

Semi-Annual Report of the Independent Auditor
For the City of Seattle
Office of Professional Accountability

July - December, 2015

Judge Anne Levinson (ret.)

OPA Auditor

February 9, 2016

Introduction

This is the Semi-Annual Report of the independent civilian Auditor for Seattle's Office of Professional Accountability (OPA), the agency responsible for handling misconduct complaints involving Seattle Police Department (SPD) employees. OPA is housed within SPD. Its Director is a civilian. To further enhance public trust and confidence in OPA's independence, since OPA's creation the City of Seattle has also contracted with an individual who does not work for either SPD or OPA, who has judicial or legal expertise, to provide independent, outside review of OPA internal investigations and complaint-handling. The City's refers to this outside reviewer as "the OPA Auditor". The OPA Auditor reviews all misconduct complaints, investigations and alternative resolutions as they move through the system and issues a public report twice per year¹. This report covers the period from July through December, 2015.

Per City ordinance, OPA Auditor reports are not for the purpose of providing a statistical overview (those reports are issued by the OPA Director) but instead are to summarize the number of complaints the Auditor 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 reviews; recommendations for changes to SPD or OPA training, policy or practice; and the results of any special audits conducted.

Complaints Reviewed

During this reporting period, there were 931 complaints and inquiries made to OPA submitted for my review. The Auditor is provided in real-time OPA's preliminary determinations as to how each contact is to be classified, which employees are to be named and what allegations are to be included. The Auditor's role is to help ensure that complaints are classified at the appropriate level, that each allegation suggested by the evidence available at that point is included, and that

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 the contact is simply a request for assistance, which, after the assistance is provided, is recorded as a "Contact Log"; is a complaint involving minor misconduct or performance issues that are best referred to the employee's supervisor to address, classified as a "Supervisor Action"; or is a complaint involving possible misconduct that should be classified for investigation. This is the point at which a referral for mediation can be made as well.

each employee who may have in some way violated policy is named. The Auditor also assesses whether the way in which the preliminary intake investigation was conducted is comprehensive, fair and otherwise in accordance with the requirements of the OPA Manual. The OPA Auditor's role in this part of the process is advisory, with the OPA Director retaining the final decision as to classification and referral for mediation.

In the period covered by this report, of the 931 contacts, 502 were complaints, of which 153 were classified for Investigations and 349 were classified for Supervisor Action (SA). The remaining 429 were inquiries recorded as Contact Logs. As with the last reporting period, during this reporting period there was a noticeable increase in the number of referrals from supervisors in SPD, which continues to be a positive indicator of a stronger commitment by SPD to accountability.

I recommended additional allegations in only four cases. The allegations were failure to call a supervisor to the scene for a report of bias; not clearly and reliably reporting and thoroughly documenting use of force; using position or authority for personal gain; and possession of controlled substances.

Fifty-three (53) classifications in this reporting period were changed, but nearly all of these were internal referrals for training or In-Car Video violations where additional information gathered at intake provided enough information to prove that a violation had not occurred. (e.g., an employee was on sick leave during the period when the required training was offered.)

In one case recommended as a Contact Log that I thought should be classified for Investigation, the complainant had alleged that she had been told by others in the neighborhood that an officer had stopped a young male of color for no reason, directing him to get on his knees or "I will take the dogs out". The case had been referred from the Precinct. The complainant said a witness or witnesses had seen the interaction and spoken with the officer. Based on the preliminary intake it did not appear that the Precinct had asked the mother or the complainant who the witnesses were or attempted to contact them prior to referring the complaint to OPA. OPA started by trying to reach the subject's mother, who did not respond to OPA's requests for contact. OPA was also unable to find any documentation of the stop. For those reasons, they did not believe they had sufficient information to begin an investigation. I asked them to re-contact the complainant to find out if she knew how to reach the witnesses or could encourage the mother or subject to

contact OPA. I also asked them to consider adding an allegation of failure to have a materially accurate report, since it turned out that this interaction was part of a search related to another incident, but based on the evidence gathered, did not appear to have been documented (nor reported as a Terry Stop). OPA followed up and was able to gather additional information so that the complaint could be investigated.

In a case that OPA classified for Supervisor Action that I felt should have been classified for Investigation, the incident involved a response by several officers to a 911 call from a witness who had observed a young woman needing help in his neighborhood. The responding officers observed her to be in crisis and called for the medics to evaluate her. I had several concerns, including that it did not appear that the officers took appropriate action given the condition and age of the victim and what the witness who had called 911 told one of the responding officers at the scene. The officers did not recognize signs of possible assault or take steps to find the suspect. (It appeared from the video that she had told the witness she had been robbed and molested.) The referral from the chain was focused on different issues, and supervisors had not addressed patrol responsibilities to investigate. The case had not been referred to OPA or classified in a timely manner, which meant that the contractual deadline for an investigation could not be met. OPA did make the SA much more comprehensive, and directed that the supervisors watch the video in its entirety, go over policy with all employees who responded to the call and document the incident in the Performance Appraisal System.

Only one complaint was successfully mediated during this period. As I have noted in prior reports, since 2013 very few complaints have been mediated. Mediation can be a more effective resolution for a variety of complaints (both for the complainant and the employee) and can help with timeliness of other investigations because more cases are not added to the caseload.

The Director and the Auditor both review all SAs that are returned from the line to make sure the actions requested by OPA were taken, such as reviewing the information gathered by OPA about the incident, coaching the employee, talking with the complainant, and documenting it in the Performance Appraisal System. Three hundred thirty-one (331) were completed during the second half of 2015³. As noted in prior reports, OPA needs a tighter case management system to ensure

³ Approximately 60 of these were for employees not completing their required on-line training on time.

that supervisors receive the case in a timely manner from OPA and that the follow-up from supervisors is responsive. Several SAs during this period were months overdue. (OPA will be reporting on the SA statistics in its next report.) Pursuant to the Department's Bias-Free Policing policy, the Director and I also each reviewed 70 reports of possible bias handled by the supervisory chain, to determine if further action by OPA was warranted. Lastly, as mandated by ordinance, I also conducted a quarterly review of the status of complaints that OPA was monitoring involving possible criminal prosecution.

Policy, Procedure and Systemic Recommendations

Based on review of complaints and investigations in this reporting period, the following are three recommendations for improving SPD or OPA policies.⁴

1. Policies 15.180 (Primary Investigations) and 8.400 (Use of Force Reporting and Investigation) should be further clarified to ensure for all incidents resulting in law enforcement action there is comprehensive documentation, as well as collection of evidence available contemporaneously at the scene.

Through the Consent Decree process, SPD has significantly strengthened its use of force documentation, reporting and review processes. Additionally, SPD has implemented an OPA Auditor recommendation to require that all general offense reports be complete, thorough and accurate. There still appears to be some degree of ambiguity, however, as to the obligation of officers at the scene, and of the sergeants who review their actions and reports, regarding responsibility for collection and/or documentation of evidence for those types of primary investigations not specifically detailed in the SPD Manual and those involving Type I use of force. For these less serious uses of force, the policy is clear that fewer steps are required regarding the force, but there should still be concomitant responsibilities to

⁴ Policy, management and training recommendations from previous reports that are still not fully implemented by SPD or OPA are not repeated in this report unless they were recommended for inclusion in the City's collective bargaining agenda or for adoption by ordinance and thus related to the Federal Court discussion outlined below. As noted in that section, one of the weaknesses in Seattle's system is there is not a clearly defined role and authority for the civilian oversight system to ensure timely and substantive implementation of recommendations to improve policy, training, procedures or systems. As the recommendation to provide that clear authority remains pending, the Community Police Commission has offered to assign staff to track recommendations and report out on the status of their implementation.

document and contemporaneously collect evidence such as audio witness statements, premises video or other material information relevant to the incident, as there should be for all incidents.

For example, when officers respond to a reported trespassing or obstructing incident, policy should be clear regarding who has the responsibility to obtain any nearby video that may have captured the incident or identify non-officer witnesses and take their statements. Policy should also be clear whether a supervisor then has the responsibility to ensure this type of preliminary investigation work was done. Also, in the policy regarding reporting use of force, it should be clear that the responsibility to clearly and reliably report and thoroughly document is not just in regard to the force used, but to the totality of the incident. In other words, the responsibility applies to any associated report, citation or other documentation, not just the use of force report.

