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## **I. Introduction**

To help ensure Constitutional, accountable, effective, and respectful policing and to have a safe community, the City of Seattle recognizes that there must be trust between police and those they serve. For that reason, the City established the Office of Professional Accountability (“OPA”), an independent office within the Seattle Police Department (“SPD” or “Department”). OPA’s mission is to ensure that SPD officers and non-commissioned employees abide by the spirit and letter of the laws and policies governing their actions. It is expected that all individuals will be treated by the police with respect, fairness and dignity.

Central to that trust is the Department’s ability to effectively police itself. This requires that members of the public and employees alike have a convenient and safe way to raise concerns; the Departmental culture must hold all employees accountable regardless of rank; and the internal administrative investigations must be conducted and discipline imposed in a trustworthy and consistent manner.

While OPA is housed in SPD, it is headed by a civilian director. OPA also has additional independent review by another civilian, referred to as the OPA Auditor, a former judge or attorney with expertise who, along with the Director, reviews all complaints and investigations and makes recommendations to improve policies and training. Both are appointed by the Mayor and confirmed by the City Council for fixed terms. Each must meet qualifications laid out in City ordinance and are appointed for fixed terms. The OPA Auditor can only be removed from office for cause. This civilian oversight was instituted to help ensure the integrity, professionalism and independence of OPA’s work.

OPA has adopted the National Association of Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics, which emphasizes the importance of always acting in a fair and impartial manner, no matter how difficult the issue; conducting investigations, audits, evaluations and reviews with thoroughness, an open and questioning mind, integrity, objectivity and fairness, and in a timely manner; rigorously testing the accuracy and reliability of information from all sources and presenting the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

OPA is committed to conducting its oversight activities as openly and transparently as the laws and collective bargaining agreements allow, while maintaining the confidentiality of information needed to ensure fairness to employees and members of the public alike.

OPA will treat all individuals with dignity and respect, and without preference or discrimination, and encourages any individual to file a complaint; even remaining anonymous if that is preferred. Complaints can be made in-person, by phone, email, using the OPA website or with the help of a community advocate, friend or relative. Officers and employees are required to report possible misconduct and no employee may interfere with hinder or obstruct a person from making a complaint<sup>1</sup>.

Retaliation for the filing of a complaint or for participation in the complaint or investigative process in any way will not be tolerated<sup>2</sup>. Actions which would be considered retaliatory can take many forms, including, but not limited to, the malicious filing of a criminal or civil action, threats or harassment in any form, contacting third parties to take adverse action, or decisions affecting an employee's hiring, promotion or assignment. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.

The process depends on the integrity and honesty of all participants. SPD officers and employees are required as a condition of their employment to provide truthful information and are compelled to give interviews as requested by investigators. False statements can result in discipline up to termination<sup>3</sup>.

## **II. The Complaint Process**

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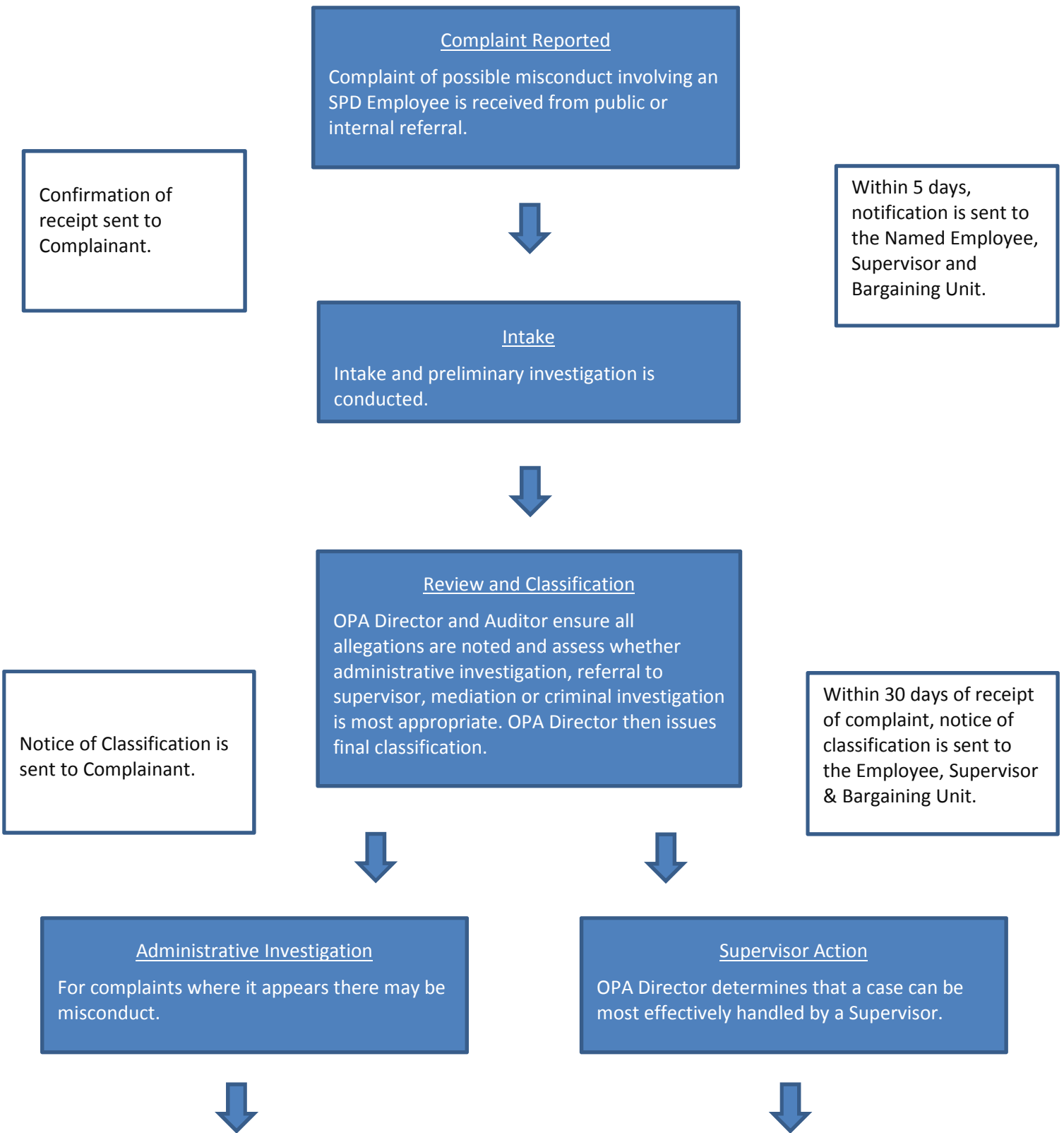
<sup>1</sup> SPD Manual 5.002

<sup>2</sup> SPD Manual 5.002 #4

<sup>3</sup> SPD Manual 5.002 #11

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Investigation is Completed  
OPA Director and Auditor certify the investigation as complete.  
  
OPA Director makes a recommended finding on each allegation and issues a Director's Certification Memorandum (DCM).



Complainant is notified when investigation has been certified and recommended findings have been made.



OPA sends the DCM with recommended findings to the Chain of Command (COC) and the Chief of Police. The COC has ten days to submit comments to the OPA Director for consideration.



Discipline Meeting  
If the Director recommends any sustained findings, a Discipline Meeting is held. The OPA investigation is summarized by OPA staff; recommended findings and potential discipline are discussed by the Employee's Chain of Command and SPD's Legal Advisor. They then provide concurring and/or dissenting finding recommendations, along with suggested discipline, to the Chief in addition to the Director's recommendation.



OPA sends a Memorandum to the Supervisor, which includes specific actions that must be taken.



Within 30 days, the Supervisor takes recommended action and sends a report to the OPA.



Complainant is notified of the outcome and resolution.

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OPA Director makes recommendations for appropriate discipline.



Final Decision

Chief of Police makes the final decision on findings and determines the discipline to be imposed for any Sustained Allegation.



Case Closure

OPA Director closes the case and issues a Case Completion Memorandum (CCM), which lists the original allegations, recommended findings, the ultimate findings made by the Chief and any discipline administered. The Administrative Investigation is thus closed.



Loudermill Hearing

If the discipline includes suspension, demotion, or termination, the Employee may meet with the Chief of Police to provide additional information to be considered.

The Employee typically brings a union representative, an attorney or another SPD Employee. Additional attendees are generally: Chief of Police, Assistant Chief, the Employee's Chain of Command, the OPA Director and the Chief's Legal Advisor.

The Chief of Police makes the final decision for findings and disciplinary action and the Employee is formally notified.



Complainant is notified of the case closure, findings, and appeal processes available to the Complainant and to the Employee.





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Appeal

The Complainant may appeal to the OPA Director.

The Employee may appeal any disciplinary decision involving suspension, demotion or termination to the Public Safety Civil Service Commission (PSCSC) or the Discipline Review Board.

Grievance

The Employee's Bargaining Unit may assert a claim of unfair practice or violation of the Labor Agreement as a result of the discipline and may challenge disciplinary decisions that are not suspensions, demotions, terminations or disciplinary transfers.



If the Employee appeals or if a grievance is filed, the Complainant is notified of the appeal or filing, and subsequently of the outcome of the appeal or grievance.

A. Source of Complaints

Complaints may be filed by anyone, including but not limited to the subject of a police incident, a witness, a third party (such as the parent or spouse of the subject), a legal representative, an anonymous person, a supervisor, commander or other SPD personnel, and the OPA Director. OPA will always have someone on site to take in-person complaints and answer questions from 8am to 5pm, Monday through Friday, except on City-observed holidays. A telephone answering machine takes incoming calls during non-business hours. OPA also accepts all complaints referred by the Mayor's Office, City Council Members, the Customer Service Bureau, the Seattle Office for Civil Rights, and other referral agencies<sup>4</sup>. OPA will attempt to enter into agreements with City referral agencies and any community organizations that make referrals as necessary to ensure that complaints are properly referred.

Complaints will be accepted by whatever means they are communicated, including but not limited to complaints made in person, by phone, mail, or email, through the OPA website, or via letter or internal memo.

- Complaints made through the OPA website use the link: <http://www.seattle.gov/police/OPA/complaintform.htm>
- Complaints made by telephone use the direct intake line: 206.684.8797. For those callers who are not proficient or comfortable in English, a translator or other reasonable accommodation will be made.

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<sup>4</sup> City of Seattle Customer Service Bureau

City Hall  
600 4th Avenue, 1st Floor  
P.O. Box 94826 Seattle, WA 98124-4726  
Email: <http://www.seattle.gov/customerservice/>  
Phone: 206.684-2489

City of Seattle Office for Civil Rights

Central Building  
810 Third Ave, Suite 750  
Seattle, WA 98104-1627  
Email: <http://www.seattle.gov/civilrights/>  
Phone: 206.684-4500

Complaints may also be referred to OPA from within SPD. Complaints are sometimes directly made to an officer's supervisor who then is required to refer it to OPA. Other referrals are made from employees who see misconduct occur, from the Use of Force Review Board, the Firearms Review Board, the Force Investigation Team (FIT), the Traffic Collision Investigation Squad or members of the Department's chain of command. The Director can initiate a complaint as well, based on a claim made against the City, litigation filed, media coverage of an incident or any other source.

SPD employees have a duty to assist any person who wishes to file a complaint by:

- Taking the complaint,
- Providing specific information to the complainant on where and how to file the complaint, or
- Immediately putting the complainant in contact with a supervisor or other individual who can assist them with filing their complaint<sup>5</sup>.

#### B. Intake

Every contact to OPA is logged, even if only a request for information or about actions by non-SPD employees, in order to have a comprehensive record. The Director and Auditor review the log of all contacts monthly to ensure that each was handled appropriately. If a contact contains an allegation of misconduct that, if proven to be true, would be a violation of SPD policy or law, an internal, administrative investigation begins. If a violation of law is alleged, a special referral for a criminal investigation is made, in addition to the administrative investigation.

