

June 20, 2019

To: City of Milwaukee Board of Fire and Police Commissioners and the Executive Director
Re: FPC must improve oversight of the Milwaukee Police Department
From: Paul Mozina

Duties of the Fire and Police Commission

[Wisconsin State Statutes §62.50\(1m\)](#) (1m) Policy review. The board shall conduct at least once each year a policy review of **all aspects of the operations** of the police and fire departments of the city (See also [Chapter 314 of the City of Milwaukee Charter](#)). The FPC has the authority and responsibility to provide independent oversight of the MPD's operating procedures, instructions, guidelines, policies and practices, and to mandate any changes that may be required.

I asked FPC Executive Director La Keisha Butler why the FPC was not reviewing "all aspects of the operations of the MPD" and she responded in writing at the Common Council's [Judiciary and Legislation Committee meeting on April 29, 2019](#) (attachment #5):

"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."

But rather than honoring "the spirit of the law" the FPC is not even seriously investigating proposed changes to MPD Standard Operating Procedures, as we saw at the [May 16th Regular Meeting of the FPC](#) when Commissioner Steven DeVougas cut off the discussion regarding proposed changes to SOP 120 Operating While Intoxicated with the following:

"... the point of clarification, I think it's probably gets into the policies versus operations aspect. The DRE (Drug Recognition Expert) was part of your operations, which is typically, out of the purview of the Fire and Police Commission. So, it wasn't anything unlawful on the department's part, they're just codifying it into a policy which brings it under our purview at this time."

What does it mean to "review all aspects of the operations of the police and fire departments of the city"?

I ask the Board of FPC Commissioners, the Executive Director and the FPC staff to consider the following:

Use of Force

Every year since the FPC initiated the annual [Use of Force Report](#) back in 2009, including 2018 and the implementation of Chief Morales' "new strategy", tucked in the report narrative is the disturbing fact that, on average, 76% of the Use of Force incidents involved Black people. The FPC needs to begin an immediate investigation into this. It should also analyze the type and amount of force applied and the injuries sustained to see if there is a racial bias.

The FPC should participate in and review the audits of the use of force that are currently being done by the MPD's Internal Affairs Division and the MPD's Use of Force Committee. The results of these examinations should be included in the FPC's annual MPD Use of Force report.

Alerts should be established to identify and investigate members who are involved in an excessive number of use of force incidents e.g., one member was involved in **24** incidents in 2018.

The FPC and MPD need to acknowledge that the execution of forced entry search warrants is a use of force. The Approach Considerations, Intervention Options and Follow-Through Considerations outlined in SOP 460.10 use of Force - Disturbance Resolution Model, should be integrated into SOP 970 Search Warrants, or that SOP should explicitly reference 460.10 and require compliance with these procedures.

Citizen Complaints

In response to the ACLU Settlement Agreement, the FPC has begun uploading a new spreadsheet of citizen complaints that it contends meet its obligations under the Court Orders. But the spreadsheet does not include MPD complaints despite the fact that the 2015-2017 annual Citizen Compliant reports already produced by the FPC includes both.

No updates have been made to either the MPD or FPC citizen complaint forms to explicitly categorize the complaints per the Court Orders i.e., as Unjustified (Traffic Stop, Field Interview, No-action encounter, Frisk or Search) or Race/Ethnicity Bias (Traffic Stop, Field Interview, No-action encounter, Frisk or Search). Unless the complaint forms are updated, these differentiations will continue to be extracted from the narrative description of the complaint, which will undoubtedly result in under-reporting.

There is no annual reporting of any kind on internally generated MPD complaints. Does FPC audit these? Does the FPC participate in the reviews of these complaints conducted every 6 months by the Internal Affairs Division – Risk Management?

There is no annual reporting of the number of complaints received by the MPD that were Mediated or the number of complaints received by the FPC that were handled via the Rapid Resolution Complaint Inquiry Procedures.

The existing version of SOP 450 - Personnel Investigations includes the following:

450.05.B Internally Generated Complaint

"An internally generated complaint may be initiated by a supervisory member based upon personal observation of misconduct **or hearsay** information that alleges misconduct."

