

## POLICE AUDITOR MID-YEAR REPORT

### VIA EMAIL ONLY

DATE: August 15, 2022

TO: Olympia City Council  
cc City of Olympia City Manager and Chief of Police

FROM: Tara L. Parker, Police Auditor

RE: Police Auditor Mid-Year Report re January 1 - June 30, 2022

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### I. Executive Summary

Between January 1 and June 30, 2022, the Olympia City Council Police Auditor reviewed 35 incidents involving the use of force by members of the Olympia Police Department (OPD), and two incidents involving the use of force by the City of Olympia Jail staff. All of those matters were audited and found to be thorough, objective, free of bias, and consistent with OPD policies.

The Auditor also reviewed the investigation files of twelve misconduct complaints against OPD employees. One investigation of allegations of serious misconduct was generated by the Department and, after the Department sustained the allegations, the officer resigned in lieu of termination. A second investigation was reported by the officer who was accused of wrongdoing during an incident and the Department found no misconduct. The ten complaints that were initiated by community members alleged service level (discourteous or unprofessional) misconduct and none were sustained. All of those investigations were audited and found to be thorough, objective, free of bias, and consistent with OPD policies.

The Auditor also reviewed five Crowd Management Operational Plans and After-Action reports related to public demonstrations related to a broad range of ideological views. The Auditor found that they were all consistent with the Department's Guiding Principles for Demonstrations and Crowd Management and there was not any indication of differing plans or responses by the OPD.

Additionally, the Auditor found that the OPD's trainings regarding First Amendment rights and Crowd Management practices were thorough, unbiased, and consistent with Department policies and best practices.

Finally, the Auditor makes two recommendations: First, the Auditor recommends that the Department develop a new way for officers to report incidents where there was a potential appearance of force, but no actual use of force. The current practice of reporting those incidents as "Use of Force" incidents creates inaccurate records and artificially boosts the Department's Use of Force numbers. And second, the Auditor recommends that the Department collaborate with the Auditor to establish protocols for analyzing BWC data to ensure that reviews of that data are consistent, fair, and unbiased.

## **II. Background**

The purpose of employing the Police Auditor is to increase public trust and confidence in the Police Department by providing an independent review and audit of the Police Department's uses of force and its internal investigations regarding complaints against the Olympia Police Department or its employees. On November 2, 2020, the Olympia City Council selected the law firm of Ogden Murphy Wallace, PLLC, and specifically, attorney Tara Parker, to serve as its Police Auditor in 2021. In July 2022, Ms. Parker founded Clarity Investigations and Consulting, PLLC, and the City Council voted to contract with Ms. Parker to continue serving as the Police Auditor. In its 2022 contract, the City Council expanded the Police Auditor's duties and responsibilities to include examining uses of force, complaint investigations, and public demonstration responses for indicia of unlawful bias and civil rights violations. The full scope of the Police Auditor's duties and responsibilities are as follows:

The Civilian Police Auditor will be responsible for the following:

1. Review of police professional standards investigations relating to complaints about the Police Department or its employees to determine if the investigations meet Department standards and are complete, thorough, objective, and fair.
2. Review of all uses of force, complaints, and internal investigations as defined in Olympia Police Department General Orders to determine if they are

consistent with Police Department policies, without indication of unlawful bias, protect civil rights, and are in alignment with best practices.

3. Provide an impartial review of the Police Department's internal investigative process and verification of the Department's compliance with established policy and procedures.

4. Provide an impartial review of the Department's responses to public demonstrations and crowd management when events result in physical injury, extensive property damage, or is determined by the City Manager to be appropriate for review by the Police Auditor to determine if the response was in alignment with the Police Department's applicable General Orders and Guiding Principles for Demonstrations and Crowd Management.

5. Review and recommend revisions to Police Department policies, procedures, and training related to complaints, use of force, and the internal investigative process based on audit findings. Revisions will be in alignment with best practices regarding diversity, equity, and inclusion, while ensuring public safety and protection of First Amendment and other constitutional rights.

