

JANUARY 2019

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

MANAGEMENT ALERT ON CPD'S ADMINISTRATION
OF THE DISCIPLINARY GRIEVANCE PROCESS



REPORT OF THE PUBLIC SAFETY SECTION OF THE OFFICE OF INSPECTOR GENERAL



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TO THE MAYOR, CHAIR OF THE COMMITTEE ON PUBLIC SAFETY, CITY COUNCIL, CITY CLERK, CITY TREASURER, AND RESIDENTS OF THE CITY OF CHICAGO:

The Public Safety Section (PS) of the City of Chicago Office of Inspector General (OIG) is currently conducting a review of the Chicago Police Department's (CPD) disciplinary grievance process for sworn personnel. In the process of this review, OIG identified four immediate concerns that should be promptly addressed.¹ The issues presented in the attached management alert represent significant obstacles to CPD's ability to effectively administer the disciplinary grievance process, consistently represent the Department's interest in grievance proceedings, and maintain the confidentiality of sensitive information.

BACKGROUND

Either the Civilian Office of Police Accountability (COPA) or CPD's Bureau of Internal Affairs (BIA) can recommend punishment for sworn members for incidents of misconduct. The sworn member's commanding officers and the superintendent then review and finalize the recommended punishment. These punishments can include reprimands, suspensions, or termination. Once the punishment is reviewed and finalized, the sworn member can then decide to either accept or grieve their punishment. A grievance, as defined within CPD's collective bargaining agreements (CBAs) for sworn members, is a dispute or difference between the parties to the CBAs concerning the interpretation and/or application of the CBAs or their provisions.²

¹ OIG decided to address these immediate concerns in a management alert to CPD as they fall outside of the scope of OIG's ongoing review of the Department's disciplinary grievance process for sworn personnel.

² Chicago Police Department. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7*. Chicago: Chicago Police Department, 2014, accessed January 4, 2019, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf;
Chicago Police Department. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants*. Chicago: Chicago Police Department, 2014, accessed January 4, 2019, http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf;
Chicago Police Department. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants*. Chicago: Chicago Police Department, 2014, accessed January 4, 2019, http://directives.chicagopolice.org/contracts/PBPA_LtContract.pdf.

Disciplinary grievances challenge punishments sworn members receive as a result of findings of misconduct. CPD members who believe their rights—as enumerated in their CBA—have been violated by Departmental action may grieve that action.

If a sworn member elects to grieve, there are three options available to resolve their grievance: arbitration, binding summary opinion hearing, or Police Board review. Arbitrations are formal evidentiary hearings before an arbitrator, who is typically a practitioner of labor law. By contrast, binding summary opinion (BSO) hearings are a streamlined form of arbitration that entails a review of investigatory files and statements from the parties by an arbitrator. Following arbitration and BSO hearings, the arbitrator issues a final, binding award. Last, Police Board reviews are formal evidentiary hearings before a hearing officer. The hearing officer then submits a report with recommendations to the nine-person Police Board, which ultimately makes the determination about the discipline issued to the sworn member. The process that the officer can select depends upon their rank and the severity of the discipline. Before resolution through the sworn member's selected method, their grievance may be resolved through a negotiated settlement, which CPD or the City of Chicago's Department of Law negotiates with the sworn member's union. Either the City's representative (CPD or the Department of Law) or the union can initiate these negotiations.

Once the officer decides whether and how they will grieve, they submit their grievance forms to the Management and Labor Affairs Section (MLAS) of CPD. MLAS is a subsection of CPD's Office of the General Counsel and is responsible for departmental activities related to the various labor agreements impacting CPD personnel as well as processing both disciplinary and non-disciplinary grievances. During the course of interviews conducted for OIG's ongoing review of CPD's disciplinary grievance process for sworn members, OIG identified four immediate concerns that impact CPD's administration of the disciplinary grievance process.

OIG's identified areas of concern, as shared with CPD on November 14, 2018,³ are as follows:

- CPD has no formal policies and procedures for processing CPD sworn member grievances and there are no agency-issued guidelines for coordination with the Department of Law in the resolution of grievances through negotiated settlements.

Chicago Police Department. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains*. Chicago: Chicago Police Department, 2014, accessed January 4, 2019, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf.

³ See Appendix A for OIG's initial letter to CPD.

