

October 30, 2019

Honorable Mayor Jorge Elorza
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Honorable Council President Sabina Matos
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Re: Providence External Review Authority (“PERA”) Bi-Annual Report, Fall 2019

Dear Honorable Mayor, City Council President and members of the City Council:

Pursuant to Chapter 18 ½ - 2, subsection (j) of the Providence Code of Ordinances, the PERA “shall submit to the Mayor and the City Council a report of its activities (...) [and] shall include, among other topics, data and analysis of complaints and complaint trends and shall be open to the public.”

PERA was empaneled and held its first meeting on April 17, 2018.

Since that time, PERA has held 10 additional meetings and taken important steps like: becoming a member of the National Association for the Civilian Oversight of Law Enforcement (“NACOLE”) and becoming a part of a network of over 200 civilian oversight boards from around the United States and at least 5 countries around the world.

For more detailed information regarding the activities and expenses of PERA since being empaneled in April 2018, please find our bi-annual report attached. This report will be slightly longer than future reports; given it is the first report PERA is publishing.

The same report shall be made available to the public on Wednesday October 30, 2019, the same night as the next PERA board meeting.

Respectfully Submitted,

/s/ Nick Figueroa
Nick Figueroa
PERA Board Chair

/s/ Jose F. Batista
Jose F. Batista
PERA Executive Director

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Board Members and Personnel

What makes PERA work is the people who volunteer their time to serve on the board as well as the staff who dedicate their professional and personal skills to the mission.

PERA is composed of 9 people who bring diverse assets, life experience and perspective to the board and vary in age, professional background, race and more.

Those 9 people include: Chairman Nick Figueroa, Vice Chair Machiste Rankin, Ms. Phanida Phivilay Bessette, Mr. Kenneth Cohen, Ms. Susan DeRita, Ms. Kimberly Dy, Mr. Michael Fontaine, Ms. Elise Swearingen and Ms. Deborah Wray.

Each of these board members are committed to the independent and impartial civilian oversight of law enforcement and the city is better off because of their service.

This fall we welcome two new board members to the PERA board and thank two former board members, Alison Eichler and Jorge Armesto, for their service to the PERA.

The PERA board has additionally hired one full time employee in its executive director, Jose F. Batista. Furthermore, in beginning to accept complaints, the PERA board has retained the professional services of an independent mediator in Ms. Sheila Hubbard as well as the professional services of an independent investigator in Mr. Eugene Monteiro.

All three members of the PERA staff bring, collectively, decades of legal, investigative and dispute resolution services to the PERA that will help to effectively and efficiently manage the complaints PERA receives and to more broadly serve the City of Providence.

In addition, the PERA board has partnered with the Roger Williams University School of Law to retain the services of a legal intern in Ms. Yasmin Gamez, who is a second-year law student and a life-long resident of Providence and graduate of our public schools.

Her legal research has been critical thus far in helping PERA understand and respond to important questions that have arisen thus far regarding: gang database policies, investigative policies, juvenile/school-based arrest policies and traffic stop statistics.

One key for the future success of PERA is to ensure that all future board members, employees, appointees, volunteers, etc. of PERA continue to bring diverse perspectives to the dialogue and maintain a commitment to independent and impartial public service.

PERA also notes and is publically grateful for the dozens of staff at City Hall, 444 Westminster and the Public Safety Complex that have been extraordinarily helpful and vital to the success of PERA as well.

Brief History and Context of PERA

Although PERA was empaneled in March 2018, the work of PERA can be traced back at least 45 years, to March 27, 1973.

On that date, the Chief Judge of the United States District Court for the District of Rhode Island, Raymond J. Pettine, executed a consent decree that would bring a resolution to a landmark civil rights dispute in Coalition of Black Leadership, et.al. v. Doorley.¹

In that case, lead Plaintiff Mr. Michael Van Leestan lead a coalition of activists from Providence and filed a class-action federal lawsuit against the City of Providence based on a continued practice of violating the civil rights of local African-Americans.

The result of the lawsuit was a consent decree, or agreement, between the City, the Community and the federal Court regarding sweeping changes to policing in Providence.

These changes included:

- creating a civilian complaint process, including the right to a hearing;
- creating and maintaining a roster with photographs and badge numbers of all uniformed police personnel, which would be available to the public, and;
- requiring all police to wear an identification/badge number on their uniform².

Though the consent decree helped pave the way for significant changes in Providence, the work in pursuit of civil rights and social justice did not end.

In 2002, about three decades after the consent decree, another group of local activists, which included now Councilwoman Mary Kay Harris, honored the life and memory of Sergeant Cornel Young Jr. by leading the charge to give civilians a more active role in police oversight.