2. Policy should require that whoever writes any type of report or statement must articulate whether anything described in it is based on what he or she has been told by another officer, rather than on personal knowledge or direct observation. While officers are entitled by law to rely upon information supplied by fellow officers when making an arrest or taking other enforcement action, it would enhance the reliability and trustworthiness of documentation if those writing reports noted whenever the information they are providing is not based on personal knowledge or observation. Similarly, when supervisors are documenting the screening of an arrest, a use of force, a report of bias, or any other type of incident, they should note the basis for what they are describing as having occurred (i.e., was their statement describing what occurred based on what officers wrote or said had occurred or based on personal knowledge from being at the scene or based on reviewing the In-Car Video). This would also help prosecutors, defense attorneys and supervisors who later review and rely on the reports.

3. OPA and the Department should modify the directive that prohibits named employees from disclosing to others that a misconduct complaint has been filed, to clarify what kind of communication is impermissible and by whom.⁵ When an employee receives notice of a complaint, it states, "This notification and the contents herein are CONFIDENTIAL. Under the authority of the Chief of Police, you are ordered not to discuss this complaint with anyone other than your Bargaining Unit representative or attorney until the conclusion of this investigation."

⁵ The OPA and SPD Manuals will also need to be changed to reflect this.

The purpose of this admonition is to ensure that employees do not inappropriately influence an investigation by discussing the case with those who may be witnesses, by receiving any sort of coaching, by taking any action that might be viewed as coercive, or in any other way interfering with that investigation or another investigation.

There may be instances, however, where an employee needs to gather particular information to prepare for his or her interview, for which a specific allowance should be made. Further, the directive not to communicate is not issued to the bargaining unit or the employee's captain, who also receive a copy of the complaint, or the employee's private attorney. Inappropriate communication by any of them could also result in the types of actions or communications the employee prohibition was designed to eliminate. Lastly, there is a separate directive at the end of each OPA interview to employees being interviewed either as a witness or a named employee, that the contents of the interview not be disclosed until the completion of the investigation. As with the first instance, the bargaining unit representative present and private counsel (if one is participating) is not subject to the same prohibition.

The Consent Decree Process and the Accountability System

During this reporting period the Federal Court overseeing the City of Seattle's Consent Decree process asked the parties (the City of Seattle and the Department of Justice) and stakeholders (the Community Police Commission – "CPC", OPA, and the OPA Auditor) to help the Court better understand how the recommendations made by the OPA Auditor and the CPC for improvements to the City's police accountability system fit with the other reforms ordered or under consideration by the Court.⁶ The Federal Court Monitoring Team also indicated that it intended to

⁶ Section III (c) of the Consent Decree's Memorandum of Understanding (MOU) between the parties (the City of Seattle and the Department of Justice) charged the CPC with the lead role in undertaking the accountability system review; this work was not among the Settlement Agreement deliverables for which the parties were specifically responsible. To fulfill the MOU mandate, the CPC - which includes a representative from each of the respective labor unions - conducted a process starting in January, 2014, reviewing and adopting or modifying OPA Auditor recommendations and adding additional recommendations regarding independence, accessibility and transparency. At the request of the City, all recommendations were submitted to the City on a 'fast track' - April, 2014 - so they could be included in the City's collective bargaining negotiations that were originally scheduled to commence in June, 2014.

conduct an assessment of OPA which it believed would be of value in considering any proposed accountability system improvements, and requested more time to conclude that work. These factors, combined with the delay in the City's collective bargaining with the relevant police unions, meant that little progress was made in implementing recommended improvements to Seattle's police accountability system. At the end of the year, the Federal Court asked that additional discussion take place among the parties and the stakeholders in the first quarter of 2016 to determine whether agreement could be reached for the best way to move forward at this juncture.

The continued delay in implementing needed reforms is understandably a source of great frustration for those in the community whose calls for reform over many years led to the Consent Decree process. The lack of progress over the last two years has been challenging as well for those of us in oversight who are charged with advising policy-makers on how to ensure the system reflects best practices and comports with public expectations. However, in the two years since the recommendations were made, City policymakers have come to better understand the importance of strengthening the independence, effectiveness, and transparency of the system and that "accountability" must be viewed more broadly than just how misconduct complaints are addressed. The national dialogue on policing issues has also changed the landscape – public awareness and expectations have grown, disenfranchised communities' concerns have greater voice, technology and social media have changed what is possible, and new lessons have been learned. Lastly, as with most types of systems, police accountability systems should be regularly reviewed and updated to reflect current best practices and to ensure the system is well-suited to meet new challenges and community needs.

As the CPC discussed during its 2014 assessment of Seattle's system, jurisdictions all across the country are considering how to establish civilian oversight or change some aspects of their current model. Although the number of civilian oversight systems has grown exponentially in recent years, there are considerable variations in oversight models with respect to the structure, scope, authority, degree of civilianization, whether the oversight entity is internal to the law enforcement agency or external, and so on. One of the challenges for policy-makers is that the research on the effectiveness of different models has yet to be done. For example, there is no

research proving a certain model has the strongest deterrent or enhancing effect on police conduct, increases complainant and employee satisfaction, or reduces litigation costs. Nor are there any proven correlations about the percentage of complaints sustained or the meting out of education-based discipline (training and mentoring) vs. traditional discipline (reprimand, suspension) with any of those outcomes. We also don't yet know which characteristics of systems most improve public trust or support the perceived legitimacy of the police, particularly among those in traditionally disenfranchised communities.

Comparisons across jurisdictions are difficult because of the significant differences in state law, labor contracts, size of law enforcement agencies, community-police historical relationships and levels of trust or distrust, suburban vs. urban demographics, options and standards for appealing discipline and terminations, the political dynamic at play, the design of the government (e.g., is there already an independent agency such as a city or county auditor with authority and capacity to audit and evaluate all departments including the police department?), and other local factors constraining or enhancing accountability beyond the structure itself.

There are, however, two aspects common across all structures: 1) certain essential elements of clear authority, capacity, independence, transparency, credibility, span of control and community perspective are critically important; and 2) the need for policy-makers to address reform of collective bargaining agreements and state law; reform only of local ordinance is simply insufficient to ensure these systems will fully meet public expectations.

Thus, it would serve the public well if the parties and stakeholders were able to use the opportunity presented by the Court for further discussion in the first quarter of 2016 to: 1) ensure the recommended reforms to collective bargaining agreements⁷ were made and the

⁷ To its credit, the Seattle Police Officers' Guild (SPOG), the labor union representing officers and Sergeants, recognized early in the process that many of the proposals suggested would make the system fairer and more efficient for their members as well as complainants, and would help improve public trust. Their representative and the Seattle Police Management Association's (SPMA) representative on the CPC participated in or listened to all of the discussion and analysis and offered valuable perspective. That provided a much better context for negotiations than perhaps had existed in prior years. Once the bargaining teams believe they have successfully negotiated the contracts, the City Council and the union memberships will each have an opportunity to accept or reject a contract, including any re-openers. Input from the Court Monitor, parties and the stakeholders as to whether reform recommendations have been sufficiently incorporated in the contracts can thus help inform the City Council's review and decision-making process.

recommended reforms to state law were addressed; 2) determine which of the recommended reforms to City ordinance that have been pending can and should be implemented because they will strengthen the independence, capacity, effectiveness, accessibility and transparency of the current system or of any future system; 3) move forward with additional reforms that were discussed, but given the shortness of time, in order to meet the City's requested deadline of spring of 2014, were not finalized; and 4) consider additional improvements identified as a result of ongoing, day-to-day work and events over the last two years. To assist in this framing of discussions requested by the Court, below is a summary of the reform recommendations that were made by the Auditor and/or the CPC for the City to address through the collective bargaining negotiations, City ordinance updates or changes to State law. Below that are the areas that were discussed for which recommendations have not yet been formally made. Last are the areas suggested for discussion based on the intervening two years of events and observations.

