



## **INDEPENDENT REVIEW BOARD**

### **Duties and Responsibilities of the Independent Review Board**

The Independent Review Board (IRB) implemented in 2015, is designed to assist the Chief of Police in the deliberative process of determining an appropriate level of discipline for instances of sustained misconduct by APD officers. The IRB may also review events that draw significant community interest.

The IRB is not designed to determine or question findings, or evaluate the Department, the Chief's Office, and/or the Internal Affairs Bureau, unless specifically empaneled by the Chief of Police to do so. The IRB is designed to recommend discipline for violations of APD policy under the circumstances of the violation.

The Chief of Police, or an officer involved in disciplinary action by the department, may request an IRB review.

The IRB review will include the Internal Affairs Bureau (IAB) files, and information presented in writing by the IAB and subject member or their representative. If requested, a subject matter expert may also present information in writing, video, or in person.

The IRB process, although supported by the Police Department, is a function of the Human Resources Department under the control of the City's Director of Human Resources or his/her designee.

### **IRB Review Process.**

#### *1. Generally*

Pursuant to APD Directive 10.11, an IRB review can be requested for disciplinary matters and non-disciplinary matters. When the need for an IRB arises under Directive 10.11, the Chief or his designee will send a written request, which can be by e-mail, for an IRB to the Director of Human Resources. Should a subject member request an IRB review, the fact that they requested an IRB review will have no bearing on the discipline recommendation from the IRB.

The IRB preparation process consists of the panel members reviewing the following materials:

- The IAB file.
- Written materials submitted to the IRB facilitator by the IAB and the subject member.
- A maximum of five comparables, chosen and agreed upon by IAB and the subject member.
- Recommendations for discipline from the Chief's Review Board.

Following the IRB preparation process, an IRB conference will be convened where the IRB members discuss the case and above materials among themselves, and make a determination for a recommended course of discipline (or in the case of Non-Disciplinary matters, make a determination on the question presented to the IRB by the Chief). NOTE: Neither the IAB nor the subject member participate in the IRB conference but may be available by phone for questions.

The IRB review process is confidential.

The subject member is not required to participate in the IRB review process. The subject member may opt to have a representative, as defined in the APD Directive's glossary, assist him or her or act on his/her behalf during the IRB review process.

## 2. IRB Members

The IRB will be staffed by the following:

- IRB Facilitator
- One Police Captain or Commander
- One Police Lieutenant
- Two peers of the subject member
- Four citizens of the City of Aurora.

IRB members will also be contacted by the Director of Human Resources or designee to discuss any potential conflicts of interest.

### *a. Facilitator*

The Facilitator will be engaged by and perform his/her duties under the supervision of the City's Director of Human Resources or designee. The Facilitator is not a voting member of the IRB and will not offer discipline recommendations during deliberations.

Under the guidance of the Director of Human Resources, the Facilitator of the IRB will continually assess the IRB process and produce analysis and recommendations to improve the process as he/she deems necessary. His/her other duties may include:

- Creating and distributing applications for civilian participation in the program.
- Providing logistical and administrative support to the board.
- Researching and recommending criteria for reviewing Internal Affairs Bureau investigations as they pertain to the IRB.
- Researching best practices for on-going improvement of the IRB process.
- Set and communicate the conduct criteria for board members and participants who appear before the board.
- Facilitate discussions among board members.

- Draft written recommendations to the Chief of Police on behalf of board members.

Except for the Facilitator, members are not permanent, and a new board will be convened for each IRB. To insure impartiality, the City's Director of Human Resources or his or her designee will oversee the selection process for the IRB panel.

***b. Sworn Members Selection***

The subject member or representative will participate in a random selection of six names from the peer pool, five names from the Lieutenant pool, and five names from the Captain/Commander pool. Officers, agents, and sergeants will be considered individual peer groups for the selection process. Lieutenants and above will constitute the command officer peer group. Members selected as peer group panel members for the IRB must serve in that capacity for the hearing unless otherwise excused by the Office of the Chief of Police, scheduled leave, or court. The Chief's Office will notify the subject member when and why a selected sworn member has been excused from service on the IRB.

The subject member or representative will strike a name from each pool of the random draw and a representative from the chief's office will strike a name from each pool. The subject member or representative will then strike another name followed by the representative from the chief's office striking a name. The remaining members will participate in the IRB Conference. The last name in each pool struck by the chief's office will become an alternate board member.

Officers with less than two years employment with the Aurora Police Department, members currently on probationary status after promotion to any civil service rank, members of the IAB, the EEO Investigator, members who worked on the same shift or section at the time of the incident or who otherwise was involved with the investigations or event, or board members of either labor organization, or the immediate supervisor will be ineligible for selection to the IRB Board. The Chief's Office will be responsible for maintaining a current list of sworn members eligible for selection in the IRB process. If, after the random selection process of sworn personnel, an IRB cannot be empaneled due to conflicts of interest, the Chief may alter the make-up of the command ranks. The random selection process will be repeated using this new make-up.

