

City of Portland
Police Citizen Review Subcommittee

AGENDA
December 11, 2024
6:00 PM

1. Zoom information

- a. On Wednesday, December 11, 2024 at 6:00 p.m., the Police Citizen Review Subcommittee will conduct a virtual meeting. This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Police Citizen Review Subcommittee and as authorized under 1 M.R.S. 403-B. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/83494470621?pwd=PqEvbCqi4naT2Pa1QNco1u4TPI1U3Q.1>

Passcode: 928732

Or One tap mobile :

+13126266799,,83494470621# US (Chicago)

+16469313860,,83494470621# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

2. The November meeting was cancelled due to a lack of a quorum and November's agenda was moved to this month's agenda.

3. Call to Order

4. Approval of October 9, 2024 minutes

- a. October 9, 2024 meeting minutes

5. Potential update on the new Civil Police Review Board ordinance

6. Use of Force Report presentation
 - a. Use of Force Report
7. Workshop: role/responsibilities of the PCRS Board and IA process overview
 - a. PowerPoint presentation
 - b. Complainant letter template
8. Public comment on agenda items
9. Executive session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA 2024-17
10. Public comment on agenda items
11. Topics for next month's meeting
12. Adjourn

MINUTES
POLICE CITIZEN REVIEW SUBCOMMITTEE

October 9, 2024
Meeting Held Remotely Via Zoom

Members present: Anne Hardcastle, Chair; Reverend Lewis, Vice-Chair; Xavier Botana Gino Desruisseaux; Tim Smith; Joey Brunelle; Kaylin Kerina (joined at 6:46)

Staff present: Associate Corporation Counsel Rachel Millette; Chief Mark Dubois; Major Dan Hondo; Lt. Jacob Titcomb

6:04 Call to order.

Motion was made by Reverend Lewis and seconded by Gino to adopt the September 11, 2024 meeting minutes. Passage 6-0.

Standing of the new ordinance:

Rachel reported that there is a plan of action for moving the new ordinance forward, however, there needs to be more negotiations with the police unions before bringing the ordinance back to the City Council, hopefully in December. Rachel will inform the subcommittee when the exact date is as soon as she knows. Reverend Lewis asked about the City Council timeline as it relates the number of readings this will need. Rachel responded that if the ordinance is added to a December agenda it would likely be in an executive session and then opened up after into a workshop session. There may be different approaches to the process if the City Council decides to make significant changes to the ordinance, it could be sent to committee where the changes would be made and then workshopped. If the City Council comes to an agreement of what the ordinance would look like, there would be two readings of the ordinance, the first of which is not open to public comment. The second read is open to public comment before the City Council votes on the ordinance.

Joey pointed out that there will be three new city council members and that a workshop would be appropriate. Xavier asked what version of the ordinance the police unions are bargaining over. Rachel expressed that the police negotiations are confidential. Xavier asked if the PCRS will see the ordinance before it goes to the City Council. Rachel responded that once the ordinance is presented to the City Council in executive session, it will then be workshopped, and then the PCRS should be able to review it before it is voted on by the City Council. Rachel expressed that there are a lot of moving parts and that there is no way to predict if the City Council will want changes. Rachel suggested that the PCRS schedule a special meeting to review the ordinance if the timing doesn't align with their normally scheduled monthly meeting. Joey pointed out that the PCRS meets on 11/13 and 12/11, the City Council meets on December 2, which may end up being the inaugural meeting for new members. Joey predicted that there could be a workshop on December 9 before the PCRS December 11 meeting.

Reverend Lewis asked if the PCRS could authorize the Chair to speak/write on behalf of the PCRS to the City Council with its response regarding the new ordinance. Rachel agreed that it could be done that way, or workshopped, though she cautioned the subcommittee about not

meeting outside of the public forum. Anne asked if they planned a special meeting what kind of advance notice would the public need. Rachel answered that there are no hard and fast meeting notice rules adding that she will know well in advance of seven days when the City Council workshop will take place.

Anne inquired about the timing of the transition from the PCRS to the Citizen Police Review Board (CPRB). Rachel responded that once the ordinance is passed, it will go into effect after 30 days, then the PCRS will be dissolved, and an appointment process will begin for the new CPRB, similar to the process that has been in place. Preference will be given for current members to serve on the new, larger board. Anne surmised that theoretically it could be 30-60 days before the new board is in place.