The first step is for OPA intake staff to interview the person making the complaint ("the complainant").<sup>6</sup> If the complainant came to the OPA office to make the complaint, he or she will be interviewed in-person. If the complaint was made by phone, online or referred by a third party, the complainant will initially be interviewed by phone. With the complainant's permission, these interviews will be audio-recorded to assure accuracy and objectivity in the investigation. OPA intake staff should ascertain if the complainant needs a translator or an accommodation, such as for a hearing or sight impairment. OPA will arrange for a translator or language line service if needed and will make reasonable accommodations to assist those complainants with disabilities

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<sup>5</sup> SPD Manual 5.002 #2

<sup>6</sup> This interview may be skipped if the complainant is a "third party" or a person without first-hand knowledge of the incident giving rise to the complaint.

During the interview, the complainant will be asked to describe what happened, where, and when, and to provide any other information he or she may have describing the involved employee(s), whether there were witnesses who could be contacted, and any other evidence that might be helpful. If there was a possibility of injury, the complainant will be asked if photos may be taken and whether he or she will sign a release to allow for medical records to be gathered detailing the injury if medical treatment was sought.

Sometimes complainants do not wish to be interviewed in-person or on the phone, in which case OPA intake staff will try to gather the necessary information from the complainant via email. While this is rarely as helpful as an interview, it is allowed if that is what the complainant prefers. In some instances, the complainant declines to participate at all after making the initial complaint. OPA will continue to investigate the allegation even without further participation by the complainant.

C. Special Considerations

1. Independence

Although OPA is an office within SPD and personnel are SPD employees who ordinarily take direction from the SPD chain of command, the integrity of the accountability process relies on the independence of OPA. With respect to any OPA investigation or other OPA matter, OPA employees take direction from and answer only to the civilian OPA Director and OPA supervisors, not any other command staff or SPD supervisors<sup>7</sup>.

2. Confidentiality

Personnel assigned to OPA must maintain the highest degree of confidentiality concerning all matters related to OPA complaints and investigations. OPA employees are prohibited from disclosing or confirming to anyone outside of OPA whether a complaint has been made or an investigation is being conducted, including the identity of complainants and named and witness employees, unless required by OPA protocols or disclosure laws. Complaint and investigative information must not be left unattended in areas accessible by non-OPA personnel. OPA personnel are required to sign an agreement regarding confidentiality and any experts outside of OPA who are consulted must also sign a confidentiality agreement. All media requests should be referred to the OPA Director. Additionally, if it is determined during intake that the employees named in a complaint work for an agency other than SPD, a referral to that agency should only be done with permission of the complainant.

3. Honesty

All SPD employees interviewed or otherwise contacted by OPA staff in connection with an OPA investigation, whether as the named employee or as a witness, have an obligation to be truthful and complete in all communications with OPA. Not only is this necessary to comply with SPD policy, but it is vital in order to maintain their individual integrity and the integrity of the Department. Dishonesty by SPD employees may be admissible in court and used to impeach their credibility, rendering an employee potentially unable to perform his or her duties involving court testimony (see below). Dishonesty by SPD employees may also result in discipline, up to and including

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<sup>7</sup> Commissioned OPA staff will take direction from SPD chain of command when acting as a police officer outside of an OPA investigation or other OPA matter.

termination, as well as possible civil penalties, criminal prosecution and loss of Washington State law enforcement certification.

For the system to work effectively, neither employees nor members of the public should knowingly provide false information or file a complaint for malicious purposes. At times, individuals may not remember everything with precision or may provide contradictory information, which is to be expected. However, all parties, employees, complainants, and witnesses alike have an obligation to provide honest answers and truthful information to the best of their ability.

#### 4. Conflicts of Interest

The SPD Manual provides, in part that “employees shall not engage in enforcement, investigative or administrative functions that create conflicts of interest or the appearance of conflicts of interest. For example, employees shall not be the primary investigators of crimes where they are the victim, nor effect arrests – except in an emergency – of family members, business associates, or social acquaintances. Employees shall exercise discretion in favor of recusing themselves from any process that might reasonably be expected to create a conflict or the appearance of a conflict of interest.”<sup>8</sup>

OPA investigators and supervisors are tasked with investigating and assessing the performance and credibility of individuals whom they have known and might have worked with in other capacities at SPD. They must listen closely to and treat with respect all persons who believe the police have mistreated them. Those involved with investigating OPA complaints must be able to set aside their personal biases and search for the truth. Investigators should be aware that extra care needs to be taken to show the public that despite being peers of those against whom complaints are filed, all aspects of OPA’s work will be conducted fairly and scrupulously. For example, investigators should refrain from openly displaying any police badge, patch, or other law enforcement-related insignia. They should communicate with all participants using the same degree of formality for everyone, and should identify themselves as representing OPA.

As OPA personnel handle complaint intakes, investigations and other OPA functions, any actual or apparent conflict of interest with the parties or subject matter involved should immediately be brought to the attention of the OPA Lieutenant, Captain Deputy Director, or Director. The fact that an OPA staff member might have previously worked with employees named or witnesses in OPA complaints does not automatically create a

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<sup>8</sup> SPD Manual 5.001 #17

conflict. However, if any previous work experience or other relationship with anyone involved in a complaint might impact (or have the appearance of impacting) neutrality in handling OPA matters, the issue should be reviewed and decided by OPA supervisors. Final determination in such cases rests solely with the OPA Director.

## 5. Non-Retaliation

Retaliation in any form for the filing of a complaint or for participation in the complaint or investigative process will not be tolerated. Per Department policy, “no employee shall retaliate against any person who initiates or provides information pursuant to any citizen or internal complaint, or against any person who provides information or testimony at a Department hearing, because of such person’s participation in the complaint process. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.”<sup>9</sup> If OPA personnel are made aware of facts indicating possible retaliation against a complainant, it must be immediately brought to the attention of the OPA Lieutenant, Captain Deputy Director, or Director. In all cases of reported possible retaliation, the OPA Director must be informed and shall have the sole authority to determine what action OPA will take in response.

Actions which may be considered retaliatory can take many forms, including, but not limited to, the malicious filing of a criminal or civil action, threats or harassment in any form, contacting third parties to take adverse action, or decisions affecting an employee’s hiring, promotion or assignment. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.

OPA personnel must not take any action or fail to take any necessary action in retaliation for a person having provided information pursuant to an OPA complaint or otherwise participated in the complaint process.

## 6. Contact with Prosecuting Authorities

OPA personnel may contact a prosecutor’s office to monitor the status of criminal charges pending against an officer, or to clarify the status of criminal charges against a complainant, to determine if there is information relevant to the OPA investigation. However, OPA personnel must avoid retaliation or even the appearance of retaliation when contacting a prosecuting authority. When contacting a prosecuting authority, OPA personnel should always identify themselves as being with OPA and shall not request or

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<sup>9</sup> SPD Manual, 5.002 #4

attempt to influence the filing of criminal charges or in any way attempt to influence the criminal prosecution of a person who has or may file a complainant with OPA.

#### **7. Three-Year Statute of Limitations**

For SPD employees who are commissioned officers below the rank of Assistant Chief, their collective bargaining agreements mandate that no disciplinary action will result from a misconduct complaint where the complaint is made to OPA more than three years after the date of the incident that gave rise to the complaint, except:

- In cases of criminal allegations, or
- Where the named employee conceals acts of misconduct, or
- For a period of thirty (30) days following a final adverse disposition in civil litigation alleging intentional misconduct by an officer.

#### **8. Criminal and other Sensitive Allegations**

Any credible allegation of criminal conduct and other allegations of a particularly sensitive or significant nature shall be immediately brought to the attention of the OPA Captain Deputy Director or Lieutenant, who will ensure the OPA Director is notified in a timely manner.

#### **9. Complainants Represented by an Attorney**

If OPA intake or investigative staff become aware that a complainant is represented by an attorney in connection with the incident about which the complaint has been made, the OPA Captain Deputy Director or Lieutenant should be consulted before proceeding.

#### **10. Contact Log Entries**

Every contact to OPA is logged, even if it is only a request for information or about actions by non-SPD employees. OPA Intake, Administrative or any other personnel who speak with a potential complainant must note his or her name, contact information, the date, the nature of the inquiry, and any action taken. The Director and Auditor review the log of all contacts monthly to ensure none that were designated as information-only should have been furthered investigated.



## **11. Frequency of Contact With Complainants and Named Employees**

In addition to any other required notifications, the OPA Investigator assigned to investigate a complaint will make contact with the complainant(s) and named employee(s) at least once every 30 calendar days until such time as the investigation is accepted as complete by the OPA Lieutenant. This contact must include information about the current status of the investigation. Contact may be in person, by phone, via email, or in writing and must be documented in the case follow up notes.

OPA will, at a minimum, notify the complainant of the following milestones with respect to their complaint:

- Upon receipt of the complaint
- When the complaint has been classified, including the nature of its classification
- In the event that action on the complainant is likely to be delayed for a significant amount of time
- When the investigation into the complaint has been certified as complete by both the OPA Director and the OPA Auditor
- When a conclusion or resolution has been achieved if the complaint had been diverted to Supervisor Action, Mediation or some other form of dispute resolution
- When the Director has recommended findings to the Chief of Police.
- When the Chief of Police makes a findings determination and imposes discipline (if applicable) including the nature of those findings and discipline, along with information about any right to appeal by the employee
- When an appeal and/or grievance is filed, including information about the appeal and/or grievance process
- When an appeal or grievance is concluded, including the nature of the outcome

### D. The Preliminary Investigation

#### 1. Gathering Evidence

Communications received by OPA range from innocuous comments about SPD employees and informational inquiries to the most serious allegations, including criminal misconduct. It is the responsibility of Intake staff to receive all incoming information with an open mind, empathy and without preconceived judgment. Complainants are not expected to be familiar with SPD policies or the law, nor is it reasonable to expect them to remember with precision every detail of the incident about which they are complaining. For some, filing a complaint will be a very unfamiliar process, and it is the responsibility of the OPA Intake staff to help the complainant through the process.

The first step in the complainant process is to conduct a preliminary investigation aimed at answering basic informative questions about the incident, such as:

- Who* – Who was involved? Does the complaint involve a Seattle Police Department employee? Who established the employee's identity and how was that accomplished? Who was present at the time of the misconduct or may know something about it? Who are the parties involved, i.e., subjects, complainants, witnesses, and named employees? Obtain their full names along with addresses, phone numbers, email addresses and other contact information for all of the parties involved. If the complainant or other party involved is transient, attempt to get a back-up means of contact, such as through a relative or friend.
- What* – What happened? Obtain a detailed description of the alleged misconduct. Ask about the circumstances prior to, during, and after the event. What was the complainant's involvement? What are the relationships among the involved parties? What outcome or remedy does the complainant desire from contacting OPA?
- Where* – Where did it happen? Obtain specific information about the location of the incident at issue.
- When* – When did it happen? Obtain dates and times of the alleged misconduct. When did complainant learn of the alleged misconduct, if complainant is not the subject? Was the SPD employee on or off-duty? If there is any significant delay in the time (more than a few weeks) between the underlying incident and contact with OPA, ask for an explanation from complainant or the referring party.
- How* – How did it come to light? How did the complainant learn of the alleged misconduct? How can OPA learn more about the incident?
- Why* – Why did it happen? Get the complainant's thoughts about the SPD employee's conduct and complainant's reasons for following up with OPA.

If the Complainant submitted a written statement via mail, email, the OPA website, etc., much of the information needed to assess the situation may be gleaned from the written submission. However, an interview of Complainant is preferred and should always be offered in order to gather as much information as possible.

OPA Intake staff should ask the complainant and others familiar with the event about the existence any photographs, video or other recording of the incident; request they not be deleted, and inquire how OPA can obtain originals or, if need be, copies. All relevant

evidence, including things such as 911 recordings, Seattle Fire Department or Medic Run Sheets or communications records, Computer Aided Dispatch data (call printout), Unit Log or CAD for Unit daily activity report, King County Jail and/or Youth Services for prisoner intake information, booking photos, officers' video, holding cell video, photographs, text messages, jail booking records, incident reports, use of force reports, traffic infraction reports, parking citations, precinct logs, and other information generated during that type of police incident should be quickly gathered.

Intake personnel are expected to know how long various SPD and jail records are retained and focus first on any perishable evidence.

The Intake staff member should next create the Case File. The purpose of the Case File is to contain the systematic compilation of all documents, records, and information associated with the case. This is done in such a manner that the Case File can on its own provide the basis and supporting documentation for the findings ultimately reached.

