

# Community Ombudsman Oversight Panel (CO-OP)

October 1

# 2009

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An overview of the Panel's audit of internal investigations within the Boston Police Department. This report explores the Panel's activities in community outreach, a look at statistics, and general observations gathered through review.

Annual Report



**City of Boston**  
Community Ombudsman Oversight Panel

Dear Mayor Menino and Commissioner Davis:

The Community Ombudsman Oversight Panel (CO-OP) hereby submits our second Annual Report for your consideration and distribution. This report covers the Panel's operations from July 31, 2008, through July 31, 2009. Last year we completed our first comprehensive Annual Report in which we outlined our history, purpose and process.

Pursuant to the Mayor's Executive Order, our mission continues to be three-fold (1) to ensure that the City of Boston has a highly competent, fair and thorough process for the review of complaints of misconduct against Boston Police Officers; (2) to promote the professionalism of the Boston Police Department; and (3) to build trust and confidence within the Boston community. To this end, the CO-OP serves as an appeals body by reviewing complaints against police officers found to be "not sustained," "unfounded," or "exonerated" by the Boston Police Department.

This report is an update of the observations and recommendations that were made in the previous annual report. It also provides an overview of important statistics in regard to complaints and their outcome, as well as recommendations for improving the IAD process and for enhancing the effectiveness of the Community Ombudsman Oversight Panel process and structure.

As indicated in our previous report, a major goal of the Panel is the creation of a culture of transparency. Public awareness for filing complaints, the rules and procedures that govern the IAD, and an objective assessment of the numbers, type and results of citizen complaints, continues to be of utmost importance.

It is with mixed emotions that we say goodbye to our esteemed colleague, David Hall. His vision and leadership will be greatly missed as the Chairman of the CO-OP. We wish him well in his new position as President of the University of the Virgin Islands, and look forward to continuing to build on his leadership and foresight.

We welcome your comments and look forward to discussing the report with both you and with members of the community.

Respectfully submitted,

Ruth Suber, Ombudsman  
John O'Brien, Ombudsman



## **Community Ombudsman Oversight Panel**

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# Executive Summary

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The second annual report of the Community Ombudsman Oversight Panel (CO-OP) provides an opportunity to review our activities and our challenges and to present a follow-up to the recommendations that were listed in last year's report.

Pursuant to the Mayor's Executive Order, our mission continues to be three-fold (1) to ensure that the City of Boston has a highly competent, fair and thorough process for the review of complaints of misconduct against Boston Police Officers; (2) to promote the professionalism of the Boston Police Department; and (3) to build trust and confidence within the Boston community. To this end, the CO-OP serves as an appeals body by reviewing complaints against police officers found to be "not sustained," "unfounded," or "exonerated" by the Boston Police Department.

A comprehensive overview and analysis of Internal Affairs Division (IAD) data for 2008 and portions of 2009 is provided along with charts and graphs in regard to the number, type and resolution of complaints against Boston Police personnel. The data is broken down according to whether the complaint was initiated by a citizen or by a member of the Boston Police Department. For example in 2008, there were eighty-seven (87) complaints filed by citizens. Lack of respectful treatment and the improper use of non-lethal force continue to be the most common violations that citizens alleged in 2008/9. The data also indicates that neglect of duty and unreasonable judgment continue as the most common type of internal complaint. Furthermore, during 2008, seventeen (17%) percent of the citizen complaint allegations were sustained, whereas seventy-nine (79%) percent of the internal complaint allegations were sustained. The report provides data in regard to the racial make-up of the complainants and the employees against whom the complaint was made. The geographic locations of the complaints are also detailed in the report.

The data portion of the report also indicates the number of cases that were reviewed by CO-OP, including their outcome and recommendations. (A more detailed review of each reviewed case is contained in Appendix A). The Panel reviewed fourteen (14) cases from 2008. Seven (7) of those cases were a product of citizens appealing the fairness and/or thoroughness of the investigation by IAD. Six (6) cases were a result of random audit of cases pursuant to the Mayor's Executive Order. The remaining case referred to CO-OP was a review of a serious misconduct investigation. Of those fourteen (14) cases reviewed, eight (8) cases were deemed to be fair and thorough. As with the previous year, similar concerns were raised by the Panel in regard to the other five (5) cases and also in regard to those that were fair and thorough. The report also provides data for a portion of 2009. The cases for 2009 are very similar to those of 2008 with minor fluctuations.

The core aspect of this year's annual report contains observations from the Panel in regard to the cases reviewed, a follow-up on recommendations that were made in the previous report, and recommendations for changes in the investigative practices of the Internal Affairs Division. The Panel also provides recommendations in regard to the future structure of the CO-OP.

The following are the observations that were listed in the 2008 Annual Report:

- The vast majority of the cases reviewed seem to reach results that were consistent with the facts presented.

- There were instances where the investigations did not appear to be thorough.
- The investigative reports sometimes included conclusive statements without any facts to support the conclusion.
- There were many instances where the investigators used “leading” questions while interviewing the complainant or the officer.
- The final letter sent to complainants from the Superintendent indicating that the complaint was not sustained does not provide any rationale or summary of the findings upon which the decision was based.
- There was at least one instance of what one reviewer described as an “escalation” of the event by the officers.
- There were numerous citizens who had a right to appeal the decision of IAD to the CO-OP who chose not to pursue their right to appeal.
- Based in large part on comments from various individuals at community meetings and from community leaders, it became clear to the Panel that there is a strong perception that citizens do not have easy access to filing complaints in supportive non-intimidating environments.

The following are some of the recommendations of the Panel in regard to the policies and practices of IAD:

- All conclusions contained in an investigative report should be substantiated by facts obtained during the investigation.
- There should be a more serious and concerted attempt to follow-up with witnesses or complaining parties when there is no response to notices that are sent to them. This follow-up should include a visit to the home if necessary.
- A statement of the reason for not sustaining a complaint should be provided to the complainant in the final letter they receive from the Superintendent.
- A study should be conducted by an independent researcher to determine the reasons numerous individuals are not exercising the right to appeal.
- Complaint forms should be made available at locations other than a police station. Serious consideration should be given to the complaint from being translated into languages other than English.

The above observations and recommendations were shared with the Commander of IAD and over the course of the year, many of them have been accepted and implemented. Others remain outstanding and are delineated in this report.

There were some recommendations of the Panel that relate more directly to police conduct and training:

- Officers should be trained and instructed to avoid actions which may “escalate” encounters with citizens or create unnecessary dangers.
- Citizens should be made aware of the reason an officer has stopped them when that information is requested.

The following are some of the recommendations in regard to the structure of CO-OP:

- It is important that investigators respond in a timely and thorough manner to questions raised and inquiries made by panel members.
- The Superintendent should regularly monitor the implementation of recommendations from the Panel and provide periodic updates to the Panel.

- If the number of cases appealed remains low, some adjustment upward in the number of random cases that are reviewed should be considered.
- The Panel should be able to review a limited number of sustained cases so that they can obtain a more balanced perspective of the entire operation in IAD.
- There should be a clear understanding of the need for transparency of data in regard to number, types and outcome of complaints.
- The Complaint Mediation Program that was originally envisioned and incorporated into the Mayor's Executive order should be implemented.
- The Community Ombudsman Oversight Panel should have an operating budget so that basic decisions in regard to training, research, communications, public relations, and data collection can be done in a more efficient and independent manner.

The report also contains appendices. Of particular note are the Boston Police Department Rules and Procedures Rule 109, included under Appendix B. These materials contain the rules governing police conduct and the policies governing the complaint process. The Panel has specifically included the rule because of numerous concerns raised during the community outreach process about the lack of available information in this area.

# History, Purpose and Process

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The Community Ombudsman Oversight Panel is charged with reviewing accusations 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 and others because of the serious nature of the complaint.

## History

In 2004, Kathleen M. O'Toole, then Boston's Police Commissioner, pledged to establish a Boston police conduct review board. She was spurred by the emergence of similar panels in other cities and by the death that year of Emerson College student Victoria Snelgrove, who was killed by police firing pepper-pellet guns during unrest following the Red Sox World Series victory. The appointments to the Community Ombudsman Oversight Panel were made after nearly two years of research on police conduct panels across the country. The board met for the first time in March 2007 and began reviewing case files in October 2007.

## Panel Members

The board members, appointed by Mayor Thomas M. Menino, are David Hall<sup>1</sup>, former Dean and now professor at Northeastern University School of Law; John F. O'Brien, Dean of New England School of Law; and Ruth Suber, a former member of the parole board who served in that position for 12 years. Each member serves a term of three years, which may be renewed at the Mayor's discretion. The Panel selected David Hall to serve as its chair.

Under the Mayor's Executive Order (See Appendix G), members, also referred to as Ombudsmen, 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 to achieve a better understanding of such topics as use of force, race and community relations, constitutional law, internal investigation and disciplinary processes, among others. The Panel received external training from NACOLE<sup>2</sup>, and one member attended the NACOLE national conference for civilian review professionals.

## Duties of the Panel

It is the responsibility of the panel to:

- ❖ Provide external oversight of Boston Police Internal Affairs investigations to monitor thoroughness and fairness;
- ❖ 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 Complaint Mediation Program's participation level and effectiveness.

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<sup>1</sup> As of August 5, 2009, David Hall officially completed his duties as a member of the CO-OP to take on a new position as the President of the University of the Virgin Islands. A search for his replacement on the board is currently underway.

<sup>2</sup> NACOLE is an acronym for the National Association for Civilian Oversight of Law Enforcement

## 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.
- ❖ Has 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<sup>3</sup> (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.

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<sup>3</sup> Please note that last year's annual reported that the CO-OP makes recommendations to the Chief of BPSD. The Bureau of Professional Standards and Development which encompassed the Internal Affairs Division, Anti-Corruption Division, Auditing and Review Unit, Recruit Investigations Unit, and the Training and Education Division was split into two bureaus, the Bureau of Professional Standards (BPS) and the Bureau of Professional Development (BPD). The Chief of BPS now oversees only the Internal Affairs Division, the Anti-Corruption Division, Auditing and Review Unit and the Recruit Investigations Unit. The Training and Education Division is now housed under the new Bureau of Professional Development.

## 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 within fourteen (14) days of the mailing date of the notice from IAD.<sup>4</sup> 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](mailto: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.

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<sup>4</sup> As of May 13, 2009, IAD began sending out notification letters that included a new CO-OP Appeal Form which is pre-printed with the IAD Case #, the name of the complainant and the date the appeal is due. This form is also available for download on the CO-OP's website at: [www.cityofboston.gov/POLICE/CO-OP](http://www.cityofboston.gov/POLICE/CO-OP)

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 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 (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.

# Community Outreach

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Outreach efforts are an important component of the work of the Community Ombudsman Oversight Panel. Our approach has been an active and on-going process to raise awareness of the Internal Affairs complaint process and to show that the process is accessible and accountable to the community.

When citizens are given an opportunity to learn more about the police complaint process and how it works, i.e. what constitutes a complaint; who can file a complaint; and what steps can be taken if a complaint is denied, major steps are made toward promoting trust in the police and the communities they serve.

The CO-OP outreach plan continues to involve public meetings to garner community input and to meet with as many citizens as possible through organizations such as Freedom House and Alianza Hispana. Freedom House is an organization that focuses on education, technology and leadership development for youth, families and seniors, and Alianza Hispana was established to empower individuals and families, strengthen communities and develop leaders through high-quality education and social services, advocacy and community organizing.

The need for effective communication between the citizens of Boston and the Boston Police Department prompted the CO-OP to also meet with managers from one of the largest housing properties in the city. WINN Management has over twenty properties, many with one hundred or more residents in communities in the city. Meetings that were held with the various property managers resulted in an agreement between many of the properties and CO-OP to conduct presentations at the monthly resident meetings. Although the list that follows are the various properties that were contacted and meetings scheduled, outreach activities by the members of the CO-OP have been curtailed due to budget constraints.

The following is a list of properties that were contacted:

1. Daly House
2. Norfolk Terrace
3. Nazing Court
4. On the Square
5. Washington Columbia
6. Academy Homes
7. Quincy Geneva
8. Madison Park Properties
9. Bancroft-Urban Edge
10. Fieldstone Apts.
11. Brown/Kaplan/Cooperative
12. Codman Square Apts.
13. Norfolk Terrace
14. Roxbury Corners
15. Parmelee Court Homes
16. Langham Court
17. Franklin Hill Apts.
18. Granite Lena Park
19. Erie Ellington
20. Alice Taylor Development
21. Camden
22. Commonwealth
23. Fairmount
24. Gallivan
25. United Housing
26. Clara Muhammad Apts.
27. Stony-Brook Gardens
28. Lofts Lower Mills

The following organizations have agreed to be more involved with CO-OP and received training on how to help citizens file complaints:

1. American Civil Liberties Union of Massachusetts
2. Boston Campaign for Proficiency
3. First Church in Roxbury
4. National Lawyers Guild
5. National Police Accountability Project
6. Project RIGHT
7. Quincy Geneva Housing Corporation
8. VOX Project
9. Youth Advocacy Project

### **Brochures**

The Community Ombudsman Oversight Panel Brochure provides an introduction and information on how to file an appeal. It is given out at meetings and is available upon request or for download off the CO-OP website. (See Appendix H)

### **Website**

Information about CO-OP, its purpose and the complaint appeals process is available to the public on the City of Boston BPD website at [www.cityofboston.gov/POLICE/CO-OP](http://www.cityofboston.gov/POLICE/CO-OP) . A link is provided to the Executive Order (See Appendix G), biography of each panel member, email address, a downloadable version of the CO-OP brochure and new appeal form (See Appendix C) and contact information.

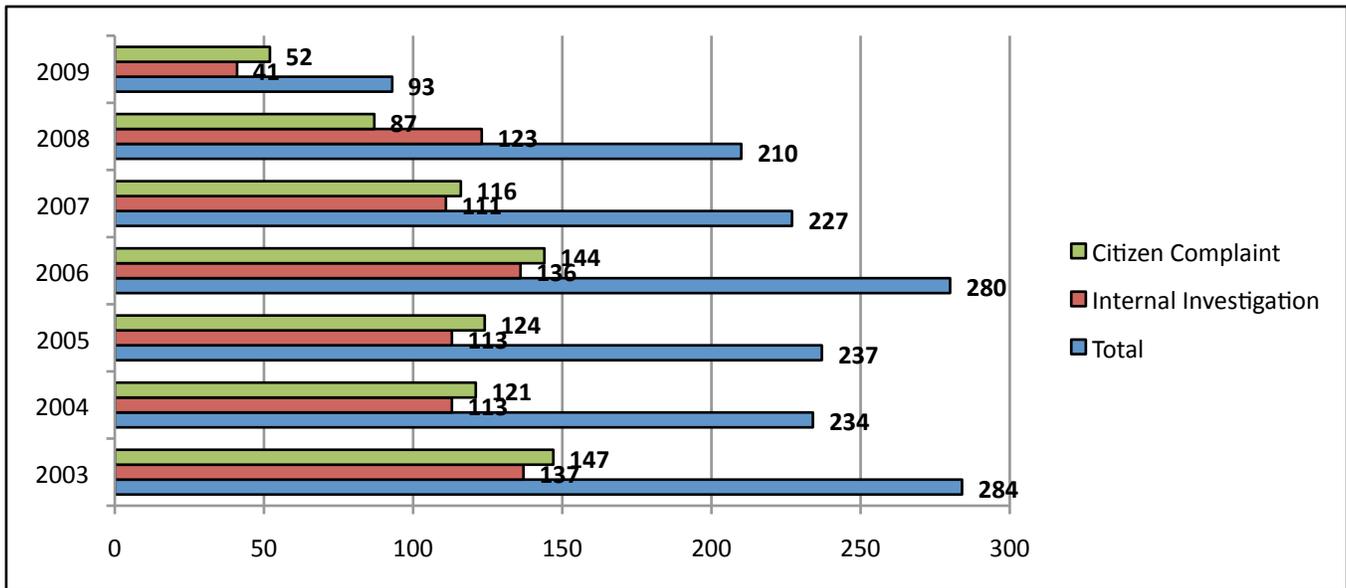
### **Conference**

In October, 2008, one CO-OP member attended the 14<sup>th</sup> National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference in Columbus, Ohio. NACOLE provides information and support for member agencies in this country and around the world. The annual conference provides members with opportunities to learn and network with others who are engaged in the same type of oversight responsibilities.

# Internal Affairs Complaint Data

The following graph (see Figure 1) illustrates the number of complaints generated within the Internal Affairs Division for the years 2003 through June 30, 2009. Complaints are also broken down by those cases which were externally generated and those internally generated.

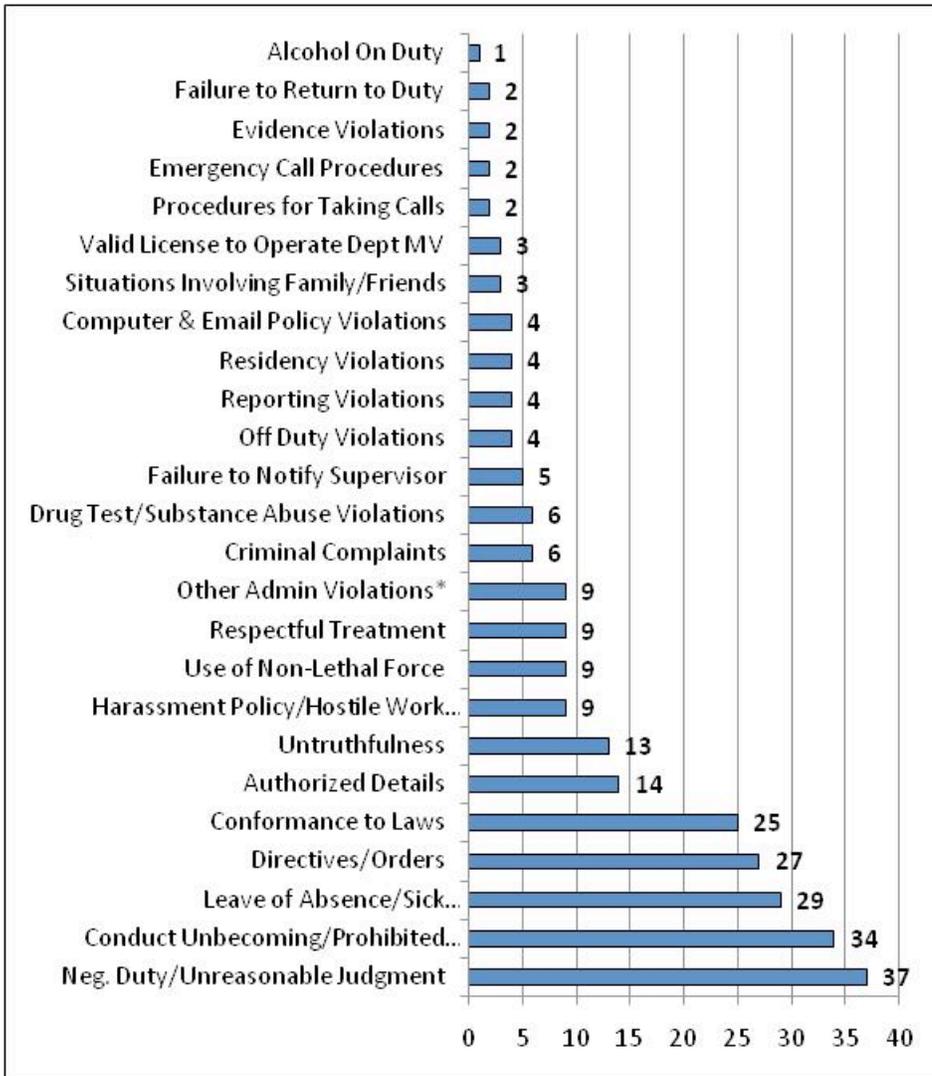
**Figure 1** 2003 - 2009 Internal Affairs Division (IAD) Complaint Investigation Data



## Observations

- IAD investigates an average of 245 complaints per year. Roughly half of the complaints are internally-generated and the other half is a result of a citizen complaint.
- In the years 2003-2008, IAD averaged 122 internal investigations per year.
- In the years 2003-2008, IAD averaged 123 citizen complaint investigations per year.
- In 2008, there was a thirty-three percent (33%) drop in citizen complaints filed from the previous year.
- Overall, IAD has been trending downwards in complaint investigations.

Figure 2 Internal Complaints



\*Other Admin Violations = 9 categories consolidated for reporting in which 1 allegation was made per category

Internal complaints are generated by complainants employed by the Boston Police Department. A complaint investigation may contain one or more allegations. “Allegation” refers to a suspected violation of a rule and procedure that is brought by the complainant against a target civilian employee or police officer.

