



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

Advisory Letter Regarding SWAT After-Action Reviews and Reports

**Andrea Kersten
Interim Chief Administrator**

**January – July
2021**

COPA identified concerns regarding SWAT records retention practices potentially contravening legal obligations, and established reporting practices contradicting standard operating procedures.

Specific Issues



1. SWAT after-action review process was not utilized for its intended purpose (i.e., to critique past performance and transparently enhance future activities).
2. SWAT after-action reports were being destroyed.

COPA's Recommendations



1. Amend standard operating procedures to distinguish after-action reviews from other reporting requirements.
2. Explicitly require the retention of all officer notes used to develop or draft Departmental reports.

Department's Response



1. Pointed to in-process efforts to amend standard operating procedures to retain after-action reports and distinguish the process from other reporting requirements.
2. Declined to amend Department directives to require retention of all notes or other documents used to draft reports due to technological limitations.

COPA acknowledges Departmental efforts to enhance pertinent directives and procedures aimed at expanding and reinforcing expectations surrounding after-action reviews but has lingering concern that the Department's efforts are not sufficient to ensure appropriate use of the after-action review process. Further, COPA encourages the Department to reconsider its decision not to take more comprehensive remedial action to mitigate risk related to destruction of records memorializing officer actions.

Appendix A

COPA Advisory Letter



David O. Brown
Superintendent
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

January 28, 2021

IN RE: Advisory Letter Regarding SWAT After-Action Reviews and Reports

Dear Superintendent Brown:

Section 2-78-120(m) of the Municipal Code of Chicago requires the Chief Administrator of the Civilian Office of Police Accountability (COPA) to make recommendations to the Superintendent of the Chicago Police Department (Department) “to improve the accountability, effectiveness, integrity and transparency of the Department.” To fulfill this obligation, as outlined in section 4.4.1 of COPA’s Rules and Regulations, the Chief Administrator may issue an Advisory Letter to the Superintendent if an investigation uncovers a problem that hinders the effectiveness of Department operations and programs or if an investigation identifies a verifiable potential liability or risk that warrants the Department’s attention.

This Advisory Letter addresses COPA’s concern that established reporting and record retention practices of the Department’s Special Weapons and Tactics (SWAT) Team contradict the explicit terms of its own standard operating procedures and may contravene legal obligations.

Current Departmental Policy

The SWAT Team provides “tactical response[s] to high-risk incidents for which the potential for injury or loss of life is present and the circumstances are unusual and beyond the capabilities of a normal police response.”¹ SWAT incidents are among the most serious the Department can encounter and include acts of terrorism, active shooters, hostage situations, and the execution of high risk search warrants.²

Since at least 2012, Departmental policy has required that, whenever a SWAT incident occurs, the incident commander must make a record of the SWAT Team’s activities, including: “(1) the

¹ CPD Employee Resource E05-15, *Application for Police Officer (Assigned as a Special Weapons and Tactics Team Member)* (Sept. 24, 2020).

² *See id.*

establishment of [an incident] plan, (2) a chronological sequence of event[s], (3) all notifications made, (4) changes in command, (5) arrival of principal response units, (6) significant tactical developments, [and] (7) any other pertinent information.”³ In 2019, the Department amended its directives to make clear that the incident commander must include this information in an “appropriate case report” and not merely as part of an incident log.⁴ Additionally, over the same period, the Department has required the commander to conduct a “critique” (*i.e.*, an after action review) of SWAT incidents.

