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**CITY OF SEATTLE
PUBLIC SAFETY CIVIL SERVICE COMMISSION**

)	
IN RE THE APPEAL OF:)	
)	
JOHN C. POWERS,)	
)	NO: 05-010
Appellant,)	
)	FINDINGS OF FACT, CONCLUSIONS
vs.)	OF LAW, AND ORDER
)	
CITY OF SEATTLE, SEATTLE POLICE)	
DEPARTMENT,)	
)	
Respondent/Employer.)	
_____)	

I. INTRODUCTION

The Commission heard this matter pursuant to a Notice of Appeal filed by former Officer John C. Powers¹, appealing his termination by the Seattle Police Department (Department). A

¹ Several witnesses with the surname "Powers" testified. In this decision, the Commission refers to the Appellant John Powers as "Officer Powers" or "John Powers".

1 full evidentiary hearing was held on July 10-14 and on July 17, 2006 before Commissioners
2 Bown, Johnson, and Nark, with Commissioner Nark acting as Presiding Officer.²

3 At the hearing, attorney Susan Rae Sampson represented Officer Powers and Dan Berger,
4 Assistant City Attorney, represented the Police Department. Each party was to submit a post-
5 hearing proposed “Findings of Fact, Conclusions of Law, and Order” by August 8, 2006. The
6 record therefore closed on August 8 and the Commission took the case under advisement on that
7 date.³

8 After considering the evidence in this case, including the testimony, documentary
9 evidence, and arguments of the parties and their representatives, the Commission enters the
10 following Findings of Fact, Conclusions of Law, and Order.⁴

11 **II. ISSUE AND BURDEN OF PROOF**

12 The Department has the burden of proving by a preponderance of the evidence that the
13 termination of Officer Powers was “in good faith for cause.”⁵ “In good faith for cause” means
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16 ²The Commission normally records all testimony offered at a hearing. However, the Commission’s recording
17 equipment did not record some of the testimony offered at the hearing on the morning of July 12. The equipment did
18 not record the testimony, both direct and cross examination, of Appellant’s father Major General George Powers,
19 Ret. It also did not record the testimony of Appellant Powers offered in Appellant’s case in chief. The Department
20 had previously called Appellant Powers in its own case. Powers’ prior testimony was properly recorded. The
21 Commission discovered the recording failure while the hearing was still in session, informed the parties of the
22 problem, and suggested that those two witnesses be recalled. The parties suggested that they might instead be able
23 to stipulate to a summary of the unrecorded testimony. The Commission agreed that if the parties could stipulate to
a summary of that testimony, and if that summary would be considered by all to be the Commission’s record of that
testimony, then recalling the witnesses to re-testify would not be necessary. The parties submitted a stipulated
“Summary of Testimony” of Major General George Powers and a stipulated “Testimony of John Powers” on August
2, 2006. Accordingly, those summaries are admitted into evidence as Exhibits 39 and 40 respectively and constitute
the Commission’s official record of that testimony.

³ The Commission holds that a hearing is considered “closed” for purposes of Commission Rule 6.27 when the
parties’ final submissions are due. In this case, that was the parties’ proposed Findings, Conclusions, and Order,
which were due on August 8, 2006.

⁴ See Appendix I for a list of Witnesses and Exhibits.

⁵ PSCSC Rules of Practice and Procedure, 6.21.

1 just cause, i.e. “for a fair and honest cause or reason, regulated by good faith on the part of the
2 employer.”⁶

3 III. FINDINGS OF FACT⁷

4 A. Procedural Background

5 1. The Department hired John Powers as a Police Officer on July 7, 1997.

6 2. In April 2001, the Department received a report from a citizen alleging that Officer
7 Powers, while on duty, was present in an apartment where cocaine had been openly visible just
8 prior to his arrival, and that he may himself have used the drug.

9 3. The Department referred the April 2001, report to the Federal Bureau of
10 Investigation’s Public Integrity Task Force.

11 4. The FBI Task Force accepted the case and initiated an investigation. After the
12 terrorist attacks of September 11, 2001, the FBI shifted its priorities dramatically, depleting
13 resources from the investigation and resulting in a significant delay in the FBI completing the
14 investigation.

15 5. The FBI’s investigation of Officer Powers remained open until March 30, 2005,
16 when the FBI informed the Department that it had closed its investigation. The Department then
17 initiated an internal administrative investigation through the Department’s Office of Professional
18 Accountability’s Investigative Section (OPA-IS, also referred to as IIS).

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21 _____
22 ⁶ *Baldwin v. Sisters of Providence*, 112 Wn.2d 127, 139 (1989).

23 ⁷ Any finding of fact more correctly considered a conclusion of law, or any conclusion of law more correctly
considered a finding of fact, may be treated as such.

1 6. The OPA-IS investigators reviewed documents that had been compiled by the FBI
2 and obtained copies of some witness statements from the Task Force’s investigation.⁸ The FBI
3 did not provide the OPA-IS investigators with a complete copy of their investigation.

4 7. OPA-IS then conducted its own independent investigation over the next several
5 months, including interviewing witnesses. In September 2005, OPA-IS forwarded its
6 investigation to the Chief of Police for his consideration. The case file provided to Chief
7 Kerlikowske consisted of four volumes.

8 8. OPA-IS recommended that the Chief sustain 16 specifications of misconduct. After
9 reviewing the complete file, Chief Kerlikowske notified Officer Powers of a proposed
10 disciplinary action sustaining 12 of the allegations.

11 9. On November 18, 2005, Chief Kerlikowske held a pre-disciplinary (*Loudermill*)
12 meeting with Officer Powers, his Guild representative and his private attorney. Also present
13 were members of Officer Powers’ chain of command and the Department’s Legal Advisor. The
14 meeting lasted approximately three-and-a-half hours.

15 10. Based on his review of the relevant materials and the information presented at the
16 November 18 *Loudermill* meeting, Chief Kerlikowske issued a decision on November 23, 2005,
17 sustaining eight specifications of misconduct. As reflected in the Disciplinary Action Report, the
18 sustained specifications included:⁹

- 19 1) While employed as a Seattle Police Officer, Officer Powers used illegal drugs
20 and permitted the use or possession of illegal drugs by others;
21 2) Officer Powers provided prescription medication to another individual;

22 _____
23 ⁸ The FBI records include several “Form 302’s”, FBI investigators’ summary of witness’ statements made to the
investigators.

⁹ Ex. 1.

- 1 3) Officer Powers used Department computers for non-official purposes to
2 provide information on individuals' criminal histories and license plates to
3 individuals outside the Police Department, including providing information
4 relevant to an ongoing homicide investigation by another law enforcement agency
5 to a relative of the victim without notifying the other agency or his chain of
6 command;
- 7 4) Officer Powers interfered with a domestic violence investigation in which he
8 had a personal relationship with the alleged perpetrator;
- 9 5) Officer Powers was present at the scene and had knowledge of a residential
10 burglary without taking any police action, writing a report or notifying any
11 supervisor in the Department;
- 12 6) Officer Powers misused City equipment and work time by providing
13 unauthorized transportation for his personal motives to friends and acquaintances
14 on numerous occasions including to locations outside of his assigned patrol area,
15 without obtaining supervisory approval, logging out or noting mileage when
16 transporting females;
- 17 7) Officer Powers took a female civilian to a restricted area of the West Precinct
18 for non-official reasons; and
- 19 8) Officer Powers failed to report to his chain of command or the individual
20 concerned that a subject of a criminal investigation had obtained the home address
21 of a prosecutor involved in the investigation.¹⁰

22 Based on these eight sustained specifications, Chief Kerlikowske terminated Officer
23 Powers' employment as a Seattle Police Officer.

11. Officer Powers received notification of his termination on November 24, 2005, and
filed a timely appeal with the Commission on November 30, 2005.

B. The Eight Specifications

The Commission considered each of the eight specifications separately, and enters the
following findings of facts regarding each.

1. First Specification: While employed as a Seattle Police Officer, Officer Powers used illegal drugs and permitted the use or possession of illegal drugs by others.

¹⁰ The Department added Specification Number 8 after the *Loudermill* meeting, apparently based on new information the Department learned at that meeting.

1 17. Officer Powers admitted that beginning in the fall of 2001 he had a sexual
2 relationship with Anji Murphy.¹¹ Ms. Murphy was living in West Seattle at the time of the
3 September 11, 2001, terrorist attacks and recalled watching television coverage of the
4 memorable events in her West Seattle apartment. She noted that her sexual relationship with
5 Officer Powers began approximately a month later.

6 18. Ms. Murphy testified that during the period of their relationship, she would routinely
7 become intoxicated while at work as a bartender. She also acknowledged that she used cocaine
8 about once or twice a week.

9 19. The FBI had installed a Global Positioning System (GPS) tracking device on the
10 Seattle Police Department patrol vehicle that Officer Powers routinely used. The tracking device
11 was in operation from August until early November of 2001, when it was discovered and
12 disclosed to Officer Powers.

13 20. John Powers testified that the records of the GPS tracker included rides that he gave
14 to Ms. Murphy to her West Seattle apartment.¹² Ms. Murphy testified that early in their
15 relationship, he revealed to her that a GPS tracking device had been found in his vehicle. This
16 corroborates that their relationship began in the fall of 2001.

17 21. Approximately two months after 9/11/2001, Ms. Murphy moved from West Seattle
18 to an apartment on Roy Street in Seattle's Lower Queen Anne neighborhood. She lived in that
19 apartment for about 8 months until she moved to another apartment, in the same neighborhood,
20 on John Street. She had resided on John Street for a couple of months when her relationship
21 with John Powers ended.

22
23 ¹¹ Ms. Murphy is also one of the individuals to whom Officer Powers is accused of giving improper rides (the sixth specification).

¹² Ex. 25.