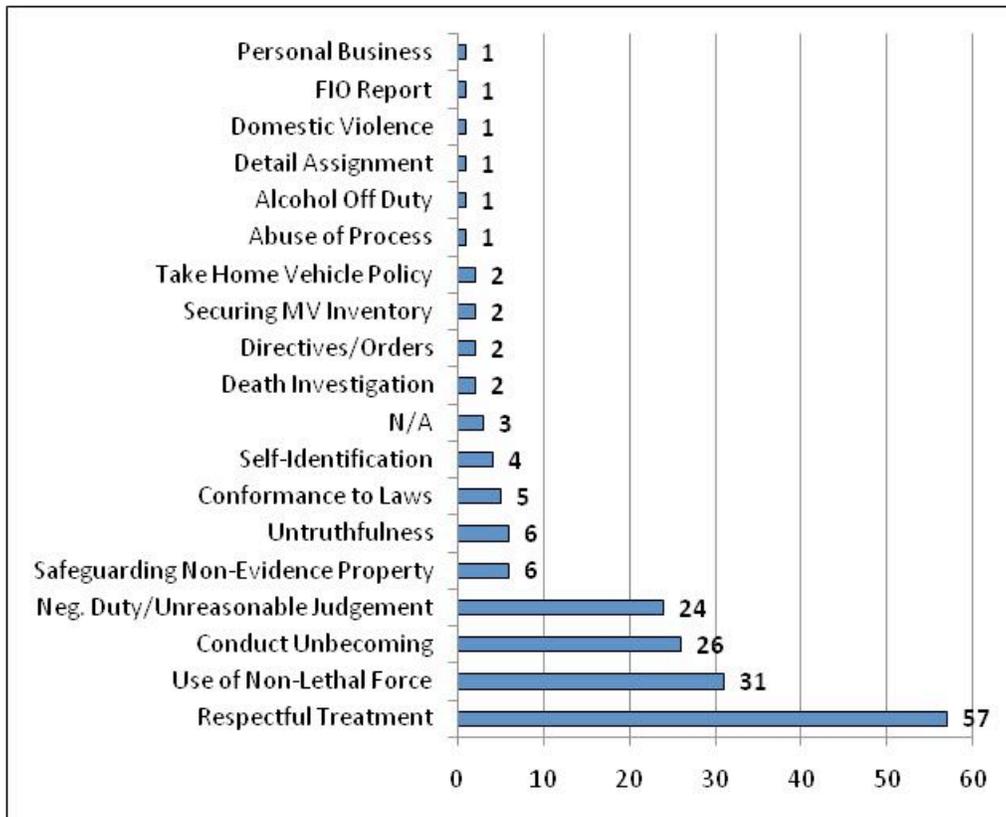
This graph (see Figure 2) illustrates a breakdown of allegations by type brought by complainants within the police department during an intake period of January 1<sup>st</sup> through December 31<sup>st</sup> in 2008.

Allegations, additional complainants and target personnel may be added during the investigative phase of an internal investigation case.

## Observations

- Neglect of Duty and/or Unreasonable Judgment was internally, the most complained of violation brought to the attention of internal investigators.
- Similar to the previous year, Neglect of Duty, Conduct Unbecoming and Reporting for Duty are still among the most common violations reported.
- In 2008, IAD saw an increase in the number of Conformance to Laws violations, which were a direct result of an internal Department of Motor Vehicle License Check Audit performed by the Auditing and Review Unit.
- Substance Abuse violations doubled in 2008 (6 reported) from 2007 (3 reported).

**Figure 3 External Complaints**



External complaints are generated by complainants not employed by the Boston Police Department. A complaint investigation may contain one or more allegation.

This graph (see Figure 3) illustrates a breakdown of allegations by type brought by complainants external to the police department during an intake period of January 1<sup>st</sup> through December 31<sup>st</sup> in 2008.

### Observations

- Respectful Treatment was the most complained of violation brought to the attention of internal investigators by non-police department complainants.
- Similar to the previous year, complaints involving Respectful Treatment, Use of Non-Lethal Force and Conduct Unbecoming are still among the most common allegations reported.

### IAD Findings

Complainants are notified by internal investigations of complaint findings once the Police Commissioner has made a determination based upon the case investigation and recommendations by members of the Bureau of Professional Standards, the Office of the Legal Advisor and the Internal Affairs Division.

In 2008, IAD amended their citizen notification letter to include more information, including a reason for the finding, a complete list of the violations and more detailed information about the right to appeal.

Occasionally, findings may be overturned. Sustained cases may be appealed to a Department Hearing Officer, Civil Service, independent arbitration and Superior Court. Not Sustained, Exonerated or Unfounded cases may be appealed to the Community Ombudsman Oversight Panel who review the cases and give recommendations

to IAD in concurrence or for additional review or re-investigation where they see it is warranted for fairness and thoroughness of the investigation.

A complaint can result in any of the following findings defined 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.

**NOT SUSTAINED:** Insufficient evidence available to either prove or disprove the allegations in the complaint. The police officer is considered innocent until proven guilty.

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

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

**FILED:** A case is placed on file but can be re-opened at any time. A couple of examples for which a case may be filed could be that the investigation was inconclusive due to one or more reasons beyond the control of the investigator or due to a lack of cooperation on the part of the complainant.

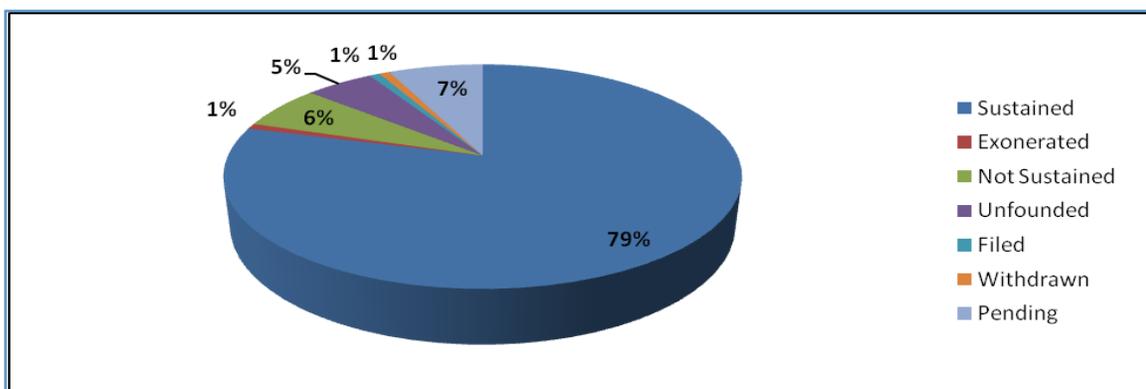
**WITHDRAWAL:** The complainant comes into IAD to sign a withdrawal form to withdraw a complaint. On occasion, the police department may choose to continue with the investigation despite the complainant's desire to withdraw the complaint.

### Allegation Findings in 2008

The next two graphs (see Figure 4 and 5) illustrate a breakdown of allegations by findings during the period of January 1<sup>st</sup> through December 31<sup>st</sup> in 2008.

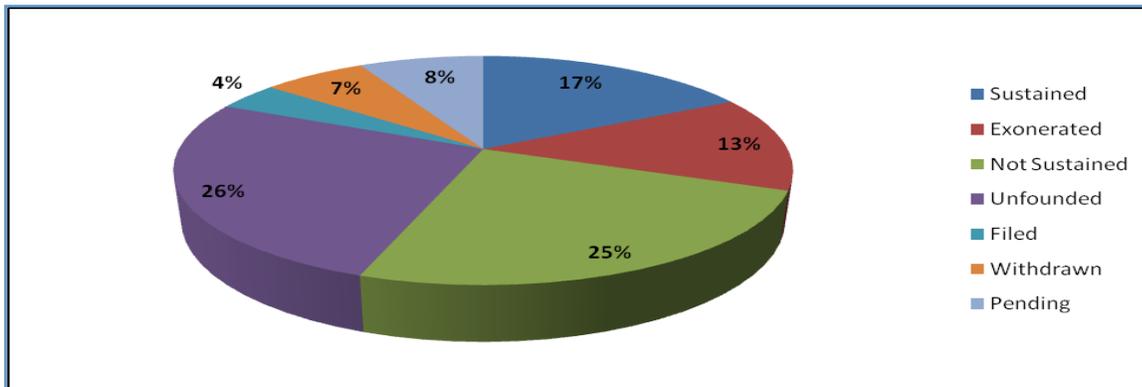
The graph below (see Figure 4) demonstrates the findings of allegations brought forth by personnel employed by the police department. Seventy-nine (79%) percent of these allegations were sustained, a five (5%) percent drop from 2007, six (6%) percent not sustained, five (5%) percent unfounded and one (1%) percent exonerated. A very small percentage (1% each) was either filed or withdrawn. Seven (7%) percent of cases are still pending.

Figure 4 Internal Findings 2008



The following graph (see Figure 5) demonstrates the findings where the complaint was brought by non-police department citizens. Seventeen (17%) percent of allegations were sustained, a four (4%) percent increase from 2007. Twenty-six (26%) percent of allegations were unfounded, twenty-five (25%) percent not sustained, and thirteen (13%) percent exonerated. Seven (7%) percent of allegations were withdrawn and four (4%) percent filed. Eight (8%) percent of cases are still pending.

**Figure 5 Citizen Findings 2008**

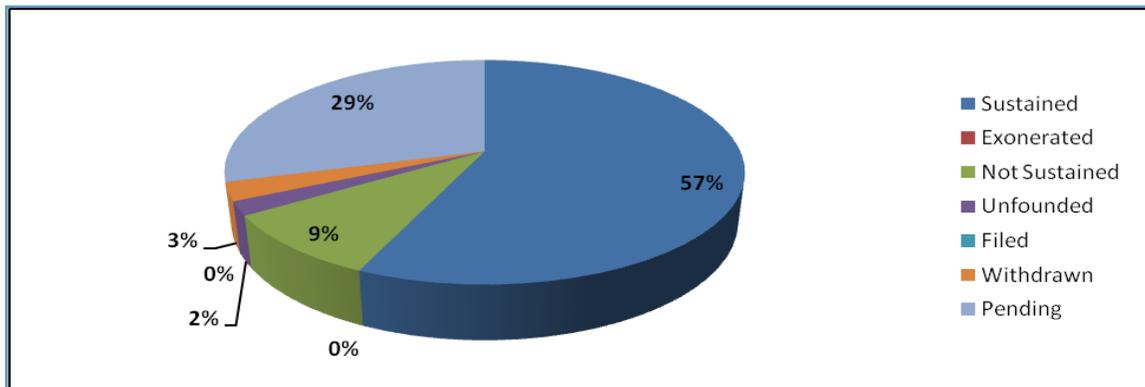


**IAD Findings in 2009**

The next two graphs (see Figure 6 and 7) illustrate a breakdown of allegations by findings during the first half of 2009.

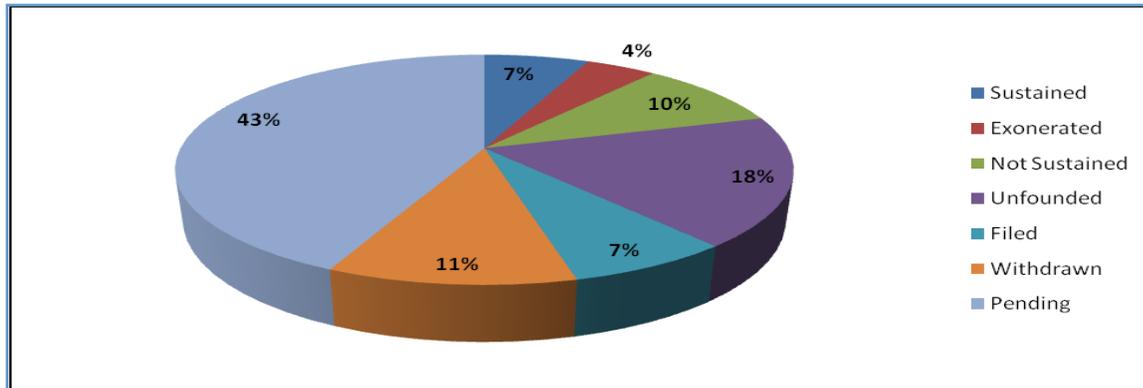
The graph below (see Figure 6) demonstrates the findings on allegations brought by personnel employed by the police department. Fifty-seven (57%) percent of these allegations were sustained, nine (9%) percent not sustained, and two (2%) percent unfounded. Three (3%) percent of allegations were withdrawn. Twenty-nine (29%) percent of cases are still pending.

**Figure 6 Internal Findings 2009**



The next graph (see Figure 7) demonstrates the findings on allegations brought by non-police department citizens. Eighteen (18%) percent of allegations were unfounded, ten (10%) percent not sustained, seven (7%) percent sustained, and four (4%) percent exonerated. Eleven (11%) percent of allegations have thus far been withdrawn and an additional seven (7%) percent have been filed and can be subject to re-opening at any time. Forty-three (43%) percent of cases are still pending.

**Figure 7 Citizen Findings 2009**

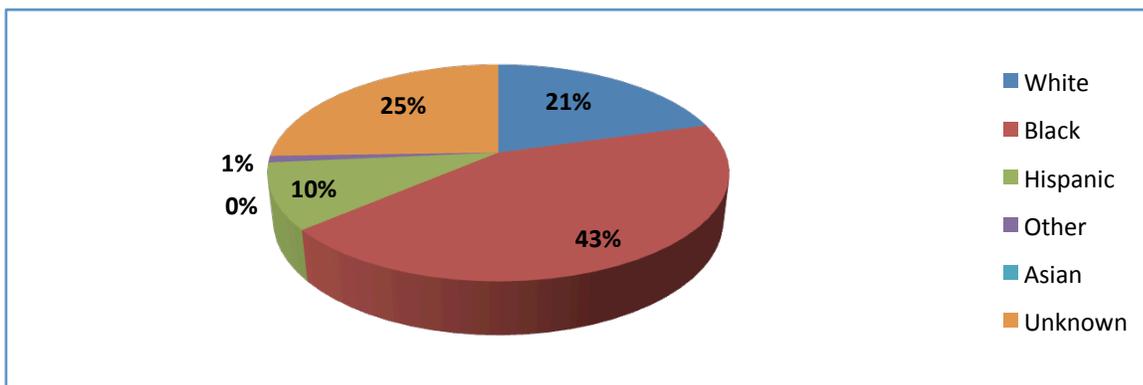


**Racial Breakdown in 2008 Complaints**

The following graphs and charts (see Figures 8 through 11) illustrate a breakdown by race of citizens who filed a complaint and the employees against whom complaints were alleged in 2008.

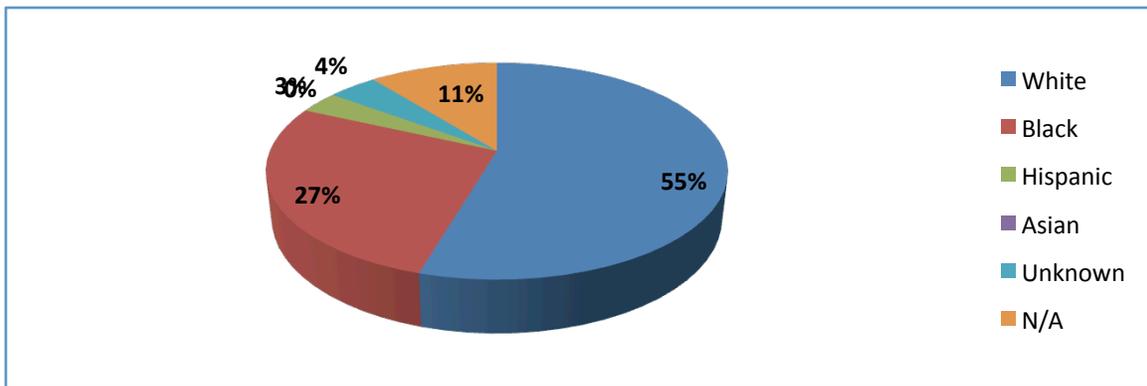
The graph below (see Figure 8) demonstrates a breakdown by race of those citizens who filed a complaint against a BPD employee in 2008. Forty-three (43%) percent of the complaints were filed by black citizens. Twenty-one (21%) percent of citizens who complained in 2008 were white. Ten (10%) percent of complainants were Hispanic and twenty-six (26%) percent, race was unknown.

**Figure 8 Complainant Race**



The following graph (see Figure 9) demonstrates a breakdown of the race of the BPD employees against whom complaints were filed in 2008. The majority of employees receiving complaints, fifty-five (55%) percent, were white. This is slightly less than the representation of white employees in the police department population (see Figure 10). Twenty-seven percent of police department employees receiving complaints were black. This is approximately representative of black employees in the police department (see Figure 10). Three (3%) percent of the complaints filed were against Hispanic employees and another fifteen (15%) percent involved cases where race was unknown or unavailable.

**Figure 9** BPD Employee Race



**Figure 10** Racial Breakdown Comparison against BPD Population

| Race         | Count      | % Of Total   | % of BPD Population~ |
|--------------|------------|--------------|----------------------|
| White        | 66         | 54.5         | 64.7                 |
| Black        | 33         | 27.3         | 24.6                 |
| Hispanic     | 4          | 3.3          | 8.2                  |
| Asian        | 0          | 0.0          | 2.5                  |
| Unknown      | 5          | 4.1          | 0.0                  |
| N/A          | 13         | 10.7         | 0.0                  |
| <b>Total</b> | <b>121</b> | <b>100.0</b> | <b>100.0</b>         |

~Statistics gathered from the Boston Police Department’s Strength Report

In 2008, no Asian citizens complained against a BPD employee (see Figure 8) and no Asian employees were the subject of a complaint (see Figure 9).

## Location of Citizen Complaint Incidents Filed in 2008

Previous data, charts and graphs have demonstrated IAD complaint statistics as an aggregate of the entire City of Boston. The following map (see Figure 11) and charts (see Figure 12) demonstrate complaints broken down by geographical location, specifically police district. This provides an analysis of the location of incidents resulting in complaints in 2008.

Figure 11 Incident Locations

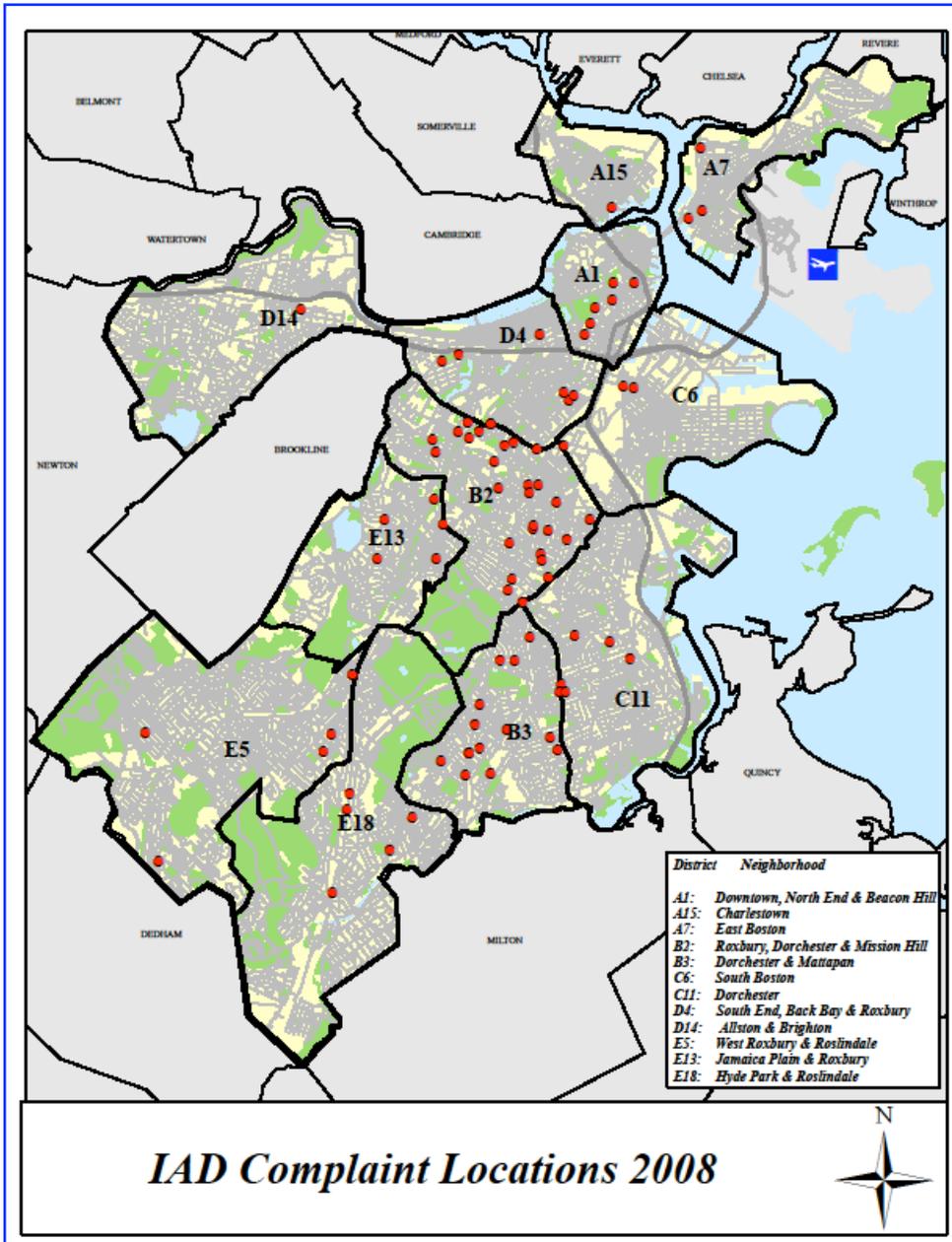


Figure 11 displays the geographical location of incidents which resulted in an external complaint being filed. IAD received a total of 87 external complaints in 2008. All known incidents resulting in complaints which occurred within the city limits are mapped.

An examination of the map reveals that Districts B2 (Roxbury, Dorchester and Mission Hill) and B3 (Dorchester and Mattapan) have amassed more complaints than other police districts in the city. Districts A15 (Charlestown), A7 (East Boston), C6 (South Boston) and D14 (Allston & Brighton) received the fewest complaints by citizens in 2008.

