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Documents 70 and 71 related to a motion to dismiss in the ACLU Lawsuit by the defendants and providing update from the MPD as of 1/25/2018 regarding the status of implementing the recommendations of the DOJ Collaborative Reform Initiative Draft Report (see especially Document 71 Exhibit L).

April 25, 2019 Communication from former FPC Executive Director La Keisha Butler on the status of the FPC's efforts to implement the recommendations of the DOJ Collaborative Reform Initiative Draft Report

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHARLES COLLINS, et al.,
Plaintiffs,
Case No. 17-CV-00234-JPS

v.
CITY OF MILWAUKEE, et al.,
Defendants.

**MEMORANDUM IN SUPPORT OF DEFENDANTS'
RULE 12(b)(1) MOTION TO DISMISS FOR MOOTNESS AND
LACK OF SUBJECT MATTER JURISDICTION**

Document 70.

Refers extensively to the Russell Declarations (attorney for the defendants) Exhibits A-X in Document 71 which follows.

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The City of Milwaukee, the Milwaukee Fire and Police Commission and Chief of Police Edward Flynn (collectively, “Defendants”) respectfully submit this Memorandum in Support of Defendants’ Motion to Dismiss for Mootness and Lack of Subject Matter Jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1).

INTRODUCTION

Nine plaintiffs have brought a putative class action complaint, now amended (Dkt. No. 19), against Defendants for a “high-volume, suspicionless stop-and-frisk program” that the current Milwaukee Police Chief, Edward Flynn, allegedly authorized and implemented once he was sworn into office on January 7, 2008. Am. Compl. ¶ 2.¹ Plaintiffs each allege that they were subject to either an unconstitutional traffic stop or an unconstitutional pedestrian stop that occurred as a result of Chief Flynn’s law-enforcement strategies. *Id.* at ¶¶ 37-187. As the caption of the Amended Complaint makes clear, Plaintiffs have brought suit against Chief Flynn

¹ Plaintiffs’ putative class period begins the same day Chief Flynn was first sworn into office (*i.e.*, January 7, 2008). Am. Compl. ¶ 281.

only in his “official capacity as Chief of the Milwaukee Police Department.” *Id.* at 1. Plaintiffs seek declaratory and prospective injunctive relief only—relief that addresses the policy, practice and custom by which Chief Flynn has directed Milwaukee’s police officers to conduct traffic and pedestrian stops during his ten-year tenure. *Id.* at 1, 86-89.

Chief Flynn announced his retirement on January 8, 2018, which is to be effective February 16, 2018. Russell Decl., Ex. A at 1.² Pursuant to state law, the Milwaukee Fire and Police Commission (“FPC”) is now in the process of selecting the interim police chief as well as the next permanent police chief. Wis. Stat. § 62.50(6); Russell Decl., Ex. B. As the FPC announced the same day Chief Flynn announced his retirement, “We at the FPC wish to assure the Milwaukee community that we are committed to serving the community’s best interests as we begin the important task of selecting [Chief Flynn’s] successor.” Russell Decl., Ex. B.

In addition, the Milwaukee Police Department (“MPD”) and FPC are already implementing changes recommended by the U.S. Department of Justice—changes which mirror the equitable relief requested by Plaintiffs—pursuant to a collaborative reform process that began in 2015, well before the Plaintiffs’ instant lawsuit (filed in 2017). Russell Decl., Ex. F.

In light of Chief Flynn’s retirement, and in light of the changes the MPD and FPC have and are implementing pursuant to the long-standing reform process originating between the MPD, FPC and the U.S. Department of Justice, Plaintiffs’ lawsuit is now moot. *See Spomer v. Littleton*, 414 U.S. 514, 521-22 (1974) (remanding for determination whether claims against

² In reviewing a factual challenge to subject matter jurisdiction, the Court may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists. *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015) (omitting citation). In addition, the Court is permitted to take judicial notice of matters of facts not subject to reasonable dispute. F.R.E. 201(b); *see also Parungao v. Cmty. Health Sys., Inc.*, 858 F.3d 452, 457 (7th Cir. 2017) (“Courts may take judicial notice of court filings and other matters of public record when the accuracy of those documents reasonably cannot be questioned.”)

former State's Attorney are moot and whether Plaintiffs should be permitted to amend their complaint to include claims for injunctive relief against the successor State's Attorney, where there is no record that the successor State's Attorney intended to continue the asserted practices of the former State's Attorney of which Plaintiffs complained) (omitting citations); *Federation of Advertising Industry Representatives, Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003) ("mootness arises when . . . a challenged [policy or practice] is repealed during the pendency of litigation, and a plaintiff seeks only prospective relief").

Two days after Chief Flynn's announced retirement, Defendants sent a letter to Plaintiffs in which Defendants set forth their position on the mootness of Plaintiffs' lawsuit. Russell Decl., Ex. C at 1. Rather than providing a substantive response, however, Plaintiffs simply emailed Defendants that "Plaintiffs strongly disagree that this action, which is brought against multiple defendants and is based upon policies and practices of the City of Milwaukee is moot." *Id.* Upon Defendants' subsequent query as to whether they could expect a more substantive response to their letter, Plaintiffs only repeated that they "strongly disagree with [Defendants'] contention that this case is moot" and that, moreover, "no further response is required or forthcoming [from Plaintiffs], unless and until Defendants move the Court for relief on the grounds in counsel's letter." Russell Decl., Ex. D at 1. Pursuant to these communications with Plaintiffs, Defendants now move the court for such relief.

FACTUAL BACKGROUND

On November 10, 2015, Chief Flynn requested participation in the U.S. Department of Justice's Office of Community Oriented Policing Services ("COPS Office") Collaborative Reform Initiative for Technical Assistance ("CRT-TA") process, with the "expectation that entering into this voluntary process with the COPS Office will provide an avenue to strengthen

and build the mutual trust between the Milwaukee Police Department and the communities we serve.” Russell Decl., Ex. E.³ On December 17, 2015, pursuant to Chief Flynn’s request, the COPS Office began to “conduct a thorough, independent and objective assessment of the Milwaukee Police Department’s policies, practices and accountability systems.” Russell Decl., Ex. F. One of the events the COPS Office organized, for example, was a “town hall meeting” at which, Plaintiffs allege, “numerous Milwaukee residents, including Black and Latino people, expressed concern that MPD officers engage[d] in suspicionless stops and racial and ethnic profiling.” Am. Compl. ¶ 205. The ACLU, which represents Plaintiffs in the instant suit, discussed similar concerns with the COPS Office, and memorialized them in a letter (joined by other community organizations) that was sent to the COPS Office on January 27, 2016. Russell Decl., Ex. G. In pertinent part, the letter stated as follows:

We are writing to follow up on the conversations your [COPS Office] teams had with the ACLU, the NAACP, and other organizations during your visit to Milwaukee.

In the context of discussing the scope of your work in Milwaukee, the ACLU made you aware of a number of concerns that we hope you will consider as you develop your objectives going forward. . . .

³ The COPS Office describes itself as “a federal agency responsible for advancing community policing nationwide.” Russell Decl., Ex. F. It describes the CRT-TA process as follows:

The COPS Office’s Collaborative Reform Initiative for Technical Assistance is an independent and objective way to transform a law enforcement agency through an analysis of policies, practices, training, tactics and accountability methods around key issues facing law enforcement today. The initiative is designed to provide technical assistance to agencies facing significant law enforcement-related issues. Using subject matter experts, interviews and direct observations, as well as conducting extensive research and analysis, the COPS Office assists law enforcement agencies in enhancing and improving their policies and procedures, operating systems and professional culture.

Id.

Regarding racially biased policing, which also was discussed, we want to ensure that you are aware of our specific concerns regarding traffic stops, pedestrian stops, pretextual stops, consent searches, and stop and frisk generally.

We also hope you stay true to the commitment you made at the NAACP offices to have conversations with community stakeholders prior to determining the scope, goals and objectives of this investigation. It is important to the credibility of your efforts that the scope of the investigation be determined with input from the community about its highest priority concerns with MPD.

Russell Decl., Ex. G at 1.

On February 22, 2017, in the midst of the robust collaborative reform process in which the ACLU was already providing input, Plaintiffs filed their complaint. This complaint, now amended (Dkt. No. 19), is primarily directed at Chief Flynn and the various law-enforcement strategies (*i.e.*, the alleged “unconstitutional, suspicionless stop-and-frisk program”) he has implemented since January 7, 2008, when he was first sworn into office. *See, e.g.*, Am. Compl. ¶ 281. Reflecting Plaintiffs’ specific targeting of Chief Flynn and his policies, Plaintiffs reference his name over fifty (50) times in the Complaint, detailing specific things he has personally said or done and which, Plaintiffs allege, reflect the unconstitutional law-enforcement strategies he has personally developed and implemented in Milwaukee since 2008. For example:

Upon assuming control of the MPD in 2008, Defendant Flynn ushered in a “broken windows policing” strategy involving “proactive policing” and so-called “saturation patrols.” As part of this strategy, Defendant Flynn directs MPD officers to increase the number of traffic and pedestrian stops, also known as “field interviews” and “field contacts,” throughout the City, and particularly in neighborhoods that are economically depressed and/or perceived as suffering from social disorder. Defendant Flynn has publicly suggested that saturating these neighborhoods with police and ramping up the number of stops made by MPD officers will disrupt and deter crime, whether or not the stops lead to arrest or prosecution. Am. Compl. ¶ 189.

[W]hen questioned about racial disparities in MPD traffic stops, Defendant Flynn publicly acknowledged, “Yes, of course, we are going to stop lots of innocent people. The point is, do folks understand what their role is as a cooperative citizen in having a safe environment.” *Id.* ¶ 190.

In 2015, the U.S. District Court for the Eastern District . . . upheld the jury verdict and observed: “. . . MPD Chief Edward Flynn has made clear that one of his prerogatives is encouraging large amounts of pedestrian stops, regardless of the reasons. In criticizing *Floyd v. City of New York*, the Southern District of New York case finding the New York Police Department’s stop-and-frisk tactics illegal, Chief Flynn stated, ‘That’s what worries us about what’s happening in New York. It would be a shame if some people decided to put us back in our cars just answering calls and ceding the streets to thugs.’” Order, *Hardy v. City of Milwaukee*, 88 F. Supp.3d 852, 881 at n.19 (E.D. Wis., Feb. 27, 2015) (omitting citation). *Id.* ¶ 198.

Defendant Flynn told the Milwaukee Journal Sentinel, “If we are going to heavily engage with those communities that are both victimized and from whence a significant majority of our offenders come, we are going to generate disparities because of where we’re physically located.” *Id.* ¶ 202.

Defendant Flynn addressed the Defendants’ policy, practice, and custom of directing and encouraging MPD patrol officers to aggressively use traffic and pedestrian stops and frisks in designated areas in a 2011 video on Milwaukee Police Traffic Stops . . . Defendant Flynn asserted: “We needed this department to be visible and we needed it to be active. We started to take more calls over the phone, and started to create more foot patrols, and more bicycle patrols and time for officers to do directed patrol missions, which means, that hot spot over there, I want you to stop cars and talk to people. I want you to disrupt the environment, because the cops are here now.” *Id.* ¶ 210.

Defendant Flynn has directed MPD officers to target so-called “known offenders” and “frequent fliers” for stops and frisks. He has made numerous statements encouraging officers to stop people with criminal histories, regardless of the specific circumstances in which police officers encounter them. His statements fail to acknowledge that stops must be supported by reasonable suspicion of criminal activity, and send the message that reasonable suspicion is not required. *Id.* ¶ 225

[I]n the 2011 Traffic Stops Video, Chief Flynn stated: “If we know 10% of our offenders are responsible for 50% of the crime . . . we’ve got to target those guys. We’ve got to drive around looking for people. And if we see them, we have to encounter them and engage them. Most of the time, they are not carrying anything bad. But once we get inside their head, we’re hoping we’re gonna affect their behavior.” *Id.* ¶ 226.

Other than Chief Flynn, no other leaders of the Defendant entities are identified by name in the Amended Complaint. Instead, the other Defendant entities have only the most vague and conclusory allegations set forth against them. *See, e.g., id.* ¶ 223 (“Defendant FPC is aware of,

and has effectively ratified and sanctioned, the MPD's high-volume, suspicionless stop-and-frisk program").

On August 30, 2017, three months after Plaintiffs filed their amended complaint, a draft CRT-TA assessment report (the "CRT-TA Report")—authored by the COPS Office and its consultants pursuant to the collaborative reform process—was made public. Russell Decl., Ex. H. This CRT-TA Report contains a large number of findings and recommendations relative to Chief Flynn's policies, practices and accountability systems. Russell Decl., Ex. I. In particular, the CRT-TA Report directly addresses Chief Flynn's "Citizen Stop and Search Practices," of which Plaintiffs complain, and provides findings and recommendations mirroring the allegations and relief sought by the Plaintiffs (*cf.* Am. Compl. at 86-89):

Finding 33: MPD's traffic stop practices have a disparate impact on the African-American community.

Recommendation 33.1: MPD should engage an independent evaluator to measure the community impact of its traffic enforcement strategy as compared to the potential benefits of the strategy.

Recommendation 33.2: MPD should continue voluntary collection of traffic stop data, a practice that is to be commended.

Recommendation 33.3: MPD should, as part of its data driven practices, provide quarterly trends and analysis of traffic stop enforcement and searches to district supervisors, analyzing data across the city, districts, and peer groups.

Recommendation 33.4: MPD should task supervisors with ensuring accuracy of data reported and reviewing and analyzing traffic stop data to identify trends and potential bias-based behaviors at an early stage.

Recommendation 33.5: MPD should, publicly and on a quarterly basis, report at the FPC the outcomes of its traffic enforcement strategy, including the demographic trends and crime trends, identified for the quarter.

Recommendation 33.6: MPD should require the training currently provided on fair and impartial policing and procedural justice to be delivered to all officers in the Department.

Recommendation 33.7: MPD should communicate throughout the ranks that a traffic stop quota is prohibited.

Finding 34: Pedestrian stops by MPD lack proper oversight and accountability.

Recommendation 34.1: MPD should immediately modify its policy on field interviews to require that officers notify MPD dispatch that the officer has engaged in a field stop and notify dispatch when that stop has completed.

Recommendation 34.2: MPD should develop a training bulletin for all MPD officers reinforcing the requirements for a field interview, including establishing reasonable suspicion for the stop, which should be reinforced through roll call training conducted by supervisors.

Recommendation 34.3: MPD officers should be required to clearly define the reasonable suspicion of the stop within the Field Interview card.

Recommendation 34.4: MPD supervisory personnel should be held accountable for ensuring timely, accurate submission of Field Interview cards.

Recommendation 34.5: Supervisors should be provided training on identifying trends and patterns that give rise to potentially biased practices regarding vehicle and pedestrian stops and vehicle searches.

Recommendation 34.6: MPD should conduct an audit of its field interviews to review the timely and accurate completion of Field Interview cards, proper explanation for the reasonable suspicion giving rise to the stop, and as a cross-reference against the CAD data for the pedestrian stop.

Finding 35: Community members are concerned that MPD engages in stop practices that are inflammatory to the community ethos, particularly the reported practice of “curbing” individuals.

Recommendation 35.1: MPD should establish a policy that the curbing of individuals during routine traffic stops is prohibited.

Recommendation 35.2: MPD should provide training for officers on how to safely conduct routine traffic stops and practices for ensuring appropriate containment of individuals.

Recommendation 35.3: MPD should begin collecting data on “curbing” as part of its traffic and pedestrian stop data collection.

Finding 36: MPD's traffic stop information system is cumbersome and time-consuming, which results in traffic stops taking a significant amount of time.

Recommendation 36: MPD should conduct a review of its technology and processes for traffic stops to identify and address the reasons for the amount of time it takes to conduct a traffic stop.

Russell Decl., Ex. I at 10-11. The same day the CRT-TA Report was made public, the ACLU issued a press release in which it embraced the CRT-TA Report findings and recommendations: “It reflects many of the concerns that we have heard, especially from communities of color, about the MPD’s aggressive pedestrian and traffic stop policies and practices, as well as about use of force, transparency and accountability.” Russell Decl., Ex. J. Tellingly, the ACLU acknowledged the CRT-TA Report addressed the same issues contained in the instant lawsuit: “Our lawsuit is an effort to address some of the problems that the COPS report appears to corroborate.” *Id.*

Notwithstanding the recent policy changes announced by the U.S. Department of Justice on September 15, 2017 (*see* Russell Decl., Ex. K), the MPD and FPC has been actively working on implementing the COPS Office recommendations. Russell Decl., Ex. L. For example, a MPD memo dated October 4, 2017 (the “CRT-TA Memo”), explicitly addresses the COPS Office’s citizen-stop-and-search recommendations in light of an information request, made by Milwaukee Alderman Russell Stamper, regarding the costs of implementing the recommendations made by the COPS Office. *Id.* The CRT-TA Memo explains, in particular, how nine of the citizen-stop-and-search recommendations would not require costs, technical assistance or best practice research (33.5, 33.7, 34.2, 34.4, 34.6, 35.1, 35.3 and 36); four of the recommendations would require a consultant that the MPD estimates would cost \$600 per day (33.4, 34.4, 34.5, 34.6); and one recommendation (33.1) would require technical assistance and/or a consultant that the MPD estimates would cost between \$60,000-\$100,000. *Id.* The CRT-TA Memo states that, “[a]s many of the items included may require substantial investment

of City resources, policymakers will need to participate in the planning and prioritization of any future investment of resources.” *Id.* at 2.

Most significantly, the CRT-TA Memo sets forth that the “MPD is committed to working with stakeholders to find solutions to implement the recommendations from the [CRT-TA Report] despite DOJ no longer providing the technical assistance that was originally supposed to be provided over an 18-month period.” *Id.* at 1. Chief Flynn, at his deposition, reviewed and corroborated the accuracy of this statement:

Q: Looking at what’s been marked as Exhibit 286, do you recognize this document?

A: Yep.

Q: Okay. Did you review and approve it?

A: It wasn’t a question of approving it. I reviewed it. Yeah.

Q: On – so if you take a look at page – so this is a – essentially a response to an alder’s request for information on what aspects of the COPS report’s recommendations the department would be willing to implement; correct?

A: Yeah.

* * *

A: Correct. Yeah.

Q: And in the fourth paragraph [of the CRT-TA Memo] it says “MPD is committed to working with stakeholders to find solutions to implement the recommendations from the original draft report, despite DOJ no longer providing the technical assistance that was originally supposed to be provided over an 18-month period.” Is that right?

A: That’s correct.

Q: Okay. And despite your concerns about the quality of the COPS report, is it true that the department has committed to making as many of the changes as possible that the COPS report has recommended?

* * *

A: Yeah. I mean, despite the fact that I thought it was a badly written report and inaccurate in many places, the recommendations for reforms and changes are fairly straightforward and boilerplate. You know, recommendations that we memorialize certain things or do them more often or do them better, I never -- even when we had the press conference announcing the intervention, I said I was predisposed to accept whatever recommendations they made. Sure.

* * *

. . . And so, number one, we're going to engage in a community process that the City Council is putting together with the Fire and Police Commission to solicit community feedback and input on the recommendations that have been made because their priorities -- my priority would be to do the stuff I can do, because that's fairly straightforward.

The community's priorities might be something altogether different. They might say "No, no, no, we need you to do this thing over here you'll need a consultant for."

So before -- you know, some of this stuff we're already undertaking, you know, the low-hanging fruit, if you will. Some of the other stuff is going to have a cost component. Th[e] next several months is going to be about getting that community feedback.

Q: So then would you be willing to use some of the money that is ultimately budgeted for a community policing consultant in an independent traffic consultant?

A: Theoretically, sure.

Russell Decl., Ex. M at 305:18-310:12. Chief Flynn's testimony regarding "[t]he community's priorities" closely echoes the ACLU's expressed desire that the collaborative reform process focus on such priorities: "It is important to the credibility of your efforts that the scope of the investigation be determined with input from the community about its highest priority concerns with MPD." Russell Dec., Ex. G at 1. In his public statements to the press, Chief Flynn has been consistent regarding his commitment to the reforms proposed and recommended in the CRT-TA Report:

. . . Flynn recently reiterated that he agrees with most of the draft [CRT-TA] report's recommendations.

“I am embracing the recommendations for MPD because, like any other police department, we could always improve,” he said in a written statement last week.

“It’s important to demonstrate to the community our willingness to examine our systems and processes and look for ways to improve them.”

Russell Decl., Ex. N at 1.

The recipient of the CRT-TA Memo, Leslie Silletti (director of MPD’s Office of Management, Analysis and Planning (“OMAP”)) similarly testified regarding the MPD’s commitment to implementing the recommendations of the CRT-TA Report, while also addressing the intimately related issues of cost and community involvement:

Q: Okay. Another thing you mentioned is the lack of funding and technical assistance related to implementing the COPS recommendations. If you did, in fact, have the technical assistance needed, would you be willing to implement -- would MPD be willing to implement all of the recommendations?

* * *

A: My understanding is that if -- in these community conversations that will happen, if those are prioritized to be implemented and resources were available, then the answer would be yes. However, if MPD says, “Yes, this is our number one priority, we want this to be implemented,” and the community of interest says, “You know what, we don't see the cost-benefit analysis” -- and I’m very much generalizing and making this up for -- exaggerating for the point of discussion -- that might never get funded, even if there was a pot of \$2 million sitting there. You know, they might -- the community of interest might say, you know, resources are limited and priorities compete and maybe this \$2 million should be spent in this direction.

Russell Dec., Ex. O.

The executive director of the FPC, MaryNell Regan, also confirmed at her deposition that the FPC is committed to working with community stakeholders to find solutions to implement the recommendations from the CRT-TA Report, to the extent those solutions have not already been implemented:

A: . . . We’ve just pulled out the recommendations [of the CRT-TA Report] for purposes of going forward on our community-led review.

Q: And are you moving forward on any of those recommendations?

A: We are moving forward with allowing the community to have a process to discuss the recommendations.

* * *

. . . [F]or example, many of their recommendations have already been implemented, and that's part -- going to be part of the community-led discussion to educate and inform the residents about that.

* * *

Q: What's the timeline for this community engagement that you're talking about?

A: It's hopefully to be wrapped up by next September [2018].

Q: Has it -- has that engagement already begun?

A: Yes.

Q: Who is being invited to contribute to that process?

A: The council president has reached out to Markasa Taylor to chair a citizen -- I'm sorry -- a citizen committee, and then the plan or thought is to have 10 to 15 organizations join with the recommended person. And the thought is some of those people would be trained as facilitators. The FPC would staff that board. There would be five or six hubs in the community to facilitate community-led conversations about the recommendations that would be pared -- they would all remain, but they would be pared down into digestible chunks.

Russell Decl., Ex. P at 212:22-213:124; 217:25-218:18. In fact, community-led discussions have been occurring to discuss the CRT-TA Report findings and recommendations since the Fall of 2017, under the guidance of Markasa Taylor. *See, e.g.*, Russell Decl., Ex. Q. These are exactly the types of community-led discussions the ACLU wanted to see occur when collaborating with the COPS Office. Russell Decl., Ex. G at 1 (“We also hope you stay true to the commitment you made at the NAACP offices to have conversations with community stakeholders prior to determining the scope, goals and objectives of this [CRT-TA] investigation.”).

Chief Flynn announced his retirement on January 8, 2018, which is to be effective February 16, 2018. Russell Decl., Ex. A at 1. The Milwaukee Fire and Police Commission (“FPC”) issued a media release on the same day as the retirement announcement, in which the FPC addressed the selection of an interim successor—someone who has “earned the confidence and trust” of community stakeholders:

After a process, the FPC will select an Acting Chief from within the department and will pay particular attention to those members that have an intricate familiarity with the department structure, possess a vision of a 21st century Milwaukee Police Department, and have earned the confidence and trust of the department members and the community at large.

* * *

. . . [S]tate law made the FPC responsible for setting employment standards, testing candidates for positions in the Fire and Police Departments, and appointing both chiefs. This wise and forward-analysis of the state of Wisconsin legislature has endured through the present date. We at the FPC wish to assure the Milwaukee community that we are committed to serving the community’s best interests as we begin the important task of selecting a successor.

Russell Decl., Ex. B. The FPC subsequently released the job announcement for the acting/interim Police Chief for the MPD. Russell Decl., Exs. R, S. As the FPC explained:

This candidate search is specifically focused on the selection of an Interim Chief whom will lead the department upon the retirement of Chief Flynn on February 16th. The person selected in this process will serve on a waiver basis until a permanent Chief is selected for a renewable term of office consistent with City of Milwaukee Code and State Law. Candidates for Acting/Interim Chief of Police may also apply for the permanent Chief position when it is posted, and the timeline and process for the selection of a permanent Chief will be communicated by the FPC as soon as practicable.

The FPC has already received numerous communications from community members and groups advising us on their desired qualifications for the next Chief of Police. We appreciate that the community is engaged in this process and we encourage other interested people/organizations to share their opinions and suggestions with us by emailing our office at fpc@milwaukee.gov. Letters to the FPC on this topic will be publicly posted to our website and will be reviewed by the board of fire and police commissioners.

We encourage the public to also engage with us via written communication as we select the Interim Chief. We assure the public that the selection process for the permanent Chief will include ample opportunity to meet and discuss the desired qualities that our community has for our City's next permanent Chief of Police.

Our commission is comprised of seven independent, civilian members of the Milwaukee community and is statutorily tasked with this important duty. We take this responsibly seriously and will make our decisions based upon what each of us feels is in the best interest of the City of Milwaukee. That this process is free from politics or favoritism is the essential reason that this independent commission was created in State Law in 1885. We intend to prove that the wisdom of that decision is not lost during this important time in our City's history.

Russell Decl., Ex. R. The deadline for receipt of application submissions was January 19, 2018.

Id. As the FPC works towards the selection of a new police chief, the FPC has welcomed input from community stakeholders, many of whom have already provided input to the FPC regarding the selection of a new police chief. Russell Decl., Ex. T (identifying, among others, the African-American Roundtable, the Coalition for Justice, the Milwaukee Police Association, the Peace Garden Project, and the Sherman Park Community Association).

It is clear from public statements made by Milwaukee's leaders that the interim and the permanent police chief will not continue the law enforcement strategies implemented by Chief Flynn of which Plaintiffs complain. For instance, Milwaukee Common Council President Ashanti Hamilton has said "It is an opportunity for the city of Milwaukee to move in a different direction." Russell Decl., Ex. U. Milwaukee Alderman Bob Donovan, who serves as Public Safety Committee Chair, expressed similar—though much more blunt—sentiments at a public address he held following Chief Flynn's resignation, which he described as "the State of Public Safety in the City of Milwaukee":

Let me say that I am frankly pleased to say that Chief Flynn has chosen to resign . . . Chief Flynn has lost the confidence of the rank and file of his department. He has lost the faith of the wide majority of the Common Council. He has clearly alienated the board of fire and police commissioners – and he has lost the confidence of a growing number of state legislators on both sides of the aisle . . . I wish Chief Flynn no ill. I do however believe it is in the best interest in the City

of Milwaukee that he move on. When it comes to public safety, Milwaukee needs a fresh start and a new direction.

