

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PITTSBURGH CITIZEN
POLICE REVIEW BOARD

CIVIL DIVISION

NO. GD10-001338

OPINION AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

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DEPT. OF COUNTY RECORDS
CIVIL DIVISION
ALLEGHENY COUNTY PA

OPINION AND ORDER OF COURT

WETTICK, J.

The Motion of the Pittsburgh Citizen Police Review Board to Enforce Compliance With Subpoena is the subject of this Opinion and Order of Court.

In a referendum election held on May 20, 1997, voters of the City of Pittsburgh approved an amendment to Article 2 of the City's Home Rule Charter creating the Pittsburgh Citizen Police Review Board ("Police Review Board").

The relevant provisions of the referendum are set forth in §§ 228-229 of the Home Rule Charter:

§ 228. INDEPENDENT CITIZEN REVIEW BOARD.

There is established an Independent Citizen Review Board, comprised of seven members reflecting Pittsburgh's diversity, for the purpose of receiving, investigating and recommending appropriate action on complaints regarding police misconduct and for the purpose of improving the relationship between the police department and the community. The members shall serve four year staggered terms and serve until the appointment of their successors. Four of the seven appointments shall be made from a list of nine nominations submitted to the Mayor by City Council. Members shall be residents of the City, shall not be employed by the City or any of its Authorities, and shall serve without compensation.

§ 229. POWERS OF INDEPENDENT CITIZEN REVIEW BOARD.

The Board shall:

- a. Investigate selected complaints filed by individuals alleging police misconduct;

b. Establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation;

c. Provide advice and recommendations to the Mayor and the Chief of Police on policies and actions of the Police Bureau, including recommendations on police training, hiring and disciplinary policies and specific recommendations of discipline for individual officers; provided, however, the Mayor and the Chief of Police shall retain full and ultimate authority to set disciplinary policies or take other actions deemed appropriate relative to the Police Bureau.

d. Hold public hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath and in connection therewith require the production of evidence relating to any other matter under investigation or any questions before the board and do all other things necessary to fulfill its purpose.

The Board shall employ and supervise a staff including a solicitor, as necessary. The Board shall adopt procedures and rules necessary to fulfill its purpose. City Council may by ordinance adopt regulations to effectuate this Charter provision.

The final sentence of § 229 provides that "City Council may by ordinance adopt regulations to effectuate this Charter provision." Through an Ordinance effective August 15, 1997, Council adopted legislation to implement the Charter provisions governing the Police Review Board. Ordinance 29-1997 is set forth at §§ 661.01-662.13.

For purposes of this litigation, the relevant provision is set forth at § 662.05(o) which reads as follows:

(o) The Board, upon motion receiving an affirmative vote of at least four (4) members, may:

(1) Initiate investigations of incidents of Police Misconduct for which no complaint has been filed;

(2) Initiate studies, investigations, hold public hearings and make recommendations on policy matters, including improvement of the relationship between the police department and the community, police training, hiring and discipline.

In September 2009, the Group of 20 Finance Ministers and Central Bank Governors ("G-20") met in Pittsburgh. During and after the G-20 meeting, more than 200 persons were arrested. The Police Review Board received numerous complaints of alleged police misconduct. On October 20, 2009 and November 10, 2009, the Police Review Board held public hearings regarding police/citizen encounters connected to G-20 activities. These hearings were held in connection with a Board-initiated investigation of the policies, procedures, and circumstances surrounding the police/citizen encounters.

Through a subpoena to the Chief of Police of the City of Pittsburgh, the Police Review Board sought two categories of information.¹ The first category is arrest reports and related documents pertaining to twenty-nine arrests made in connection with G-20 activities.² The second category is large numbers of documents relating to the G-20 activities of the City of Pittsburgh Police and police officers from other jurisdictions serving temporarily as Pittsburgh Police Officers. The second category includes a roster of all police officers serving under Pittsburgh command, the chain of command, training records, summary of injuries reported by officers, procedures relating to the use of chemical agents, LRAD, and canines and the operational/dispersal plans for Oakland and Lawrenceville. These documents are relevant for an overall review of the manner

¹Section 662.07 of the 1997 Ordinance permits the Board to issue subpoenas.

²Only five of these twenty-nine persons who were arrested filed complaints with the Police Review Board.

in which law enforcement responded to G-20 activities. The subpoena is attached as Attachment 1 to this Opinion.

At the direction of the Mayor of the City of Pittsburgh, counsel for the City has taken the position that the City shall not honor these subpoenas because the Police Review Board has exceeded its authority in issuing subpoenas for an investigation initiated by the Board. It is the position of the Mayor that the role of the Police Review Board is limited to investigating verified complaints of police misconduct.

