

CPCA

Coalition for Police Contracts Accountability

Barriers to Investigating Police Misconduct

A Series on Police Accountability and Union Contracts by the Coalition for
Police Contracts Accountability

Introduction

The Problem

For decades, the Chicago Police Department (CPD) has had a “code of silence” that allows officers to hide misconduct. The Fraternal Order of Police (FOP) Lodge 7 and the Illinois Police Benevolent and Protective Association (PBPA) union contracts with the City of Chicago effectively make this “code of silence” official policy, making it too hard to investigate and be transparent about police misconduct and too easy for police officers to lie about it and hide it. Both the Department of Justice and the Police Accountability Task Force have raised serious concerns about provisions in the police contracts, and Chicago mayors have acknowledged that the "code of silence" is a barrier to reform of the police department. Until the harmful provisions in the police contracts are changed, police officers will continue to operate under a separate system of justice.

The Coalition

The Coalition for Police Contracts Accountability (CPCA) proposes critical changes to the police union contracts and mobilizes communities to demand that new contracts between the City of Chicago and police unions don't stand in the way of holding officers accountable. We are composed of community, policy, and civil rights organizations taking action to ensure police accountability in the city of Chicago.

This Report

CPCA has proposed 14 critical reforms to Chicago's police union contracts which, collectively, can have a significant impact in ending the code of silence and increasing police accountability.

This report is the fourth of a series of reports that the CPCA will publish presenting substantial evidence in support of each of our 14 recommendations. The focus of this report is on recommendations 10-13 which speak to provisions in the contracts that make it difficult to investigate and be transparent about police misconduct.

Removing Barriers to Investigating Misconduct from Police Contracts

Police contracts cause significant impediments to police reform and increasing police oversight.¹ Chicago's police union contracts make it difficult to investigate allegations of officer misconduct and to hold officers accountable.² Nevertheless, the protections provided by Chicago's police union contracts in investigating officer misconduct are emblematic of the larger issues within the Chicago Police Department (CPD), which help to foster and perpetuate such conduct.³

The City's current collective bargaining agreements with the Fraternal Order of Police (FOP) and Police Benevolent and Protective Association of Illinois (PBPA) include provisions that pose barriers to investigating complaints against officers.

- The City's contracts place significant constraints on how interrogators can ask questions when investigating misconduct.⁴

Specifically, the contracts contain detailed rules which must be followed by interrogators in questioning officers regarding alleged misconduct or unlawful activity. These provisions make it easier for officers to use technicalities to avoid accountability and disciplinary action, and they reinforce the lack of transparency and undermine public confidence in the investigation of police misconduct.

- Before an officer is interrogated, the police contracts require that officers receive detailed information about the allegations against them.⁵

The FOP and PBPA contracts also include provisions that require officers to be given detailed information before they are interrogated. Provisions such as these can be so technical in nature that any minor misstep in complying with the provision can serve to undermine the investigatory process and weaken accountability for misconduct.

¹ Catherine L. Fisk, *Police Unions*, 85 GEO. WASH. L. REV. 712, 719, 750 (2017).

² See U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 159, 8, 50 (2017) [hereinafter DOJ REPORT], <https://www.justice.gov/opa/file/925846/download>.

³ See generally *id.*

⁴ Rahm Emanuel & Garry F. McCarthy, Agreement Between the City of Chicago Police Department and the Fraternal Order of Police Chicago Lodge No. 7 §6.1, Appendix L (June 30, 2017), http://directives.chicagopolice.org/contracts/FOP_Contract.pdf; Agreement Between the City of Chicago & Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants §6.10 (June 30, 2016) [hereinafter Sergeant Contract], <https://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement2/SgtsPBPACB A-2012-2016Final.pdf>; Agreement Between the City of Chicago & Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants §6.10 (June 30, 2016) [hereinafter Lieutenant Contract], <https://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement2/PBPALTSCB A2012-2016final.pdf>; Agreement Between the City of Chicago & Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains §6.10 (June 30, 2016) [hereinafter Captain Contract], <https://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement3/POLICEFIR E-PBPACaptainsCBA2012-2016final-c.pdf>.

