

REPORT TO THE CITY OF SPOKANE WHISTLEBLOWER COMMITTEE

Date: June 15, 2015
To: City of Spokane, Whistleblower Committee
From: COLLETTE C. LELAND, KAMMI MENCKE SMITH
Subject: Harassment and Whistleblower Complaints Filed by [REDACTED] on April 16, 2015

Introduction

On May 4, 2015, the City of Spokane (City) hired Winston & Cashatt, Lawyers to conduct an independent investigation of complaints filed against the Office of Police Ombudsman Commission (OPOC) on April 16, 2015, by a City employee who staffed the Office of Police Ombudsman (OPO)¹. The employee alleged workplace harassment by Named Commissioners, and reported improper government action by the same Named Commissioners.

Allegations in the Complaints

[REDACTED] filed (1) a complaint for workplace harassment in violation of ADMIN 0620-05053; and (2) a whistleblower complaint under ADMIN 0620-05-037 and SMC 01.04A.180. Both complaints named OPOC Comm's Rachel Doležal, Kevin Berkompas and Adrian Dominguez (collectively, the Named Commissioners) as the persons participating in the prohibited conduct. (Exhibit A, Complaint)

[REDACTED] harassment complaint alleges the Named Commissioners "collectively and individually behaved, via email, in-person interactions and in public meetings, in a very rude, disrespectful and degrading manner directly and in-directly [sic] to me. Routinely mischaracterizing my comments/statements to city personnel and in public meetings." (Ex. A at OPO 0001)

The Whistleblower Complaint states that the Named Commissioners abused their authority. (Ex. A at OPO 0003) In short, it appears the Named Commissioners sought to take on the duties of

¹ Although somewhat unclear in the Charter and Ordinance, in this report any reference to the OPO means the office not the ombudsperson.

the Ombudsman and viewed the DOJ's Collaborative Reform Review of SPD's use of force policies and practices (DOJ Report) as a mandate to "wipe and reload" the OPO.

██████████ alleges the Named Commissioners (1) have used the absence of an ombudsperson to direct her to draft policies and procedures required for the discharge of the OPO's duties, so that the OPOC would be able to approve and adopt those procedures before a new ombudsperson is hired; (2) altered OPOC meeting minutes to misrepresent discussions that took place at OPOC meetings, disregarded those minutes prepared by staff, and refused to sign them; (3) excluded voting information from OPOC meeting minutes, even when asked by other commission members to include their votes; (4) took steps to avoid the requirements of the Open Public Meeting Act; (5) misrepresented the statements and conduct of OPO staff; (6) sought to direct the projects and priorities conducted by OPO staff; (7) sought to evaluate individual OPO personnel before an ombudsman was hired; and (8) sought to cut other commissioners out of the decision-making process. (Ex. A at OPO 0007)

Conduct of the Investigation

Between May 4 and June 5, 2015, Kammi Mencke Smith and Collette Leland of Winston & Cashatt, Lawyers reviewed documents provided by the Complainant and City employees, reviewed recordings of at least seven OPOC meetings, and interviewed 20 witnesses concerning the allegations in the complaints. The individuals interviewed were:

1. ██████████ (Complainant)
2. Spokane Police Chief Frank Straub
3. OPOC Commissioner Scott Richter
4. OPOC Commissioner Adrian Dominguez
5. OPOC Commissioner Debra Conklin
6. OPOC Commissioner Kevin Berkompas
7. OPOC Commissioner Rachel Doležal
8. Former OPO Assistant Elysia Spenser
9. Former Police Ombudsman Tim Burns
10. Chris Cavanaugh, HR Process & Programs Manager
11. Councilperson Amber Waldref
12. Assistant City Attorney Erin Jacobson
13. Councilperson Mike Fagan
14. Officer Ryan Snider
15. Lt. Kevin King
16. HR Director Heather Lowe
17. City Attorney Nancy Isserlis
18. Assistant City Attorney Mike Piccolo
19. Assistant City Attorney Tim Szambelan
20. City Administrator Theresa Sanders

The evidence and interviews confirmed [REDACTED] workplace harassment allegations, revealing a pattern of misconduct as well as specific incidents of harassment that might be viewed only as rude or unprofessional were it not for the ongoing pattern of harassment.

The investigation confirmed the allegations in the whistleblower complaint and uncovered additional abuses of authority, as well as violations of the Code of Ethics.² In addition to [REDACTED] allegations, one or more of the Named Commissioners (1) attempted to directly supervise the operation of the OPO; (2) lied to investigators; (3) failed to set aside biases toward police; (4) engaged in unprofessional disrespectful conduct in public settings; and (5) engaged in conduct that created a conflict of interest.

Ms. Smith and Ms. Leland made an oral report concerning the investigation to the Whistleblower Committee (Committee) on June 5, 2015. Following that report, the Committee requested this written report.

Applicable Law and Policies

City Charter and Ordinances Governing the OPOC and OPO

Charter Article XVI and SMC chapter 4.32 defines the separate purposes of the OPO and the OPOC. The OPO is to provide civilian oversight of police, ensure investigations are conducted fairly and timely, and provide recommendations to improve police practices. Art. XVI, §129(A); SMC 04.32.010. “The police ombudsman and any employee of the OPO must, at all times be totally independent.” Art. XVI, §129(C). The OPOC oversees the OPO, but does not perform its duties. Art. XVI, §130; compare SMC 04.32.030 with 04.32.150(B).

OPOC commissioners must be able to establish a reputation for even-handedness in their dealings with complainants and SPD. SMC 4.32.150(E)(1)(e). They must have an absence of real or perceived biases, prejudices, or conflicts of interest and must keep confidential identity of individuals involved or potentially involved in investigations. SMC 4.32.150(E)(2)(a)(3). The OPOC may not conduct business at a meeting without having a quorum of at least three members. SMC 4.32.150(J)(4)

The City’s Administrative Policies and Procedures apply to all City officers and employees under the Code of Ethics. SMC 01.04A.010(A), .160. City officers include all individuals appointed to a position within the City, regardless of whether the position is paid or voluntary. SMC 01.04.020(G). The City’s Whistleblower Protection policy also applies to the commissioners under chapter 42.41 RCW. The commissioners are subject to Washington’s Open Public Meeting Act (OPMA), which prohibits secret voting. RCW 42.30.060.

²The investigation did not include the information regarding Comm’r Doležal which began appearing in the media on June 10, 2015.

Workplace Harassment

The City's policy is to not tolerate "behavior that is likely to undermine the dignity or self-esteem of an individual, or create an intimidating, hostile or offensive environment." ADMIN 0620-05053 §5.1. The City's General Harassment policy prohibits harassment of City employees and defines harassment as "any unwelcome action by any person whether verbal or physical, on a single or repeated basis, which humiliates, insults or degrades." ADMIN 0620-05053 §4.1. An action is unwelcome if the harasser knows or reasonably should know the action is not desired by the victim. Id.

Whistleblower Protection

The City encourages its employees to report improper government action. SMC 01.04A.180(D). Improper government action includes, without limitation, action by a government officer in the performance of his or her duties that is in violation of law or local rule or is an abuse of authority. SMC 01.04A.180(C)(2). Retaliation for reporting improper government action is prohibited. SMC 01.04A.180(E)(2)(a). Retaliation includes any adverse change in the terms and conditions of employment. SMC 01.04A.180(C)(3)(a).