A Member can be investigated based merely on hearsay information? I don't know how the Milwaukee Police Association allowed this language into the SOP. It is very problematic in my opinion and also a further reason that the FPC needs to monitor and audit internally generated complaints.

Search Warrants

MPD Chief of Staff Nick DeSiato stated at Alderwoman Nikiya Dodd's Town Hall meeting on April 10, that search warrants were way up. Was the FPC aware of this? Was this operational change a result of orders or instructions from Chief Morales? Is this a sign of the increased cooperation with the MPD's criminal justice system partners i.e., the District Attorney's office and Court Commissioner, that Chief Morales recently discussed at the Public Safety and Health Committee and FPC meetings on June 6? Did the Milwaukee County District Attorney and Court Commissioner agree to approve more aggressive use of search warrants?

Does the FPC audit the 4 documents related to Search warrants (the warrant, the risk assessment done by the Tactical Enforcement Unit **after** the warrant is obtained, the pre-briefing report, and the post action report)? If not, how can we understand if the risks of executing search warrants, arguably one of the most dangerous of police operations, are being properly justified and mitigated? As mentioned above, SOP 460 Use of Force should be integrated with SOP 970 Search Warrants

The FPC needs to investigate and clarify the procedures surrounding the decision to execute a no-knock forced entry search warrant. Per SOP 970, Risk Assessment comes after the warrant has been obtained. The question arises as to whether or not the search warrant would have been approved if it was understood by the Assistant District Attorney and Court Commissioner that it would be executed with no-knock forced entry? Who is ultimately responsible for the decision to execute a no-knock forced entry search warrant, the Tactical Enforcement Unit Sergeant, the Captain, the Chief? Shouldn't the Risk Assessment and no-knock, forced entry tactic proposed to be used be made part of the request for the search warrant?

Why is the execution of forced entry search warrants not considered a use of force and subject to the Approach Considerations, Intervention Options and Follow-Through Considerations outlined in SOP 460 Use of Force? The execution of a forced entry search warrant should be a "last resort".

Confidential Informants (CI)

The use of confidential informants is one of the most ethically challenging aspects of police work. The MPD needs to establish a new Standard Operating Procedure to guide the use of confidential informants. This need was especially highlighted in the deaths of Officers Matthew Rittner and Charles Irvine Jr.

Reviewing the [Criminal Complaint against Jordan P. Fricke](#) we see that a confidential informant was developed in regards to the suspicion that Mr. Fricke was using straw gun purchasers to illegally arm felons. But rather than use their CI to conduct a straw gun purchase on behalf of Mr. Fricke, the CI was asked to purchase marijuana from him. After two controlled buys totaling \$60, the MPD used this information to bolster their request for a search warrant alleging that Mr. Fricke was “Maintaining a Drug Trafficking Place”. If this additional accusation was not a factor in making the case for the search warrant, then what was the purpose of using the CI in this way?

We all know the tragic outcome, but it is not reported in the news that had Mr. Fricke simply invited the MPD into his home to execute the search warrant, they would have left empty-handed. He was not charged with illegally possessing any firearms or controlled substances. I hope that if the MPD leadership could have a do-over, they would not risk the lives of their Members to take down a penny-ante marijuana dealer, especially since this substance will be legalized across the whole country in the near future. The top priority of the MPD in this case should have been to prevent the illegal distribution of guns, but they misused their CI to purchase marijuana instead.

In the case of the death of Officer Irvine, the [Criminal Complaint against Ladell Harrison](#) again shows a troubling use of a confidential informant, in this case to use the target as bait to go after bigger fish. This case reveals the moral dilemma that the MPD, especially in its partnership with the High Intensity Drug Trafficking Area (HIDTA) Task Force, faces in their effort to do the impossible – get drugs off the streets.

The MPD became aware of the target, Mr. Harrison, during the investigation of a fatal fentanyl overdose. Over the next four months Milwaukee HIDTA used a confidential informant to make four controlled buys of heroin and cocaine from Mr. Harrison with the third purchase actually found to be fentanyl rather than heroin.

Approximately three months later the tragic car chase involving Mr. Harrison and Officers Mathew Schulze and Charles Irvine took place.

