

The City of Portland's Handling of Tort Claims Alleging Police Misconduct:

A Need for Consistent Referrals to the Internal Affairs Division

Independent Police Review Division

September 2004



**OFFICE OF THE CITY AUDITOR
PORTLAND, OREGON**

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PORTLAND, OREGON

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MEMORANDUM

To: Mayor Vera Katz
Commissioner Jim Francesconi
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten

From: Gary Blackmer, City Auditor

Date: August 31, 2004

Subject: Review of Tort Claims Handling

Attached is a report prepared by the Independent Police Review Division, containing the results of our review of the handling of tort claims that allege police misconduct.

We will be asking City Council to make a policy decision regarding this topic. To begin addressing the issues raised in this report the Portland Police Bureau has revised its practices to include a separate review of tort claims, to determine whether they warrant investigation by the Internal Affairs Division. However, the report recommends that IPR review tort claims using the same standards and protocols as the other citizen complaints it receives.

I think this is a very important topic that merits public discussion and I will place it on the Council agenda after you have had an opportunity to evaluate the two alternatives. We will submit an ordinance including proposed changes to the Portland City Code for Council to consider on October 13, 2004, and adopt if it accepts the recommendations of the report. No changes to the code would be necessary if the Police Bureau continues its current screening process.

We appreciate the cooperation and assistance we received from personnel in the City Attorney's Office, Risk Management, and the Portland Police Bureau.

GARY BLACKMER
City Auditor

Reviewers: Joseph De Angelis and Richard Rosenthal

Summary

In the City of Portland an allegation of officer misconduct made in the form of a tort or civil rights claim is reviewed, investigated, and tracked differently than if the same allegation is made in the form of a citizen complaint to the Independent Police Review Division (IPR), the Internal Affairs Division (IAD), the Mayor's Office, or a precinct. Before March 2004, the Portland Police Bureau (PPB) generally did not review or investigate tort and civil rights claims for disciplinary action unless the complaining party also filed a citizen complaint. During the course of this review, however, the Portland Police Bureau changed its policy and assigned an assistant chief to review tort claims on a monthly basis for possible referral to IAD for investigation. This new procedure, which is an improvement on past practice, continues to be different in important respects from the procedures for citizen complaints. The use of different review mechanisms may lead to inconsistent standards, disciplinary outcomes, and tracking data.

City Ordinance does not allow the IPR to investigate allegations of misconduct raised in tort claims unless the complainant also files a citizen complaint. To insure consistency, this report recommends that City Code be changed to require that all tort claims alleging officer misconduct be referred into the IPR/IAD complaint process for review and screening in accordance with the same standards applied to all other citizen complaints. This review should be independent of the City's tort defense and risk management process.

Responses from the Mayor and the Chief of Police can be found at the back of this report.

Scope and Methodology

This review was initiated by the Independent Police Review Division to address two questions:

- Are allegations of PPB officer misconduct contained in tort claims and lawsuits subject to consistent managerial review, investigation, and tracking?
- Are allegations of PPB officer misconduct contained in tort claims and lawsuits handled in a manner that is consistent with best practices elsewhere in the country?

To conduct this study, we examined PPB directives and Standard Operation Procedures (SOPs). To fully understand the wider public debate about the handling of tort claims and its potential effect on liability for the City, the available academic, legal, and policy literatures were reviewed. In addition, consent decrees and memorandums of agreement between the United States Department of Justice (DOJ) and various police agencies that became the subject of DOJ *pattern or practice* lawsuits were reviewed and compared with the PPB's current practices.

Interviews were conducted with PPB staff from the Internal Affairs Division, Police Liability Management, and the Chief's Office (under Chief Kroeker), as well as staff from the City of Portland's Risk Management Division and the City Attorney's Office. We also interviewed experts on police accountability and police liability. In order to compare the Police Bureau's handling of tort claims to current practices in other jurisdictions, an email and phone survey was conducted with staff from three jurisdictions that have addressed the issue of misconduct allegations in tort claims and lawsuits.

To examine patterns of tort claims, the IPR reviewed 156 tort claim notices alleging misconduct forwarded to the IPR by the Risk Management Division between January 1, 2002 and June 30, 2003.

