

**Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For April – September 2006**

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 OPA Director published *Complaint Statistics for 2004/2005* as well as *OPA Policy Review and Outreach* during this six month period, and therefore my own Report will be brief. The OPA Director also continued to send specific policy recommendations to the Chief in this six-month period, including issues for training and staffing proposals for the OPA IS. She responded to the City Council's Resolution seeking standards for timeliness of investigations.

SUMMARY OF ACTIVITIES

My Report summarizes my activities as the contract, part-time Civilian Auditor from April through September 2006. The core of my responsibility is to review classification of complaints, make suggestions for further investigation where warranted, and to recommend policies. The Ordinance dictates that my reports also include an ongoing analysis of the OPA process; a look at issues, problems and trends; and recommendations for additional officer training as well as policy and procedure changes. I am also tasked to meet periodically with the Chief, with the Mayor, and with the Council. I have met, during this period, with the Review Board, the Council, the Chief, and the Mayor. I have responded to the Council's request for recommendations on standards for timely completion of investigations, attached as Appendix A, hereto. I have gone on two evening "ride-alongs" and attended the April hearing in which citizens complained about the service they have received.

I reviewed all the OPA investigations before completion, made suggestions in some cases, as well as occasionally offering input about the underlying conduct alleged, and commented on some of the issues that continue to bear on the functions of the OPA.

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. I have reviewed the SPD policies involved in the investigations where appropriate.

I review the allegations of misconduct on a weekly basis, with complete access to the files in process. I communicate with the OPA staff about classification, investigations, and sometimes outcomes.

In the six months covered by this Report, I have reviewed 57 completed OPA-IS investigations, a decrease from the last period.

I reviewed 17 Line Investigation [LI] referrals, to be able to comment if I disagreed with the classification. I reviewed 6 completed Line Investigations. The actions by the OPA, the Chief, and Precinct Commanders have resulted in expediting Line Investigations. I am holding eleven assigned Line Investigation awaiting completion.

I have also reviewed, for classification and comment on possible follow-up, 44 Supervisory Referrals [SR's] and 160 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.

These numbers represent an increase in Supervisory Referrals, a decline in full investigations, and comparable numbers of PIR's, measured against the period covered by my last Report.

SPECIFIC ACTIONS

Internal Investigations

Of the 57 completed OPA-IS investigations, I had questions, comments, discussions, or requested further investigation in 6 cases. Some of these comments were about the OPA's role, some requesting further investigation, some commenting on the recommended disposition.

In one case, I agreed with the OPA's recommended disposition of "sustained" against an officer who executed a foot or leg "sweep" taking an intoxicated woman in high heels to the ground, perhaps fracturing her cheekbone and eye-socket. (Since she refused to cooperate on her attorney's advice, we have no way of verifying the injuries.) She may have lurched as the officer kicked her feet, but the question was whether this level of force was justified by her primarily verbal interference with the processing of a driver for DUI. In this case, the Chief declined to follow the recommendation and exonerated the officer, asking for follow-up on use of force training. It was unfortunate that the defense attorney advised the subject and witnesses not to cooperate with the IIS investigation, thus limiting the evidence available. In general, of course, this case also falls within my continuing concern that officers be given greater de-escalation skills to deal with minor confrontations.

Such skills of course can be useful in situations beyond minor confrontations. I was critical of the handling of a situation where officers went to a house at 2:00 am based on the occupant's outstanding arrest warrant. When a car drove up and a woman approximately meeting the description of the felon ran into the house, the officers tried to handcuff the driver on the lawn at gun point, simply to stabilize the situation. After getting one handcuff on, he resisted; they feared being assaulted and tased him in the neck, which I understand is a very vulnerable area that officers are trained not to target. Despite being tased numerous times, the man managed to run into the house. The officers followed, and after continuing trouble getting him in cuffs in a tight space, dragged him down the stairs and out. The result of all these "compliance techniques" were a broken rib, punctured lung and other injuries. The man claimed he never heard these

men identify themselves as police, though his statement at the scene that he “hadn’t done anything” might belie that assertion. In any case, the officers never saw fit to tell him that he wasn’t under arrest or why they were handcuffing him before the struggle began or during any of the intermittent actions of submission between his outbursts of resistance.

