



Community Ombudsman Oversight Panel

Annual Report 2014

A summary of the Panel's review of internal investigations within the Boston Police Department. This report outlines the Panel's activities and presents statistics for the 2014 reporting period.

Panel Members:

Damon Hart, Ombudsman
Richard Kelliher, Ombudsman
Natashia Tidwell, Ombudsman

"The police, the people who are angry at the police, the people who support us but want us to be better... We don't see each other. If we can learn to see each other... to see that our cops are people like Rafael Ramos and Wenjian Liu, to see that our communities are filled with people just like them too. If we can learn to see each other, then when we see each other, we'll heal. We'll heal as a Department. We'll heal as a city. We'll heal as a country."

NYPD Commissioner Bill Bratton,
eulogizing slain NYPD Officer Rafael Ramos

Contact Information

Community Ombudsman Oversight Panel (CO-OP)
P.O. Box 190189
Roxbury, MA 02119

Telephone: 617-594-9216

Email: COOP.bpd@cityofboston.gov

Website: www.cityofboston.gov/LAW/CO-OP



City of Boston
Community Ombudsman Oversight Panel

March, 2015

Dear Mayor Walsh and Commissioner Evans,

The Community Ombudsman Oversight Panel hereby submits its Annual Report for your consideration and distribution. This report details the Panel's work from January 2014 through the date of this letter.

Although the Panel's term expired in July 2014, Damon Hart, Richard Kelliher and I agreed to extend our service beyond that time to ensure completion of the matters covered in this reporting period. With that work completed, Messrs. Hart and Kelliher have ended their terms as Ombudsmen. Both contributed a great deal to the CO-OP and to the City of Boston, and I am truly grateful to have had the opportunity to undertake this important work with them over the past three years. While it is my sincere belief that we have made great strides in fulfilling Mayor Menino's vision of delivering meaningful police oversight to the Boston community, there is still much work to be done. With the recent appointments of Larry Mayes and Judge (Ret.) Regina Quinlan, I am confident that we can continue working towards that goal.

Last summer's tragic events in Ferguson and Staten Island, and the resulting unrest, highlight the need for police departments to develop and maintain trusting relationships with the communities they serve. As NYPD Commissioner Bill Bratton observed in his eulogy for Officer Rafael Ramos, much of the tension that has boiled over in recent months stems from the inability of the police and the community, particularly communities of color, to see one another. When residents of these affected communities bemoan the disparities in the way they are policed, it is tempting to focus solely on whether a particular officer's conduct falls within applicable police department rules and constitutional safeguards. In doing so, however, we lose sight of how the manner and method in which these tactics are deployed demoralizes communities and erodes trust in the police department. Civilian oversight is but one component of a larger strategy aimed towards rebuilding that trust.

I welcome your comments and look forward to discussing this Annual Report and the future of police oversight in the City of Boston with you and the community.

Respectfully submitted,

A handwritten signature in black ink that reads "Natasha Tidwell".

Natashia Tidwell, Ombudsman

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Executive Summary

In March 2007, former Boston Mayor Thomas Menino established the Community Ombudsman Oversight Panel (“CO-OP”), a three-member appeals body tasked with ensuring fairness and thoroughness in the Boston Police internal affairs process. The first panel (“Hall Panel”) comprised of David Hall, former Dean and Professor, Northeastern University School of Law; John O’Brien, Dean, New England Law | Boston; and Ruth Suber, former member of the Massachusetts Parole Board, served from 2007 until the end of 2010. In 2011, three new CO-OP members were appointed (“Hart Panel”): Damon Hart, Vice President and Assistant General Counsel, Liberty Mutual Insurance; Richard Kelliher, Senior Fellow, Moakley Center for Public Management; and Natasha Tidwell, Associate Professor, New England Law | Boston. The Hart Panel’s appointment ended in July 2014. During its tenure, the Hart Panel reviewed approximately 17% of the internal affairs investigations that were eligible for appeal.¹

This Annual Report details the Hart Panel’s work on cases referred to the CO-OP in 2013 and all other matters completed since January 2014. As explained further within the data section of this report, cases are brought to the CO-OP either on direct appeal from the complainant, or through a random audit process. In 2013, 14 cases were referred – eight (8) through direct appeal and six (6) via the random audit process. While these figures are similar to those from most of the previous reporting periods, they represent a sharp decrease from 2012 when the number of appealed cases spiked to twenty (20).

In summary, the CO-OP completed reviews of all fourteen (14) of the cases referred in 2013 as well as thirteen (13) additional matters previously referred. Of the twenty-seven (27) cases reviewed, the CO-OP determined that fifteen (15) investigations were fairly and thoroughly conducted and that eleven (11) investigations were either unfair and/or not thorough. One (1) matter is still pending, meaning that the case is being processed by an Ombudsman or that it has been returned to the Internal Affairs Division for clarification or supplemental investigation. Additional information about the type and number of individual allegations referred to the CO-OP in 2013 can be found in the “Case Data” section of this report. A brief summary of each reviewed case, including those referred in previous years but completed during this reporting period, is located in the “Summary of CO-OP Cases” section.

As in years past, the Case Data section of this report opens with a recap of the Internal Affairs Division’s (IAD) work during the CO-OP reporting period. IAD provided this data for the purpose of lending context to the report on cases reviewed by the panel. However, the correlation between IAD’s data and CO-OP case data is not entirely symmetrical. Matters referred to the CO-OP in 2013 may, but do not necessarily include allegations of misconduct from 2013. In fact, most of the cases referred to the CO-OP in 2013 stemmed from internal affairs complaints lodged in 2012 or before. The issue of timeliness and the potential impact of delays on the fairness and thoroughness of investigations is discussed in the “Case Timelines” section of this report.

The Appendix contains supporting documents and other related information:

- A. Police Commissioner Evans’ Response to the 2013 Annual Report**
- B. CO-OP Brochure**
- C. CO-OP Appeal Form**
- D. Mayor Thomas M. Menino’s 2007 Executive Order**

¹ A statistical breakdown of the Hart Panel’s work can be found in the “Historical Data” section.

History, Purpose and Process

The Community Ombudsman Oversight Panel was established by Executive Order, issued by Mayor Thomas M. Menino in March 2007. The CO-OP is charged with reviewing allegations of misconduct against Boston police officers. Cases can be appealed to the Panel by citizens if they are not satisfied with IAD decisions. Other cases are reviewed by the Panel through a random selection process. Additionally, cases can be referred for CO-OP review, as determined by the Chief of the Bureau of Professional Standards and BPD Legal Advisor, solely due to the seriousness of the alleged misconduct or use of force.

History

In 2004, Kathleen M. O'Toole, then Boston's Police Commissioner, pledged to establish a Boston Police conduct review board. The Department was spurred by the emergence of similar panels in other cities and by the death that year of an area college student who was killed by police firing pepper-pellet guns during crowd control operations following the Red Sox World Series victory. The initial appointments to the Community Ombudsman Oversight Panel were made after nearly two years of research on police review boards across the country. The original Panel began reviewing case files in October 2007. Appointees have terms of three years, which may be renewed at the Mayor's discretion.

Panel Composition

Pursuant to Mayor Menino's Executive Order, Panel Members are selected because of their extensive knowledge and experience in law enforcement, the criminal justice system and/or the judicial process. Prior to reviewing cases the Panel receives training at the Boston Police Academy in order to become familiarized with BPD policies and practices in areas such as use of force, race and community relations, constitutional law, internal investigation and disciplinary processes, among others.

Duties of the Panel

It is the responsibility of the panel to:

- Provide external oversight of certain Boston Police Internal Affairs investigations to assess whether those investigations meet the standards of Fair and Thorough as provided in the Executive Order;
- Receive appeals from aggrieved complainants;
- Participate in outreach to the community as to the Panel's purpose and procedures;
- Periodically review policies and procedures and provide a report to the Mayor and the Police Commissioner documenting cases reviewed; the outcome of the Panel's review for each case and the progress toward establishing a Complaint Mediation Program as envisioned in the 2007 Mayoral Executive Order.

Powers of the Panel

The Panel, when reviewing Internal Affairs cases:

- Reviews completed cases as presented by the Boston Police Department's Internal Affairs Division, without the power to subpoena. It cannot interview its own witnesses nor do its own independent investigation.
- Access to all materials contained in the completed Internal Affairs files subject to review, except those documents protected from release by statute.
- Makes recommendations to the Chief, Bureau of Professional Standards (Chief, BPS) for further investigation or clarification and recommendations to the Police Commissioner regarding the reviewed cases.

Cases Reviewed by the Panel

The Panel reviews the following categories of cases:

- A. Not sustained, exonerated or unfounded cases involving allegations of serious misconduct and unjustified use of force. The following is the definition of serious misconduct cases developed by the Chief of BPS in cooperation with the Legal Advisor.
 - 1. Not sustained, exonerated, or unfounded cases involving an in-custody death or serious bodily injury that occurs while in Boston Police custody.
 - 2. Not sustained, exonerated or unfounded cases involving use of force by a Boston Police officer which results in death or serious bodily injury.
 - 3. Not sustained, exonerated or unfounded cases involving allegations of perjury by a police officer.
 - 4. Not sustained, exonerated or unfounded cases involving allegations that the actions of a Boston Police officer were motivated by a discriminatory intent. The allegation must include specific actions taken by the police officer that led the complainant to believe the action was discriminatory.
 - 5. Any other not sustained, exonerated or unfounded internal affairs case deemed appropriate for review by the Chief, Bureau of Professional Standards.
- B. A random sample of all not sustained, exonerated or unfounded complaints;
- C. Not sustained, exonerated or unfounded findings appealed to the Panel by complainants who allege that the investigation of their complaint was either not fair and/or thorough.

Panel Review Process

For cases in Category A or B above, the review process is as follows:

- 1. The Chief, BPS, and the Legal Advisor determine those cases to be reviewed pursuant to categories A and B above. To insure the integrity of the IAD process, the panel reviews approximately ten percent of all cases with a finding of not sustained, exonerated or unfounded.
- 2. The Executive Secretary to the Panel compiles the cases for review, and presents them to the reviewing Ombudsman. The Executive Secretary assigns case numbers to the reviewed cases. The entire investigative file is provided to the reviewing Ombudsman; however, a staff attorney from the Legal Advisor's Office redacts the file to prevent the unauthorized release of privileged or protected information pursuant to Massachusetts General Laws (Criminal Offender Record information, information protected by the rape shield statute, etc.). The cases are assigned to panel members on a rotating basis based on the order in which they are received.
- 3. The Executive Secretary notifies the police officer(s) named in the reviewed cases that the case is under review by the Panel.
- 4. One Ombudsman reviews each case, and the reviewing Ombudsman either finds the investigation to be thorough and fair, or sends feedback to the Chief, BPS, requesting clarification or further investigation. The Chief, BPS, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The Ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he makes a determination as to the appropriate finding.
- 5. If the reviewing Ombudsman determines that a case was investigated fairly and thoroughly, he/she notifies the Police Commissioner, the Chief, BPS, the Legal Advisor and the named officer(s) of the determination.
- 6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he notifies the reviewing Ombudsman, the Chief, BPS, the Legal Advisor and the named officer(s) of the determination.
- 7. The Executive Secretary maintains all files for the Panel. The files of the Panel are regarded as confidential and are examined only by Panel members, the Executive Secretary and Boston Police

Department employees as designated by the Police Commissioner. The Panel is barred from duplicating documents provided by the Police Department. The files are not available for inspection by the public. The investigative files are returned to IAD within fourteen (14) days of the final determination.

