



City of Seattle

Report on Police Accountability and Recommendations

January 8, 2012



Chris Stearns, Chair

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Executive Summary

The Seattle Human Rights Commission (SHRC) has conducted a review of certain aspects of effective policing in Seattle. Our research was prompted by a series of incidents over the past two years involving alleged excessive use of force against people of color by the Seattle Police Department. Those incidents also prompted a civil rights investigation by the United States Department of Justice which found a pattern or practice of unconstitutional policing through the use of excessive force. Recognizing the importance of police accountability to ensure that officers' conduct meet international human rights standards, the SHRC further analyzed Seattle's police oversight system within the framework of human rights principles. Applying human rights principles such as due process, personal safety, impartiality, respect for dignity, and effective remedies will ensure that the City better serves and protects its vulnerable populations.

Based on our research we recommend that:

1. The Seattle City Council enact legislation enhancing the powers of the Office of Professional Accountability Review Board to function as an appeals panel for citizens who are not satisfied with the outcome of police misconduct investigations. The enhanced Board will have the power to independently investigate appealed cases and recommend discipline.
2. The Seattle Police Department, the City of Seattle, and community stakeholders enter into a collaborative agreement adopting Community Problem Oriented Policing (CPOP) as the principal strategy for addressing crime and disorder problems identified by the U.S. Department of Justice, community stakeholders, and others.
3. The Seattle Police Department, in collaboration with The Seattle Office for Civil Rights, analyze and publish use of force incidents and firearm discharges by police officers using Seattle's Racial Equity Toolkit and new baseline standards developed with an expert panel to determine whether there is a disproportionate impact on communities of color or other vulnerable populations within Seattle.

The Commission wishes to acknowledge and thank Roslyn Solomon, former Commission Chair, Andrew Lewis, former Commission Secretary, Commissioner Nika Dahlbacka, and Commission Chair Chris Stearns in drafting and editing this report.

Role of the Commission

Under the Seattle Municipal Code, the SHRC acts “in an advisory capacity to the Mayor [and] City Council . . . in respect to matters affecting human rights.” SMC 3.14.931. The SHRC, established in 1963, has historically provided guidance to the City from an objective and independent viewpoint grounded in the City’s commitment to upholding human rights.

In this capacity, the SHRC provides the following analysis of civil oversight of the Seattle Police Department. We believe that the recommended changes to the civilian oversight process would promote greater compliance with human rights standards and more effective policing.

Human Rights Principles

Below is a list of the primary human rights principles applicable to the civilian oversight issue.¹ They were not written with police oversight in mind, but the concepts they promote provide important guidance in evaluating the merits and drawbacks of a particular oversight process.

- Every human being has the inherent right to life. No one shall be arbitrarily deprived of life.²
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³
- Every person is equal before the law and is equally entitled to due process protections and the equal protection of the law without discrimination on any grounds, including race.⁴
- Every individual is entitled to feel safe and be safe in his or her person, home, and community. This right includes the entitlement of every individual to visit and to live and work in public areas.⁵
- No one shall be subjected to arbitrary arrest or detention.⁶ Anyone who is arrested or detained must be treated with humanity and respect for his or her inherent dignity.⁷
- Any person whose rights or freedoms are violated shall have an effective remedy, even when violations have been committed by government officials; injured individuals must have their complaints reviewed by a competent authority, and appropriate remedies applied.⁸

Human rights law also directs governments to apply these principles in a manner that ensures, first and foremost, the protection of vulnerable or marginalized populations. This directive is based on the reality that such populations tend to be disproportionately subject to inappropriate or disparate impacts from both the public and private sectors.

In addition to human rights principles, the U.S. Supreme Court has held that claims of use of excessive force by the police are subject to the U.S. Constitution Fourth Amendment’s

¹ These principle are delineated in the International Covenant on Civil and Political Rights (ICCPR), the primary treaty from which human rights due-process principles are derived.

² ICCPR Article 6.1.

³ ICCPR Article 7.

⁴ ICCPR Article 26.

