



SENT VIA EMAIL

**MEMORANDUM**

October 15, 2020

**To:** Chief Adrian Diaz, Seattle Police Department; Christina Fogg, Tim Mygatt, and Jeff Murray, U.S. Department of Justice; and Antonio Oftelie, Federal Monitor

**From:** Andrew Myerberg, Director of the Office of Police Accountability; and Lisa Judge, Inspector General for Public Safety

**Re:** Policy gaps impacting investigation and review of use of force

The Office of Police Accountability (OPA) and the Office of Inspector General for Public Safety (OIG) jointly write to make the Department aware of two apparent gaps in policy impacting the investigation and review of use of force. We are hopeful that we can work together to discuss these gaps and, where there is agreement, to address them in a timely and comprehensive manner.

First, we have identified that current SPD policy may need to be modified to allow contemporaneous administrative interviews where criminal conduct is suspected. Currently, if the Force Investigation Team (FIT) identifies potential criminal conduct, the FIT commander confers with OPA and makes an OPA referral. OPA then determines whether to make a criminal referral. However, the SPD Manual provides that, in such a scenario, no interview is to be conducted of the officer who may have committed the criminal acts.<sup>1</sup> This is the case even though the officer would have Garrity protections for an administrative interview and, as such, the substance of the interview would not be admissible in a subsequent criminal investigation/prosecution.

OPA and OIG believe that not conducting the contemporaneous interview is a mistake as it could result in the loss of relevant information and could negatively impact both the force investigation and administrative disciplinary proceedings. Moreover, SPD has the ability to wall off the administrative and criminal investigations and has ably done so on numerous prior occasions. This, coupled with the provision of Garrity rights, would provide sufficient protections warranting proceeding forward with the interview.

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<sup>1</sup> SPD Manual 8.400-POL-5 Use of Force – Type III Investigations Section 8 provides that officers will not be compelled to provide any statement or interview prior to the conclusion of any criminal investigation.



- **Recommendation #1:** Modify the SPD Manual to eliminate the prohibition on conducting contemporaneous administrative interviews of officers believed to have engaged in criminal behavior.

Second, in a recent OPA case, a complainant alleged that she was sitting on a stairwell when an officer threw a blast ball at her for no apparent reason. She contended that this use of force was unwarranted under the circumstances as she was away from the demonstration and did not pose any threat. She further asserted that she suffered injuries, including permanent hearing loss. This incident was not reported by SPD personnel as a Type III use of force and, consequently, FIT did not respond to conduct an investigation. Moreover, the complainant did not notify SPD at the time of what occurred.

The complainant later filed an OPA complaint and, at that point, the nature of her allegations and the extent of her injury was made known to OPA. The complainant, through her attorney, requested that OPA refer this case to both FIT and the FRB for investigation and review. While OPA notified FIT and SPD of what occurred and the complainant's request, OPA informed the complainant that, while policy provides for FIT and FRB to make referrals to OPA where potential misconduct was discovered, it does not contemplate referrals being made to those entities by OPA. OPA raised this concern and the lack of guidance in the policy with both SPD and DOJ. The OIG is also evaluating this matter based on a separate complaint submitted by the complainant's attorney but believes resolution of that complaint necessitates action from SPD, DOJ, and the Court to address the policy gap.

While this is a rare circumstance, it is indicative of a gap in policy. The issue may be complicated by the unique facts of the case, as well as by the sheer volume of force and resulting investigations stemming from the demonstrations. However, OPA and OIG feel it would benefit the overall system to evaluate whether policy should be changed to require OPA to make a referral to FIT and FRB when it appears that force was not reported or underreported, resulting in the failure to properly classify it as Type III, or provide another means for systemic review of force that comes to light after the fact.

- **Recommendation #2:** Evaluate whether SPD's force reporting policy should be revised to require mandatory referrals to FIT and/or FRB for Type III uses of force that were underreported or not reported at all.