A. The areas for reform that were recommended for the City's collective bargaining agreements (CBAs), City ordinance (CO) and state law (SL)

1. Ensure all aspects of the accountability system apply equally to all employees, regardless of rank. (CBAs)

- Accountability reforms were recommended to the City in 2014 for both the Seattle Police Officers' Guild (SPOG) and the Seattle Police Management Association (SPMA) contracts so that Lieutenants and Captains would not be treated differently than Sergeants and officers. Only when both contracts are updated and approved will the reforms apply comprehensively and consistently.
- It was also recommended that any terms and conditions in the SPMA contract that provide privileges not afforded lower ranking officers, such as the option to have questions provided in writing and the prohibition on OPA investigators communicating or interviewing SPMA members, be eliminated.
- Lastly, regarding both collective bargaining agreements, it was recommended that the City eliminate or roll into the contracts any existing side agreements or Memoranda of Understanding (MOU) that had been entered into over the years and in any way

continue to affect the terms and conditions of the agreements. Going forward, the City should ensure that consideration of any side agreements that affect accountability take into account input from civilian oversight as to their potential impact.

2. Make the disciplinary system fair, timely, transparent, efficient and uniform. (CBAs) & (CO)

- The disciplinary system should not include sworn employees as decision-makers in disciplinary appeals (they are on both the Disciplinary Review Board and the Public Safety Civil Service Commission, the two avenues for employee appeals). **(CBAs)**
- The disciplinary system should not include multiple avenues for appeal by employees. **(CBAs)**
- The disciplinary system should use a permanent hearing examiner who is a tenured professional or an arbitrator selected via a pre-determined pool to be used for several years, with individual case assignment also through a pre-determined process (e.g., random rotation, without negotiation), rather than a board with an arbitrator whose selection is subject to mutual case-by-case approval by both parties. **(CBAs)**
- The disciplinary system should require SPD to utilize a disciplinary matrix for consistent application of discipline, specifying the likely consequences for various types of misconduct, with appropriate mitigating and aggravating factors, so as to promote a culture of public accountability, individual responsibility and the highest standards of professionalism, regardless of changes in command staff or political leadership. Otherwise there can be real or perceived biases or inconsistencies that, added to a lack of transparency, result in diminished trust and effectiveness of the system. **(CBAs)**
- The disciplinary system should have set time limits for hearings to be held and for issuance of rulings to better serve complainants, employees and SPD. **(CBAs)**
- The disciplinary system should require that all appeals hearings be open to the public. **(CBAs)**

- The City should include an automatic re-opener to implement an appeals process for complainants⁸. **(CBAs)**
- The disciplinary system should require each side to have more than one attorney able to handle appeals, which could eliminate delays that have been experienced when an attorney is unavailable for weeks or months. **(CBAs)**
- The disciplinary system should allow for the use of a “rapid adjudication alternative” by which an employee can quickly admit to minor violations of policy, waive rights to investigation and appeal, and quickly resolve the complaint. **(CBAs)**
- The disciplinary system should limit the length of time allowed to notify the employee of the proposed findings and discipline, for the employee and his or her union to request a Loudermill hearing, for the Chief to issue her final disciplinary decision, and for the employee to file an appeal. **(CBAs)**
- The disciplinary system should require notification to the complainant if there is a change in the findings or discipline ultimately imposed due to a decision by the Chief, or an appellate decision or settlement. **(CO)**
- The disciplinary system should require notification to the Mayor and City Council (as well as the OPA Director and Auditor) in writing not only if the Chief does not concur with a finding recommended by the OPA Director, but also if either discipline or a finding is changed later for any reason, such as a settlement or ruling. **(CO)**
- The disciplinary system should promote a robust mediation alternative that meets the expectations of the public, provides for a range of problem-solving tools, and proactively improves the relationship between SPD and the community. **(CO)**

3. Improve how complaints alleging possible criminal misconduct are investigated. (CBAs)

- The accountability system requires that OPA immediately refer misconduct allegations that might involve criminal conduct to an SPD unit or outside agency and bars OPA from conducting, supervising or in any way coordinating the investigation until the case

⁸ An option for complainant appeals was a priority for the CPC but there was not sufficient time in the first quarter of 2014 to conduct a multi-party process to design an avenue for appeals and still meet the City’s request that all recommendations be submitted prior to the City and the unions setting their agendas for bargaining that spring.

is returned without criminal charges or after criminal prosecution, effectively eliminating OPA's ability to ensure independence, thoroughness, quality, objectivity or timeliness. It is particularly troubling that OPA was created to conduct independent investigations yet the potentially most serious cases can instead be investigated by SPD with no oversight by OPA allowed. The OPA Director should be permitted to consult with the criminal investigation lead at the start of the process, seek input from the prosecuting attorney, and determine what approach will be most effective in supporting both thorough and rigorous criminal and administrative investigations.

- If the above is not remedied, the accountability system should allow for tolling of the 180-day contractual time whenever the case is outside OPA's control (it is only allowed during the time the case is under review by a prosecutor for filing or is within the control of another jurisdiction). And there should be set timelines for return of the case to OPA, so that OPA's ability to conduct a thorough and timely administrative investigation is not further constrained by the passage of time, particularly when the case is ultimately not prosecuted criminally.
- The accountability system should encourage parallel review by Federal, County and City prosecutors or provide for a time limit for a prosecutorial filing decision; instead the decision for possible filing of criminal charges may drag on for months or years as the case is reviewed sequentially by each office, which not only affects public trust and the ultimate quality of any later internal investigation, but keeps the employee from his or her job for all of that time, costs the public money, and limits available personnel.
- The accountability system should allow for swift and immediate action by the Department to terminate employment or place an employee on leave without pay for allegations of criminal misconduct that offend the public trust, regardless of whether they are felonies or misdemeanors.
- The collective bargaining agreements' provisions regarding dishonesty include a presumption of termination requiring that a clear and convincing standard be met but should also allow for a preponderance standard should the discipline imposed be less than termination.

4. Enhance public trust, increase expertise, avoid conflicts of interest, and use tax dollars more efficiently by increasing civilianization. (CBAs)

- The collective bargaining agreements require that all intake and investigations be conducted and supervised only by sworn personnel. Sworn personnel may bring unique expertise and enhance trust by employees, but may not be viewed as sufficiently objective by complainants and the public, may not have the specific administrative investigation expertise needed by OPA, have responsibilities and hours limited by their collective bargaining agreements, may find it challenging to investigate certain colleagues or higher ranking personnel, and are subject to selection and rotation decisions made by the Chief of Police. Moreover, some members of the public are reluctant to file a complaint or participate in the intake and investigation process when they will be interviewed by sworn investigators. The OPA Director should have the authority to use both civilian and sworn personnel in intake, investigations and supervisory roles in whatever manner is most effective.
- SPD should use civilian rather than sworn personnel in myriad roles (e.g., training and education, budget, technology, human resources, policy and audit, and in precinct liaison roles) where specific subject matter expertise, institutional continuity (rather than continuous rotations) and flexibility in responsibilities and hours would be valuable. This would also allow for the sworn personnel who would otherwise serve in those roles to instead help SPD better meet the many law enforcement needs that only sworn personnel can serve.
- SPD should end the practice of having secondary employment work managed by sworn personnel, often by current employees acting through their private businesses created for this purpose, through contracts between the employee and a private business, or through special assignment approvals resulting in additional remuneration for subordinates and colleagues. SPD should instead use an internal civilian-led and civilian-staffed office with clear and unambiguous policies, rules and procedures

consistent with a strong ethical organizational culture that eliminate conflicts of interest and provide for appropriate oversight.⁹

5. Require deadlines to improve the timeliness of investigations and conclusion of cases. (CBAs & CO)

- The collective bargaining agreements should contain a single, consistent definition not subject to interpretation or inconsistent use, rather multiple, often unclear references to the "180-day" investigation deadline. And, as noted above, tolling prohibitions that undermine effective internal investigations for cases involving possible criminal misconduct should be eliminated. **(CBAs)**
- The collective bargaining agreements should clearly define what triggers the 180-day clock when review processes such as the Force Review Board or the Traffic Collision Review Board are involved. **(CBAs)**
- The accountability system should include deadlines for notifying the complainant and the employee(s) that their case has been concluded when there is no discipline recommended. **(CO)**
- The accountability system should include requirements to notify the complainant that discipline has been recommended and that the case will continue through the disciplinary process, including possible appeal. **(CO)**
- The accountability system should include timelines for resolution of complaints handled through mediation, Supervisor Action, Training Referrals or Management Action. **(CO)**

6. Enhance public trust and transparency by ensuring longer retention of complaint files. (CBAs)

- The collective bargaining agreements limit the retention of OPA files to three years. Retention should be throughout the employee's tenure with the City (including in any secondary employment position), plus seven years or as long as any employment action or other litigation involving the employee is ongoing.