Code of Ethics

The commissioners are subject to the Code of Ethics. SMC 4.32.150(G)(e). The purpose of the Code is to promote the City's policy of requiring "the highest standard of ethics from all of its ... City officers, whether elected, appointed, or hired." SMC 01.04A.010(A). The Code of Ethics requires City officers and appointed officials to "maintain the utmost standards of responsibility, trustworthiness, integrity, truthfulness, honesty and fairness in carrying out their public duties" and prohibits conflicts of interest, including those engagements that "might be seen as conflicting with the City officer or employee's proper discharge of his or her proper duties." SMC 01.04A.010(A) and 01.04A.030(A). City officers are prohibited from committing any act of dishonesty relating to his or her position as a City officer. SMC 01.04A.030(N).

Open Public Meetings Act

The OPOC is bound by the Open Public Meetings Act (OPMA) and is therefore required to conduct all business not subject to RCW 42.30.110 in a public meeting at which a quorum of its members are present. RCW 42.30.030; SMC 04.32.150(J)(4), (6). A "meeting" is a meeting at which the transaction of official business takes place, including discussions, considerations, reviews, evaluations, and final actions. RCW 42.30.020(3), (4). A final action is a collective decision or an actual vote by the majority of the OPOC when sitting as a body. RCW 42.30.020(3). The OPOC is prohibited from conducting any business at a meeting with less than three of its members. SMC 04.32.150(J)(4). All actions must be agreed to by a majority of the commissioners present. SMC 04.32.150(J)(5).

Factual Background

The OPO is staffed by two City employees: the Police Ombudsman and the Assistant to the Ombudsman. The OPO had been operating under Police Ombudsman Tim Burns for approximately five years when the OPOC held its first meeting October 22, 2014. Elysia Spenser had been employed as the Assistant since approximately March 2014.

Ms. Spenser and Mr. Burns both reported being excited by the prospect of working with the OPOC. After the OPOC was seated, however, they both reported that it became apparent that some of the commissioners had come to the OPOC with their own agendas that were not always consistent with the role and duties of the OPOC.

In December 2014, Mr. Burns announced his retirement. His last day as ombudsman was January 2, 2015, but he remained employed by the City in an advisory role through February 18, 2015. Ms. Spenser turned in her notice as well. Both Mr. Burns and Ms. Spenser reported that the conduct of the Named Commissioners was a factor in their decision to leave the OPO.

Before announcing his own departure, Mr. Burns hired a [REDACTED], to be the Assistant to the Ombudsman replacing the departing Ms. Spenser. [REDACTED] has an M.A. in Criminal Justice and was then working in the Office of the Mayor. [REDACTED] first day as the Assistant was approximately two weeks before Mr. Burns' last day as ombudsman.

After Mr. Burns and Ms. Spenser left the OPO, [REDACTED] was the sole City employee assigned to the OPO.³ [REDACTED] served as the primary point of contact for the OPO, handled all administrative tasks, prepared the OPO's monthly and annual reports, and supervised interns assigned to the OPO. (See Ex. B) Without an ombudsperson in the OPO, [REDACTED] had no direct supervisor interacting with her on a regular basis. The Named Commissioners began having office hours in the OPO and attempted to direct the actions of the OPO and [REDACTED].

In January and April 2015, [REDACTED] met with Chris Cavanaugh regarding the treatment she was receiving from the Named Commissioners. In January, [REDACTED] reported she was primarily concerned that some of the commissioners were treating her disrespectfully. She also expressed concern regarding supervision and micromanagement of the office. Some of the commissioners were giving her directives that conflicted with the directives of other commissioners. The Named Commissioners wanted to have knowledge of all projects she was working on, and the Named Commissioners attempted to control which tasks had priority. In April, [REDACTED] sought information about filing a harassment complaint. She wanted the "unprofessional and attacking" comments by some of the commissioners to stop.

[REDACTED] also sought the counsel of Nancy Isserlis and Tim Szambelan from the City Attorney's office, regarding the appropriate chain of command for the OPO while it was operating without an ombudsman. The City designated Theresa Sanders, City Administrator, as

³ To date, no replacement or interim ombudsperson has been hired.

██████████ supervisor regarding administrative matters and Mr. Szambelan as her supervisor concerning the duties of the OPO. Ms. Sanders offered to relocate the OPO to the Mayor's Office, so that other City employees would be nearby to witness or prevent any further unprofessional conduct by the Named Commissioners. Ms. Isserlis and Mr. Szambelan both spoke with the OPOC Attorney Breean Beggs about the proper chain of command and the OPOC's treatment of ██████████. ██████████ stated in her harassment complaint that the behavior continued. (Ex. A at OPO 0001)

Comm'r Richter observed his fellow commissioners' conduct and brought his concerns to Council members Waldref and Fagan on several occasions. He stated his belief that the conduct of the Named Commissioners had already led Mr. Burns and Ms. Spenser to leave the OPO. Comm'r Richter stated that the Named Commissioners were mistreating staff and expressed his concern that they were also taking on the duties specifically reserved to the Police Ombudsman. Mr. Richter claimed that one of the commissioners had a real and perceived bias against law enforcement that was finding its way into OPOC meetings, documents and presentations to the community.

On May 6, ██████████ submitted her notice of resignation. Her last day of work in the OPO was May 20, 2015. She has been provided an interim position in the Mayor's Office while the City attempts to find a new position for her.

Findings

1. The Named Commissioners interacted with ██████████ in a manner which created a negative work environment.

Witnesses to the Named Commissioners' interactions with OPO personnel described their behavior as "just plain mean", "degrading", "mistreatment", and "demeaning." This conduct began while Mr. Burns and Ms. Spenser were still working in the OPO and increased after ██████████ was the sole OPO staff member. ██████████ reported that it seemed to her that each time the Named Commissioners learned she had complained or questioned their authority, the behavior would escalate. The recordings of the monthly OPOC meetings show the Named Commissioners consistently criticized ██████████ performance in public, using comments or questions that implied she was not competent or was not properly executing her duties as Assistant.

On approximately January 6, 2015, only a week after Mr. Burns left his employment as the Ombudsperson, but while he was still on the City payroll in an effort to continue to serve as a consultant, Comm'r Berkompas specifically told ██████████ that she should not contact Mr. Burns for substantive information.

On January 14, 2015, OPOC Commissioner Scott Richter circulated a memorandum entitled, "OPO Commission Office Etiquette". (Ex. A at OPO 0027, 30) Comm'r Richter advised that he would seek to add the document to the next OPOC meeting. (Ex. A at OPO 0030) The memorandum advised that multiple and conflicting directions to OPO staff created "an extremely

unfair and negative work environment” and undermined the combined authority of the OPOC. Id.