Russell Decl., Ex. W. The FPC will make its decision on who will be the acting chief—from a group of finalists—on February 15, 2018. Russell Decl., Ex. X. The acting chief will take over on February 16, 2018, the day on which Chief Flynn officially retires. *Id.*

ARGUMENT

I. LEGAL STANDARD

A motion brought pursuant to Federal Rule of Civil Procedure 12(b)(1) raises the fundamental question of whether a federal district court has subject-matter jurisdiction over the action before it. Dismissal pursuant to Rule 12(b)(1) for lack of subject-matter jurisdiction includes dismissal on the basis of the justiciability doctrine of mootness, as mootness is an issue concerning the subject-matter jurisdiction of the federal courts. *See, e.g., Cornucopia Inst. v. U.S. Dep't of Agric.*, 560 F.3d 673, 676 (7th Cir. 2009) (“It is well established that the federal courts have no authority to rule where the case or controversy has been rendered moot.”).

In evaluating a challenge to subject matter jurisdiction, the court must first determine whether a factual or facial challenge has been raised. *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015) (omitting citation). A factual challenge contends that there is in fact no subject matter jurisdiction, even if the pleadings are formally sufficient. *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009). In reviewing a factual challenge, the court may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists. *Id.*

“The objection that a federal court lacks subject-matter jurisdiction, *see* Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006).

II. ANALYSIS

A. Chief Flynn's Retirement Renders Plaintiffs' Lawsuit Moot

On February 16, 2018, Chief Flynn's retirement will become effective and he will no longer exercise supervisory authority over MPD officers and MPD operations. Nor will he have the power to continue implementing his allegedly unconstitutional law-enforcement strategy of having MPD officers conduct a high volume of traffic and pedestrian stops. As such, Plaintiffs' claims for declaratory and injunctive relief can no longer be sustained absent a showing by Plaintiffs that Chief Flynn's successor will continue employing the same law-enforcement strategies of which Plaintiffs complain. *See Spomer v. Littleton*, 414 U.S. 514, 521-22 (1974) (remanding for determination whether claims against former State's Attorney are moot and whether Plaintiffs should be permitted to amend their complaint to include claims for injunctive relief against the successor State's Attorney, where there is no record that the successor State's Attorney intended to continue the asserted practices of the former State's Attorney of which Plaintiffs complained) (omitting citations); *Mayor v. City of Philadelphia v. Educational Equality League*, 415 U.S. 605, 622 (1974) ("Where there have been prior patterns of discrimination by the occupant of a state executive office but an intervening change in administration, the issuance of prospective coercive relief against the successor to the office must rest, at a minimum, on supplemental findings of fact indicating that the new officer will continue the practices of his predecessor.").

The burden is now firmly on the Plaintiffs to show that their suit for equitable relief can continue in light of Chief Flynn's retirement. As the Seventh Circuit has explained:

A demand for present or prospective (declaratory or injunctive) relief imposes a substantial burden on the plaintiff to show survival of the controversy. Thus, when a public official is sued in his official capacity and the official is replaced or succeeded in office during the pendency of the litigation, the burden is on the complainant to establish the need for declaratory or injunctive relief by

demonstrating that the successor in office will continue the relevant policies of his predecessors.

Kincaid v. Rusk, 670 F.2d 737, 741 (7th Cir. 1982) (citing *Spomer*, 414 U.S. at 520–523), *abrogation on other grounds recognized by Salazar v. City of Chi.*, 940 F.2d 233 (7th Cir. 1991). Plaintiffs’ burden in this regard has been repeatedly articulated by district courts within the Seventh Circuit in circumstances similar to those here. *See, e.g., Hoffman v. Jacobi*, No. 4:14-cv-12, 2014 WL 5323952, *3 (S. D. Ind. Oct. 17, 2014) (“Where the plaintiff has failed to meet that burden, the suit against that official is moot and must be dismissed for lack of subject matter jurisdiction.”) (omitting citation); *Moore v. Watson*, 838 F.Supp.2d 735, 762 (N. D. Ill. 2012) (“Because Plaintiffs have not met their burden [that the complained-of policies or practices will continue], declaratory and injunctive relief against Defendants for these practices is improper.”); *Plotkin v. Ryan*, No. 99-C-53, 1999 WL 965718 (N. D. Ill. Sept. 29, 1999) (“The burden is on the complainant to establish the need for injunctive relief by demonstrating that the successor in office will continue the relevant policies of his predecessor.”) (omitting citation); *Newsome v. Daley*, No. 84-C-4996, 1987 WL 9311, *2 (N. D. Ill. April 7, 1987) (“The predecessor is without means to render injunctive relief, and hence such a claim against him is moot.”).

Fed. R. Civ. P. 25(d), as it pertains to substitution of parties, does not help Plaintiffs sustain their lawsuit in the face of a mootness challenge, as multiple authorities amply establish. *See, e.g., 20 Fed. Prac. & Proc. Deskbook* § 82 (“When the suit is against a state officer, however, the mere fact that [Fed. R. Civ. P. 25(d)] purports to authorize substitution cannot make substitution proper . . . the action must be dismissed as moot unless the plaintiff makes the needed showing that the [successor] officer threatens to continue the policy of the predecessor”) (omitting case citations); *see also 7C Fed. Prac. & Proc. Civ.* § 1960 (“Rule 25(d) should be held applicable and to permit the automatic substitution both of federal and state officers, but the

burden of showing whether there is a substantial need for continuing the action, if challenged by an assertion that the suit is moot, will be on plaintiff if a state officer is involved”) (omitting case citations); 25 Fed. Proc., L.Ed. § 59.468 (“Although it has been said that the automatic substitution provision of Fed. R. Civ. P. 25(d) eliminates the requirement that a plaintiff demonstrate the need for continuing an action upon substitution, a moot controversy will not be kept alive by substitution.”) (omitting case citations); 2 Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983* § 6:56, n. 1 (“there must be proof that the successor will engage in the same unconstitutional conduct as the predecessor”) (citing *Spomer* and *Mayor of Philadelphia*).

Here, Plaintiffs cannot meet their burden to continue this lawsuit. With the retirement of Chief Flynn (the primary target of Plaintiffs’ complaint and allegations) there is no longer a live case or controversy. Even when a new interim/acting or permanent police chief is sworn into office—following the input provided by community stakeholders—Plaintiffs cannot substitute that individual for Chief Flynn absent a clear showing that he or she will continue the complained-of law-enforcement strategies implemented by Chief Flynn and that the FPC will continue to ratify or otherwise sanction such strategies. Plaintiffs cannot make such a showing because the City, MPD and FPC have or are implementing changes to the policies, practices and customs of which Plaintiffs complain.

B. The Changes the MPD and FPC Have and Are Implementing Regarding Traffic and Pedestrian Stops Renders Plaintiffs’ Lawsuit Moot

The City of Milwaukee, the MPD and the FPC have committed to substantively change the traffic-stop and pedestrian-stop strategies that were implemented under Chief Flynn and which were already being addressed by the COPS Office, the MPD and the FPC well prior to the filing of Plaintiffs’ complaint. *See supra* 7-15. This commitment is clearly established by the

documentary evidence and the sworn testimony of Chief Flynn, MPD OMAP Director Silletti and FPC Executive Director Regan that the citizen-stop-and-search recommendations made in the CRT-TA Report—recommendations that mirror Plaintiffs’ requested equitable relief—have or will be implemented. *See, e.g.*, Russell Decl., Exs. L, M, N, O, P. This evidence refutes Plaintiffs’ allegations that Defendants are “deliberately indifferent” to the alleged unconstitutional practice of high-volume, suspicionless traffic and pedestrian stops. Am. Compl. ¶¶ 306, 318. With regard to the FPC, such evidence also refutes the allegation that “Defendant FPC is aware of, and has effectively ratified and sanctioned, the MPD’s high-volume, suspicionless stop-and-frisk program.” Am. Compl. ¶ 223. In short, the FPC can no longer be “ratifying” or “sanctioning” a law-enforcement strategy of a police chief who has retired and whose replacement will not continue to implement his or her predecessor’s complained-of law-enforcement strategies.

To plead deliberate indifference, Plaintiffs must allege facts suggesting that “a reasonable policymaker [would] conclude that the plainly obvious consequences’ of the Defendants’ actions would result in the deprivation of a federally protected right.” *Gable v. City of Chicago*, 296 F.3d 531, 537 (7th Cir. 2002) (quoting *Bd. of Cnty. Comm’rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 411 (1997)). However, the evidence here shows the opposite. Defendants, based on the CRT-TA Report, are now voluntarily implementing changes in the MPD (not even required by the current COPS Office) to assure traffic stops and pedestrian stops are conducted in a constitutional manner in Milwaukee. *See, e.g.*, Russell Decl., Exs. L, M, N, O, P. *Strauss v. City of Chicago*, 760 F.2d 765, 768 n.4 (7th Cir. 1985) (recognizing that police departments may take actions to address constitutional concerns).

By implementing such changes, Defendants have rendered Plaintiffs’ suit—which is limited to equitable relief—moot. *Fed. of Advertising Ind. Reprs., Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2007) (“[a] question of mootness arises when as here, a challenged [policy or practice] is repealed during the pendency of litigation, and a plaintiff seeks only prospective relief”). Although it may be true that voluntary cessation of allegedly unconstitutional conduct by private parties may not negate a claim for equitable relief, “[w]hen the defendants are public officials . . . we place greater stock in their acts of self-correction, so long as they appear genuine.” *Magnuson v. City of Hickory Hills*, 933 F.2d 562, 565 (7th Cir. 1991) (omitting citation). Here, the genuineness of the Defendants’ implementation of the changes the CRT-TA Report recommended cannot be seriously questioned in light of the evidence. *See, e.g.*, Russell Decl., Exs. L, M, N, O, P. In addition, courts must not “presume[] bad faith” regarding a defendant’s voluntary cessation of a challenged activity “unless there is evidence creating a reasonable expectation” that the defendants will reenact the challenged policy, practice or custom. *Federation*, 326 F.3d at 930 (“We disagree with [plaintiff’s] characterization of the City’s actions as disingenuous; rather, they just as likely reveal the City’s good-faith attempts to initially maintain an effective ordinance that complies with the Constitution, and then its desire to avoid substantial litigation costs by removing a potentially unconstitutional law from the books.”). Indeed, the Seventh Circuit has explained that “[i]n a string of cases, the [U.S. Supreme] Court has upheld the general rule that repeal, expiration, or significant amendment to challenged legislation ends the ongoing controversy and renders moot a plaintiff’s request for injunctive relief.” *Fed. of Advertising*, 326 F.3d at 930 (omitting citations). Here, Defendants’ implementation of the CRT-TA Report’s recommendations

regarding traffic stops and pedestrian stops constitute such “significant amendment.” Accordingly, Plaintiffs’ suit has been rendered moot.

CONCLUSION

Defendants respectfully request the Court to dismiss Plaintiffs’ claims as moot because (1) Chief Flynn—whose law-enforcement strategies provide the foundation for all of Plaintiffs’ claims—is retiring and because (2) the evidence shows Defendants have been and will continue implementing CRT-TA Report’s recommendations—which mirror Plaintiffs’ requested relief—regarding the manner in which traffic stops and pedestrian stops are conducted by Milwaukee police officers.

Dated this 25th day of January, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2018, a true and correct copy of the foregoing was served on Plaintiffs via the Court's CM/ECF system, through their following counsel below:

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s/ Joseph M. Russell
JOSEPH M. RUSSELL

DECLARATION OF JOSEPH M. RUSSELL IN SUPPORT OF DEFENDANTS'
RULE 12(b)(1) MOTION TO DISMISS FOR MOOTNESS AND
LACK OF SUBJECT MATTER JURISDICTION

Document 71

See especially Exhibit L – Response to letter from Alderman Russell Stamper by the MPD answering his question regarding the DOJ's recommendations: "How many of the recommendations have no cost and can be implemented immediately? I know all except 3 or 4 were accepted by the Chief."

And Exhibits M, N, O, and P.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHARLES COLLINS, *et al.*,

Plaintiffs,

Case No. 17-CV-00234-JPS

v.

CITY OF MILWAUKEE, *et al.*,

Defendants.

**DECLARATION OF JOSEPH M. RUSSELL IN SUPPORT OF DEFENDANTS’
RULE 12(b)(1) MOTION TO DISMISS FOR MOOTNESS AND
LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to 28 U.S.C. § 1746, I, Joseph M. Russell, hereby declare:

1. I am a lawyer in the law firm von Briesen & Roper, s.c.
2. I am the lawyer representing Defendants in the above-captioned matter.
3. I make the following declaration based on my personal knowledge.
4. Attached hereto as Exhibit A is a true and correct copy of the *Milwaukee Journal Sentinel* article entitled “Milwaukee Police Chief Ed Flynn Announces Retirement” (published at 4:16 p.m. CT, Jan. 8, 2018; updated at 9:29 a.m. CT, Jan. 9 2018), authored by Ashley Luthern, which I printed from the Milwaukee Journal Sentinel website (article is available at <https://www.jsonline.com/story/news/crime/2018/01/08/milwaukee-police-chief-ed-flynn-announces-retirement/1014594001/1>) on January 22, 2018.

5. Attached hereto as Exhibit B is a true and correct copy of the media release of the Milwaukee Fire and Police Commission (“FPC), dated January 8, 2017, which I printed from the FPC website (available at <http://city.milwaukee.gov/fpc>) on January 22, 2018.
6. Attached hereto as Exhibit C is a true and correct copy of the email thread between Defendants and Plaintiffs’ counsel, dating between January 10 and January 12, 2018, regarding the mootness of Plaintiffs’ complaint.
7. Attached hereto as Exhibit D is a true and correct copy of the email thread between Defendants and Plaintiffs’ counsel, dating between January 10 and January 18, 2018, regarding the mootness of Plaintiffs’ complaint.
8. Attached hereto as Exhibit E is a true and correct copy of the Letter Police Chief Edward Flynn sent to Ronald L. Davis, Director of the Office of Community Oriented Policing Services (“COPS”) on November 10, 2015.
9. Attached hereto as Exhibit F is a true and correct copy of the media release issued by the Office of Community Policing Services (“COPS Office”), U.S. Department of Justice, entitled “Department of Justice launches collaborative review of the Milwaukee Police Department,” which I printed from the COPS website (release is available at <https://cops.usdoj.gov/Default.asp?Item=2836>) on January 22, 2018.
10. Attached hereto as Exhibit G is a true and correct copy of the January 27, 2016, letter sent to the Office of Community Policing Services (“COPS Office”), U.S.

Department of Justice, of which the ACLU was a signatory, which I printed from the ACLU of Wisconsin website (letter is available at <http://www.aclu-wi.org/story/mke-community-groups-ask-doj-comprehensive-scope-cops-review>) on January 23, 2018.

11. Attached hereto as Exhibit H is a true and correct copy of the *Milwaukee Journal Sentinel* article entitled “Trust damaged between Milwaukee police and community, Department of Justice draft report says” (published on August 30, 2017), authored by Ashley Luthern and Gina Barton (article is available at <https://projects.jsonline.com/news/2017/8/30/trust-damaged-between-milwaukee-police-department-of-justice-draft-report-says.html>) on January 23, 2018.
12. Attached hereto as Exhibit I is a true and correct copy of the COPS Office’s Findings and Recommendations, contained in its collaborative reform draft assessment report, I printed from the website of the Milwaukee Fire and Police Commission (“FPC) (available at <http://city.milwaukee.gov/fpc>) on January 22, 2018.
13. Attached hereto as Exhibit J is a true and correct copy of the statement released by the ACLU of Wisconsin, on August 30, 2017, which I printed from the ACLU of Wisconsin website (statement is available at <http://www.aclu-wi.org/media/statement-response-release-draft-cops-report>) on January 23, 2018.
14. Attached hereto as Exhibit K is a true and correct copy of the U.S. Department of Justice’s media release, dated September 15, 2017, entitled “Department of Justice Announces Changes to the Collaborative Reform Initiative,” which I

printed out from the Department of Justice website (release available at <https://www.justice.gov/opa/pr/department-justice-announces-changes-collaborative-reform-initiative>) on January 22, 2018.

15. Attached hereto as Exhibit L is a true and correct copy of a Milwaukee Police Department Memorandum, dated October 4, 2017, sent from Sergeant Mark Krowski to Director Leslie Silletti.
16. Attached hereto as Exhibit M is a true and correct copy of pages 1 and 305-307 of the transcript of the November 6, 2017, deposition Plaintiffs took of Milwaukee Police Chief Flynn in the above-captioned matter.
17. Attached hereto as Exhibit N is a true and correct copy of the *Milwaukee Journal Sentinel* article entitled “City officials, including Chief Edward Flynn, pledge to move forward on draft DOJ reforms” (published at 6:00 a.m. CT October 10, 2017), authored by Ashley Luthern, which I printed from the Milwaukee Journal Sentinel website (article is available at <https://www.jsonline.com/story/news/crime/2017/10/10/city-officials-including-chief-edward-flynn-pledge-move-forward-draft-doj-reforms/736904001/>) on January 22, 2018.
18. Attached hereto as Exhibit O is a true and correct copy of pages 1 and 162-163 of the transcript of the November 2, 2017, deposition Plaintiffs took of MPD OMAP Director Leslie Silletti in the above-captioned matter.

19. Attached hereto as Exhibit P is a true and correct copy of pages 1, 212-213 and 217-219 of the transcript of the November 14, 2017 deposition Plaintiffs took of FPC Director MaryNell Regan taken in the above-captioned matter.
20. Attached hereto as Exhibit Q is a true and correct copy of the Milwaukee Journal Sentinel article entitled “DOJ draft report moves forward with town hall sessions to share feedback, ideas for Milwaukee police reform” (published at 8:00 a.m. CT Nov. 29, 2017), authored by Ashley Luthern, which I printed from the Milwaukee Journal Sentinel website (article is available at <https://www.jsonline.com/story/news/crime/2017/11/29/have-opinion-draft-doj-report-milwaukee-police-department-share-feedback-ideas-reform-town-hall-sess/902881001/>) on January 22, 2018.
21. Attached hereto as Exhibit R is a true and correct copy of the January 12, 2017, media release from the Milwaukee Fire and Police Commission (“FPC) which I printed from the website of the Milwaukee Fire and Police Commission (available at <http://city.milwaukee.gov/fpc>) on January 22, 2018.
22. Attached hereto as Exhibit S is a true and correct copy of the acting/interim chief job announcement from the Milwaukee Fire and Police Commission (“FPC) which I printed from the website of the Milwaukee Fire and Police Commission (available at <http://city.milwaukee.gov/fpc>) on January 22, 2018.
23. Attached hereto as Exhibit T is a true and correct copy of the website page of the Milwaukee Fire and Police Commission (“FPC) (available at

<http://city.milwaukee.gov/fpc>) on January 22, 2018, which provides links to input provided by community stakeholders to the new chief police chief.

24. Attached hereto as Exhibit U is a true and correct copy of the TMJ4 article entitled “Community split on Milwaukee Police Chief Ed Flynn’s retirement” (published at 10:12 p.m., Jan. 8, 2018; updated at 9:31 a.m., Jan. 9, 2018), authored by Rebecca Klopf, which was printed from the TMJ4 website (article is available at <https://www.tmj4.com/news/local-news/community-split-on-milwaukee-police-chief-ed-flynns-retirement>).
25. Attached hereto as Exhibit W is a true and correct copy of the FOX6 News article entitled “Ald. Bob Donovan on public safety: ‘Milwaukee needs a fresh start and a new direction’” (published at 10:42 a.m., Jan. 9, 2018; updated at 11:31 a.m., Jan. 9, 2018) which was printed from the FOX6 News website (article is available at <http://fox6now.com/2018/01/09/ald-bob-donovan-on-public-safety-milwaukee-needs-a-fresh-start-and-a-new-direction/>).
26. Attached hereto as Exhibit X is a true and correct copy of the Milwaukee Journal Sentinel article entitled “10 apply to become acting chief of the Milwaukee Police Department; finalists to be named Thursday” (published at 7:00 a.m. CT Jan. 24, 2018; updated at 11:31 a.m. CT Jan. 24, 2018), authored by Ashley Luthern, which I printed from the Milwaukee Journal Sentinel website (article is available at <https://www.jsonline.com/story/news/crime/2018/01/24/10-apply-become-acting-chief-milwaukee-police-department/1058831001/>) on January 25, 2018.

Dated: January 25, 2018

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EXHIBIT A



It's what's inside
that counts.



Milwaukee Police Chief Ed Flynn announces retirement

Ashley Luthern, Milwaukee Journal Sentinel | Published 4:16 p.m. CT Jan. 8, 2018 | Updated 9:29 a.m. CT Jan. 9, 2018



(Photo: Rick Wood / Milwaukee Journal Sentinel)

Milwaukee Police Chief Edward Flynn announced his retirement Monday, capping a turbulent period during his tenure as the city's top cop.

"It's time — time to say thank you, time to say goodbye," Flynn said.

Flynn, 69, made his announcement one day after the 10th anniversary of his appointment as Milwaukee's police chief and days before he was scheduled to go before the city's Fire and Police Commission for a [performance evaluation \(/story/news/crime/2018/01/08/milwaukee-fire-and-police-commission-review-ed-flynns-performance-rumors-swirl-his-future/1013447001/\)](/story/news/crime/2018/01/08/milwaukee-fire-and-police-commission-review-ed-flynns-performance-rumors-swirl-his-future/1013447001/).

His retirement is to be effective Feb. 16. The chief is in the middle of his third term, which was scheduled to expire Jan. 7, 2020. The commission, a civilian oversight board, said it would discuss how to move forward in its closed session Thursday.

The commission said it would select an acting chief from within the department "after a process" and seek candidates familiar with department structure and who have the confidence and trust of officers and the wider community.

Under the current chain-of-command, Assistant Chief James Harpole has served as acting chief when Flynn is away. Harpole was among five finalists for the chief's post when it was last open in 2008.

RELATED: [Local leaders react to Milwaukee Police Chief Ed Flynn's retirement announcement \(/story/news/crime/2018/01/08/local-leaders-react-milwaukee-police-chief-ed-flynns-retirement-announcement/1015006001/\)](/story/news/crime/2018/01/08/local-leaders-react-milwaukee-police-chief-ed-flynns-retirement-announcement/1015006001/)

Flynn announced his retirement with Mayor Tom Barrett, a staunch supporter, by his side.

"You have earned the right to retire," Barrett said as he thanked Flynn for his service.

Flynn was appointed in 2008 and became [the first chief to have his contract renewed \(http://archive.jsonline.com/newswatch/132206818.html\)](http://archive.jsonline.com/newswatch/132206818.html) since Harold Breier, who left in 1984 after 20 years as chief. Before that, chiefs were appointed for life. He drew an annual salary of about \$147,000.

Flynn's first two years as chief were marked by Milwaukee's lowest homicide rates since 1985, though homicides and nonfatal shootings have trended upward since 2010. His trademark has been expanding the use of technology and data at the department.

On Monday, Flynn said he had wanted to stay on the job in 2017 to bring down the spikes in homicide, which reached a decades-high of 145 victims in 2015, and other violent crime increases. He said the department had made "significant progress," with homicides declining by about 18% last year.

A decade ago, many city leaders heralded his appointment, saying Flynn would modernize and reform the department.

For the most part, Flynn managed to keep their support through scandals both personal — an extramarital affair with a journalist — and professional. He was criticized by some local leaders and residents for his response to the in-custody death of Derek Williams, the fatal police shootings of Dontre Hamilton and Sylville Smith, and a series of illegal strip and body cavity searches his officers performed on African-American men suspected of having drugs.

On Monday, Flynn acknowledged his tenure had seen challenges.

"Milwaukee has been at the center of many of the social changes that we're seeing right now, the enhanced scrutiny of the police," Flynn said. "Certainly we have had some conspicuous failures over the years in which individual officers or small groups fail to adhere to our core values."

He said what was important was how the department held officers accountable, referencing the firing of the officers involved in the fatal shootings of Hamilton and Smith. Flynn's decision to fire officer Christopher Manney after the Hamilton shooting sparked a no-confidence vote by the police union (<http://archive.jsonline.com/news/milwaukee/no-confidence-vote-in-milwaukee-chief-flynn-nearly-100-b99381927z1-281078832.html>).

Flynn spent most of his news conference touting programs and initiatives, including: the creation of the Neighborhood Task Force and Intelligence Fusion Center; the re-drawing of police district boundaries to reflect neighborhoods; the use of CompStat, ShotSpotter and other technologies; and partnerships with community groups, such as the Sojourner Family Peace Center and the Salvation Army. He also highlighted drops in uses-of-force and citizens complaints.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

He praised his officers, noting one-third of the current force had been hired under his tenure.

"They've absorbed an enormous amount of technological operational and institutional change against the backdrop of significant political and societal pressure," he said.

Strained relations

In recent months, Flynn has had a particularly strained relationship with the Milwaukee Common Council and the city's Fire and Police Commission. He came to be seen by some as standoffish and uncommunicative even with those elected officials and the commission, which hired him and had the power to fire him.

This summer, Flynn found himself under a barrage of criticism, first for changes to the department's immigration policy ([/story/news/crime/2017/07/25/milwaukee-chief-edward-flynn-defends-immigration-policy-changes/508743001/](http://story/news/crime/2017/07/25/milwaukee-chief-edward-flynn-defends-immigration-policy-changes/508743001/)) and how those changes went into effect largely behind-the-scenes.

Around the same time, the Fire and Police Commission ordered Flynn to change the department's pursuit policy or face discipline, which included possible termination. Soon after, [Flynn hired prominent lawyer Franklyn Gimbel \(/story/news/2017/07/20/police-chief-ed-flynn-hires-attorney-franklyn-gimbel-represent-him-over-pursuit-policy-order/497203001/\)](#) to represent him for possible employment issues related to the order. Flynn later put forward pursuit policy changes that satisfied the commission.

"Political criticism is part and parcel of this job," Flynn said Monday. "That wasn't an issue."

The Common Council released a statement Monday expressing support for the city's Fire and Police Commission as it begins selecting a new chief. The statement also referenced the need to implement recommendations from a draft report of a review of the Police Department by the U.S. Department of Justice.

That lingering federal review of the Milwaukee Police Department had been stalled with the change in presidential administrations, launching a fight over when and how any findings or recommendations from it would be released.

Several aldermen were incensed after a public records request for a draft of the report was denied and one of them, Ald. Jose Perez, proposed hiring an outside attorney to take up the open records issue.

In late August, the Journal Sentinel obtained and published a draft of the report, which found trust had been damaged between the Police Department and the community it serves.

RELATED: [Trust damaged between Milwaukee police and community, DOJ draft report says \(https://projects.jsonline.com/news/2017/8/30/trust-damaged-between-milwaukee-police-department-of-justice-draft-report-says.html\)](#)

RELATED: [9 key takeaways from the DOJ draft report on the Milwaukee Police Department \(/story/news/crime/2017/08/30/9-key-takeaways-doj-draft-report-milwaukee-police-department/610269001/\)](#)

POLITIFACT: [Retiring Milwaukee Police Chief Ed Flynn on the Truth-O-Meter \(http://www.politifact.com/wisconsin/article/2018/jan/08/retiring-milwaukee-police-chief-ed-flynn-truth-o-m/\)](#)

It also contained pointed criticisms of Flynn's signature data strategy, suggesting it may have inadvertently widened the gulf between the officers and residents by moving the focus away from community policing.

Flynn has repeatedly said the draft is "riddled with errors" but that he agreed with most of the report's recommendations.

He said he was frustrated with the draft's analysis showing racial disparities in traffic stops, arguing it did not account for disparities in crime victimization. He made the same point when an earlier Journal Sentinel analysis of traffic stop data found similar racial disparities.

