



Seattle Office of Inspector General

Interim OPA Auditor Final Report

An OIG-Commissioned Report

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Preface

The following report from the interim Office of Police Accountability Auditor (“OPA Auditor”), Francisco Rodriguez, was commissioned by the Office of Inspector General for Public Safety (OIG).

Under Seattle Municipal Code 3.28.860, the OPA Auditor was charged with preparing a semiannual report describing the OPA Auditor’s work, recommendations, and any findings. Specifically, the reports were to describe the files and records reviewed; describe cases where reclassification or further investigation was requested; summarize any issues, problems or trends noted; and cover any findings or recommendations for policy, procedure, or training.

During the time that the City of Seattle police accountability legislation (Ord 125315) was under deliberation and implementation, the scope of Mr. Rodriguez’s interim contract arrangement with the City did not include report-writing. As a result, this report spans Mr. Rodriguez’s entire interim tenure, from late 2016 to December 2018, when his duties fully transitioned to OIG staff.

Included in this package are the OPA Auditor’s report and an afterword by OIG that discusses next steps. Going forward, pursuant to Ordinance 125315 (3.29.270), OIG will produce an annual report that covers OIG review of the OPA complaint handling system starting from January 2019, including any concerns or trends in intakes, classifications, and investigations.

OIG thanks Mr. Rodriguez for over two years of dedicated work, the building of processes and relationships with the Office of Police Accountability (OPA), insights from his tenure, and his generous transfer of knowledge to the OIG staff taking over his responsibilities.

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OFFICE OF POLICE ACCOUNTABILITY AUDITOR'S REPORT

OCTOBER 2016 – DECEMBER 2018

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Introduction

BACKGROUND

On September 30, 2016, Mayor Ed Murray appointed me to serve as the Interim Auditor of Seattle's Office of Professional Accountability, now known as the Office of Police Accountability (OPA).¹ I was appointed on an interim basis as the City anticipated that new accountability legislation establishing an Inspector General model of oversight would be in place within a few months. Because my tenure was expected to be brief, I was asked to perform the oversight functions of the OPA Auditor but not to write a report. The process of adopting and implementing the new legislation took much longer than anticipated, however, and I ultimately served as Interim OPA Auditor for more than two years. Accordingly, the Office of Inspector General (OIG) has asked that I draft a report discussing OPA's performance over the past two plus years as well as the issues, problems, and trends I have noted during my work with OPA.

AUDITOR FUNCTION

The OPA Auditor provides oversight for OPA's handling of complaints against Seattle Police Department employees. The Auditor reviews OPA's classification of complaints and provides input as to classification decisions,² the scope of any subsequent investigation, and the substance of any supervisory action recommended. The Auditor also reviews completed investigations and evaluates whether the OPA investigation was objective, thorough, and completed in a timely fashion. The Auditor may require additional investigation when necessary. Finally, the Auditor may make recommendations for changes in policies or procedures and for additional training.

¹ I use the acronym "OPA" to refer to both the Office of Professional Accountability and the Office of Police Accountability.

² Classification is the process of determining whether a complaint warrants further investigation and potential discipline or should instead be referred to the employee's supervisor for follow-up and counseling that is non-disciplinary in nature.

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SCOPE OF REPORT

This report addresses the day-to-day functioning of OPA in processing, classifying, and investigating complaints as well the systems and procedures employed by OPA. It is not meant to be a comprehensive review of individual complaint investigations. I discuss individual cases only insofar as those cases illustrate a larger point. This report does not address the impact of the new accountability ordinance in any detail because the ordinance was not fully implemented during my tenure. This report also does not address the changes relating to disciplinary investigations contained in the most recent labor contracts negotiated between the City and its police unions. I did not observe any significant change in OPA practices based on the new contracts, and I understand that at least some aspects of these contracts remain subject to court review. Finally, this report does not include a comprehensive review of the findings and recommendations of prior Auditors. Many of the areas of concern identified in this report are ongoing issues noted in prior Auditor reports. For full context, I recommend readers review the past reports of the OPA Auditor which are available on the OPA website.

OPA Leadership

At the time of my appointment, the OPA Director was Pierce Murphy who had served as Director since 2013. In July 2017, Director Murphy stepped down and was replaced by Andrew Myerberg. This change in leadership resulted in a significant change in direction for OPA. Under Director Murphy's leadership, I found that OPA's decisions were often driven by concerns regarding workload and OPA's public image. By contrast, under Director Myerberg, OPA's decisions seem much more mission driven, and OPA has demonstrated greater transparency in its work. Additionally, under Director Murphy, OPA often took an adversarial approach to input from the Auditor, while Director Myerberg is much more collaborative in his approach.

OPA Organizational Structure

OPA is led by a civilian Director and Deputy Director. OPA's long-time Deputy Director left OPA in early December 2018. Prior to her departure, the Director focused on investigations, and the Deputy Director handled the classification process. While the Director reviewed every completed investigation, he was not generally involved in classification decisions.

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Accordingly, the Director did not normally review complaints classified for Supervisor Action (SA) or designated as contact logs. Similarly, the Deputy Director had been tasked with managing the classification process and had little to no involvement in the formal investigation of complaints. Under Director Murphy, the Deputy Director was given broad discretion in making classification decisions and appeared to perform her work with little oversight from the Director. Although Director Myerberg also delegated responsibility for the classification process to the Deputy Director, he exercised more oversight in this regard. Even so, until recently, Director Myerberg still did not review most classification decisions, only weighing in when specific cases were brought to his attention. This typically occurred when there was a disagreement between myself and the Deputy Director. Upon the departure of the Deputy Director, Director Myerberg temporarily reviewed all classification decisions. While there is great value to the Director being involved in the classification process, I do not believe the Director can add this responsibility to his already formidable workload on a permanent basis.

Director Myerberg has advised me that he is in the process of restructuring OPA management. On January 22, 2019, he elevated OPA's Compliance, Policy & Research Manager to the position of Deputy Director and plans to hire a second Deputy Director. As OPA re-evaluates its management structure, the division of labor between the Director and Deputy Director(s) should be revisited. The prior organizational structure created a silo system in which the Director did not participate in most classification decisions, and the Deputy Director played no role in the investigation of the most serious complaints. I recommend OPA move away from such a rigid approach. The Deputy Director should continue to have primary responsibility for classifications, but the Director should also be involved in classification decisions. Rather than have the Director personally review OPA's preliminary investigation of every new complaint, the Deputy Director could provide the Director with regular briefings on new complaints and collaborate with the Director regarding the appropriate classification, allegations, and named employees. Similarly, the Deputy Director should be involved in the investigation process, providing oversight and guidance to investigators and supervisors on pending investigations. This process would allow the Director to become familiar with cases at an early stage and to shape the scope and nature of the investigation. Integrating the Deputy Director into the investigation process would allow investigators to take advantage of the Deputy's familiarity with the cases from reviewing

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them at the time of classification and avoid breakdowns in communication that often occur when classification decisions are not adequately explained to investigators.

While OPA has civilian leadership, the investigation staff consists of Seattle Police Department sworn personnel, OPA has a captain, two lieutenants, and 8-10 sergeants. However, OPA is rarely actually staffed at those levels due to absences resulting from vacations, medical leaves, parental leaves, transfers, trainings, etc. The sergeants perform most investigative tasks, and they are supervised by the lieutenants and captain.

The division of labor between OPO's sworn officers has generally paralleled the division of work between the Director and Deputy Director. When I first assumed the role of Auditor, OPA took a bifurcated approach to processing complaints. OPA had two pools of investigators with one group handling preliminary investigations during the intake process and another group conducting formal investigations of cases classified for full investigation. This approach meant that one investigator would familiarize him or herself with the case, interview the complainant, review in-car video, police reports, 911 recordings, etc., only to then transfer the case to another investigator who would have to repeat these tasks. In March 2017, under Director Murphy, OPA changed its organizational structure to a more vertical model with all investigators handling both preliminary intake investigations and full investigations. Moreover, the same investigator now handles the case from beginning to end. I strongly support this change as it promotes continuity in the investigation and avoids duplicative work.

Classification Process

Every submission to OPA is reviewed as part of the intake process to determine whether it constitutes a complaint, and if so, whether the complaint is best addressed through a formal investigation or by referring it to a supervisor for follow-up. For every complaint, OPA completes a preliminary investigation to determine whether the complaint should be classified for further investigation or supervisor action (SA). OPA is contractually required to

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complete this initial evaluation of the complaint within 30 days of receipt.³ Prior to notifying the employee of the classification decision, OPA submits each case to the Auditor for review and input.

AUDITOR INPUT REGARDING CLASSIFICATION DECISIONS

The Auditor reviews the disposition of every complaint submitted to OPA. At the time of classification, the Auditor has the opportunity to provide input regarding the classification decision, the employees named, the allegations identified, and the scope of any investigation to follow. In reviewing classifications, I routinely recommended changes in classification category, named employees, and allegations. Although I did not keep precise records regarding my recommendations, my notes indicate that I recommended changes in approximately 350 of 2700 cases I reviewed for classification during my tenure as Auditor.

Under Director Murphy, OPA sometimes accepted my recommendations, but the response I received far more often was “thank you for your feedback” which meant OPA was rejecting my input. OPA often seemed to take an adversarial approach to my recommendations, as if I was intruding on OPA’s turf when making recommendations regarding classification decisions. At one point, I asked OPA to include my written objections to two classification decisions in OPA’s files. OPA refused, advising me that OPA’s files are OPA’s property, so I had no right to add anything to the file. OPA’s position in this regard seems to run directly contrary to the goals of promoting transparency and collaboration. This was just one of many examples of OPA being very protective of its public image and resistant to documenting Auditor feedback. OPA was very concerned about public disclosure. The Deputy Director repeatedly chastised me for adding comments about classification decisions in BlueTeam⁴ due to concern that my notes might be provided in response to public disclosure requests.