⁹ Because employees do not have a right to secondary employment, there is a strong argument that this is not a mandatory subject of bargaining and can be implemented by the Department administratively.

- The collective bargaining agreements should clearly state that the records retention applies to all OPA complaint files, not just those resulting in investigation.

7. Enhance public trust and improve accountability when an officer chooses to retire or resign rather than be subject to discipline and/or participate in an administrative investigation and when an officer is terminated from employment. (CO) & (SL)

- The accountability system should require that an employee fulfill his or her contractual obligation to fully participate in an internal investigation as a named or witness employee if the complaint was made while the individual was still an employee and tie any benefits that inure at the time of separation from the City to fulfilling that obligation.¹⁰ **(CO)**
- The accountability system should include a policy as to when the Chief should deny a concealed firearm permit request made pursuant to the Law Enforcement Officers Safety Act (LEOSA) that allows qualified retired law enforcement officers to carry a concealed firearm under certain conditions if they retire "in good standing". **(CO)**
- State law regarding officer decertification should be updated to preclude further employment in law enforcement for any conduct that warrants foreclosure from further service as a law enforcement officer. Under the statute concerning peace officer certification, the Washington State Criminal Justice Training Commission (WSCJTC) at an agency's request or on its own initiative, may revoke certification only based on a

¹⁰Although the City of Seattle retirement system provides that the City can cash out an employee's retirement and cease the employee's membership in the system if "discontinuance of City service is caused by intemperance, willful misconduct or violation of law" (SMC 4.36.200), the Washington LEOFF (Law Enforcement Officers' and Fire Fighters') retirement system does not provide for an equivalent forfeiture of an officer's retirement benefits. (RCW 41.26.430) The only exception applies to an officer who is injured while committing a crime, in which case the officer is not eligible for disability retirement benefits under LEOFF. As long as that retirement system statute does not provide for forfeiture or reduction of a retirement benefit for any other reason, such as misconduct, any penalty involving loss of pension benefits would be an impermissible modification of the terms of the system that were in place when the officer started employment. However, the entitlement to full pension benefits is tied to an employee having satisfied all the conditions of his or her employment, one of which should be the obligation to fully participate in an internal investigation if the complaint was filed before the officer requested separation from the Department.

finding that the officer has been convicted of a felony or “has been discharged for disqualifying misconduct, [and] the discharge is final. . .” (RCW 43.101.105).¹¹ **(SL)**

- The accountability system should require that all documentation after the OPA Director recommends any disciplinary findings must also be included in the OPA file (e.g., disciplinary action notices; appellate notices; appellate or settlement decisions; the Chief’s notification regarding any changes to findings or discipline; requests and decisions regarding de-certification; employee’s resignation notice if it occurred prior to the resolution of the complaint; any authorization to serve in a Special Commission capacity, as a reserve officer, or as a retired officer in a private company that provides flagging, security or related services; and the Chief’s decision regarding any request from the employee to be granted the privilege of carrying a concealed firearm.) **(CO)**

8. Align policies and laws regarding use of Body-Worn Cameras and In-Car Video with stronger accountability and privacy. (CBAs & SL)

- SPD should have equivalent requirements of use whenever officers are acting in a law enforcement capacity, regardless of whether they are on or off-duty. **(CBAs)**
- The collective bargaining agreements’ and side agreements’ limitations on full use and review of video for improving performance should be eliminated. **(CBAs)**
- SPD should prohibit review of video prior to writing incident or use of force reports (after writing the initial reports, officers should be allowed to watch the video and write an amended report, with both reports retained)¹², and provide clear guidance

¹¹ “Discharged for disqualifying misconduct” means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement... (iii), the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under State or Federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination (RCW 43.101.010).

¹² It is important that reports reflect what the officer was actually aware of at the time. (Non-officer witnesses, suspects and victims are not afforded an opportunity to watch video prior to making their statements.) If watching the video can help ensure needed corrections of fact are made, retaining both reports and indicating the amended version was based on the opportunity to review the video will provide both the original observations and a correct record.

as to whether video may be viewed prior to participating in an internal investigation.

(CBAs)

- State law must address collateral consequences impacting privacy as a result of public disclosure requirements that include Body-Worn Camera video. **(SL)**

9. Ensure the civilian oversight system includes sufficient authority to effectively serve the public and SPD. (CO)

- The system should provide for administrative subpoena authority for OPA¹³, just as such authority is provided for City administrative investigations conducted by the Office for Civil Rights and the Seattle Ethics & Elections Commission.
- The civilian oversight system should include authority to ensure timely and effective implementation of recommendations made to SPD and other City agencies.
- The civilian oversight system should include clear authority and responsibility to review and report out as to whether proposed City budgets, legislative, and bargaining agendas, and proposed revisions to SPD policies and regulations, are in alignment with recommendations made regarding accountability.
- The civilian oversight should include clear authority to review and report out as to whether continuous improvement is being made based on lessons learned from civil litigation, criminal prosecutions, misconduct and EEO investigations.

10. Ensure the civilian oversight system is sufficiently independent and transparent. (CO)

- The accountability ordinances should provide sufficient safeguards to ensure the independence of those involved in civilian oversight, protecting them from political pressures that might undercut their autonomy through decisions related to appointment, re-appointment or termination; budget; prioritization of work; public reporting of findings; public advocacy; or work with the Legislature, City Council, etc.

¹³ SPD employees are required to fully participate in internal investigations, and SPD must produce records in its control, so subpoena power is not needed for those purposes, as it is in some other jurisdictions. But OPA does not have subpoena power to compel the production of evidence such as private business video, text messages and relevant records.

- The accountability ordinances should ensure that those involved in civilian oversight have the necessary expertise, relevant experience, and authority to confer legitimacy and confidence in the system by the public and employees.
- The accountability system should be easy to access, well understood and viewed as credible by all participants. Improved transparency is needed in reporting of all types of data, information needs to be available in multiple languages, and results of internal reviews of significant incidents need to be reported out more swiftly. Additionally, “complainant navigators” have been recommended as a way to help complainants.
- Existing City ordinance and labor policy procedures should provide for transparency regarding the terms and impacts of relevant collective bargaining agreements, a defined role for those involved in civilian oversight, and a regularized and timely updating of the agreements to improve public trust in the fairness of the accountability system.

11. Align the use of preference points to better address skills highlighted in the DOJ investigation regarding use of force and possible bias. (CO) ¹⁴

- Seattle uses “preference points” in testing and promotions as mandated by State law, which may have the effect of increasing gender disparity in SPD. By adopting alternative preference points, the Department could address that possible unintended consequence and also provide a tool for hiring those with the types of skills needed in policing today, such as multi-lingual skills, experience as social workers, mental health or domestic violence counselors, or as Peace Corps or AmeriCorps volunteers. Alternative preference points can also support the hiring of those with other work or community service backgrounds relevant to best practices in policing today.

¹⁴ Preference points do not actually require an ordinance; they fall within the rule-making authority of the City’s Public Safety Civil Service Commission. The PSCSC asked the City Human Resources Department, SPD and SFD in the first quarter of 2014 to report back on this proposed rule.

B. Other areas for reform that were discussed in 2014 but not included in CBA, ordinance or state law recommendations (They were noted in a proposed companion resolution.)

1. Ensure the civilian oversight system includes sufficient scope of responsibility and capacity to effectively serve the public and SPD (strengthen the scope, authority and capacity of one or more of the existing oversight entities, and/or the City Auditor or add an entity such as an Inspector General and change other parts of the system accordingly).