ARCHIVE: [Racial gap found in Milwaukee traffic stops \(http://archive.jsonline.com/watchdog/watchdogreports/racial-gap-found-in-traffic-stops-in-milwaukee-ke1hsip-134977408.html\)](#)

ARCHIVE: [Hundreds of assault cases misreported by Milwaukee Police Department \(http://archive.jsonline.com/watchdog/watchdogreports/hundreds-of-assault-cases-misreported-by-milwaukee-police-department-v44ce4p-152862135.html/\)](#)

During his tenure in Milwaukee, Flynn also advocated for tighter controls on firearms. He testified before Congress in 2013 after the school shooting in Sandy Hook, Conn., and urged lawmakers to ban sales of assault weapons and high-capacity magazines to civilians.

At the state level, Flynn urged limits on Wisconsin's concealed carry law, proposing people with three misdemeanor convictions within five years should not be eligible for a concealed-carry license — a fight he lost.

His stance on guns brought him [into conflict \(http://archive.jsonline.com/news/wisconsin/sheriff-david-clarke-apologizes-to-senator-for-milwaukee-police-chief-edward-flynn-gun-testimony-j091pti-195478371.html/\)](#) with former Milwaukee County Sheriff David A. Clarke Jr., who once [aired radio ads \(http://archive.jsonline.com/newswatch/188365571.html\)](#) asking residents to get "in the game" and arm themselves for protection from criminals. Clarke abruptly resigned his post in August and has taken a job with a super PAC supporting President Donald Trump.

The departure of Clarke, and now Flynn, leaves two key public safety jobs in Wisconsin open. Gov. Scott Walker has yet to appoint a replacement for Clarke. The sheriff's office has been led by Acting Sheriff Richard Schmidt since Clarke's resignation.

[Fullscreen](#)

Top Headlines:

Photos: Milwaukee Police Chief Edward Flynn through the years

Jason Kidd fired as Milwaukee Bucks coach

(<https://www.jsonline.com/story/sports/nba/bucks/2018/01/22/report-bucks-fire-jason-kidd-coach/1055454001/>)

Wisconsin Republicans hear a blunt election warning from ex-governor Tommy

Thompson (<https://www.jsonline.com/story/news/politics/2018/01/22/wisconsin-republicans-hear-blunt-election-warning-ex-governor-tommy-thompson/1053178001/>)

Farm industry divided over animal welfare rules

(<https://www.jsonline.com/story/money/business/2018/01/22/usda-organic-seal-require-animal-welfare-standards-farm-industry-divided/1048722001/>)

Read or Share this story: <https://jsonl.in/2CVWhPL>



The advertisement features a collage of fans on the left, including one in a Packers helmet. On the right, the text reads: "VOTE FOR THE SUPREME 2017 PACKERS FAN!". Below this, it says "PRESENTED BY: Robert Haack Diamonds" with a diamond icon, and "VOTE NOW!" in a dark box.

EXHIBIT B



Fire and Police Commission

MaryNell Regan
Executive Director

Steven M. DeVougas
Chair

Marisabel Cabrera
Vice-Chair

Kathryn A. Hein
Ann Wilson
Fred Crouther
Angela McKenzie
Nelson Soler
Commissioners

MEDIA RELEASE
For immediate release
January 8, 2018

FPC response to news of Chief Flynn's retirement

Upon hearing of the February 16th retirement of the Milwaukee Police Department's Chief Edward A. Flynn, the Milwaukee Fire and Police Commission (FPC) would like to first and foremost thank him for the ten years of service he has given to the city of Milwaukee.

Chief Flynn's current term was due to continue through January of 2020, but we are confident in the committed & capable members of the MPD who remain. At our January 11, 2018 meeting we will discuss in closed session this news and plan for moving forward. After a process, the FPC will select an Acting Chief from within the department and will pay particular attention to those members that have an intricate familiarity with the department structure, possess a vision of a 21st century Milwaukee Police Department and have earned the confidence and trust of the department members and the community at large.

One of the fundamental reasons that the FPC was created in 1885 was to ensure that the essential Fire and Police services for the city would not be disrupted by political changes in city government. At that time state law made the FPC responsible for setting employment standards, testing candidates for positions in the Fire and Police Departments and appointing both chiefs. This wise and forward-analysis of the state of Wisconsin legislature has endured through the present date. We at the FPC wish to assure the Milwaukee community that we are committed to serving the community's best interests as we begin the important task of selecting a successor.

-30-

EXHIBIT C

Joseph M. Russell

From: Nusrat Jahan Choudhury <nchoudhury@aclu.org>
Sent: Friday, January 12, 2018 3:58 PM
To: Joseph M. Russell; David A. Frank II; Jan Smokowicz; Naomi' 'Gehling
Cc: Jason Williamson; Karyn Rotker; Larry Dupuis; Jenessa Calvo-Friedman; Shayna Dingle; John Dougherty
Subject: RE: Collins v. Flynn, No. 2:17-cv-00234-JPS



Counsel, Plaintiffs' counsel have reviewed Defendants' letter. Plaintiffs strongly disagree that this action, which is brought against multiple defendants and is based upon policies and practices of the City of Milwaukee is moot. Plaintiffs will oppose any motion seeking to dismiss this case, stay discovery, or delay the trial date.

Have a good Martin Luther King, Jr. Day weekend.

Best,
Nusrat

Nusrat J. Choudhury

Pronouns: she, her

Senior Staff Attorney
American Civil Liberties Union
125 Broad St., New York, NY 10004
212.519.7876 | nchoudhury@aclu.org
aclu.org  

ACLU

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From: Joseph M. Russell [<mailto:jrussell@vonbriesen.com>]
Sent: Wednesday, January 10, 2018 4:30 PM
To: Nusrat Jahan Choudhury; David A. Frank II; Jan Smokowicz; Naomi' 'Gehling
Cc: Jason Williamson; Karyn Rotker; Larry Dupuis; Jenessa Calvo-Friedman; Shayna Dingle; John Dougherty
Subject: Collins v. Flynn, No. 2:17-cv-00234-JPS

Counsel: Please see the attached correspondence, a copy of which is being delivered to Judge Adelman's chambers today. Best, Joe

Joseph M. Russell
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

Direct: 414-287-1414
Fax: 414-238-6604
jrussell@vonbriesen.com | [vcard](#) | [bio](#)
vonbriesen.com

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EXHIBIT D

Joseph M. Russell

From: Jason Williamson <jwilliamson@aclu.org>
Sent: Thursday, January 18, 2018 9:10 AM
To: Joseph M. Russell
Cc: Larry Dupuis; Nusrat Jahan Choudhury; David A. Frank II; Jan Smokowicz; Naomi 'Gehling; Karyn Rotker; Jennesa Calvo-Friedman; Shayna Dingle; John Dougherty
Subject: Re: Collins v. City of Milwaukee, No. 2:17-cv-00234-JPS

Joe,

As we made clear in our January 12 email response to Defendants' letter, Plaintiffs strongly disagree with your contention that this case is moot. Defendants are free to file a motion with the Court if you believe this matter should be dismissed, and Plaintiffs will respond accordingly at that time. As such, no further response is required or forthcoming, unless and until Defendants move the Court for relief on the grounds in counsel's letter.

In the meantime, Plaintiffs will continue their discovery efforts in preparation for trial. Please let us know how Defendants intend to proceed.

Best,

Jason

From: Joseph M. Russell <jrussell@vonbriesen.com>
Sent: Thursday, January 18, 2018 7:24:06 AM
To: Jason Williamson
Cc: Larry Dupuis; Nusrat Jahan Choudhury; David A. Frank II; Jan Smokowicz; Naomi 'Gehling; Karyn Rotker; Jennesa Calvo-Friedman; Shayna Dingle; John Dougherty
Subject: Re: Collins v. City of Milwaukee, No. 2:17-cv-00234-JPS

Counsel: Defendants expect a substantive response to their letter of January 10 and its bearing on future discovery. Can you please first confirm whether Plaintiffs will provide such a response? Best, Joe

Sent from my iPhone

On Jan 17, 2018, at 8:05 PM, Jason Williamson <jwilliamson@aclu.org> wrote:

Counsel,

In light of your email below, we are writing to inquire whether Defendants intend to respond to Plaintiffs' recent 30(b)(6) deposition notice, dated January 10, 2018 (and re-attached here), as well as

Plaintiffs' outstanding document requests. Please confirm one way or the other whether Plaintiffs should expect to move forward with the 30(b)(6) deposition(s), and if so, when the appropriate designee(s) will be made available.

Best,

Jason D. Williamson

Pronouns: he, his

Senior Staff Attorney
Criminal Law Reform Project
American Civil Liberties Union
125 Broad St., New York, NY 10004
212.284.7340 | jwilliamson@aclu.org
aclu.org <image001.gif> <image003.jpg>
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From: Joseph M. Russell [<mailto:jrussell@vonbriesen.com>]

Sent: Thursday, January 11, 2018 3:39 PM

To: Larry Dupuis

Cc: Nusrat Jahan Choudhury; David A. Frank II; Jan Smokowicz; Naomi 'Gehling; Jason Williamson; Karyn Rotker; Jennesa Calvo-Friedman; Shayna Dingle; John Dougherty

Subject: RE: Collins v. City of Milwaukee, No. 2:17-cv-00234-JPS

Larry: Thank you for your email. Consistent with my letter, discovery between the parties – including depositions – will result in unnecessary expenditure of the parties' time and expense if the court determines Plaintiffs' suit is moot. That said, Defendants do not intend to go forward with the depositions on Monday and withdraw the notices regarding them. I am confident the parties can re-schedule these two depositions on a mutually convenient date once the mootness issue has been addressed by the court. Best, Joe

Joseph M. Russell |

Direct: 414-287-1414 | jrussell@vonbriesen.com

From: Larry Dupuis [<mailto:ldupuis@aclu-wi.org>]

Sent: Thursday, January 11, 2018 12:25 PM

To: Joseph M. Russell

Cc: Nusrat Jahan Choudhury; David A. Frank II; Jan Smokowicz; Naomi 'Gehling; Jason Williamson; Karyn Rotker; Jennesa Calvo-Friedman; Shayna Dingle; John Dougherty

Subject: Re: Collins v. City of Milwaukee, No. 2:17-cv-00234-JPS

Hi Joe,

With respect to one aspect of your letter, we believe we should proceed at least with the currently scheduled depositions of the Adamses on Monday. There is no currently pending motion that would justify alteration of the litigation schedule and rescheduling the Adamses' depositions is constrained by the MPS schedule. Could you please confirm that the Adamses' depositions will proceed on Monday?

We will respond to other aspects of your letter, including scheduling of other depositions, in a separate communication, but wanted to raise these imminent depositions as soon as possible.

Thanks,

Larry

Laurence J. Dupuis
Legal Director
American Civil Liberties Union of Wisconsin Foundation
207 E. Buffalo Street, Suite 325
Milwaukee, WI 53202
414-272-4032, ext 212

pronouns: he, him, his

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On Wed, Jan 10, 2018 at 3:30 PM, Joseph M. Russell <jrussell@vonbriesen.com> wrote:

Counsel: Please see the attached correspondence, a copy of which is being delivered to Judge Adelman's chambers today. Best, Joe

Joseph M. Russell
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

Direct: [414-287-1414](tel:414-287-1414)
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EXHIBIT E



BE A FORCE

November 10, 2015

Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Edward A. Flynn
Chief of Police

(414) 935-7200

Ronald L. Davis, Director
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street NE
Washington, DC 20530

Gregory J. Haanstad, Acting United States Attorney
United States Department of Justice
517 E Wisconsin Ave # 530
Milwaukee, WI 53202

Dear Director Davis and Acting U.S. Attorney Haanstad,

As the Milwaukee Police Department continues the evolution of reform necessary to achieve our vision and mission, I write to request participation in the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office) Collaborative Reform Initiative for Technical Assistance (CRT-TA) process. It is my expectation that entering into this voluntary process with the COPS Office will provide an avenue to strengthen and build the mutual trust between the Milwaukee Police Department and the communities we serve.

My decision to pursue collaborative reform comes amid our demonstrable progress and growing reputation as a forward-acting and progressive police agency. When I first became chief in 2008, we committed to becoming a top-tier professional agency engaged in community-based, problem-oriented and data-driven strategies. We quickly transitioned to a values-based organization, which included the publishing of a Code of Conduct founded in our six core values of competence, courage, integrity, leadership, respect and restraint, and serves as the foundation for our accountability and discipline.

During the past eight years, both our partnerships with public and private entities and our proactive activity aimed at improving public safety in our neighborhoods has dramatically increased while reported crime, uses of force, and citizen complaints trended downward. We critically evaluated our policies and made improvements, including a reexamination of our use of force policy that expanded the definition of reportable force and a reexamination of our pursuit policy which resulted in a constriction of the circumstances in which pursuits are permitted, resulting in fewer pursuit-related crashes and significant reductions in injuries to suspects, officers and uninvolved citizens alike.

IN SOME JOBS, SUCCESS IS MEASURED BY WHAT DOESN'T HAPPEN.

We have implemented a battery of leadership and operational training curricula, including Leadership in Police Organizations (LPO), a robust and modeled Fair and Impartial Policing program, and an aggressive and comprehensive implementation of Crisis Intervention Training (CIT) for all members of the agency, which we have dubbed the "Milwaukee Model" for CIT. In addition to our internal training advancements, we have developed novel, effective, and award-winning community-based training like our Students Talking it Over with Police (STOP) program aimed at improving relationships between Milwaukee officers and the youth they serve by reducing perceptions of conflict and animosity.

In 2014, our authorizing body, the Board of Fire and Police Commissioners, sanctioned a citizen survey for the first time in anyone's recollection. The results showed 74% of the respondents were satisfied or very satisfied with the services of the Milwaukee Police Department. Just yesterday, the Milwaukee Police Department was accredited by the Wisconsin Law Enforcement Accreditation Group (WILEAG), indicating our successful compliance with 226 separate standards associated with our policies, procedures, operations and support services.

Despite the facts I have detailed here, and the scores of other points of progress this agency has achieved, I realize that there is – and will always be – room for improvement. I also realize that requesting and completing the collaborative reform process administered by the COPS Office will not appease all those who have complaints and criticisms about the Milwaukee Police Department.

I commit to you both – and recommit to the Milwaukee communities we serve – the full transparency, openness, engagement and effort of the entire Milwaukee Police Department. I look forward to working with you and your offices to establish mutual goals for this initiative, including comprehensive assessments of key areas like use of force, training, discipline and accountability, community perspectives, recruitment and hiring, and the handling of mass demonstrations and protests, among others. More importantly, I look forward to the results of this collaboration between the COPS Office, the United States Attorney for the Eastern District of Wisconsin, the Milwaukee Police Department, and members of our communities: objective, sustainable, strategies that affect positive changes in the promotion of public safety, the growth of community-police relations, and the next steps toward the achievement of our vision of a Milwaukee where all can live safely and without fear, protected by a police department with the highest ethical and professional standards.

Thank you for your consideration of my request for Collaborative Reform. I anticipate a rigorous and productive initiative.

Sincerely,

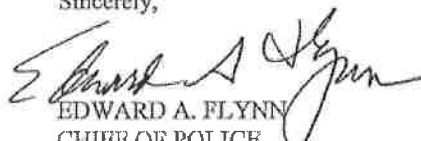
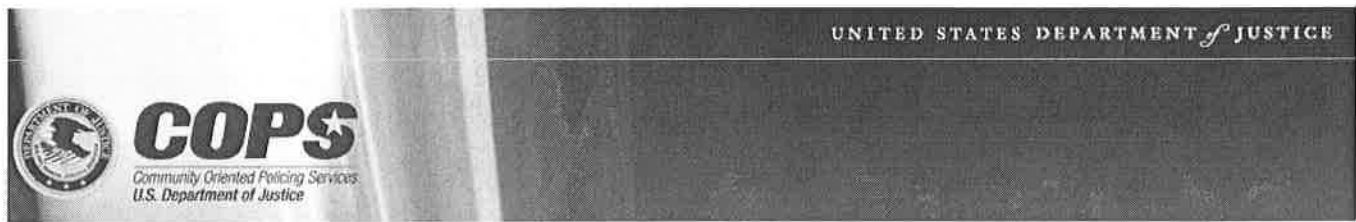

EDWARD A. FLYNN
CHIEF OF POLICE

EXHIBIT F



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★ For Immediate Release
December 17, 2015

CONTACT: Mary Brandenberger
mary.brandenberger@usdoj.gov
202-514-5328

Department of Justice launches collaborative review of the Milwaukee Police Department

MILWAUKEE – The Department of Justice, Office of Community Oriented Policing Services, today announced the start of the Collaborative Reform Initiative for Technical Assistance program with the Milwaukee Police Department.

“As part of the collaborative reform process, the COPS Office will conduct a thorough, independent and objective assessment of the Milwaukee Police Department’s policies, practices and accountability systems,” said COPS Office Director Ronald Davis. “The findings and recommendations that come from such an assessment will empower the community to hold the department accountable to the best standards of the law enforcement profession.”

Following the assessment, the COPS Office will issue a public report detailing the findings of the assessment, along with specific recommendations for improvement. The COPS Office will assess progress made in implementing those recommendations over an 18-month period following the initial assessment. Two progress reports will be released tracking implementation of those recommendations.

The COPS Office’s Collaborative Reform Initiative for Technical Assistance is an independent and objective way to transform a law enforcement agency through an analysis of policies, practices, training, tactics and accountability methods around key issues facing law enforcement today. The initiative is designed to provide technical assistance to agencies facing significant law enforcement-related issues. Using subject matter experts, interviews and direct observations, as well as conducting extensive research and analysis, the COPS Office assists law enforcement agencies in enhancing and improving their policies and procedures, operating systems and professional culture.

The COPS Office is currently providing CRI-TA in Spokane, Wash.; Philadelphia; St. Louis County; Salinas, Calif.; Fayetteville, N.C., and Calexico, Calif., and has completed the process in Las Vegas.

The COPS Office, headed by Director Ronald Davis, is a federal agency responsible for advancing community policing nationwide. Since 1995, the COPS Office has invested more than \$14 billion to advance community policing, including grants awarded to more than 13,000 state, local and tribal law enforcement agencies to fund the hiring and redeployment of more than 127,000 officers and provide a variety of knowledge resource products including publications, training and technical assistance. For additional information about the COPS Office, please visit www.cops.usdoj.gov.

###

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COPS Office
@COPSOoffice

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Due to the lapse in appropriations this account will not be updated regularly. See justice.gov for updates.

10h

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@COPSOoffice

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EXHIBIT G



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MKE Community Groups Ask DOJ for Comprehensive Scope of COPS Review



Story Date: Jan 27, 2016



Last week, representatives of the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) held a "listening session" as the COPS Office began a voluntary Collaborative Reform Initiative program with the Milwaukee Police Department. Milwaukee community organizations and individuals reiterated some of the issues that surfaced during the listening session and at subsequent meetings that they hope will be included in the goals for the collaborative reform initiative in a letter sent today.

January 27, 2016

George Fachner
U.S. Department of Justice
Office of Community Oriented Policing Services
145 N Street NE
Washington, DC 20530
Via Email

Dear Mr. Fachner,

We are writing to follow up on the conversations your teams had with the ACLU, the NAACP, and other organizations during your visit to Milwaukee.

In the context of discussing the scope of your work in Milwaukee, the ACLU made you aware of a number of concerns that we hope you will consider as you develop your objectives going forward. These included the role of the Fire & Police Commission (FPC) in hiring and recruitment; the FPC's complaint procedure; lack of transparency in data collection and the comprehensiveness of the data collected; surveillance practices and use of data about civilians; lack of supervision and accountability; and the need for community feedback on your draft report.

You are also aware of concerns regarding use of force. We want to clarify that this concern encompasses the need to reduce and prevent such incidents, including through the reduction (and ultimate elimination) of stops and frisks unsupported by reasonable suspicion, as well as accountability for such actions. Regarding racially biased policing, which also was discussed, we want to ensure that you are aware of our specific concerns regarding traffic stops, pedestrian stops, pretextual stops, consent searches, and stop and frisk generally.

We also hope you stay true to the commitment you made at the NAACP offices to have conversations with community stakeholders prior to determining the scope, goals and objectives of this investigation. It is important to the credibility of your efforts that the scope of the investigation be determined with input from the community about its highest priority concerns with MPD. With respect to specific persons and entities who should be interviewed, once the scope is determined and shared with the larger community, we suggest that you send us a list of those you intend to interview. That way we and others in the community can help determine who will have information pertinent to the problems your work seeks to address.

Thank you.

Sincerely,

Christopher Ahmuty, ACLU of Wisconsin
 Angela Lang, African American Civic Engagement Roundtable
 Pastor Steve Jerbi, All People's Church
 Shalina Ali, Milwaukee resident and mother
 State Representative Mandela Barnes
 Patricia McManus, Ph.D, RN, Black Health Coalition of Wisconsin
 Lavelle Young, Black Student Union at UW-Milwaukee
 State Representative David Bowen
 State Representative Jonathan Brostoff
 Reggie Moore, Center For Youth Engagement
 Nate Hamilton, Coalition for Justice
 Markasa Chambers, Coalition for Justice
 Alderwoman Milele Coggs
 D.C. Crowley, Milwaukee Area Chapter Board President
 Jennifer Hofschulte, Milwaukee resident and mother
 State Representative Latonya Johnson
 Pastor Walter Lanier
 George Martin, Martin Luther King Justice Coalition
 Catoya Roberts, MICAH
 Keith Bailey, Milwaukee Matters
 Fred Royal, NAACP Milwaukee Branch
 Astar Herndon, 9 to 5 Wisconsin
 Former State Representative Barbara Notestein
 Angelique Rogers, Peace Action Wisconsin
 Sister Rose Steitz, OP
 Charmaine Lang, Reproductive Justice Collective, Project of Wisconsin Voices
 Bruce Colburn, SEIU WI State Council
 Maya McCarthy-Neal, ACLU Student Alliance at UW-Milwaukee
 United Council of UW Students
 Sharlen Moore, Urban Underground

cc: Kenneth Bouche, Hillard Heintze
 Debra Kirby, Hillard Heintze
 Noble Wray, USDOJ

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Because Freedom Can't Protect Itself.

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Milwaukee, WI 53202-5774

Phone: 414-272-4032
Fax: 414-272-0182

liberly@aclu-wi.org

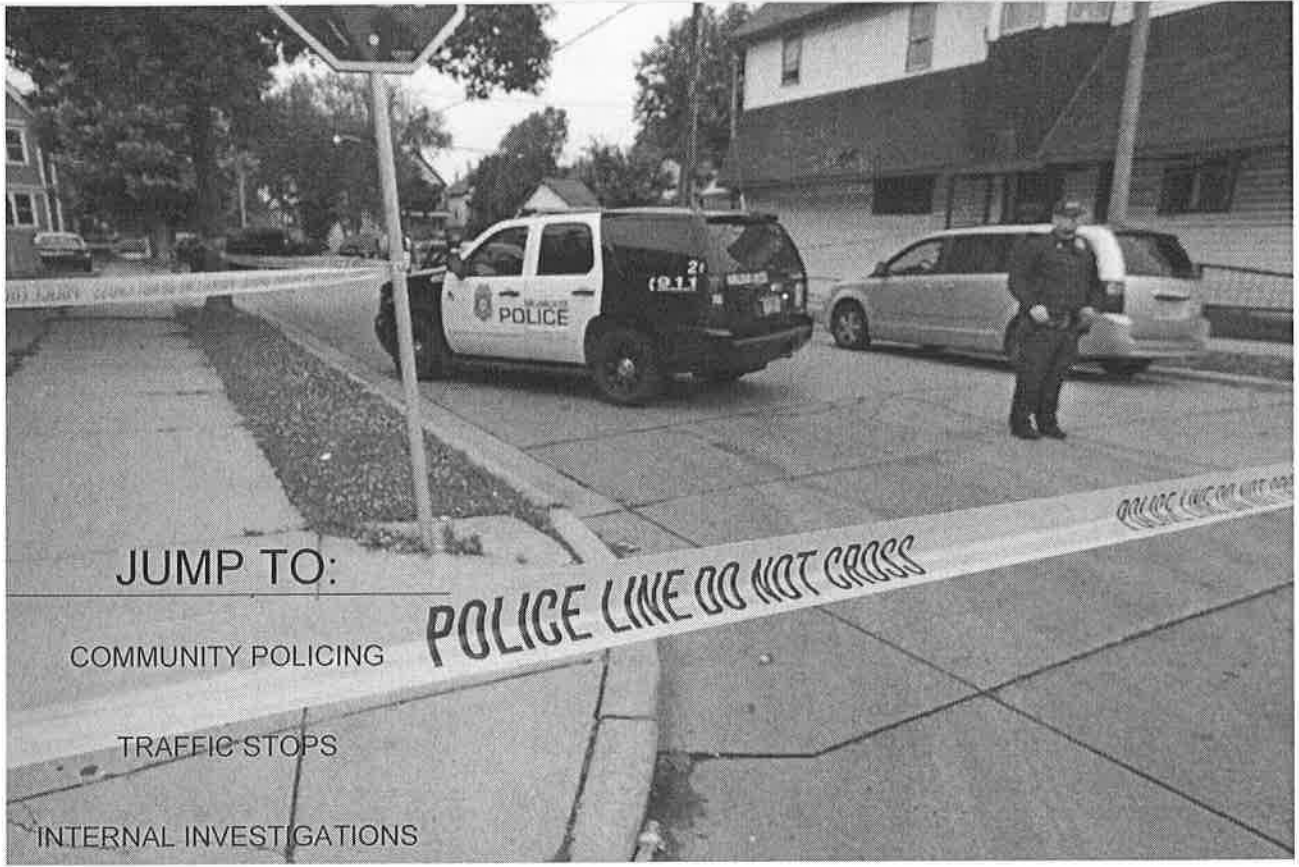


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Learn more about the distinction between these two organizations.

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EXHIBIT H

journal-sentinel



MARK HOFFMAN / MILWAUKEE JOURNAL SENTINEL

Milwaukee police investigate a double homicide on the city's south side in July 2015.

Trust damaged between Milwaukee police and community, Department of Justice draft report says

The Justice Department began reviewing the Milwaukee Police Department more than 18 months ago. A draft report doesn't hold back.

By Ashley Luthern (mailto:ashley.luthern@jrn.com) and Gina Barton (mailto:gina.barton@jrn.com) of the Milwaukee Journal Sentinel

Aug. 30, 2017

<http://hrefshare.com/f9a11> <http://hrefshare.com/ce54e>

The Milwaukee Police Department fails the community and its own officers by not communicating clearly, making too many traffic stops and applying inconsistent standards when disciplining officers, according to a draft of a federal report obtained by the Milwaukee Journal Sentinel.