⁵ See generally Emanuel & McCarthy, *supra* note 4; Sergeant Contract, *supra* note 4; Lieutenant Contract, *supra* note 4; Captain Contract, *supra* note 4.

- The City's contracts prohibit disclosing the names of officers subject to civilian complaints to the public, unless the officer has been convicted of a crime, or the Police Board decides to release an officer's name.⁶

The current Collective Bargaining Agreement (CBA) between the Fraternal Order of Police and the City of Chicago states that the name of an officer subject to a complaint may not be disclosed to the public unless the officer has been convicted of a crime or the Police Board has made a decision.⁷ Once an investigation of the complaint has been completed, the officer's name may be obtained via a Freedom of Information Act (FOIA) request.⁸ However, not only can complaint investigations go on for years, but obtaining information through FOIA may be slow and require knowing what to specifically request.⁹

- The City's contracts do not require that officers disclose other employment positions they have.¹⁰

Current contract provisions stating that officers are not required to disclose information about secondary employment are far out of sync with modern police practices. Depending on its nature, outside employment may create conflicts of interest for government employees and liability for taxpayers. That is why other City of Chicago departments are required to collect information on and approve or deny the outside employment of its staff.¹¹ The inability of the CPD to collect this information from its officers puts it in violation of city personnel rules and makes it the only major local or county law enforcement agency that does not require its officers to get approval for secondary employment.¹²

⁶ *Id.*

⁷ EMANUEL & MCCARTHY, *supra* note 4, § 6.9.

⁸ COAL. FOR POLICE CONTRACTS ACCOUNTABILITY, RECOMMENDATIONS FOR THE CITY OF CHICAGO & LAW ENFORCEMENT UNION CONTRACTS 6 (2016), <https://www.communityrenewalsociety.org/sites/default/files/CPCA%20Recommendations%20-%20FINAL.pdf>.

⁹ *Q&A, About the Data*, Citizens Police Data Project, Invisible Institute, <https://cpdb.co/data/AB9qk6/citizens-police-data-project>.

¹⁰ See generally Emanuel & McCarthy, *supra* note 4; Sergeant Contract, *supra* note 4; Lieutenant Contract, *supra* note 4; Captain Contract, *supra* note 4.

¹¹ CITY OF CHI., PERSONNEL RULES, Rule XX, § 3 (2014), available at https://www.chicago.gov/content/dam/city/depts/dbr/supp_info/HRpolicies/2014_PERSONNEL_RULES-FINAL_2014_v3.pdf; OFFICE OF INSPECTOR GEN., CITY OF CHI., REVIEW OF THE CITY OF CHICAGO'S EXPIRED AND EXPIRING COLLECTIVE BARGAINING AGREEMENTS 27-28 (May 2017).

¹² Jonah Newman, *When Chicago Cops Moonlight, No One is Watching*, CHI. REP. (May 8, 2017), <https://www.chicagoreporter.com/when-chicago-cops-moonlight-no-one-is-watching/>; OFFICE OF INSPECTOR GEN., *supra* note 11.