Thus, the original PERA board was created via city ordinance in 2002.

Although the work of PERA was briefly interrupted between the years 2008-2018, the work of PERA remains firmly rooted in and connected to the lives and memories of the leaders and visionaries like Michael Van Leestan, Sergeant Cornel Young Jr. and the many more countless and selfless public servants who have paved the way toward a more fair and just Providence.

The PERA joins the thousands of Rhode Islanders who mourn the passing of Mr. Michael Van Leestan this past August of 2019.

¹ See 349 F. Supp 127 (D.R.I. October 2, 1972)

² See Id.

Legal Standing of Civilian Oversight in Providence

In 1976, three years after the implementation of the 1973 federal consent decree, the Rhode Island General Assembly passed legislation known as the “Law Enforcement Officer’s Bill of Rights” (hereinafter “LEOBOR”). See R.I.G.L. § 42-28.6, et seq.

Soon thereafter, the defendants in the original federal lawsuit sought to modify and ultimately vacate the entire 1973 federal consent decree. The defendant’s argued, in part, that the passage of the LEOBOR constitutes such a significant change in circumstances that “principles of equity and fairness require that the decree be vacated.” See Coalition of Black Leadership v. Cianci, 570 F.2d 12, 13 (1st Cir. 1978).

The United States District Court, District of R.I. rejected this argument in 1977³. The First Circuit Court of Appeals rejected it, on appeal, in 1978⁴. The United States District Court, District of R.I. rejected it again in 1979⁵.

Of note in the First Circuit opinion is that the Court directly addresses the impact of the LEOBOR on civilian oversight:

“Defendant’s position appears to be that the procedures required by the new state law make the provisions of the consent decree unnecessary and that the continued application of the decree would result in unfairness since Providence police officers would be subject to different regulations than would the police officers in other parts of Rhode Island. We do not agree with the defendant’s analysis⁶.”

In 2008, litigation filed to challenge the legal standing of PERA reached the Rhode Island Supreme Court⁷. In that case, three questions were presented to the R.I. Supreme Court:

- Does the PERA ordinance violate the Rhode Island Constitution?
- Is the PERA ordinance preempted by the LEOBOR?
- Do civilian lead investigations violate the LEOBOR?

The Rhode Island Supreme Court rejected each of these arguments⁸ in its 2008 opinion and cemented the lawful and legal standing of civilian oversight of law enforcement in Providence.

³ Coalition of Black Leadership v. Cianci, 480 F. Supp. 1340, 1341 (D.R.I. December 10, 1979)

⁴ Coalition of Black Leadership v. Cianci, 570 F.2d 12, 14 (1st Cir. 1978)

⁵ Coalition of Black Leadership v. Cianci, 480 F. Supp. at 1342.

⁶ Coalition of Black Leadership v. Cianci, 570 F.2d at 14.

⁷ Providence Lodge No. 3, Fraternal Order of Police, et. al. v. PERA, 951 A.2d 497 (R.I. 2008).

⁸ See Generally 951 A.2d 497

PCPRA Compliance

The Providence Community Police Relations Act of 2017 (“PCPRA”) is one of the most progressive pieces of legislation in the country and has been hailed as a national model for community policing⁹.

The *full* implementation of the PCPRA will, therefore, take time.

When fully implemented, the PCPRA will revolutionize the way police interact with the community. The spirit and purpose of the PCPRA can be found in the very first paragraph of the ordinance.

Under subsection (a)(1) and again in subsection (b), the PCPRA **prohibits** the use of any of the following classes as a basis for suspecting a person is involved in criminal activity:

- Race
- Ethnicity
- Color
- National origin
- Use of a foreign language
- Limited English proficiency
- Gender
- Gender identity and/or expression
- Sexual orientation
- Political affiliation
- Religion
- Housing status
- Physical or mental disability
- Or serious medical condition.

The PCPRA notably goes further than current federal law insofar as enumerating “protected classes,” or groups of people the government cannot discriminate against.

Where federal law lists 10 categories¹⁰ of protected classes, the PCPRA lists 14.

The PERA is committed to working with the Providence Police Department to help take the steps necessary to ensure that Providence Police have the tools and training to recognize each of these protected classes.

The PERA does not seek to interfere with Providence Police officers carrying out their daily duties but rather the PERA seeks to help ensure discretionary, and often split-second, decisions are not made on the basis of any of these protected classes.

⁹ <https://www.providencejournal.com/news/20170608/providence-mayor-signs-community-police-relations-act-national-model-for-community-policing>

¹⁰ Race, color, religion, nat. origin, sex, age, disability, veteran status, genetic information or citizenship.

