

**Assessment of the Functioning of the Police Complaint Procedures
Submitted to the Select Board of the Town of Brookline by the
Police Commissioners Advisory Committee (PCAC)
Submitted August 2022 for the Year 2021**

Brookline Police Department (BPD) General Order 34.2 (the GO) provides the BPD's Process for Police Department Discipline and Select [Board] Review. The GO includes the following:

17. Periodic Assessment:

The Police Chief assisted by two civilian citizens, appointed by the Board of Selectmen¹, shall biennially provide the Board of Selectmen, Town Meeting, and the public with a report on the functioning of the police complaint procedures. To the extent practicable, the civilian citizens should be individuals with experience in the issues raised by civilian complaints against police officers, including, but not limited to, experience working with persons of diverse backgrounds and viewpoints. The report shall include an assessment of the investigations of citizen complaints, an assessment of the Board of Selectmen's role in the complaint process, relevant statistics, comparisons with comparable communities, citizen survey results, and recommendations for any changes.

The Select Board's Charge to the PCAC includes the following:

5. To (a) prepare the periodic assessment of the functioning of the police complaint procedures as required by the Civilian Complaint Policy (including, as appropriate, the interaction between police complaint policies and other Town complaint policies) . . . and (c) make any appropriate recommendations to the Select Board . . . at a Select Board meeting following the completion of the assessment.

Thus, the Select Board has tasked the PCAC with preparing the periodic assessment referred to in paragraph 17 of the GO. Accordingly, the PCAC submits this assessment for the year 2021 (the first year of the PCAC's existence), with recommendations.

¹ The PCAC recommends replacement of the term "Board of Selectmen" with "Select Board," and of the term "citizens" with "residents" throughout the GO.

1. Executive Summary:

The GO provides a detailed and comprehensive process for submission, investigation, and disposition of civilian complaints against police, with safeguards for legitimate interests of both the complainant and the subject officer or employee, and with the opportunity for appeal to the Select Board. The Office of Professional Responsibility Internal Affairs/Staff Inspection Officer (the “IAO”), who reports only to the Chief and the Select Board, is responsible for investigation of all complaints. Information about the process, along with a complaint form, are available on the BPD website. The GO requires that any police officer who learns of misconduct by another officer must notify the Chief or the IAO, who treats such notice as a complaint.

The Town’s experience in 2021, as reported in the BPD Annual Report, reflects receipt of four civilian complaints. Three of these had been resolved as of the end of 2021; the fourth was resolved early in 2022. None to date resulted in an appeal to the Select Board.

The GO has not been updated to reflect the role of the PCAC, as recited in its Charge. Accordingly, the PCAC recommends certain changes, as set forth below.

The Town has two other complaint processes that apply to police in case of allegations of discrimination and related conduct based on protected class. First, the Town Policy Against Discrimination, Sexual Harassment and Retaliation, administered by the Human Resources Department (the HR policy), applies to conduct of Town employees other than those of the School Department,² and provides a procedure for receipt, investigation, and resolution of complaints alleging violation of the policy submitted by any person, including employees and non-employees.

Second, pursuant to By-Law Article 3.14.3(v), the Commission for Diversity, Inclusion and Community Relations (CDICR) also may receive complaints, from any source other than Town employees, of “discrimination or bias” by any Town personnel. After notifying the Town Administrator, the Commission must investigate any such complaint it receives, prepare written findings, and recommend appropriate action to the Select Board within 90 days.

The availability of these separate complaint procedures, in addition to the GO, allows a complainant who alleges discriminatory conduct by police to choose among available avenues of complaint, or to utilize multiple avenues. While such availability serves to increase the likelihood that persons who experience or perceive discrimination will feel able to complain in a hospitable setting, it also poses the potential for overlapping and duplicative investigations and inconsistent or conflicting findings and recommendations. Coordination and communication among the IAO, the HR Director, and the Chief Diversity Officer (“CDO”) have served to reduce such conflict. As discussed below, the PCAC recommends that all three departments revise their policies to provide explicitly for coordination and communication in accord with their practice, so as to avoid overlapping or duplicative investigations of complaints about police.

