

M E M O R A N D U M

VIA EMAIL ONLY

DATE: April 19, 2021

TO: Olympia City Council
cc City of Olympia City Manager and Interim Chief of Police

FROM: Tara L. Parker, Attorney at Law, Private Investigator, AWI-CH

RE: Police Auditor Quarterly Report re December 2020 – March 2021

I. Introduction

The purpose of this memorandum is to provide ongoing information to the City Council, City Manager and the Chief of Police regarding (1) the number and types of Use of Force (UOF) reports that have been audited; (2) the number and types of complaint investigations recorded by the Office of Professional Standards (OPS) that have been audited; and (3) initial findings and impressions, including preliminary recommendations for improvements to Department policies and practices.

II. Background

On November 2, 2020 the Olympia City Council selected the law firm of Ogden Murphy Wallace, P.L.L.C. to serve as Police Auditor. The purpose of the Police Auditor is to increase public trust and confidence in the Police Department by providing an independent review and audit of the Police Department's internal investigations regarding complaints against the Olympia Police Department or its employees.

Police Auditor's Duties and Responsibilities

1. Review the Police Department investigations regarding complaints against the Department and its employees to determine whether the investigations were conducted in accordance with the processes required by Department policies, to ensure that they are thorough, objective, and fair.
2. Review all complaints about police employees that allege the use of excessive or unnecessary force, civil rights violations, or bias; and review all reported uses of force within the department as defined in Olympia Police Department General Order 1.4.
3. Provide an impartial review of the Police Department's internal investigative process and verify if the Department is compliant with established policy and procedures.
4. Prepare mid-year and annual reports for the City Council and City Manager which includes the type of complaints, the response, and a finding on each complaint case audited indicating whether the investigation met or failed to meet established standards. Each report shall give an analysis of key trends, patterns, and recommendations for revisions.

III. Methodology

The Police Auditor receives weekly reports from the Office of Professional Standards. Each report contains the following information:

- All new use of force checklists entered into Record Management System, which includes several data points and documents:
 - Race, sex, age of subjects
 - Name, rank, race and sex of officers (race and sex will be available by end of 2021)
 - Type of force used
 - De-escalation efforts
 - Injuries and medical treatments
 - Weapons used by subjects or officers
 - Influence of drugs, alcohol, or mental illness
 - Arrests or charges
 - Witness statements
 - Photos
 - Videos
 - Associated case reports
 - Other documentary evidence
- Immediate Supervisor review reports and determinations
- Management review reports and determinations
- Defensive Tactics Use of Force Team reviews and training points, when applicable
- Information regarding all internal and external complaints regarding OPD Officers
 - Complaint
 - Classification
 - Investigation details and findings
 - Learning and resolution

The Police Auditor's process includes:

- Tracking all data listed above
- Seeking additional information when necessary
- Examining the data for trends
- Reviewing all files to determine
 - Completeness
 - Thoroughness
 - Objectiveness
 - Fairness
- Examining Department practices for compliance with OPD policies
- Noting areas that may be improved by process or policy changes

Complaints about members of the Olympia Police Department can be received in many ways including in-person, by telephone, by written documents, and by email. Complaints can also be filed via the complaint form on the City's website. All complaints must be thoroughly and fairly investigated in accordance with the standards set forth in General Orders 52.1 and 26.1.

Complaints are sorted into one of two categories:

- Serious Misconduct complaints include allegations of excessive use of force and civil rights violations. Complaints in this category are assigned to a department manager to investigate. These investigations are also reviewed by an independent attorney office when they are completed.
- Service Level complaints include allegations of rudeness, poor work performance and minor policy violations. Service Level complaints are generally assigned to first line supervisors to investigate and address.

