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## Office of Police Oversight is NOT in compliance with Item 99 passed by Council

OPO claims to have 99% complied with Item 99, passed by Council to jumpstart the failed implementation of the voter approved Prop A. In order to make that claim, the City reworded each referenced provision and described what it is or will be doing, *rather than what is actually required by Item 99.*

Our analysis of what Item 99 actually requires indicates that, if each requirement of Item 99 is weighted equally, the City has implemented less than 33% of the required processes. In fact, items like “issue the 2022 annual report” are far less important to the future of police conduct in Austin than independent fact finding for all complainants, accompanied by an independent determination that a complaint warrants a full investigation and a recommendation on discipline once that investigation is complete. In this area, the OPO’s process appears to fall short in important ways.

OPO Completion claim	Actual language of referenced Item 99 requirement	Difference and proposed questions
OPO staff will be enrolled in CJIS level 3 certification.	Staff of the Office of Police Oversight will be enrolled, no later than October 1,2023, in the next available CJIS Level 3 certification course or equivalent CJIS certification that allows for direct and unfettered access to the body camera footage system, which shall include online certification, and the City Manager will report to Council by October 7,2023, when all	<b>Might be compliant.</b> No report has been provided detailing who now has CJIS certification.

	staff have been enrolled and the date by which all staff will be so certified	
After the certification, OPO will be granted independent access to all files and records (pg. 3-2).	Upon completion of CJIS certification the City shall immediately grant to each individual certified independent and unfettered access to all record sets to enable the office to conduct independent preliminary investigations of all complaints and <b>recommend classification of complaints based on that investigation</b> , random audits of body camera footage and usage, and all other functions necessary to carry out the mission of the Office.	<b>Noncompliant.</b> Specifies that each individual with CJIS certification will have independent and unfettered access, with emphasis on “independent preliminary reviews” of all complaints.  Requires the OPO to recommend classification of complaints as well as other functions of the office.
OPO will have independent access to APD’s body-worn camera footage (pg. 3-4).	Upon completion of CJIS certification, the Police Chief shall provide to the Office of Police Oversight direct and unfettered access to the body camera footage system, in accordance with Occupations Code section 1701.661. in order to enable thorough preliminary reviews of complaints in accordance with City Code section 2-15-3(B)(10).	<b>Might be compliant.</b> This is in the future tense. Unclear if anyone currently has direct access to BWC footage.
OPO will manage and maintain its own records (pg. 4-1).	The Office of Police Oversight will immediately begin to separately create, maintain, and manage its own records, as defined by City Code section 2-15-3 (B)(12), to facilitate mandatory reporting to Council and the public about Office of Police Oversight activities, subject to exceptions to disclosure authorized by the Texas	<b>Noncompliant.</b> Interesting omission of the term “create.”  When a complaint is given to OPO, the OPO should be creating a new casefile in its own systems, depositing that complaint into that new case file, and then independently managing the addition of material during the fact finding process. Previously, OPO was required to

	Public Information Act	immediately share the complaint, and access it from a shared file system subject to “g file” confidentiality. This is likely still the case.
OPO will conduct a preliminary investigation on qualifying complaints (pg. 4-2).	The Office of Police Oversight will immediately begin to conduct a preliminary investigation for all complaints, as defined by City Code section 2-15-2(F), where the complainant provides enough information to identify the incident in existing records (various combinations of date, time, location, or identification of involved persons), including, but not limited to review of body camera footage and any available police reports and force incident reports subject to CJIS certification requirements.	<b>Might be compliant</b> , depending on definition of qualifying and level of evidence gathering applied. If it includes requiring a sworn affidavit prior to conducting OPO’s investigation, then it is not compliant. If evidence beyond reading the complaint is not gathered, then it is not compliant.
OPO will conduct a preliminary investigation of all complaints, including verbal and written communications (pg. 4-3).	The Office of Police Oversight shall immediately begin a preliminary investigation of all complaints, including verbal and written communications, made by any person or persons which allege that an officer acted improperly and may have violated any law, policy, rule or agreement governing the actions of any police officer while in the employ of APD.	<b>Unclear.</b> Item 99 passed in September. This is in the future tense. Confusing information has been issued regarding what fact finding is currently being done and what has to wait for new staff to be hired.
OPO will not require an affidavit to <b>file</b> a complaint (pg. 5-4).	No further requirements may be imposed on complaints or complainants <b>prior to the completion of a preliminary investigation and written notice of further actions</b> which will or may be taken as a result.	<b>Noncompliant.</b> OPO does not address any of the Item 99 requirements. <b>Affidavits should not be required in order to get an OPO investigation done. Item 99 requires OPO to conduct fact finding on non-affidavit complaints.</b>

