Office of Inspector General
City of New Orleans
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www.nolaoig.org

May 3, 2010

Mayor Mitch Landrieu
City of New Orleans
City Hall
1300 Perdido St.
New Orleans, LA 70112

Dear Mayor Landrieu:

The Office of the Independent Police Monitor (IPM) was designed to play a crucial role in reforming the troubled New Orleans Police Department (NOPD) and increasing public trust in the Department. I know that these are key goals of your administration, and we look forward to working with you to accomplish them.

As you know, the IPM has been stymied in its efforts to perform its duties under the Independent Police Monitor's Ordinance, New Orleans City Code Section 2-1121 because of the NOPD's refusal to provide necessary documents.

On September 3, 2009 and January 11, 2010 I sent letters to the NOPD Superintendent listing the documents to which we requested access under the Ordinance. I have attached all of our requests for access, hereto.

I respectfully request that you direct the NOPD to comply with the Ordinance and provide the requested documents to the IPM. I emphasize that we do not seek to obtain any documents relating to the U.S. Department of Justice criminal investigations into post-Katrina shootings and have not done so in the past.

The following is a summary of the provisions of the Ordinance that establish the IPM's right to the documents as well as a recital of NOPD's expressed views regarding them.

I. Relevant Provisions of New Orleans City Code Section 2-1121, entitled "Office of independent police monitor (the IPM Ordinance):"

Classifications: The IPM Ordinance requires the NOPD to inform the IPM within seven (7) days of receipt of any complaint of misconduct, so that the IPM "shall have the power to review the classification of all internal investigations and, in circumstances where the IPM believes an investigation was misclassified, to recommend to the NOPD that it be reclassified." Section 2-1121 Para. 5.

Review of Investigations: The IPM Ordinance empowers the IPM to, inter alia, "assess the quality and timeliness of New Orleans Police Department investigations...." Section 2-1121 Para. 3. The IPM has the power to "recommend that an internal investigation be re-opened if he determines that the investigation was not thorough or fair," although the investigation can only be re-opened in the "...very limited instance where the statutory time limit permits." Section 2-1121, Para. 6. Time limits within which investigations must be completed are found in the Police Officers' Bill of Rights, LA R.S. 40: Section 2531(7), which requires that formal investigations of police officer misconduct be completed within 60 days of initiation, or within 120 days if an extension is sought and granted by the Civil Service Commission. For purposes of this statute, an investigation is considered "complete" "...upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint."

Disciplinary Proceedings: Section 2-1121 Para. 13. requires the NOPD to provide the IPM with "timely notification prior to disciplinary proceedings; complete access to the proceedings of departmental boards...involving the disciplining of officers; and complete access to all materials to which those boards...have access." Further, the NOPD is required to "provide for the ability of the [IPM] to attend disciplinary and non-disciplinary proceedings, to review disciplinary and non-disciplinary documents, to make determination as to whether departmental rules or policies have been violated, to make recommendations regarding appropriate discipline, and to review the appropriateness of disciplinary sanctions.

Access to Public Integrity Bureau Databases: The IPM is required to "...review NOPD data collection and analysis to enable it to track trends in relation to types and sources of civilian and internally-generated complaints, processing and investigation, and determinations stemming from complaints, discipline imposed by type of complaint, use of the early warning system to intervene with an officer in need of additional training, supervision, or other issues of concern that arise during a review by the [IPM]." Section 2-1121, Para. 14.

In order to perform these functions, the IPM must have complete access to any and all databases maintained by NOPD regarding internal investigations. Paragraph 14

requires NOPD to provide the IPM with the "...appropriate database and personnel to facilitate this section." NOPD has informed the IPM that its existing databases are antiquated and insufficient to provide the necessary information sharing and that it has no funds to purchase a new one. The Office of the Inspector General has accordingly offered to purchase a state of the art internal affairs database for the shared use of the IPM and NOPD.

Non-Complaint Related Documents: The authority of the IPM to obtain NOPD documents and records beyond complaints and investigations of officer misconduct rests on Section 2-1121, Para. 3., which defines the duties and responsibilities of the IPM to include "...other tasks to ensure [NOPD] accountability, transparency, and responsiveness to the community it serves." The IPM is also empowered under Para. 14. to review NOPD data collection and analysis to enable it to track trends relative to "...other issues of concern that arise during a review by the [IPM]." This catchall provision would include documents and information permitting an audit of crime statistics, for example, currently an issue of key concern.