Milwaukee HIDTA, and presumably their partners at the MPD, knew that Mr. Harrison was dealing heroin, cocaine and fentanyl yet he remained on the street unmolested for over 6 months presumably as a part of a HIDTA Task Force strategy to use Mr. Harrison as bait to catch bigger fish. In the midst of an opioid epidemic with overdoses occurring daily, who is making the decision to allow a known fentanyl supplier to continue poisoning his unwitting victims? Do

we trust this decision to Captain Johnny Sgrignuoli and his HIDTA Task Force? Who is in charge of playing this cat and mouse game with confidential informants and deadly poisons?

In both of the above cases confidential informants were used with deadly consequences. Ironically, the information provided by the CI in the case of the death of Officer Rittner regarding a relatively benign substance, marijuana, was immediately acted upon, whereas, in the case of Officer Irvine, the information provided by the CI regarding the distribution of a deadly poison, fentanyl, was kept in the back pocket of the HIDTA Task Force.

This is why it is imperative that the MPD clearly define Standard Operating Procedures for the use of confidential informants, whether their use is confined to the MPD or whether they are partnering with the HIDTA Task Force.

Death of a Member

A Standard Operating Procedure for the investigation of the death of a Member must be created, or, SOP 453 Officer-Involved Deaths and Other Critical Incidents should be updated to include this scenario. Prior to last year it had been 26 years since the death of a Member in the line of duty. The investigation should be conducted by an outside law enforcement entity. Any Standard Operating Procedure, Instruction or Guideline that is relevant to the scenario in which the Member died should be carefully reviewed.

Standard Operating Procedure Changes

The FPC makes its own [rules](#) within the constraints of the State Statutes and City Charter and they can change them at any time. Rule IV - Board Procedure describes how any new or changed standard operating procedure, instruction, guideline or directive is to be approved.

The vast majority of SOP changes are made administratively i.e., agreed to by the Executive Director and Chair of the FPC Board. There is no notification to the public that these SOPs have been changed; we are advised to go on the MPD's website and individually navigate to all 120 SOPs on a regular basis and check their dates. This method of "informing" the public is not transparent and, in the recent case of SOP 760 Controlled Substances, significant, material changes with legal consequences, were made to address the dangers posed by fentanyl, without a full vetting by the Board and explicit notification to the public.

Of the SOP changes that *are* brought before the Board of Commissioners, only a small minority of them are first heard by the Research or Policies and Standards sub-committees. Rarely if ever does the FPC's research staff appear before any committee or the Board to answer questions or provide analysis for any SOP changes. And it is equally rare that the MPD will present any analysis justifying the changes they are requesting. In the [recent example of SOP 120 Operating While Intoxicated](#), the MPD offered only that they had already been using Drug Recognition Experts for a long time and that their testimony was accepted in court.

I ask the FPC Board to change its rules and practices regarding evaluating SOP changes and require their research staff and the MPD to provide an explanation of the changes and reasons why they should be adopted. I encourage the FPC Board to take the time to question the proposed changes. Only the most mundane changes should be allowed to be approved administratively and ALL changes should be publicly noticed in the meeting agendas.

Standard Operating Instructions

[Rule IV Board Procedure – Section 3](#) says “The Board shall be provided with any modification of a standard operating procedure, standard operating instruction, standard operating guideline, or other directive affecting the policies and standards of the Fire or Police Departments, in writing at least twenty (20) calendar days prior to its proposed effective date.” Yet it does not appear that any of the Standard Operating Instructions (SOI) changes that Chief Morales made were brought before the Board.

When is the last time the FPC Board reviewed any new or changed SOI (or standard operating guideline or other directive for that matter)? How many SOI changes have been approved “administratively”? The MPD’s Standard Operating Instructions are not posted online so we have no idea of what they even entail and ditto for standard operating guidelines and other directives. This is not acceptable, and it is not the kind of transparency an oversight body like the FPC should be requiring the MPD to provide. The MPD’s Standard Operating Instructions and Guidelines should be made publicly available online, like the Standard Operating Procedures, and any new or changed instructions or guidelines should be reviewed by the Board per what their own rules require.