Consistent with these requirements, the SWAT Team Standard Operating Procedures (SOPs) require that, subsequent to every critical incident, the Tactical Commander complete “an after action report” (in addition to any other “applicable reports”) and retain a copy on file.⁵ The report must detail “all pertinent information concerning the operation.”⁶ The SOPs also require the dissemination of the after action report as part of an “after action review.”⁷ “The purpose of this review is to ... offer information for the improvement of the team,”⁸ and the “after review [*sic*]” must be “forwarded to develop ... positive factors, negative factors, solutions, and recommendations.”⁹

COPA Investigation

On March 15, 2019, the Department’s SWAT Team led the execution of a search warrant against a private residence in the Washington Heights community of Chicago. During the search the officers ordered the home’s occupants, which included three minors, to wait outside. Once outside, one of the minors—an eight-year-old boy—was placed in handcuffs by an unidentified officer. The team later learned the target of the warrant did not reside at the residence they had been commanded to search. The mother of the minors sued the City, and COPA opened an investigation.¹⁰

During its investigation, COPA learned about SWAT Team after action reports from a SWAT officer who participated in the search.¹¹ Believing these after action reports might name the officer who placed the minor in handcuffs, COPA requested that the SWAT Team provide the after action reports from the March 15th incident. The SWAT Team replied on January 15, 2020:

After Actions Reports ... are not completed for every [SWAT] activation and may also be completed in the form of discussion. When written, past practice has been to utilize the reports as notes to assist ... in the preparation of the case report or [SWAT] Supplemental report. It should also be noted that ... officer[s] may

³ CPD Special Order S05-05, *Special Weapons and Tactics (SWAT) Incidents* (Jan. 31, 2012); *see also* CPD Special Order S05-05, *Special Weapons and Tactics (SWAT) Incidents* (Nov. 22, 2017).

⁴ CPD Special Order S05-05, *Special Weapons and Tactics (SWAT) Incidents* (Jan. 29, 2019).

⁵ SWAT Team SOPs (eff. 2019 - present).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Log 2019-1893.

¹¹ *See id.*

not complete an AAR [after action report] for each activation. Upon completion of the appropriate report these AAR's [after action reports] are destroyed by way of shredding.¹²

The SWAT Team further advised that the requested after action reports already had been destroyed.¹³ Concerned by the destruction of these documents and practices associated with development and usage of the after action reports detailed in the SWAT Team's response, COPA undertook a review of Departmental policy.

Recommendations

The SWAT Team reporting and record retention practices deviate significantly from the requirements of its own SOPs and Departmental directives and may contravene legal obligations. Officers are treating “after action reports” as mere notes in that the contents of the after action reports are used to develop the factual substance of case and supplementary reports. Furthermore, it appears the requirement for after action reviews has been subsumed into the reporting process. In sum, the SWAT Team has conflated three, separate functions—each of which is vital to the effective and transparent operation of the Department. These are: (1) notetaking; (2) memorializing actions in formal reports; and, (3) conducting after action reviews. To ensure the Department and the public enjoys the benefits of each of these separate functions, we recommend two policy changes:

Recommendation 1 - COPA recommends that the Department amend its directives to explicitly require the retention of any and all notes or other documents that officers create or use in developing or drafting other Departmental reports—even when those reports incorporate the contents of the notes or documents.

The continued practice of destroying these materials is fraught with legal risk. Indeed, the Illinois Attorney General has taken the position that, under section 113-14 of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/114-13) and “fundamental due process considerations recognized by [State] courts,” law enforcement agencies must be able to provide field notes to prosecuting authorities “if the information in those notes would either tend to negate the guilt of the accused or reduce his or her punishment for the offense.”¹⁴ Departmental policy should recognize the clear possibility that there may be circumstances in which the law will require officers to disclose their notes (and similar documents).¹⁵

¹² *See id.*

¹³ For reference, the Department provided with its reply a blank copy of a Chicago Police Department / S.W.A.T. Individual After Action Report. This form does not reflect a Department assigned identification number and is not listed in the Department's Forms Retention Schedule (rev. 10/31/19). The fields listed do not clearly correspond with the objectives of the after action review/critique listed in the SWAT Team SOPs (eff. 2019 - present) and CPD Special Order S05-05, *Special Weapons and Tactics (SWAT) Incidents* (Jan. 29, 2019).

¹⁴ Opinion of the Attorney General of Illinois, No. 06-004 (Dec. 29, 2006).

