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April 11, 2007

Deputy Chief Scott Gerlicher
Minneapolis Police Department
City Hall
350 South 5th Street, Room 130
Minneapolis, MN 55415

Re: Proposal for Audit of Complaint Investigation Process

Dear Deputy Chief Gerlicher:

I am very pleased to submit this proposal to the City of Minneapolis for an audit of the Police Department's internal complaint investigation process. As I believe you are aware, I have worked with the Department in the past in different capacities, including the defense of civil claims against officers, providing training on use of force issues, and in representing the city during discharge grievance arbitrations. During my work with discharge proceedings, I became especially familiar with the internal affairs function and the department's then-existing philosophy and practices with regard to disciplinary decisions. While I expect that things have changed considerably during the intervening years, this background provides some degree of appreciation for the culture and history of the department.

As reflected below, I have substantial experience in the area of police disciplinary investigations and practices. This has included serving on the POST Board ad hoc committee to develop the statewide model policy for conduct unbecoming a peace officer, extensive investigative experience, developing the two-week IA course at the William Mitchell College of Law, serving as an outside employment misconduct investigator for the State of Minnesota, and serving in a senior command capacity as director of the Minnesota DNR Office of Professional Standards. I respectfully submit that I am well qualified to perform this work, and that the City will be extremely pleased with the quality of work provided.

EXECUTIVE SUMMARY

The purpose of this audit is to evaluate the complaint, investigation, and disciplinary processes internal to the Minneapolis Police Department and to provide key policy and decision makers with objective feedback concerning strengths, weaknesses, and recommendations for improvement.

This proposal identifies seven (7) areas of audit inquiry. Briefly described, these are:

1. Organizational structure: The clarity of the mission of the IAU and the extent to which organizational structure and resources are aligned in support of the mission.

2. Complaint process, a systems analysis: Is there a documented and defensible system in place for channeling discretion and making decisions about how complaints will be handled? Is there a system for tracking complaints through to disposition?

3. Complaint process, a community perspective: Is the complaint process "user friendly" and respectful toward individuals who seek to lodge complaints against members of the Minneapolis Police Department?

4. Investigative process: Is the IAU managing its resources and fostering a work environment in which investigators are expected to zealously pursue and expose the essential truth underlying complaints?

5. Legal compliance: Are investigations being conducted in accordance with the legal procedural requirements that apply, including *Garrity*, the Minnesota Peace Officer Discipline Procedures Act, the Data Practices Act, etc?

6. Integrity of the process: Does the existing system include transparency, segregation of disciplinary and investigative functions, and insulate investigators from pressures that would impair the zealous pursuit of the truth?

7. Disciplinary process: Is the process for making disciplinary decisions such that it complies with principles of just cause and due process, and are stakeholders kept appropriately informed of progress and outcomes?

The methodology being proposed includes:

1. An initial planning meeting with identified stakeholders to aid in focusing the audit efforts and developing a vision for the format of the final work product.

2. Document gathering and analysis to include all relevant guidance documents and forms.

3. Background interviews to gather a variety of perspectives (internal and external) regarding strengths and weaknesses of the current system.

4. On-scene evaluation and interviewing to address the substance of the audit questions.

5. Analysis and reporting, including a draft report and recommendations, an opportunity for management response, and final report.

Costs for these services would be invoiced on an hourly basis, not to exceed $42,000.

PROPOSED SCOPE OF THE AUDIT

1. **Organizational Structure**
   Key questions:

   → Is the Internal Affairs Unit ("IAU") organized around a clearly articulated mission statement or other charge?

   → Are there performance standards and expectations that govern the work of the various positions within the IAU?

   → Do investigators have a manageable workload such that they are able to give appropriate thought and attention to pending cases? Are investigators held accountable for completion of work and meeting reasonable deadlines?

   → Have investigators received formal training in conducting employee misconduct investigations? Is there an OJT/mentorship program for newly assigned investigators?

   → Do investigators have access to necessary resources (