

Report
of the
Rochester Police Policy Oversight Commission

For the period from
June 2015 to December 2016

Introduction from the Chair
of the Rochester Police Policy Oversight Commission
For the period from June 2015 – November 2016

Pursuant to Subd. 19D.03 of the Ordinance that created the Rochester Police Policy Oversight Commission and Article Fourteen of the Bylaws of the Commission, the Commission is required to draft and provide a report of its activities to the Mayor of Rochester. The Commission is also required to report on the activities of all special purpose committees and on the Rochester Police Department's adherence to its approved policies, practices and procedures.

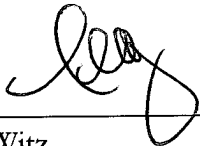
I was the elected Chair of the Commission from its first meeting in June 2015 through November 2016, and I undertook to prepare the first report of the Commission.

The Bylaws provide that elections are held in November each year, and that the new Chair takes office effective from the December meeting. Commissioner W.C. Jordan was elected Chair and Commissioner Rebeca Sedarski was elected Vice-Chair at the regular November 2016 meeting of the Commission. They assumed office in December 2016. Although my term ended in November 2016, this report will cover the work of the Commission through December 2016.

A few personal reflections from me may be helpful. This commission exists as a result of the untiring efforts of Police Chief Roger Peterson of the Rochester Police Department. In early 2014, I received a call from Chief Peterson who informed me that he was interested in the City of Rochester having an independent Police Policy Oversight Commission. Chief Peterson contacted other members of the Rochester community and within weeks of the first call, he created a task force with five members. After numerous meetings over an 18-month period and much debate between members of the task force, the Ordinance was passed by the Rochester City Council in 2015. The Commission held its inaugural meeting on June 29, 2015.

To my knowledge, this Commission is unique in Minnesota, in that there are two seats specifically designated under the Ordinance for a nominee of the Olmsted County Human Rights Commission and a nominee of the National Association for the Advancement of Colored Persons (NAACP). I am the nominee of the Olmsted County Human Rights Commission and W.C. Jordan, who is the current chair of the Commission, is the nominee of the NAACP.

I thank my fellow Commissioners for their support during my tenure as Chair. It has been an honor to serve as Chair of the Commission.



Allan Witz
Immediate Past Chair,
Rochester Police Policy Oversight Commission
For the period from June 2015 – November 2016

1. The Establishment of the Commission and Appointment of Commissioners

The Rochester Police Policy Oversight Commission was established pursuant to the City of Rochester Ordinance 19D. The Ordinance provides that the Mayor of Rochester nominate the Commissioners for approval by the Rochester City Council.

Following the application process, the Mayor interviewed all thirty-five applicants for the seven available seats on the Commission and selected seven candidates representing the diversity of Rochester's population. He then forwarded their names to the Rochester City Council which, in a public process, reviewed the recommendations and appointed the first seven members of the Commission.

Commissioners hold staggered terms that expire at the end of initial one, two and three-year terms.

The Commissioners during the period covered by this report were:

		Term Ends
Chair	Allan Witz	December 31st, 2018
Vice-Chair	W.C Jordan	December 31st, 2018
Commissioner	Abdi Roble	December 31st, 2018
Commissioner	Lawrence T. Collins	December 31st, 2017
Commissioner	Rebeca Sedarski	December 31st, 2017
Commissioner	Erin Truesdale	December 31st, 2017
Commissioner	Don Barlow	December 31st, 2016

2. Meetings of the Commission

Pursuant to the Bylaws of the Commission, meetings are held on the second Monday of each month. All meetings are recorded, and minutes are prepared after every meeting. An agenda is made available prior to and at each meeting and agendas and minutes are posted on the website of the Rochester Police Department.

3. The Powers of the Commission and Commissioners

In addition to the Ordinance, Commissioners are also bound by the Federal and State Constitutions and laws, including the Minnesota Government Data Practices Act, the Peace Officers Disciplinary Procedures Act and Minnesota's Open Meeting Laws.

