

Police Advisory Commission
990 Spring Garden Street
Proposed Agenda, June 20, 2011

Excused Absences:

- 1. Review of Minutes of May 16, 2011 (Posted _____)**
- 2. Sunshine Act Certifications (Anderson)**
Minutes from April 18, 2011, 2011 posted on Commission web site _____
Agenda for June 20, 2011, posted on Commission web site _____
- 3. Secretarial Report (Volz) (2 minutes)**
No response from Mayor or Deputy Mayor as to the acceptance of the resignation of
Mohammad Abdul-Aleem as Alternate.
- 4. Report of Chair (Islam) (10 minutes)**
- 5. Report of Executive Director (Johnson) (5 minutes)**
- 6. Report of Hearing Panels (various)**
- 7. Report of Counsel (Hayes) (5 minutes)**
Nizah Morris update
- 8. Report of Standing and Ad Hoc Committees:**
 - A. Operating Procedures Committee (Volz) (10 minutes)**
Proposed changes to Article 9 (Attached)
 - B. Public Relations Committee (Goldfein)**
 - C. Investigatory Review Committee (Cavanaugh)**
Report on meeting with District Attorney
 - D. Personnel Committee (Kung) (Waived) no meeting**
 - E. Mediation Committee (James)**
 - F. Annual Report Committee (Islam)**
- 9. Old Business**
- 10. New Business**
PAC# 112597, Angel Cruz: (1) Memorandum from William Johnson (attached) (2)
Opinion of Parliamentarian Crumlish (attached) (3) Reproduced Correspondence (attached) (4)
proposed letter to Deputy Mayor Gillison (attached).
- 11. Public Comment**

Adjournment

Report of the I.O.P. Committee as to revisions of Article 9, I.O.P.

ARTICLE 9: ALTERNATE MEMBERS

Alternate members shall have a voice but no vote on ~~Commission matters~~ **the election of Commission officers**. Alternate Members will replace any Commission member who has resigned or whose term has expired and has not been reappointed, in accordance with the provisions of Executive Order 8-93. Alternate members ~~shall have a voice but no~~ **can** vote in committees and can serve as mediators but cannot ~~chair~~ **serve as presiding officer of** any standing committees. **Alternate Members can** ~~or~~ serve as a member of a hearing panel. All alternates shall go through all training programs designed for Commission members, shall be permitted to attend all meetings of the Commission, and shall be subject to all provisions prescribed in Executive Order 8-93 for Commission members as well as the Internal Operating Procedures of the Commission.

It is the general consensus of the I.O.P. Committee that we would like the Alternate Commissions to be full Commissioners but we believed we had to retain some distinction between Alternate Members and full Commission members. Making Alternate Commissioners into Full Commissioners would be beyond our power and contrary to the Executive Order. The I.O.P. therefore proposes to do what we think we can do within our power: Alternates can serve on hearing panels and they can vote in committees. The only prohibitions are that they can't vote for officers or be a presiding officer of a committee.

POLICE ADVISORY COMMISSION

M E M O R A N D U M

Date: May 26, 2011

TO: Executive Committee

FROM: William Johnson, Executive Director, Police Advisory Commission

SUBJECT: COMPLETED INVESTIGATION FOR REVIEW/REQUEST FOR ADMINISTRATIVE CLOSING OF COMPLAINT

COMPLAINANT'S NAME: Angel Cruz, 3053 "A" Street,
Philadelphia, Pa. 19134. (215) 796-2415

COMPLAINT: IAD# none (not filed) PAC# 112597

NATURE OF COMPLAINT: Abuse of Authority/profiling

TARGET OFFICER(S): FJD warrant investigator Samuel Turner and 2 others.

ANALYSIS

On or about March 7, 2011, I received a confidential email from Deputy Mayor Everett Gillison asking me to conduct an investigation into an alleged incident of profiling that was reported to his office by a citizen. I was supplied by email a formal complaint lodged with his office, including the name and contact information for the involved person. I was also given a brief description of the incident and the location of its occurrence. The following is a summary of that account.