In addition to this core component of the PCPRA, the ordinance codifies several specific legal procedures and requirements relating to daily interactions between the community and the police, including but not limited to:

- Police shall not interfere with any person legally and safely recording the police¹¹
- Police shall tell the subject of a stop the basis for the stop *prior* to asking for ID¹²
- Police shall not ask passengers of a motor vehicle for ID during a traffic stop¹³
- Police shall inform anyone who is asked for their consent to a search of their legal right to refuse consent to the search¹⁴
- Police may not consider an individual's lack of identification or failure to provide identification as reasonable suspicion of criminal activity¹⁵
- Police shall not detain an individual at the request of another agency¹⁶

Changes of this magnitude will not take place overnight and, therefore, require a sustained commitment on behalf of all interested parties, especially the police department. The PERA is committed to contributing in any and every way possible to help meet these objectives and the full implementation and compliance with the PCPRA.

Some of the steps PERA has taken to ensure its own compliance the PCPRA include:

1. Developed a complaint form for civilians and identification card for police, each available in at least 5 languages, as well as a hotline where civilians can call to file a complaint with the PERA.
2. Enacted internal bylaws and policies that codify internal PERA procedures, including when and how the PERA will exercise its discretion to monitor internal police investigations.
3. Begun accepting complaints from civilians as well as reviewing Providence Police policies and procedures and making recommendations thereupon.

On the horizon, PERA looks to continuing its work to fulfill other provisions of the PCPRA that it has not yet addressed, such as:

1. Ensuring the execution of Electronic Data Collection Report(ing)¹⁷
2. Creating a gang database appeals and hearing process¹⁸
3. Coordinating a proper audit of and, when required, exclusion of persons from the gang database.¹⁹

¹¹ See PCPRA, section (c)(2)(iii)

¹² See PCPRA, section (d)(1)

¹³ See PCPRA, section (d)(3), unless there exists reasonable suspicion and/or probable cause of a crime.

¹⁴ See PCPRA, section (e)(1)

¹⁵ See PCPRA, section (f)(3), unless the police have a lawful reason to require identification.

¹⁶ See PCPRA, section (h)(2)

¹⁷ See PCPRA, section (c)(1)(a)

¹⁸ See PCPRA, section (f)(10)

Providence Police Department

The Providence Police Department is comprised of approximately 450 police officers and about 100 civilian personnel. In the year 2017 alone, the Police Department responded to 135,696 calls for service. This breaks down to an average of 372 calls for service every single day or a call for service every 4 minutes²⁰.

On a more personal level, the Providence Police Department of today is not the same department of generations past. Today, masters degrees adorn the walls of offices throughout the Public Safety Complex and high ranking officials are all too eager to shake your hand and scribble their personal phone number on the back of a business card.

Indeed, spending time inside the Public Safety Complex helps give any civilian an appreciation for the seriousness and gravity of the work the men and women of the Providence Police Department engage in every day.

PERA has been welcomed not only to the weekly command staff meetings that take place at the Public Safety Complex but has also been invited to interact with and speak to the 69th Training Academy. Speaking to and learning from the men and women in the Training Academy is a privilege and a solemn reminder of the commitment and sacrifice that police make to serve and protect the city every day.

Unfortunately, even just within the last six to eight months, we have seen various reminders of how serious and how dangerous the job of a police officer can be. We have seen the police department deescalate a hours long hostage situation and, on at least one separate occasion, confront the threat of lethal violence.

By the same token, as many strides as the police department has taken, many officials within the building exhibit admirable humility in being the first to admit that the department is not perfect and that there remains much work to be done.

This summer, for example, a federal lawsuit was filed against the City of Providence for the police department's maintenance of a 'gang database,' the components of which were expressly prohibited in the PCPRA. The city had previously agreed to rescind the policy and draft a new policy to better comply with the PCPRA.

While the merits of the lawsuit are still in litigation as of the publication of this report, the mere existence of the lawsuit could and should have easily been avoided and represents a self-inflicted wound on behalf of the City.

As with all other provisions of the PCPRA, and with matters pertaining to civilian oversight more broadly, PERA stands ready, willing and able to contribute to a solution to the challenges presented by the gang database policy that meets the requirements of the PCPRA and allow the Police Department to continue to execute its duties effectively.

¹⁹ See PCPRA, section (f)(14) and (f)(15)

²⁰ See Providence Police Department Annual Report, 2017

Complaints Received

One of the first tasks assigned to the newly installed executive director of the PERA, who began officially on March 1, 2019, was to help redesign the identification cards handed by police to civilians, as required by the PCPRA.