1 22. Ms. Murphy testified that in 2002, while she was living in the Roy Street apartment,
2 Officer Powers gave her an envelope containing about an “eight-ball” (1/8 of an ounce or 3.5
3 grams) of powder cocaine that was in a hardened form. She further testified Powers told her at
4 that time that he had gotten the cocaine from his friend “Rob”, who had gone into rehab
5 treatment for cocaine abuse.

6 23. She accepted the cocaine and later used it, but not with Officer Powers. She testified
7 that she never used cocaine at any time with Officer Powers nor did he admit to her that he had
8 ever used cocaine while he was a member of the Seattle Police Department.

9 24. Officer Powers testified that he never gave Ms. Murphy any cocaine.

10 25. Officer Powers also testified that he had knowledge that his friend Rob Chandler
11 used cocaine during 2001, that he [Mr. Chandler] had previously been treated for cocaine
12 addiction, and that after 2001 Chandler again entered rehab treatment for cocaine use. Officer
13 Powers testified that he did not recall precisely when Mr. Chandler entered treatment after 2001,
14 but he acknowledged that it might have been in 2002.¹³

15 26. Mark McCarty, the Department’s Legal Advisor, testified that Officer Powers
16 specifically stated during the *Loudermill* meeting that Mr. Chandler had entered rehab treatment
17 in January, 2002. No witness at the Commission hearing, including Officer Powers, contradicted
18 that testimony.

19 27. Approximately eleven months after their relationship began, Officer Powers
20 informed Ms. Murphy that he wanted to end the relationship so that he could work on his
21 marriage.

22 ¹³ This specification, as well as several others, involves an individual named Rob Chandler. Officer Powers testified
23 that Rob Chandler was his neighbor, former employer, and best friend. Mr. Chandler did not testify at the
Commission hearing.

1 28. Some months later Ms. Murphy saw him with another woman. She testified that she
2 wrote him a letter in which she “told him what a jerk he was” and had a mutual friend deliver the
3 letter. Officer Powers testified that in the letter Murphy threatened to “get” him. He did not
4 retain a copy of the letter. He testified that he showed the letter to others, including Sgt. Jim
5 Arata. Ms. Murphy denied that she made any threats against Officer Powers either in the letter
6 or in any other manner.

7 29. No other witness, including Sgt. Arata, testified seeing a letter in which Ms. Murphy
8 threatened Officer Powers.

9 **2. Second Specification – Appellant Powers Provided Prescription**
10 **Medication to Another Individual**

11 30. During an interview with OPA-IS and during the hearing, Officer Powers admitted
12 that he provided prescription Viagra to at least one other member of the Department in the West
13 Precinct. Officer Powers told investigators that he believed he had handed a Viagra tablet to Sgt.
14 Sweetland.

15 31. Officer Powers testified at the hearing that he had a “vague recollection” of handing
16 a Viagra tablet to Sgt. Joel Sweetland. He suggested that this occurred in the context of the two
17 exchanging fitness “supplements.” He stated that he believed Sgt. Sweetland had a prescription
18 for the medication, although he acknowledged that he never saw the prescription.

19 32. Officer Powers did not mention in the OPA-IS interview anything about a history of
20 the men exchanging supplements or claim that he gave him the medication accidentally. He
21 explained that he gave Sgt. Sweetland the prescription medication because “Joel didn’t want to
22 have a record of him buying it.”¹⁴

23 _____
¹⁴ Ex. 16, p. 13.

1 33. Officer Powers also acknowledged that he allowed others to have access to Viagra
2 that he kept in his locker at the West Precinct. He admitted that he was aware that Officer Dustin
3 Ay had taken Viagra from his locker and that Officer Ay did not have a prescription for Viagra.

4 34. He also testified that he gave tacit approval to Sgt. Arata and Officer Ay to take
5 anything they wanted from his locker, including Viagra.

6 35. Officer Powers also stated that he believed Sgt. Arata had a prescription for the
7 medication, although he acknowledged that he never verified this fact.

8 **3. Third specification – Use of Department Computers for Non-Official**
9 **Purposes to Provide Information on Individuals’ Criminal Histories**
10 **and License Plates to Individuals Outside the Police Department**

11 36. Officer Powers admitted that he used Department computers to obtain individuals’
12 criminal history information and license plate information and that he shared this information
13 with friends outside of the Department. He admitted that on at least one occasion he ran a
14 license plate of a vehicle that his friend Mr. Chandler considered suspicious. An individual in
15 the vehicle had attempted to sell high value property to Mr. Chandler’s pawnshop, where Officer
16 Powers was employed before he became a Seattle Police Officer.

17 37. Rather than simply telling Mr. Chandler that there were no warrants associated with
18 the vehicle, Officer Powers shared information with Chandler about the registered owner of the
19 vehicle. The vehicle was registered to a company, not an individual, with a post office box
20 number in Olympia. The vehicle was an undercover police vehicle.

21 38. Officer Powers testified that other members of the Department from the East
22 Precinct had also run the same license plate for Mr. Chandler at his request. He indicated that
23

1 Detective Dave Duty and Officer Kevin Stuckey were involved in sharing this information with
2 Mr. Chandler. No other witness corroborated Powers' testimony on this point.¹⁵

3 39. Officer Powers testified that he also ran criminal history records on an individual by
4 the name of Jeffrey Solo, also known as Jerry Solo. He obtained and printed the criminal history
5 records using a Department computer. The criminal history records included non-conviction
6 data, including arrests for which there is no indication of the disposition and an arrest for a
7 charge that was dismissed.¹⁶

8 40. In order to monitor compliance with the Criminal Records Privacy Act, the
9 Department procedures require Department personnel to record their access to criminal history
10 records.¹⁷

11 41. Officer Powers did not record his access to Solo's criminal record history in the
12 Department log maintained for that purpose.

13 42. Lieutenant Greg Caylor, one of the two OPA-IS investigators assigned to the Powers
14 case, testified that the Washington State Patrol routinely audits the Department for compliance
15 with the restrictions on the use of criminal history records. If the Department fails to comply
16 with the rules, it can lose access to the State Patrol's criminal history database.

17 43. Officer Powers testified that he had learned that Solo was a "person of interest" in an
18 on-going criminal investigation that the King County Sheriff's Office was conducting into the
19 murder of Mike Emert, Ron Chandler's brother-in-law. He admitted that he disseminated Mr.

20
21
22 ¹⁵ Officer Powers did not call Det. Duty or Sgt. Stuckey to testify at the hearing.

23 ¹⁶The Washington Criminal Records Privacy Act, Chapter 10.97 RCW, generally prohibits law enforcement agencies from disseminating outside the law enforcement community "non-conviction" data, including criminal charges that did not result in a conviction or guilty plea.

¹⁷ Ex. 7, Section III.A.3.

1 Solo's criminal history records to Mr. Chandler and his wife, Julie Chandler, the sister of the
2 murder victim.

3 44. Powers testified that he took Mr. Solo's criminal history to the Chandler home and
4 reviewed it, including the non-conviction data, with the Chandlers.

5 45. He testified that his purpose was to see if any of the information on the record
6 suggested any connection between Solo and Emert. He also testified that a 1978 arrest on
7 Mercer Island, which is not shown on the report as leading to a conviction, was of some interest
8 to Mr. Chandler. He also testified that he told the Chandlers to contact the King County
9 Sheriff's Office detectives assigned to the case about the potential connection.

10 46. Lt. Caylor testified that the Department obtained a copy of the Jerry Solo criminal
11 history record from the FBI, which had received the document from Rob Chandler.¹⁸ During an
12 OPA-IS interview, Officer Powers stated that because Mr. Chandler ended up with the printout
13 of Solo's criminal history, "then I guess I gave it to him."¹⁹

14 47. At the hearing, Officer Powers testified that unbeknownst to him at the time, Mr.
15 Chandler tore "a sheet" off the back of the printout of the Solo criminal history record. He
16 testified that Mr. Chandler later admitted to him that during the visit in which they reviewed the
17 document he (Chandler) had taken part of Solo's criminal history record when Officer Powers
18 left him alone with the document.²⁰

21 ¹⁸ Ex.19.

22 ¹⁹ Ex. 16, p.30.

23 ²⁰ Ex. 19 is the Solo criminal history the FBI obtained from Chandler.

1 48. Officer Powers introduced at the hearing five pages of the Solo criminal history
2 record that he testified he had retained in his personal files.²¹ Officer Powers had not presented
3 this document or information regarding it to the OPA-IS interviewers or to the Police Chief
4 during the *Loudermill* meeting.

5 **4. Fourth Specification – Officer Powers Interfered with a Domestic**
6 **Violence Investigation in Which He Had a Personal Relationship with**
7 **the Alleged Perpetrator.**

7 49. Sometime in early 2004, Officers Greg Neubert and Ron Cunningham were on
8 patrol in the Belltown neighborhood of Seattle. While driving through the parking lot of the
9 Medusa nightclub, they directly observed a male driver of a two-door vehicle stop his car, exit
10 the driver side, proceed around the front of the vehicle, open the passenger side door, pull an
11 obviously pregnant woman out of the car and violently throw her to the ground. The assault
12 caused the woman to be in visible pain. The officers were 30-50 feet from the couple when the
13 man pushed the pregnant woman to the ground.

14 50. Officers Neubert and Cunningham learned that the man and woman were boyfriend
15 and girlfriend. Both officers, having directly observed the assault, concluded that arrest was
16 mandatory under the Washington Domestic Violence Protection Act.²² Officers Neubert and
17 Cunningham therefore arrested the man on a charge of domestic violence assault.

18 51. Officer Powers was working off-duty in the area of Club Medusa that evening. A
19 number of Belltown establishments organized into an entity known as the Belltown Business
20 Association (Association). The Association hired off-duty Seattle Police officers to provide
21 security. Officer Powers regularly worked off-duty for the Association and was responsible for
22 scheduling himself and other officers for that work.

23 ²¹ Ex. 34 is the Solo criminal history Powers introduced at the Commission hearing.

²² Ex. 12.

1 52. Steve Good, an owner of Club Medusa, was also a stakeholder in the Association.
2 Mr. Good was in effect an employer of the off-duty police officers, including Officer Powers,
3 when they performed off-duty security work for the Association.