⁵ Universal Declaration of Human Rights, Article 3.

⁶ ICCPR Article 9.1.

⁷ ICCPR Article 10.

⁸ ICCPR Article 14.

reasonableness standard which protects citizens against “physically intrusive governmental conduct”. *Graham v. Connor*, 490 U.S. 386, 395 (1989). The Fourteenth Amendment of the Constitution also “prohibits selective enforcement of the law based on considerations such as race.” *Whren v. U.S.* (1996) 517 U.S. 806, 813.

U.S. civil rights laws also protect citizens from patterns or practices of conduct by law enforcement officers that deprive people of their rights as “secured or protected by the Constitution or laws of the United States”. 42 U.S.C. § 14141. The law authorizes the United States to pursue claims not just against individual officers, but against entire police departments to compel them to correct underlying policies.

History

In the last three years, the City watched a series of well-publicized interactions between Seattle Police officers and citizens unfold in the media. Some of these events were recorded and then replayed on television news which reached a large audience locally, regionally, and nationally.

Many of these incidents involved varying degrees of use of force, including deadly force, against people of color.⁹ These actions resulted in a large public outcry, a series of administrative reforms within the police department, City Council recommendations, and finally, a federal civil rights investigation launched by the U.S. Department of Justice. Many city and community leaders have called for various measures of police reform, prosecutions, new training methods, and better public education about police responsibilities, policies, and citizen responsibilities.

Oversight

The SHRC believes that effective policing requires a balanced three-pronged approach of strong leadership, comprehensive training, and effective oversight. We undertake our review against the backdrop of this structure. The focus of this report is on the third prong: oversight.

Police work is inherently difficult and dangerous. Yet failure to adhere to the law and police policies undermines public trust and confidence, lessens cooperation from the community, and inhibits crime prevention. Effective oversight can limit police conduct that violates the law and it can restore public confidence in police practice.

Police oversight in the United States includes the core concept of accountability. Oversight not only requires the monitoring of police actions, but accountability in instances where police officers have violated police policy or civil or criminal laws. Thus, the agency or agencies tasked with oversight must be fully vested with the power to investigate and impose disciplinary measures as appropriate. Accountability means that both police officers and citizens have the opportunity to fully present their case to the oversight authority without fear of reprisal. Finally, a critical

⁹ Seattle’s 2010 population is 563,374 with a white population of 394,889 (70%), a black population of 47,541 (8%), a Native American population of 5,659 (1%), an Asian Pacific Islander population of 76,714 (14%), a Latino population of 29,719 (5%), and a population identifying itself as two or more races of 25,148 (5%).

<http://www.seattle.gov/oir/datasheet/demographics.htm>

component of accountability is transparency, which means that the public has an opportunity to observe and participate in the oversight process.

The Commission is aware that its recommendations, if fully implemented, will require the City Council to undertake legislative action. Further, we understand that our recommendations may involve changes to employee rights protected under a collective bargaining agreement with the Seattle Police Officers Guild and the Seattle Police Management Association. Our recommendations also require significant public involvement.

Oversight Models

There are three principle configurations of police oversight models in the United States:

1. Review and appellate

Most cities use this model. Its primary elements are an internal investigation process of citizen complaints, and a subsequent review by an external board, agency, or individual. The review process often fails to provide effective oversight and, where warranted, remedy as the reviewing entity does not have subpoena power to compel witnesses to testify or to produce key evidence or documents; nor can it impose discipline separate from, or in addition to, the recommendations of the internal investigators.

2. Investigative and quality assurance

This model gives some real “teeth” to the overview phase of an investigation. Citizens, outside attorneys, or individuals have subpoena power and they can impose discipline against police officers, independent of the recommendations of the internal investigators.

