



King County

King County Ombudsman’s Office

FINDINGS & RECOMMENDATIONS

Complainant’s Identity Withheld

Case # 2017-00201

Respondent: John Urquhart, King County Sheriff

August 8, 2017

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EXECUTIVE SUMMARY

In 2016, a former King County Sheriff's deputy alleged to the Federal Bureau of Investigation (FBI) Seattle Division that Sheriff John Urquhart had raped her in 2003 when he was her supervising sergeant, and since then had engaged in conduct aimed at preventing or obstructing an investigation. The FBI conducted a review of the allegations for possible federal criminal violations; all indications are that the FBI did not pursue a rape investigation under the laws of the State of Washington.

In mid-June, 2016, an FBI agent contacted the Sheriff's Office Internal Investigations Unit (IIU), communicated the complainant's allegations to IIU, and asked whether the complainant had really been a Sheriff's deputy. The FBI indicated to IIU that the complainant's story appeared to have problems with credibility, but warned that the FBI could commence an investigation if Sheriff Urquhart were to contact the complainant. The FBI did not apparently pursue the case further.

On June 21, 2016, IIU personnel met with Sheriff Urquhart about the FBI communications. Neither Sheriff Urquhart nor IIU ordered or commenced an investigation into the complainant's allegations. Nor did they document the allegations through "BlueTeam", the system for tracking complaints against Sheriff's Office members. The IIU commander created contemporaneous notes of the June 21 meeting, on his work computer, without Sheriff Urquhart's knowledge.

On November 10, 2016, the complainant reported her allegations to the Seattle Police Department (SPD). On December 22, 2016, *The Seattle Times* reported that Sheriff Urquhart had ordered IIU not to document the complainant's allegations. On January 5, 2017, the Sheriff's Office received SPD's written report on the complaint. On January 6, 2017, Sheriff Urquhart ordered the complainant's allegations documented in BlueTeam.

On February 10, 2017, the complainant filed a complaint with the Ombudsman's Office. We investigated the administrative acts at issue pursuant to the Ombudsman's authority. We did

¹ To protect privacy, this report does not identify the complainant by name.

not investigate the complainant's criminal allegations, which fall outside our office's jurisdiction. As explained in this report, we find that:

- 1. Sheriff's Office rules and procedures required that the complainant's allegations be documented and investigated when IIU received them in July 2016.**
- 2. Sheriff Urquhart had a conflict of interest when he determined that neither an investigation nor documentation of the complainant's allegations was necessary in June 2016 when the Sheriff's Office received them.**
- 3. The Internal Investigations Unit Commander reasonably understood that Sheriff Urquhart had directed him not to document the complainant's allegations through BlueTeam.**
- 4. The Sheriff's Office should have referred the complainant's allegations to an outside local or state law enforcement authority for investigation, and documented the allegations through BlueTeam as soon as possible after the FBI communicated them to IIU.**

Stemming from our findings, we make the following recommendations to the Sheriff's Office:

- 1. The Sheriff's Office should establish a written policy requiring the appointment of an external, independent official to investigate serious complaints against the Sheriff or other senior command staff. That official should have appropriate expertise and jurisdiction to investigate the elements of the alleged offense.**
- 2. The Sheriff's Office should clarify its rules and procedures to ensure that review and investigation of all complaints against Sheriff's Office employees are documented through BlueTeam with appropriate security classifications.**

In April 2017, the King County Prosecuting Attorney's Office (PAO) stated that: it had reviewed the complainant's allegations; the allegations fall outside the applicable statute of limitations; and the evidence was insufficient to support criminal charges against Sheriff Urquhart. On May 1, 2017, an SPD memorandum stated that "interviews revealed that no crime had occurred."

ALLEGATIONS

The complainant, a former King County Sheriff's deputy, made numerous allegations against Sheriff Urquhart and a member of his staff. The allegations stem from the complainant's 2016 report to the FBI that Sheriff Urquhart raped her in 2003 while he was her supervising sergeant.²

Upon review, the Ombudsman's Office determined that the allegations appropriate for investigation by our office are that:

1. Sheriff Urquhart told his Internal Investigations Unit (IIU) "not only not to investigate this situation but not to document it" when IIU informed the Sheriff that the FBI told an IIU sergeant about the complainant's rape allegation in July 2016;
2. The complainant's allegations should have been investigated; and,
3. Sheriff Urquhart should be held to the same standards as any other member of the department.³

AUTHORITY

The King County Ombudsman's Office was created by the voters of King County in the County Home Rule Charter of 1968 and operates as an independent office within the Legislative Branch of King County government. Under King County Code section 2.52, the Office is authorized to investigate the administrative conduct of King County agencies and employees in response to complaints from the public, or on its own initiative, and to publish findings and recommendations for improving the administration of county government.⁴ The Office promotes public confidence in King County government by responding to issues in an impartial, efficient and timely manner. The King County Code provides,

In selecting matters for his [sic] attention, the director shall address himself [sic] particularly to an administrative act that might be:

² Sheriff Urquhart has repeatedly denied the complainant's allegations against him, including in sworn testimony. Urquhart Decl. 2, December 5, 2016; Urquhart Dep. 117-18; Urquhart letter to Calderwood at 4, March 27, 2017; Lewis Kamb, "King County Sheriff John Urquhart won't face charges in alleged rape almost 15 years ago", *The Seattle Times*, April 11, 2017.

³ Complainant letter to Ombudsman's Office, February 10, 2017. The letter included allegations that: her neighborhood appeared to have been under surveillance for months; text messages to Sheriff Urquhart went missing from her computer and phone; Sheriff Urquhart asked her to avoid a subpoena in an upcoming trial; she came home to find her gas stove on full blast; and, Sheriff Urquhart and his chief of staff had a secret file about her.

⁴ The Ombudsman's Office also investigates alleged violations of the county Employee Code of Ethics (KCC 3.04), Whistleblower Protection Code (KCC 3.42), and Lobbyist Disclosure code (KCC 1.07).

1. Contrary to law or regulation;
2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functioning;
3. Arbitrary in ascertainment of facts;
4. Improper in motivation or based on irrelevant considerations;
5. Unclear or inadequately explained when reasons should have been revealed;
6. Inefficiently performed; or
7. Otherwise objectionable.

The director also may recommend strengthening procedures and practices of administrative agencies.^[5]

The Ombudsman's Office does not pursue criminal investigations, but refers matters to the appropriate authorities if there is reason to believe criminal proceedings are warranted.⁶

PROCEDURAL SUMMARY

The complainant submitted her complaint to the Ombudsman's Office by email on February 10, 2017. Following a review for jurisdictional sufficiency, the Ombudsman's Office transmitted the complaint to Sheriff Urquhart on February 14. We notified the complainant of the transmittal that same day, and spoke with her by telephone on February 16. We requested that Sheriff Urquhart provide a written response, which he did on March 27. Sheriff Urquhart provided an additional written response on April 15, with deposition transcripts we had requested after reviewing his first response.

As part of this investigation, we reviewed the Sheriff's Office General Orders Manual, IIU Standard Operating Procedures, expert reports recommending best practices for police internal affairs units, and deposition transcripts (cited below) from *Shoblom, et al v. King County*, No. 15-2-09687-7, a recently-settled King County Superior Court retaliation lawsuit that alleged wrongdoing materially unrelated to this investigation, and filed by one current Sheriff's deputy and two former deputies.⁷

We interviewed the following Sheriff's Office personnel: Captain Jesse Anderson; Lance King, Human Resources Manager; Captain Mark Konoske; Captain DJ Nesel; and Sheriff John

⁵ KCC 2.52.100(A) & (B).

⁶ KCC 2.52.160.

⁷ See Lewis Kamb, "King County to settle lawsuit against Sheriff, aides for \$1.35M over retaliation claims," *The Seattle Times*, April 11, 2017, <http://www.seattletimes.com/seattle-news/king-county-to-settle-lawsuit-against-sheriff-aides-for-135-million/> (accessed May 30, 2017).

Urquhart. We interviewed Robert Davis, a law enforcement consultant with Hillard Heintz. We sent a written interview request to retired Sergeant Michael Mullinax, who did not respond. We contacted the FBI Seattle Division, which declined to provide further information.

On June 23, pursuant to KCC 2.52.240, we transmitted a draft of these findings and recommendations to Sheriff Urquhart, with the opportunity to provide, by June 30, a written statement or document to be appended to the final findings and recommendations. On June 29, the Sheriff requested a 30-day extension, which we granted consistent with our ordinary practice. On August 1, the Sheriff's Office requested an additional extension to August 11. We granted a two-day extension until August 3, and received the Sheriff's response on that date. These final findings and recommendations follow.

Senior Deputy Ombudsman Jon Stier conducted the investigation and produced this report with the oversight of Ombudsman-Director Amy Calderwood.

