

MEMORANDUM

DATE: September 7, 2022

TO: BALTIMORE POLICE DEPARTMENT
UNITED STATES DEPARTMENT OF JUSTICE

FROM: BALTIMORE POLICE CONSENT DECREE MONITORING TEAM

RE: INTERIM REVIEW OF PUBLIC INTEGRITY BUREAU MISCONDUCT INVESTIGATIONS

In 2020, the Monitoring Team (“MT”) conducted a Preliminary Baseline Assessment of 2018 cases handled at the time by the Baltimore Police Department’s (“BPD” or “the Department”) Office of Professional Responsibility (“OPR”), which is now called the Public Integrity Bureau (“PIB”) to establish a baseline with respect to the quality of the Department’s misconduct investigations. The MT assessed investigations across measures of fairness, thoroughness, comprehensiveness, and timeliness, and the Consent Decree’s requirements pertaining to all. Pursuant to the Fifth-Year Monitoring Plan, the MT will conduct a comprehensive compliance assessment in the coming months. In advance of that full compliance assessment, the MT recently completed an interim review of PIB misconduct investigations.

The review presented in this memorandum was conducted largely in response to (1) the critical systems overhaul at the PIB, which included the development of a comprehensive PIB Internal Operations and Training Manual, governing policies for all aspects of PIB operations, and (2) a five-day, in-class training that was delivered to all 68 PIB investigators between April 19 and May 5, 2021, in two sessions. The training’s 13 modules covered intake and classification, developing an investigative plan, conducting investigations, preparation of reports, review of investigations, legal requirements, collaboration with the Civilian Review Board (“CRB”), and administrative hearings.

This assessment provides a snapshot of the direction in which PIB is trending, both relative to the baseline assessment and following the implementation of the new systems described. However, compliance determinations will be held for the more robust, forthcoming compliance assessment.

I. SUMMARY OF BASELINE

In the Preliminary Baseline Assessment, filed with the Court in 2020, the MT reviewed a sample of 241 of the 1,372 OPR investigations initiated in 2018. Reviews were completed using a structured, qualitative assessment instrument designed by the MT and approved by the Parties. In conducting the baseline assessment, the MT determined, among other things:

- The overall quality of BPD’s process for investigating and making findings in misconduct investigations remains in need of significant improvement.
- The condition of misconduct case files was poor.
- The quality of classification and intake of complaints was poor.
- Allegations of excessive force, unlawful search and seizure, First Amendment violations, and criminal acts were rare and typically well-investigated.
- Communication with complainants was poor overall.
- Communication with employees was likewise poor.
- Cases were inefficiently managed, which resulted in consistently missed timelines and wasted efforts on minor cases.
- Other performance issues surfacing during the investigation, such as repetitive problematic behavior, training issues, or the need to explore policy revisions, were rarely considered.
- Investigators frequently failed to interview complainants and other necessary witnesses.
- Across misconduct investigations, complainant injuries were uncommon.¹

For the interim review, MT subject matter experts reviewed and scored PIB investigations using the same qualitative instrument from the assessment of 2018 cases. The instrument attempts to capture the relevant Consent Decree requirements for PIB investigations and generally-accepted best investigative practices.

II. INTERIM REVIEW SAMPLE

The MT conducted a limited review of cases received and completed between May 1 and December 3, 2021, the period after the delivery of the comprehensive training on investigations for PIB personnel. Of the 193 investigations that were initiated and completed within this timeframe, 64 were Expedited Resolution of Minor Misconduct (“ERMM”) cases, which is an accelerated resolution process for select minor misconduct cases. Because ERMM cases do not have a full investigative process, they were excluded from the sample. Of the remaining 129 cases, 68 were randomly selected and assigned to MT members for review.

Although the MT is confident that this sample is a sufficient size to capture a large degree of the variation in PIB cases and investigations within this time frame, the sample of 68 cases reviewed is *not* a statistically representative sample of *all* cases investigated by PIB because it is limited to those cases that were completed within a roughly seven-month period between May 1 and December 3. Furthermore, because the sample is limited to those cases that were both received and completed after training had been delivered, cases involving lengthier investigations and less common charges were less likely to be included.

¹ Monitoring Team Preliminary Baseline Assessment of 2018 OPR Investigations at 2-4.

In particular, cases involving allegations of ethical violations and excessive force may take longer to investigate and complete. Only one case received and completed after May 2021 involved an allegation of excessive force and only one was classified as an ethics case. In contrast, there were 26 ethics cases and 23 cases involving allegations of excessive force within the set of cases completed after May 2021, when date received was not restricted. As such, the MT included the five most recent ethics and excessive force cases in the sample to ensure that those substantive areas were represented.

