

## Concerns Regarding OIR Report

We have carefully read and will continue to thoroughly analyze the findings, conclusions, and recommendations made in the OIR report with the goal of strengthening the Clackamas County Sheriff's Office and its policies and improving our ability to protect and serve the citizens of Clackamas County. Although we do not entirely agree with every finding or every conclusion drawn from the findings, we will continue to evaluate each of them in connection with our larger review of internal policies.

As recognized in the report, its focus is primarily upon the Sheriff's Office's handling of the facts surrounding Detective Green and a random sampling of administrative investigations and a small handful of other cases. Therefore, the report was necessarily selective and in our view omits full recognition of the great police work done by many of our detectives and staff over the years.

Also, as the report recognizes, law enforcement agencies have budget constraints and limited resources. Within these constraints, however, we recognize there is always room for improvement and we will thoroughly evaluate each recommendation in conjunction with our ongoing efforts to improve Sheriff's Office policies. We also note that before the OIR report was issued our office already implemented some policies which are recommended in the report.

Finally, we want to call to the attention of the authors of the report certain findings we believe to be incorrect, inaccurate, incomplete, or mischaracterized. The Clackamas County Sheriff's Office respectfully submits the following concerns regarding the OIR Report which are identified by reference to specific pages of the OIR Report and are set forth below.

1. FIRST CONCERN: The OIR Report suggests there was a delay by the Lieutenant/ Supervisor of nearly a week and that the Lieutenant's first reaction was that the matter could wait. The OIR Report states on pages 6-7 and 16:

. . . The Lieutenant suggested to the Sergeant that they meet in a few days to discuss. The Sergeant responded by indicating that he did not believe the matter could wait and that he intended to file a report about Green with the Professional Standards Unit (PSU), the Sheriff's Office internal affairs unit.

\* \* \* \* \*

When the Sergeant initially began to audit Detective Green's cases, he informed his Lieutenant supervisor that he believed he had uncovered what appeared to be "gross misconduct" that needed to be thoroughly investigated and asked his supervisor to meet with him as soon as possible. The response was a suggestion that they meet to discuss nearly a week later.

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The response of both the supervisor and PSU to the Sergeant's concerns shows an apparent lack of urgency about the revelations. In spite of expressed concerns about serious misconduct, the, the Lieutenant's first reaction was that the matter could wait. That response likely was the beginning of the Sergeant's formulating the view that CCSO was insufficiently concerned and lacked the urgency that the allegations warranted.

RESPONSE: Concern regarding accuracy:

In fact the Lieutenant offered Swanson his first available opportunity to meet. The following background information establishes that Swanson emailed the Lieutenant to meet to discuss Green on a Thursday at 3:01; the Lieutenant responded at 5:01. The Lieutenant was out of the office Friday–Sunday, returning on Monday; however that was Swanson's day off. Tuesday was the first opportunity the Lieutenant and Swanson could align their schedules to meet and Lieutenant offered that day along with Wednesday. Given the Lieutenant and Swanson's schedules at the time, OIR's conclusion that "CCSO was insufficiently concerned and lacked the urgency that the allegations warranted" respectfully fails to take into account all facts. The relevant documents supporting these additional facts will be provided upon request.

2. SECOND CONCERN: The OIR Report suggests that Swanson alerted the Sheriff's Office in his internal affairs complaint that Green had potentially engaged in criminal conduct. The OIR Report states on pages 7 and 18:

The Sergeant filed the report with PSU through the dashboard on-line form designed for the purpose; he also notified the head of PSU. He included a detailed description of his initial audit and findings about Green's negligence and the unsatisfactory explanations about cases. He included his conclusions about the willful and potentially criminal nature of Green's negligence and deception, saying "I have uncovered misconduct and a gross disregard to the duties of a police officer[r], the oath of office and the Law Enforcement Code of Ethics."