STATEMENT OF FACTS

Sheriff's Internal Investigations Unit

The King County Sheriff's Office Internal Investigations Unit (IIU) investigates complaints of misconduct involving Sheriff's Office employees.⁸ According to the Sheriff's Office General Orders Manual,

It is the Sheriff's Office policy to promptly, thoroughly and fairly, investigate alleged misconduct involving its members. Supervisors and Commanders who are assigned to review complaints shall ensure that all complaints are appropriately investigated and documented according to procedures established in this policy.⁹

An on-duty supervisor who "receives notification or information that a member has been . . . accused of committing a crime" is required to "[e]nsure that appropriate law enforcement action has been initiated". The allegations "shall be investigated by the appropriate police

⁸ King County Sheriff's Office, *KCSO Internal Investigation Process*, at 4, http://www.kingcounty.gov/~media/safety/sheriff/documents/CivilForms/i/IIU_Process.ashx?la=en, undated (accessed May 15, 2017).

⁹ King County Sheriff's Office General Orders Manual (hereafter, "GOM") section 3.03.005.

agency”.¹⁰ IIU accepts third-party complaints.¹¹ Sheriff Urquhart has directed that, “every complaint will be reported and tracked”. (Emphasis in original.)¹²

The IIU Commander ensures that the Sheriff is notified when a misconduct complaint is likely to be newsworthy, involves a criminal investigation, or involves Sheriff’s Office command staff.¹³ IIU is required to conduct an administrative investigation for possible misconduct when there is a criminal complaint against a Sheriff’s Office employee. The internal (administrative) investigation may run concurrently with a separate criminal investigation.¹⁴ Complaints involving IIU personnel are to be forwarded directly to the Sheriff, who must appoint non-IIU personnel to investigate.¹⁵

Internal investigations must be conducted fairly and impartially by a neutral investigator.¹⁶ However, Sheriff Urquhart stated that he has “the prerogative and the authority to countermand” IIU Standard Operating Procedures and General Orders whenever he or his leadership team believe it is in the best interests of the Sheriff’s Office.¹⁷ There is no written policy or procedure for misconduct complaints against the Sheriff or other members who rank above the IIU Commander.¹⁸

Four IIU sergeants report to the IIU Commander, who in turn reports directly to the Sheriff.¹⁹ The Sheriff monitors and receives briefings on all important IIU investigations.²⁰ Sheriff Urquhart said he can order IIU not to conduct an investigation, and could discipline IIU personnel if they were to disobey the order.²¹

¹⁰ GOM 3.03.020(2) & (3).

¹¹ Urquhart interview with Stier, May 8, 2017; Deposition of DJ Nesel (hereafter, “Nesel Dep.”) Vol. I at 11-12; King County Sheriff’s Office, *KCSO Internal Investigation Process*, http://www.kingcounty.gov/~media/safety/sheriff/documents/CivilForms/i/IIU_Process.ashx?la=en, undated (accessed May 15, 2017).

¹² King County Sheriff’s Office, Internal Investigations Unit, *2014 Annual Report*, <http://www.kingcounty.gov/~media/safety/sheriff/internal-investigations-unit/2014-kcso-iiu-annual-report.ashx?la=en> (accessed May 24, 2017).

¹³ GOM 3.03.080(3).

¹⁴ King County Sheriff’s Office Internal Investigations Unit Standard Operating Procedures (hereafter, “IIU SOP”) section II.B.2 & II.D.10; GOM 3.03.080(4)(a) .

¹⁵ GOM 3.03.060.

¹⁶ IIU SOP III.A.

¹⁷ Urquhart email to Stier, April 15, 2017.

¹⁸ Anderson interview with Stier, April 24, 2017; see GOM 3.03.060.

¹⁹ Urquhart interview with Stier, May 8, 2017.

²⁰ Deposition of John Urquhart (hereafter, “Urquhart Dep.”) 139, 145.

²¹ Urquhart Dep. 109.

Captain Mark Konoske served as IIU Commander from July 1, 2016 until June 19, 2017.²²
Captain Jesse Anderson served as IIU Commander from July 1, 2014 until June 30, 2016.²³
Captain DJ Nesel served as IIU Commander from approximately December 2012 until June 30, 2014.²⁴

BlueTeam

BlueTeam is a digital platform developed for public safety agencies to document, review, and manage incidents. A BlueTeam entry will appear in IAPro, professional standards software used by over 700 public safety agencies in five countries.²⁵ The King County Sheriff's Office uses the BlueTeam system for capturing misconduct allegations against employees.²⁶ Types of required²⁷ Sheriff's Office BlueTeam entries include:

| IIU Designation | Definition |
|----------------------------|--|
| Inquiry | A BlueTeam entry that documents any communication directed to a member of the department, which, if true, alleges employee misconduct. |
| Major Investigation | Alleged violations that would likely result in suspension, demotion, termination or the filing of criminal charges if sustained. |
| Preliminary | A BlueTeam entry documenting any reported or observed possible violations of policy. |
| NIM | "Non-Investigation Matter": a concern expressed by a citizen that, if true, is not an allegation of misconduct. |
| SAL | "Supervisor Action Log": a BlueTeam entry documenting supervisory actions related to minor policy infractions. |

For allegations of employee misconduct, "[t]he details of the incident will be entered in Blue Team as an inquiry and investigated by IIU."²⁸ Allegations classified as NIM or SAL are also entered into BlueTeam.²⁹ Any Sheriff's Office supervisor or IIU member can enter allegations of possible policy violations through BlueTeam, with follow-up provided by the chain of command,

²² Konoske interview with Stier, April 26, 2017; Konoske email to Stier, June 19, 2017..

²³ Deposition of Jesse Anderson (hereafter, "Anderson Dep.") Vol. I at 11.

²⁴ Nesel Dep. Vol. I at 9.

²⁵ <http://www.iapro.com/> (accessed May 15, 2017).

²⁶ Anderson interview with Stier, April 24, 2017.

²⁷ GOM 3.03.010; IIU SOP (I)(1).

²⁸ GOM 3.03.030(3).

²⁹ Urquhart Dep. 133.

IIU, or both.³⁰ The IIU process is to open a new case as a “Preliminary,” then determine whether it is a NIM, SAL, or Inquiry.³¹

IIU will load an allegation through BlueTeam even if an early check shows the alleged incident did not happen. “Whether or not we investigate it, we determine that based on the nature of the complaint. But at least we load that information up into our system so we have documentation of it”.³² If allegations are not documented in BlueTeam, they would not ordinarily be documented anywhere.³³ According to Captain Anderson, it is “ingrained” in him that “anything that’s brought to our attention goes into BlueTeam.”³⁴ But Sheriff Urquhart said he has directed that at least several complaints, other than the complainant’s, not be logged.³⁵

Captain Konoske said IIU might not BlueTeam an issue if it involves legal issues that would be documented elsewhere in the Sheriff’s Office, or if a complaint presents a conflict of interest, in which case the IIU Commander would bring the matter to Sheriff’s Office legal staff.³⁶ The Sheriff’s Office Human Resources unit BlueTeams all discrimination complaints that, if true, could be a violation of policy.

The Human Resources Director said he has never failed to BlueTeam and investigate such a complaint. But he leaves it up to the appropriate manager to decide whether to BlueTeam a complaint that, if true, would not rise to the level of a policy violation. Those issues may be handled solely within a work unit. Moreover, Sheriff’s Office staff do not BlueTeam oral allegations received at the Sheriff’s Office front desk when the allegations are entirely non-credible, but non-credible written complaints are saved.³⁷

Once a BlueTeam entry is made, access to the entry may be internally restricted. The highest BlueTeam security classification for an entry may restrict access to as few as four senior Sheriff’s Office officials.³⁸ Outside the Sheriff’s Office, the King County Office of Law Enforcement Oversight has password-protected access to BlueTeam entries, though by

³⁰ Deposition of Michael Mullinax (hereafter, “Mullinax Dep.”) 69.

³¹ Nesel interview with Stier, April 25, 2017; Anderson interview with Stier, April 24, 2017.

³² Anderson Dep. Vol. II at 22.

³³ Konoske interview with Stier, April 26, 2017; Nesel interview with Stier, April 25, 2017; Anderson interview with Stier, April 24, 2017.

³⁴ Anderson Dep. 22, 31.

³⁵ Urquhart email to Stier, April 15, 2017. Two of the complaints Urquhart cited were against previous IIU commanders, and one was against a sergeant, Urquhart’s. The Ombudsman’s Office did not investigate the circumstances of Urquhart’s decisions in those matters, as they were outside the scope of this complaint. Our recommendations, below, if implemented, would ensure proper documentation in the future.

³⁶ Konoske interview with Stier, April 26, 2017.

³⁷ King Interview with Stier, April 28, 2017.