Relevant Contract Language	CPCA Recommendations
<p>When a formal statement is being taken, questions directed to the Officer under interrogation shall first be asked by the designated primary interrogator. Unless both parties agree, no more than two members of IPRA or IAD will be present in the interview room during questioning. A secondary interrogator may participate in the interrogation, provided that the secondary interrogator shall be present for the entire interrogation. The secondary interrogator will not ask any questions until the primary interrogator has finished asking questions and invites the secondary interrogator to ask questions. Generally, the secondary interrogator will ask follow-up questions for clarification purposes. The primary interrogator will not ask any questions until the secondary interrogator has finished asking questions and invites the primary interrogator to ask follow-up questions. <i>Contract with the Fraternal Order Of Police § 6.1(C). See also, § 6.2(C).</i></p> <p>When a formal statement is being taken, all questions directed to the [Sergeant/Lieutenant/Captain] under interrogation shall be asked by and through one interrogator at a time, provided that if a second interrogator participates in the interrogation, he or she shall be present for the entire interrogation. <i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois § 6.1(C). See also, § 6.2(C).</i></p>	<p><i>Recommendation 10</i> Remove provisions that place constraints on how interrogators can ask questions.</p>
<p>Prior to an interrogation, the Officer under investigation shall be informed of the identities of: the person in charge of the investigation, the designated primary interrogation officer, the designated secondary officer, if any, and all persons present during the interrogation shall be advised whether the interrogation will be audio recorded. <i>Contract with the Fraternal Order Of Police § 6.1(C).</i></p> <p>Immediately prior to the interrogation of an Officer under investigation, he or she shall be informed in writing of the nature of the complaint and the names of all complainants. <i>Contract with the Fraternal Order Of Police § 6.1(E).</i></p> <p>Prior to an interrogation, the [Sergeant/Lieutenant/Captain] under investigation shall be informed of the identities of the person in charge of the investigation, the</p>	<p><i>Recommendation 11</i> Include specifications that information provided to officers prior to interrogations should be a general recitation of allegations.</p>

<p>interrogation officer(s) and all persons present during the interrogation. <i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois §§ 6.1(C), (G), 6.2(C).</i></p>	
<p>The identity of an Officer under investigation shall not be made available to the media unless there has been a criminal conviction or a decision has been rendered by the Police Board (or by the Superintendent), except where required by law. <i>Contract with the Fraternal Order Of Police § 6.9.</i></p> <p>The identity of a [Sergeant/Lieutenant/Captain] under investigation shall not be made available to the media, unless there has been a criminal conviction or an adverse decision has been rendered by the Police Board (or by the Superintendent where no appeal is taken to the Police Board). However, if the [Sergeant/Lieutenant/Captain] is found innocent, the [Sergeant/Lieutenant/Captain] may request and the Department shall issue a public statement. <i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois §6.8.</i></p>	<p><i>Recommendation 12</i> Allow for the disclosure of the identities of officers who are the subject of civilian complaints.</p>
<p>The Employer retains the existing right to limit, restrict or prohibit the nature or type of secondary employment that an Officer undertakes. <i>Contract with the Fraternal Order Of Police §16.1.</i></p> <p>The Employer reserves the right to restrict secondary employment when it has reasonable cause to believe that the number of hours which the [Sergeant/Lieutenant/Captain] spends on secondary employment is adversely affecting his/her performance. <i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois § 16(B).</i></p>	<p><i>Recommendation 13</i> Require officers to disclose secondary employment and any other pertinent information that may cause a conflict of interest in performing their duties as a sworn officer.</p>

The Case for Removing Barriers to Investigating Misconduct

I. *Current Restraints Diminish Soundness of the Investigative Process*

A. *Questioning Officers*

The FOP and PBPA contracts currently place constraints on interrogators questioning officers. When officers are questioned about alleged misconduct or unlawful activity, the questioner must follow specific, detailed rules. For example, the FOP contract requires specific ordering of questions by the “primary” and “secondary” interrogator:

*The secondary interrogator will not ask any questions until the primary interrogator has finished asking questions and invites the secondary interrogator to ask questions. Generally, the secondary interrogator will ask follow-up questions for clarification purposes. The primary interrogator will not ask any questions until the secondary interrogator has finished asking questions and invites the primary interrogator to ask follow-up questions.*¹³

Provisions in the PBPA collective bargaining agreements for Sergeants, Lieutenants, and Captains likewise contain specific rules which define the procedures and set boundaries for interrogators during investigations.¹⁴