The preliminary investigation should be handled as quickly as reasonable under the circumstances. OPA's goal is to have the preliminary investigation completed within two weeks. However, due to certain notification requirements contained in the City's contract with employee unions, the preliminary investigation must be completed soon enough to allow the Director to make a classification decision within 30 days from the day on which the complaint was received by OPA. If circumstances make it impossible to obtain certain evidence or review evidence obtained (e.g., watch a video or interview a witness), the Intake staff member should highlight that in the intake log, and the Lieutenant should ensure the investigator to whom the case is assigned is aware of this. This will help ensure that evidence related to an incident is not lost or destroyed, and witnesses' memories are not allowed to fade with time before an interview is conducted. If an on-site view or photographs may be of particular value, and the passage of time may diminish the evidence, the intake staff should take those steps, even at this preliminary stage.

## 2. Mediation Option

Some complaints, particularly those involving possible miscommunication or misperception between the complainant and an officer or other employee, may be suitable for mediation as an alternative to the traditional means of handling complaints.

Unless the complaint involves particularly egregious allegations, use of force, possible violation of law or appears to be otherwise inappropriate for mediation, the mediation alternative should be briefly discussed during intake.

Complaints that include an allegation of biased policing and otherwise would be considered for mediation, must first be investigated sufficiently enough to determine whether or not it is reasonable to believe that a violation of the Bias-free Policing Policy may have occurred, viewing all available facts and evidence known at the time in a light most favorable to the allegation. If, prior to the OPA interview of the named employee, the OPA Director determines that no such *prima facie* case of biased policing exists, the case may be considered for mediation, if it's otherwise suitable. The goal of such mediation would be to help both the complainant and the named employee benefit from an open and safe exchange of perspectives and perceptions.

The Intake staff member should let the complainant know that some cases are selected for mediation, that it is an alternative to traditional case processing, that mediation would allow for an opportunity for the complainant to communicate his/her concerns directly to the involved employee, that it is facilitated by professional mediators from outside the Department, is voluntary and will occur only if both the Complainant and named employee agree.

The complainant should be asked if he or she would be interested in this option if the case is selected for mediation, or whether he/she would like to receive more information about the OPA Mediation Program, then note in the Intake log whether or not the complainant expressed interest in mediation or the reasons the mediation option was not discussed. Include a Mediation Program brochure or more detailed description of the program in the Complaint Information Packet if complainant requests more information, or refer the complainant to information available on OPA's website.

If the Intake staff member believes a complaint is particularly well suited for mediation, the reasons should be noted on the Intake Form. When the OPA Director and OPA Auditor review the intakes each week, the Director will decide if the complaint should be referred for mediation.

#### E. Complaint Notification

Most OPA complaints involve allegations against sworn police officers through the rank of Sergeant, all of whom are members of the Seattle Police Officers' Guild (SPOG).

Though involved employees may belong to other bargaining units and other collective bargaining agreements (CBAs) may be implicated, OPA usually defaults to SPOG requirements regarding notice and timelines, as they are the most stringent. If a named or witness employee belongs to a bargaining unit other than SPOG, the appropriate CBA should be consulted.

The SPOG CBA requires that employees be notified within five days after OPA receives a complaint against them. For all complaints that are not recorded as Contact Log entries, the Intake staff member should prepare and send a Notice of Complaint, except where criminal allegations are involved or where notification would jeopardize the investigation, such as where there are ongoing acts of misconduct.

Notice is sent via email to the named employee, with a copy of the 5-day Notice of Complaint attached. The employee's Captain or equivalent non-sworn supervisor and the named employee's collective bargaining unit are cc'ed on the email. A copy of the email should be downloaded to the complaint file, providing evidence of the day and time notice was sent to the employee. An intake log entry must be made stating the date and time the notice was sent.

Where the employee who allegedly engaged in misconduct is unknown, the Intake staff member should still initiate a Notice of Complaint. If the identity of the involved employee cannot be determined within 5 days, SPOG must be notified in lieu of the unknown employee. If the involved officer is later identified, the original Complaint Report and the Notice of Complaint will be amended and electronic notice provided as outlined above. The 5-day period begins anew once the identity of the involved employee becomes known and the employee becomes a "named employee."

#### F. Allegations & Classifications

Within 30 days of OPA receiving notice of a complaint, OPA must issue a "classification report", listing all "allegations". The classification report identifies the Complainant, the named employee(s) and witnesses, if any, includes a brief factual summary of the underlying incident and allegations made, and lists the SPD Manual section(s) implicated, along with other information concerning the event and parties. The report also notes whether the complaint will be classified for Supervisor Action or OPA investigation.

The OPA Lieutenant, who supervises the intake and investigations process, reviews the preliminary investigation conducted for each complaint intake, determines the contractual time limit of 180 days (see below) and recommends the allegations and the classification.

The appropriate allegations are determined by assessing, based on the preliminary investigation, whether any laws, SPD policies or regulations would have been violated if the actions alleged are later proven to be true. Allegations might include, for example, excessive use of force, bias-based or discriminatory policing, unprofessionalism, failure to thoroughly document an arrest, searching someone's home or car without permission, not having probable cause to make an arrest or driving an SPD vehicle in an unsafe manner. The classification must list each allegation and correctly cite the policy allegedly violated for each employee. There may be multiple officers and/or multiple allegations associated with a single complaint.

A case can be classified in one of two ways – Supervisor Action (“SA”) or Investigation. An SA classification is used for conduct that, while incorrect, does not rise to requiring discipline and may best be addressed with training or counseling. Allegations of excessive or unnecessary force, biased policing, and criminal behavior shall not be considered for classification as SA. An investigation classification is made when a full investigation is warranted.

The OPA Lieutenant forwards the Investigation Summary Report and other information collected during the preliminary investigation to OPA Administrative Staff. Once a week, all complaints that have completed the preliminary investigation process and been reviewed by the Lieutenant and preliminarily classified are gathered and copied for review by the OPA Director and OPA Auditor. This is referred to as the Intake Packet.

The Intake Packet includes a cover memorandum that lists the preliminary classification and case number for all new complaints ready for review, along with a copy of the Investigation Summary Report, pertinent documents, In-Car Video (ICV) and other available evidence from the preliminary investigation. The memorandum also lists all OPA investigations that are completed and ready for review by the OPA Auditor.

Each new complaint and preliminary investigation is reviewed by the OPA Director and OPA Auditor to ensure that all information needed for classification has been collected. They consider whether the allegations listed in the Investigation Summary Report cover all concerns raised by the complainant and whether allegations or named employees should be added or deleted. The Director and Auditor discuss the preliminary classification made by the OPA Lieutenant, check on any timeline issues, and consider whether the complaint should be referred to mediation. The OPA Director makes the final decision regarding complaint classification, following this consultation with the OPA Auditor.

The 30-day notification is then prepared and sent electronically to the named employee(s) by OPA, with a copy of the Investigation Summary Report attached. The named employee's Captain or equivalent non-sworn supervisor, and the named employee's collective bargaining unit are again cc'ed. A copy of the email is downloaded to the file, providing evidence of the date and time the classification report was sent log entry made.

**1. Complaints Classified for Supervisor Action**

If the civilian Director determines that a case can be most effectively handled by a supervisor, a memo is sent from OPA to the supervisor with specific actions requested, such as contacting the complainant, talking to the employee, assigning him or her to certain training or perhaps conducting a roll call if it might be helpful for all the officers in that precinct to be aware of the issue. The supervisor has 30 days to take the recommended action, document it in the file and return it to OPA. The Lieutenant, Director and Auditor then review it to make sure the follow-up occurred as required.

**2. Complaints Classified for Investigation**

If the case is classified for investigation, the Lieutenant will assign it to an OPA Investigator, who will have 60 days to complete an investigation. This is a default time-limit and may be shortened or lengthened depending on the complexity of the allegations and other factors. If the case might involve criminal conduct by the employee, it is instead referred for a criminal investigation at this point. (See sub-section K below.) If one of the named employees is of a rank higher than Sergeant, the CBA with the Seattle Police Management Association (SPMA) that represents Lieutenants and Captains requires that the named employee be interviewed by an Investigator of equivalent rank. The OPA Lieutenant will work with the assigned Investigator to manage these cases.

**G. Conducting Investigations**

**1. Planning the Investigation**

The first step for the Investigator is to review the complaint and all materials collected during the intake process, and to consult with the OPA staff member who conducted the intake to ensure that any perishable evidence has been collected, or to make it a priority to collect the evidence at that point.

The next step is to create an Investigation Plan to help focus and guide the investigation, and review it with the Lieutenant. The plan provides an investigative strategy, identifies potential sources of information, sets out anticipated timelines for conducting the investigation, and helps the Investigator anticipate problems before they arise.

Key segments of the Investigation Plan include:

- a) Allegations/issues to be investigated:
  - Check the Summary Investigation Report and review the SPD Manual policy sections identified in the complaint, along with the specific violations alleged for each named employee.
  - Include in the case file a copy of the SPD Manual policy section at issue, along with any related policies, regulations or statutes.
  - Identify the primary and any secondary issues involved and the elements that would need to be established to prove or disprove each allegation. Focus should also be given to identifying the specific actions, behaviors and words alleged by the complainant.
  - Do not limit the allegations to the words or specifics raised by complainant. As complainants would not typically be familiar with the SPD Manual, they likely won't frame their concerns neatly within the language of SPD policies. Assess the totality of the facts available and ensure that the employees named and allegations listed correctly cover the potential misconduct involved. If allegations or named employees need to be changed, discuss with the Lieutenant who will consult with the Director and Auditor and make sure amended notifications are sent to the employee(s).
  
- b) Witnesses and other key sources of evidence:
  - Witnesses and others who might have relevant information:
    - The complainant, named employee(s), witnesses to the incident, others with information about the incident, and internal or external experts.
    - The complainant likely was interviewed during intake, but consideration should be given whether to conduct a follow-up interview, particularly if the original interview was not done in-person.
    - Note contact information for each potential witness and issues about which they are likely to provide testimony.



- Highlight discrepancies in the actions described, timelines, or otherwise, among witnesses or with documentary evidence; consider the physical scene and any special elements that should be reviewed with witnesses; note the relationship of any witness to the complainant or the named employees.
- Consider the order in which to interview witnesses and any special considerations, such as whether any parties are anticipated to be unavailable for any period of time or whether there is concern a witness might be less willing to participate if much time passes.
- Documentary evidence (some of which might have already been gathered during intake):
  - SPD incident reports including the CAD Call; General Occurrence (GO) Reports; Use of Force reports including the Supervisor's Summary, FIT reports, Command Review, and documentation from the Use of Force Review Board; Parking Citations, copies of Traffic Infractions, etc.
  - Property or evidence reports
  - Booking reports and photos
  - Consent to search form or other evidence of consent
  - Secondary employment permits
  - Work Assignments
  - GPS records
  - Notes, email, correspondence, memoranda
  - Training protocols or records
  - Operational or unit manuals
  - Payroll or other personnel records
  - Medical records
  - Other Departmental records of potential relevance
- Physical evidence (some of which might have already been gathered during intake):
  - Digital In-Car Video
  - Holding Cell Video
  - SPD Communications recordings
  - Video and/or audio from the scene (e.g., security systems from near-by businesses) or taken by witnesses
  - Photographs

- c) Special considerations:
- Is assistance from others in OPA necessary because the complaint is time-sensitive, because an unusually large number of witnesses are involved, or because the issues are novel or complex and a second perspective would be useful?
  - Are there named or witness SPMA employees requiring that the OPA Lieutenant or Captain Deputy Director conduct the interview, per the SPMA contract?
  - Is assistance from outside OPA necessary, such as for a forensic video analysis?
  - Is the complaint related to another OPA complaint or to any other SPD investigation, investigation by another agency, or litigation from which material evidence might be obtained?
- d) Milestones and timelines:
- Set out an anticipated chronology for the investigation
    - Do all documents and physical evidence need to be collected and analyzed before witness interviews begin?
    - In what order should the witnesses be interviewed and why?
    - Make an objective estimate as to how long each step of the investigation will take and whether there could be any problem in meeting the investigation deadline.
    - Consider whether holidays, training schedules, workload, or scheduled absences (for you or witnesses) will impact the investigation timeline.
    - Consider the amount of time it will take to prepare the Case Summary and take other steps organizing the case file after the investigation is done and before forwarding it for review.
  - Develop a schedule for the investigation that includes all steps to be taken before it can be forwarded for review

## 2. Conducting Interviews

- a) General Guidelines:
- Interviews should be conducted in-person. If there is a specific reason that is not possible, the reason should be noted in the Follow-up Log.