Comm’r Richter also recommended that the OPOC discuss and vote on all issues requiring OPO action before individually directing staff. Id. Comm’r Richter followed up that same day with a lengthy email to the OPOC in which he quoted extensive portions of SMC 04.32.150 and asked his fellow commissioners to consider whether they were exceeding their authority, particularly as to their authority to direct and evaluate the employees of the OPO. (Ex. A at OPO 0031)

The conduct addressed by Comm’r Richter appears to have been sanctioned by the OPOC document, entitled “Commission Strategy, Priorities, Objectives, and Tasks” (SPOT Document). The SPOT Document was authored by Comm’r Berkompas. It interprets SMC 04.32.150(B)(1)-(4), (6), (7) as vesting the OPOC with the authority to supervise the Ombudsperson and OPO personnel, conduct evaluations of individual staff members, direct the training of the ombudsperson and OPO staff, manage the OPO “with effective policies and procedures”, direct the tasks of the Ombudsperson, and direct the content of the OPO reports. (Ex. D)

Comm’r Richter received no response to his emails concerning the scope of the OPOC authority and its treatment of OPO staff. Instead, Comm’r Berkompas emailed and telephoned [REDACTED] to determine “what triggered this rant.” (Ex. A at OPO 0026) [REDACTED] advised Comm’r Berkompas to direct his inquiry to Comm’r Richter. Id. [REDACTED] reported that after Comm’r Richter’s January 14 emails to his fellow commissioners, the Named Commissioners became noticeably hostile toward her.

At OPOC meetings, Comm’rs Doležal and Berkompas pointedly questioned [REDACTED] about the value of City-approved trainings she attended, their cost, and office coverage during trainings (which largely occurred after OPO hours). (See April 7 OPOC Meeting at 1:56 – 2:09; May 5 at 53:27 et seq.) Comm’r Berkompas “implored” [REDACTED] to not use her mediation training to take on tasks outside her job description immediately after [REDACTED] explained that mediation training had been provided to all previous Assistants. (May 7 OPOC Meeting at 54:40 et seq.) Although [REDACTED] had previously explained coverage for the OPO during her trainings, Ms. Doležal suggested [REDACTED] had not provided for coverage while she was at mediation training. (May 7 OPOC Meeting at 56:40 et seq.)

At the May 5, 2015 OPOC meeting, Comm’r Doležal criticized [REDACTED] failure to include Comm’r Doležal’s April use of force training in the OPO’s monthly report. (May 5 OPOC Meeting at 49:02 et seq.) When [REDACTED] explained that she needed the commissioners to notify her of their activities so that she would know to include them, Ms. Doležal inappropriately commented that she “wouldn’t want to get TASE’d without documentation.” Id.

City employees and former employees who were asked their opinion of [REDACTED] consistently praised her ability, knowledge, engagement with the community, and calm demeanor. The only persons who spoke negatively about her job performance were the Named

Commissioners. Comm'r Berkompas included in his critique (before abruptly cutting himself off) that the Assistant position only requires a high school education.

2. The Named Commissioners were attempting to draft and adopt OPO policies and procedures before a new ombudsperson was seated.

On December 19, 2014, the DOJ Office of Community Oriented Policing Services (COPS) released the DOJ Report. The report includes findings and recommendations that are to be implemented within 18 months. The DOJ Report's recommendations regarding civilian oversight include developing or updating OPO policies, procedures, and bylaws. The OPOC (with the exception of Comm'r Richter) has interpreted the DOJ report as recommending the OPOC should "wipe and reload" OPO procedures before an ombudsperson is hired. (Ex. A at OPO 0091; April 7 OPOC meeting 1:30 et seq.) Comm'r Doležal represented that the DOJ required the OPOC to create at least a draft of a new policy manual by June 2015. (April 7 OPOC Meeting at 1:32:45 et seq.) It has since been clarified that the timeline was meant for June 2016.

Although the task was sometimes described as documenting existing policies and procedures, ██████████ noted Mr. Burns was no longer in the OPO to identify what were the OPO practices under his leadership. Nor was ██████████ allowed to seek Mr. Burns' input. Immediately after Mr. Burns' departure, Comm'r Berkompas reprimanded ██████████ for seeking guidance from Mr. Burns regarding past OPO practices.

Mr. Burns informed us that he had provided a notebook to the OPOC that documented office policies and procedures. At OPOC meetings, however, the commissioners represented that Mr. Burns had left no documentation. In January, Comm'r Dominguez asked ██████████ to have the OPO interns perform a literature review of existing procedure and policy manuals in other cities. (Ex. A at OPO 0093-94) Comm'r Dominguez later directed the OPO staff to create an outline of policies in other jurisdictions, which the OPOC would then review to create the OPO's new policy. (Ex. A at OPO 0095-96) Comm'rs Doležal and Dominguez argued the next ombudsperson should start with the OPOC-created policy which could later be amended. (April 7 OPOC Meeting at 1:33 et seq.)

Comm'r Richter voiced his objection to adopting OPO policies and procedures as a duty reserved to the ombudsperson. (April 7 OPOC Meeting at 1:33 et seq.) Comm'r Doležal claimed the DOJ was aware that there was no ombudsperson in the OPO who could create the policies and procedures, but nonetheless required a draft by June 2015. *Id.* Through a later phone call to the DOJ, Comm'r Richter learned that DOJ was not aware that the OPO ordinance required the ombudsperson to create policies and procedures.

The OPOC continued to push for a draft of an OPO policy and procedure manual by June 2015, including bi-monthly meetings of a subcommittee with ██████████, requests for a literature review of policy manuals from other jurisdictions from which the OPOC could craft policies for the OPO, and monthly phone calls with DOJ regarding a template for OPO policies. (See April 7 1:45 et seq.; May 5 OPOC meeting 46:28 et seq.; Ex. A OPO 0093 et seq.)

3. The Named Commissioners pushed for evaluations of OPO staff to be completed before an ombudsperson could be seated.

Soon after being seated, the OPOC seized upon the language in SMC04.32.150(B)(7), which ambiguously states that the OPOC shall “conduct and approve evaluations of the OPO and OPO personnel.” The OPOC interprets this to charge them with the task of evaluating the job performance of individual staff members within the OPO.

Both Mr. Burns and Heather Lowe explained to the OPOC on multiple occasions that normal City procedure and policy would dictate that the Police Ombudsman would evaluate his staff, who are employees of the City, on a set schedule and that the OPOC would evaluate the ombudsperson and the office as a whole. During the OPOC public meetings, the Named Commissioners repeatedly raised the evaluation issue. Comm’r Doležal explained in her interview that the OPOC believed the evaluations were something the OPOC could do without waiting for an ombudsperson to be hired.

In viewing the OPOC meetings, particularly the May meeting, it appears the OPOC was using the threat of a poor evaluation to retaliate against or intimidate [REDACTED]. The OPOC had been advised of the complaint filed against one or more of the commissioners by their counsel Mr. Beggs. The City Attorney’s Office told Mr. Beggs that he should advise the OPOC to address their behavior toward OPO staff and cease their push to evaluate [REDACTED].

Nevertheless, during the May 5 meeting (beginning at 19:29), the OPOC spent 20 minutes discussing a proposal to evaluate [REDACTED] using a 360 Degree Evaluation. Comm’r Berkompas spoke at some length about the OPOC’s obligation to evaluate individual employees of the OPO. He proposed a motion to authorize a request to have the City conduct an evaluation of [REDACTED] which the OPOC would design.

Comm’r Conklin expressed concern that the OPOC proposed conducting an evaluation “out of the blue” without first setting up a policy and procedure for conducting evaluations. (May 7 OPOC meeting at 30:14 et seq.) Comm’r Richter opposed conducting any evaluations of staff until an ombudsperson was in place to conduct the evaluation, explaining that doing so would undercut the authority of the ombudsperson. (May 7 OPOC Meeting at 27:33 and 37:40 et seq.)