II. NOPD Objections to Document Production:

Classification: Although section 2-1121 Para. 5. requires the NOPD to notify the IPM within seven (7) days of receipt of any complaint, it does not explicitly require the NOPD to provide the complaint intake form or any paperwork initiating an internally generated investigation. PIB has taken the position that complaint intake forms are "work product" and cannot be released to the IPM, although it cites no authority for this proposition. However, the IPM's authority to review the documents is implicit in its stated responsibilities; it cannot determine whether a complaint has been appropriately classified without knowing the facts of the complaint. The IPM has authority under the Ordinance to obtain and review NOPD documents independent of public records law, if that is what PIB relies on for its position.

Review of Investigations: The Superintendent took the position that the IPM is not entitled to review investigations until they have been completed and "disposition rendered." See, below, Section III. In conversation he clarified this to mean not until he himself has signed off on the disposition of a complaint after final disciplinary hearings have been held, if any, and only upon written request by the IPM, which the Superintendent would determine on a case per case basis.

The Ordinance does not explicitly state the point at which the authority of the IPM to review investigations for quality, timeliness, thoroughness and fairness should be exercised. Arguably, the IPM cannot determine whether the investigation was thorough until it is "completed." The definition of completeness can be taken from the Police Officers Bill of Rights, as stated above. Nonetheless, there is nothing in the Ordinance that specifically excludes the IPM from reviewing investigations prior to final

disposition, or even to participate in key interviews in important matters such as critical incident investigations, for example.

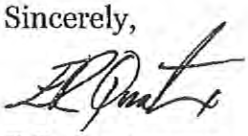
At a minimum, however, the IPM must be provided with the investigative report and all materials available to departmental boards or hearing officers prior to disciplinary hearings. See, Section 2-1121, Para. 13.

Access to Public Integrity Bureau Databases: The Superintendent took the position that the IPM is not entitled to information from any of the existing internal affairs databases. He also refused the Inspector General's offer to purchase a shared database for NOPD, stating that he would not allow the IPM access to any information at all regarding complaints or complaint processing except upon application on a case by case basis to him. Because of the vital importance of an accurate and sophisticated database, the Inspector General later offered to purchase the database without insisting on access for the IPM at that time. Although the Superintendent eventually accepted this offer, he still refused to provide any of the documents requested by the IPM. In light of this refusal to cooperate, the Inspector General has not followed through on this offer.

On April 29, 2010, soon-to-be Interim Superintendent Marlon Defillo contacted Mr. Quatrevaux to state that the NOPD would begin cooperating immediately with our requests for documents and that an office at PIB would be set aside for our convenience. We have also provided him with the above-mentioned letter of January 11, 2010 which sets forth the documents to which the IPM is entitled. Although we have received this cooperative gesture from Superintendent Defillo and are appreciative, we believe your assistance will ensure that the total requirements of the Ordinance are promptly met.

Thank you again for your interest and assistance.

Sincerely,



E.R. Quatrevaux
Inspector General

Enclosures

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January 11, 2009

Superintendent Warren Riley
New Orleans Police Department
715 S. Broad St.
New Orleans, LA 70119

Dear Superintendent Riley:

This is to request that, pursuant to City of New Orleans Code Sec. 2-1121, entitled "Office of the Independent Police Monitor," ("Police Monitor Ordinance") you provide this office with the following:

1. Notification of all complaints of alleged departmental member misconduct, whether civilian or internally generated and however classified, filed with the NOPD Public Integrity Bureau since September 14, 2009. Access to all "complainant/initial intake" forms alleging departmental member misconduct, whenever filed.

2. Access to all documents representing initiation of internally generated complaints against departmental members, including Forms DI-1 (Initiation of a Formal Disciplinary Investigation), DI-3 (Informal Disciplinary Investigations) and Citations of Disciplinary Action, whenever filed.

3. Notification of and access to all incident reports and/or use of force reports regarding all officer-involved shootings, death in custody incidents, uses of force and vehicle accidents involving alleged misconduct occurring since September 14, 2009.

4. Access to the PIB file of each departmental member who is the subject of a complaint or disciplinary investigation, both now and in the future.

5. Notification of and access to all "completed" investigative reports as defined in the Police Officers Bill of Rights, LA R.S. 40: 2531(7): "The investigation shall be considered ***complete*** [emphasis added] upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint."

6. Notification of and access to all disciplinary hearings scheduled from today's date forward.

7. Access to all materials available to the hearings officer in any disciplinary hearing scheduled from today's date forward, at least five (5) days prior to the hearing.

8. Access to any and all databases currently maintained or in the possession of the NOPD Public Integrity Bureau or any other section of the NOPD which record closed or open complaints or incidents of alleged misconduct on the part of NOPD departmental members, with the exception of access to files currently under investigation and not "complete" as defined above.

