



CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

*P.O. Box 51480
New Orleans, Louisiana 70151*



MITCHELL J. LANDRIEU
MAYOR

"to protect and to serve"

MICHAEL S. HARRISON
SUPERINTENDENT

September 22, 2014

Susan Hutson
Independent Police Monitor
525 St. Charles Avenue
New Orleans, Louisiana 70130

Re: OIPM #2012-0850; NOPD Retaliation Policy, Pattern & Practice

Dear Ms. Hutson,

We have reviewed your correspondence regarding OIPM#2012-0850; NOPD Retaliation Policy, Pattern and Practice. Thank you for your interest in assisting the New Orleans Police Department with continuing to build upon the many improvements and advancements within the New Orleans Police Department.

As a result of our review of OIPM Correspondence: OIPM#2012-0850 NOPD Retaliation Policy, Pattern and Practice, we offer the following:

Page 1 paragraph of the correspondence dated July 30, 2014, opens with a reference to police misconduct which occurred 20 years ago. The incident referenced is well documented and depicts a horrible act which occurred during a time when the NOPD was about to enter a period of reform under then Superintendent Richard Pennington. Fast forward 20 years to July 30, 2014, this reference immediately mischaracterizes the current operation and efforts of the NOPD and is not necessary to request collaboration with PIB. Since that horrible incident, the NOPD has undergone many reforms including the creation of the Public Integrity Bureau and moving the PIB office out of police headquarters to an independent location where citizens could feel comfortable reporting police misconduct.

Since 2010, the New Orleans Police Department has made considerable improvements in all areas of the Department, specifically, as it relates to discipline, the disciplinary process and transparency. These improvements include leadership, personnel, training, policy, quality assurance initiatives, participation in local, State, and Federal partnerships, and compliance with Federal Consent Decree Mandates. As a result, the NOPD has witnessed significant reductions in misconduct complaints.

Leadership & Personnel

The Department hired its first civilian Director of the Public Integrity Bureau (PIB) and elevated the position to Deputy Superintendent. Additionally, PIB created the Force Investigation Team (FIT). FIT is staffed with personnel experienced with major crime scene investigations such as

homicides, other death investigations, and firearms discharges. FIT evaluates all uses of force and investigates all allegations of unauthorized force by members of the New Orleans Police Department. FIT's review includes in-custody deaths, officer involved shootings, TASER incidents, force involving serious injury, force which required hospitalization, and any other type of force used by officers.

Training

PIB personnel provides training to all officers and supervisors on topics related to use of force, complaint avoidance, ethics, personnel performance evaluation, job performance improvement planning (JPIP), and PPEP training. Furthermore, all PIB investigators are required to attend annual internal affairs and investigation training, in addition, there normal department required in-service training. And PIB personnel, participated in a joint internal affairs training session with the New Orleans City Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office

Policy

The department has rewritten all of its policies related to disciplinary investigations. Additionally, the department established zero tolerance for misconduct by making untruthfulness an offense that can result in termination. Additionally, failure to report misconduct is now a violation of department policy. Use of force reporting has been enhanced for all members of the department.

Quality Assurance

PIB has continued quality assurance efforts to improve and maintain personnel accountability. PIB Special Investigation Section conducts regular random and targeted integrity checks of Department personnel. Additionally, PIB assigns a regular team of personnel to monitor and conduct quality assurance checks of personnel during all Major Special Events such as New Years, SugarBowl, Superbowl, Mardi Gras, NBA Allstar Events, NCAA Final Four, Fourth of July, Essence Festival, Halloween and Voodoo Music Experience.

Local, State, and Federal Partnerships

The Department is engage in several partnerships that assist us with our goals. The Department entered into a MOU with the Office of the Independent Police Monitor and partnered with OIPM to upgrade our complaint management capacity with the introduction of the IPro Complaint Management Database. Additionally, PIB has agents from the FBI Civil Rights and Public Corruption Squads working with PIB's Specialized Investigation Section. Recognizing the need to monitor officer complaint patterns, PIB reestablished the Professional Performance Enhancement Program (PPEP) in order to identify officers who established a pattern of complaints requiring early intervention training, with the long term goal of creating a more comprehensive and robust early warning system. Participants in the production of PPEP include OIPM, US Attorney's Office, NOPD Department psychiatrists, and psychologist.

Federal Consent Decree

The Department continues to work with Federal Consent Decree Monitors to assure NOPD compliance with all requirements of the Consent Decree.

Reduction in Misconduct Complaints

PIB efforts continue to yield achievement of our goals and broad successes. Since 2010, misconduct complaints have been reduced by nearly half 42%. The NOPD efforts continue to yield double digit decreases in misconduct complaints annually.

