

CITY OF POMONA: OFFICE OF INSPECTOR GENERAL

Independent Review of an Internal Investigation (“Justice 8”)

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Introduction and Background

A Pomona resident appeared at City Council and at the Pomona Police Oversight Commission and raised concerns about the testimony and conduct of two Pomona Police Department (“PPD”) employees at a preliminary hearing in which eight individuals were eventually held to answer (identified by the complainant as the “Justice 8” prosecution). After being apprised of the allegations, PPD decided to open an investigation. It assigned the case to a third-party investigator in order to promote its objectivity and thoroughness.¹

The investigator reviewed police reports and transcripts of court testimony and interviewed the complainant and the two subject peace officers. Based on this evidence, the investigator ultimately took the position that there were no substantiated violations of policy regarding the allegations. The Chief of Police concurred with the recommendation and found the allegations to be without merit. The complainant was advised of this decision in a detailed letter of notification.

During the pendency of the investigation, the Police Oversight Commission requested the Inspector General for the City Police Department to review the investigation and related materials upon completion and provide an assessment of the quality and fairness of the investigation and the disposition. The following report is intended to be responsive to this request. For the reasons detailed below, we found the investigation to have met industry standards and agreed with the Chief’s finding that no policy violations occurred. In reviewing the report, we also found some process issues worthy of further reflection and made several recommendations designed to address them.

The Allegations

The complainant alleged that a detective and officer of PPD made false statements when they testified in the preliminary hearing of eight defendants. The complainant further alleged that she was removed from court as a result of the officer falsely claiming that she had threatened her when she was in the courtroom on an earlier date of the multi-day hearing.

¹ This approach is often taken by agencies to handle administrative cases of particular sensitivity or complexity.

The complainant told the independent investigator that she had attended two days of the multi-day preliminary hearing.² She said that she heard arguments that indicated that the detective and officer had been untruthful when they testified. The complainant specifically recalled hearing that the detective's testimony about racial slurs being directed toward the security guard was disproven by video evidence. The complainant acknowledged that she had actually not been in the courtroom when the detective and officer testified. The complainant was asked whether the inconsistencies between the videos shown in court and the officer and detective's testimony were a mistake, poor job performance, or intentional false statements to keep the defendants in custody. The complainant indicated that she could not definitively answer that question.

The complainant further alleged that while one of the defense attorneys was making his closing argument, a person laughed when the attorney referred to his client as a "young Caesar Chavez". The complainant believed that the person who laughed was the Pomona officer, and she told the person that she was going to "hold your ass accountable". The complainant said that she was removed from the courtroom when she returned for allegedly using her cell phone in the courtroom and making these threatening comments the previous date. The complainant acknowledged uncertainty about whether the person who she had seen laugh was the Pomona Police officer. The complainant believed that her removal from the courtroom was at the behest of the officer because of her earlier comment.

The complainant alleged that she had spoken to the Chief about the case being transferred to San Bernardino. She stated that she had called the number provided several times and never received a return call.³

The Underlying Incidents

There were a series of incidents in Pomona starting with a confrontation between a security guard and two street vendors after the security guard advised the vendors that they could not set up on private commercial property. That encounter led to a physical confrontation between one of the vendors and the security guard. PPD was called and, after interviewing the vendors, decided not to arrest either of the parties.

Activists supporting the vendor then came to the location and confronted the security guard. PPD officers responded to the location when the Department received a "911"

² The complainant acknowledged some uncertainty regarding the specific dates of her attendance.

³ The Chief has indicated to the IG that at some point he did provide the complainant with his cell phone number, but he never received a call from her regarding this matter. The Chief did acknowledge that the complainant has subsequently successfully called him to express concern regarding another (unrelated) issue.

call alleging one of the participants had a firearm. The security guard and one of the activists were briefly detained, but PPD again elected not to arrest either.⁴ Another involved activist was arrested when it was learned that she had an outstanding warrant.

The activists then traveled to the police station to protest the activist's arrest and the failure of PPD to arrest the security guard for his alleged assault of the street vendor. While at the station, another individual became frustrated at his inability to enter the station due to the protestors and threw a bottle in the direction of some of them. The protestors then caught up with the man while he was in his car, ordered him out of the car, and challenged him to fight. The man got out of his car, went to his knees and apologized, thus ending the encounter. The activists then returned to the place of employment of the security guard.

Several hours later, the security guard returned to the business, where he again encountered the vendor activists in the parking lot. He and the activists engaged in mutual pepper spraying; he then ran into his workplace, where he was allegedly assaulted by some of the defendants. The security guard also alleged that the car he had been driving had been vandalized by some of the vendor activists.

On the date of these incidents, the officer who was named in the subsequent complaint responded to the security guard's place of business on two separate occasions. On the second response, the officer prepared a crime report. As part of that response, the officer interviewed the security guard. A portion of that interview is captured on the officer's body worn camera.

The detective (who would also be named in the resident's complaint) was assigned to conduct follow-up work on the incidents. The detective conducted a second interview of the security guard that was recorded on body-worn camera. He also conducted an interview of the man that had had the confrontation with the vendor activists after they followed him near his residence.

A third incident involving the activists occurred in Victorville in the County of San Bernardino, and the San Bernardino Sheriff's Department requested that the investigations in Pomona be joined with its criminal investigation. The San Bernardino District Attorney then filed charges against eight defendants.

