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

January – June, 2013

Judge Anne Levinson (Ret.)
OPA Auditor
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Introduction

The Seattle Police Department's ("SPD" or "Department") Office of Professional Accountability (OPA) is responsible for receiving and investigating all complaints of possible misconduct by SPD employees. It is comprised of a Captain, Lieutenant, Sergeants, civilian administrative staff and a civilian Director. The civilian Auditor for OPA is a former judge or an attorney who provides outside oversight to ensure all complaints and investigations are handled in a fair, thorough, and objective manner. Based on the complaints received and the results of the investigations conducted, the OPA Auditor also makes recommendations for changes to policies, systems and training that will help improve effectiveness, professionalism and accountability.

The OPA Auditor is required by City ordinance 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

In my last report I summarized the recommendations to improve policies, training, tactics, hiring and systems I had made since my tenure began in the third quarter of 2010, noting that the Department was beginning to implement protocols to assess and track the progress of recommendations, establish clear responsibility for timely implementation, with increased collaboration across the various divisions of the Department, and input from the rank and file. Progress is being made on several fronts, including changes to a number of policies and a range of trainings. For those recommendations not yet implemented, the Professional Standards Bureau will remain responsible for providing regular updates to the Chief and meeting regularly with the OPA Director and Auditor.

Because the Department has so many reforms already underway based on existing Auditor recommendations, requirements stemming from the Settlement Agreement with the Department of Justice overseen by the Federal Court's appointed Monitor, the related Memorandum of Understanding (MOU) and the work of Community Police Commission, my intention is to keep additional recommendations to a minimum to help enable the most expeditious implementation of those reforms already underway.

[1] See SMC 3.28.850 et seq.

Policy, system and training recommendations for this reporting period:

1. The City, through its Law Department, should assess whether there are additional options (such not supporting an application for LEOSA privileges[2], holding back salary, accumulated sick leave or pension) to help ensure accountability when an officer chooses to retire or resign rather than be subject to discipline and/or offer testimonial evidence in an administrative investigation. Officers retiring when there is an allegation of misconduct is not unique to Seattle (or to Washington State) and is particularly important for those cases that are declined for criminal prosecution or do not result in a conviction, but where the allegation was, or might have been, sustained under the preponderance standard used for administrative proceedings.

2. The City's recently-appointed Gender Pay Task Force that is developing short-term and long-term strategies to address gender-pay inequities should include in its review of gender pay disparity the possible unintended consequences for local jurisdictions of federal, state or local law requiring the use of Veterans' Preference Points in hiring and promotional opportunities, particularly in regard to SPD's female and LGBT applicants and employees.[3] While the City cannot (and may not wish to) change these laws, it may be able to create ways to balance out any inequities that may have resulted from the laws for SPD and/or other City agencies. This is likely an issue for other local governments as well.

3. SPD should ensure that there is good understanding of the procedures to be used for reporting Use of Force when there is an indication of potential criminal conduct by an officer in the force used. The "Garrity" protection afforded an officer with regard to self-incrimination was misunderstood in a case during this reporting period where the force might possibly have been criminally charged as assault. Some in the chain of command were unclear as to the obligation to conduct a timely and thorough review, as is required under policy for the reporting of Use of Force.

4. There is continued need for training (now being done) in how to communicate tactical decisions and primary officer authority when multiple officers are involved at a scene.

5. There is continued need for emphasis on thorough report writing and rigorous review to ensure General Offense Reports, Use of Force Reports and other documentation accurately

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[2] The Law Enforcement Officers Safety Act (LEOSA) authorizes qualified retired law enforcement officers to carry a concealed firearm under certain conditions. See 18 U.S.C. 926(B)&(C). The retired officer has to obtain documentation from the law enforcement agency from which he or she retired that states he or she was retired in good standing for service or physical disability. See RCW 9.41.060.

[3] This recommendation arose from observation of the limited number of women on the list for SPD promotional exams and the rankings for those who did take the exam, where the final order can be impacted by the inclusion of Veteran's Preference Points equivalent to 5% of the candidate's total exam score, as required by RCW 41.04.010.

capture the totality of the incident, the role of each officer, the tactical actions taken, and the reasons for them.[4]

6. SPD should revise its Listen and Explain with Equity and Dignity (LEED) training, to ensure it addresses the priorities laid out in the federal grant proposal initially submitted to fund the training and consider renewing its partnership with the King County Sheriff's Department to conduct joint training.[5]

7. To help eliminate any appearance of retaliation when an OPA Complainant also has pending criminal charges, OPA policy should clearly state that 1) although there often needs to be communication with prosecutors to ensure their timely review of cases for possible filing of criminal charges, there should be *no* communication between OPA and prosecutors with regard to the prosecutorial decision *as to whether charges should be filed*; and 2) OPA investigators always identify themselves as with OPA when interacting with others in the criminal justice system. As well, OPA should put in place a protocol for handling investigations for cases where an allegation of retaliation or any other allegation is made against OPA staff.

8. SPD's policy with regard to derogatory language [5.001(VII.)(6)] should be modified to cover all members of the public. The policy approach of listing protected classes is not sufficiently inclusive (e.g., gender is not listed).

9. SPD's procedure regarding conducting sexual assault investigations [Procedures and Tactics 026] should be edited to make clear that the preferred practice of limiting initial inquiry questions to those needed to determine whether a crime was committed, and that no inquiry should be made about the sexual history of the victim, is the standard for interviewing witnesses as well victims. This is the intent of the procedure, but it is not clearly written.

