

I. INTRODUCTION

To help ensure Constitutional, accountable, effective, and respectful policing and to have a safe community, the City of Seattle recognizes that there must be trust between the police and those they serve. For that reason, the City established the Office of Professional Accountability (“OPA”), an independent office within the Seattle Police Department (“SPD” or “Department”)¹. OPA’s mission is to ensure that SPD officers and non-commissioned employees abide by the spirit and letter of the laws and policies governing their actions. It is expected that all individuals will be treated by the police with respect, fairness and dignity.

Central to that trust is the Department’s ability to effectively police itself. This requires that members of the public and employees alike have a convenient and safe way to raise concerns; the Departmental culture must hold all employees accountable regardless of rank; and the internal administrative investigations must be conducted and discipline imposed in a trustworthy and consistent manner.

This overview of OPA is designed to explain to the public and employees how and why OPA addresses alleged wrongdoing by the police. OPA, and indeed the entire accountability system, must be transparent and understandable if it is to be effective.

II. INDEPENDENCE

While OPA is housed in SPD, it is headed by a civilian director. OPA also has additional independent review by another civilian, referred to as the OPA Auditor, a former judge or attorney with expertise who, along with the Director, reviews all complaints and investigations and makes recommendations to improve policies and training². Both are appointed by the Mayor and confirmed by the City Council for fixed terms. Each must meet qualifications laid out in City ordinance and can only be removed from office for cause. This civilian oversight was instituted to help ensure the integrity, professionalism and independence of OPA’s work.

III. ETHICS AND VALUES

OPA has adopted the National Association of Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics, which emphasizes the importance of always acting in a fair and impartial manner, no matter how difficult the issue; conducting investigations,

¹ See Seattle Municipal Code (SMC) 3.28.800

² See SMC 3.28.850

audits, evaluations and reviews with thoroughness, an open and questioning mind, integrity, objectivity and fairness, and in a timely manner; rigorously testing the accuracy and reliability of information from all sources and presenting the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

OPA is committed to conducting its oversight activities as openly and transparently as the laws and collective bargaining agreements allow, while maintaining the confidentiality of information needed to ensure fairness to employees and members of the public alike.

OPA will treat all individuals with dignity and respect, and without preference or discrimination, and encourages any individual to file a complaint, even remaining anonymous if that is preferred. Complaints can be made in-person, by phone, email, using the OPA website or with the help of a community advocate, friend or relative. Officers and employees are required to report possible misconduct and no employee may interfere with hinder or obstruct a person from making a complaint.

Retaliation for the filing of a complaint or for participation in the complaint or investigative process in any way will not be tolerated. Actions which would be considered retaliatory can take many forms, including, but not limited to, the malicious filing of a criminal or civil action, threats or harassment in any form, contacting third parties to take adverse action, or decisions affecting an employee's hiring, promotion or assignment. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.

The process depends on the integrity and honesty of all participants. SPD officers and employees are required as a condition of their employment to provide truthful information and are compelled to give interviews as requested by investigators. False statements can result in discipline up to termination. For the system to work effectively, members of the public must not knowingly provide false information or file a complaint for malicious purposes. At times, individuals may not remember everything with precision or may provide contradictory information, which is to be expected. However, when presented with clear evidence that false information was knowingly provided, the OPA Director may consult with the City Attorney to determine whether the filing of a charge of false reporting is warranted, in fairness to the employee(s) against whom false allegations were made.

IV. FILING A COMPLAINT

OPA will always have someone on site to take in-person complaints and answer questions from 8am to 5pm, Monday through Friday. If a complainant does not speak English or is hearing impaired, OPA will reach out to others to assist if staff do not have the expertise internally. All complainants will be treated respectfully and with an open-mind by OPA staff.

Every contact to OPA is logged, even if only a request for information or about actions by non-SPD employees, in order to have a comprehensive record. The Director and Auditor review the log of all contacts monthly to ensure that each was handled appropriately. If a contact contains an allegation of misconduct that, if proven to be true, would be a violation of SPD policy or law, an internal, administrative investigation begins. If a violation of law is alleged, a special referral for a criminal investigation is made, in addition to the administrative investigation.

The first step is for OPA intake staff to interview the person making the complaint (“the complainant”). If the complainant came to the OPA office to make the complaint, he or she will be interviewed in-person. If the complaint was made by phone, online or referred by a third party, the complainant will initially be interviewed by phone. With the complainant’s permission, these interviews will be audio-recorded to assure accuracy and objectivity in the investigation. During the interview, the complainant will be asked to describe what happened, where, and when, and to provide any other information he or she may have describing the involved employee(s), whether there were witnesses who could be contacted, and any other evidence that might be helpful. If there was a possibility of injury, the complainant will be asked if photos may be taken and whether he or she will sign a release to allow for medical records to be gathered detailing the injury if medical treatment was sought.

