

Item 1 + APOA vs. Proposed 4-Year Deal (2/13/23)

Summary

The finalized 4-year contract proposal between the City of Austin and the Austin Police Association (APA) does not fulfill the policy goals of the Austin Police Oversight Act (APOA), nor does it restore the civilian oversight system's primary powers and data access that was lost in the December 2021 arbitration decision.

This 4-year contract proposal eliminates the independence of the Office of Police Oversight (OPO) and narrows the scope of its ability to receive, review, fact-find and classify complaints, and make recommendations. Furthermore, this proposal's lack of clarity, undefined terms and clear restrictions on civilian oversight once again leave the oversight system vulnerable to upheaval from grievances from the APA.

While it's possible some additional powers and access could be restored in a corresponding City ordinance, that ordinance will be limited by the many restrictions on civilian oversight that exist within this 4-year contract proposal, and where the ordinance and contract conflict, these powers and access would be subject to grievances that would again result in them being stripped in arbitration.

Finally, this proposal leaves many important elements of civilian oversight to be determined by a Transition Committee after the contract is completed and ratified. At that point, the City will have no leverage to grant powers to the OPO which are not clearly granted in the contract, and the committee makeup is heavily weighted in favor of police interests rather than public interests and therefore its unlikely to implement stronger civilian oversight of police.

Item 1 + APOA	Proposed 4-Year Deal	Why It Matters
Protects the will of the voters related to police oversight.	Preempts the will of the voters related to police oversight.	May's vote -- between a measure supported by police and the Equity Action measure -- will be meaningless if a 4-year contract is already in place, diminishing trust in the ballot initiative process and the council's ability to be stewards of it. The outcome of a costly election can't become law.

Places no limits on anyone's ability to submit anonymous complaints.	<p>Restricts officers from submitting anonymous complaints and creates a separate process for complaints received from the public (external) vs. those received from officers (internal). [Art. 16, Sec. 2(a), (e)&(g)]</p> <p>While the OPO will have no duty to determine or reveal the identity of complainants, in order to process "internal" complaints accordingly and ensure an officer didn't improperly file an anonymous complaint, Internal Affairs (IA) will need to determine the source of complaints. [Art. 16, Sec. 2(g)]</p>	<p>Having IA seek to determine the source of any anonymous complaint threatens the anonymity of all complainants and likely reduces the number of complaints received due to fear of retaliation.</p> <p>Furthermore, anonymous complaints submitted by police provide invaluable information to the public about issues of concern within the police department and should not be restricted.</p>
Empowers the OPO to perform random audits of use of force incidents and body camera footage and places no limits on the OPO's ability to act as a complainant.	Strips OPO of the ability to "act as a complainant." [Art. 16 Sec. 2(c)]	Police misconduct and brutality witnessed by OPO, based on their unique access to data that has not been the subject of a complaint by a member of the public, cannot be investigated or result in discipline.
Treats all complaints the same with respect to the involvement of the OPO and whether information and recommendations about them can be posted publicly.	<p>Creates a separate process for complaints received from the public (external) vs. those received from police (internal), which excludes the OPO. [Art. 16, Sec. 2(a), (e)&(g)]</p> <p>For complaints deemed internal:</p> <ul style="list-style-type: none"> • Strips OPO authority to publish redacted versions prior to the imposition of discipline [Art. 17, Sec. 4(f)], • Strips OPO authority to publish at all if the complaint results in no discipline [Art. 17, Sec. 4(f)], • Strips OPO authority to conduct a preliminary review, since officers are no longer supposed to submit complaints anonymously to OPO [Art. 16, Sec. 2(a)] & OPO only given preliminary review authority over external complaints [Art. 17, Sec. 4(c)], and • Strips OPO authority to publish their recommendations about discipline. [Art. 16, Sec. 3(b)(5)] 	Restricting officer-initiated complaints, having them labeled "internal" and thus limiting their visibility to civilian oversight and the public will result in many important police misconduct and departmental policy issues being kept secret and never resulting in discipline.
Empowers the OPO to conduct preliminary reviews of complaints	<p>Prohibits OPO from:</p> <ul style="list-style-type: none"> • Reviewing complaints prior to them being sent to IA [Art. 17, 	While the OPO is expressly granted authority to conduct a "preliminary review" in the 4-year

and determine when complaints require a full investigation.	<p>Sec. 4(b)], and</p> <ul style="list-style-type: none"> • Making any classification decision about complaints (initial or final) [Art. 17, Sec. 4(c)], and • Publishing information about complaint classifications. 	<p>contract proposal, this is an undefined term in the contract, and the process will be determined by the police-controlled Transition Committee.</p> <p>Furthermore, without the ability to review complaints prior to IA, any enumerated access to information needed to conduct a preliminary review independent of IA, or the ability to ensure that complaints it deems represent policy violations or policy failures receive an investigation, this proposal strips the OPO of any practical preliminary review authority.</p>
Grants OPO direct access to relevant personnel and department records for the purposes of pursuing its oversight functions.	Limits OPO data access to IA investigation “process”. [Art. 17, Sec. 4(b)(3)]	The OPO may only be able to view what IA allows.
Enables the OPO to investigate and gather evidence when it deems necessary.	Provides no clear investigatory authority to the OPO, simply includes them in the IA interview of officers <i>if</i> the Chief orders it. [Art. 17, Sec. 3]	<p>Despite claims that this 4-year contract proposal grants the OPO significant new investigatory authority, these powers don’t appear anywhere in the agreement and they cannot be granted via ordinance.</p> <p>When the OPO had the authority to preliminarily review complaints, they reported that many of the complaints they forward to IA were never followed up on. Providing the OPO with the ability to follow-up on these complaints independently is critical to ensuring all significant police misconduct is investigated.</p>
Allows public access to Department investigation information under the Texas Public Information Act as used in most departments.	Continues to disallow public access to virtually any information if the Chief doesn’t impose discipline. [Art. 16, Sec. 6(a)(7)]	Keeping investigation information secret when no discipline is imposed creates an incentive to not discipline officers for conduct that embarrasses the Department.

