

**Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For April - September 2007**

INTRODUCTION

As explained in earlier reports, available at www.Seattle.gov/police/opa, there are three distinct modes of civilian oversight of the Seattle Police Department. The Office of Professional Accountability [OPA], under the leadership of a civilian Director, has continued to issue monthly reports that reflect up to date statistics on cases handled and outcomes. Each contains cumulative statistics for the year, which I incorporate by reference. The volunteer OPA Review Board now has access to unredacted closed files and has issued reports and letters of concern about specific investigations and outcomes.

The OPA Auditor is a part-time contract civilian position independent of the Seattle Police Department. I was appointed by the Mayor and confirmed by the City Council. I review open case files on a real time basis to improve the quality of investigations and sometimes suggest further avenues to explore, better lines of questioning, and consideration of a different perspective. I also review the classification of complaints as to seriousness and extent of the investigation. I am tasked to report twice a year, including observations of trends, problem areas, and policy suggestions. Though I have no formal role in recommending disposition of investigations, I do comment to the OPA and engage in dialogue about appropriate findings.

The system of civilian oversight in Seattle is presently under review by two different panels, appointed by the Mayor and the City Council. As Auditor, I have appeared before the 2007 Police Accountability Review Panel and have sent them written suggestions. Because the entire system is under review and many different schedules and work plans are publicly available, I will limit this Report to my specific activities in the six months covered since my last Report.

SUMMARY OF ACTIVITIES

In the six months covered by this Report, I have reviewed 73 completed OPA-IS investigations, down from the prior six months' total of 82, but above the average of 57 over the five similar periods before that.

I reviewed 10 Line Investigation [LI] referrals, to be able to comment if I disagreed with the classification. I reviewed 14 completed Line Investigations. The actions by the OPA, the Chief, and Precinct Commanders have resulted in expediting Line Investigations, which I continue to monitor.

I have also reviewed, for classification and comment on possible follow-up, 54 Supervisory Referrals [SR's] and 191 Preliminary Investigation Reports [PIR's]. I have reviewed numerous contact logs, some of which have been converted into PIR's or SR's, but most of which have not raised issues within the purview of the OPA and therefore not led to investigations.

Internal Investigations

Of the 73 completed OPA-IS investigations, I commented on 15 cases.

In several I requested further investigation or commented on the interviews conducted; in 11 or so I commented on the underlying employee conduct or the recommended disposition; I had questions about status and timeliness in a couple. I reviewed video and complete interviews in a number of cases where I had questions.

Examples of Issues Raised:

Most of my comments addressed both the investigation and the underlying conduct involved – specifically the necessity of the force used in arrest situations. In response to some of the issues raised before the Mayor's Police Accountability Review Panel, I do not consider it inconsistent in any way to comment upon findings or proposed dispositions, as well as suggest improvements in investigations. I do not “audit” or certify the OPA process in any technical sense, nor does the completed investigation represent my

work product; so there is no danger that I would hesitate to criticize it. Rather, I may make suggestions for further witness interviews, earlier contact with complainants, or improvements in the interviews. These are meant to ensure OPA IIS accomplishes the most complete, accurate, and unbiased investigation.

Another issue that has been raised is whether I should review cases after they are closed or while still open. Since the majority of cases are handled without a full IIS investigation, it is important to have me comment on the classification of complaints. In my experience, the system here has also worked, in practice, so that I see completed investigations before the Director does. The Director, OPA IS Lieutenant and Captain have expressed appreciation that this is done while the investigations are still open. It allows me to suggest other avenues, as well as to highlight and discuss troublesome issues -- about the investigation, the underlying employee conduct, and patterns observed in both.

My comments on underlying conduct of the accused employee, or appropriate disposition of the allegations of policy violations, are distinct, although a good investigation will better frame the case for the decision of the OPA Director and for the Chief in cases where discipline is recommended.

Of course the other aspect of my job, to suggest policy changes and address patterns of conduct, is also intertwined with both the quality of investigations and the patterns of underlying policy violations by employees. These three pieces fit together, in my opinion, rather than work against each other.