10. There is continued need to address systemic improvement in management of and policies for Secondary Employment (as noted in several prior reports). Issues during this reporting period included an officer who has an investment in and manages a private security company, an officer who has a financial interest in a private investigation business owned by a spouse, and

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[4] I have noted in some recent cases a significant improvement in the General Offense Reports and Use of Force Reports, as well as in the thoroughness of the initial review of force by the supervisor and by the Use of Force Review Board, addressing concerns raised in prior reports.

[5] This recommendation arose from my observation of SPD's in-service LEED training. This training had been committed to by the Department in 2011 in response to recommendations arising from the trending escalation of minor incidents. It was promoted as a collaborative effort with King County, and was to be premised on the tenets of procedural justice. Although the City and County had initially begun a collaborative process to get a federal grant to fund the training, at some point SPD discontinued the partnership and assigned training staff unfamiliar with the LEED proposal or its grounding in procedural justice principals to develop SPD's new training. It is unclear, given the importance of this training, why SPD did not use a jointly developed curriculum derived from the funding proposal, based on research and best practices, and instead assigned a trainer without expertise in the field to develop the training from scratch, with no information provided to him about the original proposal and rationale for the training.

the use of SPD vehicles, without approval, for overtime work coordinated by a private company.

11. Training for sergeants and other supervisors should include best practices for documenting any coaching, counseling or training of their employees so that there is an accurate record of work performance issues. In particular, when counseling is given that does not rise to the level of discipline, without record of it, other supervisors are not aware it has occurred; addressing ongoing problems is more difficult without accurate documentation.[6]

Additionally, OPA made the following recommendations in the Director's individual case certifications or in proposed disposition memos at the conclusion of investigations conducted during this reporting period, for which the Department will ensure there is follow-through by the relevant SPD personnel:

12. Use a roll call training to review with officers which officer is responsible for ensuring the safe-keeping of property when multiple officers are involved in a call.

13. Include employees assigned as "Precinct Clerks" in Crisis Intervention training so they can learn how best to communicate and interact with members of the public with mental health issues who ask for assistance at Precincts.

14. Ensure that Traffic Staffing Sheets and similar documents provide an accurate accounting as to the identity and assignment of all officers, whether on or off-duty, working at any given event or location (including last minute substitutions) as a way to improve accountability by minimizing the number of complaints that are unable to be resolved because the Complainant did not know the officer's name or have a specific description that could help identify the officer.

15. As recommended by SPD Audit staff, strengthen the administrative management of property within the mountain bike program by having purchases delivered to the Quartermaster Unit for inventory control tags and entering into a database rather than directly to Precincts, having the Quartermaster also process all items that are taken out of service, having newly assigned officers to the unit purchase their uniform items with a one-time reimbursement similar to Motorcycles and Harbor personnel, having one central Lieutenant (or higher) assigned to develop a common policy and also coordinate the Department-wide inventory control, equipment purchase, maintenance and training for all of the bike squads (similar to the fleet control analyst position for vehicles).

16. Conduct an audit to ensure there are appropriate safeguards and documentation requirements for Vice Unit expenditure vouchers for such items as food and drink, as well as for use of personal or Departmental credit cards.

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[6] It appears from the announcement of the Sergeants' training curriculum released after the drafting of this report that this topic will be covered in the new training. Absent from the announced subject list for the new training, however, were reviewing Use of Force and Search & Seizure, along with accurate and thorough report writing, each of which I have recommended in prior reports as priorities for first-line supervisor training.

17. Review policy and practices regarding placing employees on Mandatory Sick Leave Reporting, to determine how often Sick Leave Reporting orders should be regularly reviewed by a supervisor for proper documentation and to evaluate if mandatory reporting should be continued or ended.
18. Enhance officer safety as well as accountability by ensuring each Precinct's lobby and parking lot video cameras also record and retain video.
19. Include taxi companies and parking lot owners in any community outreach conducted, based on a case where employees may have been directed by their supervisors and/or business owners not to participate in any OPA investigation (presumably for fear of retaliation or other negative response by SPD).

Complaint Review

Each week the OPA Director and Auditor review all new complaints, determining whether each complaint should be investigated, handled by a supervisor, can be resolved without referral, or might instead be successfully mediated.

In the period covered by this report, the OPA Director and I reviewed 228 new complaints alleging misconduct. We agreed with the initial classifications recommended by OPA staff for all but 11, upgrading two from administrative to criminal, eight from Supervisor Action to Investigation and downgrading one from Investigation to Supervisor Action. The final classification results were 83 classified for Investigation and 145 classified as Supervisor Action. Sixteen cases were recommended for mediation. We also reviewed 332 inquiries that had been entered by staff into the OPA "contact log." These are requests for information or assistance, which we review to ensure none involve possible misconduct or warrant additional follow up.

When reviewing the initial complaints, the Auditor and Director also review the preliminary investigations done during the intake process to see if other allegations should be included, even though the person filing the complaint did not specifically raise that concern. For example, the Complainant may raise the concern that force was used when the officer interacted with him, but the initial case information may also indicate that the officer did not articulate reasonable suspicion for the underlying stop. Or the intake could preliminarily indicate that the incident reports did not match what the In-Car Video (ICV) showed, such that allegations related to thoroughness and accuracy of reporting by the officers and screening of the arrest by the supervising Sergeant should be added in order to make sure that the investigation covers those elements of performance as well. Because the collective bargaining agreement requires allegations be identified within 30 days of the complaint being filed, where there is information indicating a possible violation of policy or law, the allegation must be added, whether or not it is later borne out by the full investigation.

