CLERK FILE No. 308109

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Office of Professional Accountability Review Board Quarterly Report; dated May 22, 2006, filed May 26, 2006. (OPARB).

Date Filed with Clerk May 26, 2006

Received by Gene Wheaton City Clerk Staff

ACTION OF THE COUNCIL

Referred	To
Referred	To
Referred	To
Reported	Disposition
Re-referred	To
Reported	Disposition

REPORT OF THE COMM

Honorable President:

The

to which was referred this file, respectfully reports that the same was considered

SPONSORED BY:

REPORT OF THE COMMITTEE

Honorable President:

The _____ Committee,

to which was referred this file, respectfully reports that the same was considered, and the recommendation is:

Clerk Staff

Chair

City of Seattle

Gregory J. Nickels, Mayor

Seattle Police Department
R. Gil Kerlikowske, Chief of Police

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CITY OF SEATTLE
2006 MAY 26 AM 9:27
CITY CLERK

May 23, 2006

Mayor Greg Nickels
Seattle City Hall
Post Office Box 94749
Seattle, Washington 98124-4749

RE: Annual Report of the OPA Auditor

Dear Mayor Nickels:

Pursuant to SMC 3.28.860, please find attached the report of the Office of Professional Accountability Auditor, Kate Pflaumer.

The report covers the period of October 2005 through March 2006.

Sincerely,

R. Gil Kerliekowske
Chief of Police

RGK:jll

Enclosure

cc: City Council Members
OPA Review Board Members
Thomas A. Carr, City Attorney
Judith Pippin, City Clerk

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Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For October 2005-March 2006

INTRODUCTION

As explained in earlier reports, available at www.Seattle.gov/police/opa, there are three distinct modes of civilian oversight of the Seattle Police Department. The Office of Professional Accountability [OPA], under the leadership of a civilian Director, has continued to issue monthly reports that reflect up to date statistics on cases handled and outcomes. Each contains cumulative statistics for the year, which I incorporate by reference.

The OPA Director has also sent approximately 15 policy recommendations to the Chief in this six-month period, including issues for training. She has assisted the Department in the creation of an early intervention system that assesses repeated complaints, use of force reports, accidents, and other information that may signal a need for administrative, non-disciplinary intervention to improve an employee's performance and behavior. The OPA has put in action a system for voluntary mediation that has been well received by those who have chosen to use it so far. The Director has also put in place procedures for coordinating administrative review of potential criminal cases; new avenues for citizens to input complaints and have representation through the process; a new Standard of Conduct to address abuse of discretion; and has conducted community forums and outreach. Finally, OPA presented to staff from its office and from the Citizen Service Bureau (which now also receives complaints about police conduct) a training session in interest identification at intake and during the investigation. I was unable to attend but reviewed the CD and found it to be excellent. I hope the OPA investigators who couldn't make the session will also review the CD.

The volunteer OPA Review Board has not issued its scheduled reports for two years because of a dispute with the City over potential liability. The City Council is considering an ordinance that would remove the redaction requirement before the Board reviews closed files and indemnify Board members under Chapter 4.64 Seattle Municipal Code. The Ordinance would be effective after the completion of contract negotiations with the Seattle Police Officers' Guild or upon expiration of the contract.

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Although not within the reporting period, I should discuss briefly the April 18th hearing held by the City Council Committee on Public Safety to gather public comments on police accountability. The hearing lasted two hours with many speakers expressing deep personal dissatisfaction with the outcomes in cases alleging excessive force by officers. Many advocated measures that would allow the Review Board to "operate more effectively," including subpoena power. Some speakers pressed for drug testing of all police, for public negotiation of the Guild contract, for relocating the entire OPA outside the Police Force, for revising hiring standards in the Department, and for more training in crisis intervention and diversity issues.

