesy.
 - (b) The monitor's office shall also have the discretion to monitor any internal investigation by the police or sheriff department as to which the monitor's office believes it is in the city's best interest for the monitor's office to be involved.
 - (c) Upon exercising discretion to monitor an investigation identified in subsection (a) or (b), the monitor's office shall immediately advise:
 - (1) The board and the manager of safety that the monitor's office has decided to monitor such investigation and of the monitor's office's reasons for monitoring the investigation; and
 - (2) The police or sheriff's IAB only that the monitor's office shall monitor the investigation pursuant to the provisions of paragraphs (a) and (b) above.
- (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-375. Reports of the monitor.

- (a) No later than March 15th of each year, the monitor shall submit an annual public report to the mayor and city council, setting forth the work of the monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police and sheriff department uniformed personnel, including, but without identifying specific persons, information regarding uniformed personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training.
 - (b) The report shall present information in statistical and summary form, without identifying specific persons except to the extent that incidents involving specific persons have otherwise been made public by the City and County of Denver.
 - (c) In addition to the annual report, the monitor's office shall maintain an on-going status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any. Based upon an analysis of this information and other information available to the monitor, the monitor's office shall make timely recommendations to the chief of police, undersheriff, and the manager of safety regarding an early warning system and/or other policy issues.
- (Ord. No. 730-04, § 1, 10-4-04) Amended June 2006

Sec. 2-376. Confidentiality.

- (a) The monitor, its staff, the board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties.
- (b) The monitor's office shall not discuss with any person or group, including the members of the board, the status of any criminal investigation, other than the fact that a criminal investigation has not been completed and any anticipated date by which a criminal investigation may be completed.

(c) The monitor's office, the board, and all persons who participate in the police, sheriff, or fire department's investigative and disciplinary processes are part of the city's deliberative process regarding investigative and disciplinary procedures for uniformed personnel. Furthermore, all information learned by any of those persons or groups during the exercise of their duties shall be protected by the deliberative process privilege. (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-377. The citizen oversight board.

(a) There is hereby created the citizen oversight board.

(b) The functions of the board shall be to:

(1) Assess the effectiveness of the monitor's office;

(2) Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;

(3) Address any other issues of concern to the community, members of the board, the monitor, the manager of safety, the chief of police, the undersheriff, or the fire chief;

(4) Make recommendations as to specific cases as provided in subsection (f) of section 2-373; and

(5) Exercise such other powers and duties as are set forth in this article.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-378. Appointment and qualification of board members.

(a) The civilian oversight board shall consist of seven (7) members who shall be residents of the City and County of Denver.

(b) The mayor shall appoint, subject to confirmation by the city council, the members of the board.

(c) No officer or employee of the City and County of Denver shall be appointed to the board.

(d) Neither the members of the board nor any of their immediate family members (defined as husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, grandmother, grandfather, brother, sister, domestic partner, and in-laws) shall have ever been employed by the Denver police, sheriff, or fire departments.

(e) The members of the board should reflect the diversity of Denver, including the ethnic, racial, and geographic constitution of the population as well as the diverse professional backgrounds, experience, and expertise of the citizens of Denver.

(f) The members of the board shall receive compensation in an amount not to exceed one thousand two hundred dollars (\$1,200.00) per year and be paid necessary expenses incurred in connection with the work of the board.

(g) The members of the board shall participate in an appropriate training program to be established by the board and/or the monitor's office so that they shall possess the applicable knowledge to perform their duties.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-379. Terms and vacancies.

(a) The term of each member of the board shall be four (4) years.

(b) Any vacancy occurring during the term of any member shall be filled by appointment by the mayor and confirmed by city council.

(c) The members first appointed after the effective date of this section shall be appointed as follows so as to create staggered terms: Three (3) members shall be appointed to serve for two (2) years and four (4) members shall be appointed to serve for four (4) years. After these initial appointment terms have been served, each member of the board shall be appointed thereafter for a four-year term.

(d) Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting, provided, however, that that period shall not exceed ninety (90) days past the expiration of the member's term.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-380. Removal from office.

Prior to the expiration of his or her appointed term, a member of the board may be removed from the board by the mayor for cause including a persistent failure to perform his or her duties on the board or if, subsequent to being selected as a member of the board, information becomes known to the mayor that, had it been known when the member was selected, the information would have disqualified him or her from being selected.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-381. Officers.

The board shall annually elect from among its members a chairperson and a vice-chairperson, who shall serve in such capacities until their successors are duly elected. In case of a vacancy in either of these positions, the board shall elect a successor who shall serve the unexpired balance of the predecessor's term.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-382. Meetings of the citizen oversight board.

