



# ANN ARBOR POLICE DEPARTMENT



## Memorandum

**TO:** Mayor Taylor, CM Ackerman, CM Briere, CM Eaton, CM Grand, CM Kailasapathy, CM Krapohl, CM Lumm, CM Smith, CM Warpehoski, and CM Westphal

**CC:** Tom Crawford, Stephen Postema

**FROM:** Chief James Baird

**DATE:** June 6, 2016

**SUBJECT: Police Department Response to Human Rights Commission Report 11/15.**

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As the executive summary of the AAHRC report dated November 4, 2015 articulates, there have been repeated demonstrations against police use of lethal force as well as calls for police reform across the country. The Ann Arbor Police Department's only use of lethal force in at least the past 30 to 40 years occurred in the midst of this recent national discussion. The summary of the report further explains that the *"report is a response to the questions raised by incidents of apparent police misconduct nationwide – and by the shooting of Aura Rosser locally – about the policies and practices of Ann Arbor police and specific community calls for the creation of a civilian police oversight body"*. The report identifies what is described as a key question.

***Are there community concerns about policing in Ann Arbor that could be effectively addressed by some form of police oversight?***

The report further identifies five reasons for civilian police oversight. It is necessary to respond at least in part to the five reasons listed as it will ultimately give needed context to an evaluation of the Human Rights Commission's recommendations listed as the conclusion of the report.

*"Calls from the Community"*

The first section of the HRC report specifically identifies the Aura Rosser death as well as the decision by the Washtenaw County Prosecutor to not criminally charge the officer involved. This section also links the Rosser death to events occurring across the nation. It does not identify any further concerns with the Ann Arbor Police Department beyond the officer involved shooting death of Rosser.

This single incident is significant to the department and the community however, as it was the only time an Ann Arbor Police Officer had used lethal force against a citizen in the past several decades. Following the incident, the Ann Arbor Police Department immediately requested that the Michigan State Police conduct the investigation - recognizing the potential community concern of bias if the AAPD were to retain the investigation. The Michigan State Police gathered all relevant information and presented the same to the Washtenaw County Prosecutor

for review. Prosecutor Mackie did not authorize criminal charges against the officer involved. Further, the Prosecutor's office put its entire file online for public review. Prosecutor Mackie later spoke at a public event and explained when asked that, "it wasn't a crime."

The incredibly tragic incident was justified by any legal, policy or reasonable moral standards. The actions of the responding officers did have a tragic outcome but likely saved the life of the victim in the original domestic violence felonious assault incident that was ongoing when the officers arrived. It was tragic for Ms. Rosser, the officer involved, as well as all who care about either of them. It was tragic for the community as a whole. However, it was a completely justified and reasonable response to the situation the officers encountered that day.

The only other Ann Arbor event that the HRC report refers to involves an incident more than 20 years old - the 1995 serial rapist investigation. During this time, a single serial assailant brutally assaulted and raped several women in Ann Arbor. He physically struck them so hard that one woman, Christine Gailbreath, died as a result. Tips to the police department provided by the community led to a list of potential suspects that, at times, contained over 600 people. Numerous investigative methods were used to eliminate individuals from the suspect list, including polygraph examination, interviews, alibi verification, documented incarceration during the assaults and DNA comparison. DNA samples were taken from suspects only if they gave consent or a search warrant was obtained from a judge. I was a new officer in the department at the time and had limited involvement in the case. However, I took part in two requests for consensual DNA testing of subjects on the suspect list. In one case, the subject declined and therefore, no DNA sample was obtained, and in the other, the subject said he was happy to help out in any way he could to ensure that the suspect was caught as quickly as possible.

#### *"Racial Bias and Unequal Treatment"*

This section of the HRC report addresses issues which are relevant not only to the police department, but to society in general, in particular the presence of implicit bias in police officers. Implicit bias is better understood today than it was in the past and is being studied in the context of many professions, including law enforcement. Because we are products of our experiences, we all have implicit bias. Because police officers are human, they are not exempt from this trait.

The Ann Arbor Police Department has committed to conducting implicit bias training for all sworn staff during the upcoming fiscal year. That training is directed at becoming self-aware of an individual's own implicit bias, so that the effects of that bias can be minimized. Implicit bias likely cannot be eliminated as the commission's report suggests, but with awareness and training, its effects on decision making can be significantly diminished or potentially eliminated.

