



**OFFICE OF THE MAYOR
LOUISVILLE, KENTUCKY**

GREG FISCHER
MAYOR

July 23, 2020

Reverend Joe Phelps
Co-Chair
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Dear Reverend Phelps,

Thank you for your continued commitment and dedication to the City of Louisville. I appreciate the time taken to regularly communicate with me and my team.

Before I offer my responses to your latest questions, let me share a few thoughts on the need for public safety reform: The Breonna Taylor and David McAtee tragedies highlight the unacceptable laws and contracts that currently exist in Kentucky and Louisville, specifically the greater need for transparency and accountability within the Louisville Metro Police Department (LMPD).

Police are currently protected by provisions in state law and the Collective Bargaining Agreement (CBA), which limit or delay transparency and accountability. For example, the Police Officers Bill of Rights, outlined in KRS Ch. 67C.326, prohibits discussing the investigation of any potential disciplinary action prior to the completion of the investigation, investigations that often take far too long. This contributes to the perception that a police officer can get away with anything without consequences. So, while we live under the current laws, it is clear change to these laws is critical. And, I strongly believe that enhanced transparency and accountability will protect good policing and those that serve nobly, while the absence of transparency and accountability protects bad policing and leads to community suspicions that impede police-community legitimacy.

In order to achieve this critically needed balance, I am working with members of the community, the criminal justice system, the Fraternal Order of Police (FOP), as well as members of both the Kentucky General Assembly and Metro Council to advocate for the following changes:

1. Transparency: We must increase the public's right to know what is taking place during the investigative process and provide a realistic schedule of the process, by changing state law KRS Ch. 67C.326. Changing this law should help to lift the concerns about lack of transparency, secrecy, and cover-ups in the investigative process. With current law, I and others are in affect under a "gag order" about police investigations. This must change.

2. Accountability: We must improve the public's confidence in the investigatory process by having strong, independent civilian participation. The current Commission on Police Accountability conducts a review after a case is closed; it checks to ensure the process has been followed and recommends changes in process and policy. A work group, appointed and announced jointly by Metro Council and me in mid-May, will be recommending a process and draft Ordinance that will create an independent civilian review board. It is expected to be submitted to Metro Council sometime in the coming weeks. It is essential that the new process has subpoena power, so residents have confidence that the necessary information is collected in the investigation; however, this will require a state law change. Also, please note that there is \$763,500 in the recently passed FY21 budget for an Office of Inspector General. This office will be created by local ordinance and is intended to support the civilian review board by investigating individual complaints against LMPD officers for serious infractions, as well as reviewing patterns and practices. In addition, the workgroup continues to discuss and debate how a civilian review board, an inspector general, the Public Integrity Unit (PIU), the Professional Standards Unit (PSU), prosecutors and the Police Merit Board, with their statutory mandates and responsibilities, can work together without an extra layer of bureaucracy, unintended redundancy or impediment to disciplinary action and criminal prosecutions.

With this background, below are responses to each of your questions sent on July 11, 2020:

1. Officers who shot and killed Breonna Taylor: If there is a reason why the other LMPD shooters at the scene should not be fired, as you encourage us to infer, we demand you share this information with the public now. You cannot continue to use the criminal investigation as an excuse to keep this city waiting and fomenting over the employment future of all who are responsible for Breonna's death.

Response:

One of the officers (Brett Hankison) at the scene has been dismissed from LMPD. You have seen the background behind his dismissal in his termination letter. I share the frustration precluding me from sharing more detail, but I am prohibited by KRS Ch. 67C.326(1)(f) from discussing the case. It's not an excuse; it's the law.

I continue to urge Attorney General (AG) Daniel Cameron to move swiftly in his investigation, and I hope the FBI will work expeditiously as well. KRS Ch. 67C and Article 17 of the CBA outline the process following an officer-involved shooting (OIS). In short, before any disciplinary action may be taken against an officer, there must be an investigation to determine whether the officer's conduct has violated policy. Usually this requires an internal administrative investigation conducted by PSU. The PSU investigation must come *after* the criminal investigation normally handled by PIU, or, in this case by the AG's Office. Conducting the PSU *before* the criminal investigation is complete could jeopardize criminal prosecution because the PSU compels the officer to speak under threat of dismissal. The officer's statements could then be excluded under Fifth Amendment protections in the criminal case. We clearly do not want to take any action that could jeopardize a criminal case.