Counsel for the Police Review Board contends that the City's position ignores several provisions of the 1997 Ordinance, including § 662.05(o) set forth on pages 2-3 of this Opinion, which permits the Board to initiate investigations of incidents of police misconduct for which no complaint has been filed and to initiate studies, investigations, hold public hearings, and make recommendations on policy matters, including improvement of the relationship between the police department and the community, police training, hiring, and discipline.³

At oral argument at which a court reporter was present, counsel for the City conceded that this provision of the 1997 Ordinance permits the Board to investigate police officers' responses to G-20 activities. However, it is the City's position that City Council had no authority to enact § 662.05(o) and other provisions within this Ordinance authorizing the Police Review Board to initiate any investigations of incidents for which no complaint has been filed. Consequently, it is not compelled to comply with the provisions of any subpoena seeking documents that do not arise out of an incident for which a complaint has been filed.

³At least four members of the Board voted to initiate the investigation that is the subject of this Opinion.

The controlling issue in this case is whether the 1997 Amendments to the Home Rule Charter establishing an Independent Citizen Review Board authorize City Council to adopt an ordinance giving to the Police Review Board the power to initiate investigations of incidents of police misconduct for which no complaint has been filed, and to initiate studies and investigations for the purpose of making recommendations on policy matters that may improve the relationship between the police department and the community, including matters involving police training, hiring, and discipline.

The parties disagree as to the meaning of the language in § 228 of the Home Rule Charter establishing an Independent Citizen Review Board "for the purpose of receiving, investigating and recommending appropriate action on complaints regarding police misconduct and for the purpose of improving the relationship between the police department and the community."

It is the position of the City that prior to the 1997 Amendment to the Home Rule Charter, the relationship between the police department and the community was impaired because there was no place within the City where complaints of police misconduct would be considered. The sole purpose of § 228 was to improve the relationship between the police department and the community by creating a place where complaints of police misconduct would be considered by an independent body.

It is the position of the Police Review Board that § 228 refers to two purposes. First, the Board is authorized to consider individual complaints regarding police misconduct. Second, the Board may initiate studies and investigations and make recommendations involving police practices that may improve the relationship between the police department and the community.

The language of § 228 clearly supports the Police Review Board's construction of § 228. The word *purpose* is used twice. Furthermore, each purpose addresses a different question: Question 1—Is the Board authorized to investigate and make recommendations concerning specific complaints regarding police misconduct; and Question 2—Is the Board authorized to consider and make recommendations regarding police practices.

In addition, § 229 supports only the Police Review Board's reading of § 228.

As to Question 1, § 229(a) provides the same answer as is provided in § 228, namely that the Board shall "investigate selected complaints filed by individuals alleging police misconduct."

As to Question 2, § 229(c) requires the Board to "Provide advice and recommendations to the Mayor and the Chief of Police on policies and actions of the Police Bureau, including recommendations on police training, hiring and disciplinary policies" The provision would need to disappear before I could rule that the Board was only authorized to investigate selected complaints filed by individuals alleging police misconduct.⁴

The City also contends that certain documents cannot be produced because the G-20 Summit was designated a National Special Security Event by the Secretary of the United States Department of Homeland Security and that many of the documents which the Police Review Board requests are United States Secret Service documents that the City of Pittsburgh may not unilaterally divulge.

⁴Under accepted rules for construing any law, every law shall be construed, if possible, to give effect to all its provisions. 1 Pa.C.S. § 1921(a); 1 Pa.C.S. § 1922(2). Also, in construing a constitution, effect must be given to all of its provisions whenever possible. *Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008); *In re Larsen*, 812 A.2d 640, 649 (Pa. Spec. Trib. 2002).

If the City believes that certain documents cannot be produced because they are privileged under federal law, the City shall prepare a Privilege Log which identifies each document and sets forth the basis for the claim that the document cannot be produced.

For these reasons, I enter the following Order of Court:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: PITTSBURGH CITIZEN
POLICE REVIEW BOARD

NO. GD10-001338

ORDER OF COURT

On this 18 day of March, 2010, it is hereby ORDERED that the Motion to Enforce Compliance With Subpoena issued to Nathan E. Harper, Chief of the Pittsburgh Bureau of Police, is granted and the documents described in this Subpoena shall be produced within twenty (20) days. Specific documents may be withheld if identified in a Privilege Log.

BY THE COURT:



WETTICK, J.

