

Milwaukee Police Department

Executive Overview of July 20, 2020 Milwaukee Fire & Police Commission Directives

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KEY TAKEAWAYS

- *MPD created this document to provide an accurate and thorough analysis of the directives, including the legal authority to issue them, a response to each of the “Whereas clauses,” the challenges in complying with them and the legal issues surrounding them.*
- *Unlike the 2017 directive involving the pursuit policy, which features 1 directive (with sub-parts) and 45-50 days to comply, the 2020 directives feature 11 directives (amounting to over 30 components and bullet points) and 7-30 days to comply.*
- *The 2017 directives create a template for how to appropriately institute a directive; whereas, the 2020 directives lack a prerequisite statutory review process, a required collaboration with the Chief and an accurate factual basis to support them.*
- *MPD has redirected its efforts to plan for the upcoming Democratic National Convention and to address violence in the city in order to prioritize timely compliance with the directives.*
- *Every “Whereas clause” is either false, misleading or lacking valuable context.*
- *The directives include a requirement to publicly discuss open civil, criminal and internal investigations, compromising those cases and risking taxpayer money in lost cases and increased settlement demands.*
- *The FPC has declined to grant an extension to the deadline for MPD to comply with all of the directives against the recommendation of the City Attorney’s Office. The City Attorney’s Office has already found one directive to be improper and is in the process of reviewing the balance of them.*
- *The FPC never gave the City Attorney’s Office an opportunity to review the directives before issuing them. MPD has identified over a dozen legal issues, which it has forwarded along for City Attorney review.*
- *MPD has fully complied with every directive issued as of the date of this Executive Overview.*
- *On August 5, 2020, the Fire and Police Commission added the following agenda item for its August 6, 2020 “Regular Session” meeting, “Resolution to vote on the dismissal, demotion, licensing, or discipline of Milwaukee Police Chief Alfonso Morales.”*

PURPOSE OF EXECUTIVE OVERVIEW

A Milwaukee Fire & Police Commission (FPC) directive is an extraordinary use of authority. In the spirit of transparency, the purpose of this Executive Overview is to provide the community context surrounding the directives, a response to the “Whereas clauses,” a discussion of the challenges in complying with the directives, and the legal issues it has identified and provided to the Office of the City Attorney for further review. It does not include a discussion about the directives themselves. As of the date of this Executive Overview, each directive due has been timely submitted to the FPC.

APPOINTMENT OF CHIEF MORALES

On February 15, 2018, then-Captain Alfonso Morales was named by the FPC as the Interim Chief of Police for the Milwaukee Police Department (MPD). On April 5, 2018, Morales was named Chief of Police until January 2020. On December 18, 2019, Chief Morales was reappointed by the FPC to a four year term. As part of the reappointment process, the Board required that Chief Morales participate in a Six Month Review.¹ As of the date of this Executive Overview, the FPC has not scheduled the Six Month Review.

AUTHORITY OF FPC TO ISSUE DIRECTIVES:

- *Before a lawful directive may be issued, there must be a review in a public meeting evidencing the Board’s deliberations.*
- *That meeting must be a collaborative review process including participation from the Chief.*
- *Directives should not be made in a “spontaneous or willy-nilly fashion” without the benefit of supporting evidence.*

The authority of the FPC to issue directives is found in a Wisconsin state statute:

The chiefs shall be responsible for the efficiency and general good conduct of the department under their control. The board may review the efficiency and general good conduct of the departments. A chief shall act as an adviser to the board when the board reviews his or her department. The board may issue written directives to a chief ***based on a review of the chief's department***. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the mayor. (emphasis added)

Wis. Stat. Sec. 62.50(23). According to a City Attorney Opinion, dated February 12, 2001, that directive must be written (**Ex. 1. – February 12, 2001 Legal Opinion**). The opinion goes on to say:

The Board [of Fire and Police Commissioners] ***may not act in an unlawful manner***; thus, any directive that it issues must be lawful. Finally, the directive ***should be reasonable*** in order to minimize any possibility of it being overruled by a reviewing court under the standards applicable to judicial review under these circumstances (emphasis added).

¹ By state law, the FPC must conduct an annual review of both MPD and the Milwaukee Fire Department (MFD). Wis. Stat. Sec. 62.50(1m). Whether the FPC intends for the Six Month Review to be the annual review, or *in addition* to the annual review, is unknown.

The opinion also discusses at length the procedural requisites for lawful directives, namely that every directive must be the byproduct of a review of MPD by the FPC:

The evident intent of that provision is to mandate that ***any such directive be the product of reasoned, thoughtful deliberation on the part of the Board, following consultation with the Chief of Police, and (conversely) to preclude issuance of directives in a spontaneous or willy-nilly fashion without the benefit of supporting evidence.*** It is for this reason that a directive must be “based upon a review of the chief’s department.” The requirement that the Chief be consulted throughout this review process is embodied in the portion of sec. 62.50(23), Wis. Stats. which states that: “A chief shall act as an adviser to the board when the board reviews his or her department.” Clearly, the statute envisions ***a collaborative review process, including the participation of both the Board and the Chief of Police, as opposed to one in which the Board would act independently of the Chief.*** Furthermore, given the quasi-legislative nature of the Board’s power to issue directives under that statute, “a (legislative-type) hearing and a record sufficient for judicial review to determine whether the exercise of the power was capricious or arbitrary is fundamental.” Such a hearing and record may best be developed in the course of the Board’s public meeting(s); a trial-type hearing incorporating the right to cross-examine or to require testimony to be given under oath is not necessarily required. (citations omitted) (emphasis added).

The opinion also notes that in order for the directives to be lawfully constructed there must be a meeting consistent with the Open Meetings Law:

The type of directive contemplated by sec. 62.50(23), Wis. Stats. would require a convening of the Board under conditions that satisfy both of these preconditions; thus, ***the Open Meetings Law would be triggered.*** Such directives constitute the conduct of serious governmental business and would, in all likelihood, comprise substantial matters of public policy.

After noting that certain directives might be considered in an executive session, the opinion goes on to state:

We caution and reiterate that, in any event and irrespective of whether an open or closed session is utilized, ***a sufficient record of the Board’s deliberations as to any such directive must be developed and recorded*** in anticipation of potential judicial review. (emphasis added)

By statute, the FPC “shall conduct at least once each year a policy review of all aspects of the operations of the police and fire departments of the city.” Wis. Stat. Sec. 62.50(1m). According to the opinion, that annual review could constitute the statutorily required prerequisite review for issuance of a directive.

MPD is not aware of any legal opinion or case law that contradicts any of the advice or findings in the aforementioned opinion.

OVERVIEW OF 2017 FPC DIRECTIVE

- *The last time the FPC issued a directive, it only issued one directive (regarding the pursuit policy, with several components) and gave an initial deadline ranging from 14 to 56 days.*
- *The Board unanimously granted MPD its extension request to 45-50 days.*
- *That directive was based on a presentation, a public committee including former Chief Flynn and data related to pursuits.*

For context, it is important to note that the FPC last issued a directive in 2017. That directive involved one issue, was based on a review of that issue and the FPC not only allowed at least 14 days to comply but the FPC granted an extension beyond that initial deadline. On July 13, 2017 former MPD Chief Edward Flynn was presented with that directive, with several components, related to MPD's pursuit policy. (**Ex. 2 - 2017 Directive**). Chief Flynn was provided deadlines between July 27, 2017 (14 days) and September 7, 2017 (56 days) days to comply. On July 25, 2017, Chief Flynn requested a 30-day extension for both deadlines. The FPC unanimously agreed to give an extension until August 27, 2017 (45 days) and September 1, 2017 (50 days), respectfully.

The 2017 directive includes "Whereas clauses" that detail a May 18, 2017 presentation involving pursuits, a June 7, 2017 FPC committee hearing involving that issue (including comments from Chief Flynn, who declined to change the pursuit policy) and data related to pursuits.