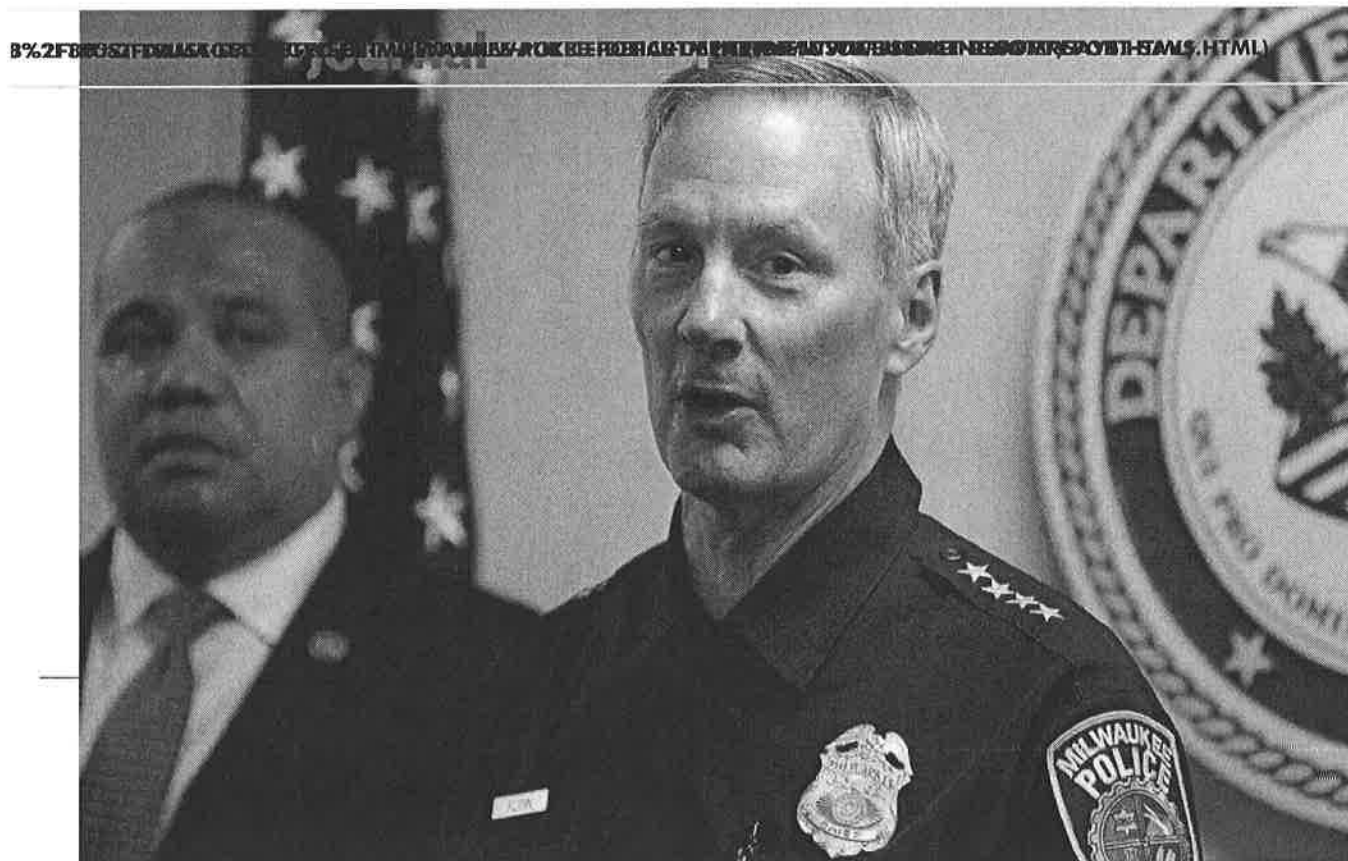
The draft report offers a particularly damning critique of Chief Edward Flynn's reliance on data, a signature component of his strategy since he took over the department in 2008. Federal evaluators found this approach is having a damaging, if unintended, effect on police-community relations.

JUMP TO:
“MPD’s reliance on crime data has distracted the department from the primary tenet of modern policing: trust between law enforcement agencies and the people they protect and serve,” the draft report states.

TRAFFIC STOPS

What’s more, many officers don’t know what community policing (INTERNAL INVESTIGATIONS (http://www.jsonline.com/story/news/crime/2017/06/27/what-you-need-know-last-nights-forces-violence-milwaukee/431617001/)) is and don’t think it’s part of their jobs — even though Flynn promised when he was sworn in nine years ago that the department would implement it.

The draft report is the result of a U.S. Department of Justice review known as a collaborative reform initiative — a voluntary, non-adversarial process aimed at improving the community's trust in the Police Department.



JOURNAL SENTINEL FILE PHOTO

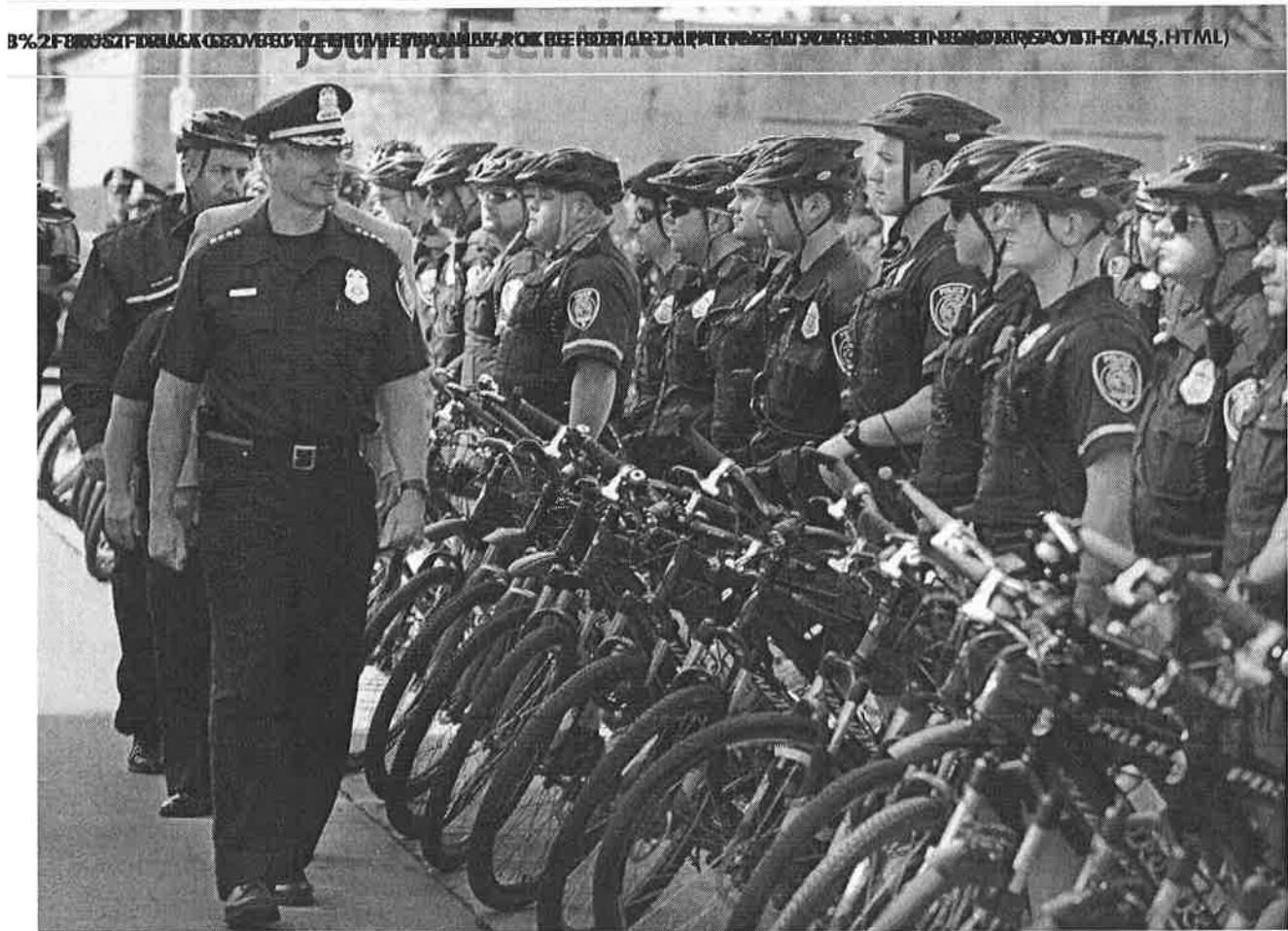
INTERNAL INVESTIGATIONS

The president of the Milwaukee Police Association told the Fire and Police Commission in 2016 that MPD officials had established a quota of at least two stops a day.

DISCIPLINE

Flynn requested the review (<http://archive.jsonline.com/news/milwaukee/dontre-hamiltons-family-to-meet-with-federal-officials-may-learn-of-charges-b99613433z1-344675532.html>) in November 2015 amid public outcry after federal prosecutors declined to charge a now-fired officer in the on-duty fatal shooting of Dontre Hamilton in Red Arrow Park.

Since then, the fatal police shooting of Sylville Smith in August 2016 sparked two nights of violent unrest in the Sherman Park neighborhood (<https://projects.jsonline.com/topics/sherman-park/>) and the ACLU of Wisconsin filed a class-action lawsuit (<http://www.jsonline.com/story/news/crime/2017/02/22/acu-sues-milwaukee-police-over-profiling-stop-and-frisk/98155822/>) accusing the department of illegal stop-and-frisks targeting African-Americans and Latinos.



DISCIPLINE

RICK WOOD / MILWAUKEE JOURNAL SENTINEL

Milwaukee Police Chief Edward Flynn holds a roll call and inspects the rows of Milwaukee Police bicycle officers as part of "Operation School's Out" in 2011.

Community policing

Throughout his tenure, Flynn has touted partnerships with large nonprofits, such as Sojourner Family Peace Center, which helps domestic violence victims; and Safe & Sound, which helps organize efforts such as block watches.

He has highlighted monthly crime and safety meetings in the police districts and the role of Community Liaison Officers, who frequently attend cookouts, neighborhood clean-ups, toy giveaways and other community events.

But those are “one-off” efforts — not a guiding philosophy embedded within the

department, according to the draft report. (http://www.jsonline.com/story/news/politics/special/2017/08/30/doj-draft-report-trust-damaged-between-milwaukee-police-department/610269001/)

“Attending community meetings or giving away toys does not require establishing ongoing and collaborative relationships with community stakeholders to address the root causes of social issues that drive crime within Milwaukee’s neighborhoods,” the evaluators wrote.

For police departments to prevent and solve crimes, all officers need to work routinely in partnership with residents to find solutions to problems. That's the definition of community policing.

JUMP TO:

COMMUNITY POLICING

TRAFFIC STOPS

And it often does not happen in Milwaukee,

INTERNAL INVESTIGATIONS

DISCIPLINE

Patrol officers cannot articulate what community policing is. Many of those who try say it's the responsibility only of those assigned to outreach efforts.

That's because the Milwaukee Police Department doesn't have a strategic plan for community policing or a set of guidelines regarding it, the draft report says. And department-wide training on how to implement the strategy has not been offered in years.

Federal evaluators highlighted one example of an attempt at community engagement that fell flat.

Related:

9 key takeaways from the DOJ draft report on the Milwaukee Police Department
(http://www.jsonline.com/story/news/takeaways-doj-draft-report-milwaukee-police-department/610269001/)

Officers held a roll call or shift change outside a Milwaukee school. The stated purpose was to let kids know officers wanted them to have a safe summer. The problem? There were no kids in sight, not even student leaders.

The evaluators noted the event may even have sent the wrong message: That the students on summer break were a problem, and the police planned to deal with them.



Lack of diversity

Racial tensions between the department and the public are exacerbated by a lack of diversity in the policing ranks

(<http://www.jsonline.com/story/news/crime/2017/03/31/milwaukee-police-department-struggles-increase-diversity-ranks/99821292/>), according to the draft report.

INTERNAL INVESTIGATIONS

DISCIPLINE

Diversity

- Although African-Americans are 39% of the population, they account for about 17% of sworn officers.
- Hispanics make up nearly 18% of the population, but just over 12% of sworn officers.
- Women account for about 52% of the population, but account for less than 17% of sworn officers.
- In general, the ranks of caption and above in the department have more diversity than lower ranks.

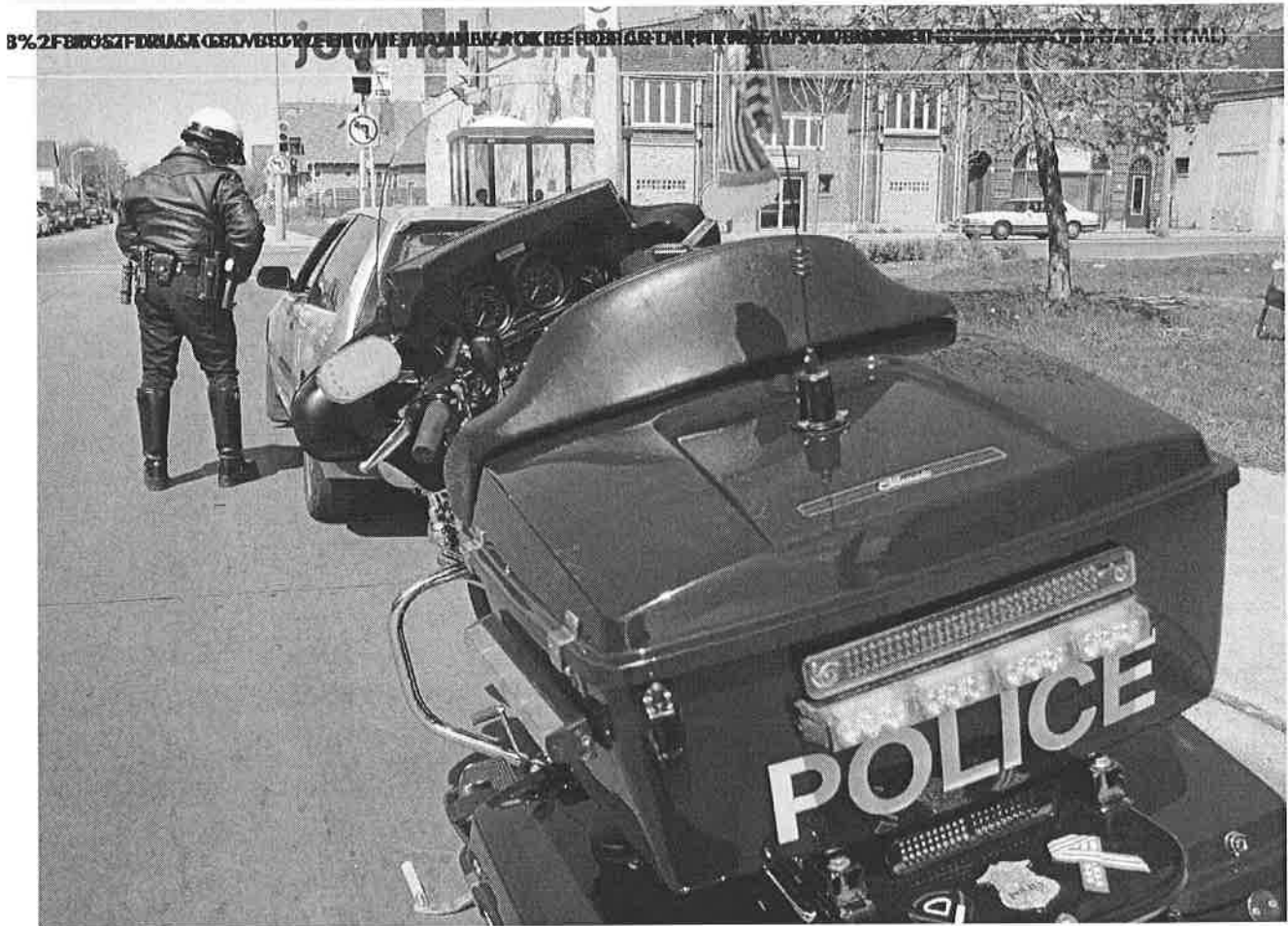
And the hiring process is designed to screen out unqualified candidates, rather than identifying those who are most qualified for the job, the report says. MaryNell Regan, executive director of the civilian Fire and Police Commission — which is responsible for hiring — said it has developed a strategic plan for hiring more women and people of color, but federal reviewers never asked about it.

Racial disparities also existed in the results of surveys commissioned (<http://archive.jsonline.com/news/milwaukee/milwaukee-survey-to-reveal-perceptions-of-police-department-b99431192z1-289486881.html>) by the city, the report notes. While most residents were satisfied with their interactions with police, white respondents reported greater satisfaction than their non-white counterparts.

Those differences of opinion persisted during interviews and listening sessions conducted during the federal review. The report noted a consistent theme: “African-Americans are subject to an unwritten rule in which they are questioned about their presence in certain areas of the city.”

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JOURNAL SENTINEL FILE PHOTO

The president of the Milwaukee Police Association told the Fire and Police Commission in 2016 that MPD officials had established a quota of at least two stops a day.

Traffic stops

The most common interactions between police and members of the public are traffic stops, with the department making nearly 150,000 in 2015.

(http://graphics.jsonline.com/jsi_news/graphics/2016/FRISK23G.jpg)

That's where the Milwaukee Police Department runs into a host of problems: a de facto quota system for issuing tickets; allegations of racial profiling; and complaints of bias and disrespect generated by "curbing," a practice in which officers make drivers sit on the curb or sidewalk while their cars are searched.

Flynn has always been clear about his goal of a patrol-driven department with officers who focus on geographic areas where crime is concentrated, known as hotspots. The philosophy includes interrupting violence with traffic and pedestrian stops.

Traffic stops

- African-Americans are stopped three times more than white residents but account for only 2% more of the city's population than whites.
- African-Americans represent 8% of the population in District 1, an area that covers downtown and the east side, but represent 66% of all traffic stops in the district from 2013 to 2015.
- Overall, African-Americans were three times more likely to be searched when compared to white drivers, both with and without consent.

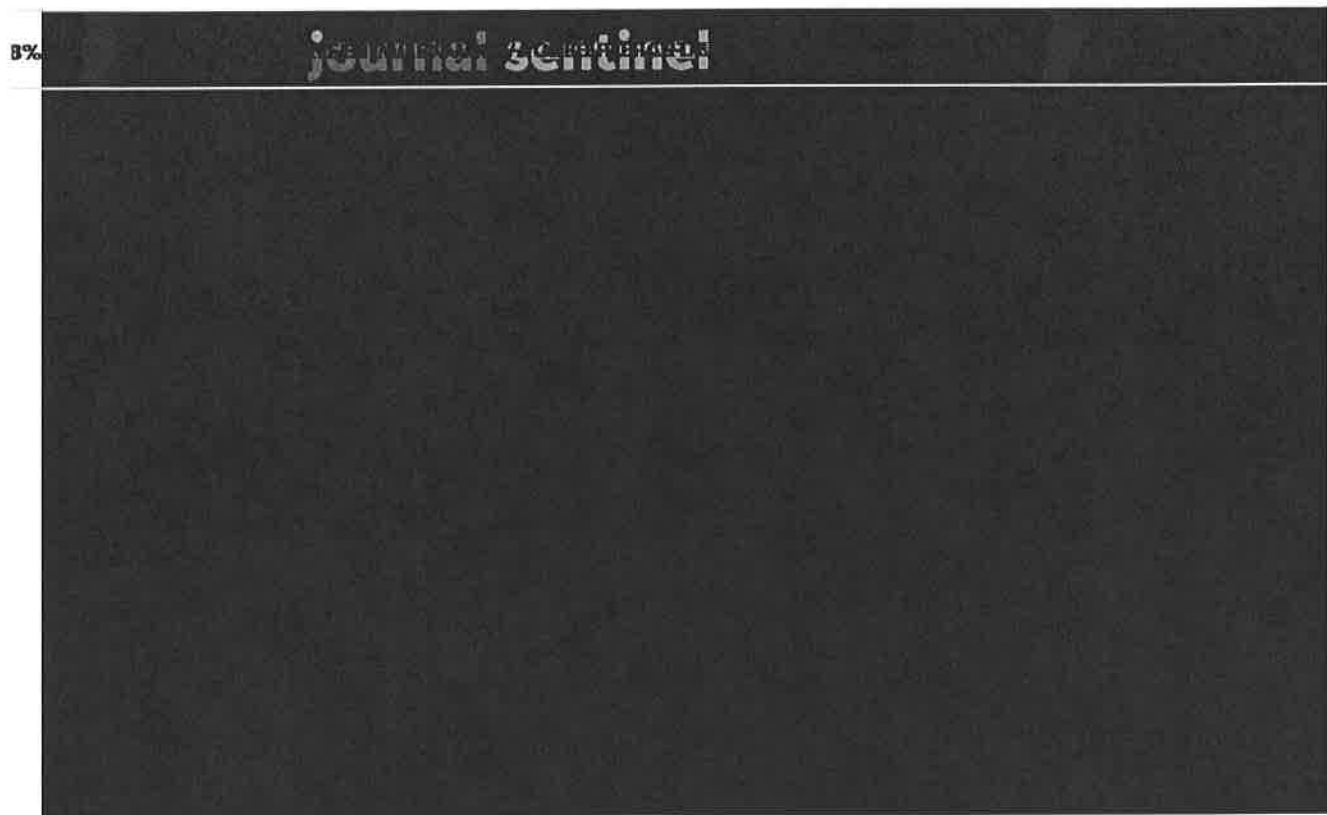
TRAFFIC STOPS

Traffic stop data is a regular fixture in weekly CompStat meetings, where the chief and his commanders scrutinize crime statistics and quiz district captains about what they are doing to address problems.

But many officers said they didn't think pulling over more cars reduced crime and they never heard the rationale fully explained. For some, an immense pressure to make more stops resulted in pulling over drivers who seemed easy to deal with and wouldn't take a lot of time to process.

Although high-ranking department officials publicly denied (<http://archive.jsonline.com/news/milwaukee/mpd-officials-say-no-traffic-stop-quota-exists-b99769858z1-388612991.html/>) the existence of a quota system as recently as last year, and there isn't one on paper, officers said they felt they had to make two stops per shift or there would be "some sort of retribution."

That fear, combined with a shortage of officers, has led some to engage in dangerous



TRAFFIC STOPS

Internal Investigations

INTERNAL INVESTIGATIONS

The way the Police Department deals with officers suspected of misconduct also ^{DISCIPLINE} undermines the community's trust, the report says.

Internal affairs investigators and supervisors who evaluate officers' use of force receive "no formal training," the report says.

The Police Department also "does not have specific guidelines for conducting use-of-force investigations, specifically how investigations are conducted, what evidence should be collected, and which supporting materials are gathered," the report says.

Investigators are required to make audio or video recordings of statements from civilian witnesses, but not from officers who participated or who saw what happened.

Use of force

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- There is a general decline in uses of force from 2011 to 2015.
- In that time period, 11 officers used force 21 or more times.
- African-Americans subjects are 118% more likely than white subjects to have a chemical agent, such as pepper spray, used against them by Milwaukee police instead of bodily force. The evaluators controlled for whether the person was armed, resisting or assaulting an officer unprovoked.
- 87% of uses of force involved someone reported to be "resisting," but the type and level of resistance is not known because of MPD reporting procedures.

JUMP TO:

Officers involved are often not interviewed by internal affairs for months, and they are allowed to review their earlier statements beforehand.

COMMUNITY POLICING TRAFFIC STOPS

“Tactics and decision-making were rarely addressed” in use-of-force reviews, the report says.

INTERNAL INVESTIGATIONS DISCIPLINE

The Justice Department also found shortcomings in the investigations of non-fatal police shootings, due in part to the fact that internal affairs does not participate in crime scene investigations. Those tasks are handled by the same division that investigates shootings by civilians. They then pass on their files to internal affairs.

When it comes to officer-involved shootings, the cases reviewed by the Justice Department were inconsistent and the documentation was inadequate.

In both non-fatal shootings and other uses of force, information about officers’ training, prior use of force, complaints and discipline were not included in internal affairs files.

That information also does not seem to have an effect on whether officers are

promoted
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The report found that neither the department nor the civilian Fire and Police Commission — which has the final say on hiring, serious discipline and promotions — has “a written directive that describes the procedures used for each element of the promotion process for sworn personnel.”

Wisconsin law, the report points out, requires the civilian board to review all aspects and policies of the department annually — something it has not done.

Regan did not answer a specific question about that contention.

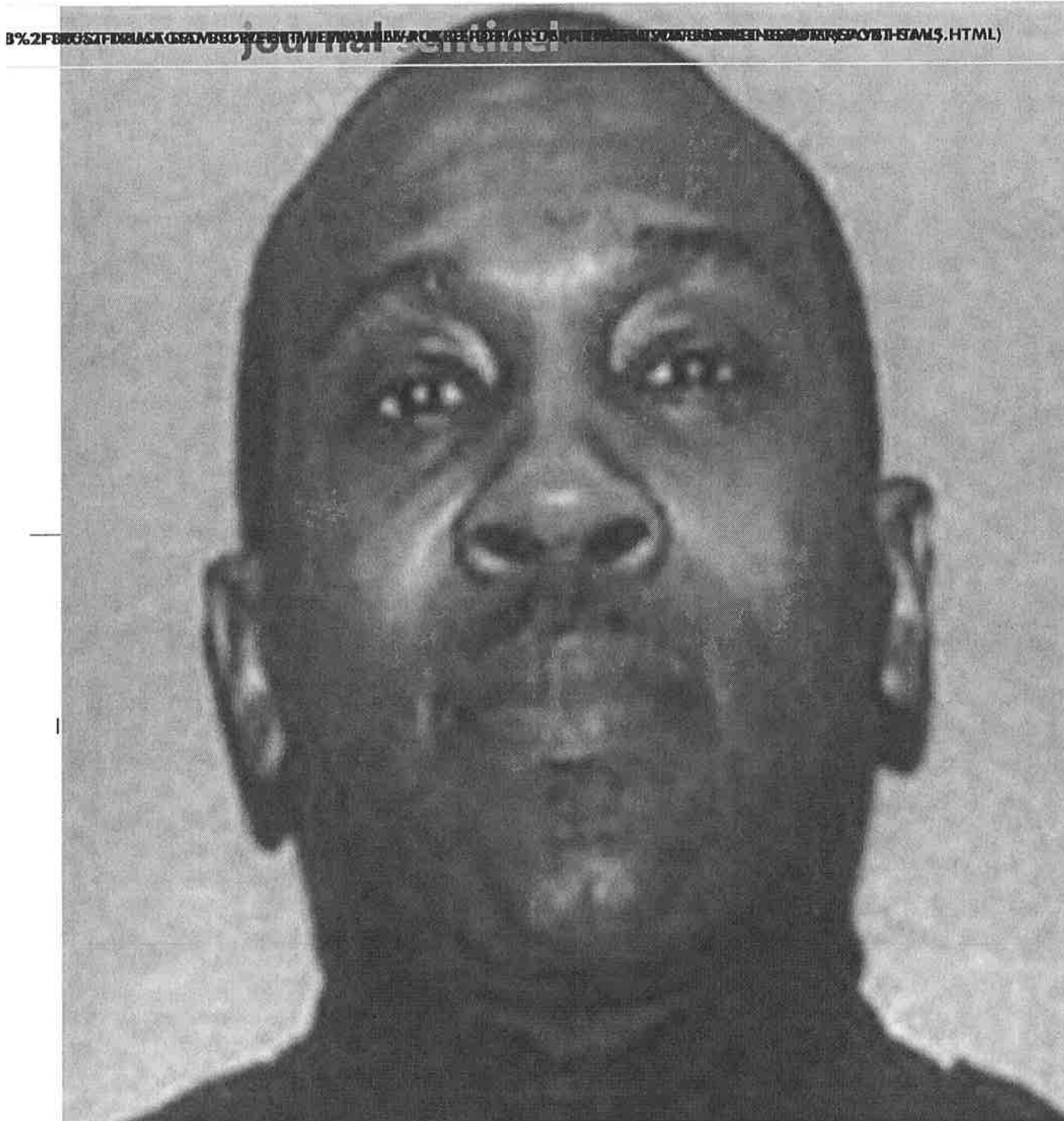
JUMP TO:
COMMUNITY POLICING
She said the Justice Department "spent 99.5% of all the resources researching the MPD."
TRAFFIC STOPS

INTERNAL INVESTIGATIONS
DISCIPLINE
"They did not review the job announcements, the union contracts, reports, data, or the job descriptions, all of which were frequently updated," she said in an email. "The DOJ never interviewed a single FPC commissioner, recruiter, investigator, or other relevant staff member."



