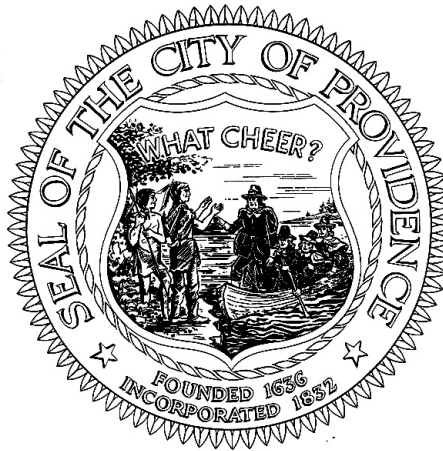


Providence External Review Authority

Complaint Intake and Review Procedures Proposed January 2020



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(A) PERA's Mandatory monitoring:

- 1) The following matters shall require mandatory PERA oversight/monitoring:
 - a) Any shooting involving uniformed personnel, whether duty related or not;
 - b) Any in-custody death;
 - c) Any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury as that term is defined in Rhode Island General Laws, as it may be amended from time to time;
 - d) Any incident, whether or not duty-related, in which a Providence Police Officer is under investigation for, or charged by any jurisdiction with, a felony;

Any incident, whether or not duty-related, in which a Providence Police officer is under investigation for, or charged by any jurisdiction with, a misdemeanor or local law violation in which a use of force (defined as assaulting, beating, striking, fighting, or inflicting violence on a person) or threatened use of force is an element of the offense.
 - e) With respect to subsections (A)(1)(c)(d), and (e), the PERA Executive Director shall have the discretion to monitor any internal investigation arising from the subject incident even if no criminal charges are filed against the officer involved or such charges are dismissed.

(B) PERA's Discretionary Monitoring

- 1) The PERA Executive Director shall have the discretion to monitor the internal Police or investigation of any citizen complaint alleging:
 - a) Improper use of force;
 - b) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion, or political affiliation;
 - c) Retaliation for making a complaint against the Police Department or any Police or uniformed personnel;
 - d) Inappropriate language or conduct;

- e) Theft;
- f) Harassment;
- g) Discourtesy; and/or
- h) Any internal investigation by the Providence Police as to which the PERA Executive Director believes it is in the City's best interest for the Executive Director to be involved.

(C) PERA Complaint Procedures

- 1) The PERA Executive Director has thirty (30) days to review all citizen complaints made to the Executive Director or the PERA board and make a recommendation to the PERA board to (1) the complaint be dismissed, (2) the complaint be forwarded to mediation, (3) the complaint be held in abeyance pending the outcome of any ongoing police department internal investigation, or (4) the complaint be transmitted for full investigation. Hereinafter, the foregoing subsections (1) through (4) may be collectively referred to as "the available remedies."
- 2) Pursuant to Chapter 18 ½ - 2(m) of the Providence Code of Ordinances, the parties who may file a complaint with PERA include, but are not limited to:
 - a) an alleged victim,
 - b) a witness,
 - c) a parent, legal guardian or immediate family of a victim having personal knowledge of alleged misconduct,
 - d) Upon probable cause, the PERA may itself initiate its own investigation into alleged misconduct
- 3) Immediately after receiving a complaint, the PERA Executive Director, or appropriate PERA staff person at the time, shall call the complainant within one (1) business day and mail a formal letter to the complainant's home address immediately thereafter.
 - a) The letter shall acknowledge receipt of the complaint and shall detail the next steps in the PERA process i.e. when the next board meeting is and/or when a formal recommendation will be made on the complaint.
- 4) The PERA staff shall be responsible for securing the integrity and confidential information on each complaint received by PERA.

- a) PERA staff will not manage any complaints or PERA work on any computer or laptop that is not issued by the City of Providence.
 - b) PERA complaints will not be shared with the public unless and until requested by Public Records Request.
 - c) Under such request, confidential information shall be removed from any complaints released.
 - d) PERA shall acquire and maintain appropriate software and database to properly manage and secure all complaints.
 - e) PERA shall maintain all complaints on file for a period of five (5) years.
- 5) Within those thirty (30) days, the PERA Executive Director/staff shall make every reasonable effort to speak to every available witness with relevant information about the incident.
- a) Additionally, within the same thirty (30) days, PERA Executive Director /staff shall collect every available piece of evidence provided by the complainant.
 - b) The PERA Executive Director may, at his or her discretion, appoint one (1) PERA board member to assist in the fact gathering/intake stage of any complaint. That board member would then be ineligible to serve on any potential evidentiary hearings for that particular complaint.
- 6) Within two (2) business days of receipt of the complaint, the PERA Executive Director shall send an official letter to the Chief of Providence Police, Internal Affairs Bureau, and the Keeper of Records of the Providence Police Department informing each that PERA has received a new complaint and supply those individuals with enough information to *identify and preserve* any and all relevant evidence.
- 7) The PERA Executive Director is provided opportunity to review any and all evidence that exists as part of preliminary review to help inform what to recommend to the board.
- 8) After the Executive Director has reviewed the information identified in sections (C)(2) and (3) above, he/she will make a recommendation to full board at next board meeting to either (1) the complaint be dismissed, (2) the complaint be forwarded to mediation, (3) the complaint be held in abeyance pending the outcome of any ongoing police department internal investigation, or (4) the complaint be transmitted for full investigation