SUBPOENA

CITIZEN POLICE REVIEW BOARD
816 Fifth Avenue, Suite 400, Pittsburgh PA 15219
412-765-8023 (V) 412-765-8059 (F)

CPRB #:325-09

Inquiry into Community/Police Relations during the
G-20 period of 9/19/09 through 9/26/09. Authorized
10/27/09

This Subpoena is issued pursuant to the authority of the CITIZEN POLICE REVIEW BOARD at Title Six, Article VI of the Pittsburgh Code as authorized by Sections 228-230 of the Home Rule Charter of the City of Pittsburgh and in accord with the Rules and Operating Procedures of the CITIZEN POLICE REVIEW BOARD.

TO: Nathan E. Harper, Chief of Police
Pittsburgh Bureau of Police, 1203 Western Avenue, Pittsburgh A 15233

You are hereby directed to deliver the following to the CITIZEN POLICE REVIEW BOARD at 816 Fifth Avenue, Suite 400, Pittsburgh PA 15219 no later than **5:00 p.m. on 12/16/09**:

Documents and information related to policies, procedures, planning, training, supervision, deployment, outcomes and related influences and factors affecting police/civilian encounters during the G-20 period of 9/19/09 through 9/26/09 as detailed in the attached Exhibits:

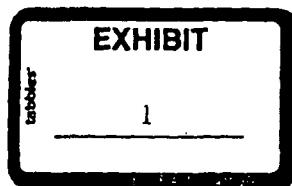
Exhibit A: List of specific reports related to 29 specified incidents originally directed to Ms. Kathy Kraus (Manager, Office of Municipal Investigations) in a request dated 11/5/09.

Exhibit B: "G-20 Related Document and Information Request of the Pittsburgh Bureau of Police" originally submitted to the attention of Dep. Chief Paul Donaldson in a request dated 11/9/09.

This subpoena shall remain in effect until the issuing authority releases you. Failure to comply with this subpoena may result in the CPRB petitioning the Court of Common Pleas for enforcement of it and may subject you to contempt of court charges.

Issued on December 1, 2009 by

Marsha V. Hinton, Chair



ATTACHMENT 1

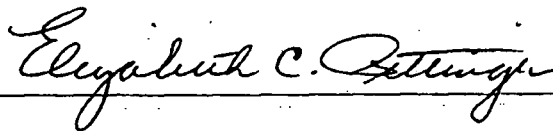
EXHIBIT A

To: Kathy Kraus
From: Beth Pittinger
Date: 11/5/09
Subject: Document Request G-20 Related Incidents

The CPRB authorized an inquiry into the policies, procedures and circumstances of police/citizen encounters during the G-20 period. Accordingly, I am requesting copies of the following reports and ask that they be forwarded at your earliest convenience but no later than Wednesday, 11/25/09.

If you have any questions, please call me, 412-765-8023.

Thank you.



11/05/09

The CPRB Requests copies of the following
Incident, Arrest, Investigative Reports and Subject Resistance Reports related to G-20:

Incident #		Incident #	
09-227084		09-228115	
09-227109		09-228126	Arrest report rec'd - need 3.0
09-227134		09-228127	
09-227149		09-228164	
09-227209		09-228204	
09-227219		09-228260	
09-227280		09-228296	
09-227315		09-228297	
09-227353		09-228299	
09-227420		09-228300	
09-227424		09-228344	
09-227465		09-228347	
09-227483		09-228379	
09-227511		09-228380	
09-227649	Arrest report rec'd - need 3.0		

EXHIBIT B

G-20 Related Document and Information Request of the Pittsburgh Bureau of Police

The **CITIZEN POLICE REVIEW BOARD** has authorized a formal inquiry into the policies and procedures guiding law enforcement and security measures before, during, and after the September 2009 meeting of the G-20 in Pittsburgh.

Accordingly, as executive director of the **CITIZEN POLICE REVIEW BOARD**, I am requesting that the following documents and information be provided to me by the Pittsburgh Bureau of Police no later than Wednesday, December 2, 2009.

1. A master roster of all police officers serving under Pittsburgh command ~~during the G-20 period of 9/19/09 through 9/26/09 with the following details~~
(*electronic form preferred to allow convenience of grouping to assignments*).
 - a. Full Name of the officer
 - b. G-20 ID number
 - c. Original jurisdiction of employment and ID number within original jurisdiction
 - d. Assigned G-20 shift/detail/unit
 - e. Period of official service in Pittsburgh
2. Roster of all officers authorized to carry less lethal weapons during the G-20 operation:
 - a. Please include the pre-requisite criteria necessary to receive authorization
 - b. Full Name of each officer
 - c. G-20 ID number
 - d. Original jurisdiction of employment and ID number within jurisdiction
 - e. Assigned G-20 shift/detail/unit
3. The chain of command by operational duty assignment, detail, and sector (if distinguished from assigned detail).
 - a. Please identify and include each operational division.
 - b. Please identify by name, rank, and G-20 ID number, the individual supervisors of each division, unit, and detail.

