

Office of the Police Ombudsman Independent Investigation Closing Report

C21-070/OPO 21-33

OFFICE OF THE POLICE OMBUDSMAN



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Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

Staff Information

Bart Logue, Police Ombudsman

Bart Logue began serving in this capacity in September 2016, after previously serving as the Interim Police Ombudsman. Bart also serves as a Commissioner on the Washington State Criminal Justice Training Commission. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, Deputy Police Ombudsman

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is a Certified Practitioner of Oversight through NACOLE. Luvimae is also a certified Advanced Force Science Specialist.

Christina Coty, Administrative Specialist

Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement and joined the Office of the Police Ombudsman in 2018. Christina is a Certified Practitioner of Oversight through NACOLE. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, OPO Attorney

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern to increase accountability and transparency into the matter as well as closing reports that may lead to recommendations for improving police policies or practices. By insisting on transparency, our goal is to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again. It is also our intent to highlight effective police practices to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide that the Office of the Police Ombudsman Commission's (OPOC) as the entity that receives the Ombudsman or Deputy Ombudsman's request for further investigation when the Ombudsman or Deputy Ombudsman is not satisfied with the determination of the Chief concerning an investigation referenced in the CBA, Article 27.

The OPOC's decision will be final based on the Ombudsman or Deputy Ombudsman's written request and the Chief's written response. Once referred to the OPOC, an independent investigation will be completed consistent with the decision of the OPOC on the OPO's request.

Per the provisions in the CBA, any independent investigation shall be limited to the additional investigative steps that were in the Ombudsman or Deputy Ombudsman's written request to the OPOC. The OPOC may direct the Ombudsman or Deputy Ombudsman or a third-party investigator to undertake an independent investigation to complete the further investigation requested. However, no investigation may commence until the Chief has made a final written discipline determination in the matter. If the OPOC contracts for a third-party to do the independent investigation, it shall be conducted by someone with knowledge and experience in conducting a fair and objective law-enforcement investigation and who has no conflict of interest. The investigator – the Ombudsman, Deputy Ombudsman, or third-party investigator – may request, but not require, participation by police officers in the investigation.

Once the investigator has completed the OPO requested investigation, the OPOC may publish a closing report of the results of the investigation in accordance with the required disclosures discussed below.

Required Disclosures

Under Article 27 of the current CBA between the City of Spokane and the Spokane Police Guild, this report must provide the following disclosures:

1. A report shall not identify specific members of the SPD and does not in any way comment on officer discipline (or lack thereof).¹
2. The closing report may include the allegation made in the complaint, a summary of the investigative steps taken by the Ombudsman or Deputy Ombudsman or third-party investigator,

¹ For consistency, witnesses were also not identified in the report. Every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.

and any policy and practice recommendations; however, the report will not determine whether there has been a violation of the law or policy or recommend discipline.

3. The closing report of the Independent Investigation also may include the OPO or OPOC's perspective of the factual information that was obtained as a result of the investigation.
4. Any closing report from an Independent Investigation shall clearly state that the information expressed within the report is the perspective of the OPO and/or OPOC, that the OPO and/or OPOC do not speak for the City on the matter, and that the report is not an official determination of what occurred.
5. The further investigation and/or the Police Ombudsman Commission's closing report may not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, including those assigned to IA, or to reconsider any decision(s) previously made concerning discipline.
6. No discipline of or other tangible adverse employment actions against bargaining unit employees, including but not limited to decisions regarding defense and indemnification of an officer, may result from the OPO or third-party investigation.

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

Summary

Procedural History

A homicide occurred on August 8, 2020 in Browne's Addition. Following the homicide, SPD Employee A and B began canvassing the area for information that could identify the suspect. They noticed the Complainant's property had exterior facing security cameras and requested the footage from the cameras. The Complainant cited privacy concerns due to the nature of the business conducted onsite and requested officers get a search warrant. Three days later, the lead detective returned with a search warrant and the Complainant provided the security camera footage without issue.

On August 27, 2021, more than a year after the incident, the Community Member filed a public records request (PRR) specifically requesting, "body cam footage/audio between [SPD Employee A] and [the Complainant] from August 9, 2020."² The Community Member filed a second PRR on September 14, 2021 for the same information after the initial request was closed due to ongoing work on the case. In late October 2021, information on this case was released on Fox News. This led to the complaint filed with the OPO on October 29, 2021.

On November 4, 2021, the IA Lieutenant assigned this case to an investigator. The complaint was investigated under an alleged violation of Policy 340.3.7: Unauthorized access and/or intentional release of designated confidential information, material, data, forms, or reports.

IA sent their investigation to the OPO for certification three times and the case was returned for further investigation each time. Upon final disagreement on whether IA would conduct further investigation, the OPO appealed the case to the Chief.

On April 11, 2022, the OPO sent Chief Meidl a courtesy notice via email that the OPO had declined to certify C21-070 for objectivity, despite having concerns for each prong of timely, thorough, and objective. The Chief responded vigorously defending his decision, continuing to allege City Council involvement and

² Public Records Request P004823-082721.

raising concerns regarding OPO objectivity. See Appendix A for the OPO's courtesy notification and the Chief's response.

On June 14, 2022, the OPO presented this case to the OPOC for further investigation. The OPOC reviewed materials presented by the OPO and the Chief. See Appendix B for the OPO's brief and the Chief's position presented to the OPOC. The OPOC unanimously voted to direct the OPO to conduct further investigation.

The OPO's summary of facts are based upon a careful review of body worn camera (BWC) footage; the IA investigative file; interviews conducted by the OPO; responsive documents to a document request submitted to the Information Technology department; public records; documents/information provided by witnesses; and other information unveiled during this investigation.

OPO Investigative Steps

The OPO requested the OPOC grant the scope of the independent investigation include:

1. The additional investigative steps that the OPO requested and were unfulfilled by IA in the investigation. The OPO requested that IA conduct additional interviews of persons who viewed the body worn camera footage prior to when the PRR was made by the Community Member.
2. Any training or policies regarding the dissemination of confidential information.
3. An email search of any email from a City employee or elected official to the Community Member.
4. Whether there were any conflicts of interest during the investigation.
5. Whether there was bias in the investigation.
6. Whether all witnesses and involved parties were identified.
7. The ability to pursue any other reasonable investigative leads that may present themselves during the investigation.

The OPO investigative process included:

1. Requesting to interview 46 witnesses. This includes every person listed in the BWC audit from August 8, 2020 through August 27, 2021, when the PRR was made, and individuals identified as relevant witnesses during the investigation process such as the Mayor, City Administrator, City Attorney, City Council Members in office during the incident and their staff, Spokane Police employees (Police Records staff, detectives, lieutenants, captains, majors, directors, Assistant Chief, and Chief), and Spokane County employees.
2. Conducting 31 witness interviews and 1 meeting with a Spokane County employee about the investigation process. Not all witnesses interviewed are mentioned in this report.
3. Requesting SPD Employee B's audit trail for BWC footage.
4. Requesting IT search for texts and emails.³
5. Reviewing 4723 responsive documents.

Obstacles to OPO Investigation

Incomplete Interviews

1. The Community Member declined to participate in an OPO interview. They didn't help the police in either interview. The Community Member accused the Complainant of obstructing a police investigation, but the Community Member also refused to answer questions that would provide

³ The OPO did not request personal emails of City employees that were used to transact City business.

material information to the investigation. The Community Member was asked for assistance three times, twice by IA and once by the OPO, and declined to provide pertinent information to IA on both occasions and declined to participate in an OPO interview. As a result of the Community Member's declination to cooperate with the OPO Independent Investigation, we used emails, phone logs, and texts between the Community Member, City employees, and SPD employees to determine whether information was inappropriately provided to the Community Member and to determine whether a special relationship existed.

2. An attorney with Spokane County refused to allow his subordinates to attend requested interviews with the OPO until the Ombudsman and legal counsel met with them. After the meeting, no one from Spokane County showed up for an interview anyway.
3. The OPO is unable to compel SPD employees to participate in an OPO Independent Investigation like in an IA investigation and some questioned the legitimacy of the OPO investigation.
 - 5 SPD employees declined to participate in interviews
 - A senior member declined to interview and said the OPO's investigation was illegitimate as there was no policy violation.⁴
 - Another senior member initially declined to interview saying, "I respectfully decline, as I don't think the continuation of this is appropriate and establishes a poor precedent..."⁵
4. The OPO's jurisdiction does not currently include civilian employees that work inside of SPD and has no recourse if individuals decline to participate.
 - 1 civilian SPD employee declined to participate
 - 1 former City Official declined to participate
 - The OPO assigned Assistant City Attorney strongly advised that the OPO not request the City Administrator compel non-Police Guild city employee participation
5. The OPO has no ability to compel employees of outside entities to participate.
 - 5 Spokane County employees never responded to requests for interviews
 - The County Prosecutor did not return phone contact requests
 - 1 Spokane County employee agreed to an interview and did not show up or respond to requests for rescheduling
 - 1 former City Official never responded
6. The OPO has no recourse to compel an interviewee to answer a question when they decline.
 - SPD Employee C did not feel comfortable sharing information that could have been critical information to the investigation.
 - SPD Employee D was unwilling to discuss their opinion on who may have leaked the video.⁶

Timeliness of the Investigation

Witnesses had difficulty recalling specific information because the incident happened two years ago. This will likely be a reoccurring theme in this type of independent investigation because of the complex process a case must go through prior to an investigation being authorized. At a minimum, the contract allows 180-days for the investigation and the chain of command review to take place.

Document Review

Access to information on government systems was dependent on permission from the City Administration. The OPO requested access to relevant emails between the Community Member and

⁴ "RE: Interview request" (September 26, 2022).

⁵ "RE: Interview Request - 2nd Request" (September 28, 2022).

⁶ Interview with SPD Employee D, OPO Independent Investigation Interviews at 15:09, in Spokane, Wash. (September 19, 2022).

SPD employees of interest, emails between SPD employees surrounding specific keywords, and other specific emails pertinent to the investigation. These materials proved to define the landscape of the nature of the Community Member's relationship with SPD Employee C and City Administration Employee 1 that would not have otherwise been known to the OPO. Had the City Administration declined to provide access, the OPO would have not had the ability to access this pertinent information.

During this review, several themes emerged which clearly established ongoing relationships and access to information. A lot of information shared with the Community Member was utilized in efforts to influence City business and/or hold City Officials accountable for their actions.

Common themes that emerged in document reviews and interviews are as follows:

City Administration/City Council Related

1. When asked, most interviewees from the Administration, City Council, and SPD said they did not hear, directly or indirectly, that the Complainant was boasting or bragging about making SPD get a search warrant. Most City Council employees raised the point that the Complainant was within their Constitutional right to request a search warrant.
2. Almost every City Council employee mentioned how the Community Member and their associates regularly send out emails to a large mailing list. The emails are very critical of some City Council members but are complimentary of SPD.
3. The tone and demeanor of City Administration Employee 1 interview provided insight into their dissatisfaction for the Complainant despite them saying they liked the Complainant and enjoyed conversations with them.
4. City Administration Employee 1 used to work for the City Administration and later moved to City Council.
5. There are similarities between City Administration Employee 1 and SPD Employee C's statements. They were the only interviewees to blame the Complainant for any repercussion they have faced from the incident and from filing a complaint. They also both emphasized how widely known it was in the community that the Complainant was talking about this incident. However, neither could or would provide specific details about that.
6. Once the Community Member received their PRR, they confronted the Complainant the same day. The Community Member emailed the Complainant to let them know they were in possession of the BWC. The Community Member said the BWC was concerning, "as it relates to [the Complainant's] perspective and faith in SPD."⁷ City Council Employee 1 said that the Community Member approached the Complainant out in public with a folder and said that they bragged about their contacts in SPD and that "we are worried about your voting records and what [City Council] is doing to the SPD."⁸

SPD Related

1. A significant percentage of emails reviewed were between SPD Employee C, the Community Member, and the Community Member's group of associates. We reviewed approximately 4700 emails. On whether this type of interaction is normal, SPD Employee C said people don't normally email them that much.⁹ These individuals are very vested in creating a safer downtown, and "I honor that because I want that too."¹⁰

⁷ "Thank you and clarification" (October 15, 2021).

⁸ *Id.*

⁹ Interview with SPD Employee C, OPO Independent Investigation Interviews at 35:03, in Spokane, Wash. (November 7, 2022).

¹⁰ *Id.* at 35:40.