Comm’r Doležal and Comm’r Berkompas both insisted that evaluating OPO staff was within the OPOC’s authority under the ordinance and pushed to conduct the evaluation before an ombudsperson was hired. (May 7 OPOC Meeting at 21:11 and 26:27 et seq.) Both commissioners desired that Comm’r Berkompas replace Comm’r Richter on the committee responsible for drafting an evaluation policy because of Comm’r Richter’s opposition to any evaluation occurring until an ombudsperson was seated. (May 7 OPOC Meeting at 35:30 et seq.) In the end, the OPOC agreed to postpone a vote until the committee had drafted a policy for evaluating the ombudsperson and OPO personnel. (May 7 OPOC Meeting at 40:58 et seq.)

This evaluation discussion, after having knowledge that a complaint had been filed, implies retaliation. The following day, [REDACTED] submitted her resignation notice, citing “the working conditions and treatment I have experienced during my tenure as the assistant.” (Ex. C)

4. Comm’rs Doležal and Berkompas instituted a policy of altering OPOC meeting minutes before they were presented for approval at the next monthly meeting.

Beginning January 3, Comm’rs Berkompas and Doležal began directing [REDACTED] to alter the minutes she had drafted from the recordings of OPOC meetings.

Comm’rs Doležal and Berkompas edited the December 17 minutes drafted by [REDACTED] to exclude Comm’r Conklin’s comments about her opposition to Comm’r Berkompas becoming the OPOC vice chair. (Ex. A at OPO 0013, 17-23) On January 3, 2015, Comm’r Doležal asked [REDACTED] to revise the minutes from the December 17 OPOC meeting so that she could review the minutes the following Monday (January 5) with [REDACTED] to ensure the minutes included the changes Comm’rs Doležal and Berkompas had requested. (Ex. A at OPO 00014) Comm’r Doležal asked [REDACTED] to not include OPOC approval of their meeting minutes in the monthly agenda. Id.

On January 4, 2015, Comm’r Doležal emailed [REDACTED] a copy of what she deemed the “final minutes”, reiterating that it has not been the custom of the OPOC to approve minutes at commission meetings. (Ex. A at OPO 0013) Comm’r Doležal asked [REDACTED] to continue to take notes during OPOC meetings, but advised that [REDACTED] notes would “be a record for our office but not a public document.” (Ex. A at OPO 00013)

On January 14, 2015, Comm’r Richter expressed his opposition to individual commissioners editing the minutes unless the commissioners had assisted in the process of transposing the recording of the meeting in question. (Ex. A at OPO 0034) The following day, Comm’r Berkompas directed [REDACTED] to make requested changes to the minutes of the OPOC’s January 6 meeting “so they are working off the ‘current’ draft.” (Ex. A at OPO 0036) Comm’r Doležal directed [REDACTED] to provide Word versions of meeting minutes, so that Comm’r Doležal could make her own changes. (Ex. A at OPO 0040)

In response to the extensive editing of minutes, [REDACTED] ceased signing the OPOC meeting minutes, as she no longer felt she could attest to the minutes being an accurate reflection of what took place at the meeting. For a period of time, the meeting minutes remained unsigned because no one was willing to sign them. Eventually, Comm’r Berkompas took over the drafting of minutes. He and Comm’r Doležal designed a procedure allowing OPOC members to suggest changes to the meeting minutes outside of the OPOC meetings, so they could be reconciled before any vote to approve the minutes at the public meeting. (See Ex. A at OPO 0089)

5. The Named Commissioners made decisions regarding OPOC actions outside OPOC meetings.

Mike Piccolo, Ms. Isserlis, and Ms. Spenser all confirmed that the OPOC had been trained on the requirements of the OPMA. Email exchanges and witness statements show the Named Commissioners used chains of communications between two commissioners at a time to decide on OPOC actions outside of public meetings. Those communication chains occasionally included Comm'r Conklin.

On March 27, Comm'r Conklin observed in an email to Comm'r Doležal that the OPOC had been "using very awkward ways to avoid violating the letter of the Open Meetings Act." (Ex. A at OPO 0055) Comm'r Conklin's comment was in direct response to an attempt to schedule an OPOC meeting to discuss the report prepared by Prof. Edward Byrnes analyzing SPD contacts with people of color. (Ex. A at OPO 0056) During her interview, Comm'r Conklin stated there were several OPOC meetings where it was apparent that the Named Commissioners had already discussed and decided an agenda item.

██████████ stated her belief that the OPOC had selected its chair and vice chair before the December 17 meeting. The meeting was not video recorded. ██████████ stated that when the election of the chair and vice chair was addressed the OPOC commissioners looked at each other in a manner that suggested they had already agreed Comm'r Doležal would be chair and Comm'r Berkompas would be vice chair. There was little discussion.

Comm'r Conklin informed us that Comm'r Dominguez contacted her on May 5 in order to ensure she would be voting for the 360 Degree Evaluation proposal that was on the agenda for that evening. Comm'r Conklin advised Comm'r Dominguez wished to obtain Comm'r Conklin's support for the proposal because he was unable to attend the meeting, but wanted to be assured there would be three affirmative votes. Without Comm'r Dominguez' third vote the proposal could not be passed. Comm'r Conklin stated it appeared that the Named Commissioners had agreed to support the proposal before it was presented to Comm'r Conklin and Comm'r Richter at the May 5 meeting.

Immediately prior to our interview with Comm'r Conklin, we spoke with Comm'r Dominguez and questioned him about the evaluation proposal. Comm'r Dominguez explained he had not attended that meeting and claimed he did not know anything about the proposal until *after* the meeting.

Comm'r Richter complained at the OPOC's May and June meetings that Comm'rs Doležal and Berkompas began meeting with Chief Straub without first presenting a motion at an OPOC meeting, so that the OPOC as a whole could discuss whether the meetings were within the ordinance. Comm'r Conklin confirmed that she was also surprised when Comm'rs Doležal and Berkompas disclosed that they were having monthly meetings with Chief Straub. (June 2 OPOC Meeting at 56:02 et seq.)

6. Specific Conduct by Comm'r Doležal

OPOC Pamphlet

Comm'r Richter was assigned to work on community outreach projects with [REDACTED]. With his assistance, [REDACTED] created a draft tri-fold pamphlet (Tri-Fold) regarding the roles and responsibilities of the OPOC. In our interview with her, [REDACTED] explained that when she engaged in community outreach, she met a large number of people who were not aware of the OPOC. The Tri-Fold provided contact information for the OPO, instructions for filing a complaint, a summary of the duties of the OPOC, and a short biography of each commissioner.

[REDACTED] forwarded the Tri-Fold to the OPOC for comments on March 23, advising that Comm'r Richter was currently working on the initial review. (Ex. A at OPO 0048) Comm'r Doležal responded the following day, asking for the file for the Tri-Fold and admonishing [REDACTED] for engaging in a project that had not been approved by the OPOC. *Id.* [REDACTED] explained the need for the Tri-Fold and Comm'r Richter's participation. She then asked whether Comm'r Doležal was requesting that OPO staff only work on projects that are officially directed by the OPOC. (Ex. A at OPO 0047) Comm'r Doležal did not reply.