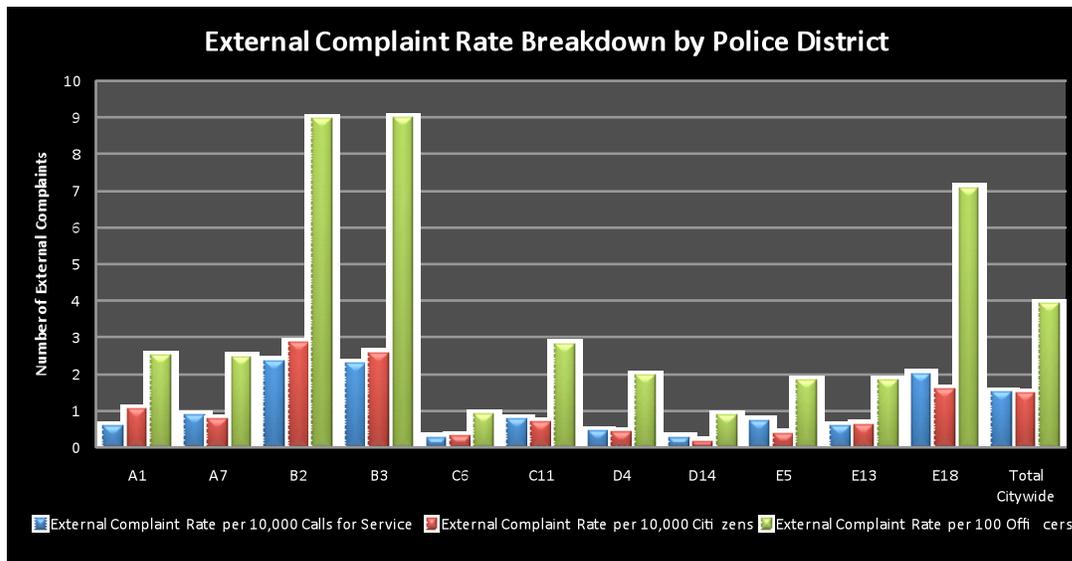
All complaints filed by citizens in 2008 involved a Boston police officer except for one complaint which alleged misconduct against a civilian employee assigned to the Operations Division of the Department.

## Citizen Complaint Rate by District in 2008 Complaints

In order to determine an external complaint rate for each district, citizen complaint numbers were calculated in light of 911 calls for service, citizen population and officer population. This analysis gives a heightened comparative assessment of how often complaints arise when a police officer responds to calls.

The following chart (see Figure 12) provides this analysis:

Figure 12 External Complaint Rate by Police District



## Observations

- There were a total of 569, 175 calls for service citywide in 2008. Of those calls, Districts A1, B2, D4 and C11 received the most calls for service.
- Districts B2, B3 and E18 had the highest rate of complaints for every 10,000 calls for service. Districts C6 and D14 had the lowest rate.
- Districts B2, B3 and E18 had the highest rate of complaints for every 10,000 citizens living within the district area. District 14 had the lowest rate.
- Districts B2, B3 and E18 had the highest rate of complaints for every 100 officers assigned to the district. District 14 had the lowest rate.
- A review of citywide numbers reveals that overall, an average of 1.5 complaints were filed for every 10,000 calls for service and 10,000 citizens in the district population. 4 complaints were filed for every 100 officers.

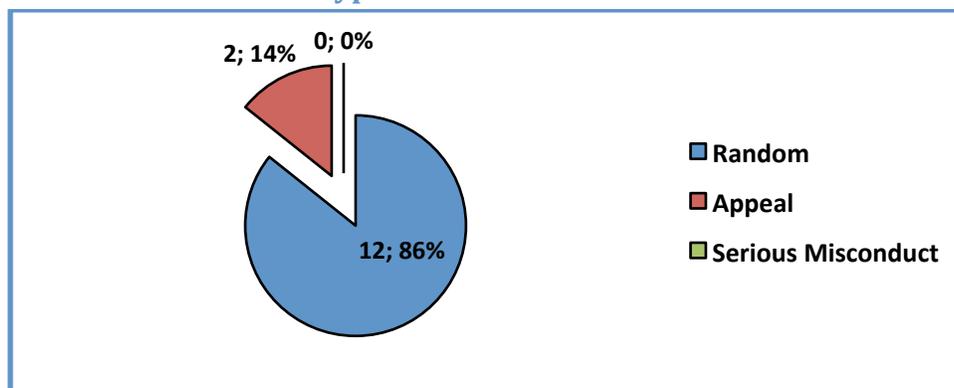
# CO-OP Cases and Recommendations

## 2007 Cases

The Community Ombudsman Oversight Panel, also known as CO-OP, first began its review of cases in October of 2007. Fourteen (14) cases were assigned to the CO-OP for review, twelve (12) of which were part of a random audit and two (2) of which were appealed by complainants (See Figure 1). The CO-OP did not review any serious misconduct cases in 2007 (for a definition of what constitutes a serious misconduct case please refer to page 10 in this document, *Cases reviewed by Panel, Section A*). All cases assigned or appealed to CO-OP contained allegations against Boston Police personnel which were not sustained, exonerated or unfounded by the Department (for more information, refer to page 8, *Cases reviewed by Panel*).

Figure 1

2007 CO-OP Case Types

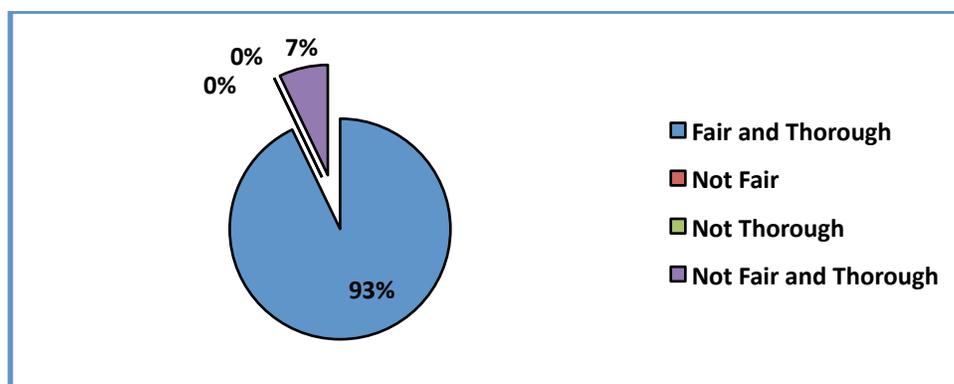


## 2007 Recommendations

Each case was assigned to an individual Ombudsman for review. The Ombudsman reviewed the entire Internal Investigation case file to make a recommendation to the Chief of the Bureau of Professional Standards. Of the fourteen (14) cases which were assigned to the CO-OP for review, initially sixty-two (62) percent were found to be fair and thorough, fifteen (15) percent fair but not thorough, and eight (8) percent not fair and not thorough. The remaining fifteen (15) percent were still under review at the time the last annual report was released on July 31, 2008. After much deliberation and additional investigation between the CO-OP and IAD, currently ninety-three (93) percent of all 2007 case investigations have been deemed fair and thorough with seven (7) percent still pending further review (See Figure 2).

Figure 2

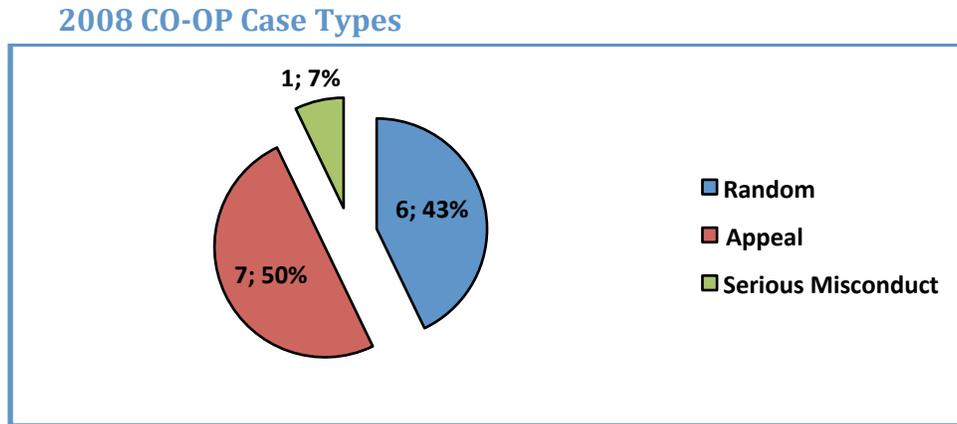
2007 CO-OP Recommendations



### 2008 Cases

Like 2007, the CO-OP reviewed fourteen (14) cases in 2008. They received seven (7) appeals, six (6) random cases and one (1) serious misconduct for review (See Figure 3). All cases assigned or appealed to CO-OP contained allegations against Boston Police personnel which were not sustained, exonerated or unfounded by IAD.

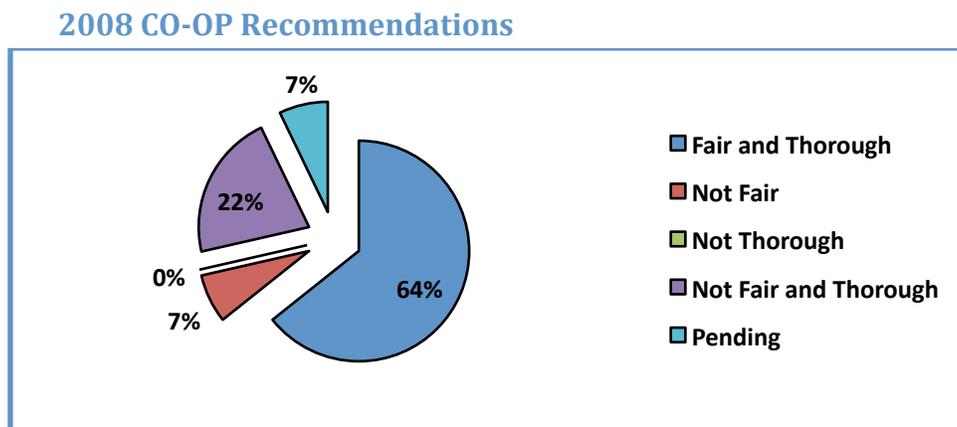
Figure 3



### 2008 Recommendations

Of the fourteen (14) cases which were assigned to the CO-OP for review, sixty-four (64) percent were found to be fair and thorough, twenty-two (22) percent not fair and thorough and seven (7) percent not fair. The remaining seven (7%) percent are still under review (See Figure 4). The total number of cases (29%) found to be other than fair and thorough are pending further review and/or re-investigation by IAD.

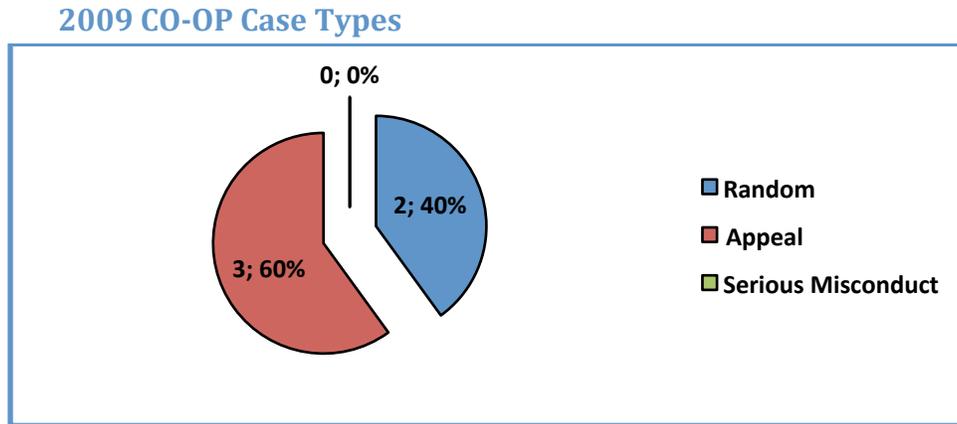
Figure 4



## 2009 Cases

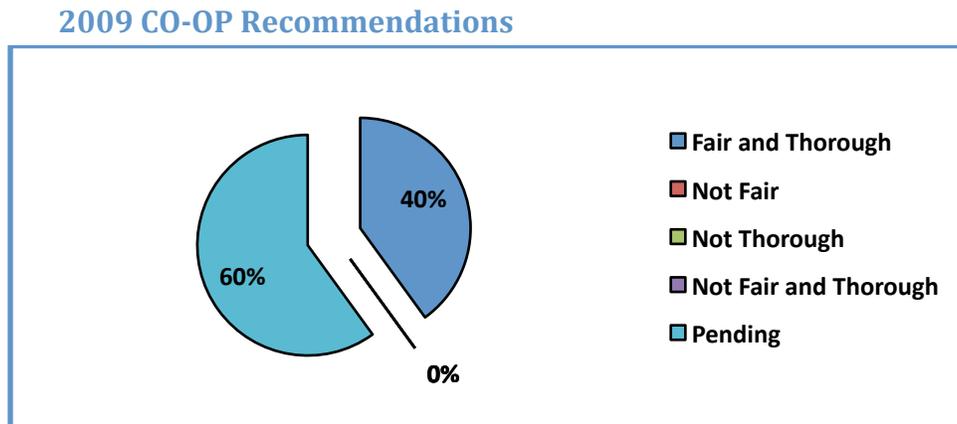
Thus far in 2009, the CO-OP has been assigned five (5) cases for review. Of those cases, three (3) are the result of an appeal and two (2) as part of a random audit. No serious misconduct cases have yet been assigned for 2009 (See Figure 5).

Figure 5



Of the cases assigned, forty (40) percent have been deemed fair and thorough investigations. Sixty (60) percent are still pending review.

Figure 6



## Definitions of CO-OP Case Recommendations

**Fair and Thorough:** Investigation of case was fair and thorough.

**Fair But Not Thorough:** Investigation of case was fair; however, investigation was not thorough.

**Not Fair But Thorough:** Investigation of case was not fair, however, investigation was thorough.

**Not Fair and Not Thorough:** Investigation of case was not fair and not thorough.

**Pending:** Case review is still pending a CO-OP recommendation.

# OBSERVATIONS BY THE PANEL

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During this second year period of reviewing complaints (appeals, random and serious misconduct), we have observed certain patterns that exist in the initial stages of complaints, and in the process of conducting and concluding investigations. Our observations are based on a limited sample of cases and thus may not represent an accurate and complete picture of the entire process. However, these observations were important enough to raise because some of them relate to changes that are recommended for the IAD process. Others may be relevant in regard to how officers are trained and instructed about their interactions with citizens. The following is an up-date of the actions that have been taken in response to the recommendations that were listed in the 2008 Annual Report.

## Recommendations in Regard to IAD Process

### Complainant/Witness Identification

- Observation: There were instances where actual or potential witnesses to an incident were not identified or interviewed.
- Recommendation: There needs to be a more serious and concerted attempt made to follow-up with complaining parties or witnesses.
- Action Taken: Investigators are advised to actually go to the residence of the complainant or witness in order to establish contact and cooperation. In the event that there is no response, a notice should be left. Complainants and/or witnesses are asked about additional witnesses to the incident. If answers are not forthcoming, there must be factual documentation noted in the report (dates, times of messages, certified mail and any home visits.)

### Conclusive Statements

- Observation: Investigative reports often included conclusive statements without facts to support the conclusion.
- Recommendation: All conclusions contained in an investigation should be substantiated by facts obtained during the investigation.
- Action Taken: Statements and conclusions have been found to be supported with specific facts and rationale to justify such statements.

### Incomplete Information

- Observation: In one instance the audio tape of the subject officer was not available. In several other instances, tapes were blank.
- Recommendation: Interviews that are recorded should be available and checked out prior to submitting them to CO-OP.
- Action Taken: CO-OP members have been assured that recordings will be scrutinized prior to submitting them to the Panel.

### Leading Questions

- Observation: There were instances where the investigator used “leading” questions while interviewing complainant or officer. There was at least one example of the investigator providing answers to the officer and cross-examining the complainant. Though the complainant had a weak case based on the facts presented, it was still unacceptable for the questioning of the complainant to be qualitatively different from that of the officer.
- Recommendation: Training in interview techniques should occur at least on a yearly basis.
- Action Taken: Leading questions appear to have decreased and interviews appear less combative. IAD attended a 4-hour seminar on Interview Techniques and Skills for Internal Investigators, taught by John Sofis Scheft of Law Enforcement Dimensions. IAD attended a mandatory 2-day seminar on Internal Investigations for Law Enforcement Investigations, taught by Al Donovan of APD Management Consultants.

### Final Letter to Complainant

- Observation: The final letter sent to the complainants from the Superintendent indicating that the complaint was not sustained does not provide any rationale or summary of the findings upon which the decision was based. Therefore, the citizen does not have a clear understanding of why their complaint was denied or whether they should appeal the decision.
- Recommendation: A statement of the reasons sustaining a complaint should be provided to the complainant in the final letter they receive from the Superintendent. A separate letter should be sent from the CO-OP indicating to the complainant of his/her right of appeal. This serves to indicate the independence of the CO-OP process and may make citizens more willing to pursue their right to appeal.
- Action Taken: A final letter is now sent to complainants from the Superintendent which provides a summary of the findings upon which decisions are based. Letters were amended last fall to include a summary explanation of the decision. Letters were again amended in

the Spring to include a new format with a more extensive summary explanation of the decision, the original complaint narrative, a listing of all allegations by the employee with the findings, a clearer explanation of the CO-OP appeals process, and a pre-printed CO-OP Appeal Form including complainant name, IAD case number and date due. (See Appendix C)

### Complaint Form Access

Observation: Complaint form is not widely available or distributed.

Recommendation: Though the CO-OP link to the online complaint information form makes complaints more accessible, the complaint forms needs to be made available at additional locations and in different languages. In addition, based on a survey of the complaint intake process of a few selected cities conducted by CO-OP, it is clear that the Boston intake process could be more accessible and transparent. It is recommended that some of the features of other cities, like multiple intake information about the complaint process; and clear guidelines for those taking complaints be considered and adopted by the Boston Police Department. Though more “citizen friendly” approaches have been embraced by cities that have independent boards that conduct the investigation, these features become even more important when the police department is in control of the initial intake procedure.(See Appendix F)

Action Taken: Complaint information forms are now placed in every Bureau of Professional Standards and Development brochure and are made available at every district police station, court house and City Hall. Distributed in 2009, these forms are intended to help facilitate citizens with the complaint process. The form can be mailed directly to IAD, hand delivered to any district station or IAD, or completed online.

### Appeals Process Study

Observation: Many eligible citizens of Boston are not utilizing the appeals process.

Recommendation: A study investigating why citizens are not utilizing the appeals process through CO-OP should be conducted.

Action Taken: Per the request of the CO-OP, a study by the Harvard Kennedy School investigating why eligible complainants have not chosen to appeal was conducted. The report was released to BPD and CO-OP in May, 2009. (See Appendix I)

## Recommendations in Regard to Police Conduct

### De-Escalation Efforts

**Recommendation:** Officers should be trained and instructed to avoid actions which may “escalate” encounters with citizens or create unnecessary dangers. The escalation of events through poor choices, overreaction and overly harsh tones can transform normal interactions with citizens into problematic and traumatic ones.

**Action Taken:** A meeting with IAD investigators took place on 2.10.09. This meeting involved a comprehensive discussion between the CO-OP and investigators to discuss patterns seen by CO-OP during case review. Also discussed were the IAD intake process and a follow-up to recommendations made in the 2008 Annual Report. The CO-OP also met with Academy instructors to discuss their concerns about actions which actually “escalate” encounters with citizens and the dangers that occur as a result of poor choices. Examples of such instances were communicated with the instructors.

### Citizen/Police Interaction

**Recommendation:** Citizens should be made aware of the reason an officer has stopped them when that information is requested. The current policy not mandating officers to inform operators for the reason for the stop may contribute to negative citizen/police interaction. Though there may be legitimate reasons for the existence of this policy, there are also potential downsides that must be considered and addressed.

**Action Taken:** CO-OP members met with Academy instructors and discussed the policy itself, how officers are currently instructed in the Academy to handle motor vehicle stops and its implications upon the community.

## Recommendations in Regard to CO-OP Structure and Operations

### Timely/Thorough Responses

**Recommendation:** It is important that investigators respond in a timely and thorough manner to questions raised and inquiries made by panel members.

**Action Taken:** Investigators are instructed to respond to inquiries by the Panel as quickly as possible. Some recommendations have required IAD to pursue additional investigations which may take more time, but it is the goal of IAD to respond to all questions and inquiries thoroughly and address the Panel’s concern.

### Regular Monitoring of Recommendations

Recommendation: Recommendations by the Panel should be taken seriously. It is recommended that the Superintendent regularly monitor the implementation of recommendations from the Panel and provide periodic updates to the Panel.

Action Taken: Based on discussions with the Superintendent and CO-OP, many of the recommendations suggested by panel members have been favorably addressed.

### Case Appeal to Police Commissioner

Recommendation: Due to the limited number of cases appealed by citizens, there was no instance in which the Panel recommended a different result than the one reached by the Police Commissioner.

Action Taken: The Mayor's Executive Order establishes criteria for a panel member to appeal to the Police Commissioner if the Superintendent decides not to pursue a case investigation any further. The final decision rests with the Police Commissioner.

### Operating Budget

Recommendation: The CO-OP should have an operating budget.

Action Taken: Since its inception, the CO-OP has not had an operating budget. As a result basic considerations such as training, research, communications, public relations and data collection have not been fully addressed. We see this as critical, especially under this model where concerns have been expressed about the Panel's autonomy.

### Random Case Adjustment

Recommendation: If the number of cases appealed remains low, some upward adjustment in the number of random cases that are reviewed should be considered. Otherwise, the Panel will only be able to view a very limited number of cases which may detract from the credibility of our observations and recommendations.

Action Taken: Though discussions have taken place between CO-OP and IAD, no final resolution has been made.

### Additional Case Review

Recommendation: The Panel should also be able to review a limited number of sustained cases so that we can obtain a more balanced perspective of the entire operation of IAD.

Action Taken: A final resolution is under negotiation.

## Transparency

**Recommendation:** There should be to the extent possible, transparency of data in regard to number, types and outcome of complaints. The type of data contained in this report should be compared to other similarly situated police departments around the country when such comparisons are possible. This second annual report has attempted to embrace this ideal and continues to receive cooperation from IAD.

