

CONFIDENTIAL MEMORANDUM

June 15, 2017

TO: Mayor Ted Wheeler

FR: Anna Kanwit, Director Bureau of Human Resources

RE: Lawrence O'Dea: Findings

Former Mayor Hales requested that I review the Independent Police Review (IPR) investigation of now retired former police chief, Lawrence O'Dea, and provide findings based on that investigation. The investigation was not completed until March 23, 2017. It is my understanding IPR could not complete their investigation until the state criminal investigation had been completed. As the Police Commissioner you confirmed that the Human Resources Director should be the person to review the investigation and provide findings to you.

My findings are based on my review of the IPR Investigation Report, transcribed interviews and the Harney County Sheriff's Office report. Although I viewed the various exhibits, they were not particularly helpful for these findings.

I. Allegations

1. [Former] Portland Police Chief Lawrence O'Dea brought reproach and discredit upon the City of Portland and the Portland Police Bureau by causing a negligent discharge of a firearm, while off-duty, which resulted in injury. (Conduct) (Directive 310.00-Conduct, Professional)
2. [Former] Portland Police Chief O'Dea failed to provide adequate notice that he was the subject of a criminal investigation. (Procedure) (Directive 333.00-Criminal Investigations of Police Bureau Employees).
3. [Former] Portland Police Chief O'Dea, after informing his Assistant Chiefs he was involved in an off-duty negligent discharge of a firearm, improperly directed or suggested the Assistant Chiefs not discuss or disclose the incident outside the Chief's office. (Conduct) (Directive 310.00-Conduct, Professional (Directive 315.30-Satisfactory Performance).
4. [Former] Portland Police Chief O'Dea failed to respond fully and truthfully during his May 24, 2016 interview with the Independent Police Review. (Conduct) (Directive 310.50-Truthfulness).

This memorandum summarizes the investigation findings from key witnesses and focuses only on the information that is germane to the specific allegations.

Ted Wheeler, Mayor

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II. Background

The allegations arose out of a hunting accident that occurred in the Pueblo Mountains area in Eastern Oregon on April 21, 2016. O'Dea was camping with a group of friends and on that date they were shooting at ground squirrels and cans. One member of the party, Robert Dempsey, was accidentally shot. At that time, it was not clear how the accidental shooting had occurred. O'Dea administered first aid to Dempsey and because they did not have cell phone service at their location, they transported Dempsey to Fields Station. They were able to pick up a cellular signal along the way and called for aid. First responders met the party at Fields Station, where Dempsey was taken by life flight to a hospital in Boise, Idaho. Harney County Sheriff Office Deputy Christopher Nesbit interviewed O'Dea and the rest of the party. According to Deputy Nesbit's report, based on the information provided to him in those interviews, he believed the gunshot wound had been self-inflicted by Dempsey. Deputy Nesbit attempted to follow-up with Dempsey on April 22, but, due to his medication, Dempsey was not able to talk with Nesbit. Deputy Nesbit was on vacation for the next two weeks and did not speak to Dempsey until May 14, 2016. It was during that telephone interview that Deputy Nesbit first learned O'Dea was responsible for the accidental shooting. According to Dempsey, he called O'Dea within a few days of the incident (Dempsey believed this conversation occurred on the Monday following the incident (April 25), and O'Dea acknowledged he was responsible for shooting Dempsey. On the following Wednesday (April 27), according to Dempsey, O'Dea called Dempsey back and apologized for the shooting.

On May 18, 2016, HCSO turned the criminal investigation over to the Oregon State Police.

Timeline:

April 21, 2016— Accidental shooting of Dempsey

April 25, 2016—O'Dea tells Dempsey in phone conversation O'Dea was responsible for the shooting
April 25, 2016—O'Dea tells the Assistant Chiefs, the Mayor and Captain Rodrigues about accidentally shooting Dempsey. Tells Assistant Chiefs that he has made notifications to the Mayor and Captain Rodrigues and to "keep the matter confidential" or to "keep it to themselves."

April 27, 2016 – O'Dea calls Dempsey to apologize for the shooting

May 14, 2016—Deputy Nesbit discovers O'Dea was responsible

May 18, 2016—Investigation turned over to OSP

May 20, 2016—Accidental shooting becomes public

May 24, 2016—Deputy Nesbit completes the Oregon Hunting Accident Report and identifies O'Dea as the shooter

III. Investigation Summary

Chief O'Dea's Meeting with the Assistant Chiefs

On April 25, 2016, the Monday after the shooting, O'Dea informed his Assistant Chiefs he had shot his friend. This occurred during their regular weekly meeting. ACs Crebs, Henderson, Day and Modica were all present. Each assistant chief had a slightly different recollection of what O'Dea told them.