Discipline

Flynn has repeatedly said dishonesty is one of the most egregious offenses that can be committed by a member of law enforcement. He has fired people for lying.



Ladmarald Cates was investigated for misconduct 13 times before he raped a woman after responding to her 911 call in 2010. He is now in prison.

However, there is no written department policy that says “dishonesty in any matter of official police business is a terminable offense,” the report says, and “the ability to testify in court with credibility” is not listed in the job description for officers.

At the same time, [journal online's Progressive Discipline Matrix](#), updated in 2008,

allows several types of misconduct to be categorized as either minor or major, including excessive force, sexual harassment, filing false official reports or entering someone's residence without valid reason.

The ability to classify these actions as minor allows for "too much discretion," the report says.

There are two ways to file complaints about police: directly with the department or with the commission.

JUMP TO:

The federal investigators did not study the commission's process, [Regan said](#).

In terms of [complaints to the department](#), supervisors have too much latitude, according to the report.

Under [department rules](#), supervisors may decide upfront, before any investigation is done, that a complaint form should not be filed because the allegation does not "rise to the level of a standard operating procedure or code of conduct violation."

The evaluators noted "accepting all complaints is crucial to ensuring transparency and community trust in the complaint process."

Discipline

- From 2011 to 2015, eight officers were accused of misconduct 10 or more times.
- One officer racked up 86 complaints during that time.

- From 2011 to 2015, about 19% of all misconduct allegations filed by community members were sustained by the Police Department. Of those, formal disciplinary action was taken about 30% of cases.
- The proportion of African Americans and Latinos whose complaints received an outcome of "not sustained" was 79.7%, compared to only 20.3% of whites.

For the department overall, complaints increased from 2011 to 2012 but decreased for the next three years, the report says.

Flynn has long characterized the reduction as evidence that the department's relationship with residents is improving. But evaluators pointed out the data "does not provide any insight into the reasons why community complaints decreased."

During the time period studied by the Justice Department, about 19% of misconduct complaints were sustained. Even then, only about one-third of those officers were subjected to formal disciplinary action.

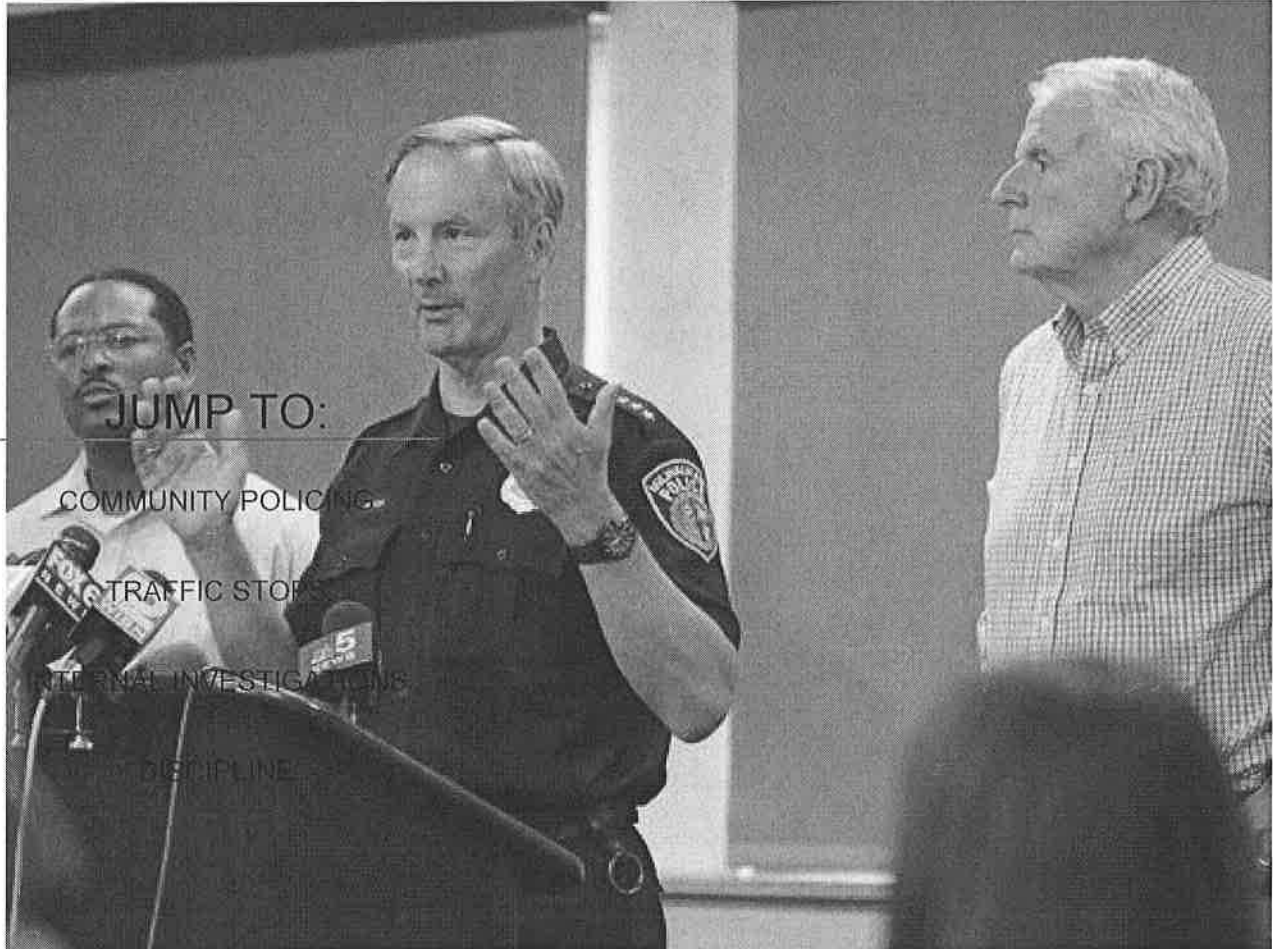
"There is a perception that the current process favors police personnel," the report says.

When complaints are not sustained, they are tracked under the department's Early Intervention Program, designed to identify potentially troubled officers.

But the system flags only officers with three hits in 90 days. As a result, it has missed officers with long histories of misconduct such as Ladmarald Cates (<http://www.jsonline.com/story/news/local/milwaukee/2017/02/07/25-million-payout-approved-after-rape-911-caller-milwaukee-cop/97594956/>), who had been investigated 13 times before he raped a woman after responding to her 911 call in 2010.

Representatives with the Community Coalition for Quality Policing say they already have discussed their proposal with Chief Edward Flynn and Mayor Tom Barrett, which is coming after a federal report on the department has been delayed for months.

(<http://www.jsonline.com/story/news/crime/2017/08/01/faith-civil-rights-groups-call-independent-audit-milwaukee-police/528388001/>)



Milwaukee Police Chief Ed Flynn turns to mentor for Sherman Park report - with the Bradley Foundation paying the bill

Under fire from many directions, Milwaukee Police Chief Edward Flynn is turning to one of his mentors to evaluate the department's response to the unrest in Sherman Park that followed a fatal police shooting last August.

(<http://www.jsonline.com/story/news/crime/2017/08/11/milwaukee-police-chief-ed-flynn-turns-mentor-sherman-park-report-bradley-foundation-paying-bill/559444001/>)



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COMMUNITY POLICING

TRAFFIC STOPS

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EXHIBIT I

United States Department of Justice (US DOJ)
Milwaukee Police Department (MPD)
Milwaukee Fire and Police Commission (FPC)

Collaborative Reform Initiative
Draft Assessment Report

Findings and Recommendations

Notes:

- Chapters 1 and 2 do not include specific findings or recommendations.
- The findings and recommendations listed were in an early draft of the US DOJ assessment report and contain inaccuracies. In the spirit of transparency they are presented here as originally written. The findings' accuracy will be addressed as the FPC and MPD proceed with the community through the Collaborate Reform Process.

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Chapter 3: Recruitment, Hiring, and Personnel Practices

Finding	1	MPD does not have a racial, ethnic, and gender diversity composition through all ranks and components that is reflective of the community it serves.
Recommendation	1	FPC and MPD should create a Diversity and Inclusion Program aligned at a sufficiently high level in MPD to allow direct access to the chief, and be charged with and provided resources for improving diversity within the Department.
Recommendation	1.2	FPC, in conjunction with MPD, should expand its current examination of barriers to recruitment to include hiring and promotional practices.
Finding	2	Neither MPD nor FPC has a strategic plan for recruiting and hiring.
Recommendation	2	FPC, in conjunction with MPD, should develop a strategic plan for recruiting and hiring a workforce that meets the needs of Milwaukee
Finding	3	FPC has not completed a job task analysis for the position of police officer since 2007
Recommendation	3	FPC should conduct a job task analysis prior to opening the next police officer examination, as well as every five years and in the event of a significant change in the job.
Finding	4	Information on hiring for MPD is not available to the public on a consistent basis.
Recommendation	4	FPC and MPD should publish the overall process for hiring of officers on their websites.
Finding	5	MPD and FPC recruitment programs lack professional standards.
Recommendation	5.1	FPC should develop and enforce a written policy regarding police recruiters.
Recommendation	5.2	FPC and MPD should to create a formal, written selection process to select MPD recruiters. This policy should make clear the qualifications and process for becoming a recruiter.
Finding	6	FPC and MPD do not have a mechanism for external input from the community regarding the recruitment and hiring of MPD officers.

Recommendation	6.1	MPD should develop a Recruitment and Retention Advisory Council whose members represent a cross-section of community stakeholders.
Recommendation	6.2	FPC should include on community members at-large to serve on the police applicant oral interview board.
Finding	7	Promotional Practices for MPD lack written procedures
Recommendation	7.1	MPD should develop a written directive defining the agency's role in the promotional process of sworn personnel.
Recommendation	7.2	MPD should develop and make available to Department members a written document that describes the process of preparing for and obtaining a promotion.
Finding	8	MPD does not have career development planning for officers who aspire to be promoted or selected for a special assignment.
Recommendation	8.1	MPD should develop an organizational plan to facilitate talented personnel within the organization achieving leadership roles.
Recommendation	8.2	MPD should develop mentorship programs to help employees achieve their professional career goals.
Recommendation	8.3	MPD should formally integrate the LPO training program into the career development process in preparation for promotion
Recommendation	8.4	MPD should examine measureable job performance outcomes achieved by graduates of the LPO program.
Finding	9	The draft report skips the number 9

Chapter 4: Community Oriented Policing Practices		
Finding	10	MPD does not have a formal, Department-wide strategy that guides officers, supervisors, and commanders in its community building efforts
Recommendation	10.1	MPD should develop a department-wide community policing strategy.
Recommendation	10.2	MPD should engage with an independent community advisory board to regularly meet with and provide the chief with input on the operations of MPD.
Finding	11	MPD does not hold all members of the Department accountable for engaging in community policy activities.
Recommendation	11.1	MPD should require command officers to define, in writing, the specific steps to be taken to identify and engage local community stakeholders in collaborative community policing efforts within their areas of command.
Recommendation	11.2	MPD should require every command officer responsible for any operational unit in the Department to complete a routine community policing status report.
Recommendation	11.3	MPD should incorporate community policing performance measures into their routine CompStat process.
Recommendation	11.4	MPD should provide training to supervisors and command staff on community policing for supervisors.
Recommendation	11.5	MPD should update the employee performance appraisal process to ensure that it includes (as appropriate) measurements of an employee's contributions to the strategic community policing goals, including positive police-community interaction and problem resolution.
Recommendation	11.6	MPD should publish an annual review of progress towards community policing goals and objectives.
Recommendation	11.7	MPD should update the promotional testing procedures for supervisors and command officers to include questions and activities testing a candidate's ability to lead and direct community policing efforts.
Finding	12	MPD members generally do not understand their roles in community policing and rely on Community Liaison Officers (CLO) to engage in community policing activities.

Recommendation	12.1	MPD should conduct in-service training for all personnel on community-oriented policing.
Recommendation	12.2	MPD should inform patrol officers on the roles and responsibilities of CLOs and provide officers guidance on how to collaborate with CLOs in their collective community policing efforts.
Finding	13	FPC has not consistently reviewed policies annually as required pursuant to Wisconsin law.
Recommendation	13.1	FPC should undertake a thorough review of the standard operating procedures and other policies of MPD.
Recommendation	13.2	FPC should issue a report detailing their review and hold a public hearing
Finding	14	Community surveys indicate a gap in trust between white and non-white residents in Milwaukee
Recommendation	14.1	MPD should conduct in-service training for all personnel on procedural justice.
Recommendation	14.2	MPD should conduct in-service training for all personnel on fair and impartial policing.
Recommendation	14.3	MPD should undertake an evaluation of its enforcement activities that specifically accounts for collateral damage on community trust and legitimacy.
Recommendation	14.4	MPD should conduct bi-annual surveys of members of the public to measure their attitudes toward MPD and its officers.
Recommendation	14.5	MPD should continue in its commitment to releasing operational data to the public through the police data initiative and beyond.

Chapter 5: Use of Force and Deadly Force Practices

Finding	15	MPD has undertaken a commitment to provide all MPD officers Crisis Intervention Team (CIT) training.
Recommendation	15.1	MPD should continue the CIT training sessions to meet its completion goal of all officers trained by the end of 2017.
Recommendation	15.2	MPD should develop on in-service recertification CIT training
Finding	16	There is no formal training for Internal Affairs Division (IAD) supervisors and investigators on how to conduct use of force investigations.
Recommendation	16	MPD should develop and enforce a formal use of force investigation training requirement for all IAD supervisors and investigators.
Finding	17	MPD does not have specific guidelines for conducting use of force investigations, specifically how investigations are conducted, what evidence should be collected, and which supporting materials are gathered.
Recommendation	17	MPD should develop a policy and checklist for use of force and deadly force investigations that outline best practices fo the investigation and mandate all investigators attempt to gather a complete picture of available information in a consistent manner.
Finding	18	IAD investigations of critical incidents are too passive, as investigators mostly rely on criminal investigators to collect the appropriate information for an administrative review.
Recommendation	18.1	IAD investigations should be more proactive and be conducted in parallel fashion to the criminal investigation of a critical incident.
Recommendation	18.2	MPD should update its critical incidents standard operation procedures to reflect a proactive role for IAD
Finding	19	Documentation, collection and marking of video evidence collected in use of force and deadly force investigations are inconsistent making it difficult to determine if those investigative steps occurred or were just not documented.
Recommendation	19	MPD should update its policy on evidence collection and require supervisory review and approval of use of force reports.

Finding	20	MPD does not provide specific direction for supervisors for obtaining videos for the Use of Force Report and investigation, whether from the vehicle, body camera, surrounding businesses, or other places.
Recommendation	20	MPD should update its policy to require obtaining videos, including specific direction for all types of video if available.
Finding	21	IAD investigative files do not adequately document involved officer interviews.
Recommendation	21	MPD should transcribe and include the complete involved officers' administrative interviews in the IAD file and reference them in the case summary.
Finding	22	MPD IAD reports do not reference what steps are taken to provide critical incident support services to involved officers.
Recommendation	22	MPD should document the critical incident support services offered and provided to officers involved in officer-involved shooting and use of force cases and require they be included in IAD reports
Finding	23	Investigative case files did not reflect whether supervisors and commanding officers conducted reviews of use of force investigations to determine the need for further documentation, review, or investigative steps.
Recommendation	23	MPD should require commanding officers to address the investigative process taken by the supervisor, including whether it was appropriate, timely, and sufficient, in addition to whether the use of force was in compliance.
Finding	24	The use of force investigations being conducted by supervisors, and the review by commanding officers and IAD, are not completed within established timelines identified by policy.
Recommendation	24.1	MPD should require internal controls to monitor the timeliness of these use of force investigations at all levels to ensure the policy is being adhered to.
Recommendation	24.2	MPD should conduct periodic inspections to ensure IA personnel and supervisors maintain and conduct use of force investigations and administrative reviews with updated policy information.
Finding	25	Although audio or video recordings of civilian witnesses are required, the audio or video recording of involved and witnessing officers is not.

Recommendation	25	MPD should require audio or video recordings of involved and witnessing officers to improve the quality and transparency of the investigation.
Finding	26	MPD policy states that "members with a body worn camera (BWC) shall make every effort to activate their BWC for all investigative or enforcement contacts," allowing for discretion when the capture of video is critical.
Recommendation	26	MPD should update Department policy and use the more directed language for these BWC's, similar to what is used for the MVDR's which mandates officers "shall record".
Finding	27	MPD command does not routinely review the involved officer(s)' use of force, complaint, and discipline history in use of force investigations.
Recommendation	27	MPD should require review of the involved officer's history in use of force investigations for aggravating factors in patterns of behavior, including previous questionable use of force situations, anger issues, unsatisfactory performance, or related unsatisfactory behavior.
Finding	28	The AIM system lacks sufficient data storage capacity causing use of force investigative reports, evidence reports, and supporting documentation to be located in multiple places.
Recommendation	28	MPD should update its Administrative Investigations Management system to allow for more space to keep all documentation in one location or consider one physical file location for documents, photographs, audio, video, and other document evidence.
Finding	29	MPD does not capture or report use of force data in a way that can be easily aggregated, analyzed, and reported.
Recommendation	29.1	MPD should capture additional standardized data fields that capture information, including level of resistance that an offender is using during an encounter, the type of weapon an offender used or displayed, mental illness history, and if contraband was seized.
Recommendation	29.2	MPD should increase the quantity and quality of data collected around use of force reports, including contextual information such as deployment data, crime data, calls for service data, targeted enforcement priorities, and community perception information, which is imperative for fulling understanding the issue.
Finding	30	The FPC has ended its practice of releasing an annual report on MPD firearms discharges.

Recommendation	30.1	The FPC should recommit to the annual report on MPD firearms discharges.
Recommendation	30.2	The FPC should seek input from the community on the types of reports it should be producing on MPD.
Finding	31	MPD has recently announced that it will no longer be outsourcing fatal officer-involved shooting incidents to the Wisconsin DOJ, instead opting for a regional approach with other local law enforcement agencies.
Recommendation	31	MPD should require that non-fatal officer-involved shooting incidents are also investigated by an external agency.
Finding	32	MPD does not have a policy for releasing critical incident information to the public in a timely fashion.
Recommendation	32	MPD should work with community stakeholders to develop a policy on critical incident information sharing and public release.

Chapter 6: Citizen Stop and Search Practices

Finding	33	MPD's traffic stop practices have a disparate impact on the African-American community.
Recommendation	33.1	MPD should engage an independent evaluator to measure the community impact of its traffic enforcement strategy as compared to the potential benefits of the strategy.
Recommendation	33.2	MPD should continue voluntary collection of traffic stop data, a practice that is to be commended.
Recommendation	33.3	MPD should, as part of its data driven practices, provide quarterly trends and analysis of traffic stop enforcement and searches to district supervisors, analyzing data across the city, districts, and peer groups.
Recommendation	33.4	MPD should task supervisors with ensuring accuracy of data reported and reviewing and analyzing traffic stop data to identify trends and potential bias-based behaviors at an early stage.
Recommendation	33.5	MPD should, publicly and on a quarterly basis, report at the FPC the outcomes of its traffic enforcement strategy, including the demographic trends and crime trends, identified for the quarter.
Recommendation	33.6	MPD should require the training currently provided on fair and impartial policing and procedural justice to be delivered to all officers in the Department.
Recommendation	33.7	MPD should communicate throughout the ranks that a traffic stop quota is prohibited.
Finding	34	Pedestrian stops by MPD lack proper oversight and accountability.
Recommendation	34.1	MPD should immediately modify its policy on field interviews to require that officers notify MPD dispatch that the officer has engaged in a field stop and notify dispatch when that stop has completed.
Recommendation	34.2	MPD should develop a training bulletin for all MPD officers reinforcing the requirements for a field interview, including establishing reasonable suspicion for the stop, which should be reinforced through roll call training conducted by supervisors.

Recommendation	34.3	MPD officers should be required to clearly define the reasonable suspicion of the stop within the Field Interview card.
Recommendation	34.4	MPD supervisory personnel should be held accountable for ensuring timely, accurate submission of Field Interview cards.
Recommendation	34.5	Supervisors should be provided training on identifying trends and patterns that give rise to potentially biased practices regarding vehicle and pedestrian stops and vehicle searches.
Recommendation	34.6	MPD should conduct an audit of its field interviews to review the timely and accurate completion of Field Interview cards, proper explanation for the reasonable suspicion giving rise to the stop, and as a cross-reference against the CAD data for the pedestrian stop.
Finding	35	Community member are concerned that MPD engages in stop practices that are inflammatory to the community ethos, particularly the reported practice of "curbing" individuals.
Recommendation	35.1	MPD should establish a policy that the curbing of individuals during routine traffic stops is prohibited.
Recommendation	35.2	MPD should provide training for officers on how to safely conduct routine traffic stops and practices for ensuring appropriate containment of individuals.
Recommendation	35.3	MPD should begin collecting data on "curbing" as part of its traffic and pedestrian stop data collection.
Finding	36	MPD's traffic stop information system is cumbersome and time-consuming, which results in traffic stops taking a significant amount of time.
Recommendation	36	MPD should conduct a review of its technology and processes for traffic stops to identify and address the reasons for the amount of time it takes to conduct a traffic stop.

Chapter 7: Systems for Supervision, Accountability, Organizational Learning, Remediation, and Discipline

Finding	37	MPD policy does not provide for appropriate oversight and require IAD to assess whether a complaint should be investigated by a district or by IAD.
Recommendation	37	MPD should require that all complaints are sent to IAD for review and determination for appropriate assignment.
Finding	38	MPD's policy regarding complaints from community members allows a supervisor to determine whether a complaint form shall be completed.
Recommendation	38.1	MPD should immediately establish a policy that requires supervisors to accept all community member complaints, including anonymous and third-party complaints.
Recommendation	38.2	MPD should ensure that supervisors are trained on their responsibilities under the new policy requiring acceptance of public complaints.
Finding	39	MPD policy does not clearly define what constitutes a serious complaint.
Recommendation	39	MPD should develop a written directive or additional language in MPD policy that specifically defines the categories and types of complaints that are serious in nature.
Finding	40	MPD policy does not require that members are notified when they are the subject of a complaint investigation.
Recommendation	40	MPD should notify members when they are subject to a complaint allegation and investigation, unless it would jeopardize the Department's ability to investigate the misconduct successfully.
Finding	41	MPD Standard Operating Procedure 450 regarding complaint investigations is inadequate, as it does not have required time frames for completion of external and internal investigations.
Recommendation	41.1	MPD should establish an appropriate time frame for community complaint investigations to be completed and hold investigators and supervisors accountable for that time frame.
Recommendation	41.2	MPD should require supervisory review and approval for investigations open beyond 90 days and every 30 days thereafter.

Finding	42	MPD does not analyze trends, patterns, or other issues associated with complaint data.
Recommendation	42.1	MPD needs to evaluate and analyze complaint data to inform an develop appropriate interventions, training, and policy implications across the organization.
Recommendation	42.2	MPD should ensure that complaint data are tabulated by citywide, district, unit, and peer groupings to help supervisors understand overall employee performance and the specific factors at issue within their district to allow for active and engaged supervision.
Recommendation	42.3	MPD should ensure that complaint data are evaluated quarterly as part of the overall CompStat process to identify trends and patterns across the city.
Finding	43	Complaint investigation files are poorly organized, lack consistency, and are often incomplete.
Recommendation	43.1	MPD needs to develop specific guidelines and a checklist of requirements, including requirements for case file contents and the components of the investigative process.
Finding	44	Many community members expressed frustration and distrust in the citizen complaint process and oversight of MPD.
Recommendation	44.1	The FPC should create a new position of independent police auditor.
Finding	45	MPD's Progressive Disciplinary Matrix is ill-defined and not applied consistently.
Recommendation	45.1	MPD should evaluate and update the Progressive Discipline Matrix to ensure that categories of conduct are appropriately defined.
Recommendation	45.2	MPD should ensure that the Progressive Disciplinary Matrix addresses progressive discipline for subsequent and repeated misconduct.
Recommendation	45.3	MPD should require that the Progressive Discipline Matrix be used to determine disciplinary action to ensure consistency, fairness, and transparency.
Recommendation	45.4	MPD should re-train supervisory personnel in the disciplinary process and the proper application of the Progressive Discipline Matrix
Recommendation	45.5	MPD should inform all members of the Department of the role the Progressive Disciplinary Matrix plays in the disciplinary process.

Finding	46	MPD was proactive and developed its Early Intervention Program (EIP) in 2008. MPD subsequently engaged a focus group in 2012 to assess the program and the efficacy of the triggers. Input was not obtained from an EIP professional for either process.
Recommendation	46.1	MPD should engage an EIP professional to assess the overall program and evaluate the indicators.
Recommendation	46.2	MPD should evaluate EIP to determine recommendations for improvement and promising practices by including personnel experienced in early intervention from another policing agency or otherwise.
Recommendation	46.3	MPD should establish a standing MPD committee on EIP to include MPD personnel, the chief's office, FPC, the Milwaukee Police Officers Association, and an EIP professional.
Finding	47	MPD's EIP policy does not sufficiently identify roles and responsibilities related to its EIP.
Recommendation	47.1	MPD should update the EIP policy to include standards and protocols for intervention including roles and responsibilities of the supervisor, commander, the member, and the EIP Coordinator; creation of an intervention plan; reporting and documentation requirements with associated timelines; and outcomes of the process.
Recommendation	47.2	MPD needs to train supervisors on how to create an appropriate intervention plan, how to report and document actions taken in support of the intervention meetings and EIP process, how to comply with timelines for the progression of the EIP process, and requirements for reporting the outcomes of the process. Engaged supervisors are important because they are the individuals most likely to identify early on problematic behaviors by patrol officers.
Recommendation	47.3	MPD should revise all of the benchmarks in EIP to have an alert notification trigger for any employee receiving three incidents in 90 days and over a rolling one-year period.
Recommendation	47.4	MPD should consider additional performance indicators for inclusion in EIP, including past performance evaluations, pedestrian and traffic stops, arrests, weapons qualifications, training history, lawsuit or claim filed, and any management and supervisory action taken pursuant to a review of EIP notifications.

Finding	48	MPD does not examine aggregated EIP data to identify potential patterns and trends across the organization.
Recommendation	48.1	MPD should use EIP to examine patterns of behavior such as employee average activity and to conduct comparisons across officers, units, areas, and other appropriate factors.
Recommendation	48.2	MPD should maintain EIP alerts for several years to track the history of officers flagged by the system.
Finding	49	MPD EIP policies and practices are not fully supported or known throughout the Department.
Recommendation	49.1	MPD needs to provide ongoing training regarding the goal, practices, and outcomes associated with Department members on EIP.
Recommendation	49.2	MPD should ensure through ongoing roll call training that the distinction between EAP and EIP messaging is conducted in roll call training and an accompanying memo or written directive explaining EIP.
Finding	50	MPD does not have a written directive that states "dishonesty in any matter of official police business is a terminable offense."
Recommendation	50	MPD should add a written directive that states "dishonesty in any matter of official police business is a terminable offense."
Finding	51	The Milwaukee Police Department does not state that "the ability to testify in court with credibility" is an essential job function on the police officer job description.
Recommendation	51	MPD should add "the ability to testify in court with credibility" as an essential job function. This is the prerequisite to establishing a written directive indicating that dishonesty in any matter of official police business is a terminable offense. This is a best practice for a law enforcement agency.
Finding	52	The Department provides limited and inconsistent rewards or acknowledgements for good behavior and job performance.
Recommendation	52	MPD should improve communication and support accolades that champion positive employee behaviors.
Finding	53	MPD personnel are often not reading or understanding new standard operating procedures or Code of Conduct standards when they are disseminated via email.