² The School Department administers its own policy pursuant to state and federal law.

2. The Police Department Complaint Procedure

Brookline Police Department General Order 34.2 addresses all allegations of misconduct by any police officer or civilian employee, received from any source. Under the GO, all allegations of misconduct are construed as complaints, and are referred to the Internal Affairs Officer (IAO). The IAO receives specialized training, and reports only to the Chief and the Select Board. The GO provides for investigation by the IAO “in an efficient, fair, thorough, and timely manner, showing equal concern for the rights of both citizens and officers.” The stated objectives of the process include protection of the public, the department, and the employee, removal of unfit personnel, and improvement of procedures.

Any person may complain, and may do so in person, in writing on a complaint form or otherwise, on-line, or by telephone, and may submit the complaint either directly to the IAO, or through the highest-ranking officer available other than the Chief, or to the office of the Select Board. A complainant may submit a complaint anonymously; in that case, the IAO will process the complaint if it provides sufficient information to warrant investigation. If a complaint alleges conduct more than six months earlier, the complaint is not processed unless the Chief or the Select Board finds extraordinary or compelling circumstances.

The GO provides detailed procedures for the receipt, processing, and investigation of complaints. At the outset of the process, the IAO or other officer who receives the complaint³ must provide the complainant with a complaint form and a brochure explaining the process; provide a private area for the complainant to fill out the form or write the complaint; offer the complainant transportation if necessary; facilitate an identification procedure if necessary; document any physical injury; provide the complainant an opportunity to read, amend, and sign the complaint; and take other steps to facilitate the making of the complaint. The complainant and any witnesses interviewed are given an opportunity to identify any information they wish to be kept confidential to the extent permissible under the law.

If the complainant chooses to make the complaint to the office of the Select Board, that office informs the complainant of the availability of the IAO or another ranking officer, and also offers the complainant the option of giving a statement to a representative of the office of the Select Board, recorded or not at the option of the complainant. The office of the Select Board forwards the complaint to the IAO as soon as possible.

The IAO classifies the complaint into one of four classifications, with corresponding time and process requirements, as follows:

Class A: Serious. This classification includes allegations of excessive force; malicious arrest; unreasonable deprivation of rights; bias based on protected class; corruption; untruthfulness; commission of a felony; and rule violation warranting more than a 5-day suspension.

³ The IAO or supervisor receiving the complaint may resolve the complaint to the complainant’s satisfaction immediately. In that event, the IAO or supervisor so reports the matter to the Chief.

For complaints in this category, the IAO must notify the Chief as soon as practicable; must interview the complainant within 72 hours at any reasonable location, including by telephone if the complainant insists; and must interview all identified witnesses. The complainant and any witnesses are entitled to have a representative present, and are asked to read and sign their statements. The complainant may choose to have the interview recorded. The accused officer is interviewed after the complainant, and after receiving notice of the allegations; may have counsel or a union representative present; and must not contact the complainant.

Class B: Any other violation of law, rule, or policy, or discourteous conduct or language. The IAO must notify the Chief as soon as practicable; and must attempt to reach the complainant by telephone within one week and invite the complainant to the station for an interview, or interview by telephone if the complainant prefers. The accused officer is interviewed in the same manner as Class A, and is subject to the same prohibition on contact with the complainant.

Class C: Allegations that address the appropriateness of Department **policies or procedures**, rather than the conduct of any officer. In such cases, the person receiving the complaint explains the policy or procedure, but nevertheless takes a formal complaint if the complainant chooses.

Class D: Allegations that are **clearly frivolous** or for other reasons do not merit disciplinary action.

The IAO makes a preliminary determination of the classification, resolving any doubt in favor of a higher classification. For any Class A complaint, the IAO provides a copy of the complaint and any police incident reports to the Chief immediately, and the Chief immediately provides those materials to the Select Board, to be kept confidential.

