

**Report of the Independent Auditor
For the City of Seattle
Office of Professional Accountability**

January - December, 2016

Judge Anne Levinson (Ret.)

OPA Auditor

January 28, 2017

Introduction

The City of Seattle's Office of Professional Accountability (OPA) is the City agency responsible for overseeing the accountability system for employees of the Seattle Police Department ("SPD" or "Department"). OPA is officially designated as part of SPD to provide it immediate and complete access to all SPD-controlled data, evidence, and personnel necessary for thorough and timely investigations, but OPA is functionally independent of SPD. This independence is to help ensure that OPA can conduct internal investigations with objectivity, free from influence or interference. As an added measure, the City also contracts with an individual with legal expertise who provides independent, third-party review of OPA's complaint handling and investigations in real-time. This independent consultant is entitled in City ordinance as the "OPA Auditor".

The OPA Auditor's primary role is to review every misconduct complaint filed and every investigation conducted to help ensure that each complaint is addressed as it should be and every internal investigation is thorough and objective. The OPA Auditor also makes recommendations to City policymakers for systemic reforms in policies, procedures and practices. The OPA Auditor issues a public report twice per year¹ summarizing the number of complaints reviewed in that reporting period and any concerns as to how they were classified²; the number of investigations reviewed, and any for which additional investigatory work was requested; issues or trends noted as a result of complaint and investigation reviews; recommendations for changes to SPD or OPA training, policy or practice; and the results of any special audits conducted.

Due to the transitional nature of the City of Seattle's police accountability oversight system in 2016, there was not a semi-annual report covering the first half of 2016. This report encompasses all of 2016.³

Complaints about possible misconduct can be made in-person, by phone, in writing, by email or by using the OPA website. They can be made by the individual who had the interaction, by a witness or by a third party. SPD employees are also required to report possible misconduct about which they become aware or that is brought to their attention by others. Immediately upon receipt of a complaint, the OPA intake staff follow-up to interview the complainant and gather initial evidence to help inform the classification decision.

¹ See: "Auditor Publications" at <http://www.seattle.gov/opa/opa-reports> for all previous reports.

² Classification refers to the determination as to whether each contact involves an allegation of possible misconduct or performance issues by an SPD employee, and if it does, whether the issues raised are minor or more serious. Contacts that do not involve possible misconduct or performance issues by SPD employees are recorded as a "Contact Log." Complaints involving minor misconduct or performance issues that are best referred to the employee's supervisor to address are classified as a "Supervisor Action." Complaints involving possible misconduct that is more serious are classified as an "Investigation." At the classification stage, OPA can also make a referral for mediation.

³ To allow for consistent comparison of data over time, I have reported sub-totals for the usual six-month periods of January through June, and July through December.

After OPA staff completes the initial intake, they make a recommendation to the OPA Director (“Director”) and the OPA Auditor (“Auditor”) as to how the complaint should be classified. The intent of having the Auditor review the proposed classification and provide input to the Director is to ensure that each complaint receives the level of attention that is warranted, that all allegations and all involved employees are included, and that classification decisions comply with the requirements of the OPA Manual. Then, for each investigation conducted, when OPA believes the investigation to be complete, they submit it for Auditor review. If she concurs that the investigation was thorough, timely and objective, the Auditor will certify it, and the Director can proceed to issue recommended findings (i.e., whether the allegations were sustained or not, based on a preponderance of the evidence). If the Auditor finds that additional evidence should be obtained, additional witnesses interviewed or other investigative steps taken, she can order it to be done at that point, while the case is still active, before the Director issues proposed findings. In conducting complaint and investigation review, it is not the Auditor’s role to be an advocate for either the named employee or the complainant, but to help ensure that all complaints of misconduct are addressed in a thorough, objective and timely manner.

Complaint Review

As part of classification review, the Auditor also assesses whether the preliminary intake investigation, which is the basis for the classification, was objective and thorough or whether to require that additional preliminary investigation be conducted before a classification decision should be made. Additionally the Auditor assesses whether OPA correctly identified the possible policy violations (“allegations”) and the employees associated with each allegation (“named employees”), and finally, whether mediation might be the best option. Where there is disagreement regarding any aspect of the classification, the Director’s decision is determinative.

In 2016, 751 complaints were submitted for classification review by the Auditor.⁴ 429 were classified for Investigation (INV) and 322 were classified for Supervisor Action (SA). In addition, OPA received 839 contacts that were determined not to qualify as complaints alleging either policy violations or performance issues by SPD employees; these are referred to as Contact Logs (CL).⁵ The overwhelming number of intake investigations in this period were thorough and objective, but OPA continues to have some problems with perishable evidence and civilian witness information not being timely obtained, and in some instances, not understanding what was really at issue from the perspective of the complainant or not adequately exploring additional sources of evidence that might identify an unknown employee or otherwise indicate a full investigation is warranted.

In a few intake investigations, the intake investigator’s demeanor and written description left the impression that *complainant* was being investigated instead of the *complaint*. For example, in a case

⁴ 326 complaints were submitted for OPA Auditor review in January - June; 425 in July - December. The complaints reviewed by the Interim OPA Auditor from November 30 through the end of the year are included in the totals described in this report.

⁵ In January-June: 187 INV; 139 SA; and 385 CL. In July-December: 242 INV; 183 SA; and 454 CL.

where the complainant raised the concern that someone was punched by officers multiple times, the intake was not as objective as it should have been, with the intake investigator asking the complainant twice what he would have preferred the officers do under the circumstances, not following up when the complainant repeated his concerns that the number of punches was excessive, and using aggressive questioning to challenge the witness' report that the sergeant on the scene tried to keep the complainant from being a witness. In the intake follow-up log, the intake investigator stated the complainant "ignored" his question, although from the audio recording, that did not appear to be accurate. Among other things, the intake summary did not articulate the complainant's explanation that his perspective was based on having been a security guard for 15 years, that the sergeant on the scene did not take a formal statement or have anyone else take a statement from him but instead said he would call him back later (in fact, it was the next week), the number and type of punches, that the General Offense Report did not list the complainant as a witness and that it stated both that there was not time to de-escalate and that de-escalation was tried.

Thirty-one complaints were reclassified as a result of the review process.⁶ Allegations or employees were added in 12 cases, including allegations of bias, misuse of discretion, lack of professionalism, failure to self-identify, failure to use a seat belt for a suspect during transport, failure to accurately report, retaliation, failure to document an investigation properly, failure to turn off radio while using In-Car Video (ICV), and failure to assist in filing an OPA complaint. In several instances, OPA did not add suggested allegations,⁷ but for the most part, OPA agreed to include additional allegations.

Only 12 complaints in 2016 were recommended for mediation. Four were successfully mediated; in two the named employees declined to participate; in two the complainant did not respond; in one the complainant declined, and in another the complainant did not attend. Two were still pending as of the end of the year.⁸ As I have noted in prior reports, OPA's mediation program still remains relatively dormant. One change made regarding mediation that should be revisited was the decision made as part of the consent decree process that no allegations of excessive force or bias-based policing should ever be mediated. This prohibition was perhaps appropriate during the initial work of reforming SPD's policies and practices as an additional safeguard to ensure *every* allegation was investigated that should be. However, as a consequence, mediation is foreclosed for some complaints involving use of force or bias where mediation would be a more effective alternative than an investigation. It would be more responsive to the complainant and better serve the public by helping employees gain enhanced understanding to improve future performance.

⁶ 5 from CL to INV; 11 from SA to INV; 14 from CL to SA; 4 from SA to CL; and 6 from INV to SA.

⁷ For example, in one complaint alleging that the officer took off his microphone, got in the ambulance and made a threatening statement to the domestic violence suspect, I felt OPA should have included allegations of honesty, as well as material accuracy in reporting, given that the officer did not disclose having done this in either his report or when screening the arrest with his sergeant.

⁸ Those reviewing OPA statistics should note that OPA categorizes mediations as "Completed" once the complainant and the named employee agree to mediation, even if the complainant later withdraws, no longer communicates or does not attend as agreed.

Further, OPA has interpreted the specific language in the OPA Internal Operations and Training Manual (Paragraph II.F.1) - "Allegations of excessive or unnecessary force, biased policing, and criminal behavior shall not be considered for classification as SA" - in a literal manner to mean that while OPA may not classify these as SAs, they may instead designate any of these types of complaints as a Contact Log, retained for record-keeping but for which no additional follow-up occurs. This is contrary to the rationale underlying the prohibition (that all of these types of complaints must be investigated rather than referred to supervisors.) The Manual only allows for two types of classifications: Investigations and Supervisor Actions. The Contact Log designation was created as a means of ensuring that every potential complaint is recorded and reviewed; it is an accountability measure designed to ensure that no complaint is ignored or summarily dismissed, regardless of who the complainant is, who the named employee is or what the possible misconduct might be. The Contact Log designation is typically used for complaints where the employee turns out to work for another agency, where someone contacts OPA to report a crime, request a police report, or express a general concern, or any allegation that would not constitute a violation of SPD policy. Unfortunately, OPA has expanded its use of the Contact Log designation to include cases involving allegations of bias and excessive force that OPA has determined do not warrant investigation. The difficulty with this approach is that OPA pre-judges the merit of these cases based on limited information and there are then no formal findings regarding the allegations.

