

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	
CITY OF CLEVELAND)	
)	<u>STATUS REPORT REGARDING</u>
Defendant.)	<u>BACKLOG ELIMINATION PLAN</u>
)	<u>SUBMITTED BY THE OFFICE OF</u>
)	<u>PROFESSIONAL STANDARDS</u>

The Second-Year Monitoring Plan, in the above-captioned matter, required the submission of a proposed “Backlog Elimination Plan” from the Cleveland Office of Professional Standards (“OPS”) to the Monitoring Team by February 1, 2017. Dkt. 120-1 at 16. A draft “Backlog Reduction Plan” was submitted to the Monitoring Team on February 1, 2017 by the Administrator of the OPS, attached hereto as Exhibit A.

Upon receipt of the plan, however, the Monitoring Team determined the plan as submitted to be insufficient. Specifically, the plan vaguely alluded to the past challenges that contributed to the current backlog of incomplete civilian complaint investigations without setting forth a clear, actionable process for OPS to use to complete the hundreds of outstanding complaint investigations. Determining that further attempts to obtain a plan from the City that would sufficiently operationalize a systematic approach for eliminating the backlog would be futile, the

Monitoring Team and the Department of Justice (“DOJ”) instead have worked with the OPS Administrator to develop a preliminary Resource Allocation Plan that might have an immediate impact on the current unacceptable backlog of cases at the OPS. In light of the City’s ongoing, comprehensive failure to generate for itself any meaningful approach to ensuring that its residents and officers receive due process in the astounding number of outstanding and unresolved complaint investigations, the Monitor respectfully requests that the Court approve the preliminary Resource Allocation Plan attached hereto as Exhibit B.

I. PROCEDURAL HISTORY REGARDING THE CITY OF CLEVELAND’S COMPLAINT INVESTIGATION BACKLOG

On paper, it would appear that the City of Cleveland’s systems of accountability and civilian oversight are adequate and appropriate. OPS – led by a civilian Administrator and staffed by civilian investigators – is the entity that receives and investigates externally-generated complaints (e.g., complaints from civilians or individuals who are not Cleveland Division of Police personnel) about potential officer misconduct. Once investigations of those complaints have been completed, they are then heard by the Cleveland Police Review Board (“CPRB”). The CPRB is an all-civilian city panel that reviews OPS investigations and makes recommendations to the Chief of Police and/or Director of Public Safety about adjudication and discipline. In theory, Cleveland has had – since voters authorized the creation of the CPRB in 1984 – the type of community involvement in police accountability that has been desired by citizens in other cities and the subject of much longer debate in those jurisdictions.¹

¹ See, e.g., MARK KRASOVIC, THE NEWARK FRONTIER: COMMUNITY ACTION IN THE GREAT SOCIETY 99–105 (The University of Chicago Press 2016) (recounting initial consideration of creating a police review board, officially created in early 2016, in Newark, New Jersey in the early 1960s); Jan Ransom, *New Police Review Board Recommended to Mayor*, BOSTON GLOBE (May 11, 2016) (outlining plans for police review board); Rowena Shaddox, “*Stockton Mayor Anthony Silva Announces Police Review Board*,” Fox40.com (Sep. 8, 2016) <http://fox40.com/2016/09/08/stockton-mayor-anthony-silva-announces-citizens-police-review-board/> (outlining plans for creation of police review board).

In practice, gross inattention to OPS has resulted in ineffective oversight of Cleveland residents and officers alike. The absence of appropriate protocols and procedures can be viewed as an active impediment to the abilities of Cleveland Division of Police (“CPD”) command staff to manage the department, of officers to have confidence that the disciplinary system affords them due process, and of community members to know that all complaints are investigated thoroughly and adjudicated fairly.

A significant concern has been the length of time that it takes for OPS to complete thorough and fair investigations. As the OPS Manual now observes:

The timeliness of an investigation is a measure of how efficient the Investigatory process functions. It also helps to instill public confidence in the citizen complaint and investigation process.

Dkt. 86-1 at 32. The newly-adopted, Court-approved OPS Manual memorializes the Consent Decree’s requirement that “Standard” complaint investigations be resolved within 45 days and “Complex” investigations be concluded within 75 days. *Id.* The Parties and Monitoring Team are mindful, and the OPS Manual expressly contemplates, that “[a] number of factors influence how swiftly an investigation may be completed”; however, issues that impact timeliness, including OPS’s workload and the pace of resolution of complaints by PRB, “are the responsibility of the OPS to effectively manage and resolve to ensure that citizen complaints are not impeded.” *Id.*

The Monitor’s First Semiannual Report in June 2016 described the OPS backlog as “staggering.” Dkt. 65 at 51. The Report noted that, according to the OPS’s own data, as of May 4, 2016, 202 cases from calendar year 2014 were incomplete. *Id.* Another 225 cases from calendar year 2015 were not complete. *Id.* The Monitor observed that that state of affairs was “unacceptable and irresponsible by any measure” and that “[t]he state of OPS [was] dire.” *Id.*

Little changed in the ensuing six months. In November 2016, OPS reported a backlog of

428 investigations of citizen complaints, including 38 complaints filed in 2014, 204 complaints filed in 2015, and 186 complaints filed in 2016.