The IAO may attempt to mediate Class A or B complaints, with the approval of the Chief. Any agreement reached through mediation is subject to approval of the Chief and the Select Board.

For all classifications, the IAO investigates “with the same degree of professional competence as is devoted to a criminal investigation,” using all lawful investigation techniques. Such techniques may include requiring the subject officer to submit to medical or laboratory examination, participate in identification procedures, disclose financial information, or submit to polygraph examination. The IAO may also conduct warrantless searches of department-issued property, or of personal property if a warrant is obtained according to law. The IAO must maintain a thorough record of the investigation, and must assist both the complainant and the subject officer in identifying and locating any evidence.

The IAO must complete the investigation and report the results to the Chief within 30 days (subject to extension by the Chief and the Select Board). The IAO’s report must include all pertinent information and documents, proposed factual findings and conclusions, and a proposed finding on each allegation, based on the preponderance of evidence. Findings on allegations are

as follows: "Unfounded" (investigation revealed that the alleged conduct did not occur); "Exonerated" (alleged action occurred but was reasonable and proper); "Not Sustained" (allegation cannot be either proven or disproved); "Sustained" (investigation indicates sufficient evidence to support the allegation); "Mediated" (both parties agree to a proposed and described disposition -- Classes A and B only); "Filed" (no action necessary or possible at this time). If the IAO report recommends that the allegation of misconduct be sustained or not sustained, the report includes a history of any similar complaints against the same officer.

The complainant and the subject officer each receive a copy of the report, subject to certain redactions, and both have an opportunity to comment to the Chief, including with additional witness statements, within 10 days. Any such comments are appended to the report.

The Chief may return the matter to the IAO for further investigation, or may prepare the Chief's own report of the final disposition, which may include any disciplinary action, and/or referral to the Department's Early Intervention program, a "progressive program of training, counseling, and discipline."

The Chief's report is transmitted to the Select Board (via the Town Administrator), to be kept confidential.⁴ The complainant and the subject officer receive copies of the Chief's report, subject to certain redactions. The Chief sends notice of disposition to the complainant and the accused officer, with a form for appeal to the Select Board within 21 days.

In case of appeal to the Select Board, the Town Administrator conducts a first review. The Administrator may change the classification subject to approval of the Select Board; may return the matter to the Chief for further investigation; must provide an interim report to the Select Board at least one week before completion of the review; and must complete the review within 30 days for Class A, and within 15 days for Class B and C, unless extended for good cause by the Select Board.

After receiving the Administrator's review, the Select Board may return the matter to the Chief for further investigation, or may decide to retain special counsel to conduct further investigation.

Within 30 days after receiving the Administrator's review (subject to extension on specified grounds), the Select Board conducts a hearing.⁵ When the appeal is brought by an

⁴ The members of the Select Board receive the Chief's report subject to the obligation of confidentiality until it becomes final upon acceptance by the Select Board. Until that occurs, the investigation remains in progress. For that reason, the report is exempt from the Public Records Law at this stage, and the Select Board is able to discuss it in executive session in compliance with the Open Meeting Law.

⁵ Such hearings are presumptively open to the public, pursuant to the Open Meeting Law, subject to the provisions of that law authorizing the Select Board to meet in executive session for specified purposes, including "to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual." However, the law

officer to challenge disciplinary action, the Board conducts a disciplinary hearing in conformity with the Civil Service law, using trial-type procedures. When the appeal is brought by a civilian complainant, the Chief, the complainant, and the subject officer each may make an informal presentation, and the complainant and the officer each may present eyewitnesses. The applicable standard for factual determinations is preponderance of the evidence. After hearing, the Select Board may discipline an officer in accord with the Civil Service law; may refer the matter back to the Chief for further action; may appoint an independent investigator to investigate and report back; or may dismiss the complaint.

In case of an appeal from a Class C complaint, the Chief provides an explanation of the policy or practice in issue. Any individual or organization may submit a written or brief oral presentation regarding the policy, and the Select Board may invite community groups to participate.

The IAO prepares and provides monthly and annual reports to the Chief of all complaints and the status of investigations.