The powers and limitation on power of the Commission are set out in the Ordinance, and summarized in the table below.

The table below also includes excerpts from Subd. 17 of the Peace Officer Discipline Procedures Act, which limits the authority of the Commission:

Rochester Police Policy Oversight Commission

	A	B	C
	Subdivision	Powers / Rights / Limitations	Ordinance
1	19D.01 Subd. 5.	<u>Meet at least four times a year.</u> At the first meeting adopt rules for: A. Time, dates, and places of future meetings; B. Election of officers; and, C. Voting and quorum requirements.	Subd. 5. The Commission shall meet at least four times a year. The Commission shall hold its first meeting within 45 days after the day this Chapter becomes effective. At the first meeting, the members shall adopt rules concerning the following business: A. Time, dates, and places of future meetings; B. Election of officers; and, C. Voting and quorum requirements.
2	Subd. 6.	<u>Appointment Authority</u> Appoint Chair and Officers	The Commission shall elect from its members a chairperson and such officers as it may deem necessary.
3	Subd. 6.	<u>Rulemaking authority:</u> Make rules for the conduct of Commission affairs	The Commission shall make such rules as it may deem advisable and necessary for the conduct of its affairs
4	Subd. 6.	<u>Rulemaking authority:</u> Make rules for the purpose of carrying out the intent of this chapter	Make rules for the purpose of carrying out the intent of this chapter.
5	Subd. 7.	<u>Right to receive support services:</u> Right to receive legal services Right to request information assistance Right to receive consultant or clerical services - if approved by the Common Council.	Support staff services shall be provided by Police Administration and, Legal services shall be provided by the City Attorney's office. Requests for information or assistance shall be made through the Department's Professional Standards Manager. Consultant or clerical services may be contracted for only if approved by the Common Council.
6	Subd 8. 1	<u>Right to:</u> • Review, and comment ○ on the policies, practices and procedures ○ adopted or to be adopted ○ by Police Administration • as they relate to the ○ legal requirements of state and federal law and ○ the expectations of the community	The Commission shall review and comment on the policies, practices and procedures adopted or to be adopted by Police Administration as they relate to the legal requirements of state and federal law and the expectations of the community.

7	Subd 8. 1	Limitation - Minnesota Government Data Practices Act • Right to review incidents • in which a member of the public has alleged • that a member of the Department • has engaged in conduct • violating an existing policy, practice or procedure	The Commission shall also, to the extent allowed by the Minnesota Government Data Practices Act, review those incidents in which a member of the public has alleged that a member of the Department has engaged in conduct violating an existing policy, practice or procedure, or that an existing policy, practice or procedure is unlawful. The Commission may make policy and procedure recommendations to the Department as well as educational initiatives that may be of benefit to the public and/or the department.
8	Sudb 8 . 2.	• Or that an existing policy, practice or procedure is unlawful. Power to raise issue relating to a policy, practice or procedure believed to be in conflict with state or federal law	In the event the Commission believes a policy, practice or procedure to be in conflict with state or federal law, the Commission will bring that conflict to the attention of the City Attorney who will make a determination regarding the legality of the policy, practice or procedure at issue.
9	Sudb 8 . 3.	Power to initiate discussions	In the event the Commission believes a policy, practice or procedure is inconsistent with the expectations of the community, the Commission will initiate discussions with the chief of police in order to resolve that inconsistency. Should the inconsistency not be resolved, the Commission may notify the Mayor and ask for a determination regarding the issue in question. In the event the issue still remains unresolved, and the Mayor and Commission feel it is of sufficient gravity or consequence to warrant Council intervention, the Mayor may refer the issue to the Common Council for resolution. The Common Council may consider the issue and, at the discretion of the Council, resolve it either by consensus or through a public hearing and subsequent issuance of a formal resolution.
10	19D.03.	Annual report	The Commission shall, with the Department's assistance, draft and provide an annual report to the Mayor outlining its activities during the preceding year and providing a general overview of the Department's adherence to its approved policies, practices and procedures. The Commission may note specific concerns or deficiencies for the Mayor to consider.

