

## APPENDIX A

### About the OPA Review Board

The Office of Professional Accountability Review (OPARB) was created by the Seattle City Council as part of a three tiered system of police oversight. The Ordinance creating our office provides that the OPARB shall have access to all OPA complaint forms and files of all closed OPA investigations for purposes of review. (SMC 3.28.920 as amended)<sup>1</sup>. Our mission is to strengthen the system of police accountability by providing an independent review of the OPA. Our goal is to build a sense of *confidence* in the community that police work is fair, even-handed, and free of bias; and to build confidence that complaints against officers will be treated fairly and without prejudice, thereby strengthening police-community relations in Seattle.

Your OPA Review Board is a small but diverse group. All three members presently happen to be lawyers, but even our respective legal experiences differ greatly: Sheley Secrest, a public defender, is the immediate past president of the NAACP, Seattle Chapter. Bradley Moericke is currently a deputy prosecuting attorney and a former police sergeant. Board Chair Peter Holmes, the last remaining member of the original 2002 OPARB panel, was formerly in private practice, specializing in business bankruptcy law and complex commercial civil litigation. Our initial knowledge about OPA-IS 07-0013 came from news articles in the local media. Ms Secrest formally recused herself from substantive Board deliberations and any future review of this matter on April 6 due to a potential conflict of interest arising from her standing representation of at least one criminal defendant potentially affected by this OPA investigation.

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<sup>1</sup> Before OPA's investigation in 07-0013 had been concluded, new legislation enacted by Seattle City Council last year became effective on April 1, 2007. Among other things, the amended OPA Ordinance now provides that the Board may request complete, unredacted copies of closed OPA cases.

## APPENDIX B

### OPARB Concerns Regarding Gaps in the Investigation of 07-0013

#### Interviews

1. Once the officers had been permitted to view the Walgreen videotape, it might have yielded useful information to ask each of them--
  - a) When one of the officers left the scene briefly, why did he leave and what did he do?
  - b) Where one of the officers is seen writing in a small notebook, it might have been useful to ask if he recalled what he was writing, what he normally does with such writings or notes, and where the one he created on the video is still in existence.
2. Neither officer was asked whether he had made any attempt to contact Walgreens for the video segment. One admitted he had gone looking, but follow up questions weren't asked. Why the segment immediately preceding complainant's entry onto the scene isn't available, or other camera angles, is perplexing.
3. Did you consider interviewing the Walgreens employee who supplied the video? A recorded explanation about the limited video availability would have been helpful. The employee could also have been asked about any efforts by anyone other than OPA investigators to obtain a copy of the video.
4. The Second Witness's arresting officer (on April 4) should have been interviewed.
5. We would like to confirm whether the evidence submitted by the named officers has in fact been destroyed. The OPA Director should consider procedures to preserve such evidence for ongoing OPA investigations.

## APPENDIX C

### OPARB Concerns Regarding the Completeness of 07-0013<sup>1</sup>

1. Although a meeting with OPA Auditor Kate Pflaumer is referred to in a single document in the file, there are no copies of any correspondence of any kind (email or regular written communications) to or from Ms. Pflaumer anywhere in the file. This has been the subject of prior discussions with OPA Director Pailca, who in 2004 discovered that Auditor emails had been routinely filed separately apart from investigative files. The Board was assured then that this practice has been addressed, and that all subsequent files reviewed by the Board would contain all such communications to and from the Auditor. The Board requests copies of all such materials pertaining to OPA-IS 07-0013 along with assurances that practice will once again be implemented, perhaps with spot-auditing to verify compliance. (A few short emails between the Chief and the Auditor were provided to the Board after May 31.)
2. Similarly, references to briefings for the Chief with discussion and input from him *during the open investigation*, including email correspondence, occur throughout the case file. However, the investigator's journals seldom reference contact by or on behalf of the Chief; nor is any direct communication (email, memos, etc.) from the Chief in the file. Assuming such input from the Chief during an open OPA investigation is appropriate, we would expect to see such contacts with and any input from him to be included in OPA's closed files.
3. Closed cases OPARB has previously reviewed typically include proposed disposition memos with indicated concurrences and objections. In the OPA-IS 07-0013 matter, none of the requested input from other superiors is indicated. Moreover, the date of the OPA Lieutenant's proposed disposition memo is hand-dated "4-9-07", which also happened to coincide with the Chief's Press Statement and even the original due date for completion of the investigation. Please explain.

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<sup>1</sup> We intend to discuss with the new OPA Director, Kathryn Olson, a possible procedure for a designated OPA employee to certify the completeness of closed OPA cases upon submission for review by OPARB.



