

NACOLE Case Studies on Civilian Oversight

Office of Police Complaints

Washington, D.C.
Investigation-Focused Model

by Michael Vitoroulis



COPS
Community Oriented Policing Services
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Program Context

Situated in the nation's capital, a jurisdiction with one of the earliest histories of civilian oversight of law enforcement, the Office of Police Complaints (OPC) serves as the investigation-focused agency primarily responsible for receiving, investigating, and adjudicating civilian complaints alleging misconduct by the Washington (D.C.) Metropolitan Police Department's (MPD) 3,900 sworn officers and the officers of the District of Columbia Housing Authority Police Department (DCHAPD). The OPC is also authorized to direct officers who are the subject of civilian complaints to policy training or retraining; mediate and conciliate complaints; initiate audits of civilian complaints outside its investigative jurisdiction; and review and report on several elements of MPD complaints, use of force, and use of body-worn cameras. In conjunction with the five-member Police Complaints Board (PCB), the OPC produces several policy-related reports and recommendations to the mayor, D.C. Council, and the chiefs of the MPD and the DCHAPD.

History of Civilian Oversight in Washington, D.C.

Washington, D.C. (the District), has one of the earliest histories of external civilian oversight mechanisms in the United States.¹ The District established the nation's first civilian review board (CRB) in 1948 in response to lobbying by the Urban League and the National Conference of Christians and Jews (now known as the National Conference for Community and Justice).² The staffless, three-member CRB was responsible for reviewing and recommending the disposition of complaints referred to it by the police chief.³ With few cases to review as a result of its informal and indirect access to civilian complaints, the CRB was widely labeled as ineffective—reviewing just 54 cases in its first 16 years.⁴

The civil rights movement in the 1960s gave way to the CRB adopting formal legal procedures, initiating independent investigations, and expanding from three to five members in 1965. With little public visibility, however, the board remained ineffective and was ultimately disbanded in 1973 following the resignation of its members.⁵

In 1980, the officer-involved shooting death of Bruce Wazon Griffith prompted D.C. officials to host a citizens' forum on police-community relations in May of that year.⁶ By November 1980, a new seven-member Civilian Complaint Review Board (CCRB) was created with exclusive jurisdiction to investigate allegations of excessive force, harassment, and demeaning language.⁷

1. Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont, CA: Wadsworth Thompson Learning, 2001); Samuel Walker, *The History of Citizen Oversight* (Washington, DC: American Bar Association, 2006).

2. Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature* (Brooklyn, NY: Vera Institute of Justice, 2002), 10, <https://www.vera.org/publications/civilian-oversight-of-policing-lessons-from-the-literature>.

3. Walker, *Police Accountability*, 23 (see note 1).

4. Walker, *Police Accountability*, 23 (see note 1); Miller, *Civilian Oversight* (see note 2).

5. Miller, *Civilian Oversight* (see note 3); Walker, *Police Accountability*, 23 (see note 1).

6. Norman Siegel et al., *Civilian Review of Policing: A Case Study Report* (New York: New York Civil Liberties Union, 1993), 25, <https://www.nyclu.org/sites/default/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf>.

7. Miller, *Civilian Oversight* (see note 2).

D.C.'s new CCRB had subpoena power and was authorized to recommend discipline on complaints that it sustained.⁸ This iteration of civilian review in D.C., however, suffered from inadequate staffing—with just four investigators for a department of 4,609 officers⁹—and ineffective procedures for screening complaints and prioritizing cases.¹⁰ This iteration of D.C.'s civilian oversight was required to investigate and conduct a hearing for every allegation of MPD misconduct received and could not mediate low-level complaints or dismiss complaints found to have no merit upon preliminary investigation. This led to a significant backlog of cases, with some investigations taking up to three years to complete.¹¹ In 1992, in an effort to reduce the backlog, the D.C. Council passed an emergency amendment to the CCRB legislation which expanded its membership from seven to 21.¹² Community frustrations with the CCRB's inability to manage its caseload nonetheless persisted and, amid a fiscal crisis for the District, the agency was abolished in 1995.¹³

8. Siegel et al., *Civilian Review*, 30 (see note 6).

9. Siegel et al., *Civilian Review*, 131–132 (see note 6).

10. Walker, *Police Accountability*, 182 (see note 1).

11. Walker, *Police Accountability*, 182 (see note 1).

12. Miller, *Civilian Oversight* (see note 2).

13. Michael A. Fletcher, “D.C. Council Seeks to End Police Panel,” *The Washington Post*, April 16, 1995; Miller, *Civilian Oversight* (see note 2).

Genesis and Evolution of the Office of Police Complaints

In early 1997, the D.C. branch of the National Association for the Advancement of Colored People (NAACP) independently convened a 25-member task force comprising representatives from the American Civil Liberties Union of the National Capital Area (ACLU-NCA), the National Black Police Association, Drug Policy Foundation, retired MPD officers, and the former chairperson of the recently abolished CCRB to review and evaluate the MPD and the District's prisons, courts, and prosecutors.¹⁴ The task force re-raised the District's need for a formal and effective external accountability structure outside the MPD to address officer misconduct and poor community relations.¹⁵

Later that year, D.C. Council member Jack Evans began discussing a plan to create a dedicated office within the Superior Court of the District of Columbia to review allegations of MPD misconduct; refer them to mediation, conciliation, or investigation by a team of complaint examiners; and refer more serious misconduct allegations for review by retired or senior judges.¹⁶ Council member Sandy Allen relayed concerns from her constituents that the proposal cut them out of the process and suggested an alternative in which a panel of civilians, rather than judges, would be in charge of the oversight.¹⁷ Others expressed concern that retired judges might know the subject officers and thus not be impartial.¹⁸ As talks of revived oversight continued, the D.C. chapter of the NAACP called for re-establishing the civilian review board but with 44 members.¹⁹

14. "GLAA Joins NAACP Task Force," Gay and Lesbian Activists Alliance, accessed August 18, 2020, <http://www.glaa.org/archive/1997/naacp.shtml>; Allyson Collins, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998), 375.

15. Collins, *Shielded from Justice*, 375 (see note 14).

16. Bill Miller, "D.C. Council Weighs Outside Police Review; Retired Judges Would Hear Conduct Complaints," *The Washington Post*, September 16, 1997.

17. Miller, "D.C. Council" (see note 16).

18. "NAACP Joins Call for New Police Civilian Review Board," *Washington Informer*, October 1, 1997.

19. "NAACP Joins Call" (see note 18).

A compromise combining elements of all three proposals was adopted by the D.C. Council in the summer of 1998 and was signed into law by the mayor in October 1998. The Office of Citizen Complaint Review Establishment Act of 1998 created a five-member Citizen Complaint Review Board (CCRB) tasked with “conduct[ing] periodic review[s] of the citizen complaint review process, and . . . mak[ing] recommendations . . . concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate . . . make recommendations . . . concerning the elements of management of the MPD . . . such as recruitment, training, evaluation, and supervision of police officers.”²⁰ It also created an Office of Citizen Complaint Review (OCCR), led by an executive director appointed by the CCRB, with the authority to “receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD that alleges abuse or misuse of police powers by such member or members” for a distinct set of allegations: harassment, excessive use of force, insulting language or conduct, discrimination and retaliation.²¹ The OCCR was authorized to conduct independent investigations, mediate and conciliate complaints, and refer investigative findings to a pool of contracted complaint examiners for review and adjudication of each allegation included in the civilian complaint.²² The initial budget for both entities, allocated by the Federal Government, was \$1.2 million for the first year and \$900,000 from the District budget for the second year.²³

In January 1999, as the CCRB and OCCR were preparing to launch, then D.C. Mayor Anthony Williams and then MPD Chief Charles Ramsey invited the U.S. Department of Justice (DOJ) to review all aspects of the MPD’s use of force.²⁴ A memorandum of agreement (MOA) was signed by the DOJ and the District in which the DOJ agreed to provide the MPD with technical assistance recommendations pertaining to its use of force policies and procedures as well as the MPD’s investigations, complaint handling, canine program, and early-warning system.²⁵

20. D.C. Law 12-208 Sec. 5(d), <https://code.dccouncil.us/dc/council/laws/12-208.html>.

21. D.C. Law 12-208 Sec. 8(a).

22. D.C. Law 12-208 Sec. 12(e).

23. Barnes D. Rolark, “Brazil Charges ‘Foot-Dragging’ Stalling the Civilian Complaint Review Board,” *Washington Informer*, June 17, 1999.