Under Director Myerberg, OPA was much more receptive to my recommendations. I continued to experience resistance from the Deputy Director, who was often overruled by the Director. This dissipated somewhat over time, however, and overall, OPA became much more

³ References to contractual obligations in this Report refer to the union contracts in effect during the bulk of the time I served as Auditor. I am aware that new contracts have been negotiated.

⁴ BlueTeam is an electronic routing system used by OPA and SPD.

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collaborative as to classifications, with OPA generally either accepting my recommendations or persuading me that OPA's approach was preferable.

CONTACT LOGS

OPA often receives submissions that do not allege misconduct by a Seattle Police Department (SPD) employee. These submissions are designated as "contact logs." Often misunderstood, "contact log" is not a complaint classification but rather reflects OPA's determination that the submission is not a complaint at all as that term is used by OPA.⁵ The types of contacts that typically fall into this category are crime reports, requests for copies of police reports, allegations against employees of another agency, and general expressions of displeasure about SPD that do not allege a policy violation by a specific employee. The "contact log" provides a useful safeguard by requiring that every phone call, email, web submission, and walk-in to OPA is documented and reviewed so that no complaint can be dismissed without any record of it having been made.

While the theory behind maintaining a contact log is sound, I found that under Director Murphy, OPA used the contact log designation in a manner that is directly contrary to its intended purpose. Rather than limiting the contact log designation to non-complaints, OPA effectively used the designation as a form of expedited dismissal of complaints that OPA viewed as baseless or not worth pursuing. This expanded use of the contact log sets a dangerous precedent and lacks transparency. Cases designated as contact logs by OPA are reviewed by the Auditor but are then simply shoved into a metaphorical drawer, never to be seen again. OPA makes no findings as to the merit of the allegations. Under Director Murphy, there was no systematic review of these cases by the OPA Director. A complainant checking the status of his or her complaint online received the following response: "Case Status: Complete. The contact has been reviewed and documented by OPA. No further action is needed. Thank you for contacting us." This is not a particularly satisfying response for a member of the public who has had a negative experience with an SPD employee. Indeed, complainants who are "contact logged" may reasonably conclude that their complaints have

⁵ The OPA Manual requires OPA to log every contact in order to maintain a comprehensive record, but "contact log" is not a classification category. The OPA Manual expressly provides that: "A case can be classified in one of two ways – Supervisor Action ("SA") or Investigation." OPA Manual at 16, 22.

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essentially been ignored. OPA's use of the contact log as a hidden mechanism for summary dismissal of complaints violates the rules for classification of complaints set forth in the OPA Manual and is inconsistent with OPA's mission.

OPA's misuse of the contact log under Director Murphy appeared to be driven largely by concerns about workload. The OPA Manual requires that OPA investigate any allegation of biased policing or unnecessary force.⁶ However, a full investigation involves a significant investment of time and resources, so when OPA received a bias or use of force complaint it viewed as groundless, the Deputy Director often characterized the complaint as a contact log in what I perceived as a misguided effort to manage OPA's heavy caseload. OPA's concerns about workload are valid, but as the entity charged with promoting accountability among SPD employees, OPA cannot itself embrace shortcuts that violate the OPA Manual and the accountability ordinance.⁷ If the current classification rules are not workable, OPA should take steps to change them rather than simply disregard them.

OPA rationalized its use of the contact log designation in a variety of ways. The Deputy Director frequently took the position that a citizen had not stated a complaint where, after a preliminary review, OPA found no evidence of a policy violation. This view mistakenly focuses on validity of the complaint rather than the substance of the allegations. A complaint is an allegation which, if true, would constitute a violation of SPD policy. That OPA views the complaint as untrue does not suddenly transform a complaint into a contact log. The Deputy Director also described what amounts to a legal standing requirement as part of OPA's definition of a complaint. Under Director Murphy, OPA declined to consider complaints made by individuals who were not involved in, or witness to, an incident, except if the complainant was a relative of the aggrieved party. I have found no basis for this standing requirement in the OPA Manual or SPD Policy, and I strongly disagree with it. If a member of the public files a complaint, OPA should accept and evaluate the complaint regardless of its source.

⁶ OPA Manual at 23.

⁷ The new accountability ordinance provides: "OPA shall have the authority to address complaints of police misconduct through investigation, Supervisor Action referral, mediation, Rapid Adjudication, or other alternative resolution processes, as well as through Management Action findings and Training Referrals." Ordinance 125315, SMC 3.29.100 (F). "Contact log" is not included as an available option for addressing complaints.

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While most of the complaints improperly categorized as contact logs appear, on preliminary review, to be without merit, that is not always the case. For example, OPA used its standing theory to dismiss as contact logs over 100 complaints from the public about a single, highly publicized use of force incident. The complaints raised legitimate issues about the use of force and de-escalation tactics, but none of the complainants was a witness to the incident. In another case, a citizen filed an excessive force complaint with OPA based on video of an incident that had recently been uncovered by a news outlet. This was an incident in which a woman had suffered a significant injury. I found the video concerning and believed that a sustained finding could be warranted depending on the results of OPA's investigation. However, OPA dismissed the complaint as a contact log over my strenuous objection. OPA explained that the complainant was not involved in the incident and that OPA had reviewed the use of force at the time of the incident and chosen not to initiate its own complaint. A complaint is a complaint regardless of whether the complainant personally observed the misconduct. While OPA is the arbiter as to the validity of complaints, it is not the gatekeeper and has no authority to decide what issues citizens may raise. Regardless of OPA's original decision not to initiate a complaint on its own, once a citizen filed a complaint of excessive force, OPA was required by its own policies to investigate the allegation and to make findings as to the merits of the complaint.

I objected to OPA's expansive use of the contact log designation on many occasions but met with little success until Director Myerberg was appointed. From the beginning, Director Myerberg was receptive to my concerns and open to changing OPA's practices with respect to contact logs. OPA no longer applies any type of standing requirement to complaints, and complaints are not to be designated contact logs based on a perceived lack of merit. Furthermore, Director Myerberg instructed the Deputy Director to notify him if I expressed disagreement with a classification decision so that he could independently review the matter. Implementation of this new approach required a significant change in culture as OPA staff, including supervisors and the Deputy Director, were entrenched in their misconceived view of contact logs as a means of summarily dismissing complaints. Change has been slow. Because contact logs seemed to be a frequent source of disagreement between myself and the Deputy Director, Director Myerberg eventually took over primary responsibility for reviewing proposed contact logs. Under Director Myerberg, I have continued to find cases improperly designated as contact logs, but this has occurred less and less frequently over time.

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Furthermore, OPA has been much more collaborative in discussing contact logs. Under Director Myerberg, when I have objected to OPA's characterization of a complaint as a contact log, OPA has been very open to my input. OPA has sometimes persuaded me that the contact log designation was appropriate. However, whenever I have maintained a strong objection, OPA has agreed to remove the contact log designation and instead classify the matter for investigation or supervisor action.

In addition to documenting non-complaints, OPA has also used the contact log designation for the disposition of "crisis" complaints. These are cases in which the complaint appears to be the result of the complainant's mental illness and clearly has no merit. For example, the complainant may allege that officers are monitoring her conversations through listening devices implanted in her body, that officers are conspiring to poison her food, or make other outlandish claims. I have not objected to treating such complaints as contact logs. Although doing so amounts to the type of summary dismissal I have regularly criticized, I ultimately concluded that an exception to the general rule was warranted to address these "crisis" cases. To qualify for this exception, I required that there be evidence of not only mental illness but also delusional thinking, as well as strong evidence that the complaint is without merit. I have never been entirely comfortable with this approach as it requires compromising the definition of a contact log and could be subject to abuse. I am also very much aware that the mentally ill can be witnesses to and/or victims of misconduct and that complaints should not be discounted merely because the complainant is mentally ill. However, OPA receives a surprisingly large number of crisis-type complaints that are demonstrably false. If classified as complaints, most would require investigation, resulting in a significant and unnecessary drain on OPA's resources. While recognizing the potential that creating an exception for these cases might allow OPA to dismiss valid complaints merely because the complainant suffers from mental illness, I reluctantly decided that Auditor review of each such case provided a sufficient safeguard against abuse. To the extent OIG moves away from comprehensive review of OPA cases and thus removes this safeguard, I recommend OPA and OIG carefully consider whether "crisis" complaints should continue to be treated as contact logs.

Because of the ongoing confusion about the definition of a "contact log," I recommend OPA consider revising the OPA Manual to clearly define the term and expressly discuss the appropriate use of the contact log designation. I also recommend OPA provide investigators and supervisors a checklist to assist them in determining whether an individual case falls into

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the contact log category. Finally, as discussed in more detail below, I recommend that OPA explore creating a summary dismissal option to provide a more transparent mechanism for the disposition of baseless complaints.