- Seattle’s system does not have a defined role for civilian oversight once the Monitoring Team has completed its work, to ensure ongoing fidelity to the organizational reforms being implemented to sustain the goals of the Consent Decree (Constitutional, accountable, effective, and respectful policing) over time. Responsibility for oversight to ensure the integrity of processes and operations related to use of force, including review of significant incidents such as shootings by officers or in-custody deaths; the Early Intervention System; front-line supervisory responsibilities; reviews of allegations of bias; interactions with those in crisis; or the development and approval of SPD policies and training, among other critical priorities, should be clearly spelled out.
- Seattle’s civilian oversight does not encompass the SPD processes and systems to recruit, hire, promote, assign or offer overtime opportunities to sworn personnel or SPD processes and systems for public disclosure and records retention.
- Neither the civilian oversight entities nor the City Auditor are charged with responsibility, and provided capacity, to regularly gather and analyze data and publicly report trends, impacts, and practices of SPD or the City’s other criminal justice agencies through review or audit of systems, operations, budgets or programs.¹⁵

¹⁵ Police practices reviewed by civilians in other jurisdictions include, for example: the practice of requiring suspects to sit on curbs; the analysis of stops & frisks; whether photo identification practices are consistent with current best practices; use of informants; problems with false convictions; use of surveillance technologies; pursuit policies; use of canines and Tasers; supervision of detectives; training of investigators and supervisors; rape kit backlogs; problems with interrogations and witness interviews; consultant contracts; litigation patterns; filing and dismissal rates and causes; relationships with non-profit organizations; overtime usage; and interactions with those who are in behavioral crisis.

- Seattle’s system does not clearly define what the appropriate advocacy role is for each of the civilian oversight entities to be responsive to the public, complainants or community-based agencies that raise concerns regarding misconduct investigations, significant incidents or larger criminal justice system issues impacting public trust in police.
- Seattle’s system does not include any appellate process for complainants (see above 2014 recommendation made for an automatic collective bargaining re-opener).
- Seattle’s civilian oversight related to misconduct does not encompass disciplinary decisions, appeals or the de-certification process.

C. Additional areas for consideration regarding investigation review

1. If the City continues to have independent oversight of individual investigations, the review process should be refined and goals prioritized.

- Policy-makers may wish to consider:
 - What should happen with an investigation when the OPA Auditor does not certify it as thorough, objective and timely?
 - What should the standards for thoroughness and timeliness be?
 - Should there be required timelines to submit investigations for review by the Auditor to ensure that Auditor recommendations for additional work can be accomplished without compromising the 180-day deadline?
 - Should there be a requirement that investigations be submitted to the OPA Auditor within the time period contractually allowed to add allegations (30 days from the date an interview or other evidence suggests an additional allegation is warranted, e.g., an employee appears to be dishonest in an interview or an employee’s statement appears to raise the possibility of another policy violation).
 - Should there be required timelines for additional investigative work to be conducted if requested or ordered by the OPA Auditor?
 - Should follow-up be required for problems identified in OPA Auditor certifications that cannot be remedied by additional investigation?

- Should there be a requirement that investigations be re-submitted to the OPA Auditor if additional investigative steps are taken or additional documentation is added to the file after certification (and/or should that not be permitted after certification without consultation)?
- There are inherent trade-offs where the process could be improved if competing objectives (individual accountability vs. broader system improvement) were more clearly articulated. For example, what is the preferred outcome:
 - When the OPA Auditor determines the investigation is of sufficient thoroughness and objectivity, but is not timely;
 - When documentation of investigative weaknesses by the OPA Auditor would impact the potential findings, discipline or appeal;
 - When requiring additional investigation would result in the preliminary disciplinary notice not being served within 180 days, eliminating the possibility of discipline; and
 - When an investigation is of sufficient quality to meet the preponderance standard but could be more thorough, and other investigations may be impacted by directing additional work in that investigation.
- There is not always a remedy if the OPA Auditor finds that an interview included leading questions, relied on personal opinion or knowledge, did not elicit complete answers or pursue what appeared to be discrepancies or gaps in information.
- Seattle's system does not include any review from the point of the OPA Director's recommended findings to resolution (i.e., there is no review of the entirety of the case file, including aspects such as closing letters, disciplinary steps, appeals, etc.).
- Seattle's system does not set a standard by which the quality of investigations is measured. Should it be:
 - Against all the requirements set forth in the OPA Manual or just certain ones?¹⁶

¹⁶ The recent Monitoring Team OPA Assessment measured investigations against a few criteria in the OPA Manual that they selected, and did not measure compliance with other criteria that may also be important to the public.

- As in-depth as possible, using all available technical or forensic independent expertise and investigative strategies?
- Seattle's system does not include access to mediation files or observation of the mediation process by the OPA Auditor.
 - Should the commitment to confidentiality, which is an important element of mediation, include the ability to audit?

2. The OPA Auditor is authorized to conduct additional systemic audits and reviews related to accountability, but Seattle's system does not provide capacity for those functions in addition to review of classifications and investigations, particularly in light of the increase in complaints and investigations to be reviewed.

- The OPA Auditor is an individual with legal expertise with whom the City independently contracts for a fixed number of hours each year. Seattle does have a City Auditor, but no staff is dedicated to review police or criminal justice functions and systems. The CPC also does not have staff capacity for these functions.
- As noted above, there is also no authority or capacity provided in Seattle's system for broader systemic assessments and reviews beyond the accountability system.

3. Seattle's system is not designed for the kind of investigation review that in some cases may better meet the needs or expectations of the public or complainants.

- The OPA Auditor is not provided direct and unfettered access to SPD and OPA databases or the ability or capacity to use forensic or technology experts to independently verify evidence provided, tactics and equipment described, determine what other evidence might be available in various systems or provide additional expertise.
- Collective bargaining agreement contractual deadlines and OPA processes do not allow for detailed Auditor reviews over several days for investigations as a matter of course.

Investigations Reviewed

During this reporting period OPA submitted 207 investigations for my review, compared to 121 in the first half of 2015.¹⁷ OPA did an excellent job on many investigations and the intake process continued to improve, as the philosophy and best practices incorporated into the OPA Manual through the work of the Director, the OPA Auditor, and the Community Police Commission have become largely operationalized. New OPA personnel were rotated in during this reporting period with much less disruption than previously, despite increased caseloads. OPA still struggles with case management, which in turn results in too many cases being submitted too close to contractual deadlines, limiting the efficacy of the review process. The case closing process still must be streamlined, there needs to be more consistent use of email notice to the parties when the investigators submit their investigations for review, and clarity in reporting as to when OPA considers an *investigation* 'closed' versus the date the complainant, public, or employee would consider the *case* 'closed' would be helpful.

In my last report, I observed that OPA was doing well at meeting most of the requirements of the OPA Manual regarding intake and investigations, but noted some areas for continued improvement. In several of those areas, improvement was made since the last report, such as:

- the OPA Director, Deputy, Captain and Lieutenants now meet weekly to discuss the transfer of cases from intake to investigation and what the investigative plans should be to help focus investigations on the most salient points and ensure any potential weaknesses in evidence are addressed prior to the commencement of each investigation;
- investigators are asked to prioritize review of any evidence not reviewed during intake, even if they do not have time to take other investigative steps, so that perishable evidence is not lost or deadlines for notification of additional allegations are not missed;

¹⁷ In 2015 OPA elected to modify past practice to bifurcate into separate investigations certain cases where there were multiple allegations. Thus, when OPA issues its statistical reports on the number of complaints resulting in investigations, it will need to account for this change in approach or it will appear that there is a greater than actual increase in complaints warranting investigation. (E.g., in the past a case that involved a single incident where certain officers were alleged to have used excessive force and others were alleged to not have used their In-Car Video as required would have been handled as a single investigation; OPA has changed its practice to instead bifurcate the single incident into two investigations.)

- intake personnel are knowledgeable about how long various SPD and jail records are retained in order to make sure they first gather evidence with short retention schedules;
- during interviews, investigators more frequently follow up where answers are unclear or present conflicting information and ask questions so as not to rely on the investigator's or supervisor's experience or judgment rather than obtaining corroborating evidence; and
- case summaries are stronger and more uniform in describing the key facts and evidence garnered in the investigations.