- Interviews should be scheduled to allow time for preparation by the Investigator and notice to the witness. The order of interviews will be guided by the specific nature of the complaint, the anticipated testimony of each witness, and other tactical considerations, though special circumstances may dictate when an interview can or should take place. Witnesses who are expected to be uncooperative are sometimes best interviewed last, allowing the Investigator to gather evidence from other sources and to develop specific questions, rather than relying on the witness to offer information. Generally, interviews should be conducted in the following order:
  - (1) Complainant (interview as soon as possible)
  - (2) Subject (if not the Complainant)
  - (3) Non-SPD witnesses
  - (4) SPD employee witnesses
  - (5) Named employee
- All efforts to contact witnesses should be noted in the Follow-up Log. Sustained and reasonable efforts must be made to contact witnesses and complete interviews. All available means of contacting a witness shall be attempted.
- For SPD employees, interview notices should be sent at least 5 days ahead of the scheduled interview day, per the SPOG contract.
  - If SPD employees covered by other CBAs are to be interviewed, check the contract for notice requirements.
  - Notice is provided by email and includes an order to appear, the date, time and place the interview will be held, information about representation rights and consequences for failure to appear, a confidentiality directive, and interview documentation options. A copy of the Investigation Summary Report, the Police Bill of Rights, and the *Garrity* informational<sup>10</sup> should be attached.
  - A copy of the email should be downloaded to the case file, providing evidence of the date and time the interview notice was sent. An entry should be made in the Follow-up log that notice was mailed to the employee, copied to the Captain and union, with a copy to the file.

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<sup>10</sup> The informational explains to the employee that compelled statements made by an employee during an internal administrative interview cannot be used against the employee in any subsequent criminal proceedings. In *Garrity v. New Jersey* (385 U.S. 493 – 1967), the United States Supreme Court ruled that public employees can be compelled by their government employer to make statements against self-interest as a condition of employment but that the Fifth and Fourteenth Amendment protections against self-incrimination prohibited the use of such statements or the fruit of such statements against that employee in a criminal prosecution of that employee.

- For witnesses not employed by SPD, including the complainant, interviews should be scheduled at the interviewee's convenience while avoiding unnecessary delays to the investigation.
  - If a witness is difficult to locate or not returning phone calls, consult with the OPA Lieutenant about strategies to use in attempting to contact the witness.
  - Consider a visit to the witness' home or work place to establish contact, if necessary.
  - As a final step, a letter should be sent asking for contact and indicating a deadline by which you need to hear from the witness in order for him/her to participate in the investigation.
  - Note in the Follow-up Log all efforts to reach the witness.
- Location of interviews
  - Interviews of SPD employees generally will take place at the OPA office.
  - Witnesses not employed by SPD should be encouraged to be interviewed at the OPA office, though special considerations may necessitate holding the interview elsewhere (e.g., a witness is in jail). Some witnesses may prefer not to come to OPA, so the Investigator may need to arrange to meet with the witness elsewhere. The OPA Lieutenant should be consulted about interviews outside OPA and consideration should be given to having a second Investigator attend the interview and to using an unmarked vehicle for transportation.
  - Once an interview is scheduled, reserve one of the OPA interview rooms.
- Preparing for the interview
  - Review the Investigative Plan to determine the issues to be addressed with the witness to be interviewed.
  - Consider whether there are documents, In-Car Video, photos or other evidence about which you want to show and question the witness.
  - Consider using photographs of the scene or diagrams in order to assist the witness with identifying where certain people were located, the relative positioning of people and things, and events that took place.
  - Prepare an outline of topics and subtopics to be covered with the witness. If listing specific questions, use open-ended phrasing.

- Recording the interview
  - All interviews, whether in-person or by telephone, should be recorded in their entirety, as a safeguard to ensure there is a record of exactly what was said during any interview.
  - SPD employees are obligated to submit to recorded interviews, though consent to the recording should also be noted at the beginning of the interview.
  - Witnesses who are not employed by SPD should be told the rationale for recording interviews and encouraged to consent. If consent is not provided, document the refusal and prepare a narrative summary of the interview immediately afterward to include in the Follow-up Log.
  - Interviewees occasionally bring their own recording device to the interview and they are permitted to create their own recording of the interview. Upon request, OPA will provide a duplicate copy of the recording or a written transcript.
- Conducting the interview
  - The Investigator's demeanor during the interview should be respectful, courteous, and professional. Each person interviewed should be addressed by his or her surname. It is very important to maintain formality and neutrality, even if the interviewee is someone the Investigator knows. Keep in mind that this can include body language and overall demeanor in the interview. The Investigator should avoid forming any opinion regarding the person being interviewed and instead focus on obtaining as much information and evidence as possible. The Investigator should also avoid expressing an opinion regarding how the case will or should be decided. If the Investigator thinks it will be difficult to maintain neutrality with any witness for any reason, he or she should consult with the OPA Lieutenant.
  - Role of the Union Representative: The primary role of a union representative during an OPA interview is to protect the contract rights of the employee. Otherwise, the union representative must not be allowed to interrupt or otherwise disrupt an OPA interview. The OPA Investigator should invite the Union Representative to place any objections on the record before the Investigator begins asking questions and at the end of the interview, if necessary. When the Investigator has completed

the questioning, the Union Representative may be invited to ask follow-up questions relevant to the investigation.

- Although the nature of the complaint may make the interview uncomfortable, the Investigator must not avoid asking the necessary questions. Specific and sometimes direct questions must be put to the witness in order to address the elements present in each allegation. Also, open-ended and probing follow-up questions must be asked in order to fully understand what the witness saw, heard and otherwise knows about the matter under investigation. It is the responsibility of the Investigator to collect all available information so that the Director and the Chief of Police can make findings based on facts discovered during a complete, objective and thorough investigation. At times it may be necessary to challenge assertions and probe further when there are incomplete responses. If possible, prepare questions ahead of time to address specific points of contention and to anticipate how interviewees may respond, so as to be prepared with follow-up questions.
- Interview questions should address the elements present in the allegation(s) raised against the named employee. Some witnesses may be able to speak to all elements of all allegations, while other witnesses may offer more limited information.
- While using the interview outline as a guide, strive to maintain eye contact with the witness and listen closely to the answers provided. Do not stay so wedded to the outline that the opportunity to pursue an unexpected line of information is lost.
- Start with the In-Person Interview Guide. This is a scripted guide for identifying each person present in the interview room, as well as other information such as the date, time, location of the interview, etc. If the person being interviewed is an employee, the guide specifically asks the employee if he or she does or does not invoke his or her *Garrity* rights prior to giving an interview. The guide is filled out and then read aloud at the start of the interview, to ensure this information is on the record.
- Next, give a brief explanation about the purpose of the interview, and then move into your questions.
- Use open-ended questions as much as possible to elicit the witness' testimony, and keep interruptions to a minimum so that

the witness offers as much detail as possible and the transcriptionist can hear all statements by all participants.

- Who?
- What?
- When?
- Where?
- How?
- Why?
- Examples include:
  - Tell me what you remember seeing when you arrived.
  - Where were you when you saw the subject?
  - Who was present?
  - What did the other officer tell you happened?
  - Why did you use force on the subject?
  - How did you know that the other officer needed your help with the subject?
- Leading questions should be avoided, and typically can be answered with a “yes” or “no,” or the answer is implied in the question - the Investigator is, in effect, providing a rationale or explanation to the witness while asking the question.
  - Examples to avoid include:
    - Do you remember seeing the subject with a gun when you arrived?
    - Were you next to your car when you saw the subject?
    - Were Officers Smith and Jones present?
    - Did Officer Smith say that the subject had a weapon?
    - Did you use your Taser because the subject would not drop his weapon after you asked him to?
    - You were worried about your safety, right?
    - Did the other officers ask for your assistance?
- Interviews should move from broad to more specific questions.
  - Use repetition to understand details.
  - Restate what you heard to ensure accuracy.
  - Avoid commenting on what was said.
  - Don't express judgment about what is said, either verbally or by tone of voice.

- Use tools to help understand what happened.
  - Have the witness use a map, diagram, photo, video, etc. to help explain what happened.
  - Remember that a written record is being created and that reviewers must understand the witness' testimony in relation to any tool or gesture used. For example, if the witness watches the In-Car Video of an event and makes a comment, make a note on the record of the point in the ICV that the comment was made.
  - If acronyms or special terminology are used, ask the witness to explain it for the record.
  - Keep short notes about what you hear during the interview, but continue to maintain eye contact with the witness and observe his or her demeanor and non-verbal behavior.
- Establish the relationships among any parties present at the incident as well as any other witnesses, with each other and with the named employee. Perceptions, statements and credibility may vary depending on the interviewee's relationship to others.
- Where there is a discrepancy between the witness' testimony and other testimony or evidence, question the witness about the discrepancy without expressing judgment. For example: "I'm confused because you said you returned to the precinct after the incident, but CAD indicates you were responding to another call at the time. Can you help me understand this?"
- SPD employee witnesses should be asked about their understanding of the policy at issue and all related training.
- When interviewing non-police personnel, avoid the use of police terminology. Use terms and concepts that are familiar to the public to ensure that the interviewees understand what you are asking of them.
- Concluding the interview
  - If the witness is represented by his or her bargaining unit, the Investigator may invite the Union Representative to ask follow-up questions relevant to the investigation.
  - If the witness's Union Representative asks any questions, the investigator should ask follow-up questions as needed.
  - Before ending the interview, ask if the witness has any other information about the incident or complaint he or she would like to provide, including whether he or she is aware of other witnesses.



- Always make sure that you have current contact information for the complainant(s) and all witnesses. Let the individuals you interview know that you may need to follow-up with them if necessary to clarify information you gather after speaking with them. Encourage witnesses not to talk about the interview or the incident with anyone else out of fairness to all persons involved. SPD employees are to be given a specific order not to discuss the matter or their interview with unauthorized persons.

### 3. Two-person Interview Teams

Occasionally, it is useful for two Investigators to be involved in the same interview. The case might be particularly complex, the Investigators might have related cases, or it might be anticipated that the witness will be difficult to interview. In such a situation, the primary Investigator on the case would take the lead, setting strategy prior to the interview, controlling the flow of the interview, asking most of the questions, taking brief notes, and operating the recorder. The secondary Investigator takes more thorough notes, identifies areas where more probing is needed, follows up with questions after the primary Investigator is finished. On occasion, it will not be necessary to ask any follow-up questions, but the secondary Investigator will still be useful in sharing notes of the interview and observations about the witnesses' demeanor and non-verbal behavior.

#### H. Review and Evaluation of Evidence

As evidence is obtained during the investigation, it should be carefully and thoroughly catalogued in the case file (source, date obtained, etc.), examined and described in the case notes. At the conclusion of the investigation, the value and importance of each piece of evidence must be weighed and described in the Case Summary.

Testimonial evidence (statements made by involved parties and witnesses) must be carefully weighed and evaluated as to relevance and credibility. Care should be taken to mitigate the effects of bias (conscious or unconscious) on the part of the Investigator. For example, the Investigator must avoid giving any greater or lesser weight or credence to an individual's testimony because of that person's position (including employment by SPD or another City entity), race, ethnicity, gender identity, economic status, sexual orientation, etc. Only objective criteria relating directly to the truthfulness or credibility of the person should be used in deciding what weight is to be given to his or her testimony.

#### I. The Case Summary

Once all steps in the investigation have been completed, the evidence is summarized in the Case Summary. There are different ways to organize the Case Summary. One highly effective approach is to start with the allegations and elements within each and list the testimonial, documentary or physical evidence that speaks to that issue. While this approach means that some evidence is repeated as it will be relevant to more than one allegation or element, it helps the ultimate decision-maker sort through the information and more easily arrive at the disposition.

Once the Case Summary is prepared and the file is ready to submit to the Lieutenant for review, send the OPA status update letter or email to the complainant (use whichever method the complainant has requested) and the named employee(s) indicating the investigation appears to be complete and will be moving through the review process before being approved and a recommended disposition made.

