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September 28, 2020

Danielle Outlaw  
Police Commissioner  
Philadelphia Police Department  
750 Race Street  
Philadelphia, Pennsylvania 19106

**Re: Use of Force Review Board**

Dear Commissioner Outlaw:

We are nearing one year since the last Use of Force Review Board (UFRB) convened, which occurred on October 1, 2019. The next UFRB hearing was scheduled for December 3, 2019 and contained 11 officer discharge investigations that were completed and ready for review. Unfortunately, that hearing was cancelled and never rescheduled. Currently, the PAC estimates that there are approximately 22-25 completed investigations that have not been scheduled for a force review.

PPD Directive 10.4 directs the procedure for UFRB. It states that “all completed police shooting investigations and appropriate Use of Force investigations will be referred to the UFRB”. This Directive also mandates that “the Chairperson will convene the UFRB, at least quarterly, for the purpose of reviewing the investigative reports on each case”. As such, the PPD is currently not in compliance with the requirements of Directive 10.4.

The PAC was also made aware that an Internal Affairs investigator, who is the primary investigator on approximately 15 officer involved shootings that have yet to be reviewed, is set to retire later this year. As a member of the board, we believe every effort should be made to allow this person the opportunity to present his investigations, many of which are complex, so the most informed individual can be made available to the board.

As you may or may not be aware, the PAC, on several occasions, objected to the amount of notice offered regarding hearings. Between 2017 and 2019, the PAC has on occasion been offered 2 days’ notice to review cases for UFRB and in some especially egregious cases, had cases added to UFRB hours before the hearing. This includes 2 fatal shootings being added to the agenda of the June 5, 2018 UFRB. The files for these cases were delivered late in the afternoon on June 4, 2018. As a result, the PAC’s review was compromised. This pattern continued through 2019 where the PAC was delivered a packet of 11 cases on 11/27/19 (the day before Thanksgiving) which were set to be reviewed at UFRB on December 3, 2019.

Additionally, PPD's public officer involved shooting (OIS) database<sup>1</sup>, which only reflects firearm discharges against people, has not updated UFRB decisions for several years. Discharges that have occurred since 2016 are reflected as "Pending" for the UFRB Determination. These determinations are necessary to ensure transparency regarding the UFRB process. A PAC report submitted to PPD last year, *Philadelphia Police Department Canine Encounters*, recommended for PPD to include all intentional firearm discharges on the OIS website.<sup>2</sup> Then Commissioner Richard Ross disagreed with this recommendation, explaining the purpose of the OIS website, he stated:

"The current PPD website regarding Officer Involved Shooting (OIS) was implemented to improve transparency and accountability to the public. This was a reform that was implemented as a result of the voluntary collaboration with the United States Department of Justice. The current format for the OIS web page was discussed and debated at length with the Department of Justice."

The United States Department of Justice completed a six-month review of this agreement and the report, *The Collaborative Reform Initiative: Six-Month Assessment Report on the Philadelphia Police Department*,<sup>3</sup> referenced the maintenance of the OIS website. Most importantly, in Recommendation 45.2 the DOJ stated: "The PPD should update its website as case files are closed and available for public dissemination. The PPD should update the information on OISs more frequently than quarterly (its current practice)." Additionally, the DOJ recommended in 45.3 that "the PPD should publish a redacted version of the DAO's declination letter, all subsequent internal review files and outcomes (i.e., administrative investigation, UFRB, police board of inquiry (PBI), and arbitration hearing) should also be posted on the website. This transparency will demonstrate to the public what internal accountability mechanisms are in place in the PPD and the outcomes of those processes". Overall, the report highlights the necessity to be transparent regarding officer use of force, a sentiment that the PAC shares.

Finally, via email, on Dec 2, 2019 Acting Commissioner Coulter stated "*We [the PPD] are proposing in the upcoming contract negotiations to combine the UFRB with the PBI.*" It is unclear if this remains a part of the proposal. However, currently the convening of this board is the only opportunity for civilian input into the discharge of firearms; the most serious action a police officer can take. Eliminating the UFRB would also eliminate civilian input and transparency into these cases and would move the PPD away from reforms it committed to after the 2015 DOJ collaborative reform.

Due to the concerns expressed in this memo, the PAC recommends:

- 1. The December 2019 UFRB hearing agenda should be rescheduled and convened immediately.**
- 2. UFRB hearings should be scheduled timely and in compliance with PPD Directive 10.4.**
- 3. Completed discharge investigations should be forwarded to the PAC at their completion so the PAC may review and prepare for UFRB hearings. Regardless of**

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<sup>1</sup> <https://www.phillypolice.com/ois>

<sup>2</sup> <https://www.phila.gov/media/20190626120415/PAC-report-on-canine-with-PPD-response.pdf>

<sup>3</sup> <https://www.phillypolice.com/assets/directives/cops-w0792-pub.pdf>

when the investigation is completed at least 10 days' notice should be provided to all board members for review.

