



City of Seattle

Office of Professional Accountability Review Board

September 6, 2007

VIA HAND DELIVERY & U.S. MAIL

The Honorable Terrence A. Carroll, Chair
2007 Police Accountability Review Panel
P.O. Box 94745
Seattle, WA 98124-4745

Subject: OPARB's Recommendations for OPA

Dear Judge Carroll:

Thank you for inviting the Office of Professional Accountability Review Board (OPARB) to meet with the Police Accountability Review Panel (Panel) on August 20. Although Seattle's police accountability system has serious problems, we remain committed to OPA's internal investigations model, and further believe that all three components—Director, Auditor and Review Board—serve important and complementary roles. As requested, we make the following recommendations to improve OPA's effectiveness.

POLICY

1. Bright Line Rule. The City must reassert the paramount duty of every SPD employee—named officers as well as witnesses—to cooperate truthfully and completely during OPA investigations, or face discipline including possible termination. The OPA Director should be present during all Loudermill hearings; any exculpatory evidence offered at this stage which contradicts the named officer's OPA interview or was otherwise available during OPA's investigation should not be permitted to serve as "cause" for the Chief to reverse the Director's certified disposition. Officers should also be barred from having any contact with complainants outside of their ongoing law enforcement duties.

PROCEDURE

2. OPA Director's Certified Disposition. To fully implement the 1999 panel's and City Council's intent that investigation/adjudication and discipline be bifurcated, the OPA Ordinance should be amended to require the OPA Director's certified disposition in all cases before the Chief's disciplinary phase of the process is implemented. This may necessitate lengthening of the contractual 180-day investigation time line, additional OPA investigative resources, or both.

3. Chief's Discipline Decision. The OPA Ordinance should also be amended to prohibit the Chief of Police from becoming involved with or directing an on-going OPA investigation prior to the OPA Director's certification. The Chief may be briefed on the progress of OPA investigations prior to certification to facilitate executive awareness and preparation, and with regard to any alleged criminal conduct by SPD personnel raising fitness-for-duty concerns. After certification by the OPA Director, the Chief may ask for additional investigation, but may only modify or reverse the OPA Director's certified disposition for cause and in writing.

4. Input by Supervisors. SPD/OPA procedures should be revised to permit the operational chain of command for any named officer in an OPA investigation to have input on possible discipline only after certification of the OPA Director's proposed disposition, unless such personnel possess first hand knowledge of the incident which is the subject of the complaint.

OFFICERS WITH MULTIPLE COMPLAINTS

5. Complaint Classifications & the OPA Auditor. Both the early intervention system (EIS) and the administrative review (AR) process are apparently being undermined by improper complaint classifications. The OPA Auditor is in the best position to oversee classification decisions; she or he should be enabled to review cases much earlier in order to facilitate the Auditor's input on complaint classifications. The City should maintain the Auditor's independence, and further expressly require that the Auditor be a civilian. Moreover, all supervisory referrals (SRs) should be included in SPD employees' personnel records for both the EIS and ARs—thereby eliminating any incentive to downgrade complaint classifications to permit so-called "frequent flyers" to fly below SPD management's radar. Finally, the Panel should revisit the City's decision to place the EIS in the Department's human resources office rather than OPA. Most citizens would be surprised to learn, for instance, that OPA has had to maintain its own history note card system for tracking officers with multiple complaints.

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EXPANDED OPA POWERS & RESOURCES

6. OPA Role in Officer-Involved Shootings. Citizens are also surprised to learn that OPA plays no role in investigating an officer's use of law enforcement's most lethal weapon—a firearm. OPA is a conduit for both complaints and commendations; there is no reason why review of an officer's discharge of his or her gun could not be assigned an OPA incident number, with OPA at least serving as the investigatory arm of the Firearms Review Board (FRB). The OPA Director should also be named as a standing member of the FRB, expanding her present role of "commenting" upon FRB findings. Finally, the Auditor, an OPARB member, or both, should be considered for inclusion on the FRB.

7. Separate OPA Budgetary Authority. The OPA Director cannot reasonably be expected to challenge SPD Command Staff when necessary on accountability issues and simultaneously compete for OPA's share of SPD's budget. Separate budgetary authority should be established for the OPA Director, independent of the SPD's overall budget, to avoid any potential chilling effect.

8. Training Resources. Former OPA Director Sam Pailca lamented on August 20 her inability to implement a comprehensive OPA training program. Her success in extending the length of investigators' OPA assignment, however, makes such training more cost-effective. It is now time to increase OPA's budget significantly to fund comprehensive training along with additional staffing. Among other things, training must be emphasized that promotes consistent, thorough and timely investigations. Continued attention is necessary to keep leading questions to a minimum. Finally, investigators and upper IIS management alike need training coordinating OPA's dual investigatory/adjudicatory functions.

