

**Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For April – September 2005**

SUMMARY OF ACTIVITIES

As explained in earlier reports, available www.Seattle.gov/police/opa, there are three distinct modes of civilian oversight of the Seattle Police Department. The Office of Professional Accountability [OPA], under the leadership of a civilian Director, has continued to issue monthly reports that reflect up to date statistics on cases handled and outcomes. Each contains cumulative statistics for the year, which will not be repeated here. The OPA Director has also sent ten policy recommendations to the Chief in this six-month period. She has led OPA in setting up an early intervention system, a system for voluntary mediation, and procedures for coordinating administrative review of potential criminal cases.

The volunteer OPA Review Board anticipates an end of year report, and has published a news release and letter to the City Council requesting changes to make its job more effective.

My Report summarizes my activities as the contract, part-time Civilian Auditor from April 2005 through September 2005. I review all the OPA investigations, make suggestions, and comment on some of the issues that continue to bear on the functions of the OPA. By Ordinance, this report is to be distributed by the Chief of Police to the Mayor, City Council, OPA Review Board and the City Clerk after he has reviewed it.

In the past six months I have met with the Command Staff, civilian Director and the Captain of the OPA, and the Review Board. I have reviewed the SPD policies involved in the investigations I have audited where appropriate. I have appeared before the City Council to discuss my last Report.

In the six months covered by this Report, I have reviewed 73 completed OPA-IS investigations. The period was notable for an increase in numbers (from 59 in the prior six months) and also in the complexity of a number of those investigations. I have reviewed 29 Line Investigation [LI] referrals, to be able to comment if I disagree with the classification. This is to be

compared with 19 in the prior six months. I have reviewed 13 completed Line Investigations. The OPA and the Chief have taken significant actions since my last Report to expedite the handling of Line Investigations. At present I am monitoring only 11 cases referred out and not yet completed.

I have also reviewed, for classification and comment on possible follow-up, 41 Supervisory Referrals [SR's] (as contrasted with 28 in the prior period) and 147 (as compared with 103) Preliminary Investigation Reports [PIR's]. I have reviewed over a hundred contact logs, some of which have been converted into PIR's or SR's, but most of which have involved listening to irrational complaints or referring a caller to another agency for service.

These numbers represent a significant increase in the workload of the OPA-IS and suggest that the problem of delayed follow-up to complaints will not easily be solved with the present staffing levels.

SPECIFIC ACTIONS

Internal Investigations

Of the 73 completed OPA-IS investigations, I had questions, comments, discussions, or requested further investigation in 15 cases. This is a decrease in the percentage of cases on which I have commented. In a handful I requested further investigation, which OPA-IS agreed to do. In three or four I would have asked for further investigation, but it was several months after the initial contact and it seemed pointless. OPA-IS recognizes the need to triage investigations, so that injured people in the jail or street witnesses or folks staying in motels are interviewed as soon as the case comes in. Often it is not clear to investigating sergeants how far to go in the intake, preliminary investigation phase. Some of these issues are being addressed directly by the OPA-IS and I hope to see improvements in this area.

My questions continue to address a wide range of subjects such as the law of search and seizure, the credibility of witnesses, and the use of too many leading questions in interviews. Some of my comments address recurring allegations -- for instance, of injuries from overly tight handcuffs or inadequate consents to search. It has long been departmental policy to obtain written consents to search, and there was a renewed commitment to do so in response to concerns about biased policing. However, it appears the

unusual case where forms are presented for signed consent, and one complainant alleged significant coercion in the signing, and that it occurred after the search had been completed.

I have always felt free to disagree with the outcomes recommended by the OPA-IS Captain and we have had good discussions about how to evaluate certain information. While I have no statutory role in recommending disposition, the Director and the OPA-IS Captain and Lieutenant have always welcomed my input. Because I usually see the files before the Director does, she has this input in assessing the investigation and recommended disposition from the Captain.

As noted above, there were a number of complex investigations in two areas: internally generated complaints of police misuse of their office and citizen complaints of excessive force. The investigations in both areas have been excellent, with an attempt to interview all witnesses and explore different viewpoints. The time commitment, investigative sergeants' open-mindedness, and their dedication to a difficult job have been notable in most of the investigations. The review by the Captain has been efficient and in-depth, including notable attempts to advance training in areas such as search and seizure. For instance we had a number of complaints about aggressive, legally questionable searches on the street, in motel rooms, and in cars. These searches have been alleged to have been based on pretext stops, coerced consent, consent after the fact, or simple demands to hand over a backpack, for instance, in a jay-walking stop. The Captain and I have discussed these issues and usually agree about the legal points. When an aggressive, arguably illegal search should be considered misconduct remains an unclear area. As a result of two cases involving motel searches, a full day of training on search and seizure has been scheduled for all precinct ACT teams and for gang detectives.

The area that continues of paramount concern to me is the escalation of minor street confrontations into situations involving forceful arrests. Despite the integrity of the investigations, the outcomes in these cases bear heavily on the credibility of the process and people's willingness to bring cases to the OPA.

I cannot stress strongly enough the need for officer training in de-escalation and a policy that serious abuse of discretion will be considered "conduct unbecoming an officer." These situations usually begin with verbal criticism

of the officers, frequently followed by an order to back off or leave the area, too slow compliance, an order to arrest, and some kind of resistance to the arrest for obstruction.

“Necessary” force has long been defined in the Department as that used when “no reasonably effective alternative to the use of force appears to exist and ... the amount of force used [is] reasonable to effect the lawful purpose intended.” It is important to look at the whole factual situation, from beginning to end, as well as the whole continuum of force. It appears in some cases de-escalation techniques are very effective, and in others officers do not even attempt them, but react with tone and volume and physical force that raises the risk to everyone.