¹⁵ COPA explored whether the Department has an obligation to retain after action reports or notes pursuant to the Local Records Act (50 ILCS 205) and Department policy (Special Order S09-03-01, *Records Management* (April 7, 2004)). The Department's Forms Retention Schedule (rev. 10/31/19) does not specifically reflect a retention period for after action reports or notes. Though state law may allow for the destruction of a record, the contents of which has been replicated is a subsequent document, there is significant risk associated with destruction of records that may contain exculpatory information, as noted in 725 ILCS 5/114-13.

Recommendation 2 - COPA recommends that the Department amend the SOPs of the SWAT Team to better distinguish the after action critique (*i.e.*, the after action review) from other reporting requirements.

The purpose of after action reviews must not be confused with other reporting requirements because they are clearly distinct. An after action review is a loosely defined but widely recognized *process*. More specifically, an after action review “is a team-based process following a particular. . . event that affords all participants the opportunity to reflect, provide their perceptions and observations, and identify promising practices and lessons learned that can be applied to enhance future responses to similar scenarios.”¹⁶ Therefore, after action *reviews* have a distinct purpose from other reporting requirements (whose function is to memorialize police actions). The SWAT Team’s SOPs need to make clear that the requirement for an after action review is not satisfied merely through the completion of reports that document the Team’s actions. Furthermore, because it appears that the SWAT Team’s approach to after action reviews does not conform to the Department’s original expectations, the Department should work with SWAT Team leadership to ensure the unit’s procedures reinforce the objectives of a viable after action review process (*i.e.*, to develop actionable recommendations for the improvement of Department policy, operations, culture, and training to mitigate risk, align with best practices, and/or reflect to the public that the Department is leveraging insight from its prior efforts).

COPA is encouraged by the Department’s efforts to commence a comprehensive review of its search warrant practices through the formation of a Search Warrant Committee. Aligned with the recommendations above, COPA strongly suggests the Committee include policy enhancements aimed at incorporating the objectives of viable after action review processes for all search warrant executions, in addition to those involving the SWAT Team and high risk situations.

We respectfully request a response to our recommendations within 60 days, along with an explanation of how the Department intends to address COPA’s concerns. COPA will publish this letter and the Department’s response, if any, on the COPA website after the 60-day response time has passed. Thank you for your time and consideration.

Respectfully,



Sydney R. Roberts
Chief Administrator

cc: Eric Carter, First Deputy Superintendent, CPD
Dana O’Malley, General Counsel, CPD
Leslie Silletti, Chief of Staff, CPD
Karen Konow, Chief of Bureau of Internal Affairs, CPD

¹⁶ National Police Foundation, *How to Conduct an After Action Review* 1 (2020).

Appendix B

COPA Follow-Up



March 31, 2021

David O. Brown
Superintendent
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Re: Follow-Up Regarding SWAT After-Action Reviews and Reports

Dear Superintendent Brown:

On January 28, 2021, COPA transmitted the attached Advisory Letter to you with recommendations to improve the record-keeping and after-action review procedures of the Department's Special Weapons and Tactics (SWAT) Team. As you may recall, the letter alerted the Department to the SWAT Team's practice of destroying after-action reports and to confusion among officers about the purpose of after-action reviews. To address these important issues, COPA recommended amending relevant policies to (1) clarify what types of documents are subject to retention requirements, and (2) provide enhanced guidance on how officers should conduct after-action reviews. We also asked that the Department provide its response within 60 days pursuant to Municipal Code of Chicago Section 2-78-130(b).

More than 60 days have passed since we submitted the letter, but COPA has received neither a substantive reply nor a request for an extension. Accordingly, we are seeking confirmation as to whether the Department intends to provide a response. We also note that, if COPA does not receive a response within the next five business days, we will conclude the Department has accepted our recommendations and will publish an announcement on the COPA website along with a copy of the original Advisory Letter.

Thank you in advance for your timely attention to this matter. I appreciate your continued commitment to working with COPA to identify opportunities for improving the policies and practices of the Department. If you have any questions or require additional information, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Sydney R. Roberts', written in a cursive style.

