

**Semi-Annual Report of the Independent Auditor  
For the City of Seattle  
Office of Professional Accountability**

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**July - Dec, 2014**

**Judge Anne Levinson (Ret.)  
OPA Auditor  
February 10, 2015**

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## Introduction

The City of Seattle's Office of Professional Accountability ("OPA") provides oversight, guidance and leadership in matters related to police accountability for the Seattle Police Department ("SPD" or "Department"). OPA's role is to help ensure the actions of SPD employees are Constitutional, in compliance with federal, state and local laws, and City and SPD policies; respectful and effective; and conducive to the public good. To be effective, OPA processes for investigation of police conduct must be, and also be perceived as, fair, objective, consistent, thorough, timely, understandable, transparent, and accessible for the public, employees, and complainants.

To help meet these goals, in addition to having a civilian Director of OPA, the City also contracts with an individual with legal expertise to provide objective, third-party review of complaint-handling, internal investigations, and other OPA activities, as well as to serve the public interest by providing unbiased analysis and objective recommendations to City policymakers about OPA and SPD policies, procedures, and practices based on review of complaints and internal investigations. This individual is called the "OPA Auditor".

To ensure that all concerns reported by members of the public are addressed at the appropriate level, both the OPA Auditor and the OPA Director review the initial intake for every misconduct complaint filed. This process of classifications of complaints determines whether a complaint is investigated by OPA, referred to the employee's supervisor for follow up, or handled through an alternative resolution. To assess whether each OPA investigation is thorough, fair, objective, and timely, the OPA Auditor also reviews each investigation at the time at which OPA believes it to be complete. If the Auditor concurs that the investigation is thorough and objective, she certifies it and the Director may then proceed to issue recommended findings to the Chief of Police. If, however, the Auditor finds that the investigation is not thorough and objective, she may request additional evidence be obtained, additional witnesses interviewed, or other steps taken. Upon completion of any additional work requested or directed, the case is then re-submitted to the Auditor for certification before the OPA Director may issue proposed findings.

The work of the OPA Auditor is intended to further instill confidence and public trust in the fairness and integrity of the police accountability system as well as the effectiveness and

professionalism of SPD by providing additional professional review of OPA case classifications and investigations, and an independent perspective on the efficacy of policies, procedures and practices of OPA and SPD. The OPA Auditor is required by the Seattle Municipal Code to issue a public report twice per year summarizing the number of complaints and investigations reviewed; those investigations where she requested additional investigatory work be conducted; issues or trends noted as a result of her reviews; recommendations for changes to training, policy or practice in the Department and the results of any special audits conducted.<sup>1</sup>

## **Policy, Procedure and Training Recommendations**

Many recommendations made in my prior reports<sup>2</sup>, related to enhancing the accountability system's independence, effectiveness and transparency, and addressing broader Departmental issues, still have not been addressed by the City. Readers of past reports may recall that I have issued a wide range of recommendations, including, for example, improvements to the accountability system such as replacing the multiple disciplinary appeals boards that have employee members with a single avenue for appeals using only neutral adjudicators, along with several other changes to strengthen the independence, timeliness and efficacy of the disciplinary process<sup>3</sup>; removing contractual barriers to more effective investigations of possible criminal misconduct; ensuring OPA reviews all incidents of possible misconduct, even where the subject does not wish to file a complaint; providing a rapid adjudication alternative to expedite the handling of minor misconduct, which would also allow OPA to better prioritize limited resources and SPD employees to acknowledge mistakes; providing the OPA Director authority to hire civilians with expertise in administrative investigations, and to control the hiring and rotation of assigned sworn personnel; creation of an OPA operations manual<sup>4</sup>, required orientation and training for OPA staff; enhancing the mediation program; and allowing complainants and employees to track the status of their complaints online.

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<sup>1</sup> See SMC 3.28.850 et seq.

<sup>2</sup> See: <http://www.seattle.gov/opa/opa-reports> (Auditor Publications) for all semi-annual OPA Auditor reports and for the Special Report reviewing SPD's disciplinary system.

<sup>3</sup> The Complaint Advisory Board has three SPD members; the Disciplinary Review Board has two SPD members; the Public Safety Civil Service Commission has one employee member.

<sup>4</sup> OPA completed the operations manual at the end of 2013.

Other recommendations related to Departmental policies and practices included providing preference points in hiring for those who are bi-lingual or have experience in fields such as mental health and domestic violence, to help add important skills to the workforce and address the gender disparity in SPD<sup>5</sup>; overhauling the standards and processes for recruiting, hiring and promotion; eliminating conflicts of interest by bringing in-house and civilianizing the secondary employment system SPD officers use to get hired for off-duty work and ending the practice of extended authority commissions; advocating for needed improvements to the state decertification statute for officers who have committed misconduct; and gathering broad stakeholder input to inform development of Departmental policy and securing necessary amendments to state law to allow for implementation of a body-worn camera program.

Some past recommendations, such as enhancing consistency and quality of the first-line supervision of officers, including a return to a “unity of command” approach; implementation of a Department-wide electronic training database to accurately track each employee’s training history; adoption of L.E.E.D.<sup>6</sup> training for all officers; more rigorous and comprehensive review of use of force, stops, searches and In-Car Video (“ICV”); addressing ongoing problems with unnecessary escalation in interactions with those in behavioral crisis through changes in training, policy and supervision; and revising the Professionalism, Social Media, Anti-Bias and other Department policies to better comport with public expectations of appropriate officer conduct, whether on or off-duty, have been or are being implemented as part of the consent decree process.

