

CITY OF SEATTLE

8
C.F. 313567
FILED
CITY OF SEATTLE

2014 JAN 27 PM 3:43

CITY CLERK

**Seattle Police Department
Office of Professional Accountability
Semi-Annual Report of the Civilian Auditor**

July – December, 2013

Judge Anne Levinson (Ret.)

OPA Auditor

January 19, 2013

Introduction

The Office of Professional Accountability (OPA), established by City ordinance, is an independent office within the Seattle Police Department ("SPD" or "Department"), tasked with leading an effective accountability system to help improve police practices and address possible misconduct by SPD employees. It is led by a civilian Director.

The OPA Auditor is an outside consultant, also a civilian, charged with providing additional oversight of the accountability system. She, along with the civilian Director, reviews every complaint and every investigation to ensure that each is handled thoroughly and objectively. The Auditor is required to issue a public report twice each year, detailing the number of complaints and investigations reviewed; those investigations where she requested additional investigatory work be conducted; her requests for reclassifications of complaints ("classification" refers to the determination as to whether a complaint will be referred to a supervisor or investigated); issues noted as a result of her reviews; recommendations for training, policy or procedural changes; any findings from audits of OPA records for other purposes; and any other activities.¹

Policy, Procedure and Training Recommendations

At the beginning of this reporting period a new Director took the helm at OPA. I have been very pleased to see his commitment to the importance of OPA operating in an independent and transparent way. He immediately discontinued a past practice of not issuing a final decision on investigative findings until hearing from the command staff, a practice which I felt lessened the independence, or at a minimum the perception of independence, of OPA. There is no longer a preliminary recommended disposition from the OPA Captain with a later final finding from the Director after consultation with the command staff. There is a Director's finding once I have approved the investigation and if those in the employee's chain of command disagree with the recommended finding, they can advocate for their point of view with the Chief. If he concurs with their perspective, or on his own chooses to overrule the OPA Director's finding, then the Chief must notify the Mayor and City Council in writing. This,

¹ See SMC 3.28.850 et seq.

in my view, is a more independent and transparent approach. The OPA finding is based solely on the evidence derived from the investigation. If there are other mitigating issues, it is the Chief's prerogative to make a finding and disciplinary decision that he feels takes those into account and then to articulate publicly what those are.

The OPA Director has also implemented a number of other recommendations I have made, ~~such as adopting a procedures manual to ensure consistent quality of intake and investigations; having more timely review of investigations; and making it clear that OPA has responsibility for addressing any possible misconduct, whether or not a complaint was filed (see more on this below).~~ As the position of Deputy Director for OPA is re-instated in 2014, OPA will have the capacity to move forward with implementation of other recommendations still pending that will enhance accessibility, transparency and community trust.

While an excellent complaint process and objective, thorough investigations are essential and necessary elements of an effective accountability system, they are by no means sufficient. One must also look at the culture and operations of the Department beyond OPA and at the obstacles or challenges presented by parts of the system outside of OPA. Below are several recommendations for the City and the Department to consider as strategies to further improve accountability to the public.

Recommendations:

Accountability begins with the recruitment, hiring and initial training of new officers. Here are three steps the Department and the City can take to effect positive change at the front end:

- 1. The City and the Department should discontinue discussions about re-initiating a separate training academy and work collaboratively with the Washington State Criminal Justice Commission (WSCJTC) on a top-notch training curriculum that builds on the work already underway by the WSCJTC to move from a command - and-control-in-policing philosophy to a community caretaking and Constitutional policing philosophy, with clear learning objectives and measures.** It is true that there are aspects to statewide training that are different for large, urban jurisdictions than for small, rural ones. But there are many benefits to all agencies in the state working together on a high quality, consistent approach to policing. The way to address different needs is not to insist that Seattle must train its own force, but to engage in development of curriculum and teaching standards that cover subject matter

and approaches common to all agencies. For those areas where Seattle or other jurisdictions may have a different philosophy or practice, separate curriculum can be offered for Seattle's recruits on site during that module or additional teaching provided as part of the pre- or post-Academy instruction.

2. **The Department's hiring standards, as well as entry and promotional exams, should integrate knowledge and input from the OPA Director and Auditor (in addition to the staff in charge of initial Field Training, human resources staff and others) in order to refine approaches based on performance problems and trends highlighted from complaints, investigations and other reviews.** Reviewing every complaint filed, every investigation, litigation, claims, use of force, etc. provides a valuable perspective for seeing the kinds of skills and experience that are affecting performance positively or negatively.
3. **The City should adopt preference points in hiring for candidates who are multi-lingual or have work experience reflective of the types of skills needed in policing today, such as social workers, mental health or domestic violence counselors, Peace Corps, AmeriCorps or other verified equivalent work experience or community service.** This recommendation stems from a recommendation in my August 2013 report that the City's Gender Equity in Pay Task Force should review as part of its work plan whether the use of Veterans Preference Points was creating an unintended disparate impact for women in the Police Department.² As my initial recommendation was being studied by the Task Force, King County began considering a proposal to add points for Peace Corps service and bi-lingual skills. That approach presents an opportunity to draw candidates with the sorts of skills needed by the Department, as well as potentially addressing any gender impact related to Veterans Preference Points. The City should adopt a similar proposal, along the lines I have noted above.

