

## City of Spokane Office of Police Ombudsman Commission (OPOC)

OPOC Special Meeting Minutes 02-28-17

### Welcome

Commissioner Deb Conklin called the meeting to order at 5:33 pm at West Central Community Center and thanked everyone for coming. Commissioners Scott Richter and Ladd Smith were present. Commissioner Jenny Rose had an excused absence. Conklin reminded everyone that because this is a special meeting, we don't make decisions about anything that isn't on the agenda.

### Agenda

Smith made a motion to approve the special meeting agenda as published. Richter seconded. The motion passed unanimously.

### OPO Report

Ombudsman Bart Logue reported that for January and February of 2017, OPO had 98 contacts, conducted 6 citizen interviews, and took in 7 formal complaints. OPO referred 11 other complaints to separate agencies. He said Luvimae Omana created a variety of tracking systems for the data, and is also working on a case management system that will track what's open and what still needs work. Omana said she reached out to the Deputy Ombudsman for state of AZ who offered to share their tracking system for contacts. Logue said Omana is working with IT to clear administrative hurdles in the hopes of getting it working in the next month.

Logue said for the year that OPO has sent back investigations 3 times for more information, and declined to certify 14 cases. The majority were in February as a result of what was found when we realized that cases were not sent to OPO. Had he had a chance to look at these cases, most of them would have been certified. Conklin congratulated him on his work with Lt. Tracie Meidl to make the process easier in the future. The 2 other cases in early January were part of the 2015 case log. For the year, OPO has certified 15 cases. There's been a lot of interest in the 12 cases that were not sent. There were no mediations. Logue went to 1 critical incident on January 15, which was an officer involved shooting with a fatality. He responded to the scene initially, and returned later for a briefing. OPO has also spent a lot of time working on the Ordinance.

OPO was out in the community at 11 official functions in January and 9 times in February. Logue accepted the Spokane Community College project based on Commissioner feedback, and asked the college to spread it out over 2 weeks. He just had a phone call before the meeting with Kathryn Olsson, former head of Office of Professional Accountability in Seattle. She's working with a retired police chief to come up with a good use-of-force tool. Because she knew Logue was interested in this program, she is applying for a new grant to study the effect of CIT training on Use of Force cases. Logue will discuss this potentially free proposal with Director Jacqui MacConnell. Conklin asked if this would be a study involving SPD. Logue said yes, if we gain concurrence with SPD. Richter said there are a lot of reasons to

have SPD involved, especially because it was one of the first departments in the country to have all its officers go through CIT.

Logue said he's received some pushback for the OPOC Coordinator position. Initially Tim Dunivant sent out an email when Civil Service (CS) was ready to start the position. The basic premise is that the OPO is bigger than it's ever been before, and the city doesn't want to see any net growth, but he would argue this is a special case. Tim Burns did not work with an OPOC or if he did it was for a very short period of time. He never had to deal with body camera footage. By April or May, Council Member Breean Beggs' ordinance will have probably gone through, and work requirements for OPO could have changed dramatically. He said Marty Huseman puts in 48 hours of work every 2 weeks. If we lose her, that's 48 hours of work that will have to be spread between Omana and himself. He thinks we need to put a united front together and figure out how we move the administration from a "no" to a "yes".

In order for us to kick off the CS process, budget requirements have to be done and it won't start until the salary is set up. We got some commitment from Council President Stuckart to make sure we'll balance our books for both Omana's position reclassification and Huseman's salary through the rest of the year. He thinks we need to do a good, hard press around April and May of this year for next year.

Logue introduced the concept of having a "Duty Commissioner" who is assigned each month that can provide better oversight and assist the Ombudsman in remaining timely and effective with his responses. Smith said he likes the idea, and it would make the Commission a more active part of the process. He asked if we could add this to an agenda for further discussion. Conklin said the Ordinance says the Ombudsperson can suggest policies and procedures, but it's the Commission that officially makes those recommendations. Because it's a duty put on OPOC by the Ordinance, she believes we would have to vote to delegate that duty to the Duty Commissioner. Then her question becomes, are they allowed to delegate something that requires there to be a decision or an action by the Commission if there's no public meeting to talk about it. Counsel Ryan Poole said if it's an action or business conducted by the Commission, it has to be done in a public meeting. Conklin said we can't make a decision tonight. She encouraged Logue, Poole and Smith to see if there's a way to make the basic concept work legally before the next meeting.