SUPERVISOR ACTION CLASSIFICATION

If, after preliminary investigation, OPA determines that any misconduct involved in an incident was minor, OPA classifies the case Supervisor Action (SA) and refers the matter to the employee's supervisor.⁸ The supervisor then reviews the complaint along with OPA's investigation and provides counseling as appropriate. Cases classified as SA cover a wide variety of policy violations but most frequently involve complaints regarding professionalism. Complaints about an employee's driving are also somewhat common. When a case is classified SA, OPA sends a Supervisor Action Notice (SAN) to the employee's supervisor summarizing the complaint and providing OPA's analysis of the issues raised. In some instances, OPA finds no apparent policy violations and instructs the supervisor to simply inform the employee of the complaint and advise him or her that no further action will be taken. In most cases, however, OPA identifies specific concerns with the employee's conduct and provides the supervisor with guidance as to the issues to be discussed with the employee. OPA may require that the complaint and counseling be documented in the Performance Appraisal System (PAS).

OPA has been inconsistent in its approach to requiring PAS entries. Initially, OPA required PAS entries for every SA. I raised concerns regarding this rigid approach as OPA was sometimes requiring a PAS entry for outrageous allegations that were unquestionably false based on video evidence. I pointed out that requiring supervisors to essentially put a note in the employee's personnel file about a demonstrably false accusation seemed unfair and counterproductive. Unfortunately, OPA then started foregoing PAS entries in a wide variety of cases and seemed to have no consistent policy as to when a PAS entry should be required. I have discussed this issue with OPA on an ongoing basis, and OPA has been receptive to my

⁸ OPA may also refer complaints that do not involve misconduct to supervisors for follow-up. OPA may do so, for example, to address general policy or procedural issues or to request a line supervisor to contact the complainant and discuss his or her concerns as a means of providing good customer service.

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input. While I still occasionally differ with OPA over whether a PAS entry should be required in a specific case, I now typically find that OPA requires a PAS entry when appropriate.

Nonetheless, to ensure consistency, OPA should adopt an internal policy regarding when to require a PAS entry as part of an SA. PAS entries are important in documenting complaints. Formal documentation of a history of similar complaints and prior attempts at counseling may be important in sustaining discipline in the future should the misconduct continue or become more serious. In my view, OPA should adopt a presumption that the complaint and any counseling will be documented in a PAS entry and forego that requirement only in exceptional cases where OPA finds that the complaint was clearly unfounded or that the alleged misconduct was so minor as to not warrant documentation.

It is important to note that supervisors have broad discretion in handling SAs. The SAN generally requires the supervisor to have a discussion with the employee and identifies issues that should be raised. However, OPA does not dictate the substance of the conversation or the content of the PAS entry. Supervisors can and do find that employees did nothing wrong and make PAS entries to that effect. SAs provide supervisors with the opportunity to use a complaint as a “teaching moment,” and I found that most SPD supervisors make good use of that opportunity. Occasionally, however, supervisors respond to complaints in a defensive fashion and end up re-enforcing negative behaviors. In some cases in which I found supervisor’s handling of an SA to be particularly inappropriate, I recommended that OPA return the SA to the supervisor with additional direction or raise concerns with someone higher in the chain of command. Under Director Murphy, OPA generally declined to follow my recommendations in this regard. Under Director Myerberg, OPA has been more receptive to this type of request, but I have also found that supervisor handling of SAs has improved such that I have rarely requested additional follow-up.

INVESTIGATION CLASSIFICATION

While OPA conducts a preliminary investigation of most complaints, only those involving allegations of serious policy violations are typically classified for full investigation. During the 30 days prior to classification, OPA conducts a preliminary investigation in order to determine whether a full investigation is warranted, identify the relevant employees and allegations, and preserve perishable evidence. OPA’s preliminary investigations of complaints were generally

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fairly thorough. However, on occasion, it was evident that investigations were rushed and the resulting work-up was inadequate.

One recurring problem was in interviewing the complainant. When complainants were readily available, OPA routinely interviewed them. However, when OPA encountered difficulty contacting the complainant, OPA's follow-up efforts were often lacking. Furthermore, OPA's interviews of complainants at intake were often cursory. This is somewhat understandable given the preliminary nature of the investigation. However, OPA rarely conducted follow-up interviews, so the brief interview of the complainant at intake was often the only interview OPA conducted. Finally, OPA frequently made no attempt to interview complainants until fairly late in the intake process. In doing so, OPA often missed its only opportunity for an interview. Many complainants are in custody at the time the complaint is filed and readily available for an interview but then get released in the following days or weeks. Other complainants are transient and/or lack funds to keep phones active so that by the time OPA attempts to reach them, their contact information is no longer valid. Director Myerberg recently directed investigators to attempt contact with civilian complainants within a few days of receiving the complaint. OPA should take steps to ensure investigators are following this guidance and revise the OPA Manual to include a specific time frame for initial contact with civilian complainants.

EXPEDITED REVIEW

OPA receives a large number of baseless complaints. The allegations often involve serious policy violations such as excessive force, bias, or even criminal conduct. The OPA Manual and the governing ordinance require that such allegations be classified for investigation. However, conducting a full investigation of complaints that are obviously groundless would be a waste of OPA's limited resources. OPA has long struggled with how to deal with such cases. Under Director Murphy, OPA often used the contact log designation as a shortcut to dispose of these complaints. However, as discussed above, such shortcuts are subject to abuse and lack transparency. Accordingly, in an effort to maintain fidelity with the OPA Manual without forcing OPA to conduct unnecessary work, my predecessor as Auditor adopted an approach called "expedited review."

Expedited review amounts to an advisory opinion from the Auditor that the investigation conducted thus far is sufficient. Expedited review generally means that OPA will not

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interview the named employees. As this precludes discipline, expedited review is only conducted in cases in which an unfounded finding is clearly anticipated. When OPA concludes that a complaint is obviously unsubstantiated and believes that no further investigation is necessary, OPA requests Auditor approval for expedited review. This typically occurs at the time of classification. I approved expedited review only when, in my opinion, the investigation already conducted clearly demonstrated that the complaint had no merit. The investigation needed to be dispositive; I generally required video evidence showing that the allegations were false. Where a complaint seemed baseless but there was no definitive evidence available to confirm this, I declined to approve expedited review.

Expedited review is an informal process created by the Auditor and OPA as a practical solution for addressing serious allegations of misconduct that are demonstrably false. Expedited review is consistent with the OPA Manual's requirement that OPA classify allegations of serious policy violations for investigation, and it provides transparency in that the OPA Director issues findings just as he would in any other case. Expedited review also allows OPA to allocate its limited resources more appropriately. However, expedited review is an imperfect solution. While issuing formal findings in expedited cases promotes transparency, it also involves a substantial amount of work for the OPA Director. This is certainly not the best use of the Director's time, and I question whether formal findings are necessary given that OPA's preliminary investigation already documents why OPA concluded the allegations lacked merit. However, OPA currently has no other option under the OPA Manual and relevant legislation. If OPA continues with the expedited review approach, I recommend OPA consider using an abbreviated Director's Certification Memo (DCM) for expedited cases that does not require the same level of detail as full investigations. In the long term, I recommend OPA explore creating a formal process for summary dismissal of frivolous complaints. This process would require safeguards and should include some explanation of the basis for dismissal but need not involve the same formal findings and review by the chain of command as is required for regular OPA investigations. OPA will likely be unable to implement such a change without revisions to the accountability ordinance. Accordingly, OPA should work with OIG and the CPC to draft proposed changes that would permit some form of summary dismissal for complaints that are obviously frivolous.

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Investigation Phase

OVERVIEW

After a case is classified for full investigation at the 30-day mark, the Auditor typically does not see the case again until OPA formally submits its completed investigation for review. The Auditor has no defined role during the investigation phase of the case and is rarely consulted. When the assigned investigator considers the investigation complete, the investigator prepares a Case Summary that collects and summarizes the relevant evidence and explains the conclusions the investigator has drawn from the evidence. After completing the Case Summary, the investigator submits the case to an OPA Lieutenant for review. The Lieutenant then forwards the case to the Auditor for certification. The Auditor reviews the completed investigation to determine whether it is ready for certification, and if so, whether the investigation was timely, thorough, and objective. Rather than proceed with certification, the Auditor may recommend further investigation. If OPA objects, the Auditor must decide whether to move forward with certification of the investigation as is or require OPA to perform additional investigation.

QUALITY OF INVESTIGATORS

SPD sergeants investigate complaints filed with OPA. While there have been exceptions, overall, I have been impressed with the quality of work produced by OPA's investigators. I have worked with a wide variety of investigators in the past and found OPA's investigators to be well above average in quality. Some of OPA's investigators are amongst the best I have seen. Two investigators who are no longer assigned to OPA consistently produced exceptional work, and two of OPA's current investigators also consistently conduct very thorough investigations. OPA's other investigators were generally strong as well, but these four stood out. OPA would be wise to take advantage of the experience of former OPA investigators who excelled at their work by inviting them back to OPA to share their expertise with current staff.

SUPERVISION OF INVESTIGATIONS

OPA lieutenants are responsible for direct supervision of the investigators. Consistent with a longstanding recommendation of the prior Auditor, Director Myerberg now requires investigators to meet with a supervisor for an investigation planning meeting at the outset of each investigation. The supervisors help develop and approve the investigation plan and

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provide guidance to investigators as the investigation progresses. When the investigator completes the investigation and Case Summary, the case is forwarded to one of the lieutenants for review.