The detective testified at the preliminary hearing. His testimony included statements provided to him by the two victims. The officer also testified at the preliminary hearing including his interview of the security guard.

⁴ The security guard told PPD that one of the activists did display a firearm during the confrontation but was not on scene when the police arrived. That person was never conclusively identified.

The Internal Investigation

The investigator assigned to the case reviewed body-worn videos, police reports, and court transcripts. The investigator also interviewed the complainant as well as the subject detective and officer.

In his administrative interview, the detective described the interviews with the security guard and the second victim that were part of his investigation. The detective further advised that, as a result of the third incident that occurred in San Bernardino County, the San Bernardino Sheriff's Department requested that the incidents be consolidated. The Sheriff's Department also asked to take the lead investigative role and PPD acquiesced in that request. The detective indicated that agencies often designate a lead when incidents occur across multiple jurisdictions.

The detective explained that initially the damage to the car which the security guard was driving was estimated at \$600, but that this was before he had the opportunity to review the damage in detail. The security guard later revised the estimate of damage as \$3,000 to \$4,000.

The detective acknowledged that he had been able to see some of the videos of the various confrontations and incidents, but that some of them were shown to him for the first time when he testified at the preliminary hearing. The detective further described a specific, previously unseen video that a defense attorney had presented at the hearing: it showed a confrontation with one of the defendants in which no racial epithets were heard. This evidence was in potential contradiction to what the security guard had told him.

The investigator found that the testimony of the officer and detective were consistent with their police reports and the interviews of the security guard and the other victim. The investigation further revealed that the officer was not in the San Bernardino County Superior Courthouse on the date that the complainant believed that she had had a verbal encounter with him and was, in fact, working a patrol assignment in Pomona that day.

As a result, the investigator concluded that the allegations against the officer and detective were without merit.

Inspector General Review

The IG reviewed all the investigative materials, including the interview transcripts of the complainant and two subject PPD personnel, the attendant police reports, and the preliminary hearing transcripts. The IG also reviewed the relevant body-worn camera footage of the various incidents. Based on that review, we found that the outside investigation met industry standards. We concurred with the findings of no policy violations with regard to the subject detective and officer relating to the allegations of false testimony. Based on the evidence obtained, we also concurred that the subject officer was not the person that the complainant encountered at the preliminary hearing.

The IG has long considered allegations of misconduct to provide an opportunity to not only determine whether a violation of policy occurred, but also to consider whether the investigation revealed areas for improvement. We offer the following suggestions based on our review of the investigative materials.

Complainant Interview

The interview of the complainant was thorough and provided an opportunity for the complainant to explain each of her concerns regarding the conduct of the detective, officer, and any other related issues.

During her interview, the complainant was advised by the investigator of the importance of providing a truthful statement. The complainant was further requested not to share her statement with anyone involved in the investigation.

Our experience with complainants and best practices suggests that advising a complainant of her need to be truthful is unnecessary and potentially off-putting. Moreover, any advisement not to share information about the incident with others can also be seen by the complainant as an unreasonable request. While in this case, the complainant continued with the interview, there could be times in which the “chill” of these advisements could undermine a complainant's candor or willingness to participate. That risk outweighs any potential benefit of the admonitions that were given here.

The IG learned that such advisements are not generally given to complainants by PPD internal investigators. To provide uniformity, it is recommended that outside investigators be advised in the future that the use of such advisements is not a favored practice in Pomona.

RECOMMENDATION ONE: Whenever an outside investigator is contracted to conduct an administrative investigation, PPD should advise the investigator to

refrain from advisements about the need to tell the truth and not to share information about the incident with others.

Detective and Officer Testimony

A review of the case materials shows that both the detective and officer testified at the preliminary hearing consistent with what the two victims told them during their interviews with them. To the degree that the victims' statements may have been contradicted by video evidence, such contradictions go more toward their credibility than any indicia that the detective or officer falsified testimony, since they were merely relating what was told to them.

A review of the preliminary hearing transcripts suggested that the victims' statements to the officer and detective were potentially contradicted by video evidence regarding the following issues:

- Whether during the various confrontations, racial slurs were directed at the security guard
- Whether during the initial confrontation between the security guard and the male vendor, the security guard was grabbed by the neck and choked.

As noted above, the preliminary hearing transcripts corroborated that some of the video recordings introduced were being seen by the testifying officers for the first time. Ideally, the detective and officer would have had an opportunity to review such recordings and compare them to what the victims told them. Unfortunately, this important pre-hearing preparation was not effectively done in this case.

The circumstance of the case being handled out of county may have factored in the officer and detective's lack of opportunity to view all relevant videos prior to their testimony. However, to the extent possible, PPD personnel should be advised to request that they be provided with the opportunity by the prosecution team to review any video of the event(s) to which they are being called to testify.

RECOMMENDATION TWO: PPD should advise its personnel that when they are called to testify, they request from the prosecutor and/or lead detective the opportunity to review any video evidence that relates to their testimony.

Venue of the Prosecution

The complainant also alleged concern about incidents that occurred in Pomona being handled outside of the County. However, because the prosecution alleges a conspiracy of criminal conduct in which alleged acts occurred in both Los Angeles and San Bernardino County, venue is legally appropriate in either jurisdiction. Moreover, the question of proper venue is a matter that could be raised by the defendants in court proceedings.