11	19D.04.	Limitation No authority to investigate or make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer	Allegations of Police Officer Misconduct. Subdivision 1. Pursuant to the Peace Officers Disciplinary Procedures Act, the Commission shall not have the authority to investigate or make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer. The Commission may make a recommendation regarding the merits of a complaint. However, the recommendation shall be advisory only and shall not be binding on nor limit the authority of the chief of police or the City of Rochester. Under the Peace Officer Discipline Procedures Act Subd. 17, a civilian review board, commission, or other oversight body shall not have the authority to make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer. A civilian review board, commission, or other oversight body may make a recommendation regarding the merits of a complaint, however, the recommendation shall be advisory only and shall not be binding on nor limit the authority of the chief law enforcement officer of any unit of government.
12	Subd. 2.	Limitation No authority to investigate complaints of employee misconduct Must refer complaints to the Department's Professional Standard's Manager for appropriate review and investigation.	Any complaints regarding employee misconduct made to the Commission or its members are to be referred to the Department's Professional Standard's Manager for appropriate review and investigation in accordance with the Peace Officers Disciplinary Procedures Act.

4. The Role of the Rochester Police Department

Chief Peterson has been proactive in bringing matters to the attention of the Commission, and makes monthly presentation to the Commission on matters of current interest and concern. Chief Peterson also makes himself available at the meetings to respond to questions and comments from Commissioners and members of the public during public comment periods, which are an agenda item at every meeting of the Commission.

Commissioners are kept informed of current issues relevant to the role of the Commission. One such issue was the reports of officer-involved shootings of African-American men. At the July 2016 meeting of the Commission, Chief Peterson gave a presentation entitled “Challenges and Changes to Policing in the 21st Century.” This presentation drew comparisons between policing in the United States and the United Kingdom, and highlighted shortcomings of current legislation, and offered proposals for change in current legislation in the United States. Many of the activities of the Commissions have their origin in information items brought to the Commission by Chief Peterson. Examples are to be found in paragraphs 5.2; 5.3; 6.1 and 6.5.

The Department’s Professional Standards Manager was the police liaison to the Commission and he performed secretarial services for the Commission until February 2016. In March 2016, Kari Berns from the Department took over this role.

5. Special Purpose Committees established by the Commission

The Commission also works through special purpose Committees. In the period under review, there have been three special purpose committees. These committees were established to create Bylaws for the Commission, to reviews the Departments Body Camera Policy, and to review the Department’s policies and practices regarding employee use of social media.

5.1 The Bylaws Committee

The Commission established a Bylaws Committee to write the Bylaws for the Commission. The committee was chaired by Commissioner Sedarski and the members were Commissioners Jordan, Truesdale, Roble, Witz and Barlow.

The deliberations of the committee included the possibility of members of the public being co-opted to Committees of the Commission, quorum and voting requirements, how to manage absences from meetings by Commissioners, and the submission by Commissioners of agenda items for discussion and future action. The draft was reviewed by the Rochester City Attorney’s office and the Bylaws were adopted at the regular meeting of the commission in July 2016.

5.2 Mobile Video Recorder (MVR) (Body Camera) Policy Committee

The Commission established a Body Camera Policy Committee in June 2015 to review and make recommendations for the Rochester Police Department’s proposed

Body Camera Policy. The committee was chaired by Commissioner Sedarski and the members were Commissioners Truesdale, Jordan and Roble. The Commission, through the work of the Committee, worked collaboratively with the Rochester Police Department to finalize a policy that was recommended by the Commission.

After the Committee concluded its work, the State of Minnesota adopted a new state-wide body camera policy. Following the new state action, the Commission established a new committee at the August 2016 meeting of the Commission.