3. Civilian Complaints in 2021

The Department's Annual Report for the year 2021, at page 19, provides the following information regarding civilian complaints:

In 2021, there were four civilian complaints filed with the Office of Professional Responsibility [IAO].

The first complaint was filed against a patrol officer for reckless driving and failing to stop at a red light. After a thorough investigation by the Office of Professional Responsibility, the complaint was withdrawn by the complainant.

The second complaint was filed against a patrol officer for discourtesy and rudeness. After a thorough investigation by the Office of Professional Responsibility, the complaint was determined to be unfounded.

The third complaint was filed against a patrol officer for failure to provide name and badge number on request. After a thorough investigation by the Office of Professional Responsibility, the complaint was mediated.

The fourth complaint was filed against a patrol officer for general misconduct and bias-based policing. The case remains open with the Office of Professional Responsibility.

grants an individual being discussed the right to override the Select Board's determination to proceed in executive session and instead insist that the discussion be conducted in public.

The relationship between complainant/officer, the nature of the complaint and the findings are below:	Complainant	Complaint	Finding
Employee			
Hispanic Female	Unknown Male	Reckless Driving	Withdrawn
Asian Male	White Male	Discourtesy/Rudeness	Unfounded
Black Male	White Male	Failure to Give Name/Badge on Request	Mediated
White Female	Unknown Female	General Misconduct, Bias-Based Policing	Open

None of the complaints that were disposed in 2021 after investigation has given rise to an appeal to the Select Board.⁶

4. Evaluation.

The GO provides a process that, on its face, is accessible, thorough, timely, and fair. The civilian complaint form is readily available on the BPD website. The form uses clear, simple language, and the website offers translation in multiple languages. The process allows a complainant to submit a complaint in any of multiple ways, and mandates measures to facilitate submission of the complaint and to protect the complainant’s privacy to the extent consistent with investigatory requirements and permitted by law. The IAO has a degree of independence from the BPD hierarchy, reporting directly to the Chief and the Select Board. In addition to general police training in conducting criminal investigations, the IAO receives training specific to the role. The GO mandates full investigation, and authorizes use of all lawful techniques. It sets short time limits, subject to extension if necessary, and provides for appropriate notice to both the complainant and the subject officer.

How the policy functions in practice is more difficult to determine. The information provided in the BPD annual report indicates that the IAO received only four complaints in 2021. The small number of complaints may indicate general public satisfaction with police conduct. Alternatively, it may indicate that civilians who would make complaints do not know how to do so, fear repercussions, or do not believe that complaints will be taken seriously. The number of complaints alone cannot indicate which interpretation would be accurate.

⁶The 4th complaint was placed on file in early 2022 after the complainant did not respond to attempts at contact. The same complainant submitted a similar complaint in early 2022, which has been closed after investigation, although the IAO has followed up to provide the complainant with information regarding BPD policy.

Additional information pertinent to evaluation on this point is feedback to the PCAC from members of the public. The PCAC, in coordination with the CDICR, invites public feedback through an anonymous Civilian Feedback Survey form, available on the PCAC webpage. The Diversity Office Liaison collects feedback survey responses, posts them on the CDICR website, and provides a monthly report to the PCAC. When a monthly report shows new survey responses received, the topic is placed on the agenda for the PCAC meeting, and the monthly report is published with the agenda.

From April 12, 2021, when notice of the survey was first publicized and circulated, through July 7, 2022, 35 responses were received. In summary, while 21 of the responses express positive or neutral views of or experiences with police, 14 are negative. Among those, some express disapproval in general terms, without reference to particular events or the conduct of individuals, but some describe incidents that appear to fall within the process provided by the GO, and could have been the subject of complaints.⁷ That the survey respondents did not formally complain of these incidents may suggest that they lacked awareness of or comfort with the complaint process. The IAO receives the survey responses, has followed up on negative responses that provide contact information or information sufficient to enable investigation, and includes information about them in the monthly report to the Chief.