3. Evaluative and performance-based

This model uses an outside auditor to examine a police department in its entirety. The goal is to make judgments over time regarding how well the department minimizes the risk of police misconduct, identifies and corrects patterns and practices of unconstitutional and illegal behavior, and finds solutions to systemic failures. The evaluative model does not rely on a case-by case analysis.¹⁰

Seattle Civilian Oversight Process

Seattle has a unique police accountability system as compared to all other major cities in the United States because its structure blends aspects of all of the above models into one system.¹¹

¹⁰ For a thorough review of civilian oversight models, see: *National Oversight Models Report for the Eugene Police Commission* by Merrick Bobb. Police Assessment Resource Center. <http://www.parc.info/home.html>.

¹¹ The intent of the Seattle model is “to enhance the quality and credibility of the City's police accountability system and thereby maintain public confidence in the professionalism and effectiveness of the Police Department..” SMC 3.28.900

The system has three separate components:

- 1) Office of Professional Accountability (OPA). Although the OPA office is part of the Seattle Police Department, the OPA Director is a civilian attorney. The Director is responsible for receiving and investigating complaints of police misconduct and for making recommendations for disciplinary action to the Chief of Police. The Chief has complete discretion to accept or reject the OPA Director's recommendations. If the Chief rejects the OPA Director's recommendations, he must provide a written explanation.
- 2) OPA Auditor. The Auditor is responsible for auditing completed case files, and for reviewing and making recommendations for additional areas of examination in pending investigations.
- 3) OPA Review Board (OPARB). OPARB is composed of community members who review the handling process for police accountability complaints, conduct community outreach, and researches trends and best practices in police accountability. OPARB delivers its findings and recommendations to the City Council twice a year. OPARB cannot investigate individual police misconduct cases or recommend discipline of a police officer.

The OPA Director's position incorporates elements of the investigatory model by empowering a civilian attorney to review and investigate cases and to make disciplinary recommendations. The OPARB is based on the evaluative model. OPARB examines the performance of the Seattle Police Department (SPD) by reviewing a broad collection of cases and then providing its analysis to the City Council.

Despite these investigatory and evaluative components, Seattle's oversight process most closely resembles the review and appellate model. It permits the OPA Director to conduct investigations, but all disciplinary decisions rest with the Police Chief. Neither the Auditor nor OPARB has the authority to overturn the Police Chief's decisions; they have no independent investigatory power or authority to impose discipline on police officers. Their roles are limited to investigation, analysis, and recommendations.

Need for Reform

As noted above, inherent to human rights is the ability to obtain due process and an appropriate remedy when or if rights are violated, even if a government official commits the violation.¹²

The United Nations Human Rights Committee has consistently interpreted due process to require that the person or panel making the final decision over proceedings be impartial in regards to the matter before them; that parties have access to witnesses and evidence; that the decision process be open to the public and subject to appeal; and that the remedy be commensurate with the offense.¹³

Applying this analysis, human rights law would require the following elements in police oversight:

¹² CCPR Article II, Sec. 3(a), (b), & (c).

¹³ CCRP Human Rights Committee General Comments; The United States also has a long history of supporting basic due process. *See, e.g., Goldberg v. Kelly*, 397 [U.S.254, 267](#) (1970).

- An independent, neutral agency or agencies be tasked with oversight and be fully vested with the power to investigate and impose discipline as necessary;
- Police officers and citizens have an equivalent opportunity to be heard – they can fully present their respective perspectives to the oversight authority without fear of reprisal, and can appeal an adverse decision to an independent decision-maker; and
- The process is sufficiently transparent to allow the public ample opportunity to observe and participate in the oversight process.

These requirements are not met under Seattle’s current oversight structure, and so the process raises the following concerns:

1. The Police Chief has sole discretion to accept or reject the OPA Director’s disciplinary recommendations.

Human rights concerns:

The Seattle Police Chief is not a neutral or impartial decision-maker.

The Chief is the supervisor of all Seattle police officers. The Chief can be promoted from within the Department. Further, he may have loyalties to the officers with whom he or she has served. Significantly, the Police Chief has sole discretion to accept or reject the OPA Director’s disciplinary recommendations. The Police Chief’s decision regarding the discipline of officers is final.

The decision process is not transparent. The final decision is not subject to meaningful appellate review.