Through this identification card, civilians would receive the identification information of the police officer they had interacted with. Additionally, on the back of this card would be the contact information for PERA as well as a one-sentence instruction translated into 5 languages to call PERA if the civilian wishes to file a complaint.

Although PERA had elected to build a strong foundation of bylaws, policies and practices *before* accepting any civilian complaints, the production and circulation of these identification cards made it necessary for PERA to have a “soft opening” insofar as accepting civilian complaints. PERA received its first complaint in March 2019.

Moving forward, and especially now that PERA has accomplished several critical benchmarks, such as: enacting bylaws and intake policies, attending the NACOLE annual conference, retaining the professional services of a mediator and investigator, PERA will begin to do more targeted outreach to inform the public of the PERA process.

Thus far, however, PERA has received 17 complaints.

Of those 17 complaints, as of the time of the publishing of this report, the executive director has made recommendations to the board on the first 8 and is scheduled to make recommendations on the latter 9 during the executive session at the next board meeting.

Thus far, PERA has referred 1 complaint to mediation, 6 complaints to investigation and has dismissed one complaint for lack of cause.

Of the total 17 complaints received, a notable amount have taken place on the city’s South Side (5) as well as in the Silver Lake and Olneyville neighborhoods collectively (5). At least one complaint originated from within a public school in the city and another complaint arose from allegations of an incident within the Public Safety Complex.

Of the total 17 complaints received, notable trends include allegations of illegal searches (6) as well as allegations of discourteousness and/or harassment (5). Furthermore, there have been 2 complaints with allegations of excessive force as well as 2 questioning why an officer did not conduct field sobriety tests on a seemingly impaired driver.

PERA anticipates its current rate of receiving one complaint every two weeks will increase significantly once it begins more targeted and active community outreach.

This “soft opening” by PERA, while originally unplanned, has given the board tremendously valuable insight as to its needs with regard to resources, management and systems required in order to more efficiently managing future complaints.

NACOLE Conference

In one of its first official actions and votes as a board, PERA officially became a member of the National Association for the Civilian Oversight of Law Enforcement (“NACOLE”) on September 17, 2018. In so doing, it instantly became a part of a network that includes over 200 civilian oversight boards across the country and in, at least, 5 countries around the world including Germany, Australia, Canada and Jamaica.

On Sunday September 22, 2019 through Thursday September 26, 2019, the PERA vice chair and executive director traveled to Detroit, Michigan for the 25th NACOLE annual conference and training(s).

There were over 500 attendees at the conference representing over 200 oversight boards across the United States, the Commonwealth of Puerto Rico and several countries around the world including Canada, Jamaica, and Australia.

In addition to networking with and learning from the hundreds of individuals from across the country, the most impactful part of the week long conference was the opportunity to participate in dozens of workshops that featured national experts from across the country.

A brief outline of the most impactful workshops included:

1. Creating a Trauma-Informed Culture within Civilian Oversight (Chicago, IL)
2. Conducting Town Hall Meetings in a volatile environment (Ferguson, MO)
3. Unmasking the Truth behind Video Driven Investigations (Los Angeles, CA)
4. The rise of Data Driven Policing Strategies (Washington DC)
5. Use of Force Reform (New Orleans, LA)
6. The Role of Independent Counsel for Civilian Oversight (Miami, FL)
7. The Impact of Overtime on Officer Safety and Performance (Seattle, WA)

We look forward to closely researching each of these initiatives and many more so as to bring the best and most effective ideas and practices to Providence.

Furthermore, the NACOLE provides regional trainings in addition to its annual national conference. The next regional training is in November in Washington DC and in March 2020 in Austin, Texas.

The next national conference will take place next September 2020 in Tucson, Arizona.

It will be a priority for PERA to not only attend any and all trainings available to PERA but to also ensure different board members and staff get an opportunity to attend each opportunity.

Immediate Future

PERA was empaneled and held its first meeting in April 2018.

At that time, out of humility and service to the purpose of PERA, the board decided it would prioritize taking testimony from a wide-ranging spectrum of stakeholders before taking any concrete steps toward the work of civilian oversight.

Indeed, for the first twelve months of service, PERA invited testimony from members of the original PERA, community activists who helped install the current version of PERA, the police leadership, the police union, as well as the national president of NACOLE.

At the conclusion of those initial twelve months, the PERA concluded its national search for an executive director and hired local attorney and lifelong Providence resident, Jose F. Batista, who began his tenure on March 1, 2019.