Additional improvement is still needed in areas such as:

- investigations should be submitted for Auditor review quickly enough after the interviews and collection of evidence so that if additional steps are needed there has not been a passage of time that diminishes the quality of follow-up; or if additional allegations are warranted or more investigation is needed, doing either is not compromised or foreclosed by deadlines imposed by the collective bargaining agreements;
- investigations that require due process hearings and the possible imposition of discipline should be submitted to the Chief of Police with sufficient time for thorough review;
- investigators should document the investigative rationale when steps are not taken, so that if there was a legitimate investigative decision not to obtain referenced evidence or interview a witness the rationale for not taking those steps is apparent and the thoroughness of the investigation can be judged by any reviewer of the case file;
- where relevant, intake personnel should consistently document whether they have asked complainants and witnesses if they have personal digital media (business video, phone video, photos, texts, etc.) and take steps to obtain it;
- informational materials about OPA and the complaint process must be translated into languages other than English and be updated to reflect current information; and
- OPA should fully utilize the IAPro system to continue refining case flow processes that can reduce the time it takes to complete investigations.

Detailed below are the investigations reviewed in this reporting period that I did not certify or where additional investigative steps were requested, directed or discussed.

Investigations Not Certified

Of the 207 investigations I reviewed in this reporting period, there were seven that I did not certify as objective, thorough and timely.¹⁸

#1

The complainant in this case owned a car being driven by her friend, who is an African American male. The complainant alleged that the officers conducted biased policing when they pulled her friend over for stolen plates. She claimed she had not reported the plates as stolen. She also alleged the officers wrongfully took the license plates from her car. The officers were working in a two-officer patrol car and had noticed the vehicle stopped next to them at an intersection. The passenger officer ran the rear license plate of the vehicle and learned that it had been reported stolen. As the subject pulled into a gas station, the officers initiated a traffic stop. They believed that they had reasonable suspicion to detain the subject for possession of stolen vehicle plates. They handcuffed the subject and had him sit on their front bumper while they gathered information. Several additional officers arrived at the scene and stood facing toward the subject as he sat on the bumper. After a period of time, the officers determined that the subject had no knowledge that the vehicle plates were stolen or that the plates had been switched. The subject was released from the scene and both license plates were taken into evidence. The actions of the officers were then reviewed at the scene by a patrol sergeant.

This complaint was about only one issue: whether the driver was racially profiled or in any way treated differently due to his race. OPA focused on the fact that the plates were determined to be stolen, thus providing reasonable suspicion to detain the subject. My concern was that OPA did not sufficiently address the rationale for the officers initially running the plates or address the nature of the detention, both of which were material to the allegation. Regarding the decision to run the plates, the passenger officer told the OPA investigator that it was routine for him in the role of a passenger in a two-officer patrol car to run plates while the driver officer focused on patrol vehicle operation. OPA should have verified there was not a call from dispatch or direction

¹⁸ This is another element of the review process, which in my view, remains a weakness in Seattle's system. When the OPA Auditor does not certify an investigation, the only effect is that there is a document in the case file that states that it has not been certified, and it can be later discussed in a semi-annual report.

from a supervisor to run plates and then assessed whether the use of discretion to run the plates in this instance was consistent with training and policy and if that policy and training reflects an unbiased approach. For example, were the named employees' statements that it is 'normal practice' to run plates while they are on patrol corroborated by records showing that they run plates randomly in a variety of neighborhoods with drivers of various races as a regular course of business? OPA should have inquired of the officers whether something about the vehicle, the driver's appearance, the driver's behavior, the neighborhood, or the time of day was a factor in their decision to run the plates.

While OPA inquired whether the decision to run the plates was made before the named employees were aware of the race of the driver, the record was left unclear as to whether they were behind or to the side of the driver's car when they ran the plates, and at what distance.

The other element of the stop OPA should have addressed was the detention of the driver, to ensure that was also done without bias. For example, OPA should have inquired about and assessed whether the request for license and identification, use of handcuffs, positioning the driver on the bumper of the car, the number and positioning of officers, and length of time the driver was detained were each consistent with training and policy. OPA should have assessed whether the named employees were diligent in releasing the driver without undue delay or whether they in any way prolonged the detention without justification.

This case provides a good example of weaknesses in Seattle's investigation audit function that I had hoped the Federal Court Monitoring Team's assessment of OPA investigations, and in particular their assessment of the investigation review process, would address. As I have noted in prior reports and in recommendations regarding needed improvements to the accountability system, the OPA Auditor's authority to "direct" additional investigation is in many instances constrained by any number of factors. In this instance, the case had a 180-day deadline of December 15.¹⁹ It was submitted for my review in mid-November; I reviewed the case and raised these issues on November 19. OPA responded by asking to discuss the case on December 1st, by

¹⁹ Pursuant to the City of Seattle's collective bargaining agreements with SPOG and SPMA, discipline can only be imposed for a sustained allegation of misconduct if the OPA investigation is completed *and* SPD serves the proposed disciplinary notice on the named employee within 180 days of the complaint being made or acknowledged.

which point it would have been impossible for OPA to provide the required 5-day interview notice to any employee, conduct any additional interviews, finalize the case, have a discipline meeting and serve any notice on the employee, thereby effectively eliminating the option of a Sustained finding that might result in discipline.

Nonetheless, additional investigation still could have been done in order to better address the complaint, regardless of the ultimate finding, but given that the initial investigative plan used by OPA for the investigation had not captured the essence of what needed to be addressed, the necessary evidence had not been gathered and that the assigned investigator was no longer in OPA (due to a rotation schedule unrelated to this case), OPA advised me that it did not think that my request for additional investigation could remedy the issues I had identified. The OPA Captain suggested that instead of conducting additional investigation, and noting the challenges often inherent in investigating allegations of bias, OPA should learn from this and create an investigator's checklist that would in the future be part of all investigative plans regarding questions of bias for officer-initiated contact. I did not certify the investigation but agreed as to the value of using such a checklist and will review it when provided. The OPA Director closed the case with an Inconclusive finding.

#2

In a case involving an anonymous complainant who alleged that the officer was regularly frequenting a strip club in uniform, harassing staff and dancers while on duty, the allegations involved Professionalism and Using Position or Authority for Personal Gain. I felt, and the OPA Director agreed, that given the nature of the allegations, the officer should not have received notification of the complaint until investigators conducted surveillance. Additionally, I was concerned that premises video had not been secured during intake. OPA also had not interviewed the officer's supervisor to confirm that the frequency, nature and duration of the officer's site visits were appropriate and to inquire about the reference made by the officer during his OPA interview that other officers conducted similar social contacts simply as a way to stay informed as to what was happening in the area. OPA interviewed the manager, who did not believe the officer behaved inappropriately, but OPA did not interview the business staff who were identified during intake or other staff (such as the bouncer). Attempts were made by phone toward the end of the

investigation to contact the business staff identified at intake, but the manager had changed since the complaint was first received and the other staff person did not respond to phone messages (an in-person site visit was not made as a way to contact witnesses). OPA articulated that they believed the preponderance standard had been met, making these additional interviews not essential, especially given competing workload demands and limited resources. I did not certify the investigation but given the limited time remaining before the 180-day deadline did not view that ordering additional work would be effective. The OPA Director issued findings of Unfounded.

#3

Another case I did not certify involved failure to complete mandatory training. The procedure for these types of cases is that SPD's Compliance Bureau compiles and forwards to OPA a list of employees for whom records reflect failure to complete all required training, along with the specific training at issue. Because of the large number of these, in order to streamline the process, in 2015 OPA worked with the relevant unions to see if it would be efficient for the most basic of these cases to be partially handled by the line. OPA created the files, included the relevant training directives and then delegated to each employee's supervisor the responsibility to interview the employee, per OPA instructions. The file was then returned to OPA for any additional needed documentation, drafting of the Case Summary and Director's Certification Memo. The overwhelming number of supervisors took their responsibility seriously and interviewed the employee in their command as directed. In this case, a Detective was alleged to have not completed in 2015 the mandatory classroom training on Defensive Tactics. The interview by the line Sergeant was neither objective nor appropriately professional. He simply used the interview as an opportunity to express his personal opinions, with gratuitous sarcasm. Nonetheless, since the record was clear that the training had not been completed, I did not request additional investigation. The OPA Director issued a finding of Sustained.

#4

The next investigation I did not certify involved officers who had recently reviewed a "wanted bulletin" with several photographs of a robbery suspect. They noticed someone who could have been the individual in the wanted bulletin and radioed for other officers to assist in stopping him to investigate further. Two additional officers responded and it was quickly determined that the

person they stopped, the complainant, was not the suspect from the wanted bulletin. One of the officers explained to the complainant about the reason for the stop. The complainant called OPA to ask if there was such an armed robbery incident that led to his stop. As part of the intake process, OPA found that the required documentation following a Terry Stop had not been completed. OPA interviews indicated that each pair of officers had thought the other would complete the documentation.