Neither the complainant nor the public is entitled to review the evidence.¹⁴ A complainant does not have access to the case file, evidence, witnesses or the decision maker. The public has no right to review complaints or completed case files except where a complaint is sustained and then the identity of the officer(s) is concealed.

2. The OPA Auditor does not have independent authority to review or overturn the Police Chief’s disciplinary decisions

Human rights concerns:

The Police Chief’s potentially biased decision is not subject to review by an independent and neutral decision-maker.

¹⁴ Far from being transparent, the current process for officer discipline is complex, internal, and opaque. There are seven official outcomes possible to a complaint in addition to four complaint classifications. See note 15, *infra*, at 2.

The OPA Auditor does not have independent authority to review and overturn the Police Chief's disciplinary decisions. The Auditor has access to all information *during* an investigation, and can order the OPA Director to further investigate an open case. The Auditor, however, does not have the authority to overrule the OPA Director's findings or disciplinary recommendations to the Chief.

3. The OPA Review Board does not have the authority to review the evidence the OPA Director relied upon, nor does it have independent authority to overturn the Police Chief's decision.

Human Rights concerns:

A complainant does not have the right to an appellate process that comports with standard due process requirements.

The OPA Review Board has limited access to information after an investigation is complete and cannot make case-specific, disciplinary recommendations. The OPA Review Board has no meaningful review or participation in a disciplinary investigation.

Recommendations

The SHRC does not question the professionalism of the OPA Director, nor the Police Chief's commitment to an accountable and professional police force and to appropriate disciplinary action in order to maintain it. That said, a system that does not provide a complainant with a neutral decision-maker who has the ability to independently investigate and analyze claims of police misconduct, and provide recourse through an appeals procedure, violates basic tenets of due process. As such, the current structure violates human rights requirements.

The Commission has considered a number of reforms and has chosen the following three recommendations as the most effective, and most likely to be successfully implemented as quickly as possible because they are based on existing agency structures and programs.

- 1. OPARB Enhancement.** We recommend that the City Council enact legislation enhancing the powers of the Office of Professional Accountability Review Board. The enhanced OPARB should have additional powers based on the Evaluative and Performance-based Oversight Model. The primary purpose of the enhanced OPARB is to ensure that SPD's internal investigations are investigated and reviewed in a fair, thorough, and impartial manner. It is critical to its success that the enhanced OPARB have sufficient resources and power.

We recommend that the Council enable OPARB to function as an appellate review panel of SPD disciplinary cases involving allegations of police misconduct, force-related incidents, and biased policing. Citizens who disagree with the OPA recommendations and the Police Chief's disciplinary decisions will be able to appeal their case to OPARB which will conduct an independent review of the case on a *de novo* basis. Citizens will be notified of this right upon receiving the OPA decision.

OPARB shall have the power and sufficient staff resources, including professional investigators, to review the cases it hears on appeal. OPARB shall have the authority to recommend discipline based on its investigation and findings. SPD shall have an affirmative duty to cooperate fully with

OPARB and provide complete, unrestricted and immediate access to records and information available to the OPA Director. OPARB shall have immediate access to any SPD employee, subject to limitations imposed by law or collective bargaining agreement. OPARB shall have the power to subpoena witnesses, administer oaths, take testimony and compel the production of such documents relevant to its investigation. OPARB shall have thorough knowledge of all SPD policies, procedures, and training relevant to the matters it investigates. OPARB shall provide a monthly report to the Mayor, City Council, and SPD of the status of pending investigations.

We do not anticipate the need to authorize review for every classification of complaint. The U.S. Department of Justice, however, has expressed significant concerns regarding how SPD and OPA classifies and disposes of civilian complaints.¹⁵ Thus we are concerned that restricting OPARB's review of complaints to certain classifications may result in the failure to investigate cases that should be reviewed.

We believe that civilian insight is extremely valuable, offering new views and insights to the investigative process and the ability to challenge assumptions or biases that may sometimes limit an investigation. We further believe that enhanced civilian involvement will help rebuild community trust in SPD and further improve the overall quality of SPD investigations.

