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# Community Ombudsman Oversight Panel

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## Annual Report 2013

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A summary of the Panel's review of internal investigations within the Boston Police Department. This report outlines the Panel's activities, presents statistics, and offers observations resulting from reviewed cases.

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### Panel Members:

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

*"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 2007 Mayoral Executive Order*

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February, 2014

Dear Mayor Walsh and Commissioner Evans,

Per Mayor Thomas M. Menino's March 2007 Executive Order establishing the Community Ombudsman Oversight Panel ("CO-OP"), please accept this 2013 Annual Report, our second and the fifth overall since the CO-OP's inception. The Executive order recognizes that the City of Boston and its police department could only benefit from an oversight mechanism that would help build trust and confidence within the community. Since our appointment in July 2011, we have worked to fulfill Mayor Menino's vision and wish to thank him and outgoing Corporation Counsel William Sinnott for their confidence in our ability to deliver this vital public service. We are likewise grateful to former Commissioner Edward Davis for his support of our efforts. As we move ahead, we look forward to an equally collaborative relationship with the City's emerging leadership team under your stewardship.

We also want to acknowledge Superintendent Frank Mancini, Chief of the Bureau of Professional Standards, for his leadership of the Internal Affairs Division. As the enclosed Annual Report details, thirty-one internal affairs investigations were referred to us in 2012, the highest annual number since the CO-OP's inception. Managing this level of activity requires the genuine cooperation of the entire Internal Affairs Division and many others. In this regard we wish to recognize, in particular, the performance of our liaison, Yola Cabrillana, without whom our ability to function effectively would be greatly impaired.

We continue to see it as our privilege to perform the duties of the Community Ombudsman Oversight Panel on behalf of those who reside, work, and travel in the City of Boston. We are hopeful that our efforts, as outlined in this Annual Report, meet their expectations for the critically important mission entrusted to us. As always, we welcome feedback from the entire Boston community on our Annual Report and all other aspects of our work.

Respectfully submitted,

Damon Hart, Ombudsman

Richard Kelliher, Ombudsman

Natashia Tidwell, Ombudsman

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# Executive Summary

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“Lack of trust is one of the greatest obstacles faced by American policing...”<sup>1</sup>

As the City of Boston and its police department proceed through this period of transition, the challenges of policing remain unchanged. Ensuring the fairness and thoroughness of the internal affairs process is but one facet of the police department’s ongoing effort to establish and maintain trusting relationships with the community it serves. This Annual Report, comprising our work on matters brought before the CO-OP in 2012, represents our contribution to this worthy endeavor.

As explained in further detail within the data section of this report, cases are brought to us either on direct appeal from the complainant, or through a random audit process. The number of cases brought to us by direct appeal has doubled, from ten (10) appeals originating in 2011 to twenty (20) appeals originating in 2012.<sup>2</sup> We attribute this rise, at least in part, to a concerted effort by the police department to increase citizen access to the complaint and appeal processes at the district level and via the internet.

Overall we have completed reviews of twenty-three (23) of the thirty (30) cases (appealed & random) referred to us in 2012. Of the 23 reviewed we found that nineteen (19) investigations were fairly and thoroughly conducted and that four (4) were either unfair and/or not thorough.<sup>3</sup> Seven (7) matters are still pending, meaning that the case is still being processed by the assigned 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 2012 can be found in the “Case Data” section of the report.<sup>4</sup>

This Report also includes an “Observations by the Panel” section in which we present our recommendations for changes in the investigative practices of the Internal Affairs Division. We are pleased to note that several of our recommendations from last year were adopted in some form by the police department.<sup>5</sup> For instance, we recommended that the department incorporate the First Circuit Court of Appeals’ decision in *Glik v. Cunniffe* into its recruit and in-service training to ensure that officers respond appropriately to citizen use of cell phone cameras and similar devices to record officers in the performance of their duties. In our meeting with Training Academy command and staff this past year, we were briefed on the measures taken to reinforce the *Glik* decision at the recruit level, at in-service training, and through the dissemination of audio/visual materials to officers at the district stations. The Bureau of Professional Development has adopted similarly innovative approaches to training officers in the Use of Force and other areas. As with other transitional changes now underway, we trust that with the promotion of Lisa Holmes to Bureau Superintendent, the Academy Division will continue its collaborative work with the CO-OP in training efforts aimed at building and fostering professionalism throughout the police department.

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<sup>1</sup> See Robert Wasserman, *Guidance for Building Communities of Trust*. Department of Justice, Office Community Oriented Policing Services (July 2010).

<sup>2</sup> One appealed case was withdrawn prior to our review.

<sup>3</sup> As per the March, 2007 Executive Order establishing the CO-OP, when a case results in a finding of not fair and/or not thorough, the head of the Internal Affairs Division may, in his/her discretion, respond to the Ombudsman’s findings, return the case to an investigator for further investigation, or make his/her own determination of fairness and/or thoroughness. In the event of disagreement between the reviewing Ombudsman and the head of IAD, the Police Commissioner makes the ultimate decision as to the fairness and thoroughness of any investigation.

<sup>4</sup> A brief summary of each reviewed case can be found in the Summary of CO-OP Cases section on p.26

<sup>5</sup> Former Police Commissioner Edward Davis’s response to the 2012 Annual Report can be found in Appendix A.

Finally, we want to point out that the Data Section of this year's Report once again opens with a recap of IAD's work during the reporting period. This data was provided by IAD for the purpose of lending context to our report on the cases we reviewed. In the fall of 2013, the Internal Affairs Division ("IAD") furnished the CO-OP with the number and type of internal investigations of Boston Police personnel conducted for the two-year period covering 2012 and 2011.<sup>6</sup> We ask that readers note that the correlation between IAD's data and our cases is not entirely symmetrical due, to a large extent, to the workflows of the investigation and appeals processes. Matters referred to the CO-OP in 2012 may, but do not necessarily include allegations of misconduct lodged in 2012 and could, in some instances, encompass appeals of investigations launched in 2011 and earlier.

By way of example, in its most recent data report, IAD indicates that it received 301 external complaints of misconduct against Boston Police Department personnel in 2011.<sup>7</sup> Because individual complaints often encompass more than one allegation of misconduct, the statistics also detail the total number of allegations investigated by IAD in 2011. To become eligible for appeal or selection through the random audit process, the investigation of an allegation must result in a finding of Exonerated, Unfounded, or Not Sustained.<sup>8</sup> By the fall of 2013, IAD had completed investigations of 322 (79%) of the 411 allegations of misconduct lodged against BPD personnel in 2011, with 281 (69%) resulting in an appeal-eligible finding.<sup>9</sup> Approximately 78 of the 2011 allegations, roughly 19%, are still pending and awaiting an outcome. Similarly, 95 or 42% of the external allegations of misconduct lodged in 2012 are unresolved.<sup>10</sup> The issue of timeliness, as it relates to the fairness and thoroughness of individual investigations reviewed by the CO-OP, is discussed in further detail in the "Case Timelines" section of this report.