OPO will post disciplinary documents within Chapter 143 (pg. 5-6).	The Office of Police Oversight will post the following data concerning all complaints, as defined by City Code section 2-15-2(F) to its website since April 1,2023: 1. Type of complaint, 2. Alleged policy violation, 3. Nature of misconduct, 4. Anonymized demographic information about the complainant, including, but not limited to race, ethnicity, age, gender identity, if provided, and 5. Sector complaint originated; and	<b>Noncompliant.</b> What does “within Chapter 143 mean” and is this related to the City’s failure to comply with the directive to stop maintaining a G-file?
OPO will conduct preliminary review and forward copy of the complaint to Internal Affairs (pg. 5-7).	The Office of Police Oversight shall conduct <b>all preliminary investigations of all complaints consistent with City Code section 2-15-3 B (10)</b> and will forward a copy of the complaint and all related materials to the Police Department <b>once the Office of Police Oversight has determined that further action related to the complaint is required by APD.</b>	<b>Noncompliant.</b> The APOA mandates that the OPO investigate all complaints and <b>determine</b> whether a complaint merits a full investigation. Item 99 specifies that the process be conducted in accordance with that provision of the law.
OPO will conduct preliminary review in a timely manner (pg. 6-8).	Essentially the same	<b>Compliant</b> as to timeliness assuming that preliminary reviews are not strictly limited to affidavit filers and meeting of “meet criteria” broadly meets APOA definition of complaint.
All complaints that meet criteria should receive a full investigation, and OPO should be granted access to reach out to the complainant	All complaints deemed worthy of a full investigation by either the Office ofPolice Oversight or appropriate personnel within APD, shall	<b>Noncompliant:</b> Level of noncompliance depends on meaning of “meet criteria.” Limits OPO access to reaching out to the

<p>if more information is needed during the investigation (pg. 6-9).</p>	<p>receive a full investigation, including an interview of the subject officer(s), in accordance with Local Government Code section 143.312. If the Office of Police Oversight believes the complaint merits an investigation including an interview of the subject officer(s), the Office of Police Oversight shall reach out to the complainant and provide the process for filing a sworn affidavit in order to facilitate an interview of the subject officer(s);</p>	<p>complainant.</p> <p>If a preliminary investigation determines that the allegations are true and the officer has likely violated policy, but the complainant is afraid or just doesn't want to come in and sign a sworn affidavit at the police department, what happens?</p>
<p>OPO will accept and review anonymous complaints (pg. 6-10).</p>	<p>In accordance with Local Government Code section 143.312, anonymous complaints deemed worthy of a full investigation by either the Office of Police Oversight or appropriate personnel within APD, shall be affirmed and certified that the complaint was received anonymously by the staff who received the complaint, in order to facilitate a full investigation, including an interview of the subject officers(s);</p>	<p><b>Noncompliant.</b> This section of Item 99 specifies that OPO staff who receive anonymous complaints will be able to step in and verify that the complaint was anonymous, as is allowed under 143.312. APD has wanted to maintain control over anonymous complaints by officers by limiting who can step in and verify that the complaint was anonymous to APD command staff.</p> <p>It also specifies that OPO will conduct fact finding on anonymous complaints in order to <b>determine</b> if there should be a full investigation.</p>
<p>Complaints that do not merit investigation can be forwarded to APD and posted on the OPO website, in accordance with state law (pg. 6-11).</p>	<p>Complaints that cannot be verified, do not merit further investigation, or where an affidavit is required by law and not provided by the complainant shall be forwarded to APD for information, and the data concerning complaints will remain on the Office of Police Oversight website for data</p>	<p><b>Noncompliant.</b> OPO apparently has decided to limit what it will post to information about complaints that it does not investigate.</p>