These issues do not generally fall within my purview as Auditor. It was disturbing to hear those who said they would not bring a complaint to the OPA for lack of confidence in its objectivity. While I can agree with the frustrations about time delays and leading questions and that the burden of proof favors the police, I cannot agree with the pervasive bias of members of the OPA-IS that some alleged. I have watched continually improving interview skills, training, policy initiatives, and community outreach that belie the broad statements some made at the hearing. The changes most frequently advocated at the hearing were those presented by the Minority Executive Directors Coalition of King County's Racial Profiling and Police Accountability Task Force in May 2004, and a number of speakers decried the lack of progress. No speaker seemed to recognize that almost every change that is within the power of the OPA itself has been made: investigating sergeants are not to access complainants' criminal history except in extraordinary cases where it might have some relevance; complainants are allowed to have advocates accompany them in the process; civilian intake personnel are available through the Mayor's office to take complaints instead of intake sergeants at OPA; every closed case reviewed by the OPARB includes any input I have added. I have observed all these policy changes being followed in practice.

I can understand the frustration expressed about the post-investigation avenues of review that the officers have in the administrative process – to the Command staff, and then individually to the Chief who can and does reverse the recommendations made by OPA to sustain complaints, and then, if sustained, at the officer's choice, through the Public Safety Civil Service Commission or Disciplinary Review Board, which also may reverse or reduce the discipline. This is in part an inescapable aspect of a system

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designed for administrative discipline rather than public justice. The additional changes advocated would require legislation and, in some cases, modification of the collective bargaining agreement. Indeed, the "*Loudermil!* hearings" with the Chief are a matter of constitutional right, though their extent and result are of course not.

SUMMARY OF ACTIVITIES

My Report summarizes my activities as the contract, part-time Civilian Auditor from October 2005 through March 2006. The core of my responsibility is to review classification of complaints and then investigations and also to make suggestions for policies that will improve the OPA process. The Ordinance dictates that my Reports also include an ongoing analysis of the OPA process; a look at issues, problems and trends; and recommendations for additional officer training as well as policy and procedure changes. I am also tasked to meet periodically with the Chief, with the Mayor, and with the Council. I do so with the Council and the Chief, but have not thus far been invited by the Mayor.

I review all the OPA investigations before completion, make suggestions, sometimes offer input about the underlying conduct alleged, and comment on some of the issues that continue to bear on the functions of the OPA. By Ordinance, this Report is to be distributed by the Chief of Police to the Mayor, City Council, OPA Review Board and the City Clerk after he has reviewed it.

In the past six months I have met with the Bureau Chiefs and Precinct Commanders, individually with the Chief, with the Director and some staff of the OPA, and with the Review Board. I have attended a community forum and the public hearing discussed above. I have reviewed the SPD policies involved in the investigations where appropriate.

I review the allegations of misconduct on a weekly basis, with complete access to the files in process. I communicate with the OPA staff about classification, investigations, and sometimes outcomes.
In the six months covered by this Report, I have reviewed 99 completed OPA-IS investigations, marking another escalation of work for the OPA. The OPA-IS completed 73 in the prior six months and 59 in the comparable period before that.

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I reviewed 16 Line Investigation [LI] referrals, to be able to comment if I disagreed with the classification. I reviewed 21 completed Line Investigations. The actions by the OPA, the Chief, and Precinct Commanders have resulted in expediting Line Investigations. I am holding only one assigned Line Investigation of 2005 conduct. I am monitoring 5 cases from 2006 referred out to the precincts for investigation and not yet completed.

I have also reviewed, for classification and comment on possible follow-up, 35 Supervisory Referrals [SR's] and 165 Preliminary Investigation Reports [PIR's]. This compares with 147 PIR's in the last period and 103 in the first six months of 2005, again reflecting a steady upward trend.

I have reviewed numerous contact logs, some of which have been converted into PIR's or SR's, but most of which have not raised issues within the purview of the OPA and therefore not led to investigations.

These numbers represent a steady increase in the workload of the OPA-IS. This is good news if it reflects increased citizen confidence in the process or at least willingness to come forward with allegations of misconduct. It is not if it reflects an increased number of incidents prompting citizen complaints. In either case, as noted in my last report, it suggests that the problem of delayed follow-up to complaints will not easily be solved with the present staffing levels. It may also be that the contract with the Guild should be altered to relieve the burden of transcription in instances where the witness has little or nothing to add. But the fact remains that the staff assigned in the first six months of 2005 to competently handle 59 full investigations and 103 preliminary investigations cannot be expected timely to complete 99 full investigations and 165 PIR's, over a 50% increase in workload. The addition of a 90-day rotation intake sergeant on loan is helpful, but is not meeting the need.

