



**To:** Andrew Myerberg, OPA Director  
**CC:** Mark Grba and Grainne Perkins, OPA Assistant Directors  
**From:** Lynn Erickson, OIG Public Safety Auditor/Investigator  
**Date:** March 31, 2021  
**Re:** 2020OPA-0231 – Partial Certification

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**CERTIFICATION:**

On March 9, 2021, OPA routed this case to OIG requesting certification. On March 18, 2021, OIG identified deficiencies with the investigation and directed additional investigative steps related to the certification element of thoroughness. The OIG request provided an opportunity for OPA to address and resolve those aspects of the investigation that would otherwise impact the ability to fully certify the case. On March 23, 2021, OPA routed the case back to OIG indicating they had updated the intake to address the issues raised.

The Investigation for 2020OPA-0231 is being certified as timely and objective. The case is not being certified as thorough. Although OPA indicated they addressed the issues raised, upon re-review, OIG finds that OPA did not sufficiently resolve two key areas identified by OIG. The nature of those deficiencies is significant enough that failing to resolve them impacts the ability to certify the case as thorough.

The two key areas of deficiencies are listed below. As always, when identifying issues with an investigation that impact the ability for OIG to fully certify a case, it is our intent and hope to continue to work towards minimizing similar issues in the future, particularly regarding allegations of bias based policing, which are a matter of great public interest.

Missed Allegations at Intake

- The Blue Team intake filled out by the NE's supervisor indicates "In previous similar situations, she (the NE) called me directly, however she failed to do so in this instance". Additionally, OPA notes in the case intake that the NE had been the subject of five Bias Reviews since 2015, as well as the subject of two completed OPA investigations and one ongoing investigation with allegations of bias. However, OPA did not include a potential policy violation related to the NE not following policy related to Bias reporting nor was the NE asked any questions related to why she did not follow process in this instance.
- The BWV of the Sergeant who reported to the scene appears to depict his not following Bias-Based policing policy by explaining the option to the Complainant of referring a complaint to OPA. Instead, the Sergeant hands the Complainant a card with OPA's contact information without explanation and states only "if you feel it is necessary, this is the contact information for Office of Professional (sic) Accountability". Additionally,



the Sergeant declines to investigate the matter on scene by speaking with a witness identified by the Complainant that purportedly supported his version of events.

These missed allegations were identified in the March 18, 2021 OIG memo directing additional investigation. OPA's response was to state they did not take action on this because "there was no Bias reporting allegation in the classification report" and that "the Sergeant was not a named employee in the case." However, OPA did not offer any explanation as to why the preliminary investigation missed these allegations and did not identify them or an additional named employee at the time of classification. The OPA Manual states that when classifying a complaint, OPA considers "whether the allegations listed in the Complaint Summary cover all concerns raised by the complainant or identified by OPA and whether allegations or named employees should be added or deleted" (p. 23).

Conflicting Testimony not Sufficiently Addressed

- The BWV of a witness officer and the Sgt depicts the Complainant providing an account of what occurred that included his seeing the NE before he ran into the store, and that he just ran in and out very quickly to pick up a plastic bag he had forgotten the day before. The OPA investigation did not include a thorough interview of the Complainant, and the NE was never asked to respond to the Complainant's version of events (which included her potentially seeing him before he ran into the store, and that she did not provide him time to move his car as she claimed).

This conflicting testimony was identified in the March 18, 2021 OIG memo directing additional investigation. OPA's response was to state "The NE explained in her interview her usual practice of arriving in an area with her lights on, waiting a few minutes and then issuing citations. The amount of time the Complainant was in the store is not relevant to the allegations." OPA did not offer further explanation as to why the NE was not asked to respond to the Complainant's version of events, including that she saw him before he went into the store, and thus was aware of his race when she issued the citation to him, or that she did not give him an opportunity to leave before citing him. OPA also did not request or include the 2<sup>nd</sup> citation issued by the NE or otherwise engage in efforts to examine the NE's version of events. The OPA Manual requires that Interview questions "address the elements present in the allegation(s) raised against the named employee" (p. 31).

Respectfully,

*Lynn Erickson*

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