24. DOJ (U.S. Department of Justice), *Memorandum of Agreement, United States Department of Justice and the District of Columbia and the D.C. Metropolitan Police Department*, memorandum of agreement, June 13, 2001, ¶1, <https://www.justice.gov/crt/memorandum-agreement-united-states-department-justice-and-district-columbia-and-dc-metropolitan>.

25. DOJ, *Memorandum of Agreement*, ¶12 (see note 24).

While the MOA and subsequent monitoring by the court-appointed independent monitor focused primarily on the MPD's use of force, the agreement included several provisions regarding MPD misconduct investigations and the OCCR. The DOJ required the MPD to develop a written plan delineating the responsibilities of the MPD and the OCCR regarding the receipt, investigation, and review of complaints.²⁶ The District was also instructed to ensure that the OCCR was allocated adequate staff, funds, and resources to perform its duties under the MOA and the OCCR-enabling legislation.²⁷ The MOA also required that the OCCR provide investigative staff with training in MPD policies and procedures, cultural sensitivity, ethics, integrity, and professionalism and develop a manual for all OCCR complaint investigations.²⁸

The OCCR first opened its doors six months after the DOJ and the District entered into the MOA in June 2001.²⁹ Within its first year, the OCCR hired 14 staff, administered a comprehensive training curriculum for investigators, and developed a mediation program and case tracking system.³⁰ To fulfill the obligations under the MOA, the MPD and the OCCR entered into a memorandum of understanding (MOU) setting forth terms regarding meeting the requirements of the MOA. The MOU addressed several issues, including (1) the MPD's training of OCCR investigators on use of force, canine deployment, transporting individuals in custody, restraints, arrests, and other topics; (2) the MPD's processing and referral of complaints within the OCCR's jurisdiction to the OCCR; (3) the OCCR's processing and referral of complaints outside its jurisdiction to the MPD; (4) MPD procedures for facilitating OCCR interviews of officers and providing documents to the OCCR; (5) access to the MPD's early-warning system and personnel performance management system; (6) the MPD's distribution of information about the OCCR to the public; and (7) the OCCR's furnishing of information regarding mediation to the MPD.³¹

26. DOJ, Memorandum of Agreement, ¶185 (see note 24).

27. DOJ, Memorandum of Agreement, ¶186 (see note 24).

28. DOJ, Memorandum of Agreement, ¶¶96–97 (see note 24).

29. CCRB (Citizen Complaint Review Board) and OCCR (Office of Citizen Complaint Review), *Fiscal Year 2001 Annual Report* (Washington, DC: Government of the District of Columbia, 2001), 2, https://mpdc.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/annual_report_fy01_final.pdf.

30. CCRB and OCCR, *Fiscal Year 2001 Annual Report*, 2 (see note 29).

31. CCRB and OCCR, *Annual Report Fiscal Year 2002* (Washington, DC: Government of the District of Columbia, 2002), 8–9, https://mpdc.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/annual_report_fy02_final.pdf.

In 2004, the OCCR and the CCRB were renamed the Office of Police Complaints (OPC) and Police Complaints Board (PCB), respectively, as part of an omnibus bill encompassing several changes to D.C.'s public safety agencies.³² In 2005, the D.C. council passed the First Amendment Rights and Police Standards Act in response to the arrest of more than 400 individuals during an anti-globalization protest against the World Bank and International Monetary Fund in 2002.³³ The act expanded the PCB's authority by allowing it to monitor and evaluate the MPD's handling of First Amendment assemblies.³⁴ The act also expanded the OPC's complaint jurisdiction by allowing it to investigate alleged failures by MPD officers to identify themselves to members of the public.³⁵

The OPC's authority was further expanded in 2016 with the passage of a sweeping public safety law known as the Neighborhood Engagement Achieves Results (NEAR) Act of 2015.³⁶ The NEAR Act was created to bring about several policing and criminal justice reforms in the District by employing a public health approach to address the root causes of crime and violence.³⁷ With regard to the OPC, the NEAR Act tasked the OPC and the PCB with reviewing and reporting on several elements of civilian complaints and MPD use of force.³⁸ It also designated the OPC as the primary entity for receiving and processing civilian complaints by requiring the MPD to forward all civilian complaints, even those outside its investigative jurisdiction, and conduct audits of complaints handled by the MPD because they were outside its jurisdiction.³⁹ The NEAR Act further empowered the OPC to direct subject officer(s) to policy training or retraining after complaint intake and screening.⁴⁰ The time frame for submitting a complaint to the OPC was also doubled from within 45 days of the incident to 90 days.⁴¹

32. D.C. Law 15-194, <https://code.dccouncil.us/dc/council/laws/15-194.html>.

33. Henri E. Cauvin, "D.C. Settles Suit Over Protest Arrests," *The Washington Post*, March 1, 2007, <https://www.washingtonpost.com/archive/local/2007/03/01/dc-settles-suit-over-protest-arrests/8c53687f-4d75-48e3-87d8-000c2213731c/>.

34. D.C. Law 15-352, <https://code.dccouncil.us/dc/council/laws/15-352.html>.

35. D.C. Law 15-352.

36. D.C. Law 21-125, <https://code.dccouncil.us/dc/council/laws/21-125.html>.

37. Brent J. Cohen, "Implementing the NEAR Act to Reduce Violence in D.C.," D.C. Policy Center, last modified May 25, 2017, <https://www.dcpolicycenter.org/publications/implementing-near-act-reduce-violence-d-c/>.

38. D.C. Law 21-125 § 208(a)(3).

39. As will be described in the Scope of Authority section of this report, the OPC is authorized to conduct investigations into civilian complaints alleging harassment; use of unnecessary or excessive force; use of language or conduct that is insulting, demeaning, or humiliating; discrimination; retaliation; and failure to wear or display identification or to identify when requested by a member of the public; D.C. Law 21-125 § 208(b)(2); D.C. Law 21-125 § 208(b)(7).

40. D.C. Law 21-125 § (b)(5)(c).

41. D.C. Law 21-125 § 208(b)(5).

Scope of Authority

Receiving, investigating, and adjudicating civilian complaints

The OPC is authorized to receive, investigate, and adjudicate civilian complaints against the MPD or DCHAPD officers alleging the following:⁴²

- Harassment
- Use of unnecessary or excessive force
- Use of language that is insulting, demeaning, or humiliating
- Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, matriculation, political affiliation, source of income, or place of residence or business
- Retaliation against a person for filing a complaint
- Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public

A complaint must be filed within 90 days of the incident giving rise to the complaint to be within the OPC's jurisdiction.⁴³ The OPC's authority extends to civilian complaints originally filed with the MPD or the DCHAPD, which must be referred to the OPC if they fall within the OPC's jurisdiction.⁴⁴ Internally generated complaints and anonymous complaints are not within the OPC's purview and are handled by either the MPD or the DCHAPD.