Chief Peterson informed the Commission after the adoption of the state-wide policy that the Department would be modifying the existing policy where necessary to comport with the State of Minnesota's requirements for such policies and would make the amended policy available to the Commissioners. The new state-wide legislation called for a public hearing or public comment on implementation of the new policy. Pursuant to the statute, the body with authority to call for public comment was the Rochester City Council because it has the tax and budgeting authority required by the new state statute. Members of the Commission made recommendations to the Rochester City Council at its public meeting.

The Body Camera Policy Committee prepared a report of their activities. The report is attached as Exhibit "A" to this report.

5.3 Social Media Policy

Following the incident in the Department regarding Officer Ben Schlag's use of Facebook, the Commission acted to review the Department's policies on social media. At the March 2016 meeting of the Commission, Chief Peterson informed the Commission that the Department did not have a code of conduct specific to social media, and that the Department did not classify communications and postings on social media differently from other types of communications, all of which were dealt with in a single all-encompassing policy. The Commission elected to create a Social Media Policy Committee.

The Social Media committee was chaired by Commissioner Barlow and the other members of the Committee were Commissioners Collins, Roble and Sedarski. After the Committee commenced work, the City of Rochester developed and presented a city-wide policy. The Commission determined that the purpose of the Committee had been achieved by the action of the City Council.

6. Other deliberations and Outreach Activities of the Commission

6.1 UAV Policy

At the February 2016 meeting of the Commission, Chief Peterson introduced Officer Reynaldo Caban, who gave a presentation on UAV (drones). Chief Peterson

prefaced this presentation by stating this was not a budgeted item for 2016 and that legislation regarding drones does exist on the federal level and is under review at the state level. Officer Caban discussed the potential for drones to complement law enforcement efforts using overhead cameras and thermal camera views. He gave examples of the benefits of UAVs that included locating missing and endangered people, hostage situations, fleeing suspects, crime scene mapping and assisting other agencies.

At the May 2016 meeting of the Commission, Officer Caban distributed a draft UAV policy based on a policy of IACP (International Association of Chiefs of Police).

At the September 2016 meeting of the Commission, Chief Peterson noted that funding for UAVs had been added to the 2017 budget request and that he anticipated there may be funding earmarked but not approved for expenditure until the Commission had the opportunity to review and comment on a proposed policy. At the time of writing this report, the matter was still under review.

6.2 Post Bulletin Dialogue at the Rochester Public Library

Commissioners took part in the Post Bulletin Dialogue at the Rochester Public Library on September 2, 2015, with Jay Furst as the moderator. There was significant public interest in the role of the Commission and Chief Peterson and Commissioners responded to comments and questions. A video of the event is available on the website of the Rochester Public Library under "Videos of Library Events" listed under "PB Dialogues" on the library website.

6.3 Body Camera Forum at the Government Center

The Commission held a public forum at the Government Center on October 7, 2015. There was significant public interest. The Department demonstrated the use of body cameras and responded to questions from Commissioners and members of the public, who had the opportunity to see firsthand how the cameras operated.

6.4 Public Comment Periods at Meetings

Public Comment periods were open at every meeting of the Commission. Persons making public comment were asked to state their names and the name of any organization they represented. Public comment periods are a fundamental part of public involvement and a demonstration of the commitment of Commissioners to be available and responsive to members of the public.

A broad range of public comments was received by the Commission, and almost every discussion and action taken by the Commission was supplemented by public comments. Questions and comments were always responded to by Commissioners and/or Chief Peterson.

6.5 Appointment of Professional Standards Manager 2017

At the October 2016 meeting, Chief Peterson reported that the City would be posting for a new Professional Standards Manager, noting the position was to be restructured to best serve the needs of both the community and the Department. Chief Peterson informed the Commission that there would be a role for the Commission in the appointment process. At a subsequent meeting of the Commission, Commissioner Collins was voted as the Commission's representative in the hiring process. A new Professional Standards Manager was subsequently appointed.