## City of Seattle

### Office of Professional Accountability Review Board

August 5, 2004

Sandra Pailca, Director  
Office of Professional Accountability  
Seattle Police Department  
610 Third Avenue  
Seattle, WA 98104-1886

Dear Sam:

Thank you for your July 12 letter, and for meeting with the Review Board last Tuesday, July 20. It was also good to see you at the memorial service for Ken Saucier on Tuesday evening, July 27.

To recap our July 20 meeting, I understand that you will follow up shortly with a written statement specifying what OPA considers to be part of "OPA investigative files" as contemplated in the ordinance creating OPA and the Review Board. (We understand that you recently received a legal opinion from the City Attorney's Office on this issue.) In our July 20 meeting we also identified a procedural issue that may require additional attention with regard to the blind case selection procedures we implemented on January 1, which implicates our ability to track all OPA contacts from "cradle to grave". (Our respective staff members will first attempt to resolve this issue between them.)

This letter will address the "resource issue" you raised on July 20 with respect to the closed OPA cases we requested in my June 30 letter and you agreed to produce in your July 12 letter for our review. We understand that, contrary to the statements made in your July 12 letter, none of the requested case files will be made available to the Review Board. This is a most unfortunate and unacceptable development.

First, you announced that our current arrangement, whereby OPA copies and redacts ten percent of all closed cases for Board review, now constitutes the maximum number of cases OPA will make available to the Review Board. We understand that this new "Department policy" was dictated by Chief Kerlikowske. Was the policy approved by the City Attorney's Office, perhaps in conjunction with your effort to determine the extent of OPA investigative files? As you know, the OPA ordinance contemplates that the Department is to make *all* closed OPA case files available to the Review Board, not just the ten percent sampling we presently target. You may also recall that the Board suggested increasing the case percentage in our 2003 YE Report. It is most unfortunate that the Chief would invoke "resource" issues in response to the Board's request for the eleven cases in which OPA's recommended findings and discipline were overruled by the Chief.

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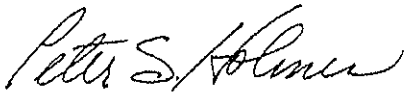
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Accommodations for people with disabilities provided upon request.

Second, the resource issue you described apparently cannot be addressed with additional resources. You quantified the problem as Kim Kubie's hourly rate multiplied by something between 40 to 55 hours, but you also observed that the real problem is Kim's availability, even with overtime. The use of temporaries or outside photocopying services isn't an option because of the redaction and nondisclosure requirements. We understand that much of Kim's time is apparently consumed by the redaction process, which the Board has recommended be eliminated in amendments to the Seattle Municipal Code. You also support this recommendation; would it not also eliminate much of the resource problem if City Council amends the ordinance to eliminate the redaction requirement?

The resource issue, moreover, is apparently all-or-nothing. It would be more reasonable to at least offer to provide one or two of the seven Taser cases along with a couple of the cases in which the Chief intervened, rather than refusing to provide *any* of them. The present policy of providing ten percent of closed cases is completely unpredictable, since under our blind case selection method the first case could be two hundred pages; the eleventh, two thousand pages; and so on. It is consequently difficult to view this new Department policy as anything but arbitrary and capricious. And since the new policy thwarts the Review Board's statutory mandate to oversee OPA, it appears to contravene a clear City Council enactment.

The Board certainly understands that these are austere budgetary times, and we are willing to work with you to help resolve this resource issue. We will consider, for instance, temporarily holding the current case selection process in abeyance in order to free up resources for the specific cases requested in my June 30 letter. However, to completely hold up the Board's statutorily-mandated oversight function without exploring alternative solutions to the "resource issue" in and of itself constitutes a serious oversight concern. We urge you and the Chief to reconsider this new Department policy.

Very truly yours,



Peter S. Holmes, Chair

cc: Lynne Iglitzin, OPARB member  
Bradley Moericke, OPARB member  
Kate Pflaumer, OPA Auditor  
Nick Licata, City Councilmember



# City of Seattle

## Office of Professional Accountability Review Board

October 10, 2005

### VIA HAND DELIVERY

The Honorable Nick Licata, Chair  
Public Safety, Civil Rights & Arts Committee  
Seattle City Council  
Seattle City Hall  
600 Fourth Avenue, Floor 2  
Seattle, WA 98104

Subject: OPARB Legislative Agenda

Dear Nick:

Thank you for meeting with the Office of Professional Accountability (OPA) Review Board on Tuesday, October 4, along with our other distinguished guests—Professor Hubert Locke, Judge Charles Johnson, and Judge Terry Carroll. The Board unanimously requests that the most serious impediments we identified in this meeting to civilian oversight of the Seattle Police Department (SPD) be promptly addressed through appropriate amendments to the OPA Ordinance.

