

**Police Records Access**

Summary of Research on Experience Elsewhere

September 2020

The extent to which the public should have access to records of complaints against police officers and of disciplinary proceedings involving police officers has been an area of focus for advocates of policing and justice reform. As the D.C. Open Government Coalition (the “Coalition”) noted in a recent letter to D.C. Councilmember Charles Allen, policing and justice activity in the District will be viewed as legitimate only if it is truly open and transparent.

Access to information about investigations of police misconduct and any resulting discipline often is limited by explicit statute or interpretation of applicable FOIA privacy exemptions. As the Coalition has noted, whatever its source, this secrecy corrodes public perceptions of the legitimacy of official review and leads to suspicion that facts were not thoroughly considered or that bias influenced results. The Coalition has been tracking efforts to pass comprehensive reform in the District and previously made two recommendations regarding proposed emergency legislation in a letter to Councilmember Allen:

* The D.C. Code should make generally open, notwithstanding any other law, Office of Police Complaints investigation records where the charge is of serious misconduct. Law enforcement exemptions that withhold records while an investigation is pending to protect the integrity of the process and ensure fair adjudication would apply. Legislation should call a halt to the District’s current practice of claiming that all investigation records are exempt because they inherently invade personal privacy.
* The Metropolitan Police Department Use of Force Review Board and the Police Officers Standards and Training Board should be designated in statute as public bodies and thus subject to the District’s Open Meetings Act. As the Coalition notes in its letter, even the best policies need oversight in practice and enforcement, and that should be done in the open.

In support of the Coalition’s efforts to advocate for reforms in this area, we researched state and local laws, regulations and policies in jurisdictions that have a police force that is comparable in size to the District’s.[[1]](#footnote-1) A chart summarizing our research is enclosed with this memorandum and we have included below some highlights of our research and recommendations for potential areas of focus in the Coalition’s ongoing advocacy efforts. We have included throughout this summary links to resources on which we relied.

**Summary of Research and Recommendations**

Keeping police disciplinary records secret has [numerous negative effects](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1471&context=clr) on public order, safety and trust in government. As you know, recent reforms in New York provide a model for meaningful public access reforms. New York [passed a law](https://legislation.nysenate.gov/pdf/bills/2019/A10611) in June 2020 that repeals its prior restrictive FOIA access laws, which kept all police personnel records confidential. Under the new regime in New York, law enforcement must disclose disciplinary records to the public, including complaints, charges, the name of the employee, and the final opinion, subject to specific redaction standards. N.Y. Pub. Off. §§ 86-87, 89 (2020). A law enforcement agency must redact an officer's medical history; personal protected information such as addresses, phone number and social security number; or the employee's use of an employee assistance, mental health, or substance abuse service. § 89. Following passage of the law, more than 323,000 complaints against the police were [published online](https://www.nyclu.org/en/campaigns/nypd-misconduct-database).[[2]](#footnote-2)

Our research suggests the following lessons for reformers seeking greater access to this vital information:

