

Communication from Paul Mozina

September 17, 2018

To: Judiciary & Legislation Committee

Re: CC File no. 170937: Communication from the Fire and Police Commission relating to updates and current activities.

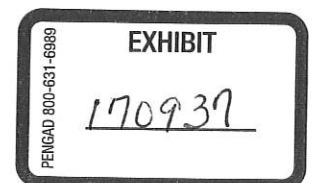
At the Judiciary & Legislation Committee meeting on July 2, 2018. Fire and Police Commission Operations Manager Clifton Crump informed the committee that, in response to public feedback, they would be taking a new approach to responding to public comments made at their meetings:

“At the Commission meetings, every meeting at the beginning we allow public comment. What we will begin to do now is address, as readily as we can, at the following meeting address those comments. So, we’re constantly taking feedback and some of the feedback was ‘you guys never respond to what we say at committee meetings’. So, to counter that, Executive Director Butler will be summarizing the minutes from the previous meeting and commenting where appropriate to address some of the questions and concerns that were raised.”

I spoke at the July 12 and July 26 FPC meetings requesting 2 things: The creation of an ad-hoc committee consisting of members of the FPC, Common Council and the MPD to manage the implementation of Collins/ACLU Settlement Agreement (the Consultant should also be included as well as representatives from the Milwaukee Collaborative Community Committee), and I requested that the FPC require the MPD to provide a Project Plan including a Fiscal Impact statement and an updated 2019 MPD budget request that reflects their real costs to implement the requirements of the Settlement Agreement (see partial list of requirements below).

The minutes of the July 12 FPC meeting have been published but no minutes from the July 26 meeting have, as of today, been published. No feedback from the FPC was provided on either of the issues I raised, nor has any item been added to the agenda of an Executive or Regular Session of the FPC meetings to address these topics. I began to wonder if maybe the FPC did not have the authority to make these demands on the MPD.

The recent issue with the Fire Department placing placards on buildings lead me to research the statutory authority of the Fire and Police Commission. I sent a summary of my findings (included below) to Mayor Barrett, all Common Council members and the leadership staff and commissioners of the FPC. In summary, from the State Statutes, to the Milwaukee City Charter and Organization Chart, to the FPC’s own rules and website, it is unequivocally clear that the FPC has complete and total oversight authority over both the Police and Fire Departments, including all new or changed polices and operations. The fact that the FPC was not invited to make, nor did they voluntarily submit, any comments whatsoever to the public record at the Common Council, Joint Committee on Redevelopment of Abandoned and Foreclosed Homes



and Public Safety and Health Committee meetings where the placards issue was discussed, is deeply concerning.

After Alderman Bauman first brought the placards issue up at the July 5 Common Council meeting, I asked FPC Executive Director Butler why no one mentioned the FPC during the debate. She responded (I'm paraphrasing) that the FPC gets involved in polices, not operations. I shared this response with Alderman Bauman via email and he agreed with that distinction. This is very concerning to me. I hope the Common Council will acknowledge the oversight authority of the FPC over both new and changed polices and operations of the Police and Fire Departments. And please note that managing daily operations is not the same as deciding what those operations will be and monitoring their faithful execution. It would be like suggesting the person managing the french fries at McDonalds is the one who decides how hot the oil should be, when it needs to be changed and how long the fries can sit under the heat lamp. These operational decisions are made by executives at McDonalds and uniformly promulgated to every franchise, where those in charge of daily operations endeavor to faithfully execute their orders.

With that background, I am again asking the Fire and Police Commission to exercise its oversight authority over the MPD and require Chief Morales and his team to produce a Project Plan including: timeline, staffing and budget, demonstrating how they will implement the requirements of ACLU Settlement Agreement. And again, I am asking the FPC and Common Council to form an ad-hoc committee including themselves, the MPD, the consultants from the Crime and Justice Institute and representatives from the Milwaukee Collaborative Community Committee to manage the implementation of this agreement.