Given this history and its stated concerns, the Monitoring Team included as part of the Second-Year Monitoring Plan the requirement that OPS “create and implement a plan for eliminating the backlog of unresolved, incomplete, or otherwise pending investigations. . .The Plan should, among other things, provide a specific, clear and evidence based approach for both eliminating the backlog of unresolved cases while ensuring the timely investigation and resolution of new complaints consistent with the new OPS Operations Manual.” Dkt. 120-1 at 16. A deadline of February 1, 2017 for the creation of this report was communicated to the OPS in December 2016. The Monitoring Plan further called for the “OPS [to] work with the Parties and Monitoring Team to refine the Final Backlog Elimination Plan,” with a completion date targeted for March 15, 2017. *Id.*

The Second-Year Monitoring Plan called for the Monitor to recommend approval or disapproval of the Final Backlog Elimination Plan to the Court, either in whole or in part. *Id.* The determination was to “be based on the extent to which the plan adequately addresses the requirements of the Agreement, incorporates feedback of the Parties, and reflects the values and specific input of community and Division stakeholders.” *Id.*

The City’s primary solution for reducing the backlog of complaints was to increase the investigative resources available to the OPS through the hiring of two additional permanent investigators and six “temporary” investigators. Authority was given to the OPS to hire into those positions in May 2016 (for the two permanent positions) and July 2016 (for the temporary positions). The two permanent investigators were identified and hired and began working at the OPS in August 2016. The temporary investigators were identified and hired and began working

at the OPS in November 2016 (one investigator), March 2017 (two additional investigators), and in April 2017 (the final three of the six total new investigators).

In the Second Semiannual Report, the Monitoring Team noted a sustained effort on the part of the Monitoring Team and the DOJ to provide the “detailed technical assistance necessary to assist in the development and implementation of a new basic approach and day-to-day process aimed at restoring legitimacy to the overall citizen review process – and drastically improving the manner in which OPS delivers services to the citizen of Cleveland.” Dkt. 97 at 48.

While we have acknowledged that “[i]mprovements to OPS will not happen overnight,” *id.* at 49, and there has been a reduction in the number of pending OPS investigations (from 428 reported in November 2016 to 383 reported in April 2017), the Monitoring Team has more recently identified an additional backlog of more than 400 *additional* cases – some of which have been ignored or inadequately handled during this same period of time.

II. PROCEDURAL HISTORY AND ANALYSIS OF THE BACKLOG REDUCTION PLAN

In the Second Semiannual Report, the Monitoring Team noted that the City, Monitoring Team, and OPS were engaged in discussions regarding a plan to eliminate the backlog of uninvestigated, incomplete, or unresolved complaint investigations. *Id.* at 12. The Monitoring Team’s had requested a detailed plan for eliminating the backlog since at least the early Spring of 2016. Instead, the Monitoring Team had been provided only with:

[A] series of cursory and highly minimalistic documents, purported to be plans for eliminating the backlog, that did little more than summarize the nature of the problem or, in one instance, propose that OPS eliminate its backlog by summarily pushing a significant number of incomplete cases on to CPD’s chain of command to resolve, likely without formal discipline. Accordingly, all efforts to date by OPS to outline mechanisms for addressing the backlog have been patently insufficient in all respects and, in form and content, not serious proposals.

Id. at 12–13.

In an attempt to resolve these failures, the Second-Year Monitoring Plan required OPS to submit a detailed plan outlining how it would utilize available resources to attack the current backlog while also timely and competently addressing incoming complaints by February 1, 2017. Dkt. 120-1 at 18. It required that the Backlog Elimination Plan “provide a specific, clear and evidence-based approach for both eliminating the backlog of unresolved cases while ensuring the timely investigation and resolution of new complaints consistent with the new OPS Operations Manual.” *Id.*

The plan that the City presented on February 1 entirely failed to meet the requirements of the Monitoring Plan. Instead, the City’s February 1 submission was minimalistic, insufficiently specific, and failed to address meaningfully many of the significant operational challenges facing OPS. The plan can best be described as a “book report” of scattered justifications and excuses for the existence of a backlog. It failed to identify any concrete steps for OPS to take or set specific timelines. It lacked supporting data, evidence, or any form of meaningful analysis – including an inventory of the status of pending investigations, how close pending investigations are to completion, and what obstacles the investigators had encountered to date that had prevented the cases from being closed.