Supporting documents and other information related to the Report narrative can be found in the Appendix:

**Appendix A. Police Commissioner's Response to 2012 Annual Report**

**Appendix B. CO-OP Brochure**

**Appendix C. CO-OP Appeal Form**

**Appendix D. Mayor Thomas M. Menino's 2007 Executive Order Establishing the CO-OP**

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<sup>6</sup> Further explanation of the IAD statistics, beyond the summary format outlined herein, can be provided by the Bureau of Professional Standards.

<sup>7</sup> In data provided to us for last year's 2012 Annual Report, IAD reported at that time it received 230 external complaints for 2011. Since that time, the Bureau of Professional Standards reports that a large number of matters previously classified as "Preliminary Investigations" were re-categorized as actual complaints, thereby accounting for the increase.

<sup>8</sup> Just as a single complaint can include multiple allegations of misconduct, a complaint investigation can also result in a "split-finding," meaning that some allegations are upheld while others are deemed Not Sustained, Exonerated, or Unfounded. The CO-OP reviews only those allegations that result in an adverse finding against the complainant.

<sup>9</sup> 41 allegations, or 10%, resulted in a finding of Sustained. 11 external complaint allegations (2%) were filed and withdrawn.

<sup>10</sup> In addition to the number and type of internal investigations conducted in 2011 and 2012, pages 16 – 19 also contain charts and graphs illustrating the type and result of the allegations investigated during that period.

# History, Purpose and Process

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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.

## Current Panel Members

The current Panel Members, are Attorney Damon Hart, employment and labor litigator, Littler Mendelson, Boston; Richard Kelliher, Senior Fellow, Moakley Center for Public Management, Suffolk University; and Natasha Tidwell, Professor, New England Law Boston and former police officer and federal prosecutor. They were appointed by Mayor Menino in July 2011.

Under the Mayor'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 received 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.

The 2012 Annual Report was the first released by the current Panel. In the time period covered by that first, and now this second Annual Report for 2013, fifty (50) cases have been referred to CO-OP for review.

## 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



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 (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 2013. 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.

## Investigations

The graph (see Figure 1) illustrates the number of complaint investigations generated within the Internal Affairs Division for the years 2008 through 2012. 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. In 2011, the police department experienced an increase in the submission of web complaints. In an effort to maintain more comprehensive administrative records of every complaint submitted to the Internal Affairs Division, BPS restructured the complaint process and began re-categorizing certain complaints. BPS indicates that these factors contributed to the increase in reported cases for 2012 and 2011 over prior years.

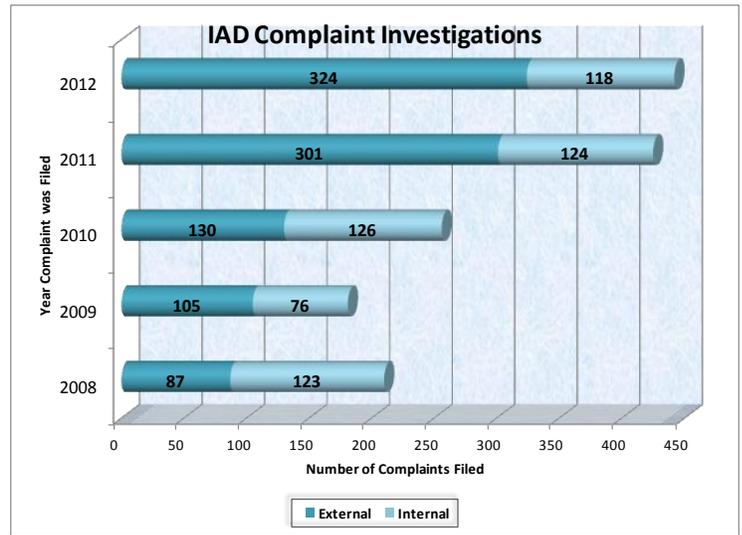


Figure 1

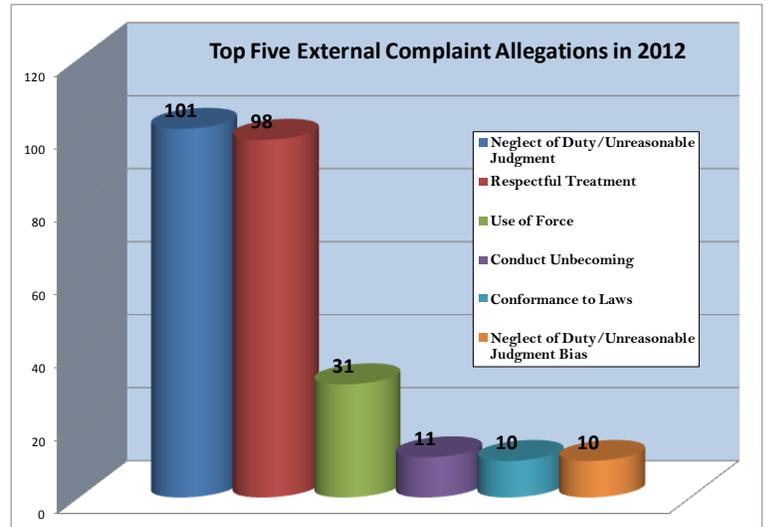


Figure 2

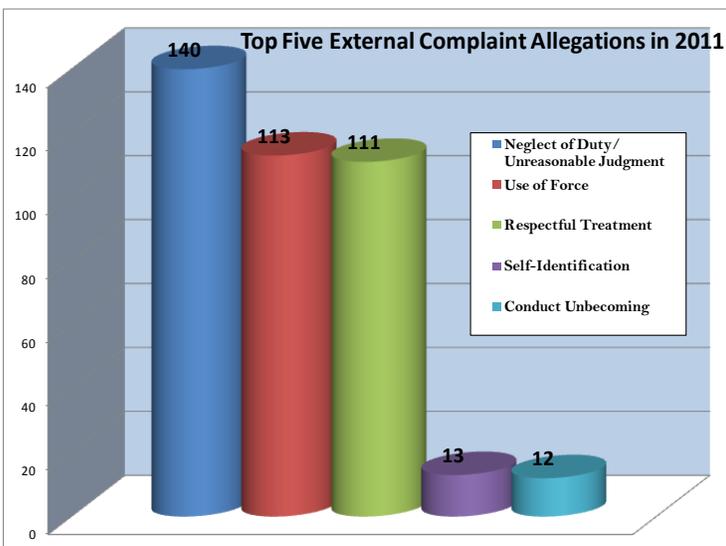


Figure 3

## External Complaint Allegations

The following graph (see Figure 2) 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, Conformance to Laws, and Neglect of Duty/Unreasonable Judgment Bias.

For comparative purposes, the following graph (see Figure 3) illustrates the five most common allegations of misconduct lodged against BPD personnel through

the external complaint process in 2011. Neglect of Duty/ Unreasonable Judgment was the most complained-of allegation, followed by Use of Force, Respectful Treatment, Self-Identification and Conduct Unbecoming.