42. D.C. Code § 5-1107(a), <https://code.dccouncil.us/dc/council/code/titles/5/chapters/11/>.

43. D.C. Code § 5-1107(d).

44. D.C. Code § 5-1107(a-1).

As described in greater detail in the Procedures section of this report, after screening an eligible complaint, the OPC's executive director may dismiss it with the concurrence of one PCB member, refer it to the U.S. Attorney for the District of Columbia for possible criminal prosecution, refer it for conciliation or mediation, refer it for formal investigation by the OPC, refer it to the subject officer(s) supervisor(s) for rapid resolution, or refer the subject officer(s) to complete appropriate policy training by the MPD or the DCHAPD.⁴⁵

Neither the PCB nor the OPC adjudicates allegations contained in the civilian complaints it investigates. Completed investigations are instead referred to a pool of third-party complaint examiners responsible for reviewing cases and issuing a determination of unfounded, sustained, insufficient facts, or exonerated for each allegation.⁴⁶ Complaint examiner determinations "may not be rejected unless they clearly misapprehend the record" and the chief of the MPD or director of the DCHA refers the determinations back to the OPC for review by a panel of complaint examiners.⁴⁷

Complaint auditing and review and First Amendment monitoring

The OPC is authorized to audit completed civilian complaint investigations that were outside its investigative jurisdiction and thus handled by the MPD or the DCHAPD.⁴⁸ The OPC's executive director is also authorized to attend the MPD's Use of Force Review Board (UFRB)⁴⁹ meetings in which serious use of force incidents are adjudicated in a nonvoting capacity.⁵⁰

45. D.C. Code § 5-1107.

46. D.C. Code § 5-1111.

47. D.C. Code § 5-1112(g).

48. D.C. Code § 5-1107(h-2)(1).

49. The UFRB is responsible for reviewing and issuing determinations on all serious use of force investigations. For the MPD's definition of serious use of force, see D.C. Code § 5-1104(d-1). For more information on MPD's UFRB, see *General Order 901.09 Use of Force Review Board* (Washington, DC: Metropolitan Police Department, 2016), https://go.mpdconline.com/GO/GO_901_09.pdf.

50. *General Order 901.09, (V)(A)(2)(a)* (see note 49).

In addition, the OPC, on behalf of the PCB, is authorized to review and report on several aspects of MPD complaints and discipline, including the following:⁵¹

- The number, type, and disposition of citizen complaints received, investigated, sustained, or otherwise resolved
- The race, national origin, gender, and age of complainants and subject officer(s)
- Proposed and actual discipline for any sustained citizen complaint
- All use of force incidents, serious use of force incidents, and serious physical injury incidents⁵²
- Any in-custody death

Where appropriate, the OPC, on behalf of the PCB, may monitor and evaluate the MPD's handling of First Amendment assemblies taking place in the District.⁵³

Mediation

The OPC may refer civilian complaints within its jurisdiction to two forms of alternative dispute resolution in instances where a complaint may be resolved without formal investigation: (1) conciliation and (2) mediation.⁵⁴ As will be discussed further in the Procedures section of this report, complaints are rarely referred to conciliation in practice. Mediation is the OPC's primary means of resolving low-level complaints and facilitating dialogue and mutual understanding between MPD and DCHAPD officers and members of the public.

51. D.C. Code § 5-1104 (d-2)(1).

52. Serious use of force is defined as (a) all firearm discharges by a member with the exception of range and training incidents and discharges at animals; (b) all uses of force by a member resulting in a serious physical injury; (c) all head strikes with an impact weapon; (d) all uses of force by a member resulting in a loss of consciousness or that create a substantial risk of death, serious disfigurement, disability, or impairment of the functioning of any body part or organ; (e) all incidents where a person receives a bite from an MPD canine; (f) all uses of force by an MPD member involving the use of neck restraints or techniques intended to restrict a subject's ability to breathe; and (g) all other uses of force by a member resulting in a death. See *General Order 901.07 Use of Force III.9* (Washington, DC: Metropolitan Police Department, 2017), 3, https://go.mpdconline.com/GO/GO_901_07.pdf.

53. D.C. Code § 5-1104(d-1).

54. D.C. Code § 5-1110.

Policy analysis and policy recommendation

Both the OPC and the PCB are tasked with furnishing recommendations “concerning those elements of management of the MPD and DCHAPD affecting the incidents of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers” to the mayor, D.C. Council, and the chiefs of the MPD and the DCHAPD.⁵⁵

Reporting requirements

One of the primary purposes of the PCB and the OPC is to “foster increased communication and understanding and reduce tensions between the police and the public.”⁵⁶ In working toward that end, the OPC and the PCB have several public reporting requirements mandated by its enabling legislation.

The PCB and the OPC are required to produce a report to the mayor, D.C. Council, and the chiefs of the MPD and the DCHAPD detailing the OPC’s accomplishments for the fiscal year within 60 days of the end of each fiscal year.⁵⁷ By February 1 of each year, the OPC is also required to produce a report to the D.C. Council regarding the effectiveness of the MPD’s body-worn camera program, which includes an analysis of use of force incidents.⁵⁸

As a result of the NEAR Act and pursuant to the PCB’s civilian complaint reviewing and auditing duties described earlier, the PCB and the OPC are required to furnish a report to the mayor and city council at the end of each calendar year that analyzes the following:

- The number, type, and disposition of citizen complaints received, investigated, sustained, or otherwise resolved
- The race, national origin, gender, and age of complainants and subject officer(s)
- Proposed and actual discipline for any sustained citizen complaint
- All use of force incidents, serious use of force incidents, and serious physical injury incidents
- Any in-custody death.

55. D.C. Code § 5-1104(d).

56. D.C. Code § 5-1102(7).

57. D.C. Code § 5-1104(e).

58. D.C. Code § 5-1107(k).

Because the OPC's and the PCB's annual reports prior to the NEAR Act already contained much of this information, this requirement essentially memorializes the public reporting of this information. The addition of the OPC's mandated review of the MPD's use of force each year has led to the publication of a dedicated, detailed report on all incidents in which force was used by MPD officers, described in greater detail in the Procedures section of this report.

Access to information

The OPC and the PCB's enabling legislation now includes several provisions regarding access to MPD and DCHAPD records. With regard to the PCB's duty to review complaints, discipline, and use of force,⁵⁹ “the Executive Director, acting on behalf of the Board, shall have timely and complete access to information and supporting documentation specifically related to the Board's duties under paragraph (1) of this subsection.”⁶⁰ The OPC executive director, acting on behalf of the board, is similarly granted “timely and complete access to information and supporting documentation specifically related to the Board's auditing duties.”⁶¹ The OPC executive director is also authorized to issue subpoenas.⁶²

In practice, an OPC Liaison Unit—housed within the MPD's Internal Affairs Bureau and currently staffed by a sergeant, civilian clerk, and one MPD officer—provides the office with requested documents and assists the OPC with obtaining compelled statements from officers. The OPC has direct access to MPD body-worn camera footage; incident reports; and stop, search, and arrest reports. The MPD's Internal Affairs Bureau and the OPC use separate internal affairs databases.

59. D.C. Code § 5-1104(d-2).

60. D.C. Code § 5-1104(2).

61. D.C. Code § 5-1107(h-2)(2).

62. D.C. Code § 5-1111(c).

Organizational Structure

Police Complaints Board

The PCB consists of five Washington, D.C., residents. One member must be a member of the MPD and the remaining four may not have or had any current affiliation with any law enforcement agency.⁶³ All members are nominated by the mayor and are subject to a 90-day review and confirmation by the D.C. Council. All board members serve three-year terms and may be reappointed.⁶⁴ The mayor designates the board's chair and may remove any member from the board for cause.⁶⁵

The PCB's primary duty is to provide community input into the practices of the MPD and the DCHAPD. In doing so, it is tasked with reviewing the citizen complaint process and issuing recommendations to the mayor, city council, and the chiefs of the MPD and the DCHAPD regarding improvements to the complaint process, departmental policies, procedures, recruitment, training, and discipline.⁶⁶

Office of Police Complaints

As of June 2018, the OPC had a full-time staff of 23: one executive director, one deputy director, one attorney acting as legal counsel, one executive assistant, one public affairs specialist, one research analyst, one staff assistant, one receptionist, one program coordinator, one investigative clerk, one chief investigator, two senior investigators, and 10 investigators.⁶⁷ In addition, the OPC has administered a paid internship program since its inception and to date has had 112 college students and 56 law students participate in the program. Roles for interns range from summarizing MPD radio transmissions and body-worn camera footage to sitting in on officer and complainant interviews, policy analysis, and investigative and community outreach support.

63. D.C. Code § 5-1104(a).

64. D.C. Code § 5-1104(a).

65. D.C. Code § 5-1104(a).

66. D.C. Code § 5-1104(d).

67. PCB (Police Complaints Board) and OPC (Office of Police Complaints), *Annual Report 2017* (Washington, DC: Government of the District of Columbia, 2018), 4-5, https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OfficeofPoliceComplaints_AR17.pdf.

