



**POLICE ADVISORY
COMMISSION**
CITY OF PHILADELPHIA

1515 ARCH STREET
11TH FLOOR
PHILADELPHIA, PA 19102
(215)685-0891
Phila.gov/PAC
PAC@Phila.gov

August 23, 2019

Acting Commissioner Christine Coulter
Police Administration Building
750 Race Street
Philadelphia, PA 19106

Dear Acting Commissioner Coulter,

In a letter dated July 15, 2019, the Police Advisory Commission (PAC) inquired about the progress of the Philadelphia Police Department's review of the publicly available Facebook posts collected by the Plain View Project. In this same letter, we expressed concern that this investigation had been classified as "internal" and therefore not available to the public.

The PAC also requested that the Police Department explain their rationale for this decision and forward any written policy which guides the classification of investigations as "internal." Further, the letter highlighted the vested interest and alarm expressed by the public. Since issuing this letter to the PPD, public interest and alarm has only grown and will only continue to grow until the residents of the city are satisfied that a the PPD will complete a transparent and thorough investigation.

On July 19, 2019 Staff Inspector Healy replied to the PAC's inquiry and stated that *"the classification of [the Facebook] investigation results directly from the language in the Mayor's Executive Order 5-15 (note the actual order is 5-17) section 1 (b), which states "a CCR shall be distinguishable from an independent internal investigation initiated from within the department. For purposes of this Order, a CCR and the subsequent investigation shall only include those complaints originated by one or more civilians." The letter goes on to state that "no individual civilians came forward as complainants. Rather, the Police Department, based upon the press coverage, initiated its own investigation".*

This response seems to cavil over process and defy the spirit of Executive Order 5-17 which calls for transparency in order to build public trust. Further, it requires the PAC to quibble with the PPD over the phrase "originated by one or more civilians". For instance, from the PAC's perspective, the reporters from BuzzFeed and the creators of the Plain View Project are civilians and they clearly not only originated the project but provided the primary investigatory tool- the Plain View Project database. We believe that the investigation originated with them because the PPD did not begin reviewing this matter before reporters from BuzzFeed contacted them. We do not believe that the fact that they did not

formally complain is a substantial enough reason for the investigation to be considered to have originated internally.

Further, our review of this decision highlighted that no formal policy exists to guide the complaint classification process, and no appeal process or oversight has been implemented to ensure the public can trust this process.

Recommendation 1: The PAC recommends the following revisions to Directive 12.18 (attached) regarding PPD investigations.

Pursuant to Executive Order 2-17, the Philadelphia Police Department must issue a written response to this report within thirty days. Upon request, the PAC will extend the Department's response time by an additional fifteen days. The PAC will include the Police Department's response with the recommendation when it is released publicly.

Sincerely,

Hans Menos
Executive Director
Police Advisory Commission

Cc: Brian Abernathy, Managing Director
Tumar Alexander, First Deputy Managing Director
Vanessa Garrett-Harley, Deputy Managing Director
Ronda Goldfein, Chair Police Advisory Commission

Attachment A

Currently, Directive 12.18 includes 8 Sections. The PAC recommends the following 9th section be added:

9. Investigations that originate from inside the Department, including EEO complaints and subsequent investigations, shall be classified as internal investigations, but shall be available for citizen review except when they meet one or more of the following criteria:

- a. Investigations which involve confidential investigative methods or tools which need to be safeguarded AND those methods cannot be safeguarded via redactions.
- b. Investigations which involve an officer as a voluntary source of information AND the officer's identity cannot be sufficiently safeguarded via redactions.
- c. *note: if an officer's statement or cooperation is compelled, they shall not be shielded by an internal classification.
- d. Investigations which are referred to the Department of Justice, District Attorney or Attorney General.
- e. An investigation that has been presented to a Grand Jury.

A. Investigations into Citizen Complaints Against Police will be classified as internal investigations as needed according to Executive Order 5-17, but shall be available for citizen review except when they meet one or more of the following criteria:

1. Investigations which involve confidential investigative methods or tools which need to be safeguarded AND those methods cannot be safeguarded via redactions.
2. Investigations which involve an officer as a confidential informant AND the officer's identity cannot be sufficiently safeguarded via redactions.
3. Investigations which are referred to the Department of Justice, District Attorney or Attorney General.
4. An investigation that has been presented to a Grand Jury

B. Investigations derived from the public or public domain (news reports, social media posts, and or notifications to the PPD not framed as complaints) may be classified as internal investigations but will be available for public review except if they meet one or more of the following criteria:

1. Investigations which involve confidential investigative methods or tools which need to be safeguarded AND those methods cannot be safeguarded via redactions.
2. Investigations which involve an officer as a confidential informant AND the officer's identity cannot be sufficiently safeguarded via redactions
3. Investigations which are referred to the Department of Justice, District Attorney, or Attorney General.
4. An investigation that has been presented to a Grand Jury

C. An internal investigation from any source that is restricted from citizen review shall be de-classified and made available for citizen review once the purpose for restricting public access to the investigation is no longer valid. This shall include when:

1. Investigation methods or tools no longer require safeguarding.
2. An officer's identity no longer requires safeguarding.
3. Investigations referred to the Department of Justice, District Attorney, or Attorney General have been closed.

