

Oversight Committee Meeting Minutes from February 12th, 2021:

Committee Members Present: P. Bradley, D. Demmings, M. Ecton, Chair M. Joseph, M. King, C. Maragaño, Chair B. McClain, K. Moss, A. Pfeiffer, R. Robinson, P. Saunders, T. Wahrab, R. Walker, J. White

Staff Present: A. Blankenship, J. Davis, M. Schaller, L. VanderKaay

Chair McClain brought the meeting to order at 10:35am. He requested that the committee review their emails for the various materials sent, including the minutes from the last meeting, models from other cities, and the agenda for the meeting. He then turned it over for the discussion of the current Citizens Appeals Board (CAB) process and some possible ways forward for recommendations as presented by J. Davis. J. Davis shared his screen, and walked through the current CAB process, including previous recommendations and their impact on the complaint process as a whole. He continued that the goal he kept in mind while outlining possible ways forward was a system that is efficient, effective and transparent. A few highlighted suggestions from the presentation include: getting the Mediation Center involved within the complaint and appeals process, possibly earlier, having the Independent Accountability Auditor (IAA) serve as an ex-officio non-voting member of CAB, and including an addendum that an individual has 30 days to file an appeal, unless CAB deems an exception.

He continued to highlight possible portions to be added into the recommendations, including: changing the board structure from 5 members to 7, including representation of specific groups represented by members, such as a member representing an organization that promotes minority rights and well-being, a member representing an organization that promotes immigrant rights and well-being, as well as taking out a prohibition in the ordinance so that someone who has had a criminal conviction may be able to serve on the board. He also mentioned increasing the number of ex-officio non-voting members from 3 to 5 to include the IAA and a representative of Civil Service.

He continued to highlight possible portions to be added into the recommendations, including: having members serve 3 year terms instead of 2 year terms, and staggering terms to not lose institutional knowledge, having CAB meet once a month at a regularly scheduled date and time as opposed to whenever appeals are up, and requesting funding be made available for legal assistance in the form of a legal advisor for each appeals case, and that information from the Professional Standards Bureau (PSB) should be approachable and sufficiently given to CAB for cases and appeals. He also included adding a section that a representative from PSB be present to answer questions if the officer declines to give testimony, changing a part of the process regarding a hearing vs. meeting to just hear information, therefore streamlining the process by not having an extra meeting, and after an appeal is filed automatically providing investigative files to CAB, the Human Relations Council (HRC) and the Legal Advisor.

He continued with an addition that members of CAB may be asked to speak at a City Commission Meeting and would be required to have an annual report of CAB's work as well as being presented alongside an annual report on policy and procedure recommendations.

Another addition included a possible recommendation including funding for training for members of CAB, such as the National Association of Civilian Oversight for Law Enforcement (NACOLE), and possible monthly training materials to review which would allow CAB to keep following nationwide, statewide and local trends. And finally, a possible recommendation included an education and outreach campaign about CAB and the new appeals process.

Chair Joseph thanked J. Davis for his work, and wanted to make the following three points. First, the basic decision that the executive committee discussed was whether to recommend improving the current process or look into a new model. He wanted to make it clear that he didn't want to take this decision out of the committee's hands, but in conversations with CAB members, including the insight of A. Pfeiffer and J. Davis, he took that feedback as to improve the current model. Second, the goal for this process is not perfection, but a process that is better, flows better, and can be improved over time and as needed. And third, he wanted to thank A. Pfeiffer for her insight and that we were very lucky to have her present for input.

A. Pfeiffer said that there are lots of good fundamental processes in CAB, and that other improvements could assist in the committee overall. She highlighted that her primary concern is the backlog can often be caused by not having the funded staff support and legal assistance. She said she believed that expanding the membership is positive, as it can be more reflective of the community and can mitigate the power dynamics that can develop in a smaller group. She said that having a routine meeting scheduled will be meaningful and lead to better trained members. She also said that access to information about the cases ahead of time will be important, and that while it will not totally eliminate the pre-work necessary, it will make a difference. She said these all seemed like generally positive recommendations.

K. Moss said that he noted that CAB already has subpoena power, but not for officers, and he wanted to know why that might be.

J. Davis said that he would have to defer to A. Blankenship for that answer, but it is likely that it is a collective bargaining issue, but he was not entirely sure.

K. Moss thanked him, and said he asked because San Diego's board has a similar subpoena power for both citizens and officers. For his second comment, he added that he saw expanding membership of the board as a good thing and that taking out the prohibition of people with criminal records from serving on CAB would help the board overall.