OVERVIEW OF JULY 20, 2020 DIRECTIVES

- *There are 11 unique "directives," with over thirty cumulative components or bullet points and deadlines ranging from 7-30 days.*
- *The City Attorney's Office was not provided an opportunity to review the directives before their release.*
- *The City Attorney's Office has recommended that the timeline for all of MPD's responses be extended so it can review the legality of the directives in their entirety; the FPC has declined to follow the city's recommendation.*
- *FPC has granted one extension after the City Attorney's Office found the ACLU-related directive in violation of the settlement agreement.*

On June 30, 2020, July 8, 2020 and July 16, 2020, the FPC met in an Executive Session (i.e. closed session) under the notice of, "Communication regarding performance evaluation data for Chief Morales' six month review." Chief Morales only participated in one of those Executive Sessions (July 16, 2020) and there was no discussion about the underlying directives discussed below other than a reference that there were pending directives. When MPD inquired whether the July 16, 2020 meeting was the Chief's review or another meeting, Executive Director Griselda Aldrete **failed to give a responsive reply after five requests**. Ultimately, one hour before the meeting Chairman Steven DeVougas acknowledged it was not the Chief's review, stating, "It is a meeting. We want to update him on where we are regarding his review." As of the date of this Executive Overview, neither the statutorily required annual "policy review" nor the Six Month Review has occurred or been scheduled.

On July 20, 2020, Milwaukee Chief of Police Alfonso Morales was served eleven (11) directives. Within those directives are several subsections, amounting to over thirty cumulative components or bullet points. The deadlines to comply with each of these directives range from seven (7) to thirty (30) days. There was never any discussion by the Commissioners or opportunity for clarification. The vote

was unanimous, 6-0 (Commissioner McKenzie was not present). The entire meeting occurred in under 20 minutes.

When Chief Morales requested a copy of the written directives the next morning², ED Aldrete stated, “As explained last night, the document must be signed by all commissioners before it is delivered to you. Since most Commissioners were virtual, I will have to wait until the document is signed before distributing a copy to you.” The Milwaukee Police Department finally received it at 3:41 p.m. on July 21, 2020. Notably, **only ED Aldrete and Chairman Steven DeVougas signed the copy.**³

An attorney for Chief Morales made multiple requests for an extension of time to comply with the directives. On July 23, 2020, via email ED Aldrete responded, in part:

This will acknowledge receipt of your July 21, 2020 communications to the Fire and Police Commission requesting an extension of time to August 28, 2020 on all deadlines in the directives. ***This will require Board action and take some time to arrange.*** We will provide a response as soon as possible; however, it would be helpful if the Chief were to identify the particular directives that require more time.

The Commissioners may agree to particular requests based on the actual need expressed concerning that particular directive. As it stands, the only question is whether to grant a wholesale extension, a proposition less likely to be considered reasonable without more explanation. (emphasis added)

Ultimately, without any timely extension being deliberated by the FPC, it became a wasted effort to seek an extension while deadlines were fast approaching or had already passed. Consequently, other pressing business was set aside and staff were taken offline from their regular duties, including DNC planning, to comply with the directives.

Because the FPC declined to give a “wholesale extension” or even schedule a hearing to discuss it, MPD was left with myriad unanswered questions about the directives and little time to respond. Accordingly, MPD requested the following legal opinion to the Office of the City Attorney:

Please confirm whether it is the Office of the City Attorney’s legal opinion that the directives issued by the Fire and Police Commission, at the July 20, 2020 meeting, are legal and enforceable in their entirety.

In a correspondence dated July 30, 2020, Deputy City Attorney Miriam Horwitz emailed ED Aldrete about MPD’s request for a legal opinion and their recommendation to grant an extension, stating:

The Chief has requested a legal opinion on the legality and enforceability of the directives. Mr. Spencer referred it to me on Tuesday and I assigned it to Ms. Christopoulos yesterday. On a

² Directives must be in writing per state law. Wis. Stat. Sec. 62.50(23) (“The board may issue written directives to a chief based on a review of the chief’s department.”).

³ The directives were added to the Legistar page for File #FPC20230. Only five files have been added to the Legistar page. The first three were initially posted for the July 20, 2020 meeting, which feature statements criticizing MPD. The fourth file was a joint press release by certain Common Council members criticizing Chief Morales. The fifth is the directives. MPD is aware of many letters submitted to the FPC in support of Chief Morales and MPD; however, none are uploaded. Similarly, two other Common Council press releases were released around the time the joint press releases. One was neutral and one was in support of Chief Morales. For an unexplained reason, the FPC elected to only include the negative press release. It is MPD’s understanding that ED Aldrete decides which documents are uploaded.

preliminary review, we do see questions regarding the legality of the MPD providing open investigative information and reports to a public forum. There may be additional legal questions we have not yet had time to explore, particularly because we were not provided an opportunity to meet and discuss the legality of the directives before they were issued. Rather, we had a limited time to provide comments. ***As you know, I specifically advised that we were not able to provide more analysis without an opportunity for discussion; however, the FPC issued the directives without further discussion with me or Ms. Christopoulos.*** The FPC asked for “comment” prior to issuing the directives, whereas Chief Morales has now requested a formal legal opinion.

We are not able to provide the formal legal opinion to the Chief within the timeline of the directives themselves. Therefore, in order to discharge the City Attorney’s duty to provide legal opinions when requested, regardless of the identity of the particular city commission or department, ***I strongly advise that the timeline for the Chief’s response to the directives be extended.*** As we would need at least an additional two weeks for review, research and writing, and given that the DNC is set for the week of August 17, it would be reasonable to extend the directive time lines to August 31, with the expectation that the CA opinion will be completed by August 18. (emphasis added)

That evening ED Aldrete responded:

Thanks Miriam for your recommendation. The Board of the Fire and Police Commission will take your advisement into consideration.

As you know, the Executive Director does not have a say in this matter, as this is a Commission board decision; as such, they have the ultimate decision in this matter.

All commissioners have been bcc on this communication.

As of the date of this Executive Overview, only one Commissioner has responded, who recommended against the City Attorney’s opinion for an extension.

However, on August 1, 2020, ED Aldrete wrote a letter to Chief Morales regarding Directive #1h. (update regarding ACLU settlement), concluding:

Knowing this, Directive #1 (H) to give the Board of the Fire and Police Commission a full update on the Milwaukee Police Department’s compliance efforts will now be due on Thursday, October 1, 2020.

The due date extension applies for this directive ONLY.

(Ex. 3 - August 1, 2020 letter from ED Aldrete regarding Directive #1h.) This extension was provided *without* an open meeting to discuss.⁴ Further, this extension *contradicts* ED Aldrete's previous assertion regarding that the July 21, 2020 extension could not be decided because "[t]his will require Board action and take some time to arrange."

On August 3, 2020, MPD was provided with a legal opinion from the City Attorney's Office to the Mayor dated July 28, 2020, finding in part:

We believe that the directive to the Chief of Police to share any MPD response to consultant Crime and Justice Institute ("CJI")'s draft Second Annual Report by August 4, 2020 is in violation of the Settlement Agreement and Court Order and fails to honor the intent of certain terms agreed to by the parties.

(Ex. 4 – Legal opinion regarding ACLU directive) It concludes by advising that the Mayor may want to exercise his "veto" authority (i.e. "override") of the directive:

Given the fact that responding to this directive could have a negative impact on ongoing efforts with the ACLU and could have significant risk costing the taxpayers millions of dollars and unnecessarily expend MPD resources, you may wish to exercise your discretion to override this particular FPC directive to the Chief of Police.

ED Aldrete's August 1, 2020 letter makes no reference to the above legal opinion.

Ultimately, MPD will continue to comply with the directives despite the FPC declining to adopt the City Attorney's recommendation to allow for an extension (aside from the ACLU directive) so it can provide a thorough analysis of the legal issues in the directives. It is notable that MPD's compliance with the directives may be found to violate the law and subject the city to civil liability.