An effective accountability system also relies on an organizational culture that 'walks the talk', so that from the time of hiring throughout their time with the Department, employees

² Veterans Preference Points are awarded based on state and federal law and are added to a test score as 'extra credit' for those with military service. That can potentially result in disparate impact since there are fewer women in military service. Related to this is an issue of examining whether a requirement for honorable discharge for recruits might have an unintentional negative impact on LGBT candidates who left the service prior to the lifting of the ban on LGBT service members.

see and hear the importance of best practices, professional conduct, working in partnership with the community and continuous improvement. Here are 14 recommendations in that regard:

4. **The Department should share with new employees that they will do well if they strive to learn, behave in an ethical and principled way, value excellence in their work, care about the community in which they serve, and treat individuals with respect, dignity and empathy.** An explanation of the Department's Code of Ethics, Policy Manual, OPA system and other regulations and processes should then be framed in this way. Too often the overriding message for new officers and for communication about new policies, training or practices is that "you have to do this to stay out of trouble", "everyone has a camera on their phones nowadays so you have to do this", "we're only doing this because of (fill in the blank)", rather than instilling in employees that the Department is teaching or sharing this information or implementing this approach because "we want officers to be the best at what we do", "we weren't doing so well at this and we want to do better", and "we try to acknowledge and learn from our mistakes or be the first to develop new ways of effective policing."
5. **Decisions about promotions, transfers, special assignments, over-time opportunities and the like should reflect a culture where performance and accountability are rewarded and actions inconsistent with a culture of excellence and accountability are not.** Regardless of the strength and effectiveness of OPA, its value is minimized if decisions affecting opportunities for advancement, personal growth and income are made in ways that undercut accountability. The public and fellow employees notice not only whether behavior is addressed through discipline, but whether it is also "rewarded".
6. **The City's Collective Bargaining Agreement with the Police Guild should be modified to allow for more supervisory review of In-Car Videos (ICV) as a tool to help improve performance on a day-to-day basis.** I had recommended in earlier reports more effective use of ICV, which the Department began to implement. The Police Guild filed an Unfair Labor Practice, and in settling that, while additional uses were then permitted, supervisors were not given clear authority to review ICV on a day-to-day basis to help officers under their command improve performance, without it

being part of a formal performance appraisal. Video can be an invaluable learning tool, and officers and sergeants should be encouraged to discuss various interactions that occurred on any given shift and how something might have been done differently. Similarly, videos of officers doing great work should also be shared more frequently (with the officer's permission) to reinforce a culture of excellence.

7. **The professionalism section of the Department's standards and duties policy should be revised to more clearly articulate expectations consistent with enhanced community trust and legitimacy, treating people with dignity and respect, and community care-taking.** This section of the policy manual includes the most frequently cited and most frequently sustained allegations for OPA cases. This section includes courtesy, profanity, discretion, duty to identify, and derogatory language, among other things. The sub-section on courtesy is very brief and effectively addresses only basic rudeness. It should be clear that the guiding principle is to treat the public with respect and courtesy, and that an officious or overbearing attitude or language, demeanor and actions that may result in the individual feeling belittled, ridiculed, or intimidated are impermissible. The courtesy sub-section currently also needs to address escalation. The preferred practice of de-escalation will now also be covered in the use of force policy, but for interactions that are less than professional due to unnecessary escalation, if reportable force is not ultimately used, it will need to be covered in this policy. In addition, I have previously recommended that the derogatory language sub-section be revised so it does not attempt to list those classes of people against whom derogatory language may not be used, but instead simply makes clear that officers shall not use derogatory language, period.
8. **OPA's role should encompass administrative or internal investigations throughout the Department, and not be artificially limited to conduct about which a complaint has been filed.** I have discussed in previous reports that OPA's past practice of focusing only on complaints means that from the perspective of the public, much of the conduct about which they may be concerned is never addressed by OPA. For whatever historical reasons, the Department long ago established separate processes for officer-involved shootings, firearms review, and use of force review, which in and of itself was a problematic approach. In addition, OPA did not play a role in any of those reviews. Nor did OPA ensure that incidents being

addressed through internal traffic collision investigations, City claims, civil litigation, or criminal filings were assessed by OPA for possible misconduct. If there is to be a truly robust accountability system, OPA should review any incident where there is possible misconduct, either through referral or direct involvement in the investigative process, regardless of whether a complaint was filed by the subject of the incident. The new OPA Director has taken steps to implement this approach to accountability; Department protocols should be put in place to institutionalize and expressly communicate it.

