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Dear Counsel:

We write this letter on behalf of the Coalition to provide written comments about the Chicago Police Department ("CPD") Bureau of Internal Affairs ("BIA") complaint investigation policies: General Order G08-01, General Order G08-01-02, and Special Order S08-01 (collectively, "BIA policies" or "the policies").

As you are aware, on November 5, 2021, the Coalition submitted written comments to General Order G08-01, General Order G08-01-02, and Special Order S08-01. CPD declined the Coalition's requests for a Deliberative Dialogue to address the Coalition's concerns about the BIA policies, which were made on October 29, 2021 and November 17, 2021.

The Coalition continues to have serious concerns about a number of inadequacies in the revised BIA policies and urges the City to make the changes described below. Without these changes, CPD officers will continue to evade accountability for wrongdoing in violation of the Consent Decree principles and requirements.

Structure of BIA Policies

1) The BIA policies must be simplified and streamlined to clearly inform officers and investigators of their duties and expectations.

The current disjointed scheme of the BIA policies makes them too complicated for officers or investigators to easily understand their duties and the consequences for officer misconduct. The three policies under review reference a litany of other policies without including the language or substance from the cited policies, thereby requiring constant cross-referencing to determine what is required, of whom, and when. This policy labyrinth frustrates the very goals the BIA policies are supposed to advance: to ensure accountability for officers who engage in misconduct or otherwise hurt members of the public, and to foster community trust in CPD's complaint and disciplinary system. In order to achieve these goals, the policies must be streamlined into a comprehensible policy.

BIA Investigator Jurisdiction, Training and Resources

2) General Order G08-01-02 must give the Civilian Office of Police Accountability (not CPD's BIA) exclusive jurisdiction over investigations concerning sexual abuse, sexual assault, or other sexual misconduct.

Complaints about officer interactions with community members must be investigated by entities outside of CPD to prevent intimidation of people who file complaints and enable complete investigations. This is especially true for complaints concerning sexual abuse, sexual assault, or other sexual misconduct, which concern incidents of a sensitive and traumatic nature that complainants often feel uncomfortable discussing and pursuing through a complaint investigation.[1] Their fears are valid. As the U.S. Department of Justice ("DOJ") described in its report, BIA has a history of failing to investigate allegations of rape and closing investigations due to a survivor's "refusal to cooperate" after being threatened by the officer in question.[2]

General Order G08-01-02 outlines Civilian Office of Police Accountability's ("COPA") jurisdiction and must be revised to include investigations concerning sexual abuse, sexual assault, and other sexual misconduct to ensure such investigations are not handled by BIA.

[1] U.S. Dep't of Justice, *Investigation of the Chicago Police Department* 69-70 (2017) [hereinafter "DOJ Report"] ("For sexual misconduct in particular, victims may be reluctant to participate in the investigation because the nature of the misconduct and of investigations means that victims may have to retell intimate and embarrassing details numerous times to complete strangers.").
[2] *Id.* at 79.

Support and Protections for People who File Complaints

3) **The BIA policies must require the provision of supportive services to complainants, including information about the complaint and investigation process, information about outcomes, and referrals to outside service providers when needed.**

Every person who files a complaint against police should be assigned a complaint support specialist, who can provide information and supportive services throughout the complaint and investigation process.[3] For example, an individual may benefit from a referral to a behavioral health professional, a social worker, or an organization that supports survivors of domestic or sexual violence, or they may need accommodations for a disability, such as a sign language interpreter for a person who is deaf. None of the three policies address how or when complainants will be provided information about the investigation process and possible outcomes, referrals to outside service providers, or appropriate accommodations when needed.

4) **The policies must be revised to make clear that no one is required to file a sworn affidavit in order to file a misconduct complaint against a nonsupervisory Department member.**

Section 10-150 of the SAFE-T Act, amending the Uniform Peace Officer's Disciplinary Act, 50 ILCS 725/3.8(b), removed the sworn affidavit requirement for complaints against officers and applies to all collective bargaining agreements entered after July 1, 2021. The collective bargaining agreement negotiated earlier this year between the City of Chicago and the Fraternal Order of Police, Chicago Lodge No. 7 ("FOP") does not require members of the public to provide a sworn affidavit in order to file police misconduct complaints. The collective bargaining agreement for supervisory members—Sergeants, Lieutenants, and Captains—which was enacted prior to July 1, 2021, does include a sworn affidavit requirement.