Joey asked how to go about bringing up a subject previously discussed at an earlier meeting. Rachel answered that the subcommittee sets the next meeting's agenda at the end of each meeting. If something comes up after a meeting, she suggests that he email her and Anne and Anne can decide if the subject should be added to the agenda. Rachel said the individual conversations around procedural topics can take place between two individuals and explained that nothing confidential should be discussed and to avoid a quorum.

No public comment was offered.

Reverend Lewis motioned to postpone review of IA2024-006 until the next meeting, Joey seconded.

Reverend Lewis explained that he believes that the case should be reviewed by the person it was assigned to – thus postponing the case until the next meeting for Kay to review the case. Anne agreed with postponing the case. Joey asked if they need to wait a whole month before reviewing the case. Anne responded that there is precedence of postponing meetings, thus it is not usual practice to hold a special meeting to review a case. Reverend Lewis re-stated his motion to defer the review of IA2024-006 until the next regular meeting of the PCRS. Tim seconded. Xavier suggested that the subcommittee appoint two people to each case to review, the second person acting as back-up. Anne agreed that it would be good practice and volunteered to be that person. Xavier volunteered to be the second person for the pending case.

Passed 6-0.

Next month's agenda:

Anne suggested that they hold a workshop around the subcommittee's roles – what they do and how they function so that the group is moving forward in the same direction. Rachel can help with some of it. Rachel and Anne will come up with an agenda. Joey would like the committee to develop SOPs for different aspects of what they do.

There are currently no new cases to review next month.

Joey asked about the Use of Force Report which was emailed to the subcommittee and if it would be added to agenda next month. Joey also asked about an earlier case which resulted in a vote that deemed the case was not thorough, not objective and not fair and what happened as a result of that vote. Anne suggested that they cover that in a workshop. Rachel will provide a copy of the redacted complainant letter that was sent. Xavier would like a forum to discuss the Use of Force Report. Rachel offered to ask someone to come and explain the report and process. The PCRS does not review Use of Force Reports. Tim suggested that the workshop include the training

opportunities available to the subcommittee. Reverend Lewis asked if the SOP addresses the Use of Force Report because it is not a citizen complaint and if the report is a public document. Rachel responded that the report is a public document. Joey also asked about discussing training in police oversight, NACOLE and their best practices. Kay joined the meeting. Anne asked the subcommittee if they wanted to review the case. Reverend Lewis expressed that he would like to go into Executive Session to discuss the case.

6:54 Motion was made to enter into Executive Session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA2024-006 by Anne and seconded by Reverend Lewis. Passage 7-0.

7:39 Out of Executive Session.

Motion was made by Reverend Lewis to find that IA2024-006 was objective; seconded by Kay. Passage: 3 yes; 2 no; 2 abstention, IA2024-0006 was found to be objective.

Motion was made by Xavier to find that IA2024-006 was timely; seconded by Reverend Lewis. Passage: 6 yes; 1 no, IA2024-0006 was found to be timely.

Motion was made by Reverend Lewis to find that IA2024-006 was fair; seconded by Kay. Passage: 4 yes; 2 no; 1 abstention, IA2024-0006 was found to be fair

Motion was made by Kay to find that IA2024-006 was thorough; seconded by Reverend Lewis. Fails: 3 yes; 3 no; 1 abstention, no consensus reached, IA2024-0006 was not found to be thorough, nor was it found not to be thorough.

No public comment.

7:46 Motion was made by Reverend Lewis and seconded by Gino to adjourn. Passage 7-0.

PORTLAND POLICE DEPARTMENT
MEMORANDUM

TO: Mark Dubois, Chief of Police

FROM: Nicole Albert, Associate Corporation Counsel

SUBJECT: Use of Force Incident Review: IA2023-020

DATE: October 8, 2024

An incident review team (IRT) met on October 4, 2024 to review the use of deadly force by Officers Jacob Webster and Jordin Jackson on December 17, 2023 in response to an armed suspect pointing and discharging a weapon at them. The IRT met, as required by Portland PD Standard Operating Procedure (SOP) 90B and the protocols of the Maine Attorney General's Office and the Maine Criminal Justice Academy, after the release of the Attorney General's findings of its investigation on June 14, 2024, and subsequent release of the Portland Police Administrative Investigation Team's (AIT) investigation report on August 28, 2024. The Attorney General's Office concluded that Officers Webster and Jackson were justified in using deadly force against Kyle Desmarais because Officers Webster and Jackson each had the reasonable belief that Mr. Desmarais posed an imminent threat of serious bodily injury or death to each of them. The Portland Police Department's AIT then conducted its own investigation, concluding that the use of force by both Officer Jackson and Officer Webster was justified under the law, and that their actions were in accordance with Portland PD SOPs.

