

I am in receipt of your email of June 6, 2022, and policy advisory report dated May 25, 2022, regarding “COB Recommendation to Standardize Investigative Findings, Modify MNPDP’s Response Protocols”. We appreciate the effort put into this report.

This report makes four recommendations, and our responses are as follows.

MNCO Recommendation 1: *As such, the MNCO Research Team recommends that the Board and MNPDP should meet and figure out a shared set of definitions for investigative findings. The COB and MNPDP should work to develop such standards within 60 days of the issuance of this report. To align with best practice, MNCO recommends referencing the investigative findings of Chicago, one the most recent cities to receive consent decrees (January 2019) and with one of the most extensive 23 decrees from the DOJ. In addition, the language outlines clear legal precedent for each finding. See the below table for comparison.*

MNPDP Response: The MNPDP has used the existing definitions for over two decades and therefore has resulting investigative and disciplinary data utilizing these investigative findings since that time. To create and implement a new set of definitions would eliminate or dramatically impair the ability to analyze investigative or disciplinary trends and patterns. This can include historical comparisons which can be (and have been) an issue in litigation.

What is unclear is the reason that the MNCO, at its founding, did not adopt the investigative findings in use by the MNPDP for decades. This would have made comparing investigative outcomes simpler for the public. Both departments changing their definitions at this point will, however, only further obfuscate the ability of members of the public to compare investigative outcomes of the MNPDP and the MNCO against their prior investigative findings. ***Nevertheless, the MNPDP will accept the recommendation and agree to meet and discuss.***

MNCO Recommendation 2: The COB and MNPDP should agree to modify Section IX.B of the Memorandum of Understanding to require MNPDP to operate under a presumption of correctness regarding the Board’s investigative findings.

MNPDP Response: Each investigation, with their independent facts and circumstances, must stand on their own merits. This is the practice of the MNPDP as it relates to our Office of Professional Accountability investigations; there is no presumption of correctness and each must stand up to the scrutiny of multiple levels of supervisory review, review at a disciplinary advisory panel meeting, administrative law review, and/or review by the Civil Service Commission and courts of law. Additionally, the MNPDP has been advised by Metro Legal that acceptance of this recommendation presents a clear conflict with the charter of the Metropolitan Government and Civil

Service Rules; ***therefore, based upon the advice of Metro Legal, the MNPD is unable accept this recommendation.***

MNCO Recommendation 3: *The COB and MNPD should agree to modify Section IX.B of the Memorandum of Understanding to require MNPD meet a standard of preponderance of the evidence when it disagrees with the findings of the Board.*

MNPD Response: As previously stated, each investigation, with their independent facts and circumstances, must stand on their own merits. In reviewing board recommendations and in responding to reports issued by the board, the MNPD will continue to present sufficient detail and/or make available to the MNCO, our detailed investigative reports. Additionally, the MNPD has been advised by Metro Legal that acceptance of this recommendation presents a clear conflict with the charter of the Metropolitan Government; ***therefore, based upon the advice of Metro Legal, the MNPD is unable accept this recommendation.***

MNCO Recommendation 4: *The COB and MNPD should agree to modify Section IX.B of the Memorandum of Understanding to include language outlining that, absent preponderance of the evidence that the Board's findings are in error, MNPD should implement the minimum recommended discipline from the Board. The COB and MNPD should work to develop such standards within 60 days of the issuance of this report.*

MNPD Response: Consistent with the MOU between the MNCO and the MNPD, the MNPD will fully consider and respond to each report of the board. As previously stated, each investigation, with their independent facts and circumstances, must stand on their own merits. Similarly, any corrective or disciplinary action taken by the MNPD against an employee, must be consistent with MNPD policy and the Civil Service Rules of the Metropolitan Government. Additionally, the MNPD has been advised by Metro Legal that acceptance of this recommendation presents a clear conflict with the charter of the Metropolitan Government; ***therefore, based upon the advice of Metro Legal, the MNPD is unable accept this recommendation.***

Thank you for the time and attention provided to this matter. We look forward to continued cooperation in the future.

Sincerely,

(Signature on File)
John Drake
Chief of Police