The FOP and PBPA contracts serve as prime examples of “excessive procedural protections during patfinternal disciplinary investigations,” which can “effectively [immunize an officer] from the consequences of misconduct.”¹⁵ The PATF Report specifically cited to these contract provisions as barriers to effective misconduct investigations and accountability. The PATF Report found that these rules “constrain investigations by dictating and micromanaging how interrogators may ask questions.”¹⁶ Like the detailed recitation of allegations afforded to officers but not the public, the PATF Report also noted that “CPD officers and detectives are not similarly constrained when they interrogate suspects.¹⁷ Furthermore, constraints on repeating questions, asking detailed questions, and the order in which questions may be asked “potentially sets [investigators] up to violate the CBA for a technicality.”¹⁸ The PATF Report concluded that, because the policy “does not appear to comport with any best practices,” it should be eliminated.¹⁹

¹³ EMANUEL & MCCARTHY, *supra* note 4, §§ 6.1(C), 6.2(C).

¹⁴ See SERGEANT CONTRACT, *supra* note 4, § 6.1(C) (“When a formal statement is being taken, all questions directed to the Sergeant under interrogation shall be asked by and through one interrogator.”); LIEUTENANT CONTRACT, *supra* note 4, § 6.1(C) (“When a formal statement is being taken, all questions directed to the Lieutenant under interrogation shall be asked by and through one interrogator at a time, provided that if a second interrogator participates in the interrogation, he or she shall be present for the entire interrogation.”); CAPTAIN CONTRACT, *supra* note 4, § 6.1(C) (“When a formal statement is being taken, all questions directed to the Captain under interrogation shall be asked by and through one interrogator at a time, provided that if a second interrogator participates in the interrogation, he or she shall be present for the entire interrogation.”).

¹⁵ Stephen Rushin, *Police Union Contracts*, 66 Duke L. J. 1191, 1253 (2017).

¹⁶ POLICE ACCOUNTABILITY TASK FORCE, RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE REPORT 72 (2016) [hereinafter “PATF Report”], https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf.

¹⁷ *Id.*

¹⁸ *Id.* at 75, 159.

¹⁹ *Id.*

The U.S. Department of Justice (DOJ), in its report, *Investigation of the Chicago Police Department*, similarly noted the barriers posed by tedious constraints on interrogations, but also noted more serious issues, such as hidden witness coaching by union representatives and attorneys and the use of leading questions.²⁰

The FOP and PBPA contract provisions setting forth arbitrary, unnecessary rules for interrogator questioning reinforce the lack of transparency and accountability. Vigorous and effective internal investigations into police misconduct and abuses could help build public confidence and trust, but contract provisions that micromanage interrogations into meaningless exercises will protect bad officers and “deter department-wide changes intended to prevent constitutional violations”²¹ Effective reform efforts must include the removal of contract provisions constraining and impeding questioning during the investigatory process.

B. *Recitation of Allegations*

The FOP and PBPA contracts currently require that officers be given detailed information before they are interrogated. The CBA between the City and FOP requires that, prior to an interrogation, an officer “shall be informed of the identities of: the person in charge of the investigation, the designated primary interrogation officer, the designated secondary interrogation officer, if any, and all persons present during the interrogation and shall be advised whether the interrogation will be audio recorded.”²² The officer must also be “informed in writing of the nature of the complaint and the names of all complainants.”²³ The CBAs with the PBPA for Sergeants, Lieutenants, and Captains contain similar requirements, including a provision requiring that prior to any interrogation, the supervisor be “informed, in writing, of the nature of the complaint, the names of all complainants and the specific date, time and, if relevant, location of the incident.”²⁴

These provisions are written so broadly that they can be interpreted to require a very detailed and specific presentation of the facts of a complaint and all the possible charges the officer could be facing. An investigator’s failure to disclose such specific information could serve as a technical violation of the contract, making it more difficult to investigate and prove misconduct. Additionally, these provisions supply officers with the evidence against them prior to an investigation and can therefore aid an officer looking to deflect or shift blame through a changed narrative.²⁵ These requirements demonstrate where the balance has “tipped too heavily in favor of protecting police officers while handcuffing internal investigations.”²⁶

²⁰ DOJ Report, *supra* note 2, at 61-64.

²¹ Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 799 (2012), <http://repository.law.umich.edu/mlr/vol110/iss5/2>.