#### Report on Ordinance Amendments

Conklin said Beggs hopes he has something close to the last version, and he's really hoping to get it passed in March. She asked Logue if he had anything that's still out there that is really important to be in the Ordinance that isn't at this point, or something that is, and maybe he doesn't want it to be. Logue said he's not excited about reconciliation. The idea of moving it from an officer and a complainant that has a specific concern towards healing angst in the community is daunting. It might grow beyond the size of something that we want our office to handle. But if it became law, we'd figure out a way to deal with it. What isn't in there is a clean process for classification of complaints.

Logue said he's working on tightening up the definition of "OPO investigation". This is beneficial for SPD and OPO, and we're trying to make the definition exactly the way we've been operating the last 6 to 8 months where the citizen is either the complainant or the aggrieved party. He had a chat with Sgt. John

Griffin and Sgt. Griffin's recollection of why it says a "serious matter" in the current definition is that it gives SPD an option to send a more egregious IA case to OPO. Logue said that Sgt. Griffin agreed that any complaint involving a citizen should be coming over to the OPO. Conklin asked if this process was in writing. She said if so, it would be helpful to show this to Beggs, and it would be helpful to have the ordinance reflect this. That way when personnel change and things happen, we don't have to re-negotiate that every time, as the Ordinance tells us how to do it. Logue said not really. He said numerous emails have gone back and forth, with a lot of face-to-face meetings. We've scheduled a meeting to talk about these processes inside IA so that they understand my expectations and are meeting them, and I understand their expectations and I'm meeting them. Maybe we could come up with some sort of written agreement; it may be late at this point. Conklin said it seems to her that OPO, SPD and the Guild could go to Beggs or the whole Council and say "here's this piece that is problematic and we have worked out a process that all of us agree would be a good process and we'd like it to be in the ordinance so that we all institutionally continue to follow that even if personnel change."

Logue said right now the way we do things doesn't neatly fit within the latest version. It's in there, but it's caveated with "if bargained for, we'll do it." Beggs mandates report writing, independent investigations and reconciliation services. What he does not mandate is our participation in IA investigations, asking questions in IA, or the certification process. Logue said he's nervous that we might lose some stuff.

Conklin said it sounds like maybe the way forward on this issue of processing complaints and inquiries, is maybe we see what ordinance gets passed, we live under that for a while, and figure out a process that works for everybody, and then down the road, maybe as far as a year when that's all ideally sorted out there might be tweaking to the Ordinance that we could suggest. Richter said he think if we lose the ability to sit in on IA and ask questions, we all might as well just get up and walk out of here.

Conklin said that was not the piece she was talking about, and that Logue has always adamantly said IA was important. We chose not, as a Commission, to present a Commission position, but we encouraged each one of us to let the city know. She's not suggesting we back off of that at all; this is about a totally different subject.

Logue said if you look at the Ordinance now, compared to what it was in June or July, it's light years ahead of what we had earlier. It really incorporates a lot of ideas that some of the interested community groups have, some of the ideas we have, and some of the ideas the Council Member has.

Logue said there were 37 complaints for 2016, and he could easily do a bang-up independent investigation on them. Most of the complaints were for inadequate response or demeanor. Without access to IA he would miss things. He doesn't think they would be trying to hide anything, but he wouldn't be able to say what's going on. There was an occasion last month where going through the course of a complaint he found something that gave him concern.

Conklin said she's to the point where we've been working on amending the Ordinance for over a year now. There was kind of an energy around it that said this is our chance to fix all the things that were wrong, and we need to get it right this time. She's to the point where she's thinking to just get this

iteration done and in place with the Guild contract, and know that we can come back any time, particularly if something has gone so wrong, to say “this is a problem with the Ordinance and it needs to be fixed”. She thinks we need to get what we can, obviously, but not beat our heads against the wall. She said everyone who strongly feels that OPO should be in on IA has voiced that pretty strongly to the Council. If we don’t get it in the Ordinance, she doesn’t think it’s because we didn’t express it strongly enough; it’s because the Council chose to listen to someone else. The Council is going to do what the Council is going to do. If we don’t get certain things that we feel are important in the Ordinance, we need to start documenting why that was important. She gets that it may be a new contract before we can get this. One of the frustrations is the way this Ordinance says “if it gets bargained, we’ll have it”, rather than “this needs to be the law and you will bargain for it.”