Recommendation	53	MPD should communicate with and train all department personnel in roll call sessions immediately after dissemination of new standard operating procedure or Code of Conduct standards beyond their acknowledgement of such policies as sent by the Department via email.
Finding	54	MPD does not encourage an open and consistent two-way communication between command staff or supervisors and employees.
Recommendation	54.1	MPD should establish clear and consistent communication between leadership or supervisors and employees.
Recommendation	54.2	MPD should provide training to patrol and investigative unit sergeants on methodologies to conduct regular, ongoing team meetings with their subordinates, with a focus on helping them understand why such interactions with their subordinates supports their efforts to lead, control, and direct their work. Consideration should be given to providing such training in the Supervisors course. The training should also include a focus on using such meetings to organize and coordinate community policing activities.
Finding	55	Many MPD officers have the perception that there is a lack of transparency in the Department when determining who is chosen to attend specialized training, leading to a concern that there is favoritism among personnel.
Recommendation	55	MPD should establish clear and consistent communication regarding procedures for who receives training and allow transparency for such selections. Personnel whose request to attend training was denied should receive the denial in writing, including the reason for denial.
Finding	56	MPD personnel are unclear on why the Department is driven by numbers. MPD personnel are unaware of what takes place at CompStat.
Recommendation	56.1	MPD should provide roll call or in-service training to all Department personnel regarding the Department's strategy on using data to determine operational strategies and allow personnel to attend CompStat meetings to increase their understanding.
Recommendation	56.2	MPD should livestream CompStat meetings so that personnel can observe remotely, as needed.

EXHIBIT J



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Statement in response to release of draft COPS report



With the release of the draft of the United States Department of Justice's Community Oriented Policing Services report, the following statement may be attributed to Larry Dupuis, legal director of the ACLU of Wisconsin:



The ACLU is pleased that the draft report from the United States Department of Justice's Community Oriented Policing Services (COPS) review of the Milwaukee Police Department has finally been made public. It reflects many of the concerns that we have heard, especially from communities of color, about the MPD's aggressive pedestrian and traffic stop policies and practices, as well as about use of force, transparency and accountability. Our lawsuit is an effort to address some of the problems that the COPS report appears to corroborate.

Unfortunately, based on his reported comments in today's Journal Sentinel, it seems Chief Flynn may be more interested in rebutting the conclusions of an agency he invited in to evaluate his department than in taking those conclusions seriously. The ACLU will continue to press for reform of MPD's alienating occupation of Milwaukee neighborhoods, which routinely results in unlawful stops and frisks and seriously interferes with the essential trust between police and communities. We hope that this report will encourage the leadership of both the Milwaukee Police Department and the Fire and Police Commission to engage in meaningful dialogue about how to address these longstanding issues.

Date: Wednesday, August 30, 2017

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EXHIBIT K

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, September 15, 2017

Department of Justice Announces Changes to the Collaborative Reform Initiative

The Department of Justice today announced significant changes to the Office of Community Oriented Policing Services (COPS Office) Collaborative Reform Initiative for Technical Assistance to better align the program with the principles outlined by the Attorney General in support of local law enforcement and the original intent of the authorizing statute. The changes are effective immediately and will provide targeted assistance directly to local law enforcement based on their identified needs and requests.

"Changes to this program will fulfill my commitment to respect local control and accountability, while still delivering important tailored resources to local law enforcement to fight violent crime," said Attorney General Jeff Sessions. "This is a course correction to ensure that resources go to agencies that require assistance rather than expensive wide-ranging investigative assessments that go beyond the scope of technical assistance and support."

Earlier this year, the Attorney General released a [memorandum](#) stating that all Department of Justice activities would be reviewed by Department of Justice leadership to ensure that they fully and effectively promote the principles outlined in the memo. Today's announcement is the conclusion of that review for the Collaborative Reform Initiative. These changes will return control to the public safety personnel sworn to protect their communities and focus on providing real-time technical assistance to best address the identified needs of requesting agencies to reduce violent crime.

The COPS Office is a federal agency responsible for advancing community policing nationwide:

www.cops.usdoj.gov.

Component(s):

[Community Oriented Policing Services \(COPS\)](#)

Press Release Number:

17-1010

Updated September 15, 2017

EXHIBIT L

MILWAUKEE POLICE DEPARTMENT MEMORANDUM

Date: October 4, 2017
TO: Director Leslie SILLETTI
FR: Sergeant Mark KROWSKI
RE: Alderman Stamper Request:
Collaborative Reform Initiative for Technical Assistance



Flynn
EXHIBIT 286
11-6-17
Gramann Reporting, Ltd.

This report is being submitted by Sergeant Mark KROWSKI JR. and P.O. Heather COSS, assigned to the Office of Management, Analysis, and Planning Day Shift.

On September 26, 2017, Director SILLETTI requested OMAP research a question from Alderman Russell STAMPER in regards to the Department of Justice Collaborative Reform Initiative for Technical Assistance report. Alderman STAMPER submitted an email request to Chief Edward FLYNN on that same date, and he had a question for the Milwaukee Police Department which stated, "How many of the recommendations have no cost and can be implemented immediately? I know all except 3 or 4 were accepted by the Chief." The remaining questions in his request were for the Milwaukee Fire and Police Commission (FPC).

This collaboration was originally meant to be an 18-month agreement with the Department of Justice as collaborative reform assists police agencies and the communities they serve by providing targeted technical assistance around specific public safety issues. The goal of the program was to assess, monitor, and assist MPD, in concert with the community, in the implementation and sustainment of reforms that improve community-oriented policing practices, transparency, professionalism, accountability, and public trust, taking into account national standards, best practices, current and emerging research, and community expectations.

Originally, upon the formal release of recommendations from DOJ, MPD would have been provided with an extensive 18-months of technical assistance from DOJ in implementing their recommendations, which will no longer happen since the collaborative reform program has been significantly changed. However, MPD is committed to working with stakeholders to find solutions to implement the recommendations from the original draft report despite DOJ no longer providing the technical assistance that was originally supposed to be provided over an 18-month period.

Please find below the recommendations listed in the draft Department of Justice Collaborative Reform Initiative for Technical Assistance report that the Milwaukee Police

Department can begin working on immediately and a preliminary cost estimate of recommendations that would require additional funding for the Milwaukee Police Department to implement.

Please also find below items suggested at the September 21st Fire and Police Commission meeting as potential "low-hanging fruit" by NAACP President Fred Royal. One of these items relates to Item #1 in Alderman Stamper's original September 26th email: "Will FPC begin to process all complaints? If so, when can we anticipate the date?" The information included below will provide context helpful to that conversation.

Conversations are ongoing relative to items that may be funded in the 2018 Budget or how they may be planned for potential future appropriations. As many of the items included may require substantial investment of City resources, policymakers will need to participate in the planning and prioritization of any future investment of resources.

RECOMMENDATIONS THAT CAN BE IMPLEMENTED IMMEDIATELY

For the purposes of this memorandum, recommendations that the department can begin immediately include recommendations that only require a change to standard operating procedures or do not include a cost, technical assistance, or best practice research.

Chapter 4

- 12.2 - MPD should inform patrol officers on the roles and responsibilities of Community Liaison Officers (CLO) and provide officers guidance on how to collaborate with CLOs in their collective community poling efforts.

Chapter 5

- 15.1 - MPD should continue the Crisis Intervention Training (CIT) training sessions to meet its completion goal of all officers trained by the end of 2017.
- 15.2 - MPD should develop an in-service recertification CIT training.
- 16 - MPD should develop and enforce a formal use of force investigation training requirement for all Internal Affairs Division (IAD) supervisors and investigators.
- 17 - MPD should develop a policy and checklist for use of force and deadly force investigations that outline best practices for the investigation and mandate all investigators attempt to gather a complete picture of available information in a consistent manner.
- 18.1 - IAD investigations should be more proactive and be conducted in parallel fashion to the criminal investigation of a critical incident.
- 18.2 - MPD should update its critical incidents standard operation procedures to reflect a proactive role for IAD.

- 19 - MPD should update its policy on evidence collection and require supervisory review and approval of use of force reports.
- 20 - MPD should update its policy to require obtaining videos, including specific direction for all types of video if available.
- 22 - MPD should document the critical incident support services offered and provided to officers involved in officer-involved shooting and use of force cases and require they be included in IAD reports.
- 23 - MPD should require commanding officers to address the investigative process taken by the supervisor, including whether it was appropriate, timely, and sufficient, in addition to whether the use of force was in compliance.
- 24.1 - MPD should require internal controls to monitor the timeliness of these use of force investigations at all levels to ensure the policy is being adhered to.
- 24.2 - MPD should conduct periodic inspections to ensure IA personnel and supervisors maintain and conduct use of force investigations and administrative reviews with updated policy information.
- 25 - MPD should require audio and video recordings of involved and witnessing officers to improve the quality and transparency of the investigation.
- 26 - MPD should update Department policy and use the more directed language for these body worn cameras, similar to what is used for the mobile digital video audio recording equipment (MDVR) which mandates officers "shall record".
- 27 - MPD should require review of the involved officer's history in use of force investigations for aggravating factors in patterns of behavior, including previous questionable use of force situations, anger issues, unsatisfactory performance, or related unsatisfactory behavior.

Chapter 6

- 33.5 - MPD should, publicly and on a quarterly basis, report at the FPC the outcomes of its traffic enforcement strategy, including the demographic trends and crime trends, identified for the quarter.
- 33.7 - MPD should communicate throughout the ranks that a traffic stop quota is prohibited.
- 34.2 - MPD should develop a training bulletin for all MPD officers reinforcing the requirements for a field interview, including establishing reasonable suspicion for the stop, which should be reinforced through roll call training conducted by supervisors.
- 34.3 - MPD officers should be required to clearly define the reasonable suspicion of the stop within the Field Interview Card.

- 34.4 - MPD supervisory personnel should be held accountable for ensuring timely, accurate submission of Field Interview cards.
- 34.6 - MPD should conduct an audit of its field interviews to review the timely and accurate completion of Field Interview cards, proper explanation for the reasonable suspicion giving rise to the stop, and as cross-referenced against the Computer Aided Dispatch (CAD) data for the pedestrian stop.
- 35.1 - MPD should establish a policy that the curbing of individuals during routine traffic stops is prohibited.
- 35.3 - MPD should begin collecting data on "curbing" as part of its traffic and pedestrian stop data collection.
- 36 - MPD should conduct a review of its technology and processes for traffic stops to identify and address the reasons for the amount of time it takes to conduct a traffic stop.

Chapter 7

- 37 - MPD should require that all complaints are sent to IAD for review and determination for appropriate assignment.
- 38.1 - MPD should immediately establish a policy that requires supervisors to accept all community member complaints, including anonymous and third-party complaints.
- 38.2 - MPD should ensure that supervisors are trained on their responsibilities under the new policy requiring acceptance of public complaints.
- 39 - MPD should develop a written directive or additional language in MPD policy that specifically defines the categories and types of complaints that are serious in nature.
- 40 - MPD should notify members when they are subject to a complaint allegation and investigation, unless it would jeopardize the Department's ability to investigate the misconduct successfully.
- 41.1 - MPD should establish an appropriate time frame for community complaint investigations to be completed and hold investigators and supervisors accountable for that time frame.
- 41.2 - MPD should require supervisory review and approval for investigations open beyond 90 days and every 30 days thereafter.
- 43.1 - MPD needs to develop specific guidelines and a checklist of requirements, including requirements for case file contents and the components of the investigative process.

- 46.3 - MPD should establish a standing MPD committee on the Early Intervention Program (EIP) to include MPD personnel, the chief's office, FPC, the Milwaukee Police Officers Association, and an EIP professional.
- 47.3 - MPD should revise all of the benchmarks in EIP to have an alert notification trigger for any employee receiving three incidents in 90 days and over a rolling one-year period.

“Low-hanging Fruit,” from the September 21th Fire and Police Commission Meeting

Please find below items suggested at the September 21st Fire and Police Commission meeting as potential “low-hanging fruit” by NAACP President Fred Royal. One of these items relates to Item #1 in Alderman Stamper's original September 26th email: “Will FPC begin to process all complaints? If so, when can we anticipate the date?” The information included below will provide context helpful to that conversation.

Internal Investigations

The suggestion was made that FPC take over the function of internal investigations. Please find below context to assist with that conversation:

In 2016, department supervisors at all work locations, including the Internal Affairs Division (IAD), investigated 249 internal and 153 external complaints against members for a total of 402 internal investigations. This total does not include criminal allegations that resulted in 65 investigations by the IAD Special Investigations Section. In addition to conducting their own investigations, IAD personnel reviewed 1,190 administrative investigations conducted by department supervisors, including uses of force, vehicle pursuits, and squad accidents. Because of our 24-hour operational period and the need to meet and interview officers during their work shifts, IAD investigators and supervisors work two shifts covering day and night shift hours. When fully staffed, the division consists of 30 employees, including a captain of police, 3 lieutenants, 11 sergeants, 6 detectives, 5 police officers, and 4 administrative personnel.

Interaction Receipts

The suggestion was made for individuals to receive receipts after interactions with officers:

The department currently supplies blank business cards on which officers can write their names, work locations, and contact information. The Printing and Stores Section can create forms or cards can be modified to include additional information, such as how to commend a member, file a complaint, or contact the FPC, along with the date, time, and location of the interaction. Members would be required to issue these contact forms in enumerated instances, such as traffic stops, field interviews, victim/witness interviews, and whenever requested by a citizen. Given that we encounter several hundred

thousand people per year, this will have a fiscal impact on the Printing and Stores Section as we estimate a cost between \$4,000 to \$13,400 per year to implement these changes. The variation in this estimate results from different options, for instance, a singular card or form versus a carbonless document that allows the department to maintain and file copies.

Body-Worn Camera Activation

The suggestion was made that the department ensure activation of body worn cameras:

The department's current Body Worn Camera (BWC) SOP requires a member who is assigned a BWC to wear it at all times when on-duty, in uniform, and performing or likely to perform enforcement duties. Officers are to activate their BWCs for all investigative or enforcement contacts and must start recording as soon as it is safe and practical to do so. Currently the department is evaluating and changing our SOP in order to update it to fit with law enforcement best practices. Among other changes, the updated SOP will remove any language giving the perception that officers have discretion in determining the situations in which their cameras must be activated outside of specific concerns raised by crime victims and other sensitive encounters. We anticipate being ready to present the revised BWC policy to the FPC by November 16, 2017. The department's Inspections Division has begun conducting random weekly audits to verify officers are complying with the current SOP.

RECOMMENDATIONS THAT HAVE A COST INVOLVED

The below recommendations would require additional funding for the Milwaukee Police Department in order for the department to successfully implement these recommendations. The cost associated with the recommendation is a preliminary cost estimate only and will more than likely change once the department creates requests for proposals or receives cost estimates.

The below listed table includes the new technology or consultant required to implement the recommendations from the report along with the preliminary estimate for these services. It should be noted this does not include any recommendations that would require a consultant at an estimated cost of \$600 / day, which are denoted later in this document. Unfortunately, until a further analysis and request for proposal is developed it is unknown how long the consultant would need to be retained for certain recommendations. It is important to note that the figures are estimates only and costs may be significantly higher than estimated. Please see below the chart for a complete breakdown of the specific recommendations and what specific technology and/or consultants are estimated to be required.

As previously noted, this collaboration was originally meant to be an 18-month agreement with the DOJ. The DOJ would have provided MPD with technical assistance to implement their recommendations, which would have included assistance with identifying subject matter experts, best practice research, and identifying funding sources to implement these recommendations.

Technology or Consultant Required	Estimated Cost
New or Updated AIM System	\$750,000 - \$1,000,000
New or Updated EIP System	\$750,000 - \$1,000,000
Transcription Software or Service	\$250,000
Live Stream CompStat Technology	\$100,000
Community Policing Consultant	\$60,000 - \$100,000
Independent Traffic Consultant	\$60,000 - \$100,000
Survey Development and Administration	\$50,000
Total Estimated Cost	\$2,020,000 - \$2,600,000

The following recommendations would require technical assistance and/or a consultant that the department is estimated to cost between \$60,000 - \$100,000 (this consultant would assist with all of the below recommendations).

- 10.1 - MPD should develop a department-wide community policing strategy.
- 10.2 - MPD should engage with an independent community advisory board to regularly meet with and provide the chief with input on the operations of MPD.
- 11.1 - MPD should require command officers to define, in writing, the specific steps to be taken to identify and engage local community stakeholders in collaborative community policing efforts within their areas of command.
- 11.2 - MPD should require every command officer responsible for any operational unit in the Department to complete a routine community policing status report.
- 11.3 - MPD should incorporate community policing performance measures in their routine CompStat process.
- 11.4 - MPD should provide training to supervisors and command staff on community policing for supervisors.
- 11.5 - MPD should update the performance appraisal process to ensure that it includes (as appropriate) measurements of an employee's contributions to the strategic community policing goals, including positive police-community interaction and problem resolution.
- 11.6 - MPD should publish and post online an annual review of progress towards community policing goals and objectives.
- 11.7 - MPD should update the promotional testing procedures for supervisors and command officers to include questions and activities testing a candidate's ability to lead and direct community policing efforts.
- 12.1 - MPD should conduct in-service training for all personnel on community-oriented policing.
- 12.2 - MPD should inform patrol officers on the roles and responsibilities of CLOs

and provide officers guidance on how to collaborate with CLOs in their collective community poling efforts.

The following recommendation would require technical assistance and/or a consultant that the department would estimate a cost between \$60,000 - \$100,000.

- 33.1 - MPD should engage an independent evaluator to measure the community impact of its traffic enforcement strategy as compared to the potential benefits of the strategy.

The following recommendations would require a new or updated Administrative Investigations Management (AIM) system. The total cost for the software would be estimated between \$750,000 - \$1,000,000. In addition, there would be unknown annual maintenance cost for the software.

- 28 - MPD should update its Administrative Investigation Management system to allow for more space to keep all documentation in one location or consider one physical file location for documents, photographs, audio, video, and other document evidence.
- 29.1 - MPD should capture additional standardized data fields that capture information, including level of resistance that an offender is using during an encounter, the type of weapon an offender used or displayed, mental illness history, and if contraband was seized.
- 29.2 - MPD should increase the quantity and quality of data collected around use of force reports, including contextual information such as deployment data, crime data, calls for service data, targeted enforcement priorities, and community perception information, which is imperative for fully understanding this issue.
- 42.2 - MPD should ensure that complaint data are tabulated by citywide, district, unit, and peer groupings to help supervisors understand overall employee performance and the specific factors at issue within their district to allow for active and engaged supervision.

The following recommendation would require a new or updated software system for our Early Intervention Program. The total cost for the software would be estimated between \$750,000 - \$1,000,000. In addition, there would be unknown annual maintenance cost for the software.

- 47.4 - MPD should consider additional performance indicators for inclusion in EIP, including past performance evaluations, pedestrian and traffic stops, arrest, weapons qualifications, training history, lawsuit or claim filed, and any management and supervisory action taken pursuant to a review of EIP notifications.

The following recommendation would require a cost to conduct a survey. As a point of reference, the Police Satisfaction Survey conducted by the FPC in 2014 cost approximately \$50,000.

- 14.4 - MPD should conduct bi-annual surveys of members of the public to measure their attitudes toward MPD and its officers.

The following recommendations would require additional funding for new or updated technology in order to implement the recommendation. The estimate cost is included after the recommendation.

- 21 - MPD should transcribe and include the complete involved officers' administrative interviews in the IAD file and reference them in the case summary. The estimated cost for the transcription software or service is \$250,000.
- 56.2 - MPD should livestream CompStat meetings so that personnel can observe remotely, as needed. The estimated cost for the technology to live stream CompStat is \$100,000.

The following recommendations would require a consultant that the department would estimate would cost \$600 / day. Unfortunately, until a further analysis and request for proposal is developed it is unknown how long the consultant would need to be retained.

- 14.3 - MPD should undertake an evaluation of its enforcement activities that specifically accounts for collateral damage on community trust and legitimacy.
- 14.5 - MPD should continue its commitment to releasing operational data to the public through the police data initiative and beyond.
- 33.4 - MPD should task supervisors with ensuring accuracy of data reported and reviewing and analyzing traffic stop data to identify trends and potential bias-based behaviors at an early stage.
- 34.4 – MPD supervisory personnel should be held accountable for ensuring timely, accurate submission of Field Interview cards.
- 34.5 – Supervisors should be provided training on identifying trends and patterns that give rise to potentially biased practices regarding vehicle and pedestrian stops and vehicle searches.
- 34.6 – MPD should conduct an audit of its field interviews to review the timely and accurate completion of Field Interview cards, proper explanation for the reasonable suspicion giving rise to the stop, and as cross-referenced against the CAD data for the pedestrian stop.

Respectfully submitted,

Sergeant Mark KROWSKI #016257
OMAP, Day Shift

EXHIBIT M

Collins vs. City of Milwaukee

17-CV-234-JPS

Transcript of the Video Deposition of:

Edward Flynn

November 6, 2017



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1 A I don't know about that formulation specifically.
2 They're encouraged to use their uncommitted time.
3 I don't offhand recall --

4 Q Is that --

5 A -- a directive to that effect.

6 Q Would it be considered uncommitted time if you
7 were going between assignments?

8 A Yeah. It would depend. I mean, I don't want
9 going to a low-level assignment to get in the way
10 of you doing something about a reckless driver or
11 somebody that's fleeing from a bank robbery. I
12 mean, you know, I would expect you to understand
13 how to prioritize your activity.

14 Q Okay. Okay. I would like to mark another
15 exhibit.

16 (Exhibit 286 marked for identification.)

17 BY MR. DUPUIS:

18 Q Looking at what's been marked as Exhibit 286, do
19 you recognize this document?

20 A Yep.

21 Q Okay. Did you review and approve it?

22 A It wasn't a question of approving it. I reviewed
23 it. Yeah.

24 Q On -- so if you take a look at page -- so this is
25 a -- essentially a response to an alder's request

1 for information on what aspects of the COPS
2 report's recommendations the department would be
3 willing to implement; correct?

4 A Yeah.

5 MR. RUSSELL: Objection. Form.

6 THE WITNESS: Correct. Yeah.

7 BY MR. DUPUIS:

8 Q And in the fourth paragraph it says "MPD is
9 committed to working with stakeholders to find
10 solutions to implement the recommendations from
11 the original draft report, despite DOJ no longer
12 providing the technical assistance that was
13 originally supposed to be provided over an
14 18-month period."

15 Is that right?

16 A That's correct.

17 Q Okay. And despite your concerns about the quality
18 of the COPS report, is it true that the department
19 has committed to making as many of the changes as
20 possible that the COPS report has recommended?

21 MR. RUSSELL: Objection. Form.

22 THE WITNESS: Yeah. I mean, despite the
23 fact that I thought it was a badly written report
24 and inaccurate in many places, the recommendations
25 for reforms and changes are fairly straightforward

1 and boilerplate.

2 You know, recommendations that we
3 memorialize certain things or do them more often
4 or do them better, I never -- even when we had the
5 press conference announcing the intervention, I
6 said I was predisposed to accept whatever
7 recommendations they made. Sure.

8 BY MR. DUPUIS:

9 Q Okay. So on pages 6 and 7 of this document,
10 recommendations that have a cost involved.

11 Do you see that?

12 A I'll get there.

13 Q And there is -- sorry.

14 A Yeah.

15 Q So there are a number -- there is actually a chart
16 on the top of page 7 of technology or consultant
17 costs.

18 Do you see that?

19 A Yes.

20 Q And among those costs are a community policing
21 consultant at up to \$100,000 per year, I assume
22 that is?

23 A There is a range. Sure.

24 Q And an independent traffic consultant at the same
25 rate?

1 A That's correct.

2 Q What would those consultants do?

3 A Well, they were recommendations they made that
4 presumably -- and, you know, one of my concerns
5 about some of their recommendations was they never
6 identified agencies or research that justified the
7 recommendation or from whom we could, you know,
8 derive guidance in terms of policy development or
9 whatnot.

10 So since presumably some of these things
11 are -- would require identifying someone to do the
12 research to ascertain either -- or to develop
13 either a new policy that didn't exist anywhere or
14 to identify people who had a policy from which we
15 could learn, that's not something which was --
16 which is within the capacity of our current
17 planning operation.

18 So we suspected that that would cost
19 somewhere between 60- and \$100,000 to provide
20 somebody to work through some of those
21 recommendations.

22 Q And was that -- were those amounts requested in
23 your current budget request for 2018?

24 A Well, my budget requests are based on the guidance
25 given to me by the City. The City has X amount of

1 taxing capacity that generates Y amount of
2 locally-generated resources, and as an anticipated
3 amount of shared revenue, which has been declining
4 every year, you probably read it in the paper.

5 So they add up what they're going to get
6 from the taxes, and they add up what they're going
7 to get from the State, they add up from the grants
8 we can participate -- anticipate, and then they
9 say "Give us a budget number that matches this
10 number."

11 So that's what I did. I've identified
12 these costs going forward going into 2018 because
13 we're not going to be able to do everything all at
14 once at the same time.

15 And so, number one, we're going to
16 engage in a community process that the City
17 Council is putting together with the Fire and
18 Police Commission to solicit community feedback
19 and input on the recommendations that have been
20 made because their priorities -- my priority would
21 be do the stuff I can do, because that's fairly
22 straight forward.

23 The community's priorities might be
24 something altogether different. They might say
25 "No, no, no, we need you to do this thing over

1 here you'll need a consultant for."

2 So before -- you know, some of this
3 stuff we're already undertaking, you know, the
4 low-hanging fruit, if you will. Some of the other
5 stuff is going to have a cost component. This
6 next several months is going to be about getting
7 that community feedback.

8 Q So then would you be willing to use some of the
9 money that is ultimately budgeted for a community
10 policing consultant in an independent traffic
11 consultant?

12 A Theoretically, sure.

13 MR. DUPUIS: Could we take another
14 ten-minute break?

15 THE VIDEOGRAPHER: We are going off the
16 record at 4:39 p.m.

17 (A recess was taken.)

18 THE VIDEOGRAPHER: We are back on the
19 record at 4:50 p.m.

20 (Exhibit 287 marked for identification.)

21 BY MR. DUPUIS:

22 Q Taking a look at what's been marked Exhibit 287.
23 Do you recognize that?

24 A Let's see here. Okay. Yeah.

25 Q So it's -- this is a May 2017 email from you

EXHIBIT N



City officials, including Chief Edward Flynn, pledge to move forward on draft DOJ reforms

Ashley Luthern, Milwaukee Journal Sentinel Published 6:00 a.m. CT Oct. 10, 2017



(Photo: Milwaukee Journal Sentinel files)

Two months ago, Milwaukee Police Chief Edward Flynn criticized a draft of a federal review of the department as riddled with errors.