A. Blankenship said that it is broader than the collective bargaining, though that is a part of it, but the City also has an interest in protecting itself and its employees from litigation, so having a lack of subpoena powers for an officer can often prevent a civil suit if the officer is compelled to testify.

D. Demmings said that she had the same comment as K. Moss, and she had read a similar board in Virginia that also had subpoena power, and that she believed we need to work on the language so that CAB can compel officers to testify because it leaves no room for accountability otherwise.

M. Ecton said that for more research on this topic, the committee will need to look at the State's collective bargaining vs. Right to work laws, as that makes a difference for infrastructure, and he also mentioned that regarding the conversation of someone with a criminal record possibly serving on CAB, that might be something to research further because there could be a conflict of privacy information from law enforcement being shared, and that there might be a prohibition for someone with a criminal record looking to access the National database structure which if violated could mean sanctions for the City at the State or National levels.

Chair Joseph asked R. Robinson to possibly assist in researching clearance issues.

D. Demmings thanked M. Ecton for his insight about the state structure, and that J. Davis did mention farther down the ability to dismiss records, and that might be something to have as an option to be fair for everyone involved.

Chair Joseph said that J. Davis would say it's important to have the ability to level the playing field to have testimony be read from the officers, but that we still need to do more research as to specifically what avenues we might have, and we might need to come back with more research to the next meeting, if that is alright.

D. Demmings said that she believes we can do what we want to do, and that this committee has shown that with previous recommendations.

Chair Joseph thanked her for that response and agreed to assist in looking into the issue.

Chair McClain said that in regards to concerns about subpoena power of records from someone with a previous criminal conviction, he wanted to know whether they can review just the case files and not personal information, and he wanted that clarified.

M. Ecton said that when a department releases information, they do redact information from leads, Workers Compensation Information System (WCIS) information, as well as certain sensitive information regarding both parties, all of which when it is released from the public. A member of CAB might get information that they can't have if they have a felony or specifically theft conviction, and we just need to make sure that information doesn't get to someone who shouldn't have that information according to the law.

A. Blankenship said that any of these documents would be a public records request, and all of that sensitive information would already be redacted.

M. Ecton said that the information that could go to comment to CAB might be piecemeal, for example information that an investigator put forward they might feel compelled to share, and CAB may feel that this could impede their work. He said he would support full-time staff members, perhaps someone who is also an attorney, to gather all of the information required, including what a file might be missing.

P. Bradley said that he would throw his support behind someone with a criminal conviction being able to serve on CAB, and while he understood that there might be an appeal with sensitive information, his sense is that there may be less cases like that and more similar to traffic stops, etc. He said that other cities have removed a similar prohibition and that he would hate to lose that perspective or balance on CAB. He said that there might be other issues to sort out and changes to recommend, but the team has asked the critical questions as to what is right and the most effective.

D. Demmings said that if the committee wants to do something, it can do it and make the time to accomplish such things. She said that she agrees with having more members and extended and staggered terms for members. She said that when the board makes a decision, from her research there are other CAB boards that have some disciplinary ability that serve as the protection and transparency for the community. She said she knows this might be difficult with collective bargaining, but would like to see it happen.

Chair Joseph thanked committee members for their feedback.

R. Walker said that it is a blessing to be a part of this process, and that he respects the City and its process, however he felt he needed to be honest that he is trying to look at this process as a complaint-how would it serve a citizen? He believes that it still falls short of the common citizen for them to be cared for. He said he wanted to know the feedback from complainants in this process in the past, and that he needed to be honest that we've heard none of that and part of our role is to empower our citizens and for them to become advocates to those around them and how they might be impacted by systems.

Chair Joseph thanked him and turned it over to A. Pfeiffer and J. Davis for feedback.

J. Davis said that in regards to the second question, there is no data for someone after the process, and part of the reason for that is that there have not been a lot of appeals in the last three years, and that there is no survey/post experience data for someone who has gone through the complaint and appeals process as it does not exist. As to the first question, there is no attorney needed for an individual to make a complaint or file an appeal. He said that there is a big problem in just getting the complainant to offer testimony, and one of his goals is that participants can be appealed and it is much easier for them to offer testimony.

A. Pfeiffer said that the reason there have been no citizens coming forward is because there is the barrier to not have legal counsel for CAB to get the testimony, so we should focus on

removing those barriers and getting the data once we have it. She said that what bothers her is when we talk about the institution and what it will and won't allow for us to do, and that we don't have to accept institutional practices to determine our next steps.

R. Walker said that he thinks this is generally a good process, but he is worried about the labor we are putting in to protect the institution as opposed to the labor in protecting citizens.

Chair Joseph said he appreciated those comments and that they are critical to keep in mind.