This work was performed by the staff of the Independent Police Review Division of the Auditor's Office and, while conducted carefully, was not conducted in accordance with generally accepted government auditing standards. Specifically, this review deals with issues relating to how the City of Portland manages citizen complaints and allegations of misconduct. The IPR is integrally involved in creating processes and policies relating to the taking of citizen complaints, and as a result, the IPR is not organizationally independent as required by General Accounting Office standards.

Managing Tort Claims and Lawsuits

The City of Portland's process for managing tort claims and lawsuits against the police involves the Risk Management Division's Liability Section (Risk), the Portland Police Bureau's in-house Police Liability Management Section (Police Liability), and the City Attorney's Office.

All notices of tort claim or requests for reimbursement for damages alleged to have been caused by the PPB (or its employees) are forwarded to Risk for processing and investigation. Risk creates a file on the claim, notifies the PPB, prioritizes that claim relative to other open tort claims, and assigns its adjustors to gather information on the validity of the claim. Police Liability, which is composed of two non-sworn police employees, assists Risk in the review of tort claims by collecting PPB documents relating to the incident, interviewing officers (when necessary), and offering advice to Risk on how to handle the claims.

If Risk determines that a person suffered a provable injury or harm due to the actions of a PPB officer, Risk may recommend settling the claim. In some cases, Risk may choose to pay a claim, even though it concludes that no misconduct or negligence occurred. In making this decision, Risk evaluates the financial exposure that the City faces from litigating the claim versus settling the claim early in the process. Finally, if the claimant is thought to have a weak or invalid claim (e.g. no supporting evidence of injuries or harm, lacks witnesses), then Risk will generally deny the claim.

Under the Portland City Charter, Risk has the ability to settle a claim made against the City for less than \$5,000. The Portland City Council must approve any settlement over \$5,000.

If a claimant files a lawsuit, Risk turns the case over to the City Attorney's Office. The City Attorney's Office, with assistance from Risk and Police Liability, defends the City (and usually the named employees) against the lawsuit.

Emerging Best Practices

Other cities have confronted the issue of how to handle allegations of misconduct raised in tort claims and lawsuits. In general, there appears to be a growing consensus that, regardless of whether allegations of misconduct are brought to light through a citizen complaint or tort claim, such allegations should be reviewed to identify and address:

- Any deficiencies in training
- Any defects in policy; and
- Whether there is a need to impose discipline.

Other police agencies have identified the handling of tort claims alleging misconduct as an important part of their disciplinary process and have created policies and procedures to ensure that they receive the appropriate managerial review.

Concerns are sometimes expressed that subjecting all allegations of misconduct to managerial review will expose a city to significant financial liability. In interviews, experts indicated that if a city begins to review all allegations of misconduct, then there might be a short-term increase in payouts on individual cases. However, experts also noted that the long-term reduction in risk exposure would likely outweigh any short-term costs by reducing the reoccurrence of problematic behavior, and by demonstrating that the city is willing to move quickly to address issues relating to misconduct.

The experience of agencies that instituted policies subjecting all allegations of misconduct to managerial review, regardless of the status of any related tort claims or litigation, appears to support these conclusions. The Los Angeles Special Counsel found that by implementing a robust risk management strategy, which included as one component investigating tort claims alleging misconduct, the Los Angeles County Sheriff's Department was able to dramatically reduce its payments on police claims. In addition, anecdotal evidence from Seattle and

Boise indicates that, rather than being harmful, the existence of internal affairs investigations has proved to be helpful in several ways. In Seattle, a prompt internal investigation saved money in at least one case, when it was disclosed that the Police Department took prompt corrective action. Internal investigations have also reportedly proved to be an effective tool in helping the City Attorneys for Boise and Seattle in deciding whether to settle or litigate claims.

Los Angeles County Sheriff's Department

Perhaps the first police agency to publicly deal with risk management issues in a public forum was the Los Angeles County Sheriff's Department (LASD). In 1992, the Kolts Commission found that evidence produced in connection with litigation "almost never triggered any new investigations of the deputies involved, and the results of the litigation virtually never appeared in the personnel files of the deputies involved." The Kolts Commission report recommended that the Department "review IAB [Internal Affairs Bureau] investigation procedures to determine why so many allegations resulting in substantial verdicts and settlements were not investigated by IAB, and why so many of such allegations that were investigated by IAB were determined to be *unfounded* or *unsubstantiated*." The report also recommended that "the Department should use the lessons learned from a review of the civil litigation to increase the frequency and effectiveness of discipline imposed on deputies who use excessive force . . ."