Executive director

The OPC's executive director must be an attorney who is an active member in good standing of the District of Columbia Bar. The PCB may appoint the executive director for a renewable three-year term, remove him or her for cause, and set his or her compensation.⁶⁸

Investigative unit

The OPC's investigative unit consisted of 14 staff who may not have ever worked for the MPD or the DCHAPD as of June 2018.⁶⁹ Investigators and supervisory investigators are required to participate in at least two ride-alongs with MPD or DCHAPD officers per year and also attend several training and professional development-related events throughout the year.⁷⁰ In fiscal year 2017, all members of the OPC's investigative unit attended 11 subject matter and legal training sessions, 16 hours of officer training at the MPD academy, and at least eight hours of ride-alongs. Some investigators also attended multiday civilian oversight practitioner trainings provided by the National Association for Civilian Oversight of Law Enforcement (NACOLE), trainings on interview technique, and a one-day symposium on policing and technology.⁷¹ Additional forms of training have included week-long courses on investigative technique provided by the Institute of Police Technology and Management at the University of North Florida,⁷² sensitivity training,⁷³ and several in-house training sessions.

Complaint examiners

The OPC maintains a pool of roughly one dozen D.C. resident attorneys with backgrounds in government, nonprofit organizations, academia, and private practice to serve as complaint examiners.⁷⁴ Complaint examiners typically have several years of litigation and criminal justice experience and are often recruited through the District of Columbia Bar Association. All complaint examiners are assigned cases on a rotating basis and are contracted for each individual case. A

68. D.C. Code § 5-1105(b).

69. PCB and OPC, *Annual Report 2017*, 5 (see note 67).

70. PCB and OPC, *Annual Report 2017*, 5 (see note 67).

71. PCB and OPC, *Annual Report 2017*, 5 (see note 67).

72. CCRB and OCCR, *Fiscal Year 2001 Annual Report*, 2 (see note 29).

73. CCRB and OCCR, *Fiscal Year 2001 Annual Report*, 5 (see note 29).

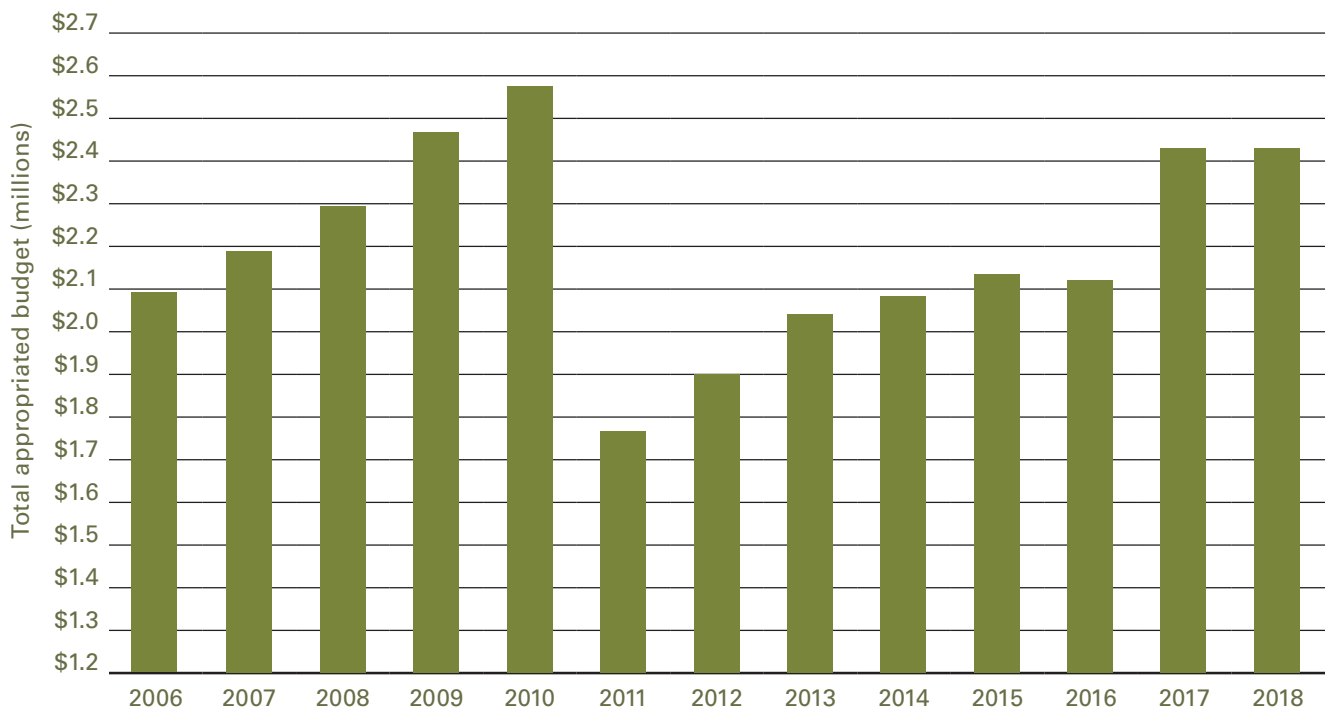
74. PCB and OPC, *Annual Report 2017*, 20 (see note 67).

training program and guidelines for the complaint examination process are used to prepare and guide complaint examiners throughout the adjudication process.⁷⁵ Complaint examiners must adjudicate at least one case and attend one OPC training per year to remain in the OPC’s pool of examiners.⁷⁶

Budget

As shown in figure 1, the OPC’s annual budget has generally exceeded \$2 million for each fiscal year between 2006 and 2018, with the exceptions of fiscal years 2011 and 2012. In 2018 the OPC’s annual budget was \$2,450,802.

Figure 1. OPC annual budgets, 2006–2018



Source: “Annual Operating Budget and Capital Plan Archives, Office of the Chief Financial Officer, accessed August 18, 2020, <https://cfo.dc.gov/node/292242>.

75. PCB and OPC, *Annual Report Fiscal Year 2012* (Washington, DC: Government of the District of Columbia, 2013), 2, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Annual%20Report%20FY%202012.pdf>; CCRB and OCCR, *Annual Report Fiscal Year 2003* (Washington, DC: Government of the District of Columbia, 2004), 8, https://mpdc.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/annual_report_fy03_final.pdf.

76. Office of Police Complaints Regulations, January 4, 2018, § 2117.2, <https://policecomplaints.dc.gov/node/1298796>.

Procedures

Complaint intake, screening, and referral to policy training or rapid resolution

Civilian complaints alleging misconduct by MPD officers may be filed with the MPD in person or by mail, phone, fax, or email. Complaints concerning MPD or DCHAPD officers can be filed with the OPC in person; by mail, email, fax, or phone; or on OPC's website. The MPD and the OPC also operate separate 24-hour, toll-free complaint hotlines. Complaint forms and brochures are also distributed by OPC's community partners throughout the District.⁷⁷

As a result of the 2015 NEAR Act, the OPC serves as the primary entity for screening and processing all civilian complaints alleging MPD misconduct, including those outside its jurisdiction.⁷⁸ When the MPD receives a complaint, it must forward it to the OPC within three business days.⁷⁹ Civilian complaints within the OPC's jurisdiction filed with the DCHAPD must also be forwarded to the OPC within three business days.⁸⁰ Unlike MPD complaints, DCHAPD complaints outside the OPC's jurisdiction are not forwarded to the OPC but instead are retained by the DCHAPD for investigation. Prior to the NEAR Act, the MPD and the DCHAPD were allowed to receive, process, and investigate civilian complaints without informing and forwarding them to the OPC.

Civilian complaints filed with the OPC or referred to the OPC by the MPD or the DCHAPD are screened by the OPC's executive director or an assigned staff member, who may request additional information from the complainant to determine how the complaint should be handled.

77. "File a Police Complaint," Office of Police Complaints," accessed August 18, 2020, <https://policecomplaints.dc.gov/service/file-a-complaint>.

