



July 16, 2021

Dear Members of the FOIA Council,

The Legal Aid Justice Center (LAJC) partners with communities to achieve justice by dismantling systems that create and perpetuate poverty and we support the reintroduction and passage of HB 2196 as currently drafted. Within LAJC, the Civil Rights & Racial Justice Program works to end the criminalization of poverty in Virginia by exposing and addressing criminal legal system policies that target people because of poverty and race. Towards that goal, we have been working with communities in Richmond and Charlottesville and have collaborated with the co-signers below to advocate for the formation of Police Civilian Oversight Boards. In 2020, the General Assembly passed robust legislation allowing localities to prioritize community safety and establish Civilian Oversight Boards to investigate civilian complaints against the police. This legislation recognizes that policing is a criminal legal system tool that disproportionately targets people because of poverty and race. Police interactions are often terrifying for people in over-policed communities, and there must be transparency and accountability in all policing. Because Civilian Oversight Boards will not replace internal affairs investigations, there must be transparency of the internal police discipline process as well. HB 2196, as currently drafted, would move our communities closer to this goal.

The community does not trust the internal affairs process, the results of which are kept secret from the public despite the police having the discretion to provide them. The police have been unwilling to guarantee the public that their internal affairs process is thorough and fair to the complainant or that problem officers are properly disciplined. For example, the Charlottesville Police Department cleared Officer Jeffrey Jaeger of any wrongdoing in early 2021 after he ran several feet with a community member's handcuffed hands in his grasp before violently shoving the man's head into a fence. Officer Jaeger was later convicted by a judge of assault, and only after the conviction did the Charlottesville Police Department fire him. While the internal affairs investigation, done behind *closed* doors, cleared the officer, a judge convicted him in *open* court. This case illustrates how important both sustained and un-sustained findings are to the public. Since the police serve the community, the community must know whether the police treat internal investigations of officers as seriously as they do external investigations of community members.

Although the Legislature believed it necessary to grant Civilian Oversight Boards much needed investigative power, many localities are reticent to set up robust oversight boards because they do not recognize that police departments' internal affairs investigations are insufficient. The community's words and experiences are not enough to convince these local leaders; they need to be shown evidence. But the police are the gatekeepers that evidence, and they almost never open the gate, which highlights the need for HB 2196. The Legislature is attempting to create community trust by giving the community some investigative power, but the police rejection of transparency is a roadblock.

Even if localities do grant oversight boards investigative power, the police departments can still refuse to turn over disciplinary records because of their discretion. Oversight boards can exercise subpoena power (if the localities allow them to do so), but such a maneuver slows down the process and the community's ability to have closure over an incident. Some police departments may be more amendable to disclosing these records to oversight boards, provided that they sign confidentiality agreements limiting what the oversight board can make public, again forestalling much needed transparency. If the disciplinary records were mandatory disclosures under FOIA, oversight boards would not be limited by process or confidentiality.

Transparency and accountability for the police are key for the safety and wellbeing of the community. The community can hold the police accountable by seeing how they investigate their officers and what factors resulted in decisions of un-sustained findings. Oversight boards are one method for achieving transparency and accountability, but they are hamstrung by the police's exercising discretion to never make disciplinary records public. Another method is making police disciplinary records public, which would strengthen all methods of achieving transparency and accountability and would give the community confidence that their police departments are truly working for them. "The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." Va. Code § 2.2-3700(B). Allowing disciplinary records resulting from internal affairs investigations to remain secret has greatly harmed communities across the Commonwealth and we urge you to recommend this bill unchanged to the full FOIA Council.

Respectfully,

/s/ Teresa Hepler, Attorney
The Legal Aid Justice Center

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