



February 20, 2023

Honorable Christian Dorsey, Chair  
Arlington County Board  
2100 Clarendon Boulevard, Suite 300  
Arlington, VA 22201

**Re: Law Enforcement Community Oversight Board Memorandum of Understanding**

Dear Chair Christian Dorsey:

We understand that discussions concerning the Memorandum of Understanding contemplated by the Law Enforcement Community Oversight Board ordinance, §69-2(c), have raised the question whether internal ACPD investigations prompted by non-public complaints or reports are covered by the ordinance and its information access provisions. We thought it would be useful for you and the participants in those discussions to know this Chapter's long-held views on that subject.

First, the PPG Civilian Review Board Subcommittee majority recommended that the independent policing auditor (IPA) and the COB "should be invested with investigative and subpoena authority, as allowed by Virginia's enabling statute." PPG Rep. at 21. The enabling statute authorized COB investigations not just of civilian complaints, but also of all "incidents, including the use of force by a law enforcement officer, death, or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees of a law enforcement agency serving under the authority of the locality." §9.1-601(C)(3). The sweeping scope of this authority drew no exception for internal investigations stemming from non-public complaints, and we would not have agreed with any.

Were there any doubt, moreover, the enabling statute goes on to expressly authorize civilian oversight boards "to review *all investigations conducted internally by law-enforcement agencies* serving under the authority of the locality, including *internal investigations* of civilians employed by law-enforcement agencies, and to issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations." §9.1-601(C)(5) (emphasis added). Thus, the enabling statute and the PPG's recommendation indisputably approve IPA and COB authority with respect to such internal investigations.

Second, the compromise reached by the County Board in approving the ordinance placed independent investigative authority in the first instance in the IPA, not in the COB, subject to review by the COB. That compromise did not divest the IPA of the authority to participate in internal investigations stemming from non-public complaints.

Third, the draft ordinance circulated by the County Manager on May 13, 2021, barred IPA and COB access to “files related to an active *internal investigation* by the County Police Department.” §69-8(c)(ii). We and Arlington for Justice strongly objected to this limitation in our letter to the County Board June 10, 2021, and our attached markup fulfilled the promise of “full access” by the COB to information it needs to conduct its investigations by “removing a battery of unnecessary limitations,” *including the limitation on access to internal investigations*. Joint letter from NAACP Branch #7047 and Arlington for Justice to Arlington County Board, June 10, 2021. The markup expressly referenced the IPA and COB’s authority to investigate not just “complaints,” but also “incidents,” whatever their source, and referred collectively to the authority as “incident investigation.”

Fourth, the final adopted ordinance dropped any exception for “internal investigations,” §69-8(b), thus entitled the IPA access to the same. But it also described access to records related to the “review of public complaints.” If this was intended to limit the IPA/COB’s investigative authority, it was not a limitation ever intended or understood by us, nor one that is remotely consistent with the express authority enabled by the enabling statute.

Furthermore, the adopted ordinance also provides that the IPA “may participate in the County Police Department’s administrative investigation of officer misconduct performed by the County Police Department after the close of the active investigation outlined in 69-8(c) . . . .” §69-9(c)(ii). However, the cross-referenced §69-8(c) of the draft ordinance the County Manager circulated on May 13, 2021, was *deleted* from the final ordinance, including the limitation on the IPA’s access to “internal investigations” as we noted above. Correcting as best we can for this erroneous cross-reference in the adopted ordinance, we believe that it preserves the IPA’s authority to participate in the ACPD’s internal investigation of officer misconduct, no matter how that misconduct is brought to the Department’s attention.

Finally, there is no dispute that the IPA has full authority to conduct the “independent review of County Police Department current and proposed policing practices, rules, policies, procedures, directive and outcomes and present findings of such reviews and any resulting recommendations to the Oversight Board.” §69-12(c). The IPA may therefore conduct independent review of the ACPD’s internal investigative practices and procedures, which necessarily includes review of any practice or incident identified in a non-public complaint or incident. For example, the *ACPD Directive Manual* itself requires that “allegations of biased based policing or discriminatory practices and other significant misconduct will be investigated by the Office of Professional Responsibility (OPR),” and indeed shall be included in the OPR Commander’s “annual administrative review . . . identity[ing] cases where [bias profiling] has occurred,” as well as in the Commander’s memorandum to the Chief. *ACPD Directive Manual* §531.06(III)(c)(1) & (3). Significantly, the sources of this review are not limited to citizen complaints, but includes “other communications received by the ACPD related to this topic,” which self-evidently include internal communications. *Id.*

Any assertion that the ordinance does not apply to internal investigations stemming from any source—whether public or non-public—is therefore insupportable, and certainly contrary to the community’s intent and understanding. A recent project funded by the Department of Justice “reaffirmed that Internal Affairs serves two communities—law enforcement and the general

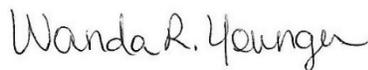
public—and Internal Affairs is essential in building and maintaining mutual trust and respect between agencies and the public.” *Standards and Guidelines For Internal Affairs: Recommendations from a Community of Practice* 11 (2005). ACPD internal investigations—whatever their source—are no less essential in building that mutual trust and respect.

Simply stated, *it makes no sense to exempt internal investigations in a broad-based, community supported initiative aimed at building trust between the ACPD and the community that it serves.* The pending Memorandum of Understanding should therefore recognize the IPA’s independent authority to participate in and review these investigations. If the language of the adopted ordinance leaves any ambiguity in this respect, we urge you to amend it forthwith to remove that ambiguity in order to give the IPA and COB the full breadth of authority that the community believes they need.

Sincerely,



Michael Hemminger  
President, NAACP Arlington Branch



Wanda Younger  
Branch Secretary

cc: Members of the County Board  
Mark Schwartz, County Manager  
Mummi Ibrahim, Independent Policing Auditor  
NAACP Arlington Branch Executive Committee & Members