

**Comments from the Maryland Office of the Public Defender
for Baltimore City
Recommendations to the Intake Chapter of the PIB Operations Manual
January 2020**

The Office of the Public Defender (OPD) provides these comments to the Public Integrity Bureau (PIB) Operations Manual, Intake Chapter. It builds upon our comments last September to the PIB Investigations Manual and our commitment to encouraging strong policies and practices to identify and address police misconduct.

The Intake Chapter primarily provides straightforward instructions for how the intake receipt process should occur. Our recommendations focus on areas where additional policy or clarification is needed to ensure that intake processes effectively encourage the lodging of complaints and the robust investigations needed to root out police abuse and misconduct.

Recommendation 1: Provide information on how anonymous complaints will be investigated.

The introductory section of the Intake Chapter states that all anonymous complaints “shall be accepted and investigated,” PIB Intake Chapter § I ¶ 3. but does not indicate how anonymous complaints will be handed or what communication should be provided to complainants who seek to remain anonymous. Clients have informed us that, when trying to lodge an anonymous complaint, they were told that without contact information for the investigator, their complaint would be dismissed. The process for handling these complaints, including how the process will be communicated to a complainant who seeks to remain anonymous, needs to be detailed.

Suggested action: Include a fuller provision on anonymous complaints that explains how they will be investigated, including a mechanism for the complainant to follow up directly with the assigned PIB investigator – and detail how the Intake Member should communicate this process to the complainant.

Recommendation 2: Detail special requirements when receiving complaints or statements from youth

The first section of the Intake Chapter also highlights the need to be “especially sensitive when receiving complaints or witness statements from youth.” PIB Intake Chapter § I ¶4. However, aside from referencing the Youth Interactions Policy – which has not yet been updated and focuses on custody issues, without detailed provisions on interviewing youth – there is no guidance for what care should be taken.

Our comments to draft Policy 1204, Youth Interrogations, highlighted the distinctions of youth that implicate interrogations. Many of these distinctions impact any interview, including a complaint intake. Are there different questioning techniques needed? Who can be present for the

interview? Will the fact of the complaint or the information provided potentially be shared with other law enforcement, child welfare, parents or schools? If so, what measures are in place to protect against retaliation? How are these possible disclosures communicated to the child before the complaint is lodged?

As discussed in Recommendations 4 and 6 below, our position on several of these issues is the same for youth as it is for adults: confidentiality and support should be prioritized so that complainants can be candid and supported, without the risk of retaliation. However, the considerations regarding children still require special attention. While we believe that information provided as part of a misconduct complaint should not be used for other law enforcement or school disciplinary purposes against the complainant or their family or associates, information regarding related to possible abuse or neglect must be reported, Family Law § 5-704. Parameters about what information may be shared, to whom, and how it should be shared, in light of retaliation and silencing concerns, should be detailed.

The potential sharing and uses of information must be effectively communicated at the start of the intake interview, so that the complainant is informed and trust is not compromised. For youth, this explanation must be simple, straightforward, and directly address the child welfare concerns that may require disclosure against the complainant's wishes.

Likewise, the intake interview must be developmentally-informed to encourage the sharing of information and the development of a trusting relationship. Care must be taken to avoid judgment of the child's behavior, recognizing that their physiological and cognitive immaturity may have resulted in poor decision-making and /or escalation of tension that is consistent with their neurological and psychosocial development and should have been accounted for by members with whom they interacted.

While we believe all complainants should be able to have a support person (unconnected to the incident) with them during the intake interview, see Recommendation 6, youth in particular should be able to have a trusted adult with them and access to an attorney. However, this should not result in automatic contact to a parent or guardian. A child's interaction with police need not be shared if it does not result in any law enforcement action against them – and doing so will decrease trust and candor during the investigation.

Suggested Action: Include a subsection in the policy detailing the special care and considerations to be taken when interviewing youth, including:

1. The confidentiality of the information provided, accounting for mandated reporting obligations.
2. How to explain the complaint process to a child, including the possibilities for disclosure of information provided beyond the PIB investigation.
3. Youth interviewing techniques for effectively gathering information from a child
4. The ability to have a lawyer, parent or other trusted individual present for the interview, if they so choose – as well as the right to not have their parent contacted.

Recommendation 3: Establish an alternative contact if the designated Intake Member has an actual or perceived conflict.

The Investigations Chapter, released for public comment back in the fall, included detailed provisions on how to identify and prevent conflicts of interest. Similar thought should be given to conflicts of interest in the intake process. The policy provides for one PIB Detective to be designated as the Intake Member at a time. Should that member identify a conflict – such as having previously been partnered with the complaint subject or having had prior law enforcement interaction with the complainant – the manual should make clear that another PIB Detective will take that complaint. Likewise, if the complainant requests to speak with another member to lodge their complaint, they should be able to do so as a matter of course.