By contrast, I commented with approval for the decisive actions of one officer who responded to a domestic violence call where a mentally ill woman had thrown objects at her mother, threatened to kill herself, taken a bunch of pills in her mother’s presence, rushed to her truck and was starting to back up. The officer broke the driver’s window and tased the woman. This case came to the OPA based on a claim the subject filed with the City. She declined to participate in the investigation, but there were many witnesses, including responders from Seattle Fire Department. From the evidence available to the OPA IS, this was a case of proper, immediate use of a taser, perhaps against a mentally ill woman on some kind of drug, a situation in which I have urged restraint with the use of tasers. It exemplifies how hard it is to craft a policy that will suit all situations.

The Director will soon publish a report on the Use of Force and I may have more comments in my next report.

One more example of comments on underlying conduct and recommended disposition: I thought an illegal car search, threat to arrest a subject in the future, and call to his girlfriend’s house to tell her parents he was a marijuana dealer, was worthy of discipline. The question was whether Supervisory Intervention was more appropriate for a new officer.

I have made very few comments about IIS investigations themselves or requests for further actions. In one I was critical of the IIS’ failure to explore facts suggesting intoxication of an off duty officer who allegedly almost ran down several people, grabbed the subject in some manner from inside his truck and threatened him. The criminal investigation sat for five months or so because the investigators failed to reach the victim for an interview. In June, six months after the event, the OPA sergeant reached the officer, the victim, and the witnesses. Because there was no independent physical evidence of intoxication, the issue was not explored with the officer during the interview. I thought it was important to assess this information, even if insufficient for a DUI conviction, where there were apparent issues about drinking, as well as driving and anger control after drinking. Since lay

witnesses may have even legally admissible opinions about intoxication, I wished there had been more attempts to contact witnesses early on, although calls to the subject were unavailing at that time.

Line Investigations

I commented on only one Line referral, asking that a subject in jail be interviewed before the case was assigned out. I have had no comments on the completed investigations. I still have eleven cases pending resolution from this reporting period, all involving incidents in the summer of 2006. Some may be back at OPA pending review there.

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 OPA-IS has looked into the matter. The classification of each case is reviewed by the OPA Lieutenant, Captain, and Director. I commented on only three of the 44 SR's I reviewed during this six-month period. A couple involved the intersection of human resources/managerial/misconduct issues. Officers, for instance, may allege misuse of authority or unsafe supervision by their superiors.

In several cases I had questions about what was expected from the supervisor on referral or I questioned the classification. In one, it was upgraded to an investigation; in another the supervisor was directed to have a serious conversation with officers about the fact that they may have discussed a case in the hall while waiting to testify in court.

Discipline is not contemplated in either SR's or PIR's, but both often require some supervisory action and return of the file to the OPA.

Supervisory Referrals usually indicate that the policy violation was not willful or the misconduct was not worthy of discipline. In PIR's there was no violation of policy and the complainant is usually quite satisfied to have the comments simply forwarded to the officer through the chain of command.

I commented on eight of the 160 PIR's completed in this period, one of which I thought should be treated more seriously, as an SR. PIR's are in fact summary investigations that are often quite time-consuming and the OPA-IS staff does a great job. The investigating sergeants often go to substantial

lengths to find out what happened and how the situation can be improved, locating property or helping citizens through other processes, despite the fact that no misconduct has occurred. Lieutenant Kebba reviews each PIR and often makes suggestions of further actions to help the caller. I was satisfied with the responses the OPA IS made to each of my questions or comments.