Sometimes complainants do not wish to be interviewed in-person or on the phone, in which case OPA intake staff will try to gather the necessary information from the complainant via email. While this is rarely as helpful as an interview, it is allowed if that is what the complainant prefers. In some instances, the complainant declines to participate at all after making the initial complaint. OPA will continue to investigate the allegation even without further participation by the complainant.

Complaints may also be referred to OPA from within SPD. Sometimes members of the public complain directly to an officer’s supervisor who then is required to refer it to OPA. Other referrals are made from employees who see misconduct occur, from the Use of

Force Review Board, the Force Investigations Team, the Traffic Collision Investigation Squad or members of the Department's chain of command. The Director can initiate a complaint as well, based on a claim made against the City, litigation filed, media coverage of an incident or any other source.

V. PRELIMINARY INVESTIGATION

Following initial receipt of a complaint, OPA intake staff will gather all relevant evidence, including things such as 911 recordings, dispatch records, officers' video or private videos, text messages, jail booking records, incident reports, use of force reports, and so on. Where helpful, the intake staff will go to the site to take photographs or gather other evidence and look for possible witnesses or third party surveillance video.

This part of the process is referred to as the "preliminary investigation" and OPA's goal is to have that completed within two weeks. The OPA Lieutenant, who supervises the intake and investigations processes, will then review the file and recommend for each case the "allegations" (what specific SPD policy has possibly been violated) and the "classification" (whether a case will be fully investigated or referred to a supervisor for follow-up). The appropriate allegations are determined by assessing, based on the preliminary investigation, whether any laws, SPD policies or regulations would have been violated if the actions alleged are later proven to be true. Allegations might include, for example, excessive use of force, bias-based or discriminatory policing, unprofessionalism, failure to thoroughly document an arrest, searching someone's home or car without permission, arresting someone without probable cause or driving an SPD vehicle in an unsafe manner.

VI. CLASSIFICATION

A case can be classified in one of two ways – Supervisor Action ("SA") or Investigation. An SA classification is used for conduct that, while incorrect, does not rise to requiring discipline and may best be addressed with training or counseling. An Investigation classification is made when a full investigation is warranted. All of the cases that are preliminarily classified during each week are then reviewed by the civilian Director and civilian Auditor. After discussion and consultation with the Auditor, the Director decides on the classification, named employees and allegations for each case. For some cases, the Director may instead recommend mediation, an alternative approach that can only be used if both the complainant and the employee agree. If both parties agree to mediation, an independent mediator is assigned and the investigation is put on hold. If mediation is used, discipline may not be imposed.

VII. SUPERVISOR ACTION

If the civilian Director determines that a case can be handled by a supervisor (SA), a memo is sent from OPA to the supervisor with specific actions requested, such as contacting the complainant, talking to the employee, assigning him or her to certain training or perhaps conducting a roll call briefing if it might be helpful for all the officers in that precinct to be aware of the issue. The supervisor has 30 days to take the recommended action, document it in the file and return it to OPA. The OPA Lieutenant, Director and Auditor then review the file to make sure the follow-up occurred as required.

VIII. ADMINISTRATIVE MISCONDUCT INVESTIGATION

If the case is classified for investigation, the OPA Lieutenant will assign it to an OPA investigator, who will have a set period of time, depending on the complexity of the case, to complete an investigation. If the case might involve criminal conduct by the employee, it is referred for a criminal investigation before OPA proceeds with its administrative misconduct investigation. The OPA investigator will submit the completed investigation to the OPA Lieutenant for approval. After being approved by the Lieutenant, the case is reviewed by the Director and the Auditor to ensure the investigation is complete, thorough and objective. If it is not, the OPA investigator will be directed to take whatever additional investigative steps are needed. The determination by the Auditor and the Director that an investigation is complete, thorough and objective is known as “certification”.

IX. CERTIFICATION AND RECOMMENDED FINDINGS

Once the Director and the Auditor determine an investigation is complete, thorough and objective, the next step is for the Director to determine what findings he or she will recommend to the Chief of Police. After a full and fair consideration of the facts and evidence from the investigation, the Director decides whether or not misconduct took place. This determination is called a “finding”. Unlike criminal law, where the standard of evidence must be beyond a reasonable doubt, administrative investigations are based on a preponderance of the evidence standard. If the Director concludes that the alleged conduct did not occur, a finding of “Unfounded” is recommended. If the Director concludes that the alleged conduct did occur, but was not misconduct (was consistent with law and policy), the Director will recommend a finding of “Lawful & Proper”. If the Director determines that misconduct did occur (a violation of policy and/or law), either a “Training Referral” finding or a “Sustained” finding will be recommended. Finally, if the

preponderance of the evidence neither proves nor disproves the allegation, the Director will recommend a finding of “Inconclusive”.