4 53. Officer Powers, unlike Officers Neubert and Cunningham, did not directly observe
5 the assault. Officer Powers heard from one of Club Medusa's employees that a friend of Mr.
6 Good's had been arrested outside the club.

7 54. Powers went to the scene of the arrest immediately after he heard about it. He first
8 approached Officer Neubert, who explained that he and Officer Cunningham had directly
9 observed the man pull the victim from the car and throw her to the ground. Officer Powers
10 subsequently spoke with the victim and with Mr. Good, who was also present at the scene.

11 55. It is undisputed that Officer Powers told Officers Neubert and Cunningham that the
12 arrested man was a close personal friend of Mr. Good. Officer Powers testified at the hearing
13 that he asked the two on-duty officers whether there was any alternative to arresting the man.

14 56. Officer Neubert also testified that Officer Powers asked whether it was necessary to
15 arrest the man. Officer Powers then asked to take over as the primary officer on the case.
16 Officer Cunningham testified that Officer Powers approached them and held out his hand in a
17 manner to indicate that he would take their notes and take over on the case. Officer Cunningham
18 corroborated Officer Neubert's testimony that Officer Powers asked to be primary on the arrest.

19 57. Officer Neubert was uncomfortable with Officer Powers' involvement in the arrest.
20 He contacted his supervisor, Sgt Mark Hazard, who arrived at the scene a short time later. Sgt.
21 Hazard screened the arrest and agreed that it was a mandatory arrest situation.

22 58. Of the numerous officers who testified at the hearing, only Officer Powers disputed
23 that the circumstances involved in the domestic violence incident required a mandatory arrest.

1 59. Officer Powers suggested at the hearing that his understanding of the facts were that
2 the woman “had gotten in the man’s face”, that he straight-armed her and she somehow tripped.

3 60. Officer Neubert and Officer Cunningham both testified that they never told Officer
4 Powers anything other than the man had thrown the woman to the ground.

5 61. Officer Powers testified there were a number of reasons why he asked about whether
6 it was necessary to arrest the man. He testified his reasons included that the booking would take
7 the arresting officer off the street for one to six hours, and that the City would incur a jail fee.
8 He also testified that the victim did not want to see her boyfriend arrested.

9 62. Chief Kerlikowske testified that, based on his more than thirty years of law
10 enforcement experience, asking whether an “alternative” to arrest is available in the case of a
11 mandatory arrest is code for asking the primary officer not to make the arrest.

12 **5. Fifth Specification – Officer Powers was Present at the Scene and Had**
13 **Knowledge of a Residential Burglary Without Taking Any Police**
14 **Action, Writing a Report or Notifying Any Supervisor in the**
15 **Department.**

16 63. Sometime in late 2000, a set of expensive tires and rims were stolen from a BMW
17 owned by Mr. Rob Chandler. Mr. Chandler eventually learned the address of an individual he
18 believed was in possession of his stolen wheels. He rode his motorcycle to that address and
19 located a set of wheels that he believed were his.

20 64. Mr. Chandler called Officer Powers for assistance in picking up the wheels.
21 Officer Powers agreed to meet him there driving his Ford Expedition. When Officer Powers
22 arrived, Mr. Chandler was alone.
23

1 65. Officer Powers testified that he did help Mr. Chandler pick up the wheels, but that he
2 did not know at the time that they had been stolen from Chandler or that Chandler did not have
3 the permission of the residents at the West Seattle home to pick up the wheels.

4 66. Officer Powers suggested during an OPA-IS interview that he was at least aware the
5 wheels were stolen. An OPA-IS investigator asked Officer Powers “you knew he was
6 recovering stolen property, right?” Officer Powers responded “Yeah.”²³

7 67. Officer Powers also told the OPA-IS interviewers that he had verified that the
8 wheels belonged to Chandler by looking at a receipt. He stated that he could not remember
9 whether Mr. Chandler showed him the receipt at the scene or later back at the pawnshop.²⁴

10 68. Officer Powers testified at the hearing that Mr. Chandler revealed to him only later
11 that he (Chandler) had been recovering wheels that had been stolen from him. He also testified
12 that Chandler told him that he had found the wheels on the stoop or the front porch of the house.

13 69. Both Chief Kerlikowske and Mr. McCarty testified that Officer Powers did not claim
14 at the *Loudermill* meeting that he did not know at the time that Chandler was recovering stolen
15 property.

16 **6. Sixth Specification – Misuse of City Equipment and Work Time by**
17 **Providing Unauthorized Transportation for His Personal Motives to**
18 **Friends and Acquaintances on Numerous Occasions Including to**
19 **Locations Outside of His Assigned Patrol Area, Without Obtaining**
20 **Supervisory Approval, Logging Out or Noting Mileage When**
21 **Transporting Females.**

22 70. Officer Powers testified that he gave personal friends, including his girlfriends,
23 numerous rides home in his patrol vehicle while he was on duty. Many of the rides took him out

²³ Ex. 16, p.21.

²⁴ Ex. 16, p.20.

1 of his district and sector beat. He also admitted that many of these rides took him out of his
2 precinct.

3 71. Officer Powers did not obtain supervisor approval to leave his sector/beat or his
4 precinct in order to give his friends rides home, nor did he log out by radio when transporting his
5 personal friends, including girlfriends, to their homes.

6 72. Officer Powers testified that he gave Ms. Murphy approximately twenty rides home
7 to her apartments in West Seattle and later in Lower Queen Anne. He admitted that he never
8 obtained supervisor approval for these rides.

9 73. Ms. Murphy testified that she could not recall the precise number of times that
10 Officer Powers gave her a ride home in a patrol car while he was on duty during their 11-month
11 relationship. She estimated that the number of rides was far more than the 20 that Officer
12 Powers admitted.

13 74. Officer Powers testified that he gave Ms. Murphy rides home while he was on duty
14 because she was routinely intoxicated. Ms. Murphy confirmed that during their relationship she
15 was routinely drinking to the point of intoxication.

16 75. Ms. Murphy testified that when Officer Powers was not available to give her a ride
17 home, she would take a taxi. Ms. Murphy also testified that when Powers gave her rides home
18 in the patrol car he would often come into her apartment. Officer Powers testified that he did
19 not log these rides in or out because he did not view it as necessary. He testified that he knew
20 Ms. Murphy and trusted her not to fabricate any claims against him.

21 76. Officer Powers also admitted that he gave another girlfriend, Heather Bauer, rides
22 from the downtown Seattle hotel where she worked to her apartment in the Fremont district. Ms.
23 Bauer's apartment was outside Officer Powers' precinct and several miles from his beat. He

1 admitted to giving Ms. Bauer as many as 15 such rides. He testified he did not obtain a
2 supervisor's authorization for any of these rides, nor did he log out via his radio for any of these
3 rides.

4 77. Officer Powers testified that he gave Ms. Bauer these rides because she had been
5 mugged once in Atlanta and she was not comfortable taking public transportation late at night.
6 Officer Powers admitted during an OPA-IS interview that when he gave her rides home he
7 would go inside the apartment for anywhere from 15 minutes to as much as an hour.²⁵

8 78. Officer Powers presented extensive evidence regarding Department practices and
9 procedures for granting courtesy rides to civilians. Witnesses testified about several situations
10 that would justify giving a courtesy ride to a civilian, including when a motorist was stranded or
11 when a witness or crime victim needed assistance because of having cooperated in an
12 investigation. Sgt. Arata testified that providing a vulnerable intoxicated individual with a
13 courtesy ride might under certain circumstances be appropriate, but he noted that in such a
14 situation he would give the individual a ride to a taxi stand or to the precinct, not to their home.

15 79. The GPS tracking data also appeared to show that Officer Powers drove his patrol
16 car on at least two occasions to his home in Issaquah, a Seattle suburb. Officer Powers testified
17 that he remembered driving his patrol car to his home once. He testified that his shift was nearly
18 over when he realized he didn't have his flashlight and drove his patrol car home to Issaquah to
19 retrieve it.

20 **7. Seventh Specification – Taking a Female Civilian to a Restricted Area**
21 **of The West Precinct for Non-Official Reasons.**

22
23

²⁵ Ex. 16, p.48.

1 80. Officer Powers testified that while off duty he took another girlfriend into the
2 men’s locker room in the West Precinct station. He testified that while picking up his paycheck,
3 he took her into the locker room to show her photographs of his children that were in his locker.

4 81. Officer Powers conceded that he did not have an official reason for taking his
5 girlfriend into the men’s locker room. He also testified that while in the locker room, she
6 became “amorous” toward him. He testified that they left promptly.

7 82. Officer Powers testified that it was very common for police officers to bring
8 civilians into the precinct, and into the locker room. He also testified that he did not think he
9 should leave his girlfriend alone in the precinct lobby, which was not staffed at the time.

10 **8. Eighth Specification – Officer Powers Failed to Report to His Chain**
11 **of Command or The Individual Concerned That a Subject of a**
12 **Criminal Investigation Had Obtained The Home Address of a**
13 **Prosecutor Involved in The Investigation.**

14 83. Officer Powers testified that Rob Chandler told him that he (Mr. Chandler) had
15 obtained the home addresses of several individuals involved in conducting the FBI Task Force’s
16 investigation, including Deputy Prosecutor Henry Corscadden. Officer Powers admitted that he
17 did not share this fact with either the Department or with Mr. Corscadden’s office.

18 84. Mr. Corscadden testified that his home address and phone number are unlisted. He
19 stated that during his 17 years as a criminal prosecutor, no witness or subject of an investigation
20 had ever to his knowledge obtained his home address.

21 85. Mr. Corscadden testified that if a police officer had learned that a witness or subject
22 of an investigation had researched his home address, he would expect that officer to alert him to
23 that fact so that he could take appropriate action to protect himself and his family.