Internal Complaint Allegations

This graph (see Figure 4) illustrates the five most common allegations of misconduct lodged against BPD personnel through the internal complaint process in 2012. Neglect of Duty/Unreasonable Judgment was the most frequent allegation, followed by Managing

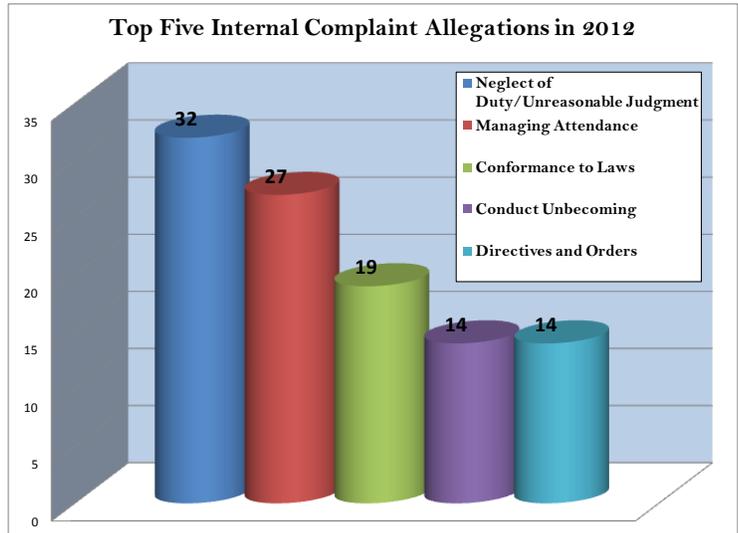


Figure 4

Attendance, Conformance to Laws, Conduct Unbecoming, and Directives and Orders.

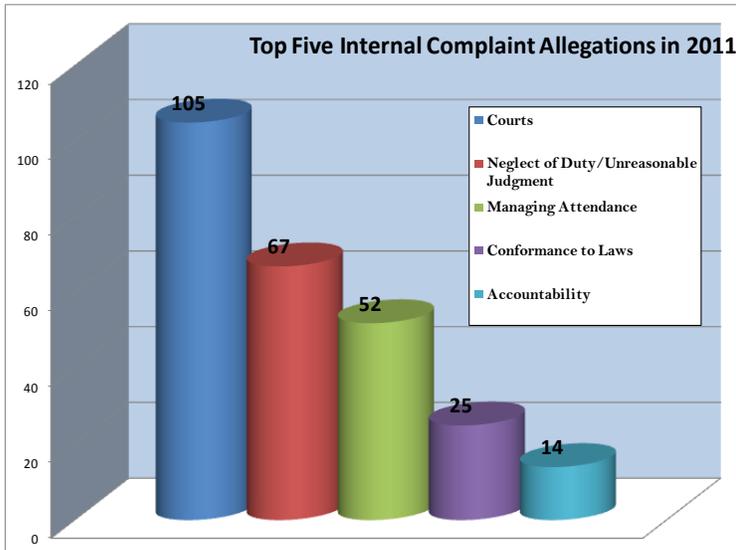


Figure 5

For comparative purposes, the following graph (see Figure 5) illustrates the five most common allegations of misconduct lodged against BPD personnel through the internal complaint process in 2011. Violations of an officer’s duty and responsibility when appearing at Court was the most frequent allegation, followed by Neglect of Duty/Unreasonable Judgment, Managing Attendance, Conformance to Laws, and Accountability.

IAD Findings

Upon completion of an investigation by the Internal Affairs Division of the Boston Police Department, complainants receive an official Notice of Findings.

For external complaints that result in a finding of Exonerated, Not Sustained or Unfounded, the complainant receives a Notice of Finding explaining their right to appeal the finding along with a CO-OP brochure and appeal form. Finding definitions are listed below:

Sustained: Investigation disclosed sufficient evidence to support allegations in the complaint. If it is a criminal case, it is presented to proper prosecuting authorities.

Exonerated: The action complained of did occur, but the investigation disclosed that the actions were reasonable, lawful, and proper.

Not Sustained: Insufficient evidence available to either prove or disprove the allegations in the complaint.

Unfounded: The complaint was not based on facts, as shown by the investigation, or the incident complained of did not occur.

Pending: The complaint is currently under investigation.

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

Withdrawn: Complainant withdrew complaint.

### Internal Complaint Allegation Findings

This graph (see Figure 6) illustrates the findings issued in internal complaint investigations from 2012. As demonstrated, fifty-four (54%) percent of the allegations were sustained, while eighteen (18%) percent resulted in a finding of Not Sustained, Exonerated, or Unfounded. One (1%) percent were withdrawn. The remaining twenty-four (24%) percent are still pending and awaiting an outcome.

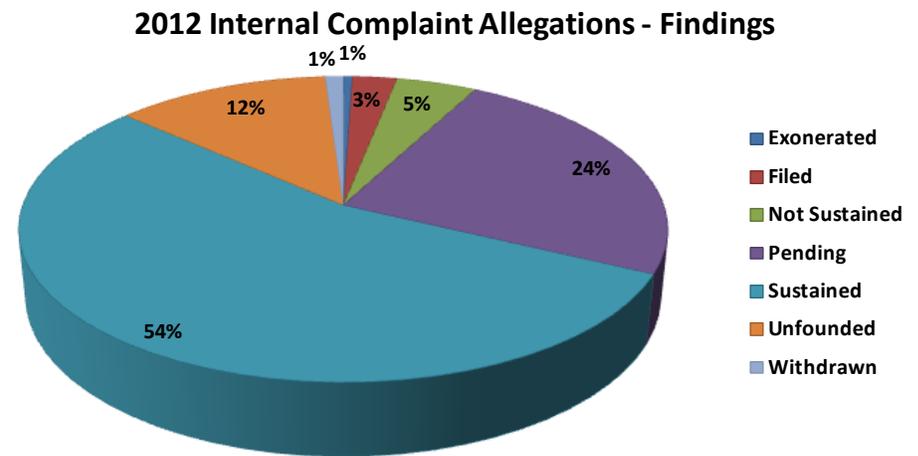
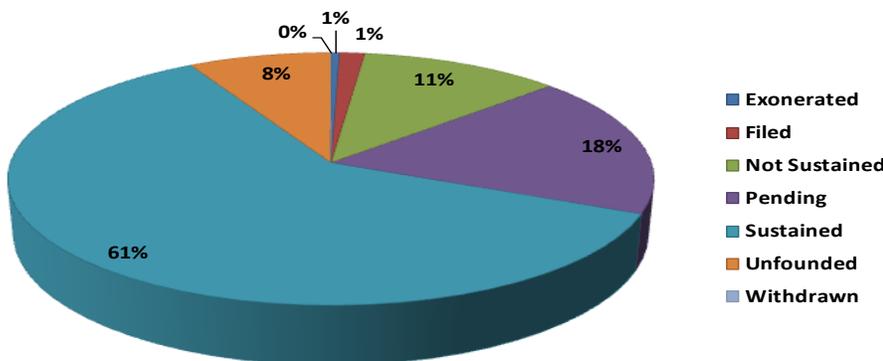


Figure 6

### **2011 Internal Complaint Allegations - Findings**



For comparison purposes, Figure 7 illustrates the findings of internal complaint investigations from 2011 as detailed in the 2012 Annual Report. At that time, IAD reported that sixty-one (61%) percent or 127 of the allegations were sustained, while twenty (20%) percent or 42 allegations resulted in a finding of Not Sustained, Exonerated, or Unfounded. One (1%) percent or 3 of internal complaint allegations were filed. The remaining eighteen (18%) percent or 38 allegations were still pending and awaiting an outcome.