For cases in category C above, the review process is as follows:

1. Upon final determination of a finding on an internal affairs case, notification is sent to the complainant by the Chief, BPS, of the Police Commissioner's finding. If the Police Commissioner's finding is not sustained, exonerated or unfounded, the complainant is informed of his/her ability to seek an appeal of this finding to the Community Ombudsman Oversight Panel. A complainant, who wishes to appeal, must do so in writing and may do so with the included Appeal Form within fourteen (14) days of the mailing date of the notice from IAD. If the appeal is sent via mail, the appeal must be postmarked within fourteen (14) days from the date the notice from IAD is mailed.

The appeal can be e-mailed to the following address COOP.bpd@cityofboston.gov.

Hand-delivered appeals must be received by close of business on the fourteenth day from the date on the notice from IAD.

Appeals may be hand delivered to:

Community Ombudsman Oversight Panel
c/o City of Boston Law Department
City Hall
Room 615
Roxbury, MA 02201

Appeals sent by mail must be postmarked by close of business on the fourteenth day from the date on the notice from IAD.

Appeals may be mailed to:

Community Ombudsman Oversight Panel
P.O. Box 190189
Roxbury, MA 02119

2. The Executive Secretary stamps the appeal upon receipt and assigns a case number to the appeal. The Executive Secretary notifies the police officer(s) named in the case of the appeal, and provides a copy of the appeal to the Police Commissioner, the Chief, BPS, and the Legal Advisor. The Executive Secretary prepares the case for the Panel, and assigns the appeal to one Ombudsman. The entire investigative file is provided to the reviewing Ombudsman; however, an attorney from the Legal Advisor's Office redacts the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).
3. One Ombudsman reviews each case and either finds the investigation to be thorough and fair, or sends feedback to the Chief, BPS, requesting clarification or further investigation. The Chief, BPS, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The Ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he makes a determination as to the appropriate finding.
4. If the reviewing Ombudsman determines that a case was investigated fairly and thoroughly, he/she notifies the Police Commissioner, the Chief, BPS, Legal Advisor and the named officer(s) of the determination.
5. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he notifies the reviewing Ombudsman, the Chief, BPS, the Legal Advisor and the named officer(s) of the determination.

6. The Executive Secretary notifies the complainant of the determination by either the reviewing Ombudsman or the Police Commissioner. All notifications made to the complainant are sent by certified mail, return receipt requested.
7. The Executive Secretary maintains all files for the Panel. The files of the Panel, and the statements of appeal, are regarded as confidential and are examined only by Panel members, the Executive Secretary and Boston Police Department employees as designated by the Police Commissioner. The Panel is not authorized to duplicate documents provided by the Police Department. The files are not available for inspection by the public. The investigative files are returned to IAD within fourteen (14) days of the final determination.

Final Decision on Appeals

As stated earlier, the Boston Police Commissioner makes the final decision on appealed cases.

Recommendations by the Ombudsmen and the Chief of the Bureau of Professional Standards are considered in addition to case file documents. The Police Commissioner's determination is final and no other appeal is available.

Given the time-consuming nature of reviewing an entire case file—especially a case containing several alleged violations—there is no specific time limit allotted for an appeal. Each Ombudsman may be assigned more than one case file for review at a time.

Internal Affairs Complaint Data

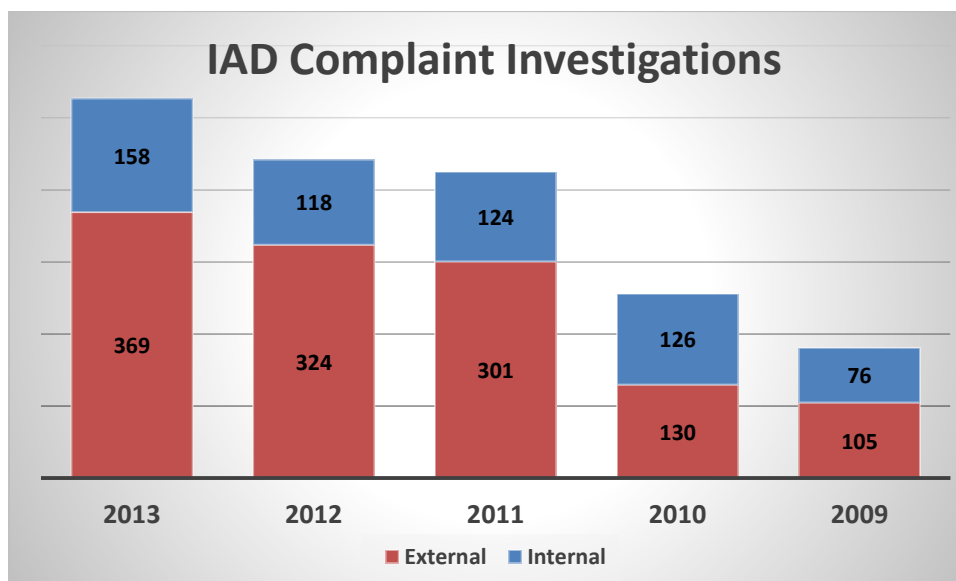
The following section details complaint data furnished to the CO-OP by the Bureau of Professional Standards (“BPS”) in the fall of 2014. This data is presented for background purposes. Further explanation beyond the illustrations shown here can be provided by the BPS, which oversees the Internal Affairs Division.

Allegations of Misconduct

The graph (see Figure 1) illustrates the number of complaint investigations generated within the Internal Affairs Division for the years 2009 through 2013.

Complaints are generally categorized by source. External complaints are those initiated by citizens unaffiliated with the Boston Police Department, while internal complaint investigations stem from allegations of misconduct brought by departmental employees. The CO-OP reviews findings from external complaint investigations.

Figure 1



External Complaint Allegations

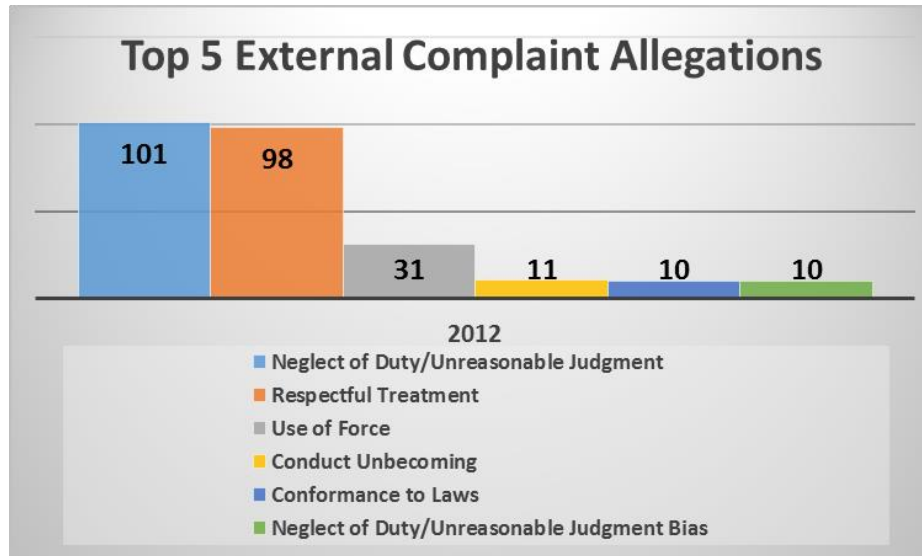
Figure 2 depicts the five most common allegations of misconduct lodged against BPD personnel through the external complaint process in 2013. Respectful Treatment was the most complained-of allegation, followed by Neglect of Duty/Unreasonable Judgment, Use of Force, Conduct Unbecoming and Conformance to Laws.

Figure 2



For comparative purposes, Figure 3 illustrates the five most common allegations of misconduct lodged against BPD personnel through the external complaint process in 2012. Neglect of Duty/ Unreasonable Judgment was the most complained-of allegation, followed by Respectful Treatment, Use of Force, Conduct Unbecoming, and Conformance to Laws tied with Neglect of Duty/Unreasonable Judgment Bias.

Figure 3



IAD Findings

When the Internal Affairs Division (“IAD”) completes an external complaint investigation, it sends the complainant an official “Notice of Findings”. If the complaint investigation results in a finding of Exonerated, Not Sustained or Unfounded, the Notice of Finding is accompanied by a CO-OP brochure and appeal form explaining the complainant’s right to appeal IAD’s finding.

External complaint investigations are classified as follows:

Sustained: The investigation revealed, by a preponderance of the evidence, that the conduct alleged in the complaint occurred. If it is a criminal case, it is presented to proper prosecuting authorities.

Exonerated: The investigation revealed that the conduct alleged in the complaint did occur, but the investigator determined that said conduct was reasonable, lawful, and proper.

Not Sustained: There was insufficient evidence to prove or disprove, by a preponderance of the evidence, that the conduct alleged in the complaint occurred.

Unfounded: The investigation revealed that the allegations in the complaint did not occur.

Pending: The complaint is currently under investigation.

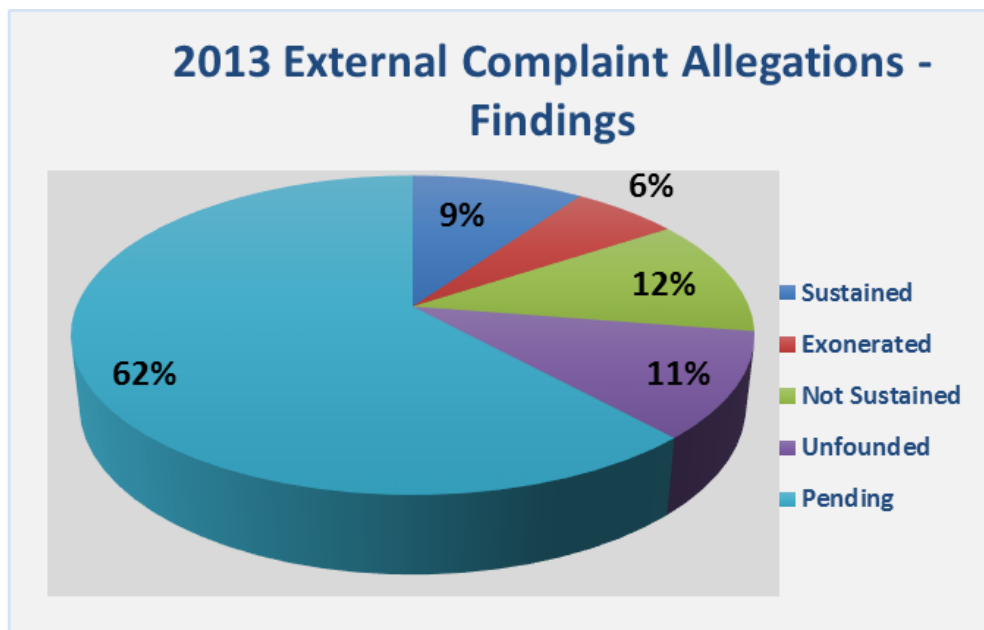
Filed: The investigation was inconclusive, due to one or more reasons beyond the investigator’s control, and may be re-opened at a later date.

