



October 9, 2012

Mary-Beth Baptista  
Director, Independent Police Review Division  
1221 S.W. 4th Avenue, Room 320  
Portland, Oregon 97204

Dear Ms. Baptista:

Last month, your office denied a request from Fred Bryant, the father of Keaton Otis, to allow a civilian body to review the Portland Police Bureau's findings that no misconduct occurred when Keaton was shot 23 times by Portland police officers in May 2010. Despite contrary information in the recently released Department of Justice investigation and statements by the City Auditor, your office publicly admitted that it would not allow appeals of Police Review Board findings concerning officer-related deaths to the Citizen Review Committee.

As you know, the Police Review Board is a seven-member body that meets out of the public eye within the Police Bureau, consisting of four police employees, two citizen members, and an Independent Police Review (IPR) representative. The nine-member Citizen Review Committee, comprised of volunteer laypersons from the Portland community, hears appeals of Police Bureau findings regarding officer conduct at public hearings and makes recommendations to affirm or change the findings, or for more investigation.

Your response came more than six months after Fred Bryant's February 2012 request to appeal the Police Review Board findings concerning the May 2010 shooting death of his son. Moreover, the IPR's position contradicts the statement in the May 2012 City Auditor report, Portland Police Bureau Learning, which indicates that "[a] community member or officer involved in [a] case who disagrees with the [Police] Review Board's decision can appeal to the Citizen Review Committee [CRC]."<sup>1</sup> It also contradicts the U.S. Department of Justice statement, in its recent Letter of Finding regarding its investigation of the Portland Police Bureau, that "There exists

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<sup>1</sup> Portland Police Bureau Learning: Improvements Needed to Strengthen Existing Processes, Portland City Auditor, May 2012, available at: <http://www.portlandonline.com/auditor/index.cfm?c=53777&a=397351>.

ATTORNEYS

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no apparent prohibition on CRC's consideration of officer accountability incidents involving in-custody deaths or officer-related deaths."<sup>2</sup>

The IPR's position, while disappointing, is not surprising in light of the long history of IPR's reticence to vigorously carry out its police oversight duties. The U.S. Department of Justice noted that IPR declined 66 percent of the complaints it received in 2010.<sup>3</sup> Fred Bryant, who called IPR in the aftermath of his son's death, was presumably among the complaints that IPR declined.

In a February 2010 letter to your office, I asked that IPR allow Mr. Bryant to file an appeal to the Citizen Review Committee. I based this request on the fact that, in the wake of his son's death, Mr. Bryant attempted to initiate a complaint by calling IPR and, in violation of IPR's case handling guidelines, the IPR staff did not tell him how to do so. Thus, we simply asked to be treated as if he had filed a complaint and therefore be allowed to request an appeal.

Your office, however, claims that Mr. Bryant does not have the right to appeal to the Citizen Review Committee because only "Type I" and "Type III" cases are subject to appeal of Police Review Board findings. Under the Portland City Code, Type I cases involve complaints, such as Mr. Bryant's, regarding officer encounters with a community member.<sup>4</sup> The Code provides, "[A]ny complainant . . . who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review" and requires that IPR inform complainants of the right to appeal Police Review Board findings.<sup>5</sup> Thus, the IPR has apparently taken the convoluted position that because the Police Review Board merely reviews investigations of deadly force, those reviews are not "investigations into alleged officer misconduct" that are subject to appeal.

Your decision is in keeping with the Department of Justice investigation findings that described Portland's police oversight system as "layers of review [that] have provided escape valves inappropriately eviscerating full administrative investigation and corrective action for some complaints."<sup>6</sup> That is the situation here.

Moreover, you did not simply deny Mr. Bryant's appeal, you also stated that the IPR would not conduct any independent investigations into officer-related deaths. Your office relied on questionable reasoning to reach this conclusion. First, your letter stated that, in passing the 2002 ordinance that granted the IPR the power to review closed investigations of officer-involved shooting and deaths in custody, the "[City] Council's intent was to limit IPR and CRC's authority." That ordinance, however, states that the "Council directed the auditor to propose code for reviewing officer-involved shootings and deaths in police custody," which at least indicates that the City Council was amenable to granting the IPR and the CRC broader authority in this area.<sup>7</sup>

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<sup>2</sup> Findings Letter to Mayor Sam Adams, U.S. Department of Justice, September 12, 2012, p. 34, available at: [http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf).

<sup>3</sup> *Id.* at p. 28.

<sup>4</sup> Portland City Code 3.21.120.B.1, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298309>.

<sup>5</sup> Portland City Code 3.21.140.A, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298310>; Portland City Code ; 3.21.120.G.5, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298309>.

<sup>6</sup> *Supra*, note 2, at p. 27.

<sup>7</sup> Portland City Ord. No. 176317, available at: <http://efiles.portlandoregon.gov/webdrawer/rec/2437320/>.

You further stated that the IPR cannot independently investigate officer-related deaths because the Portland Police Association contract states that the IPR lacks that authority. The Police Association contract, however states that, "IPR has no authority or responsibility" relating to Section 61.8 of the contract, which admittedly is entitled Deadly Force Incidents, but provides that officers involved in the use of deadly force have the right to counsel and union representation.<sup>8</sup> The contract is thus unclear with regard to whether the IPR has no authority to investigate deadly force incidents, or merely has no authority over officers' right to counsel and union representation during those investigations. The latter reading makes more sense in light of the fact that you (or your designee) serves as a voting member of the Police Review Board, the entity charged with review of officer-related deaths.<sup>9</sup> Your reliance on the language in the police union contract is therefore, at best, puzzling in light of the fact the City Code expressly grants the IPR responsibilities with regard to deadly force incidents.

Your letter's reliance on the Portland Police Bureau Directives is similarly disingenuous. The IPR states that the Portland Police Bureau Directives establishes that the Bureau shall investigate deadly force incidents. The ordinance that created the Police Review Board, however, instructs the Police Bureau to "revise its directives to the extent that the directives conflict with these code provisions."<sup>10</sup> Moreover, the Directives themselves state, "IPR may conduct its own investigation into allegations of police misconduct at the discretion of the IPR Director."<sup>11</sup> Thus, you have mistakenly relied on the Directives as a basis for your conclusion that the IPR cannot conduct an independent investigation into deadly force incidents.

As the foregoing discussion demonstrates, and the Department of Justice found in its investigation, the current Portland police oversight system is unnecessarily complex and shamefully unresponsive. It takes a highly determined individual, such as Mr. Bryant, just to see that a complaint receives an investigation, let alone an appeal before the Citizen's Review Committee. And while Mr. Bryant is heartened that the Department of Justice findings regarding excessive force may lead to reforms that will prevent future incidents like the one that resulted in his son's death, he will continue to assess his options to see that his case gets a full and fair review.

Sincerely,



Shauna Curphey

Cc: Fred Bryant  
Portland Copwatch

<sup>8</sup> Portland Police Association 2010-2013 Labor Agreement, pp. 36-36, available at: <http://www.portlandonline.com/omf/index.cfm?c=27840&a=10857>.

<sup>9</sup> Portland City Code 3.20.140.C, *supra* note 5.

<sup>10</sup> Portland City Ordinance No. 183657, available at: <http://efiles.portlandoregon.gov/webdrawer/rec/3766848/>.

<sup>11</sup> Portland Police Bureau Policy Directives – 330.00 Role of the Independent Police Review Division, available at: <http://www.portlandonline.com/police/index.cfm?c=29867>.