On August 5, 2020, the Fire and Police Commission added the following agenda item for its August 6, 2020 "Regular Session" meeting, "Resolution to vote on the dismissal, demotion, licensing, or discipline of Milwaukee Police Chief Alfonso Morales."⁵

⁴ Either there was a full meeting (with a quorum) in violation of the Open Meetings Law, there was an exchange of dialogue that constituted a "walking quorum" (also in violation of the Open Meetings Law), or ED Aldrete inaccurately stated that the Commissioners rendered this decision.

⁵ It is unclear what "dismissal, demotion, licensing or discipline" is referring to. Pursuant to Wis. Stat. Sec. 62.50(17)(b), the Chief may be "suspended, reduced in rank, suspended and reduced in rank, or discharged by the board." The terms "demotion" and "licensing" in this context are not found in relevant state law or FPC rules.

SUMMARY OF DIRECTIVES TIMELINE

The deadlines for the directives are highlighted below:

- **Effective Immediately:**
 - Directive #9: Attendance of the Chief
 - Directive #10: Open communication
- **Seven Days (July 27, 2020):**
 - Directive #1b.: Audit related to “police interaction with Kareem McKinley in 2018”
 - Directive #1c.: Audit related to “September 8, 2019 shooting of Tari Davis”
 - Directive #1d.: Audit related to “June 29, 2020 arrest of Vaun Mayes”
 - Directive #7: Responsiveness
- **Nine Days (July 28, 2020, for items to be heard at the July 30, 2020 FPC Policies and Standards Committee)**
 - Directive #2: Community Oriented Policing policy
 - Note: Directive #2 has a stated deadline of July 30, 2020. However, in a separate correspondence ED Aldrete required a July 28, 2020 deadline to submit the policy.
 - Directive #4: COVID-19 Compliance, mitigation plan and updates
 - Directive #8: Open records
- **Fifteen Days (August 4, 2020):**
 - Directive #1e.: Audit of SOP regarding “safeguarding of evidence related to sensitive crimes, as well as the privacy of complainants and potential suspects”
 - Directive #1f.: Public “explanation of the use of tear gas and large volumes of oleoresin capsicum spray during peaceful civil disturbances”
 - Directive #1g.: Explanation of “decision to terminate seven (7) PSSI employees in February of 2019”
 - Directive #1h.: Update regarding MPD’s “compliance efforts and status as it relates to the ACLU Settlement Agreement mandate”
 - Note: This directive was extended to October 1, 2020.
 - Directive #5: Re-Appointment Contingency Update
 - Six month evaluation reports:
 - MPD statistics on crime data and arrest data;
 - How MPD is integrating community policing into their policies;
 - MPD’s pursuit policy and how they use technology to avoid the complaints that were voiced in the meeting;
 - Reckless driving efforts that the MPD has in place;
 - 9-1-1 Center and the stats related to turnover and response rates;
 - CAD/technology updates;
 - Officer deployment initiatives regarding dispatching, prevention and Differential Police Response;
 - Keep the board updated on retirements and the plan to replace staff;
 - Address issues with policies that have been implemented and report if they are working, not working and why they are not working;
 - Management of overtime by the Milwaukee Police Department
 - The Chief of Police is also being asked to do the following:
 - Work with the Commissioners as they are an oversight board;

- Be accessible to the Commissioners through an open door policy;
 - Work with the community to include supporters and opponents;
 - Be transparent while working with the board
- Directive #6: Promotional process
- **Seventeen Days (August 6, 2020):**
 - Directive #3: Discipline Matrix
 - Directive #11: Immediate status briefing
- **Thirty Days (August 19, 2020):**
 - Directive #1a.: Audit related to “Sterling Brown arrest incident” (January 26, 2018)

RESPONSES TO “WHEREAS CLAUSES”

- *“Whereas clauses” are the legal predicate for issuing a directive.*
- *MPD provides a response to demonstrate that every “Whereas clause” is either false, misleading or lacking valuable context.*
- *The FPC includes incidents that are unrelated to the directives, incomplete allegations, and bald assertions without any supporting evidence.*

A “Whereas clause” creates the foundation for a directive. It should highlight the statutorily required review process of the directive(s) ordered in that document. *See Wis. Stat. sec. 62.50(23).* This is what occurred with the directive issued to Chief Flynn involving the pursuit policy. It created a thorough and accurate predicate for the July 13, 2017 directive.

Here, there are sweeping statements about undocumented “requests from both the citizenry, and their elected representatives.” There is no mention of any public review, let alone a public review involving a “collaborative review process” with Chief Morales. Instead, the “Whereas clauses” attempt to paint a picture that MPD has been non-compliant or outright insubordinate with the FPC; therefore, apparently rendering the FPC unlimited authority to demand any information with penalty of discharge. It even includes items that are not even included in the directives (e.g., Mel Johnson investigation, vacation policy for Captains, promotion process for acting Detective). As discussed in a footnote above, the FPC only included selected negative comments about MPD on the Legistar file.⁶ None of the files involve anything related to actual directives.

Ultimately, MPD contests the accuracy of each of the “Whereas clauses” for the July 20, 2020 directives. Naturally, the legality of the directives hinges, in part, on the legitimacy of those directives. MPD believes it is important to provide context by responding point-by-point to the clause alleging that MPD was either delaying or ignoring the Board’s requests:

WHEREAS, the Chief’s responses to the requests from the Board of Fire and Police Commissioners have been unduly delayed or outright ignored. Examples of this include:

As an initial matter, MPD is not aware of a single request that has been “outright ignored.” There are no examples provided in the directives, and MPD could not find any correspondence that substantiates that statement. MPD categorically denies that accusation in its entirety.

⁶ In fact, two of the three “citizen” letters involve the PO Mattioli investigation, even though that investigation is not even one of the directives. If they are included to demonstrate MPD’s alleged “lack of cooperation,” it is MPD’s position that it has not only fully complied with the FPC’s demand to take over that investigation, but it has repeatedly made its members available for interviews despite multiple no-shows and late arrivals from ED Aldrete and her staff. To date, many of these members have never been interviewed.

There are six bullet pointed “Examples.” MPD respectfully disagrees with the findings (or suggestions) in each of the “Whereas clauses.” They are addressed in turn:

1. *Lack of cooperation in providing 911 call wait times*

MPD denies the accuracy of this “Example” in its entirety. To the contrary, as it stated in a May 27, 2020 letter to the Common Council⁷, it is MPD’s position that ED Aldrete misrepresented MPD’s cooperation in a May 21, 2020 memo she wrote to the Common Council regarding 911 data. **(Ex. 5 – May 27, 2020 letter to Common Council)**. On page 2 of ED Aldrete’s memo to the Common Council, she wrote, “Unfortunately, we did not receive the data for MPD for the months of January and February in time to include with this quarterly report.” As an initial matter, the statement is patently false. ***The data MPD provided for January and February (as well as March) 2020 was, in fact, included in pages 3 and 4 the report. (Ex. 6 - 911 memo from ED Aldrete).***

In addition, the statement suggests that Chief Morales, and his staff, was uncooperative or unresponsive to the FPC. This is also untrue. MPD attempted to clarify the data request when it was initially made, provided data it believed was responsive within four days of the initial request and even had to resend that data after ED Aldrete emailed that she was behind on sending the update and would submit it without the MPD data (that was, in fact, sent over three weeks beforehand). When ED Aldrete asked for additional data, MPD provided that data 44 minutes later (and eight days before she submitted the update to the Common Council).