Present at the IRT meeting were: South Portland Chief of Police Daniel Ahern, Maine State Police Lieutenant Kevin Burton, Police Citizen Review Subcommittee Chair Anne Hardcastle, Major Robert Martin, Major Jason King, Major Daniel Hondo, Internal Affairs Sergeant Sara Clukey, Training Sergeant Daniel Hayden, Lieutenant William Preis (representing the Superior Officers Association), Officer William Stratis (representing the Police Benevolent Association), Behavioral Health Coordinator Bridgit Sliwak, Associate Corporation Counsel Nicole Albert, and yourself.

The IRT's review is independent of and not connected with the Attorney General's review of the incident.

Professional Standards Lieutenant Jacob Titcomb presented the findings of the AIT's Use of Deadly Force investigation.

As outlined in PPD SOP 90B §X-D, the discussion of Officer Webster and Officer Jackson's use of force focused on the following areas:

- 1) Whether relevant policy was understandable and effective during the incident.
- 2) Whether changes in policies or procedures are necessary to increase public safety or officer safety.
- 3) Whether training methods or protocols should be reviewed or revised.
- 4) Whether department equipment or other resources should be replaced, supplemented, or modified.

The IRT had access to any and all relevant information about the information, to include: 911 calls, radio traffic, cruiser and body camera video, photos, and witness statements.

Portland Police Standard Operating Procedures (SOP) state that the use of deadly force is justified, when the officer "reasonably believes such force is necessary . . . for self-defense or to defend a third person from what the officer reasonably believes is the imminent use of unlawful deadly force. . ." ¹ Additionally, the use of deadly force is measured by the following standards:

- 1) Whether the use of force was consistent with the requirements of Maine law.
- 2) Whether the officer reasonably believed that force was necessary in light of the facts and circumstances known to the officer at the time the force was used.

The IRT discussed Officer Webster's and Officer Jackson's use of force from a number of perspectives, including the officers' decision-making and tactical effectiveness as well as the actual use of force. It reviewed whether there are training needs, on an individual, team, or department-wide basis, that were observed during the incident, and whether any changes to policies and procedures are recommended.

Based on Officer Webster's and Officer Jackson's handling of the threat posed by Mr. Desmarais and the speed with which the situation unfolded on December 17, 2023, the IRT was satisfied that both officers understood the requirements of both Maine law and police department policy regarding the use of deadly force, and that no changes were necessary to the PPD SOP. A review of the physical evidence, including cruiser and body camera footage and 911 calls and radio traffic satisfied the IRT that the use of deadly force was in compliance with Portland Police SOPs.

¹ PPD SOP1A §V-B-2.

The IRT also discussed whether there were less lethal tactics or weapons that might have been effective in neutralizing the threat posed by Mr. Desmarais. Given the fact that Mr. Desmarais stepped out of his car with a firearm in his hand already pointed at Officer Jackson's vehicle, and shot at Officer Jackson within a little over one second of stepping out of his vehicle, the IRT was satisfied that there were no alternative tactics, less lethal weapons, or de-escalation techniques that would have been effective in this case.

The IRT did not identify any concerns with the department's training methods or protocols with respect to the response to resistance. In fact, the only suggestion in this regard was for more of the same type of training officers are already receiving, both at the Maine Criminal Justice Academy during the Basic Law Enforcement Training Program, as well as ongoing mandatory training received while serving with the Department. This recommendation for ongoing training included the tactical medical response to critical incidents, which was remarked upon by the group, who were impressed with the officers' ability to swiftly change focus from threat elimination to lifesaving measures for Mr. Desmarais.

The current SOP regarding Response to Resistance² requires, in situations requiring a casualty report, that the subject and the scene be photographed. As the Attorney General's Office investigators (including crime scene investigators) are typically the first investigators on site following a critical incident, the suggestion was made to amend this SOP to allow for the photographs taken by these investigators to satisfy this requirement.