²² EMANUEL & MCCARTHY, *supra* note 4, § 6.1(C).

²³ *Id.* §. 6.2(E).

²⁴ See SERGEANT CONTRACT, *supra* note 4, §§ 6.1(C), 6.1(G), 6.2(C); LIEUTENANT CONTRACT, *supra* note 4, §§ 6.1(C), 6.1(G), 6.2(C); CAPTAIN CONTRACT, *supra* note 4, §§ 6.1(C), 6.1(G), 6.2(C).

²⁵ See, e.g., Rushin, *supra* note 15, at 1228 (“By delaying interrogations, and in some cases providing officers with full access to all evidence against them, these contracts provide officers with ample time to coordinate stories in a way that shifts blame away from the police.”), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3890&context=dlj>.

²⁶ *Id.* at 1244.

In its comprehensive April 2016 report, the Police Accountability Task Force (PATF) found that these contract provisions requiring “highly specific notice of allegations” threaten “the efficiency and efficacy of the investigation.”²⁷ The PATF Report cited two separate arbitration cases in which arbitrators “found that if an officer lies to investigators, IPRA must present the officer with a new set of allegations that specifically addresses the lie, or else IPRA cannot charge the officer with making a false statement. See Grievance No. 016-02-001 (Arbitrator Peter R. Meyers, 2005) and Grievance No. 002-07-008 (Arbitrator Steven M. Bierig, 2010).”²⁸

The PATF Report recommended that these notice provisions be “amended to allow for a more general recitation of allegations.”²⁹ This recommendation is consistent with Illinois’ Uniform Peace Officers’ Disciplinary Act, which requires only that the information provided prior to an interrogation “be sufficient as to reasonably apprise the officer of the nature of the investigation.”³⁰

It is important to note that this notice afforded to officers is not similarly afforded to members of the public being interrogated by CPD. This only relates to officer-involved investigations. Effectively, this provision functions to make police misconduct more difficult to investigate and facilitates the ability of an officer to evade discipline.

Accountability and public confidence in police investigations require that the new FOP and PBPA contracts do not serve to undermine the investigatory process. Instead, the new contracts must include specific provisions to ensure that the only information provided to officers prior to interrogations is that which is necessary to reasonably apprise an officer of the nature of the investigation.

II. CPD Contract Provisions Prevent Transparency with the Public Throughout Officer Misconduct Investigations

In Chicago there is a need for “open data policing,” which means CPD should do more to “provide[] people access to its process, decision-making, and data.”³¹ In 2015, The President’s Task Force on 21st Century Policing encouraged police departments throughout the nation to “embrace a culture of transparency.”³² Disclosing the names of officers subject to civilian complaints would constitute a significant step in increasing CPD’s transparency. This increased transparency would promote accountability, increase public trust, and make it easier for CPD to police effectively.

The DOJ, PATF, and the ACLU of Illinois have all recommended that the CPD increase its transparency to the public. Specifically, the DOJ has recommended that CPD “develop and implement policies that mandate regular public reporting of misconduct investigations.”³³ The PATF

²⁷ PATF Report, *supra* note 16, at 72.

²⁸ *Id.*

²⁹ *Id.* at 160.

³⁰ Uniform Peace Officers’ Disciplinary Act, 50 ILL. COMP. STAT. 725/3.2 (2018) (“No officer shall be subjected to interrogation without first being informed in writing of the nature of the investigation. If an administrative proceeding is instituted, the officer shall be informed beforehand of the names of all complainants. The information shall be sufficient as to reasonably apprise the officer of the nature of the investigation.”).

³¹ Cynthia H. Conti-Cook, *Open Data Policing*, 106 GEO. L.J. ONLINE 1, 16 (2017), <https://georgetownlawjournal.org/articles/243/open-data-policing/pdf>.

³² *Id.* at 5.

³³ DOJ Report, *supra* note 2, at 159.

recommended that all disciplinary information for CPD be available online³⁴ and that there should be a “fundamental” change to “provisions in the CBA that are impediments to accountability.”³⁵ Public access to these officer names would allow assessment of how effective CPD review and disciplinary procedures are.

