

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Police Accountability Review Panel

DATE October 17, 2007

FROM: Kathryn Olson, Director
Office of Professional Accountability

SUBJECT: 180-Day Rule with Regards to Discipline

Under Article 3 of the collective bargaining agreement in effect between the City of Seattle and the Seattle Police Officers' Guild, "...no discipline may result from the investigation if the investigation of the complaint is not completed within one-hundred eight (180) days after receipt of the complaint..." There are exceptions to this rule and situations in which the rule is suspended for periods of time, as noted below. However, it is important to recognize that there is no requirement, contractually or otherwise, that OPA-IS investigations be completed within 180 days. The contract only provides that if discipline is to be imposed, there be time limits on the investigation. If a case has a finding other than sustained, there would be no discipline and the 180-day rule would not be implicated. Of course, timeliness is a concern for everyone involved and OPA strives to complete investigations in an expeditious manner.¹

Overview of SPOG Provisions relating to the 180-Day Rule

1. No discipline may result from the investigation if the investigation of the complaint is not completed within 180 days after receipt of the complaint by OPA or by a Department sworn supervisor, or
2. If a complaint is submitted to the prosecutor within 180 days of receipt by OPA, an extra 30 days after receipt of a decline notice from a prosecuting authority or a verdict in a criminal trial, whichever is later, is allowed.
3. In the case of a criminal conviction, the Department can take disciplinary action within 45 days on the basis of the conviction.
4. The 180-day timeline is suspended when a complaint involving alleged criminal conduct is reviewed by a prosecuting authority or is being prosecuted at city, state or federal level, or if the alleged misconduct occurred in a different jurisdiction and is being criminally investigated or prosecuted there.
5. If the named employee is physically or medically unavailable to participate in the internal investigation, the 180-day rule does not apply.

¹ The current average investigation time (not including review by the named employee's chain of command and the OPA Director) for 2007 cases is approximately 62 days, a figure that can easily move upwards when OPA receives a complaint involving complex issues.

6. When a complaint is filed against an unknown employee, OPA gives notice to the Guild following the usual procedures, but once the employee is identified, the notification process with the employee begins. In such cases, the 180-day time limit is held in abeyance if 60 days have elapsed without identification of the employee. The 180-day time limit will continue from the point it was held in abeyance when the employee is identified.

Questions Concerning How Often the SPD Fails to Meet the 180-day Discipline Rule

In its September 6, 2007 letter to the Panel, the OPA Review Board attached a list of 198 cases in which it claimed, in Footnote 1 of the letter, that "the 180-day investigation limit" was exceeded. The cases on OPARB's list were those from a particular time frame in which more than 180 days passed from the point a case was filed until it was closed by OPA. The implication made by the OPARB in its footnote was that, assuming a 12% sustain rate, over 20 cases had escaped discipline due to the 180-day limit. The OPARB's letter and the list of cases attached misrepresent the situation in a number of respects.

First, as noted above, there is no set investigation time limit. Only if a case is sustained and discipline is to be imposed does the 180-day issue arise. Because OPA cannot predict with certainty from the outset, which cases will result in discipline, and because all parties involved are entitled to an expeditious investigation, efforts are made to move the cases through to completion in far fewer than 180 days. However, once it is clear that a case is not likely to result in a sustained finding and discipline, there is no outside requirement that the case be concluded within 180 days. Thus, the fact a case appears on the list provided by OPARB is no indication whether there was a sustained finding and proposed discipline.

Second, the list of 198 cases compiled by the OPARB includes 44 duplicate cases (the case appeared on the list more than once), 12 cases classified as Supervisory Referrals, (where discipline is not an issue or possible by virtue of the classification), and 4 cases involving civilians who are not covered by SPOG provisions. Though I am still working through my analysis, it appears that only 34 of the IS cases listed actually involved proposed discipline. Of those cases, some permissibly went beyond the 180 days because there were referrals to the prosecutor due to criminal allegations, and the former OPA Director did not close others until after 180 days had passed but where discipline was already imposed and the deadline had been met. A wide range of discipline up through termination was imposed in many of these cases and my initial review indicates that few, if any, involved situations in which there was a sustained finding and failure to discipline because the Department missed the 180-day discipline deadline.