(a) The board shall conduct at least three (3) meetings annually for public comment, including a meeting to be held not later than thirty (30) calendar days after the issuance of the board's annual report and shall from time to time meet with citizens' groups to learn of citizens' concerns and to inform the citizens of relevant information regarding the activities of police, sheriff, and fire departments, the monitor's office, and the board.

(b) The board shall meet at least bi-monthly with the monitor.

(c) The board shall meet at least quarterly in public with the manager of safety, the chief of police, and the undersheriff and shall meet with any other city personnel on an as-needed basis to discuss any issues of concern and to make recommendations for ways that the police, sheriff, and fire departments can improve their relationships with the citizens and recommendations regarding policies, rules, hiring, training, and the complaint process.

(d) The board shall fix the time and place of its meetings.

(e) The board shall maintain records of its meetings, which records shall be available to the public.

(f) All public meetings of said board shall be subject to the provisions of article III of chapter 2 of the Revised Municipal Code dealing with open meetings.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-383. Interaction between the monitor's office and the citizen oversight board.

(a) The monitor's office shall inform the board of the status of police, sheriff, and fire department investigations and disciplinary proceedings and the actions of the monitor's office in monitoring those investigations and disciplinary proceedings.

(b) The board shall establish both qualitative and quantitative criteria for evaluating the effectiveness of the monitor.

(c) In order to determine whether the monitor's office is effectively monitoring police, sheriff, and fire investigations, the board shall receive regular reports from the monitor's office and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB files including statements of uniformed personnel and to make recommendations to the manager of safety, chief of police, undersheriff, fire chief, and monitor's office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. However, the board shall not become the custodian of any such records and the board shall not be allowed access to documents protected by the attorney-client privilege or the attorney work product privilege.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-384. Reports of the citizen oversight board.

(a) The board shall furnish an annual public report to the mayor and city council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by citizens; the board's assessment of the police, sheriff, and fire department investigative and disciplinary processes; recommendations for ways that those three (3) departments can improve their relationships with the citizens; and recommendations for changes to police, sheriff, and fire department policies, rules, hiring, training, and the complaint process.

(b) The board's annual report shall be furnished concurrently with the monitor's annual report to the mayor and city council.

(c) In addition to the annual report, the board may furnish additional reports, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.

(d) The board shall have the ability to hire consultants to assist in assessing the effectiveness of the monitor's office and in preparing the board's annual report and any other reports.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-385. Rules.

The board shall publish and make available to the public such procedural rules as it may adopt for the conduct of its business.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-386. Citizen complaints.

(a) In addition to availing themselves of any citizen complaint mechanisms that are provided by the department of safety, police department, or sheriff department, citizens

may file complaints of alleged misconduct by uniformed personnel with the board or the monitor's office.

(b) Whenever a citizen files a complaint with the monitor's office, the board, or the police or sheriff departments, the agency receiving the complaint shall, within three (3) business days, advise all of the other agencies (the board; the monitor's office; the manager of safety; and, when received by the board or the monitor's office, either the police department or sheriff department) that it has received the complaint and provide a copy of the complaint to each of them.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-387. Investigations by the Denver district attorney's office.

(a) The procedures relating to the monitor's office's actively monitoring and participating in criminal investigations conducted by the Denver district attorney's office ("DA") shall be established by an intergovernmental agreement between the City and County of Denver and the DA. That agreement shall address, among other things, reasonable access by the monitor's office to the crime scene at the earliest feasible time, witness interviews, and other evidentiary items and the monitor's role in making recommendations regarding those investigations.

(b) Upon completion of the DA's investigation, but not later than sixty (60) calendar days from the date of the incident, the IAB from either the police or sheriff department shall open a file and initiate an administrative investigation of the incident unless the manager of safety in consultation with the DA determines that the administrative investigation would jeopardize the DA's investigation.

(c) The DA's investigation will be considered to be complete:

(1) When the DA files criminal charges against any uniformed personnel involved in the shooting; or

(2) When the DA issues a public letter stating that it does not intend to file criminal charges against any of the uniformed personnel involved in the shooting.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-388. Internal investigations.

(a) The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in internal investigations. Those policies shall provide for, among other things, complete access to interviews of witnesses including uniformed personnel, IAB files, personnel files, and other evidentiary items but not including documents protected by the attorney-client privilege and the attorney work product privilege. The policies shall also provide for the ability of the monitor to make recommendations regarding those investigations and for reasonable time frames to complete the steps in the internal investigatory process.

(b) For any investigation that it monitors, the monitor's office shall review the investigation to ensure that it is thorough and complete.