Recommendations set forth below would facilitate additional feedback directly to the PCAC.

Another potential basis for interpretation of the small number of complaints would be data regarding complaints received by other police departments in communities that are comparable in relevant respects, such as size, location adjacent to an urban center, or numbers of civilian interactions. The PCAC will work with the IAO to identify comparable communities and obtain such data. Since all police departments are now required by statute to report civilian complaint data to the Peace Officers Standards and Training Commission (POST), we expect that the data will become publicly available through that source.

Also relevant to evaluation would be information about any civil litigation arising from police/civilian interactions. Two such suits have occurred in the last five years, one initiated in 2017, and one in 2020, both alleging racial or ethnic discrimination in police conduct. The 2017 case, brought by five persons, was preceded by four complaints filed with the BPD, which the IAO determined to be Unfounded or Not Sustained. The four complainants initially exercised their right to appeal to the Select Board, but withdrew their appeals after the Select Board appointed an independent hearing officer. On August 11, 2022, the United States Court of Appeals for the First Circuit issued its decision affirming the District Court's grant of the Town's

⁷ Six of the negative responses came in May or June of 2022, and address a letter from the Brookline Police Union critical of certain identified candidates for Town Meeting based on past votes relating to police funding. These responses characterize the letter as bullying, threatening, or otherwise unwelcome or inappropriate.

motion for summary judgment.⁸ The 2020 case was filed in the United States District Court without any previous notice to the Town. That case was settled in 2021 by payment of \$18,000.⁹ For future reports, the PCAC will seek information to provide comparison with other, similar municipalities.

As indicated above, of the four complaints received in 2021, two were resolved in a manner reflecting voluntary choice on the part of the complainant – one withdrawn and one mediated. One remained open as of the end of 2021, and was resolved early in 2022. In the one case where the complaint was determined to be unfounded, the complainant had the right to appeal to the Select Board, but did not. While the small number dictates caution about any conclusion, if these outcomes indicate anything, it appears that complainants are generally satisfied. All four complaints were resolved within the time limits set by the GO, without extensions.¹⁰

The Town has two other complaint processes applicable to police with respect to allegations of discrimination and related conduct based on protected class.

The Town Policy Against Discrimination, Sexual Harassment and Retaliation, administered by the Human Resources Department (the HR policy), applies to conduct of Town employees (other than School Department personnel) and provides a procedure for receipt, investigation, and resolution of complaints alleging violation of this policy submitted by any person, including employees and non-employees. Complaints may be made orally or in writing, on a complaint form appended to the policy or otherwise. Complaints may be submitted to the HR Department or to the CDICR, which notifies HR. If HR receives a complaint alleging violation of the policy by a Police Department officer or employee, the HR Director and the Chief and/or IAO cooperate to ensure consistency in the investigation. If the allegation involves police policy, the HR director typically designates the IAO to conduct the investigation, pursuant to the GO. If the complaint alleges violation of the Town Policy Against Discrimination, Sexual Harassment and Retaliation, HR conducts the investigation, in consultation with the IAO and/or the Chief. The PCAC has been informed that HR received no civilian complaints against police personnel in 2021.

⁸ The Court of Appeals decision describes the Town’s complaint procedure at length and expresses general approval of its fairness and comprehensiveness.

⁹ Five cases were initiated in the years 2011 through 2015. Each of those cases was dismissed on court order.

¹⁰ The first was received on 5/15/21 and withdrawn and investigation completed on 5/24/21. The second was received on 5/26/21 and completed on 6/17/21. The third was received on 5/27/21 and completed on 6/14/21. The fourth was received on 11/6/21 and report completed on 1/4/22. In that instance, although the time from complaint to report exceeded 30 days, difficulty contacting the complainant delayed the start of investigation.