³⁸ Konoske interview with Stier, April 26, 2017; Nesel interview with Stier, April 25, 2017; Anderson interview with Stier, April 24, 2017.

agreement that office is authorized to view only Inquiries, not NIMs or SALS.³⁹ The Ombudsman's Office and King County Auditor's Office may review any BlueTeam entry consistent with their duties.⁴⁰ BlueTeam entries are also publicly releasable, subject to exemptions from disclosure as authorized by law.⁴¹

The FBI's Contact with IIU

In mid-June 2016, Federal Bureau of Investigation (FBI) agent "Ryan" called IIU Sergeant Michael Mullinax. In a series of conversations, Ryan: asked Sergeant Mullinax if the complainant had really been a Sheriff's deputy; told Sergeant Mullinax that the complainant alleged to the FBI that Sheriff Urquhart raped her in 2003; and said the FBI had some concerns about the complainant's mental state.⁴² The FBI believed that the complainant's motivations and credibility were suspect, and something was not right about her accusation.⁴³ Ryan indicated that he was completing a report about the complaint for his supervisor, and thought that would be the end of it.⁴⁴

Sergeant Mullinax told Ryan he felt he had to tell that information to Sheriff Urquhart and Captain Anderson, the IIU Commander at the time. Ryan asked Sergeant Mullinax not to tell Sheriff Urquhart until Sergeant Mullinax spoke with Ryan's supervisor, who then called Sergeant Mullinax. The FBI supervisor asked Sergeant Mullinax not to tell Sheriff Urquhart, but Sergeant Mullinax said he felt he had to. Ultimately, the supervisor and Sergeant Mullinax came to an understanding that Sergeant Mullinax could tell Sheriff Urquhart, but the supervisor warned that the FBI might open a formal investigation if Sheriff Urquhart were to contact the complainant.⁴⁵ The FBI Seattle Division declined to provide additional information to the Ombudsman's Office concerning the Bureau's handling of the matter.⁴⁶

July 2016 Decision not to Investigate the Complainant's Allegations

After the call with the FBI supervisor, Sergeant Mullinax told Captain Anderson about his conversations with the FBI. Captain Anderson and Sergeant Mullinax planned to meet with

³⁹ Anderson interview with Stier, April 24, 2017.

⁴⁰ KCC 2.52.090(C); KCC 2.10.040.

⁴¹ RCW Chapter 42.56.

⁴² Mullinax Dep. 59-61, 66.

⁴³ Anderson File Memo, June 21, 2016.

⁴⁴ Mullinax Dep. 59-61, 66.

⁴⁵ Mullinax Dep. 61-64.

⁴⁶ Greg Jennings telephone call to Stier, June 20, 2017.

Sheriff Urquhart the next week.⁴⁷ They were uncomfortable about it but felt they had no choice.⁴⁸

Captain Anderson and Sergeant Mullinax met with Sheriff Urquhart on June 21, 2016.⁴⁹ Sergeant Mullinax told Sheriff Urquhart about his conversations with the FBI, including the rape allegation.⁵⁰ Captain Anderson knew from his years as IIU Commander that Sheriff Urquhart had enemies,⁵¹ so he told Sheriff Urquhart he thought maybe someone put the complainant up to making the accusation.⁵²

Captain Anderson did not suggest to Sheriff Urquhart that an investigation was appropriate. His position at the time was that the FBI had concerns about the complainant's credibility and was not moving forward with a criminal investigation.⁵³ Captain Anderson later said that the nature of the allegation would normally be designated as an Inquiry and investigated, because if true, it would be conduct that is criminal in nature.⁵⁴ But at the time, Captain Anderson believed it was Sheriff Urquhart's prerogative to make the final call⁵⁵ and to decide whether to move forward with an investigation. Captain Anderson later testified that "there's a conflict there, if you're the one that's being accused, to make that decision."⁵⁶

Sergeant Mullinax later testified that he believed a rape allegation against the Sheriff should be investigated, as it can be both a criminal and an (internal) policy violation.⁵⁷ However, Sergeant Mullinax thought IIU could not investigate the Sheriff, though an outside agency could, he said, consistent with past practice.⁵⁸

Sheriff Urquhart did not tell Captain Anderson and Sergeant Mullinax to investigate the complainant's allegations, or not to investigate them, in the June 21, 2016 meeting. Sheriff Urquhart later said that he thought the FBI had already investigated.⁵⁹ He did not think it was important for IIU to investigate, "[p]artially because it involves me. It's also because it is not a

⁴⁷ Mullinax Dep. 66; Anderson Vol. II at Dep. 14.

⁴⁸ Anderson Dep. Vol. II at 15.

⁴⁹ Anderson File Memo, June 21, 2016; Mullinax Dep. 67.

⁵⁰ Urquhart Dep. 113-14; Anderson File Memo, June 21, 2016; Mullinax Dep. 67.

⁵¹ Anderson Dep. Vol. II at 18.

⁵² Anderson File Memo, June 21, 2016.

⁵³ Anderson Dep. Vol. II at 38-39.

⁵⁴ Anderson interview with Stier, April 24, 2017; *see* GOM 3.03.080(4); IIU SOP II.B.2.

⁵⁵ Anderson Dep. Vol. II at 46.

⁵⁶ Anderson Dep. Vol. II at 38-39.

⁵⁷ Mullinax Dep. 65.

⁵⁸ Mullinax Dep. 70.

⁵⁹ Urquhart letter to Calderwood at 4, March 27, 2017; Urquhart interview with Stier, May 8, 2017.

credible complainant and she didn't complain at all to the Sheriff's Office. She complained to the FBI".⁶⁰ Neither Captain Anderson nor anyone at IIU commenced an investigation.⁶¹

Shortly after the June 21 meeting with Sheriff Urquhart, Captain Anderson wrote and stored notes, titled, "Sheriff Urquhart conversations", on his county laptop computer, to memorialize the meeting.⁶² Captain Anderson did not ask Sheriff Urquhart for permission to write the notes, did not tell Sheriff Urquhart about the notes,⁶³ and Sheriff Urquhart did not know of the notes until county attorneys showed him in October 2016.⁶⁴ He did not tell Captain Anderson to write or not write the meeting notes.⁶⁵ Captain Anderson said he made notes like these only four times during his two-year tenure as IIU Commander.⁶⁶

In October 2016, Robert Davis, a law enforcement consultant and former Chief of Police for San Jose, California, provided expert deposition testimony regarding the Sheriff's Office decision not to investigate the complainant's allegations. The deposition was part of a retaliation lawsuit involving the Sheriff's Office.⁶⁷

Mr. Davis offered opinions based on Captain Anderson's contemporaneous notes that document the June 21 meeting. Mr. Davis had no direct personal knowledge about the complaint or Sheriff Urquhart's and IIU's June 21 meeting. Mr. Davis was unsure how the FBI received the rape allegation, whether directly from the complainant or from a third or fourth party. He believed that IIU had not received an internal administrative complaint to investigate, and that based on what he saw in Captain Anderson's memo, the FBI had already determined that there were credibility problems and no criminal complaint. Mr. Davis did not think IIU should have opened an investigation, but he acknowledged that there are "a lot of variables".⁶⁸

The Ombudsman's Office interviewed Mr. Davis separately in June 2017. Mr. Davis said that if FBI agents thought the allegations might have any credibility, they would generally follow a protocol, such as referring the matter to the state police or to local prosecutors. "The FBI isn't going to tip off the Sheriff's Office if they think the allegations might be credible." The extent to which the FBI vetted the complainant's allegations here is a variable, Mr. Davis said, and it could be argued that the FBI had put the Sheriff's Office in a "tough spot" by communicating the complainant's allegation to IIU:

⁶⁰ Urquhart Dep. 114; Urquhart letter to Calderwood at 2 (The FBI "said nothing about transmitting, filing, reporting, or communicating a complaint" to IIU).

⁶¹ Anderson Dep. Vol. I at 36.

⁶² Anderson File Memo, June 21, 2016; Anderson Dep. Vol. II at 42-43.

⁶³ Anderson interview with Stier, April 24, 2017.

⁶⁴ Urquhart interview with Stier, May 8, 2017.

⁶⁵ Urquhart interview with Stier, May 8, 2017.

⁶⁶ Anderson interview with Stier, April 24, 2017.

⁶⁷ *Shoblom, et al v. King County*, No. 15-2-09687-7. The complainant in this case was not directly involved in the *Shoblom* case.

⁶⁸ Deposition of Robert Davis (hereafter, "Davis Dep.") 123-31.

