

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	) CASE NO.: 1:15-CV-01046
	)
Plaintiff,	) JUDGE SOLOMON OLIVER, JR.
vs.	)
	) <b><u>CITY OF CLEVELAND'S</u></b>
CITY OF CLEVELAND,	) <b><u>MEMORANDUM OUTLINING THE</u></b>
	) <b><u>PLAN TO ADDRESS COMPLETION</u></b>
Defendant.	) <b><u>OF INVESTIGATIONS BY THE</u></b>
	) <b><u>OFFICE OF PROFESSIONAL</u></b>
	) <b><u>STANDARDS IN 2018</u></b>

**I. Introduction**

Following the hearing before this Court on November 21, 2017, the City submits a plan to address resolution of the existing backlog of incomplete investigations pending before the Office of Professional Standards (“OPS”), while also ensuring that public complaints received by OPS in 2018 will be fully investigated and timely completed (hereinafter “the Plan”). The OPS has determined that as of the end of November there were 378 open investigations related to public complaints that remain to be completed. This consisted of 218 open investigations for complaints received in 2015 and 2016, and 160 investigations for complaints that were received by OPS in 2017. Reviewing the number of complaints filed with OPS during each of the last three calendar years, it is contemplated that OPS will receive approximately 200-240 new citizen complaints for investigation in 2018.<sup>1</sup>

The Plan takes into account three identified goals that are to be achieved by OPS relating

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<sup>1</sup> New complaints filed on and after December 1, 2017 will be considered part of 2018 for planning purposes.

to investigations during calendar year 2018:

- (1) OPS will remain timely in completing the investigation of complaints received on and after December 1, 2017;
- (2) Compliance with the investigative processes and reporting requirements established in the OPS Operations Manual; and
- (3) Elimination of the identified backlog of unfinished OPS investigations associated with public complaints received in 2015, 2016, and 2017.

As detailed below, the Plan incorporates the use of current OPS investigators and outside investigative resources to meet the established goals going forward in 2018.

## **II. OPS Management and Administrative Support /Training**

The following discussion is provided to update the Court on current OPS management and administrative support matters, with a brief update on recent investigator training.

### **A. OPS Management and Administrative Support**

As was addressed at the November 21 hearing, the former OPS Administrator has been reassigned to other duties for the City. The OPS Administrator position has been posted nationally and applications are presently being received by the City. A new supervisory position, “Senior Investigator” was approved and has been funded in the City’s proposed 2018 OPS budget. The Senior Investigator will report to the OPS Administrator and will work directly with the investigators in a supervisory capacity to address the quality and completion of OPS investigations.

The proposed 2018 OPS budget also funds the new position of “Community Engagement Coordinator.” While not directly involved in case investigations, the Community Engagement Coordinator will assist in keeping the public directly informed on OPS activities. OPS is presently addressing the agency’s need to assure continuing permanent administrative support. As a result of the extended absence of the agency’s former chief clerk because of serious health

issues, OPS made use of temporary administrative staff support. The use of temporary workers proved problematic. In conjunction with the City's labor agreement with Local 100, OPS is presently working to meet its support needs through the hiring of a permanent secretary<sup>2</sup> for administrative support.

**B. Training**

The Cleveland Division of Police ("CDP") has provided recent training for the OPS investigators concerning approved new police policies that will take effect in 2018. OPS investigators recently observed the new use of force training received by all CDP officers regarding the Division's new use of force policies. The investigators observed use of force training for officers that was conducted in both the classroom and at the firing range. The OPS investigators are further scheduled to receive a one day course of instruction in early January through the Cleveland Police Academy that addresses the use of force policies. Additionally, the OPS investigators have received training on CDP's new crisis intervention policies.

The Director of Public Safety anticipates entering into an agreement in the near term with Cuyahoga Community College that would provide OPS investigators with training that addresses the conduct of investigations within the specific requirements of the OPS Manual. OPS investigators have received initial training on the use of body worn cameras. Body worn cameras were issued to investigators for the purpose of better ensuring that OPS investigators have available audio and video recording capabilities when working at locations remote from the OPS offices.

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<sup>2</sup> As a matter of general information, it is further noted that the previously vacant position of full-time private secretary for the Civilian Police Review Board ("CPRB") has been filled since September, 2017.

### **III. The 2018 OPS Investigation Plan**

The 2018 investigation plan will involve the ongoing investigative efforts of the current OPS permanent and temporary full-time investigators<sup>3</sup>, while also incorporating the investigative efforts and expertise of a private outside contractor with investigative expertise. The City intends to contract with a qualified private vendor or vendors who can provide the City with sufficient investigative expertise to effectively complete the investigations associated with the large existing 2015-2017 backlog of investigations. The use of an outside investigation resource in 2018 to eliminate the backlog will allow the full-time permanent and temporary OPS investigators to direct their efforts into ensuring that investigations of public complaints received in 2018 are kept current and accomplished. The OPS investigators and the outside contract investigators will be required to complete their investigations in accordance with the procedures outlined in the OPS Manual.

