
WASHINGTON STATE OFFICE OF INDEPENDENT INVESTIGATIONS

7.01 Review of Prior Investigations

Category: Investigations

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PURPOSE

The purpose of this policy is to establish criteria for OII review of prior investigations of deadly force by a law enforcement officer if new evidence is brought forth that was not included in the initial investigation and a decision as to whether OII will conduct a new investigation.

SCOPE

This policy applies to all submissions to OII requesting a review of a previously conducted investigation of a deadly force by law enforcement.

DEFINITIONS

Preliminary screening – A screening process conducted by a member of the OII Investigation Review Team to determine whether a submission meets the criteria for an OII review i.e. an identifiable incident of fatal use of deadly force and an assertion of new evidence that was not included in the initial investigation.

Full review – A full review is a process that occurs if it is determined that a submission meets the criteria for an OII review including an assertion of material new evidence. This review will include a thorough assessment of the information provided or subsequently obtained, a presentation to the Investigation Review Team and a recommendation to the director as to whether a new investigation should be opened.

New investigation – A new investigation will only be opened if, after a full review is conducted by the Investigation Review Team, the director determines that there is material new evidence that was not included in the initial investigation. A new investigation will

include a complete and thorough investigation into the use of deadly force and will result in a final case report in accordance with OII investigative protocols.

Involved Officer – has the same meaning as defined in RCW 43.102.010(8).

Conflict of Interest - An actual or perceived conflict of interest may occur when an individual's interest, activity, or employment influences or appears to influence their ability to objectively review, investigate, or make decisions in a particular case. A conflict of interest may be based upon family, friendship, financial, social, employment, or other interests. Examples include, but are not limited to, a personal, familial, business or employment relationship with any of the persons involved in the incident, with the involved agency or initial investigating body.

Investigation Review Team – The Investigation Review Team will be comprised of OII personnel designated by the director. It will consist of no less than three members for any given review. The members will include the director of investigations or their designee. All members of the team will have significant expertise in homicide investigations or investigations involving law enforcement use of deadly force. The members of the team assigned to a particular case will be screened for any conflict of interest.

Material evidence – Evidence that reasonably could affect a decision made by a prosecuting authority.

POLICY

OII has the authority to review prior investigations of deadly force by an involved officer, and may investigate that use of force, if new evidence is brought forth that was not included in the initial investigation. RCW 43.102.030(1)(b).

Review or investigation of these cases must be prioritized based on resources and other cases under investigation with the office. RCW 43.102.050(4). These reviews will initially be limited to prior investigations of use of deadly force that resulted in death.

OII will open an investigation if there is material new evidence, as defined in this policy.

New evidence may include, but is not limited to, the following:

- Previously unknown witnesses that observed the use of force or the events preceding the use of force.
- Previously known material witnesses whose statements were not available or not obtained during the initial investigation.
- New information that significantly impacts the credibility of a material witness.
- Material changes in previously included eyewitness accounts.
- Previously unreported material conflicts of interest or misconduct by officers or others involved in the initial investigation, consistent with the Washington State Criminal Justice Training Commission (CJTC) Conflict of Interest Assessment Form or otherwise determined by the Investigation Review Team.
- Material video or audio recordings that were not available or obtained during the initial investigation.
- Material physical evidence that was not previously known or collected by investigators.
- New or additional forensic testing that could demonstrate a material change in facts believed to be true during the initial investigation.
- New or additional expert opinion that could demonstrate a material change in facts believed to be true during the initial investigation.

PROCEDURE

OII will receive requests to review prior investigations by written submissions, including through its website. The submission must include the name of either the involved officer or the person against whom force was used. The submission must also include a description of the new evidence and how that evidence is material to the investigation. Any person or organization may request a review.