For instance, I asked about cases where I thought inadequate cause for arrest should be considered a separate allegation or policy violation. Alleged violations of constitutional rights are somewhat irregularly classified as policy issues by OPA, although there has been attention to warrantless searches.

My comments on underlying allegations of police misconduct have generally been well received and addressed by OPA, as well as my suggestions for better investigations. An example that combines perspectives on both is the following comment I made about one case:

07 IIS xxxx is a troubling case, both as to the underlying conduct of the employees and as to the investigation. It is classified only to address unnecessary force, but also seems to involve use of discretion, which is almost always an issue with an allegation of unnecessary force.

The force is defended as ‘necessary to control the situation.’ Yet the situation when officers arrived was this: intoxicated people, handicapped mother asking that her daughter be evicted from the house: no crime being committed, no weapons displayed, no immediate threat to civilians or officers. The officers were inside a home at the request of the mother. I recognize that domestic disturbances can become very dangerous, but that is all the more reason to proceed slowly and not barge into a small room, cornering aggressive occupants.

As to the investigation: it seems the summary should explore variations in the recitals of what different officers saw, as they usually do with civilian witnesses.

This is also an example of the problem with cases where the subjects are awaiting court proceedings and not willing to talk. We are in any case way past the 180 day mark. When were the charges against the two young people dismissed? What attempt was made to keep abreast of that situation and to interview them?

I would request that this case be reviewed in depth by [the Director] for discussion of recurring problems.

In fairness, I should add that the OPA leadership addressed some of my concerns in this case, citing the arrestees’ breaking into violence against the officers in a short period of time after they entered the house and the officers’ obligations thoroughly to investigate domestic violence situations, despite the fact that involved families often turn on the officers.

In another case, I commented upon investigative techniques: the laudatory attempt to get a statement from a subject by going to interview him while in custody; but the failure to get a statement because the sergeant could not record the individual, who was soon thereafter deported. I asked that the uninvolved citizen who reported “excessive force” be contacted about the investigation and outcome. Otherwise, I complimented the thoroughness of the investigation.

In the same case, I also commented on the underlying conduct of the officers, criticizing the potentially dangerous actions of grabbing a man’s

hand who might have been drawing a weapon from his pocket; tasing a passively noncompliant subject and then tackling him when six applications of the taser only effected a “slow movement downward” as the arrestee bent his legs.

A third example of my comments provoked a discussion with OPA IS of the Department’s use of force training, especially since the employee at issue is a certified defensive tactics instructor and teaches in the Street Skills program. My comments were as follows:

There are several issues here that are troubling. The officer does not mention any force at all in his police report. In his Use of Force report and interview, he says he ‘slapped’ the complainant twice and used an arm twisting technique to get him out of the car. Witnesses say the entire struggle took 15 seconds. No other officer or witness saw these “slaps” administered – but the complainant had obvious injuries at the station, so a use of force report was taken. Sergeant xxxx can’t remember if he threatened the use of a taser. He says the officer pulled the complainant from the car and he was “taken to the ground.” The others thought the complainant stayed standing the entire time.

The officer’s actions in this situation show questionable judgment. He says he wanted the complainant out of the car for a sobriety test. He does not seem to have explained this to the driver. He then reached into the car and grabbed the man’s jacket. Why? At that point he says the subject had “hesitated;” and nothing more. When he saw the box cutter, he did not back off, but again reached into the car and started trying to pull the man from the car. This seems very risky, especially since he already has a jacket in one hand. What about the standard advice, “we don’t reach into cars.....” (The car was headed out from the [angle] parking space and the motor was running.) What the officer had observed was that the man appeared intoxicated and ‘had difficulty concentrating.’ This seems a very poor moment to begin applying force. According to his report, all the complainant had said was that “he will get out of the car when he wanted to.” He didn’t actually start refusing until the officer started dragging him out. It was then he said “you can’t make me” and started shaking his head like a child, and then the officer started hitting him. So the officer is pulling with his right hand, at least “slapping” with his left hand (the injuries suggest more,) the coat is ?, through the open door of a running car and the subject’s right hand is free and he has a weapon in his lap!