The various email correspondences related to this issue are summarized below:

- April 14, 2020 (1:58 pm): ED Aldrete requests, “I’m requesting if you can send me your 911 reports which indicate number of calls and wait times. I would like to request if this can be sent to me on a monthly basis. I want to gather the data to ensure that I can provide the Common Council with my quarterly report re: 911 call wait time and activities, trainings and initiatives to reduce wait times per the footnote introduced in this budget. In this case, its due at the end of April. Please let me know if I can expect this information this week.”
- April 14, 2020 (2:58 pm): Assistant Chief Regina Howard responds, “Is there someone from the FPC I could speak to regarding your request? I am unsure from the email what your request entails.”
- April 14, 2020 (3:01 pm): ED Aldrete responds, in part, “Me. I just need whatever reports you have or get re: 911 volume and wait times. This is for the FPC to be able to report for both Fire and Police on this.”
- April 14, 2020 (3:16 pm): Assistant Chief Howard provides reports through January 2020.
- April 16, 2020 (8:11 am): ED Aldrete asks, “When do you anticipate receiving the February and March data? “
- April 20, 2020 (2:16 pm): Assistant Chief Howard provides updated report with February and March 2020 data.
- April 20, 2020 (2:43 pm): ED Aldrete responds, “Thank you very much.”
- May 12, 2020 (9:47 pm): ED Aldrete emails Assistant Chief Howard, “I’m still in need of the monthly summary reports for January and February. I want to know how to best request this information as now I’m behind on sending my 911 updates to the Common Council as I wait for

⁷ ED Aldrete was cc’d on this letter.

this data from MPD. Can you let me know when and if I can receive this information? If not, I will have to send my update without MPD data for the months referenced above.”

- May 13, 2020 (1:48 pm): Assistant Chief Howard responds, “Your request for data was sent on April 16th and I responded on April 20th. I will have someone from my staff resend the original email.”
- May 13, 2020 (1:55 pm): Police Officer Monique Anderson resends the April 20, 2020 email with February and March 2020 data.
- May 13, 2020 (2:57 pm): ED Aldrete responds to Assistant Chief Howard, “Thank you very much. Received from Monique.”
- May 13, 2020 (3:22 pm): ED Aldrete writes, “After looking at what you sent me, I still need the January and February reports much like what was sent to me already for March. (see attached).”
- May 13, 2020 (4:06 pm): Assistant Chief Howard sends additional documents.
- May 21, 2020 (6:55 pm): MPD and MFD receive report falsely claiming FPC “did not receive the data for MPD for the months of January and February in time to include with this quarterly report.” The same report includes that data.

2. Lack of cooperation with Mr. Mel Johnson investigation

MPD denies that there was a “lack of cooperation” in its entirety. Mr. Johnson made a six-part records request for information in a letter dated May 1, 2020 without any deadline. The letter was delivered to an officer and then unintentionally misrouted by an administrative assistant as an open records request, which can often have a several month turnaround. It was received by the Open Records Division on May 19, 2020 and immediately expedited as a priority. In a letter dated June 1, 2020, the responsive records were provided to Mr. Johnson from the Open Records Division.

In terms of providing documents to the FPC, it is important to note that the “Whereas clause” fails to note that MPD was facing an extremely volatile time between ED Aldrete’s May 21, 2020 email request and her June 2, 2020 deadline. In an email dated May 21, 2020 (12:42 pm), ED Aldrete wrote:

Dear Chief Morales:

Please see the attached letter as a formal request from Vice Chair, Nelson Soler and myself, on behalf of the Board of Fire and Police Commissioners.

The Fire and Police Commission would like the documents requested in this letter to be hand delivered to my office no later than **Tuesday, June 2, 2020 at 5 p.m.** If you are not able to meet this deadline, I ask that you provide in writing the reasons why this request cannot be fulfilled by the deadline.

For your convenience, I have also attached the original letter request from Mr. Mel Johnson on May 1, 2020.

Should you have questions regarding this request, please do not hesitate to contact me.

Thank you,
Griselda

Beginning on May 29, 2020, Milwaukee experienced several days of well-publicized civil unrest. During that time, MPD had an officer shot, two intentionally hit by a car, had many more officers shot at or have projectiles thrown at them. MPD officers were working 12 hour shifts and the Executive Command Staff, including the Chief, were working much longer days. In short, MPD was addressing a major crisis and its administrative requests were intentionally reprioritized to focus on public safety.

In an email dated June 8, 2020 (4:09 pm), MPD Chief of Staff Nick DeSiato acknowledged the delay and emailed ED Aldrete. He wrote:

Good Afternoon,

As you can imagine, given the recent course of events a number of tasks were reprioritized and pushed back out of necessity. This afternoon we were finally able to complete the request below. Please advise when you are available for someone to hand deliver the documents to your attention. Thank you in advance.

ED Aldrete responded via email on June 8, 2020 (4:53 pm):

Thank you Nick. Would tomorrow after 2 p.m. work?

Thank you,
Griselda

COS DeSiato responded via email on June 8, 2020 (4:57 pm):

Whatever works for your schedule. Let's do 2:30 to be safe.

On June 9, 2020, the documents were served on ED Aldrete. It was not until receiving the directives that MPD was ever notified of any concerns or criticisms for its explanation of why it did not meet ED Aldrete's June 2, 2020 deadline.

It should also be noted that Mr. Johnson explicitly noted that the only individual who was uncooperative was Chairman DeVougas, who refused to be interviewed. According Mr. Johnson's report:

Second, DeVougas has refused to be interviewed in this investigation when MPD officers who are supervised by the FPC, and its chair, were required to cooperate with this investigation and truthfully answer questions. Section B. of General Order 2019-22 covers FPC investigations. Subsection 1 states that in FPC investigations that department members will fully and truthfully respond to all inquiries from the executive director of the FPC or her designee. This investigation involved interviews of various MPD officers. It is fair to note that many of them were not necessarily comfortable with being interviewed about the matters under investigation. ***However, all of them complied with subsection 1 by answering all questions. It is ironic and disingenuous for the chairman of the commission to refuse to do the same in an investigation authorized by his own commission.***

(Mel Johnson report, pgs. 14-15) (emphasis added).

This is also supported by statements Mr. Johnson said publicly, including "The officers we talked to answered the questions and cooperated with the investigation, so it would be pretty ironic and disingenuous for the Chair of the Commission that authorized this investigation to refuse to do the same

thing." He went on to state, "First of all, I contended Mr. DeVougas was untruthful in saying he was there as corporate counsel for a real estate company and not representing Mr. Haywood. Second, I thought it was ironic and disingenuous for him to be the only witness to refuse to be interviewed when it was an investigation authorized by the commission that he's the chairman of."

There was never a "lack of cooperation" from MPD.

3. *Lack of cooperation in providing videos and documents regarding the June 2, 2020 6th and McKinley incident*

MPD again denies that there was a "lack of cooperation." To the contrary, it is MPD's position that it was responsive, timely and complete in fulfilling this request in a reasonable timeframe. In an email dated June 22, 2020 at 8:25 pm, ED Aldrete requested the following information by June 23, 2020 at 5:00 pm. It is important to note, that is less than 22 hours later:

- CAD associated with this event
- Names of ALL MPD officers/personnel, MPD MIRT team and bicycle duty members that were deployed to the site (6th & McKinley).
- Personnel records and incident reports of ALL MPD officers/personnel, MPD MIRT team and bicycle duty members that were deployed to the site (6th & McKinley) which would include actions, use of force incidents, etc. (paper copy)
- ALL body cam recordings and police reports associated with this incident
- If no CAD is available, reasons as to why?
- All recordings and reports from the incident command center for June 2, 2020, specifically surrounding this incident
- Any other pertinent documents in your custody relating to this on-going internal investigation (if one has been started)

As a practical matter, this was an impossible request to fill in the timeframe provided. As noted in the directive, on June 23, 2020 (9:51 am) COS DeSiato gave a courtesy acknowledgement of the email and noted MPD's intentions to prioritize the production of its documents. His correspondence stated, in part, "The requests are very comprehensive and might take several weeks to complete. We would like to provide them to you in tiers so that you have what we can provide when it is completed rather than hold onto requests and send it to you all together. Please advise if this works."

