



Office of Professional Accountability

2016 Special Report

Pushing for Systemic Change

ISSUED BY

DIRECTOR PIERCE MURPHY

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Message from OPA Director Pierce Murphy

The Office of Professional Accountability's continued focus on creating accessible, trusted, transparent and independent oversight of the Seattle Police Department ("SPD") remained strong throughout 2016, despite the challenging nature of an ever changing police accountability landscape in Seattle. Given the current status of police accountability in the City of Seattle, this special report highlights a critical tool at the disposal of the Office of Professional Accountability ("OPA") known as Management Action Recommendations ("MARs"). OPA's thoughtful and targeted MARs provide a strong launching pad for the new Inspector General proposed by Seattle Mayor Ed Murray.



As many know, in October, the Mayor submitted his proposed a police accountability package to Federal District Court Judge James L. Robart who has jurisdiction over the Settlement Agreement between the City of Seattle and the U.S. Department of Justice. The Mayor's proposal calls for a three-legged system of civilian oversight and accountability which has OPA joined by a permanent Community Police Commission ("CPC"), and an autonomous Inspector General able to conduct deeper and more systemic audits and assessments of the SPD.

OPA's MARs are the starting point for the "far-reaching and powerful Office of Inspector General [which would] provide rigorous audits and analyses of SPD policies, procedures and practices, and act as a permanent 'monitor' to verify that SPD maintains its standard of excellence and its commitment to and practice of constitutional policing."¹ The Seattle Police Accountability Inspector General will be empowered to conduct systemic audits and assessments of the SPD similar to the OPA MARs. However, under the proposed legislation, the Inspector General will have the mandate and resources to conduct much broader investigations, analysis of data and assessments of SPD's operations and culture. While the work of OPA in this area has been limited due to our resource constraints and the structure of the current system, I look forward to working with all the stakeholders in the coming months to ensure that Seattle has a robust police accountability system.


Director, Office of Professional Accountability

Overview & Purpose

In August of 2014, OPA gained a powerful tool normally reserved for non-investigatory oversight agencies. Through the use of Management Action Recommendations, OPA is able to effectively address situations in which the public raised concerns regarding the actions of SPD officers, but where the OPA investigation found

¹ City of Seattle's Brief Regarding the Submission of SPD Accountability Systems Legislation, Case 2:12-cv-01282-JLR, Document 320, p. 3.



negative outcomes were not the fault of individual officers. Rather, OPA concluded that SPD had not provided adequate policy guidance, training or supervision. OPA now has the option of sending a Management Action Recommendation to the Chief indicating what needs to be done to correct the problem and prevent it from reoccurring in the future. These recommendations are made in writing and posted on the OPA website, along with responses from the Chief, to promote transparency and assure accountability.

History

Since the creation of this new and innovative oversight tool, OPA has issued 21 Management Action Recommendations covering a variety of topics, from the day-to-day functions of SPD including operation of police bicycles, photo-lineups, and the use of the City-owned SeaPark Garage, to more controversial and public topics such as excessive overtime spending and the use of blast-balls during protests. Generally, the OPA Director sends the Chief of Police a MAR letter after the completion of an investigation which resulted in a finding of “Not Sustained – Management Action.” This letter outlines the nature of the incident, the results of the investigation and the specific actions the Chief should consider taking to resolve the issue. The Chief usually responds to the recommendation with a letter indicating what, if anything, will be done and/or any actions taken to resolve the issue. In some cases, the response from SPD has been somewhat ambiguous and follow-up has, at times, been delayed. However, with diligence and mutual understanding of the importance of an accurate and thorough record, OPA has worked with SPD to obtain complete answers regarding all outstanding MARs before the publication of this report. We are grateful to Chief O’Toole and her staff for their willingness to work with OPA to reach this goal. OPA is also collaborating with the CPC and SPD to improve the process of communication, tracking and follow through of all recommendations sent to SPD by OPA, the OPA Auditor and the CPC.

Executive Summary

What’s Working

The value of OPA having the ability, through MARs, of pointing out systemic issues within SPD cannot be underestimated. The community benefits from knowing what is and is not working within SPD. The Department has made great strides to increase transparency and its willingness to thoughtfully consider and respond to external civilian insight of their actions and operations is extremely positive and beneficial. This open and collaborative working relationship between the OPA Director and the Chief of Police has been an integral part of the success of these efforts.

SPD has agreed with and made several policy changes as a result of MARs from OPA. This has provided greater clarity to its employees and, we believe, prevented similar complaints from the community. The MARs have allowed for various operational areas within SPD to experience the benefit of external oversight, without holding specific SPD employees accountable for what were systemic issues. Continued use of the MARs will be essential, not only in holding SPD accountable, but in providing the incoming Inspector General with a window into areas potentially ripe for in-depth analysis and review.