In my opinion, OPA supervisors do not adequately review and evaluate investigations for thoroughness and objectivity prior to submitting cases for Auditor review. With respect to completed investigations, OPA supervisors seem to perform a purely administrative function in forwarding cases for Auditor review. I am not privy to the inner workings of OPA and thus cannot know for certain whether supervisors conduct an in-depth review of completed investigations prior to submitting each case for certification. However, I saw little evidence of any significant quality control provided by OPA supervisors.⁹ OPA supervisors frequently forwarded cases to me with obvious deficiencies such as no attempt or inadequate attempts to interview the complainant and/or key witnesses. Supervisors should have been catching and correcting basic flaws such as these before cases were submitted to the Auditor. Supervisors do not seem to take any ownership of the cases they review. Director Myerberg and the OPA Captain should have higher expectations of the investigator supervisors and hold them accountable for the quality of investigations they supervise. Toward that end, I recommended that OPA consider a more substantive review process including requiring some sort of documentation of the supervisor's review of the completed investigation. This could be an open-ended narrative, a checklist, and/or a certification confirming that the supervisor has carefully reviewed the investigation and finds it to be thorough and objective. Whatever the format, OPA should require supervisors to formally sign off and take responsibility for the quality of the investigation.

CERTIFICATION

Prior to issuing recommended findings, OPA is required to submit completed investigations to the Auditor (now OIG) for review. The Auditor reviews each case to determine whether the investigation was timely, thorough, and objective. In reviewing cases for certification, I focused primarily on the Case Summary which generally provides a comprehensive description of the investigation. However, I often also reviewed primary materials such as

⁹ Supervision improved recently when Director Myerberg made a staffing change.

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body-worn video and interview transcripts to gain a more complete understanding of the incident and OPA's investigation.

From the time of my appointment in September 2016 through the end of 2018, OPA submitted 1049 completed investigations to me for Auditor review. I issued certification memos in 1031 cases. I did not make a certification decision in 18 cases because, as of December 31, 2018, OPA had not yet completed the follow-up investigation I recommended.

Overall, I certified 66.7% (688 of 1031) of the cases I reviewed as timely, objective, and thorough. This represents a significant change from 2016. In 2016, my predecessor certified 90.7% of the cases she reviewed. The prior Auditor reviewed 337 cases for certification in 2016. Of those, 295 cases were certified while 30 were not and 12 were pending further investigation at the time of her report.¹⁰ While the 24% decline in the certification rate as compared to 2016 is substantial and concerning, in my opinion, this change reflects a difference in philosophy between myself and the prior Auditor rather than any reduction in the quality of OPA's work.

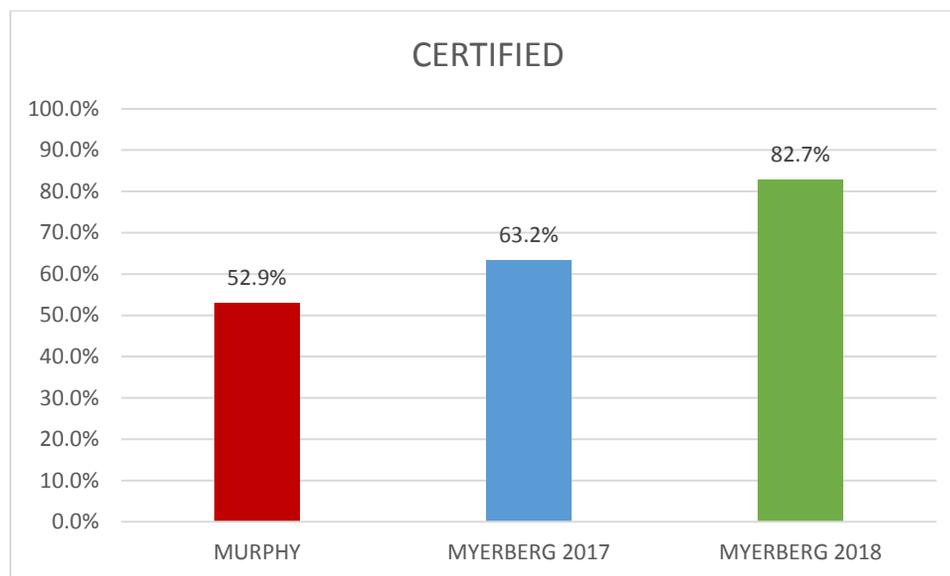
During my term as Auditor, certification rates have markedly improved over time. I reviewed 395 cases that were initiated during Director Murphy's tenure¹¹ and certified only 52.9%. I reviewed 636 cases that were initiated after Director Myerberg was appointed and certified 75.3%, an increase of over 22%. The positive trend is even more evident when looking solely

¹⁰ Report of the Independent Auditor for the City of Seattle Office of Professional Accountability, January - December, 2016, at p.8.

¹¹ Analyzing data relating to Director Murphy's tenure is complicated by the fact that a significant number of cases initiated during his administration were completed after Director Myerberg took over. I considered various options for evaluating cases that overlapped the two directors but found that no method for assigning responsibility for completed investigations was perfect. Rather than exclude a large number of cases from the analysis, I decided that the fairest method of dividing the cases was based on the date of the complaint. This choice did not have any appreciable effect on the data regarding Director Murphy's certification rate. For cases that were both initiated and completed on Director Murphy's watch, the certification rate was 56.2%, a difference of less than 4% from the 52.9% certification rate for cases initiated during his time at OPA.

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at cases initiated in 2018. For 2018 cases, I certified 82.7%. The chart below illustrates the trend in certification rates:



The certification rate has improved almost a full 30% under Director Myerberg's leadership.

Although the prior Auditor discussed individual investigations and explained why each was not certified, I found it impractical to do so due to the sheer number of investigations involved. I declined to certify a much larger number of investigations, 343, as compared to 30 investigations that were not certified during the period covered by the prior Auditor's last report. Rather than detail the deficiencies I found in 343 individual investigation, I focused instead on the recurring problems that prevented certification in the cases I reviewed.

TIMELINESS

For represented employees, OPA has a contractual obligation to complete investigations within 180-days (plus any extensions) or no discipline can be imposed. The OPA Manual provides that the default timeline for completing an investigation is 60 days after classification, or approximately 90 days after OPA receives the complaint. In practice, OPA seldom completed a full investigation within 90 days of receiving the complaint. Indeed, OPA rarely begins its formal investigation within the first 90 days. Most completed investigations I reviewed sat idle for 1-3 months at the outset of the investigation phase of the case. This appears to have been primarily due to caseload pressures. Investigators are unable to keep

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up with the workload and thus prioritize cases with approaching deadlines and cases in which a sustained finding is anticipated. Delays in initiating investigations are problematic because memories fade over time, perishable evidence may be lost, and witnesses may no longer be available.

For purposes of Auditor certification, in order for an investigation to be deemed timely, I required OPA to submit the case for Auditor review a minimum of 30 days prior to the 180-day disciplinary deadline. I set this standard in order to ensure OPA allowed sufficient time for Auditor review, any additional investigation that may be necessary and to process the case for possible disciplinary action. Auditor review typically requires 7-10 days. Follow-up interviews of SPD employees require at least 5 days' notice under the union contracts. Processing a case for potential disciplinary action typically requires 7 days. Given these timelines, I determined that submitting a case for Auditor review with less than 30 days remaining created an unacceptable risk of missing the disciplinary deadline.

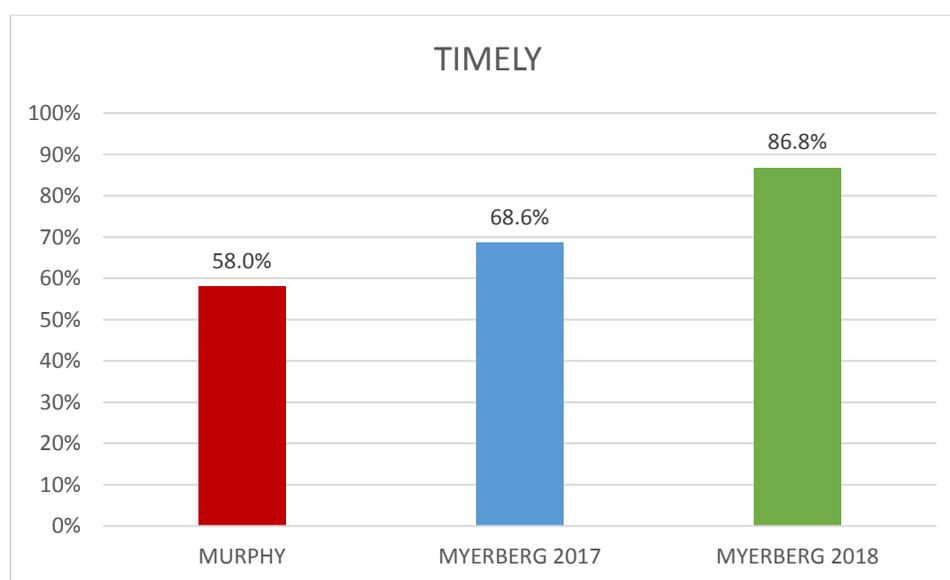
OPA initially balked at the timeliness standard I utilized. Under Director Murphy, OPA advocated a results oriented approach, with an investigation being considered timely if OPA submitted the case for Auditor review prior to the disciplinary deadline. Unless OPA anticipated a sustained finding, OPA did not view itself as being under any deadline to complete the investigation. I strongly disagree with this approach. While it makes sense to prioritize cases that appear likely to be sustained, OPA cannot always anticipate the results of an investigation and should not ignore deadlines based on a preliminary assessment of the facts. Furthermore, both complainants and named employees deserve closure and should not have to wait indefinitely for a complaint to be resolved. In reviewing data on completed investigations, I found 31 cases initiated under Director Murphy that were completed more than a year after the complaint was filed. This is twice the time allowed under union contracts and four times the default standard set forth in the OPA Manual. Four cases took more than two years to complete, and one took more than 3 years.