Grants OPO clear authority to make nonbinding recommendations on discipline, and to publicize those recommendations.	<p>Deletes OPO authority to make recommendations related to discipline in critical incidents. [Art. 16 Sec. 4(k)(2)]</p> <p>The OPO's general authority to make recommendations remains, but without explicit authority to make recommendations on discipline. [Art. 16 Sec. 4(k)(4)]</p> <p>Gives OPO authority to publicly release recommendations on discipline ONLY for non-critical incidents arising from external complaints that result in discipline. [Art. 16 Sec. 3(b)(5)].</p>	<p>Allowing civilians to publicly make recommendations regarding discipline in cases when the Chief decides against discipline is a central function of any independent oversight system and provides the public with an important understanding of whether the culture of the department differs significantly from the community.</p> <p>In the wake of the recent public disagreement between OPO and the Chief regarding discipline for the officers who killed Alex Gonzales Jr., the deletion of the OPO's explicit authority to make non-binding recommendations on discipline in critical incidents should raise alarm bells.</p>
Expands 180 day rule to 365 days from discovery for all complaints with a three year max to cap the discovery rule.	<p>Expands the 180 day rule to 365 days from discovery for a subset of complaints deemed "Serious Misconduct." [Art. 18, Sec. 8(3)] The process triggering classification under this section is not outlined in the contract and provides no articulated role for the OPO.</p>	<p>If it's unclear how complaints will ever be able to trigger this longer threshold for investigations and discipline, and civilians have no role in the process, then it's unlikely that many complaints will be treated this way. If they are, the lack of clarity is likely to trigger grievances.</p> <p>Police misconduct will continue to NOT face discipline due to the clock running out on the investigation.</p>
Removes barriers to volunteer for the Community Police Review Commission (CPRC).	<p>Bars people with felony records from serving on the panel no matter how qualified they are, and restricts volunteer access to data necessary to perform their duties unless they are in the presence of an OPO staff member and located in a secure city facility. [Art. 16, Sec. 4(c)]</p>	<p>A role on the CPRC is difficult and time-consuming. People who have experienced the justice system have a point of view that needs to be considered. Increasing the hardship in fulfilling the role based on needless hoops make filling these important positions more difficult.</p>
Protects the overall oversight system through a severability clause.	<p>Despite also containing multiple severability clauses, the new contract still contains a "reverter" clause that gives the City authority to decide to revert to current oversight if any part of this new system fails adjudication.</p>	<p>This clause incentivizes the APA to seek a judgment in some form against some portion of the oversight system in order to revert to the system they've made ineffectual through grievances.</p>

		It's unclear who would make the decision to revert, on what basis and what classifies as "crafted by the city" for the purposes of triggering this clause.
Prohibits grievances against the civilian oversight system, whose role is fact-finding and advisory, in order to maintain a stable system of oversight.	<p>Risks the same destructive flurry of grievances that the previous combination of contract and city ordinance were weakened by.</p> <ul style="list-style-type: none"> • If an officer is investigated based on a complaint by another officer, additional restrictions apply [Art. 17 Sec. 3(f), Art. 17 Sec. 4(i)] in a process to be determined by the Transition Committee. This may result in grievances. • New language mandating that investigations shall be "timely, fair, impartial, neutral and objective" are likely to generate baseless grievances over most any action by the OPO. [Art. 17 Sec. 4(k)] • Deletion of OPO's authority to make nonbinding recommendations in critical incidents likely to produce grievances even if the Transition Committee authorizes some process for this. See above. • Lack of clarity about the process for determining that an issue falls into a 365 day timeline or a 180 day timeline will generate both grievances and new issues for appeals. [Art. 17 Sec. 8(3)] <p>In addition to grievances, acts of OPO staff members engaged in fact-finding can now be incorporated into appeals of discipline at the Civil Service Commission. This is new. [Art. 17 Sec. 9]</p>	<p>With the APA able to file grievances against the civilian oversight system, coupled with the reverter clause, Austin's system of oversight may very well undergo massive changes over the course of the ensuing contract, just as it did during the previous contract.</p> <p>A stable system of oversight is important for those victimized by police misconduct, as well as for officers subject to complaint, investigation and potential discipline in order to produce confidence that the system is producing accountability consistently and fairly.</p>

Equity Action, Feb. 13 analysis of oversight in final contract