**Action Taken:** Data is provided to CO-OP per request. IAD also provides data for the Boston Police Department's Annual Report, which is made available to the public. IAD provided the Harvard Kennedy School with extensive data for their report. These statistics provided additional insight not included in the recent CO-OP and BPD Annual Reports.

## Outreach Activities

**Recommendation:** Though panel members attended numerous events, we understand that community outreach must remain a cornerstone of the CO-OP. We recognize a need for additional outreach efforts to inform and educate the Boston citizens about the existence, functions and services offered by the CO-OP. We especially want to reach out to organizations that serve youth in the Boston area and increase our outreach to residents who do not speak English as a primary language. We also want to convene meetings with a broader membership of the Boston Police Department. We believe that these efforts and others can help build confidence in this process.

**Action Taken:** The CO-OP outreach program, designed to raise awareness about the complaint review process in the City of Boston was curtailed this year due to budget constraints. Fortunately in April 2009, IAD along with CO-OP conducted training to various advocates and attorneys from local community groups to explain and discuss both the IAD complaint intake process and the CO-OP appeals process. This training gave groups the opportunity for discussion, clarification and feedback. These advocates will now be able to better assist citizens with filing complaints and/or appeals. (See Appendix E for the list of attendees and training materials)

## Mediation Program

**Recommendation:** The Complaint Mediation Program that was originally envisioned and incorporated into the Mayor's Executive Order should be implemented. Resources must be provided so that experienced mediators can institute and conduct this program.

**Action Taken:** This program is still in development. City resources are at a minimum but this option is something the Department looks forward to implementing.

# Appendix A

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TO: Superintendent Kenneth Fong  
Chief, Bureau of Professional Standards

CC: David Hall, John O'Brien and Ruth Suber  
Community Ombudsman Oversight Panel

FROM: Yola Cabrillana, Executive Secretary  
Bureau of Professional Standards  
Liaison to the Community Ombudsman Oversight Panel

RE: Summary of Reviewed Community Ombudsman Oversight Panel Cases

DATE: 10/1/09

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Please find below, an updated summary list of CO-OP cases reviewed and filed in our office.

## [2007 Cases with CO-OP Determinations](#)

| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 07-01R               | Random  | Hall             |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>   |                  |
| <b>Violation(s):</b> | 102-3 Conduct Unbecoming, 102-35 Conformance to Laws  |                  |
| <b>Summary:</b>      | Complainant alleged that while handcuffed and placed in the rear of the patrol wagon, police officer grabbed her right breast and pinched her right buttocks.   |                  |
| <hr/>                |   |                  |
| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
| 07-02R               | Random  | O'Brien          |
| <b>Finding:</b>      | <b>Fair and Thorough.</b> Additional efforts made by Investigator are commended.  |                  |
| <b>Violation(s):</b> | 304-2 Excessive Force, 102-4 Judgment   |                  |
| <b>Summary:</b>      | Woman alleged that police officer was verbally and physically abusive towards her son. Also that he illegally arrested woman.   |                  |
| <b>Note:</b>         | Addendum Investigative Report from Investigator documenting further attempts made to contact witnesses in January 2008 was forwarded to O'Brien on 3.07.08 as a response to 'Other' Preliminary Finding submitted by O'Brien on 11.12.07. [Initial Comments: Case resulted in proper determination but more effort could be made to find potential witnesses. |                  |

| <u>Case #</u>               | <u>Type</u>  | <u>Ombudsman</u> |
|-----------------------------|--|------------------|
| 07-03R                      | Random   | Suber            |
| <b>Finding:</b>             | <b>TBD</b>   |                  |
| <b>Additional Tasks:</b>    | Case reassigned to new investigator and additional investigative tasks and reports completed. Addendum Report from Investigator was forwarded to Suber on 4.10.08 as a response to Information Inquiry submitted by Suber on 11.13.07.   |                  |
| <b>Preliminary Finding:</b> | Not Fair and Not Thorough. More effort should have been put into case to question possible personnel involved. Case should have remained open until complainant was re-located after moving out of reported residence.   |                  |
| <b>Violation(s):</b>        | 302-4 Excessive Force  |                  |
| <b>Summary:</b>             | Complainant witnessed officers fighting with a man they were trying to arrest in front of the Roxy Nightclub. Complainant alleged that officers threw suspect against his car causing damage to his mirror and fender. Complainant stated when he attempted to inform officers of damage; he was pushed to the ground and sprayed with mace. |                  |

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| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 07-04R               | Random  | Hall             |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>   |                  |
| <b>Violation(s):</b> | 102-9 Respectful Treatment  |                  |
| <b>Summary:</b>      | Complainant claimed he was verbally assaulted by officers who were investigating an assault and battery. Officers threatened to arrest him for coming into the station. Sgt reported none of the officers working at the time fit the description by the complainant. |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 07-05R               | Random   | O'Brien          |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>                            |                  |
| <b>Violation(s):</b> | 102-3 Conduct Unbecoming, 102-35 Conformance to Laws |                  |
| <b>Summary:</b>      | BPD Lt. involved in a domestic incident.             |                  |

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| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 07-06R               | Random  | Suber            |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>   |                  |
| <b>Violation(s):</b> | 102-4 Neglect of Duty   |                  |
| <b>Summary:</b>      | On 12.02.06, officer refused to get personal information of a suspect that had assaulted complainant. |                  |

| <u>Case #</u>               | <u>Type</u>   | <u>Ombudsman</u> |
|-----------------------------|---|------------------|
| 07-07R                      | Random  | Hall             |
| <b>Finding:</b>             | <b>Fair and Thorough.</b>   |                  |
| <b>Additional Tasks:</b>    | Investigator Addendum Report submitted to D. Hall on 11.4.08. Memorandum from Fong in response to recommendation, including CO-OP suggestions implemented in IAD report from Hayes, submitted to D. Hall on 7.2.08.                             |                  |
| <b>Preliminary Finding:</b> | Not Thorough. More effort should be made to contact primary witnesses; Home visits if necessary. Conclusionary statements should only be made when there facts exist to support it.   |                  |
| <b>Violation(s):</b>        | 102-4 Neglect of Duty   |                  |
| <b>Summary:</b>             | Complainant stated unknown white male identified self as state trooper in a bar. Complainant alleged supposed trooper showed a firearm and threatened to hurt him. He told an officer that this guy had threatened him and officer did nothing. |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 07-08R               | Random   | O'Brien          |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>  |                  |
| <b>Violation(s):</b> | 304-2 Excessive Force  |                  |
| <b>Summary:</b>      | Complainant stated after misunderstanding with clerk at gas station over price of bottle of window washer, police arrived and complainant states that officer kicked him on the legs and one officer punched him in the face while in handcuffs. |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 07-09R               | Random   | Suber            |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>  |                  |
| <b>Violation(s):</b> | 102-3 Conduct Unbecoming   |                  |
| <b>Summary:</b>      | Complainant alleged that on 6.30.07 while backing her vehicle into a parking space she was threatened by the operator of a vehicle with a specific license plate. Operator claimed to be a police officer. |                  |

**Case #**                      **Type**                              **Ombudsman**  
07-10A                      Appeal                                      Hall  
**Finding:**                      **Fair and Thorough.**  
**Additional**  
**Tasks:**                      Addendum Report from Investigator was forwarded to Hall on 4.25.08 as a  
Response to Information Inquiry submitted by Hall on 01.16.08.  
**Preliminary**  
**Finding:**                      Not Thorough.  
**Additional**  
**Tasks:**                      Addendum Report from Investigator was forwarded to Hall on 4.25.08 as a  
Response to Information Inquiry submitted by Hall on 01.16.08.  
**Violation(s):**              304-2 Excessive Force  
**Summary:**                      Complainant alleged that officer used excessive force when he was placed under arrest.

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**Case #**                      **Type**                              **Ombudsman**  
07-11A                      Appeal                                      O'Brien  
**Finding:**                      **Fair and Thorough.**  
**Violation(s):**              304-2 Excessive Force  
**Summary:**                      Complainant alleged that officer used excessive force during her arrest when he grabbed her arm and  
pulled her from the motor vehicle causing bruising and abrasions.

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**Case #**                      **Type**                              **Ombudsman**  
07-12R                      Random                                      Suber  
**Finding:**                      **Fair and Thorough.**  
**Violation(s):**              304-2 Use of Non-Lethal Force  
**Summary:**                      Complainant alleged that after bouncers at a nightclub assaulted him, an unknown police officer kicked  
him while he was on the ground.

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**Case #**                      **Type**                              **Ombudsman**  
07-13R                      Random                                      Hall  
**Finding:**                      **Fair and Thorough.**  
**Violation(s):**              102-40 Residency  
**Summary:**                      Anonymous complainant alleged that officer is in violation of the City of Boston residency ordinance  
requiring that all police department hires comply with living in the City of Boston.

**Case #**                      **Type**                      **Ombudsman**

07-14R                      Random                      O'Brien

**Finding:**                      **Fair and Thorough.**

**Violation(s):**                      102-8 Directives and Orders

**Summary:**                      Supervising Sergeant alleged that on 3.14.07, two 911 Call Takers signed off their positions and left the floor without being properly relieved, resulting in a shortage of 911 Emergency Call Takers and lost calls.

[2008 Cases with CO-OP Determinations](#)

**Case #**                      **Type**                      **Ombudsman**

08-01A                      Appeal                      Suber

**Finding:**                      **Fair and Thorough.**

**Violation(s):**                      102-9 Respectful Treatment

**Summary:**                      Complainant alleged that she went to the area station to obtain information on license plate of motor vehicle that was involved in accident with her. Complainant alleged that civilian clerk would not give her that information, was rude and refused to get her supervisor.

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**Case #**                      **Type**                      **Ombudsman**

08-02S                      Serious Misconduct                      Hall

**Finding:**                      **TBD**

**Additional**

**Tasks:**                      Additional investigation completed with new allegations added to case. Addendum Investigative Report submitted to D. Hall on 4.28.09.

**Preliminary**

**Finding:**                      Not Fair and Not Thorough.

**Violation(s):**                      102-3 Conduct Unbecoming, 102-9 Respectful Treatment

**Summary:**                      Complainants alleged that one officer verbally and physically assaulted them. They also alleged that another officer yelled obscenities and made racial remarks.

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**Case #**                      **Type**                      **Ombudsman**

08-03A                      Appeal                      O'Brien

**Finding:**                      **Fair and Thorough.**

**Violation(s):**                      304-2 Use of Non-Lethal Force

**Summary:**                      Complainant alleged that after being placed into handcuffs, officer grabbed him from behind by the collar or his jersey and slammed his head and face onto the hood of a police vehicle.

**Case #**                      **Type**                      **Ombudsman**  
08-04R                      Random                      Suber  
**Finding:**                      **TBD**  
**Violation(s):**                      102-3 Conduct Unbecoming, 102-9 Respectful Treatment  
**Summary:**                      Complainant alleged that while assisting in the dismissal of students from school to board the buses, the officer exited his motor vehicle and harassed her because he could not proceed up the street.

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**Case #**                      **Type**                      **Ombudsman**  
08-05R                      Random                      Hall  
**Finding:**                      **Fair and Thorough.**  
**Additional Tasks:**                      Additional investigation completed. Addendum Investigative Report submitted to D. Hall on 5.07.09.

**Preliminary Finding:**                      Not Fair. Investigators should never offer leading statements in correspondence or interviews. Investigators should always Conduct Unbecoming interviews in an objective manner and never be combative with complainants or witnesses.

**Violation(s):**                      304-2 Use of Non-Lethal Force  
**Summary:**                      Complainant alleged that while riding his dirt bike on Wendover Street, one individual who he believed to be a police officer struck him on the top of the head with a baton.

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**Case #**                      **Type**                      **Ombudsman**  
08-06R                      Appeal                      O'Brien  
**Finding:**                      **Fair and Thorough.**  
**Violation(s):**                      102-4 Neglect of Duty, 102-4 Judgment, 102-9 Respectful Treatment  
**Summary:**                      Complainant alleged that while at Area E-18 to complain about her son's mistreatment during a traffic stop, she was verbally insulted by the Sergeant. Moreover, the Sergeant refused to identify the involved officers in her son's stop.

| <u>Case #</u>               | <u>Type</u>  | <u>Ombudsman</u> |
|-----------------------------|--|------------------|
| 08-07A                      | Appeal   | Suber            |
| <b>Finding:</b>             | <b>TBD</b>   |                  |
| <b>Additional Tasks:</b>    | Case review and addendum report being completed by IAD investigator.   |                  |
| <b>Preliminary Finding:</b> | Fair and Thorough for Use of Non-Lethal Force Allegations. Not Fair and Thorough for Respectful Treatment Allegations. Ombudsman believed that IAD's assessment was not fair and that further investigation with witnesses would prove useful. |                  |
| <b>Violation(s):</b>        | 304-2 Use of Non-Lethal Force, 102-9 Respectful Treatment  |                  |
| <b>Summary:</b>             | Complainant alleged that two police officers physically and verbally abused him during his arrest.   |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 08-08A               | Appeal   | Hall             |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>  |                  |
| <b>Violation(s):</b> | 102-3 Conduct Unbecoming   |                  |
| <b>Summary:</b>      | Complainant alleged that while stopped for a traffic violation, officer was rude and waving gun in threatening manner. |                  |

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| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 08-09R               | Random  | O'Brien          |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>   |                  |
| <b>Violation(s):</b> | 304-2 Excessive Force   |                  |
| <b>Summary:</b>      | Complainant alleged that officers used excessive force during his arrest. |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 08-10R               | Random   | Suber            |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>  |                  |
| <b>Violation(s):</b> | 304-2 Excessive Force  |                  |
| <b>Summary:</b>      | Complainant alleged that officers used excessive force during the arrest of her son. |                  |

| <u>Case #</u>               | <u>Type</u>   | <u>Ombudsman</u> |
|-----------------------------|---|------------------|
| 08-11R                      | Random  | Hall             |
| <b>Finding:</b>             | <b>TBD</b>  |                  |
| <b>Additional Tasks:</b>    | Case review and addendum report being completed by IAD investigator.  |                  |
| <b>Preliminary Finding:</b> | Not Fair and Thorough. Evidence supporting investigator conclusions is not clear and convincing.  |                  |
| <b>Violation(s):</b>        | 102-9 Respectful Treatment, 102-20 Identification upon Request  |                  |
| <b>Summary:</b>             | Complainant alleged that in an encounter with two police officers Downtown, one was disrespectful and both failed to properly identify themselves upon request. |                  |

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| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 08-12R               | Random  | O'Brien          |
| <b>Finding:</b>      | <b>Fair and Thorough.</b>   |                  |
| <b>Violation(s):</b> | 102-3 Conduct Unbecoming, 102-9 Respectful Treatment, 102-20 Self Identification  |                  |
| <b>Summary:</b>      | Complainant alleged that officer was disrespectful and threatening during a traffic stop and further refused her request for identification upon request. |                  |

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| <u>Case #</u>               | <u>Type</u>   | <u>Ombudsman</u> |
|-----------------------------|---|------------------|
| 08-13A                      | Appeal  | Suber            |
| <b>Finding:</b>             | <b>TBD</b>  |                  |
| <b>Additional Tasks:</b>    | Case review and response being completed by IAD.  |                  |
| <b>Preliminary Finding:</b> | Fair and Thorough (2 Counts Respectful Treatment and 1 Count Use of Non-Lethal Force). Not Fair (1 Count Respectful Treatment) Ombudsman does not agree with investigator assessment. |                  |
| <b>Violation(s):</b>        | 102-9 Respectful Treatment (1 Count per Officer), 304-2 Use of Non-Lethal Force   |                  |
| <b>Summary:</b>             | Complainant alleged that in an encounter with the three police officers named in her complaint, she was assaulted physically by one officer and verbally abused by all three.         |                  |

**Case #**                      **Type**                      **Ombudsman**

08-14A                      Appeal                      Hall

**Finding:**                      **TBD**

**Violation(s):**                      102-9 Respectful Treatment, 304-2 Use of Non-Lethal Force

**Summary:**                      Complainants alleged that during a motor vehicle stop, officer was physically and verbally abusive.

[2009 Cases with CO-OP Determinations](#)

**Case #**                      **Type**                      **Ombudsman**

09-01A                      Appeal                      O'Brien

**Finding:**                      Fair and Thorough.

**Violation(s):**                      102-4 Judgment

**Summary:**                      Complainant alleged that sergeant used unreasonable judgment when requesting a minor child to exit a motor vehicle during a stop for an infraction by the operator who refused to identify herself.

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**Case #**                      **Type**                      **Ombudsman**

09-02R                      Random                      Suber

**Finding:**                      Fair and Thorough.

**Violation(s):**                      102-9 Respectful Treatment

**Summary:**                      Complainant alleged that officer was disrespectful and did not assist with the control of her disobedient nine year old child.

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**Case #**                      **Type**                      **Ombudsman**

09-03R                      Random                      O'Brien

**Finding:**                      **TBD**

**Violation(s):**                      102-4 Judgment, 102-4 Neglect of Duty, 304-2 Use of Non-Lethal Force, 323 Field Interrogation & Observation Report

**Summary:**                      Complainant states officers stopped him and used excessive force.

| <u>Case #</u>        | <u>Type</u>   | <u>Ombudsman</u> |
|----------------------|---|------------------|
| 09-04A               | Appeal  | Suber            |
| <b>Finding:</b>      | TBD.  |                  |
| <b>Violation(s):</b> | 102-9 Respectful Treatment  |                  |
| <b>Summary:</b>      | Complainant states after he photographed a female detail officer, several officers responded, detained and assaulted him and subsequently forced him to delete the photographs. |                  |

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| <u>Case #</u>        | <u>Type</u>  | <u>Ombudsman</u> |
|----------------------|--|------------------|
| 09-05A               | Appeal   | O'Brien          |
| <b>Finding:</b>      | TBD.   |                  |
| <b>Violation(s):</b> | 102-9 Respectful Treatment, 102-20 Self-Identification, 102-35 Conformance to Laws   |                  |
| <b>Summary:</b>      | Complainant alleged that during the issuance of a parking ticket, the officer verbally assaulted and threatened him and would not identify himself upon the complainant's request. |                  |

# Appendix B

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## **Boston Police Department Rules and Procedures Rule 109 April 12, 1983 DISCIPLINE PROCEDURE, AMENDED**

Sec. 1 This rule is written and promulgated to be used in conjunction with Rule 102, which defines the conduct, general rights and responsibilities of Police Department Personnel. It is designed to provide maximum flexibility in the discipline process and to increase the responsiveness of the Department to the needs of the individual member and of the community.

Sec. 2 "Discipline" has too long had the connotation of simple punishment; this rule envisions a disciplinary process which incorporates the idea of training both for effective self-discipline and for a group discipline, or esprit de corps. To accomplish this design, the rule recognizes the wide spectrum of discipline and through such provisions as the five-day suspension program and the district personnel records places discipline at a level where it can respond better to the individual member.

Sec. 3 Scope: This rule is designed strictly to be procedural in nature, and is not meant to create new rights or duties not previously granted by law or contract.

For example, CETA employees, probationary employees, and provisional employees shall continue to be governed by the respective rules and laws pertaining to them, and this rule shall not apply to them where inappropriate or inconsistent with those rules or laws. This rule is also not meant to change the working conditions of members of the Department, but instead is a managerial guideline controlling administration. It does not necessarily promulgate a new set of procedures, but in most cases simply compiles existing departmental policy and practice. In addition, the special procedures relating to written reprimands, ss. 21-27 apply only to police officers covered by the Agreement between the City of Boston and the Boston Police Patrolmen's Association. Finally, if any substantive changes in the rights and duties of employees or the Department made by future changes in the law or the contract affect sections of this rule, such changes shall notwithstanding override the affected sections.

Sec. 4 Part I of this rule, "Spectrum of Discipline," defines the outlines of the Department's disciplinary program. It contains a general discussion of the sanctions which may be used by the Department followed by a discussion of the concept of "Progressive Discipline." Section C of Part I establishes district personnel records which are to be utilized in connection with progressive discipline; finally, the procedures used in three types of sanctions-written reprimands, five-day suspensions, and punishment duty are specifically detailed, to provide for uniformity of treatment under the discipline rule.

Sec. 5 Parts III through V of the rule state the procedures to be used by the Department in handling complaints, administrative investigations of allegations of misconduct by Department members, and hearings.

The complaints section creates a unified procedure for the handling of all complaints made the Department either from inside or outside. The section on investigations seeks to promote quick, thorough investigations without abridging the rights of Department members or injuring the reputations of members unjustly accused. It should be noted that the provisions governing investigations are strictly limited to investigations of allegations against Department personnel and are not to apply to criminal investigations or administrative studies or surveys concerning policy or practices. The hearings section deals with the three different types of administrative hearings: disciplinary hearings, appeals from punishment duty or five-day suspensions, and detective hearings--and sets up uniform practices designed to arrive at just decisions efficiently.

### **PART I: SPECTRUM OF DISCIPLINE**

A. TYPES OF SANCTIONS used by the Boston Police Department include the following: Sec. 6 Oral Reprimands: Oral reprimands, given by supervisors for minor violations of the Rules and Procedures, such as improper uniform or reporting late for duty, are simply spoken censures or reproofs. While a notation that an oral reprimand was given is entered into the district permanent personnel record, no record of the reprimand goes into the permanent personnel file. The rule contemplates that such reprimands will be given on an informal basis without any form of prior notice.

Sec. 7 Written Reprimands: Written reprimands are issued either for minor offenses committed by employees for

whom oral reprimands have proven ineffective, or for other offenses under Rule 102 which are accompanied by ameliorating circumstances. The reprimand is entered into the permanent personnel file. In situations in which an employee has the right to a hearing with respect to a written reprimand, the procedures for such a hearing are described below in part D, ss. 21-27. Section 21 of this rule establishes the guideline for determining which employees have such a right.