Suggested action: Include a provision that states:

If the PIB Detective serving as the Intake Member has an actual or perceived conflict, due to a prior or current relationship or interaction with either the complainant or a member who is the subject of the complaint, another PIB Detective shall conduct the Intake Interview. Likewise, if a complainant asks to lodge their complaint with another PIB member, they shall be permitted to do so without inquiry into the nature of the conflict with the current PIB Intake Member.

Recommendation 4: Prohibit use of obtained digital materials for non-PIB purpose, or provide warning of risk prior to securing consent to view or copy

Intake Chapter § B.5 encourages the Intake Member to seek consent to view, receive, or copy digital materials, but the manual does not otherwise specify the extent to which that information will be shared or used for non-PIB purposes. Given the heightened need for trust between the complainant and PIB and the heightened risk of retaliation that comes from lodging a complaint with PIB, the Department should ensure that information obtained for a PIB investigation is not used against the complainant.

One of the ways in which the GTTF officers were able to continue their criminal activity and abuses for so long was by targeting individuals with a criminal history, knowing that they would be in a weakened situation to report wrongdoing and, even if they did report, were less likely to be believed. It is imperative that the BPD take measures to preclude a similar strategy by corrupt officers moving forward. Given the vast array of digital data available and easily obtained from a cell phone, a complainant deserves protections and assurance that their information will not be used against them or for other purposes for which they did not consent. Creating a clear firewall between PIB materials and other law enforcement will enable the BPD to be able to gain the trust of complainants and minimize the risk of retaliation

Regardless of whether a firewall is in place or not, complainants should be informed about the extent to which their information will be used and shared, as part of the process for seeking consent to obtain someone's cell phone or other materials. Such notice is important to gaining

community trust, encouraging cooperation with PIB investigations, and promoting a culture of transparency.

Suggested action: Create a firewall between PIB evidence and other law enforcement evidence, and require the Intake Member to explain how any information provided will be used and shared, by amending § B.5 as follows:

e. Digital materials and other evidence obtained from a complainant for the purpose of a PIB investigation shall not be shared within the Department for any other law enforcement purposes.

f. Prior to obtaining digital material or other forms of evidence from a complainant, the Intake Member shall explain how the information will be used and shared, including the extent to which it may be provided or disclosed to other Divisions in the Department

Recommendation 5: Clarify standard for supervisors to deviate from procedures

Intake Chapter § B.9 authorizes the PIB supervisor to deviate from the Manual's procedures, but provides no standards of justification for when a deviation is appropriate. This has the dangerous potential of making the protocols established meaningless, as a supervisor can unilaterally ignore them at any moment. The only acceptable reasons for the procedures to not be followed should be a safety or medical emergency. Such clarification is needed in the provision, along with a clearer documentation requirement.

Suggested action: Revise I.B.9 as follows:

If at any point a A PIB supervisor ~~notes a need to~~ may only deviate from the above or below procedures due to an immediate safety or medical need or a particularly time sensitive or serious matter impacting public safety. Whenever deviating from these procedures, the PIB supervisor ~~may deem it necessary to alter this procedure and make note will document~~ in the IAProc case file what alternative actions were taken and the basis for the deviation.

Recommendation 6: Allow an individual to have an attorney in their interview, and for youth to have a parent/guardian/trusted adult.

Individuals who have experienced misconduct or abuse by a police officer may not feel comfortable speaking privately with another BPD member, even if they are a member of PIB. They may also experience trauma or have other needs that require emotional support. The BPD should encourage people to feel safe and comfortable while lodging their complaint, including having a trusted support with them for the interview.

Suggested action: Amend I.C.2 as follows:

If there are multiple complainants or witnesses, the Intake Member shall attempt to interview each complainant or witness separately. **A complainant may have an attorney, family member, or other trusted individual with them for this interview, so long as that person is not also a complainant, witness, or otherwise connected to the complaint being lodged.**

Recommendation 7: Clarify that a PIB Detective is responsible for processing all complaints, including those made online, through email and by mail or other paper.

The General Intake Structure section (I.A) makes clear that a PIB Detective is responsible for telephone and in-person complaints, but places review of online, email, mail and other paper-based complaints more vaguely on the “Administrative Unit.” Every complaint should be reviewed and responded to by a PIB Detective.

Suggested action: Revise I.A.2 as follows:

In general, the Administrative Unit at PIB is responsible for receiving and processing complaints that are made online, through email, and by mail or other paper-based complaints. **Once received, all complaints will be reviewed and responded to by the Intake Member or another PIB Detective.** Complaints that are emailed to complaints@baltimorepolice.org or made through the online complaint form on the BPD’s website are received directly by the PIB Online Intake Member.

Recommendation 8: Require complaints received by mail to be responded to by letter

All sections of the policy provide for communication to the complainant, except for complaints received by mail. If the complainant provided contact information, they should receive a response with information similar to that provided to other complainants.

Suggested action: Add the following to §I.F:

4. If the letter complaint includes a mailing address, the Administrative Unit will mail to the complainant a letter response that documents the date the complaint was received and processed, the complaint number, and the contact information for the assigned Detective.

Provide a form letter for PIB staff to use in response to written complaints.