#### J. The 180-Day Investigative Timeline

If a complaint is classified for investigation, the SPOG CBA requires that it must be completed within 180 days of being filed with OPA, or otherwise received by a Department sworn supervisor or discipline cannot be imposed. It can be difficult to determine when supervisory involvement starts the 180-day timeline and, following grievances challenges by SPOG on the issue, it was agreed that, "Receipt of the complaint by a Department sworn supervisor...is defined as a communication received by a Department sworn supervisor alleging facts that, if true, could, without more, constitute a violation of the Department's Policies and Procedures Manual."<sup>11</sup>

Despite this definition, it still is not always clear when alleged conduct might have come to the attention of a supervisor and started the 180-day timeline; thus, OPA usually is conservative and strives to have all investigations completed within 180 days from the *incident date*.

The investigation is deemed complete, for purpose of computing the 180-day timeline, once a proposed Disciplinary Action Report (DAR) is issued, following a recommended finding of Sustained on any allegation in the complaint. The 180-day clock does not start again unless further investigation takes place.

If the 180-day deadline is not met, discipline cannot be imposed in a case where the employee was found to have engaged in misconduct. However, the expiration of the

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<sup>11</sup> Agreement between the City of Seattle, Seattle Police Department and SPOG dated October 27, 2008.

180-day deadline does not preclude a sustained finding. OPA strives to complete all investigations well within the 180-day timeframe.

The consequences for missing a deadline could include an otherwise culpable named employee avoiding responsibility for his or her misconduct.

Per SMC 3.28.812, "If no discipline results from an OPA complaint because an investigation time limit specified in a collective bargaining agreement between the City and the subject employee's bargaining unit has been exceeded, within 60 days of the final disposition of the complaint investigation the OPA Director shall make a written explanation of the nature of the allegations in the complaint and the reason or reasons the time limit was exceeded. This requirement applies whether the OPA recommends that the complaint be sustained or declines to make a recommendation because the time limit has been exceeded. The written explanation shall be included in the OPA case file."

#### K. Review of the Investigation

The Investigator will submit the completed investigation to the Lieutenant for approval. It is then reviewed by the Director and finally by the Auditor to ensure that it is complete, thorough and objective. If it is not, the Investigator will be directed to take whatever additional investigative steps are needed. The criteria the Auditor "should consider include but are not limited to: (1) whether witnesses were contacted and evidence collected; (2) whether interviews were thorough; (3) whether applicable OPA procedures were followed."<sup>12</sup> If the OPA Auditor has any concerns about the investigation, the OPA Auditor discusses the concerns with the OPA Director. If further investigation is necessary, the case is referred back to the OPA Lieutenant who works with the Investigator to complete the last steps as expeditiously as possible. The Follow-up Log and Case Summary are amended to reflect any additional steps taken as requested by the Lieutenant, Director or Auditor.

#### L. Investigation Findings and Certification

After the OPA investigation has been reviewed and approved, the OPA Director, Captain Deputy Director, and Lieutenant meet to discuss the case, after which the OPA Director certifies the investigation as complete and issues to the Chief of Police a recommended finding on each allegation using the preponderance of the evidence standard, except where the allegation is one of dishonesty, in which case the CBA requires the application of a clear and convincing standard of proof.

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<sup>12</sup> SMC 328.855.C.

The preponderance standard is defined in Black's Law Dictionary (8th Ed. 1990) as follows: "Preponderance of the Evidence: the greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."

If the preponderance of the evidence shows that misconduct did occur, the recommended finding will be "sustained". When the preponderance of the evidence shows that misconduct did not occur, the recommended finding will be "not sustained".

The OPA Director's certification and issuance of recommended findings to the Chief is done via a Director's Certification Memo (DCM), issued by the OPA Captain Deputy Director, summarizing the evidence collected in the investigation. The DCM is addressed to the named employee's Captain (or civilian equivalent).

Following the issuance of the DCM, the OPA Director or designee will notify the complainant(s) in writing (email acceptable) that the complaint investigation has been certified as complete. This notification shall also inform the complainant(s) that the Director has recommended findings to the Chief of Police. It should be made clear that the Chief has final authority as to findings and discipline and that the complainant(s) will be notified once the Chief makes a decision.

#### 1. Not Sustained Finding

There are a variety of reasons why a recommended finding of "not sustained" would be appropriate including, but not limited to:

- the allegation is unfounded; the act did not take place
- the actions of the named employee were lawful and proper
- the results of the investigation are inconclusive in that there is no preponderance of evidence to either prove or disprove that misconduct occurred
- the named employee's actions did not rise to the level of misconduct (e.g., a minor or technical violation of policy, an inadvertent act, etc.) but do call for some follow up with the employee in the form of training, counseling, etc.

- the investigation brought out the need for department level changes or improvements to SPD policy, training, supervision, etc. In such cases, OPA will clearly communicate this to the complainant and the public. Such communication should include a clear explanation of the recommended process to be followed to remediate and correct policy, training, supervision, etc.

For cases in which there is anything other than a Sustained recommendation on the allegation(s), a copy of the investigative file is made available to the named employee's Captain (or civilian equivalent), who has ten days to review the file, during which time he or she may submit comments to the OPA Captain Deputy Director. Any comments from the reviewing Captain are forwarded to the OPA Director for consideration.

## 2. Sustained Finding

If the DCM recommends a finding of Sustained on one or more allegations the following steps are taken:

- a. A meeting is scheduled with the named employee's Captain and Assistant Chief, along with the SPD Legal Advisor to review the file and answer any questions concerning the investigation and/or recommended finding(s). The OPA Director, Captain Deputy Director (and/or Lieutenant), and the assigned Investigator also attend. Each participant is provided a copy of the investigative file prior to the meeting and comes prepared to discuss the investigation. After receiving input from the participants at this review meeting, the Deputy Chief makes a separate recommendation to the Chief on whether to Sustain the allegation(s) and if so, what the appropriate discipline should be. The OPA Director also advises the Chief as to the appropriate discipline. The Chief makes the final decision and determines the discipline to be imposed for any Sustained allegation<sup>13</sup>.
- b. If the Chief agrees with a Sustained recommendation, the employee and his/her union representative are notified by the Chief of the proposed finding and disciplinary action in a document called the proposed Discipline Action Report (DAR). If the disciplinary action involves a suspension, demotion, or termination, the employee is provided with an opportunity to meet with the Chief of Police to provide information the employee feels that Chief should consider before making

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<sup>13</sup> SMC 3.28.810.F

a final decision. This is called the “due process” or *Loudermill*<sup>14</sup> hearing. There is no required/prescribed time frame for this meeting, but it usually occurs about two weeks after the proposed DAR is issued.

- c. The employee generally may invite whomever he/she wishes to the meeting. Typically, the employee brings a union representative and sometimes also brings an attorney or another SPD employee. Departmental personnel who may attend depends on the CBA involved, but generally, attendees are the Chief of Police, a Deputy Chief or Assistant Chief, the employee’s Captain or civilian equivalent, the OPA Director, and the Chief’s Legal Advisor.
- d. After the employee has presented information for the Chief to consider and the Chief has had an opportunity to review relevant portions of the employee’s personnel file and questions have been asked and answered, the Chief makes a final decision. There is currently no established timeline or required deadline within which the Chief must issue his final decision in a disciplinary matter.
- e. Once the Chief makes his final decision, the Legal Advisor notifies the employee and union in writing, through the final DAR.
- f. If the Chief ultimately disagrees with the OPA Director’s recommended finding then he or she must provide the rationale for not following the Director’s recommendation in a written letter to the Mayor and City Council<sup>15</sup>.

#### 4. Training or Counseling Indicated

When a “not sustained” finding is recommended and there may have been a minor violation of policy, but it was not willful and did not rise to the level of misconduct, OPA can require the employee’s chain of command to provide appropriate training, counseling and/or review the situation for deficient policies or inadequate training. This encourages the chain of command to address well-intentioned mistakes through education and counseling.

In such cases, the OPA Captain Deputy Director or Lieutenant sends a memorandum to the named employee's Captain (or civilian equivalent). The Investigator assigned to the case may be asked to do the initial drafting of the memo. The memorandum explains

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<sup>14</sup> This informal meeting with the Chief of Police is named after a 1985 decision of the U.S. Supreme Court in *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985).

<sup>15</sup> SMC 3.28.812.A

the purpose and the type and scope of training required, based on the specific facts of the case. It also directs how this training should be documented and gives the Captain (or civilian equivalent) 30 days in which to complete and return the packet and the summary follow-up memo that is required.

The training is usually performed by the named employee's immediate supervisor, but is sometimes completed by someone else in the chain of command or a specialty unit. After the training is completed and the packet is returned to OPA, it is logged in and reviewed by the OPA Lieutenant and/or OPA Captain Deputy Director for completeness. If there are concerns, they are brought to the attention of the OPA Director. This documentation is then added to the case file.

The Chief may also order training in response to a sustained finding as appropriate.

#### M. Case Closure Process

In cases other than those involving a Sustained allegation, after the named employee's line of command has had a chance to review the file and DCM and to offer comments, if any, the OPA Director closes the case and issues a Case Completion Memorandum (CCM), which lists the original allegations, recommended finding(s), the ultimate finding(s) made by the Chief and any discipline administered. A copy of the CCM is sent to the employee's Captain (or civilian equivalent), the OPA Captain Deputy Director, Lieutenant and Auditor.

The OPA Director's Assistant then:

1. Sends the original copy of the CCM, initialed by the OPA Director, for inclusion in the case file, and retains a copy for the Director's file;
2. Drafts a closing letter to the Complainant that summarizes the evidence, findings, and discipline (if any) and includes information about any right to appeal the employee may have;
3. Has the OPA Director sign the closing letter to the complainant, makes copies for the file and mails the original, along with a survey evaluation<sup>16</sup>. When OPA has made the determination that SPD policy, training, supervision, etc. should be changed, the closing letter will include a clear explanation of this and the recommended steps to be taken;
4. Emails the DCM, CCM, and an evaluation to the named employee(s). A copy of the

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<sup>16</sup> An evaluation survey form is sent to all complainants and named employees once a case is closed. This feedback is used by OPA to improve its processes and provide better service.

- CCM is sent via email to the Section Commander and appropriate Bargaining Unit;
5. Closes the case in the case tracking system by entering the findings for each allegation listed, indicating the date the OPA Director issued the CCM, and updating the employee's complaint history card on file in OPA.

For cases resulting in a Sustained Finding, the CCM and closing actions occur after the additional steps are concluded.

#### N. Appeals

Represented employees may appeal any disciplinary decision involving suspension, demotion or termination to either the Public Safety Civil Service Commission or as provided in the CBA. If the employee is terminated, the Chief will also send notification to the Washington State Criminal Justice Training Commission (WSCJTC), which is responsible under state law for certifying and de-certifying all officers. If the misconduct includes a criminal conviction or dishonesty, the Commission may de-certify the officer, meaning he or she will no longer be allowed to be an officer anywhere in the state and information will be entered into an inter-state database.

The OPA Director or designee will inform the complainant of any appeal or grievance of discipline filed and the outcome of such appeal or grievance.

#### O. Complaints of Criminal Misconduct

##### 1. Overview

SPD policy requires that all employees "report to their supervisor as soon as practical (and before the start of their next work shift) any of the following circumstances occurring in any jurisdiction:



- a. They are the subject of a criminal investigation, criminal traffic citation, arrest, or conviction,
- b. They are the respondent of an order of protection, restraining order, no contact order, anti-harassment order,
- c. Their Washington driver's license is expired, suspended, or revoked, or if they obtain an ignition interlock driver license."<sup>17</sup>

In 2008, in response to a recommendation from the Police Accountability Review Board (PARP), a blue-ribbon task force, the City and SPOG agreed to specifically prohibit OPA from conducting criminal investigations.<sup>18</sup> Further, there "shall be no involvement between OPA and specialty unit investigators conducting the investigation."<sup>19</sup> However, the Collective Bargaining Agreement (CBA) provision adopted also notes that "pending civil or criminal matters involving an officer should not delay OPA investigations ...simultaneous OPA and criminal investigations may be conducted. In the event the Department is conducting an OPA investigation while the matter is being considered by a prosecuting authority the 180-day timeline provision continues to run."<sup>20</sup>

Though there is some argument to the contrary, SPOG takes the position that the 180-day timeline continues to run if the Department itself is criminally investigating an officer, even if OPA has not begun an administrative investigation.<sup>21</sup> Once SPD refers the matter for review to the King County Prosecutor's Office (KCPO) or City Law Department, the 180-day clock stops, and does not resume until there is a decline notice or verdict in a criminal trial, whichever is later.<sup>22</sup> However, as noted above, if OPA initiates an administrative investigation while the matter is pending with the prosecuting authority, the 180-day timeline continues to run.