Sworn officers selected for the IRB will not be allowed to participate in more than one IRB per calendar year, unless the pool of eligible members is exhausted. Should a need arise for review of more than one investigation on a given day; one IRB will be selected for each successive investigation. However, in a case involving multiple subject members, one IRB panel will suffice for all assigned IRBs.

Each selected and alternate member of the IRB will be allowed time by the Director of Human Resources to review the case file before the IRB conference. Selected sworn members will be allowed duty time to review the case, where practicable. Otherwise, overtime is authorized.

In the event an IRB member cannot serve (i.e. sickness, court subpoena etc.), the alternate from that group will serve as a board member for the IRB. Alternate members will be notified as soon as it can be reasonably assured primary members are available but no sooner than the day prior to the IRB conference but likely, the day of. If conflict of availability arises with any member, contact should be made to the Chief's Office.

*c. Citizen Selection*

The pool of civilian panelists for the IRB will be selected by the City Council from among Aurora city residents who apply for the position. The Council will make its best effort to keep the current pool of eligible IRB civilian panelists at approximately 20 volunteer citizens at any one time.

The Director of Human Resources or his/her designee will be responsible for ensuring these civilian panelists receive proper training in coordination with the Aurora Police Department and for developing an appropriate random-selection process for these civilians to serve on individual IRB panels as needed, including a process for appointment of a substitute civilian member if an originally chosen member cannot perform his/her IRB duties because of unforeseen circumstances.

Citizens of the City of Aurora wishing to participate in the IRB process are subject to a criminal background and must have completed training developed at the direction of the Compliance and Professional Standards Division Chief and approved by the Chief of Police. The content of the training curriculum will be shared with the Department's labor organizations, which will be afforded an opportunity to comment. A representative of the labor organizations will be permitted to attend and observe the training on-duty or off-duty without compensation.

Citizen members selected for the IRB will typically not be allowed to participate in more than one IRB per calendar year, unless there is a shortage of eligible civilians to participate. Should a need arise for review of more than one investigation on a given day; one IRB will be selected for each successive investigation. However, in a case involving multiple subject members, one IRB panel will suffice for all assigned IRBs.

Citizens selected to serve on the IRB are not permitted to talk about matters pending before the IRB publicly, or with any parties, Department members, or potential civilian witnesses.

*d. Conflict of Interest*

Because the integrity of the IRB as an impartial group of reviewers could be damaged irreparably by the mere perception of partiality, there can be no conflict of interest or appearance of a conflict of interest within the membership of an IRB, whether by a citizen member or a sworn member.

In order to avoid a conflict of interest or the appearance of a conflict of interest, the Director of Human Resources or designee will conduct a conflict check prior to the seating of the IRB panel. The conflicts check is designed to allow sufficient inquiry on the part of the Director of Human Resources or designee to determine whether or not a conflict of interest or the appearance of a conflict of interest exists.

A conflict of interest or the appearance of a conflict of interest may be the existence of any of the following conditions, including but not limited to those circumstances wherein an IRB member:

- a. has a material or financial interest in any issue before the IRB, or which could be perceived as a material or financial interest; or
- b. has a stated or unstated partiality toward either the subject member, the City or any other interested party, which could be perceived as an inability to be impartial and thereby bring the IRB into disrepute; or
- c. is a relative or otherwise has a significant or intimate relationship with the subject member; or

- d. is an immediate supervisor of the subject member at the time of the incident or at the time of the IRB panel selection; or
- e. is a sworn member working in the same shift or section as the subject member at the time of the incident or at the time of the IRB panel selection; or
- f. is directly involved in the investigation or events that caused the investigation

Should any participant to the IRB, including the Facilitator, be found to have a conflict of interest or perceived conflict of interest, the Director of Human Resources or designee will resolve the conflict by either:

- determining whether a waiver of the conflict is possible or advisable; or
- declining to seat the conflicted party on the IRB, and thereafter choosing as a replacement another Facilitator or an alternate member from the Citizen Member Pool or Officer Member Pool.

The Director of Human Resources or designee will notify the subject member, representative, IAB and involved Chief that the citizen member or facilitator was removed for a conflict of interest.

If a conflict of interest or appearance of a conflict of interest is determined to exist after any IRB panel has been seated and IRB proceedings have begun, such proceedings will be halted and disqualified. A new IRB Panel will thereafter be selected and the process begun anew. The Director of Human Resources or designee will again determine whether a conflict of interest or appearance of conflict of interest exists and will resolve the conflict or appearance of conflict of interest before the new panel conducts the IRB conference.

### 3. IRB Procedures – Please see Appendix A for timeline

#### *a. IAB and subject member's written submissions.*

No less than 40 business days prior to the date of the IRB conference, the Director of Human Resources or designee will inform the IAB and the subject member of the date of the IRB conference. Please see Appendix A for timeline expectations.