78. PCB and OPC, *Annual Report 2017*, 6 (see note 67).

79. D.C. Code § 5-1107(a-1).

80. D.C. Code § 5-1107(a-1).

Within seven days of receiving the complaint or additional information regarding the incident from the complainant, the OPC will proceed with one of the following actions:⁸¹

- Refer the complaint for investigation.
- Refer the complaint to the MPD or the DCHAPD for investigation because the complaint falls outside the authority of the OPC to review.
- Dismiss the complaint, with the concurrence of one member of the PCB.⁸²
- Refer the complaint to the U.S. Attorney for the District of Columbia for possible criminal prosecution.
- Attempt to conciliate the complaint.
- Refer the complaint to mediation.
- Refer the complaint back to the appropriate department for rapid resolution.
- Refer the subject officer(s) to complete appropriate policy training by the MPD or the DCHAPD.

If the U.S. Attorney declines to prosecute a complaint referred by the OPC for possible criminal prosecution, the OPC shall resume its processing of the complaint according to standard procedures. The complaint may be dismissed, referred to mediation, or referred for investigation, as appropriate.⁸³

The NEAR Act also endowed the OPC with two additional complaint processing options: (1) policy retraining and (2) rapid resolution. During complaint screening, the OPC may refer the subject officer(s) to complete policy training or retraining relevant to the incident that gave rise to the complaint.⁸⁴ The MPD and the DCHAPD are required to notify the executive director when subject officer(s) have completed the appropriate training.⁸⁵ Rapid resolution referrals may

81. Office of Police Complaints Regulations (see note 76); D.C. Code § 5-1107(g). Note that by statute, the OPC may also “attempt to conciliate the complaint;” however, in practice, this rarely occurs, so the OPC’s ability to conciliate complaints is not detailed in this report.

82. A complaint may be dismissed if it is deemed to lack merit, if the complainant refuses to cooperate with the investigation, or if the complainant willfully fails to participate in good faith after the complaint is referred to mediation. See D.C. Code § 5-1108.

83. D.C. Code § 5-1109(d). For information on when OPC may dismiss a complaint, see note 82.

84. Office of Police Complaints Regulations, § 2112–2113 (see note 76).

85. D.C. Code § 5-1107(h-1).

entail directing the subject officer's(') supervisor(s) to explain relevant departmental policies and procedures to the complainant or discuss the complaint with the subject officer(s).⁸⁶ When referring a complaint to rapid resolution, the OPC will provide a written rationale for its referral.⁸⁷

Investigation by the OPC

Civilian complaints within the OPC's jurisdiction that are not dismissed upon screening or referred for conciliation or mediation proceed to formal investigation by the OPC's investigative unit.⁸⁸ A liaison in the MPD's Internal Affairs Bureau serves as the point of contact between the OPC and the MPD and is responsible for "undertak[ing] a reasonable search for OPC requests for information within 10 business days of receipt, or, if unable to provide the requested information, respond to the OPC . . . no later than the deadline, and indicate the reasons for not responding within the required timeframe."⁸⁹ The MPD-OPC liaison is also responsible for remedying scheduling issues regarding appearances before OPC investigators.⁹⁰ MPD policy requires full cooperation with OPC investigations and good-faith participation in the OPC's mediation process; failure to do so is subject to appropriate discipline.⁹¹

At the conclusion of an investigation, the OPC investigator submits a case summary and all investigative files to the OPC executive director or assigned staff for review.⁹² After review, they may then take one of the following actions:

- Refer the complaint to a complaint examiner for adjudication.
- Dismiss the complaint if, based on the file and report of investigation, it is determined that the complaint lacks merit.

86. PCB and OPC, *Annual Report 2017*, 7 (see note 67).

87. Office of Police Complaints Regulations, § 2113.2 (see note 76).

88. D.C. Code § 5-1111.

89. *General Order 120.25 Processing Complaints against Metropolitan Police Department Members* (Washington, DC: Metropolitan Police Department, 2017), (V)(D)(1), https://go.mpdonline.com/GO/GO_120_25.pdf.

90. *General Order 120.25*, (V)(E) (see note 89).

91. *General Order 120.25*, (IV)(E) (see note 89).

92. Office of Police Complaints Regulations, § 2116.6 (see note 76).

- Direct the investigator to undertake additional investigation.
- Refer the complaint to conciliation or mediation.
- Refer the complaint for rapid resolution.
- Refer the complaint to the U.S. Attorney.

Adjudication by complaint examiner

Completed OPC investigations are not adjudicated by OPC staff or PCB members. Instead, cases that are referred for adjudication are assigned on a rotating basis to a complaint examiner. Complaint examiners review OPC investigations and issue dispositions regarding violations of MPD or DCHAPD departmental policies, procedures, practices, orders, or training for each allegation.⁹³

When the OPC refers an investigation to a complaint examiner, the subject officer(s) are provided a copy of the investigative report and are given the opportunity to submit a written response to the investigation within 10 calendar days.⁹⁴ The complaint examiner may request the OPC conduct additional investigation, hold an evidentiary hearing, or proceed with the adjudication.⁹⁵ Any further investigation must be completed within 30 days, and all supplemental reports must be made available to the complaint examiner, complainant, and subject officer(s).⁹⁶ The procedures for evidentiary hearings are described in the sections that follow. Complainants or subject officer(s) may also request that the complaint be mediated or conciliated instead of adjudicated, in which case the complaint examiner may act as a conciliator or mediator.⁹⁷

If neither additional investigation nor an evidentiary hearing is requested—or once further investigation has been conducted or an evidentiary hearing has taken place—complaint examiners must issue a set of determinations based on a preponderance of evidence for each allegation

93. D.C. Code § 5-1111(h).

94. Office of Police Complaints Regulations, § 2116.7 (see note 76).

95. D.C. Code § 5-1111(f).

96. Office of Police Complaints Regulations, § 2118.5 (see note 76).

97. D.C. Code § 5-1111(g).

within 30 days.⁹⁸ Determinations include unfounded, sustained, insufficient facts, or exonerated.⁹⁹ Complaint examiner decisions are then submitted to the MPD or the DCHAPD for review by an officer ranking above the subject officer(s) and outside his or her command, who also recommends appropriate discipline for sustained allegations.¹⁰⁰ Complaint examiner decisions are published on the OPC website,¹⁰¹ as well as in Westlaw and LexisNexis.¹⁰²

Evidentiary hearings

No evidentiary hearings took place in fiscal year 2017;¹⁰³ there were six in fiscal year 2016.¹⁰⁴ If an evidentiary hearing is requested, the OPC ensures that complainants have access to legal counsel during proceedings and has entered into an agreement with a local law firm that provides pro bono representation during hearings.¹⁰⁵ If the complaint examiner determines that an evidentiary hearing is necessary, a preliminary hearing conference shall take place within 40 days.¹⁰⁶

The purposes of the preliminary hearing conference according to OPC regulations are as follows:¹⁰⁷

- Facilitate the exchange of relevant information, including resolving discovery requests.
- Reach stipulations of fact that will reduce the length and complexity of the hearing.
- Determine the authenticity of any documents.

98. Office of Police Complaints Regulations, § 2118.3 (see note 76).

99. Office of Police Complaints Regulations, § 2122.2 (see note 76).

100. D.C. Code § 5-1112(a).

101. “Complaint Examiner Decisions,” Office of Police Complaints, accessed August 18, 2020, <https://policecomplaints.dc.gov/page/complaint-examiner-decisions>.

102. “LexisNexis and Westlaw will Publish Decisions Issued by the Office of Police Complaints,” press release, Office of Police Complaints, January 10, 2006, <https://policecomplaints.dc.gov/release/lexisnexis-and-westlaw-will-publish-decisions-issued-office-police-complaints>.

103. PCB and OPC, *Annual Report 2017*, 20 (see note 67).

104. PCB and OPC, *Annual Report 2016* (Washington, DC: Government of the District of Columbia, 2017), 7, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Annual%20Report%202016.pdf>.

105. PCB and OPC, *Annual Report 2016*, 7 (see note 104).

106. Office of Police Complaints Regulations, § 2119.1 (see note 76).

107. Office of Police Complaints Regulations, § 2119.5 (see note 76).

- Determine which witness statements to add to the hearing record, which witnesses will testify at the hearing, and whether to permit subsequent witness statements to be submitted in light of any discovery permitted.
- Present, discuss, and resolve any matters as may aid in the orderly disposition of the proceeding or expedite the presentation of evidence.
- Set the time, date, and location of the evidentiary hearing, which shall occur no more than 60 days after [the complaint examiner's] assignment to the matter.
- Determine whether the complaint can be resolved through mediation or conciliation and to undertake either process if appropriate.

