



February 14, 2023

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Oakland Police Commission

Oakland City Hall

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RE: February 15, 2023 Discipline Committee Hearing

Good Morning Commissioners and Alternate Commissioners,

I am sending this letter on behalf of the Coalition for Police Accountability and hope you accept it as our well intentioned offer to assist the Police Commission with respect to its mandate under Oakland City Charter Section 604.

Let me start by saying that holding a Discipline Committee meeting on Wednesday, February 15, 2023 will create harm to the Police Commission, the Community Police Review Agency, and the Office of the Inspector General. The Commission will lose the confidence of both the community and the Federal Court if it pursues an ill advised and illegitimate function. The Commission is not an investigative body; it may adjudicate under certain instances only.

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We are concerned that you have been given erroneous legal advice based on a misinterpretation of the following provision of Oakland City Charter section 604 (g) 5.:

“On its own motion and by no fewer than five (5) affirmative votes, the Commission may convene a Discipline Committee for cases involving allegations of Level 1 use of force, sexual misconduct and untruthfulness when either the Agency or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which either the Department or the Agency bases its findings does not include available body-worn camera footage of the incident under investigation, or when body-worn camera footage of the incident was required under Department policy but such footage was not recorded or was otherwise unavailable. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation.”

Under the above Charter section there are three instances where the Police Commission “may convene a Discipline Committee.” It appears that none of the conditions have been met, i.e. (1) “... when either the Agency or the Department have not completed an investigation within two hundred and fifty days (250) of the filing of a complaint...” The second and third instances do not apply as they deal with “body-worn camera footage” which does not apply in this case.

The Police Commission is not an Investigative Body.

The Police Commissioners are adjudicators not investigators. Investigating is the role of CPRA. If you convene the Discipline Commission, you are acting as investigators and usurping the role of CPRA. Section 604 (f) is for investigators, i.e. CPRA. If the Commission had the authority to investigate what would be the role of CPRA which has hired investigators. The eligibility to become a Police Commissioner does not require investigator skills or training.

The Commission’s Legal Counsel Failed To Subpoena Records Which Would Give Rise to an Investigation by CPRA.

The Commission’s legal counsel failed to obtain all of the relevant documents that were provided to the Dyer law firm. Had the law firm subpoenaed the records, the Commission would have been in the position to enable CPRA to discharge their

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duties. Having failed to obtain those records, does not give the Commission the authority to act as investigators. If the Commission acts as investigators, it is subjecting itself to legal challenge. The Police Commission has no authority under the Charter to investigate.

There was no investigation by CPRA.

For the reason stated above, CPRA was unable to investigate this matter. Had an investigation been done and CPRA's findings conflicted with OPD's, then the Commission could convene a Discipline Committee. As is how stands, the Commission cannot make a decision with only one set of findings. CPRA has not done so and the Charter does not authorize the Commission to substitute the outside investigator's findings for those of the CPRA.

Convening a Discipline Committee Under These Facts Will Set Bad Precedent

Convening a discipline committee under these circumstances... namely, without having the findings of both CPRA *and* the police department's findings... will set a precedent that will do irreparable harm to the ability of the Police Commission to function in the future. It will open the door to any officer who has been placed on administrative leave to demand a Commission discipline hearing in lieu of following the process described in the City Charter, which provides that there be parallel investigations conducted by CPRA and OPD in specified classes of misconduct allegations.

The Record is Incomplete.

At the moment, additional allegations of misconduct have developed since the Dyer report was released. The Commission does not have information or evidence regarding these additional allegations and therefore should not exercise any authority with respect to the disposition required in this matter. The Mayor as well as the Federal Court Monitor are in possession of this evidence that the Commission lacks and they are best positioned to reach a determination about the matter.

Repercussions of Convening the Discipline Committee

Were the Commission to proceed with convening the Discipline Committee it may well lose the confidence of the community as well as the Federal Court and the Court Monitor.

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One of the conditions necessary for the Court to vacate the Negotiated Settlement Agreement (NSA) is the confidence of the Court that the Police Commission, with its ancillary departments (the Community Police Review Agency and the Office of the Inspector General) will be able to successfully oversee the Oakland Police Department and hold it accountable once the NSA is vacated.

Should the Commission decide not to cancel the proposed Discipline Committee meeting on Wednesday, February 15, we believe that any decision in this matter without being able to rely on its own investigative report from CPRA, will give reason to doubt that the Commission is capable of discharging its responsibilities under the Charter equitably and professionally.

It will be difficult, if not impossible, to restore credibility to the Commission or its findings in the future, making it probable that its future disciplinary decisions will be reversed on appeal.

Conclusion

For the above reasons, we respectfully request that you vote to cancel the convening of the Discipline Committee scheduled for February 15, 2023. Should you decide to proceed with the Discipline Committee, the only finding you can make would be "no reportable actions."

Again, our only wish is to see the Police Commission and each of you as Commissioners succeed. Thank you for your consideration in this regard.

In Solidarity,

Cathy Leonard

Member, Board of Trustees

Member, Steering Committee

Coalition for Police Accountability

<https://www.coalitionforpoliceaccountability.com/>

cc via email:

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