With regard to response immediately following a critical incident such as the December 17, 2023 officer-involved shooting (OIS), a recommendation was made that the Department's SOPs, which currently only require that involved officers be transported to the hospital if treatment is needed,³ be amended to require all involved officers to be transported for assessment, regardless of whether there is an obvious need for medical treatment. This will allow for officers' vital signs to be assessed and monitored by medical professionals, and the time involved for the medical evaluation will also provide a brief "buffer" period between the officers' removal from the scene and their transportation to police headquarters for further investigation.

Additionally, a different section of the same SOP⁴ requires Department employees involved in a critical incident to attend a Critical Incident Stress Debriefing to which other involved City employees are also invited. The suggestion was made by the group,

² PPD SOP 1A-§VII-D

³ PPD SOP 90A-§V-B-3

⁴ PPD SOP 90A-§IX-B

given the requirement that this debriefing occurs within 24-72 hours post-incident, that the participation of the officers directly involved be at the Chief's discretion and not mandatory. This was primarily due to trauma which can surface in the hours and days following a critical incident.

With respect to post-incident procedures, a further recommendation was made by the group for the Department to better communicate with personnel the availability of mental health resources for all officers, whether directly involved in a critical incident or not. Members of the panel specifically discussed the de-stigmatization of seeking and receiving mental health counseling, and the importance of mental health in policing overall, as well as specifically following a critical incident. The Department's robust Peer Support group, which includes the recent engagement of the services of a psychologist who specializes in police and public safety to provide psychological and operational support to the Department, was noted with approval by the group.

Law enforcement officers perform a vital and often dangerous job in our communities. Unfortunately, situations arise where officers must use deadly force. The community expects that such force will only be used when legally necessary and as specified by law, as it was in this instance.

cc: Danielle West, City Manager
Mayor Mark Dion and members of the Portland City Council
Michael Goldman, Corporation Counsel
Anne Hardcastle, Chair and members of the Police Citizen Review Subcommittee
Chair of the Board of Trustees, Maine Criminal Justice Academy
PPD Use of Force Committee members
Sgt. Daniel Hayden and members of the PPD Training Committee
Sgt. Sean Hurley, President of the SOA
Officer Thien Duong, President of the PBA
Officer Jordin Jackson
Officer Jacob Webster

Police Citizen Review Subcommittee

Review of Obligations & Duties

November 13, 2024





Structure of the PCRS

Established by Chapter 2, Article IV of the Portland City Code

- Composed of seven (7) commissioners, who are residents of the City of Portland
 - Cannot be former employees or City Council members (10 year restriction)
 - Family members or commissioners cannot have been Portland police officers, arrested, filed a complaint, or brought suit (10 year restriction)
- Appointed by the City Council to 3 year terms
 - Limited to 3 terms
- Assisted by the City's Corporation Counsel's office



Meetings of PCRS

Quorum: Four (4) members; Three (3) members during vacancy

Public Meetings

- Required by Freedom of Access Act
- Public notice of meetings
- Executive session to discuss specifics of IA cases
 - To protect privacy of employees & other individuals involved in the underlying situation
- Vote in public session
 - Public discussions should not include specifics of IA cases which are otherwise confidential
- Meeting minutes are required
 - Must include date, time, place, presence or absence of members, motions or votes taken

Outside communications

- Exercise caution in emails & other external communications



PCRS' Duties - Review of IA Investigations

Section 2-76 of Chapter 2 of the City Code

To determine whether police investigations into citizens' complaints by members of the public against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures.

Key Points

- Review of IA process, not reinvestigation of underlying incident
- Review is to determine if investigation is thorough, objective, fair, and timely
- Review only citizens' complaints



PCRS' Duties - Review of IA Investigations

Limitations on Review

- No power to call witnesses
- No ability to impose or modify disciplinary action or lack of action against a police officer
 - No recommendations, findings, or comments relative to disciplinary action
- Consideration is limited to thoroughness, objectivity, fairness and timeliness

PCRS' Duties - Review of IA Investigations

PCRS has developed its own [suggested guidelines](#) for evaluating IA investigations - updated in March 2023

Timely

- Number of days between date of complaint and date of IA letter transmittal to command staff. _____
Note: [SOP 90](#) provides that every effort will be made to conclude review within 45 business days.
- Number of days between date of complaint to when letter was sent to complainant. _____
Note: [SOP 90](#) provides that investigation and command review should be completed within 60 business days of complaint.
- If delays occurred, did IA provide a reasonable explanation given either the level of complexity of the case or outside demands that took precedence over the timely disposition of the case in their report?



