

City of Milwaukee



***Report of Investigation
Disciplinary Action – Chief Alfonso Morales***

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Report of Investigation

Introduction and Summary

Complaint Origin and Allegations

The office of Inspector General received and investigated conflicting reports from the Milwaukee Board of Fire and Police Commission and the City of Milwaukee Attorney's office surrounding the board's decision to demote then-Chief Alfonso Morales.

Introduction:

Established in 1885 by the Wisconsin Legislature, the Milwaukee Board of Fire and Police Commissioners (FPC) is the oldest police commission in the nation. The FPC is authorized to exercise broad oversight over the Department. It has the power to hire the chiefs of fire and police, evaluate the chiefs' performance, review any policy of either department, approve all Milwaukee Fire (MFD) and Police (MPD) Department rules, accept complaints from civilians about fire and police misconduct, conduct trials on those complaints, and hear appeals from serious discipline imposed by the chief or against the chief by the board.

The FPC consists of seven or nine part-time civilian board members. The FPC has an Executive Director who provides leadership, guidance and coordination in public safety matters as the chief administrator of the functions performed by the board. The Mayor appoints the commissioners serving on the board as well as the Executive Director. Both are subject to confirmation by the Common Council. Commissioners serve overlapping five-year terms and receive a salary of \$6,600 per year. The Executive Director, who is a City employee, oversees staff, commission staff and is responsible for carrying out day-to-day operations of the FPC.

Under Wis. Stat. §62.50 and the *Milwaukee Code of Ordinances*, the FPC has the authority and responsibility to provide operational oversight for all aspects of both the MFD and MPD.

Summary:

The issue of due process¹ has received an immense amount of attention in recent months following the FPC's decision to demote then-Chief Alfonso Morales and has resulted in the City

¹ Due process refers to the steps that the Government must take to ensure fairness before depriving a citizen of life, liberty, or property. Due process is guaranteed by the U.S. Constitution and applies to public employment in which the Government has established that there must be a cause to remove or suspend an individual. *See Gilbert v. Homar*, 520 U.S. 924, 935-36 (1997) (suspension); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985) (removal). Due process "is flexible and calls for such procedural protections as the particular situation demands." *Gilbert*, 520 U.S. at 930 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).



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being involved in a tumultuous legal position. The right to be removed only for just cause (and not arbitrarily or for a reason that is contrary to the public good) is distinct from due process. However, it is that just cause requirement that gives an employee a property interest in a job, which triggers the constitutional requirement that government officials follow due process in the removal of that property interest.

- ϕ The FPC held a special session on July 20, 2020, and issued Milwaukee Chief of Police Alfonso Morales 11 directives, requiring the Chief to comply with the directives or face disciplinary action including suspension, demotion. Some of these directives were to be completed by August 4, 2020.
- ϕ On August 6, 2020, the FPC voted unanimously to demote Mr. Morales and return him to the rank of captain, the position he held before being promoted to interim chief in April 2018.
- ϕ Because of the demotion, Chief Morales filed a lawsuit and in November 2020 the City Attorney's Office filed a legal document that included a determination that former police chief Morales did not receive due process and as a result, the City is in a precarious legal position.

There are conflicting reports surrounding the FPC's decision to demote Chief Morales. Statements from commissioners suggest that opinions offered by the City Attorney were inconsistent and conflicting, while commentaries from the City Attorney's Office (CAO) say that opinions were consistent and provided on numerous occasions.

Scope of Investigation:

The principal focus of the investigation is to evaluate whether the FPC's decision to demote Chief Alfonso Morales was arrived at without due process. Additionally, the investigation will try to ascertain whether the FPC has documented policies and procedures in place concerning disciplinary actions, including demotion, suspensions, termination, and recruitment of both the fire and police chief.

Review activities included examining the process as well as any related documentation regarding the decision to demote the chief.