(D) PERA Executive Director Recommendation Matrix

- 1) The Executive Director will consider the following factors when formulating a recommendation to the PERA board with regard to each complaint:
 - a) What is the wish of the complainant?
 - b) What is the injury (physical, legal or otherwise) to the aggrieved party?
 - c) Do the alleged facts potentially constitute a violation of Providence Police Department Policy? If so, which policies?
 - d) Do the alleged facts potentially constitute a violation of the City of Providence Code of Ordinances? If so, which ordinances?
 - e) Do the alleged facts potentially constitute a violation of state or federal law? If so, which laws?
 - f) Upon recommendation from the Executive Director, the PERA board shall take a vote, upon a simple majority of the board members present the matter shall be (1) the complaint be dismissed, (2) the complaint be forwarded to mediation, (3) the complaint be held in abeyance pending the outcome of any ongoing police department internal investigation, or (4) the complaint be transmitted for full investigation

(E) Executive Director Recommendation

- 1) Upon completion of the preliminary review of the complaint, the Executive Director shall present a written report to the Board with a recommendation as to whether the complaint should be: (1) the complaint be dismissed, (2) the complaint be forwarded to mediation, (3) the complaint be held in abeyance pending the outcome of any ongoing police department internal investigation, or (4) the complaint be transmitted for full investigation
- 2) The report shall include the following information:
 - a) Introduction: A brief description of the facts of the case, including date, time, and location of the incident.
 - b) Allegations: The injury and/or misconduct that is being alleged.

- c) **Applicable Rules, Law and Policy:** Identify relevant governing laws and policies.
 - d) **Issue:** a description of the central question (legal or factual) in the complaint
 - e) **Summary of evidence:** a description of all evidence that exists and gathered by the PERA staff during preliminary review.
 - f) **Recommendation:** whether to dismiss, hold, mediate or investigate.
- 3) **Vote.** Upon recommendation from the Executive Director, the PERA board shall take a vote, and upon a simple majority of the board members present the matter shall be (1) the complaint be dismissed, (2) the complaint be forwarded to mediation, (3) the complaint be held in abeyance pending the outcome of any ongoing police department internal investigation, or (4) the complaint be transmitted for full investigation.
- 4) **Notice.** Upon every vote of the PERA board regarding the recommendation made on a complaint, the Executive Director shall inform the complainant, the chief of police, the Internal Affairs Bureau of the Providence Police Department, and the Keeper of Records of the Providence Police Department of the vote in writing.

(F) Held For Good Cause

- 1) If a complaint is held for good cause, the complaint will automatically be on the docket for the next board meeting at which point the executive director will have to provide an update as to the status of the complaint.
- 2) At that meeting, the executive director can again recommend any of the available remedies.
- 3) No complaint may be held for good cause for more than ninety (90) days, at which point the executive director must make a formal recommendation as to the merits of the complaint.

(G) Mediation

- 1) If a complaint is referred to mediation, the designated PERA mediator shall send notice in writing, inviting both the complainant and involved police officer(s) to mediation.
- 2) The purpose of the mediation shall be to provide a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator.
- 3) The goal of the mediation will be to promote a better understanding between

the officers and the community they serve.

- 4) Ultimately, the end product of each mediation will be a formal written agreement memorializing any and all resolutions and remedies identified during the mediation.
- 5) If either party rejects the invitation to mediate and/or rejects the proposed agreement at the end of mediation, the complaint shall be referred to investigation.

(H) Investigation

1. Pursuant to section (q) of Chapter 18 ½ - 2 of the Providence Code of Ordinances, (hereinafter referred to as "the PERA Ordinance," any investigation shall be completed within one hundred twenty (120) days from the date the complaint was filed.
2. The executive director may extend this deadline by not more than sixty (60) days by submitting a formal notice of extension of deadline to the board, the Chief of Providence Police, Internal Affairs Bureau, and the Keeper of Records of the Providence Police Department.
3. This deadline may be held in abeyance if the executive director determines this investigation may interfere with a criminal investigation.
4. Upon the conclusion of an investigation, the investigator shall submit a report to the PERA board detailing the findings of his or her investigation.
 - a) The report shall include a summary of any and all evidence reviewed by the investigator including but not limited to: witnesses interviewed, evidence acquired, and relevant policies and practices in question.
5. Once the investigation summary has been delivered to the board, the executive director may recommend that the complaint, taking into account the results of the investigation, be dismissed, mediated, or proceed to a full evidentiary hearing.
6. In making such a determination, the executive director shall rely on the same factors outlined in section (D) of these procedures, in addition to the findings of the investigation.