With regard to accountability system reform and Departmental policy and practice recommendations not already underway as part of the consent decree process, the Community Police Commission (CPC), anticipating the scheduled start of police labor negotiations last June, moved swiftly to review, debate and adopt 55 of the recommendations, along with proposed

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<sup>5</sup> In December, 2013 the City’s Gender Equity in Pay Task Force announced their support of this proposal, saying “The Task Force believes that this proposed rule would be of great value in helping to diversify the SPD’s recruitment strategies and expand the applicant pool. It would recognize potential officers’ diverse skills and experience, and provide pathways to employment for a more diverse applicant pool. Given that SPD is currently less than 30% female and there is a 21% pay gap between females and males, we are in strong support of systemic changes such as this.”

<sup>6</sup> The acronym stands for “listen and explain with equity and dignity”. The training is based on the four pillars of procedural justice related to decision-making developed by Tom Tyler: 1) giving citizens a voice and representation; 2) providing transparent and trustworthy rationales; 3) maintaining fairness and consistency; and 4) behaving with respect for individual rights and dignity.

structural changes. The Mayor then hired his own public safety consultant to conduct a third review. He concurred with both the recommendations and the CPC's suggested structural enhancements, with limited exceptions.

To institute the reforms, it was expected that the City in 2014 would:

- 1) adopt an ordinance as recommended that fully endorsed enhancing the independence, transparency, fairness, robustness, and effectiveness of the accountability system;
- 2) take advantage of the uniquely positive negotiating opportunity presented by the shared desire of both the City and the unions to bring the consent decree process to a successful conclusion sooner rather than later, and the amount of resources already set aside to comply with the consent decree; the willingness of new union leadership to support reforms that serve both the public and employees; the increase in visible public support for and attention to police accountability; and the near unanimity of recommendations from three different independent reviews, none of which negatively impact officers' salary or other conditions of employment, by expeditiously bargaining with the Seattle Police Officers' Guild (SPOG) and the Seattle Police Management Association (SPMA)<sup>7</sup>;
- 3) include in the City's legislative agenda those recommendations requiring a change in State law; and
- 4) implement administratively those recommendations that did not require a change in the municipal code, state law, or bargaining.

By any of these measures, as of the end of 2014, reform of the City's police accountability system and related improvements largely remained an aspirational goal.

The importance of the City and the Department moving forward to implement past recommendations was reinforced in several cases during this reporting period. For example, there were OPA cases involving new officers still at the Academy and in the Field Training (FTO) program. The fact that there are troubling behaviors already evident among recruits and probationary employees should be cause for concern as to the City's background checks and

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<sup>7</sup> SPOG is the union representing SPD officers and sergeants; SPMA is the union representing SPD lieutenants and captains. Both contracts need to be updated so that all members of the Department are treated equally, regardless of rank.

hiring processes. The City and the Department need to have an outside expert review SPD's background check, hiring, field training and promotional practices. As I have noted previously, in many aspects of its human resources functions related to SPD hiring, the City is not using what would be considered best practices in the industry. The processes for SPD background checks and hiring continue to take much longer than necessary, which means Seattle keeps losing good police recruits to other jurisdictions<sup>8</sup>. Also, the Department's effort to train a significantly larger number of new recruits without any additional FTO supervisory personnel presents other challenges in terms of supervision and program quality.

Other cases where OPA received misconduct complaints that it might not have, had past recommendations been addressed, involved retired officers who had been granted Extended Authority Commissions (EAC)<sup>9</sup>. As noted in my report covering the second half of 2013, there is a lack of public accountability for, as well as liability created by, retired officers with EACs. In that reporting period, the City Attorney had charged a retired officer acting under the authority of an EAC with criminal impersonation when he falsely gave the name of another officer to a member of the public who wanted to file a misconduct complaint. There were five additional OPA complaints in this reporting period concerning EACs. The Mayor should move forward with an ordinance to repeal the 1970's-era ordinance that authorized EACs and the Department should rescind the policy that allows for the continued hiring of retired officers under the auspices of these Commissions<sup>10</sup>.

Eliminating the language in the SPMA contract requiring that investigations where an SPMA member is either a named or a witness employee may only be led, and interviews only conducted, by those in OPA who are also SPMA members<sup>11</sup> is an example of a change that, if implemented, would have a positive impact on the timeliness and quality of OPA investigations. Since OPA investigators are all sergeants, this requirement effectively means the sole lieutenant or

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<sup>8</sup> This delay appears to affect civilian hiring as well. One of the challenges for efficient processing of cases in OPA in this reporting period was that the senior administrative specialist position remained unfilled for months due to the City's background check process.

<sup>9</sup> Seattle Municipal Code (see Ord. 16374 and 109757) authorizes the Chief of Police to grant a "Retired Police Officer Commission" to any officer retired in good standing, which gives him or her the same authority as an active police officer.

<sup>10</sup> See SPD Manual Section 2.030 (IV).

<sup>11</sup> See: SPMA contract Appendix B, Section B.7(A).

captain in OPA must step in, setting aside their supervisory responsibilities to conduct the investigation or interview. This interferes with OPA's ability to prioritize investigations and assign staff in whatever way best enhances quality and timeliness for all of the pending investigations. Further, SPMA has asserted that an OPA investigator who is not an SPMA member may not even communicate in any way (i.e., send an email) directly with an SPMA member who is a named or witness employee. At one point SMPA exacerbated this already inappropriate contractual constraint by arguing that only OPA staff *of the same rank* may communicate with or interview a named or witness employee, which is in fact not required by the contract.

There were several cases during this reporting period where I raised the concern that as a way to address these demands by the SPMA, to save time OPA had reverted to a past practice where witness lieutenants, captains or assistant chiefs were sent questions in writing (via email) rather than OPA conducting in-person interviews. This was the practice when I began as OPA Auditor in 2010. I had indicated using written questions in lieu of an in-person interview was not consistent with best investigatory practices and did not reinforce an organizational expectation that all employees will be treated equally regardless of rank. That practice had stopped until these cases in the latter half of 2014. Again, neither the public nor employees who would like their cases resolved more quickly, investigations to use best practices, and everyone to be held to the same standards, are well served by the City continuing to allow this needless contractual constraint.