Withdrawn: The complainant withdrew the complaint prior to the investigation’s conclusion.

External Complaint Allegations – Findings

Figure 4 shows the results of external complaint investigations conducted by IAD in 2013. As illustrated, nine (9%) percent or 37 allegations were sustained while twenty-nine (29%) percent or 109 allegations resulted in a finding of Not Sustained, Exonerated, or Unfounded. The remaining sixty-two (62%) percent or 236 allegations are still pending and awaiting an outcome.

Figure 4



For comparative purposes, Figure 5 illustrates the findings in external complaint allegations from 2012 as detailed in the 2013 Annual Report. Last year, IAD reported that nine (9%) percent or 21 allegations were sustained while forty-eight (48%) percent or 106 allegations resulted in a finding of Not Sustained, Exonerated, Unfounded or No Violation. One (1%) percent or 3 allegations were withdrawn. The remaining forty-two (42%) percent were still pending and awaiting an outcome.

Figure 5



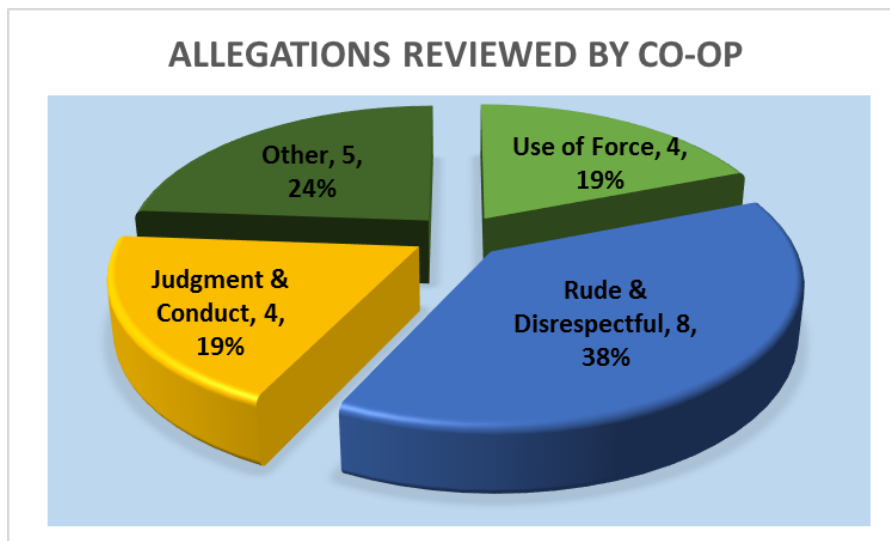
CO-OP Case Data

Cases are referred to the Community Ombudsman Oversight Panel (“CO-OP”) by direct appeal or through a random audit process. When an external complaint investigation results in a finding of Not Sustained, Exonerated, or Unfounded, the complainant is notified of his/her right to appeal the finding to the CO-OP. The CO-OP also reviews one out of every ten cases in which the complainant chose not to exercise his/her right of appeal an adverse finding. These cases are selected randomly.

In all, fourteen (14) cases were referred to the CO-OP in 2013, eight (8) through direct appeal and six (6) via the random audit process.

As shown in Figure 6 the bulk of allegations reviewed by the CO-OP fell within three (3) main categories: Use of Force, Judgment and Conduct, and Rude and Disrespectful Treatment. These categories are described in further detail below. The graph illustrates that the fourteen (14) cases referred to the CO-OP in 2013 encompassed twenty-one (21) separate allegations of misconduct. As with IAD cases generally, most CO-OP cases involve multiple allegations.

Figure 6



Allegations

Use of Force: This rule governs the guidelines for the appropriate use of non-lethal force by members of the Boston Police Department in the performance of their duties.

Judgment & Conduct: Conduct unbecoming an employee includes that which tends to indicate that the employee is unable or unfit to continue as a member of the Boston Police Department, or tends to impair the operation of the Department or its employees. This includes any conduct or omission that is not in accordance with established and ordinary duties or procedures of the police department or which constitutes use of unreasonable judgment in the exercising of an employee’s discretionary authority.

Rude & Disrespectful Treatment: The police department requires that employees shall, on all occasions, be civil and respectful, courteous and considerate toward their supervisors, their subordinates and all other members of the Boston Police Department and the general public. No employee shall use epithets or terms that tend to denigrate any person(s) due to their race, color, creed or sexual orientation except when necessary in police reports or in testimony.

Other: All remaining allegations made against Boston Police personnel including allegations of Neglect of Duty and failure to follow existing rules for Self-Identification.

CO-OP Recommendations

When a Panel member completes his/her review of an appeal, the complainant is notified in writing of the Panel member's recommendation. The Panel issues one of four findings in each appeal:

Fair and Thorough: The IAD investigation was found to be thorough and without bias toward either party.

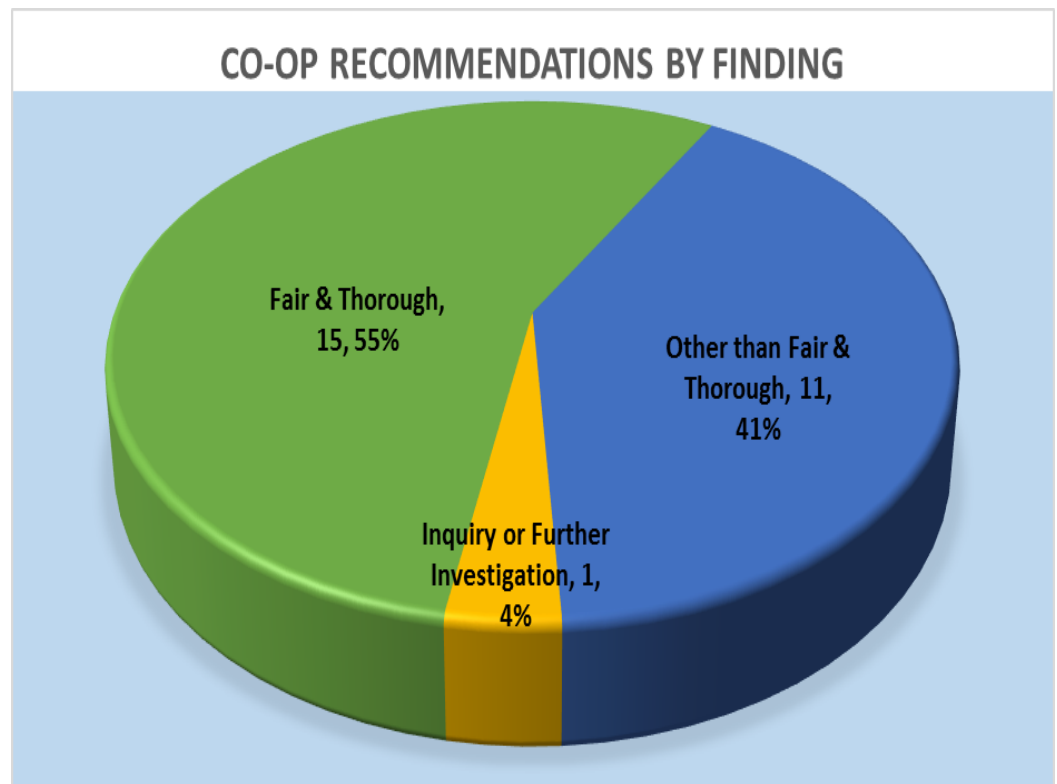
Fair but Not Thorough: The IAD investigation was found to be Not Thorough, that is, further investigative steps that may have had a potential impact on the outcome of the case should have been completed but were not. However, the case was conducted without bias toward either party.

Not Fair but Thorough: Aspects of the investigation were found to be unfairly biased but the investigation, as a whole, was thorough.

Not Fair and Not Thorough: The IAD investigation was found to be unfairly biased and additional investigative steps that may have impacted the outcome of the case were not taken.

Figure 7 summarizes the CO-OP's recommendations in the matters referred to the Panel in 2013 as well as previously pending matters that were resolved during this past year. In all, 15 IAD investigations (55%) were found to be fair and thorough while 11 IAD investigations were found to be other than fair and thorough (41%). One investigation is still under review. Further details regarding these cases can be found in the, "Summary of CO-OP Cases" section of this report.

Figure 7



Case Timelines

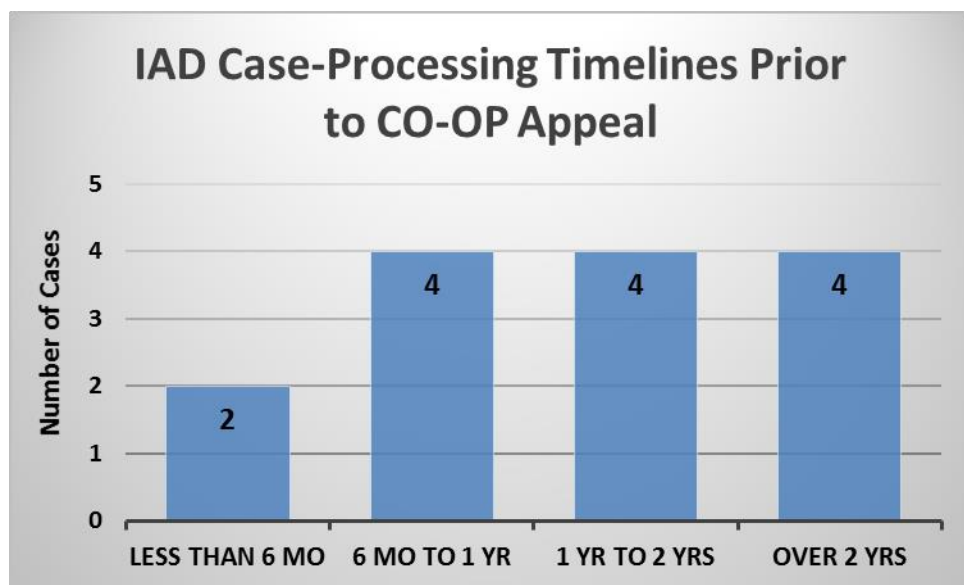
In recognition of our view that the timeliness of internal affairs investigations is an important customer service benchmark, each year we examine the time periods involved in the processing of complaints prior to appeal (measured from date of IAD complaint intake to the date of issuance of a Notice of Finding to the complainant). Our reasons for doing so are two-fold. First, there exists a real possibility that a protracted investigatory period will impact the fairness and thoroughness of an investigation. As time goes on, witnesses may become difficult to locate, memories fade, and valuable evidence, such as surveillance footage, can cease to exist.

Even when a delay in completion does not impact the fairness or thoroughness of an investigation, it can impact the complainant's confidence in the internal affairs process. For instance, this past year, the Panel reviewed a case, through the random audit process, stemming from a 2010 internal affairs complaint. In the weeks and months after filing the complaint, the complainant made numerous requests for updates. Three years later, the investigation was completed and findings of "Not Sustained" were issued against the subject officers. The complainant was notified but did not appeal despite what appeared to be an avid interest in the processing of the complaint in the investigation's early stages. It is reasonable to conclude that the prolonged delay played some role in the complainant's unwillingness to utilize the appeals process.