As the full, upcoming compliance assessment will occur several months after this interim review, the MT anticipates being able to evaluate a larger, statistically representative sample of all PIB investigation types at that time.

Interim Review Sample Composition

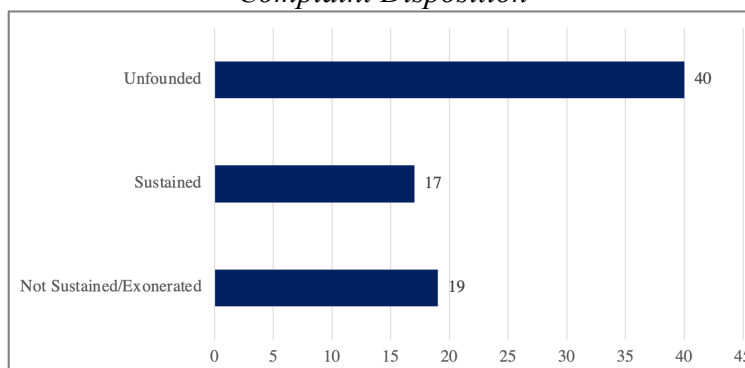
Case category	Total	Sample
PIB cases received/completed post May 2021	129	68
Use of Force cases completed post May 2021	23	5
Ethics cases completed post May 2021	26	5
		78

Of the 68 randomly selected cases, 28 were generated from internal complaints and 40 from external complaints. This ratio of internal to external complaints reflects what was observed in the broader population within this timeframe, in which 49 of the 128 total cases were the result of internal complaints, and 79 originated from external complaints. BPD reports that external cases often require additional investigative steps, which should be considered when interpreting results.

Of the ethics complaints, two were reported internally, one externally, and two anonymously. Of the force complaints, two were reported internally, and three externally. Of the 78 total cases, six resulted in a criminal investigation of one or more BPD members. Complaints received externally or anonymously across all three case types were communicated by phone, including the Crime Stoppers hotline (n=22), web or electronically (n=10), in a non-BPD city building (n=7), in a BPD District or office (n=3), or by postal mail (n=2).

Three-quarters of the complaints were ultimately determined to be unfounded, were not sustained, or the subject was exonerated. Additionally, despite filtering out cases that were identified as ERMM in IAPro during the sample selection process, reviewers determined that two of the internal complaint cases were in fact resolved through the expedited process. As a result, they have been excluded from the analysis that follows, reducing the total sample size analyzed from 78 to 76.

Complaint Disposition



III. RESULTS

The Consent Decree requires that misconduct investigations be objective, comprehensive, and timely (§ 329). Reviewers rated the overall quality of the investigations on a five-point scale, using a defined set of criteria. As is true throughout this interim assessment, the instrument and criteria applied here mirror what was used in the 2018 baseline review.

1 – Poor: All or nearly all aspects of the investigation could be improved. The investigation failed to establish sufficient information to support an evidence-based evaluation of the incident due to investigative deficiencies, material omissions, or other issues.

2 – Fair: Several aspects of the investigation could be improved. Identified flaws materially impacted the quality of the overall investigation, and the resulting file provided insufficient information to evaluate the incident.

3 – Good: Although some aspects of the investigation could be improved, the identified flaws did not appear to materially or unduly impact the quality of the overall investigation. The resulting investigation provided sufficient information to evaluate the incident but could be improved.

4 – Very Good: The investigation complied with most Consent Decree requirements and BPD protocols and investigators made reasonable attempts to follow all leads and answer all material questions.

5 – Excellent: The investigation complied with all Consent Decree requirements and BPD protocols, and investigators made reasonable attempts to follow all leads and answer all material questions. The investigation was fair, thorough, objective, and timely.

Reviewers rated the quality of the investigations much higher when assessing the 2021 sample (average score of 4.2), than the 2018 sample (average score of 2.7). However, due to the limitations of the current sample, discussed earlier, any cross-year comparisons should be made with caution; we will only conclude that there appears to be a positive trend in the overall quality

of cases assessed. A more direct scoring comparison with the baseline data will be reserved for the forthcoming comprehensive compliance assessment, in which the sample will be more representative and appropriate for that level of analysis.

When reviewing specific elements within each PIB investigation and case file within the sample of the interim review, some of the issues highlighted in the baseline assessment appear to have improved. For example, and as described in greater detail in the pages that follow, the majority of cases reviewed were completed in a timely manner and were accurately classified. However, in other areas, such as communication with employees, complainants, and witnesses, it appears there is still room for improvement, particularly with regard to clear, consistent documentation.

