

COCL Second Quarter Report: More Responsiveness to Community Concerns, Tough and Tender on the Police

by Portland Copwatch

Overall, the Compliance Officer/Community Liaison (COCL)'s Second Quarter Report ("Report") on implementation of the Settlement Agreement between the US Department of Justice (DOJ) and the City of Portland is much improved from the first one

<<http://www.cocl-coab.org/sites/default/files/Draft%20Q2%20COCL%20Report.pdf>>. It gives a better sense of what's going on with implementation, has a better layout (similar to the DOJ's annual assessment released in September), and is more responsive to (and less dismissive of) community concerns. Though the COCL team is tough on the Police Bureau in some places, in others they pull back criticism where it would be justified. Sometimes the community concerns are those suggested by the Community Oversight Advisory Board (COAB), which was created to give community feedback on assessment.

One major improvement is the "scorecard"-like ratings for each section, which builds upon the DOJ's four ratings by adding a fifth: "non-compliance with steps taken" [which we refer to here as "minimal compliance"]. The other ratings are no rating/not yet assessed, non-compliance [never used], partial compliance and substantial compliance.

A major concern that carries over from the DOJ report: The Bureau has been unable to generate statistics on use of force at least since May of 2015 due to switching to a new computer system. It seems outrageous that one of the most important components of data collection was disrupted and not at least sent back into the old system while the bugs are being worked out. While the COCL encourages quick repair, the lack of information is out of compliance and there should be no excuse for failing to generate reports— especially since the Bureau was generating such reports before the Settlement Agreement was formally entered into the court in August 2014.

In this analysis, we refer in parentheses to the paragraph numbers in the DOJ Agreement as listed in the Report.

Echoing concerns from the community:

—Telling the Portland Police Bureau (PPB) to provide "red-line" edited versions of Directives so people know what changes are being proposed (66-67).

—Asking the Bureau to infuse the value of all human life into its training (79).

—Suggesting that the Training Advisory Council (TAC) take public comment at their meetings (87).

—Passing on the COB recommendation that the Behavioral Health Unit (BHU) Advisory Committee have more representation from persons with lived experience and cultural diversity (94).

—Noting that diversion from the orthodoxy of the "Memphis Model" is, in fact, a part of the Model's guidelines; that is, each community needs to adapt Crisis Intervention training and response to its own needs (99).

—Explaining to the Bureau that simply publishing a newsletter about the work of the BHU doesn't mean that the community knows what's happening (104).

—Cautioning the City from pushing the Citizen Review Committee (CRC) to hear cases in too compressed a time frame, as it may "undermine due process" (121).

—Suggesting that the City examine moving to a fully independent, civilian run oversight system instead of the hybrid system involving police Internal Affairs (123). It would also be good to push further integrating the Police Review Board (PRB) and the CRC, to create more transparency, streamline the process, and better involve community members.

—Asking the City to dispose of the "48-hour rule" that allows officers to wait 2 days after a shooting before being subjected to an internal affairs interview; this suggestion as well as the printed refutation of the "science" behind needing "two sleep cycles" came from discussions by the COAB (124).

—Requesting that the City not try to influence the decisions of the COCL or COAB, and asking to institute a process to replace the (now-depleted) pool of alternate members (141-145).

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—As much as we would like to see change come faster, the COCL is wise to note that although the Bureau has missed most of its 180-day deadlines (which technically, the DOJ points out, would have been on February 25, 2015), it is better to strive for quality than speed.

Coming close but not quite getting to the community's concerns:

—Including the TAC and COAB in identifying training needs, and asking for community input on training, but not encouraging the Bureau to involve community members in all aspects of training (79). (The DOJ noted that the only thing they could find the TAC has done to date about training is help get some community members to act in scenarios, which is not the same thing as delivering training with a community perspective.)

—Calling for the BHU Advisory Committee to be more transparent by posting minutes and meeting times (94), but not specifically calling for a way for the public to attend or give input at meetings.

Other good recommendations:

—Suggesting the Bureau post on line for public comment the training Standard Operating Procedures (83).

