

## Detroit Police board chair accuses cops of withholding reports, seeks subpoena



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*Detroit* — Board of Police Commissioners officials say their efforts to monitor the Detroit Police Department are being hampered by cops who won't turn over reports and the city's law department's refusal to let the board hire its own attorney.

The city's police chief insisted the civilian board wants information that falls outside of its authority, while Detroit's corporation counsel said the City Charter empowers the law department to provide the police board with legal representation.

Board Chairman Bryan Ferguson sent a memo Thursday to Corporation Counsel Conrad Mallett Jr. and Senior Assistant Corporation Counsel Adam Saxby, requesting they "leverage the Board's Charter-Mandated subpoena authority to subpoena (multiple reports) from DPD."

Ferguson told The Detroit News in a statement: "This is a historical invocation of the board's subpoena power, in an effort to bring transparency and accountability on behalf of Detroiters."

Mallett said the law department is reviewing the request to subpoena DPD records. Detroit police Chief James White said the subpoena request is an "attorney-client privileged memorandum," and that by providing a copy of the memo to The News, Ferguson showed the need for police to "safeguard information" from "indiscriminate release."

Ferguson said when the board requests information, police department officials often provide only "aggregated or summarized data that doesn't allow the board or its staff to independently analyze DPD's performance." He added: "Recent requests for detailed or 'itemized' reporting has been met with resistance from DPD."

According to the memo, the items Ferguson wants to review include "all edited and unedited video and audio footage of the October 2, 2022 Porter Burks critical incident" in which officers fatally shot Burks after he lunged at them with a knife. The shooting was deemed justified following investigations by Wayne County Prosecutor's Office and a task force involving DPD and Michigan State Police.

Ferguson also wants the Law Department to subpoena lists providing details of how the police officials disciplined officers from May 1, 2022-May 31, 2023, after citizen complaints against the officers were sustained.

The board chair, whose term ends July 1 when Commissioner QuanTez Pressley is scheduled to assume the post, also asked for the number of officers who were put on paid suspension from Jan. 1, 2021-May 31, 2023.

Board Secretary Victoria Shah said police officials turned over some of the requested information after the request for a subpoena was sent Thursday to the law department, including a list of the law enforcement agencies with which DPD shares data, although she said the request for a list of private companies granted access to the data was not provided.

### **Detroit's chief has 'great concern'**

White said he was concerned that board officials provided The News with a copy of the request for a subpoena.

"The recent release of an attorney-client privileged memorandum without notice or a proper vote has given me great concern," the police chief said in a statement.

White said the information Ferguson is asking for falls outside the board's purview.

"(The City Charter) expressly limits the board's role to matters pertaining to consulting with the Chief of Police on policy, approving the department's budget, receiving non-criminal complaints, and making an annual report to the mayor," the chief said. "According to the (Charter), I serve as the Chief Executive Officer of this department and am responsible for administering its operations and personnel, including safeguarding law enforcement and other sensitive information."

White added: "The police department shall remain a transparent organization under my watch. However, the department must act responsibly with respect to what information is released and the manner in which it is released. The board's unauthorized release of an attorney-client privileged memorandum illustrates the need for internal controls and a formal release process that safeguards information from indiscriminate release."

Ferguson said the board's attempts to get information are stalled because the panel doesn't have its own attorney. From 1998-2020, the board employed a dedicated attorney. But after Jermaine Wyrick was removed from the position in August 2020, no replacement was named.

During Thursday's board meeting, Ferguson introduced a resolution that the board "will solicit and hire a Michigan Bar Association licensed Attorney, and the necessary legal support staff."

Ferguson told The News he introduced the resolution, which passed 6-0, to prompt the law department to allow the board to move forward in the hiring process.

"Repeated attempts to hire an attorney have been met with resistance from Corporation Counsel Conrad Mallett," Ferguson said. "Instead, corporation council assigns staff to support the board on legal matters, presenting a conflict of interest."

Mallett, a former police commissioner who resigned in 2018, insisted the City Charter allows the law department to provide legal representation to the board. He pointed to the section of the City Charter that states: "Corporation Council represents the city of Detroit as a body corporate and may represent its branches of government departments, agencies, elected officials and employees as required or allowed by law."

Ferguson pointed to the charter section that says, "the Board may hire ... such additional staff as necessary to carry out its duties. All members of the staff are under the direction of the Board."