4. To comply with the Collaborative Reform Initiative, the OIS website should be updated, more than quarterly, with UFRB determinations and District Attorney's actions documented.
5. Pursuant to recommendation 5 in the PAC's canine encounter report, the PAC recommends that the PPD include summaries and data concerning all intentional firearm discharges on the OIS website.
6. Continue the use of the UFRB and infuse elements of sentinel event reviews as opposed to solely determinations of Policy violations.<sup>4</sup>
7. Currently 4 of the 5 members of the UFRB are PPD Deputy Commissioners. The PPD should consider including other civilians in this process.

The PAC looks forward to working with PPD and in achieving our joint goal to increase transparency regarding officer involved shootings.



Hans Menos  
Executive Director  
Police Advisory Commission

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<sup>4</sup> <https://nij.ojp.gov/topics/articles/sentinel-events-initiative>



## CITY OF PHILADELPHIA

**Police Department**  
HEADQUARTERS, FRANKLIN SQUARE  
PHILADELPHIA, PENNSYLVANIA

**DANIELLE M. OUTLAW**  
Commissioner

11-10-2020

Anthony Erace  
Executive Director  
Police Advisory Commission  
1515 Arch Street, 11<sup>th</sup> Floor  
Philadelphia, PA 19107

Re: PAC Use of Force Review Board Response Letter

Dear Director Erace:

Commissioner Outlaw has requested that I respond to you on her behalf regarding the Police Advisory Commission's ("PAC") Use of Force Review Board recommendations. In the atmosphere of transparency and renewed collaboration with PAC, the PPD always welcomes your recommendations along with professional and positive discourse. While the PPD may not always agree with every recommendation put forward, we value and respect the process that has been created between our agencies to openly debate and discuss issues with the goal of continuously improving the PPD and the quality of services we provide to the citizens we serve.

This said, please allow me to respond to each of your recommendations.

*PAC Recommendation No. 1*

*The December 2019 UFRB hearing agenda should be rescheduled and convened immediately.*

The PPD agrees with this recommendation and will reschedule as soon as possible. It is important to note, that since the Collaborative Reform measures were implemented in 2015, the number of police shootings has declined substantially. As such, the convening of UFRB Hearings was evaluated on a month-to-month basis depending upon the whether there was a sufficient number of shooting cases to warrant convening a hearing. Hearings were being convened once a number of cases were available to be reviewed.

As such, the December 2019 hearing was delayed for this reason and after this point, the pandemic halted all in-person meetings, which served to only further the delay. While the number of officer involved shootings have declined substantially, the review and assessment of deadly force incidents remains a priority with the goal to always seek ways to make further reductions. Officer involved shootings are clearly not the norm, but rather an exception and must be reviewed in a timely manner, regardless of the conditions. Therefore, we will schedule this hearing as soon as possible and ensure that future UFRB Hearings are held at least quarterly, which is consistent with Directive 10-4.

*PAC Recommendation No. 2*

*UFRB hearings should be scheduled timely and in compliance with PPD Directive 10.4.*

The PPD agrees with this recommendation as indicated above.

*PAC Recommendation No. 3*

*Completed discharge investigations should be forwarded to the PAC at their completion so the PAC may review and prepare for UFRB hearings. Regardless of when the investigation is completed at least 10 days' notice should be provided to all board members for review.*

The PPD agrees that all UFRB Board members should have ample time to review officer involved shooting files prior to any schedule hearing. The PPD will ensure that the PAC has such files no less than ten (10) days prior to any UFRB Hearing.

*PAC Recommendation No. 4.*

*To comply with the Collaborative Reform Initiative, the OIS website should be updated, more than quarterly, with UFRB determinations and District Attorney's actions documented.*

The PPD agrees with this recommendation. The current delay is the result of a transition within the Executive Team, but will be addressed as soon as possible.

*PAC Recommendation No 5.*

*Pursuant to recommendation 5 in the PAC's canine encounter report, the PAC recommends that the PPD include summaries and data concerning all intentional firearm discharges on the OIS website.*

The PPD agrees with this recommendation and will begin to include intentional shooting at canines into its Officer Involved Shooting Website.

*PAC Recommendation No. 6*

*Continue the use of the UFRB and infuse elements of sentinel event reviews as opposed to solely determinations of Policy violations.*

The notion of reviewing the totality of the circumstances surrounding an officer involved shooting was embedding in the Collaborative Reform Recommendations and fully embraced by the PPD. The UFRB now reviews all the facts and circumstances of each officer involved shooting, not just whether, at a single moment in time, the officer was compliant with policy. We now review everything from the justification of the initial encounter, the strategy, tactics, use of cover and concealment and the availability of alternative uses of force are reviewed and will continue to be reviewed.

*PAC Recommendation No. 7.*

*Currently 4 of the 5 members of the UFRB are PPD Deputy Commissioners. The PPD should consider including other civilians in this process.*

The modification of UFRB and Directive 10.4 accordingly, is likely to be considered a matter affecting the terms and conditions of employment by our officers and subject to negotiation with the Fraternal Order of Police. Nonetheless, the PPD is willing to discuss this recommendation further to identify potential civilian candidates to add to the UFRB.

In closing, as I mentioned, we value and respect the process that has been created between our agencies to openly debate and discuss issues with the goal of continuously improving the PPD and the quality of services we provide to the citizens we serve. So, thank you for the recommendations you have provided regarding the UFRB and we look forward to future discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Healy".

Francis Healy Esq.

Special Advisor to the Commissioner