2. The Community Member’s relationship with members of SPD allows them to bypass the normal procedures the public utilizes to request police services. When people contact the Community Member’s associate, they do not call the police like the rest of the population. They get direct assistance from a high-level SPD official or forwarded to someone who can better assist them. However, this is not an uncommon practice. High-level SPD officials stated that police related requests are frequently sent to the Mayor’s Office or City Council members and they forward to SPD for follow up. SPD high-level officials said they do their best to get answers to issues that rise to their attention regularly and this is standard practice.
 - a. SPD Employee C said one of the Community Member’s associates would send them an email with issues downtown. SPD Employee C would forward the email to SPD Employee E for follow up. For example:
 - i. SPD Employee C said they were made aware of a strip lot on 3rd and Division by the Community Member’s associate and concerns about the crime happening there.¹¹ The landlord was showing a vacant business to a potential renter when they spotted someone walking around with a machete. SPD Employee C forwarded the matter to SPD Employee E for follow up.
 - ii. Auntie’s Bookstore was vandalized, and the owner emailed one of the Community Member’s associates in lieu of filing a police report with Crime Check. The associate forwarded it to SPD Employee C, who forwarded it to SPD Employee E and a detective for follow up. The detective pulled recent police reports and provided SPD Employee E with analysis – the business did not initially attempt to file a police report. SPD Employee E reached out to the bookstore owner regarding filing a police report. SPD Employee C sent an FYI to the Community Member and their associates.¹²
 - iii. A community member contacted one of the Community Member’s associates after a transient threw a rock through their window. The associate was sure to point out this community member attended a recent police fundraiser and even sat at the associate’s table.¹³ SPD Employee C asked the associate to pass along their apologies or alternatively if the associate will send contact information, they are happy to reach out directly. They asked their staff to troubleshoot why no officers were dispatched.
 - iv. When the Community Member had trouble filing an incident report online, SPD Employee C responded how the glitch was fixed internally in response to the Community Member’s contacting SPD Employee C.¹⁴
3. Quotes from emails illuminate the relationship between SPD, mostly SPD Employee C, and the Community Member and their associates.
 - a. On June 9, 2021, in an email entitled, “RE:,” SPD Employee C told the Community Member and an associate, “Their passion is invigorating and determination will help us cut through some of the hurdles we have experienced. I’m very excited about the leadership and vision! And very appreciative for you and [your associate], who ignited this flame.”
 - b. On July 15, 2021, in an email with no subject to the Community Member and an associate with, SPD Employee C said they came across this inspirational quote from their

¹¹ *Id.* at 33:57.

¹² “FW: Aunties Bookstore building.” (January 4, 2022).

¹³ “RE: Assault with a deadly weapon?” (March 23, 2022).

¹⁴ “FW: Your Online Police Report 2022-92000934 Has Been Approved” (February 10, 2022).

daily feed that reminded them of them. “Never underestimate the ability of a small group of dedicated people to change the world. Indeed, it is the only thing that ever has.”

- c. On October 23, 2021, in an email entitled, “RE: Daily Hot spot reports,” SPD Employee C tells the Community Member and their associates, “In light of all the blood, sweat and tears you all have committed to improving our downtown core, I know my words of appreciation will ring shallow. But I am still compelled to express my sincere and heartfelt appreciation, and shudder to think of where we would be without your efforts.” One of the associates responds, “band of brothers.” SPD Employee C responds, “We few, we happy few...”
 - d. On March 7, 2022, in an email with no subject, SPD Employee E told the Community Member, “Well, I think you guys have been very active in the last couple years which has been beneficial at shining a light on some of these problems, and it is greatly appreciated.”
 - e. On March 9, 2022, in an email entitled, “RE: Care to comment?” SPD Employee C emailed the Community Member and their associates and said, “I’ve said this to you all last year, and it still stands true. This group you have put together is shining light in the dark places where many don’t want light shown.”
 - f. On March 18, 2022, in an email entitled, “RE: Spokane Commercial Property Council - UGM follow-up/Tour of Cannon Street Shelter tomorrow at 10am,” SPD Employee C said to the Community Member, “I am so appreciative for the new energy and focus that this group brings, and a different set of voices (other than ours) adding to the conversation.”
 - g. On April 1, 2022, in an email entitled, “RE: Just stole all my AC piping again,” SPD Employee C emailed the Community Member’s associates and said, “Your efforts have been tremendous at bringing light to a system that needs to be fixed and has for quite some time. The justice system must also involve justice for victims (and I would argue, as the number one priority).”
4. Political lobbying
- a. One of the Community Member’s associates emailed SPD Employee C requesting to meet with them and the Community Member for breakfast or lunch to discuss whether the pressure they have applied for the past sixteen months has made any difference.¹⁵ The associate went on to say they saw some differences, but they do not know if they had any effect or it was time for the change to happen anyway.¹⁶ The associate said they are tired of applying constant pressure. If SPD Employee C thinks it will make a difference, they can continue. Otherwise, they have better things to do. They requested to discuss the task force, House of Charity moving out of downtown, new homeless facility, Judges/commissioners being more responsible, news reporting more crime, and Hello For Good.¹⁷ SPD Employee C provided a meeting place and said, “Can explain when we meet.”¹⁸
 - b. SPD Employee C shared numerous WASPC related documents. On November 1, 2021, SPD Employee C sent the Community Member WASPC’s legislative priorities.¹⁹ This includes a presentation screenshot, a synopsis of his position, and a copy of the

¹⁵ “RE: Confidential” (April 28, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ “Legislation.”

slideshow. SPD Employee C says, “Also as we learn about the new bills starting at the beginning of January, I would be happy to keep you looped in. Some of them will absolutely boggle your mind if they resemble the last few years’ worth since I’ve been paying attention...” The Community Member thanked them, and they responded, “Most welcome, and I can explain the video as well if you would like after you get a chance to watch it.”²⁰ On November 2, 2021, SPD Employee C forwarded more detail on WASPC’s draft legislative agenda to the Community Member after sending to a small internal group including – Senior Staff, the Police Legal Advisor, Mayor, and City Administrator.²¹

- c. The Community Member sought assistance from SPD Employee C on “pinning down” State Senator Billig. “The statistics you provided are a big help. Thank you! Interestingly enough, Sen. Billig suggested criminologists look at 5-year trends and not 3 as I believe he was trying to discredit the stats. He is going to include his own stats in his presentation. He hasn’t showed me what he has put together yet. The only other issue I would like to pin him down on is the drug decriminalization law.”²²
 - d. When SPD Employee C provided the Community Member and their associates with the current state of SPD’s drug enforcement, the associates discuss how there would be inaction without them applying pressure, “It would be interesting to see if you get any response from Council through the [Downtown Spokane Partnership], without [the Community Member] and I putting pressure.”²³
 - e. SPD Employee C thanked the Community Member for an email they sent to City Council opposing ORD C36156, impacting female leadership at SPD. SPD Employee C responded, “Thank you [Community Member]! And I am sorry this is taking time away from so many other priorities I know you have. Hopefully we can use this to help guide future engagement and processes among our various government branches and departments!”²⁴
 - f. The Community Member requested to speak with SPD Employee C so they can be on the same page regarding law enforcement legislative agenda advocacy.²⁵
 - g. SPD Employee C provided the Community Member and their associates analysis and opinion on the Legislature’s Substance Use and Disorder Plan.²⁶
 - h. SPD Employee C thanks the Community Member for their lobbying against electric vehicles for SPD with City Council.²⁷
5. Loyalty to the Community Member
- a. In SPD Employee C’s interview, they maintained they did not have a special relationship with the Community Member.
 - b. When asked about what the Community Member told them about the identity of the person who shared the information on SPD Employee A’s BWC, they declined to answer the question because they did not want to betray the Community Member’s confidence, “I am not comfortable sharing that, and I’ll tell you it was because [they] confided in me.

²⁰ *Id.*

²¹ “FW: WASPC's "draft" 2022 legislative agenda.”

²² “RE: Presentation to Commercial Property Council via Zoom” (April 7, 2022).

²³ “RE: Current Status of 'Simple' PCS in Spokane” (November 27, 2021).

²⁴ “RE: Request to vote against ORD C36156 ‘Streamlining SPD’” (December 13, 2021).

²⁵ “RE 2022 Legislative Agenda” (October 13, 2021).

²⁶ “RE: Law Enforcement Reform” (January 25, 2022).

²⁷ “RE: SPD Police Vehicles” (March 8, 2022).

Here's what I will tell you. It was not anyone on the Mayor's Cabinet, it was not anyone in the Mayor's staff. [They] confided in me and I'm not going to betray [their] confidence but I don't have names [but the Community Member provided job titles]."²⁸

- c. The Community Member asked SPD Employee C not to share the information they disclosed. They said that while the information was, "not confidential information, but [it was] said in privacy and...information was shared with the expectation of confidence."²⁹
6. Appeal to SPD Employee C for influence.
 - a. On November 3, 2021, one of the Community Member's associates complained to SPD Employee C that, "I am being cancelled out of any conversations, same with the [Community Member] and [our associates]."³⁰
7. Phone call between the Complainant, City Council Employee 2, and SPD Employee F
 - a. City Council Employee 2 called SPD Employee F on a Sunday and said they wanted to call them the following day. When they called the following day, the Complainant was also on the line. The Complainant was under the impression this was an, "effort by the department to bring [them] down that [they] attributed it to being racially motivated."³¹ City Council Employee 2 was more skeptical of the race comment and believed it was more because the Complainant is a[n] [elected official] that the department was going after them. SPD Employee F was offended when the Complainant said to them, "you need to call off your dogs, or I'm gonna take this out on the police department in so many words,"³² SPD Employee F replied they didn't do this. The Complainant responded that the security footage was HIPAA protected and that they would not assist with an exterior facing camera because it might expose the residents of the facility.³³ They also stated that they were within their right to ask for a search warrant.³⁴
 - b. SPD Employee G said the Complainant and SPD Employee F had a conversation on the phone that was "interesting."³⁵ While SPD Employee G was not present for the conversation, they said Council Members told SPD Employee F that the police were attacking them and Council Member attitudes toward the police department were not favorable.³⁶ When asked for specifics, they said they would rather not share and that the OPO should talk with the Complainant and SPD Employee F.³⁷ They did go on to say the comments made did not paint the Complainant and City Council Employee 2 in a good light.

²⁸ See *supra* note 9 at 15:22-15:59 and 20:10.

²⁹ See *supra* note 9 at 19:58.

³⁰ "RE: Transient arrests."

³¹ Interview with SPD Employee F, OPO Independent Investigation Interviews at 58:10, in Spokane, Wash. (October 6, 2022).

³² *Id.* at 58:09.

³³ *Id.* at 59:19.

³⁴ *Id.* at 59:28.

³⁵ Interview with SPD Employee G, OPO Independent Investigation Interviews at 12:36, in Spokane, Wash. (October 4, 2022).

³⁶ *Id.* at 13:28.

³⁷ *Id.* at 13:09.

OPO Summary of Facts

Allegation and Counter-Allegation

The complaint the OPO received on October 29, 2021 alleged someone from SPD “leaked” or improperly disclosed or released the BWC footage or information about the BWC footage that was later seen on Fox News. Prior to and since the OPO began our independent investigation, counter allegations have been raised that the Complainant was the source of the “leak.” The counter allegation also alleged that the Complainant openly discussed “playing hard ball” with the police by making them get a search warrant while inside City Hall. The initial IA investigation showed that the BWC footage was provided to the Community Member through the appropriate PRR process. However, the IA investigation did not examine whether the Community Member received information about the BWC footage and/or was directed to make a PRR.

Since the initial complaint, the Complainant stated that they receive emails from a group of business owners who are concerned about property crime who are adamant that the Complainant uses their position for their own gain to spread an anti-policing narrative. The Complainant believes this is bullying and retaliation for filing a complaint with the OPO as well as a racial issue.³⁸

This case covers a period of two years with several breaks in time. The following summarizes the significant time periods relevant to the allegations made.

Disputed Facts

1. The source of the leak. The Complainant alleged it was from SPD. SPD Employee C alleged it was City Council staff. The Community Member stated it was the City Administration.
2. Whether it is a policy violation for an SPD employee to talk about an interaction with a Council Member during a homicide investigation with someone outside of SPD that led to a PRR.
3. Whether the complainant’s personal information written on SPD Employee A’s notepad and visible on BWC footage should have been redacted.
4. Whether SPD’s practice and/or training was to close all criminal cases once charges are forwarded to the Prosecutor’s Office to make them available to the public. The lead detective said their practice was to leave all cases pending until the completion of trial. Another SPD employee concurred that was the practice and stated they had not received any previous training or direction into the matter. The OPO was not able to obtain any written directives regarding this matter in policy. However, a high-level SPD official said the standard was to close cases once charges were sent to the Prosecutor’s Office.

August 8-12, 2020: The Homicide in Browne’s Addition and Police Interest Immediately Following the Incident

Canvassing for video

On the day the homicide occurred, officers identified the Complainant’s business, an mental health facility, as a potential source of information due to its exterior facing security cameras. It is SPD’s practice to canvass an area immediately and secure any source of information such as security footage due to concerns that the footage might get deleted. SPD Employee A contacted an employee of the property who connected them with the manager of the business, later identified as the Complainant.³⁹ The interaction between SPD Employee A and the Complainant was captured on BWC. The Complainant

³⁸ These were new allegations outside of the scope of the authorized independent investigation and were only indirectly addressed as they pertained to actions of individuals who were not City employees.

³⁹ SPD Employee A’s BWC at 24:28 (August 8, 2020).

and SPD Employee A had a brief conversation that captured SPD Employee A's responses but did not capture the Complainant's side of the conversation.⁴⁰

On the call, the officer asked what the security camera captures and how far back the recording on the security cameras goes. The officer gestured with their hand to the area immediately in front of the property as they were speaking with the Complainant indicating the camera captures only what is directly in front of the property. After some discussion and obtaining contact information, the officer asked, "How hard would it be to get a hold of that footage?"⁴¹ The officer explained that there was a homicide down the street and that the police will have to reach out to the complainant to get ahold of the footage.⁴² The call ended at the 26:36 mark.