If the alleged criminal misconduct takes place in another jurisdiction and the involved officer is criminally investigated or prosecuted by an outside agency, the 180-day timeline is suspended until OPA initiates an administrative investigation.<sup>23</sup> While "the Chief of Police may, at his/her discretion, request that an outside law enforcement agency such as the State Patrol conduct a criminal investigation" of alleged criminal misconduct which occurred within the Department's jurisdiction, it is not clear whether

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<sup>17</sup> SPD Manual, 5.002 #9. This provision also covers procedures for seeking an "Employer Declaration for Ignition Interlock Device."

<sup>18</sup> SPOG CBA, 3.7.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> SPOG CBA, 3.6.B, 3.6.B.2, and 3.7.

<sup>22</sup> SPOG CBA, 3.6.B.

<sup>23</sup> SPOG CBA, 3.6.B.2.

the 180-day timeline is tolled under such circumstances.<sup>24</sup> While the Chief has made such requests of outside agencies, the timeline issue has not been squarely confronted.

Thus, while OPA has the power to conduct an administrative investigation concurrently with any criminal investigation or prosecution underway, the 180-day clock will run and OPA and the Department could be put in the position of making a finding on an administrative policy violation related to the criminal charge, prior to a criminal determination. If OPA waits to initiate the administrative investigation until after the criminal process is complete, “The criminal investigation shall become part of the administrative investigation.”<sup>25</sup> The OPA Director may elect to conduct both investigations simultaneously or may elect to delay the administrative investigation until the criminal investigation is completed. The advantages to delaying the administrative investigation are that there is less likelihood of any interference with the criminal prosecution and any information that is gathered as a part of the criminal investigation can be used as a part of the administrative investigation. The disadvantage to delaying the administrative investigation is that closure of the incident for the involved employee(s), the complainant and the Department is likely delayed for a significant period of time. To mitigate this delay where possible, the Director should work with the prosecutor or City Attorney to have an expeditious filing decision.

## 2. OPA’s Administrative Investigation Process with Criminal Complaints

The OPA Director, OPA Captain Deputy Director or OPA Lieutenant generally receives information from the employee’s supervisor or someone else in the chain of command that an employee is the subject of a criminal process, pursuant to the reporting requirement noted above. (Failure to report can result in a separate misconduct allegation.)

- a. When OPA receives notice an employee is the subject of a criminal process, is a respondent of an order of protection, restraining order, no contact order, or anti-harassment order, or an employee’s driver’s license is expired, suspended, or revoked, or if he or she obtains an ignition interlock driver license, an OPA complaint is generated.

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<sup>24</sup> SPOG CBA, 3.7.

<sup>25</sup> Ibid.

- b. A preliminary investigation is conducted, usually limited to obtaining a copy of the incident report or other associated paperwork generated at the outset of the incident.
- c. At a minimum, a criminal Violation of Law allegation is made in the OPA complaint, though other allegations may be added at the conclusion of the criminal process as more information is obtained.
- d. The usual 5-day and 30-day notice requirements for OPA complaints do not apply when criminal allegations are involved.<sup>26</sup> Instead, notice is given once the criminal matter is concluded and OPA moves forward with the administrative investigation.
- e. OPA puts the case into monitoring status, while the criminal process is pending, and an Investigator checks the status of the criminal process weekly.
- f. If the criminal matter is to be investigated by the Department, OPA determines the appropriate investigative unit with expertise in the type of criminal conduct alleged and OPA refers the matter to the Assistant Chief for the Criminal Investigations Bureau to oversee the criminal investigation.<sup>27</sup> Generally, the appropriate unit is obvious from the nature of the complaint, though some facts merit discussion with the Assistant Chief for the Criminal Investigations Bureau or other commanders before a final decision is made.
- g. The OPA Lieutenant drafts a referral memo for the OPA Director's signature that is sent to the Criminal Investigations Bureau.
- h. The Investigator assigned the case for monitoring is expected to check on the status of the associated criminal investigation and/or prosecution review at least once every week.
- i. Once there is a decline notice from the Prosecutor, a verdict or another conclusion to the criminal investigation, OPA initiates the administrative investigation. After an initial review of the criminal investigation, the OPA Lieutenant makes a recommendation to add any other administrative allegations that might apply.
- j. As per the usual complaint classification process, the OPA Director and OPA Auditor review the Lieutenant's recommendation and changes are made as needed.
- k. The assigned Investigator proceeds with the investigation and all other review and discipline procedures outlined for non-criminal complaints are followed.

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<sup>26</sup> SPOG CBA, 3.6.A.

<sup>27</sup> SPOG CBA, 3.7.

### 3. Tracking Criminal Complaints

OPA has set up several systems for tracking criminal complaints that are being investigated or prosecuted before OPA conducts an administrative investigation.

- a. The Investigator assigned the case for monitoring tracks the 180-day timeline, aware of the impact of whether it is being investigated internally or by an outside jurisdiction, or whether it has moved for review by the prosecutor.
- b. OPA maintains a list of all pending criminal cases against SPD employees, whether being investigated internally, externally or under review by a prosecutor. The OPA Director, OPA Captain Deputy Director and Lieutenant meet with the Chief of Police once a month to review the status of these cases and to discuss any concerns, including timeline issues.
- c. The OPA Director and OPA Auditor review all open OPA cases on a monthly basis, and the Director follows up on any questions from the Auditor concerning the status of any criminal complaint.

#### P. Complaints naming the Chief of Police or OPA Personnel

If the subject of the complaint is assigned to OPA, the employee receiving the report shall forward the complaint to the OPA Director. If the subject of the complaint is the OPA Director, the complaint shall be forwarded to the City Human Resources Director for investigation.

Where the Chief of Police is named in a complaint filed with the OPA, the OPA Director consults with the Mayor's Office to identify an appropriate City authority outside OPA or an independent investigator who will conduct any investigation necessary.

If a matter involving the Chief of Police or OPA personnel is being investigated outside OPA, someone from OPA, usually the OPA Captain Deputy Director or Lieutenant, will consult with the outside investigator to ensure notice, timelines, representation rights, and other procedures are followed.

#### Q. Complaints involving EEO matters

Complaints from SPD employees concerning workplace harassment or discrimination are generally handled by an Investigator in SPD Human Resources, the City Investigator or an outside investigator retained by SPD. An Equal Employment Opportunity (EEO) complaint is an accusation of misconduct by one employee of the Department against another employee of the Department based on race, creed, color, national origin, age, gender, sexual orientation, marital status, political ideology, parental status, religion, ancestry, or mental, physical, or sensory handicap. Workplace harassment is prohibited by law, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment,
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Complaints may be referred to OPA that essentially involve EEO matters, which should then be referred to the EEO Sergeant. Because it is sometimes difficult to discern if non-EEO misconduct is being alleged along with EEO concerns, the OPA Investigator should always consult with the OPA Lieutenant about how to handle the intake of a complaint that appears to involve EEO allegations. The OPA Director should be consulted if needed. Complaints referred for EEO processing should be documented in the Contact Log.

### **III. Policy and Training Recommendations**

Regardless of the findings made for allegations in an OPA complaint, the investigation might point to broader policy or training issues. While individual OPA investigations may point to training needs for the individually-named employee, policy or training recommendations might also be needed for a particular unit, precinct or the entire Department. The OPA Director and the OPA Auditor each have the authority to make policy, training or procedure recommendations to SPD. The Audit, Policy and Research Section is responsible for tracking and ensuring timely follow through for policy and training recommendations received from the OPA Director and Auditor.

### **IV. Public Reports**

SMC requires the OPA Director to issue at least two reports per year:

“The Director shall issue at least two reports per year to the Mayor and City Council describing the work of the OPA and making recommendations for policy changes as determined by the Director. Each year at least one of the Director's reports shall report the following:

1. The total number of complaints received by the Office of Professional Accountability;
2. The number of complaints by classification and nature of allegation;
3. The percentage of complaints resulting in each kind of finding, namely, sustained, not sustained, unfounded, supervisory intervention or exonerated;
4. The nature of disciplinary action taken in sustained cases;
5. The geographic distribution of complaints;
6. The racial, ethnic and gender distributions of complainants, as this information is provided voluntarily by complainants;
7. The racial, ethnic, gender, assignment and seniority distributions of officers who are subjects of complaints;
8. The number of officers who have received three or more sustained complaints within one year; and
9. The timeliness of OPA complaint handling.”<sup>28</sup>
10. Trends, observations, and areas in need of attention as indicated by data and information available to the OPA Director, including but not limited to use of force reviews, non-disciplinary incident reviews, civil actions and claims, media reports, community input, policy research, national best practices, etc.

The OPA Director also issues reports on an ongoing basis summarizing closed investigations, OPA complaint trends in comparison to the same period the previous year, and information about cases referred to the OPA Mediation Program.

Both the OPA Director and OPA Auditor issue reports on policy and training recommendations they have made individually or jointly.

The Auditor also reports on the number of cases reviewed, with a description of those in which reclassification or further investigation was requested, a summary of issues, problems and trends noted, training recommendations for officers in general or for OPA Investigators, and/or findings from OPA audits or the OPA Director's reports.<sup>29</sup>

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<sup>28</sup> SMC 3.28.825

<sup>29</sup> SMC 3.28.860

## V. Files, Records and Retention Procedures

### A. Retention protocols

Investigative files and records maintained by OPA are retained as follows:

- OPA Case files
  - All case files, whether classified for full OPA investigation or Supervisor Action, and whether completed or open.
  - Files are retained for the current plus three years, except for cases identified by the Legal Advisor or City Law Department to retain longer. Examples include cases that are on appeal, subject to a court order requiring their preservation; where there is pending civil, criminal, or disciplinary action, or where pending administrative proceedings make it appropriate to retain the file for a longer period of time.
  
- OPA Case Log File
  - A sequential list of all contacts and complaints made to OPA, including those classified for an OPA Investigation, Supervisor Action, or as a Contact Log.
    - Retention: Current plus three years.
  - A log is maintained showing any files that have been removed from the OPA office, the date of removal, who signed out the files, and the location of the files during their absence.
  
- Contact Log File
  - Logged contacts (inquiries) not resulting in an OPA Investigation or Supervisor Action.
  - Retention: Current plus three years.
  
- Named Employee Computerized Card File<sup>30</sup>
  - Alphabetized index of all employees who have been named in a complaint that was investigated by OPA and is maintained as an

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<sup>30</sup> This alphabetized list originally was maintained on index cards, prior to being moved to an electronic format. Because this information is available on the computerized complaint tracking system, along with more extensive data concerning complaints, OPA is exploring the idea of discontinuing use of the electronic card file. The current system will be maintained as OPA consults with the Legal Advisor and others who regularly access information via the electronic system. This protocol will change when the new IAPro System is implemented.

electronic Word document. Includes the OPA investigative file number of each case, allegation(s), and finding(s).

- Retention: All entries except those with “Sustained” findings shall be removed three (3) years from the date named employee notification occurred. In order to ensure accurate data retention, each employee’s listing shall be updated as needed prior to review by non-OPA personnel.
  
- OPA Intake Complaint Log File
  - A daily log completed by the Intake staff member or Investigator assigned to intake duties, listing all complaints and inquiries received during a particular business day.
  - Retention: Current plus three years.
  
- OPA Sustained Complaint File
  - The original file for each complaint in which an allegation was found Sustained, including cases investigated by OPA and Line Investigations (a classification not currently in use).
  - Retention: Current plus three years, unless the SPD Legal Advisor or City Law Department identifies the file as one to retain longer because it is on appeal, is subject to a court order requiring preservation, or there are pending civil, criminal, disciplinary, or administrative proceedings.

## B. Security of Files

Because of the confidential nature of OPA investigation files and paperwork, all files must be stored in lockable file cabinets. No file is to leave or be shown to any person outside OPA except upon approval of the OPA Director or OPA Captain Deputy Director or his/her designee, as provided by Section 2.04.040 below. File and office security is the duty and responsibility of all personnel assigned to OPA.