Email to Kathy Armstrong re [REDACTED] Contacting Ms. Armstrong Without OPOC Direction.

At the April 7 OPOC meeting, Comm'r Doležal disclosed she had been invited by Pastor Shon Davis to attend a one-day Citizens' Academy because of her role as NAACP president. (April 7 OPOC meeting at 1:08 et seq.) Comm'r Doležal expressed that it was confusing to her because the term Citizens' Academy was being used by SPD to describe two training events. She suggested OPOC get clarification from SPD.

On April 8, [REDACTED] contacted Kathy Armstrong at SPD's Office of Professional Accountability regarding the Citizens' Academies offered by SPD. (Ex. A at OPO 0078) [REDACTED] requested information on the Citizens' Academy that Pastor Davis was inviting Comm'r Doležal to attend. *Id.* Ms. Armstrong provided the requested information. (Ex. A at OPO 0077-78)

Three days later Comm'r Doležal emailed Ms. Armstrong:

Please disregard the email sent by [REDACTED] I did not direct her to send that email nor did it characterize the nature of the discussion about the Citizens Academy or the April event with Pastor Shon. I fully understand that they are two separate things.... It appears that [REDACTED] was confused, so thank you for clarifying things to her. However, I do not think the rest of the Commission was confused.

(Ex. A at OPO 0076-77) Comm'r Conklin responded to the discussion, stating she was confused by the April 7 OPOC meeting discussion that the explanatory email response from

Ms. Armstrong helped clarify the confusion. She recommended the OPOC ask [REDACTED] to take the initiative to follow up on discussion items in the future. (Ex. A at OPO 0079) Comm'r Conklin did not think Comm'r Doležal's email to Ms. Armstrong was respectful of [REDACTED] and her work. (Ex. A at OPO 0079)

7. Specific Conduct by Comm'r Berkompas

Restricting [REDACTED] communications with Mr. Burns while he was acting as the OPO consultant.

Immediately after Mr. Burns' departure, Comm'r Berkompas took steps to direct and control the OPO. On Saturday, January 3, Comm'r Berkompas emailed [REDACTED], directing edits be made to the Public Safety Committee Report prepared by Mr. Burns, including adding letters to Chief Straub and excluding vote counts. (Ex. A at OPO 0010) [REDACTED] consulted Mr. Burns by email regarding the requested changes to the Public Safety Report and whether including letters to Chief Straub was "typical." (Ex. A at OPO 009) After Mr. Burns responded to Comm'r Berkompas recommending that the other commissioners also weigh in on the proposed changes, Comm'r Berkompas emailed [REDACTED] (including only Comm'r Doležal and [REDACTED]) stating:

The "Commission" section at the front of the public safety report was new as of November, so there is no "typical". .. I asked that you include a sentence in the summary of these actions. We should either include all important Commission events in this section or have no such section. Without them it appears the Commission has made no progress, and of course with the Chief's letters of response that is not the case. If you have questions or need clarification about my inputs to the Report that you solicited, in the future kindly ask me.

(Ex. A at OPO 0012) Two days later, Comm'r Berkompas directed [REDACTED] that she was not to contact Mr. Burns unless her question was "a where's the key to the cabinet kind of thing." (Ex. A at OPO 0024) Notably, Mr. Burns was still employed by the City as a consultant for the purpose of allowing the OPOC and [REDACTED] to seek his guidance on OPO policy and procedures.

Within the first two weeks of January, Comm'r Berkompas was expressing irritation that [REDACTED] had not changed the voice message on the OPO phone line, which identified Mr. Burns as the ombudsman. [REDACTED] explained that Comm'r Berkompas was so angry and insistent on the change of the voicemail and on the restriction in contacting Mr. Burns that she began hiding Mr. Burns' current contact information, so that the Named Commissioners would not assume she had been in contact with him.

Directing [REDACTED] to cease recording individual commissioners' votes in the OPOC meeting minutes.

On January 3, Comm'r Berkompas advised [REDACTED] that vote counts distracted from the substantive issues, citing a reporter's question to Comm'r Doležal about a dissenting vote. (Ex. A at OPO 0010) According to [REDACTED], Comm'r Doležal and Comm'r Berkompas later directed her to not identify votes by commissioner, including only the tally. In a separate email to the OPOC and at the OPOC's January 14 meeting, Comm'r Richter explained that he wished to have his vote identified in all future votes, so that he could be held accountable to his district. (Ex. A at OPO 0035)

The following day, Comm'r Berkompas directed [REDACTED] that she should not honor Comm'r Richter's request. (Ex. A at OPO 0036)

After [REDACTED] sought clarification from the City Attorney's Office and HR regarding the multiple directives she was receiving from various commissioners, Comm'r Berkompas became the primary commissioner attempting to direct her day-to-day activities.

8. Specific Conduct by Comm'r Dominguez

Reimbursement Check

On Friday, February 20, Comm'r Dominguez submitted paperwork for travel reimbursement to [REDACTED] to complete and submit to the finance department. (Ex. A at OPO 0042) On March 9, Comm'r Dominguez contacted [REDACTED] to determine the status of his reimbursement check. (Ex. A at OPO 0043) When [REDACTED] responded that she was told it was in the final steps of processing, Comm'r Dominguez complained that that was "totally unacceptable." *Id.*

[REDACTED] explained she had been unable to complete Comm'r Dominguez's paperwork until the following week because of her other responsibilities in the office and asked Comm'r Dominguez if he had any suggestions for avoiding delay in the future. (Ex. A at OPO 0042) Comm'r Dominguez answered that he was "not looking for excuses or explanations", advised that processing his reimbursement form should be "a priority of work that needs to be done in the office", and complained about [REDACTED] lack of communication. (Ex. A at OPO 0041)

[REDACTED] recommended Comm'r Dominguez speak with her supervisors, Mr. Szambelan and Ms. Sanders, if he was objecting to her putting OPO business first. (Ex. A at OPO 0067) Comm'r Dominguez responded:

Yes I do have a problem with your choice to put other OPO business before paperwork you received on a Friday, thus pushing it to be completed on the following Monday or Tuesday (as you cannot recall which day it was ... I'm going with Tuesday). I still have yet to received [sic] check. Again you don't seem to not [sic] acknowledge my frustration. Yes there is a lack of communication. If you

did not have time to do the paperwork then you should have said so. Again, you don't seem to understand this. I don't need to talk to anyone. What's done is done, however I did not know you reported to Theresa Sanders or Tim Szambelan. So is what I'm hearing [sic], if we have a problem we need to talk with Theresa Sanders or Tim Szambelan? I will be talking with Rachel and Kevin about this matter. This process is not working and needs to be resolved.

(Ex. A at OPO 0066)

██████████ forwarded her email communications with Comm'r Dominguez to Ms. Sanders, Mr. Szambelan, and Ms. Isserlis. (Ex. A at OPO 0066) Ms. Isserlis spoke with Mr. Beggs about the situation, informing him that the email and behavior were unacceptable. Mr. Beggs responded that he was taking care of it. (Ex. A at OPO 0065) Comm'r Dominguez's unprofessional behavior continued.