On Sunday, February 27, 2011 at 8:30am, local resident Angel Cruz (who resides at 3053 A Street) was stopped and frisked at the intersection of Water and Clearfield Streets, while walking to a corner store to purchase breakfast items for his family. At that time, he was verbally ordered to cross the street by First Judicial District Bench Warrant Investigator Supervisor Sam Turner and at least 2 more FJD Bench Warrant Investigators. He was then "Stopped, Frisked" and "Interrogated" for well over 15 minutes against his will. Mr. Angel Cruz was placed against the wall and searched for possible weapons, and asked questions pertaining to his having a PPN (arrest number) which he believed was because of his race. Some of the questions seemed based on the prevalent Hip Hop Culture of the Kensington area. Questions including, have you ever been arrested? Are you a gang member? Are you carrying any weapons? Do you do illegal drugs? The warrant officers kept insisting that Mr. Cruz was lying, and stated that all local residents in the Kensington area typically have been locked up in the past and have criminal records. The FJD Bench Warrant Investigators also threatened Mr. Cruz with placing him in jail for not cooperating with them. This appeared to be an attempt to taunt Mr. Cruz into a physical confrontation with FJD Warrant Investigators. In the end, Mr. Cruz was released, but FJD Warrant Investigators threw Mr. Cruz's wallet on the ground and stole his personal non-driver's license identification card. No explanation or reason was ever provided for the "stop and frisk" of Mr. Cruz. Additionally,

no apology was given for wrongfully stopping Mr. Angel Cruz or for their negative behavior during the "stop and frisk". Mr. Angel Cruz was humiliated and embarrassed in front of his local neighbors for no reason other than the FJD Bench Warrant Investigators profiling young men based on their skin color, Cultural preferences and location. Mr. Cruz does not have a criminal record nor has he ever been in trouble with the law in the past.

During the incident involving the Kensington Strangler investigation, it was brought to my attention (the complaint writer) that in addition to concerns about Philadelphia Police violating the civil rights of people of color, the FJD Court Warrant Investigators also engaged in the "Stop and Frisk" of numerous young men of color against their will. Many of whom had no criminal records. FJD investigators are known to have on many occasions acted unprofessionally and used bullying tactics when stopping people for no just cause.

I (the complaint writer) would like to review the First Judicial District's policy with regards to stopping suspected bench warrant violators. I further would like to know by what authority FJD Bench Warrant Investigators are conducting investigations on suspected bench warrant violators or are able to stop people in general, who have committed no crime.

In closing, the violation of the civil rights of local Kensington residents based on their skin color, area of residence and hip hop culture by members of the First Judicial District's Bench Warrant Investigators is entirely unacceptable and needs to be corrected so that such negative behavior by FJD employees does not occur in the future.

MY RESPONSE BY EMAIL:

I informed the Deputy Mayor that we would reach out to the complainant to obtain a statement and that we would give him a full report once our initial investigation was complete. I reminded him that if this incident did involve FJD Warrant investigators, then we would not have jurisdiction to directly question the involved persons, however, I likewise informed him that I was familiar with the FJD Warrant supervisor Tom Press and that if he desired, I would reach out to him to arrange a meeting to discuss questioning the investigators directly.

Conclusion

We conducted our investigation from March 7 to March 16, 2011. We conducted a confidential interview with Mr. Cruz on March 14, 2011 at 10:15 am at his residence located at 3053 A Street. On or about March 14, 2011, I informed the Deputy Mayor that we had concluded the initial phase of our investigation and we had not yet identified any additional complainants or witnesses in this matter. I did forward to him a copy of our interview and complaint form. He instructed me that he would handle the matter from this point forward. We canvassed the area of the incident on the dates of 3/8, 3/9, 3/14, and 3/15/ 2011, in order to identify additional witnesses or complainants in this matter. These efforts yielded no additional results. We officially concluded our investigation on March 19, 2011 and again reported directly to the Deputy Mayor.