Therefore, it is evident that PIB is committed and continues to employ efforts to continue building on our reform successes and improving community relations. We are confident that our efforts will continue to yield success. So we are always open to any assistance that the OIPM can offer to help build upon our successes and the bright future ahead of the NOPD.

Page 1 paragraph 2 states that civilians and NOPD personnel continue to report retaliation or a fear of retaliation from NOPD after filing complaints against officers or cooperating in complaint investigations.

Again this language appears to make a generalization that retaliation and fear of retaliation is rampant throughout the NOPD without citing specific incidents. This statement should more specific and cite specific incidents.

Page 1 paragraph 3 acknowledges that “PIB is on the front-line in preventing and responding to allegations of retaliation.”

We believe that deterring, preventing, and responding to concerns and allegations of retaliation is critical and paramount to continuing our reform successes within the NOPD. Not only is PIB on the “front-line”, but there are ongoing Department-wide NOPD efforts regarding this topic. These efforts are evidenced in our policy and training initiatives: NOPD Policy 328 “Workplace Discriminatory Harassment/Retaliation Policy”, Procedure 1020”Misconduct Complaints/Disciplinary Investigation”, Policy 1006, Grievances: Employee Non- Discriminatory Complaints, Rule 2, Moral Conduct, Paragraph 8, Failure to Report Misconduct, and Rule 3 Professional Conduct, Paragraph 12, Retaliation.

Page 2 of your Executive Summary stated that the “OIPM” assessed the complaints and allegations it received against NOPD officers that involved retaliation and also assessed NOPD retaliation policies.

The summary introduction mentions sources reviewed by the OIPM, but does not describe the methodology used to conceptualize or form the basis for feedback and/or recommendations regarding NOPD retaliation policy, you mention are still under review by the Department of Justice (DOJ). Additionally, the summary does not list any training or expertise of OIPM personnel responsible for the review. Finally, the summary does not cite any review of Equal Employment Opportunity Commission (EEOC) or Fair Labor and Standards Administration criteria related to employment related retaliation, nor any

local, State, or Federal law enforcement agency criteria for addressing and/or responding to citizen retaliation complaints.

Page 2 paragraph 3 of the Executive Summary states that your letter is "...based on the OIPM's review, makes several observation gathered through officer interactions and complaint intake observations regarding retaliation and the NOPD's efforts to combat retaliation.

- The narratives associated with retaliation complaints that the OIPM referred to PIB were often incomplete and often did not reference retaliation concerns. A search of complaint narratives in IAPro from 2011 to 2013 yielded only 12 civilian or internal complaints of misconduct that mentioned retaliation.

This bullet does not reference the number of OIPM complaints referred to PIB containing retaliation concerns, nor verification that said complaints were sent and delivered by OIPM and received by PIB, in spite, knowledge that many complaints were never received by PIB at all.

Furthermore, a review of 40 OIPM referrals to PIB, revealed 5 claims of retaliation and 36 concerns regarding possible retaliation.

Retaliation Allegations			
Source	# of Allegations	Reason provided	No Reason provided
Complainant	4	3	1
IPM	1	0	1
IPM/Complainant	0	0	0
Total	5	3	2

Retaliation Concerns			
Source	# of Concerns	Reason provided	No Reason provided
Complainant	23	10	13
IPM	7	2	5
IPM/Complainant	6	4	2
Total	36	16	20

- Some complaints referred by the OIPM to PIB that originally accused several officers of retaliation were recorded in IAPro as an investigation against only one officer.

The observation is not specific. OIPM should be more specific with their observation so that PIB can review the specific complaints.

- From 2011 to 2013, the OIPM received 63 contacts from non-NOPD members of the public involving an element of retaliation or fear of retaliation.

The OIPM letter does not define contacts and if there were several contacts party to the same “...element of retaliation or fear of retaliation”. The OIPM letter does not provide the definition of retaliation nor the criteria that is being used to satisfy the “element of retaliation” or justify “fear of retaliation”. How many incidence of an element of retaliation or fear of retaliation comprise the 63 contacts, and was the information successfully referred and delivered to PIB? If so, please provide specifics.

- The most common forms of retaliation alleged by members of the public include: harassment, threats, retaliatory official police action (arrests, tickets, etc.) and discouragement from filing a complaint or interference with the complaint process.

The OIPM does not provide the number of incidents that comprise the list of the most common forms of retaliation allegations. However, the OIPM does state in the footnote on page 7 that “On numerous occasions more than one retaliatory action is alleged.” Perhaps the OIPM should include a definition for each type of retaliatory action listed in the letter.