(c) If the monitor's office cannot certify that the investigation is thorough and complete, the monitor's office may request that IAB conduct additional investigation.

(d) If IAB does not complete the additional investigation to the satisfaction of the monitor's office, the monitor's office may conduct additional investigation, including issuing subpoenas.

(e) The monitor's office shall advise the board, manager of safety, and chief of police or undersheriff of the reasons that the monitor's office was not satisfied with IAB's investigation and of the additional investigation conducted by, or to be conducted by, the monitor's office.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-389. Role of the monitor's office in the disciplinary process.

The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in disciplinary proceedings. Those policies shall provide for, among other things, complete access to the proceedings of departmental boards involved in the disciplinary process and all materials to which those boards have access. In addition, those policies shall ensure the participation of citizens on those boards. The policies shall also provide for the ability of the monitor's office to attend disciplinary proceedings, to review disciplinary documents, and throughout the disciplinary process to make recommendations regarding determinations as to whether department rules or policies have been violated and the appropriateness of disciplinary sanctions, if any. Furthermore, the policies shall provide for reasonable time frames to complete the steps in the disciplinary process.

(Ord. No. 730-04, § 1, 10-4-04)

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2015

COUNCIL BILL NO. CB15-0067
COMMITTEE OF REFERENCE:
4 Safety & Well-being

5 **A BILL**

6 **for an ordinance amending Article XVIII of Chapter 2, Denver Revised Municipal**
7 **Code, concerning the Office of the Independent Monitor.**

8
9 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

10 **Section 1.** Article XVIII of Chapter 2 of the Denver Revised Municipal Code shall be
11 amended by deleting the language stricken and adding the language underlined below to read and
12 be read as follows:

13 **ARTICLE XVIII. OFFICE OF THE INDEPENDENT MONITOR**

14 **Sec. 2-388. Internal investigations.**

- 15 (a) The police, sheriff, and fire departments shall ~~establish by departmental policies that they~~
16 ~~will cooperate with the monitor's office in actively monitoring and participating in internal~~
17 ~~investigations, including being present to actively monitor interviews of witnesses and~~
18 ~~persons under internal investigation. Those policies shall provide for, among other~~
19 ~~things, completed access to interviews of witnesses including uniformed personnel, IAB~~
20 ~~files, personnel files, and other evidentiary items but not including documents protected~~
21 ~~by the attorney-client privilege and the attorney work product privilege. The departments~~
22 ~~shall establish departmental policies regarding that cooperation.~~ Those policies shall
23 also provide for the ability of the monitor to make recommendations regarding ~~these~~
24 investigations and for reasonable time frames to complete the steps in the internal
25 investigatory process.
- 26 (b) For any investigation that it monitors, the monitor's office shall review the investigation to
27 ensure that it is thorough and complete.
- 28 (c) If the monitor's office cannot certify that the investigation is thorough and complete, the
29 monitor's office may request that IAB conduct additional investigation.
- 30 (d) If IAB does not complete the additional investigation to the satisfaction of the monitor's
31 office, the monitor's office may conduct additional investigation, including issuing
32 subpoenas.
- 33 (e) The monitor's office shall advise the board, manager of safety, and chief of police or
34 undersheriff of the reasons that the monitor's office was not satisfied with IAB's

1 investigation and of the additional investigation conducted by, or to be conducted by, the
2 monitor's office.

3 **Sec. 2-389. Role of the monitor's office in the disciplinary process.**

4 The police, sheriff, and fire departments shall ~~establish by departmental policies that they~~
5 ~~will cooperate with the monitor's office in actively monitoring and participating in disciplinary~~
6 ~~proceedings. The departments shall establish departmental policies regarding that cooperation.~~
7 ~~Those policies shall provide for, among other things, complete access to the proceedings of~~
8 ~~departmental boards involved in the disciplinary process and all materials to which those boards~~
9 ~~have access. In addition, those policies shall guarantee the participation of citizens on those~~
10 ~~boards. Those policies shall also provide for, among other things, the ability of the monitor's~~
11 ~~office to attend disciplinary proceedings, to review disciplinary documents, and, throughout the~~
12 ~~disciplinary process, to make recommendations regarding determinations as to whether~~
13 ~~department rules or policies have been violated and the appropriateness of the disciplinary~~
14 ~~sanctions, if any. In addition, those policies shall guarantee the participation of citizens on~~
15 ~~disciplinary boards. Furthermore, the policies shall provide for reasonable time frames to~~
16 ~~complete the steps in the disciplinary process.~~

17 **Sec. 2-390. Monitor access to records and other items.**

18 The Department of Safety, police department, sheriff department, and fire department
19 and all employees of those departments shall fully cooperate with the monitor's office by
20 providing the monitor's office, within a reasonable amount of time, complete access to police
21 department, sheriff department, and fire department records, information, documents, files,
22 reports, evidence, databases, and all other items, whether in paper, electronic, or other form,
23 that the monitor's office requests in order to perform its duties set forth in the provisions of this
24 Article XVIII but not including documents protected by the attorney-client privilege or the
25 attorney work product privilege or any document that must not be disclosed to the monitor's
26 office pursuant to federal, state, or local law or federal or state regulation.