Making the names of these officers readily available to the public at large would increase police transparency and, in turn, increase public trust in CPD. A 2015 presidential task force on policing determined that a “culture of transparency and accountability” will “build public trust.”³⁶ The DOJ highlighted this link in its report on Chicago, saying that rebuilding trust has “never been more important”³⁷ and that “trust and effectiveness in combating violent crime are inextricably linked.”³⁸ The DOJ also specifically emphasized the lack of transparency from CPD as a factor in growing public distrust,³⁹ particularly CPD’s lack of published information.⁴⁰ The data the CPD chooses to publish is insufficient to “allow the public to determine” whether CPD is doing a good--or even adequate--job at curbing misconduct.⁴¹ The city does not publish any “meaningful” information regarding officer misconduct.⁴² Furthermore, trust in a police department can “indirectly stimulate legal compliance” because it increases the public’s impression that police department is fair and legitimate; conversely, a lack of trust will have the opposite effect.⁴³

III. There is a Need to Increase Internal Transparency within CPD

A. Liabilities and Conflicts of Interest

It is critical that new contract provisions require officers to disclose secondary employment in order to avoid liabilities for the City and conflicts of interest for officers. Police departments around the country have realized that knowing where their officers are working outside of the department is a critical part of their responsibility to their officers, as well as to the taxpayers.⁴⁴ Other City of Chicago employees are required to disclose any secondary employment.⁴⁵ CPD, however, has done nothing to limit its liability for its officers, nor to prevent officers from creating potential conflicts of interest.

This can be particularly problematic when officers are moonlighting in part-time jobs in security or another law enforcement-related role. An account by the L.A. Times demonstrates this point quite clearly:

³⁴ PATF Report, *supra* note 16, at 18.

³⁵ *Id.*

³⁶ OFFICE OF CMTY. ORIENTED POLICING SERVS., FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 4 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

³⁷ DOJ Report, *supra* note 2, at 159.

³⁸ *Id.* at 2.

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 125.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1161 (2000).

⁴⁴ Newman, *supra* note 12; OFFICE OF INSPECTOR GEN., *supra* note 11.

⁴⁵ *Id.*

*When San Jose Police Department officers arrived at the home of San Francisco 49ers player Ray McDonald to respond to a now-infamous domestic violence call, they found one of their own already there, in uniform but off-duty and employed... as part of the team's security force, as 'protective detail' for the athletes. The complications prompted by that officer's presence may have been a significant factor in the delayed receipt of the case by the Santa Clara County district attorney's office...*⁴⁶

CPD prohibits officers from identifying themselves as a Chicago Police Officer while moonlighting in another position. However, once such identification is made, even in violation of department rules, taxpayers can end up footing the bill for incidents that happened when officers were working in secondary employment. According to the Chicago Reporter, at least six lawsuits have been filed against officers who were working off-duty from 2011 to May 2017. The City defended officers in four of the cases, costing taxpayers more than \$100,000.⁴⁷

CPD has some rules about secondary employment that are designed to minimize this risk of liability. For example, secondary employment is not allowed “when the secondary employment or the place where it is performed is such as to bring either the Department or the Department member into disrespect or disfavor.” However, the inability to track and approve secondary employment for the majority of its employees makes it nearly impossible for the Department to enforce its own rules. Because it cannot proactively collect any information on or approve secondary employment of its officers, CPD is wholly unable to regulate this activity. Indeed, the Chicago Reporter’s interviews of former cops, review of court records, and citizen complaints suggest that, although officers are not allowed to work at bars, they do so anyway.

Furthermore, this contract provision creates additional absurdities. Although CPD is not allowed to ask its officers about their employment, officers wanting to work security jobs often have to have their supervisors sign off on forms verifying that they are a sworn police officer.⁴⁸ Private security agencies maintain these forms, yet the City is prohibited by contract from requiring such information itself.