Sec. 8 Disciplinary Probation: At the option of the Commissioner, disciplinary probation may be imposed upon an employee for violations of the Rules and Procedures. If just cause is found in any disciplinary action taken against an employee while on such probation, the probation shall be taken into account in determining the severity of the sanction imposed.

Where the employee is a police officer, covered by the Collective Bargaining Agreement, the procedures which are used for written reprimands (ss. 21-27) shall be followed prior to imposition of disciplinary probation unless the employee on probation shall fulfill such conditions as the Commissioner may order, and failure to fulfill such conditions shall render the employee liable for further disciplinary action.

Sec. 9 Punishment Duty: Massachusetts General Laws, C. 31, s. 62 authorize the imposition of punishment duty upon sworn personnel. Such duty is extra, unpaid duty assigned above and beyond an officer's normal hours by the officer's commander for violations of the Rules and Procedures. Such duty shall not be demeaning, unduly fatiguing, nor outside of the scope of the officer's job classification. The procedures used for punishment duty are described below in part F, ss. 36-39.

Sec. 10 Suspensions: Suspensions are periods of time during which an employee is relieved of duty and for which the employee is not paid. Suspensions for a period which does not exceed five days may be imposed without a prior hearing either by the Commissioner or by persons designated this authority by the Commissioner. In addition, if the employee to be suspended is tenured under the Civil Service Law, such a suspension may only be imposed for specific offenses, as outlined below in part E, ss. 28-35. Only the Commissioner may impose a suspension of more than five days, and then only after the procedures designated in part V, ss. 56-63 below, have been followed. Employees of the Boston Police Department may also be relieved from duty with pay. Such action is not a disciplinary action, but is designed to maintain the efficiency of the force if for some reason an employee is rendered unfit for duty. In such a case, the Commissioner may relieve the employee from duty with pay.

Sec. 11 Discharge or Reduction in Rank: An employee may be discharged or reduced in rank only by the Police Commissioner, and then only after a hearing as described in ss. 56-63 or waiver of such a hearing by the employee.

## B. PROGRESSIVE DISCIPLINE

Sec. 12 Persons who utilize this disciplinary rule shall apply the concept of progressive discipline. Progressive discipline means that progressively stricter disciplinary action shall be taken against persons who persist in violations of the Rules and Procedures. Such a program serves a training function, in that, for a first time violation, an employee may be warned or given a relatively light sanction as an indication that the Department does not condone such action. Upon repetition, then, it is assumed that the employee knows that the violation is wrong, and will receive more harsh sanction.

Sec. 13 It is not necessary for the proper implementation of progressive discipline that all stages of discipline be exhausted, nor that progressive discipline start at any one level or proceed with any particular incrementation. Much is left open to the discretion of the person imposing the discipline, it is simply to be recalled that progressive discipline be used as a guiding precept.

## C. DISTRICT PERSONNEL RECORD

Sec. 14 General Considerations: Commanding officers are often called upon to make evaluations of employees assigned to them. Such evaluations are necessary for applying progressive discipline, and are also used in connection with promotion and reassignment. Accurate evaluation must be based on recorded personnel histories, such as those established by this rule.

Sec. 15 The Record Card: The commanding officer of each unit shall establish a personnel file consisting of a file card for each employee in the command. When an officer is assigned to a command, the commanding officer shall

have a new card prepared for that officer. Each card shall have the officer's name and I.D. number at the top, and shall be kept in an alphabetical file.

Sec. 16 Maintenance of the Record: Maintaining the unit personnel file is the joint responsibility of the commanding officer and the supervising officer. Whenever an incident which merits entry in the record takes place, the supervisor of the individuals involved shall report the incident to the commanding officer or person designated by him in his absence. The commanding officer or person designated by him shall make an entry in the card, including the date, subject matter, and reporting officer's name.

Sec. 17 The record file shall be kept in the commanding officer's office or other secure place, and shall be available only to the Office of the Police Commissioner, the commanding officer, the respective bureau chief, and the Bureau of Professional Standards and Development. Sec. 18 Subject Matter of the Record: The record shall maintain a notation of all minor offenses, all praiseworthy conduct and all oral reprimands. In addition, the cards shall also contain notations of any disciplinary actions taken or any commendations received from the Department. The notation need not go into specific detail; it shall suffice for the record simply to state that the employee was the subject of a type of incident (e.g., that the employee was reprimanded for a particular incident).

Sec. 19 Periodic Review: The Bureau of Professional Standards and Development shall make periodic random reviews of the District Personnel Records to make certain that accurate up-to-date records are maintained.

Sec. 20 Disposal of the Record: The records shall be maintained by the Unit until the reassignment to another unit of an officer, or upon an officer's retirement or termination, whichever occurs first. At that time, the record card for that officer shall be sent to the Bureau of Professional Standards and Development.

#### D. WRITTEN REPRIMANDS

Sec. 21 The collective bargaining contract between the Boston Police Patrolmen's Association and the City of Boston, effective July 1, 1974, provides:

No material which contains an allegation of misconduct against an employee shall be included in his/her personnel file until the charges have been verified by affidavit and a hearing held. If a determination is made that the allegation is without substance, then the allegation shall not be included in the employee's personnel file.

Therefore, a letter of reprimand may not be placed in the personnel file of a police officer covered by the collective bargaining contract, unless the allegations in the letter are supported by affidavit and the police officer is given a hearing or unless the police officer waives the right to verification and a hearing. The following procedures are established for letters of reprimand.

Sec. 22 The commander of the bureau or unit to which a police officer is assigned, or the Commander of the Internal Affairs Division, or the Commander of the Staff Inspection Division may recommend that the procedures for a letter of reprimand be initiated, and must submit a report to the Police Commissioner detailing the circumstances surrounding the subject of the letter. The report shall include the names of all witnesses and Superior Officers involved, and the dates and times of the incidents. The report must detail the facts of the incident and not rely on conclusory phrases.

Sec. 23 The Commissioner shall have the proposed letter of reprimand prepared, and then the original shall be sent back to the bureau or unit initiating the letter for verification. Such verification shall consist of either an affidavit of the complaint or the signature of the commander so verifying.

Sec. 24 The proposed letter shall then be forwarded to the chief clerk and to the Bureau of Professional Standards and Development. When the police officer has a right to a hearing the Bureau of Professional Standards and Development shall schedule a hearing and the Commissioner shall designate a hearing officer. The police officer who is the subject of the proposed letter shall be notified by the Bureau of Professional Standards and Development of the time and date of the hearing.

Sec. 25 The hearing shall be conducted pursuant to part V, ss. 59-62 below. No later than five days after the conclusion of the hearing, the hearing officer shall submit a report which briefly summarizes the evidence and recommends whether the letter should be signed by the Commissioner. Also, the hearing officer may recommend changes in the proposed letter.

Sec. 26 A police officer may waive a hearing and consent in writing to having the letter placed in the personnel file.

Sec. 27 If the Commissioner signs the proposed letter, that letter shall be served on the police officer and a copy placed in the personnel file. A copy of the letter shall also be placed in the Internal Affairs Division file.

#### E. SUSPENSION FOR FIVE DAYS OR LESS

Sec. 28 General Procedures. The Civil Service Laws, M.G.L. c. 31, s. 41 permits the Police Commissioner to delegate the authority to immediately impose suspensions of five days or less without first providing a hearing to a tenured civil service employee. The law requires that within twenty-four hours after such a suspension the subordinate be given a copy of sections 41 to 45 of Chapter 31 of the General Laws and a written notice which states the specific reasons for the suspension. That notice must inform the subordinates that they may within forty-eight hours of the receipt of such notice request in writing a hearing by the appointing authority. Such a hearing must be given within five days of the receipt of such a request. Procedures for such a hearing are detailed below in Part V, Section 65.

Sec. 29 Delegation. The Police Commissioner may delegate any member of the department the authority to impose immediate suspensions of five days or less. That delegation shall be in writing and shall specify the name or position of the member to whom the authority has been delegated and shall specify whether the authority is limited to a particular division or bureau of the Department. The delegation shall be in full force and effect unless and until it is revoked by a subsequent written notice by the Police Commissioner.

#### PART II: PROCEDURES

##### Sec. 30 Specific Procedure:

1. When an offense of the type covered by Section 32 of this rule comes to the attention of a person who has been delegated the authority, he or she may immediately impose a suspension without pay of five working days or less. The suspension is effected by orally informing the subordinate of the period of suspension. Where feasible the oral suspension shall be effected in the presence of another superior officer. If the subordinate is a sworn member, the officer shall immediately turn in the police badge and gun.
2. The Civil Service Laws require that the employee who is suspended without a prior hearing shall be given within twenty-four hours of the suspension a copy of the Notice of Suspension (BPD Form #1919). However, the notice should, if possible, be handed to the offender at the time of the imposition. The written notice must be a formal statement of the reasons for the suspension, the number of working days the suspension lasts, and the date the suspension commences. Copies of M.G.L. c. 31, s.s. 41 to 45 shall also be included. The written notice will have five copies, to be routed as follows:
  - a. original to the disciplined subordinate;
  - b. one copy retained by the commanding officer;
  - c. one copy to the Bureau of Professional Standards and Development;
  - d. one copy to the appropriate departmental bureau (Bureau of Field Services, etc.);
  - e. one copy to the Personnel Division.

It is important that all copies be routed as quickly as possible so the payroll division can be notified and the employee taken from the payroll for the suspension period. Whenever problems or questions arise in completing the notice, the person suspending should feel free to contact the Office of the Legal Advisor.

Sec. 31 Acceptance of Discipline: It should at all times be kept in mind that the most effective discipline is that which is accepted by the individual. Therefore, where practicable the person delegated the authority to suspend

should discuss the infraction and the contemplated discipline with the individual.

A subordinate may waive the right to request a hearing before the appointing authority. In such a case, the subordinate waives that right by signing a statement to that effect on the copies of the Notice of Suspension.

Sec. 32 Offenses Covered by the Five-Day Rule: The following offenses are subject to the Five-Day rule, and may be disciplined by imposition of immediate suspension of not more than five days. If an employee commits an offense not on this list, that offense may not form the basis of an immediate suspension.

1. Rule 102 s. 3:

- a. Fighting or quarreling with members of the force;
- b. Negligent use of a firearm, providing no injury or death resulted from the misuse;
- c. Negligent discharge of a firearm, providing no injury or death resulted from the discharge;
- d. Participation in unlawful games of chance or gambling.

2. Rule 102, s. 4:

- a. Failure to properly patrol beat or section;
- b. Failure to properly cover school crossings;
- c. Failure to properly care for assigned equipment, damaging or losing same due to carelessness;
- d. Willfully damaging police department property;
- e. Interference with police radio broadcasting;
- f. Improperly turning off police radio;
- g. Failure to remove keys from patrol car when left unattended;
- h. Failure to report as witness when duly notified or subpoenaed;
- i. Failure to notify Operations Division of availability for assignment

3. Rule 102 s. 5: Failure to properly maintain a copy of the rules book.

4. Rule 102 s. 6:

- a. Failure to properly supervise subordinates;
- b. Failure to prefer disciplinary charges or take appropriate disciplinary action.

5. Rule 102 s. 7: Failure to report their place of residence and telephone number or change in either of them.

6. Rule 102 s. 8: Failure to obey and comply with all rules, orders and other directives of the Department and of superior officers, whether written or oral.

7. Rule 102 s. 9:

- a. Failure to be civil and respectful, courteous and considerate toward all members of the Department and the general public;
- b. Use of epithets or terms that tend to denigrate a particular race or ethnic group except when necessary in police reports or testimony.

8. Rule 102 s. 10:

- a. Failure to report for duty;
- b. Unauthorized absence from duty;
- c. Failure to be mentally and physically fit to perform duty;
- d. Failure to be in proper uniform and properly equipped.

9. Rule 102 s. 11: Failure to be properly groomed.

10. Rule 102 s. 12: Failure to remain awake and alert while on duty.

11. Rule 102 s. 13:

- a. Drinking of alcoholic beverages while on duty unless it is necessary to gain evidence and is under the order of a superior officer;
- b. Reporting for duty while under the influence of alcoholic beverages to any degree whatever or with an odor of alcohol on one's breath.

12. Rule 102 s. 14:

- a. Consumption of alcoholic beverages while off duty to the extent that it results in obnoxious behavior that would tend to discredit the officer of the Department or would render the officer unfit to report for the next regular tour of duty.
- b. Consumption of alcoholic beverages while in uniform or while wearing any part of the uniform.

13. Rule 102 s. 17: Failure to respond to a radio call or to the request of a civilian.

14. Rule 102 s. 18: Engaging in personal business while on duty.

15. Rule 102 s. 20: Failure to give prescribed identification.

16. Rule 102 s. 21: Soliciting from the general public money, gifts, or other things of value for charitable or testimonial purposes, or otherwise using identity as a police officer for such purposes.

17. Rule 102 s. 22: Seeking or accepting food and/or drink from any individual, merchant or business

establishment, when it can be construed to involve the position as an employee of the Boston Police Department.

18. Rule 102 s. 23: Submitting false information in an oral or written report or in response to a B.I.S. inquiry.
19. Rule 102 s. 25: Failure to report any serious felonies or less serious crime that comes to the employee's attention.
20. Rule 102 s. 28: Recommending any employment or procurement of a particular service or product except in the transaction of personal business or when proceeding in accordance with established Departmental procedure.
21. Rule 102 s. 34: Failure to come to the aid of a fellow officer in an emergency if, in the course of carrying out his official duties, that officer is in need of assistance.
22. Rule 102 s. 35: Receipt of excessive moving vehicle violations or excessive unpaid parking violation tickets.
23. Rule 102 s. 37: Intervening in a situation requiring police attention when the officer's family and/or friend(s) are involved except in the case of an emergency.
24. Rule 102 s. 38: Failure to report the questionable behavior of a fellow officer.
25. Miscellaneous offenses:
  - a. Reckless driving;
  - b. Unreported paid details;
  - c. Failure to maintain proper records, such as the district control log;
  - d. Misuse of sick time;
  - e. Overtime abuses.

Sec. 33 Subsequent Offenses: If the employee persists continually in the violation of the rules, then the person delegated the authority to suspend shall recommend the matter for a disciplinary hearing. Furthermore, certain offenses are considered major if repeated within certain periods and are to be immediately recommended for disciplinary hearing. The offenses are:

1. Two offenses within one year:
  - a. Negligent handling of a firearm;
  - b. Willfully damaging police equipment;
  - c. Interfering with police broadcasting;
  - d. Failure to remain awake while on duty;

- e. Seeking and/or accepting food or drink when it can be construed to involve position as Department employee;
- f. Untruthfulness in written or oral reports or in response to B.I.S. investigations;
- g. Failure report felonies.

2. Two offenses within two years:

- a. Negligent discharge of a firearm;
- b. Failure to come to the aid of a fellow officer in an emergency.

3. Third offense in one year:

Failure to report as a witness when duly notified or subpoenaed.

Sec. 34 Periodic Review: The Chief of the Bureau of Professional Standards and Development shall periodically review the actions taken by persons delegated authority under this Section and the list of offenses provided for in Sections 32 and 33 in order to determine whether additional offenses should be included or offenses deleted from this rule. In addition, the Chief of the Bureau of Professional Standards and Development shall submit to the Police Commissioner periodic reports detailing the action taken pursuant to this rule.

Sec. 35 A suspension under this Section does not preclude the possibility of further punishment; however, before the Department can take further action, a hearing must be held following the procedures outlined in Part V, ss. 56-63.

F. PUNISHMENT DUTY:

Sec. 36 Punishment duty may be assigned to any officer of the Department by his commanding officer or by the Police Commissioner. Such duty shall be performed under the direction of the officer's commanding officer.

Sec. 37 Punishment duty must be useful work, whether as an addition to the strength of the force, or as a relief for other employees who have worked hard and faithfully. No suggestion of favoritism shall attach to either the assignment of the duty or to the reliefs created by the duty. Punishment duty must be assigned so that the employee under punishment shall not suffer undue fatigue or be otherwise unfit for regular or extra work; and except with the employee's written consent no more than seven consecutive hours of punishment duty shall be performed at any one time, or more than fourteen hours in four consecutive days, or more than twenty-one hours in seven consecutive days. Neither shall the employee be compelled, without written consent, to perform such duty within two hours before or after a tour of regular or special duty.

Sec. 38 Whenever any portion of the punishment duty as ordered has been performed, the officer in charge of the punishment assignment shall report to the Bureau of Professional Standards and Development the name of the employee, the number of hours and the character of the work done. When the punishment duty assignment has been completed, the officer in charge shall so certify in such form as the Bureau of Professional Standards and Development shall prescribe.

Sec. 39 Whenever punishment duty is assigned, the employee under punishment shall have the right of appeal from such duty as described below in Part V, Section 65. PART III: COMPLAINTS

Sec. 40 Complaint Control Form: A Complaint Control Form (B.P.D. Form #1920) shall be used to record all complaints against Department personnel, whether from citizens or members of the Department. Each Complaint Control Form shall have an identifying number so that the processing of complaints can be monitored.

Sec. 41 Manner of Recording Complaints:

- a. All complaints shall be received and recorded courteously. No citizen shall be denied an opportunity to register a complaint, nor shall any complainant be directed to another building to register a complaint.

- b. Known Complainants: When the information received from the complainant includes the complainant's name and address, the officer taking the complaint shall inform the complainant that he or she will be contacted by a member of the Department assigned to investigate the complaint. The complainant shall be instructed to telephone the Bureau of Professional Standards and Development if not contacted by the Department within seventy-two hours of making the complaint.
- c. Walk-in Complaints: Whenever a person indicates a desire to make a complaint concerning a Department employee, that person shall be directed to the nearest available superior officer. If necessary the complainant shall be assisted in making contact with a superior officer. The officer recording the complaint shall complete a Complaint Control Form, after obtaining as much information as possible from the complainant.
- d. Letter Complaints: Letters alleging misconduct by a Department employee shall be forwarded to the Bureau of Professional Standards and Development. An officer assigned to the Bureau of Professional Standards and Development shall complete a Complaint Control Form. Copies shall be distributed as indicated in section 44 of this rule, save that the complainant's copy shall be mailed to the complainant if the name and address and known.
- e. Telephone Complaints: Complainants contacting the Department by telephone shall be transferred to a superior officer if immediately available who will obtain as much information as possible from the complainant and complete a Complaint Control Form. In no case shall a telephone complaint be refused because a superior officer is unavailable, or because the complainant is not identified. All copies of the Complaint Control Form shall be forwarded to the Bureau of Professional Standards and Development, which shall distribute copies as indicated in Section 44 of this rule, save that the complainant's copy shall be mailed to the complainant if the name and address are known.
- f. Departmental Complaints: Whenever a member of the Department desires to initiate a complaint against another member--including complaints by superior officers against subordinates and subordinates against superior officers--that member shall complete a Complaint Control Form. The Complaint Control Form shall be used whenever a supervisor or superior officer seeks to initiate formal charges against department personnel.
- g. Governmental Agencies: When information is received from governmental agencies alleging specific acts of misconduct by a Department employee, the information shall be forwarded to the Bureau of Professional Standards and Development. An officer assigned to the Bureau of Professional Standards and Development shall complete a Complaint Control Form and distribute copies as indicated in Section 44 of this rule, save that the complainant's copy shall be retained by the Bureau of Professional Standards and Development.
- h. Policy Complaints: Complaints concerning Departmental Policy, performance, or practice and not alleging misconduct by specific employees, known or unknown, shall be recorded on a complaint form. One copy will be retained at the unit and the other three routed to the Bureau of Professional Standards and Development for appropriate distribution.
- i. The completed form should contain a detailed description of the alleged act(s) of misconduct, including date, time and place; names or descriptions of Department employees involved in the incident; the names and addresses of witnesses, if known; and any other relevant information.

Sec. 42 Signing of the Complaint Control Form: If the complaint is made in person, when the officer has completed the complaint form the complainant shall read it and make any necessary corrections. The officer shall request the complainant to sign the complaint. If the complainant refuses to sign, a notation to that effect shall be made on the

form. In all other respects unsigned complaints shall be processed in the same manner as signed complaints.

Sec. 43 Immediate Resolution of Complaints: Complaints resolved at the time of the complaint to the complainant's satisfaction shall be recorded on a Complaint Control Form with a notation that the complaint was resolved. Where possible, the complainant should acknowledge the resolution in writing, and such acknowledgment should be attached on the Complaint Control Form.

Sec. 44 Routing the Complaint Form: If the employee complained of is attached to the unit which receives the complaint, copies of the Complaint Control Form shall be distributed immediately as follows:

- a. One copy to the complainant;
- b. One copy to the commanding officer of the unit;
- c. One copy to the superior officer investigating the complaint;
- d. One copy to the Bureau of Professional Standards and Development.

If the employee complained of is not assigned to the unit which receives the complaint, copies of the Complaint Control form shall be distributed immediately as follows:

- a. One copy to the complainant;
- b. Three copies to the Bureau of Professional Standards and Development. The Bureau of Professional Standards and Development shall retain one copy and may distribute, upon the discretion of the Chief of the O.I.I., the remaining copies as follows:
- c. One copy to the commanding officer of the unit to which the employee complained of is attached;
- d. One copy to the superior officer investigating the complaint.

Sec. 45 Notification of Internal Affairs Division: The Internal Affairs Division shall be notified immediately upon receipt of a complaint alleging:

- a. Brutality, death or serious injury caused by a Department employee;
- b. Firearm discharge resulting in personal injury or property damage caused by a Department employee;
- c. The commission of a felony by a Department employee;
- d. Possible corruption or bribery of a Department employee;
- e. When in the judgment of the superior officer receiving the complaint an immediate investigation by the Internal Affairs Division is justified;
- f. If the employee against whom the complaint is rendered so requests.