After SPD Employee A and the Complainant concluded the call, SPD Employee A went back inside the property to return the phone to the employee (26:47). Residents of the facility were seen on camera eating at the dining table. The employee met SPD Employee A back in the living room to retrieve the phone. As SPD Employee A was exiting the property, the employee can be heard in the background telling SPD Employee A, "Please don't quit. We love you guys. We don't want you to quit, we're all for you," (27:12). The employee even offers SPD Employee A a cup of coffee anytime and tells them to stay safe. SPD Employee A later notes to SPD Employee B that the employee conveyed the business was pro-police (28:51).

SPD Employee A circled back with SPD Employee B and updated them on the contact with the Complainant. This is when officers first identify the Complainant as working for City Council. However, it does not appear that SPD Employee A recognized who the Complainant was. SPD Employee A told SPD Employee B, "So I don't know how willing [the Complainant] is 'gonna' be. I got [their] phone number, [they're] manager, address, and then call [them] back later, 'cuz' [they've] never done this before (inaudible) [they're] not here, supposedly [they] just say [they] work for the City Council, and no, and [the Complainant] said I'm not really too enthused to help you but..." (27:59) SPD Employee B interjected, "[They] said that?," (28:21) and SPD Employee A responded in the affirmative. SPD Employee B responded, "[They're] a piece of work" (28:36).⁴³

Email to Command Staff

SPD Employee H was the Shift Commander and was in the area when they learned about the homicide and responded to the scene to assist. SPD Employee H spoke with SPD Employees A and B and then sent an email to Command Staff⁴⁴ after learning the investigation involved a City Council member. According to several members of the police department interviewed, when there are incidents that involve high profile persons, SPD employees are expected to report the incident to SPD leadership. SPD Employee H's email summarized their debrief with SPD Employees A and B.⁴⁵

⁴⁰ SPD Employee A declined to participate in an OPO interview so their recollection of the conversation could not be obtained. Their recollection of the conversation was not part of the original IA investigation.

⁴¹ See *supra* note 39 at 25:53.

⁴² *Id.* at 26:23.

⁴³ It should be noted that while SPD Employee A and B had a discussion captured on BWC about the Complainant, SPD Employee B's personal feelings were left out of their police report.

⁴⁴ Command Staff includes the Communications Manager, the Law Enforcement Technology Manager, an administrative specialist, captains, majors, directors, the Assistant Chief, and Chief. There are 15 members of Command Staff as of November 22, 2022.

⁴⁵ "Interaction during Homicide investigation" (August 10, 2020).

The email described how SPD Employee B expressed their disappointment to other officers on scene.⁴⁶ SPD Employee H's email said, "Someone who worked for the City Council that did not want to cooperate during the investigation." SPD Employee H identified the person the employee called a City Council member after reviewing SPD Employee A's BWC footage and explained, "You cannot hear what [the Complainant] said on BWC but after the call was over, [SPD Employee A] told [SPD Employee B] that [the Complainant] said [they] were not too 'enthused to help us.'" SPD Employee H contacted SPD Employee A the next day to discuss their impression of the conversation with the Complainant. SPD Employee A said the Complainant was reluctant to help even though they were advised officers were investigating a homicide. This is consistent with SPD Employee A's BWC footage described above. SPD Employee H enclosed the link to SPD Employee A's BWC footage and marked the video with the points of interest.

Several high-level SPD officials responded to SPD Employee H's email. There was specific interest on whether the Complainant's lack of enthusiasm ended with a lack of assistance to the police. SPD Employee H responded they did not believe the Complainant did not want to assist but left the impression that they were not enthused to help the police. SPD Employee H also confirmed that officers were not able to obtain the video from the Complainant when they contacted them and the Investigations Unit was going to follow up on obtaining the video. This is consistent with how SPD Employee I described the process of obtaining the security footage from the Complainant.

SPD forwarded SPD Employee H's email to Administration officials and they provided SPD the following guidance, "Let's play this straight and wisely; formal request only if needed, clear discussion with the [the Complainant] about a warrant and the public nature of them. If the officer's impression of non-cooperation was not 100% clear, and we may not need the footage anyway, then let's just assume good intentions by [the Complainant]. The last thing we need is (more) Council trouble. However, if we do need the footage, then we proceed professionally."⁴⁷

Following SPD Employee H's email to Command Staff, several members of the Command Staff viewed the BWC. When interviewed, SPD employees said it is not uncommon to view BWC related to an incident of community interest to be aware of the facts of the case. It also appears SPD Employee I was assigned handling of the criminal case shortly after the incident occurred. The BWC audit trail shows SPD Employee I was the only SPD employee outside of Command Staff who accessed the BWC.

SPD request for Complainant's video footage

On August 9, 2020, SPD Employee I called the Complainant to let them know they were aware that a video existed and would like access to it. It was then that the Complainant told SPD Employee I that they would like a warrant. The Complainant said the video was protected by HIPAA protections.⁴⁸ The Complainant reasoned it was their job to protect the privacy of the facility's residents. SPD Employee I disagreed with the Complainant's assessment but moved forward with obtaining the warrant without issue. In their interview, SPD Employee I stated that they fully recognized the Complainant was well within their right to request a search warrant and was not offended. However, they were disappointed a fellow public servant chose to do this. Several members of SPD who were interviewed were similarly

⁴⁶ SPD Employee B's report #2020-20136923 (August 8, 2020) (interacting with the Complainant does not indicate any unusual interaction, the report only mentions that the Complainant's camera footage might be able to provide information and that SPD might be contacting her to follow up with that information).

⁴⁷ "RE: Interaction during Homicide investigation" (August 10, 2020).

⁴⁸ The Health Insurance Portability and Accountability Act

disappointed. When asked, SPD Employee I said the video ended up providing very important information to the investigation, “It was absolutely critical. It is the most critical evidence of this case.”⁴⁹

On August 11, 2020, SPD Employee I obtained the search warrant and collected the video from the Complainant. SPD Employee I said the Complainant had concerns police might disrupt or cause problems for the facility residents. However, once SPD Employee I and the Complainant worked out how the process would work, there were no issues and the Complainant was completely cooperative.

August 2020-April 2021: Criminal Case Preparation

SPD had no further activity on SPD Employee A’s BWC audit trail after the initial days of interest in this case following the incident. SPD Employee A’s BWC footage was only viewed by Spokane County employees in this period, presumably for the criminal trial proceedings. The OPO also requested SPD Employee B’s BWC audit trail to be thorough since SPD Employees A and B were the two persons involved in the conversation that later became the subject of the PRR. SPD Employee B’s BWC footage did not garner the same interest as SPD Employee A’s BWC footage and was only viewed by Spokane County employees during this period.

August 2021: Interest in SPD Employee A’s Body Worn Camera Footage Picks Up Again

On August 23, 2021, The Community Member sent an email to SPD Employee C. In the email, the Community Member says they were made aware of a comment made by the Complainant to a patrol officer regarding an investigation of a crime in Browne’s Addition earlier in the year. The Community Member goes on to say they believed the officer asked Complainant for surveillance footage from their property. From what the Community Member understood, the Complainant would not assist law enforcement. The Community Member asked SPD Employee C if there is a BWC video/audio file of the incident that they could get with a PRR. SPD Employee C responded they heard something like what the Community Member shared and that the Complainant did end up providing access.⁵⁰ SPD Employee C said they would look around to see if they can get more information and will keep the Community Member posted.⁵¹

Two days later, on August 25, 2021, SPD Employees C and G reviewed SPD Employee A’s BWC footage again. When asked why they viewed the footage again more than year after the incident, SPD Employee G could not recall specifics. SPD Employee C said they view BWC footage if there is a potentially larger issue. SPD Employee C confirmed they received an email from the Community Member who asked for a copy of the BWC footage, but SPD Employee C directed the Community Member to make a PRR.⁵²

On August 27, 2021, the Community Member officially made a PRR for SPD Employee A’s BWC footage.⁵³ Of note, the information the Community Member provided in their PRR request is updated to the correct information. The information they sent in an email to SPD Employee C was the wrong year and the PRR had more specific information regarding the case. The request specifically provided the police report number related to the incident, the date the incident occurred, and the names of SPD Employee A and the Complainant.⁵⁴

⁴⁹ Interview with SPD Employee I, OPO Independent Investigation Interviews at 6:04, in Spokane, Wash. (October 5, 2022).

⁵⁰ “RE: Body Cam Footage question” (August 23, 2021).

⁵¹ *Id.*

⁵² *See supra* note 9 at 3:35.

⁵³ Public Records Request P0004823-082721.

⁵⁴ The OPO was not able to independently verify the source of the information because the Community Member declined to participate in an OPO interview.

September-October 2021: Public Records Review Process

The Community Member made two requests for the same BWC footage. The first request, P004823-082721, was denied and closed by the Records Clerk on September 14, 2021. The second request, P005426-092921, was made on September 29, 2021 and released to the Community Member on October 15, 2021. The following provides the timestamps, when available, of the internal review process leading up to the release of the records.

September 14, 2021

- 12:36pm
 - The Records Clerk responsible for fulfilling the Community Member's PRR emailed SPD Employee I to inquire if the BWC footage was available for release. The Records Clerk provided the Community Member's name to SPD Employee I which is not a common practice. It is unclear why the Community Member's name was shared with SPD Employee I.⁵⁵
 - SPD Employee I responded to the Records Clerk⁵⁶ that the criminal case was still open with ongoing work and that "I do not anticipate closing it prior to trial (currently anticipated for November)."⁵⁷
- 12:58pm
 - The Records Clerk corresponded with the Community Member via GovQA, the PRR portal, to memorialize a phone conversation at 12:56pm where the Community Member communicated they were only interested in BWC footage that captured the phone call between SPD Employee A and the Complainant and not any BWC footage related to the scene of the homicide.
- 2:32pm – The Records Clerk wrote the responsive records were now available and concluded the request.⁵⁸
- 2:45pm
 - The Records Clerk corresponded via email to the Community Member that the previously sent correspondence was incorrect. The correct information is that the records were not releasable due to the ongoing investigation.
 - The Records Clerk advised the Community Member should file a new PRR once the investigation is closed.
 - The Records Clerk then provides SPD Employee I's name and phone number so the Community Member may contact them directly with questions.⁵⁹

September 29, 2021

- 8:28am – SPD Employee J accessed SPD Employee A's BWC footage on Evidence.com and watched the video.

⁵⁵ The OPO requested to interview the Records Clerk but they declined to participate.

⁵⁶ This was copy pasted into the PRR log from an email chain at 2:43pm. It is unclear what time SPD Employee I responded to the Records Clerk.

⁵⁷ See *supra* note 53.

⁵⁸ It is unclear why the Records Clerk made the records available to the Community Member. SPD Employee I's response time is unclear but ultimately, SPD Employee I said the records were not releasable. Without additional information, it appears the Records Clerk unilaterally decided to release records to the Community Member and only walked it back after hearing from SPD Employee I.

⁵⁹ SPD Employee I was not aware that the Records Clerk provided their contact information. SPD Employee I also confirmed that the Community Member contacted them directly. It was a short conversation where the Community Member was either verifying the video existed or asking how to get it. SPD Employee I would not get involved and directed the Community Member to file a PRR.

- 1:30pm
 - The Records Clerk updated the first PRR the Community Member made, that was closed on September 14, 2021, to the status, “Exemption Denial.”
 - The Community Member corresponded with the Records Clerk via GovQA. They say, “I’ve been told that this case is closed and that the video for this specific phone call is available to the public. Could you call me at [phone number] to discuss[?]”⁶⁰
- 1:38pm – The Community Member sent two email recipients a screenshot that detail their communication with Spokane Public Records Center. The email said, “I just got off the phone with [SPD Employee I] regarding releasing the body cam footage. [They] were not showing that the case is closed or told otherwise yet.”⁶¹
- 1:49pm – A recipient of the Community Member’s email forwards it to SPD Employee C.⁶²
- 1:56pm – SPD Employee C forwarded the email to SPD Employee J.
- 3:16pm – SPD Employee J accessed SPD Employee A’s BWC footage on Evidence.com and watched video again.
- 5:11pm – The Community Member re-filed their PRR request.⁶³ The request is substantively the same as the previous request but clarifies that they are only seeking the BWC portion related to the Complainant and not the homicide investigation.

September 29 – October 5, 2021

Sometime between September 29th and October 5th, SPD Employee C spoke with SPD Employee J about the status of the investigation on the criminal case. SPD Employee C directed SPD Employee J to find out the status of the case because if it had been forwarded to the Prosecutor’s Office, it should be closed, like the procedure used in officer involved shootings.⁶⁴

SPD Employee J approached SPD Employee I and presented them with the aforementioned guidance. According to SPD Employee I, this was out of the ordinary since SPD Employee J had not approached SPD Employee I regarding any other PRRs in the past.

SPD Employee J advised that SPD Employee I should not wait to close cases until the end of the criminal trial. SPD Employee J cited that SPD’s philosophy is to err on the side of transparency given the strict nature of public records laws. SPD Employee J advised if the bulk of the investigation was complete, they must close the case to be able to release records. This sentiment and reasoning was later also echoed in SPD Employee C’s interview. SPD Employee J made it clear that SPD Employee I had the authority to determine whether the bulk of the investigation had been completed. After this conversation, SPD Employee I marked the case closed.⁶⁵

On October 5, 2021, SPD Employee I spoke with the Records Clerk and advised the records were now releasable.