Most fundamentally, the backlog reduction plan failed to provide specific methodologies or approaches on how to reduce the backlog. The plan simply did not meaningfully consider the scope and true nature of the OPS backlog and the nature of resources necessary to ensure both the appropriate closing of old cases and timely investigation of newly-received complaints.

Further, it was subsequently determined that the OPS administration had focused only on reducing the backlog of pending investigations and had failed to pay appropriate attention to a

significant backlog of cases pending review by the CPRB and other cases where the CPRB had made findings, but where substantive follow-up actions were still required.

Subsequent to the submission of the February 1 plan, the Monitoring Team became aware of a substantial number of cases not addressed in the backlog elimination plan that nonetheless have not been completed – that is, complaints that have not been fully investigated, adjudicated, or otherwise resolved by the complainants being notified of a final disposition. These included cases pending disciplinary hearings before the Chief of Police (to determine whether or to what extent discipline should be imposed on cases where the CPRB had found misconduct had, in fact, occurred); cases that had been previously referred to the Internal Affairs Unit for investigation where no follow-up from the OPS had occurred; an additional set of cases designated for administrative dismissal that had not been processed and closed out; an extremely large number of cases that had been closed by the OPS without any notice to complainants; and a separate class of 2014 cases that OPS planned to assign for “supervisory review” by CPD.

Thus, the actual scope of the backlog of incomplete or unresolved complaint investigations ultimately is larger than originally known or contemplated. In addition to the previously-identified backlog, it is currently the Monitoring Team’s understanding that there are 16 cases awaiting disciplinary hearings with the Chief of Police; an additional 22 cases that have been referred to Internal Affairs but not concluded; 162 closed cases of which the complainants have not been informed as to the disposition; and, 96 cases – all from 2014 – that OPS has planned to submit to CDP for “supervisory review.”

III. APPROACH FOR ADDRESSING THE BACKLOG GOING FORWARD

After more than one year of waiting on the City of Cleveland and OPS to develop a meaningful plan to address the backlog of incomplete and unresolved citizen complaints, the

Monitoring Team and Department of Justice needed to provide substantial technical assistance to OPS to ensure establishment of even a generalized framework for addressing the backlog of incomplete investigations. The resulting, preliminary Resource Allocation Plan calls for OPS staff to be divided, as of May 1, 2017, into two functional teams:

1. The “Ongoing/Expedited Investigation Team”

This team will be led by the OPS Administrator and will have the responsibility to timely complete all complaint investigations filed *after* January 1, 2017, administer all complaints pending Pre-Disciplinary hearings to be conducted by the Chief of Police or the Director of Public Safety, administer all cases pending CPRB hearings, administer all cases pending with the Divisions Internal Affairs Unit and investigate all complaints, irrespective of filing date, identified as having the potential for sustained findings and the imposition of discipline. It will also be responsible for hiring of new staff, the implementation of a new investigative report template, and the creation and implementation of a public awareness plan.

2. The “Backlog Reduction Team”

This team will be led by the OPS General Manager and will have the responsibility for completing all investigations filed *before* January 1, 2017, including those cases pending “supervisory review” with the Division. It will also be responsible for OPS budget and budget planning and management, creation of an annual report, training for OPS staff and the CPRB, and the creation of business rules, process maps and the migration of the OPS to the IAPro case management database.

It must be noted that the Resource Allocation Plan is not nearly as specific, clear, or dynamic as the Monitoring Team believes necessary to ensure efficient and responsive engagement with the OPS backlog. Indeed, it is general and preliminary. However, even a

generalized approach for how OPS and its personnel will be structured in order to meaningfully address incomplete investigations while making progress on new and more-recent civilian complaints is better than no approach which has been the mode of operation to date in the City of Cleveland. In the meantime, the Monitoring Team will continue to provide ongoing, intensive technical assistance and be available on a daily basis in support of investigative issues and case handling concerns. It is hoped that with the addition of new investigative resources and the allocation of specific personnel to handle the backlog of cases that the OPS will be able to dig itself out of the hole it is currently in. Only time will tell whether the City can bring OPS into a position where it can operate in accordance with reasonable public expectations and the requirements of the Consent Decree.

IV. CONCLUSION

The task of the Monitor was to duly consider whether the proposed Backlog Elimination Plan required by the Second-Year Monitoring Plan sufficiently reflects, advances, embodies, and adheres to the requirements of the Consent Decree. The Monitor and the Monitoring Team have determined that the Backlog Elimination Plan did not come close to doing so. However, the recently-developed preliminary Resource Allocation Plan does have the potential to assist in reducing the current backlog of cases to a manageable level. Accordingly, the Monitor approves of the preliminary Resource Allocation Plan, attached hereto as Exhibit B, and asks the Court to therefore order it effective.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2017, I served the foregoing document entitled Status Report Regarding Backlog Elimination Plan Submitted by the Office of Professional Standards via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE

EXHIBIT A

Office of Professional Standards

Backlog Reduction Plan

February 2017

As of February 1, 2017, the Office of Professional Standards (OPS) has a total of 394 active investigations of citizen complaints of incidents involving Officers and employees of the Cleveland Division of Police. This number is inclusive of the following:

- 12 complaints filed to date in 2017
- 195 complaints filed in 2016
- 179 complaints filed in 2015
- 8 complaints filed in 2014

I. Previous Backlog

Of the eight (8) remaining active investigations filed in 2014, some have multiple allegations consisting of:

- Use of Force
- Harassment
- Lack of Service
- Demeanor/Unprofessionalism
- Missing Property
- Improper Procedure
 - Improper Arrest
 - Improper Tow
 - Improper Citation

It should be noted that the investigative staff made a concerted effort to close as many 2014 investigations as possible by the end of calendar year 2016. The remaining eight (8) active investigations are still open due to various factors, most of which are beyond the control of OPS, including:

- (a) referral to IA returned to OPS and requires additional investigation
- (b) pending criminal court cases
- (c) Officers on extended stress leave
- (d) companion cases merged and consolidated with 2015 cases that are being process for closing within next two weeks.

Investigations Closed Over the Past Two Years

In calendar year 2015, a total of 197 investigations were closed. This represents the following:

- 1 complaint filed in 2012
- 4 complaints filed in 2013
- 147 complaints filed in 2014
- 45 complaints filed in 2015

In calendar year 2016, a total of 367 investigations were closed. This represents the following:

- 1 complaint filed in 2013
- 245 complaints filed in 2014
- 52 complaints filed in 2015
- 69 complaints filed in 2016

The difference between the two years represents a 53% increase of closed investigations from 2015 to 2016. This significant increase is the result of efforts by the investigative staff to focus on closing cases that included allegations of a less serious nature, as well as the oldest cases in the office backlog.

Accordingly, OPS investigators identified approximately 96 citizen complaints that included allegations that would not result in the officer(s) involved being subject to discipline, but that nonetheless should be brought to the attention of a CDP supervisor. These allegations include Discourtesy/Unprofessionalism, Improper Procedure, Lack of Service, and No Service. Investigators recommended such cases to the Administrator, who reviewed and then forwarded them to CDP with the recommendation that a supervisor review and take any appropriate action with the officers. OPS shared its initial findings with CDP and is in the process of completing the final analysis of these cases. OPS has requested that CDP report what actions it takes with the officers involved in these incidents.

Secondly, the Administrator directed three (3) investigators who had 2014 active cases to prioritize their work to focus on closing all investigations of citizen complaints filed in 2014. A concerted effort was made to complete these investigations by the end of the

calendar year, December 31, 2016. The process was managed by the General Manager of Administrative Services.

At the onset of this effort, there were 38 remaining active investigations of citizen complaints filed in 2014. By December 31st, there were only eight (8) remaining 2014 investigations. As referenced above, those remaining investigations are still open due to various factors, most of which are beyond the control of OPS. However, OPS continues its efforts to request that CDP, wherever possible, expedite the processing of any reports pertaining to these investigations.

II. Current Backlog

Active OPS investigations include the following allegations (several complaints contain multiple allegations):

- 39 complaints alleging Use of Force
- 89 complaints alleging Harassment
- 123 complaints alleging Lack of Service
- 176 complaints alleging Improper Procedure
- 217 complaints alleging Demeanor/Unprofessionalism

Of the total 394 active complaint investigations:

- 39 complaints were filed within the last three (3) months
- 69 complaints were filed between three (3) and six (6) months ago
- 50 complaints were filed between six (6) and nine (9) months ago
- 38 complaints were filed between nine (9) and 12 months ago
- 96 complaints were filed between 12 and 18 months ago
- 87 complaints were filed between 18 and 24 months ago
- 15 complaints were filed more than 24 months ago

Attached is a list of active investigations, listed by date the complaint was received by OPS, as well as by allegation.

Methods of Prioritization

Once received and processed during Intake, complaints are prioritized as follows:

- Priority 1 (Complex Investigations)

- Use of Force
- Priority 2 (Standard Investigations)
 - Lack of Service
 - Improper Procedure
 - Harassment
- Priority 3 (Standard Investigations)
 - Demeanor/Unprofessionalism
 - Improper Tow

Complex investigations include those complaints that allege use of force, may contain multiple allegations, involve multiple officers, and/or involve multiple witnesses.

Given the current office investigative case load, the anticipated time of completion for Priority 1 investigations is approximately 180 days. The anticipated time of completion for Priority 2 investigations is approximately 120 days. And the anticipated time of completion for Priority 3 investigations is approximately 60 days.