I have also recommended in the past that a mix of civilians and sworn personnel, rather than only sworn personnel, conduct OPA intake and investigative functions, to improve timeliness, as well as to provide complainants a civilian with whom they can discuss their complaint if they are not comfortable speaking with sworn personnel. There were several cases during this reporting period that did not meet the timeline for concluding the initial investigation that OPA has established of 60-90 days, depending on the complexity of the case. As with the SPMA language noted above, this continued practice of only allowing sworn personnel to handle intake and investigations does not serve the named employees, the Department or the public well when investigations take too long because investigators are continually pulled off investigations to handle intake. Nor do the investigators themselves (who are SPOG members) want their investigations to be interrupted. It is in no one's interest for the City and SPOG to continue to delay making this change.

Similarly, the City has not yet institutionalized the recommended changes in how sworn personnel are transferred into and out of OPA so as to maximize expertise, have sufficient capacity and minimize disruption in case flow. In this reporting period, the intake sergeant position was never filled, which means OPA had one less sergeant than has had in the past and that investigators must also handle all intake; a senior investigator was transferred to another role in SPD; and a new lieutenant started. While having the skills and experience of sworn personnel in OPA is valuable, minimizing the disruption caused by regular transfers of the sworn personnel is another reason to have civilians as well.

Another recommendation that would have helped improve the timeliness of investigations during this reporting period that the City has yet to implement is a “rapid adjudication” process for certain types of alleged misconduct where the named employee wishes to immediately acknowledge the policy violation and appropriate discipline can then be imposed without having an investigation. As I noted when first making this recommendation, this could be used for cases where an employee failed to get a required approval, meet annual training requirements, complete a supervisory use of force review within the mandated timeline, use his or her ICV, or other non-complex, often technical violations. It would be an expedited process where the employee acknowledges the violation, and gives up the right to an investigation and any appeal, with appropriate discipline imposed using a pre-determined discipline matrix.<sup>12</sup> This would resolve the case quickly, which often is better for all involved, tie accountability sooner to the behavior, which is an important principle for effective accountability, and would save time and resources. It would also help enhance the Department’s culture of accountability, making it clear that acknowledging mistakes is encouraged. For this reason, the employee’s file would reflect that he or she resolved the complaint through this rapid adjudication alternative.

There were also four cases during this period having to do with how officers handle and account for personal property that is not being retained as evidence. Because OPA had received several complaints about unaccounted for personal property by individuals who had been arrested, and these complaints highlighted that the only policy and training was for evidentiary property, I had

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<sup>12</sup> I have previously recommended that the Department use a discipline matrix to help ensure consistency and fairness in disciplinary decisions.

recommended in 2013 that the Department adopt a policy requiring, for example, that the officer move the individual in front of the camera when taking items out of pockets, purses or bags, state what was being removed, and then use basic chain of custody practices for transporting and documenting the property. The Department did implement this recommendation, but the new policy wasn't promulgated until September, so OPA could not use it in these cases<sup>13</sup>.

Another area where a past recommendation not yet implemented – authorizing through ordinance the authority of OPA to have administrative subpoena power to obtain non-SPD evidence - came into play in a case involving allegations of use of force and failure to report use of force where officers were dispatched to a downtown hotel to help security remove an unruly guest. The guest at issue was an airline employee who had apparently been intoxicated and interacted in a disruptive way toward others in the lobby. Officers ended up escorting her out of her room and out of the hotel into a cab that took her to another hotel. The complainant had alleged the officers used force in escorting her to the taxi, and the interaction would not have been captured by ICV. Thus, video from the hotel lobby, hallways and front entrance might have been very useful to obtain. The hotel staff told OPA there was nothing relevant on the video but OPA did not obtain the video. The hotel and airline declined to provide documentary evidence from their own review(s) of the incident, without a subpoena. OPA did not have a way to contact the complainant without those records (the records may have incorporated the video as well). Since I originally made this recommendation to amend OPA's enabling legislation to authorize administrative subpoena power for non-employee testimony and privately-held evidence, the City has amended its Whistle-blower ordinance to provide this same authority to the SEEC.<sup>14</sup>

Two other issues arose in cases during this reporting period related to policies where past recommendations to update the policy had been recommended. Neither has been a frequent issue, but both appear easy to remedy by a clarification to existing policy. The first has to do with off-duty officers taking their guns into the King County Courthouse. The case in this reporting

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<sup>13</sup> One other aspect of this that we discussed in 2013 was that it would be useful for the Department's Audit staff to review the boxes at each precinct where 'unclaimed' property is placed to better understand if additional improvements to practice are warranted.

<sup>14</sup> The City's Ethics and Elections Commission and Office for Civil Rights each have this authority, which ironically seems to imply that the City believes only investigations of non-SPD City employees or the public, but not of SPD employees, warrant this power. This authority can be granted to OPA by a simple Municipal Code amendment as was done with SEEC and OCR; bargaining is not required.

period involved an allegation that an officer told court staff he was there in a professional capacity when he might have been there on personal business, and thus would have been acting in contravention of court policy (not checking his firearm, showing SPD I.D., signing the law enforcement sign-in sheet, using the separate entrance, etc.) SPD had a policy on point that was adopted in 2002<sup>15</sup>, but for some reason was eliminated in the current manual. This particular case also highlighted a need for additional clarity as to what constitutes “official business”. This employee was there to address an SPD-related public disclosure matter and both he and his supervisor were unclear if it was “official business”.

The second issue where a recommended policy clarification would still be helpful was in regard to an officer who failed to appear for traffic citation hearings. The SPD policy still references the obligations of the SPD court coordinator to notify personnel, when as noted in a 2012 report, SPD no longer has this position (see more on this case below).