This immediate notification will be in addition to and separate from the regular distribution outlined in Section 44.

Sec. 46 Monitoring of Complaint Control Forms:

- a. The Bureau of Professional Standards and Development shall maintain a log of all Complaint Control forms

issued to all districts and units. The log shall record the date each form was issued and the district or unit to which the form was issued. The log shall also record the date the form was used and the name and rank of the officer who completed the form.

- b. The Bureau of Professional Standards and Development shall maintain a file of all cases investigated.
- c. Access to the complaint file shall be authorized in writing by the Police Commissioner, the Superintendent of the Bureau of Professional Standards and Development or the Commanding Officer of the Special Investigations Unit.

Sec. 47 An employee against whom a complaint has been made shall not attempt, directly or indirectly, by threat, appeal, persuasion or the payment of promise of money or other things of value, to secure the withdrawal or abandonment of the complaint. Such actions shall be dealt with very strictly by the Department.

#### PART IV: INVESTIGATIONS

Sec. 48 Confidentiality of Disciplinary Process: Prior to the completion of the investigation of a complaint, information concerning such an investigation shall not be released unless authorized by the Commissioner.

However, the fact that a complaint was received and a departmental investigation is under way may be disclosed unless the Chief of the Bureau of Professional Standards and Development determines that for security reasons it should remain confidential.

Sec. 49 Initiating Investigation: Where practicable in investigations initiated by complaints, the complaints shall be verified before the investigation commences; however, the absence of verification shall not impede the registration and investigation of a complaint.

If the complaint is received at the unit to which the complainee is assigned, the commanding officer of the unit shall determine whether the matter can be appropriately dealt with at the unit level. In such cases commanding officers shall appoint an investigating officer, although the Bureau of Professional Standards and Development may intervene at any time and assume control of any investigation. If the commanding officer determines that the complaint is not appropriate for investigation at the unit level, it shall be referred to the Bureau of Professional Standards and Development for investigation. In such cases, the chief of the Bureau of Professional Standards and Development shall appoint an investigating officer, or return the complaint to the commanding officer of the person who is the subject of the complaint for investigation at the unit level. If the complaint is received at a unit to which the complainee is not assigned then the Bureau of Professional Standards and Development shall initiate the complaint at either the unit level or through the Bureau. The Bureau of Professional Standards and Development may also initiate investigations into such matters as it sees fit, whether or not a complaint has been received. Sec. 50 Investigative Techniques: The investigating officer may use any lawful investigative techniques, including, but not limited to, inspecting public records, questioning of witnesses, interrogation of the member complained of, questioning of fellow employees and surveillance.

Sec. 51 Interrogation of Members of the Department: The following provisions shall apply whenever, as part of an investigation of alleged violations of the Rules and Procedures, a member of the department is ordered to submit a report or to an interrogation.

- a. An interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise. No member shall suffer loss of pay for the time spent under interrogation.
- b. The interrogation shall take place at a location designated by the investigating officer. Usually it will be at the command to which the investigating officer is assigned or at the district station within which the incident allegedly occurred.

- c. The member of the department shall be informed of the rank, name and command of the interrogating officer and all persons present during the interrogation. If a member of the department is directed to leave his/her post and report for interrogation to another command, the commanding officer shall be promptly notified of the member's whereabouts.
- d. Whenever a member of the department is ordered to submit a report or to an interrogation pursuant to this Rule, the member may be informed of the nature of the investigation, including the name of the complainant. The address of the complainants and/or witnesses need not be disclosed; however, sufficient information to reasonably apprise the member of the allegations should be provided. If the complaint is filed in writing, a copy may be furnished to said member(s). If it is known that the member of the department being interrogated is a witness only, he should be informed at the initial contact.
- e. Questioning during an interrogation shall not be overly long. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.
- f. The member of the department shall not be subjected to any offensive language, nor be threatened with transfer, dismissal or other disciplinary punishment.
- g. Whenever a member is ordered, pursuant to these rules, to submit a report or to interrogation, that member shall be advised that any such report or interrogation cannot be used by the Department as evidence in criminal proceedings against that member. When a member of the department is complained against and is directed by a superior officer to submit a report or to an interrogation relative to such complaint, that member is required to reply.
- h. In any case, the refusal by a member of the force to answer pertinent questions may result in disciplinary action.
- i. The law imposes no obligation, legal or otherwise on the department to provide an opportunity for a member of the department to consult with counsel or anyone else when questioned by a superior officer about his or her employment or matters relevant to his or her continuing fitness for police service. Nevertheless, the department shall afford an opportunity for a member of the department, if so requested, to consult with counsel before being questioned concerning a serious violation of the rules and regulations, provided the interrogation is not unduly delayed. However, in such cases the interrogation may not be postponed for purpose of counsel past 10 a.m. of the day following the notification of interrogation. Counsel, if available and a representative of a certified employee organization may be present during the interrogation of a member of the department. Requests for an opportunity to consult with counsel in connection with minor violations will be denied unless sufficient reasons are advanced.
- j. In the event that an employee claims that there have been violations of any provisions of this Section, such employee, either alone or together with the employee organization representative, may file a signed, written complaint with the Police Commissioner against the person committing the alleged violation. The Police Commissioner shall cause such complaint to be investigated and render a decision with respect to any such complaint. The decision shall be in writing and shall state with particularity the consideration and reasons in support thereof including a statement of the facts found. A copy of the decision shall be given forthwith to both the person who is the subject of the complaint and the employee organization representative.

The Police Commissioner in his discretion may endeavor to eliminate any unlawful act or practice which constitutes a violation of this Section by informal methods or conference, conciliation and persuasion.

Sec. 52 Investigation Report: As soon as practical, though not the expense of a thorough investigation, the

investigating officer shall bring the investigation to a close and prepare an investigation report. The report shall summarize all evidence gathered during the investigation and shall contain the investigating officer's recommendation that the complaint be found:

- a. sustained (investigation disclosed sufficient evidence to support allegations in the complaint);
- b. not sustained (investigation failed to prove or disprove the allegations);
- c. exonerated (the action complained of did occur, but investigation revealed that action was proper, legal and reasonable); or
- d. unfounded (investigation revealed that conduct did not occur).

In addition, if the investigating officer has discovered misconduct not based on complaint, he shall so state in his report.

The report shall then be forwarded to the commanding officer if a unit-level investigation, or to the chief of the Bureau of Professional Standards and Development. The commanding officer or the chief of the Bureau of Professional Standards and Development shall then make recommendations for disciplinary action or shall impose an immediate suspension for five days or less if the complaint has been sustained. If a unit-level investigation, a copy of the report along with the commanding officer's disciplinary action will be sent to the Bureau of Professional Standards and Development for confirmation.

If the investigation was inaugurated by a complaint from outside the department, upon completion of the investigation a letter shall be sent to the complainant informing him or her of the results of the investigation.

## PART V: HEARINGS

### A. FORUMS

Sec. 53 The Police Commissioner is the appointing authority pursuant to the provision of M.G.L. c. 31, s. 41 and as such may hear cases relating to discharge, removal, transfer to another agency, suspension, lowering in rank or compensation, abolition of office or punishment duty. In addition, he may appoint either a hearing officer or a trial board to hear such cases.

Sec. 54 Trial Boards: Pursuant to the Acts of 1962, Chapter 322, the Police Commissioner may from time to time convene a Trial Board to be composed of three captains, to inquire into such matters as the Commissioner directs. No member of a Trial Board may sit on any matters involving the member's district, or with which the member has direct personal contact. In such cases the member must be disqualified, and the Commissioner shall appoint another captain to the Board.

Pursuant to the Acts of 1950, Chapter 735, a Trial Board must be convened at the request of any person who has been reassigned from duties as a detective after his probationary period. For rules governing such hearings, see Section 65, "Detective Hearings" below.

Sec. 55 Hearing Officer: The Police Commissioner may, pursuant to M.G.L. c. 31, s. 41, appoint a hearing officer to hear any cases concerning proposed discharge, removal from office, transfer to another agency, suspension, lowering in rank or compensation, abolition of office, or imposition of punishment duty. In such a case, the Commissioner shall send to the Bureau of Professional Standards and Development and the Chief Clerk a designation in writing containing the name of the hearing officer and the employee who is the subject of such action. The Hearing Officer shall follow the general rules of procedure outlined below.

### B. PROCEDURE

Sec. 56 Notice: Before any action affecting employment or compensation of a tenured employee as delineated in M.G.L. c. 31 s. 41, is taken, the officer or employee involved shall be given a written statement of the specific reason or reasons for the contemplated action, together with a copy of M.G.L. c. 31, ss. 41-45. The employee then may

consent in writing to the imposition of discipline and waive the right to a hearing on the specific reason or reasons given. If no such waiver or consent is executed, the Police Commissioner shall determine whether the hearing is to be before the Commissioner, Hearing Officer, or Trial Board, and shall notify the Bureau of Professional Standards and Development in writing of the hearing, the forum, the employee and the proposed action.

The Bureau of Professional Standards and Development shall then set a time and date for the hearing, and shall cause notice to be served upon the employee as to time, date and forum. The notice of the hearing must be served at least three days before the hearing except in cases involving abolition of position, in which case the notice must be served at least seven days before the hearing.

Sec. 57 Postponement: Postponement of a hearing to another date may be allowed by the Commissioner, Trial Board or Hearing Officer for an adequate reason presented either by the complainant or the defendant. However, the request for such postponement must be received before the day set for the hearing. In case of such postponement, both parties shall be notified of the new hearing date at least three days in advance of the hearing. A request for a postponement for medical reasons requires a doctor's statement from a department appointed physician.

Sec. 58 Attorneys: Both the complainant and the defendant may have attorneys present to represent them at a hearing. In addition, the defendant may be accompanied by an employee organization representative.

Sec. 59 Evidence: The hearing shall be informal and administrative. The purpose of a hearing is to determine the facts and situations surrounding a case, and members of a hearing forum, especially when counsel is not present, shall protect the rights of all parties involved whenever through the lack of ability, inexperience, or oversight, either side's case may seem to be improperly prejudiced. The rules of evidence observed by law need not be applied. Evidence which reasonable persons are accustomed to rely on in the conduct of their affairs may be considered. Unduly repetitious evidence may be excluded, and documentary evidence may be admitted in the form of copies or excerpts or by incorporation by reference. All evidence, written, oral and real, offered by the parties which is relevant to the statement of reasons shall be considered.

Sec. 60 Witnesses: Both parties may bring witnesses before the hearing. The complainant and the defendant shall be responsible for the attendance of their respective witnesses, but the Bureau of Professional Standards and Development may be requested to give reasonable assistance in securing such attendance. Witnesses, before testifying, shall be sworn or shall make an affirmation. Examination of each witness shall be made separately and apart from other witnesses, and each side shall have the opportunity to cross-examine all witnesses. Sec. 61 The Record: The Bureau of Professional Standards and Development shall designate an employee prior to the date of the hearing to serve as clerk during the hearing. The clerk shall make a record of all testimony before the hearing and shall be responsible for marking and preserving all other evidence for the sole use of the hearing body and the Commissioner.

Sec. 62 Other Procedural Rules: The hearing forum may establish further reasonable rules to expedite the hearing. In addition, several hearings may, if appropriate and at the discretion of the Commissioner, be consolidated into one general hearing. Sec. 63 Finding: Upon completion of the hearing, the hearing forum shall forthwith submit a written report to the Police Commissioner, with a copy to the Bureau of Professional Standards and Development. That report shall summarize the evidence introduced by the parties, make specific findings of fact, and make recommendations as to the disposition of the charges including recommendations as to the appropriate discipline if any. The Police Commissioner shall immediately review the report of the hearing forum. He may return it for elaboration, further explanation or further hearings and findings of fact if necessary and practicable within the time limits required by law. Recommendations made by the hearing forum will not be binding on the Police Commissioner. Within seven days after the filing of the report of the hearing officer, the Police Commissioner shall give to the employee a written notice of his decision stating fully and specifically the reasons therefor.

Sec. 64 Detective Hearings:

- a. Whenever a detective is reassigned to the regular police staff, that detective shall have the right to appeal the reassignment, pursuant to the Acts of 1950, Chapter 735. A detective who wishes to appeal must submit a notice in writing to the Police Commissioner requesting such an appeal within thirty days of the effective date of the order or reassignment.

- b. When such a notice is received, the Police Commissioner shall designate three captains to sit as members of the Trial Board after the expiration of the thirty day period following the effective date of the order or reassignment. One of the captains shall be designated as chairman and another as clerk, and an order designating the members of the Board and their duties served shall be transmitted to the Chief Clerk and to the Bureau of Professional Standards and Development.
- c. Upon receipt of the designation, the Bureau of Professional Standards and Development shall schedule the hearing and notify all interested parties of the place, date and time for the commencement of the hearing. Such notice must be received by the parties at least three days prior to the date set for the hearing.
- d. In cases where more than one member has appealed a reassignment, the appeals may be consolidated and heard by one Trial Board.
- e. The Trial Board sitting on a detective hearing shall apply the same rules governing evidence and witnesses as provided above (Sections 59 and 60), and in addition, shall also have the power to make such rules as it deems necessary to expedite the hearing.
- f. Where the assignment was the result of a complaint of misconduct or due to reasons which might impose a stigma, such as allegations of illegal conduct, the member shall be given, at the time the notice of hearing is served, a statement of charges which fairly summarizes those allegations. In addition, if the name of the complainant is known, the member shall be informed of that name. In such case, the reassignment shall be affirmed if the board finds that there is substantial evidence that the allegations are true and are sufficiently serious to reflect upon the ability of the member to perform the duties of a detective.
- g. Where the reassignment was not due to such aforesaid reason, but was an attempt to increase efficiency or economy of the Department by means of a reorganization or reallocation of manpower, or because of a member's lack of investigative ability, the reassignment shall be affirmed if the board finds there is substantial evidence that the reassignment is a good faith attempt to promote the efficiency or economy of the Department.
- h. No later than ten days after the conclusion of the hearing the board shall file its notice of decision with the Chief Clerk and the Bureau of Professional Standards and Development. If the hearing results in a change in status of the employee, the Personnel Division shall be notified by the Bureau of Professional Standards and Development. The decision shall be supported by a memorandum which shall specify reasons in support of its decision. The decision of the board as to the reassignment is final, and no provisions of Chapter 31 of the Massachusetts General Laws shall be applicable to any such hearing or determination made thereunder.
- i. The Bureau of Professional Standards and Development shall notify the parties of the result. The decision and the reasons thereof shall remain on file with the Chief Clerk and the parties may, upon reasonable notice, inspect and copy that decision.

Sec. 65 Review From Imposition of Immediate Suspension or Punishment Duty: When an employee is suspended for five days or less or is assigned punishment duty by a commanding officer, that employee receives a written notice concerning the action within twenty-four hours. The employee may then, if so wished and within forty-eight hours of the receipt of the notice, request a hearing to determine whether there is just cause for such an action. If such a request is made, then a hearing must be held within five days of the receipt of the request by the Police Commissioner. The hearing shall be conducted using the rules procedures outlined above (Sections 56 through 62). Within two days after the conclusion of the hearing, the Police Commissioner shall give the employee concerned a

written notice of the decision. Where just cause has not been found, the discipline shall be deemed not to have been imposed and the employee shall be compensated for lost time or extra hours worked. If it is decided that just cause did exist and the employee refuses to accept such a finding, the employee shall have the right of appeal pursuant to the Massachusetts General Laws.

NOTES: Rule No. 109 was amended September 14, 1979, at which time the Bureau of Inspectional Services assumed control of procedures which the Bureau of Professional Standards and Development had previously administered.

In February, 1983, The Bureau of Professional Standards and Development was given those duties which they had originally administered.

In addition, Section No. 22 was rewritten so that the Commander of the Staff Inspection Division was given the authority to initiate procedures for a letter of reprimand to be issued. In April, 1983, violations of Rule No. 102, sections 7 and 11, were added to Section 32 of this rule as offenses covered by the five-day suspension rule. This resulted in a renumbering of section 32.

Notes: Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Sections 17, 19, 20, 24, 30, 34, 38, 41 (b,d,e,g,h), 44 (b,c,d), 46 (a,b,c), 48, 49, 52, 55, 56, 60,61,63,64(b,c,h,i).

# Appendix C

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## 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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# Appendix D

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## BPD Commendation/Complaint Signs

Informational signage is now housed in the lobby of each police district and police headquarters in Boston. The Internal Affairs Division had these signs installed in the summer of 2009.



To file a commendation or complaint regarding a Boston Police employee...

- Please ask to speak to a Boston Police supervisor at any Police district station 24 hours a day
- Or, contact the Internal Affairs Division (IAD) Monday through Friday 8:30 a.m. to 5:00 p.m.
  - By phone @ 617-343-4320
  - In person @ Boston Police Headquarters, 1 Schroeder Plaza, Boston, MA 02120
- Or, visit [www.cityofboston.gov/police/complaint](http://www.cityofboston.gov/police/complaint) to fill out an online commendation/complaint information form. Submittal of this form online goes directly to the internal affairs division.
- Or, fill out a Commendation/Complaint Information Form found within every Commendation/Complaint Resolution brochure and mail it to the Internal Affairs Division at Boston Police Headquarters (address listed above). [Use of this form is not required. You may mail your own letter to IAD detailing your commendation or complaint.]

Commendation/complaint resolution procedure brochures are available to you with more information to initiate the process. You may obtain one at any Boston Police District Station, the Internal Affairs Division, any Boston District Courthouse, and Boston City Hall Law and Clerk's departments.

# Appendix E

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## Internal Affairs Complaint Filing Process and CO-OP Appeals Process Training

The following attendees volunteered their time to come and learn the process of complaint and appeal filing so they could assist citizens with these processes.

### Attendees

| <b>Name</b>              | <b>Agency</b>                      | <b>Contact Information</b> |
|--------------------------|------------------------------------|----------------------------|
| Morgan Farzier-Eley      | Project Right                      | 617-541-5454 ext. 103      |
| Dr. Christopher Thompson | Quincy Geneva/New Vision CDC       | 617-442-5711               |
| Susan Corcoran           | ACLUM                              | 6174823170 ext. 327        |
| Brigitt Keller           | NPAP                               | 617-227-6015               |
| Margaret Aylward         | ACLUM                              | 216-280-5009               |
| Jack McDevitt            | Northeastern University            | 617-373-3482               |
| Ursula Masny-Latos       | National Lawyers Guild             | 617-227-7335               |
| Lisa Laguerre            | IRJ                                | 617-373-4678               |
| Sam Williams             | UUU Ministries                     | 617-318-6010               |
| Kerry Walsh              | ACLU                               | 617-482-3170               |
| Laura Rotoló             | ACLU                               | 617-482-3170               |
| Rashaan Hall             | Lawyers Committee for Civil Rights | 617-988-0608               |
| Ra'Shaun Nalls           | Project Right                      | rnalls@projectright.org    |

# Boston Police Department Internal Affairs Division

Complaint Resolution Procedure

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## How to file a complaint?

- A complaint may be filed several ways:
  - You may contact any Boston Police District Station 24 Hours a Day. Whether you call or visit a station, please REQUEST to speak with a SUPERVISOR.
  - You may contact the Internal Affairs Division Monday through Saturday from 830AM to 500 PM.
    - Please Call 617-343-4320 and ask to speak with the ON-CALL Sergeant Detective
    - Or Visit IAD at Police Headquarters :
      - One Schroeder Plaza, Boston, MA 02120

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- You may also submit a letter documenting your complaint and mail it to IAD at One Schroeder Plaza, Boston, MA 02120 at your convenience.
- Complaint Information Forms are available to assist you if you don't want to write a letter.
  - These forms are now within every Bureau of Professional Standards & Development Commendation/Complaint Resolution Procedure Brochure.
  - These brochures are available at any District Station, IAD, City Hall Law and Clerk's Office, and District Courthouses.
- You can also fill out the Complaint Information Form online at [www.cityofboston.gov/police](http://www.cityofboston.gov/police). This web form will be sent directly to IAD once submitted online.

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## Investigative Process

- Once a complaint is received, a complainant is interviewed by a Supervisor.
- If it is determined that a rule violation has possibly occurred, an internal complaint would be generated and an Internal Investigation would begin.
- At the conclusion of an investigation, it is reviewed by the Internal Affairs Chain of Command (i.e. the Lieutenant Detective, Captain Detective, and Superintendent of BPSD)
- It is then sent for review by the Legal Advisor and finally the finding(s) are approved by the Police Commissioner.

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## Notification Procedures

- Once a complaint has been approved and a finding has been issued by the Police Commissioner, both the complainant and complained-of employee are notified of the finding by mail.
- Sustained findings are subject to a Department Hearing. The Legal Advisor's Office contact information is detailed in the finding letter.
- Not Sustained, Exonerated and Unfounded findings are eligible for Community Ombudsman Oversight Panel review. The CO-OP contact information is detailed in the finding letter and a CO-OP brochure is included with the letter.

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## Questions?

Please contact the Internal Affairs Division at 617-343-4320.

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## Community Ombudsman Oversight Panel (CO-OP)

Complaint Appeals Process

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### What complaints 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.

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### Who can file an appeal?

- ▶ You, or your legal representative, can file an appeal once you have received the **Notice of Finding** from the Boston Police Department's Internal Investigations Unit.

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### How much time does a complainant have to file an appeal?

- ▶ You must file your appeal **IN WRITING** within **FOURTEEN (14) CALENDAR** days of the date on the Notice of Finding.

