

**Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For October 2006-March 2007**

INTRODUCTION

As explained in earlier reports, available at 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 I incorporate by reference.

The OPA Director has also sent numerous policy recommendations to the Chief in this six-month period, including issues for training. Before leaving office in February, she also issued a Report on Use of Force, on which I commented. Former Director Pailca's contributions to the Department have included assistance in the creation of an early intervention system, a system for voluntary mediation, procedures for coordinating administrative review of potential criminal cases, new avenues for citizens to input complaints and have representation through the process, a new Standard of Conduct to address abuse of discretion; and community forums and outreach.

The volunteer OPA Review Board has not issued its scheduled reports for several years because of a dispute with the City over potential liability. The City Council passed an ordinance that would remove the redaction requirement before the Board reviews closed files and indemnify Board members under Chapter 4.64 Seattle Municipal Code, which is being grieved by the Seattle Police Officers' Guild. I understand the superior court has declined a TRO and that unredacted reports will be made available immediately.

SUMMARY OF ACTIVITIES

My Report summarizes my activities as the contract, part-time Civilian Auditor from October 2006 through March 2007. The core of my responsibility is to review classification of complaints as well as completed investigations. The Ordinance includes within my purview an ongoing analysis of the OPA process; a look at issues, problems and trends; and

recommendations for additional officer training as well as policy and procedure changes. I am tasked to meet periodically with the Chief, with the Mayor, and with the Council, which I do.

In practice, I review all the OPA investigations before completion for fairness, thoroughness, and findings. I make suggestions about investigations, sometimes offer input about the underlying employee conduct at issue, and comment on the functions of the OPA. The staff of the OPA IIS and I discuss all these issues and the staff is very responsive to my concerns, even when we disagree.

In the six months covered by this Report, I have reviewed 82 completed OPA-IS investigations, substantially more than the average of 57 over the last five similar periods.

I reviewed six Line Investigation [LI] referrals, to be able to comment if I disagreed with the classification. I reviewed nine completed Line Investigations. The actions by the OPA, the Chief, and Precinct Commanders have resulted in expediting Line Investigations, which I continue to monitor.

I have also reviewed, for classification and comment on possible follow-up, 49 Supervisory Referrals [SR's] and 173 Preliminary Investigation Reports [PIR's]. I have reviewed numerous contact logs, some of which have been converted into PIR's or SR's, but most of which have not raised issues within the purview of the OPA and therefore not led to investigations.

TIMING ISSUES

I have commented in past reports about the rising workload of the OPA IS. The City Council funded a specific position to increase the staff by one sergeant, which position I understand will be added. However, the Department has or may reassign the rotating intake duty "acting sergeant" position that had staffed the unit since 2001, leading to a flat FTE result of seven investigating sergeants.

I would reiterate my concern that investigations that come out many months after the event make the OPA process less than meaningful to citizens. It is easy for the public to conclude that the delay reflects the Department's

“attitude” about citizen complaints. The Chief has expressed the hope that the bottleneck during the review process will be cleared by new procedures.

As commented by the former Director and myself, delay also significantly impacts our jobs in reviewing investigations, as further interviews or follow-up is often meaningless long after the events in question. The OPA IS has reduced the average investigative time from 119 to 98 days, a significant improvement; but it must be understood that these numbers do not include review by the Director or myself (I have ten days only), or an outcome if the recommendation to the Chief is for a “sustained” finding.

Furthermore, if the employee is under criminal investigation or pending a charging decision, the administrative process usually comes to a halt until resolution by prosecutor or court. The Guild contract allows a 30 day extension of time from declination or verdict if it occurs after the normal 180 day limit has expired. The OPA keeps me informed of open criminal investigations, including a spreadsheet noting the timing issues, so that it can press for timely prosecutorial decisions, which is an improvement.

On the other side, there is no permissible delay if a subject is facing criminal charges. Investigations are often opened by a subject’s relative, a witness, or an investigative reporter. Criminal defense counsel generally advise subjects not to participate in the IIS investigation for fear of creating a statement that could be used against them in court. This leaves the IIS at a real disadvantage in assessing what happened.

To offer the same kind of extension of time for subjects that employees get in these cases could, of course, leave an employee with an unresolved disciplinary case for many months, an undesirable result from both the employee’s and the public’s point of view.

One possible way to address this would be to expedite prosecutorial review. Another might be to legislate that IIS investigations are inadmissible in court. This would probably be controversial from a policy standpoint but might be worth exploring.

SPECIFIC ACTIONS

Internal Investigations

Of the 82 completed OPA-IS investigations, I commented on 13 cases. In a couple I requested further investigation; in several I disagreed with the recommended disposition; in one I questioned bias in the investigation; in several I had questions about the even-handed application of policy in different cases.

Taser Use

There continue to be a number of cases alleging unnecessary force in the use of Tasers as compliance tools. The primary issues continue to be whether the degree of force was made necessary by the arrestee's conduct; whether the noncompliance was active or passive; and whether the intoxication or mental state of the arrestee may have presented dangerous indications for application or repeated application of electrical current.

I recommend that the Department keep up to date with the ongoing research on the effects of Tasers and consider its Directive a work in progress. There is considerable national controversy over the condition of "excited delirium" to which several deaths after Taser application have been attributed.