Recommendation

Since this complaint is being handled formally by the Deputy Mayor for Public Safety, it is recommended that this complaint be officially closed.

**OPINION OF J. CRUMLISH, III, PARLIAMENTARIAN
COMMISSIONER, PHILADELPHIA POLICE ADVISORY COMMISSION**

IN RE: ANGEL CRUZ

You have asked my opinion regarding the actions taken by PAC staff in relation to the above. My responsibility to give such an opinion falls under my duties as prescribed by the Internal Operating Procedures of the Philadelphia Police Advisory Commission. I have had the opportunity to consult with counsel to the PAC prior to rendering this opinion.

Under the terms of Executive Order 8-93 or "EO", The Philadelphia Police Advisory Commission or "PAC" may at its discretion undertake reviews, studies, investigations etc. as constrained by the Powers and Duties scope laid out in Section 4(a) of the E.O. The context and EO itself speaks to the Commission's mission as related to the purpose of the improvement of the Philadelphia Police Department and personnel and their relationship with the Community. The PAC, as I am applying in this analysis, is the duly appointed and constituted members of the Commission who, under the EO and IOPs are empowered to set policy and implement the mandate of 8-93 and direct the conduct of its staff.

The Mission of the PAC is, as published by the PAC is:

The Police Advisory Commission is the official civilian oversight agency of the City of Philadelphia for the Philadelphia Police Department. The general mission of the Commission is to improve the relationship between the police department and the community.

See: <http://www.phila.gov/pac/>

The facts here are provided by the PAC Executive Director, Mr. William Johnson's memo dated May 26, 2011 which discloses that he and at his direction the PAC Staff embarked (as they admit they have done in the past) on a "confidential" investigation at the direct request of, and on behalf of City of Philadelphia Deputy Mayor E. Gillison. The subject matter of this investigation concerns an alleged complaint or incident involving the First Judicial District Bench's Warrant Officers. These Officers, as I understand it, are not supervised by the Executive Branch of Philadelphia Government but rather are subject to the powers and jurisdiction of the Judicial Branch, i.e. the Supreme Court of Pennsylvania. Accordingly, these Officers are not the subject to the PAC's EO's mandate nor are they under the control of the Mayor from whom our powers over Home Rule executive branch employees flow. Nor does it seem in the "report" that any effort was made to relate this "investigation" to actions of the Philadelphia Police and, to the contrary, the complainant and staff were cognizant than the subjects of the complaint were from the FJD from the onset.

This "investigation" was completed and the opinions of staff were directly delivered to the Deputy Mayor and thereafter, as an after-the- fact exercise, injected into the IRC process for review which did not seem to comport with the EO or any of the established PAC IOPs or investigative guidelines. Additionally, it appears, the complaint, if facially reviewed under ordinary circumstances, would have been rejected as non-jurisdictional and the complainant redirected to the FJD. The disclosure of PAC investigations to anyone prior to the consideration and approval by the PAC is expressly prohibited in EO see section 5 EO. Further, we have been advised that previously, PAC investigations and materials have been delivered directly to the Deputy Mayor by Mr. Johnson at his request.

I do not believe that these actions are within the scope of the authority given the PAC by the Mayor in Executive Order 8-93. I also do not think that we can as the PAC (aside from the wisdom of such) legitimately assume greater investigative powers or scope of duties than those that are explicitly given by 8-93 by mere implication including e.g. such serious police powers as investigating alleged crimes and civil rights violations and drawing conclusions and making accusations that are normally undertaken by trained sworn law enforcement members rather than the PAC's patronage employees who continue to assert that are not subject to the PAC management controls, IOPs or policies established by the Commission.