What’s Not Working

OPA lacks the authority to direct SPD to take action on any recommendation. While SPD has been open and collaborative in responding to MARs, OPA has no authority to demand, direct, or expect any specific follow-through by SPD. A strong working relationship exists between the OPA Director and the Chief of Police based



on mutually-shared goals and professional respect. It is this relationship that has allowed for much progress to date. While acknowledging Chief O'Toole and her willingness to collaborate, shifting deeply entrenched beliefs and practices will require sustained efforts over a long period of time based on in-depth analysis and extensive research. For example, while SPD has been willing to make changes in some areas, such as updating the ICV policy, or ensuring that SPD officers are held to the same HOV lane requirements as ordinary citizens, the slow pace of systemic change in major areas such as overtime spending, secondary employment, missed court appearances and the use of blast-balls as a crowd management tool, is frustrating. Lasting systemic change takes time, resources, tenacity and momentum. This is a well-known fact of organizational change. In the years ahead, SPD will need to demonstrate a willingness to continue on the path of organizational growth and development through critical self-analysis and input from civilian oversight and accountability. This will require the efforts of not only the Chief, but every member of the Department and affiliated labor unions to create the path to systemic change.

Overall Status

The status of each MAR made by OPA since the creation of the tool, is discussed below in chronological order. During the writing of this report, OPA realized that public and community partners needed a more clearly understood "Status" definition to better understand the current status of SPD's response to each MAR. Since many MARs contain more than one recommendation, we will provide details regarding the specific status of each recommendation for those MARs with multiple recommendations.

RECEIVED: OPA has submitted its MAR to the SPD Chief of Police. SPD has acknowledged receipt of the MAR, but has not provided a substantive response.

IN PROGRESS: OPA has received a response from SPD indicating any action steps to be taken in response to OPA's recommendations.

COMPLETED-SOME: OPA considers the MAR completed; SPD implemented only a portion of the recommendations made by OPA, or addressed those recommendations in a manner not proposed by OPA.

COMPLETED-ALL: OPA considers the MAR completed; SPD implemented all recommendations proposed by OPA.

COMPLETED-DECLINED ACTION: OPA considers the MAR completed; SPD has indicated they will not be taking action on any of the recommendations made by OPA.

2014 Management Action Recommendations

EXCESSIVE OVERTIME SPENDING (2014-0070)

OPA's MAR – Issued September 26, 2014

As a result of an investigation into an anonymous complaint regarding excessive overtime spending in the Department's training unit, the OPA Director issued a special report detailing the investigation, and made three recommendations:

That steps are taken to ensure that adequate leadership, management oversight, supervisory control, and robust procedures are in place to enforce budget compliance, control overtime spending and align employee efforts with the goals and mission of the Department. This should begin immediately within the Education and Training Section (ETS), but extend to all of SPD as soon as possible.



1. That the Chief of Police formally invites the City Auditor to conduct an audit of the ETS, along with recommendations for systematic improvements, if appropriate.
2. That the Chief of Police implement without delay those recommendations made by the City Auditor that will reasonably be expected to improve the effectiveness and accountability of the ETS.

SPD's Response – Issued April 10, 2015

SPD indicated to OPA that the Department has implemented SeaFin, a bi-weekly financial health meeting for the organization. Using available data, this process allows executive oversight of spending on a close to real-time basis. Every Captain and above has been trained in Summit, the accounting software for the Department. This allows commanders to search and analyze their overtime spending as well as their operational expense budget. Captains are also provided monthly summaries of where they stand in relation to their overtime budgets. Chief O'Toole requested that the City Auditor conduct an audit of the Education and Training Section as well as all overtime expenditures for the SPD.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA that the actions above are still being implemented to manage overtime, and they are currently in bargaining sessions with the unions regarding proposed revisions to the overtime use policy.

OFFICER SUBPOENAS (2014-0128)

OPA's MAR – Issued November 4, 2014

Investigation into a case pointed out the need for the Department to improve its methods and processes for ensuring SPD officers appear in court as required by subpoena. In particular, SPD processes do not adequately notify supervisors in a timely fashion when employees fail to appear as witnesses in court.

SPD's Response – April 10, 2015

According to SPD, the SPD Legal Unit and IT are developing a "Legal Track" system for subpoenas received by the Department. The system will generate automated emails to inform the officer of a subpoena; if no acknowledgment is received, a second email to the officer and supervisor will be sent, and lastly, the Legal Unit will follow up via telephone if needed. Court coordinators will also receive an email reporting weekly on expected court appearances and the opportunity to indicate any missed appearances. The Audit, Policy and Research Section ("APRS") and the SPD Legal Unit are revising *SPD Manual 5.190, Court Appearances and Legal Proceedings*, which is out of date.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD updated OPA indicating that while technical and budget limitations have precluded the implementation of an automated system, the SPD Legal Unit has implemented a process by which subpoenas are tracked to ensure delivery and acknowledge receipt. SPD is also working with the Seattle Municipal Court to discuss a shared protocol given that the court does not have a protocol or system in place to reliability affirm that officers appear, or alert when officers fail to appear, when summoned. OPA will continue to monitor this issue until SPD and Seattle Municipal implement a reliable system of tracking subpoenas and notifying supervisors when police and parking enforcement officers fail to show up for court as required.



USE-OF-FORCE CASE REVIEW AND DELAYS (2014-0095)

OPA's MAR – Issued September 6, 2014

An investigation into a Type 2 Use-of-Force case revealed that scheduled and unscheduled absences from work by supervisors and management present a significant impediment to the timely completion of chain-of-command reviews of use of force incidents. In more than one case, OPA, along with the Force Review Board and members of the Monitoring Team, noted the review process comes to a halt for days or even weeks while a supervisor or manager is absent from work (e.g., vacation, sick leave, training, etc.).

The Director recommended SPD make the necessary process changes to ensure pending force reviews are either completed before a supervisor goes on leave or, in the case of an unplanned absence of a supervisor, are conducted by another supervisor of the same rank.