During the course of an investigation, investigators will prioritize cases as follows:

- Seriousness of allegation
- Sustained recommendation
- Age of complaint

For those complaints with the most serious allegations, if it appears as though there is sufficient evidence to recommend it be sustained, it is prioritized for completion to be forwarded to the CPRB at one of its next two regularly scheduled meetings. If at any given time during review of completed investigations there are none that contain serious allegations with a recommendation to sustain, then investigations are forwarded to the CPRB by order of when the complaint was filed with OPS.

Current Workload

OPS currently has a staff of six (6) permanent, full-time investigators and one (1) temporary investigator. The office continues its search for three (3) additional temporary investigators. Of the six (6) permanent investigators, four (4) of them have

between three (3) and five (5) years tenure with the office. Those four (4) investigators have caseloads of 83, 80, 77, and 66 active investigations. The two (2) additional permanent investigators have fewer than six (6) months tenure with the office. Those two (2) investigators have caseloads of 48 and 40 active investigations.

Once the two (2) newer permanent investigators were hired, they were oriented and trained on conducting civilian complaint investigations for a probationary period of 90 days. During that time, each of them worked with the other four (4) experienced permanent investigators and assisted with various aspects of conducting standard investigations. At the conclusion of this probationary period, each of the four (4) experienced permanent investigators identified 20 standard investigations from the backlog that would be appropriate to transfer to the two (2) newer permanent investigators. Management reviewed the recommended cases and then reassigned them to the two (2) newer permanent investigators. Currently, new complaint assignments are divided among all six (6) permanent investigators, with the two (2) newer permanent investigators being assigned the less complex investigations. As the two (2) newer permanent investigators continue to develop their investigative skills, they will be assigned more complex investigations appropriately.

The one (1) current temporary investigator continues to be oriented and trained on conducting civilian complaint investigations for a probationary period of 90 days. Similarly to the process described above, during this probationary time, the temporary investigator has worked with two (2) of the experienced investigators and assisted with various aspects of conducting standard investigations. Upon completion of this probationary period, management will assess the readiness of the temporary investigator with the anticipation of reassigning approximately 20 standard investigations from the backlog to him.

Once the three (3) additional temporary investigators are hired, depending on their respective skill sets, a similar orientation and training process will take place.

III. Needed Resources

- A. When OPS initially began an assessment of the resources needed to conduct its work and also to reduce the current investigative backlog in a timely, efficient, and professional manner, it shared its needs with the Department of Public Safety. The Department responded by meeting several of those requests, including the following:

- Approving the hiring of two (2) additional permanent Investigators to help reduce the workload/case assignments of investigative staff
- Approving the addition of the Research Analyst/Intake Coordinator position to help accomplish the following:
 - Conduct intake on all complaints filed with OPS, thus relieving the original four (4) Investigators of that duty and enabling them to dedicate more of their time to conducting investigations
 - Conduct necessary research beneficial to the work of civilian oversight, including recognizing potential patterns and trends in complaints filed, as well potential practices within CDP
- Approving the addition of the General Manager of Administrative Services position to assist in accomplishing the following:
 - Help manage the day-to-day operations of the office
 - Assist with the increased workload necessary to meet the requirements of the Consent Decree/Settlement Agreement
 - Help be responsive to the production requests of the Monitoring Team, Dept. of Justice, and U.S. Attorney's Office
- Approving the hiring of temporary Investigators to help toward decreasing the investigative backlog
- New and updated IT equipment, including six (6) laptop computers assigned to the permanent Investigators enabling them to conduct more investigative work outside of the office
- Assignment of two (2) new City vehicles which accomplishes the following:
 - Increases OPS vehicle fleet by one (1) additional vehicle for a total of four (4), which increases the availability of vehicles to be assigned for investigative field work
 - Improves the overall quality of the fleet with dependable, reliable vehicles that should not require the amount of maintenance and repair as previously assigned vehicles
- Upgraded mobile phones for the investigative staff enabling them to directly receive and be more responsive to calls/messaging from the Administrator, including UDFIT Call-Ups for Officer-Involved Shootings

B. Additional Staffing Needs

While the resources described above have assisted OPS in making operational improvements, there is certainly more room for advancement. OPS has made some progress in its work, however, not as much progress as what is needed. Additional resources needed to exponentially increase OPS' work product include the following:

- Investigative Staff

As referenced above, while the addition of two permanent Investigators has assisted with decreasing the case load, the current case load per investigator is still too large. Comparative research and analysis within the civilian oversight industry indicates that an appropriate case load per investigator is between 20-30 investigations. This analysis, some of which was conducted by the National Association for Civilian Oversight of Law Enforcement (NACOLE), of which OPS and the CPRB are members, and some by the Cleveland Monitoring Team, examines oversight agencies of varying sizes and complexities. For example, oversight agencies in jurisdictions such as Washington, DC, Seattle, Miami, San Francisco, Chicago, New York, Portland, Cincinnati, and Berkeley, collectively average approximately 20-31 complaints per investigator. (Information gathered from individual jurisdictions, NACOLE, and the Monitoring Team)