D. Process for classifying an investigation as an internal investigation that will be restricted from citizen review:

1. A Philadelphia Police investigator must recommend to the Commanding Officer of Internal Affairs that a particular case be classified as an internal investigation that will be restricted from citizen review.
2. The Commanding officer shall review if the investigation meets the eligibility requirements and notify the Police Advisory Commission of their determination.
3. The Police Advisory Commission shall be offered rationale explaining why an internal investigation has been classified as restricted from citizen review. Should the PAC take issue with a classification, the PAC shall have the right to appeal this decision to the Police Commissioner and Managing Director.

E. Special Access: The following entities shall receive access to all investigations, including internal investigations that have been restricted from citizen review, without conditions or equivocation.

1. The Police Advisory Commission
2. The District Attorney's Office
3. The Office of the Inspector General

F. Automatic de-classification:

1. All internal investigations, except those included in a grand jury investigation will automatically be de-classified as restricted from citizen review after they have been closed for 1 year.

Finally, should our recommendations not be accepted, the PAC would like to recommend that the Police Department consider edits to Directive 12.18 section 3, PROCEDURES FOR RECORDING AND PROCESSING COMPLAINTS. This section should be revised to include information which informs a member of the press or other civilian that the information which they provide outside of a formal complaint can be turned into an internal investigation and therefore shielded from public review.



CITY OF PHILADELPHIA

Police Department
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA, PENNSYLVANIA

CHRISTINE M. COULTER
Commissioner

October 8, 2019

Hans Menos
Executive Director
Police Advisory Commission
1515 Arch Street, 11th Floor
Philadelphia, PA 19107

Re: Letter dated 8-23-2019 – Internal vs. CAP Classification

Dear Director Menos:

I have reviewed the above-referenced letter and must first, respectfully, disagree with your position that no formal policy exists to guide the complaint classification process. On the contrary, Mayor's Executive Order 5-17 was amended to expressly describe such a process. The previous Executive Order was silent on this issue. In fact, it was the Police Department that recommended describing the classification process in the amended Executive Order to improve transparency and to provide the necessary guidance. So, whether we agree or disagree over the final classification of the Facebook investigation, asserting that no policy exists to guide the complaint classification process is not accurate. As such, I believe your proposed recommendations do not account for the existing policy in Executive Order 5-17 and would create subcategories for internal investigations well beyond the intent of Executive Order. For this reason, I must, respectfully, deny your recommendation to amend Directive 12.17 regarding internal investigation.

Moving now to why the Department classified the Facebook investigation as an internal investigation. As previously explained, the Police Department classified the Facebook investigation as an internal investigation according to the policy set forth in Executive Order 5-17. No individual came forward to make a specific complaint. Nonetheless, it is your opinion that since the Plain View Project creator provided this information to the Department that a complaint had, in fact, been initiated by a citizen and should have been classified as a Citizen Complaint. I must, respectfully, disagree with this position. The Department routinely receives information from outside sources and initiates internal investigations. This information can come from a wide range of sources, such as media events, internal government sources, lawsuits and even rumors. The mere fact that the information came from a person, does not necessarily make that person a complainant. Such was the case with the Facebook investigation. The Plain View Project creator publically posted a bevy of information in the media and the Department independently took the initiative to investigate each and every post.

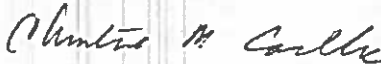
As part of this investigation, Internal Affairs attempted to contact the creator of the Plain View Project database and was rebuffed on several occasions. It is clear that this was not a complaint by a citizen against an officer or officers, but rather a media exposé to disclose an alleged wide-scale deficiency in the Police Department. As such, it was proper, according to the existing policy, to classify the self-initiated

investigation by the PPD as an internal investigation. On this point, I believe we are going to have to agree to disagree, but this leads me to the most important point that I want to stress.

This exposé and the subsequent investigation was an unprecedented event in policing in this country and the Philadelphia Police Department has taken and will continue to take unprecedented actions. Then-Commissioner Ross had several press events, one including the Mayor, City Solicitor and the Managing Director, explaining how the investigation would proceed. Furthermore, as you know, I privately discussed with you the status of the investigation and then briefed City Council on September 10, 2019 in a public hearing. This Department has been fully transparent in this process and has held officers accountable. This is what is most important.