—Asking that language governing the Police Review Board reflecting the Settlement Agreement and written into Bureau policies be included in City Code, something the DOJ also requested (131). We note here, however, that the COCL glosses over the flaw in the Settlement Agreement that allows general PRB members to serve two 3-year terms but limits CRC members to one three year term. This makes very little sense, since each of the 11 CRC members rotate onto the PRB at most once per year, while the 19 PRB members likely hear 2-3 cases each year. The skillset to review force and deadly force cases is crucial to the community, the CRC is uniquely qualified to review police misconduct investigations, and the importance of continuity and historical memory needs to be considered.

Recommendations causing concern include:

—Numerous encouragements for the Bureau to expand its “Neighborhood Involvement Locations” (NiLoc) program (84, 146, 147-148). This program anecdotally has caused confusion and fear in Portlanders (“what are these cops doing in my neighborhood, talking to young people of color?”) and may indeed be encouraging biased policing activities such as “stop and pat downs” (as described in a Portland Tribune article in late 2013). Until there is evidence that NiLocs are not being used for intelligence gathering, consent searches, and disproportionate contacts with young people of color, we’re not sure how the COCL can be blanket praising this program. (The COCL does urge the Bureau to emphasize not using demeaning language, but doesn’t address what the NiLocs are or why they should be considered “cutting edge.”)

—A shrugging off of the Employee Information System (EIS) not being fully implemented, when the COCL doesn’t seem to have actually looked at that Bureau database. The Report notes that “to our knowledge,” the EIS tracks complaints, criminal allegations, force and commendations (116-117).

—Affirming that the EIS should not be used for disciplinary purposes, even though members of the community have expressed outrage at that idea (116-117).

—Suggesting that exceptions be made for holding concurrent administrative and criminal investigations without clarifying how broad or narrow such exceptions might be (122).

—Raising the issue of racial profiling and work with the Community/Police Relations Committee (CPRC), but not urging the Bureau (and COAB) to follow through on that issue (146).

—Suggesting that community surveys about contacts with the police be sent out BY THE POLICE to people with mental health issues and people of color, while the survey is to be mailed back to the COCL for analysis (149 & Oregonlive, October 13). If the people had a negative perception of the police before or after the encounter, they likely will be alarmed to receive a mailing from the Bureau.

Significant revelations include:

—The Bureau reported back to the BHU Advisory Committee the reasons for rejecting some of their recommendations (95), a privilege that the rest of the community has not been graced with.

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—When using the EIS, the Bureau is supposed to see how many officers under a certain supervisor are using force, but instead, they're only looking at how often supervisors use the EIS (116-117); the COCL does not recommend fixing this problem.

—The Bureau updated the scope of its traffic stop data collection, but did not engage the COAB or CPRC when it did so despite requirements of the Settlement Agreement (147-148).

—Noting that the COAB has been given legal advice by the City Attorney, but not noting that COAB is supposed to be independent and thus should be receiving unbiased advice (154-155).

Interesting tension—DOJ vs. COCL:

Reading this Report led to the question, whose analysis will prevail, the assessment by the COAB (which is specified as “independent” in the Agreement but has been clarified as secondary by the DOJ), by the COCL, or by the DOJ?*

—On one of the most important aspects of the Agreement, the Use of Force Policy, the COCL says they would prefer more clarity but “will defer to the DOJ” (66-67).

—Regarding the number of patrol sergeants required to conduct use of force investigations, the DOJ said they had insufficient documentation but the COCL found partial compliance (71).

—In reviewing audits of force investigations (74/75/77), the COCL simply lists partial compliance while the DOJ outlines how force reports are not being written for deadly force incidents. (Note: This is one place the DOJ should have used a “minimal compliance” rating). DOJ also repeats the critique in 124 while the COCL admits not having looked at any shootings investigations, despite five incidents taking place since they were hired in January.

—Similarly, the COCL is silent on the issue of separating witnesses after a shooting, while the DOJ elaborates a long story of how officers were not given separation notices for hours, Internal Affairs (IA) and the Independent Police Review Division (IPR) were not alerted for hours, and officers were allowed to view security footage from a Taco Bell at the June 28 shooting (125).

—While the DOJ says the Bureau's six-month reports on training are in “partial” compliance with the Agreement, the COCL found them in “substantial” compliance, even though they note not all required items are included in the reports.