The sensitivity of certain investigations, such as those involving criminal allegations where disclosures could adversely affect an investigation, may require special handling to ensure confidentiality.

## C. Release of Information

Given the obligation of OPA to exercise the maximum transparency allowed by law and contract, the contents of OPA investigative case files, Supervisor Actions, and Contact



Log(s) will be released to the fullest extent permitted by law and contract, in response to a court order, in response to a request from the SPD legal counsel or Public Disclosure Unit, in response to a request from the City Law Department, or under other legal authority. A copy of the investigatory portion of an OPA file may be released without charge to a named employee for whom a Sustained finding has been recommended, his/her attorney, or the union representative, to assist the employee in preparing for a *Loudermill* hearing.

No individual other than the employee, OPA staff members, the employee's Assistant Chief, the Department Legal Advisor, or the Chief of Police may review an employee's OPA file without permission of the OPA Director, except pursuant to a court order or by other legal authority.

OPA will maintain a record showing which files (originals and copies) have been removed from the OPA office, the date of removal, who removed the files, the location of the files while absent from the OPA office, and the date the files were returned.

An employee may request access to the investigatory portion of the closed OPA case file in which the employee was the named employee. Such a request must be in writing. The OPA Director, OPA Captain Deputy Director, or a designee will consider the circumstances and not unreasonably deny such access. Access to the investigatory portion of the files will be limited to an in-person review of the file. Photocopies or other duplication of the file will not be permitted, nor may any portion of the file, except a copy of the named employee's own statement, be removed from the OPA office.

Where there is a public disclosure or discovery request for an OPA file, a copy of the entire file should be turned over to the Public Disclosure Unit, or SPD Legal Advisor or City Law Department responding to the request. OPA staff members will not make decisions as to what material in a file should be released or withheld.

At the conclusion of a case, the Director will post the allegations and findings on the OPA website once the complainant has been notified and any appeals are exhausted.

#### D. Records Purging Protocol

Once per year, OPA Administrative personnel purge case files and records in conformance with the records retention schedule discussed above. The following procedures are used to accomplish the records purge:

- The Department's Legal Advisor and others from the Legal Unit are consulted to determine whether any case scheduled to be purged should be retained.
- Each OPA investigative file and Supervisor Action file for the respective year is individually considered.
- As each case is reviewed for purging, the Complainant and Subject (if different) on the particular file is checked against the alphabetized list of persons pursuing claims or lawsuits against the City. The Department Legal Advisor maintains this list. If the Subject and/or Complainant are named in the claimant/lawsuit plaintiff file, the claim or lawsuit file is checked to see if it coincides with the allegations of misconduct involved with the OPA file. If so, the OPA file is retained and stored by the Department's Legal Unit. Also, a determination must be made based upon pending discovery requests of which the Department is aware whether any other OPA file the same employee should be retained.
- As a result of the previous steps, three lists are generated:
  - A list identifying each file that has been purged.
  - A list identifying each file that is being retained by the Department's Legal Unit.
  - A list identifying any file that is scheduled to be purged but is not in the OPA office for any reason, with an action plan to locate the file and determine its retention status.
- When the process has been completed, arrangements will be made for the shred company the Department contracts with at the time to destroy the material scheduled for purging.

## **VI. Oversight of Force Investigation Team Investigations**

The SPD Manual (8.300) requires that all use of force by officers be documented and investigated according to specific guidelines appropriate to the level of force used. Force resulting in great bodily harm and/or involving certain types of force (Type III) require investigation by the Force Investigation Team (FIT).

OPA has a defined oversight role as observer to all FIT investigations of Type III uses of force, including officer-involved Shootings (SPD Manual 8.300 – TSK – 12).

Any protocols ratified by the OPA Director and the Chief of Police are incorporated by reference into this manual.

## **VII. Mobilization for Unusual Circumstances**

OPA personnel will not normally be directly involved in patrol assignments for disturbances, riots, or other unusual occurrences. However, it is possible that OPA sworn personnel could be ordered into uniform or assigned other non-OPA related tasks in a significant and unforeseen major occurrence. Sworn personnel must be prepared to take police action when necessary, and are required to have appropriate uniforms and equipment available in the OPA office at all times. Lockers are available for storage of uniforms, weapons, and other police gear.

In the event of a major occurrence where the Department activates the Emergency Mobilization Plan OPA personnel will respond as directed in the Emergency Operations Manual.

## **VIII. OPA Staff**

### **A. Civilian OPA Director**

The civilian OPA Director manages the overall investigative, training, and administrative functions of OPA and assists with other aspects of the Department's discipline process. The OPA Director directs the investigative process, classifies all complaints, certifies the completion of all OPA investigations, is responsible for programs of mediation and other alternative means of dispute resolution, makes recommendations findings to the Chief of Police, and advises the Chief of Police regarding discipline. Further, the OPA Director provides recommendations regarding Department policies and practices related to police accountability and professional conduct, and publishes periodic and annual reports regarding the work of OPA and policy matters.

The responsibilities of the OPA Director include: (1) regularly advising the Chief of Police, the Mayor, and the City Council on all matters involving the Police Department's internal investigatory and disciplinary functions; (2) recommending policy to the Chief of Police, the Mayor, and the City Council on issues concerning the professional standards of the Police Department; (3) evaluating the internal investigations process; and (4) recommending strategies and policies to improve complaint gathering and investigative procedures. The Director is selected based on criteria outlined in the Seattle Municipal Code, is appointed by the Mayor and confirmed by City Council, and may serve up to three, 3-year terms.<sup>31</sup>

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<sup>31</sup> See SMC Chapters 3.28.800 through 3.28.830.

B. OPA Civilian Deputy Director

This Civilian Deputy Director is responsible for the development, implementation, administration, and evaluation of comprehensive programs related to police accountability for OPA, including:

- Implementation of OPA-related deliverables from the City of Seattle's Settlement Agreement with the Department of Justice, including those items required by the Federal Monitor and/or recommended by the Seattle Community Police Commission.
- Implementation, when appropriate, of OPA-related recommendations from the independent civilian OPA Auditor.
- Complaint Handling Process - Implementation of a strategic plan to achieve operational excellence for the OPA complaint handling process.
- Public Reporting, Electronic and Media Presence - Development and implementation of new and innovative means of increasing the transparency and public understanding of OPA's work, within the framework of collective bargaining agreements or other confidentiality requirements.
- Liaison Role – Serve as liaison with other City Departments and other units throughout SPD aimed at continuous improvement of accountability systems and activities.
- Case Management and Business Intelligence System – Planning, implementation, and management of OPA's role in the new case management information system being brought on line in 2014 for the Department and serve as primary OPA contact with others involved in this project.
- Community Outreach – Development, expansion, and implementation of community outreach programs (develop visual and written presentation materials; serve as a liaison to Community groups; meet with constituents; collaborate with others in the production and publication of OPA newsletters, press releases, reports and videos.
- Development and implementation of programs and systems to measure effectiveness of OPA's work and to enhance data collection, analysis, and reporting of OPA and SPD data concerning issues of police accountability.

The Civilian Deputy Director is responsible for responding to a wide range of issues that are technical, legal, and highly analytical, such as criminal law, employment law, labor relations, disciplinary procedures, public disclosure, risk management, law enforcement work environments and database case management information systems. The incumbent will need to have a thorough understanding of statistical and data analysis and be able to communicate complex technical information to diverse audiences, both orally and in writing.

The Civilian Deputy Director is also responsible, in consultation with the Director, for development and oversight of OPA's annual budget and facility management

C. OPA Captain Deputy Director

The OPA Captain Deputy Director reports directly to the OPA Director, assists him or her in ensuring the efficient and effective functioning of OPA, and is responsible for the day-to-day management of OPA's investigative activities.

Responsibilities of the OPA Captain Deputy Director include:

- Liaison with federal, state, county and local law enforcement agencies and prosecutors.
- Present OPA case investigation at disciplinary meetings.
- Review investigations and issue DCMs on behalf of the Director.
- Support efforts of City Law Department when preparing for a Disciplinary Review Board, arbitration or litigation involving OPA investigations by facilitating the transfer of a case file copy, providing OPA procedural explanation, and testifying in deposition or otherwise.
- Consult with the OPA Lieutenant, OPA Director and OPA Auditor regarding more complex decisions on complaint classification.
- Ensure investigations are conducted in manner that is thorough, fair and expeditious.
- Notify the OPA Director of identified misconduct patterns, training needs, and policy/procedure recommendations.
- Participate with the OPA Director in identifying and selecting personnel for assignment to OPA.
- Regularly evaluate the performance of the OPA Lieutenant and assigned OPA administrative staff.
- Participate in the actual investigation of certain cases in conjunction with the assigned Investigator when named or witness employees are of the rank of Captain or above.
- Perform other assignments as requested by the OPA Director.

D. OPA Lieutenant

The OPA Lieutenant reports to and supports the OPA Captain Deputy Director in management of the section. Responsibilities of the OPA Lieutenant include:

- Serve as acting OPA Captain Deputy Director, as needed, assuming command of the investigative function of OPA during the OPA Captain Deputy Director's absence, assisting in the performance of duties outlined above for the Captain.

- Supervise OPA Investigators and administrative staff.
- Consult with Investigators regarding incoming complaints, classifications, allegations, investigative plans and other issues that arise during the investigative process.
- Review all preliminary intake investigations and make recommendations for classification to the Director and Auditor.
- Monitor all cases assigned for criminal investigations.
- Assist, guide, and advise Investigators regarding best practices and procedures to use in conducting investigations.
- Review investigations for completion prior to review by the OPA Director and Auditor.
- Participate in the actual investigation of certain cases in conjunction with the assigned Investigator; e.g., cases involving members of SPMA as named or witness employees.
- Participate in liaison work with other Department units and outside agencies.
- Regularly evaluate the performance of OPA Investigators.

#### E. OPA Investigators

OPA Investigators report to the OPA Lieutenant and are primarily responsible for conducting intakes and investigations of OPA cases assigned to them.

Investigator duties include:

- Conducting intake of misconduct complaints.
- Preparing investigative plans for complaints assigned for an OPA investigation.
- Conducting investigations of complaints assigned for an OPA investigation.
- Providing case update reports to the OPA Lieutenant on a weekly basis.
- Initiating and updating complaint-related information in the case tracking and management system.
- Participating in post-BLEA teaching of newly sworn police officers and training other Department personnel about the OPA investigation process.
- Serves as acting OPA Lieutenant, as needed.
- Providing orientation to new Intake and Investigation personnel.

Investigators are expected to:

1. Conduct thorough, objective investigations of complaints, reach sound neutral conclusions based on investigation results and maintain confidentiality regarding process and outcomes in accordance with all legal and contractual requirements.
2. Prioritize and manage multiple cases to ensure evidence is quickly gathered and contractual timelines are met.
3. Communicate in a fair and impartial manner with complainants from a broad spectrum of diverse communities, and to exercise tact and diplomacy in dealing with sensitive, complex and confidential issues and situations.
4. Understand and act consistently with the independent function of OPA, and with an understanding of the importance of public trust, so that all intakes and investigations are above reproach and all those involved in the OPA process are treated fairly.
5. Be well versed in the operations of SPD, including policies and procedures, supervisory responsibilities, and training and tactics.
6. Be knowledgeable about accepted principles and practices of law enforcement, including use of force issues, search and seizure issues, constitutional law, state law, and investigative procedures.

Highly qualified Investigators will possess the following knowledge, skills and abilities:

- Confidentiality

Investigators have a moral and a legal obligation to maintain confidentiality out of respect for our employees, our policy and the law.

- Documentation

Documentation must be accurate, concise and thorough so that there is no question at the conclusion of an investigation as to what anyone did or said during the incident in question or the subsequent investigation.

- Fairness

Investigators must treat everyone involved in the investigation fairly, respecting their rights and explaining their responsibilities through each step of the investigative process.

- Knowledge

Investigators must know the law, Department policy and what their role is when assigned to an internal investigation. They must not hesitate to ask questions if they come across something which with they are not familiar.

- Responsibility

Investigators must recognize that when conducting an internal investigation they have an obligation to employees, to the Department and to the community – but first and foremost to discover the truth.