FAIRNESS & TRANSPARENCY

9. Mediation. OPARB applauded the launch of OPA's mediation program two years ago as an imperfect step in the right direction. While we understand the need to provide incentives for officers to cooperate, the average citizen would find it inconceivable that the City agreed to permit an officer who fails to mediate in good faith to escape discipline entirely:

If the employee does not participate in the mediation in good faith, a finding of which shall not be subject to challenge, the complaint will be processed and recorded on the officer's complaint history as a supervisory referral, but no discipline shall be imposed (CBA § 3 10 A 4; emphasis supplied)

Seattle citizens reasonably expect that such one-sided provisions will be rectified in future negotiations. Citizens should also be made aware that if they choose to mediate their dispute, there will be no investigation.

10. Reciprocity for Civilian Criminal Defendants. Criminal defense lawyers routinely advise their clients not to participate in OPA investigations due to the risk that potentially incriminating statements could be made in OPA interviews. While officers are protected by the rule in Garrity v. New Jersey, 385 U.S. 493 (1967) (officers compelled to testify in misconduct investigations protected by constitutional right prohibiting self-incrimination), reciprocal measures are needed to prevent OPA investigations from being used against complainants in related criminal proceedings.

11. Civilian Appeals. The absence of a mechanism for civilian complainant appeals from OPA decisions has at least two consequences: Contrasted with the several avenues officers have to avoid adverse determinations, civilians continue to view the OPA process as unfairly stacked in favor of SPD personnel, undercutting public respect for OPA. And with no ability to reverse erroneous OPA decisions, independent reviewers have little meaningful impact on the quality of OPA investigations. Whether or not OPARB is tapped for such a role, it is also appropriate to examine OPARB's current size and budget, with possible expansion to four or five members, all receiving increased compensation that reflects members' significant time commitment.

12. Meaningful, Transparent Reporting. As City Attorney Tom Carr recently opened the inaugural meeting of the State's new Sunshine Committee, we believe that "Good government is open government." The OPA Ordinance places just two limitations on our primary reporting function: OPARB may not identify, or recommend discipline against, any officer. (See the Board's July 9, 2007, memorandum to City Council, attached.) Reports by the Director, Auditor and Review Board often contain thoughtful policy recommendations that are simply ignored by the Department. The Chief should be required simply to respond timely—up or down—to all such policy recommendations, giving City Council the opportunity to pass on any policies rejected by the Chief.^[1]

^[1] OPARB generates a variety of oversight data in the normal course of its duties. We attach, for instance, a list of 198 OPA cases which exceeded the 180-day investigation limit—in contrast with the "ten" cases Chief Kerlikowske told Professor Locke on August 20 had escaped discipline due to the 180-day limit. We note that even with a 12% sustain rate, more than twice that number would be expected to have been sustained.

CONCLUSION

We believe that OPA should continue under its existing Director-Auditor-Review Board structure. We also believe, however, that the foregoing recommendations are minimum measures necessary to offset a philosophy and culture among current SPD and SPOG leadership that does not truly embrace civilian oversight of law enforcement. As Director Pailca stated pointedly, "the... fundamental limitations [on OPA's effectiveness]... are much more a function of leadership and philosophy and culture than any provisions of the collective bargaining agreement." Labor law concerns, however, cannot continue to stand in the way of the kind of police oversight system Seattle deserves. Until law enforcement accepts that a system based upon internal investigations constitutes a *privilege*—not a *right*—we feel it is important that wholly external, civilian-investigated accountability models also be "kept on the table." We continue to believe that officer privacy rights and transparency can coexist, and that through best law enforcement practices, both public safety and civil liberties can flourish. We remain hopeful that OPA will eventually prove to be the model police accountability system for the rest of the Nation.

Again, thank you for your time and interest in service to the City of Seattle. We welcome an opportunity to appear before the Panel again to discuss these and any other issues of concern for the Panel.

Very truly yours,
OFFICE OF PROFESSIONAL ACCOUNTABILITY REVIEW BOARD



By: Peter S. Holmes, Chair By: Bradley S. Moericke By: Sheley Secrest

Enclosures

Cc: Sam Pailca
Kathryn Olson
Kate Pflaumer
Gil Kerlikowske
Greg Nickels
Nick Licata
Tom Carr



City of Seattle
Office of Professional Accountability Review Board

MEMORANDUM

To: Seattle City Council Members
From: Peter Holmes
Date: July 9, 2007
Re: Kate Pflaumer's June 25 Memo
Cc: Kate Pflaumer, Kathryn Olson, Sheley Secrest & Brad Moericke

This memorandum responds to Kate Pflaumer's June 25 memorandum on the "Seattle Police Accountability Process," forwarded on July 2 by CM Rasmussen to the OPA Review Board (OPARB or Board), which concludes that, "OPARB is to issue semi-annual public reports regarding the OPA review process *but it does not have the statutory authority to pass judgment on specific investigations.* (SMC 3 28 910)" (emphasis supplied). This conclusion is inconsistent with the OPA Ordinance, SMC § 3 28 et seq,¹ and warrants correction.