### **Recommendations For This Reporting Period**

1. The Department and OPA should establish an easy means of referral for investigation of possible misconduct any concerns regarding officers whom others in the criminal justice system believe may have not acted with integrity or honesty. While all employees of SPD are required to report misconduct, those elsewhere in the criminal justice system do not have the same obligation, so it is incumbent on the Department and OPA to let them know they would like to hear directly if there is a belief that an officer may have lied in any documentation, requests for warrants, pleadings, or may have misled the court or otherwise proffered less than completely truthful evidence. The Department and OPA should work with the City Attorney, King County Prosecutor, U.S. Attorney, presiding judges of the federal, superior and municipal courts, and the defense bar to establish a mechanism for referral of this type of possible misconduct to OPA. Often if a judge perceives that an officer has not fulfilled his or her oath of honesty, the judge will articulate that verbally from the bench or note it in any written order. However, that information has not been communicated to the Department or to OPA. If a judge criticizes the truthfulness of

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<sup>15</sup> See: 2002 SPD Manual Section 1.157 – “Carrying Firearms into the King County Courthouse is Prohibited by Order of King County Superior Court, Except When Conducting Official Department Business”.

a police witness' evidence or testimony, or takes action based on concerns about the officer's credibility, the judge and the involved attorneys or their supervisors should report it so that it can be investigated. Likewise, if a prosecutor decides not to file charges, asks that charges be dismissed, settles a case or takes other action because it appears that an officer has been dishonest, that, too, needs to be communicated to hold the officer accountable. The possible undermining of the public trust and potential consequences to the involved parties require that those who are aware of possible misconduct do what they can to help ensure that any issues of integrity or dishonesty are fully investigated and addressed.

2. The Department should adopt consistent standards that underscore the organizational expectations for performance and accountability as part of the application process for all specialty units, (e.g., FTO, SWAT, CSI, SAU), in addition to any unique expertise required by that unit. For example, the Department could establish that in order to be considered for those assignments, the employee's performance appraisal record, OPA history and EIS information must meet certain standards. The past practice should also be changed to clearly allow for removal from that assignment if certain triggering events or ongoing concerns mean the employee is no longer meeting performance or accountability standards. For example, if a person certified to be a Field Training Officer (FTO), a role which involves training and mentoring new employees, takes actions that reflect a lack of good judgment or unprofessionalism, the Department should be able to discontinue that employee's special assignment as a management prerogative and as part of a disciplinary action where appropriate.

3. The Department should strengthen its efforts to improve the quality and thoroughness of general offense reports and of cases referred for criminal filing of charges. At the same time, the articulated responsibility in the Primary Investigations policy<sup>16</sup> that all incident reports and other documentation must be as complete, thorough and accurate as possible should be re-instated. When the policy was updated through the consent decree process last May, this preamble language was not retained. It is important that the Department be able to address those instances in which the officer may not have been intentionally dishonest, but misstated material facts, left

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<sup>16</sup> See: SPD Manual Section 15.180.

out, or did not bother to capture important information (such as the existence of witnesses or private video, noting that photos were taken, that a search of the individual was conducted, etc.) Additionally, it should be clear that officers are to take actions that are consistent with training and Departmental expectations in terms of the thoroughness and dedication with which they approach their work.

4. The Policy Manual should state the requirements for making a lawful arrest. 6.220 - Voluntary Contacts, Terry Stops & Detentions - is another policy that was revised through the federal consent decree process. That policy details the differences between a voluntary contact and a Terry Stop; requires reasonable suspicion for a Terry Stop; describes permitted searches and pat downs, but does not state that an officer must have probable cause to effect an arrest. 6.010 - Reporting Arrests & Detentions - was also revised through the consent decree process and became effective last month. It describes the requirements for notifying supervisors and screening arrests, but also does not state that there must be probable cause to make an arrest. Thus, if a complainant alleges that a false arrest occurred, OPA must allege a violation of law (the crime of false arrest) rather than a violation of policy, regardless of the facts. That in turn triggers an obligation that the investigation be handled as a possible criminal matter.

5. The Standards & Duties policy requirement<sup>17</sup> that employees must adhere to laws, the Department Manual, published directives, training and applicable collective bargaining agreements should also reference City policies. While some City policies may be codified in ordinance, so that they would then be considered "laws" and the "City Laws" sub-section could be cited, that would require OPA to allege a "violation of law". What is needed is a way to capture those types of misconduct that are based on violation of policy not in the SPD manual but nonetheless applicable to all City employees. Additionally, the Department may want to consider whether SPD regulations need be included in this sub-section if there are unit regulations or manuals that the Department expects to be followed that are not considered policies or directives (e.g., D.V. Unit Protocols or Vice Unit Protocols).

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<sup>17</sup> See: SPD Manual Section 5.001(2).

6. OPA and the Chief's Office should modify the way in which the new Management Action Finding is being used so that the issuance of the Finding and the Department's response can be included in the case closing letter sent to the complainant. In 2013, I recommended the creation of the Management Action finding to allow for more responsiveness to complainants where in fact a problem did occur but it was either not the employee's fault or was only partially his or her fault. Thus, the original allegation could either be Sustained with Management Action or Not Sustained with Management Action, and a broader organizational responsibility to improve training, a policy or practice would also result. The intent was that the complainant would be able to hear back that the problem had been recognized and would be addressed. The Management Action finding was implemented in the last half of 2014, but is being done by separate letter from the OPA Director to the Chief, in most instances after the case has been closed by OPA, so that OPA does not include in the complainant's closing letter the systemic problem identified and Chief's Office response<sup>18</sup>. Additionally, OPA needs a way to publicly report out the resultant change once the Department has taken the corrective steps.