The point is well taken that it is not productive to spend limited investigative resources on complaints that appear to lack merit, simply because someone alleges excessive force or biased policing. However, the rationale for requiring that they be investigated is to ensure that they get the attention and external review that is warranted. For those allegations that appear on their face to be lacking merit, a better alternative is to have an abbreviated investigation, approved by the OPA Auditor (or Inspector General) at the time of classification, sufficient to confirm that further investigation is not warranted, with a less labor-intensive process of investigation and findings.

When SAs are completed by the supervisor and returned to OPA, the Auditor also reviews them. Of the 403⁹ reviewed in this reporting period, most were thorough and complete. OPA continued to struggle with timeliness of these in the first half the year but with added administrative staff, now manages these more efficiently than in the past.

The Auditor also reviews bias referrals. There were 153¹⁰ submitted for review in 2016. Here again OPA's interpretation of its obligations under policies revised through the consent decree process should be re-visited. The bias-free policing policy requires officers to notify supervisors whenever there is a complaint of bias. The supervisor is then required to interview the individual who is expressing the concern of bias to ascertain if the complainant wishes to make a formal complaint. The supervisor is also required to let the individual know that a complaint of bias can be made to OPA,

⁹ 240 in January – June due to a significant backlog from OPA not tracking SAs in 2015; 163 in July – December.

¹⁰ 76 in January-June; 77 in July – December.

and offer to assist in that referral or refer it directly. Each of these bias complaints is documented and reviewed by the chain of command. After that, they are sent to OPA as a "back-stop" to ensure the correct steps were followed and that there was not misconduct warranting an OPA referral.

OPA's interpretation of SPD policy is that supervisors may infer that the complaint has been resolved to the complainant's satisfaction (and therefore no OPA referral for misconduct is warranted) even when that conclusion would appear contrary to facts presented. For example, if the ICV shows or documentation states that the complainant tells a supervisor "F__ You!" when asked about a complaint and refuses to speak to the supervisor about it, the supervisor can reasonably conclude that the complaint has been resolved to the satisfaction of the complainant, and thus a referral to OPA for a complaint of possible misconduct is not required. This interpretation means that only where the complainant expressly insists on an OPA complaint is one initiated. This can result in allowing supervisors to avoid referring to OPA complaints from those who are the most frustrated, upset, and distrustful, because they will not cooperate with the supervisor who arrives to interview them.

One other category of complaints warranting review and consideration of a new approach is complaints involving former or retired officers. The City and SPD implemented my earlier recommendations to eliminate so-called Extended Authority Commissions, which was an important accountability improvement. Instead, the Chief of Police may now issue Special Police Officer Commissions to government employees whose appointment will assist the Department in enforcing the laws and who have prior law enforcement training or experience qualifying them for such duties; or individuals formerly employed by the Police Department with training and experience in traffic control *only* for the purpose of conducting traffic control (see SMC 3.28.150). When complaints are made about these individuals, OPA's position in the past had been that OPA does not have jurisdiction since they are not active employees. While a Special Police Officer Commission does not grant employment status, in my view, the City has an interest in ensuring their conduct comports with public expectations, all the more so when there may be possible criminal conduct. As I reviewed these complaints, I asked OPA to use the Supervisor Action process to apprise SPD's Human Resources Director, Legal Counsel and Chief Operating Officer of the complaints and ensure appropriate follow-up occurs.¹¹

¹¹ Readers of my past reports may recall that the public is often unaware that these individuals are not officers, so their conduct can affect public trust and respect for the Department and its officers.

Systemic and Policy Recommendations

A significant amount of time was spent in 2016 helping the City move forward with implementation of recommendations made to strengthen its accountability system. The recommendations awaiting codification in City ordinance would implement the following needed reforms, among others:

- adopt an Office of Inspector General (OIG) oversight model with sufficient capacity and authority, and with a different appointing authority than the appointing authority for the Chief of Police and the OPA Director so that there is an appropriate separation of powers¹²;
- increase civilian oversight and independence for investigations of possible criminal misconduct, often the most serious types of alleged misconduct that under existing practice has no civilian oversight and often no separation from SPD;
- ensure all ranks are treated equivalently by the accountability system;
- make the disciplinary system fairer and more transparent by using a single, objective body with requisite expertise to hear disciplinary appeals and require that hearings be open to the public;
- civilianize supervisory, intake and investigative positions in OPA;
- enhance the independence of oversight bodies by providing OPA, the Community Police Commission (CPC) and the OIG a fixed annual budget and authority to set their own work plans for, and provide that the CPC hires its own Executive Director and staff;
- require that all OPA complaint and investigative and related personnel files be retained several years past the date the employee is employed by the City and for as long any action related to that employee is ongoing, not destroyed three years after the OPA or EEO investigation;
- eliminate the three-year limitation for filing complaints concerning non-minor misconduct;
- use the same preponderance standard for allegations related to honesty, not a higher standard of clear and convincing evidence;
- modify the contractual deadline for investigations, to retain the required timeliness without comprising accountability for the public¹³;

¹² The City Auditor and the Director of the City's Ethics & Elections Commission (SEEC) have appointing authorities distinct from the Mayor to strengthen the independent oversight role each of these offices has. The City Auditor is appointed by the City Council and the SEEC Director is appointed by the Commission.

¹³ The collective bargaining agreements provide that if an investigation takes longer than 180 days, including the steps of OPA Auditor review, a discipline meeting and notification of the employee, then no discipline may be imposed. Some argue there should be no deadline in order to avoid that occurring, but investigations that drag on for months and years do not serve the public, complainants or employees well. A better approach, as recommended to the City, is to adjust the 180-day deadline so that it is defined to be directly tied to OPA investigations rather than to the date an employee receives notice from SPD of proposed discipline, has permissible extensions for delays beyond OPA's control, and provides for extensions when additional investigation is directed.

- implement a rapid adjudication process for quick resolution of certain complaints; and
- manage all Secondary Employment through an internal, civilian-led and staffed office, to eliminate conflicts of interest and provide appropriate oversight and accountability.

These past recommendations that needed to be codified or mandated were included in the proposed accountability legislation filed with the federal court and should be put forward by the Mayor for adoption by the City Council. Other recommendations for policy, training and operational improvements not included in the proposed legislation and still not implemented by OPA or SPD will be monitored and their status reported on by the CPC.

Four recommendations for OPA and SPD from this reporting period are:

1. Allow the use of mediation for complaints involving allegations of bias or use of force when both the OPA Director and the OPA Auditor (or Inspector General) agree that mediation would be more responsive to the complainant and better serve the public.
2. Review the bias-free policing policy to better ensure that the current protocol of allowing supervisors to determine the complaint has been resolved does not result in an overbroad exclusion of these cases from OPA investigation.
3. Work with the OPA Auditor to design a triage process of additional but limited investigation for complaints involving use of force or bias where based on the initial intake investigation a full investigation with all of the required steps may not be warranted, but further analysis and some level of investigation may be needed. The OPA Auditor can direct what those steps must be (e.g., further review of all available video; a witness interview to corroborate the available evidence gathered at intake) and an abbreviated certification memo may be utilized. This process must reflect the importance of these types of allegations, the authority of the OPA Auditor to ensure that all complaints are handled thoroughly and objectively, with findings available for public review, and the effective use of available resources.
4. Strengthen the accountability mechanisms used by SPD and OPA for complaints involving former or retired SPD officers. OPA has agreed with the OPA Auditor that it should receive or initiate complaints related to those with Special Commissions, and concurs that it is important for SPD to obtain information about their conduct in order to evaluate renewal and possible terminations of commissions and/or conduct criminal investigations, as well as to report back to OPA regarding any actions taken. However, based on complaints reviewed in this reporting period, it is clear that SPD still needs a consistent, accurate and timely process for the granting, renewal and immediate termination of Special Commissions that ensures that only those who comply with the requirements in ordinance and policy will continue to serve in these roles.

Investigation Review

To provide additional independent civilian oversight for Seattle’s police accountability system, the OPA Auditor reviews all investigations conducted by OPA. The Auditor’s review is to help ensure each investigation is impartial, thorough, timely, and consistent with the required procedures set forth in the OPA Manual. When the OPA investigator believes an investigation to be complete, he or she submits it for internal review and then OPA submits it to the Auditor for certification. The Auditor either certifies the investigation, or if the investigation is not thorough, can request or direct that additional investigative steps be taken. For example, the Auditor might request that OPA obtain additional evidence, interview other witnesses (or document why certain evidence was not obtained or why certain witnesses were not interviewed), re-interview witnesses, or follow up on new concerns that arise from the investigation. OPA is required to conduct further investigation as directed by the Auditor and re-submit the case to the Auditor for certification before findings are issued.¹⁴

During 2016, OPA submitted 337 investigations for Auditor review, 149 during the first half of the year, and 188 during the second.¹⁵ The thoroughness, quality and timeliness of OPA’s investigations, which had improved in recent years as OPA implemented recommendations for improvements, declined in 2016:

- 30 investigations were not certified.¹⁶
- 12 additional cases required additional investigation and remain pending. These cases may ultimately not be certified given the range of issues and the length of time OPA has taken to conduct the requested additional investigative steps.
- 10 additional cases could only be certified after further investigation was conducted.
- 11 cases were certified even though the investigations were deficient because additional investigation would not remedy the issues identified, and because the preponderance standard had been met¹⁷.