However, I do believe more can be done. As mentioned, this has been an unprecedented event and as such, I will continue to take unprecedented actions despite the classification of this investigation. Since, the Department has already made public disclosures concerning these investigations, I intend to develop a document outlining the status of the investigations and posting this document on our Departmental Webpage for the public to access. This decision is based solely on the extraordinary nature of this event so my actions here should not be construed or cited as precedent with respect to any other current or future internal investigation.

Sincerely,


Christine M. Coulter
Commissioner

EXECUTIVE ORDER NO. 5-17

PROCESSING OF CIVILIAN COMPLAINTS ALLEGING POLICE MISCONDUCT

WHEREAS, issues relating to public safety are of primary concern to all civilians of the City of Philadelphia;

WHEREAS, it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety have the proper support from the government and its agencies; and that all civilians have an equal degree of faith in those agencies to deal with their complaints in a fair, equitable and timely manner;

WHEREAS, Executive Orders 1-80, 9-93 and 7-11 established procedures for the prompt and impartial processing of complaints against the Police Department;

WHEREAS, there is a need to broaden and codify the procedures by which civilians of the City of Philadelphia can seek redress of grievances against members of the Police Department and the Police Department can investigate police misconduct;

WHEREAS, the President's Task Force on 21st Century Policing and the United State Department of Justice, through its report entitled, *Collaborative Reform Initiative: An Assessment of Deadly Force Policy and Practice in the Philadelphia Police Department*, both recommend that law enforcement agencies should establish and maintain a culture of transparency and accountability to build public trust and legitimacy;

WEREAS, the City hopes to improve public access to civilian complaint data in a form most accessible to the general public without compromising confidentiality of the parties involved and hindering or otherwise impeding the operations and resources of the Philadelphia Police Department;

WHEREAS, the prompt response to, effective investigation of, and impartial resolution of civilian complaints of police misconduct are essential to the trust that society places in its police;

WHEREAS, numerous complaints of police misconduct have been made by civilians against some members of the Philadelphia Police Department;

WHEREAS, it is the intention of this Executive Order to preserve the autonomy of the Police Commissioner's exercise of duties, while mandating procedures equitable to both civilians and police personnel for resolving civilian complaints of police misconduct.

NOW THEREFORE, by the power vested in me in accordance with Section 3-100(h) of the Philadelphia Home Rule Charter, the following amended guidelines for the processing of complaints of police misconduct by members of the Philadelphia Police Department, and the study, review, and disposition of said complaints, are hereby ordered.

SECTION 1. CIVILIAN COMPLAINTS

- a. All civilian complaints against a police officer ("CCR") shall be received, investigated, and disposed of in accordance with the procedures set forth herein, and complainants shall be notified of actions taken by the Police Commissioner.
- b. A CCR shall be distinguishable from an independent internal investigation initiated from within the Department. For purposes of this Order, a CCR and the subsequent investigation shall only include those complaints originated by one or more civilians, whereby the Department has not otherwise initiated an independent internal investigation. In the event a CCR, or portion thereof, is or becomes the subject of a separate internal investigation, the CCR shall be merged into the internal investigation and shall be classified as an internal investigation and the complainant shall be notified.
- c. Copies of complaint forms entitled "Civilian's Complaint Report," published in English, Spanish, Chinese, Vietnamese, and other language versions as shall be necessary to provide broad and inclusive access to this complaint procedure, shall be made available via the Philadelphia Police Department website and supplied in sufficient quantities to all police districts and units, the Philadelphia Commission on Human Relations, the Police Advisory Commission, (each a "receiving agency"), the District Attorney's Office, and any community-based organization upon request. Complainants may submit completed forms to any of these offices or agencies.

Each of the receiving agencies shall maintain a control log to track the number of forms provided to complainants and collected, as set forth in subsection d of this Section 1. The District Attorney's office is requested to maintain such records as it deems necessary of such CCRs. Interpreters and persons with needed literacy skills shall be made available, as provided in Philadelphia Police Directive No. 7.7 regarding access to police services for individuals with limited English language proficiency, as needed, throughout the complaint and investigation process. Such persons shall not be sworn currently employed police officers.

