OFFICE OF THE
CITY AUDITOR
ENSURING OPEN AND ACCOUNTABLE GOVERNMENT

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Independent Police Review
Mary-Beth Baptista, Director
1221 S.W. 4th Avenue, Room 320, Portland, Oregon 97204
503-823-0146
www.portlandoregon.gov/auditor/ipr

September 5, 2012

Shauna Curphey
520 SW Sixth Avenue
Suite 1040
Portland, Oregon 97204

Dear Ms. Curphey,

Thank you for your follow up correspondence dated August 24, 2012. My apologies for the length of time it has taken me to respond to your original inquiry regarding the Citizen Review Committee appeal process. In the past few months, I have had several discussions with deputies in the City Attorney's office regarding the issues you raised.

During these discussions we reviewed the Portland City Code (PCC) and administrative rules pertaining to IPR and CRC in their entirety. In particular, we reviewed subsection 3.21.070.L and the legislative history surrounding changes made in 2002 that dealt specifically with the issue of IPR and CRC's authority in officer involved shootings (OIS) and in-custody death (ICD) investigations. We found that Council was explicit in "PCC 3.21.070.L. Review of closed investigations" that IPR shall have authority to hire a qualified person to review closed OIS / ICD investigations, and the IPR Director and CRC members shall address any policy-related or quality of investigation issues raised in those reviews. The legislative history surrounding the passage of this subsection makes it clear that Council's intent was to limit IPR and CRC's authority - as independent bodies - in these types of cases.

We also reviewed the Portland Police Association (PPA) contract. Subsection 62.1.3 of the PPA contract, approved by Council, states that IPR has no authority to conduct Deadly Force Investigations. We determined that the PPA contract, in combination with Council's stated intent to limit the scope of IPR and CRC authority, precludes IPR from initiating a complaint or an independent administrative investigation into deadly force incidents, therefore precluding the Director from initiating a "complaint" on the subject's behalf per 3.21.120.B.3 (Complaint Type III).

The Portland Police Bureau Directives establishes that the Bureau shall conduct an investigation into deadly force incidents, and all administrative investigations into incidents of deadly force are reviewed by the Police Review Board per PCC 3.20.140.B.1.c. 1 & 2. The purpose of the investigation and the Review Board hearing is to determine whether not the officer's actions were within policy; it is not an investigation into alleged misconduct under 3.21.120.B.1 (Complaint Type I).

Portland City Code 3.21.120.G.4 & 5 explicitly state that only complaints under 3.21.120.B.1 (Complaint Type I) and 3.21.120.B.3 (Complaint Type III) may be appealed to the Citizen Review Committee. Further, nothing in the legislative history surrounding the 2010 changes indicates that Council contemplated or

intended to expand either IPR's or the CRC's current authority as to these matters. Therefore, your client can not appeal the Police Review Board findings recommendations in the policy review of the Keaton Otis OIS (2010-B-0014) to the Citizen Review Committee.

I appreciate your patience as we worked through these issues.

Thank you,

Mary-Beth Baptista
Director

Cc: Jamie Troy, Citizen Review Committee, Chair