- From 2011 to 2013, the OIPM received 26 contacts from NOPD officers or employees involving an element of retaliation or fear of retaliation.

The OIPM letter does not define contacts and if there were several contacts party to the same “...element of retaliation or fear of retaliation”. The OIPM letter does not provide the definition of retaliation nor the criteria that is being used to satisfy the “element of retaliation” or justify “fear of retaliation”. How many incidence of an element of retaliation or fear of retaliation comprise the 26 contacts, and was the information successfully referred and delivered to PIB? If so, please provide specifics.

- The most common forms of internal retaliation alleged by NOPD employees were: retaliatory complaints filed against them, intimidation of complainants or potential witnesses and reassignment or threat of reassignment.

“The most common forms of internal retaliation” is relative to size of the sample. Raw numbers should be report so that an accurate measure can be obtained.

- Within the OIPM’s collected sample, PIB has a sustained rate of 40% for interdepartmental retaliation allegations and a sustained/proven rate of 5.09% for civilian retaliation allegations.

- The NOPD's initial set of retaliation policies are a strong initial step in preventing retaliation and complying with the requirements of the Consent Decree.
- The NOPD's initial retaliation policy does not define protected activity, nor does it describe for which activities officers are protected from retaliation. Further, the NOPD retaliation policies do not protect civilians for any protected activities they may engage in outside of the official PIB complaint process.

Retaliation policy development is ongoing. However, it may not be prudent to try to create an exclusive list of protected activities.

- Under its internal retaliation policy, the NOPD does not define which specific acts of retaliatory conduct are proscribed. Under its civilian retaliation policy, NOPD does not define retaliation nor mention which specific acts of retaliatory conduct are proscribed. Without clear guidance on which specific acts may constitute retaliation, NOPD employees and PIB investigators lack direction to judge their own or other's actions.

See above.

- A potential conflict of interest may arise if and when NOPD supervisors are required to initially investigate their subordinates' retaliation complaint.
- The OIPM commends the NOPD for including termination as a discipline for retaliation. This discipline is in line with other police department's retaliation policies.

Based on the OIPM's review of incidents of retaliation and existing policies of other police departments, the OIPM offers the following recommendations:

- All NOPD employees should receive training on the retaliation policy shortly after its adoption as part of recruit training and in-service training. Commanding officers and supervisors should monitor and ensure their employees are in compliance with the policy. **We agree. As with the adoption of all new policy and procedure, supervisors will review and provide training regarding the new policy.**
- NOPD's retaliation policy should clearly outline the responsibility and method of supervisors to monitor employees for instances of retaliation. **We agree.**
- The NOPD should revise both its civilian and internal retaliation policies to include a more detailed definition of retaliation which includes specific examples of actions which would be considered retaliatory. **Retaliation policy development is ongoing.**

- NOPD should define and list which “protected activities” NOPD employees and members of the public can be engaged in while still being protected by the NOPD retaliation policy.

Retaliation policy development is ongoing.

- NOPD employees should be allowed the opportunity to report official misconduct, retaliation, harassment or discrimination to the next higher ranking employee in the chain of command, directly to PIB, or to the OIPM.

All personnel can currently report official misconduct, retaliation, harassment or discrimination to the next higher ranking employee in the chain of command, directly to PIB, or to the OIPM.

- The NOPD should ensure that the requirement to report official misconduct immediately is not in itself used for retaliation purposes.

We agree.

- NOPD employees against whom a complaint is filed should be given notice in writing by their commanding officer or by PIB, proscribing future retaliation against the complainant.

Retaliation policy development is ongoing.

- PIB should specifically track retaliation complaints and ensure that a PIB supervisor closely monitors those investigations.
- Employees who have been subject to retaliatory conduct should have available to them, and be encouraged to seek, personal counseling or other services via an NOPD employee assistance program or human resources department.

Retaliation policy development is ongoing. However, NOPD psychologists and chaplains are always available to officers.

Page 4 Assessment of NOPD Retaliation - 2011-2013

OIPM goal of reviewing retaliation complaints and other incidents of retaliation is to identify past retaliation by the NOPD as reported by NOPD personnel, civilian complainants or the OIPM, and make recommendations for prevention and redress. The OIPM began its assessment of NOPD retaliation prior to the introduction of the NOPD’s new retaliation policy, using the San Jose Police Department’s retaliation policy. The OIPM categorized retaliation into retaliation against NOPD employees and retaliation against members of the public.