Flynn would not detail what those mistakes were — then or now — and an updated version of the document doesn't either.

Despite that, Flynn recently reiterated that he agrees with most of the draft report's recommendations.

"I am embracing the recommendations for MPD because, like any other police department, we could always improve," he said in a written statement last week.

"It's important to demonstrate to the community our willingness to examine our systems and processes and look for ways to improve them."

No final version of the review exists, nor will one be produced after the U.S. Department of Justice changed its collaborative reform process to focus more on crime reduction tactics instead of accountability and reform of police agencies.

The change falls in line with the new presidential administration's stated goals of reducing crime and promoting local control of police agencies.

RELATED: [U.S. Department of Justice halts ongoing review of Milwaukee Police Department \(/story/news/crime/2017/09/17/doj-retools-collaborative-reform-halting-ongoing-review-milwaukee-police/673424001/\)](#)

Last month, a Department of Justice spokeswoman said the Milwaukee Police Department will be moved into the new crime-reduction version of the program. But Flynn later received a letter from the Justice Department offering help to move the reform recommendations forward. Flynn said he is "more than happy to accept technical assistance" from the Justice Department and has reached out to them about providing it.

Asked last week for an update about the future of collaborative reform in Milwaukee, a Department of Justice spokesperson declined to comment.

Moving forward

To many in Milwaukee who have followed this process, the changes in the federal program do not matter.

"Regardless of where the Department of Justice is now, we should try to at least use these recommendations as a guide," Common Council President Ashanti Hamilton said.

"I think the community at large deserves some action on the recommendations," he said.

The Council and the Milwaukee Fire and Police Commission are moving toward implementing those recommendations. Details of the process are still being worked out, Hamilton said, but he wants to move quickly.

RELATED: [Draft DOJ report: Trust damaged between Milwaukee police and community \(https://projects.jsonline.com/news/2017/8/30/trust-damaged-between-milwaukee-police-department-of-justice-draft-report-says.html\)](#)

RELATED: [Aldermen take up draft Department of Justice report on Milwaukee Police Department \(/story/news/crime/2017/09/14/aldermen-take-up-draft-department-justice-report-milwaukee-police-department/667448001/\)](#)

The Community Coalition for Quality Policing — a group of nearly two dozen faith, civil rights and advocacy organizations — is continuing to push for problem-oriented policing. That method of policing prioritizes officers finding new strategies and solutions outside the criminal justice system to address issues in neighborhoods.

"If all politics are local then the City of Milwaukee can find a way to improve police-community relations and reduce violence using well-established best practices with or without the assistance of the Department of Justice," said Fred Royal, one of the coalition's founders and president of the NAACP Milwaukee branch.

The coalition will be pushing for the city to start with "low-hanging fruit," Royal said. That includes: centralizing the citizen complaint process, requiring body-cameras to be turned on as soon as an officer leaves a patrol car and releasing video of police shootings within two weeks after witness statements have been taken.

Updated draft

The updated draft report, dated December 2016, includes no obvious differences in facts or recommendations from an initial draft obtained by the Journal Sentinel in August. The new draft, though, takes pains to provide context.

For example, the data on traffic stops and searches cited in the later draft still shows a racial disparity between the rate of stops between whites and African-Americans, even in districts that are predominately white. But the report adds to the discussion of the data, pointing out that the numbers alone cannot be considered evidence of bias.

RELATED: [Common Ground pushes for improved Milwaukee police response to crime on south side \(/story/news/crime/2017/10/06/common-ground-pushes-improved-milwaukee-police-response-crime-south-side/735396001/\)](https://www.jsonline.com/story/news/crime/2017/10/06/common-ground-pushes-improved-milwaukee-police-response-crime-south-side/735396001/)

The new version also highlights training on fair and impartial policing, provided throughout the department. Further, it quotes a department policy that prohibits officers from stopping, detaining and searching anyone based solely upon the person's race, color, sex, sexual orientation, gender expression, national origin, ethnicity, age, religion or socioeconomic status.

Another clarification has to do with racial discrepancies in consent searches, in which officers ask permission to search someone's person or vehicle without reasonable suspicion. The data cited on the practice, which was collected from 2013 to 2015, did not change. But the updated draft points out that Milwaukee police officers have since stopped doing consent searches.

Critical statements about the potential negative effect of traffic stops on community relations, complaints about an informal quota and lack of oversight for pedestrian stops remained unchanged in the new version of the report.

The Police Department has not received additional materials from the Justice Department since February.

Gina Barton of the Journal Sentinel staff contributed to this report.

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EXHIBIT O

Collins vs. City of Milwaukee

17-CV-234-JPS

Transcript of the Video Deposition of:

Leslie Silletti

November 2, 2017



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1 A Yes.

2 Q Okay. Another thing you mentioned is the lack of
3 funding and technical assistance related to
4 implementing the COPS recommendations.

5 If you did, in fact, have the technical
6 assistance needed, would you be willing to
7 implement -- would MPD be willing to implement all
8 of the recommendations?

9 MR. RUSSELL: Objection. Foundation.
10 Form.

11 THE WITNESS: My understanding is that
12 if -- in these community conversations that will
13 happen, if those are prioritized to be implemented
14 and resources were available, then the answer
15 would be yes.

16 However, if MPD says, "Yes, this is our
17 number one priority, we want this to be
18 implemented," and the community of interest says,
19 "You know what, we don't see the cost-benefit
20 analysis" -- and I'm very much generalizing and
21 making this up for -- exaggerating for the point
22 of discussion -- that might never get funded, even
23 if there was a pot of \$2 million sitting there.
24 You know, they might -- the community of interest
25 might say, you know, resources are limited and

1 priorities compete and maybe this \$2 million
2 should be spent in this direction.

3 BY MS. DINGLE:

4 Q During the conversations that have taken place
5 about the draft COPS report, you said there was a
6 conference in November of 2016.

7 Was the FPC a part of that conference?

8 A Yes.

9 Q Okay. And in subsequent discussions has the FPC
10 been involved?

11 A On and off.

12 Q And who are the individuals from the FPC who
13 attended the conference?

14 A Director Regan.

15 Q Anyone else?

16 A No.

17 Q Okay. And how about in subsequent conversations,
18 who's represented the FPC in those conversations?

19 A Generally Director Regan. More recently Director
20 of Operations Clifton Crump. Emergency
21 Communications Director Paulina De Haan, and
22 Chairman Steven DeVougas.

23 Q So with regard to this memo, was there anyone who
24 assisted Sergeant Krowski and Officer Coss in
25 creating this?

EXHIBIT P

Collins vs. City of Milwaukee

17-CV-234-JPS

Transcript of the Video Deposition of:

MaryNell Regan

November 14, 2017



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1 A There are a lot of them.

2 Q Well, give me some of the highlights. Which
3 conclusions or findings did you agree with?

4 MR. RUSSELL: Agree with the MPD or the
5 COPS report?

6 BY MR. DOUGHERTY:

7 Q The COPS.

8 A Well, I pretty much did not agree with any of the
9 contextual writing that the DOJ put forward, but I
10 do think that there were some good recommendations
11 regarding having written procedures, giving the
12 EIP program an update, working on accountability
13 between dispatch and patrol. Things of that
14 nature.

15 Q What about the findings with respect to the use of
16 field interviews and traffic stops to promote
17 safety generally?

18 A I -- I remember at the time being very confused
19 what their point was, because it was night and day
20 from what they had said in person versus what
21 showed up in -- on paper.

22 Q But regardless of the discrepancy between what
23 they said in person and what they wrote on paper,
24 when you saw what was on the paper with respect to
25 that topic, field interviews and traffic stops,

1 did you agree or disagree with the things that the
2 DOJ found?

3 A Well, that's so broad that I really can't answer.
4 I mean, I haven't read the third draft since
5 January of 2017. And the draft report that was
6 leaked to the Journal Sentinel I've just perused.
7 I -- I haven't even read any of the narrative.
8 We've just pulled out the recommendations for
9 purposes of going forward on our community-led
10 review.

11 Q And are you moving forward on any of those
12 recommendations?

13 A We are moving forward with allowing the community
14 to have a process to discuss the recommendations.

15 Q So at this time there is no plan either at the FPC
16 or the MPD to specifically implement any
17 recommendations?

18 MR. RUSSELL: Objection. Form.

19 THE WITNESS: Well, for example, many of
20 their recommendations have already been
21 implemented, and that's part -- going to be part
22 of the community-led discussion to educate and
23 inform the residents about that. In terms of
24 parsing down the -- was it 70-some
25 recommendations, I don't have -- I don't have them

1 discussed earlier, that's a growing concern that
2 we have to be mindful that data-driven policing is
3 effective only inasmuch as there is buy-in from
4 the community. And that's kind of an open
5 question right now, which is why we're going to go
6 listen to the community.

7 Q But the specifics of the DOJ's concerns didn't
8 stick with you such that you can remember them
9 here today?

10 MR. RUSSELL: Objection. Form.

11 THE WITNESS: I -- I don't know how to
12 answer you -- that. I don't memorize 70
13 recommendations and am able to rattle them off.

14 BY MR. DOUGHERTY:

15 Q Right. And I didn't ask you to remember 70. I
16 asked if you remembered just one. It sounds like
17 you don't?

18 MR. RUSSELL: Objection. Form.

19 Argumentative.

20 THE WITNESS: I -- there were three
21 drafts. I don't remember where field -- field
22 interviews and traffic stops ended up in that
23 third draft.

24 BY MR. DOUGHERTY:

25 Q What's the timeline for this community engagement

1 that you're talking about?

2 A It's hopefully to be wrapped up by next September.

3 Q Has it -- has that engagement already begun?

4 A Yes.

5 Q Who is being invited to contribute to that
6 process?

7 A The council president has reached out to
8 Markasa Taylor to chair a citizen -- I'm sorry --
9 a citizen committee, and then the plan or thought
10 is to have 10 to 15 organizations join with the
11 recommended person. And the thought is some of
12 those people would be trained as facilitators.
13 The FPC would staff that board. There would be
14 five or six hubs in the community to facilitate
15 community-led conversations about the
16 recommendations that would be pared -- they would
17 all remain, but they would be pared down into
18 digestible chunks.

19 There would be a -- there is going to
20 be -- well, I think there is going to be a portal
21 developed with the recommendation, the current
22 practice, solutions, with the ability of people to
23 comment. And that will be parsed down into more
24 digestible information and presented to the
25 citizen committee, eventually with a report to the

EXHIBIT Q

DOJ draft report moves forward with town hall sessions to share feedback, ideas for Milwaukee police reform

Ashley Luthern, Milwaukee Journal Sentinel Published 8:00 a.m. CT Nov. 29, 2017



(Photo: Michael Sears / Milwaukee Journal Sentinel)

City officials have discussed and debated a federal review of the Milwaukee Police Department for several months.

Now, the public will have its chance.

The first community meetings will take place Thursday and Saturday at Dr. Martin Luther King Jr. Elementary School. The sessions were announced last month (</story/news/crime/2017/10/24/community-leaders-push-action-milwaukee-police-reform-recommendations/796055001/>) by the African-American Roundtable.

"We think it's really important and vital that the community stays at the head of this," Markasa Tucker, the group's director, said at the time.

The meetings kick off a six-month series of "community hubs" to allow the public to weigh in on the draft and prioritize recommendations for police reform, Common Council President Ashanti Hamilton said in a news release.

Information from the sessions will be compiled and given to the Common Council and the city's Fire and Police Commission, Hamilton said.

RELATED: [U.S. Department of Justice halts ongoing review of Milwaukee Police Department](/story/news/crime/2017/09/17/doj-retools-collaborative-reform-halting-ongoing-review-milwaukee-police/673424001/) (</story/news/crime/2017/09/17/doj-retools-collaborative-reform-halting-ongoing-review-milwaukee-police/673424001/>)

RELATED: [City officials, including Chief Edward Flynn, pledge to move forward on draft DOJ reforms](/story/news/crime/2017/10/10/city-officials-including-chief-edward-flynn-pledge-move-forward-draft-doj-reforms/736904001/) (</story/news/crime/2017/10/10/city-officials-including-chief-edward-flynn-pledge-move-forward-draft-doj-reforms/736904001/>)

DOCUMENT: [Findings and recommendations from draft DOJ report](http://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Documents/FindingsandRecommendations3.pdf) (<http://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Documents/FindingsandRecommendations3.pdf>)

When the process started almost two years ago, [more than 700 people](http://archive.jsonline.com/news/milwaukee/us-officials-set-listening-session-tonight-in-police-review-b99655954z1-366069411.html) (<http://archive.jsonline.com/news/milwaukee/us-officials-set-listening-session-tonight-in-police-review-b99655954z1-366069411.html>) packed the first listening session conducted by federal officials.

It was the first step of the review, officially called a collaborative reform initiative, to examine the Milwaukee Police Department's policies, training and practices. Flynn requested the review in November 2015, amid public outcry related to a fatal police shooting in Red Arrow Park.

As time went on, the process stalled with the change in presidential administrations, causing many in Milwaukee to fear the report would never be released. The draft report was obtained and published by the Milwaukee Journal Sentinel in August.

Soon after, the U.S. Department of Justice announced it had changed its collaborative reform process to focus more on crime reduction tactics instead of accountability and reform of police agencies.

No final version of the Milwaukee review exists, nor will one be produced. Still, city officials have pressed on and are using the draft report's 55 findings and more than 100 recommendations as a guide.

The plan for how to prioritize the recommendations came from the Common Council, Mayor Tom Barrett, Milwaukee Police Department and the city's Fire and Police Commission, with help from community partners.

Although Flynn has said the draft is filled with errors or mistakes, he has repeatedly said he agrees with most of its recommendations.

In a recent news release, Flynn said he supports this "collaborative initiative as an avenue to strengthen and build the mutual trust between the Milwaukee Police Department and the communities we serve."

The draft, written in 2016, was highly critical of the Police Department, saying it fails the community and its own officers by not communicating clearly, making too many traffic stops and applying inconsistent standards when disciplining officers.

IF YOU GO

What: Town Hall to discuss the draft DOJ report

When: 6 to 8:30 p.m. Nov. 30 and 2 to 4:30 p.m. Dec. 2

Where: Dr. Martin Luther King Jr. Elementary School, 3275 N. 3rd St.

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EXHIBIT R



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MEDIA RELEASE
For immediate release
January 12, 2018

For more information contact:
Commissioner Nelson Soler
fpc@milwaukee.gov

FPC Process for the Selection of the MPD Interim Chief

On Friday January 12th, 2018 the Milwaukee Fire and Police Commission (FPC) released the job announcement for the Acting/Interim Police Chief for the Milwaukee Police Department (MPD). This announcement has been posted internally to the department via MPD's daily roll-call and is posted to the FPC's website for public review (<http://city.milwaukee.gov/fpc>). The deadline for submission of application materials is 11:59 p.m. on January 19, 2018.

This candidate search is specifically focused on the selection of an Interim Chief whom will lead the department upon the retirement of Chief Flynn on February 16th. The person selected in this process will serve on a waiver basis until a permanent Chief is selected for a renewable term of office consistent with City of Milwaukee Code and State Law. Candidates for Acting/Interim Chief of Police may also apply for the permanent Chief position when it is posted, and the timeline and process for the selection of a permanent Chief will be communicated by the FPC as soon as practicable.

The FPC has already received numerous communications from community members and groups advising us on their desired qualifications for the next Chief of Police. We appreciate that the community is engaged in this process and we encourage other interested people/organizations to share their opinions and suggestions with us by emailing our office at fpc@milwaukee.gov. Letters to the FPC on this topic will be publicly posted to our website¹ and will be reviewed by the board of fire and police commissioners.

-more-

¹ Communications to the FPC which contain vulgar, inflammatory, offensive or profane language will not be publicly posted nor will any communications deemed to be irrelevant, spam or solely promotional in nature. All information will be recorded and maintained pursuant to local record retention requirements and subject to Wisconsin open records law.



We encourage the public to also engage with us via written communication as we select the Interim Chief. We assure the public that the selection process for the permanent Chief will include ample opportunity to meet and discuss the desired qualities that our community has for our City's next permanent Chief of Police.

Our commission is comprised of seven independent, civilian members of the Milwaukee community and is statutorily tasked with this important duty. We take this responsibly seriously and will make our decisions based upon what each of us feels is in the best interest of the City of Milwaukee. That this process is free from politics or favoritism is the essential reason that this independent commission was created in State Law in 1885. We intend to prove that the wisdom of that decision is not lost during this important time in our City's history.

-30-

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EXHIBIT S



Acting/Interim Police Chief

Milwaukee Police Department

Application period is from January 12, 2018 to January 19, 2018

The Fire and Police Commission ("FPC") seeks a current sworn member of the Milwaukee Police Department ("MPD") with the experience and educational background to serve on a waiver basis as Acting/Interim Police Chief to effectively plan, direct, organize, and coordinate the city's comprehensive police services and law enforcement programs, including, but not limited to, operations, strategic development, training, implementation and evaluation, inter-bureau and inter-agency coordination, inter-governmental relations, communications and patrol; and foster cooperative working relationships with community groups and other agencies and provide responsive and complex support to the FPC. The Acting/Interim Chief will ensure that the organization and its functions are integrated into a strong, sustainable infrastructure that supports the MPD's national reputation as a leader in the provision of quality public safety services.

PURPOSE

- Reporting to the Fire and Police Commission, the Acting/Interim Chief provides leadership by executing the MPD's mission and core values through daily operations, policies, procedures, effective communication and constructive interpersonal relations.

IDEAL ACTING/INTERIM POLICE CHIEF QUALIFICATIONS

The ideal candidate will possess the following minimum requirements:

- At least two (2) years of executive leadership experience in the Milwaukee Police Department serving as a current or former Captain or above.
- A minimum of ten (10) years of experience in law enforcement.
- Bachelor's Degree from an accredited college or university in Criminal Justice, Public Administration or Business Administration or a related field.
- Citizen of the United States; and lives within the jurisdictional boundaries of the City of Milwaukee.
- Graduate degree in a related field is preferred.

- Completion/graduation from FBI National Academy, Northwestern Police Command School Southern Police Institute or a comparable course of study is preferred.
- Certified by the Wisconsin Law Enforcement Standards Board.

NOTE: *The Board may consider equivalent combinations of training and experience in lieu of the above on a case by case basis.*

KNOWLEDGE, SKILLS, ABILITIES AND OTHER CHARACTERISTICS

- Management and administrative skills, including organizing and coordinating the activities of a large, complex organization, planning, delegating, setting goals and objectives, and maintaining fiscal responsibility.
- Strong leadership skills, including the ability to command respect, motivate subordinates, maintain department morale, foster teamwork and cooperation, and empower managers in command staff.
- Impeccable integrity, ethics and proven history of values-based leadership.
- Extensive knowledge of 21st-century policing administration and technology, including crime prevention and crime reduction strategies; community policing and problem oriented policing strategies.
- Skill in motivating and developing staff and in identifying the best use of departmental resources.
- Innovative decision-making and problem-solving including problem analysis, judgment, decisiveness and logic.
- Demonstrated commitment to community outreach and partnerships, accessibility, cultural sensitivity and diversity.
- Strong communication skills, including oral communication, written communication and oral presentation.
- Effective interpersonal skills, including the ability to establish and maintain cooperative and effective working relationships with the FPC, residents, community groups, the media, government officials, and community leaders.

Reasonable accommodations requested by qualified individuals with disabilities will be made in accordance with the Americans with Disabilities Act (ADA) of 1990, as amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008.

CONDITIONS OF EMPLOYMENT

- The candidate selected for this position must pass an updated background examination prior to appointment, must have the necessary and current security access.

THE CURRENT SALARY RANGE (4RX)

The Pay Range for Acting/Interim Chief is at the Assistant Chief of Police level- \$103,841.14 - \$145,381.08.

THE SELECTION PROCESS

The Acting/Interim Chief of Police will be selected by the Board of Fire and Police Commissioners on a waiver basis until a permanent Chief is selected for a renewable term of office consistent with City of Milwaukee Code and State Law. Candidates for Acting/Interim Chief of Police may also apply for the permanent Chief position when it is posted.

The recruitment for this temporary appointment is being conducted internally within the MPD only. Initial screening will be based on an evaluation of each applicant's experience, professional accomplishments, and education. **All resumes and answers to the question posed must be appropriately filed and will be reviewed and evaluated.** The FPC reserves the right to call only the most qualified candidates for further consideration in a manner to be determined by the board. The most qualified candidates will be invited to participate in further screening, which may include, but is not limited to: oral interviews; writing exercises; updated background investigations; management assessment; medical examination and drug screen; or, an updated psychological evaluation.

Selection will be job-related and information from the selection process will be used to make an appointment decision.

Specifically, evaluations will include consideration of the following:

- Balance between the traditional policing tasks of crime investigation and constituent response with the modern philosophy of crime-prevention through collaborative-centered community and problem-oriented policing practices.
- Commitment to the continuing development of a department that understands and represents the Milwaukee community through effective recruitment and outreach.

- Assurance of consistent and open communication within the department itself, between districts and through the ranks, as well as between the department, government and community stakeholders.
- Empowerment of department Captains to speak openly and transparently with the FPC and community members.
- Commitment to improving the morale of the department by providing members with clear and consistent leadership, support, training and development.
- Plans to use technology and best practice research to address emerging local crime problems before they become crises.
- Receptiveness to constituent concerns and respectful communication with the public.

APPLICATION PROCEDURE

Beginning on Friday, January 12, 2018, applicants may submit a cover letter and resume listing education, experience and accomplishments. Additionally, candidates shall provide answers to the following question not to exceed five pages total, double-spaced and type written, 12 pt. font.

- What is your proposed 100-day transition plan, assuming an appointment date of February 16, 2018? Please be specific in describing the challenges you anticipate and your proposed methods to meet those challenges.

Interested individuals must submit a resume and a letter of interest by email to Executive Director MaryNell Regan at [REDACTED]. Please indicate Acting/Interim Chief of Police in the subject line. Questions may be directed to Director Regan by e-mail or by telephone at 414-286-5000. **The deadline for submission of application materials is midnight, 12:00 a.m., on January 19, 2018.**

NOTE: Names of candidates may be subject to disclosure.

EXHIBIT T



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Letters from the Milwaukee Community - MPD Chief Selection Process

On January 8, 2018 the Milwaukee Police Department's Chief Edward Flynn announced his retirement, effective February 16, 2018. As the Fire and Police Commission (FPC) works towards the selection of a new police chief we welcome input from the Milwaukee community. Interested people and organizations can submit comments to fpc@milwaukee.gov and, with permission, submitted comments will be posted below.

[#WeAllWeGot MKE](#)

[9to5 Wisconsin](#)

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Contact Us

City Hall
200 E. Wells Street
Room 706A
Milwaukee, WI 53202

Phone:
414-286-5000
(24-hour message line)

Fax:
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Email:
fpc@milwaukee.gov

Hours:
Monday - Friday
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Community split on Milwaukee Police Chief Ed Flynn's retirement

Flynn will retire in February

BY: Rebecca Klopf

POSTED: 10:12 PM, Jan 8, 2018

UPDATED: 9:31 AM, Jan 9, 2018

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MILWAUKEE - Community members had mixed emotions about Milwaukee Police Chief Ed Flynn's retirement.

Flynn made the announcement Monday, and his last day will be Feb. 16.

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"It is far past his time for it. I think there will be a lot of changes positively," said north side resident Namoi Morris.

Case 2:17-cv-00234-JPS Filed 01/25/18 Page 2 of 4 Document 71-21

- **4 Memorable Moments From Chief Flynn's Tenure**

"I really liked Chief Flynn, I really did. I thought he was a good police chief," said north side resident Regina Adams.

"He was a very good chief," said northwest side resident James Burnham.

"I think he has done a great job," said East side resident Luis Vazquez.

Common Council President Ashanti Hamilton agrees with Morris. He and the chief did not always see eye to eye.

"It is an opportunity for the city of Milwaukee to move in a different direction," Hamilton said.

Others feel this is a natural transition. Groups like Sojourner Family Peace Center and the City of Milwaukee's Office of Violence Prevention hope the focus stays on preventing crime rather than reacting.

"I think that we did some good work under his tenure," said Carmen Pitre, president/CEO of Sojourner Family Peace Center. "We have the entire Sensitive Crimes unit and we have the largest family peace center, family justice center around the world so he should be proud of that accomplishment."

- **Police: Missing 13-Year-Old Boy Found Safe**

"He definitely was an advocate for prevention and understood that we needed to take a comprehensive approach to this issue so we hope that whoever the short term chief and long-term chief is will also embody that belief," said Milwaukee's Office of Violence Prevention Director Reggie Moore.

What people can agree on is moving forward, they want to see a better relationship between police and the community.

"To just make sure the community continues to stay engaged and continues to be partners with the police department," Hamilton said.

"I think the community is ours, meaning the citizens who live in it and the police officers as well. So at some point we need to get a place where it is not an us against them mentality," said Central City resident Mark Wade.

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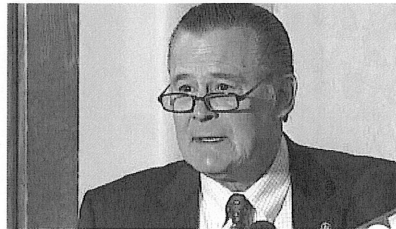
Ald. Bob Donovan on public safety: "Milwaukee needs a fresh start and a new direction"

POSTED 10:42 AM, JANUARY 9, 2018, BY FOX6 NEWS, UPDATED AT 11:31AM, JANUARY 9, 2018



MILWAUKEE — Alderman Bob Donovan delivered on Tuesday morning, January 9th an address he called the State of Public Safety in the City of Milwaukee.

"I offer these comments out of a sense of urgency — and the realization that safety is the one overriding factor inhibiting Milwaukee from reaching its full potential," Donovan said.



Milwaukee Alderman Bob Donovan

The alderman presented a critical look at the Milwaukee Police Department and its most recent leadership. He said constituents resent being told they are statistically better off than they have been in years.

"When did triple digit murders in a city our size become the new normal?" Donovan asked.

Donovan is now urging the following four steps to right what he says are the wrongs as they pertain to public safety in Milwaukee. Those steps include the following:

"First, I would first ask that the state legislature take a thorough review of the penalties attached to violent offenses; stiffen them as appropriate and make the sentences for repeat offenders mandatory.

"Second, I would ask the governor to convene a special commission to study the juvenile justice system and revise it in ways reflective of the modern reality of juvenile crime. Abhorrent circumstances like Lincoln Hills must be addressed and he has taken steps to do so. But that does not permit us to wave away all the crime, fear and disorder caused by the juvenile offender.



Milwaukee Alderman Bob Donovan

“Third, I would ask the mayor to establish a special commission, drawn from as broad a range of interests and experience as possible, to study and make recommendations regarding the long-term financing of municipal operations.

“And finally, I know that it is certainly the news of the day. Let me say that I am frankly pleased to say that Chief Flynn has chosen to resign.”



Milwaukee Alderman Bob Donovan

Donovan said he was a strong supporter of Police Chief Ed Flynn when he first came to Milwaukee. He said for all the good he may have done, he needs to go.



Ed Flynn announces retirement as chief of Milwaukee Police Department

"He has lost the confidence of the rank and file of his department. He has lost the faith of the wide majority of the Common Council. He has clearly alienated the board of fire and police commissioners — and he has lost the confidence of a growing number of state legislators on both sides of the aisle," Donovan said. "I wish Chief Flynn no ill. I do however believe it is in the best interest in the City of Milwaukee that he move on. When it comes to public safety, Milwaukee needs a fresh start and a new direction."

