

## **OFFICE OF POLICE OMBUDSMAN**

### **Tentative Agreement between the City and the Police Guild**

**April 8, 2008**

The Office of Police Ombudsman (OPO) will provide a professional presence to help ensure a quality investigation in real time, and visible, independent oversight to reassure the public.

(a) The OPO will actively monitor all police department internal investigations.

(b) The OPO may receive complaints from any complaining party, including, without limitation citizens or employees of the police department. The OPO will forward all complaints to IA within three business days for processing and, when appropriate, investigation. The OPO will not conduct independent disciplinary investigations, but may participate in interviews as provided herein.

(c) In addition to complaints received by the OPO, Internal Affairs will provide copies of all other complaints to the OPO within three business days. Once the case is closed, the OPO will return all case file materials to IA for retention, but will have subsequent access to closed cases.

(d) The OPO will have the opportunity to make a recommendation for mediation to the Chief of Police, prior to investigation. In the event the Department, the complainant and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline and no disciplinary finding will be entered against the officer. Good faith means that the officer listens and considers the issues raised by the complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.

(e) Once any complaint is received by the Internal Affairs unit, it shall be submitted to the chain of command for review per existing policy. When either the Chief or her/his designee determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.

(f) Internal Affairs will notify the OPO of all administrative interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion or discharge) and all complaints originating at the OPO. The OPO may attend and observe interviews, and will be given the opportunity to ask questions after the completion of questioning by the Department. The OPO will not participate in criminal investigations of Department employees but will be notified when the criminal case is concluded.

(g) Upon completion of investigations, IA will forward a complete copy of the case file to the OPO for review. The OPO will determine whether the investigation was thorough and objective.

(h) As a part of the review process, the OPO may conclude that additional investigation is needed on issues deemed material to the outcome. If there is any dispute between the assigned investigator(s) and the OPO regarding the necessity, practicality or materiality of the requested additional investigation, the Chief (or designee) will determine whether additional investigation will be undertaken. If the OPO is not satisfied with the determination of the Chief, the matter will be resolved by the Mayor, who's decision will be final. Once the matter has been referred to and resolved by the Mayor, the investigation will be completed consistent with the determination by the Mayor. After completion of the additional investigation, or the conclusion that no further investigation will be undertaken, the OPO will then certify whether or not, in the opinion of the OPO, the internal investigation was thorough and objective. This determination will be made within five business days. Once the above finding is entered in the investigation, the OPO will not be involved further in the disciplinary process in that case.

(i) All disciplinary decisions will be made by the Chief (or designee).

(j) The OPO will be provided a copy of any letter or other notification to an officer informing them of actual discipline imposed as a result of an internal affairs investigation or any Notice of Finding in the event that the complaint is not sustained.

(k) The OPO will be notified by IA within five business days of case closure of all complaints of a Serious Matter and all complaints originated by the OPO. The OPO, in addition to the Department's written Notice of Finding letter to the complainant, may send a closing letter to the complainant. The letter may summarize the case findings.

(l) Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Office of Police Ombudsman to discuss the matter further. However, unless persuasive and probative new information is provided, the investigation will remain closed. In accordance with established arbitral case law, employees may not be disciplined twice for the same incident. In the event the investigation is re-opened and discipline imposed, the appropriate burden of establishing compliance with this section rests with the City in any subsequent challenge to the discipline.

(m) In addition to the investigative process, the OPO will have unimpeded access to all complaint and investigative files for auditing and reporting purposes. The OPO shall not retain investigative files beyond one year and will return the same to Internal Affairs for safekeeping. At all times and including, without limitation, issuing written reports, the OPO will not release the name(s) of employees or other individuals involved in incidents or investigations nor any other personally identifying information. The OPO may make statistical

observations regarding the disciplinary results of sustained internal investigations, but shall not take issue with discipline imposed by the Chief of Police in specific cases.

(n) The OPO may recommend policies and procedures for the review and/or audit of the complaint resolution process, and review and recommend changes in departmental policies to improve the quality of police investigations and practices. Nothing herein shall be construed as a waiver of the Guilds right to require the City to engage in collective bargaining as authorized by law.