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Analysis:

Directive Authority

The FPC's sovereignty to mandate or command the Chief of Fire or Police to act in a certain manner is established in Wis. Stat. §62.50(23), and provides, in relevant part:

The Board may issue written directives to a chief based on a review of the chief's department. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the Mayor.

This provision provides that the board has the authority to issue written directives to the chief. If the FPC wants to order the chief to act in a certain manner, it may issue a written directive. These are mandatory for the chiefs unless the Mayor rules otherwise.

Disciplinary Action (leading to dismissal, demotion or licensing)

If the Board deems necessary to remove either the Police or Fire Chief prior to the expiration of their term, Wis. Stat. §62.50(19), provides:

CHARGES BY AGGRIEVED PERSON: In cases where duly verified charges are filed by any aggrieved person with the board of fire and police commissioners, setting forth sufficient cause for the removal of any member of either of the departments, including the chiefs or their assistants, the board or chief may suspend such member or officer pending disposition of such charges. The board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section. The board, or a 3-member panel of the board, shall decide by a majority vote and subject to the just cause standard described in sub. (17) (b) whether the charges are sustained. If sustained, the board shall immediately determine whether the good of the service requires that the accused be removed, suspended from office without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained, the accused shall be immediately reinstated without prejudice. The secretary of the board shall make the decision public.



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The Investigative Background

I contacted eight interviewees, conducted two interviews, and collaborated with one and communication with one other.²

| Name of Interviewee | Title | Date of Interview |
|---------------------|------------|-------------------|
| [REDACTED] | [REDACTED] | |
| [REDACTED] | [REDACTED] | |
| [REDACTED] | [REDACTED] | January 21, 2021 |
| [REDACTED] | [REDACTED] | |
| [REDACTED] | [REDACTED] | |
| [REDACTED] | [REDACTED] | |
| [REDACTED] | [REDACTED] | December 22, 2020 |
| [REDACTED] | [REDACTED] | January 7, 2020 |

Documents:

I reviewed hundreds of pages of documents. The report does not purport to include every detail described by interviewees or specified in documents. Instead, it assesses the important facts as they pertain to the specific claims.

| Appendix | Document |
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| 1. | Memo from Miriam Horwitz (Deputy City Attorney) and Elleny Christopoulos (Assistant City Attorney) to Griselda Aldrete (FPC Executive Director); Dated July 31, 2020 – Titled – FPC Authority to Retain Outside Legal Counsel, Issue Directives, and Remove the Chief of Police |
| 2. | Opinion – Re: Interpretation of Sec. 62.50(23), Wis. Stat., Dated February 12, 2001 |
| 3. | Wis. Stat. §62.50 Police and Fire Department in 1 st Class Cities |
| 4. | Email from Griselda Aldrete (then FPC Executive Director) to Tearman Spencer,(City Attorney) Dated July 20, 2020 – Titled – FPC Directives: Copy to Mayor |
| 5. | Directives Issued to Morales – signed by Chair Steven DeVougas and then Executive Director Griselda Aldrete – Dated July 20, 2020 |

² I attempted to contact interviewees through email. I conducted an interview with two of the interviewees contacted and was unable to reach five individuals because they were not responsive. One individual reached out and indicated they would contact me with a date and send requested documentation, however, an interview did not occur, nor was documentation submitted and the individual became non-responsive to additional communications. Since I received ample information from the conducted interviews and documentation provided, I did not find it necessary to continue attempting to contact the remaining interviewees because I anticipated duplicative, general testimony.