In response to the Coalition's prior comments, it appears that General Order G08-01 was edited to note that the sworn affidavit requirement *only* applies to complaints filed against certain supervisory members, and *not* against rank-and-file members. But Special Order S08-01, Section VI.D.12 continues to imply that sworn affidavits are always required (listing accountability sergeants' duties to include "initiating and making reasonable attempts to secure a sworn affidavit"). The existing references suggest that sworn affidavits are required to file a misconduct complaint against any CPD member, including nonsupervisory members, which is contrary to state law and the terms of the collective bargaining agreement with the FOP.

[3] Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve* 82 (Apr. 2016) [hereinafter "Task Force Report"].

Interview & Investigation

5) **Special Order S08-01 must be revised to require investigators to consider any evidence that an officer lied or omitted material facts, as well as the complete history of complaints and relevant investigative files concerning the officer, regardless of the outcome of those prior complaints and investigations.**

Section VIII.A.20 of Special Order S08-01 only requires BIA accountability sergeants to consider "the nature of the allegation, as well as the accused member's complimentary and disciplinary history *in cases with sustained findings*" (emphasis added). It fails to require investigators to consider information from complaints regardless of the disposition, including complaints that were withdrawn due to officer intimidation or were closed because the complainant was reluctant to sign a sworn affidavit under penalty of perjury. It fails to require analysis of patterns in complaint allegations and evidence (regardless of disposition).

The DOJ found that CPD's failure to adequately address officer patterns of negative behavior led to officers continuing to engage in negative behavior with impunity, sometimes escalating into serious misconduct.[4] "From 2007-2015, over 1,500 CPD officers acquired 10 or more [complaints], 65 of whom accumulated 30 or more [complaints]."[5] It is imperative that investigators review and consider all relevant information to determine an officer's credibility or identify any patterns of abuse or misconduct.

6) **The policies must be revised to prohibit all accused, involved, and witness officers from conferring with each other about the allegations of a complaint, and from reviewing records and reports of the incident prior to being interviewed or giving a statement.**

General Order G08-01, Section V.D prohibits officers from *colluding* with others *to undermine* a BIA investigation. But the BIA policies must go further to actually prohibit any discussion of the allegations before all accused, involved, and witness officers have been interviewed. The requirement of subjective intent undermines the very purpose of this policy.

The DOJ noted several examples of officers colluding with one another after using deadly or serious force on a person—most notably in the aftermath of the murder of Laquan McDonald, the catalyst for the Consent Decree—but it also found that "[i]nvestigators' routine failure to explore the possibility of . . . other forms of witness contamination contributes to a culture in

[4] *See* DOJ Report, *supra* note 1, at 114 ("First, CPD does not adequately and accurately identify officers who are in need of corrective action; and second, CPD does not consistently or sufficiently address officer behavior even where CPD identifies negative patterns. Because of these failures, CPD officers are able to engage in problematic behaviors with impunity, which can—and do—escalate into serious misconduct."); *see e.g. id.* at 115 ("One officer, for example, was the subject of several complaints of domestic violence over the course of just a few years that CPD did not detect or act upon for a significant period of time. After the officer's ex-wife brought four separate allegations of domestic violence and harassment between 2007 and 2008, many of which were closed for no affidavit or deemed not sustained, IPRA finally disciplined the officer for domestic violence, and gave the officer a 15-day suspension. The officer then went on to engage in domestic violence on two more occasions, which resulted in serious injuries to the officer's victims.").

[5] Task Force Report, *supra* note 4, at 12.

which officers have felt free to compare their accounts before meeting with investigators."[6] Without more restrictions in place, the BIA policies enable inadvertent contamination of officer statements and weaken the credibility of the investigation and the disciplinary process more broadly. The policies must be revised to specifically forbid officers from discussing the complainant, the incident, and the investigation with one another, as well as to prohibit them from reviewing records and reports—or otherwise conducting review of the incident—prior to being interviewed or giving a statement.

7) The policies must be revised to create strict requirements for investigation extensions and limit the use of extension requests.

The DOJ found that BIA misconduct investigations went "unresolved for unreasonable amounts of time" and that BIA "[did] not appear to follow strict deadlines for the completion of various steps or the investigation as a whole . . . nor [did] there appear to be repercussions for when investigators fail[ed] to meet them."[7] This lack of deadlines caused investigations to drag on for years, "often transferring between several investigators before even basic steps [were] complete."[8] The DOJ emphasized that delays can make it difficult to uncover the truth as memories fade, evidence is lost, and witnesses move on—thereby compromising BIA's ability to make strong disciplinary recommendations and undermining the claim that CPD takes complaints seriously.[9]

There is currently nothing in any of the three BIA policies to prevent investigators from unnecessarily extending investigations. In addition to revising the policies to reflect this recommendation, CPD must also ensure BIA has sufficient resources, including adequate staff, to conduct thorough and timely investigations.

