

**Seattle Police Department  
Office of Professional Accountability  
Report of the Civilian Auditor  
For October 2004 – March 2005**

**SUMMARY OF ACTIVITIES**

The Office of Professional Responsibility [OPA] has continued to issue monthly reports that reflect up to date statistics on cases handled and outcomes, the latest for March 2005. Those statistics will not be repeated here. The OPA Director has also sent a number of policy recommendations to the Chief concerning cases seen in this six month period. The OPA Review Board has issued regular reports and welcomed two new volunteer members.

This Report summarizes my activities as contract, part-time Civilian Auditor from October 2004 through March 2005, as well as some of the issues that continue to bear on the functions of the OPA, the Auditor, and the Review Board. By Ordinance, this report is to be distributed by the Chief of Police to the Mayor, City Council, OPA Review Board and the City Clerk after he has reviewed it.

My 2003 Report covers the structure of civilian oversight and OPA operations for the first eight months of my tenure. My second Report covered January through September 2004. Both are available at [ww.Seattle.gov/police/opa](http://ww.Seattle.gov/police/opa). I am now on schedule with the Ordinance's expectations of twice yearly reports in the spring and fall.

In the past six months I have met with the civilian Director of the OPA and the Captain and staff of the OPA IS and the Review Board. I conducted an exit interview with Captain Evenson as well as a policy and training discussion with incoming Captain Low. I have reviewed the SPD policies involved in the investigations I have audited where appropriate. I attended the conference of the National Association for Civilian Oversight of Law Enforcement in October, 2004 and have reviewed materials in connection with and following on those discussions. I have appeared before the City Council to discuss my last Report and that of the OPA Review Board.

In the six months covered by this Report, I have reviewed 59 completed OPA IIS investigations. I have reviewed 19 Line Investigation [LI]

referrals, to be able to comment if I disagree with the classification. I have reviewed 11 completed Line Investigations. Despite the attempts by OPA IS to press deadlines on the line supervisors, I am still holding a backlog of 17 cases referred out and not yet completed Line Investigations. This is an ongoing problem.

I have also reviewed, for classification and comment on possible follow-up, 28 Supervisory Referrals [SR's] and 103 Preliminary Investigation Reports [PIR's]

These numbers are consistent with my experience since being hired as Auditor in April 2003. The number of OPA IIS cases per month falls between that of the first eight months and the second nine months, where the cases spiked significantly. The LI's have remained at the lower level consistent with the OPA's decision to keep more cases in-house, discussed in my last Report.

## **SPECIFIC ACTIONS**

### **Internal Investigations**

**Of the 59 completed OPA investigations, I had questions, comments, discussions, or requested further investigation on approximately 25.** This number should not be misinterpreted. My questions addressed a wide range of subjects and infrequently alleged deficiencies in OPA IIS investigations, which have steadily improved and have been excellent during this six-month period. In some cases I have recommended a call back to complainants or subjects with a further question raised by the interviews with employees. I criticized one investigation for failing to prioritize interviews when it was obvious the subject and witness were military employees who would soon be unavailable. I have frequently stressed an assessment of credibility that includes enhanced attention to the allegations of by-standers or those who admit their fault on underlying tickets – and thus have nothing to gain by their complaints to OPA. In one case I asked why it took the Sergeant four and a half months after the incident to call the complainant.

This case, and a number of others raise the issue of how to handle a case where it is obvious the complainant intends to sue the Department. I would reiterate the suggestion made in my last report that the risk assessment

mechanisms of this City be coordinated with the OPA process. Early risk assessment and diagnosis of potential civil claims has reportedly been very successful in the L.A. Sheriff's Office and has significantly reduced claims against the City without compromising the misconduct investigations. I understand from the OPA Director that OPA is issuing a report in the near future also addressing this subject.

More often my comments involve policies, legal questions, or the underlying factual situations. In one case, for instance, I asked how SPD could gain the cooperation of King County deputy witnesses. In one, I praised the IIS Sergeant for sticking to her questions in the face of a Seattle Police Officers Guild rep's assertion that she was not allowed to ask what an officer did "in his free time" -- since he called in for vacation time in the middle of his shift to take up a relationship with an intoxicated crime victim. That case raised the issue of the proper role for a Guild rep during an employee interview. The OPA IS sergeant did continue her interview and discipline was sustained for Conduct Unbecoming an Officer.

Another general subject raised by several files was the permitted off-duty work by employees. One problem in work for bars, now prohibited, arises in investigation of incidents near the bars: off-duty employees have a vested interest in what management says happened -- and management often amounts to the bouncers -- during an incident with customers. Bouncer witnesses, by the same token, tend to support the officers. Recent strengthening and clarification of Department policies is thoroughly justified.

Many of my comments thus address policy issues or issues of law raised by the underlying complaints, rather than the sufficiency of the OPA IIS investigations. Other examples are the questions I raised about the legality of forced entry of a motel room on report of an outstanding warrant; the right of officers to search a backpack; or the potential actions available for misconduct of former employees.

### **Taser Use**

In four different cases in the last six months, I raised specific questions about use of tasers by officers named in complaints. In one case, a King County Deputy tased an intoxicated individual at a ballpark as he hung onto a seat to keep from falling. In another, an SPD officer tased an individual

while he was on the ground in handcuffs and surrounded by six officers. In a third, the arrestee was also on the ground with at least one hand in a cuff, although testimony varied about whether he was fully cuffed. In a fourth, an intoxicated patron apparently was pushed by a bouncer into the officer. All of these arrestees were uncooperative to some degree, but it was unclear to what extent or if the officers' conduct exacerbated the situations to the point where they felt they had to use the taser.