- c. Please identify by name, rank, and G-20 ID numbers, the designated chain of command with the authority:
 - i. To declare an unlawful assembly
 - ii. To authorize an emergency police response
 - iii. To order mass arrests and use of force.

4. G-20 related police training records:

- a. Subject matter of each session
- b. Identify each instructor by name, agency affiliation, and instructional topic.
- c. Length of each topical session (please distinguish classroom and field training sessions)
- d. Objectives of the training session
- e. Roster of attending officers
 - i. Full Name
 - ii. G-20 ID number
 - iii. Original jurisdiction of employment and ID number within original jurisdiction

5. Summary of injuries reported by officers describing *(no personally identifiable information is sought by this request)*:

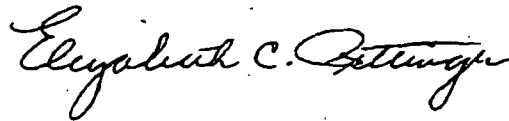
- a. The nature of each reported injury
- b. The severity of each reported injury
- c. The stated cause of each reported injury
- d. Whether emergency treatment was rendered in a hospital emergency department
- e. Please identify mode of transportation provided for each injury requiring emergency treatment (EMS, personal vehicle or police transport)

6. A copy of the orders, authorization, and procedures related to:
 - a. Accountability measures (ID armbands, arrest photos, articulated supervisory measures ordered to assure adherence to accountability measures).
 - b. The use of chemical agents for crowd/riot control
 - c. The use of LRAD for crowd/riot control
 - d. The use of canine for crowd/riot control
 - e. The use of all instruments of force and criteria for their deployment
 - f. The log of authorization for incremental elevations of force deployed
 - g. The operative definition of "unlawful assembly" as applied to G-20.
7. Please provide deployment reports and/or logs related to the Long Range Acoustic Device (LRAD) which include:
 - a. Locations of each LRAD deployment
 - b. Duration of active LRAD warning tone in each deployment
 - c. Decibel setting for the LRAD hailing function
 - d. Decibel setting warning tone for each deployment
8. Inventory of equipment purchased and used:
 - a. Inventory of all new equipment and munitions purchased under the G-20 umbrella (include personal protective equipment, LRADs, vehicles, chemical agents, less lethal munitions, etc.)
 - b. Beginning inventory of all less lethal munitions by type and designated for the operation.
 - c. Ending inventory of all less lethal munitions by type and designated for the operation.
9. A copy of the operational dispersal plan for Oakland that includes:
 - a. Distinctions (if any) for the 9/24/09 and 9/25/09 incidents
 - b. Unit assignments: staging and deployment posts
 - c. Identity of supervisors for each unit

- d. Designated (or intended) routes of egress for dispersing people
 - e. Tactical protocol for the operations
10. A copy of the operational plan for Lawrenceville on 9/24/09 that includes:
- a. Unit assignments: staging and deployment posts
 - b. Identity of supervisors for each unit
 - c. Designated (or intended) routes of egress for dispersing people
 - d. Tactical protocol for the operations
11. A copy of the Emergency Declaration by the Mayor.
12. A copy of all mutual aid agreements and/or contracts executed with any and all visiting agencies providing police officers and/or police support.
13. A copy of the insurance policy covering the City's risks related to G-20 security and law enforcement activities.
14. Complete list of demonstration, assembly, protest and march permit applications with following status per application:
- a. Name of applicant
 - b. Date received by the City and name of person who received the application
 - c. Disposition of Application
 - d. Date of disposition
 - e. Person effecting the disposition of the application
 - f. Litigation outcome of the disposition, if applicable
15. A copy of the officer's handbook that was distributed to visiting officers.
16. Copies of intelligence reports and/or briefings and/or logs related to G-20 security risks or threats conveyed to commanders, supervisors and police officers:
- a. In the four weeks prior to the 9 day G-20 period

-
- b. Immediately prior to the declarations of unlawful assemblies on 9/24 and 9/25.
17. Copies of all arrest and related investigative reports related to G-20 operations filed during the 9 day G-20 period.
18. Copies of all Subject Resistance/Use of Force reports filed by venue and/or individual arrests of record:
- a. Please include projectile discharge reports for all projectiles fired
 - b. Please include deployment reports for OC vapor and smoke grenades
 - c. If the Subject Resistance report does not include documentation of medical clearance for those affected by gas or smoke or hit by baton rounds please include the investigative report documenting same.
19. Please provide a copy of any internal review reports on G-20 operations, including the report presented to the National Policing Improvement Agency in the UK.

Submitted by:



Elizabeth C. Pittinger
Executive Director CPRB