9. **The City's Collective Bargaining Agreements with Departmental employees should be modified to allow for a "rapid adjudication" process for certain types of alleged misconduct where the named employee wishes to immediately acknowledge the policy violation and appropriate discipline can then be imposed without having an investigation.** For example, if an employee failed to get a required approval, meet annual training requirements, complete a supervisory use of force review within the mandated timeline or use his or her In-Car Video, there could be an expedited process for acknowledging the violation, with appropriate discipline imposed without an appeals process, using a discipline matrix.³ This would resolve the case quickly, which often is better for all involved, tie accountability sooner to the behavior, which is an important principle for effective accountability, and would save time and resources for other investigations. It would also help strengthen the Department's culture of accountability, making it clear that acknowledging mistakes is encouraged. For this reason, the employee's file should reflect that he or she resolved the complaint through this rapid adjudication alternative.
10. **The City's Collective Bargaining Agreements with Departmental employees should be modified to allow OPA to have a more informal problem-solving process for certain types of complaints that can be more effectively resolved with a more immediate and flexible approach.** While mediation is an important alternative to traditional investigations or SAs, it is often not a good fit for some types of citizens' concerns. For some, waiting weeks for a mediation to be scheduled, or taking more time out of their day to go to mediation, or engaging in a process that

³ I have recommended in a previous report that the Department use a discipline matrix to help ensure consistency and fairness in disciplinary decisions.

seems legalistic, is not an effective outcome. For example, if several officers mistakenly, due to being provided an incorrect address, go to the wrong house at 2 a.m. to arrest someone, recognize their mistake, go to the correct house and effect a successful arrest, they then simply fill out the required reports and consider it a job well done. Meanwhile the homeowner of the incorrect address files a complaint the next day because she has no idea why the officers attempted to enter her home. An investigation could take a couple of months, even a referral to a supervisor could take a few weeks. And technically, the officers did nothing wrong. A better alternative might be for OPA to instead be able to *that day* call the precinct Captain or relevant Assistant Chief, and ask them to 1) go apologize to the homeowner and explain what occurred; and 2) request protocol be implemented that these kind of mistakes should be mentioned in incident reports and reported to the supervisor so that someone could quickly follow up, rather than the citizen having to file a complaint to address it. The focus is on public accountability, the response is more immediate and the process is more cost-effective. Additionally, the incident is shared as a learning experience via the new protocol, so the accountability is not simply an interaction only with the involved officers. OPA does not currently have this sort of approach as an option.

- 11. The City's Collective Bargaining Agreement with the Police Guild and Management Association should be modified to allow OPA to have civilian investigators and intake personnel to enhance the work of sworn personnel.** This would be particularly valuable for those cases where the named employees being investigated are a higher rank than the sworn investigators, which creates challenges for those investigators who then later rotate to work elsewhere in the Department, possibly under the command of those individuals. I have written before about the importance of holding all employees, regardless of rank, to the same standards and expectations, in order to have a culture that truly values accountability. Having civilian investigators and intake personnel would also allow OPA to hire individuals with specific expertise, would provide for staff continuity since these staff would not rotate out to other assignments, and would be helpful in those situations where the persons making complaints might be more comfortable with a civilian.⁴

⁴ Some may raise the concern that a non-commissioned investigator does not have the inherent authority to order sworn personnel to provide an interview or evidence. This can be addressed in other ways.

12. **The Department's planned precinct liaison program should be done with a single civilian in OPA rather than a Lieutenant at each precinct.** The initial objective for this program was to provide additional capacity and expertise to help precincts better handle supervisory referrals, workplace employee issues, mentoring, performance reviews, and other sorts of human resource and accountability issues. As in many organizations, those promoted into positions with these kinds of responsibilities often do not have the training or background that is most needed. Additionally, documentation and tracking of complaints resolved at the precinct level needs to be integrated into the system so that employee records are consistent whether someone complained to OPA or the issue was handled at the precinct. This is a perfect role for a civilian with this kind of expertise who would be part of OPA but assigned to work a different precinct each day of the week.
13. **The City should move forward with providing OPA administrative subpoena power to compel the production of evidence not within the City or Department's control and non-employee interviews.**⁵ For example, if OPA is trying to secure private business video, private phone records or other evidence not within the control of the City or the Department, or request a witness provide a statement, without this authority it can only gather the evidence if it is provided voluntarily. For some types of investigations, not having this evidence can mean a less than thorough investigation and an inconclusive finding.
14. **The Department should retain holding cell video for longer than 60 days, as is current practice.** For those cases where it is alleged that unnecessary force was used, a complaint of unnecessary force was made but not reported, conduct was unprofessional, or property was taken, often part of the interaction with the subject may have occurred in the holding cell area. The Department's retention schedule for holding cell video is only 60 days, so if someone waits beyond that point to file a complaint the video will no longer be available.
15. **The City should move forward with the option of body cameras, by developing (with appropriate input) policies for their use and securing whatever statutory**

⁵ Since I initially made this recommendation, the City has provided similar authority to the Seattle Ethics and Elections Commission for its administrative investigations.

authority the City believes is needed. The City has been discussing the possible use of body cameras for officers for several years. Meanwhile, other cities in Washington State and elsewhere in the country have moved forward. The City has taken the position that state law needs to be amended, and has included proposed legislation in its state legislative agenda again this year. In the meanwhile, best policies and protocols from other jurisdictions can be gathered, consultation and drafting can move forward and the City can more strongly advocate in the Legislature.