In 2001, the Office of Independent Review (OIR) was created to monitor the LASD's Internal Affairs Bureau and Internal Criminal Investigations Bureau. In its first year of operation, the OIR assisted the LASD in implementing a new claim review procedure that ensures that all allegations of officer misconduct made in tort claims and lawsuits receive appropriate internal review. Such reviews can include both pre and post-litigation investigations.

Boise, Idaho Police Department

The City of Boise's Police Ombudsman's Office reported that the Boise Police Department opens an internal affairs file for every tort claim filed with the City that involves police. This enables city officials to track each claim and tie it to individual officers. Depending on the claim, Internal Affairs conducts a review to help the City Attorney evaluate liability exposure and determine whether any officer misconduct took place. If there is any indication of misconduct, a new internal affairs case is opened for a *department initiated* complaint and a full investigation is conducted.

Seattle, Washington Police Department

In interviews, the civilian Director of the Seattle Police Department's Office of Professional Accountability (OPA) described changes that the Seattle Police Department has made in order to address the issue of tort claims alleging misconduct. Until just a few years ago, tort claims were reviewed only by the Seattle Police Department's legal advisor. The result was that if no complaint was filed with the Internal Investigations Section, then no internal review of misconduct was conducted. Recognizing this fact as an issue of concern, the OPA implemented a practice of reviewing all tort claims alleging misconduct in a manner identical to direct complaints. All tort claims alleging misconduct are now referred to the OPA for intake, classification, and if appropriate, investigation. The existence of a tort claim or lawsuit does not play any role in determining whether an investigation is conducted. It was noted, however, that pending litigation sometimes makes it more difficult for the OPA to conduct a complete investigation, given that plaintiff attorneys do not always allow their clients to participate in internal affairs interviews.

Federal Courts Require Consistent Treatment of All Classes of Complaints

In 1989, the United States Supreme Court found that a municipality could be liable under Chapter 42, § 1983 of the United States Code (U.S.C.) for the misconduct of an employee if deficiencies in a municipal training program were the result of a deliberate indifference to the need for adequate training of officers. Federal courts have extended this finding to include inadequate systems for hiring, supervising, or reviewing police misconduct. Notably, federal district courts have held that the failure to create an adequate citizen complaint process is evidence of inadequate supervision and could result in liability to a municipality. It can be inferred from these rulings that complaints of police misconduct in the form of tort claims and lawsuits need sufficient review by city managers to ensure an adequate citizen complaint process.

United States Department of Justice "Pattern or Practice" Lawsuits

The United States Attorney General has been given authority under Chapter 42 U.S.C. § 14141 to investigate and bring civil suits against police departments where a pattern or practice of federal rights violations has been identified. Within the last decade, the Department of Justice has used such investigations and civil suits to reform multiple police departments. In many of these instances, the Department of Justice has required the targeted police department to create policies and procedures that ensure an appropriate supervisory review of all civil claims alleging misconduct.

Examples of Consent Decrees Requiring Internal Investigation of Civil Suits

Steubenville, Ohio Consent Decree (1997)

“The City shall use the following sources as supervisory tools alerting management to potential misconduct, inappropriate behavior, and areas in which additional training or policy modification may be necessary. . . (d) civil suits alleging misconduct by an officer in the course of his or her duties, or against an officer and including allegations of untruthfulness, physical force, racial bias, or domestic violence.” Such a civil suit “shall trigger an IA [Internal Affairs] investigation. The IA Officer shall conduct an independent investigation on receipt of the referral, and shall not wait for resolution of any criminal or civil court case. The fact that the City settled a civil litigation shall have no bearing on the need or findings of an IA investigation or on the supervisory or disciplinary results.”

Pittsburgh, Pennsylvania Consent Decree (1997)

“The City shall require all officers to notify the City when the officers have been...named as a party in any civil suit involving allegations of untruthfulness, physical force, racial bias, or domestic violence. The City and PBP [Pittsburgh Bureau of Police] shall monitor all civil litigation and all criminal prosecutions of officers. PBP shall discipline and appropriately re-train, counsel, re-assign, or transfer officers found guilty or liable by a court or jury. OMI [Office of Municipal Investigations] shall independently investigate and make findings on all incidents giving rise to the litigation or prosecution where the court or jury does not find the officer guilty or liable, even when the complaint is withdrawn or settled.”