According to AC Crebs, O'Dea said he shot his friend and Crebs assumed based on the conversation that the HCSO deputy knew O'Dea was the shooter. During Crebs' second interview he expressed surprise that the deputy had not known O'Dea was the shooter. O'Dea said he was going to contact Professional Standards and that he had already spoken to the mayor. Crebs did not recall O'Dea telling the ACs to do anything, including to keep the information confidential, but Crebs stated he would have done that in any event.

AC Henderson stated O'Dea advised them he shot his friend, that he had contacted the mayor and Derik Rodrigues (Professional Standards Captain). O'Dea also stated an investigation was ongoing in Harney County. Henderson's assumption was O'Dea was the subject of an investigation into a negligent discharge. O'Dea asked the ACs to keep the incident to themselves.

AC Day reported that O'Dea said he may have been responsible for the shooting after reflecting on the incident over the weekend. O'Dea said he had talked with the Mayor and was in touch with Professional Standards. Day also stated O'Dea said he did not want the conversation to be discussed outside of the room (where they were meeting). Day interpreted that as "keep this confidential". Day also noted that the assistant chiefs had a responsibility to act if they thought the chief had engaged in wrongdoing but Day believed the chief and Rodrigues were taking the appropriate steps.

AC Modica stated O'Dea said he had informed the mayor and made other notifications as necessary. O'Dea was "pretty specific" that he did not want the incident to be discussed outside of the room. Modica felt like that was an order from the chief. Modica assumed O'Dea had spoken to Harney County.

Derik Rodrigues

During their regular business meeting on April 25, O'Dea advised Rodrigues that O'Dea had shot his friend while on vacation. O'Dea did not say he was speaking with the deputy at HCSO and nor did he give Rodrigues any indication that HCSO was investigating the incident. Rodrigues stated he did not know that police were at the scene or had been involved in any way. Rodrigues did not see a nexus between O'Dea's off-duty conduct and work. In Rodrigues' mind it was an off duty accidental shooting so he did not think to notify IPR or AC Henderson (the AC over the Investigations Branch).

Larry O'Dea

O'Dea advised the ACs during their regular meeting on April 25 of the shooting incident. O'Dea said he originally thought his friend had shot himself but it turned out that O'Dea had shot him. O'Dea said he also told the ACs the investigation was ongoing so they needed to keep the information secure so the deputy could follow up and complete his investigation. O'Dea indicated the deputy was not available and there was key information he did not have. O'Dea also notified the Mayor, by telephone, and Derik Rodrigues, during their regular meeting, of the shooting incident. Mayor Hales stated that O'Dea told him an investigation was underway in Harney County and Hales assumed, because O'Dea had spoken to Rodrigues, that an internal investigation would begin as well. Diane Haman, who was O'Dea's Executive Assistant, said that O'Dea told her and Lt Kruger the morning of April 25 of the incident. In that meeting O'Dea said he had notified the mayor and Captain Rodrigues. Ms. Haman stated that O'Dea asked that the information "stay between us" as there would be an investigation. She assumed because O'Dea had advised Rodrigues and the mayor that some type of investigation would occur. IPR contacted Lt. Kruger for an interview but he declined since Lt. Kruger had retired from the Bureau at the time of the request.

O'Dea did not contact IPR because he assumed that Captain Rodrigues, as the captain of Professional Standards, would do that since he is the bureau liaison to IPR. After O'Dea realized he was the one who shot his friend, he did not contact Deputy Nesbit since the deputy was going to be on vacation for a couple of weeks and O'Dea assumed he would be contacted. O'Dea also did not contact HCSO directly to report that he was the shooter.

May 20, 2016

The incident in Harney County became public on May 20. Pete Simpson, who is the Public Information Officer for the Portland Police Bureau, received a phone call from Nigel Jaquiss, Willamette Week, who advised Simpson O'Dea or one of the ACs had been hunting and shot someone and could he comment. This was the first time that Simpson was aware of the incident. Simpson asked O'Dea if he knew anything about a hunting accident. O'Dea described the incident to Simpson and also told him that Harney County was doing the investigation and Professional Standards was doing the "internal". Simpson send out a press release to that effect and in response to the media's question of why there had been no prior public statement, stated "The chief notified the mayor, Professional Standards and some senior staff but otherwise chose to keep matter private as it was an off-duty incident while on vacation." Simpson also notified Harney County of the media

contact, which Simpson believed was the first contact Harney County had received from PPB.