IV. ANALYSIS AND CONCLUSIONS OF LAW

1 In determining whether the employer has met it's burden of proving that discipline
2 was for just cause, the Commission has looked to several factors, including:

- 3 1. Was there reasonable notice to the employee;
- 4 2. Is the rule or order at issue reasonable;
- 5 3. Did the employer conduct a reasonable investigation;
- 6 4. Was the investigation conducted fairly;
- 7 5. Did the employer base the decision on substantial evidence that the employee
8 had in fact violated the rule or order;
- 9 6. Has the employer treated similar cases similarly; and
- 10 7. Is the penalty reasonably related to: a) the seriousness of the employee's
11 proven performance deficiencies or misconduct; b) in light of the employee's
12 record of service.²⁶

13 The factors are, however, just that – factors to be considered but not either essential
14 elements of just cause or the exclusive analytical framework for determining whether the
15 employer had just cause for discipline in every case.

16 The factors focus on the reasonableness of the employer's decision, given the
17 information the employer had at the time the decision was made. If that were the exclusive
18 analytical framework employed by the Commission, the scope of a Commission hearing would
19 be very limited. As can be seen by this case, there is often more to analyzing a just cause issue.

20 This case required the Commission to make several credibility determinations
21 regarding conflicting testimony offered at the hearing. The Commission made those credibility
22 determinations based largely on the witnesses' live testimony at the hearing, their demeanor, and
23 a comparison of their hearing testimony with their own or other witnesses' hearing testimony and
with prior statements made in the FBI Task Force investigation, in the OPA-IS investigation, in
the *Loudermill* meeting, or simply to other individuals.

²⁶ Koven & Smith, Just Cause: The Seven Tests, at p. 159. (2d Ed., 1992).

1 The witnesses' testimony at the Commission hearing is obviously information that
2 was not available to the Chief of Police at the time he made his decision. Nevertheless,
3 evaluating that testimony and making any necessary credibility determinations are vital parts of
4 the Commission's responsibilities in reaching a decision in this case. Administrative tribunals
5 have the discretion to evaluate the evidence presented, including making credibility
6 determinations.²⁷

7 **1. Reasonable Notice To The Employee.**

8 The notice factor addresses whether the employer provided the employee with reasonable
9 notice that the type of misconduct with which the employee is charged was a violation of the
10 employer's rules and could result in discipline.

11
12 1. Section 1.029 of the Seattle Police Department Policies and Procedures provides the
13 Department's Rules of Conduct at the relevant times.²⁸ The document states that members of the
14 Department "are expected at all times to conduct themselves in all matters related to their
15 employment in a manner which does not bring discredit on themselves, the Department, or the
16 City." The Rules of Conduct warns the employees "An officer's conduct is closely scrutinized,
17 and when their actions are found to be excessive, unwarranted, or unjustified, they are criticized
18 far more severely than comparable conduct of persons in other professions."

19 2. Under Section I.A, the Department notes "Individual employees' actions which
20 give the appearance of conflict of interest, dishonesty, criminal activity, or permitting criminal
21 activity, may impair public confidence in the employee or the Department." Section III.A of the

22 _____
23 ²⁷ *Inland Empire Distribution Systems, Inc. v. Utilities and Transp. Com'n*, 112 Wn.2d 278, 286, 770 P.2d 624 (1989).

²⁸ Ex. 5.

1 Rules requires that “Employees shall be familiar with, abide by, and conform to all State and
2 Federal laws, all laws and ordinances of the City of Seattle, and to Department rules and
3 procedures.”

4 3. Officer Powers was on reasonable notice that the Department prohibited the
5 behavior for which he was disciplined. The policies establish that officers are prohibited from
6 using illegal drugs, permitting others to use or possess illegal drugs, distributing prescription
7 medication to others²⁹, using Department computers for non-official purposes to provide
8 information on criminal histories and license plates to individuals outside the Department in
9 violation of Department policy³⁰ or perhaps even state law³¹, interference with a mandatory
10 domestic violence arrest required under state law³², having knowledge of and failing to report a
11 burglary, using City equipment and work time to transport an officer’s girlfriends from their
12 place of work to home without supervisor approval and in possible violation of the City’s Code
13 of Ethics³³, taking a civilian into an area of the precinct restricted to employees, and failing to
14 report to a prosecutor if an individual who was a witness and subject of an investigation obtains
15 the prosecutor’s home address.

16 4. Such conduct would reasonably create either an actual or the appearance of a conflict
17 of interest, constitute criminal activity by the officer, or constitute permitting criminal activity by
18 others. All of the alleged misconduct also involves conduct unbecoming an officer, which is a
19 direct violation of the Rules of Conduct.

20
21
22 ²⁹ Ex. 13.

³⁰ Ex. 7.

³¹ Ex. 11.

³² Ex. 12.

³³ Ex. 14.

1 5. The Commission unanimously finds that the Department provided police officers,
2 including Officer Powers, with reasonable notice of the rules and performance expectations at
3 issue in this appeal. The Commission finds that the Department had reasonably placed Officer
4 Powers on notice that the types of misconduct with which he is charged would be in violation of
5 its rules and performance expectations, and that such violations might result in discipline, up to
6 and including termination.

7 **2. Reasonableness of the Rules.**

8 6. The second factor involves whether the employer's rules or performance
9 expectations are objectively reasonable.

10 7. Prohibiting police personnel from using illegal drugs or from permitting others to
11 possess or use illegal drugs is on its face reasonable.

12 8. Expecting police personnel to not provide prescription medication to others is
13 reasonable in light of police officers' duty to uphold the law – not skirt it.

14 9. Requiring police personnel who use City equipment to obtain and disseminate
15 criminal histories and license plate information only in accordance with state law and
16 Departmental policy is reasonable in light of the Department's duty to not violate those state
17 laws and its legitimate interest in not jeopardizing its access to valuable but sensitive criminal
18 history information.

19 10. Expecting police officers to enforce the domestic violence laws and not to interfere
20 with their colleague's enforcement of those laws is reasonable in order to further the State's, the
21 City's, and the Department's commitment to preventing and prosecuting domestic violence
22 crimes.

1 11. Expecting police officers to take police action if they know a crime has been
2 committed is also obviously reasonable in light of the Department's duty to enforce the laws.

3 12. Expecting officers to not routinely provide "courtesy rides" for personal friends
4 without supervisory approval is reasonable given the Department's need for patrol officers to be
5 in their assigned areas unless the supervisor is aware of and approved their absence.

6 13. Expecting personnel to not bring civilians into restricted areas without authorization
7 is reasonable in light of the Department's legitimate security needs.

8 14. Expecting police personnel to report that the subject of a criminal investigation has
9 obtained the personal address of other law enforcement personnel is reasonable in light of the
10 Department's obvious interest in protecting the safety of all people, including all law
11 enforcement personnel.

12 15. The Commission unanimously finds that the rules and performance expectations at
13 issue in this case are reasonable.

14 **3. Reasonableness of the Investigation.**

15 16. The third factor pertains to whether the employer, before administering the
16 discipline, made a reasonable effort to discover whether the employee did in fact violate or
17 disobey a management rule or order.

18 17. The investigation of Officer Powers' conduct began with the April 2001 complaint
19 that the Department referred to the Public Integrity Task Force and ended with the Department's
20 notice of charges on April 5, 2005.

21 18. Officer Powers argues that the investigation was not reasonable because some of the
22 alleged misconduct occurred more than three years before the charges were presented to him.
23

1 19. Officer Powers contends that the City/Seattle Police Officers Guild Collective
2 Bargaining Agreement (CBA) in effect during his employment precluded the imposition of
3 discipline for any non-criminal allegation based on events over three years old at the time the
4 officer received notice of discipline.

5 20. The Commission recently held that it does not have the authority to enforce the
6 provisions of a CBA. While the terms of a CBA may be relevant to the Commission's inquiry in
7 a particular case, the Commission does not have jurisdiction to enforce an alleged violation of a
8 CBA.³⁴

9 21. Officer Powers also urges the Commission to find that the delay of more than three
10 years between the initiation of the FBI investigation and the Department's issuance of the
11 Disciplinary Action Report renders the investigation unreasonable as a matter of equity.

12 22. The Commission finds that the proper inquiry is whether the Department's
13 investigation was, under the totality of the circumstances, reasonable.

14 23. The Department acted fairly and reasonably when it referred the criminal allegations
15 against Officer Powers to the FBI rather than investigating one of its own officers. The
16 evidence established that the referral was consistent with Departmental practices at the time.

17 24. The Department could not control the pace of the FBI's investigation or the external
18 factors that delayed the investigation, notably the FBI's response to the September 11, 2001,
19 terrorist attacks.

20 25. Chief Kerlikowske's testimony established that the Department made reasonable
21 efforts to urge the FBI to complete its investigation.

22
23 ³⁴ *Charles v. SPD*, PSCSC No. 05-008.

1 26. After the FBI finally closed its case, OPA-IS conducted a reasonable and timely
2 investigation.

3 27. The long delay in this case between initiation of the FBI investigation and issuance
4 of the Disciplinary Action Report (DAR), although unfortunate, is largely due to factors beyond
5 the control of the Department, particularly the lengthy delay in the FBI's investigation.

6 28. The Commission unanimously finds that the investigation was reasonable under the
7 particular, and unique, circumstances of this case.

8 **4. Fairness of the Investigation.**

9 29. The fourth factor in assessing just cause is whether the Employer's investigation was
10 conducted fairly and objectively.

11 30. Officer Powers argues that the investigation was contaminated by biased
12 investigators who compiled inaccurate summaries and omitted favorable information.

13 31. Officer Powers has focused much of his criticism at the Case Summary.³⁵

14 32. Chief Kerlikowske did not rely on the Case Summary or the recommendations in
15 reaching his decision.

16 33. The Commission concludes that we need not determine the accuracy of the Case
17 Summary. While it may contain errors, it was not relied upon by Chief Kerlikowske and is not
18 so inaccurate as to suggest that the investigation itself was fundamentally biased or flawed.