Significant issues I have raised in prior reports persist. Basic investigative practices such as use of investigative plans at the initiation of investigations, so that investigators are clearly focused on the critical issues and understand what must be proven, are still not standard operating procedure.¹⁸ OPA

¹⁴ Findings are the determinations as to whether allegations of misconduct were proven. If an allegation is proven by a preponderance of the evidence, it is “Sustained” and discipline may be imposed.

¹⁵ For comparison purposes, there were 207 investigations submitted in the second half of 2015.

¹⁶ The final three of the non-certifications were done by the Interim OPA Auditor.

¹⁷ For example, if a 911 tape, holding cell video or private media had not been obtained and was no longer available.

¹⁸ In one case, the investigator notified the named employee of his interview with this communication: “There are four allegations listed in the [complaint summary]. The written portion of the summary only explains one of the allegations: bias policing. I will be asking you about bias policing, the probable cause for the arrest and your demeanor (the complainant stated you were not courteous.) The [complaint summary] also lists discretion as an allegation. As I was

management review of investigations was cursory at best. Rarely did OPA management ask investigators to resolve gaps and material inconsistencies in evidence or pursue possible additional violations of policy that became apparent during the investigation. Nor was there management review as to whether investigators considered all the factors they should have in approaching each allegation, particularly to ensure the complainant's concerns were properly understood and addressed. Investigators are still not concluding each interview with the questions I recommended (and OPA stated had been formalized in their protocol) always must be asked: Is there anything I have not asked you that I should know? Is there anyone else who I should interview?

Equally problematic, OPA management did not adequately supervise investigators or triage investigations to ensure investigative timelines were met. Cases often sat for months before any investigative steps were taken.¹⁹ Investigations were then routinely limited in scope in order to meet impending deadlines, without documentation of an appropriate investigative rationale for the truncated approach taken. Site visits, comprehensive attempts to reach complainants and interview civilian witnesses, and other investigative steps beyond intake and employee interviews were rare. The required regular communications with complainants and named employees regarding the status of cases as they are in process were infrequent at best.

Timeliness matters for several reasons: responsiveness to complainants; respect for employees who have allegations pending against them; avoiding loss of perishable evidence and diminished accuracy of witness memory; and enhancing accountability with swifter training, discipline or management correction when needed. Another critical reason for effective time management of investigations is that, pursuant to the collective bargaining agreements negotiated by the City, no discipline may be imposed unless OPA completes an investigation, issues findings, and SPD provides notice to the named employee of the recommended findings and proposed discipline within 180 days after the complaint is received or initiated by OPA. Between August and December 2016, 40 investigations were submitted for my review after the 180-day contractual deadline had already passed or so close to the deadline as to undermine the spirit, if not the letter, of the ordinance, since insufficient time remained to conduct additional investigation. Frequently, investigations were submitted without transcripts because the deadline was too close to wait for the transcription to be completed. In other cases, where I directed additional investigation, OPA took months to do the follow up work (and some were

unable to procure any information on why Discretion was listed as an allegation, I will not be asking you any questions directly related to the Discretion allegation.”

¹⁹ Several cases referred for criminal investigation were also not timely managed. In one, the criminal investigation took six months and included no investigative steps other than assessing the named employee's status as a retired employee. The administrative investigation included a single interview by phone of the retired named employee in January and then no further work was done until the Case Summary was written in August. In another, the case was to be returned from the criminal investigations bureau by the end of August. The criminal investigation was completed before then but the case was not transmitted back to OPA until the end of September. OPA management did not track the case. The OPA investigation did not begin until October 8 and is still open as of the writing of this report.

still not complete as of the drafting of this report). In some instances, OPA drafted the Director's certification memo and notified the chain of command before submitting the case for review, eliminating the possibility of additional investigative work.

It is true that OPA investigator caseloads have increased in recent years. To some extent that reflects a culture of increased internal accountability with more referrals made to OPA from SPD supervisors and SPD's Force Review Board. Nonetheless, this is not a new trend. However, OPA still has not implemented strategies to more effectively manage investigations, including the recommendations I have made each year to OPA to institute alternatives to investigation²⁰ which would reduce the number of investigations without comprising accountability. Instead, OPA has adopted other techniques to reduce caseloads that in my view negatively affect accountability. One such technique is to use the contact log classification rather than investigating certain use of force and bias allegations (discussed in the complaint review section above). OPA management has also taken to disregarding the deadline for completing its investigations except in cases it predicts will result in sustained findings, with this prediction being made before the investigation is done or in some instances even underway. That judgment in effect predetermines that other investigations will not meet the contractual deadline, and that any additional investigation directed by the Auditor will have no effect, regardless of where the investigation leads.

Following are brief descriptions of 37 of the investigations that were either not certified, certified despite issues, or where additional investigative steps were requested:

Investigation 1

I did not certify an investigation in a case involving allegations made by a fellow employee. The complainant alleged the named employee told him that he had "jacked the guy up" and then did not fully and accurately report the force he used to a screening Sergeant. He also did not use his ICV.

OPA made no effort to interview the subject of the alleged use of force either during intake or during the investigation until requested to do so. There were only nine days left before the 180-day deadline by the time the OPA investigator attempted to contact the subject with a phone call and letter. By this time the named employee and witnesses had already been interviewed, without the benefit of any relevant information from the subject. No effort to locate the subject had been made in the nearly six months since OPA had received the complaint.

The investigator did not interview an SPD employee witness whom the complainant stated he had called about the named employee's comments. After the investigation was submitted as complete, the investigator was directed to interview the witness. When he did, it was clear OPA still had not discussed an investigative approach; no questions were asked about the discussion the complainant

²⁰ See my prior semi-annual and special reports for oft-repeated recommendations for OPA to move forward with a robust mediation and dispute resolution program and a rapid adjudication alternative to resolve complaints quickly where employees acknowledge a policy violation has occurred and waive their right to an investigation.

had with this witness, *which was the reason for his interview*. The investigator was directed to re-interview him. The critical elements of the complaint were still not addressed.

The complainant employee had alleged that the named employee made very specific comments that suggested he may have failed to report use of force and may not have been honest in his description to his screening sergeant of the force used. The complainant provided a detailed description of the conversation; the employee denied having *any* conversation with the complainant about the incident. At no point did the OPA investigator directly ask the named employee if he had made the comments attributed to him. Nor did OPA ask why the General Offense Report made no mention of the suspect tripping or of any de minimis force such as the 'guiding to the ground' which the named employee described in his OPA interview as having occurred. The fundamental reasons for the complaint were not squarely addressed by OPA.

OPA did not establish any credible reason the complainant would have called the SPD employee witness to share with him what the named employee allegedly said, seek his advice about reporting the possible misconduct, and then call the named employee's sergeant to report it to him as well, had the conversation never occurred. In fact, in his OPA interview, in response to a question posed by his union representative that OPA had not asked, the named employee's sergeant described the complainant by saying: "I find him to be top notch."

OPA did not show the sergeant the named employee's General Offense Report and inquire about the missing information. The named employee's use of force history was not compiled by OPA and no questions were asked of the sergeant regarding the named employee's record involving use of force. The sergeant was not asked whether he had concerns as a supervisor based on the facts as alleged, the credibility and professionalism of the complainant and the named employee's past performance. OPA did not ask him how unusual it was for a person in the complainant's position to be concerned enough to call him and relay a conversation such as this.

Further, a Department of Corrections employee was present in the vehicle when the alleged conversation occurred. OPA's interview of him was cursory and incomplete. The investigator did not directly ask the witness if he heard the named employee make the comments at issue. The investigator also made no effort to provide the witness sufficient information to prompt his recollection. Nor did OPA ask this witness - who works with the named employee - if he had ever observed the named employee use excessive force or fail to accurately document or provide accurate information to a supervisor. OPA never conducted a follow-up interview with the witness as requested.

The investigator noted in his log that *after* he completed all the interviews, he 'located' one of the officer's ICV. All ICV, photos and other evidence should have been obtained and reviewed well prior to any interviews so that any relevant information could have informed the interviews.

The 180-day disciplinary deadline was July 31. The investigation was submitted to me as partially complete on July 26, re-submitted on September 26 (nearly two months after the deadline) after only

one additional interview had been conducted and again on October 13, after that same employee had been re-interviewed. This was nearly three months after the 180-day deadline and nearly nine months after the complaint was made to OPA.

Investigation 2

I did not certify an investigation in a case where the complainant had been assaulted outside a restaurant and alleged the dispatched officers sat in their vehicle for several moments without attempting to contact him, refused to take a report for the assault, and threatened to arrest him for "Interrupting police time" if he continued to call dispatch.

OPA interviewed the complainant on March 11, 2016 during its intake investigation. At the end of the interview, OPA asked the complainant if he or his friends had private media relating to the incident. He stated that he didn't know if his friends did. The OPA intake investigator stated he "might follow up later" to get the contact information for the friends; he did not ask the complainant for the contact information for these witnesses. OPA never made any effort to contact them.