	and reporting purposes;	
OPO can participate in officer and witness interviews (pg. 6-12).	The Office of Police Oversight maintains the discretion to participate in investigations to the extent deemed necessary by the Director with the right to question officers, interview additional witnesses and review all documentation for every case.	<b>Partial compliance.</b> OPO stated at the Nov. 21 meeting that no one currently at the office is interviewing any non-officer witnesses.
OPO will be a liaison for complainants, provide information about their case, and access to body-worn camera (pg. 7-13).  OPO will make discipline recommendations to APD, and APD will respond to OPO's discipline recommendations (pg. 7-.13).	The Office of Police Oversight will immediately begin acting as a liaison with complainants regarding their complaints with the ability to provide updates about the status of their complaint, including information regarding any OPO recommendations pertaining to the complaint, and provide access to body worn camera footage in coordination with APD and in accordance with Occupations Code section 1701.661.	<b>Noncompliant.</b> On Nov. 21, the OPO and City Legal stated that they tell complainants to file a Public Information Request to see body camera footage of their own incident. This is not providing access to footage.  Further, OPO's claim does not include giving complainants information about any OPO recommendations in their case.
NO CLAIM MADE ABOUT THIS REQUIREMENT	Upon completion of an Internal Affairs investigation, the Office of Police Oversight shall make a recommendation to the Police Chief related to officer discipline and receive a response within 30 days, which shall be made public if allowed by state law.	<b>Noncompliant.</b>
OPO will share the 2022 annual report with Public Safety Committee (pg. 7-1).		<b>Compliant.</b> This has been shared.
OPO should host quarterly check ins with community members (pg. 8-3)	The City Manager is directed to post and conduct a quarterly community engagement meeting, in	<b>Partial compliance.</b> OPO hosted its first meeting on Nov. 21 and did not provide most of this information. The

	<p>accordance with City Code section 2-15-3 (B)(15), which shall include reports of the following information provided to those in attendance and posted on the Office of Police Oversight website:</p> <ol style="list-style-type: none"> <li>1. The total number of: <ol style="list-style-type: none"> <li>a. commendations, complaints (as defined by City Code section 2-15-2(F)) or concerns (by these categories) filed with the Office of Police Oversight about police conduct each month;</li> <li>b. complaints accompanied by a sworn affidavit for each month;</li> <li>c. complaints preliminarily reviewed by the Office of Police Oversight each month (where simply reading the complaint does not constitute preliminary review);</li> <li>d. complaints recommended for a full investigation by Internal Affairs each month;</li> <li>e. complaints investigated by Internal Affairs) each month;</li> <li>f. number and type of recommendations made to the Police Chief with respect to the classification of complaint (A, B, C, D or other) and the level of investigation it should receive, including the number the Office of Police Oversight determined could not or need not be further investigated;</li> <li>g. recommendations made to the Police Chief with respect to discipline;</li> <li>and</li> <li>h. commendations,</li> </ol> </li> </ol>	<p>meeting was in no way a “work group” and staff appeared to be reading from a pre-written script.</p> <p>Missing information:</p> <ol style="list-style-type: none"> <li>1. Number of Complaints where OPO actually conducted fact finding (more than just reading the complaint) for each month prior to the meeting.</li> <li>2. Number of Complaints where the OPO determined that a full investigation was warranted.</li> <li>3. Number of these complaints actually investigated by APD by month.</li> <li>4. number and type of recommendations made to the Police Chief with respect to the classification of complaint (A, B, C, D or other) and the level of investigation it should receive, including the number the Office of Police Oversight determined could not or need not be further investigated;</li> <li>5. recommendations made to the Police Chief with respect to discipline;</li> </ol>
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	<p>complaints, or concerns (by these categories) filed with the Office of Police Oversight anonymously each month.</p> <p>2. Any policy change or change to the general orders.</p> <p>3. The quarterly "Police Oversight Implementation Workgroup" meetings shall be conducted starting in November 2023.</p> <p>4. The meetings shall include Q&amp;A questions in regard to the complaint process.</p>	
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