Figure 7

External Complaint Allegations - Findings

The graph (see Figure 8) demonstrates the findings issued in external complaint investigations from 2012. As demonstrated, 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 or 93 allegations are still pending and awaiting an outcome.

**2012 External Complaint Allegations - Findings**

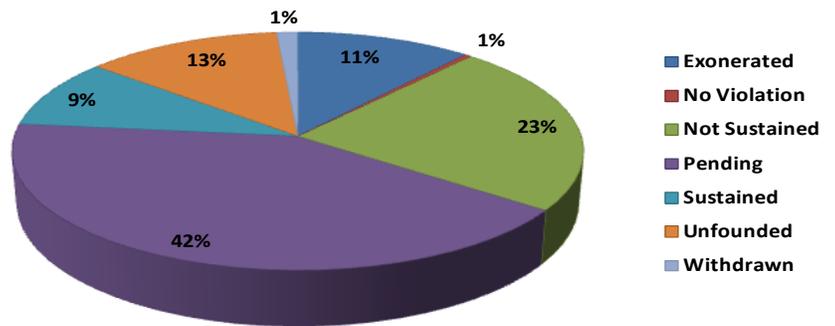
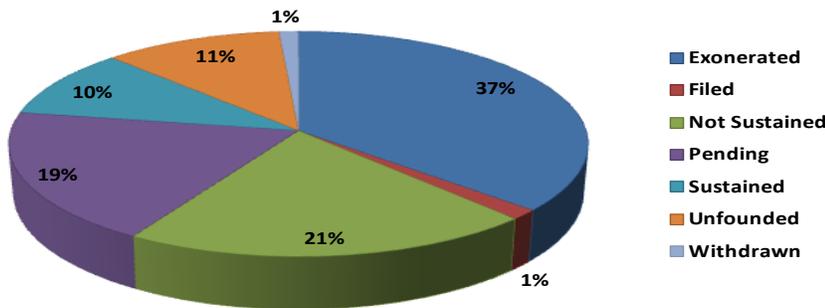


Figure 8

**2011 External Complaint Allegations - Findings**



For comparison purposes, Figure 9 illustrates the findings of external complaint allegations from 2011 as detailed in the 2012 Annual Report. At that time, IAD reported that ten (10%) percent or 41 of these allegations were sustained while sixty-nine (69%) percent or 281 allegations resulted in a finding of Not Sustained, Exonerated, or Unfounded. Two (2%) percent or 11 of external complaint allegations were filed and withdrawn. The remaining nineteen (19%) percent or 78 allegations were still pending and awaiting an outcome.

Figure 9

## CO-OP Case Data

Cases are referred to the Community Ombudsman Oversight Panel by direct appeal or through the random audit process. When an 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 chooses not to exercise his/her right of appeal an adverse finding. These cases are selected randomly.

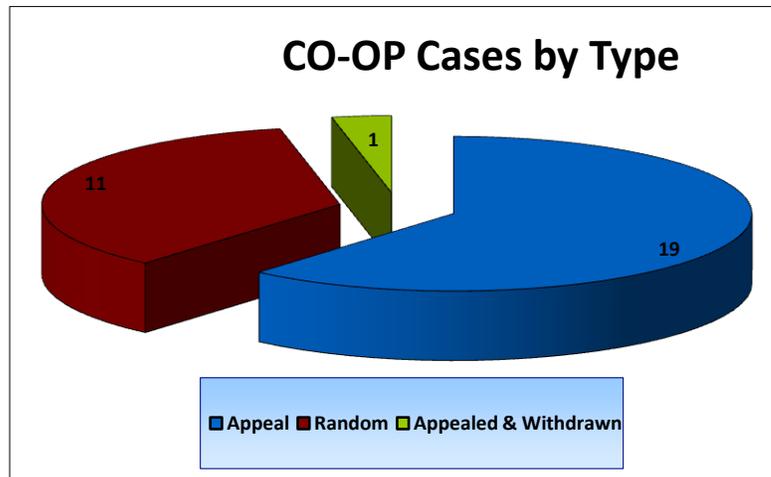


Figure 10

Upon joint referral by the BPS Chief and Department Legal Advisor, the Executive Order also permits the CO-OP to review cases where an allegation of unjustified use of force or serious misconduct results in a finding of Not Sustained, Exonerated, or Unfounded. To date, there have been no cases submitted to the Panel via this third option. In all, thirty-one (31) cases were referred to the CO-OP in 2012, one of which was withdrawn prior to review. The graph above (see Figure 10) illustrates the cases initiated in 2012, broken down by method of referral.<sup>11</sup>

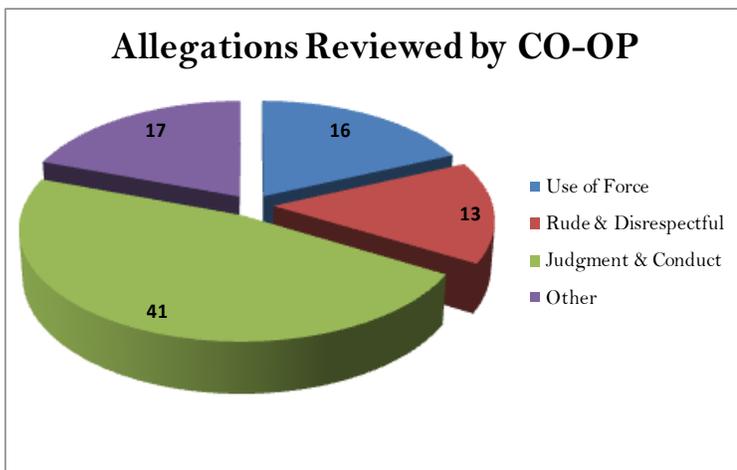


Figure 11

As shown in the following graph (see Figure 11) the bulk of allegations reviewed by the CO-OP fell within three (3) main categories: Judgment & Conduct, Use of Force and Rude & Disrespectful Treatment. These categories are described in further detail below. The remaining (Other) included allegations of Use of Alcohol Off-Duty and Untruthfulness in Departmental Reports. The graph illustrates that the thirty (30) cases reviewed by the CO-OP this past year encompassed eighty-seven (87) separate allegations of misconduct. As with IAD cases generally, many CO-OP cases entail multiple allegations.

### Allegations

**Use of Force:** This rule governs the guidelines for the appropriate use of non-lethal force by members of 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

<sup>11</sup> The CO-OP also handled matters this year that were reflected in previous annual reports. Those cases are detailed further in the Summary of Cases section on page 19.

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:** 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.

### 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 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.

This graph (see Figure 12) summarizes the status of the cases referred to the Panel in 2012. To date, the Panel has issued recommendations in twenty-three (23) of thirty matters. Of the completed matters, roughly 82% or nineteen (19) cases were found to be fair and thorough. In 18% of the completed investigations, or four (4) cases, the Panel's recommendation included a finding that the IAD investigation was other than fairly and thoroughly conducted. To date, seven (7) IAD investigations are still under review. Additional information about these cases can be found in the section on page 19 entitled, "Summary of CO-OP Cases."

