



## **Community Oversight is the Road to Police Accountability for North Carolina**

In North Carolina, law enforcement operates under a shroud of secrecy with far less democratic accountability than our other public institutions. Civilian Oversight Bodies (sometimes referred to as Civilian Review Boards or “CRBs”) in North Carolina are limited in power under current state law. Police departments are able to control the Oversight Bodies’ access to the data, evidence, witnesses, and personnel files that they need for meaningful oversight.

**A first step:** The General Assembly should pass legislation permitting localities to establish Civilian Oversight Bodies. Localities should be able to give these bodies subpoena power to compel the production of documents and witnesses, allowing them to gather, analyze, and review information; produce public reports; and to make informed recommendations related to policing issues of significant public interest. Localities should also be able to empower these bodies to make the final decision on disciplining officers in certain cases.

### **What is meaningful civilian oversight?**

**A FIRST STEP** Oversight is an important first step toward police accountability and transparency in our communities.

#### **PROACTIVE**

- Not just reviewing misconduct complaints.
- Can include independent analysis of police data related to Use of Force, Stop-and-Frisk, or other procedures; financial auditing and recommendations; review of policies and proposals to address systemic issues; and more.

#### **INDEPENDENT**

Must be independent authorities, not subsidiaries of the police departments they oversee.

#### **INDIVIDUALIZED**

- for each locality based on specific needs of the community.
- This requires broad (not prescriptive) enabling legislation for each municipality to establish a board that meets their unique needs.



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### **COMMUNITY-DRIVEN**

Oversight should be conducted—in part or in whole—by the people most impacted by policing in their communities.

### **EMPOWERED**

- Subpoena (witnesses) and subpoena duces tecum (documents) authority.
- The statewide repeal of laws that prevent public access to police records on discipline and other matters of public concern.
- Final disciplinary and/or decision-making authority.

### **TRANSPARENT**

All meetings and reports should be public, and all operations should be transparent.

### **AN INVESTMENT IN OUR COMMUNITIES**

Financial and administrative support (as requested by the individual oversight body) by municipalities is critical to the success of police oversight.

### **AN ITERATIVE PROCESS**

Meaningful civilian oversight faces numerous hurdles in Virginia due to the overwhelming protections law enforcement officers have, including statutory procedural guarantees when faced with discipline or firing that no other public official enjoys, qualified immunity, and more. Oversight will change as these landscapes change.



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## Pitfalls to Avoid

### **OVERSIGHT IS NOT A ONE-STEP SOLUTION FOR ALL POLICING ISSUES OVERSIGHT IS NOT SOLELY A REACTIVE “CIVILIAN REVIEW BOARD”**

“Civilian Review Board” indicates that the only power an Oversight Body has is to “review” individual complaints. It leaves out the ability independently investigate (rather than relying on the police department’s records) and to engage in work focused on systemic problems.

### **OVERSIGHT IS NOT CHOSEN OR HOUSED BY POLICE DEPARTMENTS**

- Appointees should not be chosen by the Chief of Police.
- Oversight bodies should be independent of the Police Department in all ways.

### **OVERSIGHT IS NOT A STATEWIDE BODY**

A statewide CRB overseeing all law enforcement agencies in the Carolina’s would defy best practices identified by the National Association of Civilian Oversight of Law Enforcement (“NACOLE”).

### **OVERSIGHT IS NOT DONE FROM THE TOP-DOWN**

Localities should be encouraged and empowered to create strict CRB membership criteria based on the history and patterns of local policing to ensure that communities most impacted by policing are represented.

### **OVERSIGHT IS NOT PERFORMATIVE**

North Carolina laws already afford extraordinary protections to law enforcement officers and conceal extensive information regarding their work from the public. Civilian oversight bodies must be given real power or

else they risk being performative political statements with no actual “teeth” or power.

### **OVERSIGHT IS NOT SECRETIVE**

This is a public-facing process and all efforts should be made by the Legislature and localities to ensure that policing matters are able to be discussed in public settings.

### **OVERSIGHT IS NOT SOLELY VOLUNTEER-BASED**

Staff can and should be able to be hired by localities, with statewide, grant-based, and/or local financial support.

### **OVERSIGHT IS NOT A QUICK FIX**

Community-Police distrust is not new. We are at a critical moment in Carolina’s history and, as Civilian Oversight Bodies become more widespread, additional statewide legislative pushes may be needed to ensure meaningful oversight and community legitimacy of the oversight process presented.