Complaint examiners may permit discovery only in extraordinary circumstances. Discovery requests must be filed no later than seven days prior to the preliminary hearing conference.¹⁰⁸ Depositions and discovery of facts predating the incident or facts relating to the character or credibility of any party are not permitted.¹⁰⁹ The complaint examiner will then schedule the evidentiary hearing, providing at least twenty days advance notice to the complainant and subject officer(s).¹¹⁰

Evidentiary hearings are open to the public¹¹¹ and involve an opening by the complaint examiner, opening statements by both the complainant or his or her representative and the subject officer(s) or his or her representative(s), a presentation of witnesses and evidence, cross-examinations, and closing statements.¹¹² The complaint examiner will then issue a merits determination of the complaint within 30 days of the completed hearing.¹¹³

108. Office of Police Complaints Regulations, § 2119.3 (see note 76).

109. Office of Police Complaints Regulations, § 2119.3 (see note 76).

110. Office of Police Complaints Regulations, § 2120.1 (see note 76).

111. Unless the OPC executive director approves the complaint examiner's request for a closed hearing. Office of Police Complaints Regulations, § 2120.3 (see note 76).

112. Office of Police Complaints Regulations, § 2120.11 (see note 76).

113. Office of Police Complaints Regulations, § 2122.1 (see note 76).

Disciplinary action by department and final review panel of complaint examiner decisions

Complaint examiner adjudications cannot be rejected by either department unless they “clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.”¹¹⁴ As mentioned earlier, complaint examiner decisions are forwarded to officers in the appropriate department for review of the investigation and adjudication(s). Within 15 days of the department’s review of the complaint examiner decision, the reviewing officers must recommend appropriate discipline to the chief of police¹¹⁵ or propose that the determination be reviewed by a panel of complaint examiners.¹¹⁶ Complainants and subject officer(s) are notified by the police chief of the police staff’s recommendation and are given an opportunity to respond to that recommendation in writing.¹¹⁷ Within 15 days of receiving written responses from both parties or the provided deadline, the chief of the MPD or the DCHAPD shall either issue a final disciplinary decision for each allegation or return the complaint to the OPC for final review by a panel of complaint examiners.¹¹⁸ If disciplinary action is taken, the police chief is required to notify the OPC, the complainant, and the subject officer of the discipline within 10 days.¹¹⁹ If a review panel is requested, the OPC executive director shall appoint three complaint examiners, excluding the complaint examiner who issued the original determination, to review the investigation and adjudication within 30 days.¹²⁰ The panel may reverse the decision, after which the complaint is dismissed, or uphold the original decision either in whole or in part.¹²¹ A total of two final review panels were convened in fiscal years 2016 and 2017, one in each year.¹²²

114. Office of Police Complaints Regulations, § 2122.5 (see note 76).

115. D.C. Code § 5-1112(b).

116. D.C. Code § 5-1112(c).

117. D.C. Code § 5-1112(d).

118. D.C. Code § 5-1112(e).

119. D.C. Code § 5-1112(f).

120. Office of Police Complaints Regulations, § 2123.3 (see note 76).

121. Office of Police Complaints Regulations, § 2123.7 (see note 76).

122. PCB and OPC, *Annual Report 2016*, 8 (see note 104); PCB and OPC, *Annual Report 2017*, 21 (see note 67).

MPD use of force review and complaint auditing

With the passage of the NEAR Act, the OPC is endowed with statutory authority to “audit citizen complaints referred to the MPD or the DCHAPD for further action”¹²³ as well as review and report on several elements of the civilian complaints and MPD’s use of force.¹²⁴ Because this authority is relatively new at the time of the writing of this report, the OPC has not yet conducted an audit of civilian complaints referred back to the MPD because they were outside its jurisdiction.

In 2017, however, OPC has published its inaugural comprehensive report and analysis of the MPD’s uses of force pursuant to the additional authority conferred to it as a result of the NEAR Act.¹²⁵ The D.C. Auditor published a report on MPD use of force¹²⁶ in January 2016, but that report was primarily concerned with the maintenance of the several use of force reforms implemented by MPD throughout the course of the MOA.¹²⁷

The OPC’s 2017 Use of Force Report provided an in-depth overview of the MPD’s use of force reporting, data collection, definitions and training; the OPC’s findings based on its analysis of use of force data; use of force in comparative perspective; and several recommendations regarding MPD’s use of force, definitions, reporting, data collection, and review.

The report included a detailed section on the MPD’s force reporting system, including descriptions of the three ways uses of force are catalogued by the department. All uses of force are reported through a Use of Force Incident Report (UFIR) form¹²⁸ or Reportable Incident

123. D.C. Code § 5-1107(h-2)(1).

124. D.C. Code § 5-1104(d-2).

125. The PCB is required to review and report on several aspects of civilian complaints as well as “all use of force incidents, serious use of force incidents, and serious physical injury incidents” and “any in-custody death.” The OPC and the PCB must publish a report analyzing the aforementioned information annually. See D.C. Code § 5-1104(d-2).

126. The Bromwich Group LLC, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force: 2008–2015* (Washington, DC: Office of the District of Columbia Auditor, 2016), <http://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>.

127. PCB and OPC, *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017* (Washington, DC: Government of the District of Columbia, 2018), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/UOF%2017%20Final.pdf>.

128. UFIRs are the MPD’s most comprehensive form for cataloguing use of force incidents. They contain the date, time, and location of the incident; officer and subject demographic information; the type of force used; injuries to the officer(s) and/or subject(s); whether the force resulted in property damage; and a narrative description of the incident. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 6 (see note 127).

Form (RIF),¹²⁹ depending on the type of force used. MPD policy stipulates that a RIF be completed only when a firearm is pointed at the subject but no other force is used and no injuries are sustained, or when an officer uses a tactical takedown, no other force is used, and the subject does not report an injury or pain.¹³⁰ Use of force incidents documented on UFIRs or RIFs are captured by the MPD's Personnel Performance Management System (PPMS), which documents officer incidents and performance for risk management purposes.¹³¹ Limitations in the PPMS data export function provide limited data for force incidents compared to UFIRs and RIFs, including the incident number; the time, date, and location of the incident; officer and subject demographics; officer rank and assignment; and administrative data such as case status and disposition.¹³²

In conducting its review of MPD use of force, the OPC requested PPMS data for the entire fiscal year of 2017, as well as historical data from fiscal years 2013–2016.¹³³ The OPC then requested all UFIRs and RIFs for fiscal year 2017 to code additional data into the PPMS dataset in order to include information such as the type of force used and the subject's action precipitating the use of force into its analysis.¹³⁴ The OPC's initial compilation of the data received from the MPD included UFIR and RIF data for 83 percent of all uses of force documented in the PPMS; additional data provided by the MPD at a later date allowed the OPC to assemble a comprehensive dataset covering 94 percent of uses of force for the 2017 fiscal year. The report also included a methodological note detailing the limitations of the dataset, such as undocumented uses of hand controls or tactical takedowns in which there was no injury or complaint of pain, because they were not required to be reported on UFIRs or RIFs during part of the sample period.¹³⁵

129. RIFs include information such as the time, date, and location of the incident; officer and subject demographics; whether the force resulted in property damage; and a narrative section. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 6 (see note 127).

130. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 6 (see note 127).

131. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 6 (see note 127).

132. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 6 (see note 127).

133. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 7 (see note 127).

134. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 7 (see note 127).

135. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 8 (see note 127).

The OPC's analysis of the data included narrative descriptions and infographics detailing several elements of MPD's use of force, including the following from fiscal years 2013–2017: the number of use of force incidents reported per year, the number of uses of force reported per year (which may differ from the number of incidents if one incident involved multiple uses of force), and the number of officers reporting using force per year.¹³⁶ For fiscal year 2017, information on the types of force used, subject behavior in force incidents, armed subjects in force incidents, injuries sustained during uses of force, officer and subject demographics, and officer rank and years of service are also included. The report also includes a summary of serious use of force incidents and their adjudications by the UFRB. In addition, the OPC compared the MPD's use of force with comparable departments in terms of size, geography, and demographic composition.¹³⁷ Comparative metrics used included use of force incidents per 1,000 officers; use of force incidents per 1,000 residents; and use of force incidents per 1,000 arrests.