Comparatively, with the current backlog, OPS investigators average between 65-76 investigations. Theoretically, once the backlog is reduced, an analysis of the current investigative caseload would be appropriate. Accordingly, in 2016, a total of 263 complaints were filed with OPS. To reduce the investigative caseload to a more manageable size according to industry standards, OPS would need a total of:

- Eight (8) investigators for an approximate caseload of 30 investigations each
- Ten (10) investigators for an approximate caseload of 25 investigations each
- Thirteen (13) investigators for an approximate caseload of 20 investigations each

With these example levels of staffing, it would be more realistic for OPS to meet the timelines specified in the Consent Decree/Settlement Agreement for completing investigations: 75 days for Complex Investigations and 45 days for Standard Investigations.

- Training and Community Outreach Staff

As OPS staff has been expanded, especially the investigative staff, there has been an increased need for staff training. Staff training is referenced in the Consent Decree/Settlement Agreement as well. New investigators require and deserve an adequate amount of orientation and training, particularly in how to conduct investigations of complaints involving police officers. It is the goal of OPS to hire candidates with general investigative backgrounds and skill sets. However, it is rare to find local candidates who possess the specialized skill of police complaint investigations.

Accordingly, OPS should have an experienced staff member who has the skill set and is responsible for training all new staff, with a focus on investigative staff.

Another requirement in the Consent Decree/Settlement Agreement is for OPS to conduct more community outreach to educate the public about the role and mission of OPS and the CPRB. Community outreach also will expand access to the citizen complaint process for the public. Unfortunately, it is not feasible for current staff to conduct proper community outreach in addition to managing their caseloads.

Examining both the need for staff training and community outreach, it could be feasible to hire one additional staff position that would be responsible for both duties.

C. Adequate Office Space

If OPS staff were to expand as referenced herein, there would be a need for increased office space. The Department of Public Safety is aware of this need and is in the process of addressing it.

D. Appropriate Access

Another aspect of OPS' ability to increase productivity and decrease the length of time it takes to close a case is appropriate access to information needed to conduct an investigation. For example, decreasing the amount of time it takes to receive various reports/data from CDP, such as officer Form 1 responses to Type Orders, Duty Reports, Daily Duty Assignments, and wearable camera system (WCS)/body-worn camera (BWC) footage.

One potential solution is for OPS to have its own separate account with Evidence.com, the website where WCS/BWC footage for CDP is stored. This would eliminate the need to request access from CDP for the footage and decrease the amount of time it takes to process the request. This is a practice in other jurisdictions.

Another potential solution to delayed access is for OPS to not place an investigation on hold during a court proceeding that involves a complainant and/or involved officer. This matter is currently being addressed by the Dept. of Public Safety, the Dept. of Law, and the Monitoring Team.

Lastly, if OPS is granted administrative access to its data and case files in IAPro, it would increase the efficiency of the case management system. OPS has been informed that the Dept. of Public Safety is in the process of transferring administrative rights

from CDP to Public Safety Administration. OPS also has been informed that it will be included on the committee that will review and address the needs of system users moving forward.

E. Filling Current Vacant Positions

Chief Clerk

The Chief Clerk position is a reclassified position for OPS; the former position was Private Secretary. OPS requested and received a certified list of ten (10) candidates in mid-October 2016. We requested to interview the top five (5) candidates whose credentials indicated the requisite skill set for the position. One (1) candidate had already accepted another position, so we interviews with the remaining four (4) candidates by the end of October.

During that time frame, the City of Cleveland began implementation of a human resources/personnel hiring software known as NeoGov. After the initial system training for appropriate staff, all City departments and divisions were then required to begin using NeoGov to process all new hires. Unfortunately there were multiple delays with the system implementation, including staff training on how to use the system, as well as candidate application files being entered into the system for interview scheduling confirmations.

Once those implementation delays were resolved and the candidates' information was entered in the system, we scheduled four (4) remaining candidate interviews. Of the eight (8) candidates, three (3) were identified as finalists and the top candidate was extended an offer of employment. The candidate, who is a current City employee, accepted the position. According to current HR practice, Public Safety was required to negotiate a transfer date mutually agreed upon with the candidate's current department. The candidate will begin work with OPS on January 30, 2017.

Senior Clerk (Part-time)

The Senior Clerk is a new part-time administrative support position for the CPRB. OPS received the hiring list of 23 applicants from HR in late September. The initial reduction of the list came from identifying persons who indicated on their application that they were specifically interested in part time employment, which was a total of 11 applicants out of the 23. All 11 applicants were contacted; of those, four (4) expressed an interest in the position and were interviewed. Of those four (4) candidates interviewed, two (2) were referred to the CPRB Chairman, who was not interested in hiring either.

