

> -----Original Message-----

> From: Portland Copwatch <copwatch@portlandcopwatch.org>

> Sent: Friday, December 6, 2024 1:26 PM

> To: Independent Monitor Team <info@portlandpolicemonitor.com>

> Cc: Chief Bob Day <robert.day@police.portlandoregon.gov>; Buckley, Mary Claire

> <MaryClaire.Buckley@police.portlandoregon.gov>; Mayor Ted Wheeler

> <mayorwheeler@portlandoregon.gov>; Mary Austad <Mary_Austad@ord.uscourts.gov>; Community

> members <copwatch@portlandcopwatch.org>

> Subject: Feedback on Monitoring Compliance and Methodology plans

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> CAUTION - EXTERNAL:

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> Supervision of DOJ Agreement: Content Mostly Fine, Presentation Not

> Engaging for Community

> Portland Copwatch comments on Monitor's monitoring and methodology plans

> December 6, 2024

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> Portland Copwatch (PCW) thanks the Independent Court Monitor team

> ("Monitor") for putting together a draft plan for assessing Portland's

> compliance with the US Department of Justice (DOJ) Settlement Agreement.

> We appreciate that we had a chance to meet with members of the team in

> early October. Our biggest concern with the plan is not the substance,

> but rather the form. The team has promised that one of its highest

> priorities in taking over assessment duties from the Compliance

> Officer/Community Liaison (COCL) is to engage the community and create

> documents that people can understand without being lawyers.

> Unfortunately, the monitoring and methodology plans are confusing, not

> up-to-date, repetitive and, at a total of 65 pages, a bit overwhelming.

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> Portland Copwatch (PCW) has already noted that the outcomes of the

> changes made by the City should also be included in the Monitor's

> reports (see item #3). This would cover many paragraphs which are not

> yet mentioned, such as 222-e-viii requiring review of lawsuit data to

> examine whether the Bureau is truly a learning agency or whether they

> simply rely on the the City to shell out money as a cost of doing

> business without trying to prevent future occurrences.

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> As much as PCW had issues with the COCL's perspective on what compliance

> looks like, the Monitor's plan can benefit from some things that

> consultant did to simplify the overwhelming task of reviewing dozens of

> paragraphs, especially now that there are fewer than 45 paragraphs

> remaining which are to be fully externally monitored.

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> 1) Combine the two plans to shorten into one document

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> The biggest issue is that these documents are redundant. An easy way to

- > consolidate the information would be to have each paragraph (or set of paragraphs-- comment #2) followed by information about the methodology to be used to ensure compliance.

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- > 2) Combine similar paragraphs to shorten document

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- > The COCL combined certain paragraphs which are in the same subject matter area and whose assessment could be done with similar research. For example, they would combine paragraphs 74, 75 and 77 which all pertain to reviewing data about use of Force. While it's important for the Monitor to be independent in their analysis, the new reports should retain helpful practices initiated by the COCL.

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- > 3) Add outcomes plan to the shortened document

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- > The Monitoring plan does mention that the team will have to produce outcomes assessments every six months along with the compliance assessments.* Over time, the COCL combined these two required reviews into the same document. Similar to our suggestion about the plan itself, their assessment and outcome reports would list the compliance ratings with explanations, followed by the outcomes for each major section of the reports. Keep it simple!

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- > 4) Cross-reference previous sections when the content is the same

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- > There are 15 or so paragraphs that the City is now allowed to "self-monitor." (Don't get us started on how this is something we do not trust given their track record.) It seems that either they can all be combined (see item #2) or, alternatively, the plan can say "see plan for paragraph 88 for information." (88 is the first of the self-monitoring paragraphs.)

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- > Similarly, rather than include a full timeline column, the Monitor's paragraphs can say "timeline A" (which is February 15/August 15, 2025 and February 15, 2026 for all paragraphs, with assessments completed by April 1/October 1, 2025 and April 1, 2026) and TBA for all self-monitoring.

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- > 5) Add short explanations

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- > The plan's effort to be clear which paragraph is being discussed lifts the section headings from the Agreement but often is not at all clear about the content of the paragraphs. Short summaries could be added in the "sub-area" column along the lines of what PCW did when creating its own scorecard before the COCL making similar tables (though the COCL never adopted short-form explanations like the ones we illustrated). This is particularly important for the self-monitoring paragraphs which give no indication at all as to the substance being reviewed.