Logue said that he firmly believes until the law is signed, the conversation’s not finished. If anyone feels strongly about anything relating to the proposed Ordinance, now is the time. Once it’s signed, the time for speaking is over.

Richter said he thinks it’s the wrong move to step back and say “whatever happens, happens.” He would rather leave the sit-in on IA sessions and scrap everything else; because if we’re not sitting in on IA investigations and have the ability to ask questions, then everything else is worthless. Public Forum

Allen McDowell: He has been looking for a document about his use of force incident for 11 years. SPD couldn’t find the document in 2012, 2015 and 2016. Lt. Staben said he did an in-depth investigation, and he couldn’t find the report. In 2015, the FBI said the document existed. He said in 2017 he threatened SPD with the FBI statement that it existed and then he had the report within seconds. He thinks there needs to be a better way of finding public records, and procedures on how to ask for documents. He said you go down there and it takes them forever to get through their CAD system. It shouldn’t be that difficult. Conklin asked Omana if she comes up with a procedure or process recommendation to let OPOC know.

Colleen Gardner: She tends to agree with Richter. As a citizen, she wants this Commission to take a stand and say “this is what the citizens voted for. As a Commission, we’re going to take this position.” She was concerned to see that the 5<sup>th</sup> Commissioner position has not been filled yet, and only 3 Commissioners are at the meeting. She asked what we are doing to recruit people and do outreach.

Her concern is if we’re going to have a Commission, as an individual and a taxpayer, and someone who is extremely involved in her community, she wants OPOC to dig their feet in; go in as a Commission and say “this is the Commission’s position; this is what we want you to look at”. That’s what the citizens asked for, and that’s why we have a Commission. You can’t risk what you believe is important and what we as citizens asked you to do by saying “well we might get another chance.” We may not get another chance. So as a citizen, she’s asking OPOC to take that tough approach. If it’s because OPOC doesn’t get enough citizen support, they should tell her what they need and she will go out and get it.

She said that with all due respect, she’s never seen any Commissioners at a neighborhood council meeting. Conklin said she believed that back in January we had a Commission meeting and had a conversation about making recommendations to the Ordinance and what we realized was that

Commission members were never going to be able to come up with a recommendation that we could get a majority vote on. She thinks the entire Commission agrees that we want to keep the participation in IA, but there were so many pieces of the Ordinance that there were questions about, and we finally decided after spending a fair amount of time, that rather than trying to craft something that we would all sign on, that each of us would take responsibility for contacting the Council Members. On one hand, it's not the Commission speaking, but on the other hand, it's 4 of us saying "here's my input as someone with experience."

Gardner asked if they could do a collective piece on what they agreed on, and then do their individual piece. Smith said he wants our Ombudsman to be able to sit in on IA, and it's imperative that that happen. His thinking was to find out how this was going to shake out, and now he's finding out tonight that this is going to be voted on in March. Now, as a Commissioner, he would like to take a stand against what he sees is happening. We need to have Logue in on IA; it's imperative we have that. He said he agrees with Gardner 100%: it's now or never. He said he knows we can't do it tonight, but at some point we may decide to re-visit that idea about whether the Commission will take a stand.

Gardner said if this Commission doesn't have Logue's back, who does? As a citizen, she can say her piece, but you're the Commission; you're the people who are supposed to be helping me as a citizen understand all of this. If Logue needs his back covered, she's going to rely on them to do it because she doesn't have all the information. Smith said he would appreciate being invited to her neighborhood council, and Gardner said she'll make that happen. Conklin said she is so active in East Central that she is a member, and that she regularly goes to meetings at South Perry, West Central Coalition. She goes as an OPOC Commissioner and she talks about what's going on. Gardner said that's good to know. Conklin said Commissioners are encouraged to be involved in the community. Richter said he would like to understand why we're still a commissioner short. He said it's the Mayor's responsibility, and it's been 8 months; it tells him it's apparently not important to the Mayor.

Gardner said she heard the Human Rights Commission (HRC) got 19 applications, and indicated she has no problem with contacting the Mayor.

Logue said at the same time they're talking about making our OPOC coordinator's position go away, they're talking about hiring somebody for the HRC. Gardner asked what support is needed from the community to get the Coordinator position. Conklin said we need people at this point to contact the Mayor, City Council President and their Council representatives and say this position is really important. Gardner pledged to help.

