



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.

Paul Mozina
April 25, 2019
Page 12

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