7. The contractual requirement that OPA must notify named employees of a complaint within five days should be changed to 10 days or more. Under existing contracts, whenever a complaint is made, regardless of its merits or significance, OPA must send a notification to the named employee, which also goes to the bargaining unit and the employee's captain or equivalent. While this deadline was likely created so as to give the employee immediate notice, it can have the unintended consequence of causing duress to employees and requiring a great deal of administrative processing by OPA. The employee receives this notice with the attendant communication that within 30 days the employee will again be notified as to whether the complaint will be handled through a Supervisor Action or an Investigation, or, if it turns out not to be an allegation of misconduct against an SPD employee, simply a Contact Log. Providing OPA a few more days to learn more about the case and perhaps then be able to handle the initial

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<sup>18</sup> The four Management Action cases in 2014 resulted in a request by the Chief for the City Auditor to audit SPD's over-time budget; a commitment by the Force Review Board to address delays in force reviews caused by supervisors' scheduled and unscheduled absences from work; an assignment to the Audit & Policy Unit for development of new policies and procedures for photo identification of suspects by witnesses; and a plan to develop a new I.T. system for better notification to officers of court proceedings.

notifications in a way that serves employees better and requires less processing, would improve the complaint intake process.

8. The Department, through its Crisis Intervention Committee, should work with the mental health advocacy community to fully implement the E911 program while a needed Public Records Act exemption is authorized by the State Legislature. The E911 program allows families with individuals who may experience behavioral health crises to provide information to help ensure first responders can respond with as much knowledge and expertise as possible. The program also serves those who are deaf or hard-of-hearing as well as non-English speakers who can add their preferred language to the profile to expedite the language line transition on a 9-1-1 call.

9. SPD should consider whether it can afford to issue all officers work cell phones, as are provided to sergeants and above. In a case during this reporting period a member of the public who filed a complaint filed it against the officer's wife because that was the name on the caller I.D. of the officer's personal cell phone used at the time of the incident to contact the complainant. Naming the officer's wife in the initial complaint caused quite a bit of consternation by the named employee and the union who interpreted that as a malevolent act by the complainant. In another case, a young man asked an officer at an event at Seattle Center to make a call to the young man's parents to see if they could provide him a ride home since it was very late at night. The officer told him he couldn't help him because the officer only had his personal cell phone. In other instances officers would rather not use their personal phones in ways that might be helpful (such a taking a photograph or video), since that may potentially subject all of their personal phone records to public disclosure or subpoena<sup>19</sup>.

10. The City and SPD may want to consider adding information to the City website for members of the public who wish to turn in a gun. In a case during this reporting period an individual filed a complaint after being unable to find any information on the website and then

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<sup>19</sup> Having cell phones could also help improve responsiveness when crime victims try to follow up after the officer has taken the initial incident report but there is not a timely way to reach the officer.

not being helped at a precinct when he tried to turn a gun in.<sup>20</sup> He was not looking for any payment, but simply wanted to turn in the gun for safety reasons.

## Complaint Review

As I mentioned in my last report, OPA and the Department made good strides in the first half of 2014 in establishing clear protocols for OPA involvement in incidents for which complaints had not been filed where the use of force is being reviewed by a force investigation team or the force review board, and for referrals from City Claims for those matters where the subject may have chosen to pursue litigation rather than file a misconduct complaint. As became evident with at least one recent high-profile case, the Department still needs to tighten its referral practices for those cases where supervisors or command staff, even with the best of intentions, have addressed a concern raised but then also need to refer the matter to OPA for an independent assessment as to whether the employee may have violated policy. While it is important to have an organizational culture where supervisors are proactive in solving problems, that must be balanced with the need to ensure all possible misconduct is addressed consistently, there are comprehensive records tracking employee performance, and employees and the public can know that every incident will be addressed as it should be.

During this reporting period, the OPA Director and I reviewed 325 new complaints made to OPA alleging misconduct. We agreed with the initial classifications recommended by the OPA Lieutenant for all but 16 complaints. Of the 325 complaints, 99 were ultimately classified for OPA Investigation, 223 classified for "Supervisor Action" (referral to the employee's supervisor to take specific follow-up steps with the employee) and three as Contact Log. Of the 16 we reclassified, six were from Supervisor Action to Investigation, seven from Investigation to Supervisor Action and three from Investigation to Contact Log. We added 15 allegations, including possible violations of policy related to thoroughness of an investigation, use of force reporting, bias, discretion, searches, profanity and conflict of interest.

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<sup>20</sup> See, for example: <http://www.thefamilypartnership.org/vertical/Sites/%7B180D3755-B455-4299-8D88-544431B73DE8%7D/uploads/%7B5B683532-8E1B-43F0-8A27-1D5BA809BC34%7D.PDF>.

We reviewed 212 cases that had been classified as Supervisor Action to ensure that they were completed in a timely fashion and that each supervisor had addressed the concerns appropriately. SPD supervisors did a much better job during this reporting period than they have in the past in meeting the 30-day deadline for following through on these types of referrals. As an additional safeguard for the Department's new practice of reporting possible bias, during this reporting period we also reviewed the 39 reports of possible bias that had been handled by the supervisory chain to make sure none warranted referral to OPA. We also reviewed the 298 inquiries to OPA during the six-month period that had been entered by staff as "Contact Log" to ensure that none needed to be upgraded.

During this reporting period I also reviewed the status of cases being monitored by OPA while the incidents were being prosecuted criminally or under consideration for filing of criminal charges. Because OPA has yet to implement the changes to the mediation program that have been recommended in past reports, no cases were referred to mediation during this period.