- MLAS does not have a dedicated electronic case management system for tracking grievances and currently lacks a standardized and reliable way to identify and obtain precedential arbitration decisions and comparable cases.
- MLAS staff stated that the section is currently understaffed, and there is currently a vacant lieutenant position.
- Finally, the workspace assigned to MLAS is not conducive to maintaining privacy and confidentiality.

CPD RESPONSE

On December 14, 2018, CPD responded in writing to the concerns identified by OIG's Public Safety section.⁴ CPD disagreed with OIG's finding that CPD lacks formal policies and procedures for how MLAS processes sworn member grievances. To rebut this finding, CPD pointed to the existence of E01-06 *Grievance Procedures* and the CBAs for all CPD bargaining members. OIG had already examined E01-06 and the sworn member CBAs as part of its ongoing review of the disciplinary grievance process for sworn members. E01-06 does not address how MLAS staff should process disciplinary grievances filed by sworn members.⁵ The CBAs for sworn members also do not establish formal guidelines for how MLAS staff should process disciplinary grievances.⁶ Moreover, as noted in OIG's management alert, MLAS reported to OIG that formal guidelines for processing grievances had been drafted, but had not been adopted or implemented as of October 17, 2018.⁷ OIG stands by its finding and strongly encourages CPD to finalize and implement formal guidelines for MLAS staff processing disciplinary grievances. CPD also did not directly address OIG's concern regarding a lack of guidelines for coordinating negotiated settlements with the Department of Law.

The Department acknowledged the need for an electronic case management system that meets the specific needs of MLAS. CPD indicated in its response to OIG that there would be a short-term solution of amplifying the current MLAS Access database and that the Department is in the process of creating a new case management system with a dedicated interface for MLAS. CPD stated that the forthcoming case

⁴ See Appendix B for CPD's complete response.

⁵ E01-06 provides steps which the MLAS Director must follow regarding the final appeal of a non-disciplinary grievance, outlines the duties of the MLAS Director as Secretary of the Grievance Review Panel, and includes a records retention policy. However, it does not address the policies and internal procedures for MLAS staff processing disciplinary grievances.

Chicago Police Department. Employee Resource E01-06 *Grievance Procedures*. Chicago: Chicago Police Department, 2017, accessed January 4, 2019, <http://directives.chicagopolice.org/directives/data/a7a57be2-12989d50-1b912-98ae-5cd4983040199e4b.html?ownapi=1>.

⁶ While the CBAs provide guidance to MLAS on timelines for responding to grievances, they do not outline any internal operating procedures for MLAS staff.

⁷ See Footnote 1 in Appendix A.

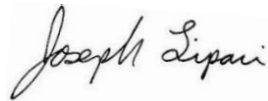
management system would be completed by 2020 under the consent decree. As the Department moves forward with integrating MLAS into the forthcoming case management system, OIG encourages CPD to ensure that precedential arbitrations will be flagged and comparable cases will be identified.

In response to OIG's concerns regarding MLAS staffing, CPD simply acknowledged that it will review this recommendation as it evaluates personnel and staffing levels throughout the Department. CPD provided no timeline for this Department-wide staffing evaluation.

Finally, CPD concurred with OIG's finding that the MLAS workspace is not conducive to confidentiality and indicated it would expedite a review of the MLAS workspace, which may result in the construction of a privacy wall and dedicated entrance.

In closing, OIG thanks CPD management staff, especially MLAS, for their cooperation with this ongoing review.

Respectfully,



Joseph Lipari
Deputy Inspector General, Public Safety
City of Chicago

cc: Joseph Ferguson, Inspector General, Office of Inspector General
Edward Siskel, Corporation Counsel
Charise Valente, General Counsel, Chicago Police Department
Dana O'Malley, Assistant General Counsel, Chicago Police Department
Robert Boik, Chief of Staff, CPD
Wynter Jackson, Director, Management and Labor Affairs, Chicago Police Department

APPENDIX A: PS LETTER TO CPD



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VIA ELECTRONIC MAIL

NOVEMBER 14, 2018

EDDIE T. JOHNSON
SUPERINTENDENT OF POLICE
CHICAGO POLICE DEPARTMENT
3510 SOUTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60653

Dear Superintendent Johnson:

The Public Safety Section of the City of Chicago Office of Inspector General (OIG) writes to respectfully raise four areas of immediate concern tied to the Chicago Police Department (CPD) Management and Labor Affairs Section's (MLAS) current administration of its disciplinary grievance process.