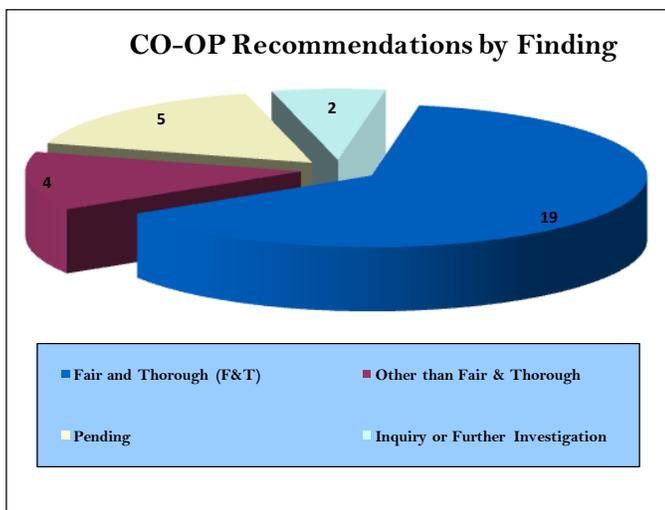


Figure 12

As per the Executive Order, in those instances where the reviewing Ombudsman determines that an investigation was other than Fair and Thorough, the matter remains open until the IAD has an opportunity to make its own determination that the investigation, as it stands, was fair and thorough, or to send the case back to the original investigator for supplemental review. The ultimate decision-making authority as to the fairness and/or thoroughness of any investigation rests with the Police Commissioner.

## Observations by the Panel

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Throughout the year, one or more recurring issues arose that warranted discussion beyond what is encapsulated in the Case Summary section. As the Case Data section illustrates, the vast majority of investigations we review are conducted in a fair, thorough, and professional manner by IAD personnel. The points outlined in this Section represent but a small sampling from that body of otherwise capable work. In some instances, our concerns have prompted us to issue recommendations for changes in IAD policy or procedure. In others, the observation is merely designed to inform. The Section also includes the restatement of previous recommendations in areas we feel warrant revisiting by the IAD or the police department as a whole.

### Recommendations in Regard to IAD Process

#### Review of Materials “Off the Record”

In a review of recorded interviews of witnesses, the Panel observed instances in which the investigating officer made reference to a witness’ “off the record” review of police reports, photographs, or other pertinent documents related to the incident under investigation. Because this practice can foster the appearance that the investigator has “coached” or assisted the witness in the review of important evidentiary items, it is generally not recommended. To be clear, there is no evidence that coaching or any other impropriety took place in any of the cases that we reviewed. However, the possibility certainly exists that even an innocent exchange about a document or photograph could be misconstrued. As such, we believe that the better practice is for all such matters to be captured on the record.

**Recommendation:** That the entirety of all internal affairs witness interviews, including the tangential review of documents and other case-related materials such as the January 2010 Untruthfulness Policy, take place on the record.<sup>12</sup>

### Restatement and Re-Issuance of Previous Recommendations

#### Complaint Mediation Program

Since the CO-OP’s inception, the Annual Reports have stressed the need for the Boston Police Department to implement a Mediation Program for citizen complainants and police officers as an alternative to the traditional IAD process. This year is no exception, as all three Panel members have reviewed matters in which mediation might have provided a more satisfactory outcome than existing procedures for all involved parties. Unlike prior years, however, there has been at least one significant development this past year. The Superintendent of the Bureau of Professional Standards reports that he has met with representatives of all three BPD unions to explain how mediation might function *under certain circumstances*. These potential functions are based on research conducted by the Bureau with area academic, law enforcement and non-profit organizations experienced in mediation theory and/or practice. However, the Superintendent also reports

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<sup>12</sup> In a January 2010 memorandum, the Police Commissioner put all BPD personnel on notice of the department’s zero tolerance policy toward untruthfulness. Specifically, the policy provides that, in the event that an employee is found to have been untruthful in any report, sworn testimony, or internal affairs interview, termination would be the presumptive disciplinary action taken. In the 2012 Annual Report, we recommended that the IAD adopt a uniform procedure for incorporating the Untruthfulness policy into all interviews of police officers. The recommendation was adopted by the police department, but it is unclear whether the new procedure dictates that recitation of the Untruthfulness policy during IAD interviews take place on the record.

that these discussions indicate that further labor/management interaction is expected prior to the implementation of any such program. Given that additional discussions could impact the implementation timetable, there is all the more reason to emphasize the importance of this issue at this juncture. Each year's case-review experience only seems to underscore the need for a wider range of options to effectively address the types of disputes underlying misconduct complaints against BPD personnel.

**Recommendation:** That the Complaint Mediation Program originally anticipated and incorporated into Article VIII of the March 2007 Executive Order be implemented, as envisioned by the Bureau of Professional Standards, as soon as practicable.

#### Notifications of Findings to Complainants

In recent years, the CO-OP has recommended that IAD, in its notification letters to complainants, include a rationale or summary of the facts upon which IAD relied in concluding that the complaint against the officer(s) was not sustained. While we are pleased that IAD has adopted our recommendation, we have observed instances in which minor descriptive errors or mischaracterizations of an investigator's conclusions have resulted in unwarranted distress to complainants. Specifically, complainants have filed appeals based on a desire to rebut assertions made in a notification letter even though such statements did not form a basis for the investigator's conclusion that the complaint was not sustained.

**Recommendation:** To avoid such confusion in the future, we recommend that the investigating officer be tasked with drafting notification letters to complainants, or that he/she be responsible for reviewing such letters prior to dissemination.

#### **Other Observation(s)**

##### The Investigation of "He Said/She Said" Cases:

Among the more difficult cases the Panel can review are those involving allegations in which there are no third-party witnesses or physical evidence to corroborate either the complainant's or the subject officer's version of events. These cases tend to contain allegations of Disrespectful Treatment against the officer(s) and result in findings of "Not Sustained." While we recognize the difficulty in sustaining such complaints in the absence of corroboration, we are concerned by the reluctance of investigators to place any value on circumstantial evidence or to draw any inferences from the conditions under which a complaint arises. Although the failure to do so rarely warrants a finding that the underlying investigation was neither fairly nor thoroughly conducted, we believe that the failure to consider the potential corroborative value of circumstantial evidence or other reasonable assessments of human behavior could impact public confidence in case-investigations of this type.

## Case Timelines

Our 2012 Annual Report was the first to recognize the timeliness of internal affairs investigations as an important customer service benchmark. Our review of cases that year included several instances in which we commented on the prolonged period of time involved in the processing of internal affairs complaints. In one review, a Panel member found that the excessive processing time (measured from date of IAD complaint intake to the date of issuance of a Notice of Finding to the complainant) impacted the investigation to such a degree as to warrant a finding that the investigation itself was Unfair. While protracted investigatory periods did not impact any of the matters referred to the Panel during this reporting period to that same degree, the delayed completion of a particular complaint investigation was noted in several of our reviews.

