

June 8, 2012
(Revised August 29, 2012)

**Office of Professional Accountability Review
Board**

Policy Report

**Revised Name, Roles, and Powers of the Office of
Professional Accountability Review Board**

Executive Summary

The Office of Professional Accountability Review Board began focusing more closely on what role civilian, community-based oversight should play when the excessive and biased use of force allegations triggered the Department of Justice investigation that resulted in Justice's December 16, 2011 report and the recent settlement between Justice and the City of Seattle. The Board strongly believes that the entire community needs representation and a voice in how the settlement is implemented. The ten recommendations in this report reflect community concerns and are designed to create greater transparency and accountability in Seattle's police oversight system. They will provide for more effective, transparent and independent civilian oversight of the Seattle Police Department and thus ensure greater public confidence, trust and cooperation between the community and the police officers who serve them.

Issue 1: Independent civilian oversight must be restructured and strengthened to have real power and relevance to citizens.

Many Seattle citizens perceive the OPA Review Board as having limited oversight powers and are confused about its role in accountability and oversight. To be effective, civilian oversight should be a simple, transparent system that is easily understood by the participants and the community at large.

1.1 Clarify the OPA Review Board's Role Relative to the OPA and the Auditor.

The Review Board should be an independent peer organization to the OPA and the Auditor, with unambiguous oversight functions.

1.2 Formal Review of the OPA Director.

The Review Board should have meaningful input into the hiring, firing and retention of the OPA Director, and the OPA Director should regularly report to the Review Board.

1.3 Ability to Review Cases.

To provide independent and transparent community oversight, the Review Board must be able to appropriately review and comment on any case, anytime.

1.4 Limited Review for Complainants.

To add transparency and to increase community understanding and support for the oversight system, the Review Board should have review power when a complainant contests the OPA final classification and/or disposition decisions.

1.5 Case Certification Review.

The Review Board, on its own motion or in response to a request by either the complainant or the subject employee may independently review the case and make an independent recommendation to the Chief either endorsing the Director's recommendation or making a different recommendation.

1.6 Compliance Reporting and Oversight.

The Review Board should be empowered to prepare an annual accountability compliance report that ensures civilian oversight suggestions and recommendations are evaluated and implemented.

1.7 Increase Size of Review Board.

To more fully represent the Seattle community and carry out its duties, the Review Board should be expanded from seven members to nine.

1.8 Increased Staff and Funding.

The Review Board should be staffed at a level sufficient to accomplish oversight, policy recommendation and review activities spelled out in the enabling legislation.

Issue 2: Confusion about the current civilian oversight system compromises its effectiveness.

Many community members perceive the OPA Review Board as being part of the police department, not as an independent civilian oversight body.

2.1 Name Change.

The new name underscores the entity's independence from the police and reinforces its oversight function of the police, the OPA and the Auditor.

2.2 Eliminate Required Community Outreach on Behalf of the OPA and Auditor.

An entity charged with critical oversight functions should not be required to advocate on behalf of the system it oversees.

Introduction

The Office of Professional Accountability Review Board is charged with providing community oversight and reporting on the Seattle Police Department's practices and its employee accountability system. It began focusing more closely on what role civilian, community-based oversight should play when the excessive and biased use of force allegations triggered the Department of Justice investigation that resulted in Justice's December 16, 2011 report and the recent settlement between Justice and the City of Seattle. The Board strongly believes that the entire community needs representation and a voice in how the settlement is implemented. While the recently issued SPD 20/20 goals may inform any outcome with the Justice Department, there is unquestionably a greater role that the community and independent civilian oversight must play in order to achieve the accountability and transparency recent events warrant and the Seattle community demands.¹

A fundamental element for all accountable government entities is the ability of citizens to have their views about matters of public concern heard and addressed. The ten recommendations in this report reflect community concerns and are designed to create greater transparency and accountability in Seattle's police oversight system. They will provide for more effective, transparent and independent civilian oversight of the Seattle Police Department and thus ensure greater public confidence, trust and cooperation between the community and the police officers who serve them.

¹ This paper focuses primarily on the Department of Justice's Dec. 16, 2011 report and the possible restructuring of the Office of Professional Accountability contemplated by the settlement between DOJ and the City.