Under Director Myerberg, OPA has made completing cases in a timely fashion a priority. OPA has accelerated internal timelines in order to complete investigations earlier and allow time for follow-up investigation if needed. Though I understand this change initially met with some resistance within OPA, it now appears to have been fully implemented and accepted. Director Myerberg has also made clear that all cases are to be completed on the same

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schedule without regard to whether the allegations are likely to be sustained. As a result of these changes, OPA investigations are now much more likely to be completed in a timely fashion.

Overall, OPA completed 71.5% of the investigations I reviewed in a timely manner. However, OPA improved dramatically in this regard over time. Only 58% (229 of 395) of the cases initiated under Director Murphy were completed in a timely manner, while 79.9% (508 of 636) of the cases initiated under Director Myerberg were timely, an improvement of 21.9%. Moreover, the timeliness of investigations has improved steadily under Director Myerberg. For 2017 cases initiated under Director Myerberg, OPA improved more than 10% to a rate of 68.6% timely. For 2018 cases, OPA improved almost another 20% to achieve a rate of 86.8% timely. Thus, in approximately a year and a half, Director Myerberg improved OPA's timeliness rate by just short of 30%. The chart below illustrates OPA's improvement over time.



In striving to complete 100% of investigations in a timely fashion, OPA faces several obstacles. First, OPA appears to need additional investigators. OPA investigations routinely stall for 1-3 months after classification because investigators have a backlog of work and must prioritize cases with earlier deadlines. These delays force investigators to work on a compressed timeline, making it difficult to complete investigations in a timely fashion.

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Second, OPA needs to develop a systematic approach to requesting extensions of the 180-day deadline. When OPA's investigation is delayed due to factors beyond OPA's control, such as when a witness is on sick leave, OPA is entitled to an extension of the disciplinary deadline so long as OPA requests the extension of the deadline before time expires. Delays beyond OPA's control occur quite frequently, but OPA's approach to requesting extensions is poor. OPA investigators often fail to discover and/or recognize the need for an extension in a timely fashion. OPA supervisors often fail to follow-up when investigators notify them of the need for an extension. Where the length of the delay is unclear, OPA often receives an extension for a specific period of time, such as 30 days, and then fails to request additional extensions when the initial period expires. The Seattle Police Officers' Guild (SPOG) tends to take a very narrow view as to the appropriate length for extensions, and OPA generally fails to push back. In my opinion, OPA is often entitled to a longer extension of time than SPOG offers. All of these factors result in less time for OPA to complete its investigation, and at times, this prevents OPA from completing its investigation in a timely manner.

Third, OPA needs to implement a system for tracking cases returned by the Auditor for further investigation. OPA appears to have a fairly reliable system for tracking cases from the filing of the complaint through the initial submission of the completed investigation for Auditor review. However, cases in which I recommended further investigation often seemed to veer off track and become lost or forgotten. Sometimes, supervisors did not convey my recommendations to the assigned investigators. At other times, I suspect the supervisor or investigator concluded the recommended follow-up could not be completed before the disciplinary deadline, so the case was put on the back-burner while the investigator worked on more pressing cases. The following are examples of cases OPA seemingly lost track of after I recommended further investigation:

- 2015OPA-1395 – Officer criminally charged with assault
- 2016OPA-0006 – Recently graduated officers put on the street despite firearms' instructors reporting they flunked training. One of the officers was then involved in a shooting
- 2016OPA-0793 – Alleged chokehold, failure to de-escalate, and lack of probable cause to arrest

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- 2016OPA-1405 – Alleged excessive force against woman who was 8 months pregnant during arrest for pedestrian interference and obstructing
- 2017OPA-0059 – Failure to report misconduct to OPA

All of the above investigations began under Director Murphy and continued under Director Myerberg. As of December 2018, each case had been pending for two years or more and OPA had not yet completed the investigation. I understand OPA finally completed the investigation in some of these cases in January 2019.

OPA has taken steps to address this problem. For example, Director Myerberg asked me to begin copying the assigned investigator when sending recommendations for further investigation instead of relying on OPA supervisors to convey the information. OPA also appears to be tracking disciplinary deadlines on all cases more closely. However, it is not enough for OPA to keep such cases on its radar and loop investigators in on Auditor recommendations. OPA must also have a monitoring system to ensure the relevant supervisor and investigator are actively working on the follow-up investigation so that it can be completed well in advance of the disciplinary deadline.

Whenever OPA fails to complete its investigation within the time permitted by ordinance, the OPA Director is required to provide a written explanation to the Mayor, City Council, City Attorney, OIG, and CPC. This requirement provides a measure of transparency when OPA misses deadlines and holds OPA accountable for completing investigations in a timely fashion. However, it also exalts timeliness over thoroughness and objectivity. OPA is not required to provide any explanation when the Auditor (now OIG) concludes the investigation is not thorough or objective. This process institutionalizes a presumption that timeliness is more important than any other aspect of the investigation and gives OPA a strong incentive to end investigations prior to the deadline regardless of whether the investigations are complete. I recommend the relevant stakeholders consider whether OPA should also be held accountable when OIG finds OPA investigations are not thorough or objective. Rather than address each case upon completion, I recommend OPA be required to provide relevant stakeholders with a quarterly report that includes (1) all OIG certifications which concluded that OPA's investigations were not thorough or objective and (2) OPA's response to OIG's findings.

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THOROUGHNESS

Auditor Expectations for a Thorough Investigation

The Auditor also reviews each completed investigation to determine whether OPA's investigation was thorough. Whether an investigation was thorough is somewhat subjective. For me, a thorough investigation does not necessarily require OPA to interview every possible witness. At the same time, OPA's investigation is not thorough merely because OPA interviewed a bare minimum of witnesses and gathered what OPA believed was sufficient information to make a finding. Thorough means more than just sufficient and less than exhaustive. What constitutes a thorough investigation very much depends on the particular facts presented. In evaluating whether each investigation was thorough, I considered not only what information OPA needed in order to make accurate findings as to the merits of the allegations but also what steps OPA needed to take in order for the public and the complainant to have confidence in the investigation.

A thorough investigation will almost always include an interview of the named employee(s). OPA regularly interviews the named employees because OPA is contractually required to do so and because OPA has the ability to order employees to appear and submit to interviews. OPA is sometimes unable to interview a named employee because the employee has left SPD and will not agree to provide an interview. OPA also does not interview named employees where an investigation has been approved for expedited review. In these instances, video and other evidence typically provide conclusive evidence that the allegations lack merit, so interviewing the named employee(s) would be a waste of time and resources.

A thorough investigation will also typically include an interview of the complainant. In some instances, the complainant need not be interviewed because the complaint was generated internally, and the complainant has no personal knowledge of the alleged misconduct and no stake in the outcome of the complaint. In most cases, however, a thorough investigation requires that OPA interview the complainant so that OPA fully understands the complainant's allegations, desired outcome, and any information he/she possesses relevant to the investigation. Interviewing the complainant is also important to the credibility of OPA's investigation and avoiding criticism that OPA's investigation was one-sided. Where OPA made diligent efforts to contact the complainant but was unable to secure an interview, I considered the investigation thorough despite the lack of an interview with the complainant.

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OPA generally attempts to interview the complainant during its preliminary investigation at intake. However, OPA is often unsuccessful. Although the OPA Manual requires “sustained and reasonable efforts” to interview civilian witnesses, OPA’s efforts to contact the complainant often begin and end at intake, with no additional attempt at contact over the remaining months of the investigation. In my review of OPA’s completed investigations, failure to make sufficient efforts to interview the complainant has been a chronic problem. Sometimes OPA lacks valid contact information and has no other avenues to pursue in attempting to contact the complainant. However, in many cases, OPA made only minimal attempts at contact over a very brief period of time. OPA often attempted to call and/or write to the complainant at intake but failed to check whether the complainant was in custody even though the complainant had been booked into jail in connection with the incident giving rise to the Complaint. In cases where OPA failed to interview the complainant, I often found complainants were in custody at the time OPA attempted contact and sometimes remained in custody for months afterward without OPA ever discovering they were in jail. It only takes seconds to check whether the complainant is in jail, but OPA investigators often failed to do so even after I had raised the issue repeatedly. OPA’s failure to make adequate efforts to interview civilian complainants was most pronounced under Director Murphy but the problem persisted under Director Myerberg. Over time, however, Director Myerberg has addressed this issue, and OPA investigators now routinely check the jail when attempting to locate complainants. Investigators also now generally make follow-up attempts to contact the complainant during the investigation phase of the case where OPA was unable to obtain an interview at intake.

A thorough investigation should include interviews with any known civilian witnesses. OPA should interview any witness who may have first-hand knowledge of the alleged misconduct, but it is particularly important to interview civilian eyewitnesses. OPA consistently interviews named employees and employee witnesses, but OPA is less consistent about interviewing civilian witnesses. This is explained in part by the fact that OPA is contractually required to interview named employees, and all SPD employees are readily available to OPA. OPA sometimes simply overlooks civilian witnesses who are mentioned in passing in the complainant’s interview or listed in a police report without explanation. OPA sometimes decides interviewing such witnesses is unnecessary because they already provided written statements at the time of the incident or because the incident is largely captured on video

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and additional interviews will not likely change the outcome of the case. Whatever the reason, when OPA interviews only police witnesses and does not even attempt to interview civilian witnesses, the complainant and the public may reasonably question the objectivity of OPA's investigation. In making decisions about the scope of its investigation, OPA often focuses exclusively on the disciplinary aspect of the investigation process without considering the investigation's role in promoting public trust in the accountability system regardless of whether discipline is imposed. Appearances matter, and even if OPA believes it already has sufficient information to proceed with findings, interviewing civilian witness can be important to the credibility of OPA's investigation. The failure to interview civilian witnesses was a persistent problem under Director Murphy but has become progressively less so under Director Myerberg.

