Clerk File No. 310533

The City of Seattle – Legislative Department

Clerk File No. 310533
Report of the Office of Professional Accountability Civilian Auditor for the period June through November 2009.

Clerk File sponsored by: _____

Committee Action:

Date	Recommendation	Vote

Related Legislation File: _____

This file is complete and ready for presentation to Full Council. _____

Date Introduced and Referred:	To: (committee):
June 1, 2010	Public Safety and Education
Date Re-referred:	**To: (committee):**
July 12, 2010	Full Council
Date Re-referred:	**To: (committee):**
Date of Final Action:	**Disposition:**
7.12.10	Filed

Full Council Action:

Date	Decision	Vote
7.12.10	Filed	9-0

3.23.10

Date Filed with City Clerk

By _____

CF No.310533

Title:Report of the Office of Professional Accountability Civilian Auditor for the period June through November 2009.

Date Filed with City Clerk:20100323

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CITY OF SEATTLE
2010 MAR 23 AM 10:58
CITY CLERK

Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
June 2009 – November 2009

INTRODUCTION

This is my first report as Civilian Auditor. I was appointed to the position by Mayor Greg Nickels and confirmed by the Seattle City Council on June 8, 2009. This report is submitted pursuant to SMC 3.28.860 which directs the civilian auditor to prepare a semiannual report. The report covers the first six months in this position. The ordinance specifies a number of areas that the report should address including:

- The number of cases reviewed by the auditor;
- The number of and description of cases in which the auditor requested additional investigation and the Office of Professional Accountability's (OPA) response;
- The number of and description of complaints in which the auditor requested reclassification or further investigation and the OPA's response;
- A summary of issues, problems and trends noted by the auditor as a result of the case reviews;
- Recommendations regarding additional officer training including specialized training for OPA investigators;
- Recommendations that the Seattle Police Department (SPD) consider policy or procedural changes; and

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- Any findings from audits of OPA records or the OPA Director's reports.

I will address each of these areas in order.

AUDITOR ACTIVITIES

Between June 8, 2009 and November 30, 2009 I reviewed 495 complaints/communications received by the OPA. When these complaints/communications are viewed by the Auditor, each has already been preliminarily classified by the intake officer to reflect whether there is an allegation of actual misconduct (i.e. a violation of SPD's Policies and Procedures) and if so, the level of seriousness of the alleged misconduct. There are five classifications.

- The Contact Log - Communications listed in the Contact Log are those that do not involve misconduct but are usually questions from citizens that can cover a wide range of topics. Often there are general inquiries about the Seattle Police Department or the complaint process and sometimes about alleged conduct that a citizen may have observed or heard about. For example, one person called to provide information about a possible witness to a crime. Another called to ask why a certain vehicle had not received a parking citation. An email inquiry requested that an officer perform a welfare check. A few calls were to commend an officer for actions taken.
- Preliminary Investigation Reports – This classification applies to complaints that, even if the allegations are taken as true, would not constitute misconduct.

- Supervisory Referrals - Supervisory Referrals are complaints that, if true, would constitute minor misconduct that may reflect a lack of training in a particular area. The complaint is referred to the employee's supervisor for review, counseling, and training as necessary.
- Line Investigations - Line Investigations are complaints that, if true, would constitute minor misconduct suitable for investigation and resolution by the named officer's chain of command.
- OPA Investigation Section - Complaints which allege more serious misconduct or which are factually more complex, such as use of force allegations or complaints of criminal misconduct, are investigated by the OPA Investigation Section.

Of the 426 complaints/communications I reviewed, nine were initially classified as Line Investigations, 53 were initially classified as Supervisory Referrals, 102 were initially classified as Preliminary Investigation Reports and 262 were contained in the Contact Log. I also reviewed 69 completed investigations. I met with the OPA Director, Kathryn Olson, on a weekly basis to review each of the cases initially classified either as a Preliminary Investigation Report, Supervisory Referral or Line Investigation.[1] We met on a quarterly basis to review the Contact Logs. As a result of those meetings 11 Preliminary Investigation Reports were upgraded, nine to Supervisory Referral and two to Investigation Section, two cases were upgraded from Supervisory Referral to Line Investigation and three cases

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[1] The OPA Director and I also review on a weekly basis each of the new cases initially classified as appropriate for referral to the Investigation Section.

were downgraded from Supervisory Referral to Preliminary Investigation Report. I also asked the Director to follow up on three communications contained in the Contact Logs.

