

## **Rose Case Policy & Procedure Review**

### **Purpose of this Review**

Patrick Rose was a Boston Police Officer who, in June 1995, was charged in West Roxbury District Court with indecent assault & battery on a child under fourteen. The criminal charges against Rose were dismissed by the Court in 1996. In June 1996, however, the Boston Police Department Internal Affairs Division (IAD) sustained allegations against Rose, citing violation of Rule 102, Section 35, Conformance to Laws. Nevertheless, Rose remained on the force for over two decades.

In August 2020, the Suffolk County District Attorney's Office charged Rose with multiple counts of criminal charges; these were new allegations since 1995 and included indecent assault & battery on a child under fourteen. Those charges are currently pending and are not part of this review. This review is solely in response to Mayor Kim Janey's request "to deliver a plan for review and reform of the police department's internal affairs procedures" that allowed Rose to remain a member of the Police Department, even after the sustained finding.

This report reviews what internal affairs policies and procedures were in place during the time of the Rose case. The report further identifies which of those policies and procedures have appropriately been changed since 1995 and recommends additional reforms where needed.

### **Review**

In drafting this review and its recommendations, Attorney Stephanie Everett, the Director of the Office of Police Accountability & Transparency (OPAT), examined a series of existing rules, past investigations and previous reports, in addition to holding several conversations with the Boston Police Department.

Documents reviewed included the *Report on the Police Department Management Review Committee*, January 14, 1992, commonly known as and herein referred to as the *St. Clair Report*. Mayor Raymond L. Flynn commissioned this independent study following a series of deeply concerning incidents that raised both local and national attention regarding the Boston Police Department. These incidents included, among other things, the Carol Stuart murder in 1989 and five deaths involving the Boston Police Department in 1991.

Mayor Flynn requested that the St. Clair Commission "review the basic management and supervision systems and practices of the Department to ensure they are consistent with the standards for a modern urban police Department."

Additional documents reviewed included the Massachusetts State Police Reform Acts of 2020, Chapter 253, “An Act Relative to the Justice, Equity and Accountability in Law Enforcement in the Commonwealth”; the Boston Police Department’s Rules & Procedures; the Boston Police Department’s Internal Affairs Division documents related to this situation; and, the City of Boston’s Office of Labor Relations file related to this situation.

Conversations were conducted with Boston Police Department Officers, including IAD, and members of the Boston Police Department Command Staff.

### **Findings & Recommendations: Overview**

From the research completed, there are three main findings and resulting recommendations. Those are summarized here and detailed below.

In 1995:

- There did not appear to be clear policies and procedures to ensure a thorough and independent response by the Boston Police Department’s IAD upon notice of a complaint.
- The Police Department did not take sufficient steps to discipline or terminate based on the IAD’s sustained finding of misconduct.
- There was no independent oversight of the IAD to identify and address these missteps.

In 2021, several changes have already been implemented or are underway that would address these issues:

- The Boston Police Department’s Bureau of Professional Standards, which includes the Internal Affairs Division, has documented policies to coordinate more timely, thorough and independent investigations.
- The Boston Police Department is drafting a matrix that recommends discipline or termination that should be used by both the IAD and the new Civilian Review Board to ensure a more consistent application of discipline.
- The Office of Police Accountability & Transparency and its Internal Affairs Oversight Panel has been established to provide a review of the IAD’s work.

Even with this progress over the last two decades and, in particular, over the last year, this review recommends continuing to clarify, confirm and advance these changes so that cases such as these never happen again.

### ***Finding #1: Ensuring Thorough, Independent Internal Investigations***

Prior to submitting their final findings, the St. Clair Commission recommended an immediate change to the IAD, after discovering that cases involving criminal charges were not being investigated. The practice of the IAD in 1992 was not to actively investigate complaints against officers facing criminal charges due to a “misinterpretation of the applicable law.”

This misinterpretation caused lengthy delays in Internal Affairs investigations, while criminal charges proceeded through the court system. This delay prevented investigators from being able to interview witnesses who may have moved, could no longer provide accurate accounting of the incident that led to the complaint, or simply did not trust that the investigators were taking the complaint seriously.

As a result, the St. Clair Commission informed the IAD that their practice of not proceeding with their own investigation while criminal charges were pending was misinformed; the St. Clair Commission provided the IAD with case law and guidance on how they should proceed to avoid such delays going forward. (*St. Clair Report*, p. 102)

This guidance by the St. Clair Commission was provided prior to the issuance of their final recommendations. It was the understanding of the St. Clair Commission that this guidance was immediately implemented. It is unclear from the events that followed, at least in the case of Rose, whether that guidance, however, was indeed implemented.