While I can hear “exonerated” coming on this one, I hope “supervisory intervention” is discussed.

Taser Use

I commented in several cases about the use of the taser, particularly on passively noncompliant arrestees. An officer tased a driver who refused to get out of his car. He had opened his car door and told the officer he was supposed to come get his license. This made the officer suspect an assault and treat the situation as “high risk.” So, rather than explain the unusual request that the intoxicated man throw his keys out and step out, he asked another officer to approach the driver side to “distract” the driver while he “approached the passenger side with another officer for lethal cover.” He then opened the door and tased the driver. This all occurred right in front of the North Precinct, where the subject had parked in “order to have a witness,” due to past encounters with police.

The IIS sergeant was to be commended for his insistence on getting an interview from the complainant, which entailed going to court and twice to the man’s house.

In another case, I agreed that the complainant lacked credibility for a very tardy complaint, but thought the officer’s use of his taser on an individual (a loud, profane man they were trying to trespass from an am/pm store) was questionable, since again the man was already on the ground. They had decided to chase him down and tackle him to deliver a trespass admonishment, when he ran, *after being told he was not under arrest*. They had no concern he was armed during their earlier interaction. Yet, they tased him twice while on the ground to get his hands out from under him.

It is not unusual for officers to shock, often with more than one five second burst, an individual they have “taken down” onto the pavement, and may have a knee on, who refuses to bring his hands out from under him. I think that use of the taser on passive noncompliant individuals should be looked at as a policy issue.

“Take-Downs”

Also the frequent “taking to the ground” as the primary means of control bears review. The individuals usually refer to it as being tackled or “thrown to the ground.” It is very understandable from the officers’ point of view that they want to see and have control of the hands of someone they are arresting; but the question is whether they are actually making this more difficult. It is normal and instinctive to put your hands out to break a fall, and if someone is pressing your body down onto the pavement, or delivering “knee strikes,” it is also counter intuitive to pull your hands out and let your face be ground into the concrete. At the very least I have suggested that in these situations we need careful documentation by OPA IS of “where the officers were, how they were holding the person down, and what alternatives” they had for control.

Alcohol Abuse

I commented on two issues of employee misconduct involving alcohol abuse. In one case, the Prosecutor’s Office agreed to a deferred prosecution, not unusual for a first DUI arrest, but unusual after a hit and run attended/injury. I commented that the circumstances relevant to the administrative case were far more egregious than the criminal case outcome reflected, particularly due to witness information describing the employee’s serious alcohol problem.

In general, the command staff looks carefully at alcohol related incidents involving officers and determines whether the officer should be on administrative leave or reassigned while the OPA IIS awaits the outcome of the criminal case.

In another case I also opined that the accompanying alcohol related conduct deserved serious attention, because of these factors: extremely high BAC (indicating alcoholism); the inconsistency of the BAC reading with the officer’s rendition of how much he had to drink; the officer’s display of his SPD identification and comments that implied he should be treated as a “fellow officer;” and his initial false claim for money left in his car.

OPA/SPD Unit Shared Investigations

I commented on the practice of coordinated investigations by OPA IS and designated SPD units of alleged criminal acts by employees. In this particular case, there was no Sexual Assault Unit memo or recording of the interview of an alleged domestic violence defendant/employee. Without that, I could not review the investigation, as required by my job.

Mitigation vs. Factual Findings

In a number of cases, I suggested that factors that mitigate discipline should be distinguished from the decision that conduct was outside policy.

I include these explicit and even verbatim examples of my comments to show my side of a dialogue that often occurs in real time, about open cases, commenting on investigative techniques, underlying conduct, and sometimes patterns or training issues. I do not see these roles as inconsistent or presenting any kind of conflict. Because I do not supervise or design the investigations, I have no stake in “defending” them when I write my reports.