SPD's Response – April 10, 2015

SPD agreed with the OPA recommendations and indicated SPD had drafted an updated Use-of-Force policy, currently under review by the DOJ and Monitoring Team addresses the timeliness issue.

Status – **COMPLETED-ALL**

Effective September 1, 2015, SPD updated SPD Policy *Manual Section 8.500-POL-1 Use of Force – General Principles* to include a section requiring that “all reviews must be completed in a timely manner” and the “reviewer or his or her designee will assign another supervisor to complete the review.”

PHOTO LINE-UPS (2014-0132)

OPA's MAR – Issued December 23, 2014

One case brought to light the need for improved training, clearer guidelines and increased supervision with respect to the use of photo lineups (photomontages) in identifying criminal suspects. The Director recommended that SPD establish a policy and clear set of procedures to govern the use of live and photographic lineups used for the purpose of identifying persons involved in criminal activity. Broad research into best practices and consultation with national experts on the topics was recommended to precede the development of this policy and these procedures. Furthermore, it was recommended that specific training in the understanding and use of this policy and these procedures be given to all new detectives and detective supervisors, as well as to all existing detectives and their supervisors on a regular and refresher basis.

SPD's Response – Issued April 10, 2015

SPD's Audit, Police, and Research Section (“APRS”) was tasked to draft a policy (SPD Manual 15.170), which is currently under internal review with subject-matter experts. Chief O'Toole requested the policy cover live and photographic lineups, and also provide direction on show-ups and identifications that occur out in the field. Training will presumably follow the implementation of this new policy.

Status – **COMPLETED-SOME**

In February of 2016, SPD implemented and updated SPD Manual Section 15.170 that included 15.170 POL-2 Preparing and Conducting Lineups. While the revised policy addresses both live and photographic lineups, there is no indication from the policy or from SPD that training was provided to Detectives and Detective Supervisors on this policy. OPA consulted various detective units who thought a training on this topic might have been developed, but never implemented. While OPA considers this matter closed, it encourages SPD to implement the developed training for detectives and conduct regular and refresher training for the use of both live and photographic lineups.



SEAPARK GARAGE PARKING (2014-0358)

OPA's MAR – Issued February 13, 2015

An investigation into an integrity allegation made against an SPD employee's use of the SeaPark garage outside the designated SPD area revealed a lack of guidelines as to whether or not employees authorized to park in the SPD secured area are permitted to park in other areas of the garage. The Director recommended that SPD Policy Manual be amended to provide clear guidance to SPD Employees concerning where they may and may not park in the SeaPark Garage.

SPD's Response – Issued April 10, 2015

SPD concurred with the recommendation of OPA and agreed to direct APRS to clarify the policy and publish when approved through all channels.

Status – **COMPLETED-ALL**

Effective June 1, 2015, SPD updated SPD Policy Manual section 10.010 addressing the requirements for parking in the SPD Secured area of the SeaPark Garage.

FREE HOUSING BENEFITS (2014-0525)

OPA's MAR – Issued April 20, 2015

OPA investigated an allegation of an employee improperly accepting rent-free use of a Seattle Housing Authority (SHA) unit for family residential purposes. OPA's investigation determined the arrangement to have a SPD officer live without cost in a SHA unit was initiated by SHA as part of a program that allows federally funded housing complexes to set aside one unit for living space for a "security station." The OPA investigation found that SHA specifically requested that the SPD officer in question be offered the opportunity to live in the unit so as to provide an on-site SPD presence and deliver better policing services. This arrangement was approved by the officer's precinct commander at the time and continued for more than four years until the involved employee was notified of the OPA investigation. OPA recommended that SPD should (1) conduct an audit to determine if other Department employees were similarly situated; (2) review those arrangements to determine their appropriateness and if they should continue; and (3) establish clear policy and/or practice by which all such arrangements in the future will be adequately scrutinized for any actual or apparent legal prohibitions or ethical barriers.

SPD's Response – Issued June 9, 2015

SPD confirmed receipt of OPA's Management Action Recommendation but didn't provide any additional information as to proposed action to be taken.

Status – **COMPLETED-SOME**

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA that SPD believes this was an "isolated matter that involved a SW Precinct Community Police Team Officer" and they have advised the Seattle Housing Authority that no such offers can be accepted and should not be extended. SPD indicated they did not believe further action or a policy revision were needed to address this issue in a broader context.

KING COUNTY MANDATORY SCREENING (2014-0526)

OPA's MAR – Issued May 22, 2015

OPA completed an investigation into allegations that an off-duty SPD officer brought discredit on the Department when he violated King County Superior Court rules. Specifically, it was alleged that the SPD employee, who was in plain clothes and armed, told the King County Sheriff deputies working the security



checkpoint at the courthouse that he was on official business when, in fact, he was not. Courthouse rules only allow law enforcement officers to be armed in the courthouse if they are engaged in official business. OPA recommended SPD clearly articulate through policy and/or directive the conditions under which commissioned personnel are considered to be on official Department business.

SPD's Response – Issued June 9, 2016

SPD confirmed receipt of OPA's Management Action Recommendation but didn't provide any additional information as to proposed action to be taken.