#### *"AAPD Composition and Culture"*

The AAPD does, in fact, demographically resemble the population of the city when viewed by race. There are some slight variations the most significant being a lack of representation from the Asian community. A more significant gap does exist in regards to gender. The field of law enforcement has historically had a disproportionate number of males choosing the career. The

Ann Arbor Police Department is consistent with other agencies locally and statewide in this way. However, the Department continues to try to identify different sources of candidates with hopes of widening the applicant pool.

*"Lack of Transparency and External Review"*

The job of police officer is incredibly complex. The sheer number of tasks an officer is required to not only perform but perform well is enormous and sometimes requires contradictory skill sets. Additionally, police officers tend to have contact with people on the worst days of their lives. Due to the nature of the work officers perform and the conditions they perform it under, much of it must remain opaque. However, we should always be in a state of self examination to determine if there are areas where we can be more transparent. This will continue to be the case.

The report states that "to file a complaint against an Ann Arbor police officer, the complainant must give it to an AAPD police officer." The AAPD is committed to investigating all complaints about department members. Complaints are taken in person, by phone, or in writing (paper and electronically). They can be made by someone involved in the incident, an uninvolved bystander, an intermediary, or anonymously. I have personally initiated complaints against unknown employees for information posted on social media sites. The complaint will be taken and investigated. However, it is true that a complaint in some form must be made. The more information received, the more thorough the investigation can be.

The commission's report also provides some limited statistics regarding the complaints received by the Department. This information is useful to frame the prevalence of concern about police conduct in the City.

In an effort to provide a greater context to the statistics in the report, the personnel complaints for the police department were reviewed for both 2014 and 2015. The statistics are remarkably similar from one year to the next.

For perspective, it is important to understand the scope of contact between the police and residents of the community. In 2014, the Police Department had nearly 64,000 calls for service. In 2015, there were over 62,000 calls for service. Calls for service numbers include dispatched calls, police reports, traffic stops, etc. Those numbers do not include all the additional citizen contacts an officer may make during the day, which could range into the thousands if football games, Art Fair and other high volume events are included.

When viewed in this context, the number of citizen complaints received is negligible. In 2014 the Police Department had a total of 65 personnel complaints. In 2015, the total was 63. Both years, approximately half of those complaints were internal complaints, initiated by police department supervisors against police employees. Many of those internal complaints (14 in 2014 and 19 in 2015) relate to at fault automobile crashes which result in damage. Department policy mandates a personnel complaint be initiated for all at fault employee crashes.

However, if analyzing the complaints in conjunction with the recommendation of a civilian review board, the complaints made by *citizens* against police officers are most significant. In

2014, 38 citizen complaints were brought against police officers. Ten of those complaints were found to be sustained following the investigation. It is also important to recognize that four of those complaints were made against the same officer, Jason Kitts, who resigned during the investigation of the complaints. In 2015, there were only 30 citizen complaints, with three being sustained.

Recognizing that even one sustained complaint of misconduct by the police is too many, it is important to understand that improper police behavior, like that of Officer Kitts, results in discipline and discharge when appropriate. Beyond what has been stated, it is difficult to respond specifically to this section of the commission's report as much of it speaks of hypothetical possibilities only. The report states, ".....*may* be disinclined to speak out", "*may* fear their attempt to help will get them in trouble.....with the police," "*may* have reason to doubt the likelihood that any engagement with police will be beneficial," "*may* be reluctant to speak," "*may* hesitate to file complaints against police," "complaint process *may* not help." If this was true, it would absolutely warrant a closer look. However, there is nothing in the report to suggest that this is the case.

### *"Trust"*

Trust is foundational to an effective police department. It is absolutely necessary because the police have so much authority and are routinely inserted into the private lives of the community members they serve. They have to be trusted to be honest and fair. The Ann Arbor Police Department has routinely demonstrated that they have earned that trust.

### ***Human Rights Commission Report Recommendations***

The HRC made four recommendations to the Ann Arbor City Council. I will address them individually.

#1. Engage the service of a police auditor-consultant on a temporary basis.