(I) Formulation of Hearing Panel

1. Upon a vote of the PERA board to refer a complaint for full evidentiary hearing, the board shall schedule the hearing no more than thirty (30) days after the vote.
2. The chairperson of the PERA board shall designate a panel of three (3) board members selected randomly to preside over the hearing, listen to and weigh the evidence, and ultimately issue a formal written decision within thirty (30) days after the conclusion of the evidentiary hearing.
3. The chairperson shall designate a foreperson of the panel.
4. The foreperson shall be responsible for all governance and administrative functions of the hearing including but not limited to calling the witnesses, labeling exhibits, opening and closing the proceedings, etc.
5. Pursuant to the Providence Code of Ordinances, any complainant present at an evidentiary hearing without legal counsel can either choose to present their evidence to the panel themselves or request assistance from the PERA legal counsel in presenting the evidence.

(J) Hearing Procedures

1. Pursuant to the Rhode Island Open Meetings Act, RIGL 42-46-5(a)(1), all hearing procedures will be conducted in executive session.
2. Each party to the hearing, i.e. the complainant and the police officer are allowed and encouraged to be represented by counsel at the hearing.
3. At least ten (10) days before the hearing, each the complainant and the involved police officer, or legal representative thereof, must submit to the PERA, in writing, a list of:
 - a) Potential witnesses and summary of anticipated testimony
 - b) List of specific allegations and/or of legal defenses
 - c) Any other information pertinent to the case.
4. Upon receiving the information from both parties, PERA shall review the proposed witness list and corresponding summary of proposed testimony. Upon review, PERA shall have the discretion to decide whether any anticipated testimony will be relevant to the proceedings and, to the extent necessary, to preclude any testimony that is irrelevant, immaterial or unduly repetitious.
5. At the hearing, both parties will be allowed to give a brief opening and closing statement to summarize the case. Neither is mandatory.

- 6) Parties will be allowed to testify, submit evidence and cross-examine the respective parties.
- 7) Examination will be limited to one round of examination and cross and one round of reexamination and re-cross.
- 8) All findings made by the PERA board shall be made subject to the “preponderance of the evidence” standard.
- 9) The Rhode Island Rules of Evidence shall serve as advisory to the hearing procedures. While the PERA board and legal counsel shall make every reasonable effort to ensure that only legally reliable and admissible evidence is admitted during the hearings, the PERA board shall not be bound by the technical evidentiary rules for purposes of this hearing.
- 10) Objections to evidentiary offers may be made and shall be noted in the record.
- 11) Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings.
- 12) Parties may request and the board may grant any request to sequester witnesses who have not yet testified during any hearings.
- 13) Once all evidence has been entered into the record and all parties have rested, the hearing will conclude and the board shall have thirty (30) days to produce and publish an official report containing the “Findings of Fact.”

(K) Findings of Fact

1. The findings of fact issued by the panel presiding over an evidentiary hearing must include:
 - a) A summary of the facts of the case, as found by the panel after weighing the evidence and the credibility of the witnesses;
 - b) A specific finding regarding the evidence, which shall be consistent with one of the following descriptions:
 1. *Exonerated*: An “exonerated” finding occurs when the PERA board finds that officer’s acts were lawful or justified. Here, the officer cannot be disciplined but may be required to undergo counseling or training.
 2. *Not Sustained*: An “non-sustained” finding is when the PERA board cannot find sufficient evidence by the preponderance of evidence standard.

Under this finding, the officer is not disciplined but may be required to undergo counseling or training.¹

3. *Sustained*: A “sustained” finding is when sufficient evidence proves that the alleged complaint occurred. Here, such findings may result in proposed officer discipline.²
 4. *Unfounded*: An “unfounded” finding is when the PERA board conclusively proves that the alleged conduct did not occur. Here, officer is not disciplined.
- c) If applicable, whether the level of violation described exists within the disciplinary matrix developed by PERA and the Chief of Police; and
 - d) A recommendation for discipline which shall be presented to the Chief of Police.
2. The Chief of Police shall provide the Authority, the City Council, and the Mayor with a written explanation of his or her disciplinary decision; and
 3. Both the hearing panel’s report and the Chief’s decision shall be public provided that the name of the complainant be redacted.

¹ See Id.

² See Id.

Appendix I: Sample Complaint Form

The PERA complaint can be accessed on the PERA website at: <https://e.providenceri.gov/pera-civilian-complaint/>, a sample form is provided below:

Providence External Review Authority

Civilian Complaint Form

Contact Information

Name of Complainant: _____

Date of Birth: _____

Address: _____

Phone Number: _____

Email: _____

Incident Information

Date: _____ **Time:** _____ **Location:** _____

List any and all police officers involved in the incident:

Name: _____ **Federal ID #:** _____ **Description:** _____

Name: _____ **Federal ID #:** _____ **Description:** _____

List any and all police officers involved in the incident:

Name: _____ **DOB:** _____ **Phone Number:** _____

Address: _____ **Email:** _____