Status – COMPLETED-ALL

On October 1, 2015, SPD issued Directive Number 15-00044 outlining SPD Manual Section 5.180 which implemented OPA's recommendations to SPD and provided that SPD officers may only carry weapons into King County Superior Court when on official Department business and indicated what circumstances qualify as official Department business.

OPERATION OF POLICE BICYCLES (2014-0789)

OPA's MAR – Issued June 1, 2015

OPA completed an investigation into allegations where an SPD officer, working on a bicycle at a demonstration, quickly rode past the complainant and bumped the complainant's leg with the bicycle pedal, causing an abrasion. During that investigation OPA indicated there was no policy that specifically addressed the unique nature of a police bicycle operations. Given the extent to which bicycles are deployed by SPD, OPA recommended that SPD clearly articulate through written policy and/or procedure clear guidelines for the safe operation of police bicycles.

SPD's Response – Issued June 9, 2015

SPD confirmed receipt of OPA's Management Action Recommendation but didn't provide any additional information as to proposed action to be taken.

Status – COMPLETED-ALL

On February 1, 2016, SPD implemented *SPD Manual Section 13.050 – Policing by Mountain Bike* which pertains to the use of mountain bicycles by SPD officers. Additional information was also added to *SPD Manual Section 8.300 – Use of Force Tools-POL-5* to include the use of a bicycle as a force tool.

SECONDARY EMPLOYMENT (2013-0410; 2015-1286; 2015-1586; 2016-0175)

OPA's MAR – Issued July 17, 2015

OPA completed an investigation into allegations that a SPD officer was the owner of a private security and traffic control company that was not properly licensed and employing unlicensed security guards. Based on the results of that investigation, OPA recommended that SPD complete a total reform of its secondary employment system without delay, to include:

1. Clear policies, regulations and procedures regarding employment of SPD officers;
2. Real-time tracking of time worked, both on and off duty (including overtime), by SPD officers to ensure they are getting the rest and recovery needed in between shifts;
3. A system of contracting by outside employers that is fair, transparent, and accessible to all officers to avoid favoritism and actual or perceived conflicts of interests;
4. Robust supervision and oversight by SPD of officers working off duty



5. Compensation for both officers and the City adequate to ensure recognition of the costs associated with training, equipment, etc.

SPD's Response – Issued July 28, 2015

SPD confirmed receipt of OPA's Management Action Recommendation and the Chief indicated a desire to resolve the secondary employment issue with great urgency, but did not provide any additional information as to the proposed action to be taken.

OPA Second MAR – Issued April 11, 2016

Subsequent to the initial MAR on this topic issued by OPA in July of 2015, three cases came to the attention of OPA which promoted a need to reiterate the previous recommendations of the first MAR. In the subsequent MAR, OPA identified three larger areas of concern with the respect to the status of "secondary employment" within SPD:

1. Officer Safety – Some SPD Officers are working solo shifts, where police best practices require at least two officers at any incident.
2. Officer Fatigue: Inability for SPD to properly track the number of secondary employment hours used creates opportunity for officers to be fatigued when arriving for their SPD shift.
3. Conflicts of Interest: OPA has evidence of a situation where a fully uniformed SPD officer, while working secondary employment failed to perform his obligations under SPD policy to assist an assault victim, but rather assisted the store personnel in removing the assault victim because the store felt she was making a disturbance.

SPD's Second Response – Issued April 18, 2016

SPD Chief wrote a letter to Director Murphy indicating her agreement with the concerns OPA raised regarding how SPD authorizes and manages secondary employment and pointed out that SPD had outlined part of their action steps in a March 15, 2016 memorandum in response to the City Auditor's report on officer overtime (see above for more details). SPD indicates they are in the process of procuring a new staffing and scheduling application that will allow real-time visibility into overtime assignments and secondary employment, but cautioned that addressing all the OPA recommendations would take time due to the complexity of the issue.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA the Department is currently in bargaining sessions with the unions regarding proposed changes to the secondary employment policy. In addition, SPD is looking to procure a workforce management system which would enable better tracking the overtime and off-duty work of officers. OPA will be looking for SPD to address all the recommendations made in both MARs.

HOV LANE VIOLATIONS (2015-1225 & 2015-1296)

OPA's MAR – Issued September 29, 2015

OPA received complaints from an individual regarding the use of High Occupancy Vehicle (HOV) lanes by SPD employees driving unmarked SPD vehicles with a single occupant (the driver). With the goal of aiding SPD to maintain its reservoir of public trust, OPA recommended that SPD direct its employees to adhere to the RCW and WAC regarding unmarked vehicles and their use in the HOV lanes. Employees operating unmarked SPD vehicles while responding to emergency situations in the HOV lanes should be required to employ the use of the emergency lights and/or siren as a means to notify the public of their emergency response.



SPD's Response – NONE

OPA did not receive a receipt or response from SPD regarding this MAR.

Status – COMPLETED-ALL

SPD Manual Policy Section 13.080 11. Prohibited Activities During Use of Department Vehicles was updated to prohibit SPD employees from driving an unmarked vehicle in an HOV lane with no passengers, except during an emergency response, which would require the use of emergency lights and/or siren. Additionally, SPD issued Directive 15-00052 discussing the changes to the policy.