A thorough investigation includes an ongoing attempt to locate additional witnesses and evidence. OPA identifies witnesses based on the available documentation and may also identify additional witnesses or evidence during the course of its investigation. However, OPA does not systematically ask witnesses if they are aware of other witnesses or evidence OPA should consider. The OPA Manual specifically directs investigators to inquire about the existence of other relevant information or witnesses before concluding an interview. However, in practice OPA investigators rarely do so. The OPA Manual also instructs investigators to verify contact information and let the witness know that a follow-up interview may be necessary. Civilians are to be asked not to talk about the interview or the incident with others. I rarely see these issues addressed in interviews. OPA should have a script or checklist for investigators to use at the conclusion of each interview to ensure that these issues are consistently addressed.

In addition to witness interviews, a thorough investigation includes a review of relevant documents and video. OPA routinely completes a review of body-worn video (BWV) and/or in-car video (ICV) and the incident report (GO) during the intake process. The review of video is usually fairly comprehensive, and the original video and reports are included in OPA's file. One recurring issue I noted was that investigators tended to rely on the video summaries created at intake and did not go back and re-evaluate the video when warranted by subsequent developments in the investigation. A thorough investigation also includes a review of any private video. OPA was not consistent about attempting to locate and review private video. Such evidence is considered perishable because surveillance video is often

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deleted after a short retention period, and personal cell videos may be deleted at any time, or the person in possession of the video may become unavailable. OPA sometimes failed to make efforts to secure such video evidence in a timely fashion only to find the video was no longer available. This also happened with holding cell videos, precinct videos, 911 recordings, and radio traffic.

Input at Classification

When reviewing cases at the time of classification, I often made recommendations regarding the scope, direction, and/or content of OPA's investigation. I sent these recommendations to the Deputy Director via email, and I expected they would be communicated to the appropriate investigator and/or supervisor. Unfortunately, I often found that there was a breakdown in communication within OPA with respect to the input I provided during the classification process. Where I recommended OPA complete specific tasks such as interview particular witnesses or search for video, I sometimes received a completed investigation months later with no mention of these tasks. Similarly, when the Deputy Director added or changed allegations or named employees based on my input, I sometimes found that no one had shared the reasoning behind these changes with the assigned investigator. As a result, the investigator did not cover the correct issues during interviews.

This breakdown in communications was due in part to the fact that OPA chooses not to include emails correspondence to/from the Auditor in its files. Under Director Murphy, OPA expressed great resistance to documenting Auditor input in what I view as a misguided effort to protect OPA's image. Although Director Myerberg has embraced a different philosophy, OPA still only selectively includes Auditor emails in its files. I am ambivalent about this practice. Maintaining a degree of privacy with regard to email correspondence between the Auditor and OPA promotes a more vigorous and candid exchange of ideas. However, the benefit of that exchange is lost when the results are not communicated to the investigator actually working the case. Director Myerberg anticipates that communicating with OIG directly through IAPro, the case management software used by OPA, will alleviate this problem, but I remain concerned that OPA investigators will not consistently review the messages supervisors exchange with OIG.

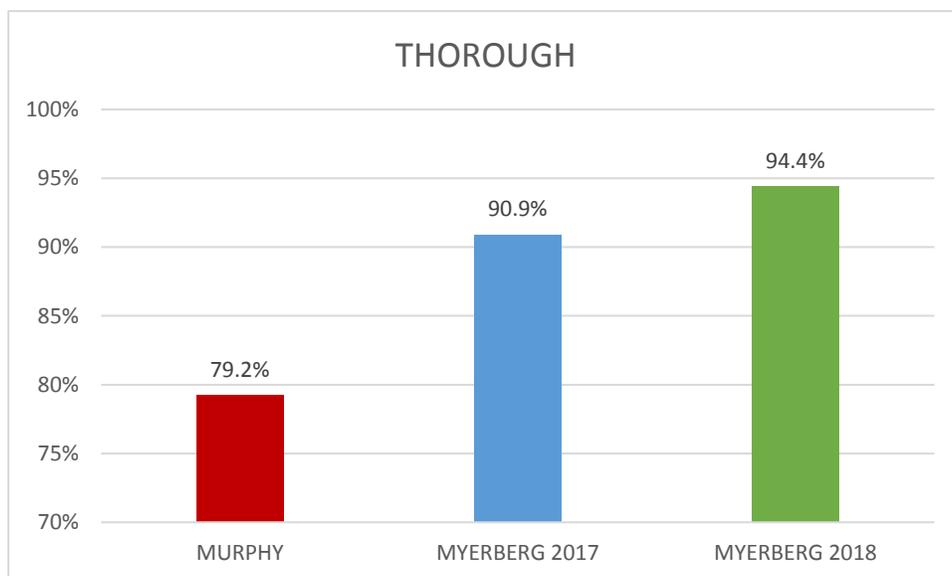
OPA needs to do a better job communicating to the assigned investigators both the reasoning behind classification decisions and Auditor recommendations regarding the investigation.

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OPA should consider including more Auditor correspondence in OPA's files. However, OPA also needs a better mechanism for OPA supervisors to explain classification decisions and highlight investigation tasks that should be completed. The Deputy Director sometimes added electronic notes in IAPro, but investigators do not seem to consistently check these notes. OPA should consider requiring that the investigation planning meeting include a discussion of the rationale for each allegation and a review of the electronic case notes to determine whether any specific investigative tasks were identified at classification. Director Myerberg advised me that he has emphasized the importance of reviewing the case notes and that at least one supervisor now makes a point of reviewing the notes during the case planning meeting.

Thoroughness of Completed investigations

Overall, I certified 87.8% (905 of 1031) of the cases I reviewed as thorough. For cases initiated under Director Murphy, I found 79.2% (313 of 395) of the investigations to be thorough. For Director Myerberg's cases, I found 93.1% (592 of 636) to be thorough. In Director Myerberg's first full year as Director, 2017, I found 90.9% (220 of 242) of investigations thorough. For 2018, I found 94.4% (372 of 394) thorough. Under Director Myerberg, OPA has increased the number of investigations certified as thorough by more than 15%.



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While these figures match my subjective impression that investigations are now more thorough, the statistics are somewhat inflated by an increase in expedited investigations under Director Myerberg. Cases that OPA used to improperly designate as contact logs are now often handled as expedited investigations. I certify investigations subject to expedited review as “sufficiently thorough” even though little to no additional work is completed after classification. This increases both the number of investigations overall and the number that are considered thorough. Even when I excluded these expedited cases from my calculations entirely, I found that I certified 89.6% of investigations as thorough under Director Myerberg as compared to 79.2% under Director Murphy.¹²

Requests for Further Investigation

Whenever the Auditor determines an OPA investigation is not thorough, the Auditor has two options. The Auditor may proceed with certification, documenting the deficiencies in the investigation, or the Auditor may recommend further investigation. If OPA objects to the Auditor’s recommendations for additional investigation, the Auditor may proceed with certification of the investigation as is, modify the recommendations, or require OPA to complete the recommended tasks.

The decision whether to recommend further investigation is often a difficult one. Because OPA investigations are routinely submitted for Auditor review with little time remaining prior to the disciplinary deadline, requesting additional investigation may cause OPA to miss the deadline and prevent the imposition of discipline. Where the disciplinary deadline has already passed, requiring additional investigation forces OPA to devote time and effort to a case that cannot result in discipline. In determining whether to recommend further investigation in individual cases, I considered the nature of the allegations, the deficiencies in the investigation, the implications for potential discipline, the best use of OPA’s limited resources, and the preferences of OPA.

Under Director Murphy, OPA preferred to move forward with certification rather than complete additional investigative work even though doing so meant the investigation would

¹² OPA does not specifically track cases approved for expedited review, so precise data is not available, but my records reflect approximately 214 cases approved for expedited review under Director Myerberg.

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not be certified as thorough. OPA seemed dismissive of Auditor input as to thoroughness and appeared to place a much greater emphasis on managing investigators' workloads than on the quality of investigations. When I did recommend further investigation, OPA did not complete the work in a timely fashion. Delays were often significant. Because OPA typically submitted completed investigations to me when the disciplinary deadline was imminent or had already passed, was not receptive to my recommendations, and did not complete follow-up work in a timely fashion, I became less likely to recommend further investigation and instead often chose to document my assessment of the investigation in the certification memo.

Under Director Myerberg, OPA has struck a much better balance between timeliness and thoroughness. Director Myerberg has expressed a strong preference that all investigations be certified as thorough. Because OPA now submits cases for Auditor review earlier, there is more time to complete additional investigative work when necessary. The turnaround time for follow-up investigation has also dramatically improved. Follow-up is now completed in days or weeks rather than months or years. As a result, when I recommend further investigation, OPA is generally able to complete the recommended tasks and still meet the disciplinary deadline.