Based on its review and analysis of the use of force data and the MPD's use of force policies, reporting systems, and training, the 2017 OPC Use of Force Report included eight recommendations to improve and standardize the MPD's collection of use of force data.¹³⁸ Among these recommendations are that the MPD create a single policy guiding all use of force reporting, eliminate the RIF and use the more comprehensive UFIR for all force incidents, collect all force data electronically, expand the contents of the UFIR, require supervisor approval of all force reports prior to final submission, resume collection of data on firearm discharge incidents, and require all officers to complete a UFIR immediately after a use of force.¹³⁹

136. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 11–12 (see note 127).

137. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 29–30 (see note 127).

138. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 32 (see note 127).

139. *Report on Use of Force by the Washington, D.C. Metropolitan Police Department Fiscal Year 2017*, 32–36 (see note 127).

Complaint mediation and conciliation

As previously explained, complaints can be referred for mediation or conciliation after screening, at the conclusion of a formal OPC investigation, or at the request of either the complainant or subject officer(s) after a case has been referred to a complaint examiner. In practice, mediation serves as the OPC's primary means of alternative dispute resolution. The OPC attempted to revive the practice of conciliation through a pilot program in 2014 designed in collaboration with the MPD and the Fraternal Order of Police (FOP).¹⁴⁰ Conciliation is voluntary for both parties, occurs over the phone, and is conducted by OPC staff.¹⁴¹ Cases referred to conciliation are typically less serious than those sent to mediation.¹⁴² A complaint is conciliated when a written agreement signed by the executive director and the parties "provide[s] for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties."¹⁴³ Statements made in conciliation proceedings may not be used in civil or criminal litigation or any disciplinary proceedings against an officer.¹⁴⁴ Conciliation nonetheless remains rare, so the rest of this section will focus on the OPC's more commonly used mediation program.

Once the OPC receives a complaint and takes a formal statement from the complainant, OPC investigators will discuss potential options for handling the complaint, including mediation. Investigators will explain the goals of mediation, answer any questions the complainant may have about the process, and fill out a mediation referral worksheet to be given to the mediator. Complainants are advised that mediations must be participated in in good faith, meaning that participants must make themselves available for the mediation session, be honest, speak their mind, and listen to the other person's perspective during the mediation session.

The investigator will then review a series of criteria including whether the officer(s) are eligible for mediation, whether they have been correctly identified, whom the complainant wishes to mediate with, any potential reasons for not referring the complaint to mediation, potential benefits of mediating the case, and whether there is any relevant ongoing criminal or civil litigation.

140. PCB and OPC, *Annual Report 2014* (Washington, DC: Government of the District of Columbia, 2015), 13, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR14%20Report%20Final%20Cover%20Side%20Border%20%28Web%206-18-15%29.pdf>.

141. PCB and OPC, *Annual Report 2014*, 13 (see note 140).

142. PCB and OPC, *Annual Report 2014*, 13 (see note 140).

143. D.C. Code § 5-1110(b)(1).

144. D.C. Code § 5-1110(b)(1).

Excessive or unnecessary force allegations may not be mediated or conciliated if they involve physical injury, nor can cases that may not be negotiated in good faith, such as those involving officers who have had complaints involving similar allegations sustained or mediated in the prior year.¹⁴⁵

If, after screening, a complaint is referred to mediation, the OPC sends a notification letter to the complainant and subject officer(s) informing them that the complaint has been referred to one of the OPC's mediation partners. In fiscal year 2017, the OPC began introducing complainants to the mediator assigned to their case before scheduling a date and time for the mediation session.¹⁴⁶ Once scheduled with the complainant, the officer is sent a notification through the MPD's court appearance system at least seven days prior to the mediation date mandating their appearance.

Mediation services were formally provided to the OPC through a single contract with a mediation provider. The OPC currently has a diverse pool of paid mediators, including Spanish-speaking mediators, mediators from nonprofit organizations, and independently contracted mediators with private sector experience or experience in the federal Sharing Neutrals mediation program.¹⁴⁷ The shift away from a single contract has decreased the OPC's mediation costs by 50 percent. In fiscal year 2016, the OPC spent approximately \$44,000 on mediation.

Both the complainant and officer are required to participate in the mediation in good faith. If a complainant fails to appear or is unreachable after attempts to schedule the mediation, the complaint is typically dismissed. If the officer fails to appear or participate in good faith, the OPC sends a disciplinary memo to the chief of the MPD or the DCHAPD, who must discipline the officer and report the discipline to the OPC. The MPD-OPC liaison assists with any logistical issues that may arise during the course of scheduling or rescheduling.

145. PCB and OPC, *Annual Report 2015* (Washington, DC: Government of the District of Columbia, 2016), 11, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Annual%20Report%202015.pdf>.

146. PCB and OPC, *Annual Report 2017*, 22 (see note 67).

147. Sharing Neutrals is a D.C.-based mediation program that provides free mediators to participating federal agencies. "Shared Neutrals Program," Federal Mediation & Conciliation Service, accessed August 18, 2020, <https://www.hhs.gov/about/agencies/dab/adr-services/sharing-neutrals/index.html>.

Mediations take place at the OPC office. A confidentiality agreement must be signed by the mediator, complainant, and officer(s) for the mediation session to begin. Statements made during the mediation session may not be used in court or as the basis for any discipline against the subject officer.¹⁴⁸ If the parties agree that the mediation has resolved the issues raised by the complainant, a Mediation Agreement is signed by both parties stating that they will adhere to the confidentiality of the mediation session and that the OPC will take no further action regarding the complaint. If the parties do not sign the Mediation Agreement, the case will be returned to the OPC's investigative unit for formal investigation. Investigators are not made aware of any aspect of the mediation apart from the disposition to maintain the integrity of the investigation.

Complainants and officers are asked to complete voluntary surveys both before and after mediation. A pre-mediation officer survey gauges the officer's openness to the mediation session and his or her perception of the community's understanding of their work as police officers. Post-mediation complainant and officer surveys attempt to gauge overall satisfaction with the mediator and the mediation process, feelings about the other party, and whether the mediation session has led to an improved understanding of the other party.

Policy analysis

The OPC issues several formal and informal policy recommendations regarding MPD and DCHA procedures, training, supervision, recruitment, and operations. These recommendations are based on constitutional policing methods, law enforcement best practices, and patterns observed throughout the course of its handling of complaints.¹⁴⁹ At the end of fiscal year 2017, OPC had issued a total of 44 policy-related reports and recommendations since its creation.¹⁵⁰

Neither the MPD nor the DCHAPD has a statutory requirement to respond to the OPC's or the PCB's policy recommendations. However, in 2018, the D.C. Council's Committee on the Judiciary and Public Safety recommended in its budget report for fiscal year 2018 that the OPC conduct an analysis of all policy recommendations PCB has issued since fiscal year 2015 and assess which recommendations have been implemented. The OPC subsequently issued a report

148. D.C. Code § 5-1110 (f).

149. "Policy Recommendations," Office of Police Complaints, accessed August 18, 2020, <https://policecomplaints.dc.gov/page/policy-recommendations>; PCB and OPC, *Annual Report 2017*, 1 (see note 67).

150. PCB and OPC, *Annual Report 2017*, 24 (see note 67).

tracking the five reports and 21 recommendations issued by the PCB and the OPC in fiscal years 2015 and 2016.¹⁵¹ The OPC reached out to the MPD and the DCHAPD to obtain status updates on its recommendations and reported their narrative responses and the OPC's findings regarding each recommendation. In total, the OPC found that of the 21 recommendations issued, 13 had been fully implemented, six had been partially implemented, and three were not implemented.¹⁵²

Policy reports frequently contain overviews of current MPD or DCHAPD practices, relevant observations and data justifying the issuance of the report, and evidence-based recommendations and best practices drawn from reputable organizations that have conducted systematic research in the fields of policing, criminal justice, and other relevant disciplines.

