



MEMORADUM

To: Michael Marshman, Chief of Police

From: Constantin Severe, IPR Director

Subject: 2016-B-0030 IPR Recommendations

Date: January 30, 2017

IPR has completed its investigation into whether Assistant Chiefs Michael Crebs, Robert Day, Donna Henderson, Kevin Modica, and Captain Derek Rodrigues took appropriate action after being notified that former Portland Police Bureau Chief of Police Larry O’Dea was involved in an off-duty negligent discharge of a firearm. IPR opened an independent investigation into this matter on May 23, 2016, about a month after the incident date of April 21, 2016. No one from the Police Bureau or Mayor’s Office notified IPR of the incident and there was no administrative investigation by the City until one was initiated by IPR. IPR learned of the shooting incident through media reports. This case focuses solely on the actions of the Assistant Chiefs and Captain Rodrigues. Allegations related to Chief O’Dea are being investigated under 2016-B-0014.

The City’s failure to initiate an immediate administrative investigation after the Mayor and the highest levels of the Police Bureau were made aware of the Chief’s negligent discharge represents an organizational failure of the highest order. It has led to decreased faith among members of the Police Bureau and the community at large that alleged misconduct by senior members of the Bureau will be subject to a rigorous administrative investigation.

The failure to launch an administrative investigation indicates the highest ranks of the Police Bureau lack a strong culture of accountability. While there was an absence of leadership from the Police Commissioner and the Chief, there were also significant structural deficiencies in the Police Bureau’s policy and procedural manual. One difficulty in framing allegations for this investigation was the set of circumstances at the heart of this investigation were not envisioned by the writers of the applicable directives.

Using its authority under City Code 3.21. 070, IPR is making several policy recommendations based on information gathered in this case. These recommendations are intended to be separate from eventual findings completed by the Police Bureau and look at broader systemic issues raised by this investigation. IPR requests that the Police Bureau respond in writing to these recommendations prior to this case being closed.



1. **Directive 330.00 should be modified so that a complaint is opened and a case number assigned whenever the Captain of Professional Standards Division becomes aware that an officer has engaged in behavior that indicates misconduct that should be subject to an administrative investigation.**

The current version of Directive 330.00 is based on the premise that Internal Affairs and IPR will receive notice of possible officer misconduct through the formal complaint process. This does not account for circumstances where IPR or IA receives information from either the involved member or another source that provides enough information, however incomplete, that objectively should lead to the initiation of an administrative investigation.

2. **Section 2.2 of Directive 330.00 should become its own directive and modified so that it clearly states that any Police Bureau employee who witnesses or becomes aware of an act of misconduct by another Bureau employee must report it. Additionally, the new directive should state that failure to report member misconduct will lead to possible discipline up to and including termination.**

The current language is well intentioned but buried within a directive that deals mostly with the administrative procedures for complaint handling. Additionally, there is ambiguity in the current language of whether the directive serves as notice of an affirmative duty to report misconduct or as an outline of where to report misconduct. The requirements of Section 2.2 do not seem to be widely understood within the Police Bureau and it has only been used once since 2010 as the basis for an allegation of misconduct.

3. **Directive 330.00 should be modified so that the Captain of the Professional Standards Division is required to notify the Director of IPR whenever he or she becomes aware that a member of the Police Bureau has engaged in conduct that one could objectively believe would be subject to an administrative investigation.**

As police accountability has evolved in Portland, the relationship between the IPR Director and Captain of Professional Standards Division has become one of cooperation and information sharing. Currently City Code and PPB directives require that IPR be informed if PPB opens an administrative investigation or closes one prior to findings stage. A practice has developed that if Professional Standards becomes aware of officer misconduct, IPR is notified and vice versa.

As currently written, Directive 330.00 has no requirement that IPR be notified in situations where no action has been taken on an allegation of possible misconduct. The failure to notify IPR in this case deprived the Police Bureau of an outside perspective at a critical juncture. IPR prioritizes conducting independent investigations of Police Bureau members of the rank of Captain or higher. The lack of notice to IPR deprived the City over a month's worth of time

that could have been dedicated to an investigation of the Police Bureau's highest ranking member.

- 4. Directive 333.00 should be modified so that the Captain of the Professional Standards Division and the Assistant Chief of Investigations have joint responsibility in monitoring the progress of criminal investigations conducted by outside law enforcement agencies.**

One of the lessons of this investigation is the danger of critical information being compartmentalized and not shared among the Police Bureau's criminal and administrative investigative branches. The Professional Standards Division could be tasked with being the lead in coordinating with outside jurisdictions, given the Police Bureau's need to conduct concurrent administrative investigations and criminal investigations. Former Assistant Chief Donna Henderson in her interviews with IPR had the strongest grasp on what should have been the Police Bureau's appropriate action, but had no prescribed role under the directives in effect at the time.

- 5. Create written procedures so that the Captain of the Professional Standards Division has a designated Assistant Chief to serve as an alternate if the Chief becomes subject of an investigation.**

The Police Bureau's shift to having the Captain of Professional Standards report directly to Chief of Police as opposed to the Assistant Chief of Services was supported by IPR. This is supported by best practices, including a recommendation by the Internal Association of Chiefs of Police (IACP). The facts of this case demonstrate there needs to be additional safeguards to protect the accountability process when the Chief is suspected of inappropriate behavior.

- 6. The Police Bureau should reevaluate whether the Captain of the Professional Standards Division should report directly to the Chief of Police.**

Additionally, the Police Bureau should take a hard look at whether it wants to maintain the practice of the Professional Standards Captain reporting directly to the Chief. Having the Captain report to the Chief allows the head of the Police Bureau to be kept directly apprised of misconduct cases. Also it is a strong message, internal and external, that the Chief cares deeply about accountability. Yet the realities of managing an organization the size of the Police Bureau, with the significant time demands placed on any Chief, may not allow adequate time for him to directly supervise the Professional Standards Captain. If the Chief chose to delegate supervision of Professional Standards, we would recommend that it be to someone of the rank of Assistant Chief, given the importance of the Professional Standards Division.