

**Comments from the Maryland Office of the Public Defender for Baltimore City  
Draft OPR/CRB Protocol for Complaint Intake & Classification  
January 2019**

The Office of the Public Defender (OPD) provides these comments to the Baltimore Police Department (BPD) on its draft OPR/CRB Protocol. Information sharing between the BPD and criminal justice stakeholders, such as the Civilian Review Board, is a critical component of the consent decree. Transparency, community collaboration, and external accountability measures are urgently needed to ensure constitutional compliance in police practices and for the BPD to regain community trust.

The memo accompanying the draft protocol highlights several issues that are still being resolved between BPD, CRB, DOJ and the Monitoring Team. While some are directly addressed in our comments below, our overall position is that the protocols, policies, and practices should always lean toward disclosure to the CRB and that there should be ongoing communication between BPD and CRB leadership to address disputes, to ensure that the CRB recommendations are taken seriously, and to discuss trends, patterns, or other systemic issues that may be identified.

Recommendation 1: Provide CRB with information about complaint and disciplinary history.

The draft protocol provides CRB with access to files for “cases that it is reviewing,” without any indication that CRB will have access to broader information that can help inform their recommendations. Complaint and disciplinary history, in order to put the current case in context, identify patterns, and make recommendations that are appropriate and consistent with graduated sanctions.

The memorandum accompanying the policy notes that this is an issue still being discussed, but suggests that it is Restricted Information in accordance with MD Gen. Prov. § 4-311(a). Whether by subpoena, a recognized exception to the MPIA limitation, or another mechanism, the BPD should work with CRB to ensure that they have all of the relevant information to conduct a meaningful investigation and review.

*Suggested action:* Recognizing the legal authority of the consent decree, the BPD should interpret the LEOBR and related laws narrowly, and, to the extent that a subpoena is required for the CRB to gather relevant history, establish as a matter of policy that it will not contest the subpoena.

Recommendation 2: Consistently make clear that all OPR action must be noted in the CRB IAPro Case File

The CRB IAPro Case Files are intended to duplicate the OPR case file, except for Restricted or Sensitive information. The Technology Access & Documentation Procedures (Section III(4)), on

page 4) only specifies the contacts between OPR and CRB that need to be noted in the IPro Case File. All OPR activities should be incorporated.

*Suggested language:* Add a new paragraph to Section III, between current paragraphs (4)(a) and (4)(b) as follows:

- b. New evidence or information in the OPR's investigative file, which must be entered into IPro, should also be entered into the parallel CRB IPro Case File.

Recommendation 3: Do not use criminal allegations as shorthand for Sensitive Information or Sensitive Cases or treat all allegations of criminal conduct as never available to CRB.

Criminal conduct is not outside the purview of CRB and the mere presence of allegations that may amount to criminal conduct does not mean that the information should never be shared with CRB. Rather, only during the course of any criminal investigation or proceedings is the complaint sensitive. If there is ultimately no criminal prosecution, CRB review is especially important and the sharing of such information should be consistent and clear.

*Suggested language:* Revise the Note on the bottom of page 4:

**NOTE:** If unrelated incidents were to come forward on the same complaint form, where one of the incidents is deemed to be Sensitive due to a ~~claims~~ criminal investigation or charges conduct but ~~the another~~ does not involve any sensitive information and ~~the non-criminal conduct~~ is under CRB's jurisdiction, BPD will separate these incidents into separate cases. The ~~criminal-conduct sensitive case~~ will be dealt with per the guidelines in Section VI below, and ~~the allegation of non-criminal conduct under CRB's jurisdiction would~~ the non-sensitive matter will be sent to CRB per the guidelines set forth in Section IV below.

In section IV(B)(3)(a) (page 6) revise the last sentence as follows:

The CRB IPro Case File will not contain Restricted or Sensitive Information, **unless until** such materials have been released pursuant to the procedures set forth in Section V below.

Recommendation 4: Clarify that sensitive information is limited to the information that identifies and depicts the informant or undercover officer, and does not apply to an undercover officer who is the subject of the complaint.

In its current wording, the section on Sensitive Information could be interpreted to suggest any information related to or derived from an informant or undercover officer should not be disclosed. Consistent with the protocol overall, this section should be explicit that only the portion of information that would reveal the identity of the informant or undercover officer should be excluded. Moreover, to the extent that an undercover officer's identity is known and they are the subject of the complaint, their information must be provided

*Suggested language:* Revise Section V(B) as follows.

1. Sensitive Information extends only to the following:
  - a. Confidential informant **identity** information, to include any footage or documentation in which the confidential informant's **name or appearance** is **identified-disclosed** or depicted.
  - b. Undercover officer **identity** information to include any footage or documentation in which the undercover officer's **name or appearance** is **disclosed identified** or depicted.

**NOTE: In most instances, Sensitive Information can be redacted so that the informant or undercover officer's identity is masked, but the information or interaction can otherwise be shared. Whenever possible, OPR will redact the identifying information and provide CRB with the redacted materials.**

**c. If an undercover officer is the subject of the complaint, their identity is considered comprised and is no longer considered Sensitive Information.**

Recommendation 5: Require the internal review of Sensitive Case designation to occur every 30 days, consistent with the review of Sensitive Information.

While the policy requires review every thirty days for sensitive information regarding a confidential informant or undercover officer's identity, it provides three times as long to review the status of Sensitive Cases. The Sensitive Case designation will often be far more debilitating to CRB's review, and involve serious cases that warrant prompt attention, particularly when the criminal investigation does not result in prosecution. The time frame for reviewing Sensitive Case status should also be at least monthly.

*Suggested language:* Revise Section VI(D) as follows.

1. Every ~~90~~ **30** days, OPR Command will conduct an internal review of the Sensitive Cases to assess whether the case shall continue to be designated as a Sensitive Case. The purpose of the review is to determine that the requirements for the Sensitive Case designation continue to be met.
2. Every ~~90~~ **30** days, the OPR Sensitive Case designee will reach out to the outside agency involved with the case, if applicable, to check in on the status of the case. That will be documented as a Task in the OPR IPro case file, and in the Sensitive Case Log.

Recommendation 6: Provide for after-action review of complaints that the CRB sustained with recommended disciplinary action and that the CRB recommended further investigation.

While the protocol details how the OPR will provide information for CRB's investigation, it does not provide any guidance for subsequent analysis and information sharing. Both the BPD and the CRB will benefit from addressing disparities in their decision making.

*Suggested language:* Add a section on Recommendations and After-Action Review that contains the following.

1. Every 90 days, OPR will provide CRB with a report on whether the recommendations submitted to BPD were adopted.
2. In cases where BPD did not institute the recommendation provided, a brief justification for the disparity will be provided.
3. The monthly meetings of the Chief of OPR and the Administrator of CRB (Section II) will also include discussion of cases in which the BPD did not follow the recommendations submitted by the CRB.