As part of its ongoing analysis of meaningful citizen oversight when police use force, and other relevant practices by the Seattle Police Department and its Office of Professional Accountability, the Review Board offers this report².

Issues and Recommendations

Issue 1: Independent civilian oversight must be restructured and strengthened to have real power and relevance to citizens.

Many Seattle citizens perceive the OPA Review Board as having limited oversight powers and are confused about its role in accountability and oversight. Given the constraints under which the Review Board operates, this is understandable and a source of great frustration to the Board.

To be effective, civilian oversight should be a simple, transparent system that is easily understood by the participants and the community at large. Currently that is not the case in Seattle; rather the community is confused about the relationship between the various components and the roles each is supposed to play.

Seattle's civilian oversight system involves three parts: (1) the Office of Professional Accountability; (2) the Office of Professional Accountability Auditor; and (3) the Office of Professional Accountability Review Board. The OPA is the first responder to all misconduct complaints against SPD employees. It is staffed by sworn officers but headed by a civilian Director, who is considered part of the SPD's Command Staff, reports directly to the Chief of Police and maintains an office in SPD headquarters. The civilian Auditor is an independent auditor who works closely with the OPA Director, to review every misconduct complaint and

² This policy work has been strengthened by input and advice from consultant Michael Pendleton, Ph.D.

investigation in real time for proper handling, with a particular emphasis on objectivity and fairness. The Auditor and Director jointly decide the classification of each complaint, which dictates whether or not the complaint is investigated and, if not investigated, how the complaint will be handled. The Director decides what the disposition will be after a complaint is investigated. The Auditor may require further investigation and may comment on the Director's disposition decision, but that decision is solely the Director's. The Auditor also issues regular reports that include recommendations for systemic improvements. The OPA Review Board is tasked with providing independent, external oversight of both the OPA and the Auditor, engaging and representing the community on accountability issues.

Unlike its civilian oversight counterparts, the Auditor and OPA Director, the Review Board is prohibited from reviewing open cases and is instead forced to limit its review and oversight to closed cases only. Further, the Board is prohibited from commenting on any specific case, regardless of its status of open or closed, and even if the case or the officers' names are widely known through the media. These limitations contribute to the perception that the Review Board does not play a meaningful role in OPA and police oversight, particularly for cases that are of interest to the community.

In addition, the OPA classification and complaint process is complex and difficult to understand. The process has been repeatedly criticized as being opaque, which can leave participants – and the Review Board charged with overseeing the process – deeply dissatisfied with the experience. Despite the ongoing concerns about this user-unfriendly experience, the Review Board has no real review powers regarding recommended discipline nor can it assist participants in the process looking for transparency on process or outcomes. Further, despite its oversight function, the Review Board has no official voice in reviewing or providing guidance on the leadership and performance of the OPA that created and supports this process.

Finally, there is also a critical need for independent community oversight of how the OPA system is implemented. For example, the Auditor, who is empowered to make recommendations and require additional investigation, meets with the OPA Director in real time to review cases before they are certified and sent to the Chief for final action. While the realities of processing a significant case load according to mandated timelines may support this practice, it can result in the Auditor's oversight/audit role and decision-making/influencing role being blurred. This blended role for the Auditor may result in the perception that the Auditor's independence is compromised. It may in fact deprive the Auditor of neutrality when further review of classification and disposition decisions is needed. Additionally, the Auditor may have a conflict when reviewing and reporting on recommendations that the Auditor and/or the OPA Director have previously made to the Chief of Police. As a result of the role the Auditor may play in an outcome or investigation, the Auditor may be perceived as not being a true neutral or independent from a subsequent oversight perspective..

Recommendations

1.1 Clarify the OPA Review Board's Role Relative to the OPA and the Auditor.

The Review Board should be renamed the Independent Police Review Board to emphasize its independence from the police department. The new Review Board should be an independent peer organization to the OPA and the Auditor, with unambiguous oversight functions.

1.2 Formal Review of the OPA Director. The Review Board should be required by ordinance to have primary responsibility for the community's input into the OPA Director's annual performance evaluation, which would include providing the Review Board's own formal review as well as managing the process to obtain formal input from other stakeholders. The Review Board should have meaningful input into the hiring, firing and retention of the OPA Director, and the OPA Director should regularly report to the Review Board.