- d. The CCR form shall contain a statement to the effect that the filing of a complaint will not necessarily result in a criminal investigation, but that an Internal Police Investigation will be initiated. The CCR form shall also include the address and telephone number of the Internal Affairs Division, and a summary of the procedures and timetable established by this Order for the conduct of investigations and notification to the complainant. Each complainant shall receive a copy of the CCR at the time it is filed with the receiving agency. Not later than twenty-four (24) hours after the CCR is filed with the receiving agency, the said agency shall send a copy of the CCR to the Police Department (if received by an agency outside the Department) and to the District Attorney's Office. If a CCR is received by the District Attorney's Office, that office is requested to forward it promptly to the Police Department.

The control log maintained by the receiving agency shall show the name of the complainant (except in the case of anonymous CCRs), the date and time the CCR form was received from the complainant, and whether the complainant left the form with the receiving agency to be officially filed. The log shall not show the name, badge number, or other descriptive information relating to any police officer(s) complained of. The Police Department shall keep a master file of all forms received and the offices or agencies from which they were received. Such control logs and master list shall be available for viewing by the public, subject to redaction as provided in Section 11(a)(4).

- e. The Internal Affairs Division of the Police Department shall be designated as the central control agency for all cases of civilian complaints against members of the Police Department.
- f. Police Department personnel shall inform any person who wishes to make a complaint against a police officer of the existence of the formal complaint procedure established by this Executive Order and shall refer such persons to the various locations, including the nearest location, where the CCR may be obtained and filed.
 - 1. Police Department personnel shall accept anonymous CCRs and in such cases shall follow the procedures in Section 3 of this Order.
 - 2. Police Department personnel shall provide a CCR to anyone requesting such forms, without requesting or requiring identification.
 - 3. When dealing with a possible complainant, Police Department personnel shall maintain a professional demeanor and take no actions to intimidate, coerce or otherwise dissuade a complainant from submitting a CCR.
- g. The Police Department shall promulgate specific procedures for the recording and processing of CCRs against members of the Police Department in accordance with this Executive Order by its effective date. The Police Department shall also prepare, publish and distribute CCRs in accordance with this Executive Order by its effective date.

SECTION 2. PROCEDURES FOR THE INVESTIGATION OF COMPLAINTS

- a. All CCRs concerning police misconduct which are filed shall be received, investigated, and disposed of in accordance with the procedures set forth in this Section 2, except as provided in Sections 4 (relating to Complaints Lacking Any Merit), 5 (relating to Traffic or Parking Citation Complaints), 6 (relating to Right to Know Complaints), 7 (relating to Verbal Abuse or Lack of Service Complaints) and 8 (relating to Priority of Criminal Investigations) of this Executive Order.
- b. Upon receipt of the CCR, the Commanding Officer of Internal Affairs shall promptly assign it for investigation to a member of Internal Affairs, who shall be responsible for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable, carried out by the staff of Internal Affairs. The staff of Internal Affairs shall have direct responsibility for all such investigations. No such CCR shall be referred for investigation to the commanding officer of the police officer against whom the CCR has been lodged, or to any other officer of the same command; provided however, that Internal Affairs may refer certain verbal abuse or lack of service complaints to the Inspector of the unit to which the accused officer is attached, where appropriate pursuant to Section 7 hereof. Internal Affairs shall monitor and review such investigations and, where necessary, take appropriate action.
- c. The investigation of the CCR by Internal Affairs shall include, but not be limited to, the following:
 - 1. Interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the CCR form:
 - 2. Interviews with the police officer(s) against whom the CCR is lodged and all

- other police officers witnessing or involved in the alleged incident;
3. Interviews with all other witnesses to the alleged incident who become known to the investigating officer as a result of the investigation:
 4. Examination of the scene of the alleged incident, when appropriate:
 5. Viewing, analysis, and preservation of any and all evidence submitted by the complainant or witnesses or otherwise discovered during the investigation including, but not limited to, photographs, video recordings, medical records, and any reports of property damage:
 6. The gathering of all pertinent Police Department forms, analyses, technical reports, laboratory results, tapes and transcripts of telephone calls, and radio transmissions;
 7. If a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigative file compiled by the Police Department and/or the District Attorney's Office in connection with such criminal complaint, when available;
 8. Such other investigative steps as may appear appropriate in the discretion of the assigned investigator, whose responsibility it shall be to record each step in the investigation and the result thereof in an Investigation Report.
- d. The assigned investigator shall attempt to secure written statements from all participants in, and witnesses to, the alleged incident, but where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide a summary of the oral statement, if any, provided by such participant or witness. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making the statement with a copy.
 - e. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.
 - f. All investigations shall be completed by Internal Affairs and the Investigation Report prepared within ninety (90) days from the date of filing of the CCR, except for extenuating circumstances stated in the Investigation Report and approved by the Police Commissioner or the Commanding Officer of Internal Affairs. The Investigation Report shall include the written recommendation of the investigator regarding the validity of the CCR.
 - g. Within thirty (30) days of the completion of an investigation, the ranking officer of Internal Affairs shall review the Investigation Report and upon giving approval thereof forward the Investigation Report, the entire investigation file and the ranking officer's written conclusion as to the occurrence and nature of the misconduct, if any, to the Police Commissioner. If the Investigation Report is disapproved by the ranking officer of Internal Affairs it will be revised accordingly and resubmitted to such ranking officer until it receives approval.
 - h. If extenuating circumstances necessitate an extension of time, the complainant (as well as the accused police officer) shall be notified of this fact and the reason therefor.