RELATED STORIES

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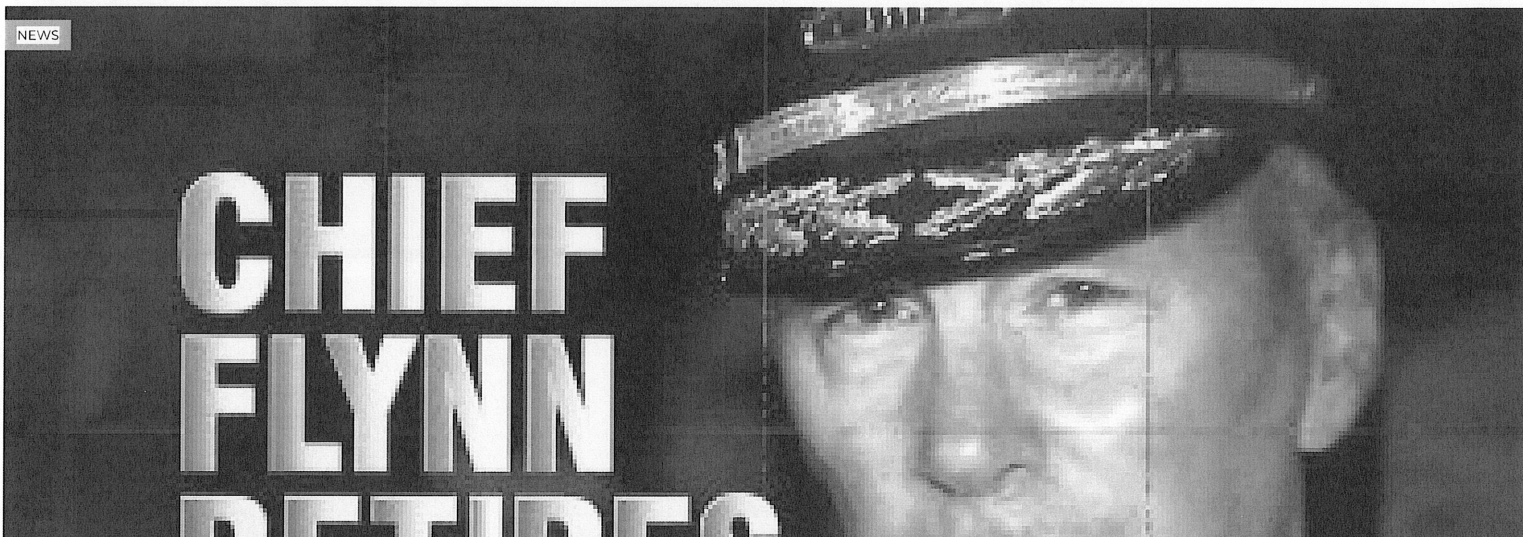


EXHIBIT X

10 apply to become acting chief of the Milwaukee Police Department; finalists to be named Thursday

Ashley Luthern, Milwaukee Journal Sentinel Published 7:00 a.m. CT Jan. 24, 2018 | Updated 11:31 a.m. CT Jan. 24, 2018



(Photo: Rick Wood / Milwaukee Journal Sentinel)

Ten members of the Milwaukee Police Department have applied to be the agency's acting chief, according to the chairman of the city's Fire and Police Commission.

"We have some good, strong talent in the mix," Chairman Steven DeVougas said.

Three finalists will be announced Thursday when the board has a regularly scheduled meeting, said MaryNell Regan, the commission's executive director.

The board declined to release a full list of applicants.

The three finalists will be interviewed in closed session Feb. 1 and then interviewed by the public on Feb. 8, Regan said.

A community listening session likely will be scheduled for next week, she added.

The commission will make its decision on Feb. 15 and the acting chief will take over the next day when Chief Edward Flynn officially retires.

Flynn will remain on the city payroll through the end of March as he uses saved vacation and sick time, Mayor Tom Barrett has said.

RELATED: [Milwaukee Police Chief Ed Flynn announces retirement \(/story/news/crime/2018/01/08/milwaukee-police-chief-ed-flynn-announces-retirement/1014594001/\)](/story/news/crime/2018/01/08/milwaukee-police-chief-ed-flynn-announces-retirement/1014594001/)

RELATED: [Who will be named acting chief of the Milwaukee Police Department? A look at likely candidates \(/story/news/crime/2018/01/09/who-named-acting-chief-milwaukee-police-department-look-likely-candidates/1017025001/\)](/story/news/crime/2018/01/09/who-named-acting-chief-milwaukee-police-department-look-likely-candidates/1017025001/)

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The acting chief will serve on a waiver basis until a permanent police chief is selected. The pay scale for the position ranges from about \$103,000 to \$145,000.

Per the [job posting \(http://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Documents/JobAnnouncement1-11-2018FINAL_Redacted1.pdf\)](http://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Documents/JobAnnouncement1-11-2018FINAL_Redacted1.pdf), the "ideal" candidates will have at least two years' experience at the rank of captain or above, a minimum of 10 years of law enforcement experience, a bachelor's degree in criminal justice or related field, with a graduate degree preferred, and live in the city of Milwaukee.

Applicants also had to submit a 100-day transition plan describing anticipated challenges and how to address them.

The acting chief could lead the department for up to a year, given the timing of Flynn's retirement and the length of time it took for the last chief search.

The commission is still determining its process to find a full replacement but has acknowledged it could take months.

Flynn left in the middle of his third term, which was set to expire in January 2020.

Depending on the process, the commission may choose to appoint the next chief to a full four-year term instead of having that chief fill what's left of Flynn's term.

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(<https://www.jsonline.com/story/news/2018/01/23/sen-johnson-says-informant-alleges-secret-anti-trump-meetings-fbi/1060586001/>)

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April 25, 2019

Response from former FPC Executive Director La Keisha W. Butler to questions from Paul Mozina regarding the status of the FPC's efforts to respond to the DOJ Collaborative Reform Initiative Draft Report.



Fire and Police Commission

La Keisha W. Butler
Executive Director

Nelson Soler
Acting Chair

Ann Wilson
Fred Crouther
Angela McKenzie
Steven M. DeVougas
Everett Cocroft
Commissioners

April 25, 2019

VIA E-MAIL

Paul Mozina
paulmozina@wi.rr.com

RE: Questions Posed in Correspondence dated April 8, 2019

Mr. Mozina,

The following is a response to the questions posed by you in a letter sent to the Fire and Police Commission and the members of the Judiciary and Legislation Committee on April 7, 2019.

The 2006 Police Assessment Resource Center (PARC) Report called for an overhaul of the FPC and the creation of a Police Monitor within the FPC — what recommendations from this report has the Common Council and the FPC implemented and what has been ignored?

The phrasing of the question suggests that all of the recommendations of the PARC Report were determined to be valid or that the policymakers determined that all of the recommendations should be implemented. There is no evidence of this. Additionally, now that the PARC Report is thirteen (13) years old, it would be wise to reexamine the recommendations for relevance and accuracy given today's climate before proceeding with implementing any additional recommendations from the report.

There were 31 recommendations for the FPC in the 2006 PARC report. Of those, it was decided not to implement one recommendation and another 5 were partially implemented. It appears that all of the recommendations were considered and discussed and not outright ignored. The recommendations reported to be not or partially implemented were:

Regarding an Independent Monitor:

- Recommendation 3.1: The Fire and Police Commission should reorganize its staffing and structure to institute a monitor model of oversight that will review citizen complaint and internal Police Department investigations and issue public reports on the quality and fairness of those investigations. The chief FPC staff person will be designated the

Independent Monitor. The Common Council should enact enabling legislation that establishes the Independent Monitor's authority and functions.

- **Partial - hybrid monitor model with Executive Director performing most functions. The duties of the Executive Director are delineated in Chapter 314 of the Milwaukee Code of Ordinances.**
- Recommendation 3.2: The Independent Monitor should report to the Fire and Police Commission. The Monitor should be appointed by the Mayor for a term of four years from a list of three candidates deemed by the Commission to be well-qualified for the post. The appointment should be subject to the confirmation of the Common Council. Removal of the Monitor during the four-year term should be only for cause as determined by the Commission.
 - **Partial – title of Executive Director not changed. While an argument can be made on both sides, there is some wisdom to having an Executive Director who cannot be fired by the commissioners. This allows the Executive Director to provide guidance and advice to the commission without fear of reprisal, even when the advice is not well received by the commissioners themselves.**
- Recommendation 3.3: The Fire and Police Commission should conduct a nationwide search for a well-qualified Independent Monitor.
 - **Yes, title not changed from Executive Director. The search process for Executive Director lies within the purview of the Mayor and a nationwide search for the next Executive Director is currently underway.**

Regarding FPC Staffing

- Recommendation 3.6: The FPC staff should include three monitoring staff, three research/policy/hearing staff, a community relations manager, and two support staff.
 - **Partial –the FPC is short one research and one monitor position**

Regarding Budget and Ordinance

- Recommendation 8.1: The Mayor and the Common Council should make the budgetary decisions and approvals necessary to fund an effective monitor-model FPC.
 - **Partial**
- Recommendation 8.2: In its ordinance defining the Independent Monitor's powers and responsibilities, the Common Council should provide for an evaluation of the Fire and Police Commission, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms.
 - **Partial – the performance of the Fire and Police Commission is constantly reviewed by the Mayor's Office and the Common Council.**

Public Hearings Regarding the PARC Report

The Common Council's Steering and Rules Committee heard testimony regarding this report on June 29, 2006 while discussing File No. 060303. This item was placed on file by a vote of 7:0. Speakers included Oren Root, Police Assessment Resource Center (PARC) Richard Jerome, President, Police Assessment Resource Center (PARC), and Eileen Force, Communications Director, Mayor's Office.

Also on June 29, 2006 a Special Meeting of the FPC was held in order to present the findings of the report to that body. Members of the public were also invited to comment during this meeting.

Further discussion occurred regarding the recommendations of the report during the September 21, 2006 FPC meeting, wherein the potential positive and negative consequences of the establishment of an independent monitor was discussed and also the potential effects of the report recommendations on the fire department.

On October 19, 2006 it was reported to the FPC that the proposed 2007 budget for the FPC called for:

- The Fire and Police Commission (FPC) to be re-established as a separate and independent agency from DER with full autonomy and budget, and
- The functions of recruitment, selection and certification of candidates for the Fire and Police Departments would remain in DER under FPC oversight.
- An independent monitor/auditor model for the FPC is recommended to be established with a stronger capacity to conduct research and policy reviews;
- departments communicate with complainants regarding the status and/or resolution of complaints;
- responsibility for tracking and monitoring the status and resolution of all complaints and creating public reports that document trends and patterns regarding the nature and frequency of complaints, sustained rates, and other performance indicators;
- the opportunity to independently review a complaint investigation when the citizen is not satisfied with the investigation or outcome of the complaint, allowing the FPC to recommend the investigation be reopened, the complaint be referred for hearing, or to close the file;
- responsibility for auditing a sampling of closed internal investigations including an analysis of the timeliness and thoroughness of the investigations, which can be shared with the Chiefs during performance reviews and used to identify systemic problems and the need for procedural/policy changes or training;
- Increased transparency into the effectiveness of the Commission's work by issuing user friendly, substantive and timely public reports of policy review analyses and audit findings.
- the size of the Board be increased to seven Commissioners if a minority of three members will be allowed to decide complaint and appeal hearings,
- that four new positions of Community Relations Manager, Paralegal, Assistant Monitor, and Research and Policy Specialist be created, and
- That Commissioners get increased training and exposure to internal operating procedures of the departments and hold more meetings at community locations on a regular basis.

Commissioner Welch commented that some of the changes will only further blur the lines of accountability and authority.

On November 2, 2006 the FPC Chair announced that information on the proposed changes to the structure of the Commission in the areas of testing, in response to the PARC report, will be presented at a later date so that the Commissioners will fully understand what is being proposed. Maria Monteagudo, Director of the Department of Employee Relations, reported that she would try to attend the next meeting to answer questions and give the rationale behind the proposal.

This discussion never occurred and the PARC report was never again discussed by the board in the meeting minutes of the FPC.

In 2017 the DOJ Collaborative Reform Initiative Report requested by former Chief Flynn was leaked, and in the LRB's FPC briefing during the 2018 budget hearings it was reported that the FPC had accomplished 3 out of 20 recommendations. What was accomplished? What are the 17 remaining recommendations and what is their status?

A complicating factor to the implementation of the draft recommendations from the DOJ assessment report was the establishment of the Collaborative Community Committee (CCC) and the related community review process. Because the CCC was to review the recommendations and provide guidance from the community on the priority of the draft recommendations, the final report from the CCC is, to my understanding, a precursor to broad implementation. This is especially true for recommendations which require a large funding commitment as the city would have to prioritize those and phase them in over time, making the CCC prioritization especially helpful in those cases.

The CCC was established in October of 2017, 2 months after the initial leak of the draft DOJ report. From December 2017 – June 2018 the CCC hosted a [series of community meetings](#) to gather input regarding the recommendations and since that time have been working with a research collaborator to create a final report.

Both the FPC and MPD made a concerted effort to specifically respond to each of the 110 draft recommendations from the report and the responses from the FPC well document the status of each recommendation relevant to the FPC. The FPC made every effort to disseminate these responses to the public and, in fact, created a [custom website](#) to facilitate this dissemination and promote community discussion surrounding the recommendations. The FPC worked with the City of Milwaukee IT department to implement a first-of-its-kind public comment feature on a city created website to

encourage community members to post their thoughts about the recommendations. The effort was intended to support and complement the series of community meetings hosted by the CCC regarding the recommendations, allowing those that could not attend in person a chance to voice their opinion. All comments submitted to the website were provided to the CCC for incorporation into their final report.

Of the 30 draft DOJ recommendations relevant to the FPC:

- 3 were deemed already implemented
 - 1.2: FPC, in conjunction with MPD, should expand its current examination of barriers to recruitment to include hiring and promotional practices.
 - 2: FPC, in conjunction with MPD, should develop a strategic plan for recruiting and hiring a workforce that meets the needs of Milwaukee
 - 4: FPC and MPD should publish the overall process for hiring of officers on their websites.
- 1 is in process
 - FPC should include on community members at-large to serve on the police applicant oral interview board.
- 8 were deemed false or were recommendations to do something the FPC already does
 - 3: FPC should conduct a job task analysis prior to opening the next police officer examination, as well as every five years and in the event of a significant change in the job.
 - 5.1: FPC should develop and enforce a written policy regarding police recruiters.
 - 7.2: MPD should develop and make available to Department members a written document that describes the process of preparing for and obtaining a promotion.
 - 13.1: FPC should undertake a thorough review of the standard operating procedures and other policies of MPD.
 - 13.2: FPC should issue a report detailing their review and hold a public hearing.
 - 14.4: MPD should conduct bi-annual surveys of members of the public to measure their attitudes toward MPD and its officers.
 - 44.1: The FPC should create a new position of independent police auditor.
 - 51: MPD should add "the ability to testify in court with credibility" as an essential job function. This is the prerequisite to establishing a written directive indicating that dishonesty in any matter of official police business is a terminable offense. This is a best practice for a law enforcement agency.
- 8 are not yet, to my knowledge, implemented

- 1.1: FPC and MPD should create a Diversity and Inclusion Program aligned at a sufficiently high level in MPD to allow direct access to the chief, and be charged with and provided resources for improving diversity within the Department.
- 5.2: FPC and MPD should to create a formal, written selection process to select MPD recruiters. This policy should make clear the qualifications and process for becoming a recruiter.
- 6.1: MPD should develop a Recruitment and Retention Advisory Council whose members represent a cross-section of community stakeholders.
- 7.1: MPD should develop a written directive defining the agency's role in the promotional process of sworn personnel.
- 11.7: MPD should update the promotional testing procedures for supervisors and command officers to include questions and activities testing a candidate's ability to lead and direct community policing efforts.
- 30.1: The FPC should recommit to the annual report on MPD firearms discharges.
- 30.2: The FPC should seek input from the community on the types of reports it should be producing on MPD.
- 32: MPD should work with community stakeholders to develop a policy on critical incident information sharing and public release.

In July of 2018 the City, MPD and FPC agreed to the terms of the ACLU Settlement Agreement and Court Order. What orders and deadlines are the FPC compelled to obey? What is the status of their compliance? What orders and deadlines are the MPD obligated to obey and what is the status of their compliance?

Items with defined deadlines

Post Stop & Search Data and Consultant Reports Online Annually

Reference paragraph IV.A.13

The FPC has not received any reports from the consultant. I believe the first quarter of 2019 data will be delivered to the consultant on April 15, so I imagine that the FPC could publish the first set of annual data (2019) by the second quarter of 2020.

Post Complaint Data Online Quarterly

Reference paragraph IV.E.5

The FPC has posed all required data for 2018 to the Open Data Portal and, now that Q1 of 2019 is complete, the report has been updated with data from Q1 of 2019 as of April 22, 2019.

Audit Stops, Searches & Complaints Every 6 Months

Reference paragraphs IV.E.1 and IV.E.2

The consultant has informed the community that the FPC does not have sufficient staff or training to begin this requirement. The FPC is considering ways to solve this issue.

Wisconsin Statute § 62.50(1m) requires annual policy review of all aspects of the operations of the MPD. This was called out in the DOJ Collaborative Reform report. It must be acknowledged, budgeted for and done.

First, note that § 62.50(1m), Wis. Stats., not only requires this of the MPD but also the MFD. There is no definition, to my knowledge, of what an annual review of ALL ASPECTS of each department would entail. Clearly, if taken literally, this would be a practical impossibility. Even an attempt to review every single policy and procedure annually would result in great breadth but little depth and as such would be oversight “on paper only”.

Instead, what the FPC has implemented is a process which points more towards the spirit of the law and is a continuous review process of all proposed *changes* to MPD and MFD policies and procedures (see FPC Rule IV Section 3). And in cases in which the Board or Executive Director wishes to initiate a specific review of a policy or procedure regardless of proposed changes they do so.

The 2017 FPC Annual Report lists 47 SOPs that were amended, created or recreated but only 5 of these SOPs were brought forward to the FPC Board for review. FPC rules permit SOPs to be changed with the approval of the Executive Director and the Board Chair but there should be an announcement of some kind in the FPC meeting agenda’s to notify the public when and how SOPs are being changed. For example, SOP 760 – Controlled Substances was recently updated with significant material changes with legal consequence, yet contrary to FPC rules, the changes were made administratively without consulting the Board or notifying the public. What are the MPD’s Standard Operating Instructions and Standard Operating Guidelines? The FPC is responsible for reviewing changes to them – are they available for public review? Is the public notified of changes? Are substantive changes brought before the Board?

The comment references the SOPs amended, created or recreated during 2017 but it should be kept in mind that it was not until July 27, 2017 that FPC Rule IV, Section 3 was revised to ensure that all policy changes are submitted to the FPC for approval and substantive changes are placed on a regular meeting agenda.

The SOP you reference as an example, SOP 760, had changes approved by the Chair and Executive Director on 11/28/2018. The Chair and Executive Director determined that the changes were not material and approved them. Clearly you disagree. While there were a large number of words and sections added to SOP 760 the changes did not sufficiently alter the overall policy to deem the changes material and warrant a hearing before the full Board.

Regardless, the Chair and Executive Director must balance the workload for the Board. In cases in which the Chair and Executive Director do not believe that it will be a productive use of Commissioners' limited time and they do not believe the changes to be material they will administratively approve a policy change. As you have stated previously, the Board has an extremely large workload; if there are immaterial changes to a department policy it is not a wise use of limited resources to put those changes to the full Board for a vote.

The FPC, unlike most other departments in city government, publishes an annual report which provides an overview of the matters attended to. In that report the FPC has been publishing a list of the policies which have had changes approved by the body; and that is the method by which the FPC has notified the public about the policy changes. The FPC is not legally required to proactively publish this information, and most bodies within city government indeed do not publicly document each and every matter attended to while carrying out their functions. The public is always free to request documents and information from the FPC via the open records process and our office will promptly and thoroughly respond to each request.

All MPD Rules and Standard Operating Procedures are available on their website at:
<https://city.milwaukee.gov/Directory/police/About-MPD/Code-of-Conduct.htm>

According to the FPC's Use of Force by the MPD Reports from 2009 through 2017, in 75 percent of the cases the subjects were black. This needs investigation.

It is well reported (see [here](#), for example) that the arrest rates for African Americans in Wisconsin is disproportionate to the overall population percentage. [Research](#) out of Marquette University by former FPC Commissioner Michael O'Hear examined the long term demographic data on arrests by the MPD. It found that from 1980-2011 the disparity ratio for African American arrest rates compared to White arrest rates was usually between 3.2 and 3.8. Thus on a per population basis African Americans were about 3.5 times more likely to have been arrested.

Considering that the number of use of force incidents trends quite closely with the number of arrests, and without taking the time to conduct a deep dive into the data, the arrest rate disparity reported does seem that it would result in a use of force disparity approximately as reported. Thus, it seems, that the disproportionate use of force data is mainly due to the underlying disparity in arrest data. This is a nationwide issue that to be addressed requires research into larger systemic issues.

The FPC should present its Annual Report, Use of Force Report, Citizen Complaint Report and Vehicle Pursuit Report to the Common Council so that they can be considered during the budgeting process. No Citizen Complaint Report for 2017 has been released.

The 2017 Citizen Complaint Report has been published as of 4/9/2019 and the 2018 report is in progress. The 2018 Vehicle Pursuit Report was published on April 18, 2019 and the 2018 Use of Force Report is scheduled to be published in May 2019.

The Common Council members as well as the public are welcome to review any and all reports written by FPC staff whenever they wish as they are all posed on the FPC website. FPC staff has been requested to present various report summaries to various Common Council Committees and has always done so upon request.

The 2019 FPC Budget was presented to the Board of Commissioners by the Executive Director a few days before the Common Council voted on it. In the future, the budget estimate should be presented to the Board before it is submitted to the budget office. Even after the requirements of the ACLU Settlement Agreement were known, there was no corresponding adjustment to the FPC or MPD budgets – as if this complex agreement could be implemented at no cost.

As you have repeatedly stated, the Board of Fire and Police Commissioners have a large set of responsibilities. A common criticism of the Board by the public is that they don't have enough capacity to attend to their current responsibilities as thoroughly as some would like. Adding the complexity of budgetary planning to the workload of the Board will only add to the number of tasks the Board must attend to. This is the main purpose of a full time Executive Director and staff: to attend to matters, such as the budget, that require extensive time commitment.

FPC Executive Director La Keisha Butler has repeatedly raised the issue that Milwaukee needs 9 commissioners on the board. Can the Common Council help make this happen?

The process for selecting individuals to serve on the Board of Fire and Police Commissioners is clearly detailed in Wis. Stat. § 62.50. It shall be the duty of the mayor of the city to appoint members of the board, subject to confirmation by the common council. There is no other way about this matter.

What is the status of the IT problems the MPD faced attempting to deliver 2018 UCR data to the FBI (the deadline was March 11, 2019). Was the Executive Director aware of these issues and were they shared with the Board? There should be a standing agenda item for every regular FPC meeting where the MPD and the MFD can communicate the status of issues affecting them.

MPD's UCR data for 2018 was submitted on March 11, 2019. The Executive Director was generally aware that MPD was having issues with its RMS system and the Board is generally aware, though there has not been a deep discussion of the issue. Agenda items are determined by matters brought by either the Police or Fire Departments, requests by commissioners, and recommendations by the Executive Director. The Chair has the ultimate authority to set the agenda.

After 22 years without the death of a member, 3 MPD Officers have died since June 2018. At a minimum SOPs 970 — Search Warrants, 453 — Officer Involved Deaths and Other Critical Incidents and 460 — Use of Force, need to be reviewed and full investigations need to be made by an external law enforcement entity regarding the circumstances of these deaths. The justification for the execution of no knock, forced entry, search warrants and the methods by which they are executed must be reviewed (as was initiated by the Common Council and accomplished by the FPC in regards to the vehicle pursuit policy). Please consider the case of Houston Texas, where the Chief of Police has stopped the use of no knock, forced entry search warrants.

Review of SOPs that are not being revised by MPD is within the purview of the Board. This issue has been raised to them before, but has not been placed on an agenda for discussion. If the Board is so inclined at some point in the future, the item will be placed on an FPC agenda for discussion.

Given the tremendous responsibilities of the FPC Board of Commissioners, their level of compensation is woefully inadequate. Their part-time status and low compensation are major contributing factors to the FPC's inability to accomplish its watchdog role over the MPD, as evidenced by the PARC Report, DOJ Report and ACLU Settlement.

You are correct that the compensation of the board members was cited in the PARC Report as a recommended topic of study for the city in light of dissimilar compensation for other similar boards. But the PARC Report also cites a number of other factors that likely contribute to the then-difficulty of filling positions on the board: reduced public regard for the Commission, the perception of ineffectiveness of the body, the thanklessness of the position considering inevitably unpopular decisions, as well as the amount of time and work required.

It is interesting to note that from 1885 until 1934 the members of the Board received no compensation whatsoever. Beginning in 1934 members received an annual salary of \$480, equivalent to approximately \$9,000 today. Though that dollar amount is somewhat higher than is offered today it is questionable whether the difference of a couple of thousand dollars would produce a starkly different recruitment then as compared to now. It is a fact that for over 100 years the city has been able to recruit qualified members to the Board of Commissioners regardless of compensation; in fact the PARC report states that even as recently as the 1980s some of Milwaukee's most talented citizens served on the FPC. That implies that it may not be the compensation but the other more intangible factors contributing to this issue.

One of the foundational principles motivating the creation of the FPC was the establishment of a civilian oversight body for the fire and police departments. That the members are indeed explicitly not full time employees of the city is part of the independence and accountability framework for the body. Board members are members of the community just like anyone else and as such have authentic insight into the perspective of Milwaukee residents.

Another consideration that altering the part-time status and requiring even more time in City Hall by members of the board, regardless of compensation, could in fact *reduce* the number of people willing to serve. Imagine that a community member has a developed career, as many current and former commissioners do. Would they be willing to put their career on pause or quit their job in order to serve on the board for only 5 years? Would even a half-time position be a reasonable thing to consider for most members of our community; do many people have that sort of professional flexibility? Regardless of the compensation, our community must allow board members to continue on with their own professional responsibilities or we certainly will have very few willing to serve except retirees.

Despite FPC Operations Manager Clifton Crump's promise to the Judiciary Committee in July 2018 that all public comments made to the FPC would be addressed, this is not happening. The lack of response by the FPC is not in conformity with their guiding principles or its stated goal to improve Community Relations.

While there may not be explicit mention of a comment at a subsequent meeting this does not mean that the concerns raised during public comment are not considered or addressed. It is not appropriate to address everything publicly and some concerns pose questions or issues that require a longer time to resolve. As stated above, items placed on the agenda are in the purview of the Board with approval of the Chair.

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April 25, 2019
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What is the status of the FPC relocating to their new quarters?

There are numerous steps that must be taken prior to the FPC staff actually moving to a new space. HVAC renovations have been started on the 8th floor and a plan to alter the floorplan to accommodate the City Attorney's Office is being worked on.

This concludes the FPC's responses to your questions posed in your April 8, 2019 correspondence. Any further inquiries will be treated as open records requests and will be responded to accordingly.

Best,

La Keisha W. Butler