Also of legitimate additional concern to the Commission itself, from the above known facts and considerations, would be that conduct of staff here may be *ultra vires* and not under the supervision or policy controls of the PAC and therefore may be legally unprivileged.

SUNSHINE ACT REQUIREMENTS

You have also asked, if discussed by the Commission as a whole at public session if this matter qualifies a subject matter for Executive Session.

I cannot at this juncture justify the invoking of Executive Session privilege at the monthly meeting unless there is some specific legal question or request for advice that is posited to counsel or some personnel action is being contemplated or debated which, the commission can at the time, invoke Executive Session at its regular meeting. Let me know if you have any follow up questions.

Respectfully

JAMES C. CRUMLISH III
Commissioner, Philadelphia Police Advisory Commission
Parliamentarian

Reproduced email correspondence between Commissioner Crumlish and Executive Director Johnson:

From: J.C. Crumlish
To: W. Johnson
Re: Repot of investigative activity regarding FJT warrant investigators
Date: 5/30/2011

Bill:

Has the PAC ever before conducted any other investigations of non Philadelphia police or any other activities not a part of the tasks under Executive Order 8-93?

Jim

From: W. Johnson
To: J.C. Crumlish
Re: Report of investigative activity concerning FJD warrant investigators
Date: 6/1/2011

To answer your question Jim:

Yes, we have been asked to review certain incidents where there was a need for an independent eye to examine the issues. While it isn't a regular occurrence, I honestly believe that the administration has a great deal of confidence in the work that we do and trusts our judgment.

You may want to ask Mike Hayes about section 4, article b and c which allows the Commission to study incidents which are of concern to the community or Police. Whether or not the Deputy Mayor has the authority to request such a review is the question. I believe that he does.

Bill

Proposed letter to Deputy Mayor

Dear Deputy Mayor Gillison:

I write presently in my capacity as counsel to the Philadelphia Police Advisory Commission (the “Commission” or the “PAC”). It has come to the attention of the Commission that your Office recently directed PAC staff to conduct an investigation into a matter involving warrant officers of the First Judicial District that falls outside of its jurisdiction under Executive Order 8-93. The PAC understands that its staff undertook the investigation as you directed, but did so without first notifying the Commission and obtaining its approval.

The Commission only learned of the investigation after the fact, when its Executive Director made report to the PAC Internal Review Committee (“IRC”) concerning the matter. Since then, the Executive Director of the Commission has suggested that additional investigations may have previously been **conducted** by PAC staff at the request of your office without notice to or approval from the Commission. To be clear, the Commission did not and does not now approve, condone, adopt, or acknowledge as legitimate any investigation(s) that may have been conducted by PAC staff at your direction or request without the Commission’s prior knowledge and express consent.

In addition, the Commission understands that its Executive Director has previously provided you with documents and information relating to investigations conducted by PAC staff in violation of Article 5(b) of the Executive Order, which sets forth the **specific** means and methods by which PAC recommendations and findings and related documents and information are to be disseminated.

It is the position of the Commission, fully consistent with Executive Order 8-93, that all requests for PAC investigations must be approved by the Commission – regardless of the source of the request. This basic gate keeping function of the Commission, spelled out in Section 4(b) of the Executive Order, is designed to ensure that the PAC’s very limited resources are judiciously applied to only those important matters within the jurisdiction of the Commission. It is likewise the position of the Commission that requests for any documents or information relating to a PAC investigation will not be distributed to anyone, including any City office or agency, except in strict accordance with the provisions of Article 5 of Executive Order 8-93.

The Commission rightfully expects and has therefore directed its staff that on a going-forward basis they must immediately present to the Commission for formal consideration and approval any requests for investigations, documents or information originating from your office or any other office or agency of the City. If you have any questions, concerns, or disagreement with the Commission’s above-described understanding and resulting expectations, please do not hesitate to contact the Chair of the Commission, Mu’min Islam, at

