



To: Administrator Carol Mitten, Assistant City Attorney Michelle Brooks

From: Benjamin E. Gehrt

Date: October 30, 2020

Re: "Personal Knowledge" Requirement for CPRB Complaints

In response to your inquiry, below is my opinion on whether under its current ordinance the CPRB can accept complaints that are not based upon personal knowledge, for example a complaint based upon a third-party's viewing of a video surveillance evidence. I have also addressed whether there is anything precluding the Council from amending its CPRB ordinance to allow for the filing of complaints that are not based upon personal knowledge of an event if the CPRB were to request such an amendment. For the reasons discussed below, it is my opinion that the CPRB cannot accept a complaint that is not based upon personal knowledge of an event.

I. The City Code Requires Personal Knowledge For A Complaint, And A Video Is Not Considered Personal Knowledge

Section 19-28(d) of the City Code specifically requires that all complaints filed with the CPRB "shall be based upon a **first-hand account** either by the person involved in the incident or a witness to the incident..." In furtherance of this section of the City Code, the CPRB's complaint form specifically advises that "to file this complaint, you need to have been physically present when and where the alleged misconduct occurred."

This requirement is similar to the requirements of both the Federal and Illinois Rules of Evidence. The Rules of Evidence require that evidence can only be introduced if the testifying "witness has personal knowledge of the matter." *See* Fed. R. Evid. 602; Ill. R. Evid. 602. Under this rule of evidence, Illinois courts have held that witnesses may not testify about events shown in videos unless the witness has independent, firsthand knowledge of the events shown in the video. *E.g.*, *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 37, 50 (2012) (conviction reversed where witness offered testimony based on video).

There are numerous, well-founded reasons to disallow complaints that are based solely on videotape evidence. *See, e.g.*, 10 Limitations of Body Cams You Need to Know for Your Protection, Force Science Institute (Oct. 1, 2014), attached. Some of these limitations include:

- Videotape is a 2-dimensional image taken from only one perspective, and often is not the same as what the officers' see during their response. Because videos are 2-dimensional, depth perception is difficult and can be altered based on the type of camera lens used.
- Videotape accounts only for the sense of vision and *sometimes* has sound that may or may not be helpful. Even when audio is available, the range of the microphone is usually very limited and does not accurately capture what the human ear can hear. Officers need to rely on all of their senses during a critical incident.
- Videotapes can easily be edited and manipulated to tell a particular narrative.

For all of these reasons and many others, merely watching a videotape does not constitute “first-hand knowledge,” and complaints based on watching videotapes should not be accepted.

As was previously discussed at the City Council meeting on September 28, 2020, there is also a sound underlying policy reason why the City may not want to allow second-hand complaints based on videotape evidence. It would open the door to the CPRB to be inundated with complaints from persons with no involvement in the event, when the people who were actually involved in the incident either have no concerns whatsoever with the behavior of the officers involved in the incident or who may very well want to leave that incident in their past and not have the matter brought into a public forum.

II. The Collective Bargaining Agreement Requires All Complaints To Be Based On First Hand Knowledge

Notwithstanding the limitations above, it would be fair to observe that the Council has the power to amend its City Code to remove the personal knowledge requirement. However, that amendment would run into a second set of obstacles: the collective bargaining agreement and the requirements of the Illinois Public Labor Relations Act.

Section 15 of the Illinois Public Labor Relations Act provides, “...any collective bargaining contract between a public employer and a labor organization executive pursuant to this Act shall supersede any contrary ... ordinances ... adopted by the public employer or its agents.” 5 ILCS 315/15(b).

The collective bargaining agreement between the City and the FOP specifically includes the personal knowledge requirement for CPRB complaints: “Complaints against an officer must be signed and sworn by a person with personal knowledge of the incident....” Because of Section 15 of the Labor Act and this contract language, even if the City Council amended the City Code, the CPRB would still be required to apply the first-hand knowledge requirement.

I hope this opinion is helpful to the City while it grapples with the challenging issues of social justice and police reform. Please let me know if I can be of further assistance.