IN-CAR VIDEO POLICY REVISION: EXEMPTIONS NEED CLARIFICATIONS (2015-0652)**OPA's MAR – Issued November 5, 2015**

Arising out of an incident in which members of the SPD SWAT Team did not fully audio and video record all their police activities, OPA became aware of the fact that SWAT and the Hostage Negotiations Team (“HNT”) both believed they were exempt from this requirement. Research on our part found there had been a long-standing practice of not requiring SWAT and HNT to record while they were tactically deployed. However, under the current in-car video policy, such exemptions must be specifically granted by the Chief on a unit-by-unit basis. OPA requested the SPD Policy Manual sections be revised and those users, for whom the nature of their activities make it impractical to use their in-car video systems, should be listed in the policy, along with the specific activities of any such who are being exempted.

SPD's Response

OPA did not receive a receipt or response from SPD regarding this MAR.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On December 14, 2016 via email, SPD indicated to OPA the use of ICV exemptions is case-by-case, specific to individual units, and SPD does not want to highlight the “activities” of these units by listing these individual units in policy applicable to the department at-large. SPD did agree with OPA that there needs to be a better tracking system for receiving, responding to and maintaining requests for exceptions and have indicated it will be a critical concern as they develop a new Body-Worn-Camera and ICV polices. OPA appreciates the challenges in protecting the details of some law enforcement “activities” and reiterates our concerns that most of the specialized units who may be seeking exceptions are also those units engaging in activities which require the greatest amount of transparency and scrutiny by the community to insure best practices and conformity to constitutional protections and SPD Policy.

POLICING OPERATIONS IN PROTESTS, MARCHES, AND DEMONSTRATIONS (2015-0643)**OPA's MAR – Issued December 10, 2015**

This MAR made recommendations based on several protests and demonstrations observed by the OPA Director, as well as OPA's investigation into the use of force by SPD officers during the 2015 May Day protest and demonstration on the campus of Seattle Central College and the Capitol Hill neighborhood.

1. Use of Rubber Blast Ball Grenades (blast-balls): SPD re-evaluate how and under what circumstances officers use blast-balls as a means of moving or dispersing crowds of people.
2. Inventory and Control of Blast-balls: SPD make immediate changes to its control and tracking of blast-balls.



3. Use of Less-lethal Projectiles: SPD review its policy and training with respect to the use of less-lethal projectiles in crowd management situations.
4. Role, Training and Expectation for Officers from Mutual Aid Agencies: SPD limit and more tightly control its use of officers from mutual aid agencies in direct crowd management assignments.
5. Documentation and Investigation of Force Used During Protests, Marches, Demonstrations and Other Crowd Control Operations: SPD study how it documents and investigates the use of force by officers during crowd management situations and demonstrations or protests.
6. More Visible Name and/or Serial Numbers for Officers: SPD find an appropriate means to provide more visible names and/or serial numbers for officers.
7. Policing Operations In Protests, Marches, Demonstrations and Other Crowd Control Situations: SPD rethink its approach to planning and providing policing services in relation to protests and demonstrations. Specifically, to collaborate with experts, to look beyond the confines of the American law enforcement establishment, which tends to use more military-style tactics.

SPD's Response – Issued January 8, 2016

Chief O'Toole responded specifically to each recommendation presented by the OPA Director:

1. Use of Rubber Blast Ball Grenades (blast-balls): SPD indicated they were working closely with a team of nationally recognized experts to evaluate the Department's response to the May Day 2015 protests to include evaluation of the appropriateness of blast-balls as a crowd management tool and the manner in which they were deployed.
2. Inventory and Control of Blast-balls: SPD indicated they agreed with the recommendation, which was also offered by the Force Review Board, and clarified that the Department maintains (as it has since this tool was first employed by the Department) a strict inventory of blast-balls by serial number, location, and type of munition.
3. Use of Less-lethal Projectiles: SPD indicated that they were working to review policies regarding less-lethal tools and exploring alternative options. This work, along with subsequent training, was going to be informed through SPD's collaboration with their external experts.
4. Role, Training and Expectation for Officers from Mutual Aid Agencies: SPD indicated this was a recommendation from the Force Review Board and was currently under discussion.
5. Documentation and Investigation of Force Used During Protests, Marches, Demonstrations and Other Crowd Control Operations: SPD indicated that video recording the actions of officers during demonstrations could be problematic under Seattle's Intelligence Ordinance. Additionally, SPD indicated that since May Day of 2015, Manual Section 8.500 (POL 6 – effective September 1, 2015) was implemented to include reviewing use of force for crowd management and that SPD would be moving forward with revisions to Manual Section 14.090 (Crowd Management).
6. More Visible Name and/or Serial Numbers for Officers: SPD agreed and indicated they were in the process of obtaining cost estimates and developing an implementation plan for adding name/serial numbers to hard suits, bikes and/or helmets.
7. Policing Operations in Protests, Marches, Demonstrations and Other Crowd Control Situations: SPD indicated that they were engaged in this process in collaboration with the DOJ, the Monitoring Team, and the team of experts assembled.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA that *Manual Section 14.090 – Crowd Management* was revised with feedback from the Community Police Commission and was provided to the DOJ



and Monitoring team for approval and filing with the Federal court on November 15, 2016. While an update to crowd management policy addresses portions of the recommendations made by OPA, it does not sufficiently address all the issues raised by OPA. Moreover, SPD has specifically rejected portions of the recommendations, for example, for the reasons stated above, they have indicated they will not be taking any action on Recommendation #5 regarding additional video recording of the actions of officers during protests. Until the review of the policy is completed and SPD has been able to take final action, OPA will maintain this MAR as in progress.