## Investigation Review

During this reporting period I reviewed 82 investigations. Most were well done, thorough and objective; those that were not timely, where I requested follow-up or raised other issues, I have noted below. There were issues with timeliness both in completion of investigations and issuance of findings during this reporting period. Many cases should have been closed more quickly. In a number of cases the Director's Certification Memo was not issued by the OPA Captain for months after I had approved the investigation and several cases were submitted too close to the 180-day contractual deadline<sup>21</sup>.

This is an issue that I have written about in each semi-annual report. These delays have a variety of negative impacts. If the 180-day deadline is missed, no discipline can be imposed<sup>22</sup>. If the deadline is not missed, but the case is not closed until months after the investigation is

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<sup>21</sup> This is the contractual requirement that employees must receive notice of proposed disciplinary action within 180 days from when the complaint was initiated or no discipline may be imposed. See: SPMA contract Appendix B, Section B.7(B); SPOG contract Section 3.6.

<sup>22</sup> There were three cases in this period where recommended findings were not issued within 180 days; none of them involved Sustained findings, so no discipline was affected.

concluded, the complainant, the named employee, and the public do not learn the results of the case in a timely manner. If the Director recommends allegations be sustained but the case is sent to the chain of command and the Chief with only a short period of time left on the 180-day time limit, there is limited time for command staff review. Lastly, where the Director has recommended Sustained findings and new material facts are raised by the named employee during his or her Loudermill hearing, which the named employee did not have knowledge of during the investigation, and which cause the Chief to indicate that she would make a decision contrary to the recommendation of the OPA Director, there may be little or no time left on the 180-day clock for further investigation as permitted by contract<sup>23</sup> in order to follow-up on that new information.

There was also a delay throughout most of the year in closing OPA cases. These backlogged cases had in fact been investigated in a timely manner, but the parties had yet to be notified. OPA did not have a mechanism in place to track the cases to ensure that closing letters had been sent and the chain of command had been notified that the case had concluded. I tracked open cases to identify the time lag for OPA each quarter and the OPA Director was able to address the problem at the end of the year when new personnel and new software systems were fully transitioned. OPA also struggled to make progress on other improvements that had been recommended to improve the transparency of the accountability process<sup>24</sup>.

As noted above, there were a number of staff capacity and contractual causes for some of these challenges in this reporting period. It should also be noted that OPA and the Department did implement the broader internal referral approach that had been recommended, so there was an increase in internal referrals, and OPA staff are also now reviewing all force review board cases and participating in Force Investigation Team call-outs.

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<sup>23</sup> See: SMPA contract section 16.1.8; SPOG contract section 3.5(F). This authority has not been used during my tenure.

<sup>24</sup> OPA didn't produce either of the two required annual reports (one summarizing statistics; one on policy) nor timely issue the quarterly summary report of concluded investigations, which I had recommended also include any changes due to disciplinary appeals. Other programmatic work such as implementing the ability for complainants and named employees to track the status of their cases on line, recommended changes to the mediation program, and adopting a training and orientation protocol for new staff also did not progress in 2014. It is projected that these and other pending operational improvements will be done in 2015. For example, moving from the quarterly closed case reports to real-time summaries was initiated in early February, 2015.

The other major challenge with regard to timeliness of case handling was simply case management by OPA supervisors. In my view, OPA still needs stronger case tracking mechanisms and oversight to ensure that interim deadlines are met, that externally caused delays are mitigated as much as possible, and that peaks in intake are addressed as best as resources allow. Some delays in this reporting period were due to the Department's transition from the AIM software system to the IPro software system at the direction of the Federal Court monitoring team. The IPro system has certain benefits, but it is by no means a strong case management system well suited to OPA's needs because it is "off the shelf" and adjustments often cannot be made to better meet OPA's needs<sup>25</sup>.

A case that missed the 180-day deadline and was concluded months later than it should have been involved an allegation against a Captain that it was contrary to policy for him, as head of the SPD Chaplain's association, to solicit contributions from employees. As noted above, the SPMA contract language meant the case could only be investigated by either the OPA Lieutenant or the OPA Captain and foreclosed the OPA Director from being able to assign investigators based on skills and expertise, the balance of caseloads and other OPA work, and any other factors that best serve the public to assure effective investigations and good stewardship of taxpayer resources.

I did not certify this case, finding that it was neither thorough nor timely. After the case was initially assigned for investigation, no investigative work was initiated for 11 weeks. Cases that are not complex and where there are no external factors causing delays are to be *completed* by the investigator in 60 days. Then, once the investigation was commenced, a single interview with the named employee was conducted and no further work was done. The named employee indicated in his interview that he had been assigned to serve in this role and that his approach to collecting contributions had been approved by an Assistant Chief. The Assistant Chief was not interviewed. The employee also stated he had checked with the Director of the City's Ethics & Elections

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<sup>25</sup> For example, investigation files are now all electronic, and cannot be organized in the way that presents the case most clearly, because IPro only allows an order based on the date a document was uploaded. Nor does the system include alerts or notifications as deadlines are pending or allow for tracking and management of cases once a sustained finding is recommended by OPA and the case is referred to SPD H.R. and legal staff to manage the disciplinary process, including appeals.

Commission (SEEC), but no investigative work was done to verify that in fact occurred or what the SEEC Director had advised. No investigative work was conducted to determine in what way the Department authorizes an employee to spend on-duty time working on behalf of this association, whether the Department has procedures in place for determining who will be assigned this work, how many on-duty hours he or she is allowed to spend on it, and whether the Department has procedures with regard to solicitation for non-profit organizations that are consistent with City policy. (The issue has arisen in the past with regard to SPD personnel and other City personnel using City resources and email systems to solicit contributions.) I requested the above investigative steps be taken, but that follow-up was of limited quality. The OPA Director ultimately found the allegations were not sustained.

In another case where the OPA Lieutenant at the time had to conduct the investigation due to the same SPMA contractual constraint, allegations related to insubordination, chain of command and professionalism had been made against a lieutenant by two assistant chiefs. The OPA investigation was not well done, including problems with leading questions, lack of objectivity and quality of the written analysis.