As Figure 13 demonstrates, there appears to be a modest downward trend in those cases taking the longest time to complete. For instance, last year we reported that 25% of the IAD investigations referred to the CO-OP, via direct appeal or through the random audit process, took in excess of 24 months to complete. At the time, it was noted that administrative practices, such as mid-investigation transfer of IAD staff, were among the factors contributing to these delays. In response, IAD indicated that it would take steps to address these and other administrative factors that could lead to extended investigation timelines. Since that time, as reflected in this reporting period, slightly less than 20% of the investigations referred to the CO-OP took more than 24 months to complete. In both this reporting period and last, about 1/3 of the investigations were completed in less than 12 months with the balance falling into the 12-24 month range.

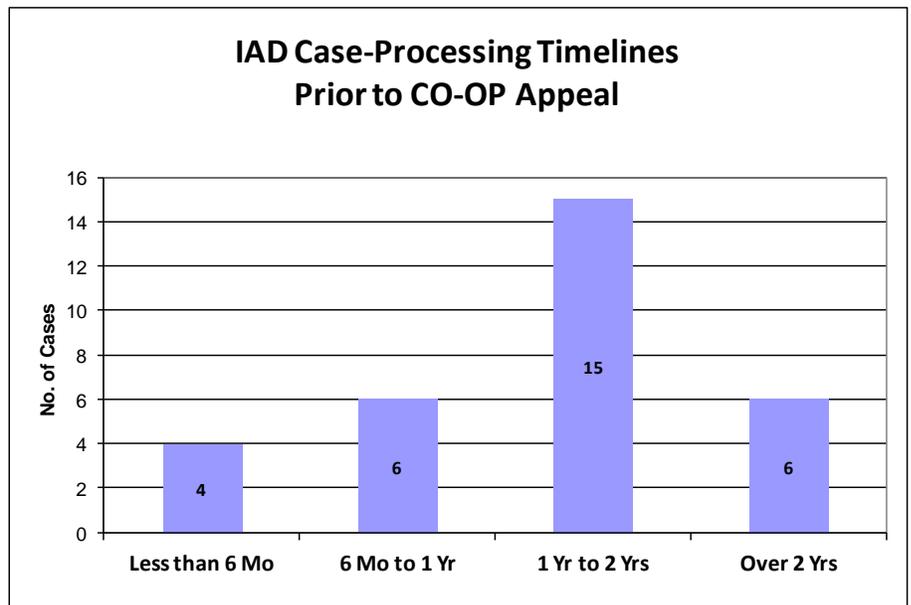


Figure 13

In recognition of the impact a prolonged investigation could have on a complainant's confidence in the internal affairs process, we previously recommended that IAD implement a process by which complainants would receive periodic updates as to an investigation's status. Last year, the police department adopted our recommendation. Since appeals of the investigations reviewed during this reporting period commenced before the police department instituted this change in IAD's complaint processing system, we have yet to see whether, and to what extent, implementation of the new policy has affected citizen perception of the IAD process. The Panel intends to continue its monitoring of this performance indicator into 2014.

## Summary of CO-OP Cases

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<b>Case #:</b>	<b>12-01A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that Boston Police officers unlawfully arrested him for violating MGL Chapter 272, Section 99 Interception of Wire and Oral Communication.

**Violation(s):** Judgment 4 counts (Sustained)  
Judgment 2 counts (Unfounded)  
Use of Force 6 counts (Not Sustained)

**Recommendation:** Withdrawn per complainant in the aftermath of a publicly reported legal settlement with the City of Boston.

<b>Case #:</b>	<b>12-02A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that Officer with whom she had a romantic relationship provided false information to authorities in order to have her arrested, in an effort to disparage her following a dispute that ended in a physical confrontation.

**Violation(s):** Judgment (Not Sustained)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-03A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that a district sergeant violated federal law as a result of his supporting the Inspectional Services Department's enforcement of a stop-work order against complainant's construction of a drug/alcohol recovery transitional residence by threatening complainant's workers with arrest and by being untruthful at a hearing of the Zoning Board of Appeals.

**Violation(s):** Untruthfulness (Not Sustained)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-04A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that the officer used excessive force.

**Violation(s):** Neglect of Duty/Unreasonable Judgment 9 counts (Exonerated)  
Use of Force (Not Sustained)

**Recommendation:** Pending

<b>Case #:</b>	<b>12-05R</b>	<b>Type: Random</b>
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**Summary:** Complainant, a gypsy cab driver, alleged that enforcement action taken against him by two officers during two separate incidents was a form of harassment.

**Violation(s):** Judgment 3 counts (Exonerated)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-06R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that off-duty officer improperly followed and stopped him for moving violations he did not commit.

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

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-07R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that officers spoke to her in a disrespectful manner.

**Violation(s):** Respectful Treatment (Unfounded)  
Judgment (Exonerated)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-08R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that, while visiting the home of a police department civilian employee with whom she had a prior dating relationship, the employee slapped her in the face. The employee was later arrested and charged with Domestic Assault & Battery.

**Violation(s):** Judgment (Sustained)  
Conformance to Laws (Sustained)  
Use of Alcohol (Not Sustained)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-09R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged he was properly operating his commercial motor vehicle in the course of his employment when he was incorrectly cited for regulatory violations by a traffic enforcement officer.

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

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-10A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged that officers struck him repeated with weapons, fists and feet during an unprovoked attack following a high speed chase in a stolen vehicle.	
<b>Violation(s):</b>	Use of Force 4 counts (Exonerated) Neglect of Duty 4 counts (Not Sustained) Truthfulness (Sustained) Conformance to Laws (Sustained)	
<b>Recommendation:</b>	Fair and Thorough	
<b>Case #:</b>	<b>12-11A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged that, while operating his bicycle near a construction site, a detail officer unlawfully ordered him to ride on the sidewalk and physically removed his bicycle from the street.	
<b>Violation(s):</b>	Respectful Treatment (Unfounded) Use of Force (Unfounded)	
<b>Recommendation:</b>	Fair and Thorough	
<b>Case #:</b>	<b>12-12A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged that she was subjected to derogatory remarks from an officer when she and a friend were among a group of bystanders who witnessed the arrest of two unknown individuals for public possession of alcohol.	
<b>Violation(s):</b>	Respectful Treatment (Not Sustained)	
<b>Recommendation:</b>	Fair and Thorough	
<b>Case #:</b>	<b>12-13A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged that when arrested his cell phone was seized and that police lost his cell phone.	
<b>Violation(s):</b>	Physical Evidence Care and Custody (Not Sustained)	
<b>Recommendation:</b>	Pending	

<b>Case #:</b>	<b>12-14A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged that an off-duty police officer threatened him with bodily harm after he asked the officer to remove his personal car from in front of the complainant's driveway.	
<b>Violation(s):</b>	Respectful Treatment (Not Sustained)	
<b>Recommendation:</b>	Not Fair and Not Thorough	
<b>Case #:</b>	<b>12-15A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged an officer, while on duty, directed derogatory and untruthful comments toward him on multiple occasions while on duty.	
<b>Violation(s):</b>	Respectful Treatment (Not Sustained)	
<b>Recommendation:</b>	Fair and Thorough	
<b>Case #:</b>	<b>12-16A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	Complainant alleged two officers grabbed him, choked him, and placed him in handcuffs causing pain.	
<b>Violation(s):</b>	Use of Force 2 counts (Not Sustained) Respectful Treatment (Sustained)	
<b>Recommendation:</b>	Pending	
<b>Case #:</b>	<b>12-17A</b>	<b>Type: Appeal</b>
<b>Summary:</b>	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.	
<b>Violation(s):</b>	Neglect of Duty/Judgment (Sustained) Use of Force (Not Sustained)	
<b>Recommendation:</b>	Fair but Not Thorough	

<b>Case #:</b>	<b>12-18A</b>	<b>Type: Appeal</b>
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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

<b>Case #:</b>	<b>12-19A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that he was unfairly stopped and issued a discriminatory traffic citation by officers based on his race.