To determine whether there is material new evidence, the following procedure will be followed:

1. A submission will be assigned to a member of the Investigation Review Team.
2. The assigned member will conduct a preliminary screening as defined above. During the preliminary screening, the assigned member will also screen for conflict according to 7.02 Conflicts of Interest - Investigations policy.
3. If a submission meets the established criteria, the team member will make reasonable efforts to obtain any additional information that may be necessary to thoroughly assess whether OII should open a new investigation. This may include, but is not limited to, requesting additional information from the person who requested the review, an attempt to obtain the initial investigative file, and a review of any court records and any statements made by the prosecuting attorney.
4. The case will then be presented to the remainder of the Investigation Review Team, who will determine whether there is material new evidence that was not included in the initial investigation.
5. A written summary of the initial investigation, the new evidence, and the recommendation of the Investigation Review Team will be provided to the director.
6. The director will determine whether a new investigation shall be opened.

If the director determines that there is not material new evidence that warrants opening an investigation, a written notice of that decision will be provided in accordance with the notification procedure outlined below.

If the director determines that an investigation will be opened, a lead investigator will be assigned the case after a conflict of interest assessment has been conducted. A new investigation will include a complete and thorough investigation into the use of deadly force using any investigative steps deemed necessary by the lead investigator in the manner set forth in the OII investigative protocols. At the conclusion of the new investigation, a final case report will be completed and disseminated as set forth in agency protocols and the matter will be referred to the prosecuting authority.

Communications and Liaisons

When a submission has been received by OII, acknowledgment will be sent to the requestor. If the requestor is an impacted person or family member, a point of contact for the family will be assigned. If the requestor is not the impacted person or family member, efforts will be made to notify the impacted family or a representative that a review of the incident has been requested. The involved officer will also be notified.

If the director determines that there is not material new evidence that warrants opening an investigation, written notice of that decision will be provided to the following:

- The impacted family, or their representative, if they made the submission for review or if they requested such notification
- The involved officer
- The involved agency
- The original investigating agency or independent investigation team
- The person requesting the review

Once those notifications have been made, the decision will be posted on the OII website. A decision not to open a new investigation will not prompt a news release unless there has been significant public inquiry or comments pertaining to the request to review.

If the Director determines that an investigation will be opened, written notice of that decision will be provided to the following:

- The impacted family, or their representative
- The involved officer
- The involved agency
- The original investigating agency or independent investigation team
- The person requesting the review
- The prosecuting authority

Notice of that decision will be posted on the OII website and the media and community representative will be notified. If not already assigned, a family and tribal liaison will be assigned.

In addition, the OII website will document all submissions received and reflect the current status i.e. "received," "under review," "declined to open new investigation," or "new

investigation opened.” If a new investigation is opened, the status will be listed with other current investigations.

OII will maintain and disseminate all records associated with all submissions in accordance with the Public Records Act, records retention schedules, and all applicable state laws.

ROLES AND RESPONSIBILITIES

Director

- Responsible for designating the Investigation Review Team and reviewing any potential conflicts of interest for that team.
- Responsible for final determination of whether a new investigation should be opened.

Investigation Review Team

- Responsible for the preliminary review, full review and recommendation to the director as to the whether a new investigation should be opened.
- Responsible for completing conflict assessments in compliance with 7.02 Conflicts of Interest - Investigations.

Director of Investigations

- Participant on the Investigations Review Team, unless there is a conflict of interest.
- Responsible for assigning a lead investigator if a new investigation is opened.
- Responsible for reviewing any potential conflicts of interest for any investigators involved in the new investigation.

Director of Communications and Community Relations, or designee

- Responsible for ensuring that the status of any submission is updated on the OII website.
- Responsible for ensuring that the required notifications are made and proper liaisons are assigned, as needed.

RELEVANT LAW AND OTHER RESOURCES

RCW 43.102, et.seq.

RCW 42.56 – Public Records Act

CJTC Conflict of Interest Assessment Form

7.02 Conflicts of Interest – Investigations



Approved By: _____
Roger Rogoff, Director

Date: _____
6/2/2023

Revision History

Date	OII Staff Responsible for Revision	Summary of Revision
6/2/23	Jessica Berliner	Added conflict assessment requirement and reference to OII Policy 7.02 Conflict of Interest – Investigations.