



## CITY OF PORTLAND, OREGON



### Bureau of Police

Ted Wheeler, Mayor  
Michael W. Marshman, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000

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### MEMORANDUM

July 22, 2017

TO: Constantin Severe, Director  
Independent Police Review

FROM: Michael W. Marshman  
Chief of Police

SUBJECT: IPR Case 2016-B-0030 Recommendations

I appreciate the time and effort IPR has spent investigating the events related to former Chief O'Dea's shooting in Harney County and the subsequent actions taken by members of the Police Bureau. I also appreciate the decision to separate this investigation into two cases for the purposes of findings, as it allowed the Bureau to review the acts of the other involved members in a more expedient manner. I read the memo you authored which accompanied the investigation, and I have reviewed your statements and recommendations. In your position as director of IPR, you have a unique perspective on the inner workings of the Police Bureau, and I value your opinions.

A number of the proposed recommendations in your memorandum involve changes to policy—specifically the accountability directives in the 330 series. As you know, we are currently working on these directives and hope to address all of these concerns. I will respond to each individual recommendation below.

1. Agree. My direction and the current practice in Internal Affairs is that the captain of PSD, upon the receipt of any complaint of misconduct, will open a case and/or refer the complaint to IPR. Our policy group will ensure this direction is memorialized in policy as we work on the accountability directives with the DOJ.
2. Agree in part. We believe it is important that members report any misconduct of which they are aware. As this is also a tenet of the DOJ settlement agreement, we commit to strengthening this policy. However, the DOJ has indicated a preference as to where this particular policy belongs.
3. Agree. Again, it is my direction and the current practice for the PSD captain to notify IPR of all allegations of member misconduct. This will also be memorialized in policy as we revise the requisite directive.

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4. Agree. The current practice has been to have a member of IA work as the liaison to an outside agency conducting a criminal investigation into actions by a Bureau member. The liaison has typically been the IA investigator assigned to the administrative investigation, as this person is the most familiar with the administrative case. The higher the rank of the liaison, the greater the potential for the appearance of the Bureau attempting to influence the outside agency's investigation. Having the investigator liaise with the outside agency helps to avoid this appearance of impropriety. The role of Investigations Branch leadership will be examined as we review Directive 333.00.
5. Agree. The PSD captain has been given the latitude to report alleged misconduct on my part outside of the chain of command. In light of recent events, this procedure seems to work appropriately. This issue will be re-evaluated and memorialized in policy.
6. Agree to review. This issue will be a part of the discussion as we revise the accountability directives. This recommendation will be assessed at the same time as recommendation #5.

All of these recommendations have been placed into our Action Item database and will be monitored.

In your memorandum, you contend the highest ranks of the Police Bureau "lack a strong culture of accountability." Whether this statement refers to current Bureau leadership or the leadership in place at the time of the incident, I disagree with your conclusion. As I have reviewed the investigation, I am left with the belief that the lack of accountability seems to be centered only on the actions of specific members and not the command staff as a whole. As you point out in your memo, the issues which led to this investigation are structural in nature, and I believe the policies in place did not anticipate serious misconduct on the part of the Chief of Police. In the investigation, all of the former assistant chiefs consistently stated their desire to avoid even the appearance of influencing or manipulating an investigation they all believed was occurring. As the findings have shown, none of the former assistant chiefs violated any policies; their intentions were good, even if their faith was misplaced.

This investigation did highlight some concerns I have with IPR investigations of Police Bureau command staff. IPR has taken as their charge the investigation of allegations of misconduct by Bureau members of the rank of captain and above. Although there have been documented instances in the past of the inability of the Police Bureau to effectively manage discipline for its highest ranking members, the ability of Internal Affairs to conduct these investigations has never been in question. Unfortunately, IPR's very brief track record of conducting these investigations has uncovered issues which cause significant concern.

In this case in particular, IPR began by investigating only the actions of former Chief O'Dea. As the investigation progressed, personnel in Internal Affairs brought to IPR's attention potential allegations of misconduct on the part of another Bureau member. IPR refused to investigate these allegations for over a month. It appears that only when the Bureau threatened to open their own investigation did IPR finally agree to look into these allegations, while also adding

allegations against the four former assistant chiefs. When the findings were finally completed, and the allegations of misconduct on that member were sustained, a member of your staff reviewed the findings. Although she concurred with the findings, she took the unusual step of authoring a memorandum, the contents of which could be seen as an attempt to limit or weaken the Bureau's attempt to hold that member accountable. This memorandum was not only unusual, but also superfluous, as IPR already has the ability to make these arguments at the PRB as a voting member. You have already made it known the contents of this investigation will be made public when the case is closed, and the memorandum will be a part of that record, while every other voting member's comments will be unavailable as they were part of the confidential PRB.

While this case was being investigated, IA was investigating a case involving alleged violations of City of Portland Human Resource Administrative Rule 2.02. When IA realized they uncovered allegations of misconduct against two captains, they immediately notified IPR. IPR showed no interest in conducting this investigation, despite the seriousness of the allegation and the rank of the individuals involved. When the case was completed, however, a member of your staff again took the unusual step to author one memorandum when she reviewed the investigation and a second memorandum when she reviewed, and concurred with, the findings. Both of these memorandums contain statements which could be again be seen as an attempt to limit the Police Bureau's ability to discipline its members and were more appropriately discussed at a PRB.

I believe recent discussions regarding the DOJ settlement agreement have finally given us a clear path forward for officer accountability. I believe we can continue to work together in the future to ensure that all investigations of officer misconduct, whether done by IPR or IA, are consistent and fair. I think this is what is best for the Police Bureau and for the community, and I look forward to our continued cooperation.