16. **The Department should discontinue the practice of authorizing “Extended Authority Commissions” that permits retired officers to act in a law enforcement capacity.** Seattle Municipal Code (see Ord. 16374 and 109757) authorizes the Chief of Police to grant a “Retired Police Officer Commission” to any officer retired in good standing, which gives him or her the same authority as an active police officer. Per the authorizing ordinances, the retired officer is subject to the orders of the Chief and the rules and regulations of the Department, but shall not be considered a City employee. The Department regularly commissions retired officers who wear their SPD uniforms and carry their firearms for this work. Their duties can range from traffic control to supervising a civilian unit.

These Commissions create liability for the City, and provide little or no accountability to citizens when poor practice or misconduct occurs. These retired officers may have retired many years ago, and while they must meet some initial qualifications, they are not required to go through the training active officers must attend each year. Nor are they supervised as active officers are. The public has no way of distinguishing them from active officers so any poor demeanor or performance reflects badly on the force as a whole. Further, if a complaint is filed or an incident occurs, no discipline can be imposed because they are not employees. For the same reason, it is not even clear that OPA has jurisdiction to conduct an investigation. Further, there are often licensing requirements for certain types of off-duty work with which the retired employee may be out of compliance, unbeknownst to the Department. Finally, If SPD continues to allow retired officers to be given Extended Authority Commissions, at a minimum, that Commission should be automatically revoked when there is a Sustained misconduct finding. The ordinance gives the Chief discretion in this regard but there is not a

process in place for the Department's human resources staff to ensure revocation occurs in all instances.

- 17. The Department should discontinue the practice of having secondary employment work managed outside of the Department, often by current employees acting through their private businesses created for this purpose. There should be an internal civilian-led and civilian-staffed office, with clear and unambiguous rules and procedures, using current technology.** I have made several recommendations during my term as Auditor highlighting the problems with the Department's secondary employment system, and little progress has been made. The system continues to be fraught with actual and potential conflicts of interest, creates internal problems among employees competing for business, is technologically out of date, and lacks appropriate supervisory review and management.

Whether the public feels that there is effective accountability also rests in part on what happens once an investigation has been completed. This part of the process can take months or years and can diminish or undermine accountability. Here are five recommendations for this aspect of the accountability system.

- 18. Once an investigation is completed, the Chief should have a limited timeframe for notifying the employee of the recommended finding and suggested discipline and the employee unions should have a limited timeframe to then request a Loudermill hearing.⁶** OPA has been working hard to improve timelines for investigations. Most investigations are done within 90 days, and some within 60. But once the OPA Director makes recommended findings and forwards the case to the Chief, OPA has limited ability to manage timelines when there is a Sustained finding. The process at this point is led by the Chief's Office. They are responsible for scheduling the discipline meeting where the chain of command discusses the finding and possible discipline, then sending the notification of possible discipline to be served

⁶ A "Loudermill hearing" provides employees due process by giving them an opportunity to present their side of the story before the Chief makes a final decision on findings and discipline. Prior to the hearing, the employee must be given specific written notice.

on the employee by the supervisor, scheduling the required Loudermill hearing if and when one is requested and notifying the employee of the final decision after the hearing. Additionally, there is also no deadline for the employee and his or her union, once the employee is served with the notice that the allegation has been Sustained and a particular discipline is recommended, to respond that the employee does wish to exercise his or her right to a Loudermill hearing or wishes to simply accept the finding and discipline. In some cases, these steps drag on for months.⁷ These post-investigation steps should occur in a timelier manner to be more responsive both to the public and to the named employees⁸.

19. **The City should work with the State Legislature, other jurisdictions and the Washington State Criminal Justice Commission (WSCJTC) to broaden the grounds for revocation of officer certification so that officers who violate the law or engage in serious misconduct are not be able to be employed in a sworn capacity anywhere else. The City should also require the Chief to formally request de-certification whenever an officer is terminated from employment after a Sustained finding.** State law requires that a peace officer must be certified. That certification may only be revoked by the WSCJTC, on its own initiative or at an agency's request. Further, the WSCJTC may only revoke certification based on a finding that the officer has been convicted of a felony or "has been discharged for disqualifying misconduct [and] the discharge is final..." RCW 43.101.105. "Discharged for disqualifying misconduct" means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement... (iii), the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection;

⁷ In addition, once the Chief issues his decision, employees have a right to appeal to either the Public Safety Civil Service Commission or an arbitrator. That can add several more months.

⁸ I also have recommended in prior reports that the City Attorney and County Prosecutor have timelines of review for cases being considered for possible criminal charges, and review cases concurrently rather than sequentially when appropriate. Those cases can have even longer timelines, since in most instances the administrative OPA investigation won't begin until the criminal process has concluded.

or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination. RCW 43.101.010.

