

HOW THE CHICAGO FOP CONTRACT UNDERMINES POLICE ACCOUNTABILITY

Testimony of Wendy Park on April 3, 2008 before the Chicago City Council Police & Fire Committee

Good morning. My name is Wendy Park, and I am an attorney at the American Civil Liberties Union of Illinois. I am testifying today on behalf of the Chicago Coalition for Police Accountability, whose members include the ACLU and Citizens' Alert.

Most police officers deserve our gratitude and respect for doing a hard job in a lawful and professional manner. But a badge and a gun confer awesome power, and unfortunately, some officers abuse that power. Thus, Chicago must have an independent and effective system of investigating allegations of police misconduct.

One substantial impediment to effective disciplinary review of alleged police misconduct is the current collective bargaining agreement between the City of Chicago and the local unit of the Fraternal Order of Police. Several provisions of the expired, but currently in-effect, FOP contract substantially inhibit effective investigation and resolution of allegations of police misconduct.

Specifically, four provisions of the FOP contract undermine police accountability:

- (1) premature *destruction of disciplinary records* (section 8.4, paragraph 1);
- (2) improper limits on the *use of past disciplinary records* in investigating and resolving present complaints (section 8.4, paragraphs 2 & 3);
- (3) improper limits on the investigation of *anonymous complaints* (sections 6.1(D) & (E); and
- (4) improper limits on the *disclosure of the names of officers* who are the subject of a civilian complaint (section 6.9).

First, we urge the City to repeal the FOP contract provision requiring the premature destruction of disciplinary records. The best practice is to retain police disciplinary records for the entire time the police officer involved is

employed by the department, plus an additional ten years. Such records can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians. Moreover, these records should be retained for the purposes of an automated early intervention system.

Unfortunately, the FOP contract requires premature destruction of disciplinary records. Under section 8.4, paragraph 1, most disciplinary records must be destroyed 5 years after the date of the complaint incident or its discovery, whichever is later. Non-sustained files alleging criminal conduct or excessive force must be destroyed 7 years after the date of the incident or its discovery.

The City has taken the position that it does not follow this provision of the FOP contract, because federal court orders in discovery disputes involving the City require the City to maintain the disciplinary records. However, at any time, the City could alter its interpretation of these judicial discovery orders, or the City could go to court to vacate these orders. Therefore, the proper remedy is to delete the premature destruction deadlines set by section 8.4.

Second, we urge the City to repeal the provision limiting the use of past disciplinary records. The best practice is to use old police disciplinary records in current investigations of alleged police misconduct – including when the old complaints were not sustained. As already noted, past allegations can prove patterns, which can be relevant in credibility disputes.

Section 8.4, at paragraphs 2 & 3, limits the use of past disciplinary records in investigating and resolving current complaints. This provides that “any information of an adverse employment nature” contained in an unfounded, exonerated, or otherwise not sustained file shall not be used against the officer in future proceedings. The sole exception is that unsustained allegations of excessive force or criminal conduct can be used in future disciplinary proceedings, to determine credibility and notice.

This provision overbroadly limits the use of past non-sustained complaints. Patterns of misconduct can be relevant to other kinds of allegations such as coercion, false arrest, illegal search, sexual and racial abuse, and verbal abuse. Patterns of misconduct can also be relevant for purposes other than

credibility and notice, such as intent, modus operandi, and appropriate penalty.

In addition, section 8.4, paragraph three, limits the retention and use of disciplinary records that have a finding of “sustained – violation noted, no disciplinary action,” or any record of summary punishment. These records must be removed from the officer’s file after one year, and thereafter they cannot be used as evidence of or in support of adverse employment action. However, this information would also be valuable in proving patterns of past conduct and resolving credibility disputes.

Third, we urge the City to repeal the provision barring the investigation of anonymous complaints. The best practice is to investigate anonymous complaints. The police routinely investigate anonymous complaints that civilians are breaking the law, because such complaints are often true, even though the complainant is afraid of retaliation from the wrongdoer. This should also apply when the alleged wrongdoer is a police officer.

However, section 6.1(D) at paragraph 2 provides that only anonymous complaints alleging a violation of a criminal law may be investigated. However, many anonymous complaints such as verbal harassment do not concern criminal conduct.

Further, section 6.1(E) provides that before an officer under investigation can be interrogated, he shall be informed in writing of the names of all complainants. This seems to mean that a complainant must disclose his identity regardless of whether he is alleging criminal misconduct or not, before a police officer can be interrogated about the misconduct. For the same reasons already stated, this provision should be eliminated, to allow the investigation of anonymous complaints.

Fourth, we urge the City to repeal section 6.9 of the FOP contract, which does not allow the identity of an officer under investigation to be disclosed to the media “unless there has been a criminal conviction or a decision has been rendered by the Police Board (or by the Superintendent).” When the Independent Police Review Authority concludes that an allegation cannot be sustained, there will be no decision by the Superintendent or Police Board, and section 6.9 will thus bar disclosure of the accused officer’s identity.

However, public access to the names of these officers would provide valuable information regarding the effectiveness of IPRA. For example, if

specific officers were shown to be the subject of numerous complaints, but none of those complaints resulted in discipline, this would be relevant to evaluating IPRA's effectiveness. Indeed, a majority of the City Council last year sought the names of the officers with ten or more complaints against them.

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In short, several provisions of the expiring FOP contract should be eliminated, because they impede effective investigation of alleged police misconduct. The next FOP contract should not be allowed to undermine the important reforms to civilian review that this Council enacted last year.