Suggested Changes;

My suggestions for change would be to give the Auditor an explicit role in commenting on policy violations by employees (that is, the underlying conduct involved in the incident.) As it is, these comments are considered by the OPA Director and members of the OPA IIS and included with the file.

I think the three functions described above can be accomplished by a part-time, contract outsider, with sufficient background in law enforcement. **The City should consider a cost of living pay raise**, though, since the Auditor contract has not changed in 15 years and the qualifications outlined in the Ordinance are quite extensive.

Line Investigations

I had comments only on one case referred for Line Investigation, which was extremely late coming in. Two of the LI's I have been holding were reclassified to SR's by the Director, without any knowledge or input from me. On review, I have no argument at all with the reclassification, but it would be good to notify me at the time. Another referral was upgraded to an IIS investigation, also without notice to me. Again, I have no objection. I am holding only one overdue line investigation, and an extension has been applied for. The turnaround time on these investigations in the precincts has been very good in this six month period.

Supervisory Referrals

Judgment is required to determine whether an incident should be classified as a PIR or an SR after a sergeant at OPA-IS has looked into the matter. The OPA Lieutenant, Captain, and Director review each. I commented on only five of the 54 SR's I reviewed during this six-month period. One had been upgraded from a PIR and classified as a "service quality issue." The Director and I agreed that if the subject's hand was still numb nine days after his arrest, and medical evidence supported his complaint that tight handcuffs were the cause, this case required further investigation. I emphasized the importance in making contact with the complainant about the outcome of the case in another file.

I continue to be concerned that SR's are not entered as data in the early intervention system meant to alert supervisors to potential problems with employees before they occur. This is a negotiated human resource issue.

Preliminary Investigations

PIR classification indicates a finding at the outset that there was no or minimal violation of policy alleged and the complainant is usually quite satisfied to have the comments simply forwarded to the officer through the chain of command. I commented on only four of the 191 PIR's completed in this period.

In one case I asked about the limits of administrative jurisdiction over non-criminal, off-duty behavior. In this case the neighbors had expressed concern about the mental health of the employee. In another case we discussed a citizen witness' concern that throwing an individual to the ground seemed unnecessary. Finally, I questioned the conclusion that one case involved a "purely civil" dispute when the complainant requested a "stand-by during a dispute over the theft of personal property."

PIR's are investigations that often require time and diplomacy from the IIS sergeants, and they generally do a great job. Lieutenant Kebba reviews each PIR and often makes suggestions of further actions to help the caller.

I have also reviewed hundreds of "contact log" entries, that did not require further investigation.

Other Activities

During this six-month period I have reviewed SPD policies involved in complaints; answered questions informally and appeared before the City Council Public Safety Committee to discuss my spring Report; met with the Chief of Police and corresponded with him; met with the Mayor and his counsel and Deputy Mayor; responded to media requests at the Chief's invitation about one controversial case; met with the new Director; met with the ACLU; answered questions informally and presented information at the Police Accountability Review Panel; appeared and responded to questions before the Human Rights Commission in a public forum; and met with the Review Board. Finally, attendance at the National Association for Civilian Oversight of Law Enforcement was a considerable commitment of time for a part-time employee, but very valuable in educating me about other approaches to civilian oversight.

CONCLUSION

As I have frequently said, the patterns observed and policy recommendations made by OPA and the Auditor may be the most valuable aspect of Seattle's civilian oversight system, yet are rarely seen or appreciated by members of the public. The administrative disciplinary system is often not the best place to address many recurring issues or service complaints, but the patterns in police conduct are important information for the Department as a whole. The respect of the precinct leadership, the Command Staff, and the Chief for the OPA-IS investigations and recommendations make this role valuable.

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. There has been some comment about this procedure, but in my experience the Chief has never asked for any substantive modification of any report I have written. Rather, we have used the reports as sources of issues for in person discussions.

Report respectfully submitted November 27, 2007

/s/

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Civilian Auditor