SECTION 3. ANONYMOUS COMPLAINTS

- a. When a member of the Police Department is approached by a complainant wishing to make an anonymous complaint concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant that it is in the best interest of a full and complete investigation for the complainant to be identified and interviewed by the assigned investigator.
- b. If the anonymous complainant nevertheless wishes to remain anonymous, the individual receiving the complaint shall attempt to elicit all facts which the complainant can provide and shall record and process the CCR pursuant to Section 2 hereof, to the extent possible.

SECTION 4. COMPLAINTS LACKING ANY MERIT

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), disclose no improper behavior on part of the police officer against whom the CCR is lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant and to the alleged victim of the misconduct (if other than the complainant), or to the representative designated in the CCR.

SECTION 5. TRAFFIC OR PARKING CITATION COMPLAINTS

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a CCR concerns the issuance of a traffic or parking citation, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct, disclose no improper behavior on the part of the officer against whom the CCR was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant with instructions that the proper procedure to dispute a traffic or parking violation is to appeal the citation to the appropriate forum as indicated on the complainant's copy of the citation. If any improper behavior on part of the police officer is disclosed, the CCR will be investigated according to Section 2 of this Executive Order.

SECTION 6. RIGHT-TO-KNOW COMPLAINTS (65 P.S. § 67.101, *et seq.*)

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a CCR concerns the denial of or the delay in responding to a Right-to-Know request authorized under Pennsylvania law, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant, disclose no improper behavior on the part of the officer against whom the CCR was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant with instructions that the proper procedure to appeal Right-to-Know disputes is to appeal the Philadelphia Police Department's response, or lack thereof, to the appropriate forum as indicated in the Pennsylvania Right-to-Know Law, 65 P.S. § 67.1101. If any improper behavior on part of the police officer is disclosed, the CCR will be investigated according to Section 2 of this Executive Order.

SECTION 7. VERBAL ABUSE OR LACK OF SERVICE COMPLAINTS

- a. If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), would constitute verbal abuse or lack of service only, and that it is the "first complaint" of such conduct against the officer(s) named, the ranking officer of the Internal Affairs Division shall refer the CCR to the Inspector of the officer against whom the CCR was lodged.

The goal of the Inspector's investigation shall be to remedy the actual or perceived offensive behavior of the police officer against whom a CCR has been lodged in the most efficient and prompt manner possible. To accomplish this goal, the Police Department shall be prohibited from taking any formal disciplinary action against a police officer for the "first complaint" received for verbal abuse or lack of service in a two (2) year period.

- b. For purposes of this Order, the assigned Internal Affairs investigator shall determine the "first complaint" status by reviewing the Internal Affairs history of the officer during the two (2) years prior to the date of current CCR. If an officer has any CCRs alleging verbal abuse or lack of service during this time period, the current CCR shall be deemed a second or subsequent complaint and shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

Prior to the execution of this Executive Order, the Police Department has implemented appropriate policies and procedures to ensure that officers subject to allegations of verbal abuse or lack of service receive an in-depth review and such advice, instructions and other useful feedback regarding the complaint as will enable them to avoid similar complaints in the future.

- c. The procedures for disposition of such "first complaints" shall be the following:
 1. Upon receipt of a CCR from the ranking officer of the Internal Affairs Division, the Inspector of the police officer against whom the CCR was lodged shall contact and interview the complainant, and the complainant's witnesses, if possible, to confirm the facts of the case.
 - i. If the Inspector determines in the initial investigation that any aspect of the CCR exceeds the scope of verbal abuse or lack of service, the CCR shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order. Additionally, if upon review the Inspector determines that the CCR states a claim of verbal abuse or lack of service motivated by animus based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability or gender identity, the CCR shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order.
 2. The Inspector shall schedule a meeting with the police officer, his or her commanding officer and any other persons the Inspector deems necessary, to discuss the facts of the CCR. At such meeting the officer will be able to convey his or her version of the incident.