When questioned about this incident, Comm'r Dominguez repeated his complaints about ██████████ job performance. He explained that he believed ██████████ should have completed his reimbursement form immediately and should have been checking on the progress of his reimbursement check regularly until he was paid, rather than simply processing his paperwork for him and sending it to the finance department for payment.

April 13 Policy and Procedure Meeting

██████████ reported through notes attached to her complaint and in her interview with us that Comm'r Dominguez became agitated and aggressive in an April 13, 2015 meeting at the OPO. (See OPO 0095, 97-99) The purpose of the meeting was to provide clarification to OPO staff on the requested literature review of the civilian oversight policies and procedures in other jurisdictions. (Ex. A at OPO 0097)

As ██████████ explained the difficulties the OPO staff was having and asked for specific direction, Comm'r Dominguez became increasingly agitated and aggressive. (Ex. A at OPO 0097) Comm'r Dominguez cut ██████████ off several times, arguing that ██████████ did not understand what a literature review was. ██████████ continued to attempt to get Comm'r Dominguez to explain what the OPOC wanted the finished product to include without success.

Comm'r Dominguez accused ██████████ of not taking any complaints from individuals who had a language barrier or had difficulty writing out their complaints. (Ex. A at OPO 0098) Comm'r Dominguez went on to state the problem with ██████████ is that she acts like she doesn't care and then criticized her facial expression, body language and attitude. *Id.* ██████████ explained that during the meeting she had been sitting at a table in the OPO office taking notes with a normal body posture and neutral expression. *Id.* ██████████ told Comm'r Dominguez that he was being rude and attempted to end the meeting. (Ex. A at OPO 0098-99) Instead, Ms. Smitley largely took over the questions to Comm'r Dominguez and Comm'r Conklin. (Ex. A at OPO 0099)

Comm'r Conklin confirmed that the conversation became heated.⁴ Comm'r Conklin, however, cited [REDACTED] failure to de-escalate the situation. We questioned a number of City employees who have interacted with [REDACTED]. They each described [REDACTED] demeanor as generally calm and quiet. Because of the nature of [REDACTED] position at the OPO, she was required to communicate effectively with individuals that were often agitated or hostile. By all accounts she was adept at de-escalation.

Use of OPO resources

[REDACTED] reports Comm'r Dominguez began having office hours in the OPO while he was on administrative leave from the Spokane Regional Health District. Although Comm'r Dominguez insisted he was not there to "babysit" [REDACTED], his practice was to come to the OPO for several hours at time, set up his laptop and work on other matters. [REDACTED] observed that on several occasions Comm'r Dominguez used the printer/copier in the OPO to make large numbers of copies for non-OPO business.

9. Comm'rs Doležal and Berkompas' meetings with Chief Straub

The Named Commissioners have taken the position that their duties under the ordinance require them to have regular meetings with Chief Straub. Comm'rs Doležal and Berkompas have had monthly meetings with Chief Straub at least since January. (June 2 OPOC Meeting at 49:36 et seq.) Comm'r Richter has voiced his opinion that the Ordinance does not provide the authority for this regular meeting. Chief Straub also questioned the authority for the meeting, but stated that his position is that he will meet with any community member when requested. Until the OPOC's June meeting, Comm'rs Doležal and Berkompas provided no public report of their meetings and provided only brief updates to Comm'rs Richter and Conklin. The monthly meetings include discussions of SPD policy and procedure and ongoing investigations into complaints filed through the OPO.

Comm'r Berkompas has stated in public OPOC meetings that the commissioners are required to provide advice and oversight to the SPD. (See May 5 OPOC Meeting at 1:14 et seq.) Comm'r Richter openly disagreed with the interpretation. When asked to weigh in, Mr. Beggs explained that if the ordinance did not prohibit certain action it was up to the OPOC to decide. (June 2 OPOC Meeting at 1:02 et seq.)

The OPOC voted to approve continuing the meetings with Chief Straub at the June 2 OPOC meeting, with only Comm'r Richter opposed. Comm'r Berkompas avoided stating the motion aloud, suggesting the commissioners could change the motion after it was drafted and included in the minutes. (June 2 OPOC Meeting at 1:09:40 et seq.) When Comm'r Conklin asked to at least get the main points repeated, Comm'r Berkompas distributed copies of a previously written motion, which already included points just raised by Comm'rs Berkompas, Doležal, and Dominguez in the meeting. *Id.* This written motion was never read aloud to allow attendees or the public to know and understand the motion that was being made.

⁴Former OPO Intern Amanda Smitley did not respond to requests to speak with investigators.

10. Lack of Neutrality by Comm'rs Doležal and Dominguez

Body Camera Training Session

On December 5, 2014, the OPOC, [REDACTED], and Councilman Stuckart attended a body camera training conducted by SPD Lt. Kevin King and Officer Ryan Snider. During the question and answer period, Comm'r Dominguez and Comm'r Doležal openly expressed their views toward law enforcement.

Comm'rs Doležal and Dominguez asked multiple questions regarding SPD's policy on race and its failure to hire sufficient numbers of minority officers. The officers characterized these questions as hostile and accusatory. The second scenario in the video simulation showed an African-American suspect, prompting Comm'r Doležal to ask the officers if all of the suspects in the scenarios were black. The first scenario in the training presented to the OPOC included only white suspects. When the officers explained this to Comm'r Doležal, she turned her body away from the officers and busied herself with her cell phone. Similar hostile and accusing questions by Comm'rs Doležal and Dominguez followed.

At one point during the training session, Comm'r Dominguez declared he had a bias against police officers. When the officers asked if he had ever been mistreated by Spokane area law enforcement, Comm'r Dominguez admitted he had not, but did not disavow his professed bias stemming from his childhood in California.

The comments during the training session were significant enough that both Comm'r Richter and Comm'r Berkompas apologized to the officers for the conduct of Comm'rs Doležal and Dominguez. During our interview with Lt. King and Officer Snider, they both stated that they were completely taken back by the conduct of Comm'rs Doležal and Dominguez, reported the conduct to their supervisors and the Chief, and expressed their concern that Comm'rs Doležal and Dominguez were in a position to affect the outcome of investigations of police conduct, and potentially the livelihood of a fellow officer.

Comm'r Dominguez's comments regarding SPD's community outreach.

At the OPOC's April 7 meeting, Comm'r Dominguez commented on SPD's community outreach strategy, stating the SPD's representation that its officers were engaged at community events was "disturbing" and "misleading." (April 7 beginning at 1:00:18) Comm'r Dominguez recommended that OPOC develop metrics for SPD's community engagement because SPD was not being honest about whether it was truly engaging with the community. (April 7 beginning at 1:03:47)

Comm'r Doležal's role at NAACP

Comm'r Doležal was elected president of the Spokane Chapter of the NAACP in November 2014, after she was seated on the OPOC. Since being seated on the OPOC, Comm'r Doležal has

participated in protests reacting to recent police shootings, including protests in Spokane, Pasco and Baltimore, and has spoken and written on racism and police violence.

In the OPOC's June 2 meeting, Comm'r Doležal disclosed she had been in communication with the family of Lorenzo Hayes. Mr. Hayes recently had died while in custody at the Spokane County Jail shortly after he was arrested by SPD. Comm'r Doležal stated her communications with the family were done in her role as NAACP president.