**Boston Police**  
One Schrader Plaza  
Boston, MA 02120

January 7, 2009

RE: I.A.D. Case #E2008-###

Ms. Jane Smith  
123 Anywhere Avenue  
Hyde Park, MA 02136

Dear Ms. Smith:

Thank you for taking the time to express your concerns over the actions of Sergeant John Doe. Your complaint of misconduct on the part of Sergeant Doe has been thoroughly investigated by the Internal Investigations Unit.

**For example: This potential appellant has until January 21, 2009 to appeal!**

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### What should a complainant include in an appeal letter?

- ▶ An appeal letter or email can be as simple as one line; no reasoning has to be included.

**Please Include Date** → January 12, 2009

To whom it may concern,

I would like to appeal IAD Case #E2008-001.

**Please Sign Your Name** → Thank you,  
Jane Doe

**Please Include the IAD Case Number** → #E2008-001

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### How to file an appeal...by mail

- ▶ 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**

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### How to file an appeal...in person

- ▶ 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>) CALENDAR** day from the date on the Notice of Finding. (If that day falls on a weekend, you will have until the end of the next business day!)
  
- ▶ Please hand deliver appeals to:
  - **Community Ombudsman Oversight Panel**
  - **c/o City of Boston Law Department**
  - **City Hall**
  - **Room 615**
  - **Boston, MA 02201**

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### How do I file an appeal...by email

- ▶ If your appeal is emailed, it must be sent within **FOURTEEN (14) CALENDAR** days of the date on the Notice of Finding.
  
- ▶ Please email your appeals to:
  - **COOP.bpd@cityofboston.gov**

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### What happens when an appeal is filed?

- ▶ Once an appeal is received within the eligible time-frame, it is assigned to one Ombudsman.
- ▶ A copy of the case file once released by IAD and reviewed by Legal will be sent to the Ombudsman for review.
- ▶ The Ombudsman will then make a recommendation to the Chief of the Bureau of Professional Standards and Development.
- ▶ The appellant will be notified by mail once a final decision has been made.

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**How long will the CO-OP take to render a decision?**

- ▶ The time it takes for the CO-OP to render an appeal decision is on a case by case basis.
- ▶ It will take time for the Ombudsman to review the entire case file, especially when there are multiple violations.
- ▶ The appeal may also be sent back to IAD for more review or re-investigation.
- ▶ An Ombudsman can review more than one case at a time.

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**Questions?**

Contact Information:  
Community Ombudsman Oversight Panel  
617-594-9216

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# Appendix F

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## Intake Procedures

In order to determine the adequacy of the intake process employed by the Boston Police Department's Internal Affairs Division (the "IAD"), an examination of the policies and procedures employed by similarly situated review boards was undertaken.<sup>i</sup> In completing this review, information was gathered from the annual reports of three oversight boards: The Chicago Independent Police Review Authority (the "Chicago IPRA"), the San Jose Office of the Independent Police Auditor ("the San Jose IPA"), and the Washington, D.C. Police Complaint Board ("the D.C. OPC").

While no two police oversight boards are identical, the procedure for lodging grievances appears to be the one area that is consistent among the various state agencies. A review of the procedures employed by the Chicago IPRA, the San Jose IPA and the D.C. OPC reveals that all complainants are required to file a complaint form summarizing the alleged incident and providing information about how to contact the complainant when a decision has been made. Moreover, each complaint form provides an explanation of the complaint process.

### Instructions to Complainant

The Chicago IPRA, San Jose IPA and D.C. OPC each have established protocol that must be utilized when filing complaints and has made this information available to its citizens. Specifically, the Chicago IPRA provides information in a document entitled, "How to File a Complaint." It gives the telephone number of the agency, the days of the week that complaints can be made, and informs citizens that they can make complaints by visiting the office or by mail.

The San Jose IPA appears to provide the most specific information for complainants. While the Chicago IPRA only provides the most basic information, San Jose's citizens are also given information about which parties have standing to file complaints, deadlines, and the exact procedures for lodging grievances. The specific duties of the San Jose IPA investigators are also listed, along with information concerning the manner in which investigation should be conducted.<sup>ii</sup> Lastly, rules by which investigators are to abide are listed.<sup>iii</sup>

Although the D.C. OPC's policies and procedures are not as detailed as the Chicago IPRA, in addition to outlining the procedures for filing a complaint, it explains the process that occurs after a complaint is received. Moreover, information is provided regarding how complaints are assigned, the role of the investigator and the procedures used in the agency's attempt to locate witnesses.

### The IAD

Unfortunately, the IAD has not done a satisfactory job in informing Boston's citizens about the methods that should be employed when filing a complaint. The study, *Enhancing Citizen Participation in the Review of Complaints and Use of Force in the City of Boston Police Department*, found that Boston residents generally did not know how to file a complaint.<sup>iv</sup> Currently, there is confusion in the community about how and where to file a complaint and what to expect when doing so. Although the study was conducted 3 years ago, it appears that the complaint process is still largely unknown to most residents in the city of Boston.

It has also been reported, and should be noted, that the IAD does not do enough to accommodate people who speak different languages. Written communication, including brochures, websites, letters and forms are only provided in

English. It is crucial that such documents be accessible to non-English speakers and people with limited English proficiency.

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<sup>i</sup> It should be noted that the Community Ombudsman Oversight Panel (CO-OP), has no involvement in the initial processing of complaints which often includes an initial interview with the complainant. Unlike many other review boards that have staff that are responsible for intake, CO-OP must rely on the IAD for information regarding initial complaints. This is especially difficult because written policies regarding intake procedures are not available.

<sup>ii</sup> For example, it is made clear that complainants are to be permitted to give an uninterrupted account of their complaint before investigative questioning is commenced.

<sup>iii</sup> Inclusive within these rules is the requirement that investigators refrain from alienating or offending complainants by requesting or referring to any criminal history. Moreover, investigators must not check for outstanding warrants, inquire about a complainant's citizenship, immigration status, or make reference to other unsubstantiated complaints.

<sup>iv</sup> Dean Jack McDevitt, Dr. Amy Farrell and Dr. W Carsten Anderson, *Institute on Race and Justice*, December 2005



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.

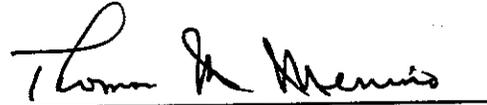
#### ARTICLE VIII. COMPLAINT MEDIATION PROGRAM

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



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

### Panel Members

- John O'Brien, Ombudsman
- David Hall, Ombudsman
- Ruth Suber, Ombudsman

### City of Boston Community Ombudsman Oversight Panel

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

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



### How do I contact the Community Ombudsman Oversight Panel?

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

By mail:

The Community Ombudsman Oversight Panel

Attn: Yola Cabrillana

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 by the Executive Secretary and kept secure.





## 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 within fourteen (14) calendar days of the date on the Notice of Finding. 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  
Attn: Yola Cabrillana  
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 (14<sup>th</sup>) day from the date on the Notice of Finding.

Please hand deliver appeals to:

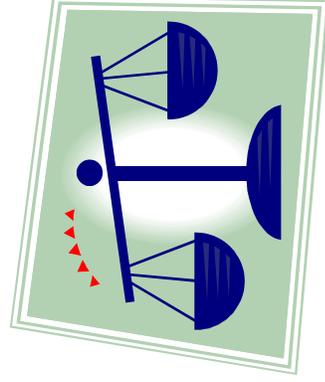
Community Ombudsman Oversight Panel  
Attn: Yola Cabrillana  
City of Boston Law Department  
City Hall  
Room 615  
Boston, MA 02201

## 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 Executive Secretary will notify you by mail.

## 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 and Development 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 has the Panel received?

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 received 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 included Constitutional Law, Race and Community Relations, and Use of Force, among others. A second day of training was also given by the Department to educate the Panel members on the Internal Affairs Investigation process, the disciplinary process and other related topics. The Panel members are in the process of receiving external training from N.A.C.O.L.E., the National Association for Civilian Oversight of Law Enforcement.

## Will the Panel be reviewing cases other than civilian complaints?

The Panel will also be reviewing 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.

# Appendix I



**HARVARD Kennedy School**

*Program in Criminal Justice  
Policy and Management*

## **An Assessment of the Community Ombudsman Oversight Panel**

**Christopher Stone, Principal Investigator**

**April 2009**

[www.hks.harvard.edu/criminaljustice](http://www.hks.harvard.edu/criminaljustice)

PROGRAM IN CRIMINAL JUSTICE POLICY AND MANAGEMENT  
HARVARD KENNEDY SCHOOL  
79 JFK STREET, CAMBRIDGE, MA 02138 | 617-495-5188

## **ACKNOWLEDGEMENTS**

This report reflects the combined efforts of a number of people in several institutions who have helped us tremendously. We wish to thank:

- The Program in Criminal Justice Policy and Management staff: Baillie Aaron for her exceptional role in the literature review, research and survey design, performance of statistical analyses, and preparation of the written report; Christine Cole for her supervision and assistance at every point in this research study; Geniece Crawford for her research assistance conducting phone interviews with complainants and entering data; and Marea Beeman for her scrupulous proofreading and counsel.
- Yola Cabrillana, Bureau of Professional Standards and Development, for the hours she spent gathering extensive demographic data on complainants and subject officers, fielding numerous questions on the specifics of the complaints and appeals processes, and clarifying terminology.
- Nicole Murati Ferrer, Assistant Corporation Counsel at the City of Boston Law Department, who patiently escorted our team through governmental layers of process.
- The Boston Police Department offices which provided us with references, referrals, and data for their support and accessibility.
- The many individual complainants who took the time to complete the research surveys and to offer their honest feedback on the Boston Police Department complaints and appeals processes. These responses formed the crux of this study, providing us with a unique picture of why eligible complainants are not filing appeals.

## **EXECUTIVE SUMMARY**

In March 2007, Boston Mayor Thomas Menino created the Community Ombudsman Oversight Panel (CO-OP) by Executive Order. The CO-OP serves as an appeals body to review complaints against police officers found to be “not sustained,” “unfounded,” or “exonerated” by the Boston Police Department. As of September 2008, approximately one year after the CO-OP began operating, only 7 out of 116 complainants eligible to appeal had appealed the finding. The Office of the Mayor of Boston commissioned this study by the Harvard Kennedy School Program in Criminal Justice Policy and Management to investigate why so few complainants submit appeals through the CO-OP.

Harvard researchers undertook a 3-month mail and phone survey study between November 2008 and February 2009, receiving completed surveys from 25% of the pool of eligible appellants. They also analyzed demographic data on all complainants provided by the Boston Police Department. Most complainants were young (18-34 year old) black males. The majority of subject officers were white male police officers with an average of 12 years work experience with the Boston Police Department.

Data analyses indicated that there were several different reasons why complainants did not appeal. Some survey respondents indicated that they filed a complaint only to have it on record, and were not concerned with the formal decision. Many survey respondents were unfamiliar with the appeals process and the CO-OP and had mistaken impressions about the agency reviewing appeals. Other respondents pointed to a negative or discouraging experience filing a complaint with Internal Affairs, and the sentiment that their complaints were not taken seriously as reasons they did not choose to file appeals. In general, responses expressed support for mediation as an option for complaint resolution.

This report makes several recommendations to the CO-OP and the City of Boston based on survey findings. The data support an increased outreach by the CO-OP to potential appellants; a clarification of the appeals process in written promotional materials; a simplification of the appeals process; and an extension of the deadline for submitting appeals. As well, survey responses suggest that complainant likelihood of submitting appeals would be increased by greater transparency in the complaint filing process, better complainant experience with Internal Affairs, and more frequent communication and contact with Internal Affairs and the CO-OP.

## **EMPIRICAL RESEARCH: SURVEY STUDY**

### **Background**

In the summer of 2008, the Office of the Mayor of Boston commissioned a study by the Harvard Kennedy School Program in Criminal Justice Policy and Management to understand why so few complainants submit appeals to the CO-OP. This section describes the three-month empirical research study: the survey process and the findings.

As of September 22, 2008, there were 116 complainants who had filed complaints against Boston Police Officers, which were found to be not sustained, unfounded, or exonerated and therefore eligible for appeal.<sup>19</sup> Only 7 of the eligible complainants, however, submitted appeals. The purpose of this study was to understand why the vast majority of complainants – 109 out of 116 – did not submit appeals by surveying them about their familiarity and experience with the appeals process.

### **Research Methods**

A combined mail and phone survey design was selected in order to obtain the largest sample size possible. While written survey studies provide participants with the time to give thoughtful responses to survey questions, they typically have low response rates. As a result, the mail survey design was supplemented with a phone survey, which generally allows for better sample access and returns higher response rates.

The Boston Police Department provided Harvard researchers with the names, mailing addresses, and phone numbers of all complainants eligible to appeal as of September 22, 2008. Over a period of two months, researchers sent self-administered mail surveys to all eligible appellants.<sup>20</sup> A preletter was sent to respondents one week before the actual survey, alerting them that the survey was coming and informing them of its purpose (see *Appendix A*). The second mailing, the survey package, included an explanatory letter, a consent form (for complainants under 18 years of age), a six-page survey, a stamped envelope, and a stamped postcard with a unique identifier (see *Appendix B*). Each unique postcard identifier corresponded to one address, allowing researchers to target follow-up mailings to individuals who had not yet responded and to avoid repeated inquiries for those who had responded. The third and final mailing consisted of the survey and a follow-up letter (see *Appendix C*).

Of the 109 surveys sent to potential appellants, one-third were returned due to invalid mailing addresses; some were returned more than six weeks after they had been sent out.<sup>21</sup> Fourteen completed surveys were received in this initial phase.

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<sup>19</sup> The CO-OP began operations in July 2007.

<sup>20</sup> Surveys were erroneously mailed to the seven complainants who had filed appeals. These responses were not included in the analysis contained in this report.

<sup>21</sup> One survey was mailed to a witness, whose name was included on the Boston Police Department's list of eligible appellants.

In an effort to increase the sample size, researchers followed up by phone to complainants who had not responded to the mail survey.<sup>22</sup> In the phone call follow-up phase, which took place in January and February of 2009, thirteen complainants chose to complete the survey over the phone. At the completion of the data collection phase, the total sample size was 27 complainants, for a 25% response rate. This response rate is comparable to other recent studies of complainants employing a mailed survey research design.<sup>23</sup>

### **Structure of the Survey**

The questions in the survey addressed the complainants' past experience with the complaints process, understanding of the forms and procedures, and attitudes toward and familiarity with the Boston Police Department and CO-OP (see *Appendix B* for a full copy of the survey). The survey contained five sections. The first section consisted of basic procedural questions about the appeals process. The second section instructed respondents to indicate the importance of a series of factors in influencing their decision *not* to file an appeal, and also whether they would be more likely to file an appeal given procedural changes to the appeals process. The third section addressed familiarity with who conducts reviews of complaints and appeals and where they can be filed. It also included two open-ended questions about what others have said about their experience with the CO-OP, and attitudes toward a complaint mediation program. The fourth section addressed complainants' perceptions of the fairness and impartiality of the CO-OP and the Internal Affairs division of the Boston Police Department in their decisions. The final section consisted of standard demographic and historical questions.

## **SUMMARY OF THE RESULTS**

### *Sample Demographics*

A total of 27 complainants (56% male) completed the survey by mail or by phone, representing one-quarter of the total eligible complainant population. Survey respondents were on average 38 years old and were well-educated: 81% of respondents had completed some college, college, or postgraduate studies. Close to two-thirds of respondents self-identified as Black (63%), while one-third indicated they were White (30%). One participant self-identified as Hispanic, and another as "Other." Most surveyed complainants were single (48%) or married (33%), with the remainder being separated, divorced, or widowed. Two respondents had served in the Armed Forces. Nearly all respondents derived their primary income from work (85%).

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<sup>22</sup> Valid phone numbers (provided by the Boston Police Department) were not available for all 100 complainants who did not return postcards indicating they had completed the survey. In total, only 18 complainants were successfully contacted by phone, of whom 13 completed the survey. Three individuals declined participation; one person started and then withdrew from the survey; and one individual requested to be mailed a second copy of the survey. At least two complainants were incarcerated at the time of the study.

<sup>23</sup> For example, see Bartels, E.C. & Silverman, E.B. (2005). An exploratory study of the New York City, Civilian Complaint Review Board mediation program. *Policing: An International Journal of Police Strategies & Management*, 28, 619-630; Strudwick, K. (2003). Is independence the only answer to complainants' satisfaction of the police complaints process? A perspective from the United Kingdom, *Police Practice and Research*, 4, 35-46; Waters, I. & Brown, K. (2000). Police complaints and complainants' experiences. *British Journal of Criminology*, 40, 617-638.

The demographics of the sample were similar to those of the total complainant population by gender and race, but survey respondents were slightly older than the average complainant (38 years old, compared to 31 years old).

#### *Complaint History*

One-third of respondents reported having prior experience with the Boston Police Department Internal Affairs Division complaint process: five had previously filed one complaint, three had filed two complaints, and one declined to offer a number. Only one complainant had filed a complaint which he or she knew to be sustained.

#### *Impressions and expectations of the complaints investigation process*

Most survey respondents expressed a general dissatisfaction with the complaints investigation process. Reasons for dissatisfaction included both procedural concerns and lack of confidence and trust in the process. Half of the respondents believed that the Boston Police Department did not investigate their complaint professionally (n=13). Two-thirds claimed that the investigation was not completed in a timely manner (n=18) and that their complaint was not taken seriously (n=17). The majority of surveyed complainants expected a formal decision (n=22), although for many the police investigation was more important to them than the rendering of a formal decision (n=17). Many of the complainants listed creating a record of officer misconduct – not the ultimate finding or discipline – as reasons why the police investigation was more important: “It would go on his record. I would know that they’re doing their job.” Other comments reflected a hope to decrease future misconduct by the subject officer: “In my case the officer had a history of misconduct and I thought the more complaints filed, the better the chance of an investigation”; “by conducting an investigation it sends a message of importance to the officer(s) involved that they cannot get away with misconduct because they are police officers.”

The six complainants who responded that the formal decision was more important selected this option because of a lack of trust in the Boston Police Department and the fairness of the Internal Affairs investigation: “because I know that the police won’t be fair”; “because their police department works together”; “at least it indicates that there was an investigation.” One participant felt that the formal decision was “more effective,” while another stated that a formal decision would allow him to “appeal the decision if [he] believed it was wrong.”

#### *Understanding of Appeals Process*

Survey results suggest that the CO-OP appeals process is not well understood by Boston Police Department complainants. Responses indicate that the directions for appealing, which are included with the findings notification letter from the original complaint, do not provide clear instruction on how to undertake the process.

One-quarter of respondents (n=7) reported that they did *not* receive the notification letter informing them of the finding of their complaint, which is accompanied by the CO-OP brochure. Of the 20 respondents that *did* report receiving the finding or notification letter, two-thirds (n=13) indicated that they understood the explanation of the finding given in the letter.

**Forty percent of respondents could not identify the outcome of their last complaint: 30% did not understand or were unsure of the outcome of their last complaint and 7% reported that they had not heard back.**

However, fewer than half of the people who reported receiving a finding notification letter (n=8) – and less than half of all survey respondents (n=12) – reported knowing they could file an appeal. Seven respondents said that they had received information on how to file an appeal, and **only 4 respondents said that they understood how to file an appeal**. Six respondents reported that they “somewhat” understood how to file an appeal.

When prompted for an explanation of why they did not know how to appeal, most respondents said that they “never received information on it,” “did not see anywhere on the letter that said I could appeal,” or believed they “didn’t receive instructions.” The comments indicate confusion about the process (“I didn’t know who to go to to file an appeal”; “assumed internal affairs conducted appeals”; “was never told that I could appeal when I left the room”) and a lack of awareness of the existence of an appeals process. One person who *was* aware of the appeals process said he heard about it “through classes in criminal justice.”

One of the respondents reported having asked the Boston Police Department for help filing an appeal; however, none of the complainants surveyed indicated that they had contacted the CO-OP for assistance.

Survey comments indicated that some citizens have mistaken impressions about the appeals process. For example, one respondent wrote that he “had no intention of paying a \$75 filing fee,” even though there is no cost to file an appeal. One-quarter of respondents (n=7) reported that the Boston Police Department discouraged them from filing an appeal: “I was discouraged from the day I was putting the complaint by the lieutenant from the Boston headquarters. He was not helpful at all”; “I was told that they wouldn’t honor it [my complaint] because they’re always right.” In general, responses suggest an overall sense of frustration with the complaints process: “I was filing a complaint against an officer to an officer. I could tell by the guy’s face that he didn’t want to hear it. It was like he was reading from a script...just going through the motions.” A few respondents felt rushed to submit an appeal (n=4).

One-quarter of survey respondents (n=7) were afraid that there might be negative consequences if they filed an appeal. Fears included retaliation by police through arrest and harassment (“they might retaliate”; “[I might] be arrested or [there might be] some kind of vendetta against me”; “[the police might] pull me over”); and “not being taken seriously”. Other perceived disincentives included additional paperwork, fees, and time off work. One respondent who was not afraid of negative consequences explained that she “was confident in [her] case and not easily intimidated.”

*Impressions of the appeals process*

The two most important factors in respondents' decisions not to file an appeal were not having enough confidence in the police ("very" or "extremely important" n=21) and not having enough information on how to appeal ("very" or "extremely important" n=15).

It was "not at all important" to most respondents that the incident took place too long ago to be worth appealing (n=14; "very" or "extremely important" n=5), that they missed the appeal deadline (n=16; "extremely important" n=7), that the complaint was not serious enough (n=14; "very" or "extremely important" n=5), that they were satisfied with the finding (n=16; "very" or "extremely important" n=5), that they were discouraged by the Boston Police Department (n=16; "very" or "extremely important" n=5), or that appealing might get them into more trouble (n=16; "very" or "extremely important" n=5).