Here, even if the statute of limitations had run, the FBI should've followed protocol as an outside entity and called the local PAO or other appropriate state organization empowered to conduct a criminal investigation of a potential violation of any Washington State penal codes and let those officials make such a determination about how to handle the case. This would preserve the ability to conduct appropriate criminal investigations, if warranted, as well as provide objectivity and transparency to the ultimate outcomes.^[69]

July 2016 Decision not to Document the Complainant's Allegations through BlueTeam

Captain Anderson's contemporaneous notes of the June 21 meeting with Sheriff Urquhart state, in pertinent part,

I asked the Sheriff if he would like this documented in Blue Team and he said no. I suggested that a NIM [Non-Investigated Matter designation] would be appropriate as this is what we would do if we received a complaint like this on other department members. He said he didn't think it was necessary. I followed his direction.^[70]

Captain Anderson perceived that Sheriff Urquhart had directed or ordered him not to document the rape allegation as a NIM. Captain Anderson believed that he would have been insubordinate and subject to discipline if he had violated Sheriff Urquhart's direction.⁷¹ At the time of the June 21 meeting, Captain Anderson was "concerned that this is going to come up again at some point" and felt it would be in Sheriff Urquhart's interests to document it.⁷² Captain Anderson later testified that he disagreed with Sheriff Urquhart's direction, as it was contrary to policy.⁷³

Sergeant Mullinax was not sure whether he heard Captain Anderson ask Sheriff Urquhart if he would like the matter documented in BlueTeam, and Sheriff Urquhart's response, during the June 21 meeting with Sheriff Urquhart, or if he heard it from Captain Anderson after Sergeant Mullinax was excused from the meeting.⁷⁴ But Sergeant Mullinax said Captain Anderson's notes of the June 21 meeting were "pretty much" accurate. "I was told by the supervisor that this incident was going nowhere", Sergeant Mullinax said.⁷⁵

⁶⁹ Davis interview with Stier, June 5, 2017.

⁷⁰ Anderson File Memo, June 21, 2016.

⁷¹ Anderson Dep. Vol. I at 35; Anderson Dep. Vol. II at 59, 61.

⁷² Anderson Dep. Vol. II at 60.

⁷³ Anderson Dep. Vol. II at 45.

⁷⁴ Mullinax Dep. 68.

⁷⁵ Mullinax Dep. 67.

Sheriff Urquhart denied giving Captain Anderson a direct order not to enter the complainant's allegations into BlueTeam.⁷⁶ He later testified, "I never told them not to 'document' the allegation . . . Captain Anderson asked me if I would like this documented in BlueTeam and I said no. When asked, I also told him a NIM was not necessary."⁷⁷

Sheriff Urquhart did not want the rape allegation documented in BlueTeam, because "lots of people in the department have access to that and could get that out of there. And you have already seen what rumors do in the sheriff's office when you have got 1100 employees. And I saw no reason to let that happen because it never—the incident never happened." Sheriff Urquhart was also concerned about his professional and personal reputation, and about the complainant's reputation, due to the possibility that a BlueTeam entry or an investigation could be publicly disclosed.⁷⁸

Sheriff Urquhart said he was not sure whether the FBI generally investigates state felony allegations, but "on something like this they'd probably look at some kind of federal civil rights or public corruption, not the elements of a state rape statute."⁷⁹ The FBI has confirmed that it reviewed the allegations "for possible federal criminal violations".⁸⁰ There are no indications that the FBI investigated the alleged rape, which is typically a state crime.

Law enforcement consultant Robert Davis, in his October 2016 deposition, said there would have been no value in logging a NIM since the FBI and Sheriff's Office had already determined that they would not investigate. But there could be damage to Sheriff Urquhart's and the complainant's reputations, Mr. Davis said, from rumors that could start if the allegations were entered into BlueTeam.⁸¹ During his deposition, Mr. Davis was unaware of the various security classifications available for Sheriff's Office BlueTeam entries, but he later said that rumors could begin even if only three or four people had access to an entry.⁸²

In his deposition and June 2017 interview, Mr. Davis emphasized that the situation was unusual, and that the FBI was aware of the allegations and had already logged them. Nevertheless, Mr. Davis said, it would have been a good idea for Sheriff Urquhart to have told

⁷⁶ Urquhart Dep. 133-34.

⁷⁷ Urquhart letter to Calderwood at 5, March 27, 2017. Urquhart later said that "Anderson asked me if I thought BlueTeam was *necessary* and I said no." Urquhart interview with Stier, May 8, 2017. In an earlier deposition, Urquhart said, "What [Anderson] said was, 'Do you think we should document this in BlueTeam?' And I said, 'No, I don't think we should.'" Urquhart Dep. 121.

⁷⁸ Urquhart Dep. 123.

⁷⁹ Urquhart interview with Stier, May 8, 2017.

⁸⁰ Ayn S. Dietrich email to Lewis Kamb, December 2, 2016, reported in, Lewis Kamb, "King County Sheriff Urquhart told investigators to ignore woman's claim he raped her, documents say", *The Seattle Times*, December 22, 2016.

⁸¹ Davis Dep. 123-33.

⁸² Davis interview with Stier, June 5, 2017.

the Prosecuting Attorney's Office about the allegations after he learned of them from Sergeant Mullinax and Captain Anderson.⁸³

January 2017 Decision to Document the Complainant's Allegations in BlueTeam

On November 10, 2016, the complainant reported the alleged rape to the Seattle Police Department.⁸⁴ On December 22, *The Seattle Times* published an article detailing the FBI contact with Sergeant Mullinax, and Captain Anderson's October 2016 testimony that Sheriff Urquhart told him not to document the complainant's allegations in BlueTeam.⁸⁵ On January 4, 2017, SPD sent a copy of the police report to the Sheriff's Office. The next day, January 5, 2017, Sheriff Urquhart instructed IIU Commander Konoske to document the complainant's allegations in BlueTeam, which Captain Konoske did.⁸⁶ Sheriff Urquhart explained that, "Once she provided *specifics* to SPD that we had never heard before, I ordered it logged into Blue Team". (Emphasis in original.)⁸⁷

On April 10, 2017, the King County Prosecuting Attorney's Office stated that the rape allegation was beyond the ten-year statute of limitations, and that the evidence was "insufficient to support criminal charges."⁸⁸ On May 1, 2017, an SPD memorandum stated that "interviews revealed that no crime had occurred."⁸⁹

OMBUDSMAN FINDINGS

The Ombudsman's Office makes findings based on a preponderance of the evidence standard of proof. A preponderance means we are persuaded that a fact at issue is more likely true than not.

1. Sheriff's Office rules and procedures required that the complainant's allegations be documented and investigated when IIU received them in July 2016.

Sheriff Urquhart emphasized that the complainant did not file a complaint directly with the Sheriff's Office, and that the FBI did not contact IIU with the purpose of filing a complaint. He

⁸³ Davis telephone conversation with Stier, June 9, 2017.

⁸⁴ Seattle Police Department, General Offense # 2016-406737.

⁸⁵ Lewis Kamb, "King County Sheriff Urquhart told investigators to ignore woman's claim he raped her, documents say", *The Seattle Times*, December 22, 2016.

⁸⁶ King County Sheriff's Office IIU# IIU2017-001.

⁸⁷ Urquhart email to Stier, April 15, 2017.

⁸⁸ Dan Donohoe email to Cindy West, April 10, 2017.

⁸⁹ Sgt. Susanna Monroe memorandum to Assistant Chief Bob Mercer, May 1, 2017.

therefore maintained that neither an investigation nor documentation through BlueTeam was necessary.⁹⁰

Sheriff's Office policy is to "promptly, thoroughly and fairly, investigate alleged misconduct involving its members. Supervisors and Commanders who are assigned to review complaints shall ensure that all complaints are appropriately investigated and documented according to [established] procedures."⁹¹ An on-duty supervisor who "receives notification or information that a member has been . . . accused of committing a crime" is required to "[e]nsure that appropriate law enforcement action has been initiated". The allegations "shall be investigated by the appropriate police agency".⁹² The Sheriff's Office accepts complaints from third parties.⁹³

Here, Sheriff Urquhart has acknowledged that the complainant made a first-hand complaint to the FBI.⁹⁴ Bureau staff apparently believed the complaint was significant enough to review it for possible federal criminal violations, then communicate the alleged misconduct to IIU at the conclusion of that review.⁹⁵ The complaint therefore should have been "investigated and documented according to" established Sheriff's Office procedures.⁹⁶ This is consistent with Captain Anderson's understanding that "anything that's brought to our attention" in IIU concerning possible misconduct by Sheriff's Office personnel should be documented whether or not the matter ultimately is fully investigated.⁹⁷

Sheriff Urquhart and law enforcement consultant Robert Davis also argue that the FBI's review of the complainant's allegations eliminated IIU's duty to appropriately investigate and document the allegations internally. But Sheriff's Office policies and practices mandate an internal Sheriff's Office review, documented through BlueTeam, for possible violations of internal policy.⁹⁸ A criminal investigation by an outside agency does not change that.