Flyer for April 21 Presentation on Race and Policing

Comm'r Richter communicated his concerns about Comm'r Doležal's inability to put her biases aside to Council members Waldref and Fagan on several occasions. Comm'r Richter opined that any real or perceived bias by OPOC commissioners placed the mission of the OPO at risk because citizens or police may come to believe that they would not be treated fairly. (Ex. E) Comm'r Richter attached a flyer issued by the OPOC at Comm'r Doležal's direction, as an example of OPOC actions that were creating the perception of bias. The flyer advertised Prof. Byrne's presentation entitled "Community Dialogue: Race & Policing" and included a photo of two young African-American children holding up signs that read "Don't Shoot". (Ex. F)

Conclusions

1. The Named Commissioners harassed [REDACTED] in the workplace by collectively and individually creating an intimidating, hostile, and offensive environment.

The Named Commissioners repeatedly engaged in behavior that belittled and discounted [REDACTED] and her abilities, while simultaneously demanding that she perform tasks that were more properly within the purview of the Police Ombudsman. During televised hearings they frequently misrepresented and criticized [REDACTED] activities and job performance. The Named Commissioners each interacted with her as if she were an employee of the OPOC who was to be directly supervised only by the OPOC.

The Named Commissioners created a hostile and intimidating environment by demanding she perform tasks which they individually assigned and demanding that she prioritize those tasks above those which were part of her job description. The Named Commissioners repeatedly used the implied threat of a negative evaluation and repeated criticism in public meetings to intimidate [REDACTED].

[REDACTED] made it clear to the Named Commissioners that their treatment of her was unacceptable and sought the help of HR, the Mayor's Office, and the City Attorney's Office. Despite repeated warnings to the OPOC, the Named Commissioners' individually, and OPOC counsel, the conduct continued.

- a. *Comm'r Doležal violated the City Workplace Harassment policy.*

Comm'r Doležal engaged in conduct that humiliated, insulted or degraded [REDACTED] by:

- (1) representing in OPOC public meetings that [REDACTED] was not accepting complaints from members of the public,
- (2) implying in a public meeting that [REDACTED] was delaying providing her job description to the OPOC,
- (3) implying in public meetings that [REDACTED] was engaging in unnecessary trainings,
- (4) chastising [REDACTED] for creating a draft informational flyer on the OPOC without first obtaining authorization from OPOC,
- (5) representing that [REDACTED] had left the OPO unstaffed while she attended a week-long mediation training, and
- (6) directing an SPD employee to disregard [REDACTED] email requesting information.

b. Comm'r Berkompas violated the City Workplace Harassment policy.

Comm'r Berkompas created an atmosphere of intimidation and hostility by:

- (1) forbidding [REDACTED] from seeking Mr. Burns' advice and input,
- (2) demanding to know why [REDACTED] had not altered the OPO voice mail announcement within a week of Mr. Burns' departure and repeating the demand a few days later,
- (3) attempting to obtain information concerning Comm'r Richter's proposal to adopt an OPO etiquette policy and reacting angrily when [REDACTED] suggested he ask Comm'r Richter directly,
- (4) implying in a public meeting that [REDACTED] would use her mediation training to perform the duties of the Police Ombudsman, despite [REDACTED] explanation that mediation training was a standard part of the Assistant's training,
- (5) pressuring [REDACTED] to make changes to OPOC meeting minutes that she concluded did not accurately reflect what had been recorded at the meeting,
- (6) repeatedly criticizing [REDACTED] performance in public meetings while also pushing the OPOC to conduct an evaluation of her performance,
- (7) attempting to direct [REDACTED] day-to-day activities, despite being informed that the OPOC did not directly supervise [REDACTED], and
- (8) generally expressing disrespect for [REDACTED] position, work and person.

c. Comm'r Dominguez violated the City Workplace Harassment policy.

Comm'r Dominguez treated [REDACTED] in a humiliating, insulting, or degrading manner by:

- (1) demanding that [REDACTED] should prioritize his travel reimbursement request over OPO business and criticizing her job performance when she did not,
- (2) treating [REDACTED] rudely and angrily when the Finance Department did not process his paperwork as quickly as he would have liked,
- (3) accusing [REDACTED] of acting like she did not care and criticizing her facial expressions and body language during the April 13 subcommittee meeting, and

(4) treating [REDACTED] in an angry and agitated manner during the same April 13 meeting.

2. The Named Commissioners abused their authority by exceeding the scope of the OPOC ordinance and charter provisions by taking onto themselves the duties reserved to the Police Ombudsman.

[REDACTED] alleged the Named Commissioners exceeded their authority by directing her to draft procedures and policies for the OPO and seeking to evaluate her job performance before a new Police Ombudsman was hired.

- a. *Because the OPOC ordinance can be construed to require the OPOC to conduct individual evaluations of OPO staff, we conclude the OPOC's attempts to create a procedure for such evaluations was not an abuse of authority.*

The SMC 04.32.150(B)(7) directs that the OPOC shall “[c]onduct and approve evaluations of the OPO and OPO personnel.” We interviewed council members and City Assistant Attorneys regarding the intent of this provision. All expressed surprise that the ordinance appears to authorize the OPOC to evaluate individual staff members who report directly to the Police Ombudsman and are City employees. Nevertheless, the language of the ordinance can reasonably be construed to provide for exactly that. Therefore, we cannot find that by attempting to establish a procedure for evaluating [REDACTED] that the Named Commissioners violated the ordinance. Nevertheless, we do find that pursuing the evaluation after the complaint was filed was retaliatory.

- b. *Comm’rs Doležal and Berkompas abused their authority by attempting to directly supervise OPO personnel.*

Our investigation also uncovered many instances of the Named Commissioners attempting to directly supervise OPO personnel. SMC 04.32.150 contains no provision allowing the OPOC to directly supervise OPO personnel. The City Charter emphasizes the independence of the OPO and its employees. Charter art. XVI, §129(C).

Comm’r Berkompas acted outside his authority when he directed [REDACTED] to cease substantive communications with Mr. Burns, provided directives regarding the day-to-day operations of the OPO, created the SPOT document which purports to authorize management of the OPO and direct supervision of its staff, directed [REDACTED] to alter OPOC minutes before they were presented to the public, directed [REDACTED] to cease recording the votes of individual commissioners in the minutes, and directed [REDACTED] that she should disregard a request from Comm’r Richter that his votes be recorded.

Comm’r Doležal acted outside her authority by reprimanding [REDACTED] for performing duties within the scope of her job description without first obtaining approval from the OPOC, including following up on comments made at an OPOC meeting by requesting additional information from SPD and drafting the Tri-Fold with the help of Comm’r Richter. Comm’r

Doležal acted outside her authority by attempting to set the priorities of the OPO and direct its day-to-day activities individually and in conjunction with Comm'r Berkompas.

In reaching this conclusion, we considered whether the OPOC was simply attempting to fill a void that was created by Mr. Burns' departure from the OPO. Although the absence of a Police Ombudsman likely exacerbated the problem, witnesses affirmed the commissioners attempted to direct the activities of the OPO prior to his departure. Further, when Mr. Burns was available to provide direction to [REDACTED], she was ordered not to seek his input.