3. At the conclusion of the meeting, the Inspector shall provide the officer with his or her opinion of the incident and the alleged conduct of the police officer. The Inspector shall then offer his or her advice, instructions and other useful feedback regarding the CCR and the officer's actual or perceived behavior, demeanor or conduct, so as to assist the officer in avoiding any similar CCRs in the future.
 4. The complainant shall be notified in writing that a meeting was held with the police officer against whom the CCR was lodged, at which the officer's conduct was discussed, and the case will be closed out.
- d. Second or subsequent CCRs alleging verbal abuse or lack of service against the same officer within the two (2) year period following the date of the complaint amounting to verbal abuse or lack of service as set forth above shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

SECTION 8. PRIORITY OF CRIMINAL INVESTIGATIONS

- a. In the event that the complainant or alleged victim of police misconduct (if other than the complainant) has been arrested and charged with a criminal offense or offenses based upon the events on which the CCR is founded, the investigation and disposition of the CCR shall conform to the procedures established in this Order. However, the complainant or the alleged victim of police misconduct may elect not to give a written or oral statement either to the assigned investigator or before the Police Board of Inquiry, or both, until final disposition, including appeal, of all such criminal charges. In the event of such an election, the investigation shall remain open until such criminal charges have reached a final disposition, including appeal, and a new opportunity has been given to the complainant or alleged victim to make such a statement.
- b. In the event that a prosecutorial agency notifies the Police Commissioner that the officer who is the subject of the CCR is under criminal investigation for the offense complained of in the CCR, or in the event that a police officer is arrested for the offense complained of in the CCR, the investigation and disposition of the CCR shall conform to the procedures established by this Order. Where criminal charges are not resolved or the criminal investigation is not complete prior to the Commissioner or his appointed delegate's final determination of the CCR, the Commissioner shall reevaluate such final determination within fifteen (15) days of the resolution of the criminal charges or the closing of the criminal investigation. A criminal investigation shall be deemed closed upon written notice from the prosecutorial agency. The Commissioner may affirm, modify or reverse the prior determination in light of the outcome of the criminal charges or criminal investigation, or may reopen the departmental investigation which shall conform to the procedures set forth in this Executive Order. A brief statement by the Commissioner supporting the decision upon reevaluation shall be transmitted to the complainant or alleged victim of police misconduct (if other than the complainant), in the manner prescribed by Section 9(d) hereof.
- c. If the initiation or completion of an investigation is delayed due to possible or pending criminal charges as detailed in Sections 8(a) or (b) hereof, the time period mandated by this Executive Order for the completion and disposition of the investigation may be extended for the period of the delay.

SECTION 9. REVIEW AND DISPOSITION OF COMPLAINTS

Except for those CCRs handled solely pursuant to the provisions of Sections 4 (relating to Complaints Lacking Any Merit), 5 (relating to Traffic or Parking Citation Complaints), 6 (relating to Right to Know Complaints), or 7 (relating to Verbal Abuse or Lack of Service Complaints), and not the provisions of Section 2, upon receipt of the file and the findings and conclusions of the ranking officer of the Internal Affairs Division, the Police Commissioner or a Deputy Commissioner assigned by the Commissioner shall review the entire file and determine the appropriate disposition of the CCR in accordance with the following provisions:

a. Criminal Misconduct.

In every case in which the Commissioner or his appointed delegate determines that there are reasonable grounds to believe that misconduct rising to the level of a crime has occurred, without regard to any person's credibility, the Commissioner shall refer the matter to the District Attorney or the U.S. Attorney for consideration and prosecution unless prosecution has been previously initiated. Whether misconduct rises to the level of a crime shall be determined by reference to the Pennsylvania Crimes Code, Federal criminal statutes, and or regulations. Regardless of whether the District Attorney or U.S. Attorney initiates or declines prosecution, the Commissioner or his appointed delegate shall impose such sanctions as the Commissioner deems appropriate.

b. Non-Criminal Misconduct.

In every case in which the Police Commissioner or his appointed delegate determines that there are no reasonable grounds to believe that misconduct rising to the level of a crime has occurred, the Commissioner shall, in his discretion, (i) make a finding that noncriminal misconduct has occurred, and impose such sanctions as the Commissioner shall deem appropriate; (ii) refer the CCR to the Police Board of Inquiry for a hearing; or (iii) make a finding that no misconduct has occurred and close the file.

c. Disciplinary Action.

In every case in which the Police Commissioner or his appointed delegate determines that misconduct has occurred, the Commissioner shall impose sanctions which are commensurate with the seriousness of the misconduct, taking into account the prior history of the officer in question. Sanctions shall range from a reprimand to dismissal from service.

d. Notice

The disposition of the CCR, including any disciplinary action, shall be communicated in writing, by certified mail, to the officer against whom the CCR was lodged, the complainant and the alleged victim of police misconduct (if other than the complainant), or such person's representative as may be designated in the CCR; and a copy shall be delivered to the District Attorney's Office. The notification shall inform the person to whom it is given that the entire file is available for review, subject to redaction in accordance with Section 11(a)(4).

e. Except for extenuating circumstances stated in the file, the determination of the Police Commissioner and the notice prescribed in Section 9(d) shall be made within forty-five (45) days from the receipt of the file by the Police Commissioner.