\* \* \* \* \*

As noted above, once the allegations surrounding Green were raised by the involved Sergeant, it took almost a year before the matter was referred to an outside agency for a criminal investigation. Certainly, an extensive audit was undertaken before the potential criminal nature became crystallized, although, as noted elsewhere, the initial Sergeant had raised allegations suggesting criminality much earlier. This incident featured a repeated concern that both pre-dates<sup>5</sup> and post-dates the Green matter: namely the efficacy with which CCSO notifies prosecutorial authorities when an employee has committed a potential criminal act.<sup>6</sup>

RESPONSE: Concern regarding accuracy:

In Swanson's interview with the Chief Deputy, Swanson confirms he did not know Green had engaged in criminal conduct at the outset of his internal affairs complaint. In fact, criminality was not discovered until the end of an extensive audit of Green's cases, nearly a year after Swanson's complaint. (See, transcription of Chief Deputy's interview of Swanson, *CCSO Response to OIR Request 2*, p. 021, line 340; and p. 033, lines 853-896; and also, the internal affairs investigating Lieutenant's interview of Swanson, *CCSO Response to OIR Request 1*, p. 005, par. 8.) It is noteworthy that the Lieutenant's interview of Swanson occurred just over one month after Swanson filed his internal affairs complaint; thus, events were still fresh in his mind.

3. THIRD CONCERN: There is a distinction between a "service level investigation" assigned to a supervisor and an "internal affairs investigation" assigned to an internal affairs detective. The OIR Report states on page 7:

The PSU Lieutenant opened the investigation of Green and referred it back to the Lieutenant of Wilsonville as a lower priority "poor performance" service level investigation.

RESPONSE: Concern regarding characterization:

The "service level" assignment is mischaracterized as a lower priority when the distinction is one of scope not priority. A service level investigation is a short-term investigation of no more than 30 days, typically assigned to the individual's supervisor or sergeant to investigate. In contrast, a complaint assigned to an internal affairs detective has a longer length of 90 days and presumes the matter requires more in-depth investigation. At the outset of Swanson's complaint, the nature of Green's conduct appeared to be a serious neglect of his work. Typically a matter of this nature would be assigned to Green's sergeant to put him on a work plan, oversee his performance and get him to work.

4. FOURTH CONCERN: Factual error regarding what information informed amendment of the F4 form: The OIR Report states on pages 8-9:

Ten months later, after the initial Sergeant met with the Sheriff and informed him that the information on Green's DPSST form was not factual, the Undersheriff sent a letter to DPSST noting that there had indeed been an open investigation at the time of Green's retirement and that "based on new information," the correct designation on the form should be "Retirement While Under Investigation".

RESPONSE: Concern regarding factual record explaining amendment of F4:

The Undersheriff sent an updated F4 form as a result of new information he received on February 25, 2016 when he met with the Detective conducting the audit of Green's cases, and not as a result of information Swanson imparted. In further explanation, at the February 16, 2016 meeting Swanson asserted to Sheriff Roberts and Undersheriff Ellington that the F4 form had not been filled out correctly. Within a couple of days following this meeting Undersheriff Ellington

directed a Professional Standards Unit Detective to contact DPSST. A representative of DPSST sent an email to PSU stating that there are no written guidelines for completing the F4 form. On February 25, 2016 Undersheriff Ellington met with the Detective who was conducting the audit of Green's cases. During the course of reviewing the audit with the Detective, Undersheriff Ellington determined that there might be a question that in a particular case, Green's conduct was potentially criminal. Following Undersheriff Ellington's meeting with the Detective, Ellington requested a criminal investigation of Green's conduct by an outside agency (Milwaukie Police Department). Also on the same day, February 25, 2016, Undersheriff Ellington completed an amended F4 form reflecting the new information that Green was now under criminal investigation and that, if true, would result in a terminable offense. For materials related to this issue see, *CCSO Response to OIR Request 23, p, 23-004 and 23-006*.

5. **FIFTH CONCERN:** OIR suggests that the Chief Deputy was tasked by the Sheriff to investigate three allegations made by Swanson during a meeting with Sheriff Roberts and a Lieutenant (who at the time was Chief of Police of Wilsonville) and only two of the three matters were investigated. The OIR Report states on pages 13 and 25-26:

The Sheriff tasked the Chief Deputy with investigating these allegations. The Chief Deputy interviewed all the parties and concluded that the initial accusations were not supported by the evidence. In the course of looking into these matters, however, the Chief Deputy determined that some of the communications one Captain had with the Sergeant (about an article on the Green matter in the *Oregonian* newspaper) were unprofessional and violated policy.