In recent years, the police department adopted the CO-OP's recommendation that IAD implement a process by which complainants would receive periodic updates of an investigation's status. However, there does not appear to be a consistent manner in which the policy is honored making it difficult to assess what, if any, impact the change has had on citizen perceptions of the IAD process.

Despite a modest improvement last year, the graph below (Figure 8) illustrates that significant delays persist. Last year, we reported that slightly less than 20% of the IAD investigations referred to the CO-OP, via direct appeal or through the random audit process, took at least 24 months to complete. Of the cases referred to the CO-OP in 2013, roughly 30% of the investigations took more than 2 years to complete. In the previous two reporting periods, 2011 and 2012, about 1/3 of the matters referred to the CO-OP stemmed from investigations completed in less than 12 months. In 2013, that number rose to more than 40%. The remaining 30% of reviewed cases stemmed from investigations that took between one and two years to complete.

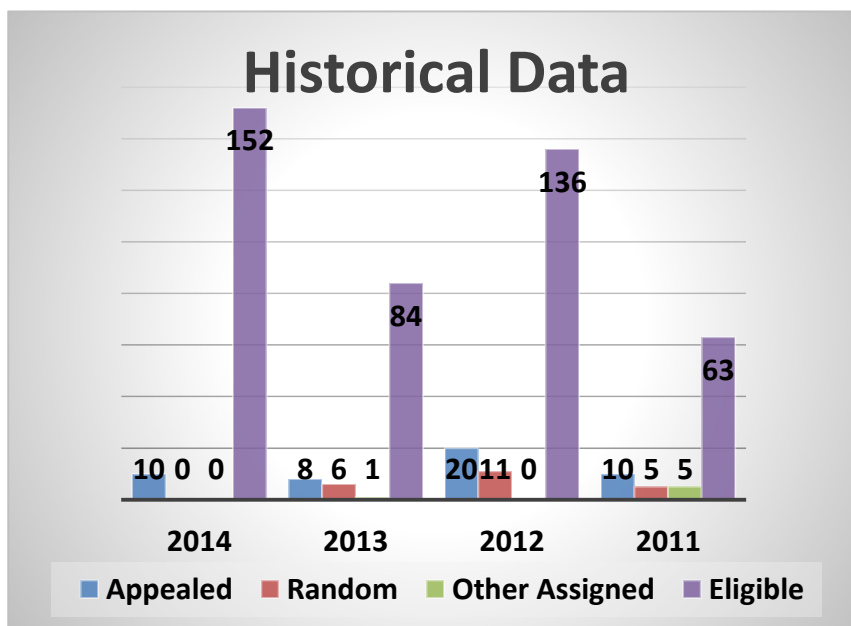
Figure 8



CO-OP Historical Data

From 2011 until the expiration of the panel's term in 2014, 76 of 435 appeal-eligible cases were referred to the Hart Panel for review (17%). In comparison, the Hall Panel reviewed 46 appeal-eligible cases during its tenure. To be eligible for appeal, an internal affairs investigation must result in a finding of "Unfounded," "Exonerated," or "Not Sustained." Figure 9 illustrates the number and manner of referral for cases reviewed by the Hart Panel during its tenure.²

Figure 9



The Hart Panel completed its review of 66 of the 76 matters referred. Of these, the Hart Panel determined that 49 internal affairs investigations were conducted in a Fair and Thorough manner (74%) and that 16 investigations (24%) were Not Fair, Not Thorough, or both. One (1) case was withdrawn by the complainant. In three (3) instances, IAD reversed its initial finding and sustained a complaint, in whole or in part, based on the panel's recommendation.

Ten (10) matters, referred in 2014, are not reflected in this reported period. Of those 10 cases, five (5) are under review, while four (4) are awaiting processing by BPD's Legal Department and have yet to be assigned.³ Review of the remaining case has been completed.

² The "Other Assigned" category in Figure 11 represents matters left over from the Hall Panel or cases that were appealed to the CO-OP prior to the Hart Panel's appointment.

³ An additional 22 cases were projected for referral to the CO-OP via the random audit process in 2014. However, due to the expiration of the Hart Panel's term, those matters were held pending determination as to future referral.

Summary of CO-OP Cases

Case #:	10-06A	Type: Appeal
Summary:	Complainant alleged that officers exercised unreasonable judgment, based on her race, in service of arrest warrant at her home. Complainant also alleges that the officers used excessive force in affecting her son's arrest	
Violation(s):	Use of Force	
Recommendation:	Not Fair and Not Thorough based, in part, on Ombudsman's view that investigation should have included review of officers' decision to serve juvenile arrest warrant in time and manner in which it was done rather than focusing solely on complainant's excessive force complaint.	
Status:	IAD reviewed CO-OP recommendation and disagreed. Pursuant to Executive Order, appeal will be forwarded to Commissioner Evans for final decision.	
Case #:	11-05A	Type: Appeal
Summary:	Complainant alleged that, following a traffic accident involving one of his friends, responding officers exhibited favoritism towards the other motorist. When complainant voiced his objection, the officers assaulted and choked him before placing him under arrest.	
Violation(s):	Use of Force, Judgment, Respectful Treatment, Gratuities	
Recommendation:	Not Fair and Not Thorough based, in part, on Ombudsman's view that the investigation should have included a review of the failure to file Use of Force reports as was required under existing police department policy.	
Status:	Closed. IAD agreed with CO-OP recommendation and issued findings of "Sustained" against two supervisors who failed to ensure that arresting officers completed Use of Force reports following the complainant's arrest.	
Case #:	12-04A	Type: Appeal
Summary:	Complainant alleged that Boston Police officers unlawfully forced entry into his home knocking him down while they responded to an active shooter call that falsely identified complainant's address as the location of the incident.	
Violation(s):	Neglect of Duty/Unreasonable Judgment 9 counts (Exonerated) Use of Force (Not Sustained)	
Recommendation:	Fair and Thorough, however, it was acknowledged by the panel that Complainant was put in a very stressful situation through no fault of his own. The circumstance dictated a strong police response given the multiple 911 calls claiming an active shooter situation was in progress. Complainant happened to be the target of an unfortunate hoax.	
Status:	Closed	

Case #:	12-13A	Type: Appeal
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Summary: Upon his release from prison, Complainant returned to BPD to claim his cellular telephone which was seized as evidence following his arrest. When the phone could not be located, Complainant filed a complaint alleging that members of the department failed to safeguard his property.

Violation(s): Care & Custody of Physical Evidence (Not Sustained)

Recommendation: Not Fair but Thorough, based on Ombudsman's view that the investigation unfairly interpreted existing BPD policy for safeguarding of prisoner property and evidence.

Status: Closed. IAD agreed with the CO-OP recommendation and issued findings of "Sustained" against two officers for failure to follow BPD rules for handling evidence.

Case #:	12-14A	Type: Appeal
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Summary: Complainant alleged that an off-duty officer threatened him with bodily harm after he asked the officer to remove his personal car from in front of the Complainant's driveway.

Violation(s): Respectful Treatment (Not Sustained)

Recommendation: Not Fair and Not Thorough based, in part, on Ombudsman's view that the categorization of the complaint as a "he said/he said" situation unfairly failed to give proper weight to the factual circumstances under which the confrontation took place.

Status: Closed. IAD agreed with the CO-OP recommendation and issued a finding of "Sustained" against the subject officer for violation of BPD Respectful Treatment policy.

Case #:	12-16A	Type: Appeal
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Summary: Complainant alleged that Boston Police officers unlawfully harassed him and wrongfully accused him of trying to make a drug purchase. He further claims that the officers used degrading language and grabbed him.

Violation(s): Use of Force 2 counts (Not Sustained)
Respectful Treatment (Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	12-17A	Type: Appeal
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Summary: Complainant alleged that, during his arrest for drug possession, the officers used unreasonable and unnecessary force to prevent him from swallowing drug evidence and in removing him from his car.

Violation(s): Neglect of Duty/Judgment (Sustained)
Use of Force (Not Sustained)

Recommendation: Fair but Not Thorough based, in part, on Ombudsman's view that the investigation failed to identify all of the officers involved in the complainant's arrest and to address the failure of the arresting officers to file Use of Force reports.

Status: Closed. IAD agreed with the CO-OP recommendation but did not issue new findings. The police department has since amended its Use of Force policy.

Case #:	12-18A	Type: Appeal
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Summary: Complainant alleged that one of two officers responding to a call re: a dispute he was having with his neighbors about winter on-street parking violated his rights by attempting to restrain him and then by following him into his house without reasonable cause to do so.

Violation(s): Judgment (Exonerated)
Use of Force (Exonerated)

Recommendation: Not Fair and Not Thorough

Status: Closed

Case #:	12-21A	Type: Appeal
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Summary: Complaint arose in aftermath of civil lawsuits alleging complainant's rights violated during arrest and booking for possession of Class B substance. Drug evidence was suppressed by court in criminal trial, but all civil actions were settled by City and complainant for a nominal sum.

Violation(s) Neglect of Duty/Judgment Improper Investigative Stop (Sustained)
Neglect of Duty/Judgment Handling of Evidence (Not Sustained)

Recommendation: Fair but Not Thorough. In each of the separate investigative interviews of the subject officers, the lead-investigator made dismissive comments about information received from the Complainant.

Status: Closed

Case #:	12-23A	Type: Appeal
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Summary: Complainant alleged, through his attorney, that investigator in homicide case used threats and intimidation to prevent potential witnesses from testifying on complainant's behalf.

Violation(s): Unreasonable Judgment (Unfounded)

Recommendation: Fair and Thorough following Ombudsman's request for and receipt of report of supplemental IAD investigation.

Status: Closed

Case #:	12-25R	Type: Random
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Summary: Complainant alleged that he was subjected to disrespectful treatment by officers that responded to the scene of a traffic accident in which he was struck while riding his bicycle. Complainant further alleges that the officers failed to properly document the incident.

Violation(s): Judgment (Sustained)
Respectful Treatment (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	12-28R	Type: Random
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Summary: Complainant alleged that motor vehicle accident in which a speeding car ran a red light and struck his car causing him personal injury was caused by officers conducting a vehicle pursuit of the speeding car during which they failed to activate lights and siren.

Violation(s): Neglect of Duty 2 counts (Unfounded)
Pursuit Driving (Unfounded)
Vehicle Surveillance Procedures (Unfounded)

Recommendation: Fair and Thorough

Status: Closed

Case #:	12-31A	Type: Appeal
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Summary: Complainant alleged that while attempting to retrieve an incident report at a police station, an officer was disrespectful toward her.

Violation(s): Respectful Treatment (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-01R	Type: Random
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Summary: Complainant alleged that officers pushed her when they searched her home while conducting a warrant service concerning her son. After her phone call to IAD subsequent to her filing a complaint at the District Station, the case file contains no further record of responses by complainant to documented attempts by investigators to communicate with her.