Again, OPA did not appear to have an investigative plan. OPA made no effort to go to the site to locate video or witnesses. The OPA investigator did not review the case file until August 4, 2016, when he listened to the intake interview. He noted in his investigation log that he did not see any reason to interview the complainant again (despite the lack of follow up on the complainant's statement that he had a friend with him who was a witness and who may have had cell phone video.) The investigator did not note that the witnesses had not yet been contacted for interviews or to obtain possible private media, nor did he take any steps to do so.

OPA did not play the 911 tape regarding the alleged assault for the named employees, which would have provided an important foundation for interview questions, and the named employees were not asked why no investigative steps were taken, including interviewing the witnesses present, getting their contact information to include in the General Offense Report, or looking for possible witnesses or video at the premises where the assault allegedly occurred.

The case was not submitted for my review until a month after the 180-day deadline.

Investigation 3

At issue in another investigation I did not certify was why a Parking Enforcement Officer (PEO) failed to respond to a subpoena for Court, resulting in the citations that had been issued to the complainant being invalidated and the City paying the towing fees. OPA did not address several gaps and inconsistencies in the employee interviews. I laid out all the conflicting statements and requested OPA conduct additional interviews. OPA re-interviewed the named employee, but did not do any other interviews. At that point, because of the continued delay and the fact that SPD had never revised the policy on court appearances as I had first recommended in 2012 to institute better procedures to

address failures to appear by SPD employees, I suggested the OPA Director move forward to issue a Management Action finding²¹ and training rather than conduct additional investigation.

Investigation 4

The responding officer's failure to follow up at the scene regarding a possible assault on the Seattle University campus was at issue in another OPA investigation that I did not certify. The complainant had called 911 to report the assault on a homeless woman. She alleged the responding officer didn't assist her because of her ethnicity and didn't assist the victim because of her homeless status. At classification I asked OPA to add an allegation of bias based on the complainant's interview and an allegation of professionalism based on a comment heard on the ICV. Although central to the complaint, OPA did not ask the named employee any questions about investigative steps he could have taken, including getting the names and contact information of the alleged assailants, or noting the availability of campus video (that the complainant brought to OPA's attention and which verified the complainant's description of events.) Nor did the investigator inquire why the named employee took the alleged assailants' statements at face value and discounted the complainant's statement. The OPA investigator's inquiry regarding the professionalism allegation was also not objective. Finally, the named employee was interviewed before information could be garnered from other witnesses, due to scheduling problems. By the time OPA submitted the investigation to me for review, it was too late for additional investigation to be conducted within the 180-day timeline.

Investigation 5

An investigation regarding a complaint of bias provides a good example of a case that would have been better addressed through mediation, but OPA did not do so because, as noted above, OPA believes the allegation of bias forecloses mediation as an option. I did not certify it because the investigation was neither thorough nor objective. The complainant had alleged that an officer directing traffic at the Fauntleroy Ferry Terminal had ordered her to turn her car around, in essence "banning her from boarding."

OPA included a bias allegation because at the end of her complaint, the complainant mentioned her ethnicity may have been a factor. But OPA completely disregarded the essence of her complaint. She had explained to OPA:

²¹ In my first report in 2014 I recommended that OPA and the Department institute a new finding, which I called Management Action (MA), to provide a way by which the public can be assured that larger management, policy, or systemic issues which come to light as a result of an OPA complaint will be addressed. Most accountability processes, including Seattle's, only focus on employees, which does not serve the public well when there are other organizational or public policy concerns that also warrant attention. This MA finding, now part of Seattle's system, can be used either where the allegation against the employee is not sustained or where the allegation is sustained, but the employee is only partially responsible.

I tried to explain to him that I am disabled by showing him my state placard and I.D. and that I walk only with great difficulty. Bottom line is: I was kicked out altogether. Not go to the end of the line, just leave because I wouldn't be allowed to board a ferry at all. What should have been a half hour trip home turned into a 3 hour drive around the bottom of the Sound. I didn't have any of my needed medication with me as it was a short trip. The 3 hour drive was horrible for me health-wise and I'm not fully recovered from that setback yet. This officer was arrogant, dismissive, and condescending. I've never had a negative experience with police in my life. I grew up in a law enforcement family. This guy maybe needs some sensitivity training although he was pretty proud of himself to pick on a 59 year old disabled woman."

OPA asked no questions to follow-up on these issues. Instead OPA focused on her subsequent comment: "I know I made a mistake with the line up but I was treated as if I was an axe murderer." Rather than address the complainant's underlying concerns, the OPA investigator literally asked the named employee, "did you treat her like an ax murderer?" This was followed by the OPA investigator allowing the union representative to ask the named officer a series of leading questions, then doing no follow-up when the officer's assertions appeared to conflict with the evidence.

Investigation 6

I did not certify an investigation involving new officers who were deemed not qualified based on their firearms skills while in SPD's field training program after the Academy. OPA never reconciled material conflicts, gaps, and inconsistencies among the named and witness employees' statements. A core issue regarding who authorized the new officers to start on the street without additional training was not squarely addressed; OPA did not determine whether that lieutenant should also have been named regarding that allegation and/or an additional allegation added if he had not provided complete and accurate information to OPA. OPA management submitted the case for my review on June 29; the 180-day deadline was July 2. I reviewed the case and returned it to OPA the next day with direction to interview the lead training officer and then re-interview the lieutenant and the sergeant who had provided contradictory information. As of the end of the year – an additional six months later - OPA had still not completed the investigation.

Investigation 7

I directed additional investigation in a case where the gang unit did not use their ICV when questioning someone they described as "a potential future informant." The lack of clarity in SPD's ICV policy regarding the obligation to record by employees acting in certain capacities was not new to OPA or SPD; it is an issue I have raised and recommended the City address for some time. The named employees reported to OPA that at the time of this incident, the Gang Unit relied on a "standing order" that Gang Unit detectives were not to activate ICV during incidents involving undercover officers, confidential informants and cooperating witnesses. It would vitiate the policy manual if the ICV policy or any other SPD policy could be overridden by a "standing order" issued by any SPD

personnel at their discretion. OPA did not take steps to ascertain who issued the standing order nor, once that was ascertained, to add him as a named employee for issuing the order.²²

SPD did create a protocol for the ICV policy that allows for exceptions based on written requests for exemptions; requests must be submitted and approved by the Chief, each for a period not to exceed one year. The lieutenant who issued the order stated in his interview that he requested an exemption *after* the OPA complaint was initiated. Further, the OPA investigator focused his questions on the employees' safety and the safety of informants, since that was what the named employees stated as their rationale for not recording. Yet there was no examination as to whether protecting undercover officers was actually relevant during transport of the suspect. And, at least one of the named employees acknowledged during his interview that the suspect in this incident was not currently acting as an informant. Nothing in SPD policy or the "standing order" provided for the option not to use ICV when interacting with those who *might become* cooperating witnesses *in the future*. Another employee indicated in his OPA interview that members of the Gang Unit had discretion in determining whether to use ICV. OPA did not explore the material conflict between the employee's report of discretion in using ICV and other employees' reports of being obligated not to use ICV pursuant to the "standing order." OPA made a single request of the Chief's Office for any documentation of a requested exemption, got no response, and took no further steps to obtain the evidence.

OPA issued a Director's Certification Memo before submitting the investigation for review and sent the investigation to the chain of command before conducting any additional investigation as requested on November 21. As of the writing of this report, OPA still had not conducted the requested investigation. OPA stated in response to my initial review that they would initiate a complaint to address the issuance of the standing order. No complaint was ever initiated.

Investigation 8

A lack of diligence prevented certification of this investigation. The initial complaint was made to OPA on February 14, 2016. The complainant was interviewed three days later and the last entry made in the intake log was on February 22, 2016. No investigative steps were taken until September 12, 2016, *a gap of nearly seven months*. The investigation was submitted for my review more than nine months after the complaint, well after the 180-day contractual deadline. Additionally, the complainant's interview was never transcribed, and various evidentiary exhibits (e.g., photos, GPS, visuals provided by the named employee in his OPA interview) were not listed as evidence in the Case Summary.

²² Finally, after I refused to certify the case, OPA agreed to initiate a separate complaint regarding that employee. That should have been part and parcel of the underlying investigation. It can be argued that the contractual deadline has now been missed, since OPA was well aware of the possible misconduct.

Investigation 9

The investigation of a complaint involving an officer not filing assault charges had myriad issues and OPA's submittal of the investigation was so late that additional investigation could not result in discipline due to exceeding the contractually-mandated timeline. Because of the delay, the fact that some of the problems with the investigation could not be corrected by additional work, and that the complainant stated her priority was that assault charges get filed, I did not direct additional investigation. Among the issues noted:

Both the security guard complainant and the guard's shift supervisor (also a witness) expressed an interest in mediation. There was no indication in the case file as to why mediation was never offered.

In her OPA intake interview (conducted by phone the morning after the incident), the complainant stated she had bruising and swelling as a result of being kicked and punched. OPA did not request photos of the injuries. The third security guard who was described as involved in the incident in the complainant's written statement to police was never interviewed by OPA nor even listed as a witness in the case file.