During this reporting period, we added 33 allegations, including bias, Use of Force, failure to use ICV, discretion, thoroughness of reporting, property damage, showing a badge while drinking alcohol,

courtesy, honesty, failure to report misconduct, retaliation, search, profanity, derogatory language, failure to report a suspended license, and failure to report Use of Force. We also removed three allegations, two where it was determined those two officers did not conduct the search at issue and one where the allegation suggested by staff did not warrant further action.

I reviewed the quarterly reports of alleged misconduct being prosecuted criminally or considered for prosecution and reviewed 158 complaints that had been referred for Supervisor Action (SA). SA's are complaints often involving perceived rudeness or minor concerns that are best addressed by the employee's supervisor rather than requiring an investigation. The supervisor may be directed by OPA to contact the Complainant, meet with the employee, offer a roll call training if the concern is relevant for others, and so forth. The actions taken by the supervisor are to be documented and returned to OPA within 30 days. Most conducted during this period were well done and timely, but there continues to be a pattern of lack of timeliness by some particular supervisors that the new OPA Director will need to address. Understandably, the unions and employees would prefer more cases are referred to supervisors for handing rather than result in full investigations, but that approach can only be effective when supervisors are accountable for ensuring responsiveness and follow through.

For the same reason, I also conducted an audit of the Training Referrals that were ordered by OPA in cases arising from complaints filed in 2012. Training Referrals are made at the conclusion of an investigation where the employee was found not to have violated policy, or the violation was minor and further training or mentoring is deemed more appropriate and helpful than discipline. Of the 40 Training Referrals reviewed, less than half met the 30-day deadline. As with requests for Supervisor Action in lieu of investigation, and with other systemic recommendations made at the conclusion of investigations, OPA needs a more robust and automated system to ensure timely and substantive follow through.

Investigation Review

The OPA Auditor reviews all investigations conducted by OPA before they are closed to make sure they are thorough, objective, and utilize best investigatory practices. This includes review of the intake, investigation, case summary and findings proposed by OPA. The Auditor can request or direct that additional investigation be conducted, which can include obtaining additional evidence, interviewing additional witnesses or re-interviewing witnesses to ask additional questions or follow up on particular answers. During this reporting period I reviewed 90 investigations.

Most OPA investigations during this period were very well done. The investigators were impartial, respectful of all Complainants, thorough and diligent. I would still like to see more detailed investigative plans done for those cases that are more complicated, to ensure that there is clarity at the front end about what questions need to be answered for each allegation. Also helpful would be a protocol for immediate review of intake, particularly in regard to the time-sensitivity of any perishable evidence, if a case is transferred from the Sergeant who did the intake to a different

investigating Sergeant. For example, if the intake Sergeant did not determine if there was premises video available, that step should be prioritized, given the likelihood it may be recorded over if not immediately obtained. Either the intake Sergeant or the Lieutenant doing the intake review should be flagging that directly for the investigative Sergeant, who otherwise may simply receive the file and not begin his or her work on it until his or her other cases are completed. Lastly, another practice I have recommended in previous reports of always offering Complainants and witnesses in cases classified for investigation the opportunity for in-person interviews, where that can occur in a timely fashion, still needs to be fully implemented.

Although all contractual timelines were met during this reporting period, and there are often competing workload demands, I would still like to see OPA adopt strategies to enhance timeliness of investigative review once the investigator's work has concluded, so as to be most responsive to both the Complainant and the employee.

Below are those investigations for which I either asked for additional investigation, made suggestions for improving future investigations or I disagreed with the findings, and some cases that help highlight one of the policy or training recommendations noted above.[7]

Criminal Investigations

Three cases during this period again highlighted the challenges created where cases are referred for criminal investigation and the possible filing of criminal charges, with OPA not conducting the administrative investigation until that process is concluded. In two investigations, the delay was caused by the criminal investigation and in one case significant delay was caused by the several months taken for a filing decision by the City Attorney. In the first two, this severely limited the available time to conduct a thorough investigation and review in order to meet the contractual time limit of 180 days, beyond which time discipline can no longer be imposed. In all cases, these delays can also result in less reliable memories and other potential loss of evidence.

Allegations of excessive force and failure to report Use of Force were at the heart of a case where officers were investigating a possible shooting incident involving an air-soft gun and a nine-year old victim. The primary officer soon located the suspect vehicle near some basketball courts. As he was interviewing the owner of the vehicle, the named officer arrived as a back-up officer. A crowd of approximately 20 to 30 young males, including the subject, started to gather near the officers and became verbally aggressive toward them. The subject allegedly became verbally confrontational with the named officer. After being taunted about what would happen if he were not wearing a police badge and uniform, the officer threw down his badge and police baseball cap and challenged the subject to a fight. During the heated exchange, the officer believed the subject intentionally spit on him.

[7] There were additional cases that provided the basis for some of the policy recommendations above, but where a description of the facts was not needed to further explain a recommendation, in the interest of report length, I did not further describe them below.

The officer allegedly assaulted the subject by pushing him several times, exchanged "fighting words," used profanity and then grabbed his hair and pushed his head toward the patrol car as another officer was placing the subject in handcuffs. At the Precinct, the officer was then captured on video making menacing gestures to the subject as he sat in the holding cell with his hands handcuffed behind his back.