State of New Jersey Consent Decree (1999)

“The State shall notify the OAG [Office of the Attorney General] whenever a person files a civil claim against the State alleging misconduct by a state trooper or other employee of the State Police. The OAG shall notify the PSB [Professional Standards Bureau] of such civil claims. . . A misconduct investigation shall be initiated pursuant to any of the following: (c) the filing of a civil suit by a civilian alleging any misconduct by a state trooper while on duty (or acting in an official capacity); (d) the filing of a civil suit against a state trooper for off-duty conduct (while not acting in an official capacity) that alleges racial bias, physical violence, or threat of physical violence. . .”

(cont.) Examples of Consent Decrees Requiring Internal Investigation of Civil Suits

Los Angeles, California Consent Decree (2001)

“IAG [Internal Affairs Group] shall investigate (a) all civil suits or claims for damages involving on duty conduct by LAPD [Los Angeles Police Department] officers or civil suits and claims involving off-duty conduct required to be reported. . . The Department shall continue to require all officers to notify without delay the LAPD whenever the officer is. . . named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity). In addition, the Department shall require such notification from any officer who is named as a defendant in any civil suit that results in a temporary, preliminary, or final adjudication on the merits in favor of a plaintiff complaining of off-duty physical violence, threats of physical violence, or domestic violence by the officer.”

Washington D.C. Memorandum of Agreement (2001)

“MPD [Metropolitan Police Department] shall develop a plan, subject to approval of DOJ [Department of Justice], to reallocate responsibility for MPD administrative complaint investigations of misconduct complaints from chain-of-command District supervisors to OPR [Office of Professional Responsibility] with respect to the following. . .(b) all civil suits alleging any misconduct by an officer while acting in an official capacity; (c) all civil suits against an officer for off-duty conduct (while not acting in an official capacity) that alleges physical violence, threats of physical violence, or racial bias. . .The Corporation Counsel’s Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD.”

Buffalo, New York Memorandum of Agreement (2002)

“The City and BPD [Buffalo Police Department] management shall monitor all known civil litigation involving allegations of untruthfulness, or physical force and all known criminal prosecutions of officers. . .PSD [Professional Standards Division] shall independently investigate, and BPD shall make findings, and take any appropriate disciplinary action on all incidents giving rise to such civil litigation, which arises from officers’ actions within the scope of the employment, or prosecution where the court or jury does not find the officer guilty or liable, regardless of whether the complaint is withdrawn or settled. A brief written summary of such litigation and investigations shall be included in the officer’s investigation history.”

Police Liability Process Not Designed to Support Disciplinary Decisions

Investigations Conducted by Risk, Police Liability, and the City Attorney are Fundamentally Different than IPR and IAD Investigations

The investigations conducted by Risk, Police Liability, and the City Attorney's Office are focused on the City's potential liability for police activity. They investigate misconduct to the extent that it bears on liability; they are not responsible for determining whether discipline should be imposed.

Police Liability, Risk, and the City Attorney's Office may provide informal feedback to the Chief's Office and the Training Division on lessons learned from litigation. They may seek non-disciplinary personnel actions for represented officers who may have engaged in misconduct. They may debrief officers about questionable conduct, or seek to have them undergo counseling or retraining. However, they may not initiate or recommend discipline because they are generally barred from disclosing harmful secrets and confidences obtained during the course of representation of the officers.

While these non-disciplinary and informal mechanisms for identifying misconduct and municipal liability are very important components of an effective risk management strategy, they are not sufficient replacements for the disciplinary process.

PPB Police Liability has a Duty of Loyalty to Represented Officers

Even though they are PPB employees, staff from Police Liability are considered agents of the City Attorney, and thus maintain a strict duty of loyalty to officers named in tort claims and represented by the City. If Police Liability becomes aware of potential misconduct by a represented officer during the course of tort defense, they will not make a referral to the Internal Affairs Division for internal investigation. This is because the City Attorney's Office and

their agents must comply with the Oregon State Bar's Rules of Professional Responsibility to represent the interests and keep secret the confidences of their clients.