The case had been assigned to the investigator on March 27th. The investigator reviewed the file, but did not attempt to obtain any relevant evidence, including 911 tapes (an important priority for the intake process is to quickly gather any evidence which might be 'perishable' such as video that is recorded over or not retained after a certain time period, text messages that might be erased, etc.). The investigator sent the required classification notice on April 3rd and then no other investigative steps were taken until July 9th when the investigator called the complainant and sent an opening letter (this was now more than three months after the complaint had been made). By the time the investigator requested the 911 tape on July 31, the 90-day retention period for retaining the 911 digital file had long since passed (it ended June 3rd). I did not certify the case, and because additional investigation would not serve to remedy the lack of timeliness or lost evidence, I did not request additional work. The OPA Director issued findings of Lawful & Proper as well as Training Referrals on the Terry Stop allegations.

#5

I did not certify a case where the complainant had alleged an officer had discriminated against two unknown subjects based on their religion when they were exercising their free speech rights at the Pike Place Market. While the investigation addressed whether the named employee's comments and actions indicated any bias, the investigative plan, including the allegations and the interview, in my view should have also addressed whether the named employee's comments and actions reflected a lack of professionalism. I also found that the interview of the named employee was not sufficiently objective. There was no indication OPA followed up on some social media information and no investigative steps had been taken for nearly three months.

#6 & 7

The last two cases I did not certify involved the same investigator as the case above and allegations of failure to use In-Car Video (ICV) as required. Each required only a single employee interview. In one, there was a gap of nearly four months after the investigator sent the initial classification notice until he took any other investigative steps. In the other, no steps were taken for two and a half months. As well, confirmation as to whether the ICV system was working properly on the date in question was not conducted prior to the interview of the named employee in either case²⁰.

Additional Investigation Requested or Discussed

#8

In a case involving an anti-crime team drug bust, where the complainant alleged the officers took the suspect's wallet and put it aside and then didn't return it, I reviewed the investigation and requested additional work be conducted on October 21, 2015. The 180-date was November 21, 2015, and, as of February 1, 2016, the case has not yet been re-submitted to me for review and certification.

This highlights another weakness in Seattle's investigation review system. There is no requirement that any investigative follow-up requested or ordered be conducted in a timely manner. If getting a higher quality of investigation results in the possibility of discipline being foreclosed due to contractual deadlines being missed, those concerned with accountability may wish to weigh the relative benefits to the public of this approach.

The complainant in this case stated that she had watched a surveillance video from a camera connected to a computer in the residence that showed an officer driving away from the location with the wallet on top of his vehicle. She believed the computer and video had been seized by SPD. OPA had not identified whether a computer with relevant video was seized by the SPD team during the execution of their search warrant. If so, OPA needed to determine if the referenced

²⁰ Similar issues of lack of timeliness were raised during the previous reporting period. There was a third case technically in this reporting period with an equivalent lack of timeliness that I reviewed in July, but because the gap of more than three months without investigative steps was actually during March – June in the prior reporting period, I did not cite it above.

video existed, retrieve it and review it to determine if the missing wallet or other relevant information was documented.

There was no indication in the case file that the investigator took steps during intake or upon being assigned the case for investigation to learn whether those who executed the search video-taped it or took photos to document the scene, and if so, to obtain the video or photographs (and, if not, whether that was consistent with SPD policy). There was a single question on this point asked of one of the interviewed employees nearly five months after OPA had received the complaint, to which the reply was, "A lot of times we do video record. It depends. Sometimes we take photographs, sometimes we video, sometimes we do both. It has to be documented in some way before and after we search. And on this particular one, not quite sure which one we did." There were also no follow-up questions inquiring as to the apparent lack of documentation regarding a video or photos and the Sergeant's role in screening Officer statements to make sure each included a thorough and accurate representation of the incident and the evidence. OPA had not included an allegation regarding thoroughness and accuracy of reports or the Sergeant's obligation to screen them.²¹

Further, the Sergeant interviewed by OPA stated that OPA should also interview two officers because they had direct contact with the suspect. Only one was interviewed by OPA. (Not all the officers at the scene were interviewed, but at a minimum those who had contact with the subject or his property or who had documented or screened the search needed to be interviewed.) Additional documentation, such as the operations plan and after action reports, and the witness officer statements needed to be obtained as well.

None of the employees interviewed were questioned about the policy requirements regarding Securing and Transporting Detainee Property, whether they complied with the responsibilities, and if not, why not. The investigation was silent on that point. The case also raised issues about which

²¹ When the complaint was first classified, it appeared from the intake investigation that there was an absence of documentation regarding checking the wallet, putting it in a bag, and handing it to another officer, the officers' interaction with the suspect (or of any video, as noted above) in the officer statements, which warranted the addition of an allegation about thoroughness of reporting.

a recommendation has been made previously regarding the lack of an ICV in special vans used for this sort of operation, no clear exemption in ICV policy for ACT/SWAT actions, and no clear obligation in ICV policy regarding premises searches (the policy covers search of person and vehicle but not location).

The opening letter in this case was sent on May 22. The investigator did not review the file or take any steps to obtain evidence until September 3. Other investigative issues were noted as well.

#9

In a case where officers had responded to a call of a male in crisis who was bleeding in the restroom of a store where the subject had apparently stabbed himself, the restroom area of the store was closed and marked by a sign. The complainant entered the closed area and wanted to use the restroom. The store manager and the officers told the complainant that the restroom was closed and that it was not safe to enter because of the blood inside. The complainant alleged excessive force had been used and that the officers were biased in their enforcement action. I was concerned that OPA did not address the failure of the officers on the scene, those in the chain and the Detective who did the follow-up to ensure that the store video and witness statement had been obtained. I certified the investigation since it was thorough regarding the named employees' use of force and lack of bias, but noted on my certification that OPA still needed to address the failure to obtain the video and witness statement. OPA chose not to initiate a complaint because the training on Type I force investigation is permissive on collecting that data and the OPA Captain thought a memo on point to the precinct commanders and the Force Investigation Unit would be a more effective approach. (See my recommendation on a change to SPD policy in the recommendations section of this report.)

#10

In a case involving an employee alleged to have not been forthright and possibly obstructing officers in another jurisdiction who came to her home looking for her son as a suspect in a domestic violence incident, no investigative steps were taken from March 20 until the case was re-assigned to a different investigator on July 1. That delay then resulted in insufficient time to

conduct more than a very limited investigation. I felt there was additional evidence that would strengthen the investigation by filling in a number of gaps in the record.

In her OPA interview, the named employee stated that, contrary to the incident report, the officer did not initially tell her why he was there, that she would be charged with a crime if she was lying or that he would get a warrant. She also stated she did not understand why the officer would have written in the incident report that she appeared evasive and deceitful. It would have been helpful for OPA to have inquired of the Named Employee whether, prior to the arrival of the police at her apartment, she was aware of her son's possible involvement in a domestic violence incident and/or that they were looking for him, and, if so, how. Also, if in her view the incident report was incorrect in material ways (she disagreed with the officers' views that she was not being honest and was obstructing them), further inquiry may have been useful as to why she entered into a Stipulated Order of Continuance whereby if she did not comply with its terms, she would no longer have the right to a jury trial, to question witnesses, including the officers, or to testify, and the judge would make a ruling as to whether the named employee was guilty as charged based solely on the information in that incident report.

Given the small square footage of her apartment, further follow-up was also needed as to how it was plausible that the son could have been in the apartment and the named employee not aware of it. Additional issues were noted on which OPA also followed up.

#11

The need for investigators to document why certain investigative steps are not taken was at play in a case involving an officer working patrol with a Washington State Department of Corrections officer. They were looking for a subject who had an outstanding arrest warrant and went to the subject's workplace. After a chase, the subject ran onto a train station platform where a train employee grabbed the subject and took him down to the concrete platform. The SPD officer then handcuffed the subject. The subject told the screening Sergeant that he had suffered an injury to his face and alleged that the officer had caused the injury.