- f. In those instances in which the Police Commissioner determines that no misconduct has occurred, the notice to the complainant and the alleged victim (if other than the complainant) shall include a summary of the investigative findings and the reason for the Police Commissioner's actions.

SECTION 10. THE POLICE BOARD OF INQUIRY

- a. Upon referral by the Commissioner of a CCR to the Police Board of Inquiry (the "Board") for hearing, the following procedures shall apply:

The Board shall schedule a hearing to be held at the earliest possible date, but not to exceed ninety (90) days from the referral of the CCR ("Civilian Complaint Hearing"). Not less than thirty (30) days' written notice of the time and place of the hearing shall be given by certified mail, return receipt requested, to the complainant and the alleged victim of police misconduct (if other than the complainant) or to his or her attorney or other representative designated in the CCR: to material witnesses identified in the investigation; to the police officer or employee charged with misconduct; and to all witnesses and participants whom the Commissioner or the Board believes may be helpful in resolving the question before the Board.

- b. The Board may grant a continuance of the scheduled hearing only upon written request by a member of the Board or the Department Advocate. If a continuance is granted, the hearing will be rescheduled to be held at the earliest date possible but not to exceed thirty (30) days from the date of the first scheduled hearing, and notice shall be given to the accused officer or employee and any witnesses by certified mail, return receipt requested.
- c. Hearings shall be informal and strict rules of evidence shall not apply. The assigned investigator and any officer or employee against whom charges have been placed shall attend. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the CCR. Any accused Police Department officer or employee may be represented by counsel or other representative and shall have the right to present evidence and to examine and cross examine witnesses. An audio recording and transcript of the hearing shall be made. For those hearings that are open to the public, such transcripts shall be made available to the public upon request and payment of cost. All Civilian Complaint Hearings, shall be open to the public provided that hearings that involve minor victims or allegations of sexual misconduct shall not be open to the public unless a public hearing is requested by the victim in writing. If the victim is a minor, the hearing shall not be open to the public unless the written consent of a parent with legal custody or the minor's legal guardian is also provided.
- d. The Board shall forward to the Police Commissioner or to the Commissioner's appointed delegate written findings of ultimate facts based on all of the evidence presented at the hearing. If the Board finds that a police officer engaged in misconduct, it shall also make a recommendation for disciplinary action against the police officer. If the Board finds that misconduct rising to the level of a crime has occurred, determined by reference to the Pennsylvania Crimes Code, federal statutes or regulations, it shall refer the matter to the District Attorney or the U.S. Attorney for consideration of prosecution, unless prosecution has been previously initiated. A copy of the Board's findings and recommendations, if any, shall be kept on file by the Department Advocate.
- e. Upon consideration of the Board's findings and recommendation, if any, the Police Commissioner shall make a final determination of the CCR, which, together with a brief statement of reasons in support of or in disagreement with the findings and recommendations of the Board, shall be transmitted to the appropriate parties, in the manner provided by Section 9(d) hereof.

SECTION 11. PUBLIC ACCESS TO AND MAINTENANCE OF RECORDS

Records relating to or resulting in criminal investigations and records relating to a non-criminal investigation are exempt from public disclosure pursuant to the Pennsylvania Right to Know Law (65 P.S. §67.708(16) and (17)). Therefore, public access to and maintenance of these records shall be governed by this Order.

- a. General procedure following the disposition of a CCR.
 1. Redacted copies, as defined in subparagraph 4 below, of the complete investigation, the written findings and recommendations of the Board, if any, and the Police Commissioner's final determination shall be given by certified mail, return receipt requested, or other such manner as requested, to the Complainant or authorized representative, and victim if other than the complainant, within forty-five (45) days of the Police Commissioner's final determination.
 2. To ensure openness and transparency, on a monthly basis, the Police Department shall post on the Department's website the relevant identifying information, classifications and outcomes in a format consistent with the Open Data Philly Initiative. This posting shall include a brief narrative of the complaint, investigation, investigative outcome, Police Board of Inquiry determinations. Relevant identifying information shall include district, complaint classification, finding, and reference numbers, and any other information determined by the Commissioner or his designee to be appropriate, but no portion of the posting shall include information removed from redacted copies of CCR records pursuant to subparagraph 4 below. All information posted on the Department's website shall be maintained on the website for a period of five (5) years beyond the calendar year of the disposition of the CCR.
 3. The officer against whom CCR is lodged shall receive notification of the outcome of any CCR and upon request will be provided an entire, completed CCR investigative file.
 4. For purposes of this Order, a "redacted copy" of any record is a record whereby certain personal information, medical/treatment information, and information that would compromise public safety or officer safety has been obscured, masked, or otherwise concealed from view. Such information shall include, but is not limited to, the following information:

A. Personal Information Redactions:

1. First and last names of complainants, witnesses, victims and Police Officers, except for initials.
2. Other names that could be used to identify witness or officers.
3. Unique information which could identify a witness or officer.
4. Home addresses or other specific non-business addresses.
5. License plate numbers and vehicle identification numbers.
6. Social Security Numbers.
7. Driver's license numbers.
8. Certified mail numbers.
9. Actual birth dates (age is acceptable).
10. District Control numbers.
11. Property receipt numbers.
12. Warrant numbers
13. Ticket or citation numbers.
14. Firearms serial numbers.

B. Public/Police Officer Safety Information Redactions:

1. Undercover and otherwise sensitive officer assignments.
2. Police Department assigned vehicle numbers, license numbers and vehicle identification numbers (VIN).
3. Officer payroll numbers.
4. Officer shift hours.
5. Location or lack of surveillance cameras in an area.
6. Information regarding police tactics that would endanger officer or public safety if released.
7. Any other portion of the investigative file that the Police Commissioner determines must be kept confidential in order to protect the integrity of the investigative process.

C. Medical, psychiatric and other confidential information.

In order to protect the privacy interest of all parties involved in the investigations, records or information obtained in the course of an investigation which would operate to prejudice or impair a person's reputation or security shall not be included in the investigative report or made available to the complainant or public under this section. Such information includes but is not limited to the following:

1. Medical information.
2. Psychiatric information
3. Drug and alcohol treatment information
4. Information supplied to police with the express expectation of confidentiality or anonymity.
5. Any other portion of an investigative file that the Police Commissioner determines must be kept confidential in order to protect the integrity of the investigative process.

b. Procedures when a CCR is being reviewed by any prosecutorial agency.

1. The Police Department shall provide a copy of the entire, completed civilian's complainant investigative file to any local, state or federal prosecutorial agency within seventy-two (72) hours following receipt of a written request from the agency.

- a. Ongoing Investigations

- During the investigation of any CCR and upon receipt of a written request from any local, state or federal prosecutorial agency, the assigned police department investigator shall provide to the prosecutorial agency any requested information within twenty-four (24) hours after receipt of the request.

1. If the incident which is subject of the CCR has resulted in a criminal investigation conducted by a prosecutorial agency or a criminal prosecution for any of the parties, the record of the complaint shall not be posted on the Departmental website until such time as the criminal charges have been resolved by verdict in the trial court or the prosecutorial agencies involved in the investigation have notified the Police Commissioner that the criminal investigation is closed. However, upon request, records will be provided to any other prosecutorial agency, the police officer against whom the CCR is lodged, the complainant, and the victim, if other than the complainant.

- c. Procedures involving anonymous CCRs.

- The records of anonymous CCRs received pursuant to Section 3(b) above, including those for which an investigation has found no corroboration of the complainant's version of the facts shall be posted on the Departmental website as described in Section 11(a)(2) above. However, records will be provided, upon request, to the complainant, if later identified, and the victim, if other than the complainant, pursuant to Section 11(a)(1).

- d. Procedures involving verbal abuse or lack of service CCRs.

- The records of "first complaints" of verbal abuse or lack of service received pursuant to Section 7 shall be posted on the Departmental website as described in Section 11(a)(2) above and the disposition shall be recorded as "Officer Counseled."

- e. A copy of the final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved, together with the findings and recommendations of the Board, if any. In those instances in which a CCR is terminated prior to a hearing, a copy of the CCR and final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved.

SECTION 12. The procedures provided in this Executive Order shall be in addition to and not in derogation of:

- a. The procedures provided for preservation of the rights of police officers pursuant to the Civil Service Regulations of the City of Philadelphia; and
 - b. The responsibility of the Police Department to investigate crimes or refer cases to the proper authorities.

SECTION 13. If any section of this Order is declared to be unconstitutional or illegal, the remaining sections shall remain valid and unaffected.

SECTION 14. Executive Order No. 7-11 is hereby rescinded.

SECTION 15. This Executive Order shall be effective in sixty (60) days, provided that all preparatory steps, including those set forth in Section 1(f), shall begin immediately.

8/1/17
DATE

James F. Kenney
JAMES F. KENNEY, MAYOR