The OPA investigator did a very thorough and objective job addressing these allegations. I was concerned, however, that the direction the investigator had been given for the initial investigative plan did not also address possible issues of policy violations by supervisors, including whether: the Use of Force was fully documented and reported; the named officer was admonished to stay away from the subject or was instead allowed to enter the holding cell; the named officer was separated out of hearing range from the subject when the supervisor interviewed him (to avoid tainting the officer's statement); the arrest was screened on site; there was confusion as to whether the subject was being arrested for assault on an officer or obstruction; supervisors had ensured that officers with an obligation to intervene on site and/or an obligation to report force did so; and any required hazard and bodily fluids reporting was done. Interviews with the Captain and Assistant Chief were not part of the approved investigative plan and should have been. I requested that the Captain and the Assistant Chief both be interviewed, and then asked that the Captain be re-interviewed when his initial interview did not sufficiently address the array of issues that needed to be addressed or follow up on inconsistencies in the original answers.

Based on the testimonial, documentary and video evidence, I agreed with the finding of Sustained for all of the allegations against the named officer. I would also have Sustained allegations of failure to report Use of Force for the Captain and the Assistant Chief. The determination was made that since the Assistant Chief was the highest ranking employee responsible, the responsibility was his, so he was named, with a finding of Training Referral for the failure to report Use of Force. I also would have directed that the current Precinct commander listen to the interviews of the other involved officers to ensure he is fully aware of their concerns and perspectives about interacting with youth in the area and that he then provides those officers additional supervisory expectations and coaching.

As noted in the policy and training recommendations above, this case highlighted that there was some confusion as to the required actions to be taken in reporting Use of Force when the force used appears to implicate criminal conduct and/or possible violations of policy.

In a case where the initial allegation had been forwarded to OPA by an SPD employee who had been told by someone at a holiday party that an officer was known to frequent bars and "hit on" women, the Director and I recommended that the case be referred for criminal investigation even though the allegations were very vague and the initial intake seemed to indicate it was probably just chatter or rumor. OPA referred the case to the Sexual Assault Unit (SAU), which attempted to investigate but was unable to get the alleged victim to make a statement. SAU returned the case to OPA. The OPA investigator, after several attempts, was able to contact the victim directly and take a statement. Based on her statement, the case was returned to SAU to proceed with the criminal investigation.

They interviewed her and interviewed several witnesses. The named officer exercised his Constitutional right to refuse to be interviewed. The case was submitted to the King County Prosecutor's Office, and they declined to file charges due to concerns about lack of physical evidence, the fact that the victim had not come forward earlier and other possible proof problems. By the time the case was referred back to OPA, only weeks remained for the administrative investigation to be concluded.

The allegations included not only possible sexual assault, but also discretion (the frequency and duration of his on-duty time visiting bars for "bar checks") and appearance of conflict of interest. After reviewing the file, I asked that an additional civilian witness and the named officer's supervising Lieutenant be interviewed and that documentation be added to note that criminal histories in the file had been run by the detective conducting the criminal investigation, not by OPA.

This case also highlighted a policy issue included in the recommendations above. During the criminal investigation the named officer announced his retirement, which meant discipline could not be imposed. To its credit, SPD policy is always to conclude the investigation regardless of the officer's retirement and when called for to prohibit the officer from have the opportunity to work under "extended authority" as a retired officer, and where a decision to terminate is made, to ask the State Criminal Justice Training Commission ("WSCJTC") through the decertification process to ensure the officer not be permitted to be employed by any other police agency in the state.[8]

Both of those mechanisms are important, but they only result in meaningful accountability if the officer at issue has any plans to keep working as an officer or retired officer. There are currently no mechanisms in place allowing pension, salary, sick leave, LEOSA or other aspects of employment to be affected or to require the officer to participate in the administrative investigation before his or her retirement is permitted.[9] As noted above, this is by no means unique to Seattle, but the City through its Law Department should assess whether other tools are available and should be utilized.

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[8] The WSCJTC, not local police agencies, can revoke certification, and only based on the criteria in RCW 43.101.010 : "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 within the meaning of Evidence Rule 609(a), (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; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination. Other states, such as Oregon and Arizona, have broader criteria for what constitutes misconduct resulting in decertification. See: Goldman, Roger, "A Model Decertification Law", *32 St. Louis U. Pub. L. Rev. 147, 2012, Saint Louis U. Legal Studies Research Paper No. 2013-7 (2012).*

[9] While this officer did give a statement to OPA, a case noted in the last report involved an officer who retired and refused to provide a statement or otherwise offer any information.

The third criminal investigation case involved a subject who, at the time of her arrest for shoplifting at a grocery store, told the store security personnel that an off-duty Seattle Police officer had been providing information that had allowed her to escape detection and arrest for large thefts of hard liquor. OPA was apprised and determined that the case had to be referred to the Investigation Bureau as a criminal investigation. After nearly six months of criminal investigation, and then review by the King County Prosecuting Attorney's Office, the case was returned to OPA with no charges being filed. The Detectives and Prosecutor's Office had been diligent in trying to track down the uncooperative subject, but if there had been any evidence found substantiating the allegations, even by the lower preponderance of evidence standard used in administrative investigations, OPA could not have pursued it because there was no time left to conduct an administrative investigation. All OPA could do at that point was rely on the criminal investigation. Fortunately, the allegation was determined to be Unfounded.