The security guard shift supervisor stated in his OPA intake interview that "this has happened before" and "letting people go on assault charges...I kind of expect that when Officer __ shows up". OPA did not follow up on this statement in either of the named employees' interviews. In her OPA interview, the complainant stated her supervisor contacted an SPD sergeant and he changed the charge to assault. OPA did not interview the sergeant to determine why he changed the charge to assault, did not address whether he may have failed to refer a complaint of misconduct to OPA or whether he completed any performance appraisal system documentation for the named employees.

The named employee wrote two supplemental reports. They were not included as exhibits in the case file or listed as evidence in the Case Summary. The named employee stated the reason he wrote those supplemental reports was because he had received emails from the complainant's supervisor. OPA did not obtain those emails, include them as evidence in the Case Summary, or follow-up with the supervisor to interview him about why he sent the emails.

OPA did not show either named employee the ICV as part of his interview. OPA did not ask questions about the statements made by the complainant and witness regarding being assaulted despite the named employees' insistence that they did not have sufficient information to make an arrest for assault. OPA interviewed the named employees in September. Although OPA conducted preliminary interviews with the complainant and witness at intake, OPA did not make any attempt to contact them for full interviews until early November. No regular status update was provided to either during the pendency of the investigation as required. The preliminary interviews with the complainant and witness were never transcribed as required.

Investigation 10

OPA's lack of case management had a particularly detrimental impact on accountability in a case involving excessive force, reporting use of force, failure to use ICV and failure to articulate the need to search a subject who was in crisis. The investigation was thorough, and should have resulted in sustained findings for all seven allegations. However, the OPA investigator did not begin work on the case for more than 100 days, and OPA management did not note the delay. The investigation was not submitted for my review until after the 180-day time limit for completion had passed. As a result of missing the deadline, no discipline could be imposed. OPA decided that a Sustained finding could not be issued based on the legal theory that a Sustained finding in and of itself constitutes discipline. As a result, in a case where there should have been seven Sustained findings with appropriate discipline imposed, there were none.

Investigation 11

Another investigation that could not be certified due to lack of timeliness involved an incident that occurred in April. The King County Jail's Internal Investigations Unit (KCJ-IIU) forwarded a complaint to OPA alleging that officers used excessive force while obtaining the complainant's blood pursuant to a search warrant after he had been arrested for Driving Under the Influence (DUI). The KCJ-IIU investigator wrote that he "alleged his arm was dislocated, a knot was over his ribs, and (his) fingers were messed up." OPA assigned an investigator on May 25, but OPA's investigation did not begin until October 5, less than three weeks before the 180-day deadline of October 23, 2016. OPA did not submit its investigation for certification until December 20, 2016.

Investigation 12

Further investigation was needed and the 180-day deadline was not met in an investigation regarding use of blast balls by police during a demonstration. OPA did not include and analyze the after-action report, blast ball logs or training materials. OPA did not identify and interview relevant supervisors regarding orders to disperse, what orders and/or guidance was given regarding the use of blast balls prior to and during the incident, and whether the supervisors themselves observed any of the incidents being investigated. Nor were the relevant training personnel interviewed regarding the appropriate use of the devices.

Blast balls were also used by several other employees. OPA did not interview any of them, document in the case file why not, nor how the named employees were identified as those involved in the incidents. One officer stated that he only used one blast ball but that three were used from the bag he was carrying. There was no information about who used the other blast balls and where they may have been deployed.

The named employees in their interviews generally explained their use of blast balls was for officer safety. OPA did not inquire if they considered the risk of injury to bystanders before using force as required. Some of the officers indicated they used overhand throws to overcome obstacles or avoid

striking fellow officers. This suggests the officers felt they had discretion to use an overhand throw in some circumstances despite policy and training. For officers who reported obstructions prevented an underhanded throw, OPA did not ask whether the officers could have repositioned themselves, whether they complied with their orders/training as to the appropriate distance from individuals to target, whether they issued any warnings, or issued or heard any dispersal orders prior to using blast balls. Again, one of the complaints alleged that no such orders were issued.

One individual who received significant injuries from a blast ball was not listed as an involved party and it was unclear whether OPA was investigating the specific incident in which he was injured. Photos and video taken during this incident were submitted to the Intel Unit within 48 hours after the demonstration but OPA did not request these materials for more than five months after the incident, by which point much of it had been deleted.

Finally, in some of the interviews, the union objected to the fact that the advisement of rights always given at the beginning of interviews was given by an investigator who was an acting sergeant, not a permanently sworn sergeant or lieutenant. In at least one instance, OPA was unable to complete a follow-up interview due to union's refusal over this issue. OPA management elected not to remedy the problem by having someone else in the office provide the advisement. If OPA disagrees with union's position, they can maintain their position of disagreement while still having someone else provide the admonishment. Instead OPA failed to conduct a necessary interview.

Investigation 13

Another investigation involving use of blast balls during a demonstration needed additional investigation to address several evidentiary gaps. In response to his request to deploy blast balls, the named employee stated in his OPA interview that he received authorization from the Captain to "do what is necessary." OPA should have either interviewed the Captain or documented in the file solid reasoning for not interviewing him. The Case Summary suggested OPA interviewed the complainant, but in fact OPA had contacted him to request an interview, and he indicated he preferred to communicate in writing. There was no record of OPA submitting written questions to him. As with the Captain, OPA should have either interviewed him via email or provided a solid reason why he was not interviewed. The complainant indicated he had video of the second blast ball deployment. OPA reviewed one of the videos he posted online at intake but did not include it as an exhibit. An analysis of video, use of force documentation and 911 calls was not in the Case Summary. OPA did not obtain and review demonstration management documentation, including orders prior to the event, any after-action report and the blast ball training curriculum for the named employees. OPA did not explore the complainant's allegation regarding a possible violation of the demonstration policy prohibiting use of chemical agents or less-lethal munitions to overcome passive resistance by non-violent peaceful protestors. As of the end of the year, OPA still had not done the necessary additional investigative work.

Investigation 14

In another case I did not certify, officers responded to a “woman in crisis” call at Dick’s Drive-In in Northeast Seattle. Upon arrival, the named employee concluded that she was a danger to herself and the property of others. He decided to call an ambulance (AMR) to have her taken to the hospital for a mental health evaluation. When she refused to comply while on the gurney, he used a “hair hold.” She complained of pain, generating a Type I use of force report. The lieutenant reviewing the use of force made the referral to OPA. He noted that the officer wrote that he used the two control points closest to him, her wrist and her head, but “did not explain why a wrist and shoulder hold would not have been sufficient. These holds would not have triggered type I reporting. The force was unnecessary.” The ICV showed four witnesses on the scene observing the interaction – two SPD officers and two AMR personnel. OPA did not explain why only the SPD officer witnesses were interviewed. Nor did OPA make any reference to the presence of the AMR witnesses on the scene in either the description of ICV evidence in the investigation follow-up log or in the Case Summary. Also, the evidence section of the Case Summary listed an OPA interview with the subject; yet OPA was not able to interview the subject.

OPA should have interviewed the AMR witnesses to ascertain whether they concurred with the employee’s description of the subject’s degree of behavioral crisis and her refusal to cooperate, the employee’s assessment of the subject’s possible risk of violence toward anyone else at the scene, and that the force the employee used was reasonable, necessary and proportionate. OPA disagreed with my request to interview the witnesses, but did make effort to do so as directed. By that point, OPA’s efforts to communicate with them were not successful.

Investigation 15

I did not certify an investigation in a case where OPA did not interview a key witness. The named officer had been dispatched to a call to: “Assist federal officer with Intoxicated male. Subject is refusing medical attention, but is too intoxicated to drive.” The officer arrived and made contact with the “federal officer” and the intoxicated male in a very brief conversation and then left quickly to respond to an in-progress Priority 1 burglary. While he was at the burglary, the “federal officer” called 911 again and told the call taker that the intoxicated male left in his vehicle by using a spare key. At about that time, radio broadcasted a hit and run collision with the vehicle description matching the prior DUI call. The officer returned to the initial scene and learned that the person with whom he had left the DUI suspect was not a federal officer, but an armed private security officer. Although the security guard’s actions and statements to the named employee were critical to evaluating the allegations relating to performance of duty, tactics and decision-making, OPA did not interview him. OPA also did not obtain the 911 and North radio audio to help identify why the private security officer was identified by the dispatch operator as a federal officer in the CAD information transmitted to the employee. OPA could have, in the alternative, interviewed the private security officer’s supervisor who made the 911 call and the dispatch staff. As requested, the OPA investigator did eventually interview

the security guard, but the case then did not get routed back to me until almost two months after I initially reviewed it.