6. Filing a mid-year and annual written report to the City Council, with a copy to the City Manager and Police Chief. The Auditor's report shall not contain the names of employees, complainants, or witnesses; and will include:

- Summary of use of force statistics, including but not limited to:
  - Types of use of force used
  - Subject Demographics
  - Indications of bias
  - Whether the use of force led to serious injury
- A finding on each complaint and internal investigation audited indicating either:
  - That the Department's internal investigation met the Department's standards and established investigative best practices; or
  - After response to a request for further investigation, the case failed to meet the above standards, and reasons supporting such finding.
- A summary of the complaints and internal investigations audited, including:
  - Date complaint received
  - Classification
  - General Description
  - Investigative Findings

- Corrective Actions
- Police Auditor Findings
- When additional complaint investigations were requested and OPD's
- Responses
- Findings on each complaint case audited
- Summaries of data in graphic and narrative form
- Analysis of key trends and patterns
- Recommendations for revisions to policy, procedures, and training
- A list of the updated policies, procedures and trainings related to the Police Auditor Scope of Work

7. The Police Auditor will present the mid-year and annual reports at a City Council meeting.

### **III. Methodology**

The Police Auditor receives weekly reports from the Office of Professional Standards. Each report contains the following information:

- All new use of force checklists entered into Record Management System, which includes several data points and documents:
  - Race, sex, age of subjects
  - Name, rank, race, and sex of officers
  - Officer's years of service
  - Reasons for initial contact between subjects and officers
  - Whether any minors were present at the scene
  - The number of officers and suspects present when force was used
  - Type of force used
  - De-escalation efforts
  - Injuries and medical treatments
  - Weapons used by subjects or officers
  - Influence of drugs, alcohol, or mental illness
  - Arrests or charges
  - Witness statements
  - Photos
  - Videos
  - Associated case reports
  - Other documentary evidence
- Immediate Supervisor review reports and determinations
- Management review reports and determinations
- Defensive Tactics Use of Force Team reviews and training points, when applicable

- Information regarding all internal and external complaints regarding OPD Officers
  - Complaint
  - Classification
  - Investigation details and findings
  - Learning and resolution
- All Crowd Management Operational Plans and after-action reports regarding public demonstrations.

The Police Auditor's process includes:

- Tracking all data listed above;
- Seeking additional information when necessary;
- Consulting with the Chief of Police and the Professional Standards Lieutenant regarding observations, policies, practices, and departmental developments;
- Examining the data for trends;
- Reviewing all files to determine
  - Completeness
  - Thoroughness
  - Objectiveness
  - Fairness
  - Indicia of Bias
- Examining Department practices for compliance with OPD policies; and
- Noting areas that may be improved by procedural or policy changes.

#### **IV. Policies Regarding Complaints**

Complaints about members of the Olympia Police Department can be received in many ways including in-person, by telephone, by written documents, and by email. Complaints can also be filed via the complaint form on the city's website. All complaints must be thoroughly and fairly investigated in accordance with the standards set forth in OPD Policy 1010.

Complaints are sorted into one of two categories:

- **Serious Misconduct** complaints include allegations of excessive use of force and civil rights violations. Complaints in this category are assigned to a department manager to investigate. These investigations are also reviewed by legal counsel when they are completed.
- **Service Level** complaints include allegations of rudeness, poor work performance and minor policy violations. Service Level complaints are generally assigned to first line supervisors to investigate and address.

Internal Affairs investigation reports must include the following information:

- A. The date of the incident;
- B. The name of the employee(s) involved;
- C. The date the case was assigned;
- D. The names and contact information for the complainants or affected individuals in the complaint;
- E. A written report containing:
  1. A concise but complete synopsis of the allegations;
  2. A narrative presenting the details of the investigation, including a chronological summary of the investigation, witness interviews, etc.;
  3. The findings of fact - including, by numerical listing, a summary of the findings of fact, including citation of any violations of policy and/or law involved;
  4. An investigator's log showing the dates and times of contacts and other key actions related to the investigation.
- F. Appendices containing:
  1. Transcripts of interviews with the complainant(s) and key witnesses;
  2. Letters and written statements from employees, community members, and witnesses;
  3. Copies of all related reports;
  4. Copies of all memos or formal letters related to the investigation.
- G. Photographs, video tapes, audio tapes and other relevant supporting materials shall also be submitted with the final report;
- H. The date the final report is submitted;
- I. The name and signature of the assigned investigator.

