

Seattle
Community
Police Commission

Our city. Our safety.
Our police. Better together.

December 14, 2017

VIA EMAIL

Dear Mayor Durkan, Chief O'Toole, and Director Myerberg:

In August 2017, upon receiving a recommendation from the City Attorney's Office, the Seattle Police Department (SPD) announced its decision to settle Officer Cynthia Whitlatch's disciplinary appeal. The settlement revised Whitlatch's termination to retirement and allowed her to collect a significant sum in back pay. However, the settlement maintained the initial outcome that Whitlatch will not be eligible to work in law enforcement again.

When this resolution was announced, the back pay and shift to retirement in lieu of termination seemed to many community observers to back away from the strong repudiation of then-officer Whitlatch's conduct that had been expressed by Chief O'Toole's dismissal of Whitlatch.

To identify system weaknesses that contributed to this outcome that was distressing to many, the Community Police Commission (CPC) requested all files from SPD, the Office of Police Accountability (OPA), and the City Attorney's Office related to the Whitlatch investigation, recommended findings, appeal, and settlement.

City Attorney Pete Holmes stated that the City's ability to defend the discipline imposed in this case was significantly compromised by procedural issues under the Seattle Police Officer's Guild's (SPOG) Collective Bargaining Agreement (CBA).¹ He specifically referred to a provision that requires officers to be notified of a disciplinary decision within 180 days of a sworn supervisor's knowledge of the alleged misconduct. After reviewing the files related to the case and settlement, the CPC agrees that SPD was vulnerable to losing the appeal under this provision. Besides compromising the City's ability to sustain and defend discipline when it is otherwise appropriate and necessary, the supervisory failures that played into this outcome are potentially as important as the underlying misconduct of then-officer Whitlatch, and it is important that they not be repeated.

The OPA first received an intake for Mr. William Wingate's arrest in January 2015. Upon OPA completing its investigation, SPD filed a disciplinary action report for Whitlatch's termination right before the assumed deadline, in July 2015. However, OPA's investigation indicates that SPD supervisors and command staff became aware of the case as early as August 2014, which, under the current SPOG CBA, would mean that Whitlatch's disciplinary report may have been filed several months too late.

¹ Pete Holmes, "Why I Settled the Whitlatch Case," <https://news.seattle.gov/2017/09/01/pete-holmes-why-i-settled-the-whitlatch-case/>

The likely and great risk of the City moving ahead with the appeal process was Whitlatch winning her appeal and being reinstated as a Seattle police officer, with full back pay. Furthermore, Whitlatch was in line to be promoted to Sergeant. The City chose to negotiate a settlement in order to prevent Whitlatch from serving as a law enforcement officer again in Seattle or elsewhere—an objective the CPC agrees was paramount.

While the CPC understands with the City's assessment that Whitlatch was likely to win the appeal on this procedural issue, the CPC identified several gaps in policy and practice that may have led to this unsatisfactory outcome. One such gap, related to the 180-day investigative timeline, is addressed by the police accountability ordinance which was enacted in May 2017. The ordinance states that the 180-day investigative timeline begins only on the date OPA initiates or receives a complaint, which would have meant the notice of intended discipline to Whitlatch was timely, had the ordinance been in effect. However, by its own terms, provisions of the ordinance that require bargaining with the City's police labor unions do not go into effect until bargaining is completed. For the time being, pending resolution of the SPOG contract, the old 180-day provisions remain in effect. We therefore make the following proposals to deal with the 180-day timeline presently in place under the existing CBA.

The CPC recommends that the City:

1. Ensure that SPD supervisors receive meaningful discipline for failing to report misconduct.

Captain Pierre Davis and Assistant Chief Nick Metz failed to refer to OPA complaints made by community advocates regarding Whitlatch's misconduct, as required by Section 5.002 of the SPD Policy Manual, and no supervisor received meaningful discipline for this violation of policy. If rank and file line officers are to face discipline for failure to adhere to policy requirements, procedural justice requires that supervisors be held to the same standard. Failure to take these supervisory failures seriously undermines accountability values as well as the morale of line officers.

2. Ensure SPD and City employees inform complainants about the formal OPA complaint process.

Captain Pierre Davis and Assistant Chief Nick Metz not only failed to advance complaints made by community advocates, but also failed to inform them about how to file a formal complaint via OPA. Furthermore, many City leaders who were briefed about the incident soon after the arrest also neglected to inform the concerned public about the OPA complaint and investigation process. It seems that several community advocates were in contact with various City stakeholders and leaders, including CPC members, regarding Mr. Wingate's arrest as early as August and September 2014; yet according to one OPA interviewee, they were not made aware of the OPA complaint process until January 2015, when they read about it in the press.

City entities and leaders, including the CPC, should adopt and enforce a policy to always inform concerned members of the public about the formal OPA complaint process when approached by them.

3. Require OPA to re-calculate the 180-day timeline to discipline an SPD employee when it learns that a sworn supervisor had been notified of the complaint in question.

OPA learned early on in their investigation that community advocates had notified SPD supervisors about Whitlatch's possible misconduct in September 2014. OPA missed an

opportunity to re-calculate the 180-day timeline and expedite the investigation as soon as it learned that supervisors had known of the incident.²

- 4. Revise the OPA intake form to ask whether the complainant has notified an SPD employee regarding their complaint, or is aware of someone having notified an SPD employee regarding the incident for which they are submitting a complaint.**

By asking at intake whether a complainant has notified an SPD employee, OPA can determine as soon as possible whether or not an SPD supervisor is knowledgeable of the incident in question to accurately calculate the 180-day timeline and expedite the investigation, if necessary.

- 5. Ensure that the SPOG collective bargaining negotiations revise the 180-day timeline for disciplining an SPD employee to begin only after receipt or initiation of the complaint by OPA, not either OPA or an SPD supervisor, as provided for in the accountability ordinance.**

Under the current SPOG CBA, the 180-day timeline begins once OPA or an SPD supervisor knows about the complaint. OPA is responsible for investigating complaints and making recommendations on discipline to the Chief of Police, and should therefore be the sole trigger for the 180-day timeline. Implementing this change in policy, set forth in the accountability ordinance, would streamline the disciplinary process and mitigate confusion, and would eliminate the need to adopt recommendations 3 and 4 above. We understand that this provision of the ordinance remains outstanding pending the resolution of the bargaining process with SPOG.

The news of the settlement agreement re-opened wounds across Seattle, and has further intensified community distrust in police and in the disciplinary process for officers. It is imperative to address the identified gaps in policy and practice to ensure that officers like Whitlatch are appropriately disciplined and not excused due to technicalities. The community's trust in the City's police accountability and oversight system depends on these improvements.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission



Enrique Gonzalez, Co-Chair
Community Police Commission



Isaac Ruiz, Co-Chair
Community Police Commission

CC:

City Attorney Pete Holmes
Deputy Chief Carmen Best, Seattle Police Department
Brian Maxey, Seattle Police Department
Rebecca Boatright, Seattle Police Department
Ian Warner, Office of the Mayor
Tonia Winchester, Office of Police Accountability
Community Police Commission

² The OPA informed the CPC on 12/6/2017 that in a vast majority of cases, they now calculate the 180-day timeline as starting on the date of the incident in question in order to ensure the timely completion of their investigations.