Training and Policy Issues

In a case that reinforces the continued need for Department training and procedures that emphasize accuracy, thoroughness and robust screening of cases by supervisors, officers were dispatched to a reported disturbance at a 40-unit residential motel regarding males fighting in the hall and one threatening to kill a female. The caller from one of the units stated the neighbor across the hall had a knife and was threatening to stab another resident. Officers arrived and made contact with one of the males (the OPA Complainant) who had allegedly been fighting in the hall. The officers arrested him for investigation of burglary and harassment. His attorney later obtained video from the building and the suspect filed a complaint stating he was in possession of video that "clearly contradicts the officers' written reports." Allegations against the officers were that one entered the suspect's room and stayed in his room for approximately 20 seconds without legal justification and that officers failed to thoroughly investigate and document the incident. After watching the video at intake, I recommended a Use of Force allegation be added even though the Complainant had not raised that issue. It appeared from the video that the suspect was intoxicated and was not intentionally disobeying or being resistant by sitting down against the wall with his hands up, rather than getting on the floor as ordered. The initial viewing of the video also showed a possible illegal search and not best practices by the backing officer.

The OPA investigation was excellent, and raised a number of issues with regard to the accuracy and thoroughness of the reporting by all of the involved officers, the screening of the case by the Sergeant, and the handling of the case by the assigned detective. Among other things, the officers asserted that the suspect resisted arrest and turned toward them with a "bladed stance" in a threatening manner (even though they were aware of his level of intoxication); the officers, the Sergeant and the detective were all aware of the possibility of a building video and none took steps to ensure it was acquired and reviewed; there was no indication that the Use of Force Review Board was aware of or reviewed the video in their decision to find the actions of the officer within policy; the officer who went into the suspect's apartment without the subject's permission did not document

that in the General Offense Report; nor was there any documentation that the suspect's fanny pack was searched.

Additionally, two officers did not write reports until much later; a property inventory was not done; the report narrative described how the suspect had kicked open the victim's door, visibly damaging it, and left his boot marks on the door but no pictures were taken of the damage and there was no documentation that the primary officer or supervisor directed any officer to photograph the damage; and there was no effort to find and obtain witness statements. The officer who found the scissors (the alleged weapon) did not document the chain of custody for them so there was confusion as to where they were found and what happened with them; witness accounts were not documented (who observed the suspect the kicking the door or who said the suspect was around the corner with a knife), and other witnesses were not sought out or interviewed. The Detective stated that his usual practice is to simply forward any 911 tape he gets on to the Prosecutor without listening to or even retaining a file copy; that relevant information was not documented but that "officers often don't include all of the relevant information in reports;" that common practice is for Detectives not to get Use of Force statements so he did not contact anyone to obtain the rest of the information needed; and that he was aware of the existence of a video, and thought he sent someone to get it, but did not know if they ever in fact did.

OPA recommended that the allegations of violation of Use of Force, Search and Primary Investigations policies be Sustained.

A case initiated by the Complainant in 2012 arising from a 2009 arrest, raised the question as to how OPA should investigate a case when OPA staff are the employees alleged by a Complainant to have violated Departmental policy and the collective bargaining contracts limit OPA's ability to use outside investigators. In this instance, the allegation was that an OPA investigator, with the approval of her supervising Lieutenant and the Director, had retaliated in 2009 against someone who had filed an OPA complaint. Because of the conflict of interest, the Seattle Ethics and Elections Commission (SEEC) Executive Director and investigator were asked to handle the case, working with the Auditor.

The OPA investigator at issue had in 2009 discussed with an Assistant City Attorney (ACA) who was in charge of filing decisions why charges had not been filed in the case. The OPA investigator had noted a Detective had failed to be diligent in pulling together the file and the investigator's follow up did then lead to the ACA filing charges (later vacated by the Court at the request of the City Attorney's Office given the concern about possible perceived retaliation).

As the SEEC Executive Director concluded in his recommended finding of Inconclusive with regard to the OPA investigator's actions, there was not a causal connection to show that the investigator, in taking the actions she did, was intending to retaliate. In this instance what the evidence showed was that the investigator in 2009 had proceeded as she would have were she not in OPA, and took steps to make sure the case was documented as it should have been when submitted to the Prosecutor. She did not stop to consider that as a Sergeant working in OPA she had a different responsibility, and that taking steps that may have been appropriate elsewhere in SPD would chill the complaint

process. In speaking with the ACA, the investigator also failed to identify herself as working in OPA, so the ACA thought there was nothing unusual about a Sergeant calling to make sure the ACA had what he needed to file a case. Nor did OPA have a policy in place at that time with regard to investigators communicating with Prosecutors about filing decisions. The actions of the OPA Director and Lieutenant were found to be Lawful & Proper since they had no knowledge it had occurred.

As noted above, this case highlighted the need for OPA have clear policies expressly prohibiting communications between OPA staff and prosecutors that could in any way appear as attempting to influence a filing decision about a Complainant or witness; training for new OPA staff to be cognizant of their unique role while working in OPA; a requirement that OPA investigators identify themselves as with OPA; and a standing (contractually negotiated) procedure for handling complaints where OPA personnel are named. The SEEC investigation of this complaint was delayed for some months as the respective unions requested negotiation about non-OPA staff conducting the investigation.[10]

Quality of the Investigation

The great percentage of the 90 OPA investigations completed in this reporting period were very well done. There were, though, a handful of cases during this reporting period where I asked for additional work or offered recommendations for future improvement. There were a few cases where I was concerned that possible private videos were not quickly followed up on during the intake or investigative process or where the file was silent as to whether OPA had done so. Because this kind of evidence is perishable (often routinely deleted or taped over by the business or individual), it is important to do a site visit or use other methods to quickly determine whether video exists and, if so, to acquire it. In past reporting periods this has not been a problem, so this was unusual.