Time lag in investigations, largely due to insufficient staffing, makes the OPA process less than meaningful to citizens, who say they have no real interest in pursuing their complaints months later when called for a statement. It is easy for the public to mistakenly conclude that the delay reflects the Department's "attitude" about citizen complaints.

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SPECIFIC ACTIONS

Internal Investigations

Of the 99 completed OPA-IS investigations, I had questions, comments, discussions, or requested further investigation in 28 cases. This is an increase in the percentage of cases on which I have commented. In a handful I requested further investigation, which OPA-IS agreed to do. In three or four I would have asked for further investigation, but it was several months after the initial contact and it seemed pointless. OPA-IS recognizes the need to triage investigations, and is sending sergeants out to interview injured people in the jail or street witnesses as part of the initial intake. This is a time-consuming but worthwhile effort, although it may be confusing to subjects when a different investigator or someone from the precinct later calls or seeks a second interview. Fairly sophisticated multi-tasking is required of all six investigating OPA-IS sergeants to handle their caseloads.

Delay Issues

My comments often pointed to delays in investigations, though caused by different factors. In one incident, for instance, the City Attorney's Office caused a delay of almost a year (partially due to the victim's extended absence) to determine whether to charge an employee with assault of a bicyclist after a verbal altercation. In that case, at least the OPA-IS had obtained witness statements within months of the occurrence. In another case, a theft allegation was hanging for eight months while the City Attorney decided whether to pursue a misdemeanor charge. In such situations it would be possible for OPA-IS to proceed to evaluate administrative discipline based on voluntary statements from the employees or none.

For criminal cases, the current Guild/City contract provides for joint supervision of a criminal investigation by OPA-IS and the appropriate investigating unit of SPD or the jurisdiction where it occurred. It further tasks the OPA-IS to complete the administrative investigation typically after the criminal investigation is completed, and to be responsible for the quality, completeness and timeliness of the investigation. These can be conflicting

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responsibilities when there is a long delay in the criminal investigation or prosecutorial decision. The situation is further complicated because the opening of an OPA-IS investigation starts a six month clock within which discipline must be imposed under the Guild contract. In practice, the OPA keeps me informed of open criminal investigations, keeps a spreadsheet noting the timing issues so it can press for timely prosecutorial decisions, and normally waits until they have been made. There are approximately 20 such open cases at this time.

Other cases were delayed simply because half the workforce was engaged in several complex, long investigations. In one case, the 90-day medical release expired before records were obtained. Another case alleged excessive force during the arrest of an intoxicated man sleeping while his three and a half year old played in a nearby park. It was hard to challenge the witness officer's repeated responses of non-recollection and summary statements that he didn't feel the named employee was "out of control" or having "difficulty controlling the subject." Investigating sergeants are encouraged to unpack such general responses to learn exactly what physically happened. It is important to know what the officer means when he says, for instance, that the subject advanced in an "aggressive manner" or in a "threatening way." When the incident was nine months earlier, however, it is hard to challenge officers' general statements or simple "I don't remember," which seem to be appearing in an increasing number of cases.

Immediate contact with subjects is particularly important in cases alleging excessive force, where injuries or lack of injury can sometimes be observed. In a number of cases, sergeants have gone to juvenile detention or jail or Harborview shortly after the allegations were made, and their interviews and observations were important to the investigations. In one case where this was not done, the sergeant spent 60 days tracking down the juvenile subject later and was not able to get a release for medical records, see the alleged injuries first-hand, or interview witnesses at the Youth Center. As noted, the OPA-IS Captain and Lieutenant are working to insure intake personnel conduct these preliminary interviews immediately.