Allowing for revocation only under these circumstances does not prohibit officers fired for misconduct not falling within this language from working for a different agency when they are terminated, no matter how egregious or unprofessional the misconduct. For example, if the officer was fired for committing a crime while off-duty but it did not involve dishonesty, controlled substances or a revocation of the right to possess a firearm, he or she would not be de-certified. Similarly, if there was not a criminal conviction or a knowing false statement made during the investigative process that was the sole reason for the termination, but the administrative investigation proved by a preponderance of evidence that a serious misconduct up to and include violations of law occurred, the officer would not be de-certified.

Other states allow revocation based on actions that led to termination from the force or resignation in lieu of termination based on violations of criminal law, felony or misdemeanor, whether or not convicted, and serious violations of department rules or regulations, such as physical or verbal abuse, substance abuse, and sexual misconduct⁹. As I mentioned in my last report, officers who retire or resign rather than be subject to discipline still have a right to retain their retirement benefits, accrued salary and sick leave. If they are also allowed to simply go to work for another agency, there is no accountability to the public for the misconduct.

20. The City should review and amend the authorizing ordinance for the Public Safety Civil Service Commission (PSCSC), SMC § 4.08.010, et. seq., which allows for one of the three commissioners to be an employee of the Police or Fire Department. In 1978, the City established a separate civil service system for officers in the Police and Fire Departments, under the direction of a Public Safety Civil Service Commission (PSCSC). The PSCSC has three commissioners, one of whom is

⁹ Decertification is an area of police accountability where the Department of Justice should be leading an effort to establish consistent, rigorous standards to be used in every state with a shared national database in which all states must participate. As Prof. Roger Goodman noted in his article on decertification, "States should treat police professionals the way states treat other professionals. It is inexplicable that in six states, state law authorizes the power to revoke a barber's license for misconduct, but does not authorize the revocation of a police officer's license." See: *A Model Decertification Law*, Saint Louis University Law School Public Law Review (2012), p.155.

appointed by the Mayor, one by the City Council and one elected by and representing police and fire employees¹⁰. Among its other responsibilities, the PSCSC hears appeals of sworn police and uniformed fire employees who have been subject to disciplinary actions and decides on the rules for examination and testing for hiring and promotions. The City should examine both the appearance and the reality of the independence of the disciplinary processes with an active employee as a member of the PSCSC.

21. **The City should assess past disciplinary decisions made by arbitrators to determine whether the standards used to override SPD's termination and disciplinary decisions for officers who have committed misconduct comport with a robust accountability system.** SPD's labor agreements provide officers the right to appeal discipline to an arbitrator, who may decide that discharge or discipline imposed is not warranted because in the view of the arbitrator the penalty is too harsh. That may then result in the Police Chief having to reinstate officers discharged for serious misconduct, or reduce discipline imposed. The Chief's authority to suspend, and if necessary fire, officers is a critically important aspect of the accountability system and the standards used for arbitral review of discipline should comport with public expectations for accountability. A pattern of overturned or lessened discipline can erode the deterrent value of the disciplinary process, both for the affected officers and for their colleagues who see the results, and have a corrosive effect on public trust and confidence.
22. **The City should move forward with a protocol to ensure Departmental responsiveness and follow-through, when appropriate, for recommendations made by the OPA Director and Auditor and others involved in oversight of the accountability system.** As noted in several prior reports, civilian oversight can be very effective in helping to reform systems, practices, training and policies, but only if there is follow-through on recommendations. For example, within 30 days of receiving an Auditor report, SPD should respond by indicating which recommendations the Department agrees with and intends to implement, which have already been partially

¹⁰ Because this third position is elected by a majority vote, and there are more Police Department employees than Fire Department employees, this commissioner is de facto a police employee.

or fully implemented¹¹; note any budget, contractual or legislative constraints that will have to be addressed; a specified time-frame for implementation; and a responsible lead person. If there are recommendations with which the Department disagrees, the reason for that disagreement should be noted and if further discussion is warranted, that should occur. As well, the Mayor can include responsibility for implementing the recommendations in the Chief's accountability contract and the relevant City Council Committee can include progress reports as part of the Chief's quarterly updates. For those recommendations where lead responsibility rests outside of the Department (elected officials or other Departments), the Mayor and Council should include a mechanism to address those as well.

In addition to these recommendations related to the accountability system, there are also four recommendations with regard to needed policy clarification stemming from cases reviewed during this reporting period.

