

MEMO

To: Mayor Adler, Members of City Council, and Interim City Manager Hart

From: Texas Criminal Justice Coalition, Austin Justice Coalition, Grassroots Leadership, Black Sovereign Nation, Counter Balance ATX, and the Austin Community Law Center

RE: Civilian Oversight and Complaint Intake

The above organizations, **dedicated to implementing a far better civilian oversight system**, wish to respond to Interim City Manager Hart's January 23, 2018 memo on the Civilian Review Panel. We agree that our existing Civilian Review Panel, as it was structured under the now-expired contract, cannot continue to conduct reviews of citizen complaints due to the limitations posed by the police department's decision to create a 143.089(g) file (called the "g" file in CM Hart's memo).

We respectfully, strongly **disagree** with CM Hart's conclusory statement that the only way to achieve effective oversight is through negotiation with the Austin Police Association. Contract negotiation is only *one* way to address oversight, but it is by no means the only way.

After due consideration of the requirements of Texas Local Government Code Ch. 143 and other state and federal laws, we are prepared to propose a stronger, more transparent, and less biased system of oversight for APD. Truly independent oversight and transparency can be implemented by restructuring the complaint intake process through an independent nonprofit organization. An independent nonprofit organization can collect and create information outside the police department. And it can investigate alleged misconduct by police officers.

First we propose that the City incorporate a nonprofit organization with an interim board, with the mission to accept complaints and compliments about police conduct, perform investigations, and produce public reports about complainants and investigatory findings. None of the material collected or reported by a nonprofit organization will be information within a "g" file because 143.089(g) only applies to personnel files maintained by a municipal police department.¹

Second, we propose that the City move certain functions performed by APD Internal Affairs (including proactive audits of use of force reports) out of the police department entirely and

¹ The critical reason to create a completely independent oversight body relates to access to records. Chapter 143.089(g) allows police departments to create a "g" file, and if police departments create a "g" file, almost all information created by the department and certain information provided to the department about police misconduct becomes secret. But 143.089(g) does not apply to information compiled and maintained outside of a police department, such as by an independent nonprofit organization. The existence of a "g" file in Austin has been a serious problem for accountability. Unfortunately, virtually no negotiation occurred about making more information about force incidents or complaints against officers public, and we believe that this will be the most difficult issue to address in any future negotiation. So we strongly suggest addressing the problem differently.

into a separate department. We propose moving this function to the City Auditor, but we are open to any move that brings investigation of allegations of misconduct entirely out of the police department. The City Auditor has a proven track record of independent and unbiased reviews, and can be trusted to pursue complaints that the nonprofit determines must get further investigation.

Taken together, these changes will make it easier for people to file complaints (online, anonymously, by phone, or by any other means of communication) and will improve the initial response to complaints by taking the preliminary assessment and follow-up investigation out of the hands of direct supervisors, other officers, and the department. At every step in the process, the new investigators can conduct themselves in accordance with the rights of officers mandated by state law.

We agree with CM Hart's earlier memo about the Office of Police Monitor, in which she stated that decisions about departmental custody of data are management decisions under her jurisdiction and do not require a special resolution from Council. We ask that the CM transfer original custody of all raw data necessary for independent investigation of incidents to the City Auditor (or other final home for independent investigation) with a special right of access to the department solely for the purpose of conducting normal criminal investigations. The findings from sustain allegations of misconduct can be given to the Chief, who will still determine the final consequence for the officer as he does under the requirements of Chapter 143.

Our proposal will fundamentally shift the process from one that is deeply biased toward inaction, to one that will provide an independent, unbiased, and fair approach to every investigation. It will address the persistent problem that IA investigations are inadequate and give Austinites a far better entry point when they want to provide information about an encounter with officers.

We hope to discuss these ideas with the City Manager and Council Offices. We are prepared to answer your questions.

For Media, the following people can be called for interviews or to provide background information:

Chris Harris, Grassroots Leadership: 1-512-897-0703

Matt Simpson, ACLU of Texas: 1-503-756-7842

Njera Keith, Black Sovereign Nation: 1-512-720-9037

Brian McGiverin, Austin Community Law Center: 1-512-366-2114

Kathy Mitchell, Texas Criminal Justice Coalition: 1-512-695-4670

Fatima Mann, Counter Balance ATX: 1-860-205-7381

Chas Moore, Austin Justice Coalition: 1-713-459-2333