19 34. Similarly, the Commission need not make findings on Officer Powers' claims
20 regarding alleged inaccuracies relating to charges that were not ultimately sustained or other
21 evidence that Chief Kerlikowske did not rely upon in making his decision.³⁶

22
23 ³⁵ Ex. 3.

³⁶ For example, the April 2001 complaint that the Department referred to the FBI was not sustained.

1 35. Officer Powers' also claims the investigation was unfair because not all his squad
2 mates were interviewed.

3 36. This claim is also unpersuasive. It is not necessary for the Department to locate and
4 interview every possible witness, particularly if the Department reasonably concludes that the
5 witness will simply confirm information that several other witnesses have already established.

6 37. The undisputed testimony of Lt. Caylor and follow-up notes show that the
7 investigators talked to many witnesses who were supportive of Officer Powers, and that the
8 investigators documented both the favorable and the unfavorable information.

9 38. Officer Powers also questions the fairness of the investigation based upon the
10 concern expressed by some in his supervisory chain of command that the FBI did not inform
11 them of the allegations the FBI was investigating.

12 39. The Commission does not find that argument persuasive. The Commission finds that
13 it was reasonable for the Task Force to exercise tight controls on the disclosure of the exact
14 nature of its on-going criminal investigation. Investigators, particularly those investigating
15 alleged criminal misconduct, must enjoy reasonable discretion to determine what information to
16 disclose and what to withhold from witnesses. Unnecessary or premature disclosure of details of
17 alleged criminal misconduct could undermine an investigation by alerting possible subjects of
18 the investigation.

19 40. Sgt. Haistings testified that some witnesses perceived that OPA-IS investigators
20 exhibited a preconceived attitude that Officer Powers was guilty as charged. The Commission
21 finds that asking hard questions and challenging witnesses' statements may be a necessary part
22 of investigators' job and is not itself evidence of bias.

1 41. The Commission does not find sufficient evidence to conclude that the OPA-IS
2 investigation was unreasonable or biased. The Commission finds that the investigation, although
3 unfortunately delayed by the events of September 11, 2001, and the FBI's reaction to those
4 events, was fair under the circumstances.

5 **5. Decision Supported by Substantial Evidence.**

6 42. The fifth factor addresses whether the decision is supported by substantial evidence.
7 As noted above, that determination includes whether the evidence presented before the
8 Commission supports the disciplinary decision. In assessing this factor, the Commission
9 considered each specification separately and enters the following analysis and conclusions of law
10 regarding each specification.

11 **1. While Employed as a Seattle Police Officer, Officer Powers Used
12 Illegal Drugs and Permitted the Use or Possession of Illegal Drugs by
Others.**

13 **a. Officer Powers' Alleged Use of Illegal Drugs.**

14 43. No witness testified that they ever saw Officer Powers use illegal drugs while a
15 Seattle Police Officer, nor did any witness testify that they heard Officer Powers admit using
16 illegal drugs while he was a Seattle Police Officer.

17 44. The Department contends that Officer Powers' periodic unexplained absences and
18 demeanor both before and after those absences evidence cocaine use. The Commission finds
19 that evidence insufficient to establish Officer Powers used illegal drugs while a Seattle Police
20 Officer.

21 45. The Department also argues other indirect or circumstantial evidence suggests that
22 Officer Powers used cocaine while a police officer. For example, they cite Tacey Powers'

1 testimony that Officer Powers' mother acknowledged to her that Officer Powers had admitted to
2 his parents that he used cocaine. Neither party called Officer Powers' mother as a witness.

3 46. Tacey Powers' testimony regarding what Powers' mother said Officer Powers told
4 her is multiple hearsay and not given significant weight by the Commission.

5 47. Although Ms. Powers is Officer Powers' ex-wife and they obviously do not have a
6 positive relationship, the Commission does not dismiss her testimony. The Commission finds
7 Tacey Powers' testimony credible that she used cocaine with John Powers before he was hired as
8 a Seattle Police Officer and that she believed that he continued to use cocaine after he became a
9 Seattle Police Officer.

10 48. Illegal drug use by an individual prior to being hired as a police officer is a serious
11 matter, although one involving different considerations than use by a present officer. The
12 Commission finds, however, that since the specification is that Officer Powers used illegal drugs
13 while a Seattle Police Officer, evidence that he used illegal drugs before being hired as an officer
14 is not sufficient to sustain this portion of this specification.³⁷

15 49. Tacey Powers' belief that John Powers continued to use cocaine after becoming a
16 Seattle Police Officer, even if reasonable under the circumstances, does not establish that he was
17 in fact using cocaine.

18 50. The Commission unanimously finds that the indirect and circumstantial evidence of
19 Appellant Powers' alleged cocaine use while employed as a Seattle Police Officer is not
20 sufficient to sustain this portion of the first specification.

21 **b. Officer Powers Permitted the Use or Possession of Illegal Drugs By Others.**

22 _____
23 ³⁷ The Commission does not hold that misconduct prior to employment could never be a basis for discipline. Rather, the Commission finds only that evidence of pre-employment misconduct is not sufficient to sustain a specification that on its face is limited to alleged post-employment misconduct.

1 51. In order to decide this specification, the Commission must resolve the conflicting
2 testimony of Ms. Murphy and Officer Powers on whether he gave Ms. Murphy cocaine. In order
3 to resolve their directly conflicting testimony, the Commission must make a credibility
4 determination between the two witnesses' testimony on this crucial point.

5 52. Ms. Murphy's testimony was detailed and forthright. She candidly admitted very
6 embarrassing personal details about her own conduct during that period of her life, including
7 alcohol and cocaine abuse, without attempting to minimize her own responsibility.

8 53. Officer Powers argues that Ms. Murphy's testimony on this crucial point is not
9 reliable because her admitted drug and alcohol abuse would affect her memory. The
10 Commission is not persuaded. She testified in some detail regarding the event. Officer Powers
11 also argues that Ms. Murphy made inconsistent statements that the cocaine was an "eight ball"
12 vs. "like a small rock". The Commission finds that the difference in terminology does not
13 undermine her credibility.

14 54. Officer Powers himself testified that he found Ms. Murphy to be trustworthy during
15 their 11-month relationship. His testimony that he could safely give her rides home because he
16 trusted her to not fabricate charges against him demonstrates that he considered her trustworthy
17 and unlikely to lie about him in order to get him into trouble.

18 55. Officer Powers also argues that Ms. Murphy was out to get him because he ended
19 their relationship.

20 56. The evidence does not support that argument. The undisputed evidence shows that
21 Ms. Murphy knew the name of Officer Powers' wife, knew where she worked, and obviously
22 knew that John Powers was a Seattle Police Officer. If she had been attempting to "get" him, she
23

1 could easily have disclosed embarrassing or incriminating information to either his wife or to the
2 Department. She did neither.

3 57. When a newspaper reporter contacted her about Officer Powers, Ms. Murphy
4 refused to talk to him and asked him to stop bothering her. She learned from the reporter that the
5 FBI was investigating Officer Powers, but did not voluntarily come forward.

6 58. Ms. Murphy testified at the hearing only in response to a Commission subpoena.
7 She was clearly a reluctant witness. She could have perhaps avoided testifying to embarrassing
8 personal details of her life simply by denying she knew anything about Officer Powers' alleged
9 misconduct.

10 59. Ms. Murphy's testimony also offers important corroborating details about the
11 source of the cocaine. She testified that Officer Powers told her at the time that he had obtained
12 the cocaine from his friend "Rob" who had gone into rehab.

13 60. During the *Loudermill* meeting, Officer Powers told the Chief that Rob Chandler
14 went into rehab in January 2002. The January date of Mr. Chandler's rehab, as stated by Officer
15 Powers at his *Loudermill* meeting, coincides with Ms. Murphy's testimony that Officer Powers
16 gave her the cocaine while she was living in the Roy Street apartment (during late 2001 and early
17 2002).

18 61. Ms. Murphy's testimony that Officer Powers told her at the time that the cocaine
19 came from his friend "Rob" who had gone into rehab also coincides with that same timeline of
20 events.

21 62. The Commission majority finds, under the totality of the circumstances, that Ms.
22 Murphy's testimony that Powers gave her cocaine on one occasion is credible.

1 63. The Commission majority finds that the preponderance of the evidence is sufficient
2 to show that Officer Powers permitted the use and possession of illegal drugs by Ms. Murphy
3 and that this portion of the first specification should be sustained.

4 **2. Officer Powers Provided Prescription Medication to Another Individual.**

5 64. Officer Powers admitted that he handed a prescription Viagra tablet to Sgt.
6 Sweetland. He also acknowledged that he allowed others to have access to Viagra that he kept in
7 his locker at the West Precinct. He gave tacit approval to Sgt. Arata and Officer Ay to take
8 anything they wanted from his locker, including Viagra. Officer Ay did not have a prescription
9 for the medication.

10 65. Officer Powers concedes that he provided prescription medication to at least one
11 individual. However, he focuses his argument on the appropriate punishment for that conduct.
12 The Commission therefore addresses that argument in the punishment section below.

13 66. The Commission unanimously finds that Powers knowingly provided prescription
14 Viagra to at least one other Department employee whom he also knew did not have a
15 prescription for the medication.

16 **3. Officer Powers Used Department Computers for Non-Official Purposes to Provide Information on Individuals' Criminal Histories and License Plates to Individuals Outside The Police Department, Including Providing Information Relevant to an Ongoing Homicide Investigation by Another Law Enforcement Agency to a Relative of The Victim Without Notifying The Other Agency or His Chain of Command.**

17
18
19
20 67. Powers admits that he ran names and license plates through Department computers
21 and that he shared information from those reports with his friends outside of the Department. He
22 does not dispute having run a license plate and giving information about the registered owner of
23

1 the vehicle to Rob Chandler. The vehicle turned out to be an undercover law enforcement
2 vehicle and the disclosure of the registered owner to Mr. Chandler could have also disclosed that
3 sensitive information to Chandler.

