

January 6, 2021

To: Mayor and Members of City Council 202002091
From: Paula Boggs Muething, City Manager
Subject: Citizen Complaint Authority Recommendations and CPD Improvement, Report 1

REFERENCE DOCUMENT # 202001079

On September 2, 2020, the Law and Public Safety Committee referred the following for a report:

MOTION, submitted by Councilmember Landsman, The Citizen Complaint Authority (CCA) is at the heart of the Collaborative Agreement but it faces two major challenges. CCA has been understaffed and the submitted complaints are not being investigated and responded to in a timely manner. At one point, CCA had a backlog of over 100 cases, including many excessive use-of-force complaints. (BALANCE OF MOTION ON FILE IN THE CLERK'S OFFICE)

The following report is the first of two in response to Motion 20200179. This report provides an overview of the CCA recommendation process, as well as recommendations submitted to CPD for response. The second report, to be submitted within 60 days, will detail responses from CPD to each recommendation identified.

CCA RECOMMENDATION AND RESPONSE PROCESS

CCA provides an independent and impartial forum for the review, investigation, and resolution of complaints filed by citizens against police officers. CCA has three components: an advisory Board of seven citizens appointed by the Mayor and approved by City Council; a full-time Director with support staff; and a team of professional investigators.

CCA has existed for nearly 20 years. It was created in May of 2002 in the aftermath of civil unrest that occurred the previous year when a Cincinnati Police Officer shot and killed Timothy Thomas, an unarmed Black teenager. In resolution of lawsuits related to the shooting, Cincinnati's historic Collaborative Agreement was signed to improve police service and to implement community-oriented policing. A Memorandum of Agreement (MOA) between the U.S. Department of Justice, the City and the CPD was also executed. As a result of those two agreements, the City established CCA in its Administrative Code.

CCA investigates serious police interventions, such as discharges of firearms, deaths in custody, and major uses of force; as well as serious complaints of misconduct, such as excessive force, improper pointing of firearms, improper searches and seizures, improper stops, and discrimination (including racial profiling). Complaints not investigated by CCA are referred to CPD. CCA also makes recommendations to the City Manager and the Police Chief.

At the conclusion of an investigation, the Director makes findings based on a preponderance of the evidence standard and may also make recommendations. CCA’s Board reviews the completed investigations, and takes a vote indicating approval or disapproval of the Director’s findings and recommendations. Afterwards, the City Manager will conduct a final review and assessment. ¹

2018 – 2020 CCA RECOMMENDATIONS²

Note: This report combines some recommendations that are nearly identical, rather than setting out all the permutations of that recommendation. For instance, in cases where repeat recommendations were issued by CCA, the agency included those with substantially similar language although not always identical. In all such instances, this report includes only one version of the recommendation. All corresponding case numbers where the recommendation was made have been included for official reference purposes.

De-Escalation & Harassment

CCA Case No.	CCA Recommendation
19157	CCA also recommends that CPD make a separate policy for the utilization of de-escalation techniques. This policy should further expand on the definition of de-escalation techniques, which is listed under CPD Procedure Manual § 12.545 Use of Force. The policy should, in part, explain the criticalness of an officer’s awareness to properly select and implement the proper de-escalation technique in a given situation. Additionally, there should be a renewed focus on training and simulations that can assist officers in developing better awareness in situations where de-escalation techniques would help prevent the use of force.
18229,17163	CCA recommends that CPD create a definition of Harassment, at a minimum, in its CPD Procedure to provide officers with specific direction and guidance.

Taser/Firearm

CCA Case No.	CCA Recommendation
18181,18158, 18092,18067, 17162	In addition to previous recommendations to CPD Procedure § 12.545 Use of Force, CCA recommends that CPD further develop the Taser section regarding avoidance of prolonged, extended, uninterrupted discharges or extensive multiple discharges. To support its development, a study should be conducted to review these types of taser discharges that include analyses of the number of incidents, the demographics of citizens involved in these incidents, the types of behaviors that result in a citizen being the target, and any injuries sustained. Such a study can be impactful in assisting CPD to ensure operational taser practices align with policy and training.
18115,18076	CCA recommends that CPD create a tracking system that requires officers to document every time they point their firearms/tasers at a person (including at the low ready position) and describe the type of encounter that prompted them to have to draw their firearm/taser such as: felony traffic stop, investigatory stop, etc. This information could be added to their Contact Card or Arrest Report. The

¹ For additional information on CCA, please visit CCA’s website at <https://www.cincinnati-oh.gov/ccia/about-cca/>.

² This report does not include 2020 recommendations pending review by the City Manager and that thus have not been formally forwarded to the Police Chief.