23. SPD should implement improvements for handling personal property taken during arrest that does not have evidentiary value. In reviewing several cases where there was an allegation of missing property stemming from an arrest, I noted there appeared to be a range of practices by officers as to how they handle personal property incident to arrest where the property does not have evidentiary value. The Policy Manual does not cover the topic, nor had I seen it included in any training, and there are multiple forms for listing detainee property that officers are to use at different stages, which are often done inconsistently. I asked those in charge of Audit/Policy and Training to review the issue and offered some suggestions for changes to consider. While there are not a significant number of complaints involving personal property, when there are complaints they require investigative time, leave some officers feeling they have been accused of theft, and often frustrate complainants when the property cannot be found. Additionally, there are boxes located at each precinct for personal property which has become separated from its owner, so regardless of whether a complaint was filed, that property likely could have been handled better. Policy staff shared the issue with sergeants and asked them to

¹¹ In each reporting period the Auditor may have made some recommendations through the investigation review process that get incorporated into the Director's certification of cases. These recommendations would have already been shared with the Department in real time, and then listed in the semi-annual report, so in fact may have already been analyzed, fully or partially addressed, or other action taken.

provide their thoughts. Based on the responses, policy staff came up with some suggested improvements and created a work group to finalize them.¹²

24. **SPD policy with regard to secondary employment should more clearly articulate that an employee cannot work a secondary assignment while on duty.** This should be obvious, and there are policy sections that can be cited, but a more explicit prohibition directly in the secondary employment section to address those cases where an employee is alleged to be working an off-duty job during a time period where he or she is supposed to be on the clock for SPD would be helpful.
25. **The policies regarding Reporting Arrests and Detentions and Responding to Threats and Assaults on Officers need to state that that if an officer is a victim (e.g. of an assault), s/he should not write the General Offense Report.** This is noted in the policy for Standards and Duties (Integrity / Conflicts of Interest), but these more on-point policies do not mention it, and they are the logical sections to which officers and supervisors would turn for this issue. (See more on this below.)
26. **SPD should assess whether policy needs to clearly articulate either that an employee shall not drive a Department vehicle after consuming alcohol or shall not drive after consuming alcohol if impaired.** Some departments clearly articulate that it is not permissible to drink and then drive a Department vehicle. Others, recognizing some employees are required to use a "take-home vehicle", do not expressly prohibit all alcohol consumption, but do prohibit being impaired, regardless of whether one has met the legal standard of driving under the influence.

¹² Their preliminary recommendations: A detainee inventory sheet that would eliminate the need to record the property on the detainee log sheet and on the jail eSuperform (which is currently not searchable by SPD). The sheet could be a triplicate form with the original attached by Data to the GO, a copy going with the detainee property and a copy going to the detainee. The detainee would be asked to sign acknowledgement of the sheet. When practical, inventories would be captured on ICV. The detainee property would be placed in a sealed bag with a copy of the inventory sheet. The sealed bag would provide added security in the precinct and protection for the transport officer. The inventory sheet sealed inside the clear bag will provide immediate confirmation of the contents. The sealed bag will provide greater security than the current practice of placing detainee property in a paper bag or paper envelope.

Complaint Review

Complaints about possible misconduct can be made in-person, by phone, in writing, by email or by using the OPA website. They can be made by the individual who had the interaction, by a witness or by a third party. SPD employees are also required to report possible misconduct about which they become aware or that is brought to their attention by others. Immediately upon receipt of a complaint, the OPA intake staff follow-up to learn more and an intake packet is prepared for review.

Each week the OPA Director and Auditor review all new complaints that have gone through intake, determining whether each complaint should be investigated, handled by a supervisor, can be resolved without referral, should be referred for criminal investigation, or might be appropriate for mediation. This “classification” process is a critically important way to ensure no complaint is ignored or taken less seriously than it should be.

In the period covered by this report, the OPA Director and I reviewed 303 new complaints alleging misconduct. We agreed with the initial classifications recommended by OPA staff for all but 13, 11 of which we re-classified from Supervisor Action to Investigation and two we re-classified from Investigation to Supervisor Action. The final classification results were 114 classified for Investigation and 189 classified as Supervisor Action. Three cases were recommended for mediation. We also reviewed 339 inquiries that had been entered by staff into the OPA “contact log.” Every contact with OPA, even those that are requests for information or assistance, or are about personnel from other agencies, are logged, as another way to make sure that each is appropriately followed up. The contact log is also reviewed by the Director and Auditor each month to ensure none of these inquiries involve possible misconduct by SPD employees. We upgraded four contact log entries to Supervisor Action during this reporting period. (This was during the month that new intake staff were being trained.)

As part of the classification review, the Auditor and Director also determine if additional or different allegations are warranted, if additional employees should be named for a particular incident, or if an allegation should be investigated criminally initially rather than administratively. During this reporting period, we added 30 allegations, related to possible bias, use of force, failure to use In-Car Video, discretion, misuse of authority, conflict of interest, confidentiality, integrity, Terry stops, safe vehicle operations, reporting collisions,

failure to have a secondary work permit, thoroughness of reporting, supervisory responsibilities, courtesy, retaliation, searches, profanity, completing an incident report when also an assault victim, and use of a computer for personal use. We also added two additional named employees.

I reviewed the quarterly reports of alleged misconduct being prosecuted criminally or considered for prosecution and reviewed 195 complaints that had been referred for Supervisor Action (SA) at the precincts or elsewhere in the Department and then returned for OPA review.