4 68. Officer Powers did not record his access to Jerry Solo's criminal record history in a
5 Department log maintained for that purpose, as required by Department procedures.³⁸ Officer
6 Powers also disseminated the Solo criminal history to the Chandlers in violation of Department
7 policy.

8 69. Officer Powers' testimony that Mr. Chandler had without Officer Powers'
9 knowledge torn "a sheet" off the back of the Solo criminal history document is based on Powers'
10 hearsay testimony that Chandler told him that "years later".

11 70. Hearsay is admissible as evidence, but given only the weight it deserves under the
12 circumstances.

13 71. Officer Powers' claim that Mr. Chandler tore a sheet from the Solo criminal history
14 record and that he (Officer Powers) did not know that at the time is contrary to the other
15 evidence. The criminal record history of Jerry Solo that Mr. Chandler turned over to the FBI
16 (Ex. 19) was five pages, not one. The document that Officer Powers presented from his file (Ex.
17 34) was also five pages. Although Officer Powers printed both Ex. 19 and Ex. 34 on the same
18 date, the documents are separate and distinct, showing different printing times. Ex. 19 is not just
19 a part of Ex. 34 that was torn off of that exhibit. They are separate documents.

20 72. Officer Powers testified that he believed he had a legitimate law enforcement
21 purpose to run Mr. Solo's criminal history and disseminate that history, including the non-

22 ³⁸ Ex. 7, section III.A.3.
23

1 conviction information, to the Chandlers. During an interview with OPA-IS, he told the
2 investigators that the legitimate law enforcement purpose was his “own edification in a case that
3 was ongoing with the King County Sheriff’s office.”³⁹ He testified at the hearing that he believes
4 that he had a legitimate law enforcement purpose for sharing “official use only” information with
5 his friends the Chandlers.

6 73. Officer Powers obtained the Solo criminal history in connection with a murder
7 investigation being conducted by another law enforcement agency. He did not inform that
8 agency of his activities or his findings.

9 74. Officer Powers was not assigned to the Emert murder investigation. He was in no
10 position to know what effect the disclosure of Mr. Solo’s criminal history to the Chandlers could
11 have on the ongoing investigation. He was not trained as a homicide investigator, nor did he
12 have any significant experience conducting such complex investigations.

13 75. Officer Powers admitted that he did not notify his Department or the Sheriff’s Office
14 about his efforts in the ongoing Emert murder investigation. Although he testified that he told
15 the Chandlers to contact the detectives assigned to the case about any potential connection
16 between Mr. Emert and Mr. Solo, Officer Powers told the OPA-IS investigators that he had not
17 contacted the Sheriff’s office to share the information because “I didn’t come up with anything
18 that might have helped them, as far as I knew.”⁴⁰

19 76. Powers’ insistence that he had a legitimate law enforcement purpose for his conduct
20 is unconvincing and contrary to the weight of evidence. His “own edification,” satisfying his
21 own curiosity, or simply helping his friends is not a legitimate reason for his conduct. He had

22 ³⁹ Ex. 16, p.30.

23 ⁴⁰ Ex. 16, p.31.

1 no legitimate reason to not record his access to the information nor any law enforcement purpose
2 for disseminating the information to the Chandlers.

3 77. Officer Powers violated Department policies by using a Department computer to
4 print out criminal history records on Jerry Solo without recording that access and by
5 disseminating that information to the Chandlers.

6 78. The Department urges the Commission to find that Powers' dissemination of the
7 Solo criminal history information to the Chandlers also violated Chapter 10.97 RCW, the
8 Washington Criminal Records Privacy Act.

9 79. The Commission notes the statute appears to prohibit "criminal justice agencies"
10 from disseminating criminal history information outside law enforcement circles except under
11 enumerated circumstances. It is not clear that an individual employee of an agency can violate
12 the statute.

13 80. The Commission finds that it is not necessary to determine whether Powers' actions
14 mean that he himself violated the Criminal Records Privacy Act, or that his actions constitute a
15 violation of that act by the Seattle Police Department.

16 81. The Commission unanimously finds that Powers did access criminal history records
17 without recording that access and did disclose criminal records information, both in violation of
18 the Department's policy and its legitimate performance expectations.

19 82. The Commission therefore also unanimously finds that the preponderance of the
20 evidence is sufficient to support the third specification.

1 **4. Officer Powers Interfered With a Domestic Violence Investigation in Which He**
2 **Had a Personal Relationship With The Alleged Perpetrator.**

3 83. The evidence establishes that the assault observed by Officers Neubert and
4 Cunningham outside Club Medusa was a mandatory arrest situation.

5 84. Officers Cunningham and Neubert both testified that they told Officer Powers that
6 they had observed a domestic assault and that the arrest was mandatory.

7 85. Sgt. Hazard also testified that Officer Neubert described the incident in terms that
8 were exactly consistent with his hearing testimony. There was no evidence to suggest that either
9 Neubert or Cunningham did, or would have had any reason to, provide a different description of
10 the events to Officer Powers.

11 86. Once Officer Neubert explained the unambiguous facts to Officer Powers, he was
12 on notice that this was a mandatory arrest situation. By then asking whether there was any
13 alternative to arrest for the man who was a friend of his off-duty employer, Officer Powers was
14 in effect asking the responding officer to not make an arrest in a mandatory arrest situation.

15 87. Sgt. Arata was not present at the scene but testified regarding the application of
16 the mandatory arrest statute. He agreed that if an officer directly observes a man pull his
17 girlfriend from a car and throw her down to the ground, an arrest is mandatory.

18 88. Sgt. Arata testified that an officer engages in interference if the officer's actions
19 are not in line with the evidence at the scene and if he acts at the request of or on behalf of
20 somebody with whom he has a personal relationship. He stated that where one officer learns that
21 another officer observed a man assault his girlfriend, it would be inconsistent with the evidence
22 and improper for the officer who did not observe the assault to ask the officer who did whether
23 there was any alternative to arrest. Sgt. Arata testified that it would also be improper for an

1 officer to ask whether an alternative to arrest was available if the officer was attempting to assist
2 a friend of his off-duty employer.

3 89. The Commission unanimously finds that, under the totality of the circumstances,
4 Officer Powers interfered with the domestic violence arrest when, knowing what he knew, he
5 nevertheless asked the arresting officers if there was an alternative to arrest.

6 90. Officers Cunningham and Neubert both testified that Officer Powers, after he had
7 asked whether there was an alternative to arrest, also asked to take over as the primary on the
8 case.

9 91. By asking to take over the case even after being informed that an arrest was
10 mandatory, Officer Powers aggravated his interference with the arrest. Officer Powers' efforts
11 were directed at helping a personal friend of the club owner, who was in effect one of his off-
12 duty employers.

13 92. The Commission finds that although Appellant Powers did not have a personal
14 relationship with the individual who was arrested, he did have a personal reason for becoming as
15 involved in the situation as he did. Officer Powers understood that the man who was being
16 arrested was a personal friend of his off-duty employer.

17 93. The nature of the misconduct is that Officer Powers interfered in an official action
18 on behalf of someone with whom he had a personal relationship. Whether he did so on behalf of
19 the perpetrator's friend rather than the perpetrator himself is not significant. The fact that the
20 man who assaulted his pregnant girlfriend was a friend of the owner of the club rather than a
21 friend of Officer Powers is not crucial.

22 94. Labor arbitrators have held that proof that the employee committed what is in
23 substance the offense charged, even if it should have been labeled and characterized differently,

1 may constitute just cause for the discipline if the employee has not been prejudiced by the
2 erroneous label or characterization of his misconduct.⁴¹

3 95. There is no reason to find that Officer Powers has been prejudiced by the question of
4 whether the person arrested was Powers' own personal friend or instead a personal friend of his
5 off-duty employer.

6 96. The Commission does not find persuasive Officer Powers' testimony either that he
7 thought the incident was not in fact a domestic violence assault, or that he had valid reasons to
8 ask whether an arrest was necessary. His stated reasons (including that the booking would take
9 the arresting officer off the street for one to six hours, that the City would incur a jail fee, or that
10 the victim did not want to see her boyfriend arrested) are at best irrelevant.

11 97. The Commission unanimously finds that the fourth specification is supported by a
12 preponderance of the evidence.

13 **5. Officer Powers Was Present at The Scene and Had Knowledge of a Residential**
14 **Burglary Without Taking Any Police Action, Writing a Report or Notifying Any**
15 **Supervisor in The Department.**

16 98. The evidence established that Mr. Chandler went on his motorcycle to the address
17 in West Seattle where he located his stolen wheels and tires.

18 99. It is undisputed that Mr. Chandler called Officer Powers to help him pick up the
19 wheels. When Powers arrived at the address, Mr. Chandler was alone.

20 100. The issue in this specification is whether Officer Powers knew at the time: 1) that the
21 wheels were stolen from Mr. Chandler, and 2) that Mr. Chandler did not have the resident's
22 permission to enter the property to pick up the wheels.

23 _____
⁴¹ *Cranston Print Works*, 36 LA 179, 185 (Maggs, 1960).

1 101. Officer Powers argues that he did not know that the wheels were stolen at the time
2 he helped Mr. Chandler pick them up. The Department argues that he did.

3 102. Powers supports his argument with his testimony that Chandler told him only later
4 that the wheels had been stolen from him (Chandler).

5 103. The Department counters that Powers' testimony is not credible since he never
6 raised that defense in either the IIS investigation or in the *Loudermill* meeting, but instead first
7 raised it at the Commission hearing.

8 104. The Commission finds that Officer Powers' testimony at the hearing that he did not
9 know at the time that the wheels had been stolen from Chandler is not credible.

10 105. Officer Powers also testified that he did not believe either at the time or later that
11 Chandler had burglarized the residence.

12 106. The Department offered hearsay testimony to attempt to establish that Chandler had
13 in fact committed a burglary. The Commission gives that evidence little weight under the
14 circumstances.

15 107. Even if Chandler had in fact burglarized the residence, there is no direct evidence
16 that Officer Powers was aware of that at the time.