Investigation 16

Use of force was at issue in an investigation I did not certify where officers were working off-duty at an event called "Freak Night" in 2012. The officers were escorting an intoxicated male outside when he swung at them and was taken to the ground. They attempted to place him in handcuffs. His girlfriend (the subject) was interfering with his arrest. A "fast back" was requested over radio and two additional officers responded to assist. In 2015, the subject filed a lawsuit alleging excessive force and unlawful arrest. She said she did not resist or assault any officer and that officers provided false statements or information to establish probable cause. The OPA Director initiated a complaint against the named officers for excessive force and lack of probable cause. However, when the subject made other assertions in her OPA interview that one of the officers acted and spoke in a manner that, if true, would also be in violation of SPD policy, OPA did not pursue it: "And then, I was wearing a skirt at the time, my skirt had come up when he had me on the ground beating me, and he made me walk in front of the line of thousands of people in my underwear. ... And he said you stupid little bitch, I know you're going, I hope you know you're going to jail." The subject also mentioned in her OPA interview that she requested the officer adjust her skirt and was told by him that he was not permitted to do so. Further, OPA interviewed the subject *after* interviewing the employees, which meant the information obtained from the subject did not inform those interviews.

Investigation 17

Another investigation I did not certify involved domestic violence (DV) arson. The complainant alleged that the three officers who responded to the arson call were unprofessional, rude, and made fun of her. She added that she had asked the officers to collect evidence related to the investigation, but the officers refused to collect it, instead leaving the evidence at the scene. There was also no indication that officers had checked for private security video at the apartment building. In her OPA interview, the complainant stated that a friend of hers was a witness at the scene. The intake investigator asked the complainant for the witness' contact information but did not list him as a witness in the investigative file, the write-up of the complainant's interview in the case file did not include her statement that there was a witness, and OPA never contacted him for an interview.

OPA interviewed the detective who ultimately investigated the crime. OPA's summary of the detective's interview did not include the statement he made that in his view the complainant was a hero for surviving almost being killed by the defendant, which was indicative of how serious the DV situation was. Nor did it include his statement that there was yet another case where the defendant was alleged to have committed the crime of identity theft against the complainant or that the cigarette in evidence was in fact proven to contain the defendant's DNA. OPA should have included these facts in its Case Summary because they further substantiated the point that the failure to

thoroughly investigate was significant. For the same reason, OPA should have obtained and included in the case file relevant documentation from the criminal prosecution of the defendant, including all charges, evidence and dispositions. OPA also did not assess whether SPD policy requiring officers to take victim and witness statements in certain investigations was complied with or address the issue of the officers listing the wrong victim name in their report.

Finally, the case file included an email stating the OPA investigator's personal perspective as to his union's sidebar settlement agreement regarding ICV. Objections such as this are the responsibility of the union to identify. The investigator doing so raises concerns about the objectivity of the investigation.

Investigation 18

Another investigation not certified involved an internal referral alleging the named employee saw an arsonist starting a fire and failed to take enforcement action as SPD was investigating a series of arsons in the White Center neighborhood. The officer was in the area and his ICV captured a suspect setting fire to a garbage container. The officer then drove away from the suspect and the flaming garbage container without broadcasting the information, contacting the suspect or taking any law enforcement action. During the named employee's OPA interview, his bargaining unit representative raised the issue that the named employee's view from his vehicle may have been blocked due to an "A-pillar" or "A-post". The bargaining unit representative asked OPA if anyone had checked that, to which OPA responded, "That, I do not know." The bargaining unit representative then sent the investigator an email several days later asking if the investigator had gone to the site to help establish whether that was correct. There was no documentation in the file regarding receipt of that email, any actions taken by OPA to follow up on that information or, in the alternative, documentation as to why OPA determined that it was not relevant, and no reference in the Case Summary to the issue having been raised and whether it was of evidentiary value.

The named employee stated that he had driven away onto to 99 North because he wanted to check on a unit there that was not responding to radio. There was no follow up by OPA on this assertion that these officers needed his assistance. While the OPA investigator did inquire as to why the named employee, after checking on that unit, kept driving northbound on 99 rather than turning around at the next exit, OPA did not follow-up on the named employee's stated reason that he didn't know where taking the Seneca Street exit would lead.

To ascertain whether the named employee might have avoided taking action in order to avoid doing work, OPA asked him how many "on-views"²³ he has done that have resulted in arrests. The named employee gave this response, "I do a great amount of traffic stops, I would say." OPA then asked, "Roughly how many arrests do you make a month... on-views? Roughly guess." The named employee responded, "I, I couldn't tell you. It... maybe 10." OPA responded, "Okay" and "That's actually a fair

²³ An "on-view" means an officer takes law enforcement action based on observing a crime rather than being dispatched.

amount.” OPA did not obtain any records to verify this or to document the pattern of the named employee regarding on-view enforcement actions, nor interview anyone in his chain of command about his performance, their view as to the named employee’s actions regarding the arson investigation, the named employee not seeing the fire either to the front or to his left, the decision to leave the area to go check on another unit on 99 North several miles away, or the decision to drive northbound for several additional minutes.

Investigation 19

The complainant, a supervisor, alleged, based on review of ICV, that the employee acted in what could be perceived as an unprofessional manner while transporting a potential sexual assault subject to the hospital and failed to conduct an investigation into her statement that she was raped. Additionally, when screening the report with his sergeant, the employee indicated that the subject had provided very little information, despite the subject having described significant information about the assault.

Because she was a warrant suspect, the named employee had arrested her and transported her to jail. During that time, the subject did not mention anything about a sexual assault. Once at the jail the subject told the booking officers that she had been raped, which meant the jail could not then book her. The employee then transported the subject from the jail to the hospital for an evaluation. During that transport, the subject made several statements about the sexual assault, including providing the suspect’s name and a possible location where the assault took place. The officer appeared to be frustrated that the subject didn’t bring up the allegations until being booked into jail. He seemed to have no appreciation for her fear and the dangerousness of her situation. The officer did not complete a report with sufficient information for detectives to investigate and did not collect evidence or attempt to take any other steps to perform a thorough and complete investigation. OPA’s investigation did not address the officer’s apparent lack of familiarity with the Department’s approach to helping sexually exploited victims, particularly youth. In my view, OPA had missed the critically important underlying issues of why the named officer had not ensured intervention and support for a vulnerable young woman who had just turned 21 and who was apparently being sexually trafficked.

The lack of OPA management direction and a clear investigative plan was evident in this investigation. I certified the case despite my concerns but only because it was sent to me ten days before the 180-day deadline, and based on the investigation that was done, I expected OPA to issue Sustained findings. Had I directed additional investigation so that it was more thorough, OPA would have missed the deadline; discipline could not have been imposed. As it turned out, OPA only issued Training Referrals, not Sustained findings. This is an issue I addressed in my recommendations to the City last year for conforming the 180-day deadline to the oversight process; directing additional investigation should not be traded off against accountability.

Investigation 20

In an investigation that was not certified, OPA seemed to miss the essence of the complainant's concerns, and then let the investigation lapse for months. A victim had called SPD to report he had been choked and robbed. He provided a description of the vehicle and stated that the driver was the suspect who held the gun and choked him. Officers who responded to the original call were not able to locate him. He called three hours later to report he had seen the suspects in a gold sedan. The victim had described the vehicle as a mid-90's sedan, gold in color, and the suspect as a black male in his mid-30s to mid-40s, with facial hair, a ball cap, and a green jacket. He stated that two white males were also in the vehicle. Officers located a gold sedan a few blocks away and conducted a high-risk traffic stop. The 67 year-old driver, the OPA complainant, was ordered out of the vehicle and made to walk backwards in the middle of the street to the officers with his hands up. There were a number of officers with their firearms drawn. One of the officers attempted to handcuff him, and he made a complaint of pain. Once all occupants of the vehicle were detained, the victim was transported to identify them. He stated the driver was not the one who robbed him and the vehicle was not involved, so the driver and occupants were released.

The complainant in his intake interview articulated two other concerns in addition to the use of force. He was troubled as to why he was stopped, made to walk backward and detained at gunpoint, when it was readily apparent he was more than 30 years older than the suspect. He expressed concern that his age clearly did not match the age of the suspect (described by the victim as mid-30's – 40's and noted in the General Offense Report as 22-29) and that the officers had seen him from a half a block away get out of his car to give some people a ride and move his flagging equipment to his trunk. He discussed the embarrassing nature of the stop and detention, and the effect that had on him.

The complainant expressed an interest in mediation and the nature of the allegations made it a good complaint to mediate. OPA responded that the complaint could not be mediated because the OPA Manual specifically excludes uses of force, at the direction of the Settlement Agreement (see discussion of this earlier in the report).

The OPA intake investigator did an excellent job of hearing his concerns, summarizing them and asking him to confirm that she had accurately understood them. When asked what he most wanted to see happen, the complainant explained that the injury to his wrist had cost him several days of work and caused a financial hardship.

After reviewing the intake, I had requested OPA include still photos of the complainant in the file to use for the employee interviews regarding the detention, to illustrate that the complainant appeared much older than the described suspect. OPA did not do that. I also requested that OPA ensure that the complainant was provided information regarding the City claims process, since he was very concerned about lost wages due to the injury. OPA did not do that either.

The investigation did not address the concerns expressed by the complainant. There was no analysis in the investigation explaining what information the responding officers had concerning the suspect's age prior to stopping the complainant's vehicle, whether they could readily ascertain that he was 30 years or so older than the suspect, and no questions were asked of the employees on this point.

They were not asked whether they noted his age when they saw him step out of his car to move his equipment prior to the stop, when he was driving or at the time of the stop. They were not asked whether, if they had seen the age discrepancy, they still would have made the stop and if so, why.