Conklin said that the issue is the City administration is saying this position was only created because there was no Ombudsman in place, and so you don't need it because now there's an Ombudsman in place. Our response is you have no idea how much work there is because there was never a time that that there was a Commission, an Ombudsperson and a staff person [at the same time]. In the last 2 years it's become abundantly clear that to staff a 5 member citizen commission doing this kind of work, we cannot do our work without that staff person.

### OPOC Policies and Procedures

Conklin said we're still at that place where rule 8 covers the hiring process which we anticipate will be significantly different in the new Ordinance, so her recommendation is that rather than try to adopt rules tonight, we continue to tweak these, and hope that the Ordinance really does get passed before our next meeting in time for her to work with Ryan Poole and a rule 8. She encouraged everyone to look at the new clean document and see if they have any concerns. She also said she would work with Poole about the due process portion for removal of a Commissioner.

### Draft correspondence to SPD

A brief discussion took place. Conklin said it's her understanding that the issues about the cases that never got referred back to OPO have been resolved in the sense that there's an agreement for how to move forward and make sure this problem doesn't happen again. However there's some tension and concern that SPD has not been willing to say that this was an important error that needed to be fixed. So last month, Logue brought this to us and we agreed that we should write the letter. So there are 2 things for us to decide: whether we vote to approve the letter, and whether the letter goes out as signed by the Chair or by all Commissioners.

Smith made a motion to adopt and send the letter to Chief Craig Meidl on behalf of the OPOC, and it will be signed by the OPOC Chair. Richter seconded. The motion passed unanimously.

### Employee performance reviews

A brief discussion took place. Omana requested to go into executive session if there was anything beyond affirmation of the Performance Appraisal Review (PAR). Smith said he was just handed the document and he has not had a chance to read it. Conklin proposed that when OPO and Huseman send things out that are time-sensitive, that Commissioners are requested to respond back so that they know it was received. She called for a 5 minute break.

Conklin called the meeting back to order. Richter made a motion to approve the PAR for Omana. Smith seconded. The motion passed unanimously.

A brief discussion took place regarding PARs for Logue and Huseman. Conklin said we need a motion that the process will be where each employee will do a self-assessment using the guidelines by the city, and they will have that submitted to each Commissioner individually by 3/17/17. Then each commissioner will respond to the employee by 3/24, and then Richter and Conklin will be a personnel committee that will find a way to do an interactive assessment session with each employee prior to the April meeting, and prepare a written evaluation that we will look at as a full Commission at the April meeting. Smith said "so moved" and Richter seconded. The motion passed unanimously.

### Reports on community meetings attended

Between January and February, Conklin attended at least 1 and sometimes 2 meetings of the West Central Coalition, the East Central Neighborhood Council, the Homeless Coalition, and SPARC. She said she would get the dates to Huseman. Smith attended the Police Advisory Committee meeting on 2/8/17. Richter did not attend any meetings.

The Commissioners had a brief discussion about upcoming training opportunities. Gardner asked if there was an outreach plan in the OPOC policies and procedures. Conklin said she doesn't recall doing anything specific about outreach, and that we might want to add this to the list.

#### Minutes for 1/7/17

The only thing Conklin noticed was that there should be more detail on the update on contract negotiations for the Police Guild. Huseman will go back and figure out what was said, and get it into the minutes so we can deal with them at the next meeting. Conklin said it's perfectly legitimate for Huseman to send out the minutes and for Commissioners to let her know individually if they see something that needs to be changed, then she can come prepared to deal with it.

#### Additional Discussion

Logue said he's been invited to attend Leadership Spokane for 2018. There's an expense that goes along with that.

The Commissioners talked about how it's ok that they may not all agree on everything that they may want to bring forward to their Council representatives or the Mayor, but if there is something that they all agree on, like having a presence at IA, they can discuss potential action. Conklin made the commitment that if the Ordinance is not passed by the next meeting, she will make sure it is on the agenda. She suggested Commissioners could speak at the City Council meetings, and send emails to the Council Members. Huseman agreed to keep track of the Ordinance timeline and let the Commissioners know.

Conklin adjourned the meeting at the 8:01 pm.

Minutes submitted by Marty Huseman and approved by OPOC on 5/2/17.