

Police Commission meeting 9-12-2023

{DRAFT}

Meeting begins at 6:00pm

Commissioners present: Co-Chair Rao, Co-Chair Cox, Commissioner Oski, Commissioner Garrison, Commissioner Comerford

Others present: Hayley McClenahan, Anthony Iarrapino, Jared Pellerin, Jon Murad, Keaton Knowles

1. Agenda

- A. Quorum is determined
- B. Modification of the agenda
 - i. Commissioner Cox moves to add an item to the executive session regarding a disciplinary or dismissal action against a public officer or employee.
 - a. Commissioner Oski seconds
 - b. The motion passes
- C. Motions to move into executive session
 - i. Commissioner Cox moves to make a specific finding that premature general public knowledge of the Police Commission's discussion of BPOA concern regarding commission review of certain officer body-worn camera footage would clearly place the Police Commission and/or the city at a disadvantage.
 - a. Commissioner Oski seconds
 - b. The motion passes
 - ii. Commissioner Cox moves that the Police Commission move into executive session based upon the specific finding, pursuant to Vermont Statute 1 V.S.A. § 313(a)(1)(B), and to discuss a disciplinary or dismissal action against a public officer or employee, pursuant to Vermont Statute 1 V.S.A. § 313(a)(4).
 - a. Commissioner Comerford seconds

2. Executive Session

- A. The Police Commission moves into executive session
- B. The Police Commission moves out of executive session
 - i. Commissioner Cox moves that the Police Commission send a letter to the labor specialist and attorneys, signed by the Police Commission co-chairs after final editing; and then to be posted on the public website. (To read the full letter, please see the attachment at the end of the minutes.)
 - a. Commissioner Comerford seconds
 - b. The motion passes

3. Adjournment

- A. Commissioner Cox moves to adjourn the meeting.
 - i. Commissioner Garrison seconds
- B. The meeting adjourns at 7:01pm

 City of Burlington Board of Police Commissioners

September 13, 2023

Jack Parlon
Labor Specialist
National Fraternal Order of Police
13 Whistler Lane
Kingston, MA 02364

Sent via email to: jparlon@fop.net

Dear Specialist Parlon:

We are writing to you on behalf of the City of Burlington's Board of Police Commissioners ("BPC" or "Commission").¹ Assistant City Attorney Jared Pellerin has shared your June 5, 2023 letter expressing concern that the City of Burlington "has conducted, is conducting and/or intends to conduct a RANDOM audit of all UOF [Use of Force] videos in direct violation of Burlington Police Department Directive DD14.1 § IX.A as incorporated into the Collective Bargaining Agreement between the City and its police union, the Burlington Police Officer's Association. Though the BPC is not specifically named in the letter, it is our understanding that the letter is focused on the BPC's review of Body Worn Camera ("BWC") footage from all Use of Force incidents reported to the BPC by the Department's management. We appreciate your concern, and hope that this letter can resolve what we believe is a misunderstanding of the purpose and effect of the BPC's review.

Please note that no-cause auditing of BWC footage specifically for personnel reasons is the only manner of review proscribed by DD 14.1 § IX.A. That Department Directive incorporated into the CBA, which was developed in conjunction with and approved by the BPC under its charter-based authority, does not in any way limit review of BWC footage to assess personnel performance when cause exists. Among the causes that would justify personnel performance-focused review by City officials are situations that are the subject of citizen complaints, public controversy or media reporting, situations in which weapons are discharged or in which an Officer or civilian are injured.

We acknowledge that review of all Use of Force videos not specifically related to the issues raised above could be construed as "no-cause" review. We hope to explain, however, the practical benefits that such review of UOF BWC footage has provided the BPC in the discharge of its policy review function under the Burlington City Charter and duly adopted resolutions of the City Council. The Commission specifically intends to clarify that the BPC's policy-focused review is not intended to be and is not actually in conflict with DD14.1 § IX.A as incorporated into the Union's contract with the City. If that hope is realized, the BPC proposes to adopt a

¹ The BPC held a special meeting on September 12, 2023 and voted unanimously to authorize us, as the Commission Co-Chairs, to send this letter with copies to the Attorney for the Burlington Police Officer's Association.

resolution which codifies its review practice in a manner that will avoid creating any conflict or appearance of conflict with the contract's provisions. We regret and take responsibility for the fact that the lack of a formally adopted internal BPC operating policy on this topic may have given rise to the Union's concerns in the first place. We would welcome the opportunity to work with the Union on resolution language that would help assuage the Union's concerns about the BPC's policy-focused review of all UOF BWC footage going forward.