Conclusion

Many of the policy recommendations made by the Director of OPA have addressed issues raised in her review and my comments about cases investigated by OPA-IS. Trends in common complaints give the Department important information about underlying problems. The administrative disciplinary system is often not the best place to address these recurring issues, but the patterns in police conduct are important information for the Department as a whole. The OPA thus provides an important service beyond investigation and proposed discipline.

Report respectfully submitted October 30, 2006

/s/

**Katrina C. Pflaumer
Civilian Auditor**

Appendix A

October 2, 2006

Council Chair Nick Licata

Hand Delivered

All Council Members

Via Email

Re: Seattle Police Department's Office of Professional Accountability

Dear Council Members:

I am responding to the City Council's Resolution asking me, as part-time contract Civilian Auditor, to "recommend standards for the timeliness of investigations of complaints about officer misconduct."

I am mindful of the limits of my statutory authority and role, and will defer to the Civilian Director of the Office of Professional Accountability [OPA] to speak with managerial expertise and an appreciation as a member of the Command Staff of the Department's budgetary constraints.

From my perspective, the entire process for handling complaints about Department employees must be looked at. I have seen marked improvement in many of the areas I have discussed in past semi-annual Reports: early, in-person interviews of subjects where serious misconduct and/or injuries are alleged; fast-tracking appropriate complaints of less serious conduct via Supervisory Referrals and Preliminary Investigation Reports; expedited Line Investigations procedures; regular monitoring of pending criminal allegations – which are often delayed in prosecutors' offices. Cases that might be resolved by the new mediation process are quickly identified. The Director has recommended and the Chief agrees that longer assignments to the OPA-IIS will give investigative continuity and experience-gained expertise. The OPA now receives word of claims against the City that might warrant investigation by OPA-IIS although not reported as complaints. Enhanced interview training was conducted. Use of Force Reports are more

uniformly completed, which allows better access for the investigators' review. Resource and equipment issues have at least been identified. These measures have improved the efficiency of the OPA-IIS without compromising the openness, integrity of investigations, or accountability that are critical to the office's success.

Triaging and case management procedures have kept the delays under control despite the rising caseload. It is not clear to me if case management training might be helpful to individual investigating sergeants, though their background in management at the precinct level may be sufficient and they seem quite good at multi-tasking.

Some issues affecting expeditious completion of investigations depend on contract, for instance how many interviews must be transcribed verbatim and the delays inherent in referring investigations of potentially criminal conduct to different units of the Department.

Any attempt to set time limits for the different categories of investigations should be presumptive and flexible, as many factors vary from case to case: the availability of civilian complainants and witnesses; the pendency of criminal investigations or charges – either against the complainant or the officer; the availability of Guild personnel and officers for interviews; the number of witnesses; the range of complexity – from multiple incidents of fraud to one-time confrontations on the street.

The Council's Resolution appropriately asks the Director and myself to reference best practices. In that regard I quote from the authoritative work of Samuel Walker: *The New World of Police Accountability* (Sage Publications, 2005) at page 74:

At present there are no recognized professional standards for complaint procedures. Neither the law enforcement profession nor the new citizen oversight professional community have[sic] developed a set of professional standards for complaint procedures. One cannot find, for example, a recommended standard on such a basic issue as the appropriate number of complaint investigators for a police department of a given size. The current accreditation standards promulgated by the Commission on Accreditation for Law Enforcement Agencies (CALEA) specify that departments should have a formal complaint process, but they provide absolutely no details on such critical questions as minimum staffing levels. The International Association of Chiefs of Police (IACP) policy paper on *The Investigation of Misconduct* addresses a

number of legal issues surrounding complaint investigations but ignores most of the administrative issues related to a complaint process.