In addition to their duty of loyalty to represented officers, Police Liability staff have a more practical reason for not reporting potential misconduct. In order to evaluate tort claims and effectively defend the City against lawsuits, both Risk and the City Attorney's Office rely on Police Liability to collect reliable and valid information about incidents identified in tort claims. This information collection process sometimes includes interviews with the officers. PPB Directive 220.40 compels officers to cooperate with Risk, Police Liability, and the City Attorney's Office in the review and defense of tort claims. However, if officers come to believe that information they provide to Risk Management, the City Attorney's Office, or Police Liability will be used against them in disciplinary proceedings, then officers may choose to be less forthcoming during the course of the litigation. Officers could also begin to insist on having a union representative present when interviewed. If this were to occur, the City's ability to objectively evaluate whether to deny, settle, or defend against a tort claim could be significantly complicated.

Litigation Strategy May Interfere with Timely Resolution of Citizen Complaints

City attorneys defending against individual lawsuits seek to limit money damages against their clients. An effective internal investigation may generate information that is unfavorable to a municipality, and which could be discovered by a plaintiff attorney during the course of litigation. It is therefore understandable why the policy literature on police misconduct indicates that some city attorneys across the United States have opposed the internal investigation of allegations of misconduct that are also the subject of open litigation.

Since city attorneys need to know the facts associated with the cases they are defending (in order to judge whether to settle a case), they have tended to promote investigative models where the results are shielded from discovery. Typically, this takes the form of the promotion of an investigative model in which agents of the city attorney conduct the investigations. Under this model, investigation results become attorney work product, which is generally protected from discovery by plaintiff attorneys. By conducting investigations in this manner, city attorneys can exercise significant control over the emergence of facts relating to the incident being litigated. While this strategy is effective at preventing damaging information from being discovered by plaintiff attorneys, it can also end up shielding information about officer misconduct from the police department itself (and its internal disciplinary process).

City attorneys in some jurisdictions have argued that internal investigations should simply wait until after litigation has been completed. The result of such a tactic, however, is the officer misconduct may go uncorrected and reoccur before an investigation is initiated, internal investigations become untimely and more difficult to conduct, and discipline may cease to be an effective or meaningful deterrent for misconduct.

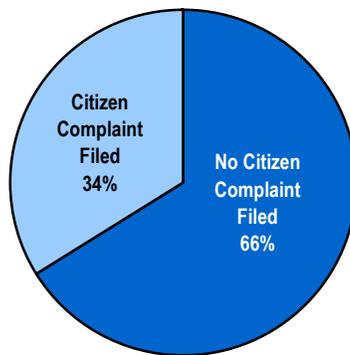
Need for Consistent Reviews

Prior to March 2004, Claims Alleging Misconduct Did Not Receive an Internal Disciplinary Review Unless a Citizen Complaint was Filed

Prior to March 2004, unless a claimant filed a separate IPR or IAD complaint, tort claims were not being screened by the PPB to determine whether an IAD investigation, and potentially discipline, was warranted.

The IPR reviewed 156 tort claim notices alleging misconduct between January 1, 2002 and June 30, 2003. Tort claims relating to officer-involved shootings and in-custody deaths were excluded from this review. Fifty-three of the tort claimants filed complaints with IPR or IAD. However, 103 tort claimants did not file a citizen complaint. As a result, those allegations of misconduct were not screened by the PPB to determine whether an IAD internal investigation (and potentially discipline) was warranted.

Number of Tort Claimants Who Also Filed a Citizen Complaint



Tort Claims Alleging Misconduct Are Now Screened by Different Officials than Other Citizen Complaints of Misconduct

Beginning in March 2004, and after the data collection for this report was complete, the PPB implemented a new policy of having a committee consisting of a deputy city attorney,

the Mayor's liaison to the PPB, and the Assistant Chief of the Services Branch meet to review tort claims for policy, practice, and performance problems. The Assistant Chief of the Services Branch, in consultation with the Mayor's liaison, has the authority to refer tort and civil rights claims to Internal Affairs for investigation. This new practice is a significant step forward, and complies with current City Code prohibitions regarding IPR investigation of complaints involving tort claims. However, the delegation of the initial screening decision to officials outside the IPR/IAD process invites inconsistent results, regardless of the officials' experience and good faith.