Search and Seizure Issues

Search and seizure issues continue to arise in OPA-IS cases, leading to some increased training for officers about the law. Officers are required by policy to document consent searches and training has been implemented to review

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the procedures for legal strip searches, the basics of consent searches of hotel/motel rooms, and of the "hot pursuit" doctrine – all as a result of recent misconduct allegations, the OPA review process and advocacy of the Office leadership, and cases I have commented on. Unfortunately, complaining citizens may have no idea of these outcomes to issues they have raised. This training has been incorporated into the mandatory 2006 Street Skills program for all officers.

Taser Use

There continue to be a number of cases alleging unnecessary force in the use of tasers as compliance tools. They represent a small minority of instances in which tasers are employed, but are significant enough to deserve comment. I question whether the SPD Directive of April 2005 is adequate to guide officers in this area, despite the regular training. For instance, officers often believe those they need to tase into compliance are "mental" or "high" – which conditions in fact present an increased risk of unforeseen injuries. The primary issue, or course, is whether this degree of force was made necessary by the arrestee's conduct. In one case, a woman would not exit her car, where the officer could see a used crack pipe and the woman said she had "mental health issues." She repeatedly yelled for a female officer and either resisted being pulled out of the car (according to the officer,) or reacted to the threatened taser use (according to her.) In any case, the male officer attempted unsuccessfully to use his taser. Then he summoned a female officer, who had no trouble getting the subject to step out of the car and be handcuffed.

In another case, a narcotics suspect claimed he was tased six times, including after he was fully compliant. The officer stated that he tased the subject once, from five feet away, in the chest, that the subject then yelled and rolled in a ball on the ground and was compliant. He was taken to Harborview, complaining of being dizzy and shaking, where he was decontaminated and treated. The taser record indicated two cycles of taser use, one for five seconds and the second for an unknown duration, with darts in the chest and stomach . Search of his pouch revealed methamphetamines and precursor elements.

In a third case an off duty Seattle officer asked for assistance from a responding King County deputy, who then tased the subject. It was unclear whether the officer had specifically requested the taser.

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In a fourth case, the subject was wandering down the middle of an alley, apparently impaired or at least irrational, and refused to move over to let a police van through. A foot chase followed a confrontation and threatened arrest, and the man was finally found running around in circles in a parking lot. The officers then tased him, unintentionally multiple times, despite the fact that his conduct pretty clearly indicated intoxication or mental issues.

In a fifth case, the complainant said he was tased for longer than necessary when he attempted to intervene in the misdemeanor arrest of his friend for creating a disturbance or obstruction. The record indicated four applications of the taser for a total of 29 seconds.

Finally, in a sixth case, an officer handcuffed an intoxicated man who resisted arrest after being found asleep on a bus bench while his three year old played unsupervised in the park. On the way to the precinct, the officer asked for a taser unit and more officers to be on hand to help get the handcuffed man into a holding cell. No taser was used.

The Victoria Police Department, on behalf of the British Columbia Office of the Police Complaints Commissioner, brought together a medical review panel in the autumn of 2004 to review taser use and the "associated condition called excited delirium." One member of that panel, the Pathfinder Forum, which consults in forensic medicine and pathology, later reviewed two reports on tasers "from a medical perspective" at the request of the Complaints Commissioner's Office. On June 14, 2005 they issued a Taser Technology Review Final Report, that concludes, at page 12, that research suggests "police should, where possible, be minimizing multiple [illegible]SER application."

Similarly, the Police Executive Research Forum advised that "officers be allowed to use stun guns only on people who are aggressively resisting arrest, not just refusing to follow orders." It also recommended "officers pause and evaluate suspects after shocking them once, instead of repeatedly shocking someone without a break." Finally, it suggested "anyone who is shocked should receive follow-up medical treatment, either at the scene or at the hospital." This latter suggestion is followed by SPD, with medical evaluation and treatment after a subject is tased.

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I recommend that the Department keep up to date with the ongoing research on the effects of tasers and consider its Directive a work in progress.

Police Escalation of Minor Confrontations

I have repeatedly recommended further training in the street skills course in de-escalation of threatening situations. The OPA Director has made similar recommendations. The Chief has ordered de-escalation training as well as instruction about the new Standard of Conduct, "Failure to Exercise Judgment and Discretion:"

> "Discretion consists of the ability to apply reason, professional experience and judgment in decision-making. ...The overarching standard defining discretion is that all decisions must be reasonable, articulable[sic], warranted and justified. Employees who engage in conduct that is or reasonably appears to be excessive, unwarranted and unjustified may be investigated for either a specific act of misconduct... or an allegation of 'Failure to Exercise Judgment and Discretion' under this article."

This training has been incorporated in Street Skills 2006.
There continue to be a number of cases where significant force became necessary because of the escalation of the original confrontation. An example is the tasing incident referred to above of the man blocking the police van in an alley. While the force ultimately used in any given case may have become necessary, earlier actions could have helped defuse the hostility and calm the situation.

It is distressing to see how many of the excessive force complaints begin with minor street confrontations: over jay-walking, possible impound of a car, or even, in one case, refusal to show an officer a "receptacle" for disposing of dog waste. Citizens often do not show officers respect or attention when confronted over such minor offenses. When they verbally challenge or disregard orders given, it often leads officers to respond more harshly than warranted. I made comments about these underlying situations in ten different cases. In four of them, the physical situation developed with witnesses, rather than or in addition to, suspects. I am hopeful that the new

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training and Standard of Conduct will help make the application of force unnecessary. My comments are not meant to reflect on the OPA-IS investigations of these incidents, which are generally thorough and appropriate, although sometimes recommendations of a "sustained" finding were changed at a higher level.

Line Investigations

I had comments only on a handful of returned Line Investigations in this period. In a couple of these, there was a long delay and an unsatisfactory investigation. For the most part, though, both timeliness and quality of investigations have improved pursuant to the Chief's directives and the emphasized 60-day deadline. There is also a serious attempt to counter the bias of precinct investigators in favor of the officers.

Supervisory Referrals and Preliminary Investigations

Judgment is required to determine whether an incident should be classified as a PIR or an SR after a sergeant at OPA-IS has looked into the matter. Each classification is reviewed by the OPA Lieutenant, Captain, and Director. I commented on only three of the 35 SR's I reviewed during this six-month period. I was concerned in one case about whether a detective ignored assigned investigations to follow up on an out of City crime where his friend was the victim. In another case, I was concerned that an officer had used his discretion to impound a homeless man's car where it was not necessary and the car contained all his belongings.

Discipline is not contemplated in either SR's or PIR's, but both often require some supervisory action and return of the file to the OPA. Supervisory Referrals usually indicate that the policy violation was not willful or the misconduct was not worthy of discipline. In PIR's there was no violation of policy and the complainant is usually quite satisfied to have the comments simply forwarded to the officer through the chain of command.

I commented on only two of the 165 PIR's completed in this period, one of which I thought should be treated more seriously, as an SR. PIR's are in fact summary investigations that are often quite time-consuming and the OPA-IS staff does a great job. The investigating sergeants often go to substantial lengths to find out what happened and how the situation can be improved,

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locating property or helping citizens through other processes, despite the fact that no misconduct has occurred. Lieutenant Kebba reviews each PIR and often makes suggestions of further actions to help the caller.

Conclusion

Many of the policy recommendations made by the Director of OPA have addressed issues raised in her review and my comments about cases investigated by OPA-IS. For instance, she has stressed the importance of training about biased policing and to improve handling of onlookers critical of police action.

Trends in common complaints give the Department important information about underlying problems. The OPA Lieutenant has identified ten recurring underlying issues appearing in OPA-Is investigations, including: failure to file use of force packets, overzealous street searches, lack of professionalism, failure to take appropriate actions, and need for de-escalation skills. These issues were shared with all captains and lieutenants at the annual briefing.

The administrative disciplinary system is often not the best place to address these recurring issues, but the patterns in police conduct are important information for the Department as a whole. The OPA thus provides an important service beyond investigation and proposed discipline.

The interaction goes in both directions: the respect of the precinct leadership, the Command Staff, and the Chief for the OPA-IS investigations and recommendations is a critical component to continually improving Police service to the community.

Report respectfully submitted May 22, 2006

/s/

Katrina C. Pflaumer
Civilian Auditor

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