Overall, I recommended further investigation in 14.8% (155 of 1049) of the completed investigations I reviewed. Under Director Murphy, I requested further investigation somewhat less often, in 13.6% (54 of 397) of the cases reviewed. Under Director Myerberg, I recommended further investigation in 15.5% (101 of 652) of the cases I reviewed. The rate under Director Myerberg went down slightly from 16.7% (41 of 246) in 2017 to 14.8% (60 of 406) in 2018.

OBJECTIVITY

Objectivity is critical to both the accuracy and the credibility of OPA's investigations. Investigations must always be a genuine search for truth rather than an inevitable journey toward pre-determined conclusions. However, for OPA, investigations must not only be objective; they must also be perceived as objective. Because OPA's investigators are themselves police officers, outsiders are naturally suspicious as to the possible influence of bias on investigations. Accordingly, to promote public trust, OPA's investigations must avoid any hint of bias.

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In reviewing completed investigations, I found objectivity to be the most difficult aspect of an investigation to evaluate. Whether an investigation is objective is often itself a subjective assessment. A reviewer's impression that an investigation was not objective amounts to little more than speculation if there is nothing concrete to substantiate it. Yet bias is rarely openly displayed. The influence of bias can be quite subtle and difficult to recognize, much less pinpoint. Indeed, the investigator herself may be unaware of the influence of subconscious bias on the investigation. For all of these reasons, during the certification process, I did not expressly question the objectivity of OPA's investigations unless I could point to specific evidence to justify my concerns.

In the vast majority of cases I reviewed, I found OPA's investigations to be objective. I certified 96.6% (996 of 1031) of the investigations I reviewed as objective. For cases initiated under Director Murphy, I certified 95.2% (376 of 395) as objective, and under Director Myerberg, I certified 97.5% (620 of 636) as objective. In the relatively few cases where I questioned OPA's objectivity, my reasons included the use of leading questions, failure to interview the complainant and/or civilian witnesses, inaccurate or incomplete video summaries, and failure to ask witnesses about conflicts between video evidence, written statements, and/or interview answers. Questions about objectivity seemed more likely to arise in use of force cases.

One issue relating to objectivity that arises in almost every case is OPA's failure to transcribe interviews with civilian witnesses. OPA invariably transcribes officer interviews but rarely transcribes the interviews of complainants and other civilian witnesses. This disparity results from the fact that OPA is contractually required to transcribe employee interviews but not others, and OPA lacks the resources to transcribe every interview. While OPA's rationale for transcribing only officer interviews is understandable, doing so gives the appearance that officer interviews are more important than the interviews of civilians. Furthermore, the availability of transcripts for officer interviews but not civilian witnesses tends to give greater emphasis (and perhaps weight) to employee interviews by making them more accessible to the OPA investigator, the Director, and subsequent reviewers. If OPA is unable to reallocate resources to allow for transcription of all relevant interviews, I recommend the City consider providing OPA with funding for additional transcriptionists.

Management Action Recommendations

During the course of investigating complaints, OPA sometimes identifies issues with SPD policies and practices that have implications beyond the case at hand. To address such systemic concerns, OPA issues Management Action Recommendations (MARs), a process OPA adopted at the urging of the prior OPA Auditor. A MAR may arise organically from a specific case or when OPA recognizes a recurring issue in a series of cases. In some instances, OPA initiates an investigation for the sole purpose of issuing a MAR. A MAR typically takes the form of a letter from the OPA Director to the Chief of Police identifying specific concerns with SPD policies or procedures and recommending SPD make changes or provide additional guidance to officers. A MAR is an extremely useful tool for identifying and correcting gaps, ambiguities, and other problems with SPD policies and procedures. Through MARs, OPA has the opportunity to be proactive in preventing misconduct before it occurs while at the same time ensuring that any discipline imposed as a result of OPA investigations will not be overturned based on flaws in SPD policies or procedures.

Overall, I found that OPA made appropriate use of the MAR process. Director Murphy had a strong history of using the MAR procedure but issued few MARs during my tenure. Under Director Myerberg, OPA was quite adept at recognizing systemic issues, articulating OPA's concerns about the relevant policies or procedures, and proposing concrete solutions to the problems identified. OPA issued MARs relating to a wide variety of issues during my time as Auditor, including in-car and body-worn video, vehicle pursuits, high-risk stops, foot pursuits, de-escalation, use of Tasers, consent searches of a home, lawful entry of a home, evidence handling, and investigation of bias allegations.

Unfortunately, SPD has been very slow to respond to OPA's recommendations. Most MARs issued by OPA in the last two to three years remain listed as "in progress" on OPA's website. The last MAR listed as "completed" was issued in February 2017. I recommend OPA consider more actively monitoring SPD's progress in addressing the systemic issues identified by OPA. In addition, OPA, OIG, and the CPC should consider asking the City Council to modify the accountability ordinance to address MARs in more detail, setting a timeline for SPD's initial response to MARs and requiring SPD to provide regular updates on all pending MARs.

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Bias Reviews

In addition to reviewing complaints submitted directly to OPA, the Auditor reviews “bias reviews” conducted by the chain of command. A bias review is completed when a citizen makes an allegation of bias but does not specifically request the complaint be referred to OPA. The reviewing supervisor conducts a preliminary investigation immediately after the complaint is made. If the supervisor concludes that no misconduct has occurred, the supervisor documents the bias investigation and forwards it for review by the chain of command. After the chain of command completes its review, the file is sent to OPA for final review. OPA does not treat bias reviews as complaint referrals and does not conduct an independent investigation of the complaint. The file forwarded to OPA is extremely limited, typically consisting of a “bias review template” completed by the supervisor, the incident report, and the chain of command review. No video is included in the file. OPA’s review generally consists of a cursory screening to determine whether the complaint appears to have been handled appropriately. If OPA has concerns about bias or discovers other potential policy violations, OPA opens a new file and conducts a preliminary investigation.

The Auditor is not formally charged with evaluating bias reviews. My predecessor as Auditor requested that all bias reviews be submitted to her for evaluation as part of the Auditor’s general authority to review OPA files, and I continued this practice. Allegations of bias must be taken seriously and deserve heightened scrutiny. Because bias reviews bypass the OPA investigation process, it is critical to have safeguards in place to ensure that any potential misconduct in such cases is recognized and addressed. The cursory reviews OPA conducted during my tenure were inadequate and often failed to identify significant policy violations. Bias is very difficult to establish because OPA cannot accurately determine *why* an officer acted as he/she did. In evaluating bias reviews, I often found evidence of other policy violations which may have been misinterpreted as indicating bias. Bias allegations often arise when officers engage in questionable conduct, and even if OPA cannot know whether an officer was motivated by bias, OPA can determine whether the conduct itself was lawful and within policy. If officers engaged in misconduct that gave rise to a perception of bias, it is important that OPA address it rather than simply defer to the chain of command. Because OPA has not demonstrated a commitment to carefully scrutinize these cases, I recommend OIG continue to independently evaluate all bias reviews.

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Bias reviews were an ongoing area of concern during my time as Auditor. Because bias reviews involve citizen complaints that are handled outside the OPA process, OPA should expect supervisors to strictly comply with the policy permitting such reviews in lieu of an OPA referral. However, I found that supervisors routinely violated bias review policy, and under Director Murphy, OPA failed to take corrective action.

SPD Policy 5.140-POL governs the use of bias reviews. Until July 2018, when the policy was revised, supervisors were only authorized to use the bias review process when the complaint was "resolved to the satisfaction of the complainant." However, supervisors routinely completed bias reviews when it was evident the complaint was not satisfied. Indeed, supervisors regularly completed bias reviews without even speaking with the complainant because the complainant had left prior to the supervisor's arrival or refused to speak with the supervisor. Furthermore, policy required supervisors to provide complainants with OPA contact information so that they could independently file complaints if they chose. However, supervisors frequently forgot to provide OPA information or were unable to do so because the complainant had left the scene. The chain of command nonetheless deemed this obligation satisfied if the supervisor made a subsequent attempt to contact the complainant, even if unsuccessful. Such attempts were often made long after the incident, using contact information the supervisor could not be certain was valid.

Under Director Murphy, OPA did not challenge these practices. I repeatedly expressed concern about the handling of bias reviews but was rebuffed by OPA. OPA's approach was driven by workload concerns. OPA worried that enforcing the bias review policy would result in a flood of new bias complaints referred to OPA to investigate. Because OPA found these complaints to be groundless, OPA chose to ignore the policy violations rather than take on the additional work. I do not disagree that most complaints handled as bias reviews are baseless. However, OPA should never have allowed workload concerns to drive its accountability decisions, particularly in an area as critical as SPD's response to allegations of biased-policing.

Director Myerberg was much more receptive to my concerns about bias reviews and began examining the issue shortly after his appointment. However, he expressed concern about suddenly starting to enforce the bias review policy against supervisors because the supervisors' actions appeared to be consistent with guidance from the chain of command. Instead, Director Myerberg gathered a series of bias reviews to illustrate the problems with

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then current practices and policies and used these examples as a vehicle for issuing a MAR. In January 2018, he made specific recommendations for policy revisions, and in July 2018, SPD Policy 5.140-POL was revised to eliminate the requirement that the complaint be resolved to the satisfaction of the complainant. Instead, policy now explicitly requires that in addition to providing OPA contact information, the supervisor must explain the option to refer the complaint to OPA and may only complete a bias review if the person does not ask that the matter be referred to OPA. Unfortunately, in practice, I continue to see bias reviews completed when supervisors have no contact with the complainant and thus could not have explained the option to refer the complaint to OPA or ascertained that the complainant did not want the matter referred to OPA. Additionally, supervisors continue to complete bias reviews despite the failure to timely provide OPA contact information, attempting to correct the oversight by mailing the information to the complainant's last known address. Going forward, I recommend OPA strictly enforce bias review policy. This is a training issue, and I have no doubt supervisors would routinely comply with policy if it was enforced by OPA and/or the chain of command. Given past practices, however, OPA should make clear to the chain of command, in advance of enforcement efforts, that the supervisor must actually have contact with the complainant before completing a bias review and that mailing OPA contact information after the fact will not be sufficient.