OPARB's Authority under the Ordinance

Having no investigative or disciplinary power there is little danger that the Board could effectively "pass judgment" on anything, but OPARB is in fact specifically intended to "review and assess... the *investigation* of Office of Professional Accountability complaints" SMC § 3 28.905 A (emphasis supplied). In addition to this specific mandate, the Board has a broader role reporting on "the implementation of the Office of Professional Accountability" (SMC § 3 28 910.A) than does the Auditor.² The Ordinance further specifies that OPARB reports are to be informed by the Board's review of individual closed OPA cases. SMC § 3 28.920.A ("The OPA Review Board shall have access to, for purposes of review ... *files of all closed OPA investigations.*"; emphasis supplied). Given the authority to review all closed OPA cases, together with its broad reporting responsibility, OPARB cannot issue meaningful reports without at least referring to "specific investigations"³

¹ Subchapter VII is entitled "Office of Professional Accountability"; Subchapter VIII, "Office of Professional Accountability Auditor"; and Subchapter IX, "Office of Professional Accountability Board".

² Compare the Auditor's prescribed semiannual report contents at SMC § 3 28.860.A to the Board's prescribed semiannual report contents at SMC § 3 28.910.B. In addition to the same seven items required in an Auditor's report, the Board is supposed to report on six other very investigation-specific areas (items 2 – 7 under subpart B): the number of complaints by category and nature of allegation; sustained vs. unsustained cases; the nature of disciplinary action taken; patterns of complaints, including race, ethnicity and gender of both complainant and named officers; and the number of officers with three or more sustained complaints in a year.

³ Critics of the Board's efforts to promote transparency consistently treat the *minimum* content of Board reports set forth at SMC § 3 28.910.B as *maximums*, ignoring City Council's plain prefatory admonition that our reports "shall contain a general description of files and records reviewed, and should include, *but not be limited to* ..." *Id.* (emphasis supplied)

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Cases Over 180 Days Old

of days old Opened.Date Closed.Date Case

736	4/19/2005	4/25/2007	IS 05-0086
688	4/11/2005	2/28/2007	IS 05-0078
581	9/26/2005	4/30/2007	IS 05-0235
532	3/4/2005	8/18/2006	IS 05-0052
529	9/26/2005	3/9/2007	IS 05-0235
528	3/8/2005	8/18/2006	IS 05-0039
510	9/8/2005	1/31/2007	IS 05-0223
510	9/8/2005	1/31/2007	IS 05-0223
503	4/2/2005	8/18/2006	IS 05-0075
498	3/7/2005	7/18/2006	IS 05-0031
490	4/15/2005	8/18/2006	IS 05-0077
480	4/25/2005	8/18/2006	IS 05-0088
479	1/30/2006	5/24/2007	IS 06-0072
476	4/29/2005	8/18/2006	IS 05-0093
457	5/18/2005	8/18/2006	IS 05-0114
454	4/26/2005	7/24/2006	IS 05-0099
449	5/26/2005	8/18/2006	IS 05-0117
447	4/27/2005	7/18/2006	IS 05-0090
444	2/10/2006	4/30/2007	IS 06-0082
442	5/2/2005	7/18/2006	IS 05-0092
437	3/26/2005	6/6/2006	IS 05-0062
427	5/17/2005	7/18/2006	IS 05-0112
414	4/18/2005	6/6/2006	IS 05-0082
409	4/5/2005	5/19/2006	IS 05-0073