It is anticipated that the timeline associated with the City identifying and entering into a contract with a qualified outside contractor and allowing for sufficient transition time for the vendor's investigators to effectively familiarize themselves with the OPS's required processes and procedures would take three to four months. The Plan further establishes that during the several months before the outside investigative resources are brought on board in 2018 that OPS's existing investigators will continue to work on reducing the backlog of 2015-2017 claims while also establishing that investigations for claims received in 2018 will be kept current and timely completed.

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<sup>3</sup> Going into 2018, OPS employs six (6) permanent full-time investigators. An additional six (6) full-time temporary investigators were funded and brought into OPS in 2017 to assist in addressing and reducing the backlog of unfinished investigations from prior years.

**A. OPS Investigator Smart Objectives Established**

In November, the Director of Public Safety, Michael McGrath, and Assistant Director for Public Safety, Laura Palinkas, established “Smart Objectives” to be met by OPS investigators for the balance of 2017. This step was accomplished in an effort to clearly define for the OPS investigators the expectations going forward as the Plan is implemented. The Smart Objectives set out clearly expressed and defined goals to be achieved by both the permanent and temporary investigators. The individual Smart Objectives were not established as milestones, but were entered into to provide the Director of Public Safety with an ongoing objective basis for reviewing and measuring the production and quality of the investigations undertaken by the OPS investigative staff, while also assuring that each investigator had a clear understanding of what was being required. Smart Objectives for the OPS investigators will again be put into place for 2018 following the initial 2017 experience. The agreed upon objectives to be established for 2018 will be reviewed within the requirements of the OPS Manual and will take into consideration such technical assistance and suggestions as are received from the Monitor Team and the Department of Justice (“DOJ”).

The Director of Public Safety will remain informed of how the Smart Objectives in both 2017 and those developed for 2018 are being met by the OPS investigators. The Director will continuously assess the need for investigative resources.

**B. Addressing Investigations by OPS in 2018**

The first goal of the Plan provides that in 2018 “OPS will remain timely in completing the investigation of complaints received on and after December 1, 2017.” In addressing such goal OPS will group the full-time permanent and temporary OPS investigators into three working teams. While working to meet this first goal, the current OPS investigators will also

retain responsibilities related to reducing the backlog of investigations for claims received in 2015-2017.

### **1. Investigations of Complaints Received in 2018**

Two of the newly created OPS investigation teams will be immediately tasked proceeding into the New Year with investigating and staying current with new complaints as they are received by OPS in 2018. Each of these two investigative teams (“current investigations teams”) will be directly supervised by an Assistant Director of Public Safety, one team being supervised by Assistant Director Laura Palinkas and the other by Public Safety Assistant Director Ed Eckart.<sup>4</sup> The Plan requires that investigations for complaints received in 2018, unless otherwise specified, will take no longer than four months to be completed. The Director of Public Safety will meet with the Assistant Directors and the members of the two current investigations teams on a re-occurring bi-weekly basis going forward in 2018 to ensure that the quality and timelines established for the investigations are being achieved.

As noted above, a new OPS Administrator will be hired in 2018 along with a Senior Investigator. The direct supervisory involvement of the Director and the Assistant Directors of Public Safety in reviewing and managing the progress of the two current investigation teams will be reduced as the new Administrator and the new Senior Investigator become fully integrated into the OPS management structure and can assume effective supervisory oversight. The first and overriding priority for the investigators will be to remain current on all complaints that have been filed on or after December 1, 2017.

For planning purposes it is contemplated that each of the 2018 team investigators will

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<sup>4</sup> AD Ed Eckart oversees the Integrity Control Unit for Public Safety that is tasked with investigating misconduct for all Public Safety employees outside of the Division of Police. He has overseen, reviewed and managed many high-profile and complex investigations

complete at least two new 2018 complaints each month going forward. There will be a lag in the accumulation of new 2018 investigation assignments as the 200-240 new complaints anticipated to be received during 2018 begin to arrive over the next several months. During December and the first few months of 2018 it is planned that the investigators on the two current investigations teams will also be able to work on finishing some of their assigned existing investigations from complaints received in 2015-2017. It will be a second level priority for the OPS investigators to finish those cases that are closest to being completed during the early part of 2018.

In addition to addressing the management and administrative support staff described above, OPS will be hiring two (2) new full-time permanent investigators in 2018. It is intended that the two new investigators will be incorporated into the current investigation teams. While the time plan for bringing the two new investigators on board is not yet established, it is believed for planning purposes that it will take approximately six months going into 2018 before the new investigators can be identified, hired, trained, and prepared to effectively undertake the investigations of new complaints.

## **2. OPS Backlog Team**

A third investigative team of full-time OPS investigators will be created and tasked initially with continuing their work to reduce the existing backlog of 2015-2017 of investigations (“the backlog team”). This third team (“backlog team”) will continue its efforts to reduce the remaining 2015-2017 open investigations until such time as the contemplated outside vendor has been retained and become fully effective and capable of accomplishing investigations in accordance with the OPS Manual. The backlog team will be directly supervised by the OPS’s General Manager of Administrative Services, Anthony Scott.