6.6 Police Officers in Political Advertisements

At the November 2016 meeting, the Commission discussed the matter of police officers in political advertisements. Chief Peterson reported that the department was aware that this has occurred in the recent elections, and noted that it was not police policy to permit use of police vehicles or uniformed staff in political advertisements.

6.7 November 2016 Elections effective in December 2016

Commission members elected new officers at the November 2016 meeting. The new officers will hold their positions for twelve months from December 2016 to November 2017. Commissioner Jordan was elected as Commission Chair and Commissioner Sedarski was elected as Commission Vice Chair.

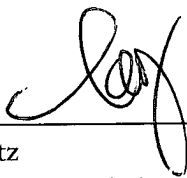
7. Conclusion and Recommendations

The Commission presents this report to the Mayor pursuant to the requirements of the Bylaws and the Ordinance.

The Commission records that the Department has, in its work with the Commission, adhered to its approved policies, practices and procedures.

The Commission records its appreciation for the collaborative way Chief Peterson and the Department under his leadership has supported the work of the Commission. The Commission records its thanks to Kari Berns of the Department for the support provided by her to the Commission.

Respectfully submitted,



Allan Witz

Immediate Past Chair,

Rochester Police Policy Oversight Commission

For the period from June 2015 – November 2016

Report prepared by
Mobile Video Recorder (MVR) "Body Camera" Subcommittee
of the

Rochester Police Policy Oversight Commission

Committee members: Commissioners Sedarski (Chair), Jordan, Truesdale and Roble.

Report Summary

On November 14, 2016, after several meetings, the Rochester Police Policy Oversight Commission's Body Camera Subcommittee, presented a summary report of their research and recommendations to the Rochester Police Policy Oversight Commission (RPPOC). Motion to have the report presented to Chief Peterson for his review and to have the document sent to the city council members; seconded and passed (5-2 vote).

The report from the Body Camera Subcommittee follows:

RPPOC Mobile Video Recorder (MVR) Policy Subcommittee Report

After a careful review of Chapter 171 SF 498, the Mobile Video Recorder "Body Camera" Policy Subcommittee of the RPPOC, proposes the following recommendations specific to the Rochester Police Department's Mobile Video Recorder (MVR) Policy. **These recommendations were prepared by the Subcommittee, after having been appointed by the RPPOC to make recommendations to the Commission. The recommendations have not been reviewed, discussed or voted on by the Commission.**

1. The Subcommittee recommends that MVRs be used and required during the following law enforcement encounters:
 - All calls for service and while en-route to emergency calls.
 - Pedestrian stops, including consensual encounters and "Terry stops" (a brief detention of a person by police on reasonable suspicion of involvement in criminal activity).
 - Traffic stops.
 - Foot and vehicle pursuits.
 - Consensual or warrantless searches.
 - Executing search warrants.
 - Arrest and detentions.
 - Transports (driving with a prisoner)
 - Other adversarial encounters or situations where criminal activity is likely to be recorded.
2. The Subcommittee recommends that RPD officers make their initial incident report without the use of the video. As they have done in the past and is legally allowed, police officers may continue to use audio recordings to help them in writing their reports. Once they have submitted such reports, police officers may have access to the video and make any necessary amendments to his/her report.

3. The Subcommittee recommends that a system be developed that limits when a video can be viewed or copied by individuals or police officers, and that logs any activity with a username/passwords.
4. The Subcommittee believes that police officers and individuals that are being recorded should have the same access to police videos. Individuals accused and recorded in the video should have the same access to the video as police officers prior to any trial proceedings. RPD must consider individual privacy concerns before making such footage available to other audiences.
5. The Subcommittee recommends that the data retention period be changed from 60/90 days to 1 year, which is in accordance with the Minnesota Department of Human Rights for individuals to file a complaint.
6. The Subcommittee asserts that it is important to notify citizens firsthand when they are interacting with police officers wearing a MVR; they should be advised that they are being recorded.