The Settlement Agreement requires the MPD to do the following (this list does not include FPC specific tasks and it does not indicate dependencies between tasks):

#### A. Data Collection and Publication

- Database and User Interface changes to the Traffic and Criminal Software (TraCS), Records Management System (RMS), Computer Aided Dispatch (CAD) system and the Administrative Investigative Management System (AIM) to capture new data and enable cross-referencing of cases and individuals across systems.
- Systems to validate that all required data is captured
- Creation or establishment of primary key that bridges TraCS, RMS, CAD and AIM (the settlement agreement mentions potential keys as: CAD number, Name+Birthdate, a unique stop identification number, a unique identifier, unique encounter identification number created from date/time stamp etc...). This requirement needs precise definition.
- Creation of identifier that correlates TraCS, RMS and CAD with any related video
- Video database searchable by CAD number
- MPD Officers required to input identified information into above systems as required by end of day or, at latest, next day

- Removal of personally identifiable information about an individual that may have been captured in any of the above mentioned systems if that individual is released without further action
- Production on a quarterly basis of all data captured in the above mentioned systems to FPC, Plaintiff's Counsel and Consultant

#### B. Training

- Review and revision if necessary of training materials for officers and supervisors
- Testing to insure MPD staff has learned new procedures
- Supervisors trained to insure accuracy of data captured and regularly review and analyze data
- Training for all MPD staff who conduct, supervise, document in TraCS, RMS or CAD, and/or audit traffic stops, field interviews, no-action encounters, frisks and searches.
- All training materials provided to Plaintiffs within 6 months of execution
- MPD employs state-certified instructors at the MPD Academy

#### C. Supervision

- Continuous supervision of officers who conduct traffic stops, field interviews, no-action encounters and searches
- All arrest reports in RMS reviewed and approved by supervisor
- Supervisors approve reports prior to submission to RMS
- Supervisors review, correct and approve every warning and citation issued by MPD officers in TraCS
- Supervisors review, correct and approve every no-action encounter in CAD
- MPD supervisors identify and document any non-compliance
- MPD supervisors counsel, train or refer to re-training any officer as needed
- MPD command staff counsel, train or refer to re-training any supervisor as needed
- MPD completes twice per year community policing status report

#### D. Complaints

- Improve procedures for initiating and investigating complaints
- MPD Internal Affairs investigators receive special training

#### E. Audits

- FPC and MPD audit data on dashboard camera footage, body camera footage, and traffic stops, field interviews, no-action encounters, frisks and searches
- MPD Internal Affairs uses audits to insure compliance with agreement

#### F. Counseling, Re-training, and Discipline

- MPD develop and maintain system of benchmarks and alert notifications
- MPD subjects officers to progressive discipline as required
- Supervisors who fail will be disciplined
- many more items...

G. Compliance

- Incorporated all substantive requirements of Agreement into policy
- **Hire and train personnel required**
- **Appropriate sufficient funds to insure requirements met**
- show sustained and continuous improvement (includes many, many metrics)

Collins Settlement and Agreement Court Order Deadlines (using 7/25/18 as date of execution)		
Page	Deadline	Requirement
8	10/25/18	10. To effectuate the principles and constitutional standards addressed in paragraphs IV. 1-8, Defendants shall prepare the proposed revised policies detailed in this paragraph through procedures that conform with the requirements of Wisconsin State law, and shall ensure that these proposed revised policies are ready for submission to the FPC for final approval within <b>ninety days</b> of entry into this Agreement.
9	9/25/18	b. Defendants also agree to work with Plaintiffs to amend the following MPD SOPs within <b>sixty (60) days</b> of entering into this Agreement to reflect provisions of this Agreement that pertain to policies, procedures, guidelines, and standards addressed in these specific SOPs.
15	7/25/19	The MPD database(s) of video footage from police-vehicle cameras and body-worn cameras shall be searchable by CAD number with video to be produced one incident at a time, with such searches available for both types of video within <b>one year</b> from the date of this Agreement.
19	7/25/19	2. Within <b>twelve (12) months</b> of the execution of this Agreement, and on an annual basis thereafter, MPD shall provide training for all MPD staff who conduct, supervise, document in TraCS, RMS, or CAD, and/or audit traffic stops, field interviews, no-action encounters, frisks, and searches. <b>If Defendants show good cause for the need for an additional six months to complete this training, Plaintiffs will not unreasonably withhold agreement to such extension.</b>
20	1/25/19	3. All training materials developed and/or approved by Defendants to comply with paragraphs IV. B.1 and IV. B.2 of this Agreement shall be provided to Plaintiffs within <b>six (6) months</b> of the execution of this Agreement for review.