CCA Case No.	CCA Recommendation
	results would prove useful in detecting trends as well as be used in the creation of further training tools.
18154,18076, 18042,17220	CCA continues to recommend that CPD review the Taser section of its Procedure § 12.545 Use of Force to determine when it is appropriate for officers to remove their tasers from their holsters and how officers should point and use their tasers as a means of control to avoid the appearance of a physical threat to a citizen. While CPD's recent 2019 changes continue to enforce the objective reasonableness standard, CCA feels more clarity is needed. One point of clarity that CCA recommends be included is the creation of a definition and section on passive resistance versus active resistance with explanation of what uses of force are acceptable and non-acceptable based on the type of resistance and why.

Body Worn Camera

CCA Case No.	CCA Recommendation
18139	While BWCs are primarily worn by uniformed officers, CCA expressed concern during the BWC Policy implementation period regarding scenarios where plain clothed officers should be required to wear BWC's. This case provides such an example.
19010	<p>CCA recommends the Body Worn Camera System procedure be reviewed and adjusted to provide explicit direction to officers in light of the procedure's purpose.</p> <p>CPD Procedure § 12.540 Body Worn Camera System states that officers will use BWC equipment to record all calls for service and self-initiated activities and when assisting other officers. The BWC must be activated when the officer arrives on-scene or announces he/she is on-scene in the area and must be recorded in its entirety. However, it allows exceptions for officers to deactivate their BWC in specific situations, such as completing paperwork, e.g. case report, as long as they are not interacting with the public. There are concerns that the exceptions may be contradictory to the purpose and policy behind CPD Procedure § 12.540. Furthermore, the discretion of the officer regarding when to activate or deactivate the BWC could come into question. Since CPD has the ability to redact any information that it deems confidential in nature prior to making footage public, it should not be left to the officer's discretion.</p>
18149	CCA recommends that CPD include in Procedure § 12.540 Body Worn Camera System that officers who are assigned to work the front desk be required to activate their BWC's for civilian contact regardless if it is a consensual encounter. Doing this can either confirm or refute complaints. CPD should also define the term consensual encounter, further provide guidance at what point a consensual encounter becomes a police-initiated encounter and at what point during the encounter officers should activate and de-activate their BWCs.

CCA Case No.	CCA Recommendation
17244,16247, 17033	<p>CCA continues to urge CPD to issue BWC to the FAS (uniformed and plain clothed), requiring them to wear them as patrol officers are required to wear them, in addition to during the execution of warrants. This includes scenarios that involve obtaining consent. As further support of this recommendation, the International Association of Chiefs of Police Model BWC Policy also recommends such units like CPD's FAS wear BWCs.</p> <p>In the past, CCA expressed concern regarding the FAS not wearing BWCs, including during the BWC Policy implementation period. CCA understands that the undercover units should be exempted from the practice. The FAS is not an undercover unit; its primary role is to execute warrants including the investigation, location, and apprehension of offenders with warrants.</p>
17033	<p>Furthermore, all uniformed officers in specialized units should be required to wear BWCs. There is no exception in the current CPD Procedure § 12.540 that excludes uniformed officers assigned to specialized units like the FAS from wearing BWCs.</p>

Use of Force

CCA Case No.	CCA Recommendation
18229,18181, 18158,18092, 17162,17073	<p>CCA recommended in prior investigations involving the allegation of use of force that CPD re-enact the Use of Force Board. While CPD acknowledged that enactment of the Use of Force Board is not needed due to the concurrent investigations by CPD and CCA, CCA still has concern. Since Use of Force is still the underlying cause of many CPD and CCA complaints, CCA believes the Use of Force Board is imperative. CPD Procedure § 12.545 Use of Force, refers to the Use of Force Board conducting comprehensive reviews of various use of force incidents; this would also include reviewing police tactics in cases like this one. By enacting the Use of Force Board, protocols and patterns may be further identified that can lead to a decrease in Use of Force complaints.</p>
17162	<p>CCA recommends that a Force Continuum or Matrix be included in CPD Procedure § 12.545 Use of Force, defining the types of force/weapons that can be used to respond to specific types of resistance. This tool can further guide officers in how force should be applied, but also further encourage de-escalation.</p>

Transparency

CCA Case No.	CCA Recommendation
19058,18114, 18214,17234, 17234	<p>CCA recommends a review by the CPD of its handling of and response to CCA's requests for information to ensure CPD's compliance with Article XXVIII and the Collaborative Agreement. It is imperative that CCA receive evidence from CPD timely to conduct a viable investigation. At a minimum, since CCA shares all complaints it investigates with CPD, any records related to the complaint should be flagged and provided to CCA upon notification of CCA's investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents. . . ." In this case, CCA requested the MVR/DVR of the incident but was informed by CPD that while the evidence existed and was requested, it could not be located.</p>