Sydney R. Roberts
Chief Administrator



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

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cc: Eric Carter, First Deputy Superintendent, Chicago Police Department
Dana O'Malley, General Counsel, Chicago Police Department
Leslie Silletti, Chief of Staff, Chicago Police Department
Karen Konow, Chief of Bureau of Internal Affairs, Chicago Police Department

Appendix C

Chicago Police Department Response



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

April 7, 2021

Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: COPA's Advisory Letter Regarding SWAT After-Action Reviews and Report

Dear Chief Administrator Roberts:

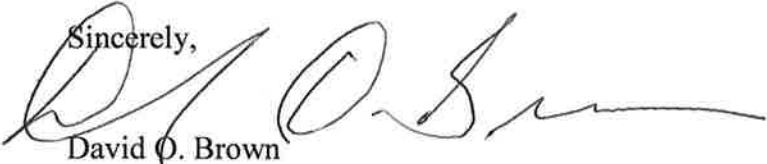
I am in receipt of COPA's recommendations about SWAT's after-action reviews and reports and appreciate the time and opportunity to respond. It is important that as we move the Department forward we take these opportunities to reflect on best practices and what we can do to make the Department better. As this advisory letter focuses on SWAT's practices, I will first address COPA's second recommendation.

At the time of this review, the SWAT standard operating procedures (SOPs) were in the process of being reviewed and amended to comport with S05-05. That review and the amendments adopt much of your second recommendation. When SWAT is assigned to an incident, they are typically divided into two or three teams with a team leader as the head of each of these teams. After an incident the members of each of these teams will complete an after-action report and provide that after-action report to the appropriate supervisor. The supervisor will then incorporate this information into the Supplemental Report along with any additional information that is required. These after-action reports will then be placed in the file and maintained in addition to the supplemental report. This should serve to differentiate from the program evaluation and critique included as section four of Special Order S05-05, Special Weapons and Tactics (SWAT) Incidents.

With respect to the first recommendation, COPA offers that the Department amend its directives to require retention of all notes or other documents that are used to draft reports. This recommendation is far more difficult to implement and for that reason the Department cannot adopt it wholesale at this time. While the Department understands the reasoning behind this recommendation, we are nonetheless stilled by the technology limitations we continually face. There is no capability in the current Department systems to scan and upload copies of paper documents generated in the field. Further, there are in most circumstances no paper files within which to place these notes. Until the Department is in a position to be able to maintain these notes, the directives cannot be amended as COPA recommends. That said, the Department will take this recommendation into consideration as we move forward to determine if there are ways in which to adopt this recommendation.

Thank you again for the opportunity to review and respond to your recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. O. Brown', written in a cursive style.

David O. Brown
Superintendent of Police
Chicago Police Department

Appendix D

COPA Response



David O. Brown
Superintendent
Chicago Police Department
3510 S. Michigan Ave
Chicago, Illinois 60653

July 9, 2021

IN RE: Advisory Letter Regarding SWAT After-Action Reviews and Reports

Dear Superintendent Brown:

COPA received your April 7, 2021 reply to our Advisory Letter of January 28, 2021. I appreciate you and your team taking the time to consider COPA’s recommendations, and I am pleased to read you remain committed to reflecting on opportunities to improve Departmental policies and practices. Nevertheless, after reviewing your response, I feel it is necessary to respond with additional feedback on COPA’s recommendations to take under advisement as the Department continues its efforts to revise and implement critical directives and procedures.

In our Advisory Letter, we made two recommendations to improve the reporting and record retention practices of the Department’s Special Weapons and Tactics (SWAT) Team. First, COPA recommended that the Department amend SWAT Standard Operating Procedures (SOP) to better distinguish after-action reviews from other reporting requirements. We made this recommendation to impress that objectives behind after-action reviews are distinct from efforts to simply memorialize police actions.

Since our January Advisory Letter, the Department has taken steps to incorporate valuable principles and processes related to after-action reviews across a variety of documents:

- The recent overhaul of the Search Warrants directive (Special Order S04-19), provides additional clarity on the process for conducting after-action reviews, though limited in applicability to “wrong raids” and incidents as identified by the Superintendent, as well as introduces an implied requirement that officers create and retain records of after-action reviews that are distinct from other Departmental reports.^{1,2}
- Your April response indicates that SWAT SOPs are being revised to comport with “critique” requirements detailed in the SWAT Incidents directive (Special Order S05-05).