**Violation(s):** Judgment Bias (Unfounded)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-20A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that his civil rights were violated and that he was assaulted by officers, when arrested for possession of a firearm. IAD complaint arose in aftermath of civil lawsuit by complainant against the City of Boston, which was eventually settled for a nominal sum.

**Violation(s):** Use of Force (Not Sustained)  
Neglect of Duty (Unfounded)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-21A</b>	<b>Type: Appeal</b>
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**Summary:** Complaint arose in aftermath of civil lawsuits alleging complainant's rights violated during arrest and booking for possession of cocaine. 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:** Not Fair but Thorough

<b>Case #:</b>	<b>12-22A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that police officers involved in an accident were untruthful in their reporting and testimony.

**Violation(s)** Untruthfulness (Unfounded)  
Emergency Driving-Exercise of Due Caution (Exonerated)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-23A</b>	<b>Type: Appeal</b>
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**Summary:** Upon learning of a departmental review of an officer's conduct in an unrelated criminal matter, a local attorney initiated a complaint against the same officer for what he alleges is the officer's misconduct in a subsequent murder case.

**Violation(s)** Judgment (Unfounded)

**Recommendation:** Information Inquiry.

<b>Case #:</b>	<b>12-24A</b>	<b>Type: Appeal</b>
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**Summary:** Complainants claimed their constitutional rights were violated during a routine traffic stop when subjected to unreasonable search and seizure and improperly arrested for mere "contempt of cop". One of the complainants additionally complained of mistreatment while in police custody. District Court ordered complainants to perform 20 hours of community service and to write letters of apology for their actions. Appeal also noted missteps and delays in the IAD investigative process. Complainant's claims relative to case-processing missteps and delays were credited, but were not found to have adversely affected conduct or outcome of investigation.

**Violation(s):** Neglect of Duty/Unreasonable Judgment (Exonerated)  
Neglect of Duty/Unreasonable Judgment Bias (Unfounded)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-25R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that he called the police for assistance when he was hit while riding his bike. The responding officer had an attitude and threatened to lock him up for disorderly conduct.

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

**Recommendation:** Pending

<b>Case #:</b>	<b>12-26R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that, during a motor vehicle stop for her failure to yield to pedestrians in a crosswalk, the officer spoke to her in an abusive and threatening manner.

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

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-27R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that District Station refused her request to file a report about the possibility the government had placed a tracking device in her phone and was monitoring her activities.

**Violation(s):** Police Service Refused (Unfounded)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-28R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that officers while in pursuit of a vehicle traveled at an excessive high rate of speed without emergency lights activated and eventually caused an accident which injured the complainant.

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

**Recommendation:** Pending

<b>Case #:</b>	<b>12-29R</b>	<b>Type: Random</b>
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**Summary:** Complainant was mistakenly detained as a potential suspect in an armed robbery. He alleges that the officers used excessive force in affecting the stop.

**Violation(s):** Use of Force (Unfounded)  
Use of Force (Exonerated)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-30R</b>	<b>Type: Random</b>
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**Summary:** Complainant alleged that, after the detective bureau failed to act for several months on her assault and battery complaint against a local business owner, the assigned detective treated her in a rude and abrasive manner in an attempt to get her to drop the complaint. She further alleged that, when she went to the police department to complain, several officers refused to take the complaint.

**Violation(s):** Judgment (Sustained)

Manner of Recording Complaints 3 counts (Not Sustained)  
Respectful Treatment (Not Sustained)  
Situations Involving Friends (Unfounded)

**Recommendation:** Fair and Thorough

<b>Case #:</b>	<b>12-31A</b>	<b>Type: Appeal</b>
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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:** Further Investigation

The Co-op also issued recommendations in the following cases, which were listed as pending in previous annual reports:

<b>Case #:</b>	<b>10-03A</b>	<b>Type: Appeal</b>
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**Summary:** Complainant alleged that he was tackled and handcuffed by plainclothes officers who misidentified him as the suspect in a ticket scalping operation. The officers then failed to properly identify themselves.

**Violation(s):** Judgment  
Use of Non-Lethal Force  
Self-Identification

**Recommendation:** Not Fair and Not Thorough. Based on the panel's recommendation, the investigation was reopened and the responding supervisor was counseled for his failure to fulfill his command responsibilities.

<b>Case #:</b>	<b>11-05A</b>	<b>Type: Appeal</b>
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**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 and attempted to record the officers' actions with his cellular telephone, he was assaulted, choked, and placed under arrest.

**Violation(s):** Use of Force  
Judgment  
Respectful Treatment  
Gratuities

**Recommendation:** Not Fair and Not Thorough. Based on the panel's recommendation, the case has been returned to IAD for further review.

**Case #:**

**11-15A**

**Type: Appeal**

**Summary:**

Complainant alleged that two officers overstated their hours on their paid detail cards, which the contractor-complainant himself had signed for approval. Investigation into one officer originally found fair and thorough. Investigation of second officer classified fair but not thorough, pending additional information from IAD. When additional information supplied by IAD investigation classified as both fair and thorough.

**Violation(s):**

Judgment

**Recommendation:**

Fair and Thorough.

## MEMORANDUM

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

From: Edward F. Davis, Police Commissioner   
Boston Police Department

Date: February 15, 2013

Subject: **CO-OP Annual Report**

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I have reviewed the 2012 CO-OP Annual Report and want to thank you for all of the work that you have put into producing the report and providing your invaluable insight into the Internal Investigation process. As we have discussed previously, the Department has been engaged in an extensive review of the Internal Affairs process. This review resulted in many significant changes to how we investigate cases. A few of these changes directly address concerns raised in your Annual Report including: the notification, in writing, to complainants of the status of the investigation after ninety (90) and one hundred and eighty (180) days as the investigation is ongoing, and the recategorization of complaints to ensure more comprehensive records of every complaint submitted to IAD. In addition to these important improvements to the process, I brought in a nationally recognized expert in this field, who was tasked with reviewing IAD's processes against national best practices. We have already implemented many of the expert's recommendations and are in the process of implementing the balance.

The Internal Investigation process is, however, constantly evolving and I look forward to a continued relationship with the Panel to ensure that we move forward in a constructive and effective manner.