Violation(s): Use of Force (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-02A	Type: Appeal
Summary:	Complainant alleged that officers exercised poor judgment in the decision to suspend his hackney license and that, when he attempted to appeal the decision, he was subjected to disrespectful treatment.	
Violation(s):	Respectful Treatment (Not Sustained) Unreasonable Judgment (Not Sustained)	
Recommendation:	Fair and Thorough	
Status:	Closed	
Case #:	13-03A	Type: Appeal
Summary:	Complainant alleged that officers used excessive force when moving him from an area and that one officer twisted his finger while doing so. He further alleged officers were disrespectful toward him in that they used profanity.	
Violation(s):	Use of Force (Unfounded) Self-Identification (Unfounded) Respectful Treatment (Not Sustained)	
Recommendation:	Fair and Thorough	
Status:	Closed	
Case #:	13-04A	Type: Appeal
Summary:	Complainant, property owner, alleged that several police officers exercised poor judgment when they forced entry into his rental property and searched the apartment following a shooting outside the house.	
Violation(s):	Unreasonable Judgment (Exonerated)	
Recommendation:	Not Fair and Not Thorough based on investigation's over-reliance on hearsay information and failure to interview responding officers.	
Status:	Closed. IAD agreed with CO-OP recommendation and re-opened the investigation.	
Case #:	13-05A	Type: Appeal
Summary:	Complainant alleges that, during a months-long series of confrontations, he was threatened and subjected to rude and discourteous treatment by a member of the police department.	
Violation(s):	Unreasonable Judgment (Exonerated)	
Recommendation:	Not Fair and Not Thorough based, in part, on Ombudsman's view that the categorization of the complaint as a "he said/he said" situation unfairly failed to give proper weight to the available evidence including the subject officer's own admission of conduct inconsistent with Department Rules and Procedures.	

Status: Closed. IAD agreed with the CO-OP recommendation and issued an amended finding of “Sustained” to the allegation of Unreasonable Judgment. No other findings were changed.

Case #:	13-06R	Type: Random
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Summary: The Complainant claims that an Officer unjustly harassed him as he was engaged in a street performance (drums) on the Brookline Avenue overpass outside of a Red Sox game. Complainant asserted that he did not need a permit to perform on the street, however, he was cited for obstructing travelers on a city street.

Violation(s): Neglect of Duty (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-07R	Type: Random
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Summary: Complainant alleges that during a road-rage incident with an off-duty police officer, the officer threatened complainant with his service firearm and was verbally abusive.

Violation(s): Unreasonable Judgment (Not Sustained)

Recommendation: None issued

Status: Pending. Ombudsman submitted request for additional information, awaiting response from IAD.

Case #:	13-08R	Type: Random
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Summary: Complainant alleges that during a motor vehicle stop, several plainclothes officers pulled her juvenile son from her car and searched him. The officers then left the scene without identifying themselves or stating the reason for the stop.

Violation(s): Self-Identification (Unfounded)
Respectful Treatment (Not Sustained)
Excessive Force (Unfounded)

Recommendation: Not Fair and Not Thorough based, in part, on Ombudsman’s view that the investigation should have assessed whether the officers racially profiled Complainant.

Status: Pending. Ombudsman submitted recommendation, awaiting response from IAD.

Case #:	13-09A	Type: Appeal
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Summary: Complainant alleges she was the object of disrespectful treatment by an officer working a paid detail for a movie production requiring the control of pedestrian traffic on neighborhood sidewalks.

Violation(s): Respectful Treatment (Not Sustained)

Recommendation: Fair and Thorough following Ombudsman’s request for and receipt of report of supplemental IAD investigation.

Status: Closed.

Case #:	13-10A	Type: Appeal
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Summary: Complainant alleges that members of the investigations unit failed to diligently investigate her case based on her race and social status. Complainant also alleged that an investigator made inappropriate sexually charged remarks to her.

Violation(s): Neglect of Duty/Bias (Unfounded)

Recommendation: Fair but Not Thorough based on Ombudsman's view that the investigation failed to fully address complainant's allegations of inappropriate conduct.

Status: Pending. Ombudsman submitted recommendation, awaiting response from IAD.

Case #:	13-11R	Type: Random
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Summary: Complainant alleged that she has been the subject of a ten-year pattern of harassment by members of the police department based on her transgender status.

Violation(s): Conduct Unbecoming (Unfounded)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-12R	Type: Random
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Summary: Complainant alleged that unidentified uniformed and plainclothes officers harassed her and her family over a period of months. The case file included no record of responses by the complainant to documented attempts by investigators to communicate with her after she did not appear for a scheduled investigative interview.

Violation(s): Respectful Treatment (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-13A	Type: Appeal
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Summary: Complainant alleged that, during a traffic stop at a construction site, he was verbally abused and detained for an unreasonable period.

Violation(s): Respectful Treatment (Not Sustained)

Recommendation: Fair and Thorough

Status: Closed

Case #:	13-14A	Type: Appeal
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Summary: Complainant alleged that she felt threatened by officer when he told her over the phone she would be subject to arrest, if she did not follow his directives concerning her possible actions in a landlord tenant dispute.

Violation(s): Respectful Treatment (Exonerated)

Recommendation: Fair and Thorough

Status: Closed

Appendices



MEMORANDUM

To: Damon Hart, Ombudsman, Community Ombudsman Oversight Panel
Richard Kelliher, Ombudsman, Community Ombudsman Oversight Panel
Natashia Tidwell, Ombudsman, Community Ombudsman Oversight Panel

From: William B. Evans, Police Commissioner
Boston Police Department

Date: July 3, 2014

Subject: CO-OP Annual Report

I have reviewed the 2013 CO-OP Annual Report and would like to thank you for the thoughtful insights and incredible work that went into producing this report. I am particularly pleased with the acknowledgements expressed in the cover letter for Superintendent Frank Mancini's leadership as Chief of the Bureau of Professional Standards, and the efforts of the CO-OP Executive Secretary Yola Cabrillana.

As Commissioner I am committed to excellence in police and community relations. I hold my officers to the highest possible standards in both how they interact with the public as they perform their duties, and in ensuring public safety throughout the City of Boston. Accountability and transparency are critical to achieving and maintaining public trust. The Internal Affairs process is central to this mission.

I have conferred with Superintendent Mancini, and Amy Condon, Legal Advisor, and offer the following responses to your concerns, recommendations, and observations:

Previous concerns regarding Rule 304: Use of Non-Lethal Force:

The CO-OP suggested amending Rule 304 of the Department's Rules and Procedures to require the reporting of any use of force, by any means that results in either obvious injury or a request for medical treatment. Rule 304 was revised and issued via Special Order SO 13-020 on April 29, 2013. Specifically, Section 7 Investigation of Use of Force was amended to include documentation of any interaction between police and a citizen that resulted in a visible or reported injury, and it added a requirement for a supervisor to report to the scene and complete an investigation. See Attachment #1 – Revised Rule 304, Attachment #2 -- Training Bulletin explaining all changes to the rule, and Attachment #3 – Commissioner's Memorandum.

Recommendation regarding review of materials "off the record":

The Department is in agreement that interviewers going "off the record" for a time period to allow witnesses to review documents related to the incident under investigation may give the appearance that the investigator has coached or assisted the witness in review of important

evidentiary items. Therefore, going “off the record” is generally not recommended. Over the course of the last year this recommendation has been accepted and implemented, with investigators routinely providing documents and materials to witnesses ahead of time for review before the interview in order to avoid the appearance of coaching.

Recommendation regarding implementation of a complaint mediation program:

Since the CO-OP’s inception the CO-OP’s Annual Reports have stressed the need for the Department to implement a mediation program for citizen complaints and police officers as an alternative to the traditional IAD process for less serious complaints. The Department is in agreement with this recommendation. Superintendent Mancini has met and collaborated with Maureen Griffin, Program Manager for the Harvard Mediation Project, and Shiona Sommerville, Case Coordinator for the Harvard Mediation Project, and discussed the process of formal mediation and the required training for mediators as well as the proposed implementation of a Civilian Complaints Mediation initiative for the Boston Police Department. In addition, he has reviewed national models and Department of Justice guidelines before establishing a framework for mediation for citizen complaints. A draft mediation policy has been developed and is currently being negotiated with labor unions through the collective bargaining process; and a verbal agreement was reached with the Harvard Mediation Program to enable citizen complaint mediations to be handled by their program. The selection process for cases to go through mediation will be established and adhered to in order to ensure consistency and fairness.

Recommendation regarding notification of findings to complainants:

In recent years the CO-OP has recommended, and the BPD has implemented, including in finding notification letters a rationale or summary of facts upon which IAD relied in concluding that the complaint against the officer(s) was not sustained. The CO-OP is now recommending that the investigating officer draft and review the notification letters to avoid minor descriptive errors or mischaracterizations of conclusions. The Commander of the Bureau of Professional Standards has taken this recommendation under advisement. Currently Superintendent Mancini utilizes one person to draft all notification letters to ensure uniformity, consistency and reliability of letters across the multiple investigators in the Division. These letters are reviewed, approved and signed by Superintendent Mancini.

Observation regarding the investigation of “he said/ she said” cases:

There is agreement that allegations that do not involve any third-party witnesses or physical evidence to corroborate either the complainant’s or the subject officer’s version of events are very difficult cases. As such, these cases typically were not sustained. The Department agrees that circumstantial evidence and/or reasonable conclusions based on facts established in an investigation, as well as the totality of the circumstances, should be taken into consideration regarding these types of investigations, and the allegations should not automatically be deemed not sustained by investigators. This practice has been implemented, and both the Superintendent and Deputy Superintendent review each investigation for thoroughness.

Thank you for the important work you do throughout the year in your case reviews and in completing the annual report. I greatly value and appreciate our partnership with the CO-OP -- community trust is critical to public safety. Please feel free to contact me at (617)-343-4500 if you have any questions or concerns.

ATTACHMENT #1

Boston Police Department

Rules and Procedures

Rule 304

April 29, 2013

USE OF NON-LETHAL FORCE

This rule is issued to establish guidelines for the use of non-lethal force by members of this Department in the performance of their duties, and to establish appropriate training, reporting, and record keeping procedures for such use of force. Effective immediately, it supersedes all other rules, regulations, procedures, orders, bulletins, and directives issued previously regarding the use of non-lethal force by Boston police officers.

Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no rule can offer definitive answers to every situation in which the use of non-lethal force might be appropriate. Rather, this rule will set certain specific guidelines and provide officers with a concrete basis on which to utilize sound judgment in making reasonable and prudent decisions, attending to the spirit over the letter of the rule.

The “Reasonableness” of a particular use of force must be judged from perspective of reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (Graham v. Connor 490 U.S. 386)

Sec. 1 DEFINITIONS: For the purpose of this Rule the following definitions will apply:

1. Reasonable Force A balanced response suitable to the confrontation that is necessary to overcome unlawful resistance and regain control of the situation.
2. Non-Lethal Force is that amount of force that will generally not result in serious bodily injury or death.
3. Prudence is cautious, discreet, or shrewd action having due regard for the rights of citizens while maintaining an awareness of the responsibilities of a police officer.
4. Reasonableness means within reason, moderate and/or fair action suitable to the confrontation. The final decision as to the prudence and reasonableness of a police action will be determined on a case by case basis by those members of the Department called upon to judge the propriety of a fellow officer's action. Such judgments may not conflict with the expressed provisions of this or any other rule or order.
5. Totality of the Circumstances: the sum of all elements in a situation used to determine the presence or absence of excessive force (nature of subject offense, actions of third parties, officer's physical odds, feasibility or availability of force alternatives).

6. Serious Bodily Injury: Serious bodily injury is defined as any bodily injury which creates a substantial risk of death; causes serious, permanent disfigurement; or results in extended loss or impairment of the function of any bodily member or organ.