Through the course of interviews conducted for OIG's ongoing review of CPD's disciplinary grievance process for sworn officers, OIG identified four distinct issues which impact MLAS operations. The identified areas fall under the following categories: policies and procedures, information storage and collection, staffing, and office space.

A. SWORN MEMBER POLICIES & PROCEDURES

MLAS administers the grievance process for both disciplinary and non-disciplinary grievances. MLAS staff have stated to OIG that CPD has no formal policies and procedures for processing CPD sworn member grievances.¹ Accordingly, MLAS currently functions without agency-issued guidelines concerning how sworn member grievances should be processed and when certain steps in the grievance process should be taken.

Additionally, there are no agency-issued guidelines concerning how MLAS and the City of Chicago Department of Law should coordinate to handle negotiated settlements, which are an additional option to resolve grievances. Adopted policies

¹ MLAS indicated that formal guidelines for processing member grievances have been drafted, but as of October 17, 2018, CPD had not formally adopted or implemented these guidelines.

and procedures should delineate how each agency initiates negotiated settlement proceedings to ensure that both are applying appropriate standards for entering into and processing such agreements.

B. INFORMATION STORAGE & COLLECTION

MLAS staff informed OIG that MLAS currently operates without a dedicated electronic case management system for grievances. MLAS currently uses a Microsoft Access database to record information about grievance cases, but the program is not a case management system. While the Access database allows MLAS staff to store certain information about the grievances they are processing, MLAS has indicated that the current database does not have specific functions that are relevant for processing grievances, such as tracking communications regarding individual grievances or alerting staff members of upcoming deadlines. MLAS has acknowledged the need for a case management system and has been working to identify what would be required for such a system. OIG encourages CPD to expedite a formal assessment of MLAS' case management needs and to then implement a case management system that meets those needs.

Further, MLAS does not appear to have a standard, reliable means for flagging precedential arbitration decisions or identifying comparable cases, which are used to determine how to most effectively respond to a grievance. MLAS staff indicated that they individually search electronic case files, rely on institutional knowledge held by individuals within the section to locate precedential decisions, and rely on information shared from the Advocate Section in the Bureau of Internal Affairs (BIA) for comparable cases. The result of this piecemeal approach is that staff members may have inconsistent access to information necessary to inform decisions about how to proceed with certain cases. OIG encourages CPD to assess potential solutions for MLAS to obtain consistent and reliable access to precedential arbitration decisions and comparable cases.

C. STAFFING

MLAS staff stated that the section is currently understaffed relative to their volume of work. MLAS indicated that the section fields approximately 300 to 500 grievances annually. In addition to processing grievances, MLAS staff are responsible for running CPD's bidding process, answering contract interpretation questions, advising CPD supervisors in the field, and completing special projects assigned by the MLAS director. MLAS has seven staff members: the MLAS director, four sergeants, and two civilian labor relations specialists. The section is budgeted for a lieutenant but does not currently staff one. Taken together, there appears to be a strong indication that MLAS needs more staff to address its core workload in addition to other section responsibilities. OIG encourages CPD to undertake a staffing assessment in order to

appropriately align MLAS staffing to the volume of work and responsibilities of the section.

D. OFFICE SPACE

Additionally, MLAS expressed concern about its ability to maintain the confidentiality of sensitive information in their work environment. OIG observed that MLAS staff work in an open floorplan with no doors. Any CPD member, including grievants, could walk into the MLAS office space unannounced and either observe or overhear confidential information.

Due to the sensitive nature of the work of the section, OIG encourages CPD to take steps to further safeguard confidentiality and sensitive information.

In closing, OIG recommends that CPD take immediate steps to address these four areas of concern regarding MLAS administration of the grievance process. Should your office have any clarifying questions, please feel free to contact Leigh Anderson, Chief Performance Analyst, at landerson@igchicago.org or (773) 478-8554.

As required by MCC § 2-56-245, please send your response to these recommendations by November 28, 2018. Thank you in advance for your time and attention to these issues. We look forward to CPD's response.