CCA Case No.	CCA Recommendation
18199	CCA continues to request that once CCA shares complaints it investigates with CPD, which occurs within 48 hours of CCA's receipt of a complaint, any records related to the complaint should be flagged and provided to CCA upon notification of CCA's investigation. It is imperative that CCA receive evidence from CPD to conduct a viable investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents.
19129,18199	In the interest of transparency, CCA continues to recommend that CPD record and monitor officers' telephone interactions with the public, especially when addressing citizen complaints and concerns, to ensure the officers meet the applicable procedural and regulations requirements of CPD and the City of Cincinnati's requirements for all employees.
17130,18199	CCA recommends a review by CPD of its handling of and response to CCA's request for records in this matter to ensure CPD's compliance with article XXVIII and the Collaborative Agreement. It is imperative that CCA receive evidence from CPD in a timely manner to conduct a viable investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents, etc." In this case, CCA Investigators requested the BWC footage within CPD's 90-day retention period. CCA did not receive the requested records and was notified by CPD's Internal Investigations Unit that the records had not been "flagged" as they should have, and had already been deleted.

Officer Review and Training

CCA Case No.	CCA Recommendation
19157	CCA recommends that Officer **** receive additional training in de-escalation techniques to prevent similar encounters in the future.
18229	CCA also recommends that Officer **** receive follow-up training in customer service and the application of policies, procedures, training in the areas of use of force, transporting and the use of de-escalation techniques to be able to decrease the potential need to use force and respond appropriately to levels of compliance or resistance.
18080	CCA recommends Officer **** receive further training on CPD Procedure § 12.412 as well as sensitivity training when working with domestic violence victims.
18120	CCA recommends Officer **** receive additional training in working with domestic violence victims as well as de-escalation techniques to prevent similar encounters in the future.
18070	CCA recommends that Officer **** receive additional training in de-escalation techniques and customer service skills to prevent similar encounters in the future.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
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17205	CCA recommends that Officer **** receive further training in the use of de-escalation techniques to be able to decrease the potential need to use force and respond appropriately to levels of compliance or resistance.
17163,17041	CCA has noticed an increase in complaints and allegations against Officer **** and recommends that CPD review Officer **** record of complaints and allegations to determine if further training, counseling, remediation or change in assignment is needed.
17138	CCA highly recommends Officer ***** receive additional training in addressing citizens, including those in mental health crises as well as utilizing disengagement and no escalation methods.
18181,18158, 18092	CCA recommends that CPD review officers who have the same type of complaints and allegations filed against them to determine if further training, counseling or remediation is needed. This can serve as an initial warning to CPD that early intervention may be needed. All department personnel must recognize that their actions, both verbal and non-verbal, can play a significant role in the outcome and escalation or de-escalation of an interaction.
19058	Additional clarification may be needed that contact cards are required for any vehicle passenger or pedestrian detention which meets the definition of a "Terry" stop unless the stop results in an arrest or citation. Furthermore, CPD should not train its officers that self-initiated interactions do not require contact cards. To be proactive and ensure policy accountability and fairness, contact cards should be required no matter the type of stop, nor whether the stop may be considered self-initiated or not.
17162	CCA recommends that CPD instruct officers to thoroughly explain all the reasons why they were called to the scene to the citizens. CCA believes that thorough explanations to citizens could possibly reduce the amount of misunderstandings between CPD and citizens. If citizens are fully informed of the reasons for the questioning, it could possibly reduce the amount of citizen complaints filed against CPD officers, as well as foster better police/community relations.
18096	CCA recommends that Officer Smith receive training in use of force, foot pursuits, tactics, de-escalation techniques, and customer service skills,

CCA Case No.	CCA Recommendation
	particularly regarding interactions with juveniles, in order to prevent similar encounters in the future.

Miscellaneous

CCA Case No.	CCA Recommendation
18142	There appeared to be a lot of confusion by the individuals involved and bystanders regarding walking in the street; there appeared to be a common theme that others historically walked in the street, even with the sidewalks present. If that is the case, CCA believes that this may be an excellent time to engage this community regarding City pedestrian laws.
16247	CCA is unaware of a due diligence checklist for the identification of alleged suspects with open warrants for service. If one does not exist, CCA recommends that one be created and that it be required of all execution of warrants. This recommendation would be a proactive measure to ensure that there is due diligence in the identification of an alleged suspect, especially in a case like this one where the person has a common name.
17033	Since the FAS's primary role is to execute warrants, procedurally, all officers in that squad should carry Consent to Search forms when acting in the performance of their duties. If the FAS officers do not carry and provide the correct CPD approved documentation and forms in the performance of their duties, they should be held accountable.

SUMMARY

The City Manager's Office in coordination with Citizen Complaint Authority and the Cincinnati Police Department has identified 37 unique recommendations in response to Council's request for an update on CPD's response to prior CCA recommendations. The Administration will submit a follow up report to Council within 60 days detailing CPD's response to the identified recommendations.

cc: Jason Cooper, Division Manager, Criminal Justice Initiatives
Gabriel Davis, Director, Citizen Complaint Authority
Lt. Col Teresa Theetge, Executive Assistant Chief, Cincinnati Police Department