Tort Claims Alleging Misconduct Are Not Tracked Like Other Misconduct Complaints

A decision by the Assistant Chief not to refer a tort claim to IAD for investigation is equivalent to a decision by the IPR Director to decline a complaint. However, the Assistant Chief's decision is not recorded or tracked as a declination. The lack of tracking data means that IPR cannot report to policy makers or to the public on the full range and pattern of citizen complaints.

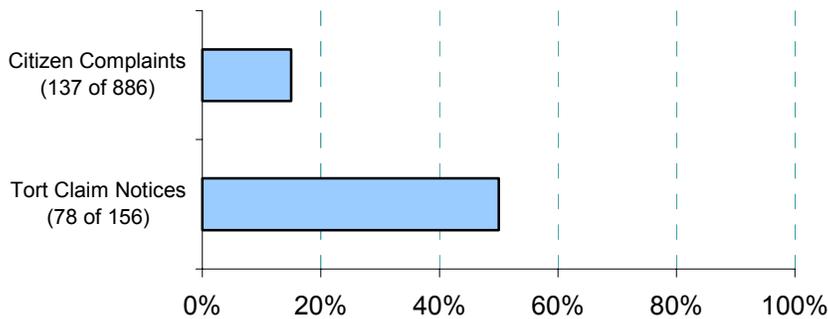
PPB Decisions Not to Investigate Tort Claims Alleging Misconduct Are Not Subject to Independent Review

If the Assistant Chief decides not to refer a tort claim to IAD, his decision is not subject to IPR review. By contrast, if IAD declines to fully investigate a complaint referred by IPR, IAD's decision and reasoning is subject to IPR review, consultation, and reporting.

Tort Claims of Misconduct Tend to be More Serious than the Typical IPR or IAD Complaints

Fifty percent (50%) of the tort claims in the review sample alleged excessive force compared to roughly 15% of citizen complaints filed with the IPR during the same time period.

Percentage of IPR Complainants vs. Tort Claimants Alleging Excessive Force January 2, 2002 through June 30, 2003



IPR often refers excessive force complaints to IAD for review. If the IAD Captain declines to conduct a full investigation after a preliminary review, the Captain's declination decision is independently reviewed by IPR. Many of the excessive force allegations made in tort claims contained very serious allegations, some of which (if true) could potentially amount to criminal conduct. These allegations were not the subject of an internal investigation, so it is not possible to determine whether the allegations had any substance.

Recommendations

Recommendation 1:

The City Council should change City Code to allow the IPR to conduct intake investigations on allegations of officer misconduct contained in tort claims and lawsuits when warranted.

City ordinance currently bars the IPR from conducting an intake investigation on any allegation of misconduct contained in a tort claim or lawsuit unless the claimant/plaintiff also files a citizen complaint. In order to conduct intake investigations on tort claims alleging officer misconduct where no citizen complaint has been filed, the IPR ordinance should be amended by City Council, as follows:

3.21.110. Intake

B. The Director shall develop procedures for handling not investigate complaints and appeals involving matters currently in litigation; or where a notice of tort claim has been filed;. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules has been filed; or with respect to employee or applicant discrimination complaints.

City ordinance currently permits the IPR to conduct independent investigations as necessary and appropriate (excluding cases currently in litigation or where a notice of tort claim has been filed). As long as the IPR has the authority to review, consult, and report on IAD assignment decisions, however, there appears to be no need for the IPR to have the authority to conduct an independent investigation of a complaint while litigation is pending. The IPR would still maintain the authority to conduct an independent investigation at the conclusion of litigation, if necessary and appropriate.

3.21.120. Handling Complaints

D. IPR investigation with IAD involvement. The Director may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. IPR investigations shall be conducted in conformance with legal and collective bargaining

provisions. Such investigations shall not be initiated by the IPR Director involving matters currently in litigation, or where a notice of tort claim has been filed.

The Director shall notify the IAD commander that IPR has undertaken an investigation and the reason. The IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When Bureau personnel are being interviewed by IPR personnel the IAD investigator may either repeat the question or direct the employee to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation. The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR findings to the Chief or designee to assist the Chief in determining what, if any, action is appropriate. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

Complainants and members wishing to appeal an investigation by IPR or the findings shall appeal to the Committee as described in City Code Section 3.21.160 A.2.

Recommendation 2:

As with citizen complaints received by the IPR, tort claims and lawsuits alleging misconduct need to be handled in a consistent manner. Only with the involvement of all of the participants in the process can a review mechanism be created that is fair and consistent.