Moreover, the extent and depth of the FBI's review here remains unknown outside the Bureau. What is known is that the FBI reviewed the allegations for possible federal criminal violations, consistent with its federal jurisdiction. There is no indication that the Bureau investigated the allegations for possible state criminal violations. Sheriff Urquhart's and Mr. Davis' inferences and assumptions about the FBI's actions or omissions, protocols it may have followed, and the

⁹⁰ Urquhart Dep. 114; Urquhart letter to Calderwood at 2 (the FBI "said nothing about transmitting, filing, reporting, or communicating a complaint" to IIU).

⁹¹ GOM 3.03.005.

⁹² GOM 3.03.020(2) & (3).

⁹³ Urquhart interview with Stier, May 8, 2017; Nesel Dep. Vol. I at 11-12; Anderson Dep. Vol. II at 31; King County Sheriff's Office, *KCSO Internal Investigation Process*.

⁹⁴ Urquhart Dep. 113-14.

⁹⁵ Mullinax Dep. 59-61, 66.

⁹⁶ GOM 3.03.005.

⁹⁷ Anderson Dep. Vol. II at 22, 31.

⁹⁸ GOM 3.03.010; IIU SOP (I)(1).

reasons for its decisions, are inadequately supported and do not justify noncompliance with Sheriff's Office rules here.

2. Sheriff Urquhart had a conflict of interest⁹⁹ when he determined that neither an investigation nor documentation of the complainant's allegations was necessary in June 2016 when the Sheriff's Office received them.

Sheriff Urquhart acknowledged that he was concerned about his professional and personal reputation when considering whether the complainant's allegations should be documented in BlueTeam. Sheriff Urquhart's reputational concerns conflicted with his duty as Sheriff to ensure that serious allegations against Sheriff's Office members are investigated. Because Sheriff Urquhart was the accused, he could not impartially decide whether the need to follow Sheriff's Office rules was outweighed by his accuser's possible credibility problems, and by any hypothetical harm that disclosure might do to the Sheriff's Office.

3. The Internal Investigations Unit Commander reasonably understood that Sheriff Urquhart had directed him not to document the complainant's allegations through BlueTeam.

Sheriff Urquhart denied giving Captain Anderson a direct order not to document the complainant's allegations. There is uncertainty about whether Captain Anderson asked Sheriff Urquhart if he "should" BlueTeam the allegations, or if Sheriff Urquhart thought it was "necessary" to BlueTeam them; and whether Sheriff Urquhart said "no" in response to Captain Anderson's suggestion, or "no, I don't think we should". Whatever combination of words were spoken, Captain Anderson believed that Sheriff Urquhart had given him a direct order not to document the complainant's allegations in BlueTeam. Sergeant Mullinax also understood the direction to be that the allegations were not to be BlueTeamed and that "this incident is going nowhere."

As IIU Commander, Captain Anderson reported directly to Sheriff Urquhart and believed that failure to comply with Sheriff Urquhart's words would be insubordination. Due to their reporting relationship, Sheriff Urquhart should have clearly communicated to Captain Anderson that it was Captain Anderson's sole decision whether to document the allegations if that is what Sheriff Urquhart intended.

In light of the foregoing, Captain Anderson reasonably understood Sheriff Urquhart to be directing him. The fact that Captain Anderson separately decided to document the Urquhart

⁹⁹ The term "conflict of interest" used in this finding has its ordinary meaning: "a conflict between the private interests and the official responsibilities of a person in a position of trust". <https://www.merriam-webster.com/dictionary/conflict%20of%20interest> (accessed June 20, 2017). The complainant here has not alleged that Sheriff Urquhart violated any ethics laws in this case, and we have no reason to believe that he might have.

conversation, without Sheriff Urquhart's knowledge, does not undo Sheriff Urquhart's direction. Nor need we determine whether Sheriff Urquhart directed Captain Anderson not to "document" or "BlueTeam" the allegations. BlueTeam is normally the way to document such an allegation at the Sheriff's Office. In context, the terms are synonymous.

4. The Sheriff's Office should have referred the complainant's allegations to an outside local or state law enforcement authority for investigation, and documented the allegations through BlueTeam as soon as possible after the FBI communicated them to IIU.

A Sheriff's Office internal (administrative) investigation may run concurrently with a separate criminal investigation.¹⁰⁰ Internal investigations must be conducted fairly and impartially by a neutral investigator.¹⁰¹ For allegations of employee misconduct, "[t]he details of the incident will be entered in Blue Team as an inquiry and investigated by IIU."¹⁰²

Neither Captain Anderson, Sergeant Mullinax, nor any other King County Sheriff's Office personnel could reasonably be expected to adequately separate their positions as subordinates to the King County Sheriff from their duty to investigate a rape allegation against that Sheriff. Thus, Captain Anderson and Sergeant Mullinax had a conflict of interest due to their reporting relationship to Sheriff Urquhart. And as discussed, bringing the complaint to Sheriff Urquhart for disposition created a conflict of interest between Sheriff Urquhart's personal reputational interests and his duties as Sheriff.

Lacking written procedures for the proper routing of serious allegations made specifically against the Sheriff, it might have been prudent for Captain Anderson to have consulted the Sheriff's Office Legal Advisor about the need to appoint an external, independent official to investigate the complainant's allegations.¹⁰³ That independent official should be experienced in investigating sexual assault allegations under the laws of the State of Washington.

¹⁰⁰ GOM 3.03.080(4)(a); IIU SOP II..B.2 & II.D.10.

¹⁰¹ IIU SOP III.A.

¹⁰² GOM 3.03.030(3).

¹⁰³ That course of action would have been consistent with Captain Konoske's testimony concerning what he would do in a similar situation. Konoske interview with Stier, April 26, 2017.

OMBUDSMAN RECOMMENDATIONS

- 1. The Sheriff's Office should establish a written policy requiring the appointment of an external, independent official to investigate serious complaints against the Sheriff or other senior command staff. That official should have appropriate expertise and jurisdiction to investigate the elements of the alleged offense.**

An expert report, prepared by twelve major city and county law enforcement agencies for the U.S. Department of Justice, states that,

Internal Affairs should investigate all allegations of misconduct of command-level personnel with the exceptions of allegations against the agency head or in any instance where there is an apparent conflict of interest.^[104]

The report recommends that,

Agencies should have a policy to address any instance where Internal Affairs confronts a conflict of interest or believes that it cannot conduct an objective and unbiased investigation, such as when the agency head or Internal Affairs commander is the subject of the complaint.^[105]

A separate Justice Department report, prepared by the International Association of Chiefs of Police, observes that,

When a complaint allegation involves the chief executive or a member of his or her executive staff or when there are not enough resources to conduct an internal investigation, an agency can use an external investigator or investigative agency to handle the complaint.^[106]

The Sheriff's Office already has a policy stating that complaints against the IIU Commander are to be forwarded directly to the Sheriff, who must appoint non-IIU personnel to investigate.¹⁰⁷ The Sheriff's Office should now establish a policy regarding allegations against the Sheriff and

¹⁰⁴ U.S. Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (2008), at 32, <https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54affb83e4b066a5a28ad527/1420819331714/cops-p164-pub.pdf> (accessed May 23, 2017).

¹⁰⁵ *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (2008), at 27.

¹⁰⁶ U.S. Department of Justice, Office of Community Oriented Policing Services, and the International Association of Chiefs of Police, *Building Trust between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement* (2009), at 19, <http://www.theiacp.org/portals/0/pdfs/buildingtrust.pdf> (accessed May 23, 2017).

¹⁰⁷ GOM 3.03.060.

other senior command staff as recommended by the above-cited Justice Department reports. The new policy should require appointment of an external, independent authority to investigate serious complaints against the Sheriff or other senior command staff. The external official should have appropriate expertise and jurisdiction to investigate the specific elements of the alleged misconduct.

2. The Sheriff's Office should clarify its rules and procedures to ensure that review and investigation of all complaints against Sheriff's Office employees are documented through BlueTeam with appropriate security classifications.

The Washington Association of Sheriffs and Police Chiefs states that internal affairs units should "require[] the documentation and investigation of all complaints of misconduct or illegal behavior against the agency or its members."¹⁰⁸ Sheriff Urquhart has directed that, "every complaint will be reported and tracked". (Emphasis in original.)¹⁰⁹

At the Sheriff's Office, complaint reporting and tracking occurs through IAPro and the BlueTeam portal. Yet, Sheriff Urquhart has directed that at least several complaints not be logged, in addition to the complaint at issue here.¹¹⁰ We are mindful of Sheriff Urquhart's legitimate desire to minimize the damage to organizational cohesion, effectiveness, and morale that rumors can cause. But we believe a perception that senior leaders in an organization do not hold themselves to the same standards that apply to lower-ranked employees can also damage cohesion, effectiveness, and morale.

We therefore recommend that the Sheriff's Office clarify its rules and procedures to ensure that review, including of Non-Investigated Matters and Supervisor Action Logs, and investigation of all complaints, is documented in IAPro directly or through BlueTeam, with proper security classifications to minimize the risk of inappropriate access. We are mindful that a delay in logging allegations through BlueTeam may be necessary, in rare cases, to preserve the integrity of internal investigations.