When the Director has determined what the recommended findings will be, he issues a “Certification and Recommended Findings” memorandum which becomes a permanent part of the record. The Director also notifies the Chief of Police concerning the recommended findings.

X. CHIEF’S FINDINGS AND DISCIPLINE

A memo laying out the evidence and facts of the case, along with the Director’s recommended findings and the rationale behind the findings is then written by the OPA Captain Deputy Director and sent to the named employee’s Captain or civilian equivalent. A copy is also forwarded to the Chief of Police.

If the Director does not recommend any “Sustained” findings for a particular case, the Chief of Police and the named officer’s chain of command have ten days in which to respond. The Chief has the final say on what the permanent findings will be.

If any of the recommended findings are Sustained, the named employee’s Bureau Chief and Captain meet to discuss the OPA investigation and consider whether or not to support the OPA Director’s recommended findings. They also consider what, if any, discipline should be imposed. The OPA Director routinely attends these meetings, along with the OPA Captain Deputy Director and the assigned OPA investigator, to answer any questions about the investigation. Only the OPA Director participates in that portion of the meeting that pertains to suggested discipline.

The Chief makes the final decision on findings and determines the discipline to be imposed for any Sustained allegation³. Before discipline involving a suspension, demotion or termination is imposed, the employee is entitled to a meeting with the Chief of Police or his designee, to present mitigating information or anything else the employee wants considered before the complaint findings and discipline are finalized. If the Chief ultimately disagrees with the OPA Director’s recommended Sustained finding, he or she must provide the rationale for not following the Director’s recommendation in writing to the Mayor and City Council⁴.

Employees may appeal disciplinary decisions to either the Public Safety Civil Service Commission or to a private arbitrator selected by mutual agreement of the parties. If the

³ SMC 3.28.810.F

⁴ SMC 3.28.812.A

employee is terminated, the Chief will also send notification to the Washington State Criminal Justice Training Commission (WSCJTC), which is responsible under state law for certifying and de-certifying all officers. If the misconduct includes a criminal conviction or dishonesty, the Commission may de-certify the officer, meaning he or she will no longer be allowed to be an officer anywhere in the state.

XI. USE OF FORCE REVIEW

The use of force by a police officer is a necessary part of the job in order to protect the public and the officer from harm and to further the legitimate aim of investigating crime and arresting violators. It is also an aspect of police work that raises legitimate concerns concerning potential Constitutional rights violations, exposes officers and subjects to the risk of injury, creates potential civil liability for the City and may raise doubts in the minds of members of the public concerning the legitimacy of SPD's use of police authority. As a result, SPD has established a comprehensive process to investigate and review the use of force by its officers. The OPA Director also has an oversight role with respect to this process.

Whenever a SPD officer uses deadly force or any force that results in great or substantial bodily harm ("Type III") or any instance when there is a death of a person in SPD custody, OPA is notified immediately. The civilian OPA Director and members of his investigative staff will respond to the scene of the incident. The Director and his staff will act as observers and advisors to the SPD Force Investigation Team ("FIT") that has the responsibility of investigating all Type III and use of deadly force incidents involving SPD officers. OPA continues to closely monitor all FIT investigations until they are completed. At any time, if the OPA Director sees evidence of misconduct and/or criminal behavior on the part of a SPD officer, direction of the investigation will be transferred to OPA.

While lower levels of force ("Type I" and "Type II") are not investigated by FIT but instead by the front line supervisor of the involved officer(s), OPA does review completed use of force investigations once they have been approved by the officer's chain of command. The civilian OPA Director attends each Use of Force Review Board as an observer and advisor. If at any time during the review of a Type I or Type II use of force, the officer(s)' chain of command or the civilian OPA Director see evidence of misconduct and/or criminal behavior, the matter will be transferred to OPA for further review, investigation and recommendation of findings.

XII. TRANSPARENCY

Complainants and named employees receive notices concerning the filing of a complaint and its progress through the investigative process. Notices to named employees are governed by the City's contracts with various bargaining units and SPD policy. At a minimum, complainants are notified by OPA when the investigation has been completed and again when the Chief issues the final findings. Once the Chief of Police issues the final findings and discipline, if any, in connection with an OPA administrative misconduct investigation, the OPA case is closed. The complainant(s) and all named officers receive written notification concerning the findings and discipline. In addition, the public is informed via summary reports posted to the OPA web site.