7. Controlled Substance is a drug or substance in any schedule or class referred to in M.G.L. c. 94C, including Class A, B, C, D and E.

Sec. 2 GENERAL CONSIDERATIONS: The policy of the Boston Police Department is to use only that amount of force that is reasonably necessary to overcome resistance in making an arrest or subduing an attacker.

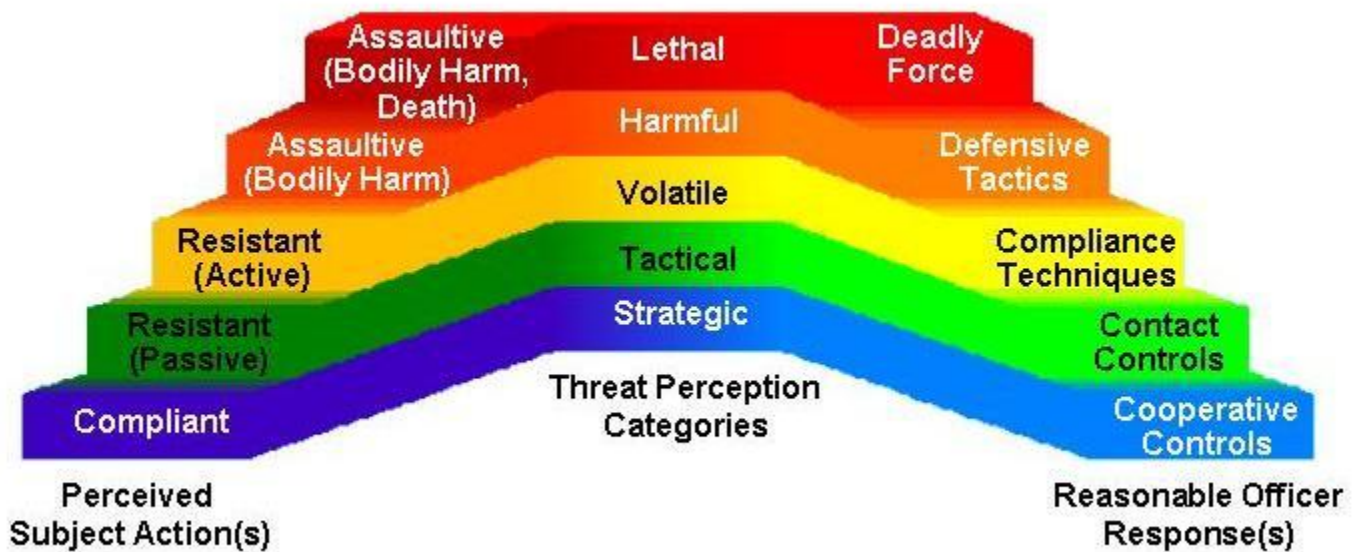
The right to use non-lethal force is extended to police officers as an alternative in those situations where the potential for serious injury to an officer or civilian exists, but where the application of lethal force would be extreme.

The availability of a variety of non-lethal weapons is necessary to provide the police officer with a sufficient number of alternatives when presented with a physical confrontation. However, since such force will not likely result in serious injury and the close public scrutiny that accompanies the use of deadly force, this availability may also increase the possibility for overzealous and inappropriate use of force. Therefore, application of non-lethal force will generally be limited to defensive situations where (1) an officer or other person is attacked, or (2) an officer is met with physical resistance during an encounter.

An officer may also use non-lethal force if, in the process of making an arrest, the officer is met with passive resistance, i.e., an individual who refuses to get out of an automobile, or a protester who is illegally occupying a particular place. Such force should be a reasonable amount required to move the subject based on the totality of the circumstances. An officer who encounters resistance should be assisted by any other officers present. Two or more officers may effect an arrest, without the use of force which one officer cannot complete without resorting to the use of force.

As a result of the increased potential for injury, officers shall refrain from utilizing restraint techniques that include squeezing the trachea, windpipe, or throat area to stop a subject from ingesting any controlled substance. This does not preclude an officer from using other reasonable methods to secure evidence that may be destroyed or lost during an encounter. As with all use of force it must be reasonable and suitable to the confrontation.

When the officer believes that an individual has swallowed a controlled substance, the officer shall take the following actions: If the officer has probable cause to arrest the individual, the officer shall make the arrest and detain the individual. If the officer does not have probable cause to arrest the individual, the officer shall ask the individual to remain at the scene. The officer shall notify dispatch of his belief that the individual swallowed a controlled substance and shall request EMS to come to the aid of the individual. The officer shall protect the scene and the individual while awaiting EMS.



The use of Force Model was developed in 1991 by Dr. Franklin Graves, Federal law Enforcement Training Center and Professor Gregory J. Connor, University of Illinois Police Training Institute.

Sec. 3 TRAINING AND QUALIFICATION: Police officers in the Department will be held accountable for proficiency, as well as compliance with Department policy in the use of non-lethal force. Specifically, sworn members shall qualify by successfully completing the course of instruction on non-lethal force approved by the Training and Education Division. This course will be conducted as part of in-service training and will include a practical application segment and a written test component. Whenever the Department adopts new non-lethal force implements, officers will qualify in their use prior to carrying or using them on duty.

In the event that an officer fails to complete the required certification, the officer will be temporarily reassigned to the Academy. The Academy will then provide a remedial training program in order to ensure such certification. Officers who still fail to qualify will be subject to reevaluation as to their fitness to continue to perform the duties of a police officer.

Sec. 4 INCAPACITATING AGENT: Officers will carry only the type of incapacitating agent issued by the Department.

In electing to use an incapacitating agent against an armed subject, officers should understand that its effects are not uniformly predictable and certain individuals may remain undeterred by its application. Any such use should be accompanied by a realization that officers may need to take further action to ensure their safety. Conversely, all officers should be aware of the potential, however limited, for serious injury arising from the use of an incapacitating agent.

For this reason, officers should generally confine the use of incapacitating agents against armed or unarmed persons to the following situations:

1. In self defense or to defend another person.
2. When an officer, during an encounter is met with active resistance.

Officers should be aware of the increased potential for serious injury to the suspect when incapacitating agents are used under the following circumstances:

1. When the subject is less than two feet away.
2. When the subject is in an enclosed area without ventilation.
3. When the subject lacks normal reflexes, such as the ability to blink, or is otherwise incapacitated.

When an incapacitating agent has been applied to a subject, officers should, upon securing the suspect, provide for the thorough dousing of the exposed areas with water as soon as is practicable. This should be done as soon as possible since the seriousness of any injury or burn is directly related to the length of time the exposed area remains untreated.

Sec. 5 SERVICE BATON: The Department currently authorizes several baton-type implements for use as non-lethal weapons against assailants. Upon issuance to and qualification by an officer, the only baton-type implements authorized for that officer's use shall be their Department issued baton.

The primary purpose of these weapons is to provide officers with an advantage when fending off and subduing an UNARMED assailant. Officers should not rely on these weapons to overcome an ARMED attack, since they are not intended for such use.

All officers should bear in mind the essentially defensive nature of the use of non-lethal force, as outlined above in General Considerations, Section 2, when using these weapons. Except in extreme situations, where the officer is in imminent danger of serious injury, no blows should be struck above the thigh, other than to the arms. Additionally, officers should be aware of the potential for permanent disability arising from a blow to the groin, and should limit such blows to extreme situations.

Sec. 6 EVALUATION OF SUSPECT BY EMERGENCY MEDICAL TECHNICIANS: The process of booking and jailing a suspect is often time consuming and confusing, allowing for the possibility of overlooking an injury that might have been brought about by police use of force. Indeed, many injuries may not be obvious even to the injured party. Such injuries, if left untreated, could result in serious problems for both the victim and the Department.

Therefore, this Department will have Emergency Medical Technicians examine all suspects who fall under either of these categories:

1. The suspect has an obvious injury, which in the opinion of the Duty Supervisor, requires treatment.
2. The suspect requests medical treatment for any injury, whether obvious or not.
3. The suspect ingests or swallows any controlled substance.

Sec. 7 INVESTIGATION OF USE OF FORCE: This Department will thoroughly investigate every incident in which an officer strikes someone with any object or an incapacitating agent is used on a subject, or when a visible injury occurs with officer(s) on scene.

All such applications of force or visible injury as described above shall be immediately reported verbally to the involved member's patrol supervisor. By the end of the tour of duty, an officer who has used non-lethal force shall make out a written report describing the incident including the names of the officer and other persons concerned, the circumstances under which such force was used, the nature of any injury inflicted and the care given afterwards to the injured party.

Upon receipt of verbal notification, the Patrol Supervisor shall respond to the scene and make an initial assessment of the incident. During this assessment if the officer(s) involved are assigned to and working in a capacity for a Division/Unit out of the chain of command of the Patrol Supervisor, the Patrol Supervisor shall make contact with a supervisor from that Division/Unit if available and request he/she respond to the scene. The investigation of the incident shall then be the responsibility of that Division/Unit supervisor. Prior to the end of the tour of duty the Patrol/Unit Supervisor shall conduct a complete investigation on the use of such non-lethal force and submit a report to the Commanding Officer of the District or Unit where the officer(s) is assigned. Such report shall include the Supervisor's findings and recommendations based upon the assessment of facts known, as to the justification for the use of force. A complete Supervisor's investigation shall consist of the following, where applicable:

1. Supervisor's investigative report;
2. A copy of the incident report, BPD Form 1.1;
3. Reports from the officer(s) alleged to have utilized non-lethal force;
4. Reports from all Department personnel that were present;
5. Reports on all interviews of civilian witnesses to the incident.
6. Use of Force Tracking Form (0027-BFS-1106), with above information attached.

At the discretion of the involved member's Commanding Officer, further investigation of the incident may be undertaken. Once all the facts have been compiled and substantiated, the Commanding Officer shall submit a report of the incident through channels to the Police Commissioner within seven (7) days.

Once the Police Commissioner indicates that the report and the associated investigation is satisfactory, copies of every such report shall be forwarded to the Bureau of Professional Standards, the Human Resources Division and the Training and Education Division.

The Bureau of Professional Standards shall maintain a comprehensive file of all use of force reports. Further, the Bureau of Professional Standards , acting on its own authority may, or at the request of the Police Commissioner shall, investigate all incidents involving the use of non-lethal force that, based on the information at hand, indicate non-compliance with Department policy.

The Bureau of Professional Standards shall forward the results of all investigations undertaken to the Police Commissioner, who may accept it and act upon its recommendations, in total or in part, or return the report with a request for further information or clarification. In every case, the authority and responsibility for final departmental disposition of a Use of Non-Lethal Force incident rests solely with the Police Commissioner.

Note: Rule 304, issued by Special Order 94-37 on October 11, 1994, was amended by the issuance of Special Order 95-16, which made clear what constitutes a proper Patrol Supervisor's report (see section 7, para 3).

Notes:

Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Section 7.

Edward F. Davis
Police Commissioner

ATTACHMENT #2

Boston Police Academy

P.O. Darryl Owen

Training Bulletin 5-13
(Issued: 06/04/13)



Changes to Boston Police DEPARTMENT RULE 304 USE OF NON-LETHAL FORCE

The Purpose of this training bulletin is to highlight changes in BPD Rule 304 for members of the Boston Police Department.