In a case where the Complainant had called 911 to report his car had been broken into at the parking garage across the street from the Seattle Aquarium, I asked OPA to follow up on the possibility of private premises video that had been mentioned in the General Offense Report. Two officers had arrived in response to the call, and the victim (OPA Complainant) felt that the officer who spoke with him lacked sympathy, in particular alleging that the officer commented that the victim was foolish for leaving his items in the car. OPA added an allegation for failure to use In-Car Video (ICV). Because of the lack of ICV, additional private video of the encounter would have been particularly useful. No relevant video was found, so the professionalism allegation was found to be inconclusive. The failure to use ICV allegation was Sustained.

A second case involved allegations of misuse of authority, courtesy, profanity and consuming alcohol while displaying a badge, stemming from an officer's off-duty trip to British Columbia during the New

[10] Three years had passed since the date of this incident, which meant that discipline would not have been an option even if the SEEC had completed its investigation in less than 180 days and sustained any of the allegations.

Year's Eve holiday. He had allegedly used his position as a police officer to try to bypass fees for the First Night (New Year's Eve) festivities, made profane comments and was quite discourteous to various individuals after he had identified himself as a police officer. He interacted with several Royal Canadian Mounted Police (RCMP) Officers who documented his behavior and immediately notified SPD. As part of that documentation, there was a notation that private video might exist. OPA intake did not indicate that they had pursued that, so I asked when we classified the case for investigation that the Lieutenant make sure the investigator follow up on that when he and the investigator went over the investigative plan. This was a rare instance where not only did a request not get followed up on, but when I received the file after conducting a review of open cases that appeared to be delayed, it was apparent that there had been no action on the case by anyone until late May, a delay of four months. Fortunately, because the RCMPs had done such a thorough job of their initial documentation, witnesses could still be contacted and even with the loss of memory over time and the lack of video, there was sufficient evidence to Sustain all four allegations.

In another case where checking for video should have occurred both as part of the Sergeant's screening at the time of the incident and then as part of the OPA intake, SPD had received a call about an armed robbery of a citizen in Pioneer Square during a Seahawks game. Bike officers heard the suspect description and immediately stopped a person in the area who matched the description. The victim was brought over to identify him and stated that the person stopped was not the suspect. A Sergeant responded to the scene, approved the release of the person stopped as a possible suspect and explained to him what had occurred. The suspect (OPA Complainant) alleged he was grabbed, turned and slammed up against a plate glass window of a business, that an officer threatened to Taser him, other force was threatened and he was called a "crackhead" and a "felon." He also alleged his cell phone was damaged. In reviewing the case it was clear that the initial review of the investigative plan was lacking, as there was a specific address given and an assertion that the force used was against a business's plate glass window, both of which meant there was a possibility of witnesses and/or premises video. No canvass of that business or others nearby had been conducted by OPA, and neither the officers nor the Sergeant who screened the initial stop and release were asked as part of their interviews whether the businesses were open, whether there were witnesses, whether they had looked for video and why none of those things were mentioned in their respective reports. A quick check by the OPA Captain after my review showed that because the incident occurred on a Sunday night the business at that address was closed, but that did not foreclose the possibility of any possible employees or customers on site or in neighboring businesses who could have been noted by the Sergeant on site that evening or the possibility of any video cameras outside of those businesses. The OPA Director found, based on all of the interviews and other evidence available, that the officers' actions were within policy.

In a fourth case, the Complainant had alleged an unknown bike officer kicked him on the foot and belittled him. Because bike officers don't use In-Car Video, doing an immediate check of the location for video was important. When we reviewed the file for classification after intake, there was not any

indication whether that had occurred, so I asked that the Lieutenant ensure that the assigned investigator quickly do that, or if in fact the intake Sergeant had done so, that the file document that.

In a case where two officers were enforcing the sit and lie ordinance in Occidental Park, two members of the public not within hearing distance but within line of sight had seen the latter part of the incident where officers had punched the subject and they felt it was excessive. From the investigative file it did not appear that anyone had followed up with the park concierge as a possible witness. He had been mentioned by Park Department staff in an email that was noted in the intake log. It turned out the investigator had spoken with him when looking for possible video in the Park and he had said he had not seen the incident. I asked that an entry to that effect be added in the case file. There was also a reminder to intake investigators not to offer Complainants that their intake "interview" can be done via email if they prefer. That is a practice I had recommended only be used as a last resort if the Complainant or witness will not otherwise participate.

I asked for some additional interview questions in a case where officers were dispatched to a reported violation of a DV protection order and there was information from the victim that the suspect might possibly be armed. It was about midnight, and during the officer's response to this call he heard that a K-9 officer had spotted the suspect vehicle nearby. The named officer, responding to back up the K-9 officer, was driving a patrol car with his emergency lights and siren activated, and was traveling in excess of 80 miles an hour. A pedestrian had crossed against the light (and outside of a crosswalk) as the police car was approaching. When she saw the car, she ran in the same direction she had been going, and the officer, to avoid hitting her and to avoid swerving to the left into any oncoming traffic, swerved to the right where he hit a pole and totaled the car, and she was struck by his outside mirror. The Traffic Collision Investigation Unit did a thorough investigation and then referred the case to OPA. I felt that the OPA interview of the officer was not of the usual quality of OPA interviews, with no question directly on point as to exactly what the pursuit policy requires (and prohibits) and some questions that were leading. Also, at least two of the officers had mentioned that the named officer asked them to look at his In-Car Video, but there had not been any follow-up question(s) as to when and why that happened. If the named officer had asked them to do it because of the OPA investigation, that would have been a violation of confidentiality requirements. The investigator re-interviewed the officers to get the specifics and no policy violation in that regard had occurred. The allegation relating to emergency vehicle operations was Sustained.