21	1/25/19	I. Within <b>six (6) months</b> of the execution of this agreement, MPD shall establish and enforce policies requiring continuous supervision of officers who conduct traffic stops, field interviews, no-action encounters, frisks, and searches by appropriate, specified officers within the MPD.
22	7/25/19	b. Within <b>twelve (12) months</b> of the date of this Agreement, MPD will achieve a practice of supervisory review, correction, and approval of 50% of all documentation of field interviews in RMS consistent with the timeframes set forth in SOP 085.20.
22	7/25/19	c. Within <b>twelve (12) months</b> of the date of this Agreement, MPD will achieve supervisory review, connection, and approval of every warning and citation issued by MPD officers in the course of a traffic stop or field interview, as recorded in TraCS within seven (7) days, consistent with the timeframe set forth in SOP 070.
23	7/25/19	d. Within <b>twelve (12) months</b> of the date of this Agreement, MPD shall achieve supervisory review, correction, and approval of every no-action encounter documented in CAD within fourteen (14) days.
24		<b>Every six months</b> , Internal Affairs will prepare a report for command staff of allegations of policy violations described above and any corrective actions taken.
24		6. MPD shall complete a <b>twice per year</b> community policing status report and forward that report to the FPC.
27	7/25/19	2. MPD Internal Affairs investigators shall receive special training conducted <b>within one year</b> from the execution of this agreement in the investigation of complaints by members of the public, including training on the amendments to SOP 450 required by this Agreement.
30		I. Defendant FPC shall audit data, dashboard camera footage, and body camera footage on traffic stops, field interviews, no-action encounters, frisks, and searches. <b>every six (6) months</b> to identify:
30		2. In order to ensure that complaints from members of the public are appropriately investigated, the FPC, including through the work of any retained consultants, shall conduct an audit <b>every six (6) months</b> of: (a) complaints submitted by members of the public to the MPD, and (b) complaints from members of the public to the FPC.

31		5. Defendant FPC shall publish on its website, <b>on a quarterly basis</b> , data on civilian complaints received, under investigation, or resolved during the previous quarter. including the number of complaints from members of the public broken down by number relating to traffic stops, field interviews, no-action encounters, frisks, and searches without legal justification and traffic stops, field interviews, no-action encounters, frisks, and searches based on race or ethnicity and whether the complaints remain open or have been closed.
32		6. Defendants shall ensure that the appropriate division within MPD audits data, dashboard camera footage, and body camera footage on traffic stops, field interviews, no-action encounters, frisks, and searches <b>every (6) months</b> to identify:
46	7/25/19	9. The Consultant shall issue the first Draft Report no later than 12 months after entry of this Agreement, and this Draft Report shall address the period of <b>the preceding twelve ( 12)-months</b> .
48	1/25/19	Unless otherwise noted, Defendants agree that all policies, procedures, and manuals shall be developed <b>within six (6) months</b> of the effective date.

Below is documentation of the statutorily mandated oversight authority of the FPC, its Rules and Mission and the expert testimony of Samuel Walker PH.D. for the plaintiffs in the ACLU Settlement regarding the same.

