



**MEMORANDUM**

To: Chris Uehara  
Interim Chief of Police

From: Constantin Severe  
Director, Independent Police Review

Date: August 30, 2017

Subject: IPR Recommendations 2016-B-0030

I have reviewed Chief Marshman's July 23, 2017, memo responding to IPR's recommendations in 2016-B-0030. I appreciate the written response and the inclusion of IPR's recommendations in the Police Bureau's action items. I would like to provide additional context as to the items included within my January 2017 memo and respond to Chief Marshman's memo.

The lack of a culture of accountability mentioned in the January memo refers to factors unique to the record in this case and 2016-B-0014, which point to broader policy concerns.

IPR's investigation of the actions of Chief O'Dea and members of command staff aware of the Chief's off-duty accidental shooting of a friend was based on the need for the City to conduct a thorough investigation that had the confidence of the public and members of the Police Bureau. IPR was not informed of the negligent discharge until nearly a month after the incident. As a result, IPR was not able to initiate its investigation of Chief O'Dea until May 23, 2016. IPR was made aware of the shooting through a tweet by the Willamette Week.

Chief O'Dea was the first person interviewed during IPR's investigation and during his interview he stated that he informed the Mayor and several Bureau members of his negligent discharge, including all the Assistant Chiefs and the Captain of the Professional Standards Division. Once IPR became aware that five members of the Police Bureau's command staff were aware of Chief O'Dea's shooting it attempted to interview them as soon as possible. IPR interviewed several of the Assistant Chiefs within the first week of its investigation. Once IPR's investigative team was able to review interview transcripts and other available evidence, the decision was made that allegations should be crafted to inquire as to whether the Assistant Chiefs and the Captain of the Professional Standards Division acted appropriately once they became aware that Chief O'Dea was involved in an off-duty shooting.

IPR takes significant care in how it crafts allegations of misconduct, because allegations play a large role in the progression of an investigation. IPR notified the Assistant Chiefs and the Captain of Professional Standards Division that they were involved members by June 16, 2016. Given the unique nature of this case, particularly that the Captain of the Professional Standards Division was an involved member, IPR did not collaborate closely with Internal Affairs on this case aside from scheduling officer interviews. IPR is unaware of any conversations regarding the Police Bureau conducting its own investigation into the

actions of Chief O’Dea or any other members of the Police Bureau regarding this incident prior to IPR initiating its investigation.

The investigation conducted by the assigned IPR investigators was robust and exhaustive in its breadth. Nineteen witnesses were interviewed, including civilian witnesses, employees of the Police Bureau, Mayor’s Office, and Harney County first responders. Given the City’s early failure to initiate an administrative investigation, IPR felt a heightened responsibility to conduct a thorough investigation that answered all questions presented by the facts of this case.

IPR’s ability to conduct its own investigations into allegations of officer misconduct was enshrined in City Code with the creation of IPR in 2001 and was reaffirmed in 2012 with the City’s settlement agreement with the U.S. Department of Justice. IPR was able to conduct its first independent investigation only in 2013, after an infusion of additional resources and staff. The settlement agreement has allowed IPR to nearly triple its staff investigators and transition from being a complaint intake office to a full-fledged police accountability agency.

IPR has made its decision as to what cases it will conduct its own investigations based on feedback from the community and the U.S. Department of Justice. Among the case categories that IPR has chosen to conduct administrative investigations are cases involving Bureau members of the rank of Captain or higher due to the possible conflict of interests.

The facts of this case dictated that IPR conduct the administrative investigation related to Chief O’Dea’s negligent discharge for several reasons. IPR as a division of the Auditor’s Office is independent of both the Police Bureau and the Mayor. As no IPR staff members were aware of the Chief’s incident until it became public, an IPR investigation would have greater credibility than one conducted by an entity that reported to either the Mayor or the Chief. Additionally, IPR has subpoena power which allowed it to gather phone and medical records that were necessary to a full and complete investigation

There are certain aspects of this case that point to a larger issue regarding the culture of accountability within the Police Bureau and the Mayor’s Office. After Mayor Hales became aware of Chief O’Dea’s off-duty shooting he notified some members of his staff but did not notify his Public Safety Policy Director. Interviews with the Mayor’s Office indicated a lack of understanding of Police Bureau policy and procedures.

Additionally, Mayor Hales made several contradictory statements about the City’s initial failure to initiate an administrative investigation of this incident that undermined the public’s confidence in the ability of the City to conduct an impartial investigation. Additionally, Mayor Hales criticized the Oregon Attorney General for the timeliness of the DOJ investigation, where it was the City’s failure to ensure that there were concurrent criminal and administrative investigations that led to both investigations being delayed.

As is the practice at IPR, because of the level of my involvement during the investigations of 2016-B-0014 and 2016-B-0030, I recused myself from a review of the Bureau findings and attendance at the Police Review Board. IPR Assistant Director Rachel Mortimer, an experienced attorney with significant expertise in police accountability, served as my designee. It is my expectation that when IPR staff review a file that they will document any concerns that they find. I would disagree with the contention that Ms. Mortimer’s memo was “superfluous” given IPR’s ability to serve as a monitor under Portland City Code

3.21.120 of all Police Bureau investigations, which is distinct and separate from IPR's role as a voting member on the Police Review Board.

It is important to note in IPR's role as an investigative agency and as a monitor of Police Bureau investigations, IPR's allegiance is to greater officer accountability and an investigative process that has the confidence of the public and officers. While at certain points during a case IPR is authorized to provide discipline recommendations the ultimate decision rests with the Chief and the Police Commissioner. Unlike in some accountability systems, IPR does not serve as an administrative prosecutor of involved officers. It has always been IPR's mission to note issues regarding individual investigations or broader policy concerns. Memos such as Ms. Mortimer's strengthen rather than limit the Police Bureau's ability to appropriately discipline its members by allowing the Police Bureau to address issues related to investigations in a timely fashion.

### **2016-B-0011**

IPR was provided timely notification of IA's investigation in 2016-B-0011 which initially had a non-sworn PPB manager as the involved employee. As Internal Affairs' investigation progressed two sworn members, a Captain and Assistant Chief (at the time of the incident) were added. Eventually, a former Chief was also added as an involved member. By this point, Internal Affairs had already committed significant resources and time in its investigation, both Internal Affairs and IPR agreed that IA would continue its investigation. Given IPR's investigation in 2016-B-0014 and 2016-B-0030 as well as several protest related cases, I did not believe that IPR had sufficient capacity to takeover this investigation without causing significant delays. Ms. Mortimer was assigned as the IPR reviewer.

A review of the case file indicates the significant effort exerted by Internal Affairs to conduct a thorough investigation. Even in cases where IPR does not conduct its own investigation, our agency takes its monitor role seriously. Ms. Mortimer spent several weeks reviewing the case file in its totality, including all witness transcripts. As is IPR's practice, Ms. Mortimer noted her concerns both after reviewing the Internal Affairs investigation and the Bureau findings. Ms. Mortimer noted the tension presented in this investigation between the City's stated policy of combatting institutional racism through application of an equity lens and HRAR 2.02, leading to "possible adverse impact on employees who belong to communities of color."

One of IPR's roles as an independent civilian agency engaging in an oversight function of the Police Bureau is providing frank and honest assessment of the cases it reviews. It is a role that IPR takes seriously and exercises with significant care to not overstep its bounds. Both the Police Bureau and IPR have learned deep lessons from the events that have transpired over the last year which have led to fundamental changes within both agencies.