



King County

Office of Law Enforcement Oversight

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To: Captain Rodney Chinnick, Internal Investigations Unit, King County Sheriff's Office

Fr: Deborah Jacobs, Director, OLEO

Re: OLEO Standards for Thorough Investigations (update to July 25, 2017 Memo)

OLEO's Role

As part of OLEO's duties, its staff conducts certification reviews of the King County Sheriff's Office (KCSO) administrative investigations of alleged employee misconduct. "Certification review" means the monitoring and examination of an administrative investigation in order to determine whether the investigation was thorough, complete, accurate, timely, objective and in compliance with sheriff's office procedures.¹ KCC 2.75.010(B).

Our objective is to develop a shared understanding with the Internal Investigations Unit (IIU) about what constitutes a thorough and objective investigation from the public's perspective. Most of the recommendations in this memo reflect our perspective on ensuring that an investigation is thorough, complete and accurate (whether conducted by the precinct or IIU). We do not delve into issues of objectivity in this memo, but hope to discuss objectivity further with KCSO, including but not limited to establishing systems to address potential conflicts of interest.

In making the recommendations within this memo, OLEO drew from a variety of expert sources including other oversight entities and professionals, former law enforcement personnel, arbitration decisions and literature. We are open to further insight and expertise from KCSO and reserve the right to amend these standards as we collectively learn ways to improve the quality of administrative investigations. Of course, we will discuss any such amendments with IIU prior to implementation.

Many of the following standards were already provided to KCSO both in our May 18, 2017 memo, which provides recommendations for the IIU Standard Operating Procedures (SOP) update, and in the prior (July 25, 2017) version of this memo.

¹ This memo references "thorough and objective" for short.

OLEO's Goal

The purpose of OLEO's certification review is to provide an additional level of accountability to help ensure the quality and fairness of IIU investigations.

We conduct this work with an eye toward ensuring that any investigation is conducted fairly and transparently. OLEO's recommendations and requests to IIU during the certification review are provided in the spirit of achieving this goal.

Scope of OLEO Review

When conducting certification review, OLEO evaluates the entire investigatory file including but not limited to the preliminary investigation, the precinct or IIU investigation, and the documentation and analysis in the investigator's Follow-up Report.

Part I: Classification

Ensuring that an investigation is thorough and objective starts at the time of classification and continues throughout the investigation. At classification, we recommend that the IIU Captain preliminarily:

- Assess whether allegations completely capture the complainant's known concerns.
- Assess whether all involved and subject employees are identified based on information available at time of classification.
- Assess any potential conflicts of interest with involved personnel and consider options to avoid or overcome them.
- Identify evidence to be gathered and witnesses to be interviewed.
- Discuss potential investigatory steps with the investigator before investigation commences.

Part II: Key Investigative steps

We recommend the following investigation steps:

- Issue and upload to IAPro required member notifications (A-150).
- Gather and review all relevant reports, including but not limited to the: incident reports, CAD log, the Preliminary Complaint Submission form, Commander Review form, and Use of Force Investigation Report form(s).
- Obtain all evidence, including perishable evidence such as video or audio recordings, as soon as possible after receiving case assignment.
- Check history and social media of the subject employee and complainant, if relevant.
- Upload or include in the Follow-up Report citations to applicable policy and law and last revised date.
- Conduct field investigation (e.g., for surveillance cameras, area layout, evidence).
- Review all statements prior to conducting interviews.
- Obtain medical and financial releases, and request relevant records, if applicable.
- If the named employee stated a reason why s/he did or didn't do something, verify the reason provided.
 - For example, if an employee states "that's how I was trained," then verify the information with a supervisor, trainer or online training contents. Or if the

employee states XX witness stated no video existed, confirm that with the witness.

- Include training and supervisor responsibility (or lack of). If the allegation is Performance Standards, consider obtaining information on whether officers have been trained on the conduct that is the subject of allegation/discipline and/or what their supervisors are training/directing.
 - Include training manuals, written directives (General Information Bulletin, etc.) when relevant.
 - This will often require an interview from the trainer or supervisor. During the interview, the trainer/supervisor must only address whether the technique or action was trained or a directive, not their opinion on whether the action was appropriate. Whether the action was appropriate is a determination made by the fact-finder.

Part III: Interviewing Witnesses

We recommend the following when conducting interviews:

- Conduct in-person interviews of all involved parties.
 - If someone cannot be interviewed, document each specific attempt to interview (how, when, and address used/why). If a non-KCSO employee declines to be interviewed, provide them with OLEO's contact information and notify OLEO so that we may attempt to explain the administrative process to them.
 - Do not assume an individual's interview would be duplicative of evidence or written statements already gathered, or have nothing to add.
 - All KCSO employees involved in or a witness to an incident must be interviewed.
 - When requesting an interview or additional information from parties that have already provided a written statement, do not discourage a response by stating or implying that their written statement is already complete, thorough or sufficient.
 - Before the interview, prepare questions based off their written statement.
 - For an investigation to be thorough, OLEO's expects that all involved parties and witnesses to an incident will be interviewed. If the investigator determines interviewing a specific individual is not necessary, the basis for that decision must be documented in the follow up report. That documentation should include, for example, why and how the investigator knows the individual is not a relevant witnesses, and why and how the individual's written statement is sufficient for command to make a finding on the allegation.
- Require interviewees to provide a statement prior to their viewing any video or listening to any audio recording. After the interviewee provides the statement and then watches or listens to recording, interviewee can be given the opportunity to add to or clarify their statement.
- Ask open-ended, non-leading questions.
 - Although leading questions can be helpful to orient an interviewee (e.g. to a specific time, place, detail, etc.), investigators should minimize the use of leading questions.
 - Do not ask questions that suggest factual or legal justifications for the officer's conduct.