- Patience

Investigators need to be patient. They need patience to locate, collect and review large amounts of evidence and they need patience to deal with the inevitable obstacles and challenges they will encounter during an investigation.

- Follow the evidence

Investigators must begin every investigation with an open mind. Good investigators do not assume anything. They are prepared for anything to emerge as they begin to investigate. They do not accept or reject any possible explanation until they have the evidence to do so.

- Skepticism

Good investigators do not necessarily accept evidence from anyone at face value. They look for corroboration wherever possible.

- Adaptability

Investigators have to be flexible in their approach. No two investigations are the same and all present unique challenges and opportunities. Investigators should be good at identifying both and developing strategies to deal with them.

- Empathy and Understanding

A degree of empathy will assist an investigator to better engage with and understand the perspectives of the people with whom they are interacting.

- A thick skin

Nobody likes being investigated. A lot may be at stake, both personally and professionally, and some parties to an investigation may take it personally. Those who are culpable, or who may be embarrassed by the outcome of an investigation, will not welcome an investigator and will seek to undermine the investigation. If that fails, they may claim that the investigative process was flawed. One way of doing so



is to attack the credibility, impartiality or professionalism of the investigators. Investigators need a thick skin to deal with criticism.

- Courage

It can take a great deal of personal courage to conduct misconduct investigations, especially inside one's own agency.

- Judgment and common sense

Good judgment and common sense are much underrated qualities. Investigators sometimes have to make difficult decisions, including what issues to investigate, what investigative avenues to pursue and to what extent. They have to be able to justify why they chose to – or choose not to – interview someone. That takes sound judgment, based on common sense.

- Strategic thinking

Investigators need to be able to think ahead and think strategically. They need to be able to answer a range of challenging questions to ensure an effective investigation:

- What approach will work best?
- What are the possible obstacles?
- How should a failure to cooperate be dealt with?
- Is it possible to resolve or avoid a potential problem, before it arises?
- How should responsibility for a lack of cooperation and delays be dealt with in order to address the difficulties encountered<sup>32</sup>?

#### F. OPA Administrative Personnel

Administrative staff duties include:

- Administer and coordinate maintenance of the case tracking and management system.
- Prepare and distribute employee, bargaining unit, and chain of command notifications.

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<sup>32</sup> Adapted in part from: Undertaking Effective Investigations A Guide for National Human Rights Institutions, Asia Pacific Forum. 2013

- Prepare new case file folders for cases classified for OPA investigation or Supervisor Action.
- Track, copy, and file all OPA investigations, Supervisor Actions, and Contact Logs.
- Review, analyze, and provide statistical data for periodic reports.
- Transcribe interview tapes and review/proof-read completed transcripts.
- Liaison with the SPD Public Disclosure Unit.
- Answer questions and screen in-coming telephone calls and in-person inquiries.
- Perform section facility coordinator responsibilities; i.e., order supplies and equipment, and facilitate, as needed, repair of telephones, computers, copiers, and other office equipment.
- Review and distribute incoming mail and other documents.
- Provide administrative support to OPA personnel.
- Perform duties as OPA archivist and file manager.
- Manage file retention process.
- Train clerical support staff.
- Answer questions and screen in-coming telephone calls and in-person inquiries.
- Transcribe interview tapes.
- Maintain section telephone listings and staff status board.
- Distribute weekly intake packet and other documents to OPA Director and OPA Auditor.
- Distribute and collect mail to and from the Data/Distribution center and OPA Director's office daily.
- Assist with the new case file folder preparation.
- Assist with case copying.

## **IX. OPA Training Requirements**

All OPA personnel must participate in Department In-Service training that is identified as mandatory and are encouraged to further their education by attending other training or learning opportunities offered internally or through sources outside the Department. Per SPD policy, OPA sworn personnel “will be familiar with the SPD Manual, Directives, and Notices” and related Department publications.<sup>33</sup> OPA personnel must also be familiar with the all procedures set out in the OPA Manual, along with references contained in the Appendix.

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<sup>33</sup> Seattle Police Manual, 16.100.III.

### A. Newly Assigned Personnel

The OPA Director has final decision-making authority as to whether a particular employee will be assigned to OPA. The Director looks for individuals who are honest, have high integrity, are well regarded by others, and able to conduct thorough, fair, and expeditious investigations. The Director will review the SPD complaint history for any current SPD employee considering an assignment to OPA. While having a complaint history will not automatically preclude anyone from working in OPA, recent, numerous or particularly serious Sustained complaints might be cause for disqualification.

Further, OPA commissioned staff candidates must:

- Have extensive law enforcement knowledge;
- Be very familiar with the operation of the Seattle Police Department;
- Have strong verbal communication skills;
- Have strong investigative skills or a demonstrated aptitude for developing such skills;
- Be knowledgeable about accessing Departmental data bases and other sources of information;
- Appreciate the importance of accurate electronic tracking of OPA complaints;
- Be analytical and demonstrate an ability to write thorough and concise reports about events that can be quite complex;
- Be open to feedback and committed to seeking out other learning opportunities.

The OPA Director and/or OPA Captain Deputy Director review the training history for any commissioned SPD employee newly assigned to OPA, to assess individualized training needs. An individualized training plan should be developed, based on the education, skills and experience the employee brings to OPA.

All newly assigned OPA staff members should receive either hard copies of or electronic access to both the OPA Policy and Procedures Manual and the OPA Internal Operations and Training Manual. A schedule will be set up for the newly assigned employee to review and discuss specific sections of the manual with the assigned mentor or other experienced OPA personnel. The goal will be to provide new staff members with an orientation to OPA operational procedures, an overview of the complaint intake and investigation process, an initial understanding of investigative and other resources available in OPA, and the philosophy underlying civilian oversight and OPA.

Training for all newly assigned OPA personnel must stress throughout that every complainant deserves respect, and the importance of timeliness and being responsive to complainants and named employees.

### Orientation and Training for OPA Investigators

An experienced Investigator should serve as a mentor to each newly appointed OPA Investigator. The mentor should be assigned by the OPA Captain Deputy Director and/or Lieutenant to work with the newly assigned Investigator to assist in developing the new Investigator's skills.<sup>34</sup> The newly assigned Investigator should shadow the mentor (and other OPA Investigators) while he or she is conducting OPA investigations, and should primarily perform Intake functions for at least the first two months of the new assignment. Focusing initially on Intake will help the new Investigator transition from skills necessary for criminal investigations to competencies involved in administrative investigations, expose the employee to the variety of types of misconduct complaints lodged with OPA, and help the employee understand the complaint classification and processing systems. Training for those assuming only the Intake role for a limited period of time should be more tailored to that particular function.

Training for recently assigned OPA Investigators should also address the following topics:

1. Relevant law, policy and collective bargaining agreements
  - a. Case law – for example:
    - b. *Graham v. Connor*
    - c. *Tennessee v. Garner*
    - d. *Terry v. Ohio*
    - e. *Miranda v. Arizona*
    - f. *Loudermill v. Cleveland Board of Education*
    - g. *Garrity v. New Jersey*
    - h. *NLRB v. Weingarten*
    - i. Seattle Police Manual
2. CBAs, in particular the SPOG agreement, Article 3 – Disciplinary, Complaint Hearing, and Internal Investigation Procedures
3. State law materials available through the Washington State Criminal Justice Training Commission website including Law Enforcement Digests and legal update outlines on arrest, search, seizure and other topics:

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<sup>34</sup> The time involved in serving as a mentor will be factored into caseload distribution for a period up to three months after an Investigator takes on mentoring responsibilities.

[https://fortress.wa.gov/cjtc/www/index.php?option=com\\_content&view=article&id=137&Itemid=80](https://fortress.wa.gov/cjtc/www/index.php?option=com_content&view=article&id=137&Itemid=80)

4. Intake, complaint classification, findings, and discipline overview
5. Case tracking and management
6. Digital In-car Video and Holding Cell Video
7. Best practices in administrative investigations
8. Investigation Plans
9. Conducting objective and thorough investigations
10. Investigation and notice timelines
11. Collection and preservation of evidence
12. Communication with named employees and complainants
13. Interviewing skills
14. Intake and Follow-up form entries
15. Writing clear, concise, well organized and thorough case summaries
16. Criminal investigation monitoring process
17. Use of Force – policy, reporting and review
18. Departmental EEO and Early Intervention System (EIS) procedures and relation to OPA complaints
19. Interface with other law enforcement agencies
20. Civilian oversight of law enforcement in Seattle and elsewhere
21. OPA Mediation Program

#### Newly assigned OPA Captain Deputy Director or Lieutenant

When a Captain or Lieutenant is assigned to OPA, the OPA Director, with the assistance of the immediate past OPA Captain or Lieutenant (if appropriate) will develop an individualized training plan.

#### B. Ongoing Training and Development for OPA Personnel

The OPA Leadership Team, comprised of the OPA Director, OPA Civilian Deputy Director, OPA Captain Deputy Director and OPA Lieutenant, will regularly assess the training and development needs of all OPA personnel. Overall and individualized training plans will be developed, implemented and tracked. Supervisors will incorporate training and development plans into their annual appraisal discussions with their direct reports.

At a minimum, the following topics should be covered in training for all Investigators at least annually:

1. Interview skills
2. Investigation plans and evidence analysis
3. Case law updates on use of force, search and seizure, stops and arrests, biased policing, and other issues frequently raised in OPA complaints
4. Mediation and alternative dispute resolution
5. Selected topics such as Crisis Intervention, Race and Social Justice, and de-escalation strategies

Though budget restrictions may limit the ability to attend training that is fee-based, or to bring in trainers to OPA who charge for services, the following are examples of resources for training relevant to the work of OPA. Some offer free and/or e-learning options and list serves with regular informational updates. Details can be found by visiting the associated website:

1. National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conferences
2. International Association for Chiefs of Police (IACP)
3. Police Executive Research Forum (PERF)
4. National Institute of Justice (NIJ)
5. Criminal Justice Training Center (CJTC) sponsored courses
6. Regional Internal Affairs Round-table
7. Regional Law Enforcement Legal Advisors Group
8. SPD Street Skills
9. SPD Detective In-Service Trainings

## **X. OPA Auditor**

The civilian OPA Auditor is appointed by the Mayor and confirmed by the City Council, with selection criteria outlined in the Seattle Municipal Code.<sup>35</sup> The OPA Auditor may serve up to three, 3-year terms. The Auditor provides review and assessment of OPA complaints and investigations and of Police Department policies and practices.

The OPA Auditor reviews complaint intake, completed OPA investigations, and documentation for complaints that have been referred to supervisors for handling

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<sup>35</sup> Required qualifications include “A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office; A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional rights of all affected parties.” See SMC Chapters 3.28.850 through 3.28.870.

(Supervisor Actions). The Auditor and the OPA Director jointly review these cases and the Auditor provides the Director with advice and recommendations concerning complaint classification and the quality of OPA investigations. If necessary, the Auditor has the authority to require further investigation in a case.

The OPA Auditor has access to and may audit any and all OPA records for the purpose of ensuring thoroughness, fairness and timeliness of OPA investigations or as related to other police accountability and professional conduct recommendations. The OPA Auditor publishes semi-annual reports highlighting concerns and making recommendations for improvement in policies, systems and training.

## **XI. OPA Review Board**

The OPA Review Board (OPARB) consists of seven members who are appointed by the City Council<sup>36</sup> and selected based upon criteria contained in the Seattle Municipal Code, with at least one member being an attorney, one having significant experience in community outreach, another with at least 5 years of law enforcement experience, and another member having at least 5 years of experience in law enforcement or criminal justice. Members may serve up to four 2-year terms.

The purpose of OPARB is to review the quality of the OPA's complaint handling process; to advise the City on Police Department policies and practices related to police accountability and professional conduct; and to conduct public outreach on behalf of itself, the OPA, and the OPA Auditor in order to enhance the quality and credibility of the City's police accountability system and thereby maintain public confidence in the professionalism and effectiveness of the Police Department. OPARB does not participate in the investigation or disposition of OPA complaints and cannot seek to influence the disposition or discipline related to specific complaints.

### **NOTICE**

*Failure to comply, fully or in part, with any provision of the OPA Manual is not to be construed to have a presumptive adverse effect on an OPA investigation and is not to be used as a means of challenging the findings or disposition of any complaint.*

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<sup>36</sup> See SMC Chapters 3.28.900 through 3.28.920.