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| 6. | Rules of the Board of Fire and Police Commissioners – Most Recent Amendment Date October 1, 2020 – Revised Date July 26, 2001 |
| 7. | State of Wisconsin – Circuit Court – Milwaukee County - Brief of Respondent Case No. 2020CV005352 |
| 8. | Memo from Elleney Christopoulos (Assistant City Attorney) to Griselda Aldrete (Executive Director) Dated November 19, 2019 – Titled: Role of FPC in Police and Fire Chief’s Term, Salary Oversight and Termination |
| 9. | Email from Steven DeVougas to Elleney Christopoulos, cc’d Griselda Aldrete, Miriam Horwitz, Tearman Spencer; Dated July 16, 2020 - Titled – Atty. – Client Privilege |
| 10. | Email from Nelson Soler to Steven DeVougas, cc’d to John McNally, Griselda Aldrete, Miriam Horwitz, Elleney Christopoulos, Tearman Spencer – Titled – Per Commissioner DeVougas for your Review |
| 11. | Email from Nelson Soler to Steven DeVougas; Dated June 6, 2020 – Titled – We Need to Talk |
| 12. | Email from Nelson Soler to Griselda Aldrete, cc’d Steven DeVougas; Dated June 11, 2020 – Titled Updates FPC Meetings and Items for June 2020 |
| 13. | Email from Alfonso Morales to Miriam Horwitz; Dated July 30, 2020 – Titled – Response to Request for an Opinion Re: The Directives. |
| 14. | Letter from President of Common Council to FPC Commissioner; Dated June 5, 2020 |
| 15. | Email from Griselda Aldrete to Elleney Christopoulos, Miriam Horwitz, John McNally and Majewski; Dated July 8, 2020 – Titled – Letter from Common Council President Cavalier Johnson |
| 16. | Email from Everett Cocroft to Griselda Aldrete; Dated January 13, 2020 – Titled – 1 of 2 Anonymous Emails Re Replacing MPD Lts. w/ Sgts. |
| 17. | Letter to Chief Morales from Griselda Aldrete; Dated May 30, 2020 – Titled – Six Month Review Information Request. |
| 18. | Email from Griselda Aldrete, Miriam Horwitz, Christopoulos Elleney (to Commissioners); Dated May 30, 2020 – Titled – Letter to MPD Chief Morales |
| 19. | Letter from Mayor to Chief Morales; Dated May 19, 2020 Regarding Employment Status of Officer Michael Mattioli. |
| 20. | Email from Griselda Aldrete to Elleney Christopoulos & Miriam Horwitz; Dated May 19, 2020 – Titled – Letter to Chief Morales from Mayor Barrett |
| 21. | Email from Chief Morales to Commissioner; Dated July 28, 2020 – Titled – Internal Investigation of Video Leak – Haywood Case |
| 22. | Email from Griselda Aldrete to Steven DeVougas, cc’d Tammy Majewski & Chief Morales; Dated December 16, 2020 – Titled Chiefs Responses |
| 23. | Letter from Griselda Aldrete to Vaun Mayes; Dated May 21, 2020 – Regarding Chief Morales Six-Month Review |
| 24. | Email from Tammy Majewski to Griselda Aldrete; Dated May 15, 2020 – Titled Six (6) Month Review of Chief Morales (Confirmation of survey sent to MPD personnel). |