The previous sections of this report detail much of the work undertaken in the latter 6 months of PERA's service. Notable steps that have been taken in those months include:

- Leasing space for PERA's main office on Broad Street in Providence which is on a major public transit line and provides space that is private and confidential
- Partnered with Roger Williams University School of Law to retain the services of a legal intern/policy analyst
- Retained the services of a professional independent mediator and professional independent investigator.

With the previous 18 months of experience and effort under its belt, PERA now looks to the future how to most effectively and efficiently continue to carry out its mission.

In the immediate term, PERA will be seeking to take the following steps:

- Empanel two subcommittees on "Policy Review" and "Community Outreach,"
- Publish two (2) Requests for Proposal's (RFP) to assist PERA to retain a consultant to help craft and execute a strategic plan as well as a communications firm to help develop an outreach strategy including website and content,
- Continue to house meetings at 807 Broad Street in order to be more accessible to the community and anyone traveling via public transportation,
- Collaborate with local universities and organizations to acquire and interpret research regarding police policies and best practices,
- Converting the part-time investigator position to FTE position by Spring 2020.

Budget

For purposes of context and transparency, this report will outline the budgets and expenses for the FY2019 fiscal year (7/1/2018 through 6/30/2019) as well as the actual and projected expenses for the FY2020 fiscal year (7/1/2019 through 6/30/2020).

In FY2019, the Providence City Council allocated **\$302,097.00** to the PERA. Of this total budget, PERA spent approximately \$39,861.73, or about 13.2%. The remaining 87% of the PERA budget was returned to the city at the conclusion of the fiscal year.

In FY2020, the Providence City Council allocated **\$340,190.00** to the PERA. As of the publishing of this report, PERA has spent approximately \$54,500.00 and is currently projected to spend approximately \$155,000.00 total once factoring in monthly accrued expenses (i.e. personnel, rent, phone) between now and June 30, 2020.

The majority of this spending is comprised of: the salary of the executive director, retaining the professional services of a mediator and investigator, as well as travel expenses to the NACOLE national conference and leasing space from 807 Broad Street for the PERA office.

For the remainder of FY 2020, and in addition to the aforementioned projected expenditures, the PERA looks to make at least three (3) more notable investments.

Those investments include:

- the services of a professional consultant to help plan and execute a strategic planning session for the PERA,
- the services of a professional media production company to help build an outreach, communications and content strategy for PERA,
- and investigative software to assist in the storage and maintenance of confidential information.

Looking forward to FY2021, PERA will be looking to build on the strong foundation it has laid in its first two years and requests the Providence City Council to codify a provision in the PERA ordinance whereby PERA will be funded, at a minimum, of 1% of the total Providence Police Department budget every year.

The Providence Police budget for FY 2019 was approximately \$75,000,000, 1% of which would result in a total PERA budget of \$750,000.00.

Ultimately, there is a fundamental correlation between the amount of resources at the disposal of the Providence Police Department and the amount of work and resources required by PERA to be able to carry out its work of conducting civilian oversight.

With this increased budget, PERA will be able to significantly increase its efficiency and effectiveness. Based on the past 18 months of experience and input, PERA would be best suited to add the following positions to its staff:

- Bilingual Intake Coordinator and Administrator (FTE)
- Lead Investigator (FTE)
- Legal Policy Analyst (FTE)
- Lead Mediator (Part time)
- Independent Legal Counsel (Part time)

The increased budget will also help to account for the unanticipated costs of leasing office space, as well as leasing additional office space for the additional staff.

Moreover, the increased budget will allow for PERA to better avail itself of the resources and national and regional trainings provided throughout the year by the National Association for the Civilian Oversight of Law Enforcement (“NACOLE”).

Conclusion

In conclusion, the work of the PERA has been rooted in history, humility and service.

Since being empaneled in April 2018, the PERA has taken significant steps toward fulfilling its mission of conducting impartial, independent and competent civilian oversight over the Providence Police Department.

While the PERA has taken significant steps, such as acquiring office space, hiring an executive director, begin taking complaints and integrate itself into the national network of civilian oversight boards, the work for PERA is only getting started.

Each new case and/or question that is presented to PERA will provide for an opportunity for continued development and growth across all of local government and local communities.

Therefore, in order to properly assist in that work, the PERA respectfully recommends the City of Providence:

1. Immediately resolve the pending federal lawsuit regarding the gang database by implementing a new policy that complies with the PCPRA.
2. Collaborate with PERA to ensure compliance of any and all provisions of the PCPRA that have not yet been complied with.
3. Codify a PERA budget at a minimum funding level of 1% of the police budget.