During the early interim period before the outside vendor assumes responsibility for working to complete the backlog of open investigations, the backlog team will also provide support to the current investigations teams. In this respect members of the backlog team will be assigned investigations for complaints received in 2018 in those months where members of the two current investigations teams have each already been assigned two new 2018 complaints to investigate. The backlog team would remain under the supervision of General Manager Tony Scott when working on assigned 2018 investigations. The completion of 2018 investigations is a priority and, unless otherwise specified, such investigations are to be completed by members of the backlog team within four months of assignment. The direct supervision of the backup team will be subject to the direction of the new OPS Administrator once the position is filled and the Administrator has become fully and effectively integrated into the OPS management structure.

**C. The Outside Vendor Investigation Team**

It is recognized, as a practical matter, that the expressed goal of staying current with the investigation of complaints received in 2018, and succeeding years, will require that the existing backlog of open investigations is directly addressed and resolved. The City is committed to ensuring the goals expressed above are effectively met in a manner that will allow OPS to remain current on new investigations. To efficiently address the backlog, the Plan involves the City contracting with an outside vendor or vendors (collectively “vendor”) having expertise in conducting investigations. The anticipation is that the vendor will be able to commit sufficient resources that the backlog of investigations can be completed within calendar year 2018, but with recognition that the work may take up to 12 months. The vendor would be responsible for addressing only the 2105-2017 backlog, leaving OPS’s full-time investigators to focus on staying current and timely completing the investigations of 2018 complaints.

### **1. Request for Qualifications Issued to Find Vendor**

In seeking to identify an appropriate vendor to address the backlog of investigations the City's plan includes the release of a public "Request for Qualifications" ("RFQ") through which the City will invite the submission of qualifications from professional investigation organizations. The RFQ will identify the nature and scope of the work to be accomplished along with identified deliverables to be met by vendors who believe they are qualified. The RFQ will ensure that vendors bidding on the anticipated contract understand that investigations of the 2015-2017 backlog are to be accomplished in accordance with the standards, expectations, and processes established in the Operating Manual approved and adopted for OPS in 2017. The time frame allowed in the RFQ for completing the backlog will not exceed twelve (12) months. The City is working with the Monitor Team and the DOJ to identify qualified potential vendors prior to the public posting of the RFQ.

The City is intending to have the terms of the RFQ completed and finalized by the end of December. After finalizing the terms of the RFQ, the City will proceed in a manner that meets the established requirements authorizing the City to enter into the anticipated public contract that will result. The following provides the Court with an overview of the basic timeline in the process:

#### January 2018

- RFQ will be sent to identified potential vendors and posted on the City's website for other potential vendors to bid. (During the posting period vendors will have the opportunity to submit questions and attend a pre-proposal conference.)
- Legislation authorizing the anticipated contract is introduced and passed by City Council.

- Vendor proposals are received and reviewed by the City to work on finalizing a selected vendor.

February 2018

- A recommendation for the selected vendor is made.
- Final approval is received by City board authorities.
- The terms of the contract are finalized with the vendor.

March 2018

- The anticipated vendor start date is set for March 1, subject to the identification of a qualified vendor by that date.

It is imperative to note that the above timeline is dependent on the response from the posted RFQ. If a response is not sufficient to meet the needs of the City's backlog the City will need to revisit this timeline and consider allowing more time to obtain the appropriate vendor.

**2. Transition to Outside Vendor**

Before the contract with the vendor is entered into, OPS, with the assistance of the Monitor Team and DOJ will develop a transition plan to address the orderly transfer of incomplete 2015-2017 investigations from the OPS investigators to the outside vendor. It is contemplated that within such transition plan that General Manager Scott and the members of the OPS backlog team who have been primarily involved in addressing the backlog of investigations will work directly with the outside vendor team members to ensure a successful transition. The transition period is to ensure the outside vendor team understands and accepts receipt of the unfinished cases to be investigated and in so doing that all members of the vendor team comprehend the OPS mission and structure, the applicable provisions of the Consent Decree, the established OPS case management system, the requirements established in the OPS Manual for

undertaking and completing investigations, the role of the Civilian Police Review Board, the role of the OPS investigator in presenting completed investigations to the Board, and the role of the Monitor Team and DOJ in providing technical assistance and review.

**IV. Conclusion**

The Plan identified to this Court is intended to ensure that the OPS meets the three expressed goals. As 2018 ends, the Plan anticipates that the OPS will be current on their 2018 investigations; that investigations will have been completed in compliance with the standards and procedures contained in the OPS Manual; and that the backlog of open investigations will be eliminated. The City intends to provide the Court with a progress report in early April 2018 that addresses the status of efforts undertaken in the first three months under the Plan presented herein.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the “City of Cleveland’s Memorandum Outlining the Plan to Address Completion of Investigations by the Office of Professional Standards in 2018” was filed electronically on December 15, 2017. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system. Pursuant to the requirements of the Consent Decree the Monitor Team has been delivered a copy of this filing.

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