We do not propose at this time limiting or transferring powers of the OPA Director and the OPA Auditor. The OPA Auditor will continue to identify patterns of, or trends in, misconduct, recommend or develop improvements in police policies, procedures, tactics, and training that will serve to increase police integrity and improve the performance of SPD.

2. Collaborative Agreement. We recommend that within four months, the Seattle Police Department, the City of Seattle, and community groups representing community stakeholders enter into collaborative agreement based on negotiations between City Officials (including SPD) and community leaders that uses Community Problem Oriented Policing (CPOP) as the principal strategy for addressing crime and disorder problems.¹⁶ CPOP has been used effectively in Cincinnati to resolve conflict, create an atmosphere of trust between the community and police, and to reduce crime and disorder.¹⁷

The goals of the collaborative agreement will be (a) for police officers and community members to become proactive partners in community problem solving; (b) build relationships of respect, cooperation, and trust within and between police and communities; and (c) improve education, oversight, monitoring, hiring practices, and accountability of the Seattle Police Department.

¹⁵ "Investigation of the Seattle Police Department", U.S. Dept. of Justice, Civil Rights Division, U.S. Attorney's Office, Western District of Washington (2011), Appendix D.

¹⁶ See Problem-Oriented Policing: Reflections on the First 20 Years, Michael S. Scott (2000). <http://www.cops.usdoj.gov/files/RIC/Publications/e03011022.txt> . See also "Understanding Community Policing: A Framework for Action", Bureau of Justice Assistance (1994), <https://www.ncjrs.gov/pdffiles/commpp.pdf>

¹⁷ Collaborative Agreement between Cincinnati Black United Front, ACLU of Ohio Foundation, City of Cincinnati, Fraternal Order of Police, (2002), http://www.cincinnati-oh.gov/police/downloads/police_pdf6369.pdf . See also, "Cincinnati police reform effort notable for 'collaborative agreement'", Laura Maggi, The Times-Picayune, October 16, 2011, http://www.nola.com/crime/index.ssf/2011/10/cincinnati_police_reform_effort.html

CPOP is based on the basic tenets of community-oriented policing which is the dominant policing philosophy in the United States, including Seattle. Community-oriented policing encourages civilians to have an expanded role in shaping police priorities to better address the needs and desires of the community.¹⁸

3. **Racial Equity Tool.** We recommend that the SPD collaborate with the Seattle Office for Civil Rights (SOCR) to cooperatively research and analyze use of force incidents by police officers, firearm discharges by police officers, and other relevant incidents involving police officers that may disproportionately impact communities of color and other vulnerable communities. The collaborative process should insure that SOCR has immediate and thorough access to all of the information necessary to complete the study. SOCR has developed a Racial Equity Toolkit that is used City wide as part of the Race and Social Justice Initiative. The Toolkit analyzes how communities of color will likely be affected by a proposed action or decision. The Toolkit is used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, and budgetary decisions. SPD should use the Toolkit, in collaboration with SOCR, to determine whether its practices and policies disproportionately impact communities of color or other vulnerable communities.

We further recommend that SPD and SOCR work with an expert panel comprised of advocacy organizations, such as the Defender Association, to develop a series of baseline standards for the Toolkit to measure police interactions regarding use of force incidents, firearms discharges, and other relevant incidents. The Defender Association, for example, developed a baseline standard for measuring whether Seattle drug arrests were racially disproportionate to the composition of the actual offender population.

Conclusion

We hope and intend that our comments assist the City in ensuring that we all move toward better meeting and fulfilling the human rights of all members of our community.

The Seattle Human Rights Commission

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¹⁸ Police Assessment Resource Center. "Evaluation of a Pilot Community Policing Program: The Pasadena Police-Community Mediation and Dialog Program", COPS Evaluation Brief No. 2, Office of Community Oriented Policing Services, U.S. Department of Justice (2008) 5.
<http://www.nacole.org/sites/default/files/e070825154.pdf>