—The DOJ says that reports on the Enhanced Crisis Intervention Team (ECIT) are currently required when the officers use their special mental health/de-escalation skills, where the COCL says they're happening any time the ECIT is dispatched on a call (105).

—The DOJ gave a “non-compliance” rating on creating a policy to transfer persons in mental health crisis from the Bureau to caregivers (such as Emergency Medical Services); the COCL gives a “partial compliance” rating while acknowledging it's not solved (111).

—The COCL gives a “partial compliance” rating to the effort toward eliminating duplication in the IPR/IA investigations process, even while encouraging City Council to look at expanding IPR's powers, and despite the DOJ rating of “non-compliance” (128).

—The DOJ found the Bureau in non-compliance regarding the prohibition of retaliation (130), citing incidents revealed by the City Auditor about Portland Police Association (PPA) intimidation of IPR investigators that wasn't reviewed by the City because of the PPA's “special relationship.” However, the COCL gave a “partial compliance” rating based on the Bureau's revised Directive about retaliation—which the COCL goes on to say needs to be rewritten.

* Note: Portland Copwatch recognizes that the Agreement specifies the DOJ as final arbiter of compliance, but having the paid “monitor” and volunteer community members raises expectations that their voices will be heard.

Taking the cops to task:

—The COCL says the Bureau's quarterly data on force only meets minimal compliance (the DOJ said “partial,” but again didn't have the lower rating to use), wisely suggesting that the Bureau look at longer term trends and focus on analysis of race and the type of force used (76).

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—The data on interactions with people in mental health crisis are not being tracked properly, so received a minimal compliance rating (92-93).

—The Report notes that the Bureau has only minimal compliance in determining who can qualify to be part of the ECIT (101); the DOJ listed this assessment as “pending.” Oddly, the COCL gives “partial” compliance to the same question regarding who can be on a “Behavioral Health Response Team,” even as they say they did not receive documentation explaining the criteria (108).

—There is no rating on the voluntary interviews of officers at deadly force scenes. The DOJ generously gave the City a “partial compliance” rating, but the COCL stresses that officers declining to give voluntary statements is not a best practice, and “community members view noncompliance as obstruction of justice and an attempt to protect officers” (127). (Note: DOJ only talks about three shootings in 2015, rather than 5, and explains that officers’ counsel advised against making the statements.)

—The Bureau is rated as only minimally complying with the requirement to investigate all use of force complaints, noting they have not received documentation for three quarters of a year (129). The DOJ noted a number of cases that were declined for investigation as listed in the IPR 2013 annual report, when the City said it was voluntarily following the Agreement before it was formalized, and other incidents up until February 2015 where IA was not investigating force complaints.

— Going too easy on the cops/City:

—Even though the DOJ found that the Bureau only referred for review just 2 out of 129 officers flagged for using more force than a certain threshold, the COCL found them in “partial” rather than minimal compliance (118-119). To be fair, the COCL did suggest the Bureau not allow the EIS coordinator to rely on “best judgment” and instead to give a list of criteria for when to forward potential problem cops to the Professional Standards Division.

—Regarding re-investigating officers who are found liable in civil court, but who were not found out of policy by the Bureau, the COCL only focuses on finalizing parts of the Standard Operating Procedure examining officers’ fitness to participate in certain Bureau functions (133). In its report, the DOJ clearly cites the 2011 case of Jason Cox, whose beating/multiple tasing was caught on security camera, noting that the officers were “exonerated” by the Bureau though the jury awarded Mr. Cox \$562,000 in October 2014. It appears the Bureau did not re-open the case for investigation, which does not bode well for this important section of the Agreement.

—The DOJ reprimanded the City for overturning the two sustained findings against Captain Mark Kruger, noting that there is no provision in policy or the Bureau’s “discipline matrix” to do so; the COCL has no recommendations about the matrix and no comment on the Kruger scandal (137). To be fair, the revoked discipline occurred in 2014 and the DOJ’s report came out in the third quarter of 2015, while this report covers 2nd quarter 2015. However, it would be great to see more synchronicity between the DOJ and COCL on such issues.