R. Walker said that he would be interested in working closely with the Community Engagement Working Group to make sure that we have our bases covered, and that while we haven't been privy to other groups' work, he hopes that they are looking at the same things that we are and that we need to keep in mind what the citizens of Dayton need.

D. Demmings said that the first time this committee met, her biggest concern is that there is accessibility and engagement with the community and that there needs to be some cross-group organization moving forward. She said that a lot of people are scared to even reach out and tell their stories and we want to make sure that they can. She said she agreed with R. Walker to sit in on such a cross-committee group meeting, as she still wants to know that people can understand the process.

Chair Joseph suggested that the staff put together a cross-group meeting with a few folks from community engagement and our committee to discuss this further. He asked for volunteers, who included K. Moss, D. Demmings, M. Ecton, T. Wahrab, C. Maragaño, and R. Walker.

J. Davis suggested there could be a recommendation for educational and outreach funding, whether that's creating materials, working with the Public Defender's office to communicate what authority CAB has, working on outreach with respected community organizations like Gem City Market, etc. could be an idea moving forward.

M. King echoed that was a great idea from J. Davis, but that he thought it was implied that this process is about the citizens.

Chair Joseph said that this is true, and that there's nothing wrong with getting back to basics.

R. Robinson said that in regards to classified and/or information sharing, it might be determined as For Official Use Only (FOUO) designation, and that it is important to figure out for the integrity of the report, as well as the different levels of reports, and depending on the timing of the report, a redacted report might not give CAB the information needed and there could be nothing more added to CAB's understanding of a case.

Chair Joseph asked for assistance from A. Blankenship and R. Robinson to sort out information sharing on CAB if the prohibition on someone with a criminal record serving on CAB.

P. Bradley wanted to make several points. First, he supports amending the original recommendation for outreach on the investigation process, so that it could include education and outreach around the appeals process and CAB. Second, it shouldn't be overlooked that it is important to give policy recommendations to the Commission directly, and that he believed that every committee like this, especially working with police, should have a mechanism to give these policy recommendations to the Commission when they establish a pattern. And third, one thing that occurred to him is if there is a hearing, a citizen could be talking about and to high level people and it could be very intimidating to individuals for people who are worried about an appeal. He said that for example, if he is someone intimidated by the process, he might reach out to for example, D. Demmings who might be serving as a member of the board, and use that as a route for the IAA to look into an issue.

T. Wahlrab said that he appreciated this conversation and so many things. He said that in terms of protecting institutions vs. citizens in regards to protecting institutions, there are some good reasons to do so but we are here because some of the structures in the United States have been made to protect white, male, land-owning individuals for many many years. He continued that if you have a criminal record for example, you can't get information needed. He said that while we are not racists, we are working within racists organizations and that he had worked within these institutions his whole life, and that he is a part of it and while we can tweak and build trust, it is all near impossible to balance. He acknowledged the expertise and feelings in this room and that there are many who want to restrict many of the voices in this room. He said that we want to bring people to the table and half the folks out there want to do otherwise.

Chair Joseph thanked him for his comments and for his confidence and if it seems like we are glossing over the system, it is unintentional because we are chipping away at it every bit of this process. He then wanted to mention a couple of things. First, he asked committee members to fill out the survey sent before the meeting. Second, he underlined how important it is in this time to check-in about others' well-being, and to let him know if you need anything. And third, he mentioned the Dayton Young Black Professional Drive for West Dayton, and to please donate if able. He mentioned that folks can email D. Demmings at Dajza@DaytonYBP.org if they had any questions or for more information. He then turned it over to Chair McClain.

Chair McClain said that the energy in this room is incredible, and that this is a very tall task, but he remains optimistic and positive and he is so thankful for everyone's presence. He said that there are still a couple of meetings to continue to make these decisions and plan to implement change.

Chair Joseph highlighted several action items including:

1. City staff contributing research on subpoena power, its roots, etc.
2. Chair Joseph, R. Robinson, and A. Blankenship researching information sharing w/ NCIS guidelines and how to move forward on that possible recommendation.

3. Illuminating more information on the discussion on discipline/discipline authority and CAB, and he mentioned that the City team had discussed this previously and would report out.
4. He mentioned having a survey of citizens post-appeal, and asked for P. Bradley and J. Davis to work together on that.
5. And finally, he mentioned establishing a cross-committee working group listening session and then mentioned the previous volunteers including D. Demmings, R. Walker, C. Maragaño, M. Ecton, T. Wahlrab, K. Moss, and L. VanderKaay and promised to keep them in the loop for such a meeting before the committee meets again.

He thanked everyone for their attendance and adjourned the meeting at 12:01pm.