The IAD was first notified about a restraining order issued against Rose on November 10, 1995. The first time, however, that Rose was ordered to report to the IAD was 5 months later in a letter dated April 16, 1996. Rose was then not interviewed until June 4, 1996. This approach resulted in unnecessary delay in taking action. In addition, the completed IAD report relied on the criminal investigation rather than an independent investigation. This approach appears to have been caused, in part, by the lack of clear and consolidated policies for conducting internal affairs investigations.

### **Recommendation #1: Start Investigations Within 48 Hours of Notification**

Since 1995, the Boston Police Department has implemented clear policies and guidelines for internal investigations. In the case of criminal investigations, the Anti-Corruption Unit, within the Bureau of Professional Standards works in collaboration with specialized units, such as the Sexual Assault Unit.

Nevertheless, there is an opportunity to further strengthen policies, particularly for complaints similar to those in the Rose case. It is recommended that the Boston Police

Department's Bureau of Professional Standards shall, upon receiving information from the Court, an officer's supervising officer, or other credible source, that an officer has been charged with violating Massachusetts General Law c. 265, Section 13a-29, as may be amended, prioritize this matter and seek to interview witnesses within 48 hours, where appropriate for the witnesses.

### **Finding #2: Ensuring Appropriate Action from a Sustained Finding**

IAD sustained the finding against Rose for failure of Conformance to the Law. The Boston Police Department had the opportunity to terminate him; it is unclear what, if any, discipline he received. There was, however, never a recommendation that Rose be terminated. In fact, the only recommendation that was found in a review of the Internal Affairs files was "try to settle prior to hearing."

There was no comprehensive, accessible guidance at the time as to what discipline would be appropriate given any findings of the IAD. The lack of clear and concise policies and procedures often led to unbalanced and unchecked disciplinary determinations.

### **Recommendation #2: Make Discipline from Internal Affairs Investigations Visible, Predictable and Just**

One of the recommendations made by the 2020 Police Reform Task Force was for the Boston Police Commissioner to develop and implement a discipline matrix that the Civilian Review Board (CRB) would use for its discipline recommendations. Following a discipline recommendation of the CRB, if the Police Commissioner decides not to implement the discipline recommended by the CRB, they will need to justify that decision in writing. The purpose of this is to ensure that discipline is consistent, transparent and appropriate. This recommendation is codified in Section 12-16.11 of the City ordinance establishing an Office of Police Accountability and Transparency.

It is recommended that this same discipline matrix should also be used for recommendations resulting from IAD investigation. In addition to guidance that will be provided by that matrix, the Boston Police Department is also developing and will promulgate this year new policies involving members of the force accused of sexual assault and domestic violence.

### **Finding #3: Ensuring Oversight of the Internal Affairs Investigations**

Even with the implementation of the first two recommendations, it is important to put an additional check in the process to verify that the appropriate steps are being taken by the IAD.

In 1995, there was not an Office of Police Accountability & Transparency to serve that role. Twenty-six years later, the City of Boston has started that office. This was a recommendation of the 2020 Police Reform Task Force, and it was created through an ordinance and funding in the FY 2022 budget.

**Recommendation #3: Mayor to File Amendment to OPAT Ordinance to Alert OPAT of Criminal Charges Brought Against Officers**

In addition to the oversight provided by the Office of Police Accountability & Transparency, the Civilian Review Board and the Internal Affairs Oversight Panel, an additional step is recommended.

When the IAD receives information from the Court, an officer's supervising officer, or other credible source, that an officer has been charged with violating Massachusetts General Law c. 265, Section 13a-29, as may be amended, notification will be sent to the POST Commission and to the Office of Police Accountability & Transparency for the offense and the initiation of an investigation.

**Conclusion**

In 1992, the St. Clair Commission recommended a series of reforms that, had they been implemented, may have prevented Rose from remaining on the force for over two decades after the IAD sustained a finding in his case. In the decades that followed, some of those recommendations were implemented; others were included in the 2020 Boston Police Reform Task Force's Recommendations to the Mayor and now are being implemented.

While there are vast differences between where we are as a City and as a Department between 1995 and now, some things, unfortunately, have remained slow to change. The review of the policies and procedures used during the time of the Rose case underscore the urgency of implementing the 2020 Task Force recommendations and establishing OPAT and its public boards. Because many of the St. Clair Commission's recommendations years ago were not implemented, and because sound judgement was seemingly not exercised in this case then, we must now accelerate needed reforms so that this never happens again.