B. Policing Reform

Both the PATF and the DOJ noted CPD’s inability to collect information on secondary employment as extremely problematic.

According to the PATF Report, “the CPD is missing a key tool for identifying red flags that can be indicators of corruption, such as unexplained income, or addressing potential conflicts of interest

⁴⁶ Elizabeth E. Joh, *When Police Moonlight in Their Uniforms*, L.A. TIMES (Oct. 13, 2014), <http://www.latimes.com/opinion/op-ed/la-oe-joh-police-moonlighting-vonderrit-myers-20141014-story.html>. See also Interoffice Memorandum from Santa Clara, California Office of the District Attorney on Whether or Not to File Charges Against Ray McDonald Based on the August 31, 2014 Incident (Nov. 10, 2014) (“The relationship between Sgt. Pritchard and the 49ers, and possible relationships between other San Jose Police officers and the 49ers required a thorough investigation including extensive interviews and search warrants to make sure neither perceived nor actual bias compromised the investigation or in turn our charging decision.”), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Documents/McDonald%20memo>.

⁴⁷ Newman, *supra* note 12.

⁴⁸ *Id.*

and emotional stressors that may adversely impact performance that otherwise would not come to light.”⁴⁹

Likewise, the DOJ Report stated that “a significant amount of alleged officer misconduct involves officers working secondary employment... [and] that there is a need for a thorough review of the policies and accountability measures related to officers’ secondary employment.”⁵⁰

⁴⁹ PATF Report, *supra* note 16, at 73.

⁵⁰ DOJ Report, *supra* note 2.

CPCA's Fourteen Reforms

For too long and in too many ways, Chicago police union contracts have included provisions that have served as barriers to identifying misconduct. The result has been an inability to investigate civilian and officer complaints of misconduct and address bad behaviors at an early stage. Offenses go unreported and undisciplined and the “code of silence” culture is reinforced. The negotiation of new FOP and PBPA union contracts presents an opportunity to address these problematic provisions identified by both the Department of Justice and the Police Accountability Task Force as barriers to accountability. The new contracts must address the ability to investigate anonymous complaints and complaints without an affidavit and ensure that a complainant’s name is not disclosed prior to an investigation. The new contracts must ensure that officers who perform their ethical and moral duty of reporting misconduct are not barred from promotion and recognition. Only through removing these barriers can the City and CPD begin to build a culture of accountability worthy of public confidence and trust.

In addition to removing these barriers to identifying misconduct, the CPCA supports the reformation of union contract provisions, which in the past have made it too easy for officers to lie about misconduct, that require officials to ignore and destroy evidence of misconduct and that make it difficult to investigate police misconduct in transparent ways. Only through addressing each of these areas, as detailed in the CPCA’s fourteen recommendations for reform, will the City, the CPD and the community it is committed to serve be able to embark on the path of trust and accountability.

1. Eliminate the requirement of a sworn affidavit for investigating civilian complaints of misconduct.
2. Allow for the filing and investigation of anonymous complaints.
3. Prevent the disclosure of a complainant’s name prior to the interrogation of an accused officer.
4. Remove the ban on offering rewards to officers that cooperate or provide information on ongoing investigations.
5. Eliminate the 24 hour delay on officer statements in shooting cases and create a clearly outlined process to receive statements from all officers involved in a timely manner.
6. Eliminate an officer’s right to review and amend statements previously made to investigators.
7. Allow past disciplinary records to be used in investigating and resolving present complaints.
8. Eliminate the provision requiring the destruction of police misconduct records.
9. Eliminate the need for the Superintendent’s authorization to investigate complaints that are five years old or older.
10. Remove constraints on how interrogators can ask questions.
11. Specify that information provided to officers prior to interrogations should be a general recitation of allegations.
12. Allow for the disclosure of the identities of officers who are the subject of civilian complaints.
13. Require officers to disclose secondary employment and any other pertinent information that may cause a conflict of interest in performing their duties as a sworn officer.
14. Reduce years of seniority for officers who have been repeatedly recommended for suspension because of findings of complaints filed against them.