Among the nine Preliminary Investigation Reports that were elevated to Supervisory Referrals there was no particular type of complaint that stood out. Nor were the same officers or complainants involved these nine cases. As an example of the cases that were elevated, in one instance the complainant alleged that the officer harassed him by ordering him to either leave a park or be arrested for drug traffic loitering. In an effort to document his complaint the complaint took a photograph of the officer. Of particular concern to me, however, was the complainant's allegation that three days later the same officer stopped him again, seized his camera and went through the pictures stored in the camera's memory. In my view, the claims of unlawful stop and seizure of the camera were worthy of review.

In another, the complainant was videotaping events while acting as a legal observer at a protest. She alleged that two officers told her that she was not permitted to videotape them. If the officers made such a statement, it is contrary to law (State v. Flora, 845 P.2d 1355 (1992)) and to Seattle Police Department policy (see SPD Policies and Procedures Manual Section 17.070). I believed that the issue was important enough that if the officer's did have a misunderstanding, it was essential to make sure that both the law and SPD policy were clarified with the officers via a supervisory referral.

It is not surprising, in this age of instantaneous mass communication, that one complaint involved an officer's alleged posting on Facebook. An anonymous complainant observed an officer's inappropriate comment in response to a juror complaining about jury duty. While the comment

appears to have been made in jest, a more serious classification of this complaint served as a reminder that officers, indeed all public servants, must exercise care and restraint in utilizing these new tools of mass communication. The potential risk of tainting the jury trial process and creating grounds for a mistrial or dismissal of charges is a serious concern.

In another case, a supervisory referral was warranted to ensure that a complaint of racially biased policing received a more thorough review.

Of the two cases which were reclassified from Supervisory Referral to Line Investigation, one was a complaint of racially biased policing. Here, as well, the Director and I agreed that a more rigorous evaluation of the allegation was warranted. The other involved an allegation that a parking enforcement officer was rude to the complainant and when the complainant protested the officer responded with a parking citation.

Two complaints were reclassified from Preliminary Investigation Reports to the Investigation Section for a full investigation. One involved an allegation that an officer assaulted the complainant and destroyed property belonging to the complainant. It was also alleged that the officer gave an inaccurate account of the incident to the responding officers. In the other case, the complainant alleged that the officer violated the terms of a temporary restraining order.

After a review of the 69 completed investigations, I concur with the conclusion of my predecessor that the overwhelming majority of cases are thoroughly investigated.[2] I have requested additional investigation in only

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[2] In particular I would note that in a number of the complaints received the complainant is unable to identify the named officer beyond a vague physical description. Obviously without knowing the officer's identity it is unlikely that the complaint can go forward and

two cases which will be described below. In each case the additional investigation was promptly completed.

In one case it was alleged, among other things, that a sergeant failed in his supervisory duties while screening an arrest. It was undisputed that the sergeant screened the arrest and release of a suspect via a telephone conversation with the arresting officer. However, there was a factual dispute as to what specific information the arresting officer reported to the sergeant. It appeared that a reserve officer was present in the car with the sergeant at the time the conversation took place. I asked that the reserve officer be interviewed.[3]

Another case involved an officer who had been dispatched to a disturbance call. The officer determined that a man and woman had been involved in the dispute. The woman was in need of a ride home and the officer obliged. The woman later complained that during the drive home she had reported an incident of domestic violence to which the officer failed to respond. An issue arose as to whether the woman had exhibited obvious physical injury at the time of the officer's contact with her. Since the woman went to the hospital a few hours after the officer had dropped her off, I asked that efforts be made to obtain the medical records as part of the investigation.

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be resolved. However, the Investigation Section officers undertake extensive efforts to learn the officer's identity and are successful in the vast majority of cases.

[3] It should also be noted that this was the only instance in which I disagreed with the OPA-IS proposed disposition on a matter. OPA-IS recommended not sustained as to the noted allegation against the sergeant, while I felt a sustained finding was warranted. Ultimately, Chief Diaz concluded that the allegation should be sustained.

In two other cases although no additional investigation was necessary, I asked that additional measures be taken. In one case I asked that complainant be advised of the reason there was no follow up on a burglary report he had made to the Seattle Police Department. The reason was that the owner of the suspect home was not interested in pursuing the investigation. The other involved a complaint against an unnamed officer. The investigation narrowed the possible officers to two, both of whom fit the description provided by the complainant. I asked that the officers' supervisor be contacted to determine if he or she could assist in the identification.

In one other case, it appeared to me that there were additional allegations that could have been brought against the named officer and an additional officer. The first involved an unknown officer who, according to the complainant, first told her that there was no form or formal mechanism for filing a complaint. The second involved a potential allegation that the named officer and his sergeant failed to properly document problems with the In Car Video as required by department policy. The passage of time and time constraints precluded formal pursuit of these potential allegations, however, the OPA Director agreed to note these issues in her recommended disposition of this case.