17 108. The Commission unanimously finds that the evidence is not sufficient to support a
18 finding that Officer Powers knew that Mr. Chandler had committed a burglary at the West
19 Seattle residence.

20 109. The Commission therefore unanimously finds that based on a preponderance of the
21 evidence the Department did not meet its burden of proving that Officer Powers was present at
22 the scene and had knowledge of a residential burglary without taking any police action, writing a
23

1 report or notifying any supervisor in the department. The Commission therefore finds that the
2 fifth specification is not supported by a preponderance of the evidence.

3 **6. Officer Powers Misused City Equipment and Work Time by Providing**
4 **Unauthorized Transportation for His Personal Motives to Friends and Acquaintances on**
5 **Numerous Occasions Including to Locations Outside of His Assigned Patrol Area, Without**
6 **Obtaining Supervisory Approval, Logging Out or Noting Mileage When Transporting**
7 **Females.**

8 110. Officer Powers admitted that he used his patrol vehicle while on duty to transport
9 his girlfriends to their homes. He estimated that he did this approximately 35 times.

10 111. Some evidence would support a finding that the number of times Officer Powers
11 gave his girlfriends rides exceeds 35, but it is not necessary for the Commission to determine the
12 precise number. When asked whether he was a taxi service for workers in the bar industry,
13 Officer Powers replied, "I give a lot of rides, yes I do."

14 112. None of the 35 rides were approved by Officer Powers' supervisors. He did not
15 follow proper procedures by logging out via radio. Many of these rides were to locations outside
16 his precinct.

17 113. During the times that Officer Powers was giving his girlfriends rides home, he was
18 not present in his assigned sector and beat to patrol or be available to immediately respond to
19 calls.

20 114. Officer Powers maintained that providing rides for his girlfriends in a Seattle Police
21 patrol car while he was on duty was consistent with Department practices and policy.

22 115. The Commission disagrees. No witnesses, including those called by Officer
23 Powers, supported that contention.

1 116. None of the witnesses testified that such conduct was either common practice or
2 consistent with Department policy. The witnesses instead testified that it was inconsistent with
3 Department policy and practice for an officer to leave his assigned area (district/beat) while on
4 duty to repeatedly give his girlfriends rides home, and especially to do so without his
5 supervisor's approval.⁴²

6 117. Officer Powers argues that the Department's policy in effect at the time required
7 officers providing courtesy rides to log time and mileage in and out only when they were
8 transporting female prisoners, not female friends.

9 118. The Commission does not find that argument persuasive. While it may be disputed
10 whether Officer Powers was required to log in time and mileage for these rides, the Commission
11 finds that he was required to log out via radio and to obtain supervisory approval.

12 119. This case illustrates the legitimacy of such requirements. Sgt. Arata testified that
13 Officer Powers did not obtain his permission for the rides for Ms. Murphy and Ms. Bauer. He
14 also testified that he would not have approved the rides. Had Officer Powers followed
15 Department policy and procedures and sought supervisor approval for these rides, his conduct
16 might have come to light sooner and the Department would have had the opportunity to attempt
17 to correct that conduct.

18 120. The Department also urges the Commission to find that Powers' conduct violated
19 the City's Code of Ethics, SMC 4.16.070.2.⁴³

20 121. The Commission does not have jurisdiction to determine violations of the City's
21 Ethics Code, nor do we need to in order to resolve this specification.

22
23 ⁴² Ex. 36.

⁴³ Ex. 14.

1 122. The Commission unanimously finds that Powers' repeated pattern of using a patrol
2 vehicle and work time to transport his girlfriends home without informing or obtaining the
3 permission of his superiors constitutes a violation of Department policies, procedures, and
4 legitimate performance expectations. The Commission therefore unanimously finds that the
5 evidence is sufficient to support the sixth specification.

6
7 **7. Officer Powers Took a Female Civilian to a Restricted Area of the West Precinct
8 for Non-Official Reasons.**

9 123. Officer Powers admitted that he brought his girlfriend into the men's locker room
10 in the West Precinct while he retrieved his paycheck.

11 124. Officer Powers conceded that he did not have an official reason for taking his
12 girlfriend into the men's locker room. Powers in effect concedes the essential facts but argues
13 that he was off-duty at the time and that discipline was not appropriate.

14 125. The Department concedes the Officer Powers was off-duty at the time.

15 126. The Commission unanimously finds that the preponderance of the evidence does not
16 support a finding that Officer Powers violated a Department policy. The Commission therefore
17 finds that the evidence is not sufficient to support the seventh specification.

18 **8. Officer Powers Failed to Report to His Chain of Command or The
19 Individual Concerned That a Subject of a Criminal Investigation Had
20 Obtained The Home Address of a Prosecutor Involved in The
21 Investigation.**

22 127. Officer Powers testified that he did not believe it was necessary to reveal that Mr.
23 Chandler had obtained investigators' home addresses because Chandler had told Powers that he

1 had already told Detective Jennifer McLean and FBI Special Agent Rob Mertz that he was able
2 to track down their home addresses.

3 128. Officer Powers' testimony is hearsay. The Commission admits hearsay into
4 evidence but gives it only the weight it deserves under all the circumstances. There is no other
5 evidence corroborating Officer Powers' hearsay claim that Mr. Chandler had already disclosed
6 this information to the FBI investigators.

7 129. However, Officer Powers testified that Chandler told him that he had also obtained
8 King County Deputy Prosecutor Hank Corscadden's home address.

9 130. Officer Powers does not claim that Chandler had already disclosed to Corscadden
10 that he had obtained his (Corscadden's) home address. Mr. Corscadden was not among the
11 group of FBI personnel that was present when Chandler supposedly told them that he was able to
12 track down their home addresses.

13 131. Officer Powers admits that he did not inform Mr. Corscadden, anyone in the
14 prosecutor's office, or any member of the Department that Mr. Chandler had obtained Mr.
15 Corscadden's home address.

16 132. Officer Powers testified that he did not alert Mr. Corscadden or the Department for a
17 number of reasons. He suggested that he did not know that Chandler was a subject of an
18 investigation.

19 133. Officer Powers did acknowledge that Mr. Chandler was a witness against him,
20 cooperating with the FBI Task Force investigation. Additional evidence suggests Powers
21 suspected that Mr. Chandler was also the subject of a criminal investigation. Powers suggested
22 during an OPA-IS interview that his friend Mr. Chandler might have turned against him because
23

1 the FBI was threatening Chandler with jail time. Officer Powers' testimony demonstrates that he
2 at least suspected that Chandler might have been the subject of a criminal investigation.

3 134. Officer Powers also testified that he believed Mr. Chandler was harmless.
4 However, he also confirmed at the hearing that he had previously told OPA-IS investigators that
5 Mr. Chandler had "sociopathic pathologies."

6 135. Officer Powers had no reason to believe that the prosecutor was already aware that
7 Chandler had obtained his personal address. Nor did Officer Powers have any reason to believe
8 that Chandler had any justifiable purpose for obtaining the home address of a prosecutor.

9 136. The Commission majority concludes that the preponderance of the evidence sustains
10 this specification.

11 137. In summary, the Commission finds the preponderance of the evidence supports
12 Chief Kerlikowske's decisions sustaining part of Specification 1 (permitting use of illegal drugs
13 by others); Specification 2 (providing prescription medication); Specification 3 (improperly
14 disseminating criminal history information); Specification 4 (interfering with a domestic
15 violence investigation); Specification 6 (providing numerous rides home to his girlfriends); and
16 Specification 8 (failure to report that a subject of a criminal investigation had obtained the home
17 address of a prosecutor involved in the investigation).

18 138. The Commission finds that part of Specification 1 (use of illegal drugs while a
19 Seattle Police Officer), Specification 5 (failure to report a known burglary) and Specification 7
20 (unauthorized individual in restricted area) were not supported by a preponderance of the
21 evidence.
22
23

1 **6. Similar cases treated similarly**

2 139. The issues in this factor and the next are highly related. The issue here is whether
3 the Department treated similar cases of misconduct similarly in imposing the level of discipline.
4 The proper focus is on whether the misconduct viewed as a whole was treated similarly to other
5 comparable misconduct cases.

6 140. Chief Kerlikowske and Mr. McCarty both testified that in their experience they had
7 not encountered any case that was substantially similar to the set of facts presented in Officer
8 Powers' case. They testified that there had not been a previous case of like size and complexity
9 or one involving so many sustained findings. Furthermore, they testified that the case was
10 unique in the diverse nature of the sustained findings.

11 141. The evidence in the record supports that testimony. The record regarding other
12 disciplinary cases includes a series of short entries summarizing previous Departmental
13 disciplinary actions.

14 142. The summary log clearly illustrates on its face that no other officer has ever had so
15 many or such a variety of sustained findings.⁴⁴

16 143. The Commission finds that the Powers misconduct case has no comparable
17 Department precedent during at least the period covered by the summary log.

18 144. The summary log does not include much detail regarding other individual cases,
19 such as the particular facts of the misconduct, the context, or any aggravating or mitigating
20 factors such as whether the individual who was subject to the discipline accepted responsibility
21 for his or her misconduct. These are significant factors the employer can legitimately consider in
22 determining the appropriate discipline.

23 _____
⁴⁴ Ex. 29.

1 145. Claims that the employer discriminated in applying rules or punishment are often
2 considered an affirmative defense for which the employee, at least initially, bears the burden of
3 proof. Some arbitrators apply a two-part analysis. First, the employee bears the burden of
4 showing that his or her punishment was substantially different than what the employer imposed
5 in a comparable case. The employer must then justify that difference.⁴⁵

6 146. Although that analysis appears reasonable, the Commission finds that it need not
7 decide that legal issue here. Even assuming the employer bears the burden throughout, the
8 Department here has shown that there are no comparable disciplinary cases with which to
9 compare the Powers case.