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> See this one from 2021:

> <https://www.portlandcopwatch.org/sampleDOJscorecard1121.pdf>

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> 6) Take a look at current events

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> A separate issue is the copy-and-paste nature with which the Monitor
> team painstakingly recreated, nearly line-by-line, what the Settlement
> Agreement literally required at its outset. As a result, names remain
> that were changed in the real world but not the Agreement (such as the
> "Addictions and Behavioral Health Unit" which simply became the
> Behavioral Health Unit). References to time that has passed since the
> adoption of the Agreement are mostly moot at this point, including, for
> instance the requirement for the civilian head of the Training Division
> (paragraph 191), whose hiring was delayed by a problematic initial
> candidate being chosen. Paragraph 131 refers to the Auditor examining
> members of the Police Review Board, though those members are currently
> nominated by the Independent Police Review (now separated from the
> Auditor's office). A reference in paragraph 195 to holding officers
> accountable lists paragraph 169, which was replaced by paragraph 245.

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> 7) Other specific edits that could / should be made

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> PCW also found a few items where clarifications or edits would help the
> reader. For instance, the methodology for Paragraph 131 says the review
> of the Police Review Board will be done "except as enumerated in this
> paragraph." It's not clear what that means. Paragraph 195 refers
> obliquely to "the Commission" but should specifically name the Police
> Accountability Commission (PAC).

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> Now, our advice for examining compliance and outcomes:

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> A) A floor, not a ceiling

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> PCW strongly recommends adopting the philosophy expressed by the
> community, the DOJ and the COCL over these last 12 years: the Agreement
> is a floor, not a ceiling. When the City and PPB can do better by going
> beyond the Agreement's requirements, they should be encouraged to do so.

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> B) Look at PPB directives and other documents to define terms being
> used.

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> The Use of Force Policy (1010.00) describes two kinds of de-escalation:
> one that is done initially ("Proactive," which we agree should be called
> de-escalation) and one that is done in response to the community
> member's lowering their resistance to the police ("Reactive," which we
> would call mitigation of force, not de-escalation, as the scenario has
> already been escalated).

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> C) Seek compliance with the spirit, not just the letter of the Agreement.

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> The City has been allowed to "self-monitor" the two paragraphs about presenting the PPB's annual reports to the public and to City Council. Yet their outreach and precinct presentations have been rushed and lacking, and their presentations to Council have not incorporated any feedback they heard from the community, which would seem an important thing to include after spending the time to listen. This is just one example of "checking off the boxes" without achieving the spirit of the goals set by the DOJ and agreed to by the City.

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> D) Try to overcome obstacles set up by the collective bargaining units.

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> The Portland Police Association is an intervenor in this case. The Portland Police Commanding Officers Association often follows their lead when throwing up roadblocks to true transparency and accountability. While they have the legal right to bargain for workplace safety, and the Constitutional right not to self-incriminate, the restrictions they have put on body-worn camera use undermine the purported reason for having the cameras-- accountability. (An exception is that they are not allowed to look at the video before giving statements after using significant amounts of force including deadly force, but even that has its limitations.) We believe that no officer involved in a deadly force incident has given an on-scene statement in these 12 years, because the Agreement only requires that they be asked to do so. This makes paragraph 127 merely performative.

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> E) Don't leave the Bureau to its own devices.

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> The last COCL report was published on July 1, the day the Monitor team began its work. It covered January-March 2024. We had hoped the team would have its plan in place by October to review the months from April-June 2024 for compliance. This is particularly important because of the PPB's reportedly strong-arm tactics at the Portland State University protests for Palestinian solidarity in May. It appears that the first report will only cover July to December, and won't be published until May 2025. We hope the three missing months of data will be included in the first report. It was the Bureau's response to protests in 2020 that led to them falling out of compliance, the additional remedies section, and in particular the external review envisioned in Paragraph 189.

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> We recognize that this plan needs to be finalized soon, but it will be a foundational document that needs to be referenced moving forward and we hope you will take the time to make the changes we have suggested. This

> will also help improve future publications by the Monitor.

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> Thank you again for your work and we look forward to meaningful,

> easy-to-understand and comprehensive reports in 2025.

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> dan handelman and other members of

> Portland Copwatch

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> *- PCW missed the mention of outcomes upon our first brief review of the

> plans.

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