In my view, the entire matter had been blown way out of proportion; the focus of the command staff at the time should have been less on taking umbrage and more on addressing the underlying frustration of the lieutenant. While his communications and behavior were determined to be insubordinate, nothing about the months of time and energy that went into the complaint, investigation and disciplinary process addressed his concern, which was the length of time the Department was taking to conduct reviews of officer-involved shootings and the impact on the officers of being unable to do their jobs while the reviews were delayed for months. As I noted in my last report, these shootings reviews, of significant importance, were not handled in a timely manner by the Department<sup>26</sup>.

And in a case where the same SPMA constraint meant that the OPA Lieutenant at the time had to conduct the part of the investigation involving a witness who was also a lieutenant, I was

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<sup>26</sup> It should be noted as well that as of the end of the year the Department had still not publicly reported out the findings for these reviews.

concerned that there was no documentation in the OPA file, as required, of steps taken or evidence gathered by the OPA Lieutenant, other than a transcript of the interview itself. (There was required documentation of the steps taken by the intake Sergeant and by the lead investigator.) If that Lieutenant had still been at OPA, I would have required that he add appropriate documentation to the file. Instead, as an alternative, OPA called him to confirm and document that he had taken no steps other than notifying the employee of the interview time and conducting the interview. He had also not included in the investigative file an audio of the interview, only a written transcript.

Another case where OPA issued recommendations after 180 days involved an allegation of excessive force against an individual who was walking in the street downtown when officers were responding to an incident of a downed person. The complainant was a third party who was not at the scene but who reviewed incident reports and video and made this complaint to OPA on behalf of the subject. A medical aid unit was attempting to turn onto that street to assist the downed person, and had to blow its horn because the subject was in the intersection and making no move to avoid or quickly get out of the path of the vehicle. Officers contacted him, asked for identification and told him he was going to be cited for impeding an emergency vehicle. An officer placed her hand against his chest as he attempted to walk away from her, and he said that he did not want to be touched and that he wanted to leave the scene. Due to the subject's lack of cooperation and a variety of other factors, the officers struggled to get the subject out of the street, and ultimately a Taser was deployed. Based on the ICV and other documentary evidence, the OPA Director recommended a finding of Lawful & Proper, so no discipline would have been imposed regardless of the missed 180-deadline.

The third case that was not completed within 180 days in this reporting period involved allegations of excessive use of force and not properly using the ICV. Officers had stopped and detained the subject because he had warrants. A scuffle ensued. The officer stated the subject punched him in the face and would not submit to arrest attempts. The subject stated the officer approached him quickly telling the subject to come to him, tightly pressed his arm, attempted to pull him to the ground and punched him on the face, all without telling the subject why he was stopped. The subject stated he was afraid and so he broke free and ran. Responding officers went

to a location where a friend of the subject lived and found the subject as he hid next to an apartment building. When officers cornered the subject, he unsuccessfully attempted to escape by running past the officers who had positioned themselves in front of him. The OPA Director's finding was Lawful & Proper with regard to the use of force and, because it was the first time this officer had been found to have incorrectly used the ICV, that finding was a Not Sustained, with a training referral. Also, I noted the SPOG rep for one of the officers in this case was married to another of the named employees so I requested that OPA discuss with SPOG the best way to avoid any possible conflict of interest in future cases by seeing if bargaining reps who are married to named or witness employees can instead be assigned to other cases.

In a case involving photo identification of a suspect by a witness, I requested additional investigative steps despite the fact that the investigation was submitted to me close to the 180-day deadline for possible disciplinary action. OPA had not determined whether the training provided by SPD to detectives prior to their promotion to detective, or as part of required in-service training after they become detectives, includes best practices for photo identification and whether the named employee fulfilled the requisite training requirements. I also asked that OPA determine whether any regulations or any other tactical guidelines on point had been communicated by the Department in such a way that the employee should have been expected to be familiar with their requirements.

The Director's finding was Not Sustained (Management Action). As noted above, the Management Action finding is a new finding I recommended last year which was implemented in the latter half of 2014. While the named employee incorrectly used a single photo identification as the basis for the warrant request, the OPA investigation determined that the Department in its training and protocols had not clearly communicated that this is a prohibited method. SPD has agreed to develop a policy with regard to best practices for photo identification of suspects and plans to include, as well, a policy governing show-ups and other forms of field identifications.

I would not certify as timely another case where the only investigative steps needed were additional review of the ICV and drafting a case summary, because the ICV and use of force documentation were determinative, requiring only review of the ICV. No additional interviews

were required nor did any additional evidence need to be gathered. Despite this, the case was not quickly finalized so that the named employees could be notified. Instead, from the end of August to the beginning of December, no investigative steps were taken. Nor apparently was there any case management review to inquire as to why those steps had not been taken so that the investigation could be concluded. It was finally submitted to me for review in early February.

I requested clarifications to the file in another case that was submitted very close to the 180-day deadline, where the named employee was alleged to have driven his patrol vehicle at an excessive speed. He attempted to avoid a turning car, lost control of his patrol vehicle, spun sideways and collided with a vehicle and telephone pole, sustaining substantial injuries, and damaging the pole and the patrol vehicle. I expedited my review, as did the command staff, so the employee was notified of the Sustained findings and recommended discipline within the required 180 days.

Two additional investigations submitted very close to the 180-day deadline involved allegations of missing personal property and a stolen shotgun that SPD Audit Unit personnel noted had been retrieved from a Seattle pawnshop but remained in evidence, instead of being returned to its owner in Indiana.

