

OPARB
Minutes of
Nov 7, 2012 Meeting
11:30 a.m. – 1:30 p.m.

Dale Tiffany, Chair	P	Joe Hawe, Member	P
Liz Holohan, Member	E	Claudia D'Allegrì, Member	P
Pat Sainsbury, Member	P		

Michael Pendleton, Consultant: P

*(Absent = A, Present = P, Excused = E, * = by phone)*

Today's agenda and minutes from Oct 24, 2012 were approved.

Meeting began at 11:45

New Business

Merrick Bobb the new Police Monitor would like to meet with the OPARB members. Linda will coordinate this for the group.

Agenda items #2 & #4 were combined - add the informed poll to raise issues. It was suggested that the whole board should hear what the core review was about

Case File Review Discussion

Michael led an exercise for the members who reviewed the case files. Question that were asked of the board members were "what did they see" and "what does it mean" after review of the case.

MP Reviewed notes from the most recent case review.

- Contents of file questioned
- Concern with OPA case review, going into a secure bldg, room was locked with the only way out was with a code, was given a very thick file with a short amount of time to review
- Case file should have been organized and standardized for ease of review
- Supervisors should know where their subordinates are
- Team concept , stereotypical, mismanagement
- Complex opportunity for management to be involved
- Initial action not criminal
- Cost of department, is OPA a risk management dept or an investigative department?

It was mentioned that the group should decide what they would review in the case files, having an independent OPA, perhaps better if there was full public disclosure of the files.

There was a concern of leading questions, how to. Is it reasonable to expect a sworn officer to investigate another sworn officer?

Policy Question - is employment law the best basis for defining "retaliation"?

TO DO

- 1) Follow up with James Egan
- 2) City Attorney
- 3) Add via P2 more items statements on there about who complained.

What to do next

Obligated to create a report on retaliation by OPA or people who report/complain to OPA.

Exercise force - racial discrimination

The board is not able to review open retaliation cases

None of the cases that were reviewed gave witness statements

Board policy becomes a dead-end when doing case by case, need to look at patterns

Can the group interview the officers?

If officer refuses what can be done.

OPA allows 3 yr old cases to be reviewed

Why investigating officer did A

Oversight body to review this

Is the group protected from certain disclosure for example case review discussions?

When the oversight body has questions, the questions should be asked in writing. Ethically should not review open cases - ethical issues

Is there a prosecutable file for the board to review?

1. Question of retaliation by OPA investigators
2. Biased policing

Focus on the topic of what is the definition of retaliation. Retaliation should be based on facts. Are retaliation cases identified by SPD? Consider this potential work plan item - to pursue the definition of retaliation. Report on retaliation and investigation

Follow up with the officer, what happened was the officer sent to training?

Is a subcommittee needed to move forward?

1. Review Lawyer case - Pat
2. City Attorney meeting Dale and Liz
3. Random review of cases on all 12 - summary to include disposition memo - Dale and Claudia

RECENT CASES

4. What has OPA done in wake of the case?
5. Better definition on retaliation - HOLD
6. Recommend changes to SPD website - HOLD