At the conclusion of an investigation, the investigator will reach a finding in accordance with the Department's policies. The standard of proof for all internal investigations is by "a preponderance of the evidence." This is a lower standard than what a criminal case requires which is "proof beyond a reasonable doubt."

In July 2022, the OPD Policy 1010, regarding Personnel Complaints, was revised.<sup>1</sup> The new Personnel Complaint policy contains categories and disposition terms that were broadly approved by the Department since January 2022; accordingly, the Department utilized the update terminology in reports prior to the final publication of the revised policy. The key definitions and categories are as follows:

**Complaint Definition** – A communication, verbal or written, conveying dissatisfaction with the performance or conduct of the Department or one or more of its members. Complaints are classified in one of the below categories:

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<sup>1</sup> The full policy can be found at <https://public.powerdms.com/OlympiaPD/tree/documents/1662358>.

1. **Inquiry** – A matter in which there is a question regarding conduct or performance. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents handled by the Department.
2. **Personnel complaints** - include any allegation of misconduct, or improper job performance against an employee of the police department that, if true, would constitute a violation of department policy or of applicable federal, state, or local law, policy, or rule, or CJTC decertification/suspension/revocation criteria found in section 1010.16 of this policy. Personnel complaints may be generated internally or by the public.
3. **Informal complaint**- A matter in which there is no expectation, from the complainant, that an investigation will occur and the supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
4. **Formal complaint**- A matter in which a supervisor or manager determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

**Wrongdoing** – (as defined in RCW 10.93.190 – Officer’s Duty to Intervene) means conduct that is contrary to law or contrary to the policies of the witnessing officer’s agency, provided that the conduct is not de minimis or technical in nature.) “Wrongdoing” – even if true - may or may not be determined to be misconduct pursuant to City of Olympia policies if such “wrongdoing” involves allegations that a City of Olympia officer violated the policy of a witnessing officer’s agency.

**Preliminary Investigation** – A cursory fact-finding activity where the Office of Professional Standards investigator or a supervisor seeks to determine if sufficient information exists before deciding whether or not an investigation is feasible or warranted.

#### **1010.6.4, COMPLAINT DISPOSITIONS**

Each complaint shall be classified with one of the following dispositions:

**No Finding** – When the investigation shows one of the two following conditions to be present:

1. The complainant failed/declined to disclose information to further the investigation.

2. The allegations relate exclusively to another agency, and the complaint and/or the complainant has been referred to that agency.

**Unfounded** - When the investigation shows that the alleged behavior did not occur or was patently false.

**Exonerated** - When the investigation shows the alleged behavior occurred, but also shows such acts to be justified, lawful, and proper.

**Not sustained** - When the investigation fails to disclose sufficient facts to prove or disprove that the alleged behavior occurred.

**Sustained** - When the investigation discloses sufficient facts to prove the alleged behavior occurred.

**Resolved** – Resolved may be used as a disposition for inquiries and informal complaints only.

**Without Merit** – The Professional Standards Lieutenant, with approval of the Chief or Police or designee, may close an investigation if one of the following conditions are demonstrated:

1. Positive proof (photos, video, audio tape, etc.) clearly establishes that the allegation is untrue; or
2. The facts indicate that the allegation is clearly inconsequential or frivolous and no tangible harm can be reasonably associated with the behavior; or
3. The facts indicate that the allegation was made maliciously and with wanton disregard for the truth; or
4. The complaint does not involve the Olympia Police Department or its employees.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall recommend appropriate action with regard to any additional allegations.

All investigations and findings are reviewed by the Professional Standards Lieutenant and the Chief of Police. All service level complaint investigations must be completed within sixty (60) days from the date the case is received by the Department. All investigations into allegations of Serious Misconduct must be completed within ninety (90) days from the date the case is received by the Department, unless extended by the Professional Standards Lieutenant with the approval of the Chief of Police.