To date, the OPC's policy reports have covered various topics relating to MPD's and DCHAPD's policies and procedures, ranging from subject matter reports concerning discrete policy matters to thematic reports addressing each department's operations more broadly. In fiscal year 2017, the PCB issued a policy report regarding MPD searches based on the OPC's receipt of several complaints from a disproportionate number of minority civilians alleging searches of people, vehicles, or homes without consent.¹⁵³ The OPC reviewed applicable laws and departmental policies; provided a discussion of its concerns with current policies and procedures; and issued several recommendations geared toward improving the MPD's general orders and training, preserving the constitutional rights of civilians, and increasing community trust in the police. In a separate policy report, the OPC evaluated the MPD's compliance with D.C.'s Limitations on the Use of Chokeholds Act of 1985 and recommended revising the law concerning chokeholds and neck restraints, ensuring the MPD's neck restraint policies comply with the law and best practices, developing comprehensive training on neck restraints, and expanding the

151. OPC, *Implementation Update on the Reports and Recommendations of the Police Complaints Board From Fiscal Years 2015 and 2016* (Washington, DC: Office of Police Complaints, 2018), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Policy%20Rec%20Implementation%20Update_FINAL.pdf.

152. OPC, *Implementation Update*, 2 (see note 151).

153. PCB, *PCB Policy Report #17-5: Consent Search Procedures* (Washington, DC: Office of Police Complaints, 2017), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Consent%20Search%20Report%20FINAL.pdf>.

OPC's authority to monitor and review use of force incidents.¹⁵⁴ Pursuant to the PCB's authority to monitor and evaluate the MPD's handling of First Amendment assemblies, the OPC and the PCB have also published observations from attendance at the 2017 presidential inauguration¹⁵⁵ and the 2017 Women's March.¹⁵⁶ Among the OPC's more thematic reports have been a review of the MPD's adherence to the principles and tenets of 21st century policing¹⁵⁷ as identified in the *Final Report of the President's Task Force on 21st Century Policing*,¹⁵⁸ a report on the MPD ensuring its policies are in line with best practices,¹⁵⁹ and a recommendation that the DCHAPD conduct a review of its policies and procedures.¹⁶⁰

154. PCB, *Improving MPD's Policy on the Use of Chokeholds and Other Neck Restraints: Report and Recommendations of the Police Complaints Board* (Washington, DC: Office of Police Complaints, 2015), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/8.10.15%20chokehold%20policy%20rec%20FINAL.pdf>.

155. PCB, *OPC Monitoring of the Inauguration January 20, 2017: Report and Recommendations of the Police Complaints Board* (Washington, DC: Office of Police Complaints, 2017), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Inauguration%20Protest%20Monitoring%20Report%20FINAL.pdf>.

156. PCB, *OPC Monitoring of the "Women's March" January 21, 2017: Report and Recommendations of the Police Complaints Board* (Washington, DC: Office of Police Complaints, 2017), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Women%27s%20March%20Protest%20Monitoring%20Report.FINAL_.pdf.

157. PCB, *21st Century Policing: Reports and Recommendations of the Police Complaints Board* (Washington, DC: Office of Police Complaints, 2016), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/21stCenturyPolicing.Proposal%20Recommendation%20%28FINAL%29.pdf>.

158. President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), <https://cops.usdoj.gov/RIC/ric.php?page=detail&id=COPS-P311>.

159. PCB, *PCB Policy Report #17-1: Ensuring MPD Policies and Procedures are Current* (Washington, DC: Office of Police Complaints, 2017), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Ensuring%20MPD%20Policies%20and%20Procedures.FINAL_.pdf.

160. PCB, *PCB Policy Report #17-4: District of Columbia Housing Authority Police Department Policy and Procedure: Improving Identification Requirements for Officers; Implementing a Body-Worn Camera Program; and Ensuring Policies and Procedures are Current* (Washington, DC: Office of Police Complaints, 2017), <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/DCHAPD%20Policy%20Report%20FINAL.pdf>.

Public reporting

In addition to the annual use of force report and policy reports previously described, the OPC and the PCB publish annual reports¹⁶¹ and mid-year reports¹⁶² informing the public of their work and accomplishments. Both types of report offer accessible and infographic-rich insight into the functions and operations of civilian oversight of the MPD and the DCHAPD.

Mid-year reports present brief statistical summaries of complaint activities, including information on allegations, the outcome of the screening of complaints, and complaint examiner determinations. Information on cases with body-worn camera footage, the MPD's body-worn camera program more generally, and recent policy recommendations are also typically included.

The OPC's and the PCB's annual reports provide an overview of the missions and functions of both entities; annual accomplishments; a significant amount of qualitative and quantitative information regarding complaints, screening decisions, and investigative outcomes; summaries of policy reports and recommendations; and information on community outreach efforts. The OPC also includes a chapter on the MPD's body-worn camera program as required by its enabling legislation. The chapter includes statistics on officer compliance with the MPD's body-worn camera policy, data on complaints with body-worn camera footage, and the impact of body-worn cameras on the OPC's work.

Community outreach

The OPC's outreach efforts, led by its Public Affairs Specialist, work to increase public awareness of the agency and promote positive community-police interactions.¹⁶³ Outreach in the past has typically involved delivering information and presentations to D.C.'s immigrant and minority communities, youth and students, and MPD officers. In fiscal year 2017, the OPC conducted

161. All OPC and PCB annual reports can be found at "Annual Reports," Office of Police Complaints, accessed August 18, 2020, <https://policecomplaints.dc.gov/page/annual-reports-for-OPC>.

162. All OPC and PCB mid-year reports can be found at "Mid-Year Reports," Office of Police Complaints, accessed August 18, 2020, <https://policecomplaints.dc.gov/page/mid-year-reports>.

163. "Community Outreach," Office of Police Complaints, accessed August 18, 2020, <https://policecomplaints.dc.gov/page/community-outreach>.

or participated in more than 45 community outreach events.¹⁶⁴ The OPC works to conduct its outreach throughout the District by participating in or conducting at least one event in each of D.C.’s eight wards per year.¹⁶⁵

In fiscal year 2015, the OPC launched a Community Partnership Program designed to collaborate with community organizations, government agencies, social service providers, neighborhood associations, and advocacy groups and provide greater access to information about the agency’s services.¹⁶⁶ More than 15 local organizations participate in the program.¹⁶⁷

The OPC works to maximize the accessibility of its services to non-English speaking members of the community. Complaint forms and informational materials are available in eight languages other than English.¹⁶⁸ In addition, it has participated in community forums intended to connect non-English proficient community members directly with government and community-based services.¹⁶⁹

The OPC has also provided training sessions to staff members at the District of Columbia Office of Human Rights and the District Department of Public Works to explain the complaint process and provide them with information on the OPC’s mission and jurisdiction.¹⁷⁰ Several trainings have similarly been provided to new recruits at the MPD police academy.¹⁷¹

164. PCB and OPC, *Annual Report 2017*, 26 (see note 67).

165. PCB and OPC, *Annual Report 2017*, 26 (see note 67).

166. PCB and OPC, *Annual Report 2014*, 18 (see note 140).

167. PCB and OPC, *Annual Report 2016*, 13 (see note 104); PCB and OPC, *Annual Report 2017*, 26 (see note 87).

168. “Community Outreach” (see note 163).

169. PCB and OPC, *Annual Report 2014*, 18 (see note 140).

170. PCB and OPC, *Annual Report 2014*, 18 (see note 140).

171. PCB and OPC, *Annual Report 2014*, 18 (see note 140).

The wave of high-profile incidents in 2020 between police and community members prompted widespread calls for greater community oversight of law enforcement agencies. *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, a white paper by the National Association for Civilian Oversight of Law Enforcement, outlines the history of civilian oversight including reference to this case study of the Washington (D.C.) Metropolitan Police Department and eight others.



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Office of Community Oriented Policing Services
145 N Street NE
Washington, DC 20530

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National Association for Civilian
Oversight of Law Enforcement
P.O. Box 20851
Indianapolis, IN 46220-0851