

REPORT

VIA EMAIL ONLY

DATE: August 9, 2021

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

FROM: Tara L. Parker, Police Auditor

RE: Police Auditor Mid-Year Report re January 2021 – June 2021

I. Introduction

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

II. Background

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

Police Auditor's Duties and Responsibilities

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

case audited indicating whether the investigation met or failed to meet established standards. Each report shall give an analysis of key trends, patterns, and recommendations for revisions.

III. Methodology

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

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

The Police Auditor's process includes:

- Tracking all data listed above
- Seeking additional information when necessary
- Examining the data for trends
- Reviewing all files to determine
 - Completeness
 - Thoroughness
 - Objectiveness
 - Fairness

- Examining Department practices for compliance with OPD policies
- Noting areas that may be improved by process or policy changes

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

Complaints are sorted into one of two categories:

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

Internal investigation reports must include the following information:

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

At the conclusion of an investigation, the investigator will reach a finding in accordance with the Department's policies. The standard of proof for all internal investigations is by "a preponderance of the evidence." This is a lower standard than what a criminal case requires which is "proof beyond a reasonable doubt."

There are five categories of possible investigation findings:

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

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

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

Corrective actions include one of the following:

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

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

IV. January 1 – June 30 Data¹

A. Use of Force

Between January 2021 and June 2021, OPD officers responded to 24,179 calls for service and made 1,032 arrests. OPD officers reported that they used force during twenty-three (23) incidents. Each of the use of force incidents was subject to internal, multi-level review. In twenty-one (21) of the incidents, the Department determined that the officers' actions were within policy. The Auditor reviewed each of those files and determined the officer's actions were within policy.

In two incidents, the Department determined that the officers' use of force was out of policy because the officers did not have sufficient grounds to detain fleeing subjects. In both cases, the Department took corrective action in the form of documented oral warnings and mandated training regarding the policy prohibiting the use of force to detain fleeing subjects who do not pose an imminent threat to public safety. The Auditor reviewed the files and determined that the Department's internal review and corrective action responses were within policy.

Additional key data regarding those 23 files is as follows:

Types of Force Used

- 17 involved takedowns by means of defensive tactics such as pain compliance techniques, control holds, and physical restraint.
- 6 incidents involved the deployment of Conductive Energy Weapons (CEW or CED Taser probes).
- 1 incident involved kinetic impact rounds from a less lethal shotgun.

Subject Demographics

- 17 incidents involved white male subjects.
- 4 incidents involved white female subjects.
- 1 incident involved a Black male subject.
- 1 incident involved an Asian male subject.

Additional Key Data

- None of the incidents led to serious injuries.
- 21 of the incidents involved subjects who appeared to be mentally ill and/or intoxicated.

B. Complaints

Between December 2020 and June 2021, the Office of Professional Standards received and investigated six citizen-initiated complaints and two matters that were generated internally by OPD employees or City

¹ The Police Auditor received and audited two use of force incidents that arose in December 2020. The Department's actions in those incidents were found to be within policy. That data will be included in the Office of Professional Standards' 2020 Report. Therefore, in order to properly allow year-to-year analyses, that data is not included in this report.

staff. The six citizen-initiated complaints were audited and determined to have met Department standards. One of the internally generated investigations resulted in sustained findings, the Department recommended termination, and the employee resigned ceasing employment with the City. The other internal investigation resulted in no finding and no further action because the Complainant failed to provide information to further the investigation. This data is summarized below.

Complaint Investigation Details

Received	Classification	General Description	Investigative Findings	Corrective Actions	Police Auditor Findings
2020-12-21	Service Level	Discourteous - Citizen stated officer's comment was unprofessional and made her uncomfortable.	Supervisor recommended no additional investigation required.	Supervisor discussed event with officer and they talked about various communication methods and strategies.	Met Department standards.
2021-01-14	Service Level	Discourteous - Citizen felt an officer's statement to her after she called them to a disturbance was rude and uncalled for.	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.
2021-001	Serious Allegation	Subject of arrest alleged assault by OPD personnel to third party but did not notify the Department or provide any contact information. [Connected to UOF 2020-7348]	No Finding. Complainant failed/declined to disclose information to further the investigation.	N/A	Met Department standards.
2021-002	Serious Allegation	Thurston County Sheriff's Office charged an OPD employee charged with criminal conduct.	Internal Affairs Investigation completed 04/03/21. Sustained findings.	The Department recommended termination. The employee resigned and no longer works for the City.	Met Department standards.
2021-01-26	Service Level	Discourteous	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.