James Egan Notes, 11/27/2012

1. Mr. Egan represents Donald Fuller who alleges retaliation by OPA in the form of persuading the City Attorney to prosecute Fuller after Fuller had been told the City Attorney declined to file charges against him. Fuller then filed an OPA complaint, and OPA in the course of determining the status of the case lobbied the City Attorney to change their decision and file charges. Fuller was charged with obstruction and assault and convicted of obstruction. Once the role of OPA came to light, Egan moved to dismiss the case (and thus set aside the conviction). The City Attorney joined in the motion. The court dismissed the case. Fuller has now filed a claim for damages against the City.
2. Egan filed an OPA complaint against Kathryn Olson, Lt. Mark Kuehn, and Sgt. Caryn Lee for the alleged retaliation. Lee was the investigator for the OPA case and the person who contacted the City Attorney.
3. In the media coverage surrounding Egan's complaint against the three OPA employees, Egan said he believed Mr. Fuller's experience was not an anomaly and that he had documents showing a pattern of retaliation by OPA.
4. When the Review Board decided to examine the issue of retaliation by both OPA investigators and by SPD officers who are the subject of complaints to OPA, the Board decided to ask Mr. Egan for the case names/files that showed a pattern of retaliation and sent him a letter with that request.
5. Mr. Egan's first response, by email at 2:49 p.m. on Friday, Oct. 12, 2012, asked if OPARB had asked Kathryn Olson about this, because she should know. He suggested we should be conducting an internal inquiry, "not contacting a lawyer who established a single event and knows of others."
6. In an email later that day (3:48 p.m.), Mr. Egan referred OPARB to his website and the documents there from Fuller's motion to dismiss his case, specifically documents #53 and #55, and Exhibit #13 in #55. The document that is Exhibit #13 is Kathryn Olson's closing Certification in Fuller's OPA complaint case. Kathryn notes that the Auditor raised an issue about Caryn Lee's contacts with the City Attorney and that there had been "at least one other [case] in which OPA-IS had contact with the Prosecutor's Office with questions regarding charging decisions." Olson noted that in the future, if there was to be a decision to recommend prosecution of a complainant, that decision should be "reduced to writing and approved through the OPA chain of command."

7. There was no further contact with Mr. Egan until today. The Review Board assigned me to follow up with him to attempt to obtain any information he has regarding other cases of retaliation by OPA investigators or by SPD officers who have been the subject of an OPA complaint.
8. I began by introducing myself and explaining the composition and purpose of OPARB. I told him that although the Review Board has OPA in its name we have been trying to change the name to make it clear that we are not part of the police department or of OPA-IS. I explained we are more similar to the Auditor and that we are appointed by and report to the City Council. I explained that although we work on occasion with the Auditor and Director on projects to improve the OPA system, we also do independent oversight and issue independent reports, just like the Auditor. I told him we typically ask OPA for closed cases in a subject area that we are interested in, in this case retaliation, and that we contacted him in addition because we wanted to make sure we didn't overlook anything.
9. When I distinguished retaliation by OPA investigators, he said Kathryn Olson had identified two cases in her Certification. He did not respond when I asked about cases alleging retaliation by SPD officers who were the subject of OPA complaints. Rather he reiterated generally that he was receiving or had information about retaliation that he is looking into, but that he would not share it with us. He said it was up to OPA to investigate itself, and that he did not know us well enough to share information with us. He expressed concern about what might happen if OPA learned which cases he is interested in, even the possibility that files might be altered. He was quite clear that he would not provide any further information to OPARB at this time.

Pat Sainsbury



City of Seattle

Office of Professional Accountability Review Board

October 11, 2012

Mr. James C. Egan
Offices of James C. Egan, PLLC
605 First Avenue, Suite 400
Seattle WA 98104

Dear Mr. Egan,

The Office of Professional Accountability Review Board is interested in the allegations of retaliation raised by your client, Mr. Fuller, relating to his experiences with the Office of Professional Accountability. The Review Board is exploring cases that are similar to those of your client.

You have been quoted in the media saying that you believe that Mr. Fuller's experience was not an anomaly and that you have documents showing a pattern of retaliation by the OPA. Would you share the case names/files that you believe show a pattern or practice of retaliation? It would assist in our efforts.

Thank you in advance for your assistance. Please do not hesitate to contact either Dale Tiffany, Dale.Tiffany@seattle.gov, or Liz Holohan, Elizabeth.Holohan@seattle.gov if you would like to discuss this matter further.

We look forward to hearing from you.

Sincerely,

Office of Professional Accountability Review Board
Dale Tiffany, Chair
Claudia D'Allegri, Member
Joe Hawe, Member
Elizabeth Holohan, Member
Pat Sainsbury, Member

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