Prior to the guidance received from SPD Employee J, it was SPD Employee I’s common practice to leave cases open due to a flaw in the case tracking system. If any new documents were added to a closed case, the system would reopen the case. This caused confusion as to the status of cases so SPD Employee I would leave them pending until the end of the criminal trial. It should be noted, SPD

⁶⁰ See *supra* note 9 at 26:17 (saying they probably provided the Community Member this information).

⁶¹ “Fwd: [Records Center] Police Records Request: P004823-082721” (September 29, 2021).

⁶² The timestamp on the screenshot is 1:48pm and the email was forwarded to SPD Employee C at 1:49pm.

⁶³ PRR P005426-092921

⁶⁴ See *supra* note 9 at 26:44.

⁶⁵ See *supra* note 49 at 17:01.

Employee I had not received formal training in the release of public records procedures. After speaking with SPD Employee J, SPD Employee I has begun marking cases as releasable after the bulk of the investigation is complete. SPD Employee I also began instructing other detectives with the guidance they received.

October 15, 2021

- 7:48am – Records were released to the Community Member.
- 11:50am – The Community Member emailed the Complainant to let them know they were in possession of the BWC. The Community Member said the BWC was concerning, “as it relates to [the Complainant’s] perspective and faith in SPD.”⁶⁶

Information reaches the media and story airs on Fox News

On October 25, 2021, Jason Rantz, a Seattle-based conservative radio show host and frequent guest on Fox News, emailed the Complainant. He said he was looking into a story and hoped the Complainant could provide a comment for context. He asked the Complainant to provide context as to why the officer said the Complainant was “not enthused” to help with the investigation and whether they ended up providing the surveillance footage.⁶⁷

On October 26, 2021, the Reporter posted an article about the Complainant on Mynorthwest.com⁶⁸ and on Twitter.⁶⁹ The article is based on the content of SPD Employee A’s BWC.

In the week following the article on the Complainant posted on Mynorthwest.com and its broader exposure on Fox News, the Complainant received requests from the Community Members to interview them about the incident over Zoom; the Complainant has been called “shameful” and a “disgrace to the community” and that the whole country knows about them; and the Complainant has been called upon to resign.⁷⁰

Late October 2021-April 2022: The IA Investigation Process

1. October 29, 2021 – the OPO conducted a complaint intake with the Complainant.
2. November 4, 2021 – the IA Lieutenant assigned this case to an investigator.
3. December 22, 2021 – IA interviewed the Complainant.
4. January 7, 2022 – IA sent the case to the OPO for certification. The OPO returned the case for further investigation citing thoroughness. The OPO requested interviews of the officers on scene, interviews of SPD employees listed as viewing SPD Employee A’s BWC on the audit trail prior to when the Community Member made a PRR as well as sending a request to interview non-SPD employees identified in the BWC audit trail. The OPO also requested a copy of the PRR be attached to the investigative file to help establish the timeline of events.
5. March 8, 2022 – IA interviewed SPD Employees A and B to partially fulfill the additional investigative steps requested by the OPO.
6. March 25, 2022 – IA sent the case to the OPO for certification a second time and the OPO returned it again for further investigation. Under timeliness, time was running out to conduct the additional interviews requested as the case was on the 158th day of the 180-day

⁶⁶ “Thank you and clarification” (October 15, 2021).

⁶⁷ “Request for comment” (October 25, 2021).

⁶⁸ Jason Rantz, *Rantz: Spokane Councilmember told cop she wasn’t ‘too enthused to help’ with murder investigation*, MYNORTHWEST, Oct. 26, 2021, <https://mynorthwest.com/3204751/rantz-spokane-councilmember-told-police-she-wasnt-too-enthused-to-help-murder-investigation/>.

⁶⁹ Jason Rantz on KTTN Radio (@jasonrantz) TWITTER (October 26, 2021, 6:55PM), <https://twitter.com/jasonrantz/status/1453178384339464193>.

⁷⁰ See IA casefile for C21-070.

investigation and review window. However, the length of the investigation did not correlate to the amount of work performed. Further, it was only after sending the case for certification a second time that IA raised the issue for the first time that they did not feel there was a policy violation. Under thoroughness, the OPO requested an email previously sent by the OPO be attached to the investigative file, a timeline of events be created that lines up the PRR requests made and video surfacing from outside sources, and the OPO provided a list of 12 names of persons who had yet to be interviewed from the BWC audit. Lastly under objectivity, the OPO cited their concern about IA's unwillingness to conduct further investigation.

7. IA briefed the Chief about the case at some point after the OPO returned the investigation the second time and before the IA investigator called the Community Member for a recorded interview. In the briefing, the IA investigator was directed to call the Community Member to get a recorded statement of a previously unrecorded conversation about where the source of their information on this BWC footage came from. The IA Summary on this case says that the Community Member initially assured the IA investigator that the information didn't come from anyone within SPD and that they did not want to get too involved past that.⁷¹ The Community Member did disclose that the video came from City Administration at City Hall.
8. On or around March 30, 2022 – SPD Employee K, a person included on the list of interviews requested, directed IA to stop conducting interviews on this case.
9. April 2, 2022 – the IA investigator called the Community Member with the OPO on the line to obtain the recorded statement. On the call, the IA Investigator read the part of their IA Summary where the Community Member said the video⁷² came from City Administration and asked them to confirm if that was an accurate summary. The Community Member confirmed the statement was accurate and refused to provide any further information on the matter.⁷³
10. April 5, 2022 – IA sent the investigation to the OPO for certification for the third time. The OPO also met with the Chief the same day. In the meeting with the Chief, the OPO raised concerns about SPD's Law Enforcement Code and Ethics, Canon 9 and corresponding standards. Canon 9 deals with authorized release of confidential information as a law enforcement officer and the personal use of that information. Chief Meidl held that members of the department maintain First Amendment rights in response to the OPO's raising concerns about Canon 9 regarding authorized release of confidential information. The Chief had already decided there was no policy violation by any member of the department even if they had discussed the matter with others.
11. April 11, 2022 – The OPO declined to certify the case for objectivity.
12. April 19, 2022 – The OPO advised the OPOC in their April 2022 meeting that they declined to certify C21-070. Following the meeting, the Police Guild President wrote the Chief, Assistant Chief, and Director of Strategic Initiatives to express support in honoring the OPO's reasonable investigative requests. See Appendix C for the Police Guild President's email.

[June-November 2022: The OPO Independent Investigation](#)

On June 14, 2022, the OPOC authorized the OPO conduct an independent investigation. The OPO commenced preparatory work and began conducting interviews in September 2022.

The OPO found the following relevant items during our investigation:

⁷¹ IA Investigator, C21-070 IA Additional (October 29, 2021).

⁷² This says someone from City Administration provided The Community Member the video, which is more than just information about the video. The OPO requested a follow up interview with The Community Member but they declined to participate in the OPO Investigation.

⁷³ Interview with Community Member, SPD IA Investigation C21-070, in Spokane, Wash. (April 12, 2022) at 1:26.

Disputed Facts

1. The source of the leak

When interviewed, it became clear that City Administration Employee 1 was a source of the information which initiated the PRR, whether directly or indirectly, to the Community Member. City Administration Employee 1 was working in the Mayor's Office at the time of the incident but later moved to the City Council.

In their interview with the OPO, they said they spoke with the Complainant regularly. The week after the incident occurred, they spoke with the Complainant about the incident and the Complainant bragged about making the police get a search warrant.⁷⁴ When asked how they interpreted the Complainant's behavior, City Administration Employee 1 said, "It sounded like obstruction...and I was concerned that [the Complainant] would not help the police department as an elected official. And it sounded personal, uh, so that also concerned me. It's been talked about that [they were] bragging and that is accurate, this was no secret. This was a known thing that [they were] going around telling people that. That was [their] attitude towards this. So, uh, people were talking about it, that's that was how [they were] approaching this."⁷⁵

City Administration Employee 1 said they did have conversations about this incident, and they had no reason to keep the conversation private.⁷⁶ They said information about this case got out to the business community but when asked for specifics, they did not have any.⁷⁷ They also said they told members of the community that the Complainant spoke in a "braggadocious" kind of way to them about the incident but that not all information out in the community came from them, there were other sources.⁷⁸

City Administration Employee 1 was the only interviewee outside the police department who raised an objection to the Complainant's behavior. This employee had also been admonished by at least one other City official for releasing or spreading information to undermine them. Additionally, City Administration Employee 1 considers the Community Member a friend.⁷⁹ While not admitting directly to discussing the matter with the Community Member, City Administration Employee 1 stated they talked to many people regarding the matter and did not recall if they spoke to the Community Member about it.

SPD Employee C said they directed the Community Member to make the PRR. They also directed SPD Employee J to speak with SPD Employee I about why the case had not been closed.⁸⁰ They further told the Community Member when the criminal investigation was closed.⁸¹

2. Whether it is a policy violation for SPD employees to talk about an interaction with a Council Member during a homicide investigation with someone outside SPD that led to a PRR.

The Chief maintains that an officer has First Amendment rights, and that Canons and Standards are expectations, but that there are legal parameters surrounding their restriction such as with First Amendment rights.

⁷⁴ Interview with City Administration Employee 1, OPO Independent Investigation Interviews at 3:03, in Spokane, Wash. (September 19, 2022).

⁷⁵ See *supra* note 74 at 5:23-6:16.

⁷⁶ *Id.* at 8:00.

⁷⁷ *Id.* at 7:45.

⁷⁸ *Id.* at 10:07.

⁷⁹ *Id.* at 21:28.

⁸⁰ See *supra* note 9 at 27:20.

⁸¹ *Id.* at 26:17.

The OPO maintains that Canon of Ethics 9 and Standards 9.2 and 9.4 of the policy manual apply.⁸² In 2022, there have been three IA complaints that involve allegations of violation of standards.⁸³ Canon 9 provides, “Members of the SPD shall observe the confidentiality of information available to them through any source, as it relates to law enforcement.” Standard 9.2 requires SPD members to treat all official business as confidential and only release or disseminate information in an authorized manner. Standard 9.4 requires members to neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.

3. Whether the complainant’s personal information written on SPD Employee A’s notepad and visible on BWC should have been redacted.

The Complainant’s personal information is legible on SPD Employee A’s notepad in the BWC footage. The OPO has received PRRs related to this case that contain redacted personal email addresses in emails. It is unclear why the SPD Records Clerk did not redact the Complainant’s personal information since they declined to participate in an OPO interview. This should not be interpreted to mean that a person’s information is always subject to redaction. In many cases it is not protected information.

4. Whether SPD’s practice was to close all criminal cases once charges are forwarded to the Prosecutor’s Office.

SPD Employee C said it has been SPD’s practice to close investigations once the bulk of the work had been completed and charges sent to the Prosecutor’s office for the last five to six years. SPD Employee I said it was their practice to leave all cases pending until the completion of trial, “We don’t technically close anything, unless we have absolute irrefutable conviction or proof of innocence.”⁸⁴ This is due in part to a flaw in the case management system that reopens cases when any document is added to the file. Instead, SPD Employee I considered almost all cases suspended. This includes any case up until the defendant is convicted. They only considered the case closed at the end of trial when the defendant is found guilty or innocent.

SPD Employee J had never approached SPD Employee I regarding a PRR. SPD Employee J was concerned about the department’s goals and transparency. SPD Employee J made it clear that SPD Employee I had final authority on when to close a case. SPD Employee I has since changed their practice of closing cases when the bulk of the work is done and instructs other detectives similarly.

Common Themes in Interviews

When asked, most interviewees from the Administration, City Council, and SPD said they did not hear, directly or indirectly, that the Complainant was boasting or bragging about making SPD get a search warrant. Most City Council employees raised the point that the Complainant was within their Constitutional right to request a search warrant.

⁸² Spokane Police Department Policy Manual, Spokane Police Department, <https://static.spokanecity.org/documents/police/accountability/police-policy-manual-2021-07-19.pdf>. (last visited on November 25, 2022).

⁸³ SPD IA investigations C22-003, C22-004, and C22-066.

⁸⁴ See *supra* note 49 at 11:30.

When everyone interviewed was asked if they directed the Community Member to make a PRR or if they knew who did, everyone denied any knowledge except SPD Employee C.

It was only City Administration Employee 1, SPD Employee C, and SPD Employee F who said the Complainant was bragging about the incident. However, SPD Employee F said they heard that the Complainant was bragging from SPD Employee C.⁸⁵ When pressed for specifics, neither City Administration Employee 1 nor SPD Employee C could recall. Both similarly offered it was widely known that the Complainant was bragging about this incident. It was only City Administration Employee 1 and SPD Employee C who blamed the Complainant's behavior for any repercussions they have faced in the media and the community. When SPD Employee C mentioned the Complainant, they were the only person interviewed who got emotional. The OPO also found City Administration Employee 1 and SPD Employee C included their personal emails in some of their interactions with the Community Member and their associates. The OPO did not pursue obtaining personal emails.

Concerns were raised with how information was being handled. It was alleged that City Council Employee 1 took a report provided by the Legal Department that was meant for the eyes of the named recipients only, of which they were not one. Legal provided strict instruction for review and return of the documents. City Council Employee 1 allegedly took the report to an outside copying service, scanned the document, sent it to themselves, then removed any watermark or heat stamps through a mobile application.