Page 5 paragraph 2 - “Since NOPD did not always record retaliation against civilians as retaliation in IAPro, the OIPM could not collect a fully reliable sample of retaliation cases. When attempting to collect a complete sample, the OIPM encountered disparities and inconsistencies with the data in IAPro. The narratives associated with complaints which PIB

had entered in to IAPro were often incomplete. Allegations or concerns of retaliation were often not included in these narratives.”

We are not sure of the data that was collected for this statement. Nor at what phase of the investigations the data was collected. It has been previously reported prior to 2013, the data population in IAPro was not very reliable due to date conversion of and the newness and inexperienced use of the database.

Page 5 paragraph 3 - “A search of complaint narratives in IAPro from 2011 to 2013 only yielded 12 complaints of misconduct which mentioned retaliation as part of the complaint.” Also, some complaints referred by the OIPM to PIB which originally accused several officers of retaliation, were recorded in IAPro as an investigation against only one officer. The IAPro records did not include the remaining accused officer(s) against whom the initial complaint was lodged. Further, six retaliation complaints referred to PIB by the OIPM could not be located in the IAPro system at all. Six out of the twelve total retaliation complaints identified through a search of IAPro narratives from 2011-2013 fewer complaints filed in 2013, with four in 2012 and two in 2011. Since 2013, the number of retaliation cases appearing in IAPro has increased.

Further review of these OIPM referrals will have to be conducted in order to establish its validity. However, many OIPM referrals to PIB were never received and many of those received indicated that either the complainant, OIPM or both had a concern about retaliation but did not make an allegation of retaliation.

Civilian Retaliation

Page 5 paragraph 4 - “From 2011-2013, the OIPM received 63 contacts involving an element of retaliation or fear of retaliation from non-NOPD employed members of the public. These incidents included formal complaints referred to PIB by the OIPM, inquiries from the public, communication with individuals where the individuals did not follow through with the complaint process and incidents when a member of the public or an NOPD officer wished to remain anonymous. These contacts also included allegations where members of the public claimed they were retaliated against by the NOPD and incidents where the complainant and/or the OIPM feared future retaliation against the complainant based on the facts surrounding the allegation.

The most common forms of retaliation alleged by members of the public include:

- Harassment,
- Threats,
- Retaliatory police action(issuing citations, arrests, stops, et. That civilians believe were motivated by retaliation or believe to be unjustified, and
- discouragement from filing a complaint or interference with the complaint process.

The OIPM correspondence does not define a contact and refers to “an element of retaliation or fear of retaliation from non-NOPD employed member so the public. Further review of these OIPM referrals will have to be conducted in order to establish

its validity. However, many OIPM referrals to PIB were never received and many of those received indicated that either the complainant, OIPM or both had a concern about retaliation but did not make an allegation of retaliation

Page 9 Intradepartmental/Whistleblower Retaliation

The OIPM reviewed complaints and information received from NOPD personnel regarding retaliation from 2011 until 2013. A total of 26 contacts involving an element of retaliation or fear of retaliation were received by the OIPM from NOPD personnel over this period. The most

The most common forms of retaliation alleged by victims of retaliation who were NOPD employees, were:

- Officers filing retaliatory complaints or threatening retaliatory complaints against the NOPD employee,
- Intimidation of complainants and potential witnesses
- Reassignment or threat of reassignment of whistleblowers
- Interference with the complaint investigation and/or interference with the hearing results from the complaint investigation,
- Refusing to receive complaints or the failure to investigate complaints, and
- Harassment and/or unprofessional conduct.

The OIPM does not define contact. OIPM further refers to having received 26 contacts involving “an element of retaliation, or fear of retaliation.” This comment is very vague and on the surface does not present retaliation. OIPM should be more specific regarding “elements of retaliation or fear of retaliation.” Many “elements” may not yield retaliation; however, may violate another policy or rule.

Page 10 paragraph 2 “Between 2011 and 2013, seven officers wished to remain anonymous when filing a complaint with the OIPM, and two officers did not file complaints concerning retaliation after the officers initiated contact with the OIPM, due to fears of retaliation.”

OIPM collected sample reported the following:

- 40% - Sustained rate for interdepartmental retaliation allegations
- 5.09% - Sustained rate for civilian retaliation
- 35% - PIB non-sustained rate
- 25% - pending, reclassified, or without disposition.

We cannot comment on the validity of anonymous complaints that we may or may not have received, and that may or may not have occurred.

Page 13 paragraph 1 OIPM's Review of "NOPD's New Retaliation Policies"

"OIPM commends the NOPD for drafting these policies and believes these policies are a clear and strong initial step in preventing retaliation and complying with the requirement of the Consent Decree.

Policy 328, "Workplace Discriminatory Harassment/Retaliation Policy"

OIPM recommends that "protected activity" be clearly defined in NOPD policy.