Wisconsin State Statutes

§62.50(1m) <https://docs.legis.wisconsin.gov/statutes/statutes/62/II/50/1m> the Fire and Police Commission has the following authority granted:

(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**. The board may prescribe general policies and standards for the departments. The board may inspect any property of the departments, including but not limited to books and records, required for a review under this section.

City of Milwaukee Charter Ordinances Chapter 314 Board of Fire and Police Commissioners <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH314.pdf>

314-3. Duties.

In accordance with the duties provided in s. 62.50, Wis. Stats., the board of fire and police commissioners shall:



1. **Conduct a policy review of all aspects of the operations of the police and fire departments**, may prescribe general policies and standards for the departments, and may inspect any property of the departments, including but not limited to books and records, required for such review.

...

4. Use oversight authority to identify systemic problems within the police and fire departments, identify opportunities for improvement through organizational change, and delegate authority for follow-up to the respective chief.

314-5. Executive Director

...The executive Director shall...

2. **Evaluate police and fire department policies, practices and patterns**, including but not limited to deployment of staff, crime and fire prevention training, use of force, search, seizure, **citizen interaction and communication**.

Rules of the Fire and Police Commissioners City of Milwaukee

<https://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Rules/FPCRrules.pdf>

#### Rule IV. Board Procedure

**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.** A requested change, if not material, may go into effect with the approval of the Chair of the Board and the Executive Director; otherwise it shall go on the Board's Regular Agenda for approval. Material change is one that creates an issue of legal consequence or controversy, or creates a change in the meaning or language of a document other than a routine update, or acknowledges changes in state certification standards. **Newly proposed standard operating procedures, standard operating instructions, standard operating guidelines, or other directives affecting the policies and standards of the Fire or Police Departments shall be placed on the Board's Regular Agenda for approval.** (Rev. 7/27/17)

Fire and Police Commission website <https://city.milwaukee.gov/fpc/About#.W5BR334naAs>

#### **What is the Fire and Police Commission?**

Under Wisconsin law and the Milwaukee City Charter, the **Fire and Police Commission oversees all aspects of Fire Department and Police Department operations.** The Commission sets overall policy while the chief of each department manages daily operations and implements the Commission's policy direction and goals. Specific Commission functions also include:...

## VI. ROLE OF THE MILWAUKEE FIRE AND POLICE COMMISSION

16. Pursuant to Wisconsin State § 62.50(1m), the FPC is tasked with, among other things, overseeing the Department's practices and procedures, and engaging in at least an annual "policy review of all aspects of the operations" of the MPD.<sup>7</sup> The FPC is obligated to "[u]se oversight authority to identify systemic problems within the police and fire departments, identify opportunities for improvement through organizational change, and delegate authority for follow-up to the respective chief."<sup>8</sup> Moreover, under its mandate, the FPC has the authority and responsibility to undertake an independent investigation of controversies involving the MPD and the MPD's related policies and practices.<sup>9</sup> Further, the FPC maintains the authority to hire and fire the Chief of Police.<sup>10</sup>

17. It is my opinion that the FPC is failing to provide proper oversight of the MPD with regard to the issues related to traffic stops, pedestrian stops, frisks, MPD procedures for holding officers accountable for misconduct, and MPD's relations with the community.

18. In her deposition, FPC Executive Director MaryNell Regan testified that when the issue of whether or not the MPD has a quota system arose, the FPC Board of Commissioners "chose to believe management that there is not a quota system."<sup>11</sup> The FPC Board of Commissioners then "held . . . open" the issue of a quota system, which Regan explained meant that it would be postponed for further discussion if necessary, and there is no indication such further discussion occurred.<sup>12</sup>

19. It is my opinion that the FPC Board of Commissioners' decision to defer to the MPD leadership, without any effort to investigate what was presented to it as a significant controversy in the community concerning MPD officers' interactions with members of the public, represents an abdication of its official mandate. On its website, the FPC describes its mission as "oversee[ing] all aspects of the Fire Department and the Police Department."<sup>13</sup> No further language limits in any way the term "all aspects" in this statement. And as discussed above, Wisconsin statute and Milwaukee ordinance require the FPC to conduct a policy review of "all aspects" of police department operations.<sup>14</sup>