1.3 Ability to Review Cases. To provide independent and effective community oversight, the Review Board must have the ability to review and comment, as appropriate, on any case, anytime.

1.4 Limited Review for Complainants. To help counter the lack of transparency in the system and to increase community understanding of and support for the oversight system, the Review Board should be given limited review power when a complainant wants to contest the OPA's final classification and/or disposition decisions. The OPA should be required to inform the complainant in writing of the facts found, the reasoning for the decision, what the decision means for the complaint and the complainant's right to appeal. The Review Board should have the ability to independently select a case to review, on its own motion, and the absolute discretion on whether to review a case when such review is sought by a complainant.

After completing its review the Review Board may uphold the OPA's action or request in writing that the OPA conduct further investigation or take other action. If the issue involves a classification decision, the OPA Director's decision after hearing from the Review Board shall be final. If the issue involves an investigation and the OPA Director disagrees with the Review Board's request, the Director shall within five days provide the Review Board with a written explanation of the Director's reasons. The Review Board may accept the Director's position or after giving due consideration to it may require the OPA to conduct the specified action.

1.5 Case Certification Review. Whenever the OPA Director certifies a case to the Chief with a recommendation that it be sustained and discipline imposed, the Review Board, on its own motion or in response to a request by either the complainant or the subject employee may, in its sole discretion, independently review the case and make an independent recommendation to the Chief either endorsing the Director's recommendation or making a different recommendation. In instances where the Director decides after investigation that a case should be ruled lawful and proper, or inconclusive, and on review, the Board thinks it should

be sustained, the Board may send the clashing recommendations forward to the Chief for decision. The Chief's decision would include a written explanation. In making its independent review and recommendation, the Review Board should have the ability to review the entire OPA file and the Auditor's notes, and to hear from the SPD employee who is the subject of the case. If the Review Board differs from the Director on whether the case should be sustained or what discipline should be imposed, as in the case with differing outcomes between the Chief and OPA Director, the Chief should be required to explain his or her choices publicly in writing.

1.6 Compliance Reporting and Oversight. Current OPA civilian oversight reports provide valuable suggestions to SPD command. There is, however, currently no independent community mechanism in place to ensure those recommendations are seriously evaluated and implemented. The Review Board should be empowered to prepare an annual accountability compliance report that ensures that accountability and compliance recommendations are implemented when appropriate, and discusses and assesses the merits pro and con when there are legitimate questions about implementing a recommendation.

1.7 Increase Size of Review Board. The Review Board should be expanded from seven to nine members to more fully represent the Seattle community and to carry out its increased duties.

1.8 Increased Staff and Funding. The current Review Board has seven volunteer civilian participants, supported by a small time allocation from one City FTE. To be effective, the Review Board should be staffed at a level sufficient to accomplish the civilian oversight, policy recommendation and review activities spelled out in the enabling legislation. Expectations for the amount of time Review Board members spend in review/oversight/policy and recommendations should be clearly established.

Issue 2: Confusion about the current civilian oversight system compromises its effectiveness.

In its meetings with community members it was clear that the public is conflating the OPA with the OPA Review Board, seeing the Review Board as an adjunct of OPA. Many community members that know of the OPA Review Board perceive it as being part of the police department, not as an independent civilian oversight body. This misperception is fueled by at least two things. One is the constraint placed on the OPA Review Board regarding case review and comment. The second is the requirement in the Board's authorizing legislation that it functionally market the OPA and police accountability system, even though OPA conducts its own extensive, independent outreach. Given the confusing names, restrictions on public comment regarding case review, and blurring of the OPA Review Board's oversight role, with the Board having to advocate for the very system it is supposed to critically review, it is no wonder that the community is confused about the current system.

Recommendations

2.1 Name Change. Change the OPA Review Board's name. The Board suggests the "Independent Police Review Board." Removing any reference to the OPA should reduce confusion. The new name underscores the entity's independence from the police and reinforces its oversight function of the police, the OPA and the Auditor.

2.2 Eliminate Required Community Outreach on Behalf of the OPA and Auditor. An entity charged with critical oversight functions should not be required to advocate on behalf of the system it oversees. The OPA Director and Auditor have been and are able to engage in whatever outreach on whatever subjects they deem appropriate; the current OPA Director is extremely active on behalf of the OPA. The Review Board should be similarly empowered and not have to compromise its oversight functions.