We suggest that the proposed BPC operating policy on Use of Force BWC footage review in situations falling outside of review for "cause" would confirm that the Commission's review in those circumstances is not done to "monitor Officer or personnel performance" within the meaning of the DD as incorporated into the CBA. Rather, it would clarify the Commission's current exercise of its authority under Resolution 7.09 to evaluate how key policies and directives such as DD.05 Use of Force Police, DD.03 Fair and Impartial Policing, and DD.13.02 Interacting with Persons with Diminished Capacities, among others, are working in the field. The BPC policy would focus review on these policies and other key issues to monitor policy implementation generally and not the specific officers or personnel implementing the policies. We emphasize that the Commission has not, at any time since it began its review of all UOF BWC footage, initiated a complaint against a specific Officer nor recommended that the Chief initiate discipline against a specific Officer whose conduct the BPC observed during BPC's policy-focused review of BWC footage. The proposed BPC operating policy would clarify this point.

We believe the policy described above would enable BPC to carry out its Charter and Resolution-based duties consistent with DD 14.01 as incorporated into the BPOA contract.

As you may know, the BPC is an official commission of the City of Burlington with powers granted to the BPC under the City's Charter and duly adopted resolutions of the City Council insofar as they are consistent with Charter provisions. Pursuant to Section 3-184 "The City Council shall make rules and regulations for the government of the entire police force...The Board of Police Commissioners shall have such authority and responsibility relating to the management of the Police Department, its services, and facilities as may be delegated from time to time by resolution of the City Council." The City's Charter Sections 3-189 and 3-190 make clear that the Chief of the Department enjoys exclusive, discretionary authority to take a range of disciplinary actions against members of the Department. Section 3-190 specifically limits the BPC's authority regarding Department personnel decisions affecting Union members to hearing appeals from any disciplinary personnel decision already made by the Chief.

This last point bears emphasis as regards the concerns articulated in your letter. The BPC is not empowered to make "Officer or personnel performance" decisions within the meaning of DD 14.1 § IX.A. While the Chief does, as a matter of policy and practice, advise the BPC of complaints the Department receives and any personnel actions contemplated or taken as a result of those complaints or of internal investigations, the BPC does not have the power to initiate personnel actions. Nor does the BPC have the authority to determine the outcome of personnel actions taken by the Chief except in the exceedingly rare case of administrative appeal.

By contrast, the BPC has been granted broad authority “to initiate audits, reviews, and evaluations of policies, directives, or data; in regard to discipline, racial disparities, or other Commission priorities.” (Emphasis added). City Council Resolution 7.09 signed by the Mayor in November 2021 granted this authority to the Commission. We emphasize the language focusing our audit, review, and evaluation authority on “policies” and “directives” because it is distinct from the use of no-cause BWC footage review in making personnel decisions, a practice that DD 14.1 § IX.A specifically addresses and that the BPC has not engaged in.

The BPC takes its charge to evaluate the implementation of Department policies and directives very seriously. Policy-focused review of BWC footage in UOF incidents has proved invaluable to the Commission in fulfilling this charge. The footage helps provide civilian Commission members with a vivid picture of the challenges that Officers and other department personnel experience in the field, including overall patterns within police practice. The footage helps provide context and meaning to the words on the pages of various Department Directives which the BPC has a role in approving and amending. The BPC reviews the BWC footage from the perspective of improving organizational culture and in helping develop a modern police force which is diverse, transparent, and accountable. The videos provide numerous practical examples that enable an informed policy-focused dialogue between the Chief and the BPC. Moreover, consistent with the stated purpose of DD14.1 § I, the BPC’s policy-focused review “enhance[es] police transparency, thereby preserving and expanding the public’s trust.”

Thank you in advance for considering the information presented in this letter. We welcome the opportunity to meet with you at a subsequent Commission meeting aimed at resolving this issue and welcome any written response you may wish to provide.

Very truly yours,

Shakuntala Rao
Shakuntala Rao (Sep 13, 2023 14:21 EDT)

Shakuntala Rao
Commission Co-Chair

Mary Cox
Mary Cox (Sep 13, 2023 14:05 EDT)

Mary Cox
Commission Co-Chair

CC: Caroline Earle, Esq., Atty for Burlington Police Officer’s Association
Jared Pellerin, Esq., Assistant Burlington City Attorney
Hayley McLenahan, Esq., Assistant Burlington City Attorney
Anthony L. Iarrapino, BPC Independent Counsel