### **Oversight board still under investigation**

The wrangling and dueling charter citations come amid multiple investigations and controversies involving the 11-member citizens panel. The city's auditor general, the Office of the Inspector General and the Detroit Police Department have separate ongoing probes into the board. Ferguson told The News he requested the auditor general and IG investigations after "evidence showed there was merit" to "allegations of overtime abuse, improperly closed cases, unapproved staff and other unethical and possibly illegal activities into (board) operations."

Other problems include a continued backlog of cases at the board's Office of the Chief Investigator, which looks into non-criminal complaints against cops. Amid a backlog of hundreds of cases, the number of investigator positions was

cut from 15 to 13 in the Fiscal Year 2024 budget, which starts July 1, as part of an overall \$93,000 cut to the board's \$3.78 million budget.

Police Commissioner Ricardo Moore accused Mayor Mike Duggan of "interfering with the board because he's trying to kill civilian oversight in Detroit."

"Duggan is behind all this because he wants to control the board," Moore said. "His law department and DPD are hampering our efforts to get transparency and police oversight. He talks about transparency, but doesn't want oversight of his police department."

Duggan's spokesman, John Roach, called the allegation a "fiction."

When Mallett was asked about claims that the mayor is trying to control the police board through the Law Department, he said: "Nothing could be further from the truth."

Ferguson insisted the board, which was established in 1974 to provide citizen oversight of the police department, can't carry out its duties without its own attorney. In a May 25 memo to City Council President Mary Sheffield, Ferguson said it's a "clear conflict of interest for a Corporation Counsel-assigned attorney to be the sole legal advisor to a Board charged with providing independent oversight in the interests of the public."

Ferguson added: "Corporation counsel is violating the City Charter by preventing the recruiting department from posting the attorney to the board and legal assistant positions on behalf of the Board of Police Commissioners."

Sheffield's spokesperson did not respond Friday to a request for comment about the memo that asked the council to "prohibit Corporation Counsel from denying BOPC approval to post for and appoint the budgeted Attorney to the board and Legal Assistant."

## **Current board lawyer has 'limited license'**

When the board requested an attorney months ago, the law department deployed Saxby, the senior assistant corporation counsel, to serve in that capacity. On June 13, Ferguson sent an inquiry to the State Bar of Michigan asking whether Saxby is a licensed attorney.

Bar Association counsel Katherine Gardner replied Tuesday that Saxby has a "limited license to practice law in Michigan for very specific purposes" and that he is "authorized to provide services only to the City of Detroit."

Ferguson said law department appointees serve the city's interests, not the board's. In the memo to Sheffield, he said an example of the conflict of interest is how the law department handled issues involving former interim Chief Investigator Lawrence Akbar and former interim Board Secretary Melanie White.

The law department in November sent an email to the board threatening to fire Akbar and White if they weren't replaced by Dec. 15. According to the email, their employment violated the City Charter because they had worked for the city within three years of their current appointments.

On March 24, Akbar was escorted by police officers out of the OCI facility on Merrill Street and placed on paid administrative leave along with White, who was ushered by cops out of Public Safety Headquarters the same day. A few days later, Ferguson released a statement explaining that "exigent actions were taken Friday, March 24th to guard evidence from being and/or further being altered, stolen and/or destroyed."

Five days later, Saxby told the board in a confidential memo obtained by The News: "The suspensions did not follow the appropriate procedures and as such are not enforceable, but may expose the actors, the Board, and the City to unnecessary legal risk."

In his memo to Sheffield, Ferguson wrote that Saxby "did not work with the board" when the panel was crafting a policy that passed in January requiring the Office of the Chief Investigator to sustain all complaints against officers who don't have their body-worn cameras running during the incidents in question.

Commissioner Linda Bernard, who served as the board's attorney from 2014-16, said she's reached out to Duggan about the need for a board-dedicated attorney.

"The board needs its own attorney to maintain autonomy," Bernard said. "Conrad Mallett said we can't hire our own attorney, which is ridiculous. This is a serious issue, and I want to sit down with the mayor to talk about it."

Roach, Duggan's spokesman, replied: "This is a matter for corporation counsel to manage as it's addressed in the charter."

*Correction: Bar Association counsel Katherine Gardner's name was misspelled in an earlier version of this story.*

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