



Date: July 31, 2019

To: M. Lorena González, Chair, Gender Equity, Safe Communities, New Americans & Education Committee; Committee Members

From: Lisa Judge, Inspector General, Office of Inspector General; Bessie Scott, Interim Executive Director, Community Police Commission

Re: Police Accountability Mid-Year Report

This memorandum supplements information provided in the mid-year presentation to the Gender Equity, Safe Communities, New Americans, and Education Committee (GESCNAEd) on July 31, 2019, by the Community Police Commission (CPC) and Office of Inspector General (OIG).

The 2017 Seattle police accountability ordinance (Ordinance 125315) created the Office of Inspector General, made CPC permanent and independent, and enumerated the duties and authorities of the accountability oversight entities for the purpose of “ensuring constitutional, accountable, effective, and respectful policing” by the Seattle Police Department (SPD) (Ord 125315, 3.29.010.B).

The police accountability ordinance uses the power of transparency to foster accountability through public reporting requirements. The ordinance directs OIG and CPC to present a mid-year report to GESCNAEd on the status of oversight entity recommendations to SPD and the timeliness and effectiveness of SPD’s response.

Subchapter IV Mechanisms to Support Accountability

3.29.400 Reporting of potential misconduct and police accountability issues

B. The Inspector General and CPC Co-Chairs, or their designees, shall present a mid-year report to the public safety committee on the status of recommendations issued by OPA, OIG, and CPC, including those which involve the City’s budget, state legislative agenda, and collective bargaining agenda. The report shall include whether follow-through was timely and effectively addressed needed improvements. The Chief and OPA Director, or their designees, shall participate in the presentation, as well as a Mayor’s Office representative as appropriate (Ord 125315).

The mid-year report highlights major projects by the accountability oversight entities, recommendations, and implementation statuses by SPD. This memorandum provides additional detail on projects that contain specific recommendations or suggestions for SPD. Neither the presentation nor the memorandum is intended to account for all projects or work currently in progress. The scope of the mid-year report does not cover initiatives originated by SPD in the field of accountability.

Accountability Mechanisms



The police accountability ordinance encourages continuous improvement through several mechanisms, including regular accountability oversight partner check-ins and reporting requirements.

1. *Collaborative quarterly recommendation tracking:* City of Seattle accountability oversight partners (CPC, OIG, OPA, SPD) convene quarterly to discuss common accountability efforts and collectively review the status of all recommendations (3.29.410.A.2). CPC compiles and maintains a database of all recommendations and their status, as presented to CPC by the issuing entity (3.29.410.A.3).
2. *Recommendation response requirements:* SPD and OPA are directed to respond in writing within 30 days to any oversight entity recommendations contained in reports required by the police accountability ordinance. Accepted recommendations are to include an implementation plan, including a plan for regular progress reports (3.29.410.A.1).

Project Highlights

Many of the 2019 police accountability projects are collaborative efforts involving multiple agencies. Highlighted initiatives include:

Multi-Agency Involvement

- Washington Initiative 940-related work
 - Serious and Deadly Force Investigation Task Force
 - Independent Investigations of serious or deadly uses of force by officers
 - Statewide training rulemaking
 - Statewide investigations rulemaking
- Consent decree¹ compliance input
- SPD disparity review of police stops
- Investigative interviewing techniques
- Disciplinary process mapping²

Audits and Assessments

- Force Review Board Assessment, Canine Unit audit, and Mutual Aid audit (in progress)
- SMC Chapter 14.12 *Collection of Information for Law Enforcement Purposes* (police intelligence) audit
- Firearms Inventory review

Best Practices

- Investigative interviewing techniques

¹ *United States of America v. City of Seattle*, 12 Civ. 1282 (JLR)

² Available at www.seattle.gov/oig/reports



- Peer intervention program

Process Improvements

- Technical assistance to SPD on internal process improvements
- Process improvements for OIG review of OPA complaint classifications and OIG certification of OPA complaint investigations
- Process improvements for OPA management action recommendations (MARs) to SPD

Report Recommendations and Responses

The following section provides more detailed descriptions of reports issued by Seattle accountability oversight entities and their specific recommendations or suggestions.