Investigation Review

During this reporting period I reviewed 97 investigations. The investigations were very well done, deadlines were met, intake was comprehensive, complainants were offered the opportunity for in-person interviews, investigative summaries were largely very well written and reviews by the Lieutenant were thorough and timely. The Captain's Certification Memos issued on behalf of the Director (previously Proposed Disposition Memos) laid out the evidence for each allegation in detail and based analysis only on the investigation. There was also a noticeable improvement in the quality of referrals to OPA from within the Department, and in the thoroughness of General Offense Reports, Use of Force Reports and reviews by Supervisors.

There were only two cases where I requested additional investigation. In one, the officer was serving on a DEA Task Force and some DEA officers alleged he may have stolen money belonging to a subject. The investigation was inconclusive but there was a video of poor quality. I asked that a forensic video analysis be done by an outside expert to determine whether the video could be enhanced enough to tell what the officer was putting in his pocket. The video was enhanced by the technical expert, but it did not provide conclusive evidence.

The other case involved allegations that an officer used profanity and rudeness when directing traffic at a Mariner's game. The complainant and her family were driving to a game. She was a passenger and her father was driving. When her father pulled into the parking garage, she got out of the car and the officer allegedly yelled at her "I'm f--cking talking to

you!" and then he berated her for blocking traffic. She was quite shaken by this encounter and "ran away" from the officer. After she told her father what had occurred, her father made a point of walking over to take a photograph of the officer. The investigator interviewed her, but did not interview the father or brother (also a passenger in the car) since they were not outside the car when the incident occurred. I asked that they be interviewed to see what if anything they had seen or heard, and whether they would corroborate what she relayed to them immediately after the incident that in turn caused her father to take the photo. The investigator interviewed the father (he did not want his wife or son interviewed due to unrelated reasons). He confirmed use of profanity and general tone of the officer, which he had heard, as well as the reaction of his daughter.

For an investigation involving an allegation of excessive force, I felt the investigator did a good job inquiring about the initial use of force, but should have further pursued the issue of how much force was used. In this case the officer had contacted the subject in Cal Anderson Park for an outstanding Department of Corrections no-bail felony warrant. When the officer was placing the subject under arrest, the subject placed his left hand into his pants pocket and refused to remove it. The officer verbally ordered him to remove his hand from his pocket and when the subject did not remove his hand, the officer then delivered five rapid, consecutive punches to the right side of his head and face. The investigator needed to determine why five punches were necessary, whether there was an opportunity to pause, and whether if the subject hadn't eventually moved his hand, the officer would have continued punching.

In a case alleging failure to use In-Car Video (ICV), the investigator concluded that because the officer was parked on another street his vehicle was not in a position to make use of the ICV so no further inquiry was made. The officer should have been asked why he parked on another street away from incident. If it was for safety, investigative or traffic factors, that might result in a different finding than if he simply parked on another street, eliminating the possibility of being able to have ICV of the incident.

During this reporting period the Chief disagreed with the recommended findings of the OPA Director on eight cases. As required by Seattle Municipal Code section 3.28.812, the Chief sent a letter explaining his reasoning for each to the Mayor and City Council.

One case involved allegations related to the responsibility of supervisors, discretion, courtesy, misuse of authority, and excessive use of force. This was a well done internal referral and OPA investigation. The OPA Director recommended that all the allegations be Sustained, but the Chief did not uphold the Sustained findings on misuse of authority and use of force. His final decision was a Training Referral on each. For misuse of authority, his rationale was that this finding was with regard to an officer who was the victim of an assault writing the report, which the Chief believed was not done with an intention to misuse authority. (This is the relevant section, so that was how it had to be alleged. See the recommendation above to revise the policy manual accordingly.) With regard to his decision to overturn the finding of Sustained for excessive force, I strongly disagree.

The facts of the case were as follows: officer contacted an occupied vehicle that was associated with narcotics and a possible stolen vehicle. He contacted three individuals and ran their names for warrants, verifying a felony warrant for the male. During his contact with them, the officer walked up to the passenger side of the car and stated; "you're all going to jail, especially you with the DOC felony warrant and you, child molester, you're going too." The male replies: "f--- off, you don't know sh--t" and tells the officer "...suicide by cop. Let's go mother f--cker", to which the officer responds "I am exactly the person for the job". At this point the male then exited the vehicle. The officer was standing by the right front corner of the vehicle as the male exited. The officer advanced toward the male as the male moved toward him. The officer struck the male with a right strike to his head. The male moved back and the officer continued to advance, then striking the male in his mid-section with a knee strike and taking him down.

In another case where the Chief did not uphold the OPA Director's findings, there were six allegations involving insubordination, honesty, discretion, exercising due care and activating emergency equipment during a pursuit, ending a pursuit when the risk of the pursuit outweighs the danger to the public, and use of pursuit ending tactics, PIT or ramming. The Director recommended Sustained findings for all allegations. The Chief overturned the Sustained findings for insubordination and pursuit tactics, directing a Training Referral instead, and finding Inconclusive on the honesty allegation.