MT reviewers scored the 66 full investigations slightly higher than the subset of cases involving ethics and force complaints. The primary sample of 66 cases, which excluded the 2 ERMM cases, had an average investigation quality score of 4.3, whereas the 5 ethics complaint cases averaged 3.6, and the 5 force complaints cases had an average score of 3.8.

A. Timeliness

Within the first 72 hours of PIB being notified, the initial classification determination was made for 92% (n=70) of the 76 full investigations; this includes all 5 ethics complaint cases, and 3 of the 5 excessive force cases. The complaint was assigned to a PIB investigator within 72 hours of PIB being notified of the allegation of misconduct in 79% (n=61) of the cases, including 4 of the 5 ethics cases, and 3 of the 5 force complaints. Slightly more than three-quarters (n=58) of the 76 full investigations reviewed were completed within 90 days of the investigation's initiation, including 4 of the 5 ethics cases, and 3 of the 5 force complaints.

B. External Complainant Notification, Communication, and Interviews

In total, the sample included 34 external complaints that were not submitted anonymously. In most of those cases (82.4%, n=28), a written notice of receipt was provided to the complainant within seven days of PIB receiving the complaint. From what reviewers could discern, updates were provided inconsistently across cases. (*See Appendix Table 1.*)

External complainants were interviewed in slightly more than one half of the cases (61.8%, n=21). In many of the cases in which an interview did not occur, there was documentation to reflect that the complainant was contacted but did not respond, or that the complainant did not wish to pursue the complaint further. (*See Appendix Table 2.*)

Reviewers found that in most of these cases reasonable steps were taken to gather evidence and documents in a timely manner (85.3%, n=29), though reviewers indicated that there was an appropriate focus on retrieving perishable items in less than half of cases (47.1%, n=16).

C. Communication with Involved Officer(s)/Employee(s)

In their assessments of cases in which a BPD member was named or identified during the investigation (n=59), reviewers found documentation of timely notification of involved employees (89.8%, n=53) and the supervisors of officers under investigation, occurred in the majority of cases (83.1%, n=49). However, in 5 cases in which the BPD member was named or identified, reviewers found that there was not timely notification of employees, and in 4 of these same cases reviewers found there was not timely notification of supervisors. (*See Appendix Table 3.*)

Reviewers identified numerous instances in which the notification forms provided in the PIB case file were blank, standard forms that did not provide any information regarding who the notices were given to, or what the allegations were. Documentation across cases was inconsistent and made it difficult for reviewers to be certain whether individuals were ever notified. For example, in three of the cases reviewed:

- A task sheet indicated that 5-day and 30-day letters were automatically created and sent, but there was no copy of the letters in the file;
- An officer was brought in for an interview, but there was no documentation of the notification in the file; and
- Case documentation did not include a notification, and the officer was never formally interviewed because they were exonerated by body worn camera; it is therefore unknown whether the officer was ever notified.

That said, one reviewer highlighted a case in which the officers were not identified by the complainant, and the investigators “made a valiant attempt to identify who the officers may be,” by checking CAD, rosters, and watching body worn camera videos. They noted that each of these efforts was documented.

D. Investigation Quality

Reviewers found that, in all 76 cases, appropriate allegations and relevant policy/manual sections were identified and listed, and the most serious policy violation was appropriately used for classification purposes. Additionally, nearly all investigative reports (96.1%, n=73) included a narrative with description of the incident and evidence that either justified or failed to justify the officer’s conduct based on the investigator’s independent review of the facts and circumstances of the incident. When relevant, most investigative reports typically included sufficient documentation of evidence gathered, witness contact (or lack thereof), and interviews with BPD employees. However, audio, video, and/or transcripts of witness interviews were missing in one-third of case files when applicable. (*See Appendix Table 4.*)

Reviewers identified weapons as being used or involved in five incidents. However, only one of the five corresponding files included documentation indicating that officer's certification and training for weapon were current.

Evaluations of the incident within the investigative report were found to be of mixed quality. Reviewers found most cases included credibility determinations about statements that were based on independent, unbiased, and credible evidence. However, there were numerous instances in which reviewers found that all relevant officer activity was not fully investigated and evaluated (n=8 of 53 relevant cases), and in which there was not sufficient documentation of whether additional training, counseling, or intervention was recommended (n=12 of 20 relevant cases). (See *Appendix Table 5.*)

Below is a select set of examples of issues that Monitoring Team reviewers identified in some of the investigations evaluated:

- *During the interview of an officer an allegation was made that his sergeant retaliated against him for filing a complaint with Human Resources. It is not clear if PIB initiated an investigation into that matter.*
- *The case gave the appearance that no investigation was done (i.e., surveillance, employee interview) to determine if the sergeant was leaving his post. The incident was handled by simply transferring him out of the unit. This is not procedural justice for the employee if he was innocent of the allegation, nor was it accountability for the employee or the agency if he was not.*
- *The incident was VERY thoroughly researched and documented, as was the original use of force case that led to the internal complaint. However, the sergeant failed to call for medical treatment for obvious injuries sustained by the subject during the use of force, even though the subject requested this be done. Instead, the sergeant requested medics to respond to the substation while they were still out at the scene, which is contrary to policy. It is intimated that this was done because of a crowd gathering at the location, and while this may be a good justification, it was never really expounded upon in the investigation. Additionally, in recognition of the policy violation, the sergeant was given non-punitive counselling for the infraction, yet the final disposition for that allegation was Not Sustained. Even more alarming is that the intentional transport of the combative subject in a wagon without being restrained was also Not Sustained.*
- *Case was closed as unfounded yet clearly there was a use of force by an officer in the mobile field force that resulted in an injury to the complainant. The allegation was given enough credibility that Academy staff was queried as to justification of the use of the shield, and they verified that based upon the evidence given, the use of the shield was appropriate. Even so, the involved officer should have reported the use of force at the end of the event. You cannot have a resolution of Unfounded when the allegation is*

Use of Force Reporting. It does not work to have the use of force report completed after the complaint is filed.

Amid the deficiencies highlighted above, reviewers still found that the investigators' recommended disposition met the required level of proof most of the time (88.2%, n=67).

Monitoring Team reviewers found that investigations were forwarded through the investigator's chain of command in a timely manner in most, but not all cases (84.2%, n=64). However, it was also noted that the administrative reviews did not typically consider patterns in officer behavior based on their disciplinary history, prior complaints in which allegations were not sustained, or officer training records. (See Appendix Table 6.)

While there remain areas for improvement, which will be central to the forthcoming compliance assessment, MT reviewers did also make note of some good practices identified during the course of the reviews. For example, feedback for some of the cases assessed included:

- *Well documented investigation with well done interviews. No leading questions asked and subject employees allowed to give their stories without any prompting.*
- *The investigator reviewed CAD records and hours of BWC video to try to find out who stopped the complainant. When he exhausted all leads he determined, appropriately, that the case should be not sustained rather than unfounded. Good documentation and communication with the complainant.*
- *Investigator was very professional and thorough in his actions. His demeanor was so good that complainant was very complimentary of his efforts and thanked him for not treating him in a "judging" manner. All reports were gathered and all BWC reviewed and documented. Items were located and complainant was instructed how to retrieve them after judicial proceedings were completed.*

E. CONCLUSION

This purpose of this interim review was to provide a benchmark assessment for how BPD is trending, following the critical systems overhaul within PIB, to include the training and the implementation of the PIB Investigator manual. This interim review was also conducted at a time when staffing was higher than in 2018, resulting in, generally, a lower caseload per investigator. Overall, Monitoring Team reviewers indicated that PIB investigations have improved measurably in the time since the baseline assessment was conducted. That said, there remains room for improvement with regard to certain elements of case documentation, processes, and feedback mechanisms within the Department. The Monitoring Team anticipates exploring each of these areas in greater detail during the forthcoming compliance assessment.

Appendix

Table 1. Notification and Written Notice to Complainant (External complaints excluding anonymous complaints)

	Yes	No	Unable to Determine
Written notice of receipt within 7 days of PIB's receipt of a complaint? (n=34)	82.4% 28	14.7% 5	2.9% 1
PIB mail or email periodic updates to complainant on status of complaint/investigation? (n=34)	61.8% 21	8.8% 3	29.4% 10
Communications with complainant professional and respectful? (n=34)	85.3% 29		14.7% 5
Did receipt include tracking number, other relevant case numbers, and allegations being investigated? (n=28)	100% 28		
Did notice inform complainant how he/she may inquire about complaint status? (n=28)	96.4% 27		3.6% 1
Did notice contain any language that could reasonably be construed as discouraging participation in the investigation? (n=28)		100% 28	

Table 2. Complainant Interview (External complaints excluding anonymous complaints, n=34)