Any sustained complaint is referred to the employee's supervisor or manager for corrective action. The determination of corrective action is based on the severity and repetitiveness of the violation.

Corrective actions include the following:

- Counseling and coaching
- Oral warning
- Written warning
- Performance improvement plan
- Suspension without pay
- Reduction in pay or rank
- Last chance agreement
- Termination

The Office of Professional Standards (OPS) is responsible for managing the formal accountability system. OPS is managed by the Chief of Police. All records are tracked, stored, and maintained in the Department Records Management System (RMS). OPS provides all information regarding external and internal complaints about OPD employees to the Police Auditor on a weekly basis. The Police Auditor also has independent access to the RMS database.

## **V. Uses of Force January 1 – June 30, 2022**

### **A. Use of Force Records**

In the first six months of 2022, OPD officers reported uses of force in thirty-five incidents. The Olympia Jail reported uses of force in two incidents. Each of the use of force incidents was subject to internal, multi-level review and the Department determined that the officers' actions were within policy. The Auditor reviewed each of those files and determined the officer's actions were within policy.

With respect to five of those incidents, officers submitted Use of Force reports and submitted the records for supervisory review, despite asserting that there was not "use of force" per Department policy.

In one incident, the Department determined an officers' use of his handgun was contrary to the Department's training – though not a specific policy violation – and directed the matter to its Firearms Training Team for review and follow-up. The Firearms Training Team reviewed this incident and decided

there was no specific extra training needed for the officer other than counseling about options for carrying the handgun in his utility vest.

Additional key data regarding the 37 use of force files is as follows:

#### Types of Force Used

- 28 involved takedowns by means of defensive tactics such as pain compliance techniques, control holds, and physical restraint<sup>2</sup>.
- 4 involved use of the Bola Wrap, a remote restraint device that does not rely on pain compliance.<sup>3</sup>
- 2 incidents involved the deployment of Conductive Energy Weapons (CEW or CED Taser probes).
- 1 incident involved kinetic impact rounds from a less lethal shotgun.
- 1 incident involved pepper spray.

#### Subject Demographics

- 16 incidents involved white male subjects.
- 9 incidents involved white female subjects.
- 6 incidents involved Black male subjects.
- 4 incidents involved a Black female subject.<sup>4</sup>
- 1 incident involved an Asian female subject.
- 1 incident involved an Indigenous male subject.

#### Additional Key Data

- None of the incidents led to serious injuries.
- 26 of the incidents involved subjects who appeared to be mentally ill and/or impaired by alcohol or drugs and were not compliant with de-escalation efforts.

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<sup>2</sup> Three of these incidents were reported as precautions where there was no use of physical force per Department policy, but the officers still noted them as takedowns. The thirty-six Types of Force Used, rather than 37, because, in two instances, no type of force was noted in reports that were filed as precautions and one incident involved two uses of force.

<sup>3</sup> In early 2021, the OPD purchased Bola Wrap Remote Restraint devices. The Bola Wrap is a hand-held, pre-escalation and apprehension tool that discharges a Kevlar tether to temporarily restrain uncooperative suspects and persons in crisis from a safe distance to minimize injuries or the need for higher levels of force.

<sup>4</sup> One Black female subject was transgender.

## **B. Use of Force Trends**

### **1. There Was No Evidence of Racial or Gender-Identity Bias**

The 12 incidents where officers used force in encounters with people of color, and the one incident involving a transgender person, were thoroughly scrutinized by the Auditor and found to have been justified and within policy. There was no evidence that the officers' interactions with subjects of color differed from their interactions with white subjects. The records involving the transgender person indicated that officers consistently referred to by her proper name and pronouns, and treated her with dignity and respect throughout the incident.

The records involving marginalized persons were generally more detailed and more thorough than reports regarding white, cisgendered people. Those records also provided detailed descriptions of de-escalation efforts and often involved other law enforcement agencies and CRU personnel. Two of the reports involving Black subjects did not technically involve uses of force but were filed as a precaution because observers could have perceived wrongdoing. Collectively, the records indicate that OPD officers are attentive to their need to demonstrate the utmost care in their interactions with marginalized people and their willingness to have such interactions scrutinized.