Initiative-940 (I-940) Rulemaking Process

The Washington State Criminal Justice Training Commission (CJTC) has been tasked with creating rules to implement I-940, which was approved by Washington voters to, among other things, increase training and independent investigation requirements for officer-involved shooting (OIS) incidents. CPC is participating with SPD, OPA, OIG, and other community groups in that process.

Increased training requirements

In the first six months of 2019, CJTC considered and adopted rules relating to the increased training required by I-940. CPC partnered with other community groups to help form a curriculum outline for 200 hours of training.

This effort included soliciting input from community members and working in partnership with community groups to suggest line-by-line revisions to the CJTC's proposed rules. CPC used its expertise and first-hand experiences with SPD crisis intervention training to help inform this process. CPC also worked to include public comment from people with mental illness who are currently incarcerated about their experiences with law enforcement.

The new training rules were approved in June 2019 by the CJTC.

Independent investigation requirements

The CJTC has dedicated the last half of 2019 to consider and adopt rules relating to independent investigation requirements in I-940 for serious and deadly uses of force by officers. CPC is participating in that process with SPD, OPA, OIG and other community groups. Three preliminary meetings have taken place. The CJTC plans to hold public engagements on the topic in July and August and aims to have its recommendations completed in September. The work of Seattle's Serious and Deadly Force Investigation Taskforce may play a big role in helping shape those recommendations.

Serious and Deadly Force Investigation Taskforce



The Serious and Deadly Force Investigation Taskforce (SDFIT) was created by CPC to fulfill Resolution 31753, the companion resolution to the police accountability ordinance. The resolution directs CPC to convene a group of stakeholders to assess the feasibility of establishing an investigation process external to SPD for cases involving serious and deadly uses of force.

SDFIT includes community members, OIG, OPA, SPD, other law enforcement, prosecutors, and additional people with subject matter expertise to produce recommendations for independent investigations of serious or deadly uses of force by officers. The taskforce held its first meeting in May 2018 and is about to hold its ninth and final meeting in August 2019.

Recommendations under consideration

Recommendations SDFIT is considering adopting include:

- Recommendations for independent investigations for SPD
- A statement about the values and expectations for independent investigations of OIS incidents after I-940
- Opportunities to better support the family of people impacted by police use of force
- Methods for identifying systemic improvement opportunities raised by OIS incidents

Seattle Police Department Disparity Review – Part I

SPD conducted the first phase of its efforts to assess levels of disparity in its policing earlier this year. SPD used the statistical technique of propensity score matching to identify levels of disparity in officer interactions with different populations in Seattle. CPC and OIG each evaluated SPD's methodology.

SPD's report, "Disparity Review – Part I," identified disparities in police stops. Findings included:

- Subjects of color were more likely to be frisked than white subjects
- Subjects of color were less likely to be found with a weapon when frisked
- Subjects of color were more likely to have a firearm pointed at them than white subjects

CPC and OIG responsibilities

SPD Policy 5.140 on bias-free policing states that SPD shall consult with CPC and OIG to explore effective alternative practices that would result in less disproportionate impact. According to the policy, alternative enforcement practices may include addressing the targeted behavior in a different way, de-emphasizing the practice in question, or other measures.

Recommendations

After the "Disparity Review – Part I" was published, CPC sent a letter to Chief Best requesting a formal meeting to initiate a collaboration between SPD and CPC to address the disparities confirmed by the audit.



The letter reads, "One such area that the CPC would like to reengage with SPD on is training of officers, especially given that since previous conversations between the two agencies on this subject, both the CPC and SPD have had changes in leadership. We hope to work with SPD on efforts to negate bias and eliminate inequitable treatment of marginalized communities via SPD's training of officers."