In a case where the complainant to OPA was an SPD supervisor, allegations included whether one of the named employees was less than thorough when he incorrectly broadcast and later stated to other officers that there was no available complainant or witnesses to the incident, so officers did not follow up with the original caller. While the relevant statements could for the most part be heard on the ICV, it was not clear which officer was speaking and some words were unclear. The ICV should have been played by the investigator as part of each named employee's interview and each employee asked to confirm who made which statements and what exactly was said. Instead, the employees were asked to characterize the conversation and recollect to the best of their abilities, resulting in responses of "I'm not sure"; "I don't really recall what the conversation was exactly"; "I don't remember hearing that on the video I just listened to. But if it was it was either my partner or I. I don't...I don't remember." ; "I don't know spe...without specifically hearing it but I know that there probably was a little frustration with them stopping the vehicle."; "I don't know, honestly."; "Okay. So it could have been you? Could have."

I requested OPA interview a Parking Enforcement Officer who was mentioned as a possible witness in a case where the complainant had alleged the officer directing traffic near Husky Stadium after a game had refused to let him go in a particular direction in which cars ahead of him were allowed to proceed, that the officer called him a "dumbass" and that the complainant had asked the officer to identify himself twice but he provided only a last name. I also noted that the OPA investigator had not asked the named employee about that identification issue in his interview, nor was it mentioned in the case summary. Additionally, the interviews did not clarify why the complainant would have raised the issue that the named employee had allowed others immediately in front of the complainant to proceed in the direction in which the complainant wished to proceed if it was in fact the case that the named employee had not done that "anywhere near the time that he (the complainant) was there", as the named employee described.

In a case where the complainant later alleged that officers kicked her and used other inappropriate force, officers had been dispatched to a weapon call in which an intoxicated female had brandished a knife inside a business. Officers had located her hiding across the street from the business and they handcuffed her. As they were placing her into a patrol car, she pulled free and ran. The officers pursued her as she ran into a residential driveway, pushed the driveway gate open with her back, and fell backwards onto her backside. They grasped her arms and lifted her to her feet. There was no evidence that reportable force was used, so no violation of policy was found to have occurred. I was concerned that neither the chain of command who had reviewed the case through the force review process nor OPA addressed or counseled the employees about: 1) the number of officers who could be seen on the ICV hanging around at the scene for an extended period of time without an investigative need for them to be there; and 2) that despite the large number of officers, or perhaps because of it, no one watched the subject, who, after being handcuffed and placed on the front bumper of the vehicle, got up and ran for 14 seconds.

I requested additional work in a case where it was alleged the officer had missed 28 court dates for traffic infractions. The case raised many issues including the lack of appropriate systems in the City Attorney's Office, the Seattle Municipal Court and SPD to notify officers of court proceedings and to track officers' missed appearances. In this case the officer was found not to be at fault due to the larger systemic issues, and a Management Action Finding was entered. SPD Information

Technology will help develop a centralized system to coordinate officer appearances and SPD presumably will update the relevant policy as well.

In a case involving a juvenile stopped along Alki Beach for throwing a firecracker, I felt that OPA should have asked the witness Sergeant why he had not parked his SPD vehicle in such a way as to capture useful ICV. There did not appear to be any exigent circumstances or safety concerns, and there was an available, easily accessible space immediately along the beach. Instead he parked his vehicle facing oncoming traffic and away from the interaction. That meant the ICV had no useful video and that traffic was disrupted as well<sup>27</sup>. As I have noted in past ICV recommendations and special reports, merely having the ICV on does not constitute compliance with best practice or policy. Where there is either poor quality audio or video, if the officer's report or any written supervisory screening does not articulate why that is, OPA needs to ascertain that as part of the investigation.

In a case where the complainant alleged the named male officer searched her, instead of having a female officer conduct the search, after stopping her on the street for warrants, the investigation determined that the officer was correct in making the stop, and that conducting the search and the method of search were appropriate. I raised the issue that the officer was not specifically asked whether he requested a female officer come to the scene. Due to the exigent circumstances of a gathering crowd, he likely did not have time to make that request or it may not have been prudent to wait until a female officer was available, but he should have been asked that so he could articulate if in fact that was why he took the steps he did rather than have the OPA investigator simply draw that conclusion.

The named employee in another OPA investigation was working off-duty at Century Square when he observed the complainant and another male who appeared to be arguing. A female at the scene asserted that the complainant had robbed her of her cell phone two days prior and she had brought the second male to the area to retrieve her phone from the complainant. The complainant later alleged to OPA that he felt the officer should have further investigated the

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<sup>27</sup> The ICV did have good *audio* quality and, because the issues in this case revolved around what the officer said, OPA's investigation was not hindered.

situation. I raised concerns that the OPA investigator's interview of the named employee included leading questions and there were several questions the named employee did not clearly answer. As well, the OPA intake Sergeant had interviewed the complainant by phone without inquiring as to whether anyone else was present. The complainant could be heard in the audio of her interview talking to someone else. Even at that point the intake Sergeant did not inquire as to who it was, determine if it was a potential witness, and ask that the complainant conduct the interview in private. I have discouraged the practice of phone interviews of complainants, and OPA has included in its manual the preferred practice, which is to offer the complainant an in-person interview.

Other feedback to OPA for improving investigations during this reporting period included reminding investigators to include court records where relevant, to always ask parties present at interviews of named employees to identify themselves and their affiliation for the record (e.g., attorney, bargaining rep), and to interview the named employee after all witnesses have been interviewed unless schedules make that problematic.

Finally, due to the transition to electronic case files, and the challenges of the IAPro software system, quite a bit of time was spent in the last quarter of 2014 detailing naming conventions for different types of evidence and exhibits, ensuring that exhibits in the electronic case files are consistent with OPA protocols, so that each investigation clearly includes all evidence, required notifications and other communications, is organized in the same way regardless of the investigator and those certifying cases, conducting disciplinary reviews or appeals are receiving the case in the most cogent way.