—The IPR was supposed to come up with a way for a person to be able to track their complaint on line, instead (the DOJ noted in their assessment) there is a form you have to fill out to request information on the case’s status. The COCL gives the tracking plan a “partial compliance” rating even while noting they have no documentation for what IPR is doing regarding this or for sharing public documents with the complainants (138-140).

—Both the COCL and DOJ give a “partial compliance” rating to the requirement for the COAB to meet with the Police Chief and Mayor (Police Commissioner) twice a year, even though both acknowledge the COAB was created in February 2015 and no meeting has happened yet or is planned (152). In fact, at the Community Outreach and Engagement Plan Subcommittee meeting on October 15, officials stated that they were concerned how such a meeting would go, citing the disastrous results of their police-heavy community forum held in April.

— The COCL didn’t assess:

—Taser policy (68), awaiting COAB input, though some comments may have been appropriate looking at the number of incidents with over three Taser cycles listed in quarterly Force Reports.

—Training on constitutional rights (78) and working with Community Care Organizations on mental health issues (88)— these paragraphs are missing in the Report, although paragraph 90 indicates that (disappointingly) the CCOs are refusing to create working groups to include the City/Police just to meet the requirements of the Agreement.

—The fact that the Bureau is supposed to put out an annual report, starting upon enactment of the Agreement in August 2014, but is proposing to wait until January 2016 to publish such a report (150). Oddly, the DOJ gave the Bureau a “partial compliance” rating for this task, while both reports indicate no annual report has been published by the PPB since 2013.

—Quite a few items dealing with the DOJ’s interactions with the City (157, 167-168) and the COCL itself (160-164, 173-175).

Not sure what this means department:

—Describing ways to improve training, the COCL refers to “social competencies with strangers.”

Clarifying confusion with some success:

—The Report wisely summarizes the longer paragraphs from the Agreement, and uses the current terminology for programs whose names were changed since 2012. However, sometimes direct quotes of Settlement Agreement paragraphs use these new terms and sometimes they do not; we suggest that the COCL use brackets to indicate that they have inserted the new term in the old language.

—Because the Bureau decided to label their specialized mental health officers the “Enhanced Crisis Intervention Team,” it’s not clear whether the COCL’s interpretation of the Agreement’s requirements for Crisis Intervention Training and the ECIT matches what was intended. For example, should tracking use of CIT skills be limited to ECIT officers, or should regular officers who invoke those skills also write reports (92-93)?

Lingering problems:

—The COCL still refuses to use names of persons involved in the process, claiming that doing so might somehow compromise their ability to get people to talk to them (see final First Quarter Report, p. 30). But when the Report is talking about the “Inspector,” the “Compliance Coordinator” and other public figures involved in implementing the Agreement, the community doesn’t always know who that person is. Or, in these two examples, whether they are the same person. (Note: By reviewing documents at the Bureau’s DOJ tab, we’ve come to the conclusion that the “Compliance Coordinator” is Captain Mike Marshman and the “Inspector” is Lt. Steve Jones.)

—The report wisely pushes the Bureau to come up with statistics showing whether or not the Service Coordination Team is effective (112), but doesn’t address the program’s major fault: that persons seeking addiction treatment have to be arrested over and over to qualify for help.

—Even though the Settlement Agreement requires all Bureau audits and other documents related to the implementation to be made public (158-159), the “folders” referenced in the Bureau’s quarterly status reports (176-177) are either not publicly available or simply too difficult to find. The COCL Report notes that some documents were not even provided as part of those status reports, and the DOJ questioned some of the conclusions drawn by the Bureau.

—While the COCL and COAB have 45 days to comment on Bureau Directives (169), the community only gets 30 days, which presents problems particularly for organizations which need to meet and confer before publishing opinions (for example, the CRC and the Albina Ministerial Alliance Coalition for Justice and Police Reform).

Conclusion:

We greatly appreciate that the COCL is now focused on the activities of the Bureau and the City, rather than unnecessary comments about the community and the COAB. We appreciate the breadth of the 2nd Quarter Report, but hope that the COCL will add depth, such as the particular anecdotes relayed in the DOJ’s annual assessment. It is odd that the longest analysis in the Report, about the Employee Information System (116-117), seems to be full of commentary and repeated notions but little substance that sheds light on what is in the System and how it is currently used. We look forward to commentary from the COAB and the finalized document.