CFLJ COMMENTARY

Why Transparency Matters -- The First Street Incident Report

"Transparency is critical to renewing the community’s trust and confidence in our policing systems." - Governor Andrew Cuomo

In the guidebook New York State provided to help municipalities develop plans to reinvent policing, transparency is cited as one of the four pillars of procedural justice, critical to ensuring accountability. When people are physically harmed or killed by the police, the department should conduct an investigation to determine if individual officer misconduct occurred, and/or if departmental shortcomings in policy, practice, training, supervision, or leadership contributed to an unwarranted use of force.

If individual officers are determined to have violated department policy, they must be appropriately disciplined to ensure that the inappropriate behavior does not occur again. If policy, practice, training, or supervision are found wanting, the systemic deficiencies must be corrected. If a failure of leadership contributed to the unwarranted use of force, the City must reiterate its expectations of the department’s leadership. Officers and leadership alike must be held accountable for unwarranted use of force.

There can be no accountability without transparency. When the Albany Police Department completes an investigation of unwarranted use of force, the report should be shared with the public as soon as possible to ensure that no further abuse results from the deficiencies found in the course of the investigation. When the APD completed its investigation into the First Street Incident in January 2020, Police Chief Eric Hawkins assured the Center that he would release the report by mid-February. The Center eventually obtained the report in July, but only after an exasperating series of requests to the Chief in February, March, and April; a Freedom of Information Law request filed with the Albany FOIL Center in May; an appeal filed with the Albany FOIL Appeals Officer in June; and a request for an Advisory Opinion from the New York State Department of State’s Committee on Open Government (COOG) filed in July.

The “First Street Incident” refers to violent police behavior against minority citizens on First Street on March 16, 2019, captured on cell phone videos and police body cameras. An investigation of the incident by the APD’s Office of Professional Standards (OPS) resulted in charges that officers violated the victims’ constitutional rights, and lied to investigators. The report revealed not only individual officer misconduct, but failures in supervision, management, and leadership. Brian Higgins, adjunct professor at John Jay College of Criminal Justice said after reviewing the report, “You have an issue at a higher level here. It doesn’t take away from the officers’ responsibility --- they should be held accountable --- but I think people all the way up should be called to the carpet for this.” The report did not address disciplinary measures.

Just as abusive as the police behavior described in the report was the assault on public trust carried out by the APD in its attempts to keep the report hidden. After ignoring repeated requests, in April the Chief informed the Center, “The Albany Police Department will immediately assess the release of the investigative documents associated with the ‘First Street Incident’ upon the receipt of a Freedom of Information Law request.” The Center filed a FOIL request for the report with the Albany FOIL Center on May 12, 2020.

On June 10, 2020 (the latest response date permitted by New York law), the Albany Records Access Officer replied as follows: “Due to the current pandemic the department working on collecting the information required to comply with your FOIL request has requested a 20 business days extension. The anticipated completion date of your FOIL request will be July 8th, 2020.” This response made no sense.
There was no “information” to be “collected” --- the Center had requested a report that the Chief had acknowledged was already completed. The COOG website advises that when a FOIL response is delayed beyond 20 business days, it must be reasonable in relation to the circumstances of the request.

Following guidance on COOG’s website, the Center filed an appeal with the City’s FOIL Appeals Officer on June 12, 2020. Because no FOILS Appeals Officer is identified on the City’s website, the Center emailed the appeal to the Office of the Mayor. The Center received an acknowledgment of receipt of the appeal on June 13, along with an assurance that it would be forwarded to the FOIL Appeals Officer.

The Center heard nothing from the City’s FOIL Appeals Officer by June 26, the latest appeal response date permitted, nor did the Center receive the Albany Record Access Officer’s promised reply by July 8. On July 9, the Center filed a request for an Advisory Opinion with the Committee on Open Government, to determine whether the City was following the State’s FOIL Law.

On July 10, 2020, COOG acknowledged receipt of the Center’s request, and offered the City an opportunity to provide COOG by July 17 with any information that would assist them in forming an opinion regarding the City’s compliance with the Freedom of Information Law. The City provided the First Street Incident Report to the Center before July 17.

Inexplicably, more than a week after the City had provided the report to the Center, on July 24 the Center received the following email from the Albany Records Access Officer: “Due to the Covid-19 pandemic and offices working with limited capability, the department working on collecting the information required to comply with your FOIL request has requested and been granted an additional 20 business days extension. The new anticipated completion date of your FOIL request will be August 21st, 2020.” One can’t help but wonder if the FOIL replies were pre-programmed to extend the response date at the conclusion of every 20-day response period. Or --- is there more of the report to come, including disciplinary measures?

But now the community has a report, and now Albany knows. Albany knows that not only did police department officers unjustifiably pepper spray and beat citizens, but a colossal failure of leadership at the highest levels caused the breakdown of community policing practices that could have averted the First Street fiasco. What Albany doesn’t know: will the offending officers be appropriately disciplined? Will leadership be held accountable? And if not --- how does Albany know this won’t happen again?

Why did it take literally months of imploring Chief Hawkins, followed by a FOIL request met with an inane response, followed by an appeal ignored by the City, followed by a request for an advisory opinion from the New York Department of State, for the community to gain access to this report? The Chief will tell you, as he told the Center, that all requests for OPD reports require a FOIL filing. So --- will all reports take months to obtain?

To meet the Governor’s mandate to assure transparency, Albany’s reinvented policing plan should include the provision that an Office of Professional Standards report regarding alleged unwarranted use of force must be posted on the City’s website no later than thirty days after its completion.

Accountability matters. Transparency matters.

Next Friday’s Commentary: Is the Albany Policing Reform and Reinvention Collaborative in Danger of Compromising the Passion of the People?