2. Officer who lied to get no-knock warrant: Why have you not announced disciplinary charges for this officer? Justice delayed is justice denied.

Response:

There is currently a PIU investigation into the officer who wrote the warrant for the search on Ms. Taylor's home to determine if there was any criminal conduct. In addition, there will be a PSU investigation to determine if there were any administrative violations in the crafting of the warrant. This issue was also referred to the FBI for review.

3. LMPD and National Guard dispatched to clear 26th and Broadway: We demand to know how and why the decision was made to invade West Louisville with military tactics. Who requested it, who developed the plan, and who authorized it? Were you informed of this plan in advance? Did you support this decision? And do you support it now, in retrospect?

Response:

The Kentucky National Guard had been assisting Louisville in relation to civil unrest and looting that began on May 28th. On May 30th, the Kentucky National Guard was working with police all day. In the evening, while the city was under a curfew, LMPD received intelligence that the protest groups they had dispersed downtown were planning to rally back up at an unknown location in west Louisville. The LMPD Real Time Crime Center observed a large crowd at 26th and Broadway and alerted LMPD Incident Command, which dispatched police and the Guard members working with them to disperse the crowd. The crowd at 26th and Broadway was, at the time, the only large gathering LMPD was aware of after the curfew was in effect. I rely on the officers leading the incident command, who have the experience, skills and real-time information, to make the necessary tactical decisions. Regarding whether it was an appropriate action by the LMPD is currently under investigation.

4. LMPD shooting at citizens at 26th and Broadway, including as they retreated into a building: We demand disciplinary action against all officers who acted in this way as well as disciplinary action against the commanders who led them into this situation.

Response:

There is an ongoing PIU/Kentucky State Police criminal investigation into this matter. Once the PIU investigation is concluded, a PSU investigation will be conducted to see if there were violations of LMPD policy and recommend related discipline.

5. No LMPD activated body cameras at 26th and Broadway: You have not announced a single consequence for this blatant disregard of LMPD policy. Your silence is completely unacceptable to the citizens of Louisville. How many of the 20+ officers on the scene who failed to activate their cameras that night have received previous disciplinary action for failing to activate their body cam?

Response:

We have not said no one from this incident activated body camera; rather that neither of the two officers involved in the shooting had cameras on or activated. This failure will be subject to a PSU investigation once the state's criminal investigation into the shooting is complete. Within the CBA, failure to turn on a body camera is not considered a terminable policy violation on its own. Officers typically get a warning for their first failure to activate and discipline will progress with each follow-up violation. We are still waiting on the results of the state investigation to ensure that decisions are based on the facts.

6. Here is the Kentucky Center for Investigative Reporting's article I cited on how few PIUs are completed. It states, "The Gazaway shooting is one of at least 37 shootings since 2011 that are still under investigation. The department has **closed only one of its PIU investigations into police shootings in the last two and a half years**, according to LMPD's database."

You questioned this detail. If your office has different data, please provide it. The public needs to know. This is why your reference to "completing the investigation" is heard as a **stall tactic and evasion**.

Response:

Since January 2018, the Public Integrity Unit (PIU) has investigated 25 officer-involved Shootings (OISs). Of those, 14 have been completed and closed. In eight others, the investigations have been completed but they are not yet closed: three are pending in court and five are awaiting a decision by the Commonwealth Attorney's Office or Attorney General's Office. The remaining three OISs are still under investigation.

Thank you again for your vital role as a leader and citizen advocate. I would welcome you and your organizations' leadership and involvement in ours (and other's) continued efforts to reimagine public safety.

Sincerely,



Greg Fischer
Mayor
Louisville, Kentucky