27 If, in response to a request from the monitor's office, records and/or information cannot
28 be produced at all or produced within a reasonable amount of time, a written explanation,
29 sufficiently detailed for an understanding of why the records and/or documents cannot be
30 produced, shall be promptly provided. The monitor's office shall not be required to pay the
31 department of safety, police department, sheriff department, or fire department for copies of the
32 materials set forth in this section 2-390 including copies of documents previously supplied by the
33 departments, provided that OIM may not use those departments as a printing service to make
34 multiple copies of individual documents.

1 COMMITTEE APPROVAL DATE: February 6, 2015

2 MAYOR-COUNCIL DATE: February 10, 2015

3 PASSED BY THE COUNCIL: _____, 2015

4 _____ - PRESIDENT

5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER

8 PREPARED BY: Richard A. Stubbs, Assistant City Attorney DATE: February 11, 2015

9 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of
10 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
11 resolution. The proposed resolution **is not** submitted to the City Council for approval pursuant to §
12 3.2.6 of the Charter.

13 D. Scott Martinez, City Attorney

14 BY: _____, Assistant City Attorney DATE: _____, 2015

A Resolution

**A Resolution of the Citizen Oversight Board advocating for an amendment to Article XVIII.
Office of the Independent Monitor (Ord. No. 730-01 § 1, 10-4-04)**

Whereas, in 2004, the Mayor and City Council of Denver created the Office of the Independent Monitor ("OIM") to provide independent oversight of the Denver Police Department and Sheriff Department ("Departments"), including monitoring investigations into sworn personnel;

Whereas, a core function of the OIM is to make policy recommendations to help improve Department policy over time;

Whereas, in 2004, the Mayor and City Council of Denver created the Citizen Oversight Board ("COB") to assess the effectiveness of the OIM, make policy recommendations regarding the complaint process, and address other issues of concern to the community;

Whereas, by the ordinance that created the OIM, the OIM is to have complete access to interviews of witnesses, IAB files, personnel files, and other evidentiary items;

Whereas, much information essential to the mission of the OIM does not fall within these categories of access;

Whereas, having full access to documents, electronic records, personnel, and other information within the Departments is key to the effective functioning of the OIM;

Whereas, this lack of access to documents, electronic records, personnel files, and other information has been a hindrance to the OIM in carrying out its functions, particularly its policy recommendation function;

Whereas, the OIM is bound by confidentiality restrictions that protect information received from the Departments from unauthorized disclosure;

Whereas, the OIM's lack of access to information it has requested from the Departments is of concern to the COB and the community as a whole;

NOW, THEREFORE, BE IT RESOLVED BY THE CITIZEN OVERSIGHT BOARD OF THE CITY AND COUNTY OF DENVER ON FEBRUARY 21, 2014:

That the Council and the Mayor of the City and County of Denver amend Article XVIII to include the language attached as Exhibit A as Section 2-390 of that ordinance:

Dr. Mary Davis, Chair Francisco "Cisco" Gallardo, Vice Chair Cathy Reynolds, Secretary

Mary Davis

Francisco Gallardo

Cathy Reynolds

Mark Brown

Pastor Paul Burleson

Rabbi Steven Foster

Nita J. Gonzales

Mark Brown

Pastor Paul Burleson

Rabbi Steven Foster

Nita J. Gonzales

Exhibit A:

Section 1. § 2-390

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A) The Monitor's Office shall have full, complete and timely access to all Police and Sheriff Department records and information, including paper and electronic documents, files, reports, evidence, databases or other information the Monitor's Office deems necessary (without the payment of any fees or charges) except those that must not be disclosed to the Monitor's Office by federal or state law. If, in response to a request from the Monitor's Office, documents and/or information cannot be produced, a detailed written explanation must be promptly provided of the reason why the documents and/or information cannot be produced.

B) All Denver Police and Denver Sheriff Department employees shall be required as a condition of their employment to cooperate fully and truthfully with the Monitor's Office by providing the Monitor's Office with any and all information, evidence, interviews, or other material that is requested.