



King County

Office of Law Enforcement Oversight (OLEO)

May 21, 2019

To: Councilmember Larry Gossett, Chair, Law & Justice Committee

Fr: Deborah Jacobs, OLEO Director

Re: Review of the King County Sheriff's Office Response to 2019-2020 King County Budget, Section 21, Proviso P7

Thank you for inviting OLEO's comments on the Sheriff's Office's response to the 2019-2020 King County Budget, Section 21, Proviso P7.

We were very pleased to receive a substantive response to the recommendations in OLEO's 2018 reports and to see that the Sheriff's Office intends to adopt a good number of the expert recommendations offered within these reports.

We're appreciative that the King County Council recognized the importance of having these recommendations reviewed and considered. Below are OLEO's comments on the Sheriff's Office's response to the recommendations in these reports.

Report: Transparency and Media Relations in High Profile Cases

The Sheriff's Office response indicates that it has operated with the spirit of the recommendations within OLEO's report since the current administration took office, and that it intends to adopt some of the report recommendations. Specifically, it indicated that it would adopt the report recommendations on correcting inaccurate information, affirmatively providing information to the public, specifying that officer-involved shootings are "high profile," and having systems and practices for communicating with ethnic media. OLEO shared its own ethnic media list with the Sheriff's Office to help it achieve these communications.

The Sheriff's Office declined to adopt the report recommendations related to contacting the families of people harmed in incidents with police. It indicated that protocols for notification include via the Medical Examiner as well as through the natural course of Sheriff's Office personnel investigating the incident. The Sheriff's Office maintained that this protocol does not belong in a media relations policy.

To start building bridges and trust with communities, respectful and timely communication from the leaders of the Sheriff's Office directly with families during the most serious incidents is essential. Regardless of where the policy belongs, it belongs somewhere in the Sheriff's Office General Orders Manual (GOM). Additionally, notifications by the Medical Examiner or through the course of investigation may not be timely enough to inform families before details are released through the media.

The Sheriff's Office said it would not adopt a specific recommendation relating to release of information about arrestees. It also did not respond to other specific recommendations within that section, such as the proposed policy relating to release of criminal record information about those harmed in police-involved shootings or incidents. We understand the Sheriff's Office's position related to releasing information about arrestees. However, the other policy recommendations under the section on release of information are important and still need to be addressed.

The Sheriff's Office states that it will adopt a new policy by October 1, 2019. OLEO will continue its dialogue with the Sheriff's Office about these unresolved issues and look forward to reviewing its policies when drafted.

Report: Use of Force Complaint Processing in the King County Sheriff's Office

Overall, it appears that the Sheriff's Office agrees with and is in the stages of implementing most of OLEO's recommendations contained in its 2018 Use of Force Complaint Processing Report. We'd also note that many of the changes underway relate to a separate 2018 project that OLEO worked on with the Sheriff's Office in which we provided extensive policy recommendations regarding Use of Force Reporting, Investigation, and Review.

Implementation of all report recommendations will help ensure that the Sheriff's Office's processing of Use of Force (UOF) complaints is clear, more transparent, and contains internal quality controls. This will help lead to greater public credibility in Sheriff's Office administrative investigations of its employees.

There are some recommendations that the Sheriff's Office does not intend to implement due to current staffing levels. OLEO is sensitive to the Sheriff's Office's resource limitations and need to make choices in prioritizing which recommendations to implement, and OLEO agrees that some are more important than others. The Sheriff's Office specifically indicated that it would not be implementing the following recommendations, which OLEO considers high priority:

- **Recommendation 16: Track whether changes in training or policy result from complaints.** This recommendation is important from a risk management standpoint, and should be implemented for all types of force, not just serious force incidents. This report was commissioned in 2016, and since that time, there have been instances of less serious force incidents that were either clearly not consistent with policy or training or

have led to litigation. One mechanism to mitigate this risk is for the Sheriff's Office to centrally track whether any complaints have led to changes in training or policy. This tracking then allows it to monitor trends and whether those policy or training changes have led to desired outcomes. Additionally, including this information in the complaint investigative file will document that the Sheriff's Office followed up on training or policy issues identified.