As noted, in each of the cases in which I requested further action, the request was complied with promptly.

Over the course of the last six months, I have also met with the President of the Seattle Police Officers Guild, Assistant Chief Nick Metz, the Seattle Police Department's Command Staff, representatives from the American Civil Liberties Union and the former director and current assistant director of The Defender Association. I have also attended several

meetings of the OPA Review Board and appeared before Seattle City Council Public Safety and Health subcommittee. In addition, I attended the annual conference of the National Association for Civilian Oversight of Law Enforcement in Austin, Texas.

ISSUES, PROBLEMS, TRENDS AND RECOMMENDATIONS

In the semi-annual report, the Auditor is asked to comment on issues, problems and trends observed during the case reviews over the preceding six months of and to make recommendations regarding officer training. What stood out most often was the number of instances in which citizen/officer contact escalated from innocuous to a use of force situation. On many occasions the initial contact was brought about by an allegation of jaywalking which escalated when the citizen failed to comply with the officer's order to stop. In some instances the failure to stop was inattention or merely bad judgment. In other instances the citizen, rightly or wrongly, believed that the officer's action is motivated by racial bias. In another case, the citizen responds with rude and offensive remarks which lead the officer to respond in kind. In either instance, the officer's effort to enforce his or her authority often leads to physical contact with the citizen and often ends with a take-down or, on at least one occasion, with the use of a Taser. In addition, the situation often results in injury to the citizen or the officer(s) or both.

Certainly when an officer observes a jaywalking or other minor infraction, there is some obligation to make an effort to either cite the offender or in some other way encourage compliance with the law. However, whether the use of force in this situation is a best practice is

questionable. Of particular concern is the nature of the officers' response to offensive verbal comments from the offenders. Is it appropriate to give into the natural urge to respond in kind? Or, is the better response restraint and the use of techniques to redirect or defuse the offenders' anger and frustration? In the course of my case reviews I have observed a number of instances where an officer chose not respond to vulgarities with curses and instead calmly responded in ways that thoroughly defused a potentially violent situation. I would urge the Department to engage in further efforts to intensify the training of its officers in de-escalation techniques that defuse hostile citizen/officer interactions and minimize the necessity to resort to the use of force.

The use of digital in car video (DICV) has been extremely useful in resolving a number of complaints. On occasion it has revealed officer conduct in violation of Department regulations, but most often it tends to exonerate the officer or at minimum place in context the conduct complained of. Nonetheless, there are too many occasions when DICV is unavailable either because the officer was untrained in using this technology or because of a malfunction or because the officer simply failed to use it. Because this tool is so valuable, I urge the Department to outfit all marked patrol cars with DICV as quickly as possible and train all officers so that there is no reason it should not be available in all cases. In particular, all officers should be specifically made aware of Section 17.260(III)(A)(1)(a) of the Department's Policy and Procedure Manual. That section requires that before going into service, the officer ensures that the DICV is in working order and that if it is not the problem is properly documented in writing and that a supervisor be notified. Compliance with this directive

eliminates a potential claim that the DICV was tampered with subsequent to an incident.

There are a number of complaints in which the allegation directly or indirectly raises an issue of racially biased policing. Most often the complaint arises in the context of police stop and it is alleged that the complainant's race is, at least in part, the motivation for the police action. To my knowledge no such claim that has been sustained.

The issue of racially biased policing was the subject of presentation at the most recent conference of the National Association of Civilian Oversight of Law Enforcement in Austin, Texas. According to the speaker, Shanetta Cutlar, across the country it is rare that a claim of racially biased policing is sustained. Generally inquiries into racially biased policing do not go beyond establishing whether there is an objective basis for the stop. Where an objective basis for the stop is found and there is no other evidence of the officer's motivation, for example statements indicating racial prejudice, the almost inevitable conclusion is that the allegation is unfounded. Ms. Cutlar pointed out that, of course, merely because there is an objective basis for the stop it does not necessarily follow that racial bias was not involved in the officer's actions. The difficulty is that, in the absence of some overt statement or act, proving intent or motive is exceedingly difficult. In addition, because the allegation of racially biased policing carries the stigma of an accusation of racism, decision making bodies are often reluctant to sustain the allegation in the absence of substantial evidence.