The ICV clearly proved that the officer had knowledge of the injury to the subject prior to being told by his Sergeant. In his Use of Force Statement, the officer had written that he was unaware of any injury or claim of injury until he was notified by his Sergeant regarding the claim of injury.

Thus it was clear that the officer's written statement was inaccurate regarding when he learned of the possible injury to the subject, but there was insufficient evidence to determine by a clear and convincing standard that it was intentional.

The OPA investigator had interviewed certain witnesses to the arrest of the subject. One of these witnesses indicated he was previously interviewed by law enforcement and the prosecutor's office concerning the same event, and noted two other individuals who may have also witnessed the event. I requested that OPA either interview the other witnesses or document a sound investigative reason why they were not interviewed. OPA amended the case file to articulate that in their view they determined that there was sufficient information regarding the subject's eye injury and officer's conduct at the point of arrest, and that those additional witnesses as well as the prosecutor's documentation would not shed further light on whether the officer's failure to correctly document that he was aware of the injury was intentional.

#12

In a case that had been referred to OPA from the Force Review Board (FRB), I noted there was documentation stating that the FRB would also be referring to OPA a related issue of the supervisory decision for one of the involved officers to be on the street after training personnel had requested that all members of his Academy class (who had just graduated from the Academy) receive additional training prior to the officers officially being on the street. OPA did not address that issue in the investigation, and I had not recalled reviewing it as part of a separate complaint. I asked OPA to follow up to ensure that the FRB referral had in fact occurred or provide documentation of an acceptable reason for the lack of referral. OPA determined no referral had been made so I requested they document in the case file that the OPA Director would take appropriate steps to address that separately, and then keep me apprised of the ultimate course of action OPA would be taking to ensure policy was not violated. (They ultimately initiated a separate complaint investigation.)

13

Officers in another OPA case were dispatched to a call of two unknown males who had looked into a window and then sat in their car parked in front of the home. The officers located the car and initiated a traffic stop. There were three subjects inside of the vehicle, two males and a

female. The male driver was asked to step out of the vehicle in order to have a conversation on the sidewalk. As he acted nervously and appeared to have turned away, one of the officers placed him in handcuffs. After further investigation, it was determined that the two male subjects had looked through the window; they were looking for the female subject but had the wrong address. The three were released and the officers documented the stop.

The complaint was received by OPA on March 23rd. OPA sent the complainant an opening letter on April 16th, advising her, "I am the assigned investigator, and you can find my contact information at the bottom of this letter. I will contact you for additional input, and to keep you advised about the status of the investigation. Your participation in my investigation is critical." No follow-up was made to the complainant until a message was left for her on August 7th, more than four months later and no attempt was made to reach the driver or passengers until a letter was sent to them on August 28th. Ultimately, none were interviewed. Offering the complainant and/or the subjects an opportunity to watch the ICV or participate in a mediation session soon after the complaint came in may well have provided an effective alternative to explain why there was a response involving several officers and handcuffing, for what was no doubt thought by the subjects and complainant to be a misunderstanding not warranting that level of response.²²

#14

I requested further investigation in a case where the Intake Follow-Up Log indicated that the OPA intake Sergeant had emailed the complainant (the subject's attorney) to ask if her client would be available for OPA to interview. She replied that same morning via email response to OPA that she would advise her client not to provide a recorded statement while his criminal case was pending, and added "Is there a deadline for this? Can he reach out after the case is adjudicated?" The subject's case was adjudicated in Seattle Municipal Court on May 11; OPA interviewed the named employee on June 9. There was no indication in the Investigation Follow-Up Log that OPA had reached out to the subject's attorney to interview the subject, so I requested that OPA do that

²² Also noted in this case was that the ICV which was very material to the investigation was not listed as evidence in the Case Summary. As this came up several times during this reporting period, one of the areas for future improvement is to ensure that the Case Summary comprehensively lists all evidence material to the investigation.

and document any attempts to reach him. OPA called both the subject and his attorney, who provided an additional phone number, but OPA did not receive a call back from the subject.

#15

In a case involving an employee who was directing traffic at a Mariners' game, the complainant alleged that the officer exited his car, went up to the complainant's car and yelled at him about not yielding the right of way. In requiring employees to behave professionally at all times, SPD Policy states, "Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." It continues, "The Department encourages all employees to treat all people with dignity; remember that community care-taking is at times the focus, not always command and control; and that the guiding principle is to treat everyone with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor, and actions that may result in the individual feeling belittled, ridiculed, or intimidated."²³

In my view, the OPA investigation should have centered on how or whether each of the named employee's actions comported with these expectations. He could have been asked about:

- The public safety purpose for using his vehicle's flashing lights and honking his horn to cut through traffic even though he stated that he had concluded his shift and was heading home, (which he said was why his ICV was not on);
- Yelling at the complainant through the PA system, when in fact he was not operating in the manner of an emergency vehicle, neither taking enforcement action nor en route to taking enforcement action, which would require yielding by other drivers;
- Exiting his vehicle, going over to the complainant's vehicle, asking the complainant if he saw him and telling the complainant he "should probably learn what you're supposed to do";
- Stating in his OPA interview "it was not going to go anywhere good" suggesting that he understood by his actions he was potentially escalating a situation; and

²³To SPD's credit, the language in these sub-sections had been recommended by the OPA Auditor and was incorporated by SPD into the Department Manual.

- Whether, before this incident, he had been ordered to attend additional training or been counseled by a supervisor both in regard to professionalism, and specifically in regard to using the PA system in his take-home vehicle to communicate with members of the public in a manner that the public may not view as respectful or professional.

In OPA's view, because by the named employee's own description of his actions in his OPA interview, the preponderance standard with regard to the allegation of Professionalism appeared to have been met, they disagreed about the value of re-interviewing the named employee. I did not direct OPA to re-interview him, based on the assumption that these questions would ultimately be addressed should the named employee request a Loudermill hearing.

#16

In a case where the complainant was a mother concerned that her daughter had been assaulted on a Metro bus with a Taser, she believed the officers had not taken the actions she thought they should in arresting the other involved girl. She stated during intake that the girl threatened her daughter on Facebook and carried out that threat to shoot her daughter when she made a "Bang Bang" symbol with her finger. I requested that OPA follow up to capture any social media mentioned by the complainant or others. OPA did and was able to obtain screenshots of Facebook messages.

#17

In a case where an anonymous complainant alleged that the named employee took a piece of equipment assigned to his SPD Unit to his personal residence, I discussed with OPA that the investigator had not specifically asked the named employee about several other pieces of equipment that other witnesses had mentioned which were also thought to have been in the possession of the employee; and that it had been mentioned by a witness that other employees had "piggy-backed" orders of hay to save transportation costs for hay purchased from the same vendor for personal use. Because OPA agreed that additional investigations needed to be opened to address these issues, I certified the case.

#18

In a related case, a witness employee had taken photos of the property loaded onto the named employee's vehicle. Additionally, he was able to state with specificity and certainty the dates on

which he observed the named employee take and return the property at issue. I felt it would have been more thorough for the OPA investigator to inquire of the witness employee why he took those photos, and why he had recollection of the specific dates when the property was taken and returned. Also, another witness employee acknowledged violating policy in not reporting at an earlier point her concerns that the named employee may have taken the property at issue. Given that this related to an array of EEO and other management issues that needed to be addressed by the Department, I did not request additional follow-up on this by OPA.

#19

In a case where the officer was alleged to have punched a subject in response to the subject spitting, I asked OPA to add documentation to the file from the Education & Training Section as to when the curriculum on point was adopted and whether the officer attended that training prior to the incident. I also requested they add the relevant Fire Department documentation and document why a student officer on the scene was not interviewed.

#20

In a case stemming from a parking citation, the complainant alleged that the named employee was confrontational and threatened to write him another citation if he did not move his vehicle immediately. The complainant also alleged that he believed that the named employee was attempting to provoke a physical challenge between them. The named employee showed the OPA investigator some photos of the scene and the investigator concluded the interview by asking the named employee if he would email the photos so they could be included in the case file, but he had not done so. I asked OPA to follow up with the employee to obtain the photos. OPA requested them but apparently did not order they be produced, as they were not provided to OPA. OPA did not identify any witnesses or other evidence to corroborate either version of the incident. The Director issued a finding of Inconclusive.