IN-CAR VIDEO POLICY REVISION: OBLIGATION TO RECORD ALL POLICE ACTIVITY (2015-1035)

OPA's MAR – Issued December 29, 2015

During OPA's investigation involving an In-Car Video (ICV) violation, there appeared to be some confusion as to the use of the terms "employee" and "officer," and whether the different terms created different obligations to record under SPD policy. OPA recommended the policy be reviewed and modified to provide clarity, and a Department Directive be issued to ensure universal compliance with the requirement that all police activity be recorded regardless of rank or role of the employee, if they are equipped with the capability to audio and video record.

SPD's Response – Issued February 9, 2016

SPD agreed to issue a Directive clarifying the ICV policy and to revise the policy.

Status – COMPLETED-ALL

On March 1, 2016, SPD updated *Manual Section 16.090 – In-Car Video* and issued Directive 16-00016 on March 1, 2016 indicating the Department's expectations that all employees who operate in-car video systems follow *SPD Manual Section 16.090 – In-Car Video*, regardless of rank.

USE-OF-FORCE: LESS LETHAL PROJECTILES (2015-1626)

OPA's MAR – Issued March 18, 2016

OPA investigated a Force Review Board referral questioning the justification for at least some of the pepper balls fired at one or more persons during a demonstration event. The investigation revealed the use of the pepper balls may not have been consistent with the requirements of various SPD use-of-force policies. In particular, the written force report submitted by the officer who deployed the pepper balls appeared to indicate some of the pepper balls were launched for the sole purpose of marking a fleeing suspect for later identification and arrest. OPA recommended that SPD develop clear policy governing the use of each less-lethal projectile and its corresponding launcher including, but not limited to, pepper balls.

SPD's Response – April 4, 2016

SPD indicated agreement with OPA's recommendation and would proceed to develop a clear policy around the use of this tool, reemphasizing their concerns and agreements from their January 8, 2016 letter regarding OPA's recommendations following the 2015 May Day Event.

Status – IN PROGRESS

On November 19, 2016, in anticipation of publishing this report, OPA sought information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA the Department had submitted its proposed policy revisions to all of *Title 8 – Use of Force*, including *8.300 – Tools*, to the DOJ and Monitoring Team on July 7, 2017. SPD indicated they have not received comment back from either as of their letter.



MERCHANDISE SALES AND FUNDRAISING BY SPD UNITS (2015-1535)

OPA's MAR – Issued April 18, 2016

OPA investigated allegations that a SPD officer used his position in the Department to personally profit from the sale of clothing items branded with SPD and SPD Specialty Unit logos. While the OPA investigation found no evidence to support the allegation that the named officer was selling the items under false pretenses or personally profited from their sales, it did reveal a host of potential ethical, financial and practical problems. Therefore, OPA recommended that SPD take the following steps:

1. Issue a Directive putting a halt to such activity.
2. Conduct an audit of all SPD divisions to determine the nature and extent of such activity.
3. Based on the results of the audit create policy which either prohibits or regulates such activity.

SPD's Response – May 2, 2016

While SPD indicated they did not have concerns regarding the ethics of this particular practice, SPD did agree to reach out to the Ethics and Elections Commission to confirm their understanding that nothing about the practice currently utilized by some units to sell items to provide additional funding for the unit runs afoul of the City's ethics code. Additionally, SPD indicated they would have the Audit, Policy and Research Section conduct an audit to determine how widespread the practice is and to develop clear policies relating and with respect to reporting such activities.

Status – **COMPLETED-DECLINED ACTION**

OPA last contacted SPD on November 19, 2016, seeking information on the status of SPD's actions regarding this MAR. SPD did not provide an update in their November 23, 2016 letter addressing other "in progress" Management Action Recommendations. On December 14, 2016, SPD clarified they considered this issued resolved because the concerns are addressed through *SPD Manual Section 5.001 (2) and (12)* and would be part of city-wide ethics training. SPD also indicates there is no copyright to the SPD logo and so long as sales are not for personal profit, such practices are not a violation of ethical rules. While OPA understands SPD sees no need for an explicit policy, OPA had concluded based on its investigation that a full audit into this practice should be performed by SPD and proper policies implemented to ensure adherence to ethical standards.

COMPLEX INCIDENT COMMAND & USE OF A POLICE VEHICLE AS A WEAPON (2016-0469)

OPA's MAR – Issued June 29, 2016

During a review of an incident which involved an armed individual who endangered the lives of the public, OPA's investigation revealed some issues with SPD's incident command in situations where a subject created a dynamic and rapidly changing environment in which police commanders, supervisors and officers made split-second decisions. OPA recommended:

1. Formation of an internal SPD "Study Team" to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident.
2. A thorough review and reconciliation of SPD's policies and training concerning the use of police vehicles to end a pursuit and/or stop a driver who poses a deadly threat.