8) Special Order S08-01 must be revised to explicitly prohibit the destruction of records relating to complaints, investigations, and adjudications of police misconduct or use of force.

The Illinois Supreme Court ruled last year that the destruction of disciplinary records was contrary to public policy, and the SAFE-T Act then amended the Local Records Act to explicitly require permanent retention and prohibit destruction of records.[10] Section IX.B of Special Order S08-01-04 on Post-Investigation Log Number Procedures requires the preservation of all records related to complaints, investigations, and adjudications of police misconduct, including administrative investigative files and disciplinary histories. This requirement must be reiterated in Special Order S08-01, which addresses the duties of Complaint and Disciplinary Investigator and Investigations and is likely to be consulted by CPD personnel in the course of conducting investigations. S08-01 should, to explicitly reiterate the prohibition on all CPD personnel

[6] DOJ Report, *supra* note 1, at 61.
[7] *Id*. at 73.
[8] *Id*.
[9] *Id.* at 74.
[10] *City of Chicago v. Fraternal Ord. of Police, Chicago Lodge No. 7*, 2020 IL 124831, *cert. denied sub nom. Fraternal Ord. of Police, Chicago Lodge No. 7 v. City of Chicago*, 141 S. Ct. 1072 (2021); 50 ILCS 205/25 (2021).

involved in investigations from destroying any records relating to a complaint, investigation, or adjudication of police misconduct.

Criminal Conduct and Investigations

9) The policies must be revised to require BIA to consult with the relevant prosecuting agency or federal law enforcement agency any time an investigator finds evidence indicating apparent criminal conduct by any CPD personnel.

BIA investigators have an obligation to keep members of the public safe. Part of this duty includes protecting the public from CPD members who have engaged in criminal conduct. Unlike policies in Baltimore and Newark,[12] the current policies do not require BIA to contact a prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation if an investigator finds evidence that a Chicago Police member engaged in criminal conduct.

10) The policies must be revised to ensure that BIA will not pause an investigation when a criminal investigation is underway.

BIA investigators must continue an investigation *even if* a criminal investigation is initiated or underway. During the DOJ's investigation of the CPD, the BIA Chief informed the DOJ that BIA would never conduct parallel investigations to the State's Attorney's Office.[11] However, it is legally permissible to do so, as long as precautions are taken to avoid tainting the criminal investigation with any evidence from compelled administrative interviews.[12] In fact, "COPA is required to actively pursue an administration investigation within its jurisdiction concurrently with an active criminal investigation."[13]

Section V of Special Order S08-01 assigns complaints involving criminal conduct to BIA investigators and prohibits their assignment to an accountability sergeant. But none of the BIA policies require, or even address, simultaneous investigation of criminal conduct.

[12] Baltimore Consent Decree, *supra* note 10, ¶ 359 ("If at any time during the intake or investigation of the misconduct complaint the investigator finds evidence indicating apparent criminal conduct by any BPD personnel, the investigator shall promptly notify the OPR. The OPR shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation"); Consent Decree ¶ 137, *United States v. Newark*, No. 2:16-cv-01731-MCA-MAH (D.N.J. May 5, 2016) [hereinafter "Newark Consent Decree"] ("If after a reasonable preliminary inquiry into an allegation of misconduct, or at any other time during the course of an administrative investigation, the OPS has cause to believe that an officer or employee might have engaged in criminal conduct, the OPS will refer the matter to the ECPO, DOJ, or other law enforcement agency as appropriate.").

[11] DOJ Report, *supra* note 1, at 73.

[12] *Id.*

[13] City of Chicago, *Civilian Office of Police Accountability Rules and Regulations* §3.13 (April 13, 2018), http://www.chicagocopa.org/wp-content/uploads/2018/04/Final-COPA-Rules-and-Regulations-April-2018.pdf [hereinafter "COPA Rules and Regulations"].

BIA Findings

11) The BIA policies must be revised to explicitly require that the disciplinary recommendations of BIA investigators shall be given deference.