- Allow interviewees to give uninterrupted statements as much as possible.
- Allow interviewees to explain their answers and ask interviewees clarifying questions, if necessary.
- Document diagrams or evidence used during the interview in the Follow-up Report. If the interviewee draws a diagram, have the interviewee sign and date the diagram and scan and upload the original or photo of the diagram to IAPro.
- Ask questions about factual inconsistencies.
 - When important facts from a party's interview or written statement are contradicted by another party or evidence, do not fill in the gaps based on personal experience, speculation or knowledge on how human memory varies. Instead, ask the person to explain inconsistencies during interviews.
- Apply these specifics to complainant interviews:
 - Ask complainants if they are interested in mediation in all eligible cases.
 - Interview complainants in-person whenever possible. Be willing to travel to them or propose interviewing at OLEO's office. If a complainant declines an in-person interview provide them OLEO's contact information and notify OLEO so that we may attempt to explain the administrative process to them.
 - Take care to get clarity in complainant interviews.
 - In addition to the standard closing questions of "is there anything you would like to add to your statement" and "is there anyone you think I should talk with," make sure to: (1) summarize the complainant's concerns, and (2) ask the complainant to confirm the investigator accurately understood them. This helps to ensure understanding of the complaint from the complainant's point of view and identify an opportunity for mediation or to determine whether it is appropriate to provide additional resources (for example, Risk Management contact information).
 - Allegations regarding any new issues the complainant raises during the interview must be added to the file and addressed in the investigation or, if more appropriate, in a separate investigation. For example, a complainant may allege excessive force, but during the interview, the complainant may reveal that s/he believes the stop itself was unlawful.
- Conduct any identification procedure in accordance with General Orders Manual (GOM) 17.19.000. Upload all relevant documentation to IAPro.

Part IV: Investigative Follow-up Report

The presentation of an investigation in the Follow-up Report is a critical part of the investigative process. It paints the picture of the case for any reviewer. It helps a reviewer understand what steps were investigatory steps were conducted (or not conducted and why) and why decisions were made relating to evidence, obtaining statements and interviews, and other investigatory steps. The Follow-up Report should stand alone without further explanation from the investigator. The Follow-up Report should:

- Include the specific policy language and effective date for each allegation central to the complaint. This makes it clear to a reviewer exactly which policy violation(s) (and elements) were investigated. It also ensures that the subject employee is being investigated for the policy applicable at the time of the incident.
 - If the IAPro allegation identified only generally references standards, policy, or laws, etc., the specific standard within the GOM must also be identified. In

fairness to the employee, it must be clear what standard the employee's conduct is being measured against.

- For example, the following IAPro allegations also require reference to a specific policy at issue:
 - GOM 3.00.020 “Performance Standards” – identify the specific GOM, SOP or training section, standard, rule, etc.
 - GOM 3.00.015(1)(b) “Conduct that is criminal in nature” – identify the relevant criminal code.
 - GOM 3.00.015(2)(b) “Willful violation of Sheriff’s Office Civil Service rules . . .” – identify the specific Civil Service Rule.
 - GOM 3.00.015(2)(c) “Willful violation of any lawful or reasonable regulation . . .” – identify the specific code or regulation.
- Allegations specified in the Follow-up Report and in IAPro must be consistent.
- Identify the allegations separately for each employee if the investigation involves multiple employees.
- List evidence gathered.
- List interviews obtained and not obtained.
 - For interviews obtained, include name, work location, phone number, PeopleSoft number, etc. (Note: this is already included in the IIU SOP.)
 - For interviews not obtained, briefly state reason why and reference explanation below:
 - John Smith – not obtained – witness declined to be interviewed. See entry dated XX/XX/XX
- List written statements obtained/not obtained. (This should be separate from interviews obtained.)
 - For statements obtained, include name, work location, phone number, PeopleSoft number, etc. (Note: this is already included in the IIU SOP.)
 - If not obtained, briefly state reason why and reference explanation below:
 - John Smith – not obtained – witness declined to provide statement. See entry dated XX/XX/XX
- Document all investigative steps in chronological order and include short explanation of why the evidence is relevant. This assists any reviewer in understanding the investigative progress and strategy and determine whether investigative steps were thorough and timely. Citing to evidence also is helpful.
 - An example on documenting the relevance of evidence – “I checked IRIS” versus “I checked IRIS and determined that neither deputy was on duty at the time.”
- In the Summary:
 - Analyze each allegation separately. A clear way to present this is to breakdown each allegation and the analysis in the following manner:
 - Allegation
 - Facts
 - Disputed Facts
 - Applicable policy or law
 - Standard of Proof
 - Analysis
 - Include all pertinent facts. (Citing to evidence is also helpful.)
 - Include facts only, no conclusory terms or language.
 - Use parties’ own words as much as possible.

- Identify conflicting evidence or gaps in evidence and include explanation for inconsistency uncovered during investigation.
- Include credibility determinations if relevant. If determining credibility is necessary to resolve allegations, include credibility factors for all parties/witnesses.
 - Credibility is more than having a bias or personal interest, it also includes how much weight witnesses should be given based on their ability to perceive the event from where they were, what they heard about an incident, etc.
 - For example: If complainant alleges something and a witness did not hear or see what the complainant alleged, include in the summary or report the explanation the witness provided for why s/he did not see or hear (e.g., did the witness state s/he was too far away or blocked from seeing or hearing; cannot remember or simply disputes that the fact occurred as alleged?)
 - Credibility cannot be based the subjective opinion of the investigator. Specific facts supporting any credibility determination must be summarized.