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| 25. | Email from Griselda Aldrete to Miriam Horwitz & Ellen Christopoulos; Dated April 20, 2020 – Titled – Important Morales 6-Month Review |
| 26. | Email from Griselda Aldrete to Ellen Christopoulos; Dated May 28, 2020 – Titled – Update: Morales Six-Month Review |
| 27. | Email from Griselda Aldrete to Nelson Soler, Ellen Christopoulos, Tammy Majewski, John McNally; Date May 7, 2020 – Titled Detective Transfers |
| 28. | Acevedo Family Statement; Date July 18, 2020 Submitted File Item – FPC20230 (Complaint) |
| 29. | Join Statement of Alderwoman Chantia Lewis, Alderman Nik Kovac, Alderwoman Nikiya Dodd, Alderwoman Milele Coggs, Alderman Ashanti Hamilton, Alderman Russell Stamper, & Alderman Khalif Rainey; Dated July 20, 2020 – FPC20230 (Complaint) |
| 30. | Letter to Board; July 17, 2020 - Titled - Employment Status of Chief Morales |
| 31. | People Revolution, Letter to Members of the Fire and Police Commission; Dated July 17, 2020 – Titled – Termination of Chief Alfonso Morales |
| 32. | Chapter 303 – Code of Ethics |
| 33. | CAO Opinion to Mayor Barrett; Dated July 28, 2020 – FPC Directive to Chief Alfonso Morales Concerning Collins Settlement Agreement |
| 34. | Letter from Griselda Aldrete to Chief Alfonso Morales; Dated May 21, 2020 – Titled Mr. Johnson Open Records Request – Investigation |
| 35. | Letter from Mel Johnson to Chief Morales; Dated May 1, 2020 – Re: Open Records Request |
| 36. | Letter from Chief Morales to Griselda Aldrete; Dated June 11 – Re: Covid-19 Personal Protective Equipment and Testing |
| 37. | Email from Griselda Aldrete to Ellen Christopoulos & Miriam Horwitz (Commissioners); Dated June 11, 2020 Titled – COVID-19 Testing |
| 38. | Email from Nelson Soler to Griselda Aldrete; Dated July 22, 2020 Titled – Info from Frank Gimbel – FPC Mailbox |
| 39. | Letter to Attorney Franklyn Gimbel from Griselda Aldrete; Dated July 23, 2020, Re: Acknowledgement of receipt of letter requesting an extension for directives due dates. |
| 40. | Email from Griselda Aldrete to City Atty. Tearman Spencer; Dated May 31, 2020, Titled – Questions from FPC Commission |
| 41. | MPD Standard Operating Procedures included as an attachment on email (see Appendix 40). |
| 42. | Email from Nelson Soler to City Atty. Tearman Spencer; Dated August 4, 2020, Titled – Response to request for an Opinion Re: The Directives |
| 43. | Email from Griselda Aldrete to Ellen Christopoulos; Dated May 26, 2020, Titled – FPC Directives and MPD Chief |
| 44. | Email from Griselda Aldrete to Miriam Horwitz, Ellen Christopoulos & Tearman Spencer; Dated June 30, 2020, Titled FPC Directives |
| 45. | Email from Nelson Soler to Kyle Mirehouse; Dated November 19, 2020, Titled – Morales Matter – 20CVV5352 – Respondents’ Brief |



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| 46. | MCO 314: Board of Fire and Police Commissioners |
| 47. | Sample FPC Rules and Regulations – City of DeKalb |

Determination:

Founded on available evidence there is adequate information to conclude that the Board’s decision to demote Chief Morales was made despite opinions issued by the City Attorney’s Office, FPC Rule XV, and the citizen complaint procedure as set forth in §62.50(19). FPC Rule XV indicates there is designated FPC staff to conduct an investigation into all citizen complaints; a citizen complaint can be from a citizen, advocacy organizations, Common Council members or a member of its board. The executive director reviews all investigations and refers the complaint for resolution. The executive director can refer the complaint to the board for trial if it is determined that: (1) it is more likely than not that an act of misconduct was committed; or (2) an act of misconduct may have been committed and it is likely that additional investigation, including trial, would make a factual finding possible.

An essential characteristic of due process in the matter of former Chief Morales is to be resolved through the procedure prescribed in §62.50(19), which states “in cases where duly verified charges are filed by any aggrieved person with the board of fire and police commissioners, setting forth sufficient cause for the removal of any member of either of the departments, including the chiefs or their assistants, the board or chief may suspend such member or officer pending disposition of such charges. The board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section.” Outlined in the evidentiary records above are confirmations that through its Executive Director, the FPC received from the Office of the City Attorney opinions on numerous occasions that the citizen complaint procedure is the method by which a chief may be disciplined. Testimonial evidence suggests that on at least two occasions the Board’s decision to demote the chief was exclusively based on an apparent assertion by the City Attorney “to do what needs to be done” with assurance that the Board’s decision would be supported and defended by the City Attorney’s Office.