Assistant Chief Regina Howard sent a similar correspondence via email on June 23, 2020 (8:12 am):

Director Aldrete,

The information you requested will be provided. However, the timeline of June 23, at 5pm (today) is not a timeline MPD can meet. In addition, please clarify if you, the FPC, are investigating the citizen complaint. If so, I will advise Internal Affairs to cease all investigatory work.

RMH

It was also unclear to MPD as to the nature of the request. AC Regina Howard sent a follow-up email to clarify the content of the request. At no point did ED Aldrete note that there was a "lack of cooperation." In an email dated June 30, 2020 (4:24 pm), AC Howard wrote:

Director Aldrete,

Please see the above attachments.

I do not understand what you are requesting when asking for actions, use of force incidents and incident reports. Are you requesting incident and use of force reports specifically associated with 6th and McKinley? If you could explain what you mean by actions that would assist me with providing you with the requisite records.

“Personnel records and incident reports of ALL MPD officers/personnel, MPD MIRT team and bicycle duty members that were deployed to the site (6th & McKinley) which would include actions, use of force incidents, etc. (paper copy)”

RMH

ED Aldrete responded via email on July 2, 2020 (10:30 am):

I would like the personnel records of ALL officers and MPD personnel involved in this incident. Can I received these by Tuesday, July 7, 2020 by 5 p.m. in my office?

Thanks,
Griselda

AC Howard responded via email on July 2, 2020 (1:14 pm):

Director Aldrete,

MPD is working on gathering all the personnel records of officers who were assigned to the 6th and McKinley incident as you requested. There were hundreds of officers assigned to the location and it is impossible for me to gather the personnel records by the date you requested. I am happy to send records as we gather them.

The email I sent on the 30th was seeking clarification from you regarding the request for all reports, actions and use of force reports of MPD personnel assigned to 6th and McKinley. Specifically, am I to assume that the only reports you're requesting are reports filed as a result of action taken on 6th and McKinley?

MPD has already submitted the CAD report, the roster of officers, the use of force report, the CP document specifically related to 6th and McKinley and some videos. Since there were over 300 officers, we are checking all body cameras. That takes time to do and we are working on it. MPD will begin sending personnel files next week as they are copied.

RMH

ED Aldrete responded via email on July 2, 2020 (3:33 pm):

AC Howard:

Yes please send the records as you gather them...I'd like for Diana to begin this investigation as this has come up multiple times by the Commission and the Council.

Yes I want all reports, personnel records and use of force incidents for MPD personnel assigned to 6th and McKinley as a result of the action taken.

We will also want all the body camera footage released to my office and Diana can also do her checking of the over 300 officers along with my Compliance Auditor.

I would like to be able to give the FPC Board a timeline of when items can be expected so they do not think my office is not being responsive to this investigation. Please advise.

Thank you,
Griselda

AC Howard responded via email on July, 2, 2020 (3:49 pm):

Director Aldrete,

I will begin delivering personnel files next week. MPD is delivering all video. However, we have already delivered several hours of video, documents and use of force reports. We will deliver the balance of the video as it's downloaded. I cannot give you a firm date as I have limited staff to fill the request.

RMH

On July 14, 2020, MPD completed the request in its entirety.

4. *Email regarding April 30, 2020 closed, executive session*

It is unclear what, if any, allegations are made against MPD related to this "Example." It is correct that ED Aldrete sent an email on April 20, 2020 with the requests stated in the "Whereas clause" (without a deadline). However, two days later she made a formal request for similar information on official FPC letterhead. (**Ex. 7 – April 22, 2020 letter from ED Aldrete**). That letter was slightly different from the April 20, 2020 email.⁸ Notably, the April 22, 2020 letter never referenced "the vacation policy for MPD Captain and above by rank."

The letter provided a deadline of April 27, 2020. The documents responsive to the April 22, 2020 request **were timely and personally served on ED Aldrete at 4:18 pm on April 27, 2020**. MPD is unaware of any comments from the FPC that it failed to comply with this request or that it was delayed.

⁸ The April 20, 2020 email, which MPD deemed to be replaced by the formal April 22, 2020 letter on FPC letterhead, requested: "1) The employee files for the seven PSSI that were fired late last year; 2) The job description for the position of Emergency Communications Manager (ECM) along with the salary that has been made to the candidate put forth to the Commission for approval (Williams); 3) The interview records for the position of ECM. A/C Howard stated at last week's Special FPC meeting on 4/16/2020 that the Department had a lengthy interview process with various candidates. The Commission would like to review all of the records of the individuals interviewed; 4) The vacation policy for MPD Captain and above by rank."

5. COVID-19 plan

It is unclear what, if any allegation, the FPC is making related to this item. There was never a deadline provided in the request. However, MPD does acknowledge it had drafted a response on May 12, 2020, but as an administrative error it was not sent to the FPC until nearly a month later. The letter acknowledges this error:

(The following letter was drafted on May 12, 2020. We do not have a record of the letter being sent to the Fire & Police Commission. This oversight was unintentional.)

It is important to note the directive falsely suggests that ED Aldrete was not provided a copy of the document or that MPD did not provide it until June 18, 2020 (“AC Howard provided MPD’s COVID plan on June 18, 2020 via email to the FPC Commissioners without cc ED Aldrete.”). To the contrary, ED Aldrete provided the document on June 11, 2020 via an email from Chief Morales (1:42 pm):

Good afternoon,

Please see the attached COVID-19 PPE and Testing Letter that was drafted by MPD on 5/12/20. This letter is complete with updates as of today.

Thank you,
Alfonso Morales
Chief of Police

6. Acting Detectives

It is unclear as to the relevance of this subpart of the “Whereas clauses.” For many months, MPD has been working actively and openly with the Department of Employee Relations, the negotiating body for labor issues, and the City Attorney’s Office regarding the use of Acting Detectives. When the City Attorney’s Office opined that FPC should approve a pending MOU, MPD did not object. Since May 2020, DER has been waiting for FPC to schedule this matter.

It is important to note that the role of Acting Detectives is out of necessity due to inaction by the FPC. Every promotion list originally **expired years ago** (Lieutenant Eligible List originally expired on 7/16/17, Sergeant Eligible List originally expired on 5/5/18 and Detective Eligible List originally expired on 12/17/17). MPD had requested a total of 5 extensions on those lists in an effort to maintain adequate supervision as members continue to retire, resign or are promoted out of those positions (e.g., Captain or above). The most recent of those extensions expired last August, meaning there are no currently active eligibility lists. MPD has been actively requesting new promotional lists from the FPC for over two years, as adequate supervision is one of the key recommendations for compliance with the ACLU settlement. As of Pay Period 14, **MPD was short 58 Detectives** due to the expiration of that promotional list.

The final “Whereas clause” before the “Statutory Authority” section states:

WHEREAS, a continued failure to communicate openly with the Board of Fire and Police Commissioners and Executive Director has forced the issuance of mandatory directives in place of requests for voluntary cooperation

It is unclear to MPD to what or to whom the FPC is referring. There is no example provided of when there was a “failure to communicate openly” let alone a “continued failure to communicate openly.” It is MPD’s position that it has consistently “voluntarily cooperated” with FPC requests. MPD denies the truth and validity of this “Whereas clause.”