¹⁰⁸ Washington Association of Sheriffs and Police Chiefs, Law Enforcement Accreditation Standards (July 2016), at 34, <http://www.waspc.org/assets/ProfessionalServices/2016%20accreditation%20standards.pdf> (accessed May 24, 2017).

¹⁰⁹ King County Sheriff's Office, Internal Investigations Unit, *2014 Annual Report*, <http://www.kingcounty.gov/~media/safety/sheriff/internal-investigations-unit/2014-kcso-iiu-annual-report.ashx?la=en> (accessed May 24, 2017).

¹¹⁰ Urquhart email to Stier, April 15, 2017.

CONCLUSION

Sheriff Urquhart and IIU did not follow the Sheriff's Office's own policies and procedures when they failed to investigate the complainant's allegations against Sheriff Urquhart, or to seek an external, independent investigation by a state or local law enforcement agency. Sheriff Urquhart and his subordinates in IIU also did not follow Sheriff's Office policies and procedures when Sheriff Urquhart directed Captain Anderson not to document the complainant's allegations.

Sheriff Urquhart's and IIU's conflicts of interest, paired with their decisions not to follow policies and procedures, lead to an appearance that they sought to prevent proper scrutiny of the complainant's allegations. Moving forward, acceptance and implementation of the recommendations offered in this report can help to enhance public confidence in the Sheriff's Office and its leadership.

The Ombudsman's Office appreciates the cooperation of Sheriff Urquhart and all other witnesses in this investigation.

Ombudsman Case # 2017-00201

APPENDIX A

Sheriff's Response

SHERIFF

KING COUNTY

KING COUNTY SHERIFF'S OFFICE
516 Third Avenue, W-116
Seattle, WA 98104

John Urquhart
Sheriff

August 3, 2017

Amy Calderwood, King County Ombudsman
Jon Stier, Senior Deputy Ombudsman
Office of the Ombudsman
516 Third Ave., Room 1039
Seattle, WA 98104
VIA EMAIL: Amy.Calderwood@kingcounty.gov
Jonathan.Stier@kingcounty.gov

RE: Case 2017-00201

Dear Ms. Calderwood and Mr. Stier:

Thank you for sending me the draft of your findings and recommendations in Case #2017-00201. I appreciate the thought and effort you put into your report and the courtesy extended to give us time to respond.

As the elected Sheriff, it is my privilege to serve the citizens of King County. It is also my responsibility to ensure the integrity of the Office of the Sheriff and the Sheriff's Office, at every level of the organization, including myself. As an elected official, I am directly accountable to the citizens we serve. The staff in my organization are accountable as well, but I bear ultimate responsibility for their conduct. I fully support institutional and structural systems to support and guide the many discretionary decisions I and my employees must make.

To that end, the focus of my response is the Ombudsman's Recommendations. All or part of the underlying allegations or the issues you identified have been reviewed by different entities within their respective authority, in various forums, over several months: the FBI, the Seattle Police Department (SPD), the Office of Law Enforcement Oversight (OLEO), an expert in police policies and procedures, as a subject in litigation, in the press, and now by your office. I have provided the history of the matter and my reasons for my actions in a deposition and directly to the press. Several news articles have covered the topic.

I will not belabor the facts other than as needed to discuss the recommendations. First, I want to review the status of those investigations. Initially, the FBI reviewed the underlying allegations and decided the accusations were not credible. The FBI did not contact me directly, and my staff told me the FBI staff thought the accusations did not have enough credibility to tell me about them, and, they asked my staff

not to tell me about them. Later, the alleged victim contacted OLEO, who contacted me, and I recommended OLEO suggest to her that she report the matter to the SPD. She did or already had, and ultimately, the SPD investigated the underlying accusations with the help of a Deputy Prosecuting Attorney, and concluded, that no crime occurred. As you note, when SPD forwarded the initial police report, the matter was Blue Teamed at my request. As of now, two outside independent law enforcement agencies and the prosecutor's office have reviewed or investigated the matter and have reached the same conclusion. Throughout this, the Sheriff's office has never received a written or verbal complaint directly from the alleged victim making these accusations.

It is clear that, some entities and people, including the Ombudsman, are critical of my decision not to Blue Team the information from the FBI or initiate a separate investigation. I have listened to the criticisms, understand them, and have considered them. And, I appreciate that your observations and criticisms are constructive. I take them seriously. As noted, I am ultimately responsible to the citizens for my decisions.

I noticed that while the accusations in the complaint are against me, the recommendations affect all employees of the sheriff's office. I will address whether I believe those recommendations should affect all employees, but as written, I need to consider the impact of your recommendations on the office as a whole, how they may affect employees, operations, and how or whether my position as an elected official and the head of the agency warrants implementation of different procedures.

I am going to take the recommendations in the reverse order. The second recommendation is that:

The Sheriff's Office should clarify its rules and procedures to ensure that review and investigation of all complaints against Sheriff's Office employees are documented through Blue Team with appropriate security classifications.

I agree with this recommendation, with clarification and comments.

First, you are correct that "all complaints" are to be Blue Teamed, third parties may also file "complaints," and Sheriff's Office employees must report known and suspected criminal or administrative policy violations which would be Blue Teamed.

As I have contemplated my own decisions, and thought about and shared other incidents that were not Blue Teamed or investigated, I realized a couple of things. First, there can be questions whether something is a "complaint." Our manual and your recommendations presuppose that this is clear at all times, and there is no discretionary decision making necessary to ascertain whether something is actually a "complaint." In fact, this determination is quite straightforward when a citizen contacts IIU and "files a complaint" or sends a "complaint" over the Sheriff's office email, or walks into a precinct and says they want to file a "complaint."

But, these determinations are not always straightforward when the citizen has not made a formal complaint. I believe the office could benefit from clarification about when a matter is a "complaint" or reportable misconduct under the manual when a citizen has NOT filed a formal complaint with our office. Clearly, you and others disagree with my assessment of the matter in my own case, and my decision to make that call when I was the accused. To move forward, I accept that criticism. However, whether a matter should be Blue Teamed is a regular topic of conversation and deliberation among

command staff. While I don't have all the answers about what those policies should be at this point, I agree that clarification and guidance is needed.

Ironically, while the manual, the Ombudsman, I, and others have proclaimed that "all complaints" should be Blue Teamed, myself and my office have been and are being sued for Blue Teaming and/or, investigating members for what I or others have concluded are "complaints" or allegations of misconduct. The lawsuits have asserted that among other things, certain allegations are not "complaints," or are not cognizable complaints because they involve off-duty time, or were initiated to retaliate against certain members, or should have been handled as a performance matter not rising to the level of a Blue Team entry, let alone an investigation.

Myself, and the Office, are simultaneously criticized for under- and over- entering matters into Blue Team, whether or not they were investigated. To put it plainly, we often find ourselves in a "damned if you do, damned if you don't" situation when determining whether to document and investigate allegations.

Some additional policy and procedures may help guide us when a matter should be Blue Teamed and/or investigated.

Second, the recommendation seems to suggest, that assuming it is clear that a matter is a "complaint" or allegations of misconduct, that it must be "Blue Teamed" all the time, anytime, no matter what. I recognize I have contributed to that interpretation. And, while in most cases, that is true, the notion that there is NO discretion within the system, and that there SHOULD be no discretion within the system, is faulty. Policies and procedures need to guide and structure discretion, and with or with regard to misconduct allegations, that discretion should be narrow, and placed with appropriate personnel. But I cannot envision a system without any discretion. Rather, myself, and others need to be held accountable for the discretionary decisions we make. But I do not believe that discretion can or should be entirely removed.