Internal investigation reports must include the following information:

- A. The date of the incident;
- B. The name of the employee(s) involved;
- C. The date the case was assigned;
- D. The names and contact information for the complainants or affected individuals in the complaint;
- E. A written report containing:
 1. A summary of the allegations (a concise but complete synopsis of the allegations);
 2. A narrative presenting the details of the investigation (including a chronological summary of the investigation, witness interviews, etc.);
 3. The findings of fact - including, by numerical listing, a summary of the findings of fact (including citation of any violations of policy and/or law involved);
 4. An investigator's log showing the dates and times of contacts and other key actions related to the investigation.
- F. Appendices containing:
 1. Transcripts of interviews with the complainant(s) and key witnesses;
 2. Letters and written statements from employees, citizens, and witnesses.
 3. Copies of all related reports.
 4. Copies of all memos or formal letters related to the investigation.
- G. Photographs, video tapes, audio tapes and other relevant supporting materials shall also be submitted with the final report.
- H. The date the final report is submitted;
- I. The name and signature of the assigned investigator.

At the conclusion of an investigation, the investigator will reach a finding in accordance with the Department's policies. The standard of proof for all internal investigations is by "a preponderance of the

evidence.” This is a lower standard than what a criminal case requires which is “proof beyond a reasonable doubt.”

There are five categories of possible investigation findings:

- Sustained: Sufficient facts to prove the allegation did occur.
- Not Sustained: Fails to disclose sufficient facts to prove or disprove the allegation.
- Unfounded: Allegations complained of did not occur.
- Exonerated: Allegations occurred, but acts are found to be justified, lawful and proper.
- No Findings: Complainant failed to disclose information to further the investigation or another agency was involved and investigation was referred to that agency.

All investigations and findings are reviewed by the Professional Standards Lieutenant and the Chief of Police. All service level complaint investigations must be completed within sixty (60) days from the date the case is received by the Department. All investigations into allegations of Serious Misconduct must be completed within ninety (90) days from the date the case is received by the Department, unless extended by the Professional Standards Lieutenant with the approval of the Chief of Police.

Any sustained complaint is referred to the employee’s supervisor or manager for corrective action. The determination of corrective action is based on the severity and repetitiveness of the violation.

Corrective actions include one of the following:

- Counseling and coaching
- Oral warning
- Written warning
- Performance improvement plan
- Suspension without pay
- Reduction in pay or rank
- Last chance agreement
- Termination

The Office of Professional Standards (OPS) is responsible for managing the formal accountability system. OPS is managed by the Chief of Police. All records are tracked, stored and maintained in the Department Records Management System (RMS). OPS provides all information regarding external and internal complaints about OPD employees to the Police Auditor on a weekly basis. The Police Auditor also has independent access to the RMS database.

IV. First Quarter Data

A. Use of Force

Between December 2020 and March 2021, OPD officers recorded that they used force during eleven (11) incidents. By comparison, OPD officers recorded eighteen (18) incidents involving the use of force during the First Quarter of 2019.

Each of the First Quarter use of force incident files was audited and determined to be within policy. Of those incidents, six (6) involved takedowns, three (3) involved the deployment of CED taser probes, two (2) involved counter-joint techniques (control holds and joint manipulations that do not cause pain), one (1) involved the use of a Wrap restraint, and one (1) involved a canine bite as well as punches and kicks. None of the incidents led to serious injuries. Ten (10) of the incidents involved white subjects and one (1) involved an Asian subject.

B. Complaints

Between December 2020 and March 2021, OPS (Office of Professional Standards) received and investigated four citizen-initiated complaints and two matters that were generated internally by OPD employees or City staff. The four citizen-initiated complaints were audited and determined to have met Department standards. One internally generated investigation is still in progress and has not been audited. The other internally generated investigation was closed with no finding due to the lack of information from the complainant. That matter was audited and found to have met Department standards. This data is summarized below.