Ms. Cutlar's interesting observation was that the current adversarial approach to allegations of racially biased policing had two unfortunate results. First, the complainants often left the process frustrated and

unsatisfied and their confidence in the system's ability to adjudicate these claims fairly and hold police officer's accountable was undermined. Second, the finding of unfounded or exonerated foreclosed any further discussion of the officer's conduct, how it was perceived by the complainant, whether there was any reasonable basis for that perception and whether any change could resolve the problem. She suggested that these failures of the adversarial system of resolving complaints of racially biased policing could be alleviated by using mediation as an alternative means of addressing the issues.

I agree that we should continue to recommend mediation to the parties involved in allegations of racially biased policing. We should also re-examine how we monitor the outcomes of these cases. Are we using meaningful measures that can reliably tell us whether mediation of these types of complaints is producing favorable outcomes for both the complainant and the officer?

Finally, it is worth noting that among the cases I reviewed where it was alleged that some misconduct had occurred, i.e. supervisory referrals, line investigations and investigation sections, approximately 40% were supervisory referrals. In these cases the supervisor is required, at minimum, to contact the named employee and the complainant and discuss the complaint with each of them. It is expected that the supervisor will document the efforts made to contact the complainant and, if successful, also document the contact with the complainant and the employee. When the supervisor has concluded his or her conversations with the parties, he or she must send a letter to the complainant advising that the complaint is now considered closed.

The Director and I routinely review a sample of the completed supervisory referrals and generally we have found them to be well done. The necessary contacts have been made and are well documented. The communication with the complainant is complete and most often it appears that the complainants are satisfied with the result. On occasion, however, poor documentation has made it difficult to ascertain exactly what steps were taken by the supervisor and whether he or she made a good faith effort to follow through. On one occasion the complainant disputed whether any efforts had been made to contact him and the efforts the supervisor claimed to have made were not well documented.

To my knowledge there is no standardized training process for instructing supervisors how to handle to supervisory referrals. Since they form a fairly large segment of the complaints where some alleged misconduct has been identified it would be useful to offer some training to the officers we ask to undertake this function. Moreover, since the misconduct alleged in these cases is minor, ensuring that we address it effectively at this juncture may prevent more serious issues in the future.

CONCLUSION

Overall, the oversight of police conduct in the City of Seattle is working well. However, it is worth taking the opportunity here to reiterate my concern regarding the escalation of routine contacts between police and citizens into more serious incidents. Certainly there is almost always an element of tension when a citizen is contacted by an officer, particularly when there may be a citation for a traffic offense or for jaywalking or some other cause for a brief detention. It must also be acknowledged that in

many instances the citizen's response to this contact can be rude and disrespectful to the officer. The issue, however, is on to whose shoulders does the burden fall to take responsibility for facilitating a non-violent outcome? While we should not ask our officers to tolerate physical aggression, the responses to verbal outbursts, no matter how disrespectful, are a different matter. It is not always easy to determine when an aggressive versus a calm attitude is appropriate to the situation, but my concern is whether our officers are sufficiently trained to make this a rational decision as opposed to the mere natural reaction to yell and curse back. I think it is fair to place the burden on our officers to make the right judgment call when they are placed in these difficult situations, however, we must ensure that they are properly trained to do so.

This training should include understanding when it is appropriate to acknowledge that an error has been made. On more than one occasion an officer has lawfully detained a person only later to learn that the detention was in error. How this situation is handled can leave a deep and lasting impression on not only the citizen who was stopped but also on all those to whom he or she recounts the incident. In my view, it is of the utmost importance to the Seattle Police Department that that lasting impression be positive, not negative.

Most people understand that we ask the police to do a very difficult job, they understand that circumstances often require the police to make difficult decisions very quickly and most people understand that under these conditions sometimes the wrong call is going to be made. When it does happen, the citizen who is on the wrong end of it should at least feel that he or she was treated with respect, which includes an acknowledgement that a mistake was made. Even though the event may

be routine for the officers involved, for the citizen it may be one of only a few contacts he or she will ever have with the police and it may be the event that shapes their view of the Seattle Police Department (and that of their friends and neighbors) for years to come.

While I emphasize these points, I am not the first to raise them. I have reviewed several of the reports on my predecessors, Judge Terry Carroll, ret. and former U.S. Attorney Kate Pflaumer going back several years and these issues have been a consistent theme.[4] We must find an effective way to address them.

Respectfully submitted,

Judge Michael S. Spearman (ret.)
Civilian Auditor
Office of Professional Accountability

[4] In 2002 Judge Carroll wrote, "But distinguishing between the situations where an aggressive attitude is required and those where it is harmful is a part of police work. In many ways this is a leadership issue. Supervisors are in the best place to monitor this problem. There must be an expectation that respect will be shown toward our citizens and the failure to do so will result in sanctions. To not view rudeness problems as a serious issue will only serve to undermine any efforts at repairing police/community relations."