Professor Walker's book speaks of the need for standards in staffing levels, which I believe are key, along with case management, to expeditious and timely investigations, as I have repeatedly commented in my Reports. Despite the improvements in management and classifications, it must be questioned whether the same staffing level at OPA-IIS is sufficient to handle the steady upward trend in cases referenced in mine and the Director's Reports and quoted in the Council's Resolution.

The only existing standards for staffing apply to the San Francisco Office of Citizen Complaints. "A 1997 ordinance, enacted by referendum, requires the OCC to have one complaint investigator for every 150 sworn officers...." *Id.* at page 94. The ratio in Seattle is one investigating sergeant to approximately 217 officers. Similarly, we might look to Denver, a city of the same size and comparable problems, including a similar number of complaints about officer misconduct, although their classification system is different. I understand they have **ten investigators, two lieutenants and one captain**. Beyond Internal Affairs investigators, Denver has an office of the Police Monitor that includes the Monitor, a Senior Deputy Monitor, a Deputy Monitor, a Community Relations Ombudsman, a Managerial Analyst, and an Office Manager. The Monitor's Office works with a seven-member Citizen Oversight Board that evaluates the work of the Monitor, holds public meetings, and makes policy recommendations. The Monitor reviews all Internal Investigations (including internal criminal investigations) and officer-involved shootings and makes recommendations on discipline to the Chief and the Manager of Safety. Cases are not considered complete until members of that office have reviewed and recommended or done further investigation. While I think this system might lead to more delays here, I point it out for the staffing comparison to OPA's six investigating sergeants, one lieutenant and one Captain. Obviously the real time oversight of the Civilian Director and part-time independent Auditor involves far less personnel than the Denver model.

Having said all this, it is my opinion that delay in resolution of citizen complaints is perhaps the single weakest aspect of the Seattle Police Department OPA. That and the disciplinary outcomes (or the Chief's decline of sustained recommendations) are certainly the dissatisfactions

most frequently cited to me by members of the public. Furthermore, my job to ask for further investigation in appropriate cases is significantly undercut when the IIS interviews took place several months earlier. So I will try to respond to the Council's request by saying I would like to see serious complaints investigated within 90 days, and resolved at the management level within another month. Exceptions would be made for complex investigations of multiple instances or ongoing misconduct such as those recently at issue in several 2005 cases. Nonetheless, the unit should be able to accommodate such investigations without compromising the more typical, one incident allegations. Exceptions would also be appropriate when some legal proceeding is outstanding, multiple witnesses are unavailable, etc. It is absolutely unacceptable for cases to have "expired" – that is to be beyond the 180 day Guild contract limit for imposing discipline – when they reach the office of the Director. I would like to see all other categories of complaints – Line Investigations, SR's, PIR's – have a presumptive resolution date, including contact with the complainant, within 60 days.

As the Council, the OPA and the Chief look at standards, each might want to assess the efficiency of the overall model for civilian oversight in Seattle. This is particularly appropriate as the very able Director reaches her term limits and will be moving on. The job description is truly daunting, and I believe contributes to the overall delay in handling cases: the Director is expected to do community outreach and hold regular meetings; to represent OPA at the Command staff and in disciplinary meetings; to review all investigations, SR's, PIR's, contact logs, and Line Investigations; to make internal policy and procedure adjustments; to supervise the mediation program; to advise the Chief on policy changes; to conduct studies on use of force, racial profiling and the like; to manage the OPA as a whole; to publish regular reports; and to engage in the work of groups such as the National Association for Civilian Oversight of Law Enforcement. Both she and the staff of OPA-IIS have significant training responsibilities as well. In fact, a look at the staff of the Denver Monitor's office offers an insight into the job Seattle expects one person to do. It is indicative of the Director's energy that she considers it relaxing to run in a marathon, but the job description itself probably bears re-examination before her replacement is hired. I of course would be happy to meet with the Council to discuss these matters.

Very truly yours,

Kate Pflaumer

Cc: Chief Kerlikowske; Director Pailca; John Fowler; OPA-IS; Peter Harris