SPD employees' feelings toward the Complainant ranged from disappointed to offended. However, no one got worked up about it.⁸⁶ Instead they discussed the time and effort that had to be diverted unnecessarily to obtain the search warrant that could have been better utilized in their efforts of locating and arresting the suspect in the homicide. There was genuine confusion as to why the Complainant did that. However, no high-level SPD official had spoken to the Complainant regarding this confusion and/or asked for the reasons why.

When asked if interviewees were familiar with the Community Member in their OPO interview, many of the individuals mentioned the Community Member as running the Facebook page called Spokane Business & Commercial Property Council. Prior to the OPO Independent Investigation, we were advised that several SPD current and past employees would make political and disparaging posts on the page. The OPO was shown some posts from the Facebook group but felt this was outside of the scope of this investigation. Most of the city officials interviewed identified daily hostile emails they received from the Community Member and their associates. Multiple members raised concerns regarding the detailed emails the Community Member and their associates sent that condemned the actions of City officials.

Right to Request a Search Warrant/Right to Privacy Versus Expectation to Cooperate

The Complainant's request for a search warrant and whether they were "enthused" to help law enforcement or not fueled most of the emails within SPD and media interest into this case.

When SPD Employee H sent an email to Command Staff and received follow up questions on the Complainant's willingness to help, SPD Employee H responded it was more about leaving the impression with officers that they were not enthused to cooperate, and the Complainant did not decline to assist the police. SPD Employee H also confirmed that officers were not able to obtain the video from the Complainant when they contacted them and the Investigations Unit was going to follow up on obtaining the video.

⁸⁵ See *supra* note 31 at 27:38.

⁸⁶ *Id.* at 32:01.

SPD Employee A's BWC footage does not capture the Complainant's side of the conversation. The OPO interview of the Complainant attempted to learn their side of the conversation with SPD Employee A. The Complainant said SPD Employee A assumed that they did not want to help the police.⁸⁷ The Complainant said they requested a search warrant because they run a mental health facility and they need to protect their clients and their rights.⁸⁸ The Complainant said they need to ensure they would not violate their clients' rights.⁸⁹ They wanted to get legal advice since they had never experienced this before.⁹⁰ The Complainant called SPD Employee A back to say they would need a warrant. City Council Employee 1 said they were present when the Complainant was on the phone with SPD Employee A because they were concerned when they heard the Complainant say "warrant" on the phone.⁹¹ They said they did not hear the Complainant say the words "not enthused to help," but did recall hearing the Complainant say multiple times, "you are going to need a warrant for that."⁹² Immediately following the call, the Complainant grabbed their things and told City Council Employee 1 that they had to go take care of something.

SPD Employee I provided that initially officers did not have any good suspect information to identify them. In times like this it is routine in a major case for officers to canvass the area. This includes looking for witnesses, knocking on doors, asking who heard or saw anything, and locating any videos available. Timeliness is an important factor when locating evidence in a homicide investigation. Any evidence can be lost and investigators want to identify available evidence as fast as possible. As discussed in the facts section, SPD Employee I runs into similar issues with hospitals that cite HIPAA protection when SPD does not believe HIPAA protections apply and they must get a search warrant to obtain requested evidence.

When the OPO spoke with SPD employees and reviewed the guidance from the Administration sent to SPD regarding the matter, there was consensus that the Complainant was well within their right to request a search warrant. SPD employees were mostly disappointed that the Complainant would not immediately assist, as the extra time it took to get the search warrant took time away from other tasks officers could be doing.

Different Audit Trails with Different Organizations

The OPO interviewed a County employee who worked on the criminal case this complaint is attached to. The individual came to the OPO's attention because they appeared on SPD Employee A's audit trail. When asked if they shared the video, they said they shared it with their team in preparation for trial. They said a member of their team likely downloaded the file to bring to the jail because there is poor or no internet access there. Any subsequent interaction with SPD Employee A's BWC was not captured in the audit trail. The OPO's investigation revealed that a new audit trail is created once BWC access is sent to an outside agency from Evidence.com, the online portal to BWC footage. SPD's audit trail does not reflect how an outside agency shares BWC footage or who views it once it has been shared. Similarly, when BWC footage is downloaded, there is no way for an SPD audit trail to show who has accessed or disseminated the footage.

⁸⁷ Intake interview with Complainant, SPD IA Investigation C21-070 at 9:57, in Spokane, Wash. (October 29, 2021).

⁸⁸ Interview with Complainant, OPO Independent Investigation Interviews at 0:58, in Spokane, Wash. (August 25, 2022).

⁸⁹ *Id.* at 2:49.

⁹⁰ *See supra* note 87 at 11:01.

⁹¹ Interview with City Council Employee 1, OPO Independent Investigation Interviews at 4:27, in Spokane, Wash. (September 2, 2022).

⁹² *Id.* at 6:35.

Recommendations to Policy and/or Training

Special Access to City Employees

The IA investigation showed that BWC footage was not provided to the Community Member improperly and that the BWC footage was properly obtained through the PRR process that is open to any member of the public. However, not every member of the public was privy to the same special access to information that the Community Member enjoys. For instance, the Community Member did not initially have the correct date of the incident when they started asking about the BWC footage. However, a few days later when they made their PRR, they had specific information that while it was subject to PRR, was not readily known to the public. This included the police report number related to the incident, the correct date the incident occurred, and the names of SPD Employee A and the Complainant.

After conducting a review of email and documents related to this case, there are several City⁹³ employees who were in regular contact with the Community Member from August 8, 2020 through September 20, 2022, the date the OPO request for documents was sent. Some employees were referring other business owners to their group, some employees forwarded press releases, and some employees were providing advice on policy recommendations and strategies. However, the Community Member's special access pointed to two City employees, City Administration Employee 1 and SPD Employee C. These employees sometimes included use of their personal emails. This investigation and analysis only includes correspondence over work emails.

Email records show City Administration Employee 1 provided the Community Member with regular information. However, email records show this type of information exchange began in 2022. City Administration Employee 1 said in an email to the Community Member that they're "doing some digging now" in reference to City Council's December 2020 meeting video and provided relevant time stamps.⁹⁴ They provided an analysis on how City Council was voting on police vehicles.⁹⁵ They also forwarded them an email with an Excel attachment created by other City employees that analyzes police fleets.⁹⁶ The Community Member asked City Administration Employee 1 to run a report reflecting salaries for 2021 and what is expected for 2022.⁹⁷

City Administration Employee 1 and the Community Member vented to each other about their distaste for particular City employees. In a string of emails entitled "Standing up for SPD," City Administration Employee 1 reported that another City employee pulled them aside to address how City Administration Employee 1 disrespected them in public. City Administration Employee 1 responded, "While I thanked [them] for [their] opinion, I let [them] know that I will be speaking authentically regardless of the cost. Standing up for and supporting the good work of our Police Officers is an honor for me. I want to thank you again for your support and advocacy in our community. Threats, intimidation and retaliation tactics have never and will never stop me from driving toward my goal of the greatest and most positive impact possible."⁹⁸ The Community Member responded with a seemingly unrelated subject matter how they don't like the Complainant and an OPO employee. City Administration Employee 1 responded by thanking the Community Member, congratulating them on their work, and encouraged them to keep it up.

⁹³ "City employees" includes all Administration, City Council, and Spokane Police Department employees.

⁹⁴ "Watch "December 7th, 2020 – Public Safety Committee' on Vimeo" (March 8, 2022).

⁹⁵ "Re: Revised Resolution" (March 29, 2022).

⁹⁶ "FW: Police Fleet Comparison" (March 29, 2022).

⁹⁷ "RE: 4/21 Study Session Agenda/Reminder" (April 20, 2022).

⁹⁸ "RE: Standing up for SPD" (April 11, 2022).

SPD Employee C's relationship with the Community Member is far more robust. Their prolific email relationship began in March 2021 and appears to continue to present. When asked about the hundreds, if not thousands, of emails between them and the Community Member and their associates, SPD Employee C said they mutually beneficial relationship based upon creating a safer downtown.⁹⁹ SPD Employee C said they want to give the Community Member and their associates a voice. The Community Member's associate feels like they have been ignored by City Officials for the better part of two years.¹⁰⁰ City Officials do not get back to them, ignore them when they have frustrations and issues they share on behalf of the Downtown business community.¹⁰¹ The Community Member's associate does not feel represented.¹⁰²

SPD Employee C said they try to send information that the Community Member and their associates can obtain through the PRR process, nothing that would jeopardize an investigation.¹⁰³ There are instances they share leads on investigations with the associates.¹⁰⁴ Leads that they would not share in comments to the media in fear of tipping off suspects, but they trust the Community Member's associate would not leak that information.¹⁰⁵ They know the associate will help quell the fear of crime in Downtown. SPD Employee C said they really want to leverage the Community Member and their associates' network. They said they will take extra steps to provide certain members of the community with information, especially someone with a large network of business leaders, but they don't have the capacity to do that for everyone.¹⁰⁶

They provided the Community Member with numerous data and reports that the Community Member and their associates requested:

- Narcan use in 2019 and 2020;¹⁰⁷
- Snapshot of transient arrests within the city boundary;¹⁰⁸
- Current state of SPD's drug enforcement;¹⁰⁹
- Shoplifting increase around the city;¹¹⁰
- Analyze City Council's response to defunding the police;¹¹¹
- Cold weather shelter;¹¹²
- How shootings and stabbings are attributed to transient crime;¹¹³
- Transient crime map;¹¹⁴
- What are we doing with transient criminals;¹¹⁵ and

⁹⁹ See *supra* note 9 at 38:44.

¹⁰⁰ *Id.* at 38:19.

¹⁰¹ *Id.* at 38:23.

¹⁰² *Id.* at 38:34.

¹⁰³ *Id.* at 37:46.

¹⁰⁴ *Id.* at 37:42.

¹⁰⁵ *Id.* at 37:47.

¹⁰⁶ *Id.* at 38:55.

¹⁰⁷ "RE: FW OD" (September 8, 2021).

¹⁰⁸ "RE: Transient arrests" (November 3, 2021).

¹⁰⁹ "RE: Current Status of 'Simple' PCS in Spokane" (November 27, 2021).

¹¹⁰ "FW: Is this City wide or only at Franklin Park?" (December 11, 2021).

¹¹¹ "RE: CP Beggs response to a constituent's inquiry about Council's support of SPD" (January 3, 2022).

¹¹² "RE: The biggest victims are the poor" (January 5, 2022).

¹¹³ "FW: Violent week in Spokane" (January 25, 2022).

¹¹⁴ "Transient crime request" (October 15, 2021).

¹¹⁵ *Id.*

- Has SPD given direction on how to deal with this segment of the population?¹¹⁶

SPD Employee C provided the Community Member with information that is less readily accessible to the public for lobbying purposes. The OPO asked SPD Employee G about requests for data or reports they receive from the public. The OPO asked if they typically received requests, how frequent are the requests, whether they respond, direct staff, or get information themselves.¹¹⁷ SPD Employee G said it depends on the type of information requested. Sometimes they go ask Crime Analysis or Records can pull the information. They said when people ask for specific stats, they don't usually provide that because that's all they would do. But if it's a onetime request, they can facilitate clean data for things that are not protected but would be difficult for people to get to on their own. When SPD Employee G receives these types of request from the public, they usually delegate it since they do not pull data. Other times, when they can get the information, they will get it. When they get vague requests, they send them off to Records for fulfillment.

By contrast, SPD Employee C was less restrictive about data and reports they shared. In response to a request for information from the Community Member's associate, SPD Employee C directs an SPD staff, "Regarding the recent shootings or stabbings, is it possible to get a brief background on the suspects (please see below)? Not looking for anything uber in-depth, and I highlighted the portion below. Also, criminal history synopsis would be helpful. I really appreciate it!"¹¹⁸ The staff person provided SPD Employee C with a breakdown of recent shootings and stabbings and suspect backgrounds. SPD Employee C provides the breakdown to the Community Member and a couple of their associates despite the email request including a larger group of people.

For the Narcan request, SPD Employee C asked their staff to create reports for each year requested for the Community Member. The Community Member expressed concern whether the information they were provided is releasable to the public because they would like to use this information on a Zoom call the next day. SPD Employee C said, "Yes, no problem sharing that data. It's all subject to public records."¹¹⁹ The Community Member was pleased and hoped the media would be interested in picking up the story.

For the snapshot of the transient arrest request, SPD Employee C expressed concerns multiple times in the email thread that the Community Member and their associates not share the information provided to them directly because the data has not yet been finalized.¹²⁰ One of the Community Member's associates responds, "Thank you [SPD Employee C], please thank your teams for us. This data is invaluable to us and as [the Community Member] stated, affirms what we are seeing on the street."¹²¹ SPD Employee C was on vacation when the Community Member's associate asks for this data. They still responded and directed their staff to begin working on the request.

When one of the Community Member's associates asks for a report on a half-naked transient, SPD Employee C directs the associate to make a PRR, "The best method for getting this, to ensure I do not get crosswise with any PRR laws, would be via a public records request. Else I can see myself getting jammed up if I release information that is legally required to be redacted (there are well over 100

¹¹⁶ *Id.*

¹¹⁷ *See supra* note 35 at 15:28-18:00.

¹¹⁸ "Transient crime request" (October 15, 2021).

¹¹⁹ "RE: Current Status of 'Simple' PCS in Spokane" (November 27, 2021).

¹²⁰ "RE: Transient arrests" (November 3, 2021).

