

Memorandum of Understanding
between the
The Louisville Metro Office of Inspector General;
and
The Louisville Metro Police Department
pertaining to:

Cooperation by LMPD Employees with OIG Investigations

THIS AGREEMENT is made and entered by and between the Louisville Metro Office of Inspector General (“OIG”) and the Louisville Metro Police Department (“LMPD”).

WHEREAS, Louisville Metro Council and Louisville/Jefferson County Metro Government wish to make the citizens of the community a more integral part of the process by which the conduct of our sworn officers is investigated and reviewed; and

WHEREAS, the creation of the new Civilian Review & Accountability Board (“Board”) and Office of Inspector General (“OIG”) is designed to promote police accountability and reduce civilian complaints; and

WHEREAS, a civilian review board should provide objective and independent civilian-led oversight of the Louisville Metro Police Department in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the rights of the people of Louisville Metro; and

WHEREAS, the OIG is established under Louisville Metro Council Ordinance (“LMCO”) Sections 36.70 – 36.98, and LMCO Section 36.82 (E)(1) requires LMPD, to the extent permissible by law, to provide unrestricted access to employees, documents, records, and any other information necessary to assist in carrying out its duties under the ordinance; and

WHEREAS, the LMCO contemplates that full participation and cooperation of all parties involved is essential to the success of the independent civilian-led oversight process; and

WHEREAS, sworn officers whose conduct may be under investigation deserve due process protections including rights afforded by the Peace Officers’ Bill of Rights;

NOW, THEREFORE, the parties agree as follows:

1. The OIG will conduct only administrative investigations of complaints as determined under LMCO Section 36.83.
2. Personnel within the Office of Inspector General who serve as investigators shall complete, at a minimum, 40 hours of initial training in conducting misconduct investigations. In house, or on

the job training will not be considered part of the 40 hours of training.

3. All interviews of LMPD members conducted by the OIG will be conducted in a private interview room.

- a) Upon request of the accused officer or witness within the investigation or his or her representative, the LMPD member shall be provided a copy of the transcript of the recorded interview/interrogation, if one has been made, and a copy of the recording. A requesting LMPD member shall provide the OIG with a thumb drive or other storage device for such transcript at his or her expense.

4. Compelled interviews of LMPD members will only be conducted for approved Board investigations or pattern and practice investigations of which the Board have been notified. Compelled interviews will not be conducted of LMPD members for initial review prior to the approval of the Board.

5. Interviews involving LMPD members will be conducted by no more than 2 investigators at one time.

6. The parties intend for this agreement to ensure that the OIG will conduct its investigations in strict compliance with Kentucky Revised Statute 67C.326, commonly known as *Peace Officer's Bill of Rights*, and in a manner consistent with the relevant protections afforded under the current Collective Bargaining Agreements between the River City Fraternal Order of Police Lodge No. 614 and Louisville/Jefferson County Government.

7. Procedures after Filing of Complaint.

- a) If the complainant elects to file a formal complaint, in compliance with KRS 67C.326, the complaint shall be taken in the form of an affidavit, signed and sworn to by the complainant.
 - i. Once the Board approves an investigation, the OIG will notify the Chief of Police of the initiation of an administrative investigation and provide the Chief of Police a copy of the complaint prior to an officer being ordered to appear for interview/interrogation.
 - ii. Upon execution of this agreement, the Chief of Police will issue a new SOP 2.10.3.1 notifying LMPD personnel they must cooperate with OIG investigations conducted pursuant to this MOU. Pursuant to SOP 2.10.3.1, upon notification of the Chief of Police or her designee by the OIG that the Board has authorized an investigation, the Chief of Police or her designee will order all LMPD members whose interviews have been requested in connection with the investigation to cooperate with the investigation.
 - iii. If at the time of receiving the complaint or during the course of the OIG investigation, the Inspector General and/or the OIG investigator identifies that criminal conduct has been alleged, the administrative investigation will cease and

the LMPD Special Investigations Commander will be notified. If a formal complaint had been obtained, it will be forwarded to the LMPD Special Investigations Commander for review of initiation of a criminal investigation through the LMPD Public Integrity Unit. If the LMPD Special Investigations Commander determines that a criminal investigation should be initiated, the OIG will be notified that the LMPD Public Integrity Unit is taking over the investigation. If the LMPD Special Investigations Commander concludes that a criminal investigation should not be initiated, the appropriate prosecutorial authority will be consulted. If, after consulting with the appropriate prosecutorial authority, it is again determined that no criminal investigation will be initiated, the OIG will be notified and may resume its administrative investigation.