Sec. 1 DEFINITIONS: For the purpose of this rule the following definitions have been added:

- 5. **Totality of the Circumstances:** the sum of all elements in a situation used to determine the presence or absence of excessive force (nature of subject offense, actions of third parties, officer's physical odds, feasibility or availability of force alternatives).*
- 6. **Serious Bodily Injury:** Serious bodily injury is defined as any bodily injury which creates a substantial risk of death; causes serious, permanent disfigurement; or results in extended loss of the function of any bodily member or organ.*
- 7. **Controlled Substance:** a drug or substance in any schedule or class referred to in M.G.L. 94C including Class A, B, C, D and E*

Sec. 2 GENERAL CONSIDERATIONS: The following changes have been made to the General Considerations section of BPD rule 304

New paragraph added

"As a result of the increased potential for injury, officers shall refrain from utilizing restraint techniques that include squeezing the trachea, windpipe, or throat area to stop a subject from ingesting any controlled substance. This does not preclude an officer from using other

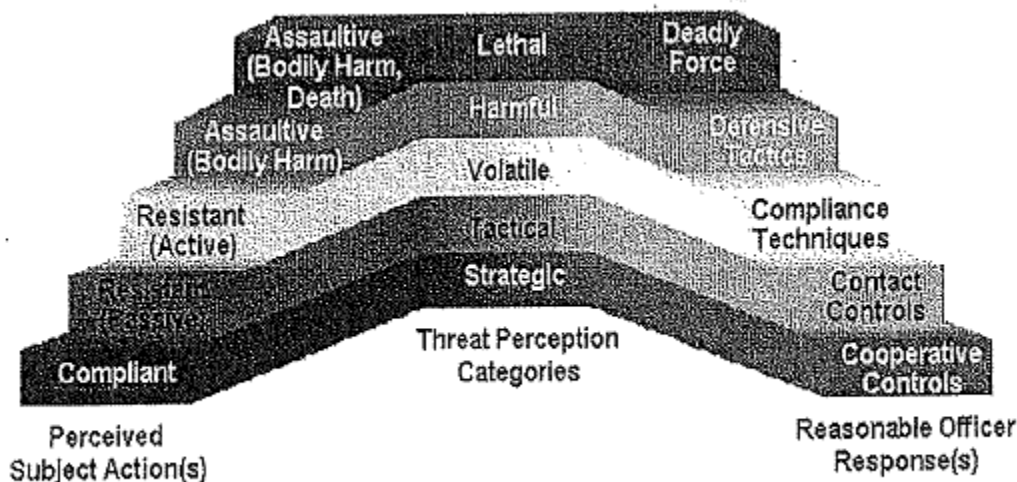
reasonable methods to secure evidence that may be destroyed or lost during an encounter. As with all use of force it must be reasonable and suitable to the confrontation.”

New paragraph added

“When the officer believes that an individual has swallowed a controlled substance, the officer shall take the following actions:

- *If the officer has probable cause to arrest the individual, the officer shall make the arrest and detain the individual.*
- *If the officer does not have probable cause to arrest the individual the officer shall ask the individual to remain at the scene.*
- *The officer shall notify dispatch of his belief that the individual swallowed a controlled substance and shall request that EMS come to the aid of the individual.*
- *The officer shall protect the scene and the individual while awaiting EMS.*

Also added, the current Use of Force Model used in all training and education on the subject of police use of force by the Bureau of Professional Development:



The Use of Force Model was Developed in 1991 by Dr. Franklin Graves, Federal Law Enforcement Training Center and Professor Gregory Connor, University of Illinois Police Training Center

Sec. 5 SERVICE BATON AND SAPSTICK

In the prior version of BPD Rule 304 the baton method PPCT (Pressure Point Control Tactics) was mentioned as the prescribed method of use of the service baton by Boston Police Officers. What is more important than any specific method of deployment is that officers, when using the service baton or any other weapon, do so reasonably and in accordance with their training. - PPCT has therefore been removed from the rule. This does not preclude officers from using techniques as trained at the Boston Police Academy during the time when PPCT was the prescribed method of deployment.

Also note that the sapstick has been removed from BPD Rule 304. Upon issuance of these revisions to the rule, the sapstick is no longer authorized and is not to be carried while on duty by any Boston Police Officer.

Sect. 6 EVALUATION OF SUSPECT BY EMERGENCY MEDICAL TECHNICIANS (FORMERLY INJURY TO SUSPECTS)

The department will have emergency medical technicians examine all suspects who fall under either of these categories:

- 1. The suspect has an obvious injury, which in the opinion of the Duty Supervisor, requires treatment.*
- 2. The suspect requests medical treatment for any injury, whether obvious or not.*
- 3. (Newly added to BPD RULE 304) The suspect ingests or swallows any controlled substance.*

Sec. 7 INVESTIGATION INTO THE USE OF FORCE

1. Investigation must be completed whether or not the injury occurs during an arrest

- New Language: This Department will thoroughly investigate every incident in which an officer strikes someone with any object or an incapacitating agent is used on a subject, **or when a visible injury occurs with officer(s) on scene.**
- In the prior version of the Rule, an investigation into the use of force was only required if the subject was injured during the course of an arrest. Under the new version of the Rule, an investigation is required any time an officer strikes or uses an incapacitating agent on a subject or a visible injury occurs while the officer is on scene, regardless of whether the injury occurred in the course of an arrest.

2. Supervisor must respond to the scene

- New Language: Upon receipt of verbal notification, the Patrol Supervisor **shall respond to the scene and make an initial assessment of the incident.**
- The prior version of the Rule did not require the Patrol Supervisor to physically respond to the scene to assess the incident.

3. Division / Unit Supervisor to conduct investigation, where applicable

- New Language: **During this assessment if the officer(s) involved are assigned to and working in a capacity for a Division/Unit out of the chain of command of the Patrol Supervisor, the Patrol Supervisor shall make contact with a supervisor from that Division/Unit if available and request he/she respond to the scene. The investigation of the incident shall then be the responsibility of that Division/Unit supervisor.** Prior to the end of the tour of duty the **Patrol/Unit** Supervisor shall conduct a complete investigation on the use of such non-lethal force and submit a report to the Commanding Officer of the **District or Unit** where the officer(s) is assigned. Such report shall include the Supervisor's findings and recommendations based upon the assessment of facts known, as to the justification for the use of force.
- Under the prior version of this Rule, the Patrol Supervisor was responsible for the investigation into the use of force, regardless of whether the officer was working for a Division/Unit out of the chain of command of the Patrol Supervisor. Under the new version, if the involved officer is working out of the chain of command of the Patrol Supervisor, the supervisor from that officer's Division/Unit is responsible for conducting the investigation into the use of force. In the event that no supervisor from the officer's Division/Unit is working at the time the incident occurs, the Patrol Supervisor will conduct the investigation.

4. New Use of Force Tracking Form added

- A complete Supervisor's investigation shall consist of the following, where applicable:
 1. Supervisor's investigative report;
 2. A copy of the incident report, BPD Form 1.1;
 3. Reports from the officer(s) alleged to have utilized non-lethal force;
 4. Reports from all Department personnel that were present;
 5. Reports on all interviews of civilian witnesses to the incident.
- **Use of Force Tracking Form (0027-BFS-1106), with above information attached.**

ATTACHMENT #3

POLICE COMMISSIONER'S MEMO 13-07 (Issued 1/24/13)

SUBJECT: PATROL SUPERVISOR RESPONSE TO NON-LETHAL USE OF FORCE INCIDENTS

In the event that an officer strikes someone with any object, or an incapacitating agent is used on a subject, or when a visible injury has occurred in the course of an arrest, that officer is required to immediately report the incident to his/her patrol supervisor.

Upon receipt of the verbal notification, **the patrol supervisor shall immediately respond to the scene** and shall conduct a thorough investigation on the use of such non-lethal force and submit a report to the Commanding Officer, as required by Rule 304 s. 7.

The above does not change any of the current requirements set forth in Rule 304 s. 7.

How do I contact the Community Ombudsman Oversight Panel?



If you want further information, you can contact the CO-OP in writing:

By mail:

The Community Ombudsman Oversight Panel
P.O. Box 190189
Roxbury, MA 02119

By email:

COOP.bpd@cityofboston.gov

Or by phone:

617-594-9216

"Such oversight will serve to promote the professionalism of the Boston Police Department."

Excerpt from Mayor Thomas M. Menino's Executive Order

What else should I know?

The entire process is confidential. Personal information will not be released. Your appeal and any correspondence will be filed and kept secure.



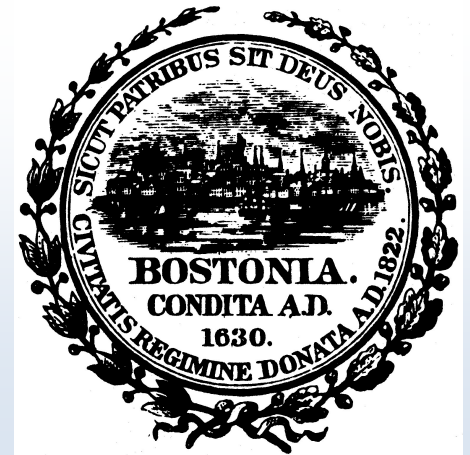
City of Boston Community Ombudsman Oversight Panel

P.O. Box 190189
Roxbury, MA 02119
Phone: 617-594-9216

All CO-OP Forms and Publications are available **online** at the address listed below:

Website Address:

www.cityofboston.gov/LAW/CO-OP



Mayor Martin J. Walsh

City of Boston Community Ombudsman Oversight Panel

"It is in the best interest of the City of Boston and the Boston Police Department to have an oversight mechanism to build trust and confidence within the community."

Excerpt from Mayor Thomas M. Menino's Executive Order



What is the CO-OP?

The Community Ombudsman Oversight Panel, or CO-OP, is a three person independent civilian board appointed by the Mayor that is empowered to review Boston Police Internal Investigations cases appealed by complainants.

What cases are eligible for appeal?

Cases eligible for appeal include those with a finding of not sustained, exonerated or unfounded that you feel were not fairly and/or thoroughly investigated.

How do I file an appeal?

You, or your legal representative, can file an appeal once you have received the Notice of Finding from the Boston Police Internal Investigations Unit. You must file your appeal in writing or using a CO-OP Appeal Form (which is sent with your Notice or available for download online) within fourteen (14) calendar days of the date on the Notice of Finding. You may also reference the Appeal Form which accompanies your Notice. This has the *Date Due* listed on it for your convenience. If your appeal is sent via mail, the appeal must be postmarked within fourteen (14) calendar days of the date on the Notice of Finding.

Please mail appeals to:

Community Ombudsman Oversight Panel
P.O. Box 190189
Roxbury, MA 02119

If your appeal is hand-delivered, it must be delivered to the address below by the close of business of the fourteenth (14th) day from the date on the Notice of Finding.

Please hand deliver appeals to:

Community Ombudsman Oversight Panel
City of Boston Law Department
Boston City Hall
Room 615
Boston, MA 02201

You may also email your appeal to:

COOP.bpd@cityofboston.gov

Please reference the IAD Case # in the subject line.

What is the process of appeal?

When an appeal is received within the allotted time-frame, it is assigned to an Ombudsman. The Ombudsman will then review the entire Internal Investigations case file and make a recommendation. Once a final decision has been made, the CO-OP will notify you by mail.