PCRS' Duties - Review of IA Investigations

Thorough

- **Was the articulated basis for categorizing the complaint as a Category U, Category 1, or Category 2 complaint consistent with SOP 90?**
 - **If not, was a more detailed investigation warranted?**
- Was key Information/evidence (including available video and audio files, telephone logs, electronic media posts, photos, written statements, etc.) pursued and analyzed by IA?
- If appropriate based on the categorization of the complaint, were all witnesses identified in the complaint interviewed?
- If appropriate based on the categorization of the complaint, was an adequate level of due diligence used to locate and contact witnesses?
- Did the investigator elicit all relevant information from the complainant, witnesses and officer(s) in their interviews?
- Did the investigator conduct follow up interviews with the complainant, witnesses or officer(s) to clarify any conflicting or new information discovered after the initial interviews, if applicable?

PCRS' Duties - Review of IA Investigations

Fair

- Was the investigation process followed as defined by IA department standards and policies?

Note: See [SOP 90](#) issued by Portland PD on IA standards and policies.

- Was the complaint received in an impartial, non-judgmental way?
- Did the investigator approach the investigation in an impartial, non-judgmental way?



PCRS' Duties - Review of IA Investigations

Objective

- Did the investigator exhibit professionalism and neutrality with the complainant, witnesses or officer(s) in his/her interviews?
- Did the investigator evaluate all facts and evidence in a dispassionate, objective manner in the IA report
- Was open-ended questioning used by the investigator with the complainant, witnesses or officer(s)?
- Did the investigator explain his or her role and the IA process, including the role of the PCRS?

PCRS' Duties - Review of IA Investigations

Letter send to citizen complainant after review notifying them of findings



CITY OF PORTLAND
POLICE CITIZEN REVIEW SUBCOMMITTEE
Anne Hardcastle, Chair

RE: Police Citizen Complaint
IA

Dear _____:

The City of Portland has a Police Citizen Review Subcommittee (PCRS) that reviews all of the Police Department's Internal Affairs (IA) investigations into citizen complaints about the Police Department. The PCRS reviews the IA investigations to ensure that they are thorough, objective, fair, and timely. Although the Subcommittee cannot change the Police Department's decision on an investigation, or impose discipline, it ensures that the IA division **Page 10** conducting its investigations appropriately. The PCRS reports its findings directly to the City Manager so that she can address any issues that the

PCRS' Duties - Review of IA Investigations

The PCRS reviewed the IA investigation into your complaint and found that the investigation was thorough, objective, fair, and timely.

If you have any questions about the PCRS or its process, or would like to provide feedback, the PCRS meets regularly throughout the year, and welcomes public comment at the beginning of each meeting. Meetings are posted on the City website at <https://www.portlandmaine.gov/602/Agendas-Minutes>. You are also welcome to reach out by email at pcrs@portlandmaine.gov, or by mail or phone through the City's Corporation Counsel's Office, whose contact information is at the bottom of this letter. Any comments or questions you provide will be shared in the next meeting of the PCRS.

The PCRS takes its role seriously in ensuring that the review of citizen complaints about the Portland Police Department is fair and effective, and appreciates you bringing forward your concerns.

Sincerely,
/s/ [Anne Hardcastle](#)
Anne Hardcastle, Chair

cc: Police Citizen Review Subcommittee
Danielle P. West, City Manager
Mark DuBois, Portland Police Chief
Michael I. Goldman, Corporation Counsel



PCRS' Duties - Additional Duties

Annual Report to the City Manager

- Subcommittee's determinations on thoroughness, objectivity, fairness, and timeliness of IA investigations
- Recommendations and/or proposals for improvements or modifications in:
 - Police internal affairs investigative processes, policies or training
 - Enhancing public confidence in the methods and processes of investigation of citizen complaints

Public Hearing

- At least annually
- To receive comments upon the police citizen complaint process



Questions?



CITY OF PORTLAND
POLICE CITIZEN REVIEW SUBCOMMITTEE
Anne Hardcastle, Chair

RE: Police Citizen Complaint
IA

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The PCRS reviewed the IA investigation into your complaint and found that the investigation was thorough, objective, fair, and timely.

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Sincerely,
/s/ [Anne Hardcastle](#)
Anne Hardcastle, Chair

cc: Police Citizen Review Subcommittee
Danielle P. West, City Manager
Mark DuBois, Portland Police Chief
Michael I. Goldman, Corporation Counsel