### **2. The Vast Majority of Instances Necessitating Uses of Force Involved Individuals in Crisis.**

Twenty-nine of the incidents where officers used force to subdue and arrest individuals involved subjects who were suffering from mental illness and/or severely impaired by drugs or alcohol. The records show that those individuals did not respond to officers' de-escalation efforts, nor did they comply with orders to cease conduct that posed serious dangers to themselves and others. The records indicate that the OPD consistently called for Crisis Response Unit (CRU) assistance during such encounters and refrained from intervening prior to the CRU response. Because the Auditor did not review encounters that did not involve uses of force, it is not known how many encounters with individuals in crisis were successfully concluded through de-escalation efforts and/or assistance from the CRU. In other words, we cannot discern from use of force records alone whether the Department's training on crisis response and de-escalation, and its coordination with the CRU, has lessened officer's uses of force in encounters with individuals in crisis.

### 3. The Department Demonstrates a High Level of Transparency and Openness to Scrutiny

Five Use of Force reports were submitted by officers who reported conduct that did not include physical force that necessarily required such reports. The officers who reported those five incidents stated they did so as a precaution because the subjects or third parties indicated that they would bring allegations of excessive force or civil rights violations. This trend was not observed in 2021. The OPD has a practice of documenting incidents involving “perception of force” or “looks like force” in its Use of Force system so that those incidents are thoroughly reviewed and documented. Neither the Department nor the Auditor has identified any other law enforcement agency that does this. The Department recognizes that this practice makes it appear that officers used force more often than they actually did. This matter is discussed further in the Recommendations section below.

#### **C. OPD Procedural Changes**

The OPD has continued to enhance the clarity and thoroughness of its use of force reporting. The officers’ reports have included increasingly detailed and coherent descriptions of the relevant circumstances, de-escalation efforts, how force and defensive tactics were employed. This has enhanced accountability, transparency, and the efficiency of follow-up actions.

The Department also moved forward on the process of obtaining and using body worn cameras (BWC). This equipment will enhance reporting, transparency, accountability, opportunities to learn, and the capacity to capture criminal acts and aid prosecutions. Furthermore, the Department completed its public outreach and communication efforts and completed a draft policy for use of BWCs. However, there have been supply chain issues that held up the delivery. The supplier, Axon, is scheduled to deliver the equipment and provided training to the OPD on October 6, 2022.

A third way in which the OPD has significantly enhanced its use of force practices is through providing trainings regarding First Amendment rights and effective, unbiased Crowd Management practices. Those training materials were reviewed by the Auditor and determined to be thorough, unbiased, and meet Department standards and best practices.

Finally, throughout 2022, the Department has submitted its Crowd Management Operational Plans and After-Action reports related to all public demonstrations for review by the Auditor. The Auditor reviewed

such documents for five public demonstrations between January 1 and June 30. The organizers and participants in those events held a broad range of ideological views. There was not, however, any indication of differing plans or responses by the OPD. They were all consistent with the Department's Guiding Principles for Demonstrations and Crowd Management.

## **VI. Misconduct Complaints**

The Office of Professional Standards received and investigated twelve misconduct complaints between January 1 and June 30, 2022. Ten of the complaints came from members of the community and two misconduct investigations were generated internally by OPD employees or City staff.

All of the complaint investigations were audited and determined to have met Department standards.

One of the internally generated investigations resulted in sustained findings of serious allegations and the Department recommended termination. The employee resigned and the Department reported the matter to the Criminal Justice Training Commission, in accordance with RCW 43.101.135, which mandates such reports.

The second internal investigation was filed by an officer as a precaution because an individual complained about excessive force and civil rights violations at the scene, as well as an intent to file a complaint. The Department investigated the matter and found no improper conduct. The individual who complained verbally during the incident declined to provide additional information to further the investigation. The matter was therefore closed without further action.

The 2022 Complaint records are summarized below.