Elements of this review and investigation process should include:

- Automatic referral of tort claims alleging misconduct to the IPR;
- Handling of IPR intake and case evaluation in the same manner as a citizen complaint;
- An IAD review of allegations referred by the IPR to determine whether a full investigation is warranted;
- Re-evaluation of all tort claims that result in a settlement or adverse judgement by the IPR and IAD to determine whether further review and investigation is warranted; and
- The amendment of the PPB Manual of Policy and Procedure to incorporate these changes.

Local Interviews

Darrel Schenck, *Captain, PPB Internal Affairs Division*

Nancy Sturdevant, *Office Manager, PPB Internal Affairs Division*

Merry Grant, *Senior Police Administrative Support Specialist,
PPB Internal Affairs Division*

Mike Palmer, *Manager, PPB Management Service Division*

Roger Haven, *Claims Analyst, PPB Police Liability Management*

Claudia Swansen, *Claims Analyst, PPB Police Liability Management*

Mark Stairiker, *Liability Manager, Office of Risk Management*

Dorothy Elmore, *Former Adjutant, PPB Chief's Office (Under Chief
Kroeker)*

David Woboril, *Deputy City Attorney*

Expert Interviews

Dr. Carol Archbold, *Marquette University*

Dr. Samuel Walker, *University of Nebraska at Omaha*

Other City Interviews

Sam Pailca, *Director, Seattle Police Department Office of
Professional Standards*

Pierce Murphy, *Community Ombudsman, City of Boise, Idaho*

Ilana Rosenzweig, *Attorney, Office of Independent Review,
Los Angeles County*

Selected Publications

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Other academic and newspaper articles are available for review in the work papers.

Response from the Mayor



Office of Mayor Vera Katz
City of Portland

August 26, 2004

TO: Gary Blackmer
City Auditor

SUBJECT: IPR Recommendations on Police Tort Claim Processing

I appreciate being given an opportunity to read and respond to your report and recommendations on the processing of Police tort claims and lawsuits.

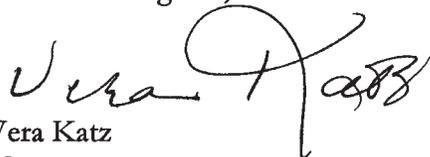
In December, 2003 I asked the City Attorney to develop a review process for tort claims filed against the Police Bureau (See attachment ('A')). In so doing, I was fully cognizant of the need for an internal review mechanism that allowed the Bureau to identify deficiencies in training, polices, procedures and individual officer performance while at the same time limiting the city's exposure to significant financial liability. As a result, a Tort Review Committee was formed under the auspices of the City Attorney and made up of my Staff Liaison to the Police Bureau, a Deputy City Attorney and the Assistant Chief of the Services Branch of the Police Bureau. It is this committee that reviews all tort claims, identifies training, policy or performance issues likely to expose the city to liability, and recommends to the Chief of Police any appropriate follow-up action, including but not necessarily limited to the initiation of an IAD case or a review by the involved Officers' Commander.

I firmly believe that all tort claims and lawsuits filed against the Police Bureau, whether or not they allege officer misconduct, must be subjected to a comprehensive managerial review to identify potential and actual deficiencies in bureau operations and individual officer performance. This review should be followed-up with appropriate and timely action to prevent the reoccurrence of circumstances that create liability for the city. On the other hand, I also believe it would be foolhardy, and a violation of our fiduciary responsibility, to initiate a response to tort claims and lawsuits that would expose the city and its taxpayers to increased financial liability. We would be ill-advised to conduct managerial reviews of tort claims without taking steps to preserve the review's products and processes from plaintiff discovery. For this reason, I respectfully disagree with Recommendation #1, which proposes that IPR be allowed to conduct "intake investigations on allegations of officer misconduct contained in tort claims and lawsuits."

I would like to give the Tort Liability Review Committee an opportunity to develop a “track record” and, when warranted, institute whatever changes may be necessary to improve their effectiveness. I also would be supportive of having IPR assume a role in routinely auditing the Committee’s work to ensure consistency in the handling of allegations of officer misconduct. Further, once tort claims and lawsuits have been resolved, I would favor releasing to the public information regarding any corrective action and/or disciplinary measures that had been or are being taken by the bureau in response to the claimant’s allegations.