In this case, North Precinct officers were dispatched to investigate an unverified report of a stolen vehicle within the last 20 minutes. A description of the vehicle was provided and the

dispatcher noted that the owner was able to track the location of his vehicle with his GPS device. Officers located the stolen vehicle, pursued it, but a short time later the Sergeant terminated the pursuit per policy. The named officer attempted to stop the stolen vehicle as it was travelling, and continued to follow the vehicle as it entered the freeway. He was alleged to have failed to terminate the pursuit at least twice after being told to do so by a Supervisor, to have written a statement that had false information and omitted material facts about the incident, to have given false information to a Supervisor during the vehicle pursuit, and to have used poor discretion in deciding to pursue the vehicle. He was also alleged to have failed to: use his audible siren during his emergency driving; keep radio updated; use his emergency lights and sirens during this pursuit; and end his pursuit when the risk of the pursuit outweighed the danger to the public. He allegedly rammed the stolen vehicle and used the "PIT" maneuver to stop the stolen vehicle without having been trained on how to use the maneuver, and did not write a use of force statement for the incident.

A third case involved multiple officers where they had not communicated well in regard to tactical decisions, putting both themselves and the suspect in danger. Their screening Sergeant then did a poor job. The OPA investigation was very well done and the OPA Director recommended a finding of Sustained on the allegation of excessive use of force. The Chief did not uphold that, instead directing a Training Referral. The three officers were dispatched to a priority one call where it was reported there was a possible burglary taking place and an elderly female was being beaten up by a male. The officers located the complainant, inside the hallway of the apartment building, as a possible suspect. Officer M and S approached from a back door while officer N entered through the front. The suspect alleged that he said "come in", that Officer N allegedly did not tell the truth in his statement when he stated the suspect took a fighting stance and said "come on", and that Officers N and S allegedly used unnecessary force when they "beat him senseless and unconscious" as they arrested him.

Officer M was in the doorway and pointed her Taser at the suspect, who was facing her. Officer N, coming from the front, had his gun pointed toward the suspect, whose back was to him, and said he did not see other officers on other side of suspect. The Taser officer said she did not see Officer N with his gun pointed at the suspect (and the officers). Officer N called out to the suspect to put his hands up, and as the suspect turned toward Officer N, Officer S, without communicating, jumped in front of the Taser officer and tackled the

suspect. He stated to OPA that he did not want to alert the suspect (who then had his back turned to him and the Taser officer). No non-verbal signals were used. Officer N stated he never saw the other two officers in his line of fire. Had the suspect moved in a way that caused Officer N to shoot or Officer M to deploy her Taser, both the suspect and officers could have been seriously hurt.

~~A case alleging excessive force was an example of a particularly strong on-scene incident~~ review, use of force review, internal referral to OPA, and OPA investigation. The named employees were assigned Police Mounted Bike patrol duties in Pioneer Square. They observed two men arguing just north of the entrance to the Lazarus Day Center, a daytime location for the homeless to rest and find food. As the officers approached the men on their bicycles they could smell the odor of marijuana. Initially, with the intent to merely warn against the public use of marijuana, one of the two men, later identified as the complainant, began to walk away. The other man told the officers that the complainant had stolen \$20.00 from him. The complainant initially began to run from the officers, but upon a command to stop he stopped and one officer began to contact him. When it quickly became apparent the complainant was not going to comply, the two officers grabbed his arms in an attempt to restrain him. The complainant's initial resistance allegedly turned into an aggressive physical assault against the named officers, involving hand and arm strikes against the officers as well as an attempt to grab one officer's Taser from her hand. After asking for a "fast back-up", additional officers and a Sergeant responded. With the assistance of these other officers the complainant was finally subdued after a lengthy struggle along the sidewalk. He was transported to Harborview Medical Center for medical screening (after being rejected by KCJ). During his visit to Harborview, the complainant made a brief attempt to escape and resisted the security and staff at the hospital. A significant quantity of marijuana laced with the drug PCP was discovered in the complainant's backpack incident to his arrest.

Other Auditor Activities

During this reporting period I observed this year's "Street Skills" training, in particular the new scenarios focused on social contacts and Terry stops, and communication when multiple officers are involved in using force, subjects for which I had recommended additional training in past reports. I also observed and provided feedback for the new Sergeants' training, which also included several elements I had recommended.

I provided technical assistance for various Community Police Commission workgroups; met with the Crisis Intervention Committee; the Monitoring Team; several times with the Professional Standards Bureau and various assistant chiefs to ascertain whether progress had been made with regard to past policy, practice and training recommendations; and with the Law Department, the Gender Pay Equity Task Force, and the Public Safety Civil Service Commission, with regard to the recommendation noted above on preference points for multi-lingual skills and certain types of work and community service.

I attended the annual NACOLE conference and presented on essential components for effective law enforcement accountability systems.