Please refer to the Mayor's Executive Order for more detailed information online at:

www.cityofboston.gov/LAW/CO-OP

How much does it cost?

There is no fee to file an appeal.

Who makes the final decision?

The Boston Police Commissioner makes the final decision on an appealed case. Recommendations by the Ombudsman and the Chief of the Bureau of Professional Standards are considered in addition to case file documents. The Police Commissioner's determination is final and no further appeal is available.

How long will this appeal take?

There is no specific time limit allotted for an appeal. It will take time for the Ombudsman to review the entire case file, especially when a case contains multiple violations. Ombudsmen will be assigned more than one CO-OP case file for review at a time.

What training does the Panel receive?

Each of the Ombudsmen has extensive knowledge and experience in law enforcement, the criminal justice system and/or the judicial process. However, prior to reviewing any Boston Police Department Internal Investigation case, the Panel members receive training at the Boston Police Academy to better their understanding of how police officers are trained while in the Academy. Topics discussed at this training include Constitutional Law, Race and Community Relations, and Use of Force, among others. A second day of training is given by the Department to educate the Panel members on the Internal Affairs Investigation process, the disciplinary process and other related topics.

Will the Panel review cases other than civilian complaints?

The Panel will review a random sample of not sustained, exonerated or unfounded cases that *have not* been appealed by complainants. This external oversight of cases will help ensure that current Internal Investigation practices are fair, thorough and complete even when an appeal is not filed. Not sustained, exonerated, or unfounded cases involving allegations of serious misconduct or unjustified use of force will also be reviewed by the Panel at the discretion of the Department.

Community Ombudsman Oversight Panel Appeal Form

Instructions: Please sign this form to file your appeal in writing. The area below is provided should you wish to list additional comments. There is **no fee due** to file this appeal. **This form must be postmarked by the date listed below** (which is 14 calendar days from the date listed on your notice). Please mail this appeal to:

City of Boston
Community Ombudsman Oversight Panel
P.O. Box 190189
Roxbury, MA 02119

You may also file your appeal via email to COOP.bpd@cityofboston.gov. **Your email appeal must be sent by 5:00PM on the due date listed below.** Just please include the information listed below in your email.

DATE DUE:

NAME:

IAD CASE #:

To the Community Ombudsman Oversight Panel:

I would like to appeal the above listed Boston Police Department Internal Affairs Case.

SIGNATURE

DATE

If you would like, please include additional comments:



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

EXECUTIVE ORDER

March 14, 2007

Establishing a Community Ombudsman Oversight Panel and Complaint Mediation Program

WHEREAS, civilian oversight and review of internal investigations have become a standard practice for many law enforcement agencies;

WHEREAS, it is in the best interest of the City of Boston and the Boston Police Department to have an oversight mechanism to build trust and confidence within the community;

WHEREAS, such oversight will serve to promote the professionalism of the Boston Police Department, and to enhance community relations; and

WHEREAS, such oversight will be established to demonstrate that the Boston Police Department internal affairs process is fair and thorough;

NOW, THEREFORE, pursuant to the authority vested in me as chief executive officer of the City of Boston, St. 1948, c. 452 § 11, and every other power hereto enabling, I hereby order and direct the establishment of the Community Ombudsman Oversight Panel and Complaint Mediation Program.

ARTICLE I. PANEL MEMBERSHIP.

The Panel will be composed of three members appointed by the Mayor, and each will serve a term of three years. This term may be renewed at the Mayor's discretion. Each ombudsman will have extensive knowledge and experience in law enforcement, the criminal justice system and / or the judicial process.

ARTICLE II. PANEL MEMBER COMPENSATION.

Each ombudsman will be paid one hundred dollars (\$100.00) per hour for his / her service, not to exceed fifty thousand dollars (\$50,000) per year.

ARTICLE III. PANEL MEMBER TRAINING.

Ombudsmen will attend a preliminary training session prior to beginning their review of internal affairs cases. This training will be formulated by designees of the Boston Police Commissioner, and approved by the Mayor. The training will include, but is not limited to, the internal affairs process, Boston Police Department Rules and Regulations, constitutional law, and general police procedures.

ARTICLE IV. DUTIES OF THE PANEL

The panel will:

- A. Provide external oversight of Boston Police internal affairs investigations for thoroughness and fairness;
- B. Receive appeals from aggrieved complainants;
- C. Participate in out reach to the community as to the Panel's purpose and procedures;
- D. Periodically review policies and procedures and provide a report to the Mayor and the Police Commissioner on the integrity of the complaint and internal affairs process;
- E. Produce an annual report to the Mayor and the Police Commissioner documenting cases reviewed, the outcome of the Panel's review for each case, and the Complaint Mediation Program's participation level and effectiveness.

ARTICLE V. POWERS OF THE PANEL.

The panel will have the following powers when reviewing internal affairs cases:

- A. To review completed cases as presented by the Boston Police Department's Internal Affairs Division ("IAD"). The Panel will not have subpoena power, it cannot interview witnesses, or do its own independent investigation;
- B. To have access to all materials contained in the completed internal affairs files subject to review, except those documents protected from release by statute;
- C. To make recommendations to the Chief, Bureau of Internal Investigations ("BII"), for further investigation or clarification; and
- D. To make recommendations to the Police Commissioner regarding the reviewed cases.

ARTICLE VI. CASES REVIEWED BY THE PANEL.

The panel will review the following categories of cases:

- A. Not sustained, exonerated, or unfounded cases involving allegations of serious misconduct and justified use of force;

- B. A random sample of all not sustained, exonerated or unfounded complaints; and
- C. Not sustained, exonerated, or unfounded findings appealed to the Panel by complainants who allege that the investigation of their complaint was either not fair and / or not thorough.

ARTICLE VII. PANEL REVIEW PROCESS.

A. For cases in category A or B in Article IV, the process will be follows:

1. The Chief, BII, and the Legal Advisor shall determine those cases to be reviewed pursuant to categories A and B of Section IV. The Panel will review approximately ten percent (10 %) of all cases with a finding of either not sustained, exonerated, or unfounded.
2. The Executive Secretary to the Panel will compile the cases for review, and present them to the reviewing ombudsman. The Executive Secretary shall assign case numbers to the reviewed cases. The entire investigative file will be provided to the reviewing ombudsman; however, the Executive Secretary shall redact the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).
3. The Executive Secretary shall notify the police officer(s) named in the reviewed cases that the case is under review by the Panel.
4. One ombudsman will review each case, and the reviewing ombudsman will either find the investigation to be thorough and fair, or send feedback to the Chief, BII, requesting clarification or further investigation. The Chief, BII, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he will make a determination as to the appropriate finding.
5. If the reviewing ombudsman determines that a case was investigated fairly and thorough, he/she shall notify the Police Commissioner, the Chief, BII, Legal Advisor and the named officer(s) of the determination.
6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he shall notify the reviewing ombudsman, the Chief, BII, the Legal Advisor and the named officer(s) of the determination.

7. The Executive Secretary shall maintain all files for the Panel. The files of the Panel shall be regarded as confidential and shall be examined only by Panel members, the Executive Secretary, and Boston Police Department employees as designated by the Police Commissioner. The Panel shall not duplicate documents provided by the Police Department. The files shall not be available for inspection by the public. The investigative files shall be returned to IAD within fourteen (14) days of the final determination.

B. For cases in category C of Article VI, the process will be as follows:

1. Upon a final determination of a finding on an internal affairs case, notification shall be sent to the complainant by the Commander of IAD of the Police Commissioner's finding. If the Police Commissioner's finding is not sustained, exonerated, or unfounded, the complainant shall be informed of his/her ability to seek an appeal of this finding to the Community Ombudsman Oversight Panel.
2. A complainant who wishes to appeal, must do so in writing within fourteen (14) days of the date of the notice from IAD is mailed. If the appeal is sent via mail, the appeal must be postmarked within fourteen (14) days from the date the notice from IAD is mailed. If the appeal is hand delivered, it must be delivered to the address below by the close of business of the fourteenth day as described above.

Appeals may be mailed or hand delivered to:

Executive Secretary, Community Ombudsman Oversight Panel
Bureau of Internal Investigations
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

3. The Executive Secretary shall date stamp the appeal upon receipt and shall assign a case number to the appeal. The Executive Secretary shall notify the police officer(s) named in the case of the appeal, and provide a copy of the appeal to the Police Commissioner, the Chief, BII and the Legal Advisor. The Executive Secretary shall prepare the case for the Panel, and assign the appeal to one ombudsman. The entire investigative file will be provided to the reviewing ombudsman; however, the Executive Secretary shall redact the file in order to prevent the unauthorized release of privileged or protected information pursuant to the Massachusetts General Laws (Criminal Offender Record Information, information protected by the rape shield statute, etc.).

4. One ombudsman will review each case, and the reviewing ombudsman will either find the investigation to be thorough and fair, or send feedback to the Chief, BII, requesting clarification or further investigation. The Chief, BII, may send the case back to the investigator for review, or determine that the investigation as it stands is fair and thorough. The ombudsman may then make a request to the Police Commissioner for final review and determination. The ultimate decision as to the fairness and/or thoroughness of any internal investigation remains with the Police Commissioner, and he will make a determination as to the appropriate finding.
5. If the reviewing ombudsman determines that a case was investigated fairly and thoroughly, he/she shall notify the Police Commissioner, the Chief, BII, Legal Advisor and the named officer(s) of the determination.
6. If, pursuant to the procedure defined above, the Police Commissioner makes a determination as to whether a case was investigated fairly and thoroughly, he shall notify the reviewing ombudsman, the Chief, BII, the Legal Advisor and the named officer(s) of the determination.
7. The Executive Secretary shall notify the complainant of the determination by either the reviewing ombudsman or the Police Commissioner. All notifications made to the complainant shall be sent by certified mail, return receipt requested.
8. The Executive Secretary shall maintain all files for the Panel. The files of the Panel, and the statements of appeal, shall be regarded as confidential and shall be examined only by Panel members, the Executive Secretary, and Boston Police Department employees as designated by the Police Commissioner. The Panel shall not duplicate documents provided by the Police Department. The files shall not be available for inspection by the public. The investigative files shall be returned to IAD within fourteen (14) days of notification to the complainant of the final determination.

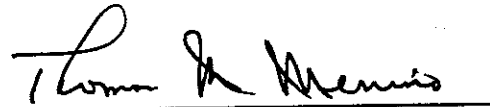
ARTICLE VIII. COMPLAINT MEDIATION PROGRAM

The Police Commissioner may establish a Complaint Mediation Program. This program will serve as a voluntary alternative to the formal complaint process, and will be available to those officers and complainants involved in less serious incidents. The Police Commissioner, or his designee, will determine what complaints are appropriate for the Complaint Mediation Program.

The Executive Secretary will compile data regarding the program, its participation, and its effectiveness, and provide the information to the Community Ombudsman Oversight Panel upon request.

I order and direct that all Cabinet members, Department Heads and City of Boston employees take all necessary steps to implement the above directives.

I further order and direct that one copy of this Order be delivered to the Commissioner of Police of the City of Boston and that another be filed with the Clerk of the City of Boston.

A handwritten signature in black ink, appearing to read "Thomas M. Menino", is written over a horizontal line.

Thomas M. Menino
Mayor of Boston

Dated: 3/14/07