An OPA Complainant had been contacted by officers regarding a reported disturbance between her and another female in a case where probable cause was then developed to arrest her for misdemeanor assault. She alleged excessive force had been used by the officers. The investigator's interviews of the witnesses were not of the usual detail and quality, which would normally have included inquiry into how far away they were, what they could hear and what their line of sight was, and whether or not they knew the victim. Additionally, they were not offered the opportunity for in-person interviews but were instead interviewed by phone. Because it was quickly determined that

the force at issue was by jail personnel, not SPD, the case was referred to the jail and there was no need for additional work by OPA.

Similarly, interviews of the officers could have been stronger in a case where officers were working as a two-officer mountain bike team when they were flagged down by a security guard who explained to the officers that a man asked her if she wanted to buy drugs, implying that he had some for sale. The officers recalled seeing a man fitting the security guard's description just a few minutes earlier. They quickly located the suspect a block away. During their contact with him he initially lied about his name. After giving the officers his true name, they discovered an active Seattle Municipal Court warrant for his arrest. The suspect (OPA Complainant) alleged via email that they had no right to stop or search him. Since the allegation involved whether the officers had a legal right to stop and search him, the questions about when a stop is permissible and when a search is permissible were the foundational questions that should have been asked of the officers. The OPA investigator was able to determine that the Complainant had also given OPA a false name. Despite repeated attempts to contact him, the Complainant chose not to not cooperate in the investigation. Based on the interviews and General Offense Reports, there was sufficient information on which to base a finding of Unfounded.

Findings or Classification Decisions

Although the Auditor has no formal role in the determinations made at the conclusion of an investigation (Findings), or the discipline imposed, I have noted in my public reports those cases where I have strong disagreement with OPA or the Chief's final decision.

During this reporting period, I disagreed with findings by the Chief in a case where allegations included retaliation, honesty, discourtesy, discretion and failure to use ICV. I would have Sustained all allegations. (The Director recommended Inconclusive on the allegation of courtesy given conflicting testimony, but also would have Sustained on the other allegations.)[11]

In this case, the Complainant called 911 to report he had been assaulted by someone in the parking lot he was managing. Officers investigated the incident and arrested the suspect. A few days later the same Complainant called 911 to report a theft at the parking lot. The officers also investigated this incident, cleared this call with "assistance rendered" and no general offense report was written. The Complainant alleged that the officers were discourteous and unprofessional and did not thoroughly investigate the incident. He also alleged that one of the officers retaliated against him for filing a complaint with OPA. During the OPA interviews, the officer allegedly then provided false or incomplete statements. This particular officer has a history of OPA complaints related to courtesy and professionalism.

[11] The OPA Captain also recommended Sustained for allegations related to courtesy, discretion and ICV against the 2nd officer, with which I would have concurred based on the investigative file. Information provided during the disciplinary process resulted in findings of Unfounded for the ICV, Inconclusive for Courtesy and Training Referral for Discretion.

Following the Loudermill meeting (the employee's opportunity to be heard prior to discipline above a reprimand being imposed), the Chief determined that the findings for allegations of Retaliation, Courtesy and Honesty should be Inconclusive; he agreed with the recommended Sustained findings for Discretion and ICV. The Chief was concerned that, with regard to the honesty allegation, the clear and convincing standard had not been met, which is contractually required with that particular allegation since there is a presumption of termination if it is Sustained. Whenever the Chief overrules the Director with regard to any finding, under SMC 3.28.812, he is required to file an explanation with the Mayor and City Council regarding the reason for his decision.

I disagreed with the finding of Lawful & Proper on the allegation of Unnecessary Use of Force against the one of the named officers in a case where an OPA complaint filed in 2013 arose from an incident that had occurred back in December of 2010.[12] Officers had come across a car at a shopping center, parked next to a retail clothing store, unoccupied and with the engine running. The car had not been reported stolen and the registered owner appeared to be a female. One officer smelled an odor of marijuana coming from inside the car. A short time later the suspect (OPA Complainant) appeared and officers became suspicious because the car was registered to a female. At this time one of the officers ordered the suspect to walk to the parked patrol car so the officer "could check his name and verify if he had a legal right to have the vehicle."

Over the next five or so minutes, the officer told the suspect repeatedly not to not take his hands off the hood of the car while asking him about why he had so many keys on his key chain. The officers were notified that he had a prior felony conviction and had been tagged in the computer as being "assaultive to officers." The officers stated in their reports that the suspect heard that they were now aware of this information and became more resistant. They immediately grabbed him to handcuff him. After handcuffs were placed on his left wrist, he continued to resist and struggle and one officer then took control of his head and extended his head upward to control his movement. The Officer's left pinky finger was under the suspect's nose and he lifted his head up and bit the officer's finger, breaking the skin. The officer immediately delivered two closed fist strikes to the right side of the suspect's face as a tactic to get the suspect to stop biting him.

Regardless of the behavior of the suspect, which was combative and resistant, or his history, I felt it was the officer's method of interacting with the suspect which unnecessarily antagonized him, led to the situation escalating, to the officers going "hands on" and ultimately taking the suspect to the ground, despite the fact he was surrounded by four officers. I was also troubled that no one in the chain of command who reviewed it at the time was concerned enough to require additional training, or even refer the incident to the training staff to use to develop additional training for other officers. Nor was it clear that the chain of command had viewed the ICV. (This incident occurred before the Use of Force Review Board was created.)