Responses were mixed for items addressing lack of confidence in the CO-OP ("not at all important" n=11; "slightly" or "moderately important" n=6; "very" or "extremely important" n=6), that it took too much time and effort to appeal ("not at all important" n=6; "slightly" or "moderately important" n=7; "very" or "extremely important" n=11), and that the finding was not important ("not at all important" n=11; "moderately important" n=3; "very" or "extremely important" n=10).

Other factors that survey respondents indicated were "extremely" important in their decision not to appeal were that:

- their complaints were "not taken seriously"
- they "lost faith"
- they "didn't care"
- "it took too long for the department to get back"
- there were "fees and time" associated with the appeals process
- there was confusion about the process

*Factors which could increase the number of appeals*

Almost all respondents agreed that they would have been more likely to appeal if they had **more confidence in the fairness of the appeals process (81%, n=22)**. The majority of respondents felt that having a less complicated appeals process would have made them more likely to appeal (n=19); 9 respondents would have been "significantly" more likely to appeal. Similarly, most respondents said that they would have been more likely to appeal if they had been given more information on how to appeal (n=19), and 12 respondents said they would have been "significantly" more likely to have appealed. Sixty percent of respondents (n=16) said that having more time to appeal would have made them more likely to appeal (thirty percent would have been "significantly" more likely to appeal).

Procedural factors which survey respondents believed would make them more likely to file an appeal included having stamps, envelopes, or a way to deliver the appeal (n=10); and being able to file an appeal online (n=17), by phone (n=16), or by email (n=12). Sixty percent of surveyed complainants responded that they would be more likely to file an appeal if the incident were more serious (n=16). At

least for those in this sample, language does not appear to be a barrier to the appeals process. Respondents indicated that they would be “not at all more likely” to file appeals if the information were available in a language other than English (n=26).<sup>24</sup>

*Impressions of the Boston Police Department and CO-OP roles in the appeals process*

The majority of participants had misperceptions of the appeals process and the role of the Boston Police Department and CO-OP in appeals investigations. Most surveyed complainants believed that police officers (n=10) or the Internal Affairs department (n=17) handle appeals. Only one-quarter of respondents (n=7) correctly identified the CO-OP as the agency reviewing appeals. Accordingly, many respondents believed that appeals should be sent to a Boston police station (n=13) or to the Mayor’s office (n=9). Almost half of respondents (n=12) selected the CO-OP as the appropriate destination for appeals, although only two respondents did so exclusively.

**Only one respondent had heard of the CO-OP prior to receiving the research survey, and the respondent identified the complaint finding notification letter as the source of this information. It should be noted that this individual had a postgraduate education and identified both the CO-OP and the Boston Police Internal Affairs as the agencies responsible for reviewing appeals.**

No respondents had heard of any cases appealed through the CO-OP through the media, neighborhood networks, or other means.

*Mediation*

Complainants were asked about their willingness to engage in mediation with the subject officer and a neutral third party as an option for complaint resolution. Over 60 percent of respondents (n=17) indicated that they would have pursued mediation, if it were available.

Reasons for an interest in mediation include: the desire for an apology from police officers and a commitment from the officers to not repeat the mistake (“because I would have told the officer...that he owed me an apology and should never repeat that against someone else”); a confrontation with the subject officer; the opportunity to explain why the officer’s actions were wrong (to “make him see the severity of the situation”; “to let him know how I felt about the whole thing”) and the opportunity for a “neutral” chance to “get a fair understanding so the third person could hear both sides.”

Arguments for not wanting to pursue mediation include: a belief that mediation eliminated disciplinary follow-through by the police department (“because the officer needed to be punished so that he wouldn’t harass anyone else. Talking to him resolves nothing); the feeling that mediation would be unsuccessful (“because of the nature of the complaint I wouldn’t have thought the mediation would make a difference”; “though I would love to talk to [the subject officer] this cannot be resolved through

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<sup>24</sup> It should be noted that all complainants contacted spoke English and had likely filed a complaint in English; the complaint form online is only available in English. If non-English speakers are not accommodated at the beginning of the complaints process, it may create a barrier for those wanting to file complaints.

conversation”); lack of importance of the finding (“I think my complaint was symbolic and I didn’t actually care to see it through”); discomfort upon being confronted by the subject officer (“I would probably feel intimidated and wouldn’t want to be in communication”; “because I wouldn’t want to be next to the person who assaulted me”; “I do not want to speak to [the police officer] unless there is an apology beforehand”); and fear of retaliation (“I don’t want a confrontation on a later date”).

*Perception of fairness of complaints/appeals investigators*

The majority of survey respondents believed that the Boston Police Internal Affairs Department was either very unfair/very biased or somewhat unfair/somewhat biased in general (n=16) and in the handling of their specific complaint (n=18). Most respondents had no opinion or a neutral opinion on the fairness of the CO-OP in its investigation of appeals (n=16) or thought it would be very fair/unbiased (n=9). Similarly, most respondents had no opinion or a neutral opinion on whether the CO-OP would be fair in its treatment of their individual complaints (n=14) or thought it would be very fair/unbiased (n=7).

*Likelihood of filing another complaint*

The majority of survey respondents would complain again (n=22), although reasons for doing so varied:

- **Out of principle:** “Any time they [the police] do something wrong I’ll file a complaint”; “I was treated unjustly and the BPD should be made aware of the overzealous tactics of its officers. Whether they choose to take action is on them”; “everyone should be held accountable for their actions.”
- **To exercise a right:** “It is my right to complain and recommend solutions”; “because people have rights.”
- **Lack of options:** “It’s the only thing I can do.”
- **To have it on record:** “If only to have it on record that the actions of a police officer were wrong. Whether or not it [my complaint] was taken seriously”; “when I feel like something is wrong I will file. That way it will be on record.”
- **Impact on officer behavior:** “So they wouldn’t do what they did before.”
- **Hope that they will be heard:** “Because if you keep poking at something, keep knocking, someone’s bound to answer”; “hoping one day something happens”; “there could be better chance that this (or the 2<sup>nd</sup>, 3<sup>rd</sup>, or whatever) time the investigation may have a different outcome. Never give up!”

There were three main reasons why some respondents indicated they would *not* file another complaint. Many comments reflected a sense of **disappointment and disillusionment** with the complaints system, or confirmation of suspected bias: it “did not get anything done”; “it was pointless... It was a waste of time”; “I thought it was not going to be fair anyway.”

Several respondents pointed to **feelings of intimidation, discouragement, and partiality by officers in Internal Affairs** as the reason they would not complain again: “...when you call a supervisor to make a report...the supervisor either call[s] you a liar or act[s] like they would help you or take care of the matter themselves and they don’t report it to the proper authority”; “because the headquarter people

from internal affairs are very cricked an crooked – they don't care neither, they asked why you wait so long if it was so serious. Well, people gets scared cause you become an enemy to all police officers...I have no trust and faith in any police now..."; "there is no neutral party to help me understand the complaint process or my right to appeal. I do not believe the investigator police will be impartial, and would be biased against blacks, low income, ex-offender, addicts and other disenfranchised or disabled persons."

Some respondents were also less inclined to complain again because they felt their **complaints were not taken seriously**. One respondent who indicated he would not complain again wrote, "I really didn't think [my complaint] was taken seriously by the dept [police department]. It also took a long time before anyone contacted me." A second respondent said he would complain again even though his "case was not taken seriously."

### **Analysis: Why didn't eligible complainants file appeals?**

There was no single reason why eligible complainants did not file appeals, but there were several different themes that emerged: people who would not appeal regardless of changes made to the appeal process; people who would be more likely to appeal given more and better information about the CO-OP; and people who would be more likely to appeal if they had more confidence in the fairness of the complaints system.

#### **I. People Who Will Not Appeal**

Some people were not interested in appealing – they “didn’t care” to appeal or just wanted to have their complaint on record. For example, one survey respondent wrote that the reason he did not appeal was that: “I didn’t look into it. I didn’t receive information. I didn’t mean for it to be followed up. I just wanted it known.” Thirty percent of survey respondents said that it was “extremely important” in their decision not to appeal that the finding of their complaint did not matter. About 75% of survey respondents said that the police investigation, for them, was more important than the formal decision they received (and which they could appeal).

#### **II. Correcting Misunderstandings and Improving Information**

Some people did not appeal because they were unaware that they could file an appeal, or they had mistaken impressions about the agency reviewing appeals. Over 60% of survey respondents believed Internal Affairs reviewed appeals. It is also notable that 80% of survey respondents said that would be more likely to appeal if they had more confidence in the fairness of the appeals process (although it should be noted that most respondents did not know they could file an appeal). The CO-OP can address these concerns by:

**1. Increasing the CO-OP’s outreach to potential appellants.** The CO-OP brochure is currently sent to eligible complainants by mail along with the finding notification letter. At least one-third of the mailing addresses given by complainants at the time of their complaint were no longer valid at the time of the survey, and 25% of survey respondents reported never receiving the notification letter telling them that the finding on their complaint was not sustained, unfounded, or exonerated (or the brochure informing of their right to appeal this finding).

The CO-OP can work with Internal Affairs to increase awareness and understanding of the CO-OP by:

- collecting email addresses, cell phone numbers, and secondary addresses, if available, *at the time the complaint is filed*

- distributing a brochure about the CO-OP to every complainant *at the time the complaint is filed*<sup>25</sup>
- posting a copy of the CO-OP brochure on the Boston Police Department website conspicuously next to the complaint form
- informing all eligible complainants by phone or email of their right to appeal

**2. Clarifying the Appeals process by using language that is easier to understand.** Most survey respondents, even those that received the finding notification letter along with the CO-OP brochure, mistakenly identified Internal Affairs as the agency reviewing appeals. This misunderstanding is significant because many survey respondents “do not believe the investigator police will be impartial.” It might be helpful if the CO-OP revised its brochure, identifying very clearly that the CO-OP reviews appeals, emphasizing that neither the CO-OP nor its panel are connected or affiliated with Internal Affairs or the police department, and explaining in simple steps how a person can file an appeal (nowhere on the brochure does it indicate exactly what information should be included in an appeal, or what is an appeal). In addition, since 25% of respondents feared negative repercussions from the police upon filing an appeal, it may alleviate their concerns to specify in the CO-OP brochure that the Internal Affairs department would *not* be made aware of appeals filed by complainants, and that there will be no negative consequences or “filing fees” for anyone who appeals.

It was also striking that 40% of survey respondents did not understand the notification letter’s explanation of the finding of the complaint. It would be beneficial to the Appeals process if the finding notification letter could also be reworded with simpler language and better definitions of what it means when a complaint is found not sustained, unfounded, or exonerated. Additionally, as noted in the 2008 CO-OP Annual Report, the finding notification letter should explain logically and fully how a finding decision was reached.<sup>26</sup> If complainants do not understand that the complaint was not found in their favor, then they have no reason to appeal; if they do not understand why the complaint was not found in their favor, then they would not know why they are appealing. By increasing the transparency of the process, complainants will not only have better information which they can use to appeal, but they may also see the complaints system, and by extension the police, as more legitimate.

**3. Making the process of filing an appeal less burdensome for the complainant.** The majority of surveyed complainants – 70% – said that they would have been more likely to appeal given a less complicated appeals process. Many survey respondents indicated they would be significantly more likely to file an appeal if it could be done electronically or by phone. It should be noted that while the 2008 CO-OP Annual Report indicates that appeals may be submitted by e-mail, this information is not

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<sup>25</sup> Copies of the CO-OP brochure are readily available at all Boston Police Department stations, as well as at the Clerk’s Office and at the Law Department, both located at City Hall.

<sup>26</sup> The finding notification letter “does not provide any rationale or summary of the findings upon which the decision was based. Therefore the citizen does not have a clear understanding of why their complaint was denied or whether they should appeal the decision.” (Community Ombudsman Oversight Panel (July 31, 2008). *Annual Report*, p. 30-31. Available at: [http://www.cityofboston.gov/police/co-op/pdfs/CO-OP\\_Annual\\_Report\\_2008.pdf](http://www.cityofboston.gov/police/co-op/pdfs/CO-OP_Annual_Report_2008.pdf)).

included in the CO-OP brochure or in the Mayor's Executive Order establishing the CO-OP.<sup>27</sup> It would be beneficial to continue to provide complainants with several methods for filing appeals as well as to present procedural information on the appeals process clearly and consistently.

The method by which complainants file complaints could be used as an indication of how they would prefer to file appeals. For example, the New York City Civilian Complaint Review Board (CCRB) has found that complaints filed by phone in 2007 represented 87% of all complaints received. An additional 7% of complaints were received by e-mail, internet, or fax. Only 2% were received by letter.<sup>28</sup>

**4. Extending the appeal deadline.** It was "extremely important" to 25% of survey respondents in their decision not to file an appeal that they missed the appeal deadline, and half of respondents said that they would have been more likely to appeal given additional time. The analysis of the population of appellants provided by the Boston Police Department showed that people who did appeal returned appeals close to or after the 14 day deadline. In addition, our survey experience suggests that mail may take several weeks to get through the return process – far longer than the appeal filing timelines allow. Since late appeals were still accepted by the CO-OP, it seems logical that the deadline be extended. This would acknowledge the situational pressures that might be facing complainants during the appeal window – for example, one complainant wrote that among the reasons that she did not appeal was that she "was on maternity leave with a newborn when given the opportunity to appeal."

### **III. Addressing the Atmosphere of Distrust and Dissatisfaction Surrounding the Complaints Process**

"Based in large part on comments from various individuals at community meetings and from community leaders, it became clear to the [CO-OP] panel that there is a strong perception that citizens do not have easy access to filing complaints in supportive and non-intimidating environments. Whether this perception is accurate or not, it creates an atmosphere of distrust that requires serious attention."<sup>29</sup>

-CO-OP 2008 Annual Report

A third reason people did not appeal is that they "lost faith" in a complaints system in which their complaints were "not taken seriously." Most complainants had a *negative* experience with the complaints process. Over 25% of all complainants said that an important factor in their decision not to appeal was that they were "discouraged" by the Boston Police Internal Affairs Department and that appealing might get them into more trouble. Half of respondents said that the Boston Police Department did not investigate their complaint professionally. Most surveyed complainants thought that Internal Affairs was biased toward the police and did not trust the process because they "know that

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<sup>27</sup> The CO-OP brochure and the Mayor's Executive Order establishing the CO-OP state that appeals may be mailed or hand-delivered to the CO-OP.

<sup>28</sup> New York City Civilian Complaint Review Board (January-December 2007). *Status Report* (Vol. XV, No.2). Available at: [http://www.ci.nyc.ny.us/html/ccrb/pdf/ccrbann2007\\_A.pdf](http://www.ci.nyc.ny.us/html/ccrb/pdf/ccrbann2007_A.pdf).

<sup>29</sup> Community Ombudsman Oversight Panel (July 31, 2008). *Annual Report*, p. 31. Available at: [http://www.cityofboston.gov/police/co-op/pdfs/CO-OP\\_Annual\\_Report\\_2008.pdf](http://www.cityofboston.gov/police/co-op/pdfs/CO-OP_Annual_Report_2008.pdf).

the police won't be fair." One respondent wrote, "I believe the officers involved in the case and the Boston Police Officer were solely interested in doing whatever they want and getting away with it and protecting their own." A second respondent wrote:

"...filing a complaint served me no other purpose other than a pursuit of justice. Both myself and the other involved identified the police officer who harassed us verbally and physically yet the complaint was dismissed...I have no faith in IA or the corrupt BPD."

Nearly **one-fifth of the complainants who responded to the survey said they would not file a complaint again in the future** – "because they [Internal Affairs] didn't take the first complaint seriously." Since many respondents believed that the Internal Affairs department handled appeals, complainants who were not satisfied with the complaints process might be less inclined to continue participation in the system by filing an appeal.

There is more work to be done for the CO-OP to realize the goals of its mission statement: "to demonstrate that the Boston Police internal affairs process is fair and thorough, to promote the professionalism of the Boston Police Department, and to build trust and confidence within the Boston community."

To increase confidence in the appeals system in the long run – and to prevent the attrition of numbers of incoming complaints – the challenge of widespread dissatisfaction with the Boston Police Department in general and low confidence in the impartiality of Internal Affairs must be addressed. It should be noted, on the brighter side, that all complainants, despite the negative interaction with a Boston police officer that motivated them to complain, must have some faith in the Internal Affairs department to file a complaint in the first place.

While this is a complex issue, the CO-OP and the Boston Police Internal Affairs department can take steps to reduce sentiments expressed by complainants, thereby increasing future complainants' propensity to file appeals. To increase **transparency in the complaint filing process** – which should increase complainants' feelings of legitimate and fair treatment – Internal Affairs can explain the entire complaint and appeal process at the time the complaint is filed. Complainants will be able to make more informed decisions if they are provided with a detailed explanation of the complaints process: for example, how a complaint is investigated, including the criteria for a finding of sustained, as opposed to not sustained, unfounded, or exonerated. At the same time, they could be presented with the option of mediation as an alternative process (if available), and be introduced to the appeals process. As well, the production of an approximate timeline for the entire process would aid in complainants' understanding of how their complaint will be handled from filing to finding. These details should be offered in a variety of ways and not limited to conversation. The use of print and electronic media to convey this information is important.

Comments about officer behavior suggest that complainant satisfaction with the complaints process would significantly increase with a more neutral complaint intake system, with adequate process

information given to complainants but with no editorializing on the merits of filing. If it is not possible to have a civilian receive complaints, then training for officers who take complaints, and certainly those in Internal Affairs, might be in order. Officers handling complaints should be taught to be sensitive to complainants' feelings and fears. Reports that officers are "reading from a script" do not instill confidence or an appreciation for the seriousness of a complaint. Finally, Internal Affairs complaint intake officers and materials (print and electronic media) should clearly and accurately describe the process of filing complaints and appeal filing procedures to avoid misperceptions and disincentives (ex. "\$75 filing fee").

In addition, the CO-OP or Internal Affairs can **increase contact with complainants**. On average, finding notification letters were sent to complainants 10 months after the original complaint was filed – compared to 6 months for complainants who appealed. Two-thirds of surveyed respondents felt that the Internal Affairs investigation was not completed in a timely manner – it "took a long time before anyone contacted me." At least one respondent felt that an extremely important factor in her decision not to appeal was that "it took too long for the department to get back." Another said that one of three reasons she did not file an appeal was that "the outcome was reached in 6 months after the incident occurred." The CO-OP may elect to follow-up by phone with all complainants within a week after the complaint file date, to let them know that the complaint was received and to introduce the CO-OP and the appeal process. They could also use this opportunity to clarify to complainants that it may be months or even a year before they receive a finding on their complaint.

Assuming Internal Affairs cannot reduce the case closure time, another way to mitigate this concern at minimal cost to the Boston Police Department is to send letters out to complainants at regular intervals (for example, every month) letting them know that their complaint remains under investigation. Keeping in regular contact will be beneficial to complainants, who will feel as if their complaint is being taken more seriously, and who might gain more confidence in the complaints process as a result. Internal Affairs can also provide complainants with the name and phone number of a Boston Police Department Officer or CO-OP member to contact if their address or phone number changes. This could reduce or eliminate the problem of finding notification letters never reaching complainants because of old mailing addresses.

### **Mediation**

While over half of survey respondents were in favor of mediation as an option for complaint resolution, it seemed that respondent willingness to engage in mediation was heavily dependent on the nature of the complaint and the complainant's interaction with the subject officer. Some complainants indicated they would be extremely uncomfortable interacting with the subject officer and would certainly decline mediation; some complainants suggested that mediation alone was not sufficient, and they wanted the officer to be disciplined. Mediation therefore might work well for some types of allegations and for some investigations, but it cannot replace an investigation for all types of allegations.

The Boston Police Department might consider offering mediation as an opt-in elective for complainants, to ensure that complainants who are intimidated to meet with the subject officers do not feel obligated

to do so. After a successful mediation complainants could opt-out of pursuing an investigation. This might reduce the Internal Affairs workload and increase complainant satisfaction with the complaints process.

The New York City CCRB offers mediation as an option for complaints in which no property is injured or damaged and when there are no civilian arrests. In 2007, the CCRB successfully mediated 97 complaints. They report that mediation can be successful: “officers have a better sense of what caused a civilian to file a complaint, and civilians have a better sense of what officers do and why they do it. Oftentimes, mediation builds trust and respect between a civilian and an officer, which in turn can lead to more positive relations in the community in general.”<sup>30</sup> Additionally, a 2008 study by the CCRB found that officers who participate in mediation are less likely than officers who do not to receive future complaints.

One difficulty the CCRB has faced is that complainants who agree to mediate a case may not show up to mediation sessions. As a result, more than half of the cases eligible for mediation were not successfully mediated.

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<sup>30</sup> New York City Civilian Complaint Review Board (January-December 2007). *Status Report* (Vol. XV, No.2), p.16. Available at: [http://www.ci.nyc.ny.us/html/ccrb/pdf/ccrbann2007\\_A.pdf](http://www.ci.nyc.ny.us/html/ccrb/pdf/ccrbann2007_A.pdf).

## **Conclusion**

The results of this three-month research study indicate that there is no simple explanation for why eligible appellants are not filing appeals. Survey responses suggest that a major barrier for many complainants is that they did not understand how to file an appeal; only one respondent had heard of the CO-OP prior to the survey. Others had mistaken impressions about the appeals process, including the belief that Internal Affairs handled appeals. A serious challenge facing the CO-OP is that the majority of survey respondents had a negative experience filing a complaint with the Boston Police Department, which led to fears and low confidence in the rest of the complaints review process, extending to appeals. The research also suggests that mediation may be a successful means of alternative complaint resolution for some complainants, but not all.

Some of the recommendations in this report will be easily and inexpensively implemented; others will require long-term attention. However, all modifications proposed in this report can help not only to raise the number of appellants, but also to increase community trust and confidence in Internal Affairs and the Boston Police Department, and to improve satisfaction with the complaint process.