In addition, CPC issued the following recommendations and questions related to the disparity review:

1. In future audits and reports by SPD, SPD should disaggregate Pacific Islander people from Asian people in the "Non-White" racial identification categories. In the wake of the shooting death of Iosia Faletogo, it is important to recognize that the historic grouping of Asians and Pacific Islanders ignores the different biases and systemic barriers that they may respectively face. Disaggregating this information will allow SPD and accountability partners to address these groups more effectively.
2. As SPD prepares to relaunch the Community Service Officer (CSO) program, exploring the underlying cause of disparity is paramount. Asking Community Service Officers to step into communities that are disparately impacted, and may have difficulty trusting police, leaves CSOs at a strategic disadvantage. How does SPD plan to utilize the CSO unit, their work, and their expertise to inform SPD's efforts to reduce disparity in policing?
3. What are next steps for SPD in relation to the Disparity Review? Beyond releasing the report to the public, are there plans to discuss the findings with affected communities? How are the findings being shared within SPD, including specific units and precincts? What are next steps for SPD leadership to address the audit's findings?

Response

CPC and SPD have met to discuss phase two of the disparity report, the draft methodology for which is pending approval from the Department of Justice and court-appointed monitoring team. CPC and SPD plan to work together to create focus groups to review some videotaped interactions between officers and people in the community. While the methods of doing this are still being worked out, the hope is that community members would be able to give SPD insights into ways they can improve.

In reference to CPC's first recommendation, Chief Best noted operational challenges with implementing greater data disaggregation. SPD indicated that Phase II of the review will include more data to inform any determinations.

Audit of Chapter 14.12

The police accountability ordinance directs OIG to conduct regular audits of SMC Chapter 14.12, *Collection of Information for Law Enforcement Purposes* (Chapter 14.12). OIG conducted its



2019 audit of Chapter 14.12 in accordance with federally issued Generally Accepted Government Auditing Standards (GAGAS).

Audit Findings

OIG did not detect any violations of SMC Chapter 14.12. However, OIG identified several issues relating to the outdated language of the Chapter which prevent OIG from being able to determine whether SPD is in full compliance.

1. Chapter 14.12, adopted in 1979, does not address modern methods of distributing information, resulting in inconsistent practices by different units within SPD. The current wording of the Chapter is not specific enough for OIG to determine whether some of these practices are in violation of City code.
2. OIG was unable to determine whether past authorizations issued by SPD complied with the Chapter, as SPD disposed of relevant records in compliance with Chapter records retention requirements.
3. While OIG did not find any specific issues involving unauthorized collection of information in a review of patrol reports, OIG identified gaps in SPD training and policies which may create risks for future compliance.
4. Chapter 14.12 record retention requirements appear to conflict with state law, as well as existing SPD record retention policies. OIG acknowledges that the limits set by the Chapter for retaining records could conflict with state records retention requirements and restrict the ability of SPD to comply with public records requests or investigate misconduct and crime.

Audit Recommendations

OIG issued five recommendations to SPD as a result of the audit. SPD concurred with all recommendations and issued proposed implementation plans in response (see Chapter 14.12 audit report, available at www.seattle.gov/oig/reports).

1. The Chief of Police, in consultation with the City Attorney's Office, should develop a clear policy for whether written authorization is required prior to collecting protected information from open sources or third parties. If necessary, the Chief of Police should offer suggestions to the City regarding changes to Chapter 14.12 that would provide the required clarity.

Response: SPD agreed with the recommendation and stated its intent to consult with assigned staff in the City Attorney's Office to create written protocol to clarify the current application of the Ordinance.

2. The Chief of Police should ensure there is a procedure in place to notify OIG of all approved written authorizations to collect protected information.



Response: SPD agreed with the recommendation and stated its intent to coordinate with OIG on the establishment of a protocol to notify OIG of all approved written authorizations to collected protected information.

3. The Chief of Police should ensure that SPD retains records relating to approved written authorizations for at least six months, to facilitate future audit reviews.

Response: SPD agreed with the recommendation and stated its intent to consult with the City Attorney's Office to create written protocol to ensure that its records retention protocols meet legal requirements.

4. The Chief of Police should ensure that *Policy 6.060, Collection of Information for Law Enforcement Purposes*, includes all requirements of Chapter 14.12, being cognizant of any updates that are contemplated by the City, and ensure staff are updated on any changes or additions to the policy or Chapter.

Response: SPD agreed with the recommendation and stated its intent to establish alignment between Policy 6.060, the Ordinance, and updated protocol developed in consultation with the City Attorney's Office (see Response to Recommendation 1 above).