of days old Opened.Date Closed.Date Case

327	8/25/2005	7/18/2006	IS 05-0214
313	1/4/2006	11/13/2006	LI 06-0069
313	1/7/2006	11/16/2006	SR 06-0003
308	3/17/2005	1/19/2006	IS 05-0054
307	2/24/2006	12/28/2006	IS 06-0101
307	2/24/2006	12/28/2006	IS 06-0101
307	2/24/2006	12/28/2006	IS 06-0101
307	1/17/2006	11/20/2006	IS 06-0067
306	1/11/2006	11/13/2006	IS 06-0025
305	1/12/2006	11/13/2006	IS 06-0041
305	4/1/2005	1/31/2006	IS 05-0066
302	8/2/2005	5/31/2006	IS 05-0189
301	4/5/2005	1/31/2006	IS 05-0044
300	1/17/2006	11/13/2006	IS 06-0045
300	9/21/2005	7/18/2006	IS 05-0233
299	3/4/2006	12/28/2006	IS 06-0106
299	3/4/2006	12/28/2006	IS 06-0106
299	3/4/2006	12/28/2006	IS 06-0106
299	3/4/2006	12/28/2006	IS 06-0106
299	3/4/2006	12/28/2006	IS 06-0106
299	3/4/2006	12/28/2006	IS 06-0106
298	7/28/2006	5/22/2007	IS 06-0357
296	7/27/2005	5/19/2006	IS 05-0163
295	5/9/2006	2/28/2007	IS 06-0268
294	1/23/2006	11/13/2006	IS 06-0040
292	2/1/2006	11/20/2006	IS 06-0089
288	3/14/2005	12/27/2005	SR 05-0065
284	5/20/2006	2/28/2007	IS 06-0283
283	8/5/2005	5/15/2006	IS 05-0192

of days old Opened.Date Closed.Date Case

248	3/17/2006	11/20/2006	IS 06-0136
248	3/17/2006	11/20/2006	IS 06-0136
248	3/17/2006	11/20/2006	IS 06-0135
248	3/17/2006	11/20/2006	IS 06-0135
246	3/12/2006	11/13/2006	LI 06-0120
246	3/12/2006	11/13/2006	LI 06-0120
242	7/1/2006	2/28/2007	IS 06-0321
242	4/18/2005	12/16/2005	IS 05-0085
241	3/4/2005	10/31/2005	LI 05-0043
240	4/3/2005	11/29/2005	IS 05-0067
240	4/3/2005	11/29/2005	IS 05-0070
240	9/2/2006	4/30/2007	IS 06-0416
240	7/3/2006	2/28/2007	IS 06-0335
239	9/25/2006	5/22/2007	IS 06-0435
239	4/5/2005	11/30/2005	IS 05-0044
239	7/4/2006	2/28/2007	IS 06-0327
238	5/4/2006	12/28/2006	IS 06-0242
238	9/15/2005	5/11/2006	IS 05-0229
238	5/4/2006	12/28/2006	IS 06-0242
238	5/4/2006	12/28/2006	IS 06-0242
235	7/8/2006	2/28/2007	IS 06-0339
233	10/24/2005	6/14/2006	IS 05-0253
233	10/10/2005	5/31/2006	IS 05-0244
233	12/19/2005	8/9/2006	IS 05-0279
233	8/10/2005	3/31/2006	IS 05-0200
233	8/10/2005	3/31/2006	IS 05-0200
232	8/10/2005	3/30/2006	IS 05-0200
232	8/10/2005	3/30/2006	IS 05-0200
231	9/22/2005	5/11/2006	LI 05-0204

of days old Opened.Date Closed.Date Case

209	6/2/2006	12/28/2006	IS 06-0272
209	10/18/2005	5/15/2006	IS 05-0250
209	6/2/2006	12/28/2006	IS 06-0272
209	7/6/2005	1/31/2006	LI 05-0162
207	3/7/2005	9/30/2005	IS 05-0128
206	6/16/2006	1/8/2007	LI 06-0295
206	6/16/2006	1/8/2007	LI 06-0295
203	6/19/2006	1/8/2007	LI 06-0300
203	6/19/2006	1/8/2007	LI 06-0300
201	6/21/2006	1/8/2007	LI 06-0309
201	6/21/2006	1/8/2007	LI 06-0309
200	5/4/2006	11/20/2006	IS 06-0242
199	6/23/2006	1/8/2007	LI 06-0308
199	6/23/2006	1/8/2007	LI 06-0308
196	10/16/2006	4/30/2007	IS 06-0474
193	9/30/2005	4/11/2006	IS 05-0237
192	11/4/2005	5/15/2006	IS 05-0257
187	10/20/2006	4/25/2007	IS 06-0481
187	10/25/2006	4/30/2007	IS 06-0483
186	4/21/2006	10/24/2006	IS 06-0192
186	10/10/2005	4/14/2006	SR 05-0242
185	10/10/2005	4/13/2006	IS 05-0244
183	7/13/2006	1/12/2007	IS 06-0343
183	7/28/2005	1/27/2006	IS 05-0193
183	7/13/2006	1/12/2007	IS 06-0343
182	9/25/2006	3/26/2007	IS 06-0443
182	8/2/2005	1/31/2006	LI 05-0186
181	2/9/2006	8/9/2006	IS 06-0070
181	11/16/2005	5/16/2006	SR 05-0263