- iv. For officer involved shootings, upon LMPD's completion of its internal investigations, the files will be tendered to the OIG for review consistent with the ordinance. The PIU file will be provided to the OIG's office at the same time the file is provided to the Commonwealth Attorney's Office. The OIG agrees that the PIU file will be maintained in confidence and not presented to the Board until the Commonwealth Attorney's Office renders a decision and, if charges are brought against the officer, the OIG agrees that it will not present the PIU file to the Board until the Commonwealth Attorney's Office approves its release.
- b) If the complainant does not file a formal complaint as defined above, the OIG may further investigate to determine if there is information independent of that obtained from the citizen which substantiates the allegations of misconduct by the citizen. If the allegations are substantiated by independent information, then procedures involved in section 7(a)(i)and(ii) will be followed.
- c) Conflicts of Interest should be avoided in all official investigations. It is in the best interest of all parties to ensure those investigations are conducted in a fair and unbiased manner.
 - i. When an OIG investigator is assigned a case, the lead investigator will complete and submit a Recusal/Conflict of Interest Form to the Inspector General for review. The form should state whether the investigator has any of the following relationship(s) with the complainant, witness, or officer.
 - a. Family relationship;
 - b. Outside business or financial relationship;
 - c. Romantic relationship;
 - d. Personal friendship; or
 - e. Close work relationship (to be determined on case-by-case basis)
 - ii. The Inspector General will review the background of the investigator in relationship to the parties involved in the investigation to determine the appropriateness of case assignment or reassignment. This form shall be maintained in the investigative file.

- d) To the extent practical and convenient the OIG agrees to use forms similar to those currently in use by PSU.

8. Request of LMPD Member for Interview/Interrogation.

- a) If an LMPD officer is listed or identified within a complaint as the subject of the complaint and the Board has approved an investigation, then the officer(s) will be considered the accused.
- b) Any LMPD officer that is considered the accused shall not be subjected to interview/interrogation within the administrative investigation until forty-eight (48) hours have expired from the time the request for interrogation/interview is made to the accused officer, in writing.
 - i. The 48-hour notice must include a copy of the complaint and, in the event a written complaint does not exist, the notice shall include other written information sufficient to advise the officer of the specific allegations of misconduct and to fully inform the accused officer of the nature and circumstances of the alleged violations in order that the officer may be able to properly defend themself.
 - ii. The 48-hour notice will be hand delivered to the officer during their working hours in a private setting. OIG will contact the LMPD commanding officer to arrange a mutually agreeable time and place for the officer to be present for the OIG to make the delivery of the notice. LMPD will provide a list of Division commanders to the OIG and will update as to any changes.
- c) An LMPD member or an LMPD officer who is not considered an accused as defined in foregoing Section 8(a), but because of their employment status with LMPD is compelled to participate in an interview, will be listed and further identified as a witness.
 - i. LMPD member witnesses will be notified by the Inspector General or OIG Investigator via email that their statement is warranted and to contact the requestor to set up an interview. Within the email, the IG or OIG Investigator will give no less than 7 days from the request for this communication to occur, not including any documented leaves of absence. Within the email there will be a warning that failure to comply with this request within the allotted time will result in the LMPD Special Investigations Commander being notified.
 - ii. Upon scheduling of the interview, the LMPD member witness will be notified of the substance of the complaint about which he/she is being interviewed, and informed of any and all reports, notes, or records about which they are being interviewed.
 - iii. If during the witness interview, the investigator determines that the witness should be under investigation for potential policy violations, the interview will cease, and the procedures outlined in subsection (b) of this section will be followed.
- d) All interviews/interrogations with accused officers and LMPD member witnesses shall be conducted while the member is on their scheduled tour of duty. If the OIG elects to interview an officer outside their scheduled tour of duty, such that the officer works overtime, the OIG will reimburse LMPD for the actual overtime expenses for such officer

within a reasonable time.