### **DISCIPLINARY SANCTIONS FOR FAILURE TO COOPERATE**

Law enforcement agencies that are subject to civilian oversight should establish policies outlining the role of their civilian oversight agency, processes and procedures for cooperation, and the duty of officers and staff subject to oversight to cooperate with an oversight agency’s requests. Failing to cooperate should be subject to discipline similar to the type of discipline imposed for failing to cooperate with an internal investigation.



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## NC Personnel Files for law 160A-168

- Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed, and no criminal action taken, or until the criminal action is concluded.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action,

reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk and is a record available for public inspection and shall become part of the employee's personnel file.

### **Pro Se Subpoena for personnel records G.S. 1A-1, Rule 45 - North Carolina General Assembly**

Pro Se can request records of law enforcement personnel files along with an evidence or findings for their specific case.

- Pro Se can give all findings and personnel records to the City or County Citizens Review Complaint process. This can be publicized to the

Civilian Police Oversight Authority with Citizen Review Board not for public display.

- Citizen Review Board Members should sign nondisclosure agreement, confidentiality and conflict of interest agreement forms prior to selection process.



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## Case Study NC COA10-1516

719 S.E.2d 54

In re RELEASE OF the SILK PLANT FOREST CITIZEN REVIEW COMMITTEE'S REPORT AND APPENDICES, Petitioner,  
v.

Michael N. BARKER, Richard E. Best, Robert G. Cozart, John Grismer, Bryan L. Macy, Michael C. Rowe, Michael L. Sharpe, Michael Poe, Randy Patterson, Randy N. Weavil, Lonnie M. Maines, Mary McNaught, et. al., Respondents.

No. COA10–1516.

Court of Appeals of North Carolina.

Oct. 4, 2011.

Appeal by respondents from order entered 4 March 2010 by Judge Richard W. Stone in Forsyth County Superior Court. Heard in the Court of Appeals 17 August 2011. Alan A. Andrews, Winston Salem, for petitioner-appellee. The McGuinness Law Firm, Elizabethtown, by J. Michael McGuinness, for respondents-appellants. HUNTER, ROBERT C., Judge. Respondent police officers (“the officers” or “respondents”) appeal from the trial court's 4 March 2010 order granting the City of Winston–Salem's (“the City”) petition for disclosure of transcripts contained in respondents' personnel files.<sup>1</sup> Respondents argue on appeal that: (1) the trial court erred in granting the petition pursuant to N.C. Gen.Stat. § 160A–168(c)(4) (2009), and (2) disclosure of the transcripts would violate respondents' privacy and liberty interests guaranteed under the 9th and 14th Amendments of the United States Constitution and Article I, Sections 1, 19, 35, and 36 of the North Carolina Constitution. After careful review, we reverse the trial court's order.

This Court has never directly addressed the scope of the trial court's authority to allow examination of confidential personnel files pursuant to N.C. Gen.Stat. § 160A–168(c)(4), and the statute itself is silent as to the extent of the trial court's authority. Consequently, the primary issue before us is whether the legislature intended to grant the trial court the authority to release portions of a city employee's confidential personnel file to the general public pursuant to N.C. Gen.Stat. § 160A–168(c)(4).<sup>6</sup> We hold that the trial court was not granted such authority under the statute. “Questions of statutory interpretation are questions of law, reviewed de novo on appeal.” *State v. West*, 202 N.C.App. 479, 486, 689 S.E.2d 216, 221 (2010). The plain language of N.C. Gen.Stat. § 160A–168(c)(4)

allows, by order of the trial court, “examination” by “any person” the relevant “portion” of a city employee's personnel file. The natural meaning of these terms indicates a clear intent to maintain the privacy of a city employee's personnel file except under limited circumstances where examination of only the relevant portion of the file is allowed. The key term in this subsection is “any person.” The legislature did not use the term “general public” or even the word “people.” We must presume that the legislature chose “any person” as a limiting mechanism. While we do not read the term “any person” so narrowly as to mean only one individual, we do not read it so broadly as to mean the general public. Certainly, there are circumstances when justice requires that an individual, or perhaps a group of individuals sharing a common goal, be permitted to examine a relevant portion of a city employee's personnel file, but a wholesale publication of even a portion of the file would be contrary to the legislative intent behind N.C. Gen.Stat. § 160A–168(c)(4). Had the legislature intended to grant the trial court the authority to release these protected records to the general public, it would have done so in specific terms, or at least in terms that would render such an interpretation logical. Rather, the legislature chose to grant the trial court *limited authority* to allow “any person” to “examine” a relevant “portion” of the file.



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