¹²¹ *Id.*

redaction exemptions, the vast majority of which I am not familiar with).”¹²² By contrast, SPD Employee C forwarded an email to the Community Member and their associates that include portions of three reports. SPD Employee C made their own redactions and sent out records, “I removed the names, but all of the incidents were tied to one person.”¹²³ In another case, one of the Community Member’s associates requested access to a SPD video. The employee didn’t direct the associate to make a PRR but they responded they would loop their supervisor in to address.¹²⁴

There is clearly picking and choosing of what information should go through the public records request process. The OPO understands that information sharing is a critical part of public safety. For instance, police can use social media as an investigative tool when seeking evidence or information, for community outreach and engagement, to make time-sensitive notifications, to inform the media, or as a recruitment mechanism to attract and interact with persons seeking employment and volunteer positions.¹²⁵ It also appears that most of the information shared with the Community Member and their associates are not prohibited from sharing and are subject to PRR. However, as SPD Employee C rightly said in their email, there are well over 100 exemptions, the vast majority most City employees are likely not aware of. The best way to avoid improper release of information is through the PRR process.

RECOMMENDATION R22-09: ALL REQUESTS FOR DATA AND/OR RECORDS THAT ARE NOT PUBLICLY OR READILY AVAILABLE FROM THE PUBLIC SHOULD GO THROUGH THE PUBLIC RECORDS REQUEST SYSTEM. FURTHER, IT WOULD BE BENEFICIAL TO SIT DOWN WITH THE CITY CLERK’S OFFICE TO DETERMINE UP FRONT WHEN REQUESTS DO NOT NEED TO GO THROUGH THE PRR PROCESS AS WELL AS AGREEING WHEN A CASE-BY-CASE BASIS ADVISEMENT IS APPROPRIATE.

Public Records Release Process

The OPO learned that Police Records office follows a separate process when fulfilling a PRR compared to the rest of the City. When SPD receives PRRs, processing and fulfilling the requests falls under two categories. First, the Police Records Department operates independently from the Clerk’s Office when it comes to processing PRRs that involve BWC footage, police reports, or any information that is housed in those repositories.¹²⁶ The Records Clerk assigned a PRR is solely responsible for the collection, review, redaction, and release of the records.¹²⁷ Second, it is only when PRRs involve items not housed in SPD repositories, such as request for text messages, then the Clerk’s Office handles those requests.¹²⁸ By contrast, when other City departments receive PRRs the Clerk’s Office serves as the reviewing authority for responsive documents and coordinates obtaining records. At SPD, the Clerk who gathers the

¹²² “RE: Police report” (October 25, 2021).

¹²³ “FW” (April 6, 2022).

¹²⁴ “RE: Homeless activism” (June 22, 2021).

¹²⁵ Considerations Document: Social Media, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, <https://www.theiacp.org/sites/default/files/2019-05/Social%20Media%20Considerations%20-%202019.pdf>. (last visited November 23, 2022).

¹²⁶ See *supra* note 31 at 36:50.

¹²⁷ Interview with City Administration Employee 3, OPO Independent Investigation Interviews at 6:31, in Spokane, Wash. (September 2, 2022).

¹²⁸ See *supra* note 31 at 37:16.

responsive records is solely responsible for the entire review process unless they request assistance. As such, records clerks become experts in public records procedures as they do their best to interpret current laws. They are not necessarily experts in where SPD houses all records. Through no fault of their own, Records clerks may not know whether they captured all responsive records to requests or whether cases are at the point where they are releasable. Without the added oversight of the Clerk's Office, Records clerks should consult with SPD employees with subject matter expertise to determine whether the records captured for release are thorough and complete.

In this case, the Records Clerk was unclear on the status of the case and correctly reached out to SPD Employee I.¹²⁹ However, the OPO learned there were several interpretations as to when the case was releasable. Since SPD Employee I had never received formal training, they used their best judgment and was in the practice of marking cases as closed at the end of trial. However, as discussed in a previous section, SPD Employees C and J believe that cases should be closed when "the bulk of the investigation is complete." SPD's Legal Counsel advised that under *Sargent v. Seattle Police Department*,¹³⁰ cases should be marked as closed when they are sent to the Prosecutor's Office.¹³¹ This practice complies with case law and is consistent with other law enforcement in Washington State and Washington Association of Prosecuting Attorneys.¹³² This does not appear to be recorded in policy and, based on statements made to the OPO, SPD employees made it clear that they have not been trained to this standard. There is a difference between a department's guidance and policy and there can be severe repercussions when a government entity fails to comply with public records laws.¹³³ It is SPD's responsibility to clearly articulate its expectations of its employees in policy and provide adequate training, especially to those employees who only occasionally deal with public records requests.

RECOMMENDATION R22-10: THE OPO RECOMMENDS SPD DEFINE IN POLICY THAT THE "BULK OF THE INVESTIGATION IS COMPLETE" IS WHEN SPD SENDS A CASE TO THE PROSECUTOR'S OFFICE FOR REVIEW OR WHEN AN INVESTIGATION REACHES A LOGICAL CONCLUSION AND IS NOT REFERRED TO THE PROSECUTOR'S OFFICE. FURTHER, SPD SHOULD REQUIRE RECORDS CLERKS, SUBJECT MATTER EXPERTS, AND EMPLOYEES WHO RESPOND TO PRRS ARE TRAINED ON DEPARTMENT POLICY AND ENSURE THAT ALL RESPONSIVE RECORDS ARE CAPTURED.

In the OPO's closing report on C19-040,¹³⁴ we submitted a PRR for the casefile but were denied records from an administrative investigation. The department cited the investigative records exemption under the Public Records Act. In our closing report from 2020, the OPO cited to *Sargent v. Seattle Police Dept.* *Sargent* provides that records should be disclosed, including both administrative and criminal records, with a minor exception only applied in a small class of information where police have not yet referred

¹²⁹ See *supra* note 31 at 37:31 (explaining that it would be ideal for Records clerks to get in contact with the lead investigator to see if records are releasable).

¹³⁰ 179 Wash. 2d 376, 402, 314 P.3d 1093, 1105 (2013).

¹³¹ "RE: PRR" (December 9, 2022).

¹³² *Id.*

¹³³ *Id.* (explaining the City can incur a penalty of \$100/day per record when found in violation of public record laws).

¹³⁴ OPO's Closing Report and Recommendations on C19-040, CITY OF SPOKANE, <https://static.spokanecity.org/documents/opo/documents-reports/other/opo-c19-040-closing-report-and-recommendations-final-2021-01-11.pdf> (last visited December 10, 2022).

the matter to a prosecutor for a charging decision and revelation to the defendant. We previously recommended, Recommendation #23 in C19-040, that SPD update its release of records to follow case law. In the Chief's response to the OPO's recommendation, he declined the OPO's recommendation and said, "In conversations with the OPO, there has also been a lack of alignment with the OPO's research versus direction provided by City Legal."¹³⁵ Due to recent information provided by SPD's Legal Counsel, OPO's research is aligned with current case law. The OPO requests SPD reconsider its original response to this recommendation.

RECOMMENDATION R22-11: THE OPO RECOMMENDS SPD RECONSIDER RECOMMENDATION #23 FROM C19-040 WHERE THE OPO RECOMMENDED SPD UPDATE ITS POLICY 703.11, RELEASE OF BODY CAMERA VIDEOS TO MAINTAIN COMPLIANCE WITH CASE LAW ON PUBLIC RECORD REQUESTS THAT INVOLVE INTERNAL INVESTIGATION RECORDS.

Training or Policies on Disclosure of Confidential Information

There is a difference between open and transparent government and rules and procedures on how to conduct one's work. This investigation has shown there is a City-wide lack of consistent policy and procedure on confidentiality and public disclosure. If they do exist, very few, if anyone, is cognizant of them or can answer: What is the proper way to release information? What is the role of the Communications Director? Do elected officials need to follow the same rules as others? No one the OPO spoke with knew the rules for certain. Most City employees were trying to do the right thing. However, some were trying to do what benefitted themselves the most. Some were doing both. As an example, City Administration Employee 1 was consistently stirring up noise against their enemies or political opponents; yet was solid and fervent in their efforts to support law enforcement.

Every person interviewed about what information is considered confidential provided a different answer. Two City Administration employees provided two completely different answers. City Administration Employee 2 said, "Everything we do...is considered confidential, although it is a public record, we ask staff to keep things confidential."¹³⁶ City Administration Employee 1 wasn't sure if there was anything on paper and suggested there might be something about confidentiality in an agreement one signs when working for the Administration. City Administration Employee 1 said it was more about respect. The line on what was subject to public disclosure was similarly blurred amongst City Council employees.

When City Council employees were asked if documents have been "leaked" to the public during their tenure, City Council Employee 3 asked to clarify what "not available to the public" means and said, "in my opinion, every document is a public document and if somebody makes a request and I have access to

¹³⁵ Letter from Police Chief to Police Ombudsman (Feb 12, 2021) RE: C19-040 Closing Report and Recommendations from OPO, <https://static.spokanecity.org/documents/opo/documents-reports/other/c19-040-spd-response-to-recommendations.pdf> (accessed December 10, 2022).

¹³⁶ Interview with City Administration Employee 2, OPO Independent Investigation Interviews at 4:08, in Spokane, Wash. (September 20, 2022).

it, I will provide the document.”¹³⁷ They further stated that they’ve witnessed numerous memorandums shared with the public in advance of their release. They observe more leaks because they are on the City Council side, but they are certain leaks happen on the Administration side as well. When City Council Employee 4 was asked if they were aware of any “leaked” privileged or confidential information they indicated an issue with an employee within City Council, City Council Employee 1. It was alleged that City Council Employee 1 took a report provided by the Legal Department that was meant for the eyes of the named recipients only, of which they were not one. They took the report to an outside copying service, scanned the document, sent it to themselves, then removed any watermark or heat stamps through a mobile application. It became clear that what one might consider confidential leaks in City government greatly varied. A lot of City Employees take steps to give out information that is not theirs to give out.

On agreements or guidelines on how to disclose information to the public, City Council Employee 4 did not sign any non-disclosure agreement when they were hired. Furthermore, they provided each council office acts independently as its own office, so each office may have a different agreement.

When SPD was asked about non-disclosure policies, SPD Employee C responded there were canons and ethics about disclosure of confidential information but there was a balance. The OPO raised these canons and ethics regarding disclosure of information during the IA certification process of this case with the Chief. When asked about “leaked” information, SPD Employee C responded they didn’t believe information was “leaked.” They said, “I feel very confident that if [the Complainant] had not talked about this, there would not have been a PRR on this case. It wouldn’t have been on Fox News. It wouldn’t have been in the media. I feel like the very thing [they] are frustrated about was caused by [them] talking to people about it.”¹³⁸

There are notable similarities in the statements provided by both City Administration Employee 1 and SPD Employee C that were dissimilar to all other statements made to the OPO. City Administration Employee 1 provided a very similar statement in their interview where they also blame Complainant for everything that has happened to them. City Administration Employee 1 said, “The whole reason any of this is happening is because of [the Complainant’s] behavior and if we want to talk about inappropriate behavior, I think it’s important to have a conversation about a [City employee] who’s willing to make a statement like that.”¹³⁹ Further, both City Administration Employee 1 and SPD Employee C emphasized how widely known it was that Complainant was bragging about making the police get a search warrant.¹⁴⁰ This does not mean that City Administration Employee 1 and SPD Employee C were colluding. They were, however, both clearly connected to the Community Member.

RECOMMENDATION R22-12: *THE CITY SHOULD CONSIDER ESTABLISHING A POLICY AND DISCLOSURE AGREEMENT FOR ALL EMPLOYEES, WHICH OUTLINES WHAT IS RELEASABLE TO THE PUBLIC AND PROVIDES GUIDANCE TO EMPLOYEES ON WHEN IT IS NECESSARY TO UTILIZE THE PUBLIC RECORDS REQUEST PROCESS.*

¹³⁷ Interview with City Council Employee 3, OPO Independent Investigation Interviews at 10:02, in Spokane, Wash. (September 22, 2022).

¹³⁸ See *supra* note 9 at 48:22.

¹³⁹ See *supra* note 74 at 30:21.

¹⁴⁰ See *supra* note 74 at 10:07; *supra* note 9 at 49:39.

The IA Investigation Process

IA investigates cases of significance, where employees may face ramifications such as suspension, termination, or demotion. In cases of public concern, IA will brief SPD Command and/or Executive Staff. In those briefs, IA tells them where they are at in the investigation as more of a status update.¹⁴¹

During the IA investigation process of this case, IA provided a case brief to Executive Staff¹⁴² and in one-on-one meetings between the Chief and SPD Employee K.¹⁴³ They said they waited for others to leave the meeting before discussing IA matters, but it appears, because no one interviewed could recall with specificity, there was more than just the Chief in the room at some point when IA provided the brief. When asked, SPD Employee K said it was not necessarily normal to discuss IA investigations during Executive Staff meetings.¹⁴⁴

SPD Employee F recalls discussing this case as a group after the OPO requested further investigation to determine whether further investigation was warranted. They said prior to that, briefs were more of a one-way street. SPD Employee G volunteered that they were told the reason the information about this case was released was because City Council staff was talking about this case. When asked who told them this information, they said they were not sure if it was from IA or Executive Staff.¹⁴⁵ The group relied on the Community Member's statement to IA that the information about the BWC footage came from an employee at City Hall, where SPD does not have jurisdiction. SPD Employee C determined that IA should close the investigation due to a lack of any policy violation. SPD Employee C believed IA's investigation was thorough and did not want to go on a "fishing expedition."¹⁴⁶

First, this line of reasoning maintained by SPD fails to consider there must be a direct link from someone from SPD, where the information at issue is stored, to the Community Member. SPD Employee K said there is no direct link that said it was a police officer who released the video.¹⁴⁷ However, the information provided to the Community Member includes specifics like the incident number, date of the incident, and names of the individuals involved. If, as City Administration Employee 1 and SPD Employee C assert, it was Complainant's bragging who was the source of information that was overheard and shared with the Community Member, then Complainant was bragging about very specific information for over a year that they were not aware existed¹⁴⁸ and did not have access to.¹⁴⁹

Second, most Internal Affairs Units report directly to the Chief after the conclusion of the investigation to prevent any undue influence in the investigation. Here, IA provided the Chief and other high-level executives information on an active IA investigation. As a result of that briefing, executives who were

¹⁴¹ See *supra* note 31 at 26:40.