CHALLENGES WITH 2020 FPC DIRECTIVES

- *In order to comply with the directives under the tight deadlines, many members of MPD had to redirect their other responsibilities, including DNC planning and addressing violent crime.*
- *MPD has serious concerns about how compliance with the directives demanding MPD publicly discuss open civil, criminal and internal investigation will affect those cases, including increased costs to taxpayers for compromised civil cases.*
- *Many of the directives are inaccurate and unclear, making it difficult to comply in good faith.*
- *Compliance with the directives may limit MPD’s ability to solve crimes, find missing persons and protect victims’ rights.*

It has always been, and remains, Chief Morales’ intent to fully comply with the FPC’s directives. However, MPD believes it is important for the public to understand the challenges of complying. In addition to the many legal issues it has flagged for City Attorney review (discussed below), MPD believes there are considerable practical, public safety and victim right’s implications to be publicly addressed. These include:

- **Time constraints:** MPD is unaware of any prior directives from the FPC that are so wide-ranging and voluminous, let alone so many with such tight deadlines. Some of the requests involve investigations that are over 2 years old and contain data housed on prior systems with former employees having the institutional knowledge of that matter. The consequences of failing to fully comply with the directives could result in discharging Chief Morales. In order to comply, the Chief has pulled several members of his Executive Staff offline to prioritize these directives who have, in turn, pulled offline many of their subordinate staff to prioritize these directives. As of the date of this Executive Overview, the FPC has only granted an extension for the ACLU-related directive ***despite the City Attorney’s Office’s recommendation to the contrary***. Ultimately, timely compliance with these directives under the deadlines provided has greatly diverted MPD’s attention from its regular duties.
- **Outstanding crime:** Currently, the City of Milwaukee is facing a homicide rate nearly double that of last year. For example, in the first fifteen days since the July 20, 2020 directives, MPD has responded to ***11 homicides and 65 non-fatal shootings*** in addition to many other ongoing investigations and responsibilities. In addition, MPD responds to over 700 calls for service per day. In order to comply with the directives’ timelines, it has had to redirect efforts related to crime.
- **Democratic National Convention:** In less than two weeks from the date of this Executive Overview, Milwaukee will be hosting the Democratic National Convention.⁹ Rather than allow MPD to focus its efforts towards this nationally covered event, it issued these directives under tight deadlines and potentially inaccurate legal authority. The directives have had a direct consequence on the DNC, including:

⁹ The DNC is scheduled from August 17, 2020 to August 20, 2020.

- *Law enforcement backing out:* As has been publicly reported, **over 100** Wisconsin agencies have pulled out of the DNC, with many citing Directive 1f. as the basis for their withdrawal.
- *Safety of officers:* By issuing a directive that eliminates the use of certain chemical irritants during the DNC, MPD (and other participating agency's) officers are placed at a considerable disadvantage in the event their use is necessitated. If implemented, this directive would have compromised officer safety, as well as the safety of the delegates and other participants of the DNC.
 - **Note:** At the July 30, 2020 Standards and Policies Meeting, and after much public scrutiny, this item was adjourned until September.
- *Redirecting planning:* The directives were issued 28 days before the Democratic National Convention, resulting in numerous MPD members responsible for preparing for the DNC to redirect their efforts in order to timely comply with the directives.
- **Additional requests from the FPC:** Since the July 20, 2020 directives were issued, ED Aldrete has continued to inundate MPD with time sensitive request after time sensitive request. For example, ED Aldrete has demanded that MPD provide numerous responses regarding SOPs (due by July 28, 2020)¹⁰, an update on an investigation (due July 29, 2020), updates regarding promotional tests, updates regarding COVID-19 testing, information regarding Operation Legend, AIM access¹¹ and requested participation in a community event. In addition, the FPC has held several meetings.¹²
- **Safeguarding of confidential information:** The FPC, as it is statutorily authorized to do, has requested files involving open criminal or internal investigations. Each either has an open or high likelihood of pending civil litigation. Many of the incidents have gained local media, political

¹⁰ The FPC scheduled a Polices and Standards Committee hearing for July 30, 2020 to address **six different SOPs** (an unusually large number). Despite promises to provide notes on FPC recommended changes from a meeting in May 2020, ED Aldrete did not provide those notes until July 23, 2020, less than three business days before the noon July 28, 2020 deadline. Given the vagueness of the notes, including some new expectation that MPD was being asked to adopt recommendations from a professor, MPD had many questions as to what was expected. Accordingly, MPD reached out to the Committee Chairman Nelson Soler, who provided a thorough response in an email that night. According to Commissioner Soler, "There was a memo from the UW Professor. I assume FPC staff sent it to you." That night, ED Aldrete stated, "It wasn't sent because the memo was internal to the commissioners up until the meeting on July 2, 2020 when Dr. Hassell presented it to the Commission. Glad you have a copy." It is unclear why ED Aldrete never provided the copy that she had in possession for at least 25 days.

¹¹ ED Aldrete appeared to suggest via email that MPD intentionally shut off her staff's access to the AIM system ("Having this access removed without notice hinders our office's ability to do our work.") and demanded that MPD resolve the issue as a priority ("Please let me know when her access has been restored and let me know of if there is a policy that removes access from AIM due to expiration and what are the steps that should be taken ahead of time to ensure, situations like these are prevented."). Ultimately, the issue was determined to be a technical issue to be addressed by the city's IT department and was not related to any action or inaction by MPD.

¹² The FPC has held four meetings between July 20, 2020 and July 30, 2020. However, it has repeatedly cancelled the monthly "Regular" meetings since April, which would include the items requested from MPD including long-overdue appointments and promotions. It has held over a dozen "Special" and committee meetings during that time period it did not hold a Regular meeting. For example, the FPC has refused to place on the agenda an FPC employee who has been trying to return to MPD since March 19, 2020. Effectively, this employee is stuck working for a department against their wishes and is being prohibited from pursuing a new job opportunity. MPD has communicated its outstanding appointment and promotional requests to Chairman DeVougas (cc'ing ED Aldrete, Commissioner Soler and Mayor Barrett) without any response or explanation. (**Ex. 8 – June 9, 2020 letter to Chairman DeVougas**). In the August 6, 2020 agenda, there are 11 positions for appointment or promotion. The aforementioned FPC employee is not included on this agenda.

and public interest. It is unknown how many (and which) individuals will have access to this information and how (or if) that information will be appropriately safeguarded.¹³

- **Inaccurate directives:**

- Directive #1(f): Requires a “full, public, and accurate explanation of the use of tear gas and large volumes of oleoresin capsicum spray during peaceful civil disturbances.” As an initial matter, a “peaceful civil disturbance” is, by definition, an impossibility.¹⁴ Further, it remains MPD’s position that the use of chemical irritants during the recent civil unrest was predicated on non-peaceful actions, including throwing bottles and rocks at police officers.
- Directive #1(g): Requires a “full explanation and proper documentation of the decision to terminate seven (7) PSSI employees in February 2019.” As has been previously provided to the FPC, there were only five PSSI employees terminated in February 2019. Two others resigned in lieu of termination.
- Directive #5: Requires Chief Morales to “promptly provide a full update of compliance with the terms of re-appointment outlined by a motion approved by the Board of the Fire and Police Commission on December 18th, 2019.” This is inaccurate. As the City Attorney’s Office clearly stated at the December 18, 2020 reappointment hearing for Chief Morales, there cannot be conditions to reappointment. It is either reappointment or not. Ultimately, Chief Morales agreed to the “terms,” and in fact, ***already timely complied with this request.***¹⁵
- Directive #6: Requires a “full explanation of the methodology, process, all candidate information and interview records for vetting and approving candidates for promotion in the ranks of Assistant Chief, Captain, Lieutenant¹⁶ and Emergency Communications Manager positions.” MPD does not control the promotional process for Lieutenant. ***Lieutenant exams are done by the FPC.*** In addition, the Emergency Communications Manager position ***is not a promoted position.*** It is an exempt position open to any applicant.¹⁷

¹³ This concern was exemplified on July 27, 2020, when MPD became aware that the ***unredacted versions of the SOPs*** it had provided to ED Aldrete for the July 30, 2020 Policies and Standards Committee were publicly available online via Legistar. This included the tactical information for Civil Disturbance and Crowd Management (SOP 910) and Use of Force (SOP 453), ***which creates a major significant risk*** that had to be reported to the Secret Service. It was not until MPD reached out to the FPC immediately upon becoming aware of this public access to confidential information that the matter was resolved by the City Clerk’s Office.