10 147. Officer Powers points out that the other individual involved in the prescription
11 specification (the individual to whom Powers admits giving the Viagra) received only a letter of
12 reprimand while Officer Powers was terminated. Officer Powers argues the discrepancy proves
13 the Department was unfair in its disciplinary decision.

14 148. That argument misses an essential point – the proper comparison is between this
15 case as a whole and comparable cases. The comparability of the discipline is based on the
16 totality of the misconduct, not simply on any one finding of misconduct.⁴⁶

17 149. However, as already noted, the cases are not comparable. One incident of
18 improperly receiving prescription medicine is not comparable to the severity and variety of
19 misconduct the Commission had found Officer Powers committed.

21 ⁴⁵ For example, see Elkouri & Elkouri, *How Arbitration Works*, p. 996 (6th Ed. 2003).

22 ⁴⁶ If, for example, the Department had terminated Powers solely for the prescription incident (and given the other
23 officer only a letter of reprimand) it would be reasonable for the Commission to require the Department to explain
the discrepancy.

1 150. The Commission finds that there are no comparable situations in which an officer
2 received lighter punishment for comparable offenses and that the penalty in this case was not
3 discriminatory.

4 **7. Penalty**

5 151. In determining whether the discipline is proportional to the misconduct, the
6 Commission considers whether the penalty is reasonably related to the seriousness of the
7 employee's proven misconduct and the employee's record of service.

8 **A. Proven Misconduct**

9 152. The Commission finds that the Department has met its burden in showing that the
10 evidence is sufficient to sustain Specifications 1.B, 2, 3, 4, 6, and 8.

11 153. Those six specifications demonstrate that Officer Powers engaged in a wide-
12 ranging pattern of misconduct that included giving cocaine to his girlfriend, improperly
13 disseminating a prescription medication, inappropriately accessing and disseminating criminal
14 records history information, attempting to interfere in a mandatory domestic violence arrest for
15 personal reasons, misusing his patrol car and paid Department time to give his girlfriends
16 numerous rides home, and failing to report that the subject of a criminal investigation had
17 obtained the home address of a prosecutor.

18 154. The issue then is does that sustained pattern of misconduct justify termination,
19 giving proper weight to Mr. Powers' record of service.

20 155. The Commission finds that four of the specifications it has sustained are the most
21 serious (permitting others to possess drugs, interfering with a domestic violence arrest,
22 improperly obtaining and disseminating criminal history information, and improperly giving
23 personal friends repeated rides home).

1 156. The Commission finds that one of the sustained specifications (providing a
2 prescription to another) is less serious. If that were the only sustained specification, the
3 Commission might well have found that the offense was not just cause for termination.

4 157. However, the issue is whether the sustained specifications, taken together as a
5 whole, justify termination.

6 158. Officer Powers necessarily possessed the cocaine in order to give it to Ms. Murphy.
7 Possession and provision of cocaine is very serious misconduct and that single incident might
8 itself justify termination.

9 159. Officer Powers' nonchalant attitude toward asking another officer whether the
10 perpetrator of a blatant domestic assault could be released rather than facing a mandatory arrest,
11 effectively asking a colleague to violate the law, is also very serious and might itself justify
12 serious discipline, including termination.

13 160. Officer Powers had no legitimate law enforcement purpose to show Mr. Solo's non-
14 conviction data to his friends, the Chandlers. He did not appreciate that the investigation was
15 being handled by another law enforcement agency or that his actions not only violated
16 Department policy but could also have had an unknown impact on a homicide investigation. He
17 also appears to not appreciate how the misuse of these records could have adversely affect the
18 Department's access to the records. The access and dissemination of criminal history
19 information in violation of Department policy is also serious misconduct that could itself justify
20 termination.

21 161. Officer Powers' insistence that there was nothing inappropriate about regularly
22 driving his girlfriends home in a patrol car while on duty likewise shows a startling lack of
23

1 understanding as to the proper purpose of courtesy rides, as well as an arrogance about the
2 privileges of his office.

3 **B. Officer Powers' Record of Service**

4 162. Officer Powers' performance in his pre-employment police training is impressive.
5 However, he presented very little evidence of notably meritorious service during his nine years
6 in the Department. The most complimentary information from his former lieutenant was that
7 Officer Powers' *squad* was high performing. He did not single out Officer Powers as being a
8 particularly strong contributor to that achievement.

9 163. Officer Powers' record of service does not outweigh the seriousness of his proven
10 misconduct.

11 **VI. CONCLUSION**

12 164. The Commission unanimously finds that the penalty of termination is appropriate
13 given Officer Powers' wide-ranging pattern of misconduct. Officer Powers repeatedly, and in
14 several different contexts, violated a basic trust of his duty. He acted in his personal interests
15 and in the interests of his friends rather than in the public interest he was sworn to uphold.

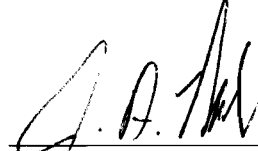
16 165. Officer Powers obtained cocaine from his friend Rob Chandler and gave it to his
17 girlfriend Ms. Murphy. He provided prescription Viagra to his friends at the Department. He
18 attempted to interfere with a domestic violence arrest on behalf of his off-duty employer, Mr.
19 Good. He improperly accessed and disseminated criminal history information to his friends the
20 Chandlers. He improperly used his patrol car as a private taxi service for his friends, especially
21 his girlfriends. He failed to notify any law enforcement personnel when he learned his friend Rob
22 Chandler had discovered a prosecutor's home address.

1 166. The pattern is clear. Officer Powers repeatedly abused his public trust for his, and
2 his friends', private interests. For all the reasons described above, the Commission unanimously
3 concludes that the termination of Officer Powers was for just cause.

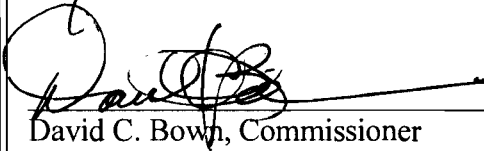
4 **ORDER**

5 Appellant John Powers' appeal is hereby dismissed with prejudice.

6 DATED this 12th day of October, 2006.

7 

8 _____
Joel A. Nark, Commission Chair

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10 _____
David C. Bown, Commissioner

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12 _____
Herbert V. Johnson, Commissioner

1 **Appendix I: Evidence before the Commission.**

2
3 **A. Testimony of Witnesses:**

4 SPD Lt. Greg Caylor, John Powers, SPD Officer Greg Neubert, Anji Murphy, Tacey Powers,
5 Deputy Prosecuting Attorney Henry Corscadden, SPD HR Attorney Mark McCarty, SPD Chief
6 Gil Kerlikowske, Major General George Burton Powers, USAF (ret.), SPD Sergeant Mark
7 Hazard, SPD Officer Mark Bisson, David Powers, Lori Powers Lawson, Rick Fike, Rick
8 Albertini, SPD Sgt. Jim Arata, SPD Officer Dave Hockett, SPD Officer Jon Huber, SPD Sgt.
9 Kevin Haistings, Rebecca Pena, SPD Lt. Dave Emerick, and SPD Officer Ron Cunningham.
10 Testimony of Maj. Gen. George Powers and portions of the testimony of John Powers was
11 admitted via stipulated summaries.
12

13 **B. Exhibits**

- 14 Exhibit #1 Disciplinary Action Report
15 Exhibit #2 Proposed Disciplinary Memorandum
16 Exhibit #3 Case Summary
17 Exhibit #4 Case Follow-up Form (telephone log)
18 Exhibit #5 SPD Manual Section 1.029 (without earlier versions)
19 Exhibit #6 SPD Manual Section 1.003
20 Exhibit #7 SPD Manual Section 1.337
21 Exhibit #8 SPD Manual Section 1.201
22 Exhibit #9 SPD Manual Section 1.352
23 Exhibit #10 SPD Operations Bureau Policies and Procedure Section 2.015

- 1 Exhibit #11 Washington State Criminal Records Privacy Act, RCW 10.97
- 2 Exhibit #12 RCW 10.99.030
- 3 Exhibit #13 RCW 69.41.010--RCW 69.41.030.
- 4 Exhibit #14 Seattle Municipal Code, Code of Ethics, SMC 4.16.070.
- 5 Exhibit #15 FBI Form 302 Statement attributed to Powers, admitted over objection of
- 6 Powers
- 7 Exhibit #16 IIS Statement of John Powers, May 31,2005, admitted over objection of
- 8 Powers
- 9 Exhibit #17 IIS Statement of John Powers, June 1, 2005.
- 10 Exhibit #18 IIS Statement of John Powers, July 22, 2005.
- 11 Exhibit #19 Criminal Records History of Solo
- 12 Exhibit #20 WSP Criminal History Inquiries Audit
- 13 Exhibit #21 Unit Log 05/04/01
- 14 Exhibit #22 Unit Log 11/12/2002 and Vehicle Record Check results.
- 15 Exhibit #23 Statement of Det. McLean ("Confidential Work Product")
- 16 Exhibit #24, FBI 302 Form of Chapman
- 17 Exhibit #25 Statement of Sgt. Allen (GPS data)
- 18 Exhibit #26 August 1, 1996 Cover Page to SPD Manual
- 19 Exhibit #27 SPD Operations Bureau Policies and Procedures Section 2.015 part 1.A.
- 20 Exhibit #28 SPD Manual Section 1.352
- 21 Exhibit #29 City's Answers to Interrogatories
- 22 Exhibit #30 Exhibit Not Offered
- 23 Exhibit #31 Letter of Corscadden to Lobsenz

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Exhibit #33 Powers Telephone records

Exhibit #34 III Print-Out

Exhibit #35 Deposition of McCarty with two exhibits, the partial statement of
Corscadden and “Confidential Work Product” (same as Ex. 23).

Exhibit #36 Operations Bureau Manual

Exhibit #37 Declaration of Marianne Rose

Exhibit #38 Ride-Along Policy

Exhibit #39 Summary of Major General George Powers’ Testimony

Exhibit # 40 Summary of John Powers’ Testimony