I support this recommendation. The only specific, recent and local concern identified in the commission's report is the officer involved shooting death of Aura Rosser. This was the incident that birthed the process that ultimately resulted in the HRC's report this memo is addressing. This incident led to several questions regarding how the Ann Arbor Police Department performs its service to the community. Because the commission's report blends the national discussion with the Rosser incident, I have concern that there may be an appetite to address national issues and concerns with local policy. Given that we are looking at the issue of police oversight, I concede that my opinion should not solely be used as a gauge in determining whether or not there is merit in various concerns addressed in the commission's report.

I believe it prudent to have an outside assessment of the department's practices and policies. The Ann Arbor Police Department is a professional agency that performs its duty in an honorable and efficient manner. There is a high standard of expectations for staff. When incidents occur or issues are identified that suggest a failure to meet that standard, they are addressed in a competent manner through sound policy, supervision and leadership. Additionally, the agency has begun a national accreditation process. However, additional

improvements can always be made to any agency. I welcome the involvement of an outside evaluator to help the department leadership identify potential areas for improvement.

## #2. Create and Maintain a Civilian Police Review Board

I do not support this recommendation at this time. *Following* an audit of the Ann Arbor Police Department is the logical time to evaluate whether a Civilian Police Review Board is warranted. The commission's report does not identify or even suggest systemic issues within the ranks or leadership of the agency that would warrant such a step. It identifies that there is a small segment of the population that remains upset by the justified use of lethal force in the Rosser incident. It also identifies nationwide incidents that were proximate in time to the Rosser incident. The purpose of a department wide evaluation is to determine what the agency does well, what could be improved upon and to make recommendations for steps that could be taken to make the improvements. The commission's report makes recommendations on the composition of such a board as well as addressing compensation and responsibilities. However, it also states that such boards "are often formed in the wake of politically contentious police shootings and are seen as a forum for voicing community concerns over policing issues and as an attempt to ensure future adherence to positive police practices." To presume that the Ann Arbor Police Department's practices are not "positive" and that a review board is the best way to "ensure future adherence" absent any supporting reference is ill advised.

It is my suggestion that the audit of the agency be conducted per the commission's first recommendation. This could be a useful tool to determine if there are significant policy gaps or failures. Once all the information is gathered, it can be determined if additional steps are needed as well as what those steps should be.

## #3. Implement Alternative Dispute Resolution Methods

I do not support this recommendation at this time. It is my suggestion that the audit of the agency be conducted per the commission's first recommendation. The implementation of such a program in a formal manner may or may not be recommended based on the results of the audit. However, this practice currently does occur in an informal manner when appropriate. The investigating supervisor for a personnel complaint will often explain the citizen's perspective to the officer and the officer's to the citizen. I do not support such a program as a replacement for the complaint process as it could compromise the integrity and ability of the complaint process to identify problematic employees or behavior.

## #4. Fully Implement the Use of Crisis Intervention Teams and Community Policing

The Ann Arbor Police Department formerly had a Crisis Intervention Team. The program was rarely used partially because the AAPD's initiative was done independently. There is a current initiative to roll out a "Memphis Model" CIT countywide. The early discussions have included all Washtenaw County law enforcement executives as well as Community Mental Health. The Ann Arbor Police Department will be proceeding forward with the countywide collaboration of reinstating the Crisis Intervention Team regardless of whether or not specific council direction is received to do so.

The recommendation to "fully implement" community policing would require more specifics in order to properly evaluate. A community policing philosophy is foundational to good police work. However, when staffing numbers were higher in the agency, there was a large contingent of officers who were dedicated to that function. Historically, community policing has been mostly program and position based in the agency. By way of example, there was a time not long ago when we staffed officers dedicated to interacting with the community's youth in a non-enforcement capacity. This occurred through the DARE (Drug Abuse Resistance Education) program, GREAT (Gang Resistance Education And Training) program as well as staffing School Resource Officers in each of the city's three traditional high schools. We currently staff a community engagement unit of one sergeant and two officers. Although they do spend time in the schools, this is in addition to the unit's numerous other engagement responsibilities. As the number of employees has fallen, there has been a necessity for sworn staff to be less specialized and to attempt to perform community policing tasks and activities in addition to the more traditional patrol function.

It is my suggestion that the audit of the agency be conducted per the commission's first recommendation. Perhaps a recommendation regarding staffing levels, allocation of personnel or department philosophy with regards to community policing would be forthcoming.