Each of the additional 12 applicants were contacted and specifically asked if they had an interest in part-time work. Of those 12 contacted, six (6) indicated they were interested in part-time work; however, two (2) of them declined an interview due to

other potential commitments. Accordingly, four (4) candidates were interviewed by a panel that included the CPRB Chairman. The top candidate was identified; however, the candidate ultimately decided that part time work was no longer a viable option. At present, OPS is working with HR to identify appropriate next steps to generate additional interest in the position, including the potential to reclassify the position.

Of note, the new NeoGov system also generated a delay in this hiring process as well. However, management was able to work around the delay.

Temporary Investigators:

OPS has received approximately 23 resumes, including two in the past week, from either the temporary employment agency contracted through the City, or referrals from staff professional and personal networks. Of those, eight (8) candidates whose credentials indicated the requisite skill set for the position have been interviewed. Two (2) candidates were hired effective early November. One (1) temporary investigator worked for approximately six (6) weeks before the contract had to be terminated based on the fact that the employee was previously employed by CDP.

The process to hire temporary investigators has been a challenging one due to the fact that the position is only temporary; it is currently scheduled for six (6) to 12 months. As with filling any position, there is a preference to hire qualified candidates with some level of experience in doing the required work. Investigation of citizen complaints alleging police misconduct is a very specified skill set. Unfortunately, there is not a very large cadre of local candidates with that experience. Accordingly, candidates with other types of investigative experience may be a good fit if they are able to transfer their skill set to the work of civilian oversight. However, our experience has been that the average candidate with even only basic investigative skills is interested attempting to acquire a full time position, at least beyond six (6) to 12 months.

At present, OPS General Manager of Administrative Services (GMAS) is continuing efforts to identify additional potential sources to generate interest in the temporary investigator positions. These efforts include forwarding the job posting to members of the Monitoring Team who have shared it with their own professional networks, and continued outreach to local law school and university criminal justice programs and career services offices. Those local/regional academic institutions include Case Western Reserve Law, Cleveland Marshall Law, Cleveland State, University of Akron, Kent State, and Bryant and Stratton. Also, the Consent Decree Implementation Coordinator has shared the posting with various auxiliaries of investigative agencies (i.e. FBI, Secret Service).

Additionally, OPS has discussed with Public Safety and the Monitoring Team the feasibility of two other options: (1) searching for existing City employees with investigative skills and backgrounds who currently work in other City departments and

could be detailed to work in OPS on a temporary assignment; and (2) contacting civilian oversight offices in other jurisdictions to gauge interest in experienced investigators being detailed to Cleveland for a temporary assignment in OPS. Currently, however, these efforts have not yet yielded any candidates.

It is anticipated that if the current vacant temporary investigator positions are not filled in the near term, then the current investigators will continue to be assigned larger caseloads. This will in turn require a longer period of time to close cases and the backlog will be reduced at a slower rate.

IV. Methods to Assist with Caseload Reduction Goals

As part of the backlog reduction plan, the GMAS will work with four (4) investigators, including the temporary investigator, on closing 2015 cases in the backlog. Those priority cases, described above, will be identified during ongoing bi-weekly case management conferences with each investigator and management. During case management conferences, the investigator reviews the status of each assigned case, including the following:

- Complainant and witnesses, including interviews that have/will take place
- Allegation
- Officer(s) involved
- Pertinent documentation, either obtained or to be requested (i.e. Medical Releases, Duty Reports, DDAs, BWC/WCS footage, Type Orders, Form 1s, etc.)
- Challenges (anticipated or known)
- Projected date to be closed

On-going case management will track the status of each investigation and identify those cases that can be closed within a relatively short turnaround time, which helps to decrease the backlog in a more expeditious manner.

Citizen complaints that were filed with OPS in 2016 and new 2017 complaints will be assigned to the remaining three (3) investigators and prioritized in the same manner as described above. Once additional temporary investigators are hired, they will be assigned to either group as appropriate. OPS is cognizant of the need to assure that more recently filed complaints do not eventually contribute to the case backlog.

Another tool that will assist with caseload reduction is the new pending policy that will allow the Administrator, on an interim basis, to properly administratively dismiss specific complaints without prior review or approval of the CPRB. These complaints will include those that involve the following:

- An officer or employee who is not employed by CDP
- An officer or employee who has separated from CDP
- An officer or employee who is unidentifiable despite diligent investigative efforts by OPS
- Complaints that involve only a Uniform Traffic Ticket (UTT)/Parking Infraction Notice (PIN) and no allegation of misconduct
- Alleged conduct of a civil nature by an officer who is off-duty, where such action, or its effects, neither constitute misconduct nor have a substantial nexus to the officer's employment

Appropriate written notice and explanation will be forwarded to the complainant informing him/her of the right to request review of the administratively dismissed complaint by the CPRB.