¹⁴² Executive staff includes Command Staff less Captains. Executive Staff has nine members as of November 22, 2022.

¹⁴³ Interview with SPD Employee K, OPO Independent Investigation Interviews at 16:15, in Spokane, Wash. (October 13, 2022).

¹⁴⁴ *Id.* at 16:40.

¹⁴⁵ See *supra* note 35 at 2:46.

¹⁴⁶ See *supra* note 143 at 12:30.

¹⁴⁷ *Id.* at 13:14.

¹⁴⁸ See *supra* note 87 at 3:30 (saying they only became aware of the BWC after the Community Member confronted them with it in October 2021).

¹⁴⁹ See *supra* note 143 at 15:24 (saying in their interview that City Council employees do not have access to Evidence.com, where BWC is housed).

included in the list of interviews the OPO requested, were directly involved in the discussion that determined the result of the investigation and directed it be closed.

Third, IA was reluctant to conduct this investigation. There was a lot of talk about SPD Employee A's video around the department from the very beginning of the criminal investigation.¹⁵⁰ Multiple SPD employees who interviewed with the OPO expressed their disappointment at the Complainant for not providing the security footage to SPD upon initial contact. Upon receipt of this complaint, IA seemed reluctant to thoroughly investigate the matter. The OPO was unable to learn the extent of outside interference from investigators as they declined to be interviewed in this investigation. When IA sent the case for certification, they had yet to conduct a single interview. Regardless, they provided the suggested classification of Administratively Suspended, subsection F which provides, "all reasonable investigative leads were exhausted and no evidence of wrongdoing was uncovered." The OPO disagreed with this classification and requested further specific investigative steps. When the OPO asked IA to interview everyone who viewed the BWC footage up until the PRR was made, the then IA Lieutenant said, the real sticking point was how unusual it would be for IA to go outside of SPD.¹⁵¹ The OPO offered to co-sign a letter with IA to all individuals outside of SPD. This letter never came to fruition. IA did not return the case for certification again until day 158/180 of the investigation window and fell significantly short of fulfilling the original requests for additional investigation. This left very little time to conduct further investigation. In that time, IA only interviewed SPD Employees A and B but not seven other SPD employees on the audit trail, five Spokane County employees, and members of the City Administration/City Council. Ultimately, the amount of time the investigation lasted did not correlate to the amount of work performed. Further, it was only after sending the case for certification for a second and third time that IA raised the issue for the first time that they did not feel there was a policy violation.

The OPO could have declined on all three prongs of timely, thorough, and objective, but decided to decline to certify the case for objectivity. The Chief cited that SPD employees maintain First Amendment rights in disseminating information related to a homicide investigation. The Chief also took the Community Member's statement as fact and was unwilling to have IA conduct any further investigation because the Community Member already provided a statement, when the Community Member's interests were not objective, nor was the Community Member forthcoming in their interview.

RECOMMENDATION R22-13: CASE UPDATES SHOULD BE SOLELY BETWEEN IA AND THE CHIEF/DESIGNEE. NO OTHER PARTY SHOULD BE ALLOWED TO INFLUENCE OR DIRECT IA INVESTIGATIONS. THE CHIEF SHOULD WITHHOLD DECISIONS ON FINDINGS UNTIL INVESTIGATIONS ARE COMPLETE AND SHOULD DIRECT IA INVESTIGATORS TO GIVE THEIR BEST EFFORTS IN INVESTIGATIONS REGARDLESS OF WHERE THE INFORMATION TAKES THEM.

¹⁵⁰ See *supra* note 49 at 19:00.

¹⁵¹ See *supra* note 5 at 13:09.

Summary of Recommendations

Recommendation R22-09: All requests for data and/or records that are not publicly or readily available from the public should go through the Public Records Request system. Further, it would be beneficial to sit down with the City Clerk's Office to determine up front when requests do not need to go through the PRR process as well as agreeing when a case-by-case basis advisement is appropriate.

Recommendation R22-10: The OPO recommends SPD define in policy that the "bulk of the investigation is complete" is when SPD sends a case to the Prosecutor's Office for review or when an investigation reaches a logical conclusion and is not referred to the Prosecutor's Office. Further, SPD should require Records Clerks, subject matter experts, and employees who respond to PRRs are trained on Department policy and ensure that all responsive records are captured.

Recommendation R22-11: The OPO recommends SPD reconsider Recommendation #23 from C19-040 where the OPO recommended SPD update its Policy 703.11, Release of Body Camera Videos to maintain compliance with case law on public record requests that involve internal investigation records.

Recommendation R22-12: The City should consider establishing a policy and disclosure agreement for all employees, which outlines what is releasable to the public and provides guidance to employees on when it is necessary to utilize the public records request process.

Recommendation R22-13: Case updates should be solely between IA and the Chief/Designee. No other party should be allowed to influence or direct IA investigations. The Chief should withhold decisions on findings until investigations are complete and should direct IA investigators to give their best efforts in investigations regardless of where the information takes them.

Appendices

Appendix A

From: [Meidl, Craig](#)
To: [Omana, Luvimae](#)
Cc: [REDACTED]
Subject: RE: Decline to certify note for C21-070
Date: Monday, April 11, 2022 7:28:27 PM

Ms. Omana

As previously discussed with you and Mr. Logue, officers don't lose all 1st amendment rights just because they decide to become a police officer. These Canons and Standards are expectations, and there are legal parameters surrounding their restrictions, including how far a Department can go in restricting an officer's 1st Amendment rights. When the requestor of the video testified to Internal Affairs that he was told about this incident from employee(s) at City Hall, it would seem to me that the allegation initially alleged that officers "leaked" information was incorrect. If anything, word about this incident made it to someone at City Hall, which was then subsequently shared who knows how many times until finally making it to the ears of [REDACTED]. Since it appeared the intent behind this investigation was to determine where the requestor learned of this incident, and the requestor testified that [REDACTED] learned of it from staff at City Hall, the focus should shift to City Hall. SPD has no jurisdiction over City Hall staff, as the OPO ordinance was negotiated in relation to the Guild only.

I heard shortly after this incident occurred that [REDACTED] shared with others at City Hall that [REDACTED] compelled officers to obtain a search warrant to view video surveillance of the front of [REDACTED] business (the front yard), where there is no expectation of privacy, to try to see if they could obtain a description of a murderer who had just executed a mother of multiple children in broad daylight and was still at large. Were I to recall who told me this shortly after the incident, I assure you I would refer you to them, but this was quite some time ago. But if true, and based on the testimony of [REDACTED] to Internal Affairs, it is quite possible that [REDACTED] shared information about what [REDACTED] had done and that prompted further discussion at City Hall, which subsequently made it to [REDACTED] ears (since the source of this information came from City Hall). I am curious when you talked to [REDACTED] if you asked [REDACTED] if [REDACTED] discussed this incident with anyone at City Hall after it occurred, since that was the source of the information to the PRR requestor.

SPD had no control over when this information was requested via a PRR, and the insinuation that SPD chose the election season to release this information to someone is pure speculation on your part. The PRR was released in accordance with the law and under normal time frames based on other requests unrelated to this. In terms of confidentiality, if this information was "confidential", it would not have been released via a PRR.

The real tragedy here is children that will now grow up without their mother, because she was executed in broad daylight. Parents who will never hug their daughter again, or have a

conversation with her, or have her over for the holidays because she was murdered. And a [REDACTED] that could have given the okay over the phone for officers to view the footage, that may have helped them track down this murderer, who was still at large, and believed to have possibly ran through the front yard, shortly after the execution (officers requested to view video covering the outside of the facility, which is open to the public). I imagine the children will grow up quite frustrated by what occurred, and I am sure the parents are equally frustrated. I share in what I can only expect is their astonishment, disappointment and frustration.



Craig Meidl | Spokane Police Department | Chief of Police
509.625.4063 | cmeidl@spokanepolice.org

From: Omana, Luvimae <lomana@spokanecity.org>
Sent: Monday, April 11, 2022 2:07 PM
To: Meidl, Craig <cmeidl@spokanepolice.org>
Cc: [REDACTED]
Subject: Decline to certify note for C21-070

Chief Meidl,

Please see my comment on BlueTeam below to close the loop on your conversation with Bart on April 8th regarding our final determination not to certify this complaint. Following our discussion with [REDACTED] we have determined we will not be requesting additional investigative authority from the OPOC.

This case has been sent for OPO review three times. First on January 7, 2022, second on March 29, 2022, and lastly on April 5, 2022. Each time, I requested additional interviews. The request included seven SPD employees and a request for a voluntary interview of four individuals who work for the County, as well as City Administration officials, City Council members, and their staff. This only resulted in interviews of two additional SPD employees. On March 30, 2022, [REDACTED] forwarded information regarding [REDACTED] order IA to stop conducting additional interviews, which is complicated by the fact that [REDACTED] was on the list of persons to interview.

On April 5, 2022 the OPO met with Chief Meidl who determined there was no policy violation for improper release in this complaint. [REDACTED] the person who allegedly received the information at issue in this complaint said [REDACTED] information came from the "City administration." The OPO raised concerns about SPD's Law Enforcement Code and Ethics, Canon 9 and corresponding standards. Canon 9 provides, "Members of the SPD shall observe the confidentiality of information

available to them through any source, as it relates to law enforcement.” Standard 9.2 requires SPD members to treat all official business as confidential and only release or disseminate information in an authorized manner. Standard 9.4 requires members to neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.

Here, based upon requests I made and my review of SPD’s investigation, I still maintain objectivity concerns that fall within Canon 9. SPD is unwilling to consider that any dissemination or release of information from body worn camera originates with SPD and should be treated as confidential. Furthermore, [REDACTED] public records request indicates [REDACTED] was specifically told by someone with inside information when the records were available. Lastly, there was a lack of acknowledgement that the records disseminated in the request were used to negatively target a current City Council member during a campaign.

SPD has displayed a lack of investigative interest from the onset of this complaint. Concerns on a lack of policy violation only came to light in the last 30 days of the 180 day investigation window. Further, I maintain it is inappropriate for anyone to direct the outcome of an investigation.

Therefore I, Lu vimae Omana, have reviewed the investigation to arrive at a classification decision and determined that it was not completed in an objective process.

Lu vimae Omana, Deputy Police Ombudsman, City of Spokane. (509) 625-6742

Best,
Lu vimae



Luvimae Omana | Office of Police Ombudsman | Deputy Police Ombudsman
808 W. Spokane Falls Boulevard, Spokane, WA 99201-3342
desk 509.625.6757 | mobile 509.929.8949 | lomana@spokanecity.org

Appendix B



SPokane POLICE DEPARTMENT

CHIEF OF POLICE

CRAIG N. MEIDL

June 7, 2022

Office of the Police Ombudsman
808 W. Spokane Falls Blvd
Spokane, WA 99201

Re: Fail to Certify I.A. Investigation #C21-070

Dear Mr. Logue, Ms. Omana and members of the OPO Commission:

Please accept this correspondence in accordance with the Spokane Police Guild's Collective Bargaining Agreement (CBA) related to the above Internal Affairs investigation. This correspondence is in response to Ms. Omana's declination to certify as "complete" the steps taken by Internal Affairs, at my direction, related to this investigation.

This investigation revolves around a public records request related to an incident involving several SPD officers and a City of Spokane [REDACTED]. The officers involved were following up on a homicide investigation and believed a business owned by the councilmember had surveillance video viewing the front outside public area of the business, possibly along the path that the homicide suspect fled after committing murder. When initially authorizing this investigation to proceed, it was on the premise of ensuring no unauthorized access was allowed by non-SPD members or others who have access to the body worn camera (BWC) viewing system (e.g., prosecutor's office).

The subsequent release of the BWC footage related to this incident was mandatory and compliant with Washington State's PRR laws. No basis existed to withhold the release of the footage once cleared by the detective in charge of the homicide investigation.

The officers both testified to Internal Affairs investigators that they did not talk with the requestor of the footage or reveal the existence of the footage to the requestor. Additionally, neither officer was familiar with who the requestor was.

The requestor informed Internal Affairs investigators that he did not learn of the existence of the incident, including the BWC footage, from the officers, nor did he learn of the footage from any officer at SPD. In subsequent postings on social media, the requestor indicated that he learned of the incident from staff members at City Hall who overheard the councilmember speaking about the initial incident while at City Hall shortly after it occurred, making a statement that she refused to allow officers to view the surveillance footage of the outside of the business to determine if the suspect had fled that direction (along with a possible suspect description).