A new Standard of Conduct, “Failure to Exercise Judgment and Discretion,” applies to incidents occurring after July 5, 2005 and affords a better follow-up:

"Discretion consists of the ability to apply reason, professional experience and judgment in decision-making. ...The overarching standard defining discretion is that all decisions must be reasonable, articulable[sic], warranted and justified. Employees who engage in conduct that is or reasonably appears to be excessive, unwarranted and unjustified may be investigated for either a specific act of misconduct... or an allegation of 'Failure to Exercise Judgment and Discretion' under this article."

This new section should be used to evaluate cases of unreasonable escalation. Moreover, a new Standard that reflects this kind of community philosophy and expectation of conduct should be the subject of specific training. I am reiterating my recommendation that de-escalation techniques be a substantial part of the street skills training. Judge Carroll’s 2002 Report similarly suggested that “over-reaction” should be a specific policy violation in some cases.

Taser Use

Use of tasers continues to be a controversial source of some complaints of excessive force. It does not seem that the Department's new Directive (issued April 1, 2005) in the area has answered the questions about taser use or satisfied citizens who have experienced taser application. The ACLU has opined in its April 11th memo to Councilmember Nick Licata, that the Department's "policies do not provide sufficient guidance to officers because they lack clarity and are inconsistent. They also fail to comply with the recommendations of the International Association of Chiefs of Police (IACP)." The ACLU also noted in a December 2004 letter to the Chief that tasers were disproportionately used on African Americans. In both documents, the ACLU notes the need for training, particularly in dealing with people impaired by "mental illness, drugs, or alcohol" which applies to many of the people tased during arrest. The Chief responded with a four-page letter addressing some of the concerns raised.

The New York Times reported on October 19 that the Police Executive Research Forum recommended that "officers be allowed to use stun guns only on people who are aggressively resisting arrest, not just refusing to follow orders." It also recommended "officers pause and evaluate suspects after shocking them once, instead of repeatedly shocking someone without a break." Finally, it suggested "anyone who is shocked should receive follow-up medical treatment, either at the scene or at the hospital." I have not yet been able to obtain the full document in which these policy recommendations were made. Even such specific policy recommendations do not answer all the judgment calls an officer must make: Is someone "aggressively resisting arrest," for instance, when he is on the ground with his hands underneath his body instead of available for handcuffing?

In the last six months, I have commented on two cases involving application of tasers. In one, my comments involved the coordination of the OPA-IS investigation with criminal cases (i.e. delaying the interview of a co-arrestee until six months after the conclusion of her case). Another involved the arrest of bar patrons after a fight broke out on the street in Pioneer Square.

Again, my comments were about witness interviews and coordinating with criminal cases, not specifically about the use of the taser.

Line Investigations

In my last Report, I noted the ongoing difficulty of some precincts in completing Line Investigations in a timely manner. While several of the investigations I have reviewed have been beyond the 60 day due date, the response has been much improved.

Of the 13 completed Line Investigations I have reviewed, three were significantly late in completion. This often means the complainant is not contacted until months after the events. I found one of these to be seriously biased in approach and poorly investigated – with leading questions and mistaken presumptions of law – specifically that it was appropriate for officers to use pressure and lies to entice a citizen to surrender her constitutional rights. The Captain also responded directly to the precinct on this point.

Supervisory Referrals and Preliminary Investigations

Judgment is required to determine whether an incident should be classified as a PIR or an SR after a sergeant at OPA-IS has looked into the matter. Each classification is reviewed by Lieutenant Kebba. I commented on approximately 13 of the 41 SR's I reviewed during this six-month period, some with a view to changing the classification. For instance, if a woman signed a consent to search form under threat of losing her kids to CPS, I considered it serious misconduct. The Director agreed and it was reclassified as a line investigation. Sometimes OPA-IS added an issue to the SR at my request – such as suggesting the supervisor discuss the limits of an officer's right to demand a homeowner step back into her own home instead of witnessing an arrest. I also raised questions about the handling of "service complaints" – for instance an inappropriate or delayed response to a 911 call. By and large, I found the complaints in this category appropriately classified as SR's.

Discipline is not contemplated in either SR's or PIR's, but both often require some supervisory action and return of the file to the OPA.

OPA-IS is now putting more information into these referrals, giving specifics of expected follow-up by supervisors in the precincts. Sometimes

the supervisor is expected to act as informal mediator – talking to both the employee and the complainant separately to help each see the other’s point of view. Hopefully some complainants and officers will soon engage in the volunteer mediation program as well.

I commented on approximately six out of the 147 PIR’s completed in this period. These summary investigations are often quite time-consuming and the OPA-IS staff does a great job – sometimes satisfying subjects and complainants. The investigating sergeants often go to substantial lengths to find out what happened and how the situation can be improved, despite the fact that no misconduct has occurred. Lieutenant Kebba reviews each PIR and often makes suggestions of further actions to help the caller.

Complaints Involving Criminal Conduct

I receive regular reports of investigations involving potentially criminal conduct. As detailed in my last two reports, these cases present particular challenges for OPA. The OPA Director has sent a policy recommendation memorandum to the Chief about some of these issues and there is ongoing discussion about how to handle the administrative side while the criminal investigation is pending. The Director expects to address the subject in an upcoming report.

Conclusion

I would incorporate herein the discussion of all of the policy issues in my prior three reports. These issues are not easily solved. In many respects these are ongoing challenges for the Department as a whole rather than simply for OPA.

Report respectfully submitted October 27, 2005

/s/

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Civilian Auditor