SPD's Response – October 25, 2016

SPD apologized for their delay in responding indicating that they had prepared a response last July to our June 29, 2016 letter, but did not respond until OPA submitted our October 18, 2016 MAR regarding Complex Incident Commands (2016-0462). SPD responded to both letters in one response indicating:



1. Regarding forming a “Study Team,” SPD acknowledged the Department was currently exploring the feasibility of establishing a separate review board, similar to the concept of the Force Review Board (FRB), that would be dedicated to ensuring critical self-review and analysis of non-force-related events. Although this process is squarely outside the scope of the Department’s consent decree, SPD indicated they would be consulting with the Monitoring Team and DOJ to explore how to establish such a board within existing bandwidth, organizational structures, and labor considerations.
2. Regarding review and reconciliation of SPD’s policies and training, SPD indicated the Department has provided to the Monitoring Team and DOJ a draft revision of *Manual Sections 13.031 – Vehicle Eluding/Pursuits* and *8.300-POL-7 Use of Force – Vehicle-Related Force Tactics*. According to SPD, these revisions would identify intentional vehicle-to-vehicle contacts as uses of force that may be used only when consistent with the use of force and reporting requirements, and reflect restrictions around the use of a vehicle as force. SPD also noted that it does not provide formal training on vehicle use of force tactics, given their use in only exigent circumstances. SPD defers to the Washington State Patrol for such training.

Status – IN PROGRESS

Based on the response received on October 25, 2016, this MAR is still in progress.

RECOVERY OF STOLEN PROPERTY (2016-0128)

OPA’s MAR – Issued August 25, 2016

OPA completed an investigation into a complaint that SPD officers encouraged a burglary victim to arrange a meeting with someone the victim believed was selling property taken in the burglary. The victim set up the meeting with the seller and called 911 for assistance. Unfortunately, no officers were available at that time; the victim and several associates went forward with the meeting. During the meeting, a confrontation ensued during which the seller brandished a handgun. Fortunately, no shots were fired and no one was injured. The stolen property was not recovered. OPA recommended SPD direct all officers to cease recommending to crime victims that they arrange or in any way become involved in recovering property stolen, and if not to develop and publish clear guidelines and limitations governing this practice so as to decrease the potential risks to involved parties.

SPD’s Response – September 15, 2016

SPD acknowledged OPA’s concerns, but noted it is not *de facto* SPD practice to encourage crime victims to recover their own stolen property, outside of highly controlled and coordinated investigations by specialized teams and detectives. The Chief directed precinct commanders to ensure that this practice is immediately discontinued to the extent it is being used. Additionally, SPD’s Audit, Policy, and Research Section is finalizing a draft policy to govern circumstances and protocols when specialized teams, officers or detectives may coordinate with cooperating victims to recover stolen property, and to assure appropriate supervisory oversight at all stages of the process.

Status – IN PROGRESS

OPA last contacted SPD on November 19, 2016, seeking information on the status of SPD’s actions regarding this MAR. On November 23, 2016, SPD informed OPA that a policy concerning the use of cooperating victims is currently in draft.



POLICE PURSUITS (2016-0214)

OPA's MAR – Issued September 21, 2016

An OPA investigation raised concerns regarding the practical application of SPD's pursuit policy, a concern which has arisen in previous OPA reviews of similar incidents. OPA recommended SPD modify its Vehicle Eluding/Pursuits Policy (§13.031) so that all pursuits, including those in which an officer fails to activate his or her emergency lights and siren as required, are subject to the same prudent restrictions and regulations.

SPD's Response – October 21, 2016

SPD agreed the policy definition of "pursuit" could be subject to misinterpretation, and therefore the Audit, Policy, and Professional Standards Section will revisit this policy and its definitions to determine what clarifications may be appropriate given both the concern OPA raised and the statute on which the policy is based. Additionally, the SPD Senior Counsel will work with OPA to identify the cases which have raised this concern before to follow up with bureau commanders as appropriate.

Status – **IN PROGRESS**

OPA last contacted SPD on November 19, 2016, seeking information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD informed OPA the Department provided its proposed policy revisions to Manual Section 13.031 to the DOJ and Monitoring Team on July 7, 2016, and as of their letter have not heard back from either.

COMPLEX INCIDENT COMMAND (2016-0462)

OPA's MAR – Issued October 18, 2016

OPA completed an investigation into the fatal officer-involved shooting that took place on December 6, 2015. In particular, OPA investigated the use of deadly force by an officer who was part of a SWAT team that made contact with a subject who had endangered the lives of the public and police officers alike while engaged in a crime spree ranging from the Belltown neighborhood north of downtown Seattle, to the Laurelhurst/Wedgwood neighborhoods of northeast Seattle. Based on the results of this investigation, OPA renewed its previous recommendation to form "an internal SPD 'Study Team' to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident."

SPD's Response – October 25, 2016

Please see COMPLEX INCIDENT COMMAND & USE OF A POLICE VEHICLE AS A WEAPON (2016-0469) above.

Status – **IN PROGRESS**

Please see COMPLEX INCIDENT COMMAND & USE OF A POLICE VEHICLE AS A WEAPON (2016-0469) above.

FAILURE TO APPEAR IN COURT (2016-0303)

OPA's MAR – October 20, 2016

OPA completed an investigation into an allegation that a Parking Enforcement Officer (PEO) failed to appear in Municipal Court in response to a valid subpoena served on that PEO. This mandatory court appearance was for a hearing on a vehicle impound the PEO had made. Impounded vehicles accumulate tow and storage fees that sometimes exceed the value of the vehicle. In order to prevent excessive charges to either the vehicle owner or the City, the Municipal Court schedules hearings within a day or two of receiving notice from the vehicle owner of his or her desire to contest the impound. In this case, the PEO received a subpoena to attend a hearing the next day but chose, instead, to attend a previously-scheduled, non-mandatory seminar sponsored by the Department.