\* \* \* \* \*

Although the Chief Deputy conducted a creditable investigation of two of the three allegations against command staff, he did no investigation regarding the DPSST matter and the Undersheriff. Instead, the Chief Deputy simply collected documents pertaining to the matter and opined that because the matter had already been reviewed, no further investigation was necessary. The Chief Deputy further concluded that based on the documents, there was no misconduct.

**RESPONSE:** Concern regarding the scope of Chief Deputy's directed activities mischaracterized as an "investigation" rather than an inquiry:

The use of the term "investigation" mischaracterizes the scope of the Chief Deputy's fact finding. The Chief Deputy did not conduct an investigation. Rather, he was directed by Sheriff Roberts to conduct an "inquiry" to determine if Swanson's May 2017 allegations, made during a meeting with Sheriff Roberts and Lieutenant (Wilsonville Police Chief), were new allegations that required investigation or the same allegations which had already been investigated. This mischaracterization is material to OIR's conclusion that the Chief Deputy failed to do a creditable "investigation" of Undersheriff Ellington.

Sheriff Roberts declined to accept Swanson's characterization of Undersheriff Ellington's submission of the original F4 as dishonest. On its face, Sheriff Roberts found no support for Swanson's claim. It is within the Sheriff's authority to make that decision. The Chief Deputy's inquiry simply confirmed that Swanson previously raised the same claim and that there was no new information requiring the Sheriff to modify his previous determination that Undersheriff Ellington had not engaged in misconduct.

6. SIXTH CONCERN: The OIR Report discusses historic incidents unrelated to Green. The OIR Report discusses at length "The Grahn Murders" and "Bowman death."

RESPONSE:

Sheriff Roberts respectfully asks the entire section of episodes occurring eight years ago and 18 years ago be deleted from the report. The incidents have no relation to Green. No questions were asked by OIR of the Clackamas County Sheriff's Office leadership regarding the Grahn and Bowman matters. Further, information in this section is not used as a basis to support any Recommendation.

Furthermore, an inquiry into the Sheriff's Office handling of the Grahn matter was already thoroughly investigated by the Advisory Committee on Best Practices, convened by the Board of County Commissioners in 2010. The Committee issued a report in 2011. (See, *CCSO Response to OIR Request 28*, for related materials).

Importantly, information relating to Grahn in the following paragraph as underlined, is factually inaccurate (p.13):

Sergeant Grahn had worked for the Sheriff's Office for 15 years. A year before the shootings, police had responded to a domestic violence call at Grahn's house. Sergeant Grahn was not arrested at the scene, but the incident was serious enough to cause the Sheriff's Office to request that an investigation be done by another agency, the Portland Police Bureau.

The Sheriff's Office learned of an alleged incident of domestic violence through a series of disclosures that eventually reached the Sheriff's Office. Mrs. Grahn had confided to a girlfriend who was a probation officer working in another jurisdiction. That friend told her husband who was a State Trooper and he called then, Undersheriff Kirby to report the allegation. The Sheriff directed Kirby to contact the Portland Police Bureau to investigate. There was never a response made to a Domestic Violence call at Grahn's house by our agency because there was never a Domestic Violence call that was made.

7. SEVENTH CONCERN: The OIR Report suggests that PSU/Internal Affairs never interviewed Swanson in depth about the scope of Green's misconduct. OIR's statement on page 24 in the second full paragraph states:

Because the investigation against Green was not pursued, the initial Sergeant was never interviewed in depth by CCSO about the scope of the misconduct. Months later, after learning that the investigation against

Green had been closed without any further fact gathering, that Sergeant wrote to the same CCSO Captain that he believed that Green may have destroyed evidence, had been untruthful to him, had been insubordinate, and failed to investigate cases because he could get away with it and because the victims were minorities, vulnerable, or otherwise powerless to complain about his conduct. The Sergeant alluded to concerns that prior supervisors had failed to ensure that Green performed his work.

RESPONSE:

Swanson was in fact interviewed about Green in-depth by the Internal Affairs Investigating Lieutenant on April 16, 2015, along with Swanson's claims of a cover up. The dual focus of the interview is identified in the first paragraph of the investigating Lieutenant's report. At that interview Swanson provided his documentation to the Internal Affairs Investigating Lieutenant outlining his concerns about Green's conduct. (See, *CCSO Response to OIR Request 1*, pp. 001-007, detailing the Internal Affairs Investigating Lieutenant interview of Swanson.)