Pursuant to Town By-Law Article 3.14.3(v), the Commission for Diversity, Inclusion and Community Relations (CDICR) also may receive complaints, from any source other than Town employees, of “discrimination or bias” by any Town personnel. After notifying the Town Administrator, the Commission must investigate any such complaint it receives, prepare written findings, and recommend appropriate action to the Select Board within 90 days.¹¹ The CDICR has a proposed procedure for receiving and investigating complaints in a draft stage. The PCAC has been informed that the CDICR received one complaint in 2021 alleging discriminatory enforcement by police in a particular context, without identifying any individual officer. In that instance, the CDO consulted with the IAO, who provided data, resulting in withdrawal of the complaint.¹²

The availability of these separate complaint processes, in addition to the GO, allows a complainant who alleges discriminatory conduct by police to choose among available avenues, or to utilize multiple avenues. While such availability serves to increase the likelihood that persons who experience or perceive discrimination will feel able to complain in a hospitable setting, it also poses the potential for overlapping investigations, multiple interviews of witnesses, and inconsistent or conflicting findings and recommendations. To date, voluntary, appropriate coordination and communication among the IAO, the HR Director, and the CDO have served to reduce such conflict.¹³ As discussed below, the PCAC recommends that both HR and the CDICR document explicit policies for such coordination.

5. Recommendations

The PCAC makes the following recommendations:

A. Police Department General Order

The BPD should update the GO, and the brochure that accompanies the complaint form, to recognize the role of the PCAC with respect to civilian complaints, as set forth in the PCAC Charge, as follows:

- Amend paragraph 17 of the GO to reflect that the PCAC prepares the “periodic assessment,” as provided in paragraph 5 of the PCAC Charge.

¹¹ Both the HR policy and Article 3.14 recognize that a complainant alleging discrimination in violation of state or federal law has the right to file a complaint with the MCAD and/or the EEOC, and both provide for notice to the complainant of that option.

¹² The complainant in that instance expressed an intention to file a charge with MCAD. The Town has received no notice of any such charge having been filed.

¹³ The practice of the Chief Diversity Officer (CDO), upon receiving a civilian complaint against police, is to inform the complainant of the various avenues available and, if the complainant consents, to forward the complaint to the IAO and to HR. The CDO offers the complainant support throughout the investigation.

- Amend Paragraph 1(a)(2) of the GO to indicate that complaints may be made directly to the PCAC, through an email address provided on the PCAC webpage, monitored by the Liaison of the Diversity Office, or in person at the Diversity Office, as provided in paragraph 6(i) of the PCAC Charge.
- Amend paragraph 4V to provide that the monthly reports regarding civilian complaints, with identifying information redacted, and the annual summary shall be submitted to the PCAC, to permit the PCAC to conduct the periodic assessment and the public hearings provided in paragraph 3 of the PCAC charge.
- Amend paragraph 5C of the GO to provide that the Chief shall send the Chief's report to the PCAC, with identifying information redacted, when the Chief submits the report to the Select Board, so the PCAC may review it, advise the Select Board, and mediate in appropriate cases, as provided in paragraph 6 (vi, vii, and viii) of the PCAC Charge.
- The BPD should make corresponding changes in the information provided on its webpage regarding the complaint process, and in the brochure provided to complainants and available on the webpage. The BPD should also change the brochure to inform potential complainants that they may be interviewed "at any reasonable location," or by telephone if they choose, as provided in the GO.
- The BPD should also amend the GO in accord with the recommendation set forth in Paragraph B regarding HR and CDICR.

B. HR and CDICR

The HR and CDICR, as well as BPD, should revise their policies to provide explicitly for coordination and communication in accord with their practice, so as to prevent overlapping or duplicative investigations of complaints about police.

C. The PCAC

The PCAC will take steps to increase its visibility to the public, so as to facilitate its receipt of feedback and complaints, its evaluation of the functioning of the complaint process, and its provision of information to the public, as provided in paragraphs 5, 6 (i and iv), and 7 of the Charge. Such steps include adjusting its webpage to facilitate complaints directly to the PCAC, providing the same Civilian Complaint form that appears on the BPD webpage. The PCAC will also make the Civilian Feedback Survey form more visible on its webpage. Additional steps may include conducting meetings to seek feedback from particular interest or affinity groups.