The main areas, and there may be others, where ambiguity may arise, include the following:

- Allegations made during the course of litigation
- Repeated allegations by the same person of the same misconduct or allegations that in context appear to be made by a mentally ill person not in touch with reality.
- Allegations over social media and comments made in response to on- line news stories
- Allegations made related to labor union activities
- Allegations made in public records requests
- Allegations that have been resolved through the criminal justice system, either definitely because a conviction has occurred, or because it is clear through the criminal investigation that no crime occurred, or because adding multiple administrative allegations is unnecessary and can delay resolution of the IIU investigation
- Allegations where employees or citizens are "complaining" about their boss, citizens, their supervisor, or the way things are in the office, provided those accusations do not rise to the level of EEO violations or other policy violations.
- Allegations that appear to be made as a tactic to deflect or counter an investigation of that employee, and the IIU process is being abused

Let me give you some actual examples:

1. During the course of public disclosure litigation, the plaintiff, an employee, alleged in correspondence and/or pleadings, that a former IIU Captain had "lied" and "sought to cover up all the evidence" related to the employee's public records request. The employee had not filed a formal complaint with IIU, and it was clear the employee knew how to do that because the employee had filed a complaint previously. The matter was being litigated, discovery had been conducted, the prosecutor's office had completed interviews, the office has a substantial history with the employee, and therefore, the office was well aware of how the public disclosure request was handled. Although the allegations were serious – dishonesty and tampering with evidence – the conclusion was that the attorney's and plaintiff's allegations were baseless and self-serving made in the context of litigation. They were not entered into Blue Team or investigated.
2. A woman who lives 2500 miles away from King County made dozens and dozens of allegations against a KCSO Sergeant, claiming among other things, that he had implanted a device into her body which made her unable to sleep. The woman's complaints were not entered into Blue Team or investigated.
3. The office received a public records request, in which the requestor made comments that at least one or maybe two members of the office, a Captain and a Sergeant, may have engaged in inappropriate behavior off-duty but while at a work related conference. The public records request was given to a former captain of IIU, who determined that it wasn't a "complaint", and that the requestor had not submitted a formal complaint to IIU. The allegations were not Blue Teamed or investigated. During a different IIU investigation of an allegation made by the requestor's husband, who was an ex-employee, he made similar remarks during the IIU process but did not file a formal complaint. Those comments were also not Blue Teamed. A few months later, he made a formal complaint alleging the same and additional allegations, at which time the additional allegations were addressed through the IIU process. I was unaware of the original decision by the IIU Captain, and if I had known of his decision, I would have over-ruled it. However, upon learning of that decision, I did not make a Blue Team entry against the Captain or the investigating Sergeant for failing to make a Blue Team entry. The Captain was a person in a position to exercise that discretion, and while I disagreed with how he handled that particular case, I did not Blue Team or investigate him for it.
4. During a criminal investigation of a deputy, by my office and the DEA, the accused deputy made allegations implicating one of our sergeants. The USAA in consultation with the investigators decided that the accusations should be investigated through the criminal process. During that process, the investigators determined that there was no basis to believe the Sgt. had engaged in misconduct, and the accused deputy was trying to deflect blame from himself onto the Sgt. Satisfied with that investigation, I determined that it was not necessary for further investigation through IIU because, the criminal investigation determined that the allegations were false, therefore there were no policy violations to investigate. Conducting another investigation was unnecessary and unwarranted, and would have been a costly and time consuming expenditure of limited IIU investigation resources.

5. A cursory review of citizen comments at the bottom of published news reports and in Facebook and Twitter posts show numerous "complaints" and "allegations" against KCSO staff that haven't been entered into Blue Team. One comment was related to a news story about a deputy who was in an accident on his way home. The commentator stated that since it was 2 AM, he must have just come from a bar. A Blue Team entry was not made against the deputy.
6. During a criminal investigation of a member of our office that resulted in a plea, numerous allegations were made against the deputy that could also be policy violations. The deputy was in custody, and under due process rules, could not be terminated while the IIU investigation was pending. Although IIU could have investigated every single potential policy violation, I made the determination that was unnecessary, given the status of the criminal case, the certainty that the most serious, terminable offenses would be sustained as a result, and the extraordinary amount of time, resources, and delay that would occur if every accusation was investigated while the deputy remained on paid leave. Although the IIU investigators were uncomfortable not investigating every accusation, I was not, and I directed them to finish the investigation based upon what the criminal investigators had provided. The deputy was terminated more quickly as a result, saving my office time and the taxpayers' money.
7. On a regular basis, there are labor relations related formal and informal allegations or "complaints," made against KCSO management by union representatives and employees, which are not entered into Blue Team. A recent example involves an employee who alleged that he was being spied on. The allegation was baseless and was not entered into Blue Team.
8. During the election season, there have been allegations in speeches or on social media that arguably could fall within the parameters of a "complaint" or accusation of misconduct. Upon consideration, the accusations appear to be political rhetoric and either have not been entered into Blue Team or investigated.
9. A young man, who over time, appeared to be suffering from some form of mental illness, kept emailing numerous members of the Sheriff's Office, with multiple and duplicative inquiries about the employment process. If a staff person engaged in an email exchange with him, he would never be satisfied with the response and would continue to ask questions. The gentleman apparently obtained all of the employee's email addresses and would then start emailing someone else. After a while, the gentleman's contacts became extremely disruptive and interfered with my staff getting their work done. While he "complained" vociferously, and repeatedly, I ultimately made the decision that our office should stop responding to him, and that we would not entertain, Blue Team, or investigate his accusations.
10. A former Sgt in our office made a domestic violence accusation against her boyfriend, who was also a deputy in our office. A criminal and internal investigation of him ensued, and our investigators believed our Sgt, not the deputy. The deputy started to accuse the Sgt of multiple acts of misconduct, mostly off duty but some on-duty. The office made a preliminary check to

determine whether her command was aware of any concerns about her on-duty conduct, and they were not. We concluded that his allegations were a defensive tactic to attack a DV victim, dissuade her from cooperating in the criminal case, drop a civil protection order, and damage her reputation within the office among her peers and with the public. Having determined that he was trying to abuse the IIU process and intimidate her, the decision was made not to Blue Team or investigate her further. Nonetheless, that tactic worked, the damage was done, and she dropped her protection order petition and refused to cooperate with the criminal investigation.

These types of allegations are made across the entire spectrum of employees, not just command staff. The Ombudsman's recommendation is not limited to me, and is not limited to command staff – it is very broad and affects all the staff and the operations of the office. The breadth of the Ombudsman's report and this event, has prompted and expanded my thinking about providing additional guidance on these types of matters, which could include accusations against anyone in the organization, including the sitting Sheriff.

Anyone, including the Ombudsman, the public, media, litigants, are free to conclude that every single accusation described above should have been Blue Teamed, and perhaps investigated, regardless of the absurdity of the accusation, the known context in which it is made, the waste of resources that would be expended, and even if it resulted in abuse of the IIU process and employees, either because the "manual" says "all complaints" and all accusations of misconduct must be Blue Teamed and investigated, or, because they hold the opinion that there should be no discretion whatsoever.

For this discussion, I want to set aside the accusation against me that I had a conflict and should not have made the decision about accusations levied against myself. I am speaking for the organization and the broad recommendation that the Ombudsman has made. I agree with the Ombudsman that our policies and procedures and perhaps definitions, need clarification. If what the Ombudsman is saying is that there may not be and should not be ANY discretion in the system, no matter what, then I disagree. I do not believe it is feasible or wise, to attempt to characterize any and all comments, criticisms, or "complaining" as "complaints" that should be Blue Teamed and investigated when a formal complaint has not been filed. Certainly some and perhaps most should be, have been, and will be. Internally we will continue to have many discussions about those decisions, with deliberation, and explore manual amendments. Individuals granted the discretion will be limited, and held accountable for the exercise of their judgment.

The "first" recommendation is as follows:

The Sheriffs' Office should establish a written policy requiring the appointment of an external, independent official to investigate serious complaints against the Sheriff or other senior command staff. That official should have appropriate expertise and jurisdiction to investigate the elements of the alleged offense.

I agree with parts of this recommendation and disagree with others.

I agree, that as general matter, an investigation should be referred to another entity when there is a conflict of interest that cannot be addressed internally. While we have already done that on occasion, I agree that we should adopt a manual section that addresses that issue specifically. However, this manual section would have to be crafted carefully to avoid labor issues and *may* have to be bargained

with the affected collective bargaining units. Those units include the King County Police Officers' Guild because the investigation work is done by their members. And it may have to be bargained with the accused member's collective bargaining unit, since it might affect working conditions.

I agree that criminal investigations should be done by entities with jurisdiction over those matters. I believe that generally happens but that we should adopt an express manual section that covers it.

I disagree, as a blanket rule, that when the Sheriff's office has jurisdiction, criminal or administrative investigations of "serious complaints" against the senior command staff **must be** referred to an "appropriate" official outside the Sheriff's office, who has "expertise" to investigate the "elements of the offense". Serious investigations of command staff should be investigated by the Sheriff's office as a matter of course, absent a conflict, jurisdiction issues, or other compelling reasons.

I do not agree that the Ombudsman should be making recommendations regarding investigations of senior command staff, since the complaint is directed towards myself, the Sheriff. The breadth of the recommendations seem to be outside the scope of the complaint.

Administrative investigations of misconduct against Sheriff's Office employees, including the command staff and the Sheriff, are the sole and exclusive work of the King County Police Officers Guild bargaining unit. Under RCW 41.56, the KCSO could not unilaterally appoint an external investigator to investigate complaints against senior command staff or the Sheriff as a standard practice. The sole exception is investigations into alleged violations of GOM 3.01.000, which was bargained and mutually agreed upon with the Guild.