8. EIGHTH CONCERN: The OIR Report alleges that certain matters were not investigated and that there was a failure to follow up with additional received information. The OIR Report states on pages 24-25 that:

The Sergeant further informed the Captain that he had been told that Green had made statements to the effect that "Mexican women report rapes so their families can come to this country." At a later point, the Captain noted the Sergeant's concern about possible racial bias in the investigations to the Undersheriff. In addition, the Sergeant informed the Captain that as a result of making the complaint, he had received a harassing phone call and misinformation was used to mock him. On their face, these claims are alarming in both their scope and severity. However, with the key exception of the extensive audit conducted into Green's cases, these specific and distinct allegations were never investigated or otherwise pursued by CCSO.

RESPONSE:

The Sheriff respectfully submits that CCSO did follow up regarding these matters. Undersheriff Ellington was informed by a Captain of the possible racial bias in late September of 2015. Ellington asked the Detective assigned to the audit, at the conclusion of his initial audit of Green's cases, whether there was evidence of a pattern of bias in Green's neglect of his cases. The Detective reported that he did not find a pattern of bias.

When Swanson's claim of retaliation became known, the Sheriff referred the matter to County Human Resources to follow up with Swanson about his concerns.

9. NINTH CONCERN: Anecdotal information: The OIR Report states at page 32, footnote 18 that:

<sup>18</sup>We were also informed anecdotally that over the years several supervisors had run Green out of their detective unit and required him to find another detective assignment. Of course, this approach is not beneficial to the organization, since the moved employee simply becomes another supervisor's problem.

RESPONSE: Concern regarding inclusion of anecdotal information that was not investigated:

If asked by OIR, CCSO would have provided verifiable reasons to support changes in Green's unit assignments. The Sheriff respectfully requests that footnote 18 be deleted.

10. TENTH CONCERN: OIR's interpretation of events leading to first F4 report on Green: The OIR Report states on page 41:

The argument advanced by CCSO about why it chose not to accurately report to DPSST the conditions under which Green retired is not persuasive. As it had been explained to CCSO, the purpose of the form was to alert DPSST about circumstances that might warrant its further review of the officer's status. In cases where the employing agency lists "retired," there is no reason for DPSST to pursue further. It is not for the employing agency to determine whether the investigation was of the sort that might impel DPSST to revoke certification. More significantly, CCSO knew that it was not coincidental that Green decided to retire once allegations were brought forward and an investigation had been initiated. In short, the type of situation presented in Green's departure from CCSO, by all indicia, is precisely the circumstance that the form entry "retired under investigation" is intended to capture. It is a serious misstep<sup>25</sup> that CCSO initially declined to fill out the appropriate entry on the PAR.

RESPONSE:

In the absence of written guidelines from DPSST, Undersheriff Ellington in good faith reasonably believed the service-level investigation was a performance matter that would not result in termination and therefore not trigger a review by DPSST. At the time Undersheriff Ellington first filled out the F4 form, the potential criminality of Green's neglect of work was not known to Undersheriff Ellington or Swanson.

11. ELEVANTH CONCERN: Unclear reference and possible factual inaccuracy to facts in support of Recommendation 21. The OIR Report states on page 29:

Recently, allegations that first appeared as part of employee-generated litigation attracted media coverage, and eventually CCSO referred the allegations to an outside agency for a criminal investigation. However, that

referral did not occur as a result of any internal review process, but only in response to the public attention. Clearly, CCSO is in need of protocols and a system to more timely review claims and lawsuits with an eye toward accountability

RESPONSE:

If this is a reference to a tort claim and recently filed lawsuit generated by a former employee, then the underlined information is incorrect and does not support the conclusion. The Sheriff's Office received service of the former employee's tort claim on March 28. PSU received information of the tort claim on April 5, and began its preliminary inquiry on April 9 into the allegations raised. Ultimately PSU contacted the Clackamas County DA's Office on May 17 to inform them of potential criminal conduct of an employee identified in the tort claim. The following day, the DA investigator interviewed the former employee and based on that information referred the matter for further investigation to the Multnomah County District Attorney's Office, who referred the investigation to the Portland Police Bureau. The Sheriff respectfully disagrees with the conclusion that the referral did not result from any internal review process. In fact, it did.