The Court did not excuse the PEO from its order to appear. As a result of the PEO's non-appearance, the vehicle was released from impound and the City was ordered to cover the accumulated tow and storage fees.

SPD's Response – October 25, 2016

The SPD Legal Unit has been exploring opportunities to coordinate with Seattle Municipal Court on closing this loop on parking and traffic citations where the City is not represented; in addition, in response to OPA's recommendation, the Chief asked the Legal Unit to expedite engagement with the City Attorney's Office and the King County Prosecutor's Office to explore how SPD can best assure officers are meeting their obligations under Manual Section 5.190.

Status – IN PROGRESS

OPA last contacted SPD on November 19, 2016, seeking information on the status of SPD's actions regarding this MAR. On November 23, 2016, SPD updated OPA indicating that similar to the MAR regarding Officer Subpoenas (see 2014-0128, above) the SPD Legal Unit has implemented a process by which subpoenas are tracked to ensure delivery and acknowledge receipt. SPD is also working with the Seattle Municipal Court to discuss a shared protocol given that the court does not have a protocol or system in place to reliability affirm that officers appear, or alert when officers fail to appear, when summoned. Similar to concerns expressed in OFFICER SUBPOENAS (2014-0128) above, OPA encourages SPD to include a process for supervisor reporting and accountability for officers, including PEOs that fail to appear in court, which may result in costs to the City for refunded towing and impounding fees.

MISDEMEANOR DOMESTIC VIOLENCE FOLLOW-UP INVESTIGATIONS (2016-0139)

OPA's MAR – Issued October 21, 2016

The OPA investigation into allegations of inadequate follow-up investigations led to a surprising and disturbing discovery. With some exceptions, no one in SPD is assigned to conduct follow-up investigations into misdemeanor domestic violence (DV) crimes.

OPA recommended that SPD:

1. Strengthen the quality of the primary investigations Patrol officers conduct into reporting DV crimes.
 - Implement a Domestic Violence Investigations Policy to be added to the Primary Investigations Chapter of the SPD Policy Manual. OPA recognizes development of this policy is already underway by SPD.
 - Develop clear procedures and check lists for use by Patrol officers when responding to and investigating reports of DV crimes. This, too, is already under development by SPD.
 - Develop resources for Patrol sergeants tasked with screening DV arrests and approving DV General Offense Reports.
 - Develop a "Risk Assessment Tool" for use by first responders, sergeants and detectives in spotting potential early indicators of increased risk for DV victims. The DV Unit is already working on development of this tool.
 - Develop a "Domestic Violence Investigations and Reporting" training course for Patrol officers and supervisors to cover best practices, policy and procedures relating to DV.
 - Make DV Unit detectives available for after-hours response to significant incidents.



2. Evaluate the staffing requirements of the DV Unit to determine what additional supervisory and/or detective personnel are needed to ensure adequate follow-up investigations are conducted when misdemeanor DV cases have the potential for successful prosecution; and
3. Engage with the City and County Prosecutors to explore promising best practices in DV investigations and prosecutions that might be successfully adapted for use in Seattle and King County

SPD's Response – November 22, 2016

SPD indicated they are developing a policy specific to Domestic Violence investigations to include procedures, checklists and risk assessment tools for officers responding to DV calls. In conjunction with the policies, training modules would be implemented to address best practices and procedures. Additional resources would be developed by SPD for Patrol sergeants tasked with screening DV Arrests, and additional staffing of the DV unit is being explored in collaboration with prosecutors and other system partners.

Status – IN PROGRESS

Based on the response received on November 22, 2016, this MAR is still in progress.

Moving Forward

Every law enforcement agency is different, as unique as the communities they serve. So, too, with police accountability, there is no one-size-fits-all. Nonetheless, many cities and their police agencies are beginning to see the value of a civilian monitor or inspector general with the authority, independence and resources necessary to look deeply and widely into police policies, training, management, finances, tactics and operations. No individual complaint investigation, no Management Action Recommendation will be able to sustain the momentum of positive change begun in 2012 when the Seattle community, represented by over 30 various community groups, asked the U.S. Department of Justice to investigate the patterns and practices of excessive force and biased policing by SPD. The resulting Settlement Agreement between the City and the DOJ established a Monitor with the authority to conduct rigorous audits and reviews of SPD's progress in meeting the terms of the Settlement Agreement. SPD command staff, supervisors, officers and civilian employees have worked diligently over the past four years to complete the reforms outlined in the Settlement Agreement. The presence of the Monitor and his team of experts and advisors, along with the deep systemic analyses they have conducted have provided motivation to keep the reforms on track. When the Settlement Agreement concludes, so too will the presence of the Monitoring Team. However, the need for independent and robust analysis and research into SPD's practices will not go away. The establishment of an oversight entity such as the proposed Inspector General will help ensure that SPD creates training, policies, and practices that respond to the evolving needs and challenges of the Seattle community well into the future.

OPA is pleased to have taken a significant step in bringing to Seattle Police Accountability the power of systemic analysis and recommendations through the MAR process. We look forward with excited anticipation the advent of a new police accountability and civilian oversight system in the new year. Together with these new elements of accountability, OPA will continue its work of accessible, trusted, transparent, and independent oversight of the Seattle Police Department.

