

**Discussion by Director Tom Radulovich
BART Police Department Review Committee Meeting
Monday, April 20, 2009**

Three Governance Models:

Auditor or Civilian Ombudsperson:

In this model, civilian oversight is independent of the police, and in a separate office. Civilian review typically works under a city manager rather than elected or appointed officials. An auditor investigates the process by which the police department accepts and investigates complaints and reports on the thoroughness and fairness of the process to the department and the public. Sacramento and San Jose use this model.

Commission:

In this model, civilian review powers rest with an appointed board or commission, with a professional staff supporting their work. The Police Department retains a separate internal affairs function, but the civilian review agency has a role in investigating complaints, reporting, policy recommendations, and/or officer discipline. Berkeley, Oakland, and Richmond use this model.

Investigative or Agency:

Citizens investigate allegations of police misconduct. San Francisco uses this model where SFPD has a high level of oversight with an Office of Citizens Complaints (OCC) and a citizen Police Commission. Serious allegations are investigated internally by the SFPD Management Control Division (MCD) or by OCC and may be referred to the Police Commission for disciplinary action. Allegations can be investigated by both OCC and the MCD; however, MCD typically investigates officer involved shootings, in custody deaths or allegations while an officer is off-duty and OCC investigates allegations of excessive force, civilian harassment and other infractions by on-duty officers. Both the OCC and the Police Department answer to San Francisco's Police Commission, which is appointed by the Mayor (4 seats) and the Board of Supervisors (3 seats).

Elements of Successful Civilian Review:

1. Independence - The civilian review body must be independent of the Police Department.

Note: A civilian review body under the BART General Manager could probably be done under the current BART Act (the state statute governing BART). A civilian review body answering directly to the BART Board, or to an appointed commission, would probably require amendments to the BART Act.

2. Investigative Power - The civilian review body must have the authority and resources to independently investigate complaints. Sacramento includes civilian review investigators on the 'shooting team', which responds immediately to police-involved shootings.
3. Mandatory Police Participation (aka Subpoena Power) - The civilian review body must be able to compel the participation of officers in their investigations and hearings.
4. Role in the Discipline System - A civilian review body must have a role in the discipline of officers where complaints are upheld. That role may be advisory to the Police Department, or civilian review may have a disciplinary role in certain defined cases. The San Francisco Police Commission has almost exclusive authority over police discipline in San Francisco.
5. Statistical Analysis and Reporting - The civilian review body should issue a report annually, or more frequently, on statistics involving police complaints and other aspects of policing, and analyze the data to identify trends and to identify practices or even individual officers that may require remedial action to improve policing and prevent future incidents.
6. Policy Recommendations - The civilian review body should be both retrospective, investigating individual complaints, but also prospective, proactively looking at ways to improve policing. Policy recommendations in other civilian review bodies are often the result of investigating individual complaints, which may identify a need for new or better police practices, policies, or training. San Jose's annual report has a well-organized account of the police review body's policy recommendations, and of the Police Department's response to those policy recommendations.

Note: In discussions of BART police review, some stakeholders support the civilian review body doing periodic best practices reviews, or detailed policy reviews in areas of concern.

7. Hearing Component (Formal or Informal) - The civilian review body must have the ability to conduct hearings on individual complaints and on matters of policy. Hearings about specific cases of officer misconduct in cities like San Francisco, Oakland, and Berkeley, which previously were formally open are now closed because of a recent court case.

Note: If BART hearings on officer misconduct were to be open, it would require a change to state law. Hearings on matters of policy are generally still open.

8. Adequate Funding - Funding must be adequate to effectively support the investigative, analysis and reporting, and policy roles of civilian review.
9. Reflects Community Diversity - Both the staff and the board or commission should reflect community diversity. Hiring of staff and appointment of commissioners must consider how to reflect community diversity.
10. Accessibility - The public must be able to easily and directly access the civilian review body, whether physically, by phone, email or fax. The physical location of the police review office is an important consideration, and should reflect both the public accessibility of the body, and its independence from the police department.

Note: BART staff, including station agents and other 'front line' employees as well as customer service agents, should be trained to identify which complaints ought to have follow up by the civilian review body, and should be ready to both provide contact information for the civilian review office, and/or to take basic contact information from members of the public so that civilian review staff can follow up appropriately. Also, 311 and other non-BART governmental customer service providers should know how to contact the civilian review body if they are contacted with potential complaints involving BART police.

11. Qualifications and Training - The civilian review staff must be appropriately qualified and trained, and time and funding dedicated to continuing education and peer-to-peer learning. Appointed commissioners may be required to meet specific qualifications, and will probably need to be given initial orientation and/or training, with opportunities for ongoing education and peer-to-peer learning.