Sincerely,



Joseph Lipari
Deputy Inspector General, Public Safety
Office of Inspector General
City of Chicago

cc: Joseph Ferguson, Inspector General, Office of Inspector General
Edward Siskel, Corporation Counsel
Charise Valente, General Counsel, Chicago Police Department
Dana O'Malley, Assistant General Counsel, Chicago Police Department
Wynter Jackson, Director, Management and Labor Affairs, Chicago
Police Department

APPENDIX B: CPD RESPONSE LETTER



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

December 14, 2018

Deputy Inspector General Joseph Lipari
740 North Sedgwick, Suite 200
Chicago, IL 60654

RE: Management and Labor Administration of Disciplinary Grievance Process

Dear Deputy Inspector General:

This letter is in response to the City of Chicago of Inspector General's letter dated November 14, 2018, where you outlined "four areas of immediate concern tied to the Chicago Police Department's Management and Labor Affairs Section (MLAS)." We have reviewed each item carefully and respond to each in turn, below.

First and foremost, the Department remains committed to the highest standards and execution of best practices for every bureau and unit within the Chicago Police Department (Department and/or CPD). That commitment includes MLAS, which is responsible for the management, oversight and administration of seven collective bargaining agreements (CBAs) that impact the majority of the Department's approximate 12,000 sworn and civilian personnel.¹ The work of MLAS is integral to the work experience of Department personnel and as such, an important undertaking. It is with this view that the Department responds to the four points outlined in your Report.

A. Sworn Member Polices & Procedures

The Report references the importance of an operating manual as it relates to the grievance process. Employee Resource Number E01-06, titled *Grievance Procedures*, has been in effect since September of 2017.

¹ By way of background, since its inception in or near 1982, MLAS has been, and continues to be, under the command of the Superintendent reporting to the General Counsel. MLAS provides management and oversight of the Department's grievance programs (such work includes, but is not limited to, investigating informal and formal grievances and responding to each and every formal grievance in writing, partnering with the City of Chicago's Law Department in defending CPD's actions at grievance arbitration proceedings and Unfair Labor Practice Hearings before the Illinois Labor Board); providing input to command, executive-level and supervisory staff to facilitate a uniform implementation of the CBAs, coordinating Departmental labor relations activities with internal partners (such as CPD's Human Resources and Finance Divisions and the Bureau of Patrol), as well as external governmental agencies (such as the Committee on Finance and the Department of Law); serving as liaison between the Department and the collective bargaining agents (such work includes, but is not limited to coordinating and hosting regularly occurring labor management meetings and grievance Level III meetings); providing input into the development of Department Directives and training programs to facilitate compliance with the CBAs, and conducting training for supervisory personnel as well as working as a principal member of the City's core labor negotiating team for the sworn CBAs.

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Mayor

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Eddie T. Johnson
Superintendent of Police

E01-06 outlines the formal Department policy for the filing of grievances. More specifically, it provides the Department's policy for resolving workplace disputes, such as the process to follow for the filing and processing of grievances for sworn bargaining and non-bargaining members, as well as for civilian represented and non-represented Department members. It also outlines the record retention policy for these matters. Additionally, each of the seven CBAs managed by MLAS outline a formal process for the filing of medical, disciplinary and standard grievances, such as those involving contract interpretation. These processes are outlined in the following CBAs: Article 7 of the CBA with the *Illinois Nurses Association*, Articles 20 and 21 of the CBA with the *American Federation of State, County, and Municipal Employees*; Article 7 of the CBA with the *Public Safety Employees Union, Unit II*; Articles 9 and 9A of the CBA with the *Policemen's Benevolent & Protective Association of Illinois ("PBPA")*, *Unit 156-Captains' Association*; Articles 9 and 9A of the CBA with *PBPA-Lieutenants' Association*; Articles 9, 9A and 9B of the CBA with *PBPA-Sergeants' Association* and Article 9 of the CBA with the *Fraternal Order of Police, Lodge 7*.²

The Department would also note that in 2017 we received CALEA accreditation. CALEA, the Commission on Accreditation for Law Enforcement Agencies, is a law enforcement credentialing body that represents the "gold standard in public safety." Part of the accreditation process included a review and audit of MLAS. That audit included an assessment of whether MLAS follows the *Grievance Procedure Employee Resource* explained above. It also included an inspection of MLAS and whether it performs a trend analysis of grievances filed. Finally, that audit also included interview(s) of the current Unit Commander, in addition to leaders of sworn bargaining units in an effort to assess their experiences with the grievance process and MLAS. The CALEA accreditation determined that MLAS had a formal policy in place; and it, in fact, complied with that policy. We are mindful that the PSIG can certainly disagree with the CALEA accreditation. That having been said, to say we have no formal policy is simply not accurate.