	Yes	No	Unable to Determine
Complainant interviewed?	61.8% 21	35.3% 12	2.9% 1
Interviews occurred at time/place convenient and accessible for witness?	61.8% 21	17.6% 6	20.6% 7
Permission requested to record interview?	38.2% 13	23.5% 8	38.2% 13
Interview video-recorded?	47.1% 16	32.4% 11	20.6% 7
Interview audio-recorded?	52.9% 18	17.6% 6	29.4% 10
Was there a request or apparent need for translation or accommodation?		82.4% 28	17.6% 6
Was there an injury?	5.9% 2	91.2% 31	2.9% 1
Were reasonable steps taken to gather evidence, documents in a timely manner?	85.3% 29	5.9% 2	8.8% 3
Was there appropriate focus on retrieving perishable items?	47.1% 16	29.4% 10	23.5% 8
Were all contacts logged?	82.4% 28		17.6% 6
Was complainant interview thorough and unbiased?	61.8% 21	11.8% 4	26.5% 9

Table 3. Notification of Involved Officer(s)/Employees (All complaints in which BPD member was named, or identified through investigation)

	Yes	No	Unable to Determine
Timely notification to all involved employee(s)? (n=57)	89.8% 51	8.5% 5	1.7% 1
Timely notification to supervisor of officer(s) under investigation? (n=57)	83.1% 47	6.8% 4	10.2% 6
Officer's supervisor(s) facilitating officer's appearance documented in writing? (n=57)	50.8% 28	10.2% 6	39.0% 23
Did notice jeopardize the investigation? (n=51)		94.3% 48	5.7% 3
Did officer only receive notice prior to being formally interviewed by PIB, and not earlier? (n=51)	18.9% 10	60.4% 30	20.8% 11
Did notice comport with due process and the law? (n=51)	86.8% 44		13.2% 7
Did the notice contain the nature of the investigation? (n=51)	86.8% 44		13.2% 7
Did notice prohibit officers from speaking to witnesses/complainants, reviewing police reports, reviewing body camera footage, or taking other actions that could jeopardize the investigation? (n=51)	28.3% 15	43.4% 21	28.3% 15

Table 4. Investigative Report (n=76)

Did the investigative report provide:	Yes	No	N/A	Unable to Determine
Sufficient documentation of all evidence gathered (including names, phone numbers, addresses of witnesses, etc.)?	90.8% 69	3.9% 3	3.9% 3	1.3% 1
Sufficient documentation if no known witnesses?	42.1% 32	1.3% 1	56.6% 43	
Sufficient documentation of reason(s) why witnesses were unable to be identified or have contact information collected?	22.4% 17	6.6% 5	71.1% 54	
Sufficient documentation of identification of anyone who refused to provide a statement?	7.9% 6	3.9% 3	88.2% 67	
Sufficient documentation of whether officers/other BPD employees were interviewed?	65.8% 50	7.9% 6	26.3% 20	
Sufficient documentation of names of all other BPD employees who witnessed interviews?	28.9% 22	7.9% 6	60.5% 46	2.6% 2
Audio, video, and/or transcripts of all witness interviews included?	39.5% 30	19.7% 15	36.8% 28	3.9% 3

Table 5. Evaluation of the Incident in the Investigative Report (n=76)

	Yes	No	Not Applicable	Unable to Determine
Credibility determinations about statements based on independent, unbiased, and credible evidence?	69.7% 53	1.3% 1	26.3% 20	2.6% 2
Officer statements critically evaluated?	50.0% 38	3.9% 3	40.8% 31	5.3% 4
Past deception/untruthful statements by witnesses, complainants, officers taken into account?	10.5% 8	18.4% 14	61.8% 47	9.2% 7
Importance of evidence reasonably weighed?	75.0% 57	3.9% 3	18.4% 14	2.6% 2
Testimonial evidence reasonably weighed?	42.1% 32	1.3% 1	55.3% 42	1.3% 1
All relevant BPD officer activity in the incident and any evidence of potential misconduct uncovered, whether or not part of the original allegation, fully investigated and evaluated?	59.2% 45	10.5% 8	26.3% 20	3.9% 3
Sufficient documentation of recommendations for non-punitive action or misconduct charges?	40.8% 31	5.3% 4	53.9% 41	
Sufficient documentation of whether additional training, counseling, or intervention was recommended?	10.5% 8	15.8% 12	73.7% 56	

Table 6. Administrative Review of Completed Investigation (n=76)

	Yes	No	Not Applicable
Was completed investigation timely forwarded through investigator's chain of command to Director of PIB?	84.2% 64	14.5% 11	1.3% 1
Did review/findings consider patterns in officer behavior based on disciplinary history?	14.5% 11	60.5% 46	25.0% 19
Did review/findings consider prior complaints in which allegations were not sustained?	3.9% 3	65.8% 50	30.3% 23
Did review/findings consider officer training records?	9.2% 7	61.8% 47	28.9% 22
Was the disposition "closed" or "administratively closed" used?		97.4% 76	