- i. Position Paper regarding the case.
  - a. The Facilitator will review the Position Paper provided by both the IAB and the subject member, and will strike out any information the facilitator believes, in their own discretion is: irrelevant to the IRB's charge of recommending discipline on a particular case, unduly inflammatory, harassing or abusive, unnecessary, or inappropriate. If the Facilitator believes, for any of the above reasons, that either IAB's or the subject member's written presentation should be revised, they will provide the rationale and one opportunity for the IAB or subject member to make revisions. Any exclusions the facilitator makes to either IAB's or the subject member's materials after their one revision will be excluded from the IRB panel members' materials.
  - b. The facilitator has the discretion to return the Position Paper to request a party limit the length.
  - c. Inclusion of materials not received by the deadline will be left to the discretion of the IRB facilitator.
- ii. A maximum of five comparables, chosen and agreed upon by IAB and the subject member. If they are unable to come to agreement, the facilitator will convene a meeting of IAB and the subject member and will hear their perspective on the comparables and make the final determination upon the five comparables.

iii. Recommendations for discipline from the Chief.

An IRB conference will be convened where the IRB members discuss the case and above materials among themselves, and make a determination for a recommended course of discipline (or in the case of Non-Disciplinary matters, make a determination on the question presented to the IRB by the Chief). NOTE: Neither the IAB nor the subject member participate in the IRB conference but may be available by phone for questions.

The subject member will be permitted to retrieve his/her Investigative Review Process (IRP) notes and remove them from IAB prior to his/her deadline to submit written materials to the IRB facilitator.

***b. IRB members' review of materials.***

IRB panel members, both civilian and sworn, will review the complete IAB case file and the written materials submitted by IAB and the subject member, in the IAB office before any IRB conference. The IRB member may not comment or interact with IAB staff or anyone else regarding the file or the case. If an IRB member has questions, the question(s) should be submitted to the facilitator or Human Resources Department, in writing and all answers and questions made available to all IRB members prior to the conference.

Panel members may take notes during this review and those notes will be put in a sealed envelope and sent to the Facilitator or Human Resources and remain under the control of the Facilitator or Human Resources until the IRB. The notes will be given back to the panel members not less than one-half (1/2) hour before the start of the IRB. They will be destroyed along with the rest of the records of the IRB with the exception of the written recommendation to the Chief of Police.

***c. IRB Conference***

An IRB conference will take place so that IRB sworn and civilian members can discuss the case and submitted IAB and subject member materials among themselves, prior to making a determination for a recommended course of discipline (or in the case of non-disciplinary matters, make a determination on the question presented to the IRB by the Chief).

No recordings or formal minutes of IRB conference will be allowed. The IRB conference will be closed. If it is determined that a recording has been made, or notes retained, the recording/note keeping party could be subject to disqualification from the IRB panel or be disciplined if a City employee.

With the consent of the Director of Human Resources or designee, and the Chief's office, observers from the Department of Human Resources may be allowed to observe the IRB conference. Observers will sign the same confidentiality acknowledgment as participants. Observers will not be allowed to disrupt, or participate in the IRB conference. Observers may be removed from the conference room at the discretion of the facilitator.

Following the IRB conference, a recommendation of discipline will be forwarded to the Chief of Police. The Chief of Police will have the option of accepting, increasing, or decreasing the recommended discipline of the IRB.

The introductions of recommendations or conclusions of the IRB to Civil Service Commission hearings will be subject to Civil Service Rule 64.

*d. Records of the Proceeding*

Any notes created as part of the IRB panel's review of a case shall be destroyed. The materials submitted by IAB and the subject member to the IRB shall be destroyed. The IRB's recommendation, as written by the Facilitator, and sent to the Chief shall be added to the IAB file.

*e. Confidentiality*

The IRB review process is confidential. Prior to participating in any part of the IRB process, all participants and panel members of the IRB will sign a confidentiality acknowledgement (for APD members) or agreement (for citizens) and abide by its requirements. Failure to keep the IRB process confidential from all persons, except those involved in that specific IRB, will be treated as a violation of policy or the agreement, and may subject the individual to discipline and/or removal from the IRB.

## Appendix A – Aurora IRB Conference Timeline

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### Request for IRB Conference

Pre-work

IRB conference date set

Once the hearing date is set, all due dates are calculated as Hearing -x, or H-x. These are all days, including weekends.

1. H-40 Inform IAB and subject member of date of IRB
2. H-26 Determination by facilitator if comparables are agreed upon
3. H-24 If there is not agreement, meeting convened
4. H-23 Position papers  
Comparables due electronically to facilitator  
SME request, if needed
5. H-21 Revision request by facilitator
6. H-18 Final position papers from IAB and subject member  
Recommended discipline letter from Chief
7. H-17 IAB file and supplemental information ready for review
8. H-7 IRB panel deadline for submitting questions
9. H-5 Questions to IAB and subject member
10. H-3 IAB and subject member's responses to questions
11. H-2 Questions and Answers sent to IRB panel
12. H-0 Hearing convened  
Memo from facilitator to Chief regarding panel's recommended discipline