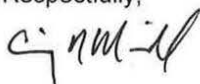
Public Safety Building • 1100 W. Mallon Avenue • Spokane, Washington 99260-0001



Based on the statements of the officers and the requestor to Internal Affairs investigators, no specific nexus to SPD was established. Additionally, the councilmember relayed to the OPO in the initial complaint that she had no information indicating SPD released any information related to this incident, but she suspected it ("hunch"). This, coupled with statements from the requestor that he heard of this incident from staff at City Hall, who in turn indicated to the requestor that they overheard it from the councilmember, further investigation of SPD staff would not be material to the outcome (see Police Guild CBA; Article 27 (j)(3)).

For these reasons, I am convinced the investigation was complete, thorough and unbiased in determining a lack of nexus to SPD officers related to this incident, and no policy violation exists to justify the continuation of the investigation.

Respectfully,

A handwritten signature in black ink, appearing to read "Craig Meidl". The signature is stylized and cursive.

Craig Meidl
Chief of Police



**OFFICE OF
POLICE OMBUDSMAN**
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201
509.625.6742
FAX 509.625.6748

June 14, 2022

Office of the Police Ombudsman Commission
808 W. Spokane Falls Blvd.
Spokane, WA 99201

RE: Memorandum on C21-070

Commissioners,

Pursuant to Article 27 of the Collective Bargaining Agreement (Agreement) between the City of Spokane and the Spokane Police Guild, we are submitting a case for your consideration in which we have reviewed the case and met with final disagreement with both [REDACTED] in Internal Affairs (IA) as well as Chief Meidl regarding the objectivity of the investigation. Once we were unable to come to an agreement with the Chief, the next step in the process is that the case is submitted for your consideration and decision as to whether an independent investigation in this case is warranted.

If you determine an independent investigation is appropriate, the OPO requests that the scope of the independent investigation include:

1. The additional investigative steps that [REDACTED] requested and were unfulfilled by IA in the investigation. [REDACTED] requested that IA conduct additional interviews of persons who viewed the body worn camera (BWC) prior to when the public records request (PRR) was made by [REDACTED].
2. Any training or policies regarding the dissemination of confidential information.
3. An email search of any email from a City employee or elected official to [REDACTED].
4. Whether there were any conflicts of interest during the investigation.
5. Whether there was bias in the investigation.
6. Whether all witnesses and involved parties were identified.
7. The ability to pursue any other reasonable investigative leads that may present themselves during the investigation.

We have outlined the procedure when presenting a case to the OPOC for further investigation, the investigation timeline and our rationale in reviewing the case under each prong of timely, thorough, and objective. We have also included additional information that may be persuasive to your deliberation process including our thoughts on the complainant's desire to proceed and an analysis that considers the benefits and drawbacks of conducting further review or an independent investigation.

Procedure for Requesting Further Investigation from the OPOC

1. The case must be of a complaint of a serious matter.¹

¹ The agreement defines a "serious matter" as a complaint that could lead to suspension, demotion, or discharge that involves allegations that an employee either improperly used force or improperly/inappropriately interacted

2. The OPO is not satisfied with the Chief's determination concerning this investigation.
3. The OPO may present a request for further investigation to the OPOC.
4. The request shall specifically list the additional investigative steps that the OPO is requesting be taken.
5. The OPOC's decision will be final and based on the OPO's written request, the Chief's written response, and other information the OPO finds relevant to evaluate the request.
6. Once the OPOC makes a determination, an independent investigation will be completed consistent with the decision of the OPOC on the OPO's request.

Investigation Timeline

██████████ conducted the complaint intake of this case on October 29, 2021 and submitted it to Internal Affairs for review on the same day. This case was sent to the OPO for review three times. First on January 7, 2022, second on March 29, 2022, and lastly on April 5, 2022. Each time, ██████████ requested additional interviews. The request included seven SPD employees and a request for a voluntary interview of four individuals who work for the County, as well as City Administration officials, City Council members, and their staff. These requests only resulted in interviews of two additional SPD employees. On March 30, 2022, ██████████ forwarded information regarding Director ██████████ order for IA to stop conducting additional interviews, which is complicated by the fact that she was on the list of persons to interview.

On April 5, 2022 the OPO met with Chief Meidl who determined there was no policy violation for improper release in this complaint. ██████████, the person who allegedly received the information at issue in this complaint said his information came from the "City administration." The OPO raised concerns about SPD's Law Enforcement Code and Ethics, Canon 9 and corresponding standards. Canon 9 provides, "Members of the SPD shall observe the confidentiality of information available to them through any source, as it relates to law enforcement." Standard 9.2 requires SPD members to treat all official business as confidential and only release or disseminate information in an authorized manner. Standard 9.4 requires members to neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.

On April 11, 2022, ██████████ declined to certify the investigation for objectivity.

Certification Process

The OPO reviews complaints and determines whether IA conducted the investigation in a timely, thorough, and objective manner. While ██████████ ultimately declined to certify the case under objectivity, we had concerns under all three categories further explained below.

Timeliness

Under the current Police Guild Contract (2017-2020), Article 24(E)(12), an administrative investigation must be completed within 180 days of the matter coming to the attention of the department. This case was filed on October 29, 2021. The OPO received IA's first 'completed' investigation on January 7, 2022 (70 days from filing), the second on March 29, 2022 (151 days), and the third investigation on April 5, 2022 (158 days).

with citizens. Due to the negative national coverage for the complainant, we believe the improper release of protected information is significant and rises to the level of a serious incident.

The length of the investigation does not correlate with the amount of work conducted. There are several factors that impact the length of an investigation. Some factors include the number of issues being investigated, the number of interviews conducted, the investigator's workload, and holidays. In this case, IA relayed to the OPO they had several other cases they were working on. After the OPO returned the first investigation, ██████ requested IA interview all persons in the audit trail up until the PRR was made. This amounted to 11 individuals plus City Administration/City Council and their staff. However, when the case was sent to ██████ again 81 days later, only 2 of those interviews had been conducted. When the case was sent to ██████ for the third time, IA conducted one additional interview of a citizen who had been previously interviewed but not recorded, but this time was recorded for the record.

IA only communicated their opinion of a lack of policy violation in the last 30 days of the 180-day investigation window. This complicated the resolution process of this investigation.

Thoroughness

As mentioned above, ██████ received this case three times for review and returned it for additional investigation twice. We have attached emails that include the full request, but for ease of your review ██████ summarized her requests below:

The first time ██████ returned the investigation, she requested the following items:

1. Interviews of all persons on scene and all persons listed in the audit trail of the officers' BWC prior to a PRR being made. For non-SPD employees, ██████ asked IA to at a minimum request a voluntary interview since those employees cannot be compelled by IA. We felt it was important the record reflect an effort was made to request an interview whether they agreed to be interviewed or not.
2. Include a copy of the PRR to establish the timeline of events.

IA attached the timeline of events and interviewed 2 officers who were on scene.

The second time ██████ returned the investigation, she requested the following items:

1. Same interviews as in first return but with individuals and entities listed
2. Attach email from ██████ from ██████ dated 3/10/22 titled, "Fwd: Officer ██████"
3. Who in the department can view videos without a 'viewed by' name on it?

IA attached the email and clarified the 'viewed by' issue. Interviews were not conducted.

Objectivity

Based upon requests ██████ made and her review of SPD's investigation, we still maintain objectivity concerns that fall within SPD's Law Enforcement Code and Ethics, Canon 9 and corresponding standards. SPD was unwilling to consider that any dissemination or release of information from body worn camera which originated with SPD, should be treated as confidential in accordance with Canon 9.

Furthermore, ██████ public records request indicates he was specifically told by someone with inside information when the records would be available. There was a lack of acknowledgement that the records disseminated in the request were used to negatively target a current City Council member during a campaign.

Lastly, it is our opinion that SPD displayed a lack of investigative interest from the onset of this complaint. This is best exemplified in the multiple requests for further investigation and Director ██████ stopping the investigation inappropriately.

Additional Information

Meeting with CM ██████

At ██████ direction, ██████ and ██████ met with Council Member ██████ on April 8th to update ██████ on the status of ██████ case. Based on the information we provided ██████ we are under the impression ██████ was content with the steps the OPO had already taken in ██████ case. On May 20th, Council Member ██████ placed a phone call to ██████ and relayed that in light of recent emails ██████ had received admonishing ██████, ██████ would like to request that an independent investigation be conducted.

Benefits and drawbacks of conducting an independent investigation

Ultimately, while we had concerns in all areas (timely, thorough, and objective) we must examine to certify a case, ██████ (upon consultation with ██████) decided to go with lack of objectivity. The timeliness of the investigation was unusually long. However, the OPO and SPD came to an impasse on the case within the 180 days.

██████ also chose not to decline the case based on thoroughness because any additional investigation would focus on interviews of the listed individuals and entities IA did not interview. The fruitfulness of additional interviews come with two considerations. First, should the case be returned to the OPO by the OPOC for an Independent Investigation, the OPO does not have the authority to compel SPD employees or any of the individuals listed to attend an interview. All we have authority to do is ask for voluntary interviews which, in our view, will likely not be complied with. Thus, it is unlikely the OPO will receive additional material information by conducting additional investigations outside of IA. Second, the information that would be material is not physical, i.e. the alleged leak was likely a verbal communication. Thus, conducting additional interviews would not likely definitively indicate who the alleged leaker was. The limitations placed upon the OPO and the OPOC regarding Closing Reports following an Independent Investigation also dictate that the Closing Report will not include opinions regarding what may have occurred, only a summation of facts that we have backed up with some form of evidence. Should we have a declination of interviews, we will have limited information to include in a report.

On the other hand, conducting an OPO independent investigation is an uncharted path that could be a worthwhile endeavor, albeit not without challenges. There are the considerations listed above on the fruitfulness of additional investigation. It is also important to consider that the OPO is prohibited from providing its opinion in any report under the Police Guild Contract.

It is our view that there is potential for forward momentum for the OPOC and the OPO regardless of the direction we go in. It seems prudent to do everything we can to conduct an independent investigation while documenting all of the steps that we undertake. This will definitively show how the process set forth in the contract is inadequate as we will have all of the attempts to obtain voluntary interviews and other information as physical proof regarding how an independent investigation would go. This should help us gain the leverage that any ombudsman investigation should have, at a minimum, the same authority to compel interviews as an IA or even a HR investigation which seems doable, although it would take some political will by elected officials to get it done. At a maximum, the OPO may be given the same authority as a City Legal investigation, which would include subpoena power, although we believe this would be a super long shot. Additionally, a Closing Report regarding steps taken would also

prove that the restrictions in the contract on closing reports are unreasonable, and significantly detract from transparency and accountability.

Should the OPOC decide that we do not need to undertake further investigation due to the obvious limiting factors, we should still be able to document the reasons why we feel an investigation would not be fruitful. However, this approach would not be as strong of an argument. An independent investigation will need to be conducted by [REDACTED] and [REDACTED] as we currently do not have funding, nor a path towards it, to hire an outside investigator. This is something that we will need to address budget wise moving forward.

In closing, we believe that there will be significant value in conducting an independent investigation into this matter, especially regarding processes that are in place for conducting an investigation and for writing a final closing report. Thank you for your consideration of this request.

Very Respectfully,



Bart Logue
Police Ombudsman
City of Spokane

Appendix C

From: [Dunkin, David](#)
To: [Meidl, Craig](#); [Lundgren, Justin](#); [MacConnell, Jacqui](#)
Cc: [REDACTED]
Subject: C21-070
Date: Wednesday, April 20, 2022 2:50:36 PM

Chief,
Assistant Chief,
Director,

I attended last night's OPOC meeting and learned of an issue the OPO is having with you and IA regarding the certification of this investigation. I will start with that my knowledge of the issue is limited to what I learned from Ombudsman Logue, and Deputy Ombudsman Omana in their brief to OPOC, and of previously sitting through interviews with two of my members in this case. I am certain there is much more information and details that I am not aware of. However, I did want to reaffirm some the Guild's expectations, knowing that some or all of these may not even be applicable in this matter. We expect that all reasonable investigative requests from the OPO be honored. I understand "reasonable" is a vague qualifier, but I personally am not aware of any unreasonable requests either of them have made in the past. If there are members of our bargaining group that they would like to have interviewed in this case, or any other case, we would expect those members be brought in for an interview. We expect that any additional investigative steps requested by the OPO be honored as well. We understand that the limit of our requests stop at our CBA, and our rights as articulated by PERC, but we worked hard through multiple contract negotiations to get to where we currently are, and we do not want to have set backs in this area. We value the work the OPO does, we appreciate the recommendations they have made in their closing reports, and their certification of investigations as being "Timely, Thorough, and Complete," is vitally important to us as we look to improve trust and build credibility with our community. Our final request, and we know this may not be applicable in this instance, but we would ask that the Guild or the Guild's contract never be used as a reason to not honor a request from the OPO, or at least we not be used as a reason without our full knowledge and agreeance.

I again recognize that my concerns may not be valid in this case, as I am not fully informed as to the details of the disagreement, but there was mention of our contract last night, and there has been a past practice of different entities using the Guild as a scapegoat, and I am trying to make a concerted effort to prevent that from occurring anymore.

Many thanks,

Dave Dunkin
President, Spokane Police Guild