5. The Chief of Police, in consultation with the City Attorney's Office, should review Chapter 14.12, SPD policy, and state law in light of current records retention needs. The Chief of Police should either modify SPD policy or offer suggestions to the City regarding revisions to the retention provisions of Chapter 14.12 to bring SPD records retention into alignment with applicable laws.

Response: SPD agreed with the recommendation and stated its intention to work with the City Attorney's Office to review Chapter 14.12 in light of current records retention requirements and modify SPD policy accordingly.

Chapter 14.12 Revisions

Resolution 31753, the police accountability ordinance companion resolution, states that OIG and CPC shall, "by the end of the first Inspector General's first full year, conduct a review and provide recommendations to the Council for any needed revisions to Seattle Municipal Code Chapter 14.12." (Section 3)

OIG and CPC discussed the results of the OIG Chapter 14.12 audit and the limitations of Chapter 14.12 identified in the audit. In consulting about the content of Chapter 14.12, it was apparent that Chapter 14.12's provisions are outdated and ambiguous.

For any revision effort, the City may wish to address several policy questions:

- Are there categories of information that should be protected by Chapter 14.12 today?
- How should Chapter 14.12 address the technology of today and the ready existence of public information, such as social media?



- How do the protections of Chapter 14.12 intersect with the provisions of Chapter 14.18, which governs acquisition and use of surveillance technology?
- What types and levels of authorization should exist, and how can the ability to audit the authorizations best be preserved?
- How can the City retain information for oversight purposes while being sensitive to issues such as aggregating sensitive information that is potentially subject to public disclosure or information requests from external agencies?

Firearms Inventory Review³

In October 2018, OIG received a referral from OPA related to a complaint received by OPA. A portion of the complaint identified a set of assets, including firearms, categorized as having an “unknown” location within the Seattle Police Department asset management system.

OIG determined that SPD recordkeeping and firearms inventory management practices resulted in incomplete inventory of firearms. SPD was not aware that seven firearms were missing, because these items were not included in the SPD master gun list used to assess inventory. Additionally, firearm inventory procedures did not include firearms owned by SPD but on loan to other entities. OIG identified another missing firearm listed in a previous SPD report, resulting in a total of eight firearms that were unaccounted for.

OIG did not issue formal recommendations as a result of this review but provided three suggestions for SPD consideration. In its response, SPD concurred with the suggestions and noted implementation next steps.

1. SPD should consider amending its practices to ensure that firearms inventory processes include all SPD-owned firearms, including those used by other city entities and converted firearms.

Response: SPD agreed with this suggestion and stated its intention to review its practice of loaning firearms to outside agencies.

2. SPD should consider conducting a firearms inventory of all firearms formerly listed as assets and that could potentially have been overlooked by prior APRS inventories of firearms. OIG stated a willingness to assist with the inventory.

Response: SPD agreed with the suggestion and expressed interest in working with OIG on this effort.

³ Unlike formal audits, OIG assessments or reviews follow GAGAS principles for sufficiency and appropriateness of evidence, but do not generate official recommendations and thus do not trigger 3.29.410.A.1 response requirements.



3. SPD should consider requiring that all lost or stolen SPD firearms be reported to the National Crime Information Center Database and the Washington State Department of Licensing.

Response: SPD agreed with this suggestion and stated its intention to address this issue via policy changes. SPD also ran the missing firearms through the National Crime Information Center Database.

Management Action Recommendations

Management Action Recommendations (MARs) are recommendations issued by OPA in the form of a letter to the Chief of Police identifying specific issues and recommending changes. MARs provide a means for OPA to identify issues with SPD policies or practices that have implications beyond an OPA investigation into a specific case. SPD is not required to implement suggestions proposed by MARs but does need to identify reasons if declining to do so (3.29.410.A.1).

In 2019, OPA has issued 18 MAR letters to date. MARs are available online at <https://www.seattle.gov/opa/news-and-publications/management-action-recommendations>.

OPA and SPD have worked collaboratively in addressing MARs throughout 2019 and are streamlining communications between OPA and SPD regarding the ongoing status of MAR implementation by SPD.

Conclusion

CPC, OIG, and OPA each produce an annual report. This structure, combined with the mid-year report, provides the City and public with regular accounting of police accountability efforts by oversight entities and SPD response.