One employee stated he didn't remember what he was told about the subject's description, but that was not followed up on by OPA. There was no inquiry as to the sources of information the officers would have had to advise them of the age of the suspect and why they would not have been aware of it. One employee stated the subjects matched the description: "One was, the driver was a black male and other than that it was just that the occupants were inside a gold vehicle". There was no further inquiry by OPA.

OPA did not ask the named employees about their notation in the General Offense Report indicating that they believed the complainant's age fell into the "56 and above" category "when the decision to contact was made" whereas the suspect was described as much younger. OPA did not note that the General Offense Report (GOR) in fact listed the suspect's age as 22-29. OPA did not ask about the fact that the vehicle described by the alleged victim contained a black male and two white males, while the vehicle he spotted and detained a few minutes later contained two black males, a black female, and a white female.

In addition, the OPA interviews did not address the scope of the stop. Even assuming the officers had a reasonable basis for stopping the complainant's car, OPA did not ask why the detention continued once it became apparent that the complainant was 67 years old and thus did not meet the suspect description. OPA also did not ask why the officers detained two female passengers, one of whom was white, when the robbery suspects were men.

There was no documentation indicating that the investigator listened to the intake interview, the 911 tape or reviewed the intake log. In fact, the investigator stated in the Case Summary that "OPA was unable to procure the 911 tapes before they were deleted." To the contrary, the intake log stated the 911 tape was obtained, attached to the file and the intake investigator described in detail what was heard on the 911 tape. This was the recording relating to the original robbery report. OPA did not, however, obtain the subsequent 911 recording from several hours later in which the alleged robbery victim reported seeing one of the suspects driving a gold car. It was this second call that contained the victim's description of the suspect and the car on which the officers relied in stopping the complainant. By the time OPA submitted a follow-up request for the 911 recording, it had been deleted.

The complainant reported wrist pain in the attempt to handcuff him. The named employee reported this complaint of pain to his sergeant, but the sergeant informed him that no use of force report was necessary because the complainant had a pre-existing wrist injury. The OPA investigator recognized the sergeant's decision as a potential policy violation and referred the case for re-classification to change the sergeant's status from witness to named employee. OPA management declined to pursue a complaint against the sergeant, however, indicating that the sergeant was within his discretion to classify the force used as de minimis. The complainant indicated that the force used aggravated his pre-existing injury, causing pain and swelling and leaving him unable to work for five days. Since the force used in this incident caused pain, it was subject to reporting requirements. OPA did not interview the sergeant.

Although OPA had completed its preliminary review and classification of this complaint by mid-February, OPA did not assign an investigator until March 28. OPA did not begin its investigation until June 22. For over four months, OPA conducted no investigation on this case. The case file noted repeated warnings from the assigned investigator to his supervisors that he would not be able to meet the required timelines for completing his investigation. The case was submitted for my review on the date of the 180-day deadline. I reviewed it and directed additional investigation.

OPA did not take any further action on the case until almost four more months had passed. Then OPA updated the Case Summary. No further investigation was ever conducted, although required by City ordinance. The case was re-submitted for final review on December 21. OPA never addressed the issues expressed by the complainant as most important to him.

Investigation 21

I requested additional investigation in a case where the complainant was on an SPD Advisory Council, and had alleged that a civilian SPD employee who does community outreach for SPD had threatened her. I requested that OPA re-interview the named employee because OPA did not ask him, among other things, about a statement made by the complainant that she was scared because her cousin had told her that the named employee had gone to her cousin's apartment and showed him a gun, put it on the table and told him that the complainant had better behave well.

I also requested that OPA re-interview the witness for whom the complainant worked because OPA did not ask him, among other things, about a statement the complainant had made that her employer was concerned enough for her safety that they had arranged for private parking and asked her to show a picture of the employee in case he came to the office or any public place where she was working.

Also problematic was that the Case Summary did not include any information about the initial criminal investigation based on one of the allegations that the employee had attempted to run her over with his car in a community center parking lot. The Case Summary was also not as objective as it should have been in that it also implied that the employee requested the relevant video from the community

center in order to be helpful, which was not correct, and referred to the complainant's cousin and his choice not to be interviewed due to safety concerns as refusing to cooperate.

Investigation 22

I requested additional interviews before certifying an investigation where officers responded to a McDonalds regarding an intoxicated male and female running around a vehicle in the parking lot. Restaurant staff wanted them removed. The vehicle had a flat tire and vomit around the outside of the vehicle. The occupants were in the back seat; the male was wearing only boxer shorts. He was argumentative and kept stating he knew his rights while opening and slamming the vehicle door. When the female tried to get him to calm down, he slammed her head in the closing door, and she cried out in pain. He was arrested for domestic violence assault. He told the sergeant during the screening process that officers slammed his head "pretty hard in the side of the door." During his OPA intake interview, he then stated that he was missing \$280.00 when he left the King County Jail.

The three employees' interviews and initial investigation by OPA showed by a preponderance of evidence that the allegation regarding excessive force did not occur, but there was not sufficient evidence regarding the allegation of missing cash from his wallet. There had been a Field Training Officer (FTO) and a Student Officer also at the scene. They did not have a close view regarding the physical altercation, as they were standing in a different part of the parking lot. But they came over to help prior to the time when the wallet would have been removed and put in the trunk, so I requested OPA interview them about allegedly missing cash. OPA attempted to follow up as requested, but in the months since the complaint had been made, the FTO had gone on medical leave and would not return within the required contractual timeline; he was never interviewed.

Investigation 23

I requested additional investigation in a case where the complainant, who was in a dating relationship with a sergeant, alleged that he had assaulted her while they were on a trip, made verbal threats against his estranged wife and their property, borrowed a large sum of money from the complainant over the span of a few months without paying it back, and watched his minor child engage in private sexual behavior, describing what he was seeing over the phone to the complainant.

The Medina Police Department (MPD) had conducted the criminal investigation. The documentation in the case file indicated they attempted to schedule an interview of the named employee on several occasions, to no avail, and that their case would be forwarded to the prosecutor for a filing decision without a statement from him. OPA had not spoken with them to ask whether the named employee ever did provide a statement and had not obtained a copy of the prosecutor's filing decision. OPA also did not ask the named employee why he refused to provide a statement to MPD and did not include that refusal in the Case Summary.

MPD's report stated that the complainant had alleged the named employee drove by his ex-wife's house "12-24 times a week" and that his ex-wife alleged that she had seen him driving by their home

in his SPD Black Suburban. The SPD DV Case Investigation Report stated that MPD had advised the SPD DV investigator that the named employee's ex-wife had stated "that [he] is continuing to drive by in his work vehicle." The MPD lieutenant stated that if he was provided a license plate that he could check for all vehicles going through Medina that are captured on their license plate reader system. OPA did not follow up with the MPD lieutenant to ascertain what he had learned, did not add this possible policy violation as an allegation, ask the named employee about it or address it in the Case Summary. OPA followed up on these requested additional investigative steps and also opened a new investigation on the possible misuse of a Department vehicle as requested, at which point I certified the investigation.²⁴

Investigation 24

The complainant in this investigation was an SPD supervisor who alleged that the named employee used profanity in describing another supervisor and failed to report for an assignment, instead working an off-duty job. The named employee had been directed by the Seattle Police Operations Center (SPOC) to report for a particular assignment on the 4th of July, and allegedly was unhappy about his assignment. The named employee alleged in his interview that this OPA complaint was retaliatory. OPA did not pursue that allegation. Additionally, the evidence showed there are often employees who do not show up for special event assignments as ordered by SPOC, and that there were others who did not show up for this event as well. OPA should have addressed why complaints were not made by supervisors regarding those employees.

OPA concluded that the named employee followed proper procedure regarding his absence (the allegation regarding profanity was inconclusive). Because OPA's investigation regarding the allegations specifically at issue was sufficient, I certified the case. In so doing I also requested that OPA: 1) initiate a new complaint regarding possible retaliation; and 2) ensure that there is an internal referral mechanism in place from SPOC to OPA whenever personnel fail to comply with ordered assignments. OPA did open an investigation into the allegation that the complainant in this case filed the complaint as an act of retaliation for a grievance the named employee had previously filed. OPA sent an email to the relevant Assistant Chief, but took no formal action and has provided no verification that a referral mechanism is now in place regarding employees who disobey SPOC orders.

Investigation 25

I requested further investigation in a case where a King County Sheriff's Office deputy provided a written statement as part of the initial use of force review but was not interviewed by OPA. I requested that he be interviewed, and that OPA inquire in particular as to a named employee's use of a closed

²⁴ I also requested that OPA redact date of birth information (both complainant and named employee) included by the OPA investigator in the file. There is no reason for it to be listed and it was unnecessary for OPA to obtain it or include it. Not including personal contact information and date of birth information about complainants is a recommendation I made a couple of years ago so as to ensure there was not a chilling effect on the filing of complaints. OPA implemented that change. This was an exception.

fist to the right side of the subject's torso and the deputy's statement that "At no time did I see any punches or kicks applied by the three Seattle Police officers. Only body weight and control holds were used by us." The investigation log needed to include each material investigative step taken and the Case Summary also needed to more clearly explain how neither of the other two officers saw that hit to the torso. Once these steps were completed I certified the case.