¹⁴ According to SOP 910.10(C.), “Civil Disturbance” is defined as: “An unlawful assembly that constitutes a breach of the peace or any assembly of persons where there is potential of imminent danger of collective violence, destruction of property, or other unlawful acts. These are typically, but not always, spontaneous occurrences requiring the emergency mobilization of police forces and related emergency services.” All SOPs are approved by the FPC.

¹⁵ In a letter dated May 30, 2020, ED Aldrete requested the information with a due date of June 12, 2020. (***Ex. 9 – May 30, 2020 letter from ED Aldrete***). It was personally served to ED Aldrete on June 11, 2020.

¹⁶ There is a footnote to include “Administrative Lieutenant.” This position has been filled for nearly two years.

¹⁷ MPD has been repeatedly pleading with the FPC to hire its Emergency Communications Manager selection. This is a ***critical position responsible for overseeing the city’s 911 center***. After proceeding through a public job announcement and a scored interview process (both unnecessary for an exempt position), MPD has been trying to bring on its candidate ***since March 2020***. FPC has repeatedly refused to put the candidate on the agenda, refused to schedule the candidate’s interview and refused to grant an emergency appointment - all without any explanation and at a great detriment to the community. As a result, the 911 center has been without a manager for many months. It is being supervised by a Lieutenant out of necessity. In a letter dated April 27, 2020, MPD

- **Public discussion of sensitive items:** Directives #1b.; #1c.; and #1d. require a “full, open, and public explanation.” Directive #1c. *each involve an open civil litigation and pending internal investigation*. Directive #1d. involves *an open criminal investigation* with charges currently pending by the Milwaukee County District Attorney’s Office. In order to comply with these directives and provide a “full, open, and public explanation,” MPD fears it will go against advice from the City Attorney’s Office and District Attorney’s advice to not publicly discuss open civil and criminal matters, while compromising each of those criminal, civil and/or internal cases, violating its Code of Conduct¹⁸, likely violating due process rights and possibly violating its members’ collective bargaining agreements.
- **Unclear terms:** There are a number of vague references or terms that may lead MPD to unintentionally fail to comply with a directive. There was no opportunity for clarification when the directives were issued on July 20, 2020. For example:
 - What is the difference between a “full, open, and public explanation” (Directive #1b.; #1c.; and #1d.) and a “full, public, and accurate explanation” (Directive #1f.)?
 - How does MPD conduct such public explanations without FPC convening? There is no guidance as to where and how those public explanations should occur if they do not align with FPC committee hearings.¹⁹
 - What does the term “audit” mean for Directives #1a. - #1e.?
 - What does “a future Fire and Police Commission meeting and trial” mean for Directive #1g.?²⁰
 - What does “all related command staff” mean for Directive #7?
 - Directive #5 refers to “Re-Appointment Contingency Update.” The Office of City Attorney made it clear that there cannot be contingencies on reappointment during the Chief’s reappointment hearing. In addition, the FPC has yet to schedule a Six Month Review so it is unclear what dates the data should include. The first six months since reappointment? First six months of 2020? All data from reappointment until the Six Month Review? The data it previously provided?
 - Directive #11 requires the Chief to “immediately provide written updates on MPD compliance with these directives at the next meeting of the Board of Fire and Police Commissioners on August 6, 2020.” How can the Chief provide an “immediate update” but not have it occur until August 6, 2020?
 - Note: This item *was not scheduled* for the August 6, 2020 meeting.
- **Victims’ Rights:** Directive #1d. involves *an open criminal matter*. Multiple families’ homes, including that of a mother who recently gave birth, were destroyed as a result of the actions of individuals related to that incident. MPD believes full compliance with this directive prioritizes a suspect over the victims and greatly compromises the criminal case. Similarly, it is unknown if any of the individuals in Directive #1 gave permission for their cases to be publicly discussed. It is unclear why these matters could not be discussed in a closed-door Executive Session.

provided the promotional process data requested in this directive. (Ex. 10 – April 27, 2020 letter from Chief Morales).

¹⁸ Code of Conduct 3.04 states, “Department members shall treat the official business of the department as confidential, not imparting it to anyone, either orally, electronically or in writing, except those for whom it is intended or under due process of law.”

¹⁹ Without having any guidance or scheduled public meeting, MPD made a good faith effort to comply with Directive #1f. (“full, public, and accurate explanation” of chemical irritants) by posting a video online and providing it to the media.

²⁰ There was reference to a trial at the July 27, 2020 Complaints and Discipline Committee item involving former PSSIs. However, the vote on that resolution occurred *after* the July 20, 2020 directives were issued.

- **Limiting public help in solving crimes:** In order to safeguard “the privacy of complainants and potential suspects,” MPD may need to cease putting out suspect alerts and reaching out to the community for support in identifying dangerous criminals. This would include stopping its successful partnership with CrimeStoppers, which highlights outstanding cases and solicits tips for reward money. It could also apply to state regulated missing persons alerts (Amber, Green and Silver). A significant number of violent criminals are detained and missing persons are found because of these public communications.
- **Increased risk of losing civil lawsuits:** The open or potential civil lawsuits in Directive #1 would be greatly jeopardized by having a “full, open, and public explanation.” This could cost taxpayer money in increased jury awards or settlement demands.
- **Limit productivity of MPD:** By having unlimited directive authority²¹, including no limitations on reasonableness or timelines, **every** request from the Board or Executive Director will be treated with urgency and will place other potentially far more important matters on hold.

LEGAL ISSUES

- *The City Attorney’s Office was not asked to provide a thorough legal review of the directives before the FPC issued them.*
- *MPD identified over a dozen legal issues that it has forwarded to the City Attorney’s Office for review.*
- *By not having a statutorily required review and not having valid “Whereas clauses,” the legality of the entire directive document is at issue.*
- *By requiring MPD to comply with directives that could later be found to be illegal, the city is facing potential liability.*

There are **many** legal issues that MPD has identified in the directives, questioning the legality not only of the individual directives but of the entire package of directives given the lack of an open meeting to discuss the directives and the absence of a “collaborative review process” antecedent of issuing a lawful directive. Further, as discussed above, it is MPD’s position that the “Whereas clauses,” which form the authority to issue the directives, are either inaccurate or lacking valuable context.

On July 24, 2020, Chief Morales requested the City Attorney’s Office to render an opinion on whether the directives are legal and enforceable in their entirety. As of the date of this Executive Overview, the opinion remains outstanding. Nonetheless, it is apparent that the directives must be consistent with all relevant statutes, ordinances and valid collective bargaining agreements. Absent a valid legal opinion, the following considerations are limited to expressing the concerns of the various legal issues MPD has identified and should not be interpreted as a legal conclusion.

It is unclear who wrote the directives, how they were reviewed and what, if any, legal analysis was conducted in reviewing the directives before releasing them. According to a Deputy City Attorney, the City Attorney’s Office was never utilized for such a review. It is not clear if there was any review of the relevant statutes, past legal opinions or even a thorough review of the directives for their own inaccuracies or unintended consequences.

It is important to note, this is not the first time the FPC has incorrectly cited its “directive” authority. On May 19, 2020, ED Aldrete inaccurately alleged that she issued a “directive” regarding the Office Mattioli investigation, stating in part:

²¹ Directive #7, which is discussed further in the “Legal Issues” section below.

“At the request of the Board of Commissioners,²² I have sent correspondence to the Milwaukee Police Department, specifically to Police Chief Morales, informing them to cease all current investigations regarding Officer Mattioli, and that my Office will be taking control of the investigation moving forward. A deadline was given to the Chief to turn over all materials by 5:00 PM today and ***the Board expects compliance with this directive***” says Director Aldrete. (emphasis added)

(Ex. 11 – Media release from ED Aldrete). Clearly, this was not a lawful “directive” pursuant to Wis. Stat. 62.50. There was no written directive, there was no noticed meeting to discuss or issue it and there was no review with the Chief prior to its issuance.