* **Requirements for the maintenance and disclosure of disciplinary records should be explicitly detailed in statute**, as in New York State’s [recently approved reform legislation](https://legislation.nysenate.gov/pdf/bills/2019/S8496). The [experience of states like Pennsylvania](https://courts.illinois.gov/OPINIONS/AppellateCourt/2014/1stDistrict/1121846.pdf) has shown that relying on general FOIA provisions and exemptions can lead to excessive delays and litigation. Indeed, even New York’s law [left room for litigation that delayed the dissemination of police complaint and misconduct investigation records](https://www.propublica.org/article/nypd-civilian-complaint-review-board-editors-note) by failing to specify whether unsubstantiated complaints must be disclosed.
  + As another example, recent changes restricting information available on a [voluntarily maintained, publicly accessible database of police complaints](https://www.opendataphilly.org/dataset/police-complaints) in Philadelphia [undermined the community’s trust in the department](https://whyy.org/articles/after-promising-increased-transparency-philadelphia-is-redacting-police-complaint-records/). The department had been voluntarily releasing data for a number of years, but changed course last year and began removing identifying information and redacting and significantly summarizing potentially embarrassing accusations. Because there is no statutory requirement to disclose the information, the city and the police department were free to make these changes.
* **Broad statutory exemptions for personnel records often preclude access to substantive information about police disciplinary information.** In New Jersey, the State Attorney General [issued a new directive](https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-5_Major-Discipline.pdf) in June 2020 that interprets the state’s personnel records exemption—which exempts all records except basic information such as an employee’s name, title, and position—to require public disclosure of the names of officers that commit serious disciplinary violations. The directive defines serious disciplinary violations as circumstances where an officer is terminated, receives a rank or grade reduction, or is suspended for more than five days. However, this change does not provide access to an officer’s full disciplinary records or complaints against the officer. The directive’s definition of serious discipline may also allow police departments to tailor disciplinary action to preclude any public disclosure.
  + Maryland’s highest court has specifically ruled that police disciplinary records are exempt from disclosure under the state’s general personnel records exemption, which precludes disclosing the outcome and findings from complaints. [*Md. Dep’t of State Police v. Dashiell*](https://www.mdcourts.gov/data/opinions/coa/2015/84a14.pdf), 117 A.3d. 1 (2015). **Specific reforms focused on police complaints and disciplinary proceedings could help to avoid similar outcomes.**
* **D.C. should ensure that all complaints, regardless of disposition or final substantiation, are available to the public.** Even a jurisdiction like Texas, which permits [disclosure of most misconduct](https://www.westlaw.com/Document/I8d32cbeee7df11d99439b076ef9ec4de/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) investigations, does not provide access to unsubstantiated complaints or complaints that involve only verbal reprimands. This [allows patterns of abuse to go unnoticed](https://www.texasobserver.org/horror-every-day-police-brutality-houston-goes-unpunished/).
* To prevent [destruction of misconduct records](https://www.latimes.com/local/lanow/la-me-police-records-california-20190630-story.html), **reforms should account for how long police must retain records, who is responsible for handling records requests and the impact of union agreements on these policies**. For instance, the Illinois [state Supreme Court ruled](http://www.illinoiscourts.gov/Opinions/AppellateCourt/2019/1stDistrict/1172907.pdf) only last year that union agreements could not govern the retention periods for disciplinary records. Such measures should be legislatively mandated, not left to the courts to decide.
  + Document retention policies are frequently used to discard records of misconduct that would have been available to the public. In some jurisdictions, police use retention policies to bypass statutory disclosure requirements. For instance, a [recent audi](https://dallascityhall.com/departments/auditor/DCH%20Documents/Audit%20of%20the%20Dallas%20Police%20Department%27s%20Complaint%20Process%2011-25-2019.pdf)t of the Dallas Police Department revealed that hundreds of complaints were missing from the department’s internal database and that some misconduct records were deleted before they could be investigated. These [widespread faults](https://www.dallasobserver.com/news/missing-records-lax-security-and-ignored-complaints-city-audit-skewers-dpd-handling-of-alleged-misconduct-11842177) in the record maintenance process suggest that **reform policies should also focus on the processes by which police departments receive and store complaints. Policy suggestions could include the implementation of periodic auditing and the stringent administration of criminal or civil penalties when documents are illicitly destroyed.**
* Finally, our research into the availability of information in Miami-Dade County highlights the **importance of training**. Florida law [permits access](https://www.muckrock.com/place/united-states-of-america/florida/) to almost all police misconduct records, but we found that it is difficult and burdensome to obtain records of police complaints in Miami-Dade. The Public Records Center of the county website is not [entirely clear](https://www.miamidade.gov/global/publicrecords/search.page) on whether police misconduct records are available and, based on our experience in telephone calls with multiple government employees in Miami-Dade County, it seems that some civil servants are unable to provide adequate support to requesters. These issues suggest that **policy recommendations should touch on specific non-legal questions, such as exactly how information is displayed on a website, who can provide the support needed to fulfill an applicant’s request, and whether civil servants are receiving appropriate training – and budgeting for technology and training.**

1. Our research focused on sixteen state and local police forces. We selected these police forces primarily because they have a comparable number of sworn officers as the D.C. Metropolitan Police Department, using data provided in a 2008 Census of State and Local Law Enforcement Agencies published by the U.S. Department of Justice (*available at* <https://www.bjs.gov/content/pub/pdf/csllea08.pdf>). The Coalition gratefully acknowledges research assistance by Coalition counsel, Ropes & Gray LLP. [↑](#footnote-ref-1)
2. *See also* Ashley Southall, 323,911 Accusations of N.Y.P.D. Misconduct Are Released Online, *New York Times* (Aug. 20, 2020), *available at* <https://www.nytimes.com/2020/08/20/nyregion/nypd-ccrb-records-published.html>. [↑](#footnote-ref-2)