The Department has recently examined the use of tasers and issued a new Directive about "Less Lethal Options" on April 1, 2005. It is unfortunate that management did not consult with OPA or look at the complaints being investigated over taser use by officers. The new Directive does not appear to answer the questions that come up in complaints about overuse of tasers.

Perhaps this is also a good place to reiterate the recommendation I made in my last report for enhanced de-escalation training. "Necessary" force has long been defined in the Department as that used when "no reasonably effective alternative to the use of force appears to exist and ... the amount of force used [is] reasonable to effect the lawful purpose intended." Looking at the whole continuum of force used, it is also important to look at the whole factual situation, from beginning to end. It appears in some cases de-escalation techniques are very effective, and in others officers do not even attempt them, but react with tone and volume and physical force that raises the risk to everyone. I am mindful that my predecessor recognized the same problem in his 2002 report when he noticed Police overreaction to minor transgressions. Auditor Judge Carroll suggested an "overreaction provision" be added to the Code of Conduct. I understand the Department is about to issue new standards of conduct that include a provision on exercise of discretion. It would be useful to have more training to distinguish when an aggressive attitude is required and when it will exacerbate the situation.

### **Incomplete and Late Line Investigations**

I am holding 11 Investigations that were referred for handling to the precincts in 2004 and have not yet been received back at OPA. While I recognize that the press of daily priority business often pushes line investigations back, many are straightforward and should not have taken this long. They often allege officers' rude comments or failure to identify themselves, failure to take appropriate action at a traffic accident or to file a report. Such allegations would require only talking to the complainant and

the officer(s) involved and reporting back. Some of these incidents occurred in 2003, which makes discipline impossible and any action by a supervisor rather meaningless to a complainant. In a few of these cases, there is good reason to hold the investigation open, such as for the return of an employee who is presently working in Iraq. Most, however, do not reflect any justification for keeping the file open this long. In one, not yet back from the precinct, for instance, I recommended a different classification. The OPA Director and OPA IIS Captain decided it should be investigated by the Line Supervisor. The incident happened 15 months ago. The allegations were that named employees exceeded the scope of their authority in making an arrest and that they were profane and rude and refused to identify themselves.

Although the OPA IS specifically informs the precincts that they are expected to return these completed investigations within 60 days, this apparently has had little effect. The Captain of OPA IS has also written two specific comments on completed investigations (to the same supervisor), noting “inexcusable time delay which would preclude discipline if a sustained finding were warranted.” It is unclear if such admonitions have had any effect and it should be noted that this problem seems particularly acute at some precincts. At this point management may need to examine how to assure these investigations are timely completed or assign OPA IS the personnel to complete them downtown.

### **Supervisory Referrals and Preliminary Investigations**

Judgment is required to determine whether an incident should be classified as a PIR or an SR after a sergeant at IIS has looked into the matter. I commented on approximately eight SR’s during this six-month period, some with a view to changing the classification. In neither an SR or a PIR is any discipline contemplated, but both often require some supervisory action and return of the file to the OPA. On occasion I have asked IIS to consider reclassifying a case. A typical PIR that I asked be upgraded to an SR was a complaint about lack of service made by a subject whose van, possessions and car were stolen and police refused to investigate despite the fact that the crime appeared to have been recorded on videotape. I felt this complaint deserved more substantial follow-up at the precinct level. In another case, I asked that a PIR be upgraded so that other witnesses could be interviewed. In one case I requested upgrade of an SR to an IIS investigation because of

the complexity and seriousness of allegations about police action at a motel. OPA IS concurred with that recommendation and upgraded the complaint for a full investigation.

I have also asked for more serious treatment of complaints about delay in officer response. For instance, an hour delay is too long to respond to a personal assault or a “burglary in progress” from almost any citizen’s point of view. These delays may be a result of dispatch, change of shift, personnel management, or other factors, but they should be explored.

In my opinion, it is important for OPA IIS to make clear in its referrals exactly what it expects in follow-up by supervisors in the precincts. Sometimes the supervisor is expected to act as informal mediator – talking to both the employee and the complainant separately to help each see the other’s point of view. Hopefully the volunteer mediation program agreed to in the Guild contract will soon be implemented.

I commented on approximately eight PIR’s. These summary investigations are often quite time-consuming and the OPA IIS staff does a great job – often satisfying subjects and complainants. The investigating sergeants often go to substantial lengths to find out what happened and how the situation can be improved, despite the fact that no misconduct has occurred. Each PIR is analyzed by Lt. Kebba, often with supplemental suggestions, such as reviewing the citizens’ concerns with officers and possibly calling the complainants to discuss this afterwards.

### **Complaints Involving Criminal Conduct**

I receive regular reports of investigations involving potentially criminal conduct. As detailed in my last report, these cases present particular challenges for OPA. The OPA Director has sent a policy recommendation memorandum to the Chief about some of these issues.

As I understand the new Officers Guild contract with the City, the investigation of criminal conduct by Department employees will be done by the unit that has jurisdiction over the possible charges (e.g. the Domestic Violence Unit,) under the direction of OPA. I assume this will not change my role in auditing these administrative investigations.

## **Conclusion**

I would incorporate herein the discussion of all of the policy issues in my prior two reports. In many respects these are ongoing challenges for the Department as a whole.

I think the training and experience of the OPA IS are leading to quality investigations in which open-ended, in-person interviews produce a full picture of what happened. Lt. Kebba and Captain Low have stressed interview training and made use of materials from the National Association for Civilian Oversight of Law Enforcement. The supervisory review by Lt. Kebba, Capt. Low and Director Pailca is complete and incisive and often goes beyond the “outcome” to offer good managerial suggestions and to try to help complainants. The Office is a credit to the Department.

**Report respectfully submitted May 9, 2004,**

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**Katrina C. Pflaumer  
Civilian Auditor**