While MPD awaits a formal legal opinion from the Office of the City Attorney it is including the various legal issues that it has identified and conveyed for legal analysis:

- **No Statutorily Required “Review”:** Pursuant to state law, there must be a review of the items before a directive can be issued. This review did not happen.²³ As of the date of this Executive Overview, the Six Month Review ***never occurred***. There was never a noticed meeting to discuss the contents of the directive. There was never a “collaborative review process” on any of the directives. In fact, very few of the issues addressed in the directives *were ever* discussed by the FPC either as noticed items or as commentary. In essence, the prerequisite “collaborative review process” that is statutorily required *before* a directive can be legally issued are, instead, the directives themselves. For example, each of the “audits” found in Directive #1 is an example of a review that should have been heard *before* a directive was issued and not be the directive itself.
- **Open Meeting Violation:** Per the City Attorney’s opinion, there must be “a sufficient record of the Board’s deliberations as to any such directive must be developed and recorded.” Here, there is no record. There was never a noticed meeting to discuss the content of the directives and they were voted on without any discussion or opportunity for feedback. Unless the Board is asserting it had never seen or discussed the contents of the directives until ED Aldrete publicly read them, it is apparent that there were likely violations of the Open Meetings Law in the construction of the directives.²⁴
- **Unlimited Directives:** Wis. Stat. Sec. 62.50(23) dictates the requirements for issuing a directive, including the ability for the Mayor overrule it in writing. According to Directive #7, both Chief Morales “and related command staff” must “comply with ALL requests of the Fire and Police Commission within **seven (7) days of receipt or in accordance with the deadline set by the Executive Director and/or Board of Fire or Police Commissioners.**” (emphasis in original). Like the person who finds a genie lamp and uses his or her third wish for “unlimited wishes,” this directive effectively allows for an infinite amount of directives. This is one of many legal concerns, including:
 - How can the Mayor “veto” any future “request”?

²² This is another example of a potential Open Meetings Law violation. There was no noticed meeting from the Board of Commissioners to discuss this “directive” prior to its issuance.

²³ FPC provided an example of a “review” on July 27, 2020, at its Complaints and Discipline Committee, for its item captioned, “Resolution regarding terminations of Police Services Specialist Investigators from the Milwaukee Police Department in February 2019.” However, the hearing occurred *after* the directives. In fact, this item is substantially similar to Directive 1g., which had a deadline of August 4, 2020. This highlights why it is important to have reviews *prior* to having a directive.

²⁴ Open meeting violations have become a repeated area of concern for MPD. Numerous times, ED Aldrete has directed MPD under the guise of from the “Commissioners,” without there ever being a public meeting to substantiate that claim.

- Where are the statutory reviews for every future request? What about collaboration with the Chief?
- It expands a directive to “all related command staff.” In addition to not defining who is included in “all related command staff,” it expands the authority of the FPC to order a directive to employees other than the Chief in violation of state statute.
- By having a seven day requirement to “comply” *regardless* of the reasonableness of the request, there are no boundaries to the FPC’s authority. This is exasperated by allowing for any timeline, including one less than seven days. This allows the Board or Executive Director to make a request ***for anything with any deadline***, with the consequence of termination if it is not fully and timely complied with.
- By delegating that deadline authority to the Executive Director, the directive authority is expanded beyond the Board in violation of state statute.
- **Violation of Public Records Laws:** By requiring the seven day (or less) compliance deadline in Directive #7 and requiring an amendment to SOP 265 – Open Records, it appears as though the FPC is requesting a change to its open records policy as it applies to the FPC. However, according to state law, members have notice rights that require that certain open record requests may not be disclosed for at least ten days. By complying with the directive, MPD may be in violation of public records laws.
- **Delegating FPC Authority:** Both Directives #7 and #8 require “[a]n amendment will be made to SOP 265 – Open Records at the next Polices and Standards meeting on July 30, 2020 to make this a policy on SOP 265.” MPD can only propose changes. The FPC makes all SOP changes.²⁵
- **Inconsistent Directives:** Directive #1e. requires the Chief to present an SOP “regarding the safeguarding of evidence related to sensitive crimes, as well as the privacy of complainants and potential suspects.” However, Directives #1d. involves an open criminal investigation, in which a “full, open, and public explanation” would necessarily expose the privacy of “complainants and potential suspects.” In order to comply with one directive the Chief would violate another. In addition, this compliance with this directive could violate disclosures required by open records laws, discovery rules, state alerts (i.e. Amber Alerts, Green Alerts, Silver Alerts, etc.), and the ability for the media to access the blotter.
- **Vagueness:** It is unclear what any of the following sub-parts of Directive #5 are intended to mean, what their standard is, what the timeline is and what is a reasonable interpretation:
 - Work with the Commissioners as they are an oversight board;
 - Be accessible to the Commissioners through an open door policy;
 - Work with the community to include supporters and opponents;
 - Be transparent while working with the board
- **Marsy’s Law:** In the April 2020 election, Wisconsin voters approved an amendment to the state constitution (known as “Marsy’s Law”). Marsy’s Law provides additional rights to victims. It is unclear how the discussion of an open criminal matter, involving victims of the criminal trespass to property, complies with Marsy’s Law.
- **Meet and Confer:** By requiring a tight deadline to implement SOPs, MPD is unable to conduct its required “meet and confer” obligations in violation of collective bargaining rights.
- **Unscheduled Meetings:** Directives 1.b-1.d had a July 20, 2020 deadline to “audit the investigation” of three matters and have a “full, open, and public explanation.” However, there

²⁵ In fact, the FPC could not even make the change at the July 30, 2020 committee hearing. All changes must be made before the entire commission.

was never an FPC meeting scheduled for that “full, open and public explanation,” making it impossible to comply.²⁶

- **Reputational Interest:** Directive 1g. requires MPD to publicly discuss its prior employees. There is a concern that there could be claims that the former employer is publicly speaking negatively about their employment, negatively affecting their reputational interests. Of course, this same argument could be made when the FPC Complaints and Discipline Committee held the July 28, 2020 “resolution” regarding PSSIs and routinely criticized FPC’s own employee without including that employee and allowing her to defend herself.²⁷
- **ACLU Settlement:** The reporting requirements of the ACLU settlement are clearly set forth in the agreement. The directive to provide a “full update of Department compliance efforts and status as it relates to the ACLU Settlement Agreement mandates,” is in violation of that settlement agreement.
 - NOTE: An extension was given on this item. **(See Ex. 2).** Although not cited by ED Aldrete, it is MPD’s understanding that this extension was actually based on a legal opinion by the City Attorney’s Office dated July 28, 2020 finding that directive in violation of the ACLU settlement agreement.
- **“Whereas clauses”:** As discussed in further detail above, MPD contests the accuracy and framing of the “Whereas clauses.” Absent valid “Whereas clauses”, it is unclear if any of the directives are valid.

CONCLUSION

The July 20, 2020, directives issued to Chief Morales, and in effect to all of MPD, were extraordinary in their breadth and the lack of time to respond. This urgency rendered MPD’s critical priorities, including preparing for the Democratic National Convention and addressing a spike in violent crime, secondary. All but one of the original deadlines remain, despite a recommendation from the City Attorney’s Office to the contrary. The directives are replete with factual errors, unclear requirements, very serious legal issues and a lack of due diligence to conduct the statutorily required reviews required *before* a directive could be issued. While MPD’s responses may be controversial in what they expose, they are accurate and intended in the spirit of transparency. In an era of rhetoric and baseless accusations against the institution of policing, the Milwaukee Police Department remains committed to base its responses and actions on analysis, the law and facts.

²⁶ Ultimately, MPD posted a public video related to its use of chemical irritants during civil unrest. Based on serious legal concerns, MPD has not created a similar video involving its open civil, criminal and internal investigations.

²⁷ This involves criticizing the same employee who publicly documented that the FPC environment was a “toxic/hostile work environment” in opposition to ED Aldrete’s confirmation hearing. **(Ex. 12 – June 23, 2020 letter from Arvis Williams).**