Everyone present agreed that two issues require immediate attention: (1) the broad personal liability faced by Board members under our Confidentiality Agreements; and (2) OPA's obligation to redact SPD personnel identities from its closed files prior to Board review. The Confidentiality Agreements chill the Board's primary reporting function; redaction further burdens OPA's already limited resources. SPD privacy interests are protected by the integrity of OPARB members—who reaffirm their commitment to safeguarding police officer identities—and not by threatening citizen volunteers with personal liability, or the costly, redundant redaction process. Judge Johnson, chairman of the original 1999 Citizens Review Panel, echoed our sentiments when he linked the City's willingness to address these issues to the ultimate question whether Seattle *really* wants civilian oversight of its police department.

The requested amendments are both modest and the minimum necessary to ensure OPARB's viability. Modest, in that Seattle's present police accountability model—in which law enforcement enjoys the privilege of policing itself—is preserved. According to many public interest groups, misconduct complaints should instead be investigated by civilians wholly outside the Department, with the power to compel police officer testimony. OPARB continues to support the present model, but only if the City fully embraces the concept of *meaningful* civilian oversight. A civilian review board forced to operate under the cloud of potential personal liability and without full access to the Department's investigative files is a sham.

Specifically, OPARB requests preparation of appropriate legislation and scheduling of any necessary hearings at the earliest possible date. We are prepared to go to work immediately with you and the City Attorney to draft appropriate language. We understand that you have previously prepared legislation to repeal the redaction requirement; our May 18 letter to you also suggests possible legislative solutions to the personal liability dilemma. Considering the extensive discussion and study to date, however, we request that a timetable for comprehensive legislative action be established before OPARB departs for the annual conference of the National Association for Civilian Oversight of Law Enforcement in Miami on October 22.

Thank you for your continuing support and assistance for civilian oversight of law enforcement in Seattle. We look forward to your prompt response.

Very truly yours,



Peter S. Holmes, OPARB Chair

Cc (via First Class Mail):

Sheley Secrest, OPARB member

Bradley Moericke, OPARB member

Prof. Hubert Locke

The Hon. Charles Johnson

The Hon. Terrence Carroll

The Hon. Jan Drago, President, Seattle City Council

Thomas Carr, City Attorney

The Hon. Greg Nickels, Mayor

R. Gil Kerlikowske, Chief of Police

Sandra "Sam" Pailca, OPA Director

Katrina Pflaumer, OPA Auditor

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Gregory J. Nickels, Mayor

**Seattle Police Department**

Chief R. Gil Kerlikowske - *Chief of Police*

SPD Statement on Investigation into the Allegations made Against Officers Gregory Neubert and Michael Tietjen  
April 9, 2007

The Seattle Police Department has conducted an extensive investigation into the allegations made against Officers Gregory Neubert and Michael Tietjen. SPD investigators and Command staff have dedicated a substantial number of hours into reviewing all the facts surrounding this complaint.

In working downtown both officers routinely participate in multiple lawful contacts with individuals some of which result in physical arrests and seizure of drugs and/or guns. The officers have turned in thousands of dollars of narcotics and illegal firearms to the evidence section.

On January 5th, Mr. Patterson filed a complaint alleging that unnecessary force was used when he was arrested on January 2nd. In later interviews, Mr. Patterson claimed that the narcotics that Officers Neubert and Tietjen recovered were not his. An independent witness describing Mr. Patterson as her "dope dealer," observed the arrest and stated that officers were restrained in the way that they handled Mr. Patterson. The witness also states that she observed Mr. Patterson with the narcotics that the officers recovered. The witness also told investigators that Mr. Patterson had left her a message asking her to accuse the officers of planting the narcotics. When Mr. Patterson made his complaint, he referred to a surveillance camera that may have captured his arrest.

Investigators recovered the video and notified the King County Prosecutor's Office, the City Attorney's Office and the Office of the US Attorney of the investigation. Based on the totality of the information in the investigation, the Seattle Police Department has concluded that the allegation of unnecessary force should be exonerated. The claim that officers planted the narcotics on Mr. Patterson is unfounded and has been refuted.

In the course of the internal investigation it was shown that Officers Neubert and Tietjen temporarily detained another suspect on a warrant in a completely unrelated stop. The detained suspect was then released. This detention was not documented as required by the Seattle Police Department's Policies and Procedures. Both officers have accepted full responsibility for this administrative violation and I will impose disciplinary action.

We have reviewed every individual case that Neubert and Tietjen have been involved in since the beginning of the year, including cases pending prosecution. We have found nothing in our review that would lead to further investigation. If anyone has specific information on any wrongdoing committed by any Seattle Police officer, we encourage them to contact the Office of Professional Accountability to file a complaint. The US Attorney's Office has also agreed to investigate any allegations of wrongdoing by a department member.



The Seattle Police Department will not apologize for making arrests and seizing narcotics and illegal firearms. These actions are consistent with our mission of preventing crime and protecting the public.

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