## **Complaint Investigation Details**

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Record Number/ Date Filed	Classification	General Description	Investigative Findings	Corrective Actions	Police Auditor Findings
IA 21-006 11/15/21	Serious	Officer interfered with another law enforcement agency's dangerous dog investigation after the dog caused the death of the officer's family dog. Contrary to the directive of the investigating agency, and while in uniform, the officer approached the dangerous dog owner and demanded and took possession of the dog.	Sustained three policy violations:  320.5.9, Conduct unbecoming an officer.  320.5.9, Interference with a law enforcement agency investigation.  32.5.2, Misuse of OPD status for improper purpose.	The officer resigned in lieu of termination. This was reported to the Criminal Justice Training Commission per RCW 43.101.135.	Met Department standards.
1069 1/31/22	Service	Complainant emailed City Manager alleging wrongful vehicle stop. OPS made three failed attempts to contact Complainant and records review showed the stop was proper.	Exonerated	N/A	Met Department standards.
1068 1/30/22	Service	Person trespassed from business premises for refusing to wear a mask and engaging in disorderly conduct complained of excessive force and civil rights violations. Officer involved filed the complaint as a precaution. The Department investigated the incident and found no misconduct.	No further action required	N/A	Met Department standards.

1070 2/11/22	Unspecified	Municipal Court and prosecutor sent emails from Complainant to OPD. Complainant declined to file a report or follow up.	Exonerated	N/A	Met Department standards.
1071 3/14/22	Service	Anonymous complaint submitted on-line contained vague allegation of non-response by OPD, with insufficient information for follow-up.	Unfounded	N/A	Met Department standards.
1072 3/18/22	Service	Anonymous on-line complaint contained insufficient information for follow-up.	Unfounded	N/A	Met Department standards.
1075 5/2/22	Service	The Complainant alleged via email that the OPD failed to properly follow up after an arrest. Department records showed the OPD actions were within Department standards.	Not Sustained	N/A	Met Department standards.
1076 5/2/22	Service	The Complainant emailed allegations of multiple unwarranted vehicular stops and harassment. The Department investigated and found most of the stops, at transient camps, occurred in the City of Lacey. The Complainant did not provide sufficient detail to allow further investigation into stops in Olympia. The Complainant was advised how to report any future concerns and informed that the matter would be documented by the	Not Sustained	N/A	Met Department standards.

		OPS. She expressed satisfaction.			
1077 5/4/22	Service	Complainant emailed the OPD and City Council members alleging the OPD failed to perform requested welfare check on her sister. Records showed that an officer was unsuccessful in his attempt to contact the person of concern. The officer was then diverted to an emergency, where he was injured and sent to the ER. The second officer read the first officer's notes and believed the welfare check was completed.	Unfounded	Officer was counseled by his supervisor regarding making clearer notes in call records.	Met Department standards.
1078 5/23/22	Service	On-line complainant alleged an OPD officer was rude to him. The Department emailed him and called him twice for more information, but was unable to make contact.	Not Sustained	N/A	Met Department standards.
1079 5/20/22	Service	On-line complainant alleged an OPD officer was rude to him. The Department emailed him and called him twice for more information, but was unable to make contact.	Not Sustained	N/A	Met Department standards.
1069 1/31/22	Service	Complainant emailed City Manager alleging wrongful vehicle stop. OPS made three failed attempts to contact Complainant and records review showed the stop was proper.	Exonerated	N/A	Met Department standards.

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### **A. Trends Observed re Complaints**

#### **1. The Department is Responsive, Thorough and Fair in Addressing Community Complaints.**

Ten of the eleven 2021 Misconduct Complaints from the community arose from individuals who felt an officer had been discourteous or unprofessional, typically by using disrespectful language or failing to provide services to the complainants' satisfaction. In those cases that provided the Office of Professional Standards (OPS) with sufficient information to follow up, OPS thoroughly investigated the matters and communicated with the complainants about their concerns and the records. Where applicable, OPS further advised the complainants about how to effectively address future concerns and assured them that the matter would be recorded in the OPD database.

In response to a community member's complaints of misconduct during an incident, an officer filed a complaint report. The OPS thoroughly investigated the matter and found no misconduct.