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

### **Untruthfulness Policy**

As noted in the report, I issued a Memorandum in January 2010 reiterating the importance of being truthful and putting all Department employees on notice that, if they are found to be untruthful in any report, sworn testimony or during an internal investigatory interview, the presumptive disciplinary action will be termination. (See CM10-007 Attached). The Internal Affairs Division (IAD) currently utilizes this

Memorandum during all interviews of Department employees. More specifically, every employee that participates in an interview with an IAD investigator is provided a copy of the Memorandum prior to the start of the interview. Once the parties go on record, the interview subject is asked if they have had an opportunity to review the Memorandum and ask any relative questions. All IAD investigators have been instructed to follow this procedure during every interview of a Department employee. The following is an example of reference made during an IAD interview in November 2010:

SERGEANT DETECTIVE: Prior to going on the record, Officer, I presented you with Police Commissioner's Memorandum 10-007, dated January 20, 2010. Have you had sufficient time to review that document?

POLICE OFFICER: Yes.

SERGEANT DETECTIVE: Do you understand it?

POLICE OFFICER: Yes.

SERGEANT DETECTIVE: Do you have any questions pertaining to it?

POLICE OFFICER: No.

SERGEANT DETECTIVE: And for this interview I'm going to define the definition of untruthfulness, and that would be the intentional making of false statements or reports and/or the intentional omission of significant or pertinent facts. That would be considered untruthfulness and will be treated as such for this interview. Do you understand that definition, sir?

POLICE OFFICER: Yes.

SERGEANT DETECTIVE: And do you have any questions regarding it?

POLICE OFFICER: No.

### **Reporting the 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. The Department has been in the process of revising Rule 304, including updating the language to align with our current training and to prohibit officers from utilizing certain techniques. In addition to the proposed changes currently pending, I have initiated a review of other law enforcement agencies nationwide regarding the type of force that requires an investigation. While these changes are under review, I have also instituted an immediate order regarding supervisory responses to use of force incidents. Specifically, as of January 24, 2013, a patrol supervisor is required to

immediately respond to a scene after receiving verbal notification of an officer's use of force. (See CM13-007 Attached). This immediate response to the scene will further ensure that incidents of this nature are thoroughly investigated as required by the Department's existing rules and regulations.

### **Officer Responses to the Use of Cellphone Digital Cameras**

Following the First Circuit Court of Appeals decision in *Glik v. Cunniffe*, the Department took several actions to educate officers on the appropriate response to an individual's use of cellphone digital cameras or other similar devices. First, a Training Bulletin (15-10) was disseminated Department-wide that summarized M.G.L. c. 272 §99 and the relevant case law. (See TB 15-10 Attached). The Bulletin also made it clear that public and open recordings are allowed under the Wiretap statute and there is no right of arrest for public and open recordings under this statute.

In October 2011, I reissued the Training Bulletin department-wide. (See CM11-061 Attached). In addition to providing another copy of the original Bulletin, I mandated that all officers review both the training bulletin and take an E-Learning course on this issue within the next ten (10) days. In addition to the mandatory E-Learning course, the Academy continues to address this issue during in-service and recruit training.

### **Domestic Violence Procedures**

I agree that domestic violence incidents involving Department employees, and the corresponding risks, are of great importance to the Department and will continue to enforce the procedures set forth in Rule 327A of the Department's Rules and Procedures. Following an incident of this nature, the services of the Department's Peer Support Unit or the City's Employee Assistance Program can be invaluable. Members of my command staff often offer the services of the Peer Support Unit to officers in need. To ensure that officers are knowledgeable about the services available to them, the Academy includes presentations by members of the Peer Support Unit during all recruit training that occur both at the Academy and the off-site facility.

### **Procedures for Officers Involved in Traffic Accidents**

I have reviewed Special Order 97-35 and agree that it does not specifically prohibit an officer from issuing a parking citation as a result of an incident that s/he was involved in. While I believe this behavior, which may cause the appearance of a conflict of interest, may be prohibited by other current Department Rules and Procedures, the Special Order has been revised to include the following language (reflected in bold):

“To avoid the appearance of a conflict of interest on the part of officers involved in motor vehicle accidents, officers personally involved in a motor vehicle accident which either involves Department vehicles or occurs within the City of Boston, shall not be the arresting officers nor issue a Massachusetts Uniform Citation to any other person involved in the accident for any criminal offenses or civil infractions **or parking**

**violations** which they have observed or have reasonable grounds to believe have been committed....It shall be the responsibility of the responding Patrol Supervisor to issue appropriate Massachusetts Uniform Citations for any criminal offenses or civil infractions **or parking violations** that the Patrol Supervisor has reasonable grounds to believe have been committed (see, M.G.L. c. 90C, §2).”

### **Community Accessibility to Complaint Information and Process**

Based on the CO-OP’s prior recommendation to Superintendent Kenneth Fong, the Department made several changes in an effort to make the Complaint Process more accessible to the community. For example, complaints can now be filed in person at any district station or Boston Police Headquarters, by contacting IAD via telephone or mail, or on-line through the City of Boston website. We have taken steps to ensure that all district stations are supplied with copies of the paper complaint forms as well as having access to the on-line complaint system. I have also directed my Command Staff and Audit and Review Division to conduct audits of the district stations to ensure the forms are readily available to the public upon request.

In addition to making the Complaint Process more accessible, we have taken steps to increase the available options for filing an appeal to the CO-OP. These include providing complainants with written notification of their appellate rights at the conclusion of an investigation. Included in the correspondence is a copy of the appeals form that can be mailed directly to the CO-OP for review. In addition to utilizing the paper form, Complainants have the option of filing an appeal on-line through the City of Boston website or directly through the CO-OP web site. I am confident that the increased accessibility to the appeal process has, in part, led to the increased number of appeals filed in 2012.

### **Mediation Program**

IAD has created a draft policy to institute an internal Mediation Program. The proposal is currently under review by Bureau of Professional Standards Superintendent, Frank Mancini, and I anticipate that it will be circulated internally for further review in short time. Once the draft is completed, it will undergo review by the Executive Rules Committee and then will likely be subject to our bargaining obligations under the relative collective bargaining agreements.

Thank you again for your diligent efforts throughout the year in your case reviews and in completing the annual report. If you have any questions or concerns, please do not hesitate to contact me at (617) 343-4500. I look forward to continuing this meaningful partnership.



### 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](mailto: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.



Mayor Thomas M. Menino

## 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*

### 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/POLICE/CO-OP](http://www.cityofboston.gov/POLICE/CO-OP)



## 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

## 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.

If your appeal is hand-delivered, it must be delivered to the address below by the close of business of the fourteenth (14<sup>th</sup>) 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](mailto: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/POLICE/CO-OP](http://www.cityofboston.gov/POLICE/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.

# Community Ombudsman Oversight Panel Appeal Form

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**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](mailto: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 #:**

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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:

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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.

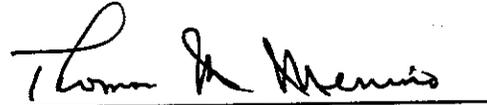
#### ARTICLE VIII. COMPLAINT MEDIATION PROGRAM

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.



Thomas M. Menino  
Thomas M. Menino  
Mayor of Boston

Dated: 3/14/07