Conclusion

OPA has undergone major changes in structure, culture, and approach during my time as Auditor. With the appointment of current Director Andrew Myerberg, OPA has improved in every area I evaluated. OPA's investigations are now more likely to be thorough and objective, and they are more likely to be completed in a timely fashion. OPA has become far more collaborative in its relationship with the Auditor and more transparent in its work. While there remains room for improvement, the generally high quality of OPA's investigations and OPA's more open and collaborative approach under Director Myerberg should inspire increased confidence in Seattle's system for police accountability and optimism as to the future.

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Afterword

Since the appointment of current Director Andrew Myerberg, the OPA Auditor noted improvements by OPA in many aspects of OPA functioning, including classifications, supervisor actions, and investigations. There was a significant increase in OPA investigations being certified as thorough, objective, and timely, with 30 percent more cases being certified by the OPA Auditor for the current OPA director as compared to the previous OPA director. OPA has become more transparent in its work and more collaborative in its relationship with the OPA Auditor, whose functions are now performed by OIG.

In January 2019, OIG staff assumed the duties of the OPA Auditor, following a period of three months of training and transition from the OPA Auditor. In general, the experiences of OIG are consistent with the observations noted by the OPA Auditor in his report. The OIG annual report will contain a review of the OPA complaint handling system and an analysis of trends in OPA intakes and investigations, which will be informed by the OPA Auditor recommendations in this report.¹ Below is a discussion of themes raised by the OPA Auditor that OIG will address moving forward.

Assessing Complaint Veracity

The OPA intake system currently does not provide an efficient means of addressing complaints alleging a violation of law or SPD policy that are demonstrably false. The OPA Auditor noted that “[in] addition to documenting non-complaints, OPA has also used the contact log designation for the disposition of...cases in which the complaint appears to be the result of the complainant’s mental illness and clearly has no merit.”² The OPA Auditor noted that OPA receives a surprisingly large number of crisis-type complaints that are demonstrably false, but he recognized the importance of safeguarding against dismissing potentially valid complaints merely because the complainant may have mental health issues.

Presently, expedited investigation³ is one method of handling a complaint that is clearly without merit, but the OPA Auditor noted the downside that expedited review still consumes some resources for baseless allegations.

¹ OIG considers recommendations by the OPA Auditor in this report to be suggestions made to OIG as the requestor of the report. To the extent that OIG believes it is appropriate to issue an official recommendation to any agency which would have response requirements under the police accountability ordinance, OIG will issue any such recommendation via a formal request to the agency.

² See page 9 of OPA Auditor report.

³ See page 12 of OPA Auditor report describing expedited reviews, a.k.a. expedited investigations.

Determining the appropriate response to claims which appear likely to be false is an ongoing challenge. OIG expects this issue will be discussed further when OPA conducts its annual OPA manual revision. Under Ordinance 125315 (3.29.120.E), the revisions will be done in consultation with and with input from OIG and the Community Police Commission.

Addressing the Complainant Perspective

The OPA Auditor expressed concerns related to the thoroughness of complainant and civilian witness contacts: cursory complainant interviews, inadequate attempts to contact the complainant, and incomplete attempts to identify and interview civilian witnesses contrary to OPA manual protocol. He noted the impact this can have on public trust when the officer perspective in complaint investigation is covered more thoroughly than the complainant's, although he recognized the reality insofar as OPA is contractually required to interview named employees and SPD employees are more readily available to OPA. The importance of considering the complainant perspective is a priority area of analysis for the OIG annual review of OPA.

For example, the OPA Auditor previously experienced recurring problems where the complainant intake interviews were cursory or attempts to interview complainants missed the window to contact unsheltered or in-custody complainants. The OPA Auditor stated that OPA investigators now routinely check the jail when attempting to locate complainants (as sometimes a complainant is in custody in connection with the incident giving rise to the complaint), and OPA generally makes follow-up attempts to contact the complainant during the interview phase if OPA was unable to obtain an intake interview. OPA reported to OIG that it now has timeliness rules for making contact with complainants and secondary witnesses.

Once a complainant or civilian witness is contacted, it is important for evidence-gathering to be thorough. This includes ensuring that all allegations are properly identified⁴ and that relevant evidence and statements are appropriately gathered and considered. One aspect that makes consideration of the complainant perspective more challenging is that complainant and civilian witness interviews are not all transcribed (officer interviews are required to be transcribed by contract). OPA has begun transcribing all interviews in cases where OPA issues a recommendation that the complaint be sustained; this is in part a resource issue.⁵

⁴ Ordinance 125315 (3.29.250.A) charges OIG with reviewing OPA classifications to validate that the appropriate classifications were made, and to validate that allegations and employees associated with the complaints were properly identified. OIG reviews each contact log and expedited investigation classification as it is made; OIG reviews supervisor action and investigation classifications on a quarterly basis.

⁵ OIG, OPA, CPC, and SPD are also in the process of discussing effective approaches to interview techniques as part of the OIG special project on interrogation practices identified in the OIG work plan; this work will benefit all agencies that have interview roles.

Investigation Extension Requests

OPA has 180 days to complete an investigation or else discipline cannot be imposed under the collective bargaining agreement. OPA has the ability to request extensions from the applicable labor representative. The OPA Auditor found OPA made inadequate efforts to obtain extensions or request additional extensions when the original extension expired. OPA has not missed any 180-day deadlines for cases in recent months. OPA attributes this improvement to now having a supervisor actively monitor deadlines, tracking extensions in its case management system, and more manageable investigator workloads.

The accountability system is well equipped to track OPA timeliness. When an investigation time limit has been exceeded, under Ordinance 125315 (3.29.135.C) OPA must: (1) provide a written statement explaining the reasons for the delay to the Mayor, the Council President and the Chair of the public safety committee, the City Attorney, the Inspector General, and the CPC Executive Director; (2) include it in a communication with the complainant and the public; (3) include it in the OPA case file; and (4) summarize it in the OPA annual report (3.29.135.E). OIG also certifies each OPA investigation for whether it is thorough, timely, and objective (3.29.260.C). This transparency facilitates OIG monitoring of OPA extension requests.

OPA timeliness appears to be on track. Timeliness with its associated disciplinary implications remains a priority that OIG will evaluate as part of its annual report.

Case Management

The OPA Auditor noted various stages of case documentation that could be improved. For example, he opined that OPA supervisors did not adequately review and evaluate investigations for thoroughness and objectivity prior to submitting cases for OPA Auditor review. The OPA Auditor suggested that it would be helpful for OPA to implement something akin to a checklist of steps taken by investigators that would be available when the investigation is being reviewed for certification.

OIG sees value in a checklist type of approach for areas of concern raised by the OPA Auditor, such as:

- having clear criteria for contact log classifications,
- explaining OPA supervisor classification decisions to investigators,
- documenting efforts to contact complainants,
- asking for additional witnesses in interviews and ensuring other interview requirements from the OPA policy manual are followed,
- tracking extension requests, and
- documenting completion of OIG requests for additional investigation.

Whether by utilizing a checklist or some other mechanism, OIG supports the development of a transparent and standardized process of review, by which OPA supervisors document what steps they have taken to review cases, and investigators work from a non-exclusive checklist of tasks for any investigation. Such documentation would assist OIG when reviewing completed investigations and could increase consistency.

OPA currently has plans to examine how the investigation plan or case planning meeting can be utilized to address some of these issues. The OPA Director currently includes OIG investigation requests in casefiles, which has increased communication, transparency, and follow-up. Documenting the completion of requests for additional investigation would be a logical next step.

Bias Reviews

Bias reviews are conducted by SPD when a person alleges bias but does not request an OPA complaint. The SPD supervisor and chain of command complete a bias review template that is reviewed by OPA to make sure it was correctly handled as a bias review, as opposed to an OPA complaint. The OPA Auditor considered OPA oversight of SPD bias reviews to be cursory and often inadequate in identifying significant policy violations. The role of OPA and OIG in the oversight of bias reviews is a matter that OIG will work on with OPA in 2019.

OIG notes that video, which is often relied upon by SPD supervisors in determining whether biased policing occurred, is not provided in bias review casefiles. Retrieving the video directly from the records system is cumbersome, which affects the ability of OPA and OIG to readily view the same materials as the reviewing supervisors. Using reasonably available evidence, contacting the complainant, and ensuring adequate documentation are all aspects that can contribute to a thorough bias review.

As OIG determines how it can provide effective oversight of the bias review system, OIG will continue to engage in conversations with OPA and SPD on how to ensure a good bias review process given the roles and responsibilities of each agency.

Conclusion

The OPA Auditor noted significant improvements in OPA over time. He also offers numerous suggestions for improving OPA operations based on his years of case review. These suggestions are a useful guide for potential areas to monitor as OIG provides individual case review and systemic oversight over OPA. OIG appreciates the level of collaboration that the OPA Auditor built with OPA, and looks forward to continuing to strengthen that relationship.