Investigation 26

A case referred from the Force Review Board (FRB) involved officers responding to a report of a male in crisis. SWAT was called to the scene. The FRB alleged that the named officer violated the ICV policy by shutting off his camera prior to the event ending. The named officer was asked in his OPA interview if he conducted a system check for the ICV at the beginning of his shift. He stated that he did not. There was no follow-up from OPA on that possible policy violation nor was it documented in the investigator's summary of the interview in the investigation log and the Case Summary. The OPA investigator also did not review the General Offense Report and was not familiar with the ICV policy (and whether there were any relevant exemptions) prior to interviewing the named employee. Had OPA management reviewed an investigative plan, they could have ensured the investigator at the time he was assigned the investigation understood there was no SWAT exemption in policy. Instead, the investigator asked the Chief's administrative staff about it. OPA was at that time already familiar with the issue (I had raised it in a prior report and recommended SPD address it in revising the policy.) As requested, OPA added an allegation regarding the named employee's failure to conduct an ICV system check and re-interviewed him, so I was able to certify the investigation.

Investigation 27

In a case where the complainant alleged the named employee kicked her when she was being arrested, the video did not support the allegation. This would not have been a complicated investigation to complete; yet there was no clear articulation in the file as to why the complainant was never interviewed. Additionally, OPA did not request jail sally port video until more than five months after the complaint was made, well past the known retention schedule, even though OPA had identified at the time of intake that the alleged kick occurred as part of booking the complainant into jail. OPA never responded regarding either of these issues, so the case could not be certified.

Investigation 28

I did not certify an investigation where the complainant alleged the named employee threatened him about him sending inappropriate texts using another person's old phone. The text message at issue was mentioned by the complainant during the intake interview on February 8, but was not obtained by OPA at that time, nor was the complainant or witness asked if there were other relevant texts. The investigator did not request the text until June 24, and even at that time did not seek to obtain it directly from the phone but instead asked the complainant if he could send the content via email.

Investigation 29

I did not certify an investigation where the complainant alleged the named employee violated policy by "liking" a disparaging comment in a tweet. OPA's analysis incorrectly limited the inquiry to protected classes. The social media policy, however, has other elements, including that the use of social media may not violate other SPD policies. One such policy is Standards and Duties, which includes professionalism. OPA did not address whether the communication violated this provision. What policies are at issue and what would need to be proven are the sorts of things that should be basic elements in an investigative plan.

Investigation 30

I did not certify an investigation involving a referral from the FRB alleging that a sergeant failed to use ICV as required. The lack of ICV was the only issue. After initial review of the case file on February 19th, the OPA investigator took no action until May 6th when he sent an email to the named employee regarding scheduling his interview. The only other investigative step taken was to check SPD's ICV system to verify the lack of ICV. This was not done at the initiation of the investigation; it was done after the named employee's interview, and after the Case Summary had been written and the investigation was being submitted for review.

Investigations 31 & 32

Two other ICV investigations each consisted of a single interview of the named employee. No other investigative steps were taken other than writing the Case Summary. In each, the employee was interviewed in February and the Case Summary was written in May, three months later. In one, the officer contacted an individual at a bus shelter regarding an open can of beer being consumed. The individual stated to the officer that the stop was because of his race. The officer contacted his supervisor regarding the bias allegation per policy. When he returned to his vehicle and realized that his ICV was not activated, he turned on the camera and narrated what had occurred. The sergeant was able to retrieve the audio from the hard drive. Both cases are examples of complaints that could have been handled through a rapid adjudication alternative rather than with an investigation that, despite its simplicity, languished for months.

Investigation 33

In an investigation regarding use of force reporting at a May Day demonstration based on a referral from the FRB, once again the lack of an investigative plan directed by OPA management was problematic. The allegation involved an unknown officer not reporting a protestor being taken to the ground. Oddly, OPA's approach was to use a great number of investigative hours to have 42 different officers come in for interviews, show them relevant video before questions were asked, and then ask them to ignore the video and tell the investigator if they could identify the unknown officer from memory. OPA could have created a still shot from the video to show the officers and made inquiries designed to identify the officers based on how the officers were lined up, unit order, who was

assigned that day as bike officers wearing that kind of attire, etc. and who among those was not yet identified.

Investigation 34

When reviewing a criminal case at the time it was referred back to OPA upon completion of the criminal investigation, I raised several issues and requested that OPA follow up with the Assistant Chief who had responsibility for ensuring the quality and timeliness of the criminal investigation. Despite having the case for more than two months (thus using a significant part of the 180 days permitted for completion of the administrative investigation under the terms of the collective bargaining agreement), no criminal investigation was conducted other than an interview of the named employee. No other witnesses were interviewed or evidence such as bank records was obtained. No audio file was provided for the single interview conducted. Additionally, the criminal investigator (from the homicide unit) inappropriately provided a Garrity advisement to the named employee. He also contacted SPD's policy unit, asking them to identify any potential policy violations, which breached confidentiality requirements regarding internal investigations and was within OPA's jurisdiction to determine. Finally, there was no indication the "criminal investigation" was reviewed by the Assistant Chief with relevant documentation from him in the file. The OPA Director followed up on this request.

Investigation 35

There were numerous problems in an investigation where a complainant alleged she had been drugged and raped in 2008 by an employee whom SPD had subsequently terminated for misconduct. The complainant also alleged she had consensual sex with him while he was on duty and that he sent her inappropriate photos of himself. OPA added an allegation that the officer used his position for the purpose of establishing a personal, sexual relationship with the complainant. Due to the passage of time, no physical evidence was available, and no witnesses were identified. The King County Prosecuting Attorney declined to file charges due to a lack of evidence and the complainant's reluctance to participate in the criminal prosecution. The named employee, who was no longer an SPD employee, refused to be interviewed.

The Case Summary for this investigation stated that the complainant "refused a follow-up interview so OPA was unable to inquire if she still had the text messages or photos, or to get further details regarding either the alleged rape or alleged consensual sex while on duty," but there was no explanation as to why OPA did not ask the complainant for that evidence several months prior when OPA first interviewed her, or in the alternative, why OPA did not reach out to the complainant's attorney after receiving the prosecutor's decline notice to make this inquiry and to see if the complainant wished to provide any additional information. The OPA investigator did not contact the complainant until eight months after her initial OPA interview. The investigator then called the complainant "for some clarifying questions."

There was no documentation in the case file that OPA checked on the filing status for six months. OPA did not seem to have a clear investigative plan given that the investigator received the case in January, and was not aware whether there was a criminal case file. He contacted former OPA investigators in May to see if they could advise him as to where he might find it (after attempting to schedule interviews of the named employee and the complainant). Ironically, in light of the fact that in most instances OPA is not complying with the obligation to regularly inform employees and complainants as to the status of their cases, in this instance, OPA sent the former employee (who had been terminated and refused to participate in the investigation) monthly status reports.

OPA received an additional complaint involving the same former employee apparently prompted by media attention. Because the employee had been terminated, OPA forwarded the complaint to SPD and made no further inquiry. The memo from SPD communications said the complainant asked not to speak to anyone at the East Precinct and "sounded scared." I requested that OPA determine whether the caller had information relevant to additional possible misconduct, also potentially relevant to this case, that may have occurred prior to the named employee's termination, rather assume OPA no longer had jurisdiction. OPA followed up as requested.

Investigation 36

The Force Review Unit referred a complaint to OPA alleging that the named officers did not start ICV recording at the beginning of an incident as required by policy. OPA added allegations for the acting sergeant for failure to record or attempt to record his interview with the subject of the use of force and failing to refer the officers' ICV violations to OPA. OPA added the lieutenant for failing to report both the officers' and the acting sergeant's possible policy violations. In my view, the Chain of Command should have ensured timely referral of the potential policy violations to OPA, which meant that the captain should also have been interviewed and potentially named by OPA as having the responsibility for that referral, based on the lieutenant's interview. There was also no indication as to why the sergeant who, also according to the lieutenant's interview, had been directed to make a Performance Appraisal System (PAS) entry but apparently did not, was not interviewed and potentially added as a named employee. This was another investigation not completed until after the 180-day deadline. It was also another investigation where the investigator did not request the 911 audio tape until after the 90-day retention period, an ongoing issue that OPA should have long since resolved.

Investigation 37

In a case involving a retired employee working as a flagger at a construction site, the complainant had alleged the retired employee was wearing an SPD uniform and made racist remarks. At intake, OPA determined that the employee retired from service due to disability in 1982. SPD should not have issued him a commission, both because he left the department due to disability and because employees were required to apply for commissions within two years of separating from the Department; he did not do so until 2014. OPA sent the investigation to the criminal investigations

bureau of SPD at the end of March, 2015 for investigation of possible impersonation of a police officer (this former employee was also named in several cases). The criminal investigation involved little more than determining that charges would not be filed because SPD allowed the retired employee to work in this capacity when it should not have. OPA did not track the case and it took 17 months before the case was referred back to OPA for administrative investigation. As of the end of the year, OPA had still not issued findings and closed the case.