This process will assist in closing investigations of complaints that do not involve misconduct in a timelier manner, and thus help decrease the backlog. OPS will begin this practice once its policy manual is officially approved by the Court.

These methods will assist with the overall goal of investigative caseload reduction. The goal is to eventually decrease caseloads from the current average between 65-76 cases to a more manageable average of 20-30 cases described earlier.

V. Staff Productivity

Of the total 394 active complaint investigations, 108 were filed within the last six (6) months. The remaining 286 complaints are more than six (6) months old. If OPS attempts to close those 286 cases over the next six (6) months, or by August 1, 2017, the office would need to close on average 48 cases in each of those six (6) months. With the six (6) permanent investigators and one (1) current temporary investigator, that averages to approximately seven (7) cases closed per month, per investigator. If OPS is able to hire and adequately train three (3) additional temporary investigators in the short term, and the total number of investigators increases to ten (10), then each would need to close approximately 28-29 cases over the six (6) month period.

Once the backlog is significantly reduced and using 2016 as a guide, with a total of 263 complaints filed, each investigator's caseload also will be reduced to a more manageable size. With the current investigative staff size of six (6), it averages to approximately 43-44 cases per investigator. As referenced above, with a minimum of

eight (8) investigators, the caseload is reduced to approximately 30 cases per investigator, and so on.

VI. Complaint Screening/Filtering Process

Under current OPS policy, all complaints filed by citizens alleging misconduct by a CDP officer or employee, that is not criminal in nature, are reviewed and investigated by OPS. Historical perspective reveals that this practice produces a very large investigative caseload for the office. This practice is not followed by all civilian oversight agencies.

Some agencies have policies that enable them to screen or filter complaints to determine their merit during the initial intake. The Monitoring Team is in the process of considering development of such a long-term plan. If adopted by OPS, it could reduce the number of complaints that qualify for a full investigation. OPS would ensure that all citizen complaints are thoroughly and adequately addressed to serve the needs of the community. Examples of alternate means of complaint resolution include the following:

- Categorization as a service complaint
- Potential for mediation
- Administrative review and referral to CDP
- Officer intervention program
- Declination

OPS will continue to explore more details of this process as it is further developed by the Monitoring Team.

VII. Conclusion

The overall goal of OPS with regard to this plan is to decrease the case backlog as expeditiously as possible while conducting fair and impartial investigations of all citizen complaints filed with the office. In order to accomplish this goal, the number of complaint investigations assigned to each investigator must be decreased. And in order to decrease caseloads, additional investigators are needed. OPS has addressed this need by requesting, being approved for, and attempting to hire temporary investigative staff. This process is clearly taking longer than anticipated due to the lack of qualified candidates interested in temporary assignment.

Additionally, the permanent investigators must receive the support and resources needed to increase productivity. This process has begun with the addition of two (2) permanent investigative positions and currently one (1) temporary position, as well as improved IT equipment. Effective case management, both by the investigative and

management staff, also is essential to this process. Increased productivity with regard to management of caseload must continue to help achieve the goal of decreasing the backlog.

The remaining three (3) temporary investigator positions must be filled to provide additional staffing to help address the backlog. If the challenge to attract qualified candidates with investigative experience interested in temporary assignment continues, then consideration should be given to hiring additional permanent staff.

If the increase in productivity does not continue and the hiring of additional staff, either temporary or permanent, does not occur, then the backlog will continue to increase, thus become reduced at a slower rate.

OPS remains committed to continuing its work toward achieving this goal and is optimistic that it can be realized with the ongoing support of current staff, the Dept. of Public Safety, and the Monitoring Team.

EXHIBIT B

Office of Professional Standards (OPS) Resource Utilization Plan

1. Creation of two teams:

Ongoing/Expedited Investigation Team:¹

Lead: OPS Administrator

Responsibilities:

Complaint Investigations:

- All complaints filed after January 1, 2017
- Complaints pending Pre-Disciplinary hearings conducted by Chief or Director
- Complaints pending CPRB hearings
- Complaints pending at IAU
- Complaints, irrespective of filing date, identified as having the potential for sustained finding and imposition of discipline

Administrative Tasks

- Hiring of new staff
- Investigative report template
- Public Awareness Plan

Backlog Reduction Team:²

Lead: OPS General Manager

Responsibilities:

Complaint Investigations:

- Closure of all complaints filed prior to January 1, 2017
 - Including cases pending supervisory review

Administrative Tasks

- Budget & Budget Planning
- Annual Report
- CPRB training
- Process Mapping / Business Rules / IAPro Migration

2. Monitoring Team Support: Technical assistance to be available on a daily basis (one hour window per day) in support of investigative issues/concerns/case handling. Need to determine who will be providing the TA and when

¹ Senior permanent investigators will retain some of the newer cases where investigation is in progress

² Most or all of the temporary investigators will be assigned to this team