IV. Findings

Allegation #1

It is difficult to determine whether O'Dea brought discredit upon the City and the Police Bureau solely by causing a negligent discharge of a firearm while off-duty that resulted in injury. The incident was largely kept secret until May 20. However, the fact there was no public statement about the off-duty incident until Willamette Week published the story did bring discredit to the City and to PPB. Public concern there was a cover-up is evident from Mayor Hales' interviews with Straight Talk and Think Out Loud. Exacerbating this is the fact that, according to Simpson, O'Dea had insisted that information about the arrest of an officer for driving under the influence (that occurred on April 25, 2016) be made public. Simpson acknowledged the officer's conduct was more serious but expressed concern about a double standard.

Because O'Dea's actions, by causing the accidental shooting, set in motion the entire series of events and because he was at least partially part responsible for the fact the incident was not made public, he did bring discredit to the City and to PPB. This allegation is sustained.

Allegation #2

O'Dea did not provide adequate notice he was the subject of a criminal investigation. Based on the information O'Dea provided to his ACs, to Diane Haman and to the Mayor about the shooting they all assumed Harney County was investigating the incident. The ACs generally were under the impression there was an investigation and Mayor Hales stated that O'Dea advised him Harney County was conducting an investigation. Diane Haman assumed "some type of investigation" would occur. Captain Rodrigues, however, stated that O'Dea did not indicate Harney County was investigating the shooting. It does not appear that O'Dea was explicit about the investigation. Indeed, at the time of O'Dea's meetings on April 25, he had to know he was not the subject of a criminal investigation because HCSO did not know O'Dea was the shooter. O'Dea had only come to that conclusion over the weekend. O'Dea never took affirmative steps to notify Harney County or the investigating deputy that O'Dea was the shooter. O'Dea stated he had expected to be contacted by the HCSO deputy upon his return from vacation.

On April 25, while O'Dea knew there was an investigation into the incident, it is also true that he knew he was not yet the subject of a criminal investigation because O'Dea had not contacted HCSO to tell them Dempsey had not shot himself. It is concerning that O'Dea did not notify HCSO he was the shooter and that he allowed assumptions to be made by those in PPB and the City about what Harney County may have been doing. Allegation #2 is sustained.

Allegation #3

O'Dea did not improperly direct or suggest that the Assistant Chiefs not discuss the off duty negligent shooting outside the chief's office. O'Dea did ask that the ACs not discuss the incident; some felt it was a directive, some felt it was a request to keep the information confidential. AC Day noted that since O'Dea told them he had notified the mayor and Professional Standards, the ACs did not have a duty to report as that had been done by O'Dea. Given that the ACs also assumed there was an investigation by Harney County, asking them to keep the information confidential was not improper. Again, however, O'Dea allowed certain assumptions to be made, specifically that there would be an internal as well as an external investigation into the shooting without being explicit about what was actually going to happen. This allegation is not sustained but only because of what appears to be a general lack of forthrightness on the part of O'Dea, it is difficult to determine if O'Dea's actions were a deliberate attempt to keep the incident as quiet as possible.

Allegation #4

O'Dea failed to respond fully and truthfully during his May 24 2016 interview with IPR. O'Dea stated he told the ACs to "keep the information [about the fact that O'Dea shot his friend] secure" so the deputy could follow up and finish his investigation. O'Dea stated the discussion with the ACs was around not needing a wholesale notification right now because the investigation was still ongoing. None of the ACs corroborate this version of what O'Dea advised them; they all recalled a more general discussion. O'Dea also stated that he notified his boss (the mayor) and the four ACs O'Dea was the subject of a criminal investigation the moment he knew he was the one who shot his friend. This was not truthful because, as noted above, at the time O'Dea had his conversations with the mayor and the ACs, O'Dea knew he was not the subject of a criminal investigation since HCSO did not know at the time that O'Dea was the shooter. Allegation #4 is sustained.

Conclusion

The overall impression from the investigation is that O'Dea allowed certain assumptions to be made but that he took no action to ensure that important and critical information was shared. For example, O'Dea assumed IPR had been notified that O'Dea was the subject of an external investigation because he told Rodrigues about the off-duty shooting—but O'Dea did not contact IPR himself to ensure this had occurred. O'Dea allowed the mayor to also assume both an internal and external investigations were ongoing but again O'Dea took no responsibility to ensure this was the case. Similarly, rather than contact HCSO and tell them O'Dea was the shooter, he waited for the deputy to contact him, assuming that since the deputy was on vacation, there was no independent need for O'Dea to contact the sheriff's office. Last, as expressed by Pete Simpson, O'Dea's insistence the public be informed of an officer's off-duty alleged criminal conduct, while ensuring O'Dea's own off-duty alleged criminal conduct be kept confidential is also problematic and created the impression the chief believed his behavior was governed by a different set of standards.

Cc: Maurice Henderson
Mark Amberg