- **Recommendation 17: Make explicit the qualifications necessary to become an internal expert¹ in specific aspects of use of force policy, training, and tactics.** This recommendation is also important from a risk management standpoint and helps protect the integrity and credibility of the Sheriff's Office's administrative investigation and internal reviews. This applies to both serious and less serious force incidents.² Having a policy or written criteria of qualifications to designate an internal expert demonstrates to the public that those opining on whether an action was appropriate (e.g. within policy or that training is consistent with policy and the law) is objectively qualified to make those determinations, and helps ensure that the Sheriff's Office always selects internal experts according to its written criteria.
- **Recommendation 18: Review the purpose behind the Administrative Review Team and the Use of Force Review Board to identify any unintended overlap of duties and provide clarification where needed.** After OLEO recently discussed this recommendation with the Sheriff's Office and clarified its purpose, the Sheriff's Office has agreed to consider it further.
- **Recommendations 21, 22, 25 and 26: All relate to training internal investigators on standards of proof and credibility determinations.** After further discussion with the Sheriff's Office regarding these recommendations, we agreed on the value of general investigative training, which includes obtaining more factual details from witnesses or parties that go toward how much weight commanders should give their testimony when making findings. It would be especially useful for precinct sergeants who conduct the less serious use of force investigations but do so while balancing a variety of other responsibilities. Our offices continue to discuss how to provide this training, with potential for it to occur jointly with the Sheriff's Office and OLEO. This also relates to a Complaint Classifications report recommendation, discussed below.

¹ This term "expert" as used in the report does not refer to a qualified expert for litigation purposes, but rather those internal employees that the Sheriff's Office goes to for information on its training, policy, etc. because of their specialized knowledge, training, and experience.

² Although state law now requires an outside investigator conduct serious force incidents, OLEO's understanding is that the Sheriff's Office is outsourcing the criminal investigation to Seattle Police Department's Force Investigation Team, but is still conducting its own administrative investigation. This means the Sheriff's Office is still utilizing internal experts to assist with analyzing serious force incidents.

Report: Internal Investigations Complaint Classifications Review of the King County Sheriff's Office

As mentioned in the Sheriff's Office's response, it convened a workgroup to review OLEO's 2018 Complaint Classifications report and recommend implementation possibilities to the Sheriff. The leader of that workgroup engaged OLEO for feedback. The workgroup proposed some significant changes such as that "minor" investigations (one that cannot result in property loss³ to the subject employee) be processed at the worksite without being routed first to IIU, and that less serious use of force investigations (non-complaint generated) be reviewed by the Advance Training Unit rather than the Internal Investigations Unit.

OLEO provided the following input to the workgroup's leader during a meeting and in a follow-up email (recommendation number reference in parentheses) on the following recommendations:

- **Handling of Supervisor Intervention (SI) classified cases (22).**
 - The workgroup proposed to change the timing for processing of these cases (currently called "Supervisor Action Logs"). OLEO would like to support this change to make case processing more efficient, reduce IIU workload, and allow for more timely addressing of issues with deputies. However, there has been vast inconsistency in the past with how the Sheriff's Office handles these cases, and the new change would make it harder for OLEO to monitor. As middle ground, before formal implementation, OLEO proposes a pilot project on how such cases are processed, with a component that includes OLEO auditing.
 - For SI cases stemming from a civilian complaint, OLEO would recommend that supervisors either consider mediation (as an additional option to corrective counseling or training) as follow up, or if not referring for mediation, contact the civilian to explain the situation, etc. of what occurred and why, etc.
 - One aspect OLEO needs to clarify with the workgroup is in which system (BlueTeam or IAPro) it would maintain the SI cases. This question is important for OLEO because it only has access to IAPro and this decision impacts OLEO's ability to audit.
- **Handling of Non-Investigatory Matter (NIM) classified cases (21).** OLEO supports maintaining the NIM classification, which means cases on which the Sheriff's Office will take no action. The workgroup considered processing these cases with an expedited finding; however, because by definition NIM cases are ones that, even if true would not be a policy violation, OLEO does not think a finding can be entered at all on these cases. For a NIM classification, OLEO recommends the Sheriff's Office include a community member outreach or mediation component. This would help the complainant

³ For example, suspension, demotion, or termination.

understand the situation or help foster mutual understanding with the complainant and deputy. In that light, we'd recommend IAPro include documentation of the type of follow up conducted on the complaint.