The MVR Policy Subcommittee also believes that this MVR Policy remains vague at this time, therefore, the Subcommittee reserves the right to make additions and revisions to the policy in the future. The time frame that we had to review this policy is beyond our scope of time to review; thus, we reserve the right to provide additional recommendations in the future.

Members of the PPOC's Body Camera Subcommittee attended the November 21st, 2016 Rochester City Council meeting to present the summary; prior arrangements for the presentation had been confirmed with the City Council Chair, Randy Staver. The focus of the presentation to the City Council would be recommendation #2.

2. The Subcommittee recommends that RPD officers make their initial incident report without the use of the video. As they have done in the past and is legally allowed, police officers may continue to use audio recordings to help them in writing their reports. Once they have submitted such reports, police officers may have access to the video and make any necessary amendments to his/her report.

At the City Council meeting, the Subcommittee members pointed out that the issue of when officers may write their reports specific to review of police videos, has its origins in a decision made by Governor Mark Dayton during the closing days of the 2016 legislative session. After hearing concerns of civil rights and open government advocates, Governor Dayton said he would veto a proposed bill on body camera policies unless certain changes were made. "My issue was not that I oppose law enforcement being able to review the video before they filed their reports" Dayton told *The Uptake*. "It was that they were given the exclusive ability, right, to do that. And meanwhile the (video) could be withheld from everyone else."

Officers should not be able to review or receive an accounting of body cameras footage prior to completing any required initial reports, statements, and interviews regarding the recorded event. Allowing officers to view body camera footage before writing reports could undermine the legitimacy of their investigations. This is especially problematic when there are complaints of excessive use of force and in any officer-involved shootings.

At this point the Rochester City Attorney, Terry Akins, stated that it would be against the law for an officer to be prohibited from accessing the video prior to completing his report. This statement was left as fact throughout the remainder of the presentation and conclusion of the City Council meeting. This statement was later refuted by Commissioner Ramona L. Dohman, Minnesota Department of Public Safety and General Counsel Isaac Kaufman, Law Enforcement Labor Services, Inc. Both have indicated that there are no legal requirements for officers to have access to the video prior to their initial report.

In the PPOC meeting of January 19, 2017, Chief Peterson was asked to explain Mr. Terry Akins' statement regarding the legality of officer access to police video footage. Chief Peterson provided the following explanation:

Section 13.825 subdivision 4 (a) identifies police officers as subjects of the data collected by body cameras:

Subd. 4 Access by data subjects.

For purposes of this chapter, a portable recording system data subject includes the peace officer who collected the data, and any other individual or entity, including any other peace officer, regardless of whether the officer is or can be identified by the recording, whose image or voice is documented in the data.

Section 13.825 Subdivision 4 (b) states that subjects of body camera data have access to that data:

(b) An individual who is the subject of portable recording system data has access to the data, including data on other individuals who are the subject of the recording

As to when that data must be made available, Section 13.04, (**Rights of Subjects of data**), Subdivision 3 mandates that data be made available immediately if possible:

13.04 Subd. 3 (In part) The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.

Summary

Prohibiting pre-review of Body Worn Camera footage does not conflict with the Civil Rights Principles adopted by more than one hundred national civil rights organizations and does not conflict with Minnesota law which is silent on this issue given that the governor threatened to veto the MN legislation if it contained a pre-review provision which in fact would provide an undue advantage to law enforcement.

Body camera data and technology was not created "for the sole purpose of accurate reports," but rather for the purposes of accountability, transparency, public trust—and in direct response to the breach of trust created by the number of officer involved incidents with unarmed citizens that were captured on citizen operated cell phones videos. Again, the MVR was not intended to be a means of heightened surveillance or preferential treatment for law enforcement.

Report prepared by: Commissioners Jordan, Sedarski, Truesdale, and Roble.