2021-02-11	Service Level	Unsatisfactory - Citizen did not agree with the manner in which an incident was handled.	Reported that complainant satisfied with resolution, no further action required.	N/A	Met Department standards.
1059	Service Level	Discourteous – Dispatcher complained officer was rude.	Reported that complainant satisfied with resolution, no further action required.	Documented oral warning to employee.	Met Department standards.
1060	Service Level	Discourteous	Investigation in progress as of 08/03/2021.		

As illustrated above, there were eight (8) complaints of officer misconduct received by the Office of Professional Standards in the first half of 2021. Six (6) investigations involved service level allegations and two (2) involved allegations of serious misconduct. Each was audited and found to be conducted and addressed consistently with the Department's policies.

VI. Key Observations

A. OPD officers' use of force has decreased.

OPD officers reported that they used force during twenty-three (23) incidents, which constituted 1.7% of all arrests. By comparison, OPD officers recorded thirty-two (32) incidents involving the use of force during the first two quarters of 2019. That represents a 28% decrease from 2019, the last year for which data is available. Also, the 23 use of force incidents constitute 1.7% percent of total arrests. That represents a 17% decrease from 2019.

B. Uses of force overwhelmingly involved mentally ill and substance abusing subjects.

Out of 23 instances where officers used force to arrest subjects, 21 involved individuals who were suffering from mental illness and/or under the influence of drugs or alcohol. The records show that those subjects did not respond to officers' de-escalation efforts, nor did they comply with orders to cease conduct that posed a danger to themselves, members of the public and law enforcement.

C. The Department's internal, multi-level review of uses of force and misconduct is effective.

The audits of the OPD's 23 use of force files and 8 misconduct investigations all resulted in findings that the Department has operated within policy on those matters.

VII. Recommendations

1. Use of Force Reporting

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

Accordingly, use of force data-gathering systems, policies and practices should be improved in three ways:

- a. Explore ways to streamline the RMS to enhance transparency and ease of use.
- b. Include mandatory reporting data that will be required by April 1, 2022 under E2SSB 5259, including:
 - i. Race and ethnicity of involved officers
 - ii. Officer's years of service
 - iii. Reasons for initial contact between subjects and officers
 - iv. Whether any minors are present at the scene
 - v. The number of officers and suspects present when force was used
- c. Continue training officers to properly record all required use of force data.

2. Defensive Tactics Team Reviews and Training Points

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

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

3. The On-Line Complaint Process

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

4. Trainings

The Department has a robust training program. Nonetheless, it should augment the video trainings regarding Cultural Awareness, De-escalation, and Hate Crimes that occurred in December 2020 with in-person trainings. Those trainings, and others, should align with the City of Olympia's Diversity Equity and Inclusion values and the City's Reimagining Public Safety goals.

Additionally, the trends involving uses of force in encounters with mentally ill and intoxicated persons indicates that officers would benefit from additional training and support for addressing the specific needs and challenges posed by such subjects.

Finally, the Department should continue trainings related to Department Policies that were updated as a result of the 2021 Legislation.

VIII. Additional Information

New Legislation and OPD Policy Revisions

The Washington State Legislature passed a series of police reform bills in the 2021 legislative session that change the role of police in Washington and the way some law enforcement services are delivered. Some of the new legislation will result in significant changes to OPD policies and practices. The majority of these bills went into effect on July 25, 2021, while others will go into effect in 2022.

There are 13 bills addressing police reform, including three that significantly impact police services to the community. They include House Bill (HB)1054 (Police Tactics), HB 1310 (Use of Force), and Senate Bill (SB) 5476 (Amends Controlled Substance Act), which went into effect on July 1, 2021.

The Police Auditor has engaged in several conversations with the Office of Professional Standards and the City's legal counsel regarding how the new legislation will require OPD policy revisions and related trainings. The OPD policies below were revised shortly before the date of this report and the Department has begun training its employees accordingly.

- 300 – Use of Force
- 301 – Use of Force Review Boards
- 303 – Control Devices & Techniques
- 304 – Conducted Energy Weapon
- 305 – Officer Involved Shootings, Death, & Serious Injury
- 312 – Temporary Custody of Juveniles
- 320 – Standards of Conduct
- 325 – Outside Agency Assistance
- 340 – Protection Orders
- 409 – Emergent Detentions
- 422 – Portable Audio-Video Recorders
- 432 – Crisis Intervention Incidents
- 433 – Medical Aid & Response
- 600 – Investigation & Prosecution

- 604 – Brady material Disclosure
- 607 – Warrant Service
- 700 – Department-Owned & Personal Property
- 1000 – Recruitment & Selection
- 1005 – Reporting of Employee Convictions
- 1010 – Personnel Complaints
- 1013 – Personnel Records
- 1031 – Employee Speech, Expression, & Social Networking

The Police Auditor will continue to examine and assess the Department's compliance with relevant new legislation and will report more on these matters in the Third Quarter and Annual Reports.

IX. Conclusion

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