Police Escalation of Minor Confrontations

I have repeatedly recommended further training in the street skills course in de-escalation of threatening situations. The OPA Director has made similar recommendations. The Chief has ordered de-escalation training as well as instruction about the new Standard of Conduct, "Failure to Exercise Judgment and Discretion:"

"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 training has been incorporated in Street Skills 2006.

There were fewer cases in this period where significant force became necessary because of the escalation of the original confrontation. In one case a noise complaint involving no obvious threat, but one intoxicated man who refused to hang up his cell phone call with his wife or to keep his hands on the patrol car for frisking, was eventually Tased and subdued by nine officers, involving injuries all round. In another, two teenagers refused to move out of the way of traffic exiting a parking lot. The father of one rushed to intercede when they were placed up against a patrol car and was forcefully intercepted by an officer, leading to a struggle and Tasing and injury to both. While the force ultimately used in any given case may have become necessary, different initial actions could have helped defuse the hostility and calm the situations.

It is distressing to see how many of the excessive force complaints begin with minor street confrontations. Citizens often do not show officers respect or attention when confronted over minor offenses. When they verbally challenge or disregard orders given, it may lead officers to respond more harshly than warranted.

Discretion is at the heart of an officer's duty and effectiveness. In several cases, I commented that the IIS analysis focused unduly on the illegal conduct of the arrestee. In one for instance, the threat posed by a "road rage" incident was increased by the officer's high speed chase after the perpetrator, pulling him over and putting a gun to the back of his head, possibly before clearly identifying himself as police. While the arrestee's conduct may well have been illegal or even dangerous, that is often a given, and the question for OPA is whether the police response is cool headed and effective, as well as commensurate with the threat or violence faced.

In another case, bus passengers saw a man running from police, then stop and put his empty hands in the air. I questioned whether the officer really perceived this as a "fighting stance" or whether chase-fueled adrenalin led

him to kick the subject in the head when caught. Again it was a given that the man was high and fleeing, and I questioned whether focus on his behavior affected the IIS analysis of the officer's actions.

The new standard for abuse of discretion is designed, I believe, to allow assessment of officers' discretionary decisions, with realistic evaluation of the situations they face. As Lt. Kebba has commented, he assesses the case for best practices and options that were at the officer's disposal at the time. It is a delicate balance to maintain, with the goal to identify deficiencies and improve police response to future events. The public often does not see the effectiveness of the OPA process in this latter area of improving responses to future confrontations and challenging events.

Line Investigations

I had comments only on two cases referred for Line Investigation, in each case questioning the classification. I have only four open Line Investigations.

Supervisory Referrals

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. The OPA Lieutenant, Captain, and Director review each. I commented on only three of the 49 SR's I reviewed during this six-month period. I was concerned in two cases about what we expected the supervisor to do. In one I thought it was "over-classified" in that it appeared the officer acted correctly.

I am concerned that SR's are not entered as data in the early intervention system meant to alert supervisors to potential problems with employees before they occur.

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. In some cases service complaints are classified as SR's. Supervisory Referrals usually indicate that if a policy was violated, it was not willful or the misconduct was not worthy of discipline.

The Department has increasingly used “Supervisory Intervention” as an *outcome* after an investigation by the IIS, as distinguished from an initial classification. This indicates a finding that the behavior warrants more serious follow-up: “while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee’s chain of command is to provide appropriate training, counseling and/or to review for deficient or inadequate training.” In one IIS investigation where the recommendation was for a sustained finding, the Acting Chief imposed a Supervisory Intervention after conferring with the Department legal advisor regarding the legality of the entry into a home and the arrest of the homeowner. I disagreed with the legal advisor in part, based on my own research. In another case, an SI was ordered as a way to strengthen supervisory action. An SI goes on an employee’s OPA card and constitutes an unequivocal warning to the employee. I have continuing concern, however, that its increasing use not represent an avoidance of discipline in cases where employees have clearly violated law or policy.

Preliminary Investigations

PIR classification indicates a finding at the outset that there was no or minimal violation of policy alleged and the complainant is usually quite satisfied to have the comments simply forwarded to the officer through the chain of command. I commented on only six of the 173 PIR’s completed in this period. If they involve service complaints or rudeness, I think it is important for the precinct supervisor to follow up with the complainant as well as the officer. I asked for reclassification of one PIR as a full investigation, but it remained a PIR with directed supervisor follow-up to fill in missing facts.

PIR’s are investigations that often require time and diplomacy from the IIS sergeants, and they generally do a great job. Lieutenant Kebba reviews each PIR and often makes suggestions of further actions to help the caller.

CONCLUSION

Many of the policy recommendations made by the Director of OPA have addressed issues raised in her review and my comments about cases investigated by OPA-IS. Her Use of Force Report is an important document, unfortunately issued at the end of her tenure.

Trends in common complaints give the Department important information about underlying problems. Examples from this period are: 1) the application of the non-smoking in the workplace initiative to police cars; 2) the need for training about how to handle noise violations and parties without violating the law of search and seizure; and 3) the proper application of the service dog ordinance in public places of business.

The administrative disciplinary system is often not the best place to address many recurring issues or service complaints, but the patterns in police conduct are important information for the Department as a whole. The OPA thus plays an important role in policies and training. The respect of the precinct leadership, the Command Staff, and the Chief for the OPA-IS investigations and recommendations make this role valuable.

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.

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Report respectfully submitted April 12, 2007

/s/

Katrina C. Pflaumer
Civilian Auditor