   This includes the Excel database created by the PIB approximately one year ago, the database program designed/created by PIB personnel post-Katrina, and any pre-Katrina database still existing. Please note New Orleans City Code Sec. 2-1121(14) Review of Data Collection and Analysis: "The New Orleans Police Department shall provide [the Independent Police Monitor] the appropriate database and personnel to facilitate this section."

9. A copy of the NOPD Standard Operating Procedures.

Finally, at our meeting on November 16, 2009, the Office of the Inspector General offered to purchase an internal affairs database for the NOPD, a tool which we understand the Public Integrity Bureau has been seeking funds to purchase for over a year. In addition to tracking complaint investigations, such commercially available databases include functions of vital utility to a police department such as early warning programs, trend analysis and other state of the art management tools. At our meeting you declined our offer on the grounds that we proposed to share the database, which would be designed so that the IPM could access information and only information to which it is entitled under the Police Monitor's Ordinance.

Deeming such a database necessary for the NOPD, at a minimum, to comply with its responsibilities under Sec. 2-1121(14), above, we now offer to purchase a database for the NOPD's independent use. The IPM will use an identical but separate database program for its own files so that the NOPD can provide the information it is required to submit to the IPM by Sec. 2-1121(14) in a compatible format.

You may deal directly with Deputy Independent Police Monitor Holly Wiseman to discuss these and any other issues arising under the Ordinance. In the absence of an Independent Police Monitor, I have fully authorized her to represent the IPM. You can reach her at 681-3229. Thank you.

I would appreciate hearing from you before January 29, 2010. Thank you.

Sincerely,

E.R. Quatrevaux
Inspector General

Office of Inspector General
Independent Police Monitor
City of New Orleans
525 Saint Charles Avenue
New Orleans, LA 70130-3409
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September 4, 2009

Warren J. Riley
Superintendent of Police
New Orleans Police Department
715 S. Broad St.
New Orleans, LA 70119

Dear Superintendent Riley:

On Wednesday, September 2, 2009, Holly Wiseman, Deputy Independent Police Monitor, and I met with Deputy Superintendent Bruce Adams and Captain John Thomas of the NOPD Public Integrity Bureau (PIB) to begin discussing the Protocol which the NOPD and our office must finalize by November 9, 2009. See enclosed Police Monitor Ordinance. Both officers assured us of their good will and desire to make the PIB files and procedures open and transparent to this office; I am sure we will work together cordially and effectively.

I would like to set out the issues for which our agencies must establish rules and procedures under the Protocol:

The NOPD must provide the Independent Police Monitor (IPM) with:

1. Notification of the filing of any complaint of misconduct, whether civilian or internally-generated, however classified, within seven (7) days of its receipt.
2. Notice of any internal investigations and/or internally generated complaints within seven (7) days of the initiation of investigation.
3. Timely notice prior to all disciplinary proceedings.
4. Complete access to all disciplinary and non-disciplinary proceedings of department boards.
5. Complete access to all materials to which those boards have access, regarding all disciplinary and non-disciplinary matters.
6. Adequate notice of the conclusion and results of disciplinary and non disciplinary proceedings so that the IPM can meaningfully exercise its statutory responsibility to review the completed investigations and make recommendations as to re-opening an investigation or altering a disciplinary sanction.
7. Meaningful status reports on all investigations as requested.

The IPM shall:

1. Refer to the PIB all civilian complaints that it receives from community or civil groups. It may or may not refer complaints it receives directly, as appropriate.
2. Review classifications of all civilian complaints and internal investigations and recommend that they be re-classified where the IPM believes appropriate.
3. Review civilian commendations to the NOPD and present such information public.
4. Review the appropriateness of disciplinary sanctions and make its own recommendations where appropriate.

Additionally, the IPM and PIB must develop recommendations to improve police disciplinary procedures.

The IPM must also review how the NOPD collects and analyzes information regarding misconduct in order to allow it to track trends of various factors, such as types of complaints, supervision, and use of the early warning system to intervene with officers charged with misconduct, etc. To this end, we are interested in knowing how the PIB currently maintains its files and what types of statistical reviews and analyses it performs on the information in the files.

In addition to finalizing the Protocol, in order for our office to begin its work, we will need copies of or access to the follow materials:

1. All policies and procedures of the NOPD.
2. Policies and procedures of the Public Integrity Bureau and all rules regarding disciplinary and non-disciplinary procedures.
3. Tables of disciplinary action.
4. Files of complaints and internal investigations closed within the past year.
5. Number of investigations during the past year that were not completed within the required time period, whether 60 days or 120 days.

We will meet again with Captain Thomas next week to begin sketching out the Protocol and will keep you advised of our progress.

Sincerely,

Neely Moody

Neely Moody
Independent Police Monitor

cc: Deputy Supt. Bruce Adams, NOPD
Enclosure
NM/hw