Complaint Investigation Details

Received	Classification	General Description	Investigative Findings	Corrective Actions	Police Auditor Findings
2020-12-21	Service Level	Discourteous - Citizen stated officer's comment was unprofessional and made her uncomfortable.	Supervisor recommended no additional investigation required.	Supervisor discussed event with officer and they talked about various communication methods and strategies.	Met Department standards.
2021-01-14	Service Level	Discourteous - Citizen felt an officer's statement to her after she called them to a disturbance was rude and uncalled for.	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.
2021-001	Serious Allegation	Subject of arrest alleged assault by OPD personnel to third party but did not notify the Department or provide any contact information. [Connected to UOF 2020-7348]	No Finding. Complainant failed/declined to disclose information to further the investigation.	N/A	Met Department standards.

2021-01-22	Serious Allegation	Thurston County Sheriff's Office completed their investigation/ reports regarding an OPD employee charged with criminal conduct.	Report date 2021-01-22. Investigation still in progress. Extension of deadline permitted due to circumstances outside of OPS control.		
2021-01-26	Service Level	Discourteous	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.
2021-02-11	Service Level	Unsatisfactory - Citizen did not agree with the manner in which an incident was handled.	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.

V. Initial Findings, Impressions and Preliminary Recommendations

At this early stage of the Police Auditor review, there is not sufficient data to support determining meaningful trends and patterns. Nonetheless, the audits and ongoing work with the Department have yielded significant insights into how the Department may improve its practices moving forward. These are summarized below, along with related, preliminary recommendations for changes to Department policies and practices.

1. Use of Force Reporting

The Police Auditor has engaged in productive conversations with the Office of Professional Standards regarding agreed-upon needs to improve use of force reporting. The current RMS system is somewhat cumbersome and fragmented, making it difficult to view all of the records in a clear and efficient manner. Also, although the required information is being recorded, it is not consistently included in the officers' use of force checklist entries. Furthermore, the Washington State Legislature recently passed a law, E2SSB 5259, which will require law enforcement agencies to collect and report use of force data, some of which is not currently being collected by the OPD.

Finally, the Office of Professional Standards recently identified and addressed the need for additional guidance and training for officers regarding which actions constitute a “takedown” that is required to be recorded in a use of force checklist.

Accordingly, there are four ways in which we agree that use of force data-gathering policies and practices may be improved:

- a. The applicable General Order, 1.4.7 II. C should be revised to more clearly inform officers regarding the defensive tactics and takedown events that must be recorded in a use of force checklist. This process has begun.
- b. Explore ways to streamline the RMS to enhance transparency and ease of use.
- c. Include mandatory reporting data that will be required by April 1, 2022 under E2SSB 5259, including
 - i. Race and ethnicity of involved officers
 - ii. Officer's years of service
 - iii. Reasons for initial contact between subjects and officers
 - iv. Whether any minors are present at the scene
 - v. The number of officers and suspects present when force was used
- d. Continue training officers to properly record all required use of force data.

2. Defensive Tactics Team Reviews and Training Points

OPD commanders meet monthly to review the Department's use of force reports and determine where the Department may benefit from additional training. This aspect of the Department's multi-level review is very valuable and constructive. However, the Department has not been systematically tracking and reporting the meeting outcomes.

Accordingly, the Police Auditor and the Office of Professional Standards have discussed ways in which the Department could provide more information regarding the content and outcomes of those meetings, as well as systematized follow-up on the training recommendations.

3. The On-Line Complaint Process

The City of Olympia's on-line complaint process is currently undergoing review and revisions in order to ensure that it is optimally accessible and useful to the public. The Police Auditor seeks to expedite this process and facilitate the implementation of a complaint process that maximizes public confidence in the Department.

VI. Conclusion

The OPD, the City Manager, and IT have been extremely cooperative and helpful in enabling the Police Auditor to access and assess all of the information necessary to perform this role. This work has generated protocols and facilitated conversations that have enhanced the transparency and accountability of the Police Department. Moreover, the ongoing audits of every complaint and use of force report will provide the necessary information to ensure that the Department complies with its policies, continually learns from its experiences, and makes improvements as needed to maintain public trust and confidence.