The Commission failed to adhere to FPC Rule XV, Citizen Complaint Procedures, Wis. Stat. §62.50(19) Charges by Aggrieved Person and written opinions provided by the City Attorney’s Office, and it is in those instances that due process was not extended to Mr. Morales.



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Recommendations or Corrective Actions:

The primary duty of the FPC Board is to promote the best interests of the City through overseeing the management of the Fire and Police Departments.

I recommend that the Fire and Police take the following actions:

Finding 1:

The Fire and Police Commission failed to adhere to FPC Rule XV Citizen Complaint Procedures, Wis. Stat. §62.50(19) Charges by Aggrieved Person, and written opinions provided by the City Attorney's Office.

Recommendation 1:

Revise, implement, and document comprehensive, well-defined Rules and Regulations of the Board of Fire and Police Commission specifically outlining each process.

To ensure actions taken by the board, the Executive Director and FPC staff is in compliance with §62.50, the FPC should:

Revise, implement and document comprehensive, well-defined Rules and Regulations of the Board of Fire and Police Commission specifically outlining each process; similar to the Rules and Regulations of the Board of Fire and Police Commissioners for the City of DeKalb (*see Appendix 47*).

Finding 2:

During the investigation, documentation and other records requested, maintained by the former Executive Director, were either not easily accessible or could not be located.

Recommendation 2:

Develop and implement records management procedures as guidance to promote consistent document and archival management controls.

Finding 3:

The executive director is the liaison for the Board of Fire and Police Commissioners and communication on behalf of the board occurs through the executive director. It appears emailed communications including all commissioners was done by blind copying commissioners with a



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comment that states “commissioners have been bcc on this email”. It is, therefore, not easy to determine whether the entire Board is in receipt of the same information.

Recommendation 3:

Develop a systematic approach to managing records to ensure compliance with applicable requirements.

The FPC creates and maintains increasing amounts of records to support day-to-day operations as well as board business. The FPC should develop a systematic approach to managing records to ensure not only compliance with applicable requirements but also effective operations at reasonable costs with the following benefits:

- Demonstrate public accountability.
- Facilitate document research.
- Prevent unauthorized access and editing.
- Retrieve document easily to resume business during the transition of the executive director, or in the event of a disaster.
- Support of legal actions.

An essential part of a records management system is a procedure that provides guidance to promote the consistent application of a uniform set of practices. Such a manual would minimize risk of non-compliance and result in better-organized, well controlled, and timely disposed public records.

Finding 4:

Some board members communicated that the information they receive hinders rather than facilitates good governance and strong leadership. Members protest that they are overwhelmed with large quantities of irrelevant information, doesn't receive enough information, or receive material too late to devote serious attention to it.

Recommendation 4:

Establish and maintain a board information system that focuses on enlightened decision making, stimulate participation and supports an appropriate balance of responsibility between the board, executive director and staff.



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The board and executive director should work together to develop a reference guide for board members and consider including:

- Basic responsibilities of the board.
- Legal responsibilities of the board.
- Responsibilities of individual board members.
- Responsibilities of the chair, vice chair, executive director, for the board and individual committees.

In addition, the executive director should collaborate with the City of Milwaukee's Department of Administration – Information Technology Management Division to establish a secured shared drive specifically designated and easily accessible for board members to obtain information necessary to effectively perform its job responsibilities. In this designated location, new and current board members would have access to the same information including: opinions provided by the Office of the City Attorney; quick reference guides; issues of concern; performance evaluations, etc.

Conclusions

The conclusions in this report are drawn from the totality of the evidence and a thorough analysis of all the available facts, and where necessary, credibility determinations.³ Interviewee statements were not recorded. Quotations in this report are not verbatim recitations of interviewees' statements. Quotations are cited as accurately as possible based on my notes.

³ I considered and gave appropriate weight to information that might be considered hearsay in a legal proceeding.