20. It is my opinion, based on over thirty years of research and consulting on the subject of public oversight of the police, that the central purpose of an agency, with a mission of overseeing a police department is to inquire into any and all controversies that should arise with respect to that department, and not automatically defer to the agency's management. "Inquiry" in this context should include the agency's ability to conduct its own independent investigation of the issue, hold public hearings, retain outside experts if that step is deemed necessary, and render a public decision on the matter. External oversight agencies have



conducted audits of uses of force, uses of chokeholds, civil litigation against agencies, and management practices related to holding officers accountable for their conduct.<sup>15</sup>

21. It is my opinion that the FPC's failure to provide proper oversight of and guidance to the MPD on its policies and practices related to stops and frisks, accountability for officer misconduct, and community relations is a problem that has existed for some years. A 2006 report by the Police Assessment Resource Center ("PARC") found that the FPC "underutilizes its policy review powers."<sup>16</sup> The PARC report recommended a "fundamental overhaul" of the FPC.<sup>17</sup> Yet, there is no evidence available to the author of this report that any such "overhaul" has occurred. It is also my opinion that PARC is one of the most highly respected independent consulting organizations in the field of law enforcement, with a wide range of experience, and that its judgment carries great credibility.
22. It is my opinion that the current Executive Director of the FPC is failing to provide the best professional leadership for the agency. It is the function of an executive director in this context to provide leadership on important issues, including providing the Board of Commissioners informed expert advice on important policy decisions. In her deposition, however, in direct response to this issue, FPC Executive Director Regan testified that "I try not to influence their [the FPC Board] views."<sup>18</sup>
23. It is my opinion that the definition of the role of the current Executive Director of the FPC, as stated in her deposition and cited in the above paragraph, is not consistent with the responsibilities of the Executive Director of the FPC to "[e]valuate police and fire department policies, practices, and patterns, including, but not limited to, deployment of staff . . . search, seizure, [and] citizen interaction and communication," as established by the Milwaukee City Charter Ordinance, § 314-5.
24. It is my opinion that the current Executive Director of the FPC has failed to become familiar with the details of day-to-day policing, and is thereby unable to provide informed advice on important matters, as required under Milwaukee City Charter Ordinance, § 314-5. In her deposition, on a question related to SOP 085 and whether an officer has reasonable suspicion of criminal activity when seeing a person at a location during "inappropriate hours of the day or night," Executive Director Regan testified that "I'm not a law enforcement officer, nor have I ever served as one."<sup>19</sup> Yet, she has by her own testimony not taken steps to become familiar with basic police operations (such as stops and frisks by MPD officers) despite the fact that, according to her own testimony, she plays a role in approving MPD SOPs.<sup>20</sup> It is my opinion that based on my own research on citizen oversight of the police, which has included regular attendance at the annual meeting of the National Association for Civilian Oversight of the Police ("NACOLE"), where I routinely converse with the directors of oversight agencies, that many, if not most, of the directors of oversight agencies such as the FPC are not police officers and have no prior experience as police officers.<sup>21</sup> Yet, I have found that these individuals are generally well-informed about the details of day-to-day policing and are consequently able to provide informed opinions and directives about important policy matters.

25. It is my opinion that, given the controversies surrounding MPD practices and its obligations under Wisconsin law, the FPC has a responsibility to undertake an independent investigation of any and all such controversies involving the MPD, and of MPD's related policies and practices. In my opinion, it is an abdication of the FPC's basic mandate to provide independent oversight of the MPD for the FPC Board of Commissioners to conclude that it "believe[s] management" on the question of whether the MPD sustains an informal quota for the number of traffic and pedestrian stops conducted by officers, which may lead to unjustified stops of members of the public.