(o) A committee of five (5) members (Committee) will be formed that will recommend three (3) candidates for the OPO position to the Mayor (one of which must be selected). The Committee shall be composed of one member appointed by the Spokane Police Officers Guild; one member appointed by the Lieutenants and Captains Association; one member appointed by the President of the City Council, one member appointed by the Mayor, and a fifth member selected by the other four members.

(p) In addition to whatever job requirements may be established by the City, one of the minimum job requirements for the OPO will be to have a history that includes the establishment of a reputation for even-handedness in dealing with both complainants and the regulated parties. The City also agrees that compliance with the confidentiality provisions of this agreement will be a condition of employment for the OPO. Inadvertant, de minimus disclosures shall not be considered a violation of this section.

(q) This agreement shall become a new article within the collective bargaining agreement upon ratification by both signatory parties. Alleged violations of this agreement are subject to the grievance and arbitration provisions of the bargaining agreement. In the event the Guild believes a candidate recommended by the Committee for OPO does not meet the minimum job requirement established in Section (o) above, the Guild must within three (3) days of the recommendation present information to the Mayor about their concern. If that person is ultimately selected by the Mayor, the Guild may file a grievance within five (5) days of the appointment and an expedited arbitration process will be utilized to resolve the matter. The Arbitrator will conduct an arbitration within twenty one (21) days, and issue a bench decision. The decision will be final and binding upon the parties. Upon the filing of a grievance, the appointment shall be held in abeyance pending completion of the arbitration. As a part of the ratification of this agreement, the City agrees to repeal Section 04.26.010 of the Spokane Municipal Code in its entirety within 60 days of the agreement's execution.

(r) It is agreed that upon implementation of the OPO, Article 24, Section E of the collective bargaining agreement will be modified as follows:

**Section E - Police Officer Rights in Discipline**

Administrative investigations must be completed within 180 days of the matter coming to the attention of the Department (Bureau Command Staff

or above) In the event the Office of the Chief believes an extension beyond 180 days is necessary, and the City can show that it has acted with due diligence and the investigation could not be reasonably be completed due to factors beyond the control of the Department (including, but not limited to, for example, extended illness or other unavailability of a critical witness (i.e. - the complainant, the officer being investigated), or necessary delays in the processing of forensic evidence by other agencies,) the Chief must contact the Guild prior to the expiration of the 180 days seeking to extend the time period. Any request for extension based on the unavailability of witnesses shall include a showing that the witness is expected to become available in a reasonable period of time. A request for extension based upon the above criteria will not be unreasonably denied. The period of investigation may also be extended by mutual agreement between the Guild President and the Chief.

The 180 day period shall be suspended when a complaint involving alleged criminal conduct is being reviewed by a prosecuting authority or is being prosecuted at the city, state or federal level, or if the alleged conduct occurred in another jurisdiction and is being criminally investigated or prosecuted in that jurisdiction. In cases of an officer involved fatal incident, the 180 day period will commence when the completed criminal file is provided to the Prosecuting Attorney, and will only be tolled in the event criminal charges are filed.

In the event an outside agency conducts a criminal investigation of a matter within the jurisdiction of the City, and the Department receives the completed criminal file with less than sixty (60) days remaining for the administrative investigation, the Department will have up to an additional sixty (60) days to complete its administrative investigation; In no event, shall the investigation last more than 240 days..

Compliance with this provision is required if findings are to be entered or discipline is to be imposed. Issuance of a Loudermill notice of intent to discipline will constitute conclusion of the administrative investigation for purposes of this section.

Nothing in this article prohibits the City from disciplining (provided just cause exists) an officer convicted of a crime, or laying off an employee pursuant to Civil Service Rule IX, Section 6 (d).

NOTE: This language is effective upon ratification by the parties. The revision to Section E - Police Officer Rights in Discipline will be applicable to any investigations commenced after the parties ratify this agreement.