- c. *The Named Commissioners abused their authority by pushing to "wipe and reload" OPO policies and procedures before a new ombudsman could be hired.*

It is the prerogative of the Police Ombudsman to propose rules and procedures required for the discharge of his or her duties, including the internal office procedures for processing complaints. SMC 04.32.030(P). The OPOC shall "approve" OPO policies, procedures, rules, and goals. SMC 04.32.150(B)(2), (3), (6). The OPOC shall "review, comment on and assist in *maintaining* policies, procedures and operating principles for the OPO." SMC 04.32.150(J)(8) (emphasis added). The ordinance does not authorize the OPOC to *create* policies or procedures.

The Named Commissioners abused their authority when they directed [REDACTED] to draft OPO policies and procedures. It is apparent from comments by the Named Commissioners during their monthly meetings and Comm'r Dominguez's comments during his meeting with [REDACTED] on April 13, that the intent was not to merely document existing procedures used by [REDACTED] in executing her own duties. Not only had some of these policies and procedures been provided to the Commissioners by Tim Burns prior to his departure, but the Named Commissioners directed [REDACTED] to perform a literature review in order to draft a new OPO policy and procedure manual. The Named Commissioners' comments during their hearings also establish they intended to create and approve policies and procedures so that they would be in place before a new Police Ombudsman was hired.

3. The Named Commissioners abused their authority by violating the OPMA and SMC 04.32.150(J).

The ordinance contemplates a transparent process through which the OPOC conducts its business in public meetings and authorizes actions through a majority vote of commissioners. SMC 04.32.150(J)(3)-6). The Named Commissioners circumvented this process on a number of occasions when they decided on OPOC actions through email and telephone communications before the OPOC meetings took place.

- a. *Comm'rs Doležal and Berkompas manipulated the minutes of OPOC meetings.*

Comm'rs Doležal and Berkompas violated RCW 4.30.030 and SMC 04.32.150(J)(4)-(6) by amending and approving meeting minutes outside of and prior to OPOC public meetings. Comm'rs Doležal and Berkompas' system for amending and editing the minutes of OPOC meetings ensured that, with few exceptions, all amendments would be made prior to the meeting.

Comm'r Berkompas began drafting the minutes after [REDACTED] stopped signing minutes that she had not drafted in full. He used [REDACTED] notes, which Comm'r Doležal referred to as non-public documents, and then distributed the minutes to the other commissioners. He instructed them to respond to him individually to avoid any discussion of the minutes with a quorum of the OPOC. He would then amend the minutes as suggested and present them at the next OPOC meeting for a vote. This procedure kept nearly all discussion regarding the content of the minutes outside of public meetings of the OPOC.

Comm'r Berkompas also directed that minutes should not identify how particular commissioners had voted. Although the votes of individual commissioners can be determined by reviewing recordings of the OPOC meetings, the exclusion of this information from the OPOC's minutes is inconsistent with RCW 42.30.060's prohibition against secret ballots.

b. The Named Commissioners decided on OPOC actions prior to OPOC meetings.

The Named Commissioners violated RCW 42.30.030 and SMC 04.32.150(J)(4)-(6) by conducting business in a series of pairs of commissioners to secure a majority vote prior to taking an official vote at OPOC meetings. According to Comm'r Conklin, the Named Commissioners communicated prior to the May 5 meeting regarding the proposal to evaluate [REDACTED]. When Comm'r Dominguez could not attend the May 5 meeting, he contacted Comm'r Conklin to ask her to provide the third vote.

The Named Commissioners appear to have also violated the OPMA and SMC 04.32.150(J)(4)-(6) by selecting a chair and vice chair prior to their December 17, 2014 meeting and at the June 2 meeting by agreeing to a previously drafted motion to authorize continued meetings with Chief Straub.

Comm'rs Doležal and Berkompas decided, without OPOC approval, to conduct monthly meetings with Chief Straub, and failed to provide public and substantive reports of those meetings.

Through their serial communications regarding OPOC actions and proposals, the Named Commissioners cut Comm'rs Richter and Conklin out of the decision making process to a substantial degree. The Named Commissioners could sometimes be swayed by modifications suggested by Comm'r Conklin, but Comm'r Richter was effectively isolated.

4. The Named Commissioners retaliated against [REDACTED] by escalating their public criticism of her job performance and their insistence that they should evaluate her job performance.

[REDACTED] filed her complaints on April 17, 2015. The commissioners were aware that a Whistleblower Complaint had been filed and were aware that [REDACTED] had previously complained to HR and the City Attorney's Office.

At the next OPOC meeting, Comm'rs Doležal and Berkompas pushed to evaluate [REDACTED] job performance, questioned the value of training approved for [REDACTED] by the City, implied [REDACTED] was neglecting her duties, and expressed concerns that [REDACTED] was taking on the duties reserved to the ombudsperson. The treatment was so hostile that [REDACTED] tendered her resignation the following day.

Although the Named Commissioners had consistently mistreated [REDACTED] it is more likely than not that the escalation apparent at the May 5, 2015 OPOC meeting was in retaliation for [REDACTED] complaints.

5. Comm'rs Doležal and Dominguez have exhibited a bias against law enforcement within the scope of their activities as OPOC commissioners and in public.

Comm'rs Dominguez and Doležal have failed to satisfy SMC 4.32.150(E)'s requirements of fairness and impartiality. Both have exhibited real or perceived biases against law enforcement during their encounters with law enforcement and at OPOC meetings. Comm'r Doležal has exhibited a real or perceived bias by participating publicly and vocally in protests of recent officer-involved shootings and in the photograph chosen for the OPOC flyer regarding Dr. Byrnes' discussion on race and policing.

6. Comm'r Doležal's position as NAACP president is a conflict of interest with her role as a OPOC chair.

Comm'r Doležal's duties as an OPOC commissioner include (1) approving recommendations for changing SPD policies; (2) approving OPO rules for monitoring IA investigations; (3) requesting the OPO to examine SPD policy and procedure issues, including requesting additional IA investigations; and (4) communicating with the public regarding the complaint filing and investigation process. SMC 04.32.150(B). As NAACP president, she has spoken with family members of an individual who died in custody. She has been actively and publicly engaged in protests of officer-involved shootings. This position is in conflict with her ability to serve on the OPOC in an unbiased even-handed manner.

7. Comm'r Dominguez committed an act of dishonesty relating to his position as a City officer when he made false statements to investigators.

Comm'r Dominguez claimed to have no knowledge of the proposal to pass a motion to evaluate [REDACTED] on May 5 until after that meeting took place. Immediately after his interview, Comm'r Conklin disclosed that she learned about the proposal prior to the May 5 meeting through a phone call from Comm'r Dominguez who was asking her to vote for the proposal. Comm'r Dominguez's false statement violates the City's Code of Ethics.

8. Comm'r Doležal has breached her duty to keep identifying information confidential.

Comm'r Doležal has, on more than one occasion, provided in an open public meeting, the name and identity of individuals involved or potentially involved in police misconduct investigations. This is a violation of SMC 04.32.150(E)(3) which requires all commission members to "sign a confidentiality statement confirming as a condition of service that they will not release the name(s) of... individuals involved in incidents or investigations, nor any other personally identifying information."

In sum, our investigation substantiated [REDACTED] claims and revealed additional violations of law and City policies.

Respectfully submitted,

COLLETTE C. LELAND

KAMMI M. SMITH