On a related note, the Unit Commander for MLAS was present for the intake meeting for this project. However, the Unit Commander for MLAS was not interviewed prior to the submission of the November 14, 2018 Report. The Department was not afforded the ability to discuss the *Employee Resource* as explained above, nor to discuss a draft Standard Operating Procedure for MLAS. Further, the Department notes that leaders of Departmental units that work closely with MLAS also were not interviewed. Had these interviews occurred, it may have served to assuage some of the concerns as outlined in the letter or at the minimum afforded the parties an opportunity to discuss in a collaborative manner.

B. Information Storage & Collection

CPD has concluded negotiations with the Illinois Attorney General and is anticipating the implementation of

² It is important to note that while these articles govern the formal grievance process for each CBA, such governance is also impacted by side letter agreements as well as precedential and binding arbitration awards.



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the negotiated Consent Decree. This serious undertaking will align our operational functions with constitutional policing and best practices in many facets of our organization, which include data management. To that end, the Department has made significant progress with its creation and implementation of a Case Management System that will track the investigative work of both the Department's Bureau of Internal Affairs and the Civilian Office of Police Accountability. As you may know, in the event that a member has been found to violate Department Rules and Regulations to which a disciplinary penalty has been levied, most of those matters are often subjected to the grievance process. Accordingly, the Department's plan is to build an interface for MLAS into the forthcoming Case Management System. We are on target to meet that goal as set forth in the Consent Decree by 2020. MLAS has and continues to work with the Bureau of Technical Services, Information Services Division, and our outside vendors in ensuring said system provides the tools MLAS needs, which includes a reliable means to store, track and analyze arbitration decisions. In the interim, MLAS has undertaken steps to amplify the current Microsoft Access Database; and in doing so, is currently able to generate reports and track information previously unavailable. We would ask that you consider this progress to date in rendering your recommendations.

C. Staffing

Right-sizing and appropriate staffing levels are important to the success of any organization, unit or team. To that end, we will review this recommendation with greater scrutiny as we evaluate our personnel and staffing throughout the Department.

D. Office Space

Confidentiality is of paramount importance, not only because of the legal obligations associated with the work performed by MLAS, but also due to the types of matters MLAS handles, such as its review and transmission of Complaint Register files, employee personal information, but also because Department members should feel confident that their information and related personnel matters are being handled with the utmost care for confidentiality and discretion. We concur with this recommendation. We will take measures to expedite that review, which may include an expenditure request to construct a privacy wall and/or entrance to the space currently occupied by MLAS.

In conclusion, moving forward, we hope you partner with the Department in a manner that facilitates collaboration in order to help identify ways in which the Department can deliver first-class services to both its employees and Department members, as well as to the citizens of this great City. While the Department understands that letter was to address issues that PSIG identified as of immediate concern, based on the information we are providing in this letter, the Department contends that some of the concerns raised could have been addressed in a discussion with MLAS Unit Commander or other Department heads. Since 1982, MLAS has been providing an important service to both Department members, and to the supervisory and executive

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Superintendent of Police

level staff. Our goal is to look for ways to ensure those services remain robust, effective, and legitimate. We welcome the opportunity to discuss these efforts, along with our responses to your recommendations as outlined in this document, at your request.

Sincerely,

A handwritten signature in blue ink that reads "Charise Valente".

Charise Valente
General Counsel
Office of the Superintendent

cc: Joseph Ferguson, Inspector General , Office of Inspector General
Edward Siskel, Corporation Counsel
Dana O'Malley, Assistant General Counsel, Chicago Police Department
Wynter Jackson, Director, Management and Labor Affairs, Chicago Police Department

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MISSION

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations by its Investigations Section;
- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and employment activities by its Hiring Oversight Unit.

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AUTHORITY

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, -240, and -250.

PUBLIC INQUIRIES:

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