I look forward to further discussions on this important issue with you, the IPR staff, the City Attorney, Risk Management and the Police Bureau.

With warm regards,

A handwritten signature in black ink, appearing to read "Vera Katz", with a large, stylized flourish extending from the end of the name.

Vera Katz
Mayor

December 17, 2003

TO: Jeff Rogers and Linda Meng
City Attorney

SUBJECT: Management Review of Police Bureau Tort Claims

Because many tort claims filed against the Police Bureau are not accompanied by an Internal Affairs complaint and therefore do not receive the kind of thorough investigation typically conducted by IAD, I am interested in instituting a standardized procedure whereby all tort related incidents, regardless of the ultimate disposition of the claim, are routinely reviewed by bureau and city staff to ascertain if improvements are warranted in any aspect of bureau operations. This review should include, but need not be limited to an examination of policies, practices, procedures, and/or training and performance standards. I would want representatives from the Police Bureau, City Attorney's Office and the Police Commissioner's Office to have a role in the review process.

Since all of the incidents reviewed under this system could become the subject of court litigation, I do not want the review procedure to jeopardize the city's ability to defend against the claims. Therefore, I would appreciate if you would suggest a tort claim review procedure that would allow us to achieve the type of management scrutiny I have suggested while protecting the city's position as a defendant in these cases.

Vera Katz
Mayor

Response from the Chief of Police



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

VERA KATZ, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Service Compassion Integrity Excellence Respect

August 27, 2004

TO: Gary Blackmer
 City Auditor

SUBJECT: IPR Recommendations on Police Tort Claim Processing

Thank you for the opportunity to read and respond to your report and recommendations on the processing of Police tort claims and lawsuits. I have discussed many of my issues and concerns with this study's author Mr. Richard Rosenthal. As a result there have been changes to the recommendations and findings of this study. However, I would like you to be aware that there are several areas that we have issues with regarding your conclusions and recommendations.

This study cites several jurisdictions that utilize a tort claim review process to identify officer misconduct or policy issues. In December of 2003 Mayor Katz met with senior police leadership and the City Attorney's office and directed us to develop a tort claim review process, which resulted in the creation of the Tort Review Committee (TRC). This committee works under the auspices of the City Attorney's Office and is comprised of a Deputy City Attorney, the Assistant Chief of the Services Branch of the Portland Police Bureau, and the Police Liaison from the Mayor's Office. This committee will review all tort claims filed against the Portland Police Bureau to identify performance issues, training issues, or policies needing to be revised or modified. These recommendations will be forwarded to my office for follow-up action. These actions include the initiation of an IAD case, or performance investigation by the officer's RU commander, as warranted.

Mayor Katz and I firmly believe that the Tort Review Committee should be allowed the opportunity to develop their protocols and function for at least a year prior to evaluating their effectiveness and recommending any changes. We also believe that because these cases are initiated as tort claims, that oversight for this process should be with the City Attorney's office and not with the auditor's office. However, I would support having the IPR staff audit this committee's work to ensure that allegations of police misconduct are investigated in a thorough and timely manner.

I have directed the staff of our Management Services Division to develop a tort claim tracking database similar to our Collision Review Board tracking system to ensure these cases are being processed and reviewed in a timely manner. This tracking system will be utilized by the City Attorney's office to monitor all tort claims filed against the Portland Police Bureau for purposes of review and litigation trend analysis. I believe that this system will be of greater value than tracking these cases through the Administrative Investigations Management (AIM) system, which focuses solely on officer misconduct and citizen complaints.

The Tort Review Committee addresses the issues and concerns identified in this report. The TRC provides the following: 1) Consistent review of tort claims by an oversight committee comprised of three City entities rather than one, and 2) the TRC will have the ability to refer cases for IAD and performance investigation as required and track the review of tort claims so that appropriate actions can be taken as necessary as it relates to policies, training or corrective disciplinary actions.

I would welcome the opportunity for further discussion on this important issue with you, the IPR staff, the City Attorney, and Risk Management to resolve any issues or concerns you may have with the Tort Claim Review Committee process.

Sincerely,

A handwritten signature in black ink that reads "Derrick Foxworth". The signature is written in a cursive, flowing style.

DERRICK FOXWORTH
Chief of Police

DF/BWP/lsm

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