¹ See Special Order S04-19, Item II(L)(2)–(3) (May 28, 2021) (requiring “the results of each after action review” to be “presented” to the Superintendent and also requiring an “annual evaluation of all the reviews”).

² See *id.*, Item IX(F)(2)(e) (“The search team supervisor will ensure documentation of the post-service evaluation session is submitted to the designated unit supervisor the rank of lieutenant or above for review and included in the unit search warrant file.”)

These requirements define two categories of critiques: Formal and Informal. The directive explains that all SWAT incident plans, not just those related to high-risk search warrant executions, will be subject to a critique “with a view towards the constructive modification of the SWAT Incident Program.”³

- Though COPA has not reviewed the Department’s proposed revisions to the SWAT SOPs, your April response indicates that revisions to the SWAT SOPs that will reincorporate existing requirements for SWAT officers to prepare After Action Reports and conduct after-action reviews following activation incidents. Though these changes appear to merely restate obligations in place under current SWAT SOPs, you maintain that the revised SOPs will stay the present confusion among the SWAT team and distinguish reporting requirements from after-action reviews.

COPA appreciates the Department’s efforts to further avail itself of processes that incorporate after-action review principles and objectives (i.e., to analyze and reflect on important events and practices to independently develop actionable recommendations for the improvement of Department policy, operations, culture and training). That said, COPA encourages the Department to be mindful that expectations relative to these concepts may be easily confused if not consistently employed.⁴ Additionally, if not conveyed harmoniously, confusion may also result from the appearance of overlapping expectations across directives and procedures.⁵

COPA’s Advisory Letter also recommended that the Department expand record retention requirements to reach any and all notes or other documents officers create or use in developing or drafting Departmental reports. Your response indicates this recommendation is not feasible at this time, though have taken COPA’s recommendation under advisement. In support of your position, you invoke the absence of “capabilities in current Department systems to scan and upload copies of paper documents generated in the field.”

While COPA recognizes that development of protocols for, and implementation of, a centralized repository capable of storing voluminous digitized Departmental records requires expenditure of time and resources, the risks of inaction—including adverse outcomes in litigation and erosion of the Department’s efforts to enhance transparency—significantly outweigh the costs of pursuing enhanced records retention. I find it difficult to conceive that the Department is wholly unable to develop interim solutions to incrementally address this concern.⁶ Further, continuation of established practices related to destruction of records memorializing officer actions in the field, which may contain information critical to a misconduct investigation, is contrary to the

³ Special Order S05-05, Item IV(A-C) (January 29, 2019).

⁴ COPA highlights seemingly incongruent terminology employed across directives and procedures (i.e., “After Action Report,” “After Action Review,” “After Action Critique,” “Debrief,” “Informal Critique,” and “Formal Critique” are employed across the current SWAT SOPs, S05-05, and S04-19).

⁵ For example, S04-19 mandates an “after action review” for search warrants identified as wrong raid or otherwise as identified by the Superintendent, which may include incidents involving SWAT, whereas S05-05 mandates a “critique” (Formal or Informal) for all SWAT incidents.

⁶ COPA notes that District Stations and other Department facilities are equipped with modern office amenities (such as scan-to-email printers the Department regularly deploys in its communications with COPA). Officers could use these tools to make permanent records of their notes.

Department's interests in reform and accountability. Therefore, I urge you to reconsider whether options are immediately available for remedial action to mitigate risk in this area.

Thank you once again for your continued attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Andrea Kersten".

Andrea Kersten
Interim Chief Administrator

cc: Eric Carter, First Deputy Superintendent, CPD
Dana O'Malley, General Counsel, CPD
Leslie Silletti, Chief of Staff, CPD
Karen Konow, Chief of Bureau of Internal Affairs, CPD
Jay Westensee, Deputy Chief Administrator, COPA