- **Non-serious force incident reviewed by Advanced Training Unit (ATU) instead of Internal Investigations Unit (IIU) (18).** OLEO supports the Sheriff's Office decision to move review of less serious force investigations, which are not related to a complaint, to ATU. Consistent with our UOF Investigation and Reporting procedures (June 2018) and UOF Complaint Report (August 2018), OLEO recommends that the Administrative Review Team (ART), which conducts "lessons learned" reviews of serious uses of force, periodically audit ATU's processing of the less serious incidents to help monitor the Sheriff's Office's consistency as an internal quality control. The auditing should be of randomly selected cases, ideally monthly, but no less than quarterly.
- **Training for commanders/sergeants (17).** The Sheriff's Office's workgroup recommended more precinct/section level investigations, something that has been attempted periodically over time by the department. OLEO supports this, but requests that OLEO staff have opportunities to communicate with commanders and sergeants assigned to review and investigate these cases. Currently, most of the follow-up OLEO requests relates to precinct/section investigations. The hope is that with an OLEO presentation/training, sergeants would understand what OLEO looks for when reviewing cases, and this would eventually decrease the amount of follow-up OLEO requests during our certification review.
- **Public Information and Access (5):** OLEO accepts the Sheriff's Office's decision not to put complaint forms in libraries/community centers due to logistic and resource challenges.
- **Concurrent Investigations (6):** OLEO supports the Sheriff's Office's commitment to establishing guidelines for the timing of criminal and administrative investigations that stem from the same incident. During our conversation with the workgroup, OLEO again stressed the importance of keeping separate administratively-compelled interviews for employees from related criminal investigations.
- **Complaint Categories (8):** OLEO would like to clarify the report's recommendation that the GOM section on intoxication complaints are requirements that are *in addition* to requirements for misconduct investigations.
- **Uncooperative Witnesses (9):** After clarifying this recommendation with the Sheriff's Office, OLEO recommended that GOM 3.03.075 *Anonymous Complaints* be removed from the GOM since anonymous complaints should be handled like any other complaint.

However, we also want to recommend that the GOM explicitly state that it accepts anonymous complaints (see recommendation 1 in Sheriff's Response).

- **Standards of Proof (10):** The report recommended "preponderance of evidence" be used as a standard of proof for all administrative investigations. Daigle's basis for this recommendation is that preponderance is the standard of proof for administrative proceedings. The Sheriff's Office declined to adopt it because arbitrators require "clear and convincing evidence" as the standard of proof to uphold a discipline decision. OLEO is neutral on this recommendation.
- **Credibility Assessments (11):** This recommendation calls for investigators to make greater efforts to establish credibility facts among involved parties and witnesses. Credibility facts relate to more than just whether a person is telling the truth, they also establish a person's physical ability to accurately or fully perceive an event. Ultimately, these detailed facts help a commander making findings know how much weight to give an individual's statement. Credibility facts go to the thoroughness of investigations; if investigations are more thorough in this regard, then when a commander makes findings that include why they believe one party over another, their decisions appear more objective because they can be traced to specific facts in the files. We consider this important. It should be adopted and OLEO would include in an OLEO presentation/training to commanders and sergeants (see above).
- **Complaint Notification (14):** The report recommended greater communication between IIU and its complainants, which can increase complainant satisfaction and transparency. Although the Sheriff's Office indicated that it will not provide more notices to complainants regarding case status due to limited resources, the workgroup recommends that template letters to complainants be revised and improved with the interest of recipients in mind. OLEO agreed with the workgroup that the letters could provide more information in a digestible way, and expressed interest in reviewing those revised templates before they are utilized.
- **Conflict of Interest (24):** The report recommended a conflict of interest screening form be used for cases before they are assigned to an investigator, which the Sheriff's Office declined. A practice for checking for conflicts of interest protects the integrity and credibility of an investigation.

Conclusion

OLEO appreciates the time and consideration the Sheriff's Office has given to the expert recommendations contained in OLEO's 2018 reports. We look forward to the next phase as the Sheriff's Office adopts recommendations into policy.