9. Interview/Interrogation

- a) No LMPD officer as a condition of continued employment by the Louisville/Jefferson County Metro Government shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature, to include independent contracted investigators.
- b) LMPD will advise all LMPD members to adhere to LMPD SOP 5.1.5 Truthfulness/Untruthfulness when being interviewed/interrogated. LMPD members are required to be honest and truthful in all matters related to their scope of employment and operations of the department. Allegations of violation of SOP 5.1.5 Truthfulness / Untruthfulness are to be brought to the attention of the Chief of Police and the Special Investigations Division Commander. The Chief of Police will then determine whether an investigation will be initiated as to a potential policy violation.
- c) Prior to any questioning All LMPD members, whether listed as accused or witness, that are interviewed/ interrogated by will be advised of their rights and protections covered by *Garrity v. New Jersey*, commonly referred to as Garrity Rights.
 - i. The OIG Investigator will provide a Garrity Rights form that will outline the rights of the member during the compelled testimony. The form will be read to the member and signed by the interviewer and the member. This form will be maintained in the investigative file.
- d) If an LMPD member refuses to answer questions during the interview, the member's refusal shall be reported to the Chief of Police and the Special Investigations Division Commander.

10. All OIG files shall be maintained in accordance with applicable statutes and regulations regarding archive retention. Furthermore, the OIG shall adhere to Louisville / Jefferson County Metro Government records retention schedule for the Louisville Metro Police Department, Series L5123.

11. OIG request for documents from LMPD

- a) Request for records, documents, and any other information, to the extent permissible by law, shall be requested through the LMPD Special Investigations Commander. The request shall be conducted on a standardized form created by the OIG office that includes:
 - a. OIG Case number or inquiry number;
 - b. Date investigation as approved by Board or date the Board was notified of the non-complaint review;
 - c. Name of investigator requesting the information;
 - d. Known Officer information about any officer who is listed as accused;
 - e. Detailed description of the information that is requested (including CAD number and/or incident numbers corresponding to body worn camera video, dash cam

- video, or photos stored on Evidence.com).
- b) Information will be returned by the LMPD Special Investigations Commander within a timely manner.
 - c) Subject to their successful completion of the approval process required of other Metro employees, LMPD shall provide the IG and OIG investigation staff (“Authorized Users”) with sign-in credentials that will allow direct access to Evidence.com for purposes of reviewing records hosted in the database (e.g., body cam footage, dash cam footage, ring cameras, business security video, and photos). Authorized users may only access such records in connection with an approved pending OIG Case, other than as set forth in subsection (e) below. Upon accessing Evidence.com, the investigator will identify in the note/comment section which investigation the review is associated. If the Evidence.com audit trail establishes that an Authorized User has purposefully viewed any other records, LMPD may immediately terminate such Authorized User’s access to Evidence.com. Further, the OIG will deem such an infraction to be a violation of such Authorized User’s terms of employment, and the OIG will administer discipline up to and including termination. In the event that records have been inadvertently accessed, OIG will, within 2 business days, notify the Chief and LMPD Special Investigations Commander of the incident and the records that were inadvertently accessed.
 - d) Pending the approval of Authorized Users, OIG may request access to records contained in Evidence.com by contacting the individual designated by LMPD for that purpose.
 - e) The OIG will inform the individual designated by LMPD when it accesses records on Evidence.com when conducting an “initial review” or pattern and practice review and advise as to which investigation the review is associated.
 - f) If any video is related to an on going criminal investigation the OIG staff will confer with LMPD investigators to determine if the administrative investigation will interfere with the criminal investigation.

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APPROVED: DocuSigned by:

Edward W. Harness

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EDWARD W. HARNESS
OFFICE OF INSPECTOR GENERAL

Date

Jacquelyn Gwinn-Villaroel

CHIEF JACQUELYN GWINN-VILLAROEL
LOUISVILLE/JEFFERSON COUNTY
METRO POLICE DEPARTMENT

03/13/2023

Date