Regardless of labor issues, the Sheriff remains responsible to the public for the conduct of ALL the Sheriff's Office staff, including command staff. I would not abdicate my responsibility to the public to investigate, correct, and potentially discipline my staff, at whatever rank. I can and have delegated some decisions to my Chief Deputy when appropriate, again regardless of rank. I agree, that in some cases, investigations and/or findings and disciplinary recommendations should be referred outside in case of a conflict or other compelling reasons. I do not assume, nor agree, that there is an automatic conflict simply because the accused member is in the command staff.

There is an additional recommendation that I agree with, which is:

That appropriate security classifications must be adopted and implemented regarding access to Blue Team and IAPRO, the database in which entries, investigations, and other document are entered.

Unfortunately, there have been a couple of incidents in which staff with access to Blue Team/IAPRO have improperly accessed their own files contained within Blue Team/ IAPRO, and in one case, access to other employees' files. In addition, there are current allegations that staff have improperly obtained, disseminated and discussed a staff person's background investigation. As a result, there is concern that data in the IAPRO is insufficiently secure and that we need to take steps to increase security. These abuses and lack of security in IAPRO was one factor, certainly not the only one, which influenced my decision not to enter the FBI information into Blue Team. I also need to be able to guarantee to my employees, that information concerning them is not improperly accessed or prematurely or improperly released. Consequently, I have instructed my staff to examine and implement ways to increase the security of the information in IAPRO/Blue Team.

And finally, I address the recommendation that serious investigations against the Sheriff should be referred to an outside entity.

I agree, that members of my own staff are not in a good position to investigate the person that holds the office of the Sheriff, absent an outside investigator assisting them, as is currently done in EEO cases, or in some cases, entirely. And I believe, that even if they do the investigation, "disciplining" an elected official under policies and procedures that apply to non-elected staff, does not make sense. I agree that this is an institutional question of significance, which should involve considerable thought, review and input. It needs to be done with recognition that as an elected official, there are certain procedures and processes that do not apply to the position of the Sheriff, because it is an elected position. Specifically, even if there would be "finding" that the Sheriff committed misconduct by an internal or external entity, it would ultimately be the voter's decision whether to retain that Sheriff.

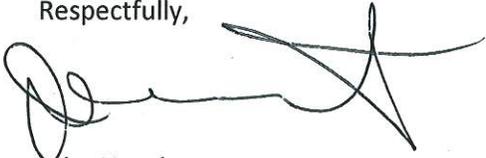
My understanding is that the Ombudsman does not have the authority to investigate council members, their staff, the Executive or his staff, or other separately elected officials. And, that the current Ombudsman's authority to investigate the "Sheriff," as opposed to its members and the office, is a remnant of the days when the Sheriff was not separately elected. Nonetheless, I am sure there are some institutional systems in place in the County, or elsewhere, that address best practices about how to investigate separately elected officials, who are not subject to all of the policies and procedures that apply to non-elected employees in their organization. I have asked my staff to start exploring those best practices and obtain the input and advice of the prosecutor's office and others. I am amenable to implementing them to ensure the integrity of the Office of the Sheriff and the Sheriff's Office. As I have said, in many forums, and for several months, I believed I had legitimate reasons to make the decision I did. I currently believe the matter has been investigated and no further administrative investigation is necessary. Nonetheless, I am sensitive to and understand the concerns raised by the Ombudsman in this report, as well as others, and support adopting policies and procedures that help alleviate those concerns.

One final note: In your draft conclusions, you write, "Sheriff Urquhart and IIU's conflict of interest, paired with their decision not to follow policies and procedures, lead to an appearance that they sought to prevent proper scrutiny of the complainant's allegations. Their decisions call into question Sheriff Urquhart's and the Sheriff's Office commitment to "ensure [that] the high standards of the law enforcement profession are maintained."

Like every allegation against a member of the Sheriff's Office, the IIU commander and I exercised our discretion of whether it needed to be logged into Blue Team and investigated. We agreed that it did not need to be investigated for reasons already set forth. The commander disagreed with me that it did not need to be logged. That was my decision at the time, and I must live with it. A former police chief and expert on internal investigations who was hired by the King County auditor to evaluate KCSO IIU practices later completely agreed with my decision. But to call into question mine and my staff's commitment to protecting the high standards of the Sheriff's office is inaccurate and unfair, and I respectfully ask that this section be re-worded or removed.

I thank you for your review and input and look forward continuing the discussion about these very important matters.

Respectfully,

A handwritten signature in black ink, appearing to read 'John Urquhart', with a large, stylized flourish at the end.

John Urquhart
King County Sheriff

Ombudsman Case # 2017-00201

APPENDIX B

Ombudsman's Reply to Sheriff



King County

OMBUDSMAN

Amy Calderwood, Ombudsman – Director

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August 8, 2017

Re: Ombudsman's Reply to Sheriff's Response Letter in Case # 2017-00201

Dear Sheriff Urquhart,

Thank you for your August 3 letter responding to our draft findings and recommendations in the above-referenced case. We are pleased that you and your staff have carefully reviewed our recommendations and that you generally accept them. The recommendations are based on reports published by the U.S. Department of Justice and the Washington Association of Sheriffs and Police Chiefs. We look forward to seeing changes in the Sheriff's Office General Orders Manual to prevent and manage conflicts of interest when complaints arise about senior command staff including the Sheriff, and to ensure documentation and investigation of complaints with appropriate security safeguards.

We would like to reply to several other matters covered in your letter:

You express concern about a policy that would remove all discretion from the Sheriff's Office in determining which complaints must be documented and investigated no matter how absurd and no matter the waste of resources in doing so. But there is a spectrum of actions that agencies can take to document complaints that are, for example, factually impossible or duplicative. In most such instances, making a brief record of a complaint with an explanation for why no further action was taken is sufficient and does not use undue resources, while the existence of such complaint records can enhance public trust in the government. Notably, the matter under inquiry here did not fall into the category of an absurd, factually impossible, or duplicative complaint. As our report found, it should have been investigated and documented in BlueTeam.

You contend that the breadth of our recommendations seems to be outside the scope of the complaint. But there is no dispute that our recommendations are relevant to the matter under inquiry here, and that the Ombudsman has authority to determine the scope of investigations. KCC 2.52.090.

You point out that it may not always be clear what a "complaint" is, and therefore whether one should be BlueTeamed. During our investigation, you acknowledged that the person making allegations against you had made a complaint to the FBI. In reviewing Sheriff's Office rules going forward, you and your staff may find helpful the following definition from a U.S. Department of Justice report cited in our recommendations: "A

complaint is one or more allegations by any person that an employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation.”¹

You state that you recommended to the Office of Law Enforcement Oversight (OLEO), after the complainant contacted OLEO which in turn contacted you, that OLEO suggest to the complainant that she report her accusations to the Seattle Police Department (SPD). The narrative in your letter could leave a misimpression that you made that recommendation soon after the June 21 meeting in which you directed Internal Investigations not to document the complaint. But your and the OLEO director’s recollections indicate that you met sometime in November 2016, months after the June 21 meeting.

You appear to question whether the Ombudsman’s Office should retain its authority to investigate the Sheriff, and suggest that this authority is a remnant of a time before the Office of Sheriff was an elected position in King County. To clear up any confusion, the Ombudsman’s Office is empowered to investigate “any administrative act of any administrative agency”. KCC 2.52.090(A). The administrative acts of the Sheriff, Assessor, and Director of Elections, fall properly within that jurisdiction, irrespective of their status as elected positions, because they head administrative agencies. County Councilmembers, judges, the County Executive and the Prosecuting Attorney, and their personal staffs, do not head administrative agencies and are therefore explicitly and properly excluded from the Ombudsman’s Office’s general jurisdiction.²

Lastly, you request that we change language in our draft report conclusion stating that your and IIU’s actions lead to an appearance that you sought to prevent proper scrutiny of the complainant’s allegations, and that those decisions call into question your and the Sheriff’s Office’s commitment to “ensure [that] the high standards of the law enforcement profession are maintained.” While we are gratified that you have taken our recommendations seriously, we are concerned that your letter continues to defend your past decisions in this matter and that you have accepted our findings only “to move forward”. Nevertheless, after considering your request, in the final report we deleted the sentence beginning with “Their decisions call into . . .”.

Thank you again for your cooperation during our investigation, and for the thought and hard work you and your staff put into your response. We look forward to reviewing changes in the General Orders Manual as they are completed. Please do not hesitate to contact us if you would like to discuss our report further or have any questions.

Sincerely,



Amy Calderwood
Ombudsman-Director

¹ U.S. Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (2008), at 14, <https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54affb83e4b066a5a28ad527/1420819331714/cops-p164-pub.pdf> (accessed May 23, 2017).

² The County Council has additionally empowered the Ombudsman’s Office to investigate elected officials accused of violating the Employee Code of Ethics (KCC 3.04) and the Whistleblower Protection Code (KCC 3.42).