#### **2. The Department is Proactive, Thorough and Fair in Initiating and Investigating Serious Misconduct Concerns.**

The Department initiate one Internal Affairs investigation into circumstances that raised concerns of serious misconduct. The investigation, which was thorough, fair, and unbiased, resulted in sustained findings and recommended termination. The officer resigned in lieu of termination and the matter was properly reported to the Criminal Justice Training Commission per RCW 43.101.135.

### **VII. Recommendations**

#### **1. Clarify Use of Force Reporting Policies and Procedures**

As stated above, five out of thirty-five Use of Force reports were, more accurately, "perception of force" incidents that did not involve physical force exerted by an officer that mandated such reporting under OPD policies. Such reports constituted a substantial proportion - seventeen percent – of all Use of Force reports. As noted above, this practice is commendable because it enhances transparency and accountability, while also potentially mitigating risk to the Department and the City. The practice is also

extraordinary, as no other law enforcement agency is known to engage in this practice. Law enforcement agencies may reasonably refrain from this practice because it artificially increases the number of recorded uses of force.

Although this practice is commendable, reporting “perceptions of force” as uses of force is problematic in at least three ways. First, the reporting officers are in the awkward position of reporting a use of force while also reporting that they did not use force. Second, because “perception of force” reports are submitted via the Use of Force checklists, they artificially enhance the Department’s Use of Force numbers. And third, using the Use of Force checklist for “perception of force” reports creates data-tracking problems because the checklist requires the officers to specify the type of force used (which they did in some cases but not in others) even though no force was used.

Accordingly, the Auditor recommends that the Department develop an alternative way for officers to record these incidents. One possibility is to specify that “perception of force” reports be classified as pursuant to OPD Policy 300.7.1, which may be broadly read to require officers to submit reports of such incidents. Policy 300.7.1 mandates that officers notify supervisors, “following the application of force” in several circumstances that warrant taking extra precautions. For example, supervisory notification is required when an individual indicates intent to pursue litigation; an individual was forced to the ground or would reasonably appear to be forced to the ground; or an individual alleges unreasonable force was used or that any of the above has occurred. Policy 300.7.1 does not specify whether “application of force” for this purpose includes the de minimis types of force employed in the five incidents at issue.

Such reporting is commendable and should be encouraged because any circumstance where people involved or observing police action complain about misconduct should be thoroughly reported and reviewed. Nonetheless, it distorts the Department’s records regarding uses of force to include incidents where officers are not truly reporting that they used force.

2. Develop Protocols for Reviewing Body Worn Camera Data in Use of Force Reviews.

As stated above, the Department has completed a draft policy for the BWC program and is considering community feedback in that process. Once implemented, BWC footage will be submitted to the Auditor as part of the Use of Force reports and, where applicable, complaint investigations. It is therefore

imperative that protocols for reviewing that data meet best practices. Accordingly, prior to the deployment of BWCs, the Auditor recommends that the Department collaborate with the Auditor to develop BWC data review policies that ensure such reviews are fair, unbiased, and consistent.

## **VIII. Conclusion**

As demonstrated above, the records reviewed by the Auditor indicate that the Department's performance has met Department standards and best practices in several respects. First, the OPD has engaged in compliant and substantially transparent, unbiased uses of force and complaint investigations throughout the first six months of 2022. Second, the Department has demonstrated that it has prepared for and attended to public demonstrations in thorough and unbiased ways that are consistent with the Department's Guiding Principles for Demonstrations and Crowd Management. Third, the OPD has engaged in thorough trainings regarding First Amendment rights and effective, unbiased Crowd Management practices. And fourth, throughout 2022, the Department's Crowd Management Operational Plans and After-Action reports related to public demonstrations have been thorough, unbiased, and consistent with Department policies and best practices.

In closing, the Auditor makes two recommendations. First, the Auditor recommends that the Department develop a new way for officers to report incidents where there was a potential appearance of force, but no actual use of force. The current practice of reporting those incidents as "Use of Force" incidents creates inaccurate records and artificially boosts the Department's Use of Force numbers.

And second, the Auditor recommends that the Department collaborate with the Auditor to establish protocols for analyzing BWC data to ensure that reviews of that data are consistent, fair, and unbiased.