Section VII.A of General Order G08-01 provides that the Superintendent of Police retains discretion to restrict the duties of sworn Department members in response to complaints, to review recommendations for disciplinary action, and to take disciplinary action. The Police Accountability Task Force observed that, in a majority of misconduct cases they reviewed, the ultimate discipline imposed was lower than what BIA recommended.[14] The Task Force further noted that the "fragmented system involving IPRA, the Superintendent, BIA within CPD, numerous arbitrators and the Police Board compromises the strength and significance of the investigative findings and recommendations over time, and discourages systemic accountability and transparency."[15]

The BIA policies must be amended to clearly state that the findings and recommendations of the BIA investigators shall be given deference by each subsequent entity reviewing those findings and recommendations unless clearly erroneous or an abuse of discretion. Additionally, the policies must provide that, if the Superintendent seeks to override a recommendation, the Superintendent must provide BIA with written bases for doing so within 30 days of receipt of the recommendations, and BIA shall immediately publish the Superintendent's response online.

12) General Order G08-01 must be revised to require the provision of *Giglio* evidence to the Cook County State's Attorney's Office, United States Attorney's Office, and defendants in criminal cases in which the officer testified, and specify the actual process for making these disclosures.

The DOJ found that CPD had "no system in place to ensure that all officer disciplinary findings bearing on credibility, including Rule 14 findings, are supplied to the State's Attorney's Office and criminal defendants, even though this is required under *Giglio v. United States*, 405 U.S. 150 (1972)."[16] Section VII. B. 3 of General Order G08-01 only requires that BIA will establish and maintain a relationship with the Cook County State's Attorney's Office, the United States Attorney's Office, the courts, and other law enforcement agencies. It does not specifically require the provision of *Giglio* evidence to the prosecutors nor does it provide a framework to ensure that communication. General Order G08-01 must be revised to require BIA to inform the State's Attorney's Office, U.S. Attorney's Office, and impacted criminal defendants of any disciplinary findings that bear on an officer's credibility. To ensure that these important disclosures occur, the policy must go further to provide the specific mechanisms for how, when and where the disclosures are provided to the relevant agencies.

[14] Task Force Report, *supra* note 6, at 87.
[15] *Id.*
[16] DOJ Report, *supra* note 1, at 76-77.

BIA Investigation Feedback and Transparency

13) BIA must be required to seek and publish feedback from members of the public who interacted with BIA investigators in the context of a misconduct investigation.

To increase community trust and improve the effectiveness of the investigatory process, BIA must seek feedback from members of the public who interacted with BIA investigators. This feedback must include their overall satisfaction with the process, their ability to access information, their treatment throughout the process, the investigator's sensitivity to their circumstances, and the ease with which they could make a complaint, as well as suggestions for improvement. BIA must publish the results of this feedback process annually, and CPD must revise the BIA policies according to the feedback received.

14) The CPD must meaningfully engage with the community on the BIA policies.

Under the Consent Decree, the CPD must meaningfully engage with the community about policy changes.[17] But the CPD has failed to meet this requirement with respect to the BIA policies.

On October 5, 2021, the CPD hosted a webinar to present the BIA policies to the community for the first time; it is unclear how many community members attended, and the Coalition is unaware of any additional webinars CPD hosted. After the webinar, CPD opened a public comment portal for community members to submit input on each of the policies from October 5 through November 5, 2021. On November 8, 2021—*after* the public comment portals close—CPD plans to host a Community Conversation on the BIA policies. Community members who attend the Community Conversation may be more informed on the policies at that time and interested in submitting comments, but they will be unable to do so.

Additionally, the CPD initially offered to engage with the Coalition in a Deliberative Dialogue but declined the Coalition's request to meet during the week of November 8, 2021, without suggesting any alternative dates. The Coalition hoped that by providing this letter to CPD in advance of a Deliberative Dialogue, CPD would be prepared to actually engage in a real dialogue—a back and forth exchange of viewpoints and ideas between the Coalition and CPD, focused on the substance of the Coalition's specific recommendations and concerns. CPD's decision to reject the Coalition's request for a dialogue on or after November 8, 2021, after the submission of the Coalition's written recommendations, sends the message that the City is not interested in engaging with the substance of the Coalition's concerns and recommendations. This is not meaningful community engagement.

[17] *See* Consent Decree ¶ 52, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019) (requiring CPD to seek community input on impartial policing policies); *id*. ¶ 160, (requiring "clear channels through which community members can provide input regarding CPD's use of force policies and propose revisions or additions to those policies").

We urge the City to implement the Coalition's recommended changes to General Order G08-01, General Order G08-01-02, and Special Order S08-01. The Coalition remains interested and willing to meet with the City and CPD to discuss the recommendations in this letter.

Sincerely,

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