We agree and, per Sgt. Jean Jordan, this is something that the Policy and Planning team is currently working on.

OIPM presents their opinion that a supervisor's investigation of their own employee's retaliation complaint...may represent a conflict of interest and may end up tainting PIB's subsequent investigation.

Please clarify this statement. However, we agree if the retaliation complaint involves the complainant's chain of command.

Procedure 1020 "Misconduct Complaints/Disciplinary Investigations"

PR 1020.4 "Preventing Retaliation" found under Procedure 1020 "Misconduct complaints/disciplinary investigations"

OIPM stated that without clear guidance on which specific acts may constitute retaliation, NOPD employees and PIB investigators lack specific direction by which to judge their own or other's actions. Without clear guidance on which specific acts may constitute retaliation, civilians already fearful of retaliation will lack the confidence to question or report police activity.

Policy development in this area is ongoing. We agree that there should be more guidance on what constitutes retaliation. However, it would not be prudent to attempt to create an exclusive list of activities.

OIPM asserts that there is no clear delineation between the policies that proscribe retaliation for NOPD employees and civilians. Additionally, the policies do not define or list specific civilian activities outside of the complaint process which are protected from retaliation.

We agree that there needs to be more clarity in the policies regarding retaliation. Furthermore, it is the NOPD's position that exercise of all Constitutional Rights by a citizen is considered "protected activity".

Policy 1006, Grievances: Employee Non-Discriminatory Complaints

OIPM offers that filing a grievance should be listed as a protected activity in Policy 328, and that Policy 1006 should reference Policy 328.

We agree.

Rule 2, Moral Conduct, Paragraph 8 Failure to report misconduct

OIPM supports the NOPD requirement that employees immediately report misconduct; however, OIPM finds the term “immediately” vague and leaves the employees open to retaliation in the form of an allegation of failure to report misconduct immediately. OIPM speaks to two such incidents that were brought to their attention.

The intent of “Failure to Report Misconduct” rule is to encourage employees who see or are aware of misconduct to report such misconduct. Therefore, we agree that the rule should be reevaluated to consider retaliation protections.

Rule 3, Professional Conduct, Paragraph 12, Retaliation

OIPM agrees that Rule 3, Paragraph 12 addresses the seriousness of retaliation for reporting and cooperating with investigations of misconduct, and the allowance of termination as discipline is consistent with other retaliation policies previously reviewed by the OIPM. However, the rule does not proscribe any specific behavior.

As stated above, we agree that more clarity should be offered regarding behavior that constitutes retaliation; however, it would not be prudent to attempt to create an exclusive list of activities.

Page 18 - OIPM Recommendations in Light of Existing Policies and Practice from other Departments

- Prevention of Retaliation through Training
- Supervisory responsibility
- Within Civilian Retaliation Protection Requirements there should be Concise Definitions of “retaliatory conduct: and explicit protection for “protected activities”.
- Within the Rule Forbidden Internal Retaliation there should be a Concise Definition of Retaliatory Action with Specific Examples.
- The NOPD should define and specify which “protected activity” NOPD officers are allowed to take part in without fear of retaliation.
- Reporting and Investigating authority for Misconduct, Harassment and Retaliation
- Immediacy requirement for Reporting Misconduct
- Instructions to Accused Officer
- Dedication of Resources to NOPD’s Efforts against Retaliation
- Compliance Assistance

Although we agree with some of the information and recommendations contained in the OIPM correspondence, we have concerns. Some of the information appears to suggest broad subjective generalizations regarding the prevalence of retaliation within the NOPD and NOPD’s efforts related to preventing and investigating allegations of misconduct. The correspondence does not appear to present a fair picture of the frequency of retaliation complaints and our efforts to prevent and curtail retaliation.

Additionally, the OIPM letter concludes with another reference to the tragic murder of Kim Groves which occurred 20 years ago, prior to any of the numerous reform efforts that have taken place and are ongoing within the NOPD.

The focus of our collaboration should be to build upon the many positive achievements, strides, and successes of our officers, agency, and community, and not refresh our momentum with tarnished images of our not so proud past.

Finally, as we stated early in our opening and our comments throughout, the NOPD is committed to building on our successes and continuing to strengthen our relationship with the community we serve. We foresee a bright future for our community and the NOPD, therefore, we will continue to focus on the positive traction of our reform efforts, and continue to collaborate with our local, state, and Federal partners, as well as, all stakeholders within our community as our many successes transition into quantum leaps.

Sincerely,

Michael S. Harrison
Superintendent of Police

By Arlinda P. Westbrook
Deputy Superintendent

MSH:APW:rw

Cc: Central Files