[12] The Guild argued that no discipline could attach since in their view the 180-day clock should have started to run at that time, as no new evidence had come to light since then, and the complaint was not filed until 2013.)

The General Offense Report noted additional force had been used in the holding cell but it did not appear from the case file that the chain of command review had included that aspect of the arrest, nor did OPA address it. Similarly, one of the officers called the subject an S.O.B. and that was not addressed. The allegations related to professionalism and grounds for the initial stop were not Sustained, but a Training Referral was ordered on each. The Director, in her certification, stated "all who reviewed this complaint in the discipline meeting agreed the video would provide useful roll call or other training. A memo suggesting this will be forwarded to the Training Unit."

I disagreed with the initial OPA recommendation of Lawful & Proper and felt that the Use of Force review determining the force used was within policy had not been sufficiently thorough in a case where a Sergeant was working off-duty at a Safeway store. He observed a man coming out of the women's restroom, told him to stop, and instead the man ran. The Sergeant chased him and as the subject ran out the front door, grabbed him and took him down just outside the door, calling for a "fast-back up." As the backing officers arrived, the Sergeant was able to get the subject into handcuffs, so no other officers needed to get involved. The Sergeant in his interview said that he had initially asked the subject to stop because of concern that he might have been doing something illegal in the restroom. When asked in a follow-up question what he intended to do if the subject had stopped as directed, the Sergeant stated he intended to issue him a trespass admonishment (which would not have been the appropriate enforcement action if illegal activity had occurred).

I felt there was insufficient articulation of the reasonable suspicion that justified chasing the subject, tackling him, cuffing him and the possible involvement of other officers while the Sergeant and the subject were on the ground, due to a call having gone out for "fast back-up." In my view, additional review was needed, particularly because this was a veteran Sergeant and that the Use of Force Review Board documentation was incomplete. A finding of Training Referral was ultimately determined, for the Sergeant and his supervisor to meet the training Captain to discuss how the Sergeant could have articulated his reasoning more clearly. It was also unclear whether there is a protocol for addressing unanswered questions sent out or received by the Use of Force Review Board, so the OPA Director requested that one be established.

I recommended a case be re-classified as criminal and transferred to the Domestic Violence Unit based on an allegation made by an anonymous woman in Portland who provided no information other than to allege that she had been involved with a "senior SPD official," that they had two children with unusual names and that she had been hospitalized in Seattle. The Portland DV Unit had done additional follow up and had not found the assertions to be credible. The Seattle DV Unit felt no additional work could be done, particularly since there was no further information available about the Complainant and no medical release from the Complainant to check hospital records, and returned the case to OPA. Before closing the case, given the unusual names of the alleged children, I asked that OPA take one additional step that the DV Unit had not done, to check SPD's human resources database to see if any minors with those names were listed. None were found.

In a case involving force, a missing antibiotic prescription form and possible bias, after watching the business's video and reviewing the General Offense Report after intake, I recommended an allegation be added related to failing to thoroughly document the incident. The officer was working off-duty at Pacific Place and had assisted a security officer in dealing with the Complainant who was refusing to leave the premises. The officer had not documented that a second officer assisted him in making the arrest, the aggressive behavior of the Complainant or the force the officer used to control and arrest him (under existing Use of Force reporting requirements the amount of force used did not rise to the level of needing more full Use of Force reporting). There was no bias, the force was appropriate and the officer did not lose the prescription, but he did fail to thoroughly document the arrest. During his interview the officer explained he had not documented it because he had promised the subject he would not get him in trouble for resisting if he would cooperate. For that reason, a Training Referral rather than a finding of Sustained was appropriate.

Other Auditor Activities

During this reporting period I observed a training for officers on improving competence in interacting effectively with youth by better understanding the neurological basis of differences in adolescent brain development, learning what structures in the brain affect teens' behavior, especially impulsivity, risk-taking, over-reliance on peers and so-called "herd" behavior, and the best ways to respond to incidents without escalating youths' responses. The Director and I had recommended this kind of training in 2010, and had met with the lead trainer at that time. The training offered this spring was excellent, but unfortunately, it was not offered broadly across the Department, significantly limiting its value. As mentioned above, I observed SPD's in-service LEED (Listen and Explain with Equity and Dignity) training and King County's LEED training as well.

I also observed the WSCJTC mock scenario testing as part of the Academy basic training and met with the Executive Director of the WSCJTC to get an update on the changes underway at the Academy. As I have mentioned in past reports, overhaul of WSCJTC's training is integral to SPD's successful reform. Former Sheriff Rahr, the WSCJTC Director, is leading this cultural change in philosophy and approach to training. While there are challenges inherent in a basic law enforcement academy that has to train personnel from small, rural departments as well as large urban departments, ideally those challenges can be addressed as successfully as the philosophical and research-based training changes are.

The OPA Director and I met with several groups of Sergeants to explain their role in handling supervisory referrals and with staff in the Communications Center to follow up on some issues raised in a couple of cases about call center and dispatch processes. I spoke to legal advisors attending the annual meeting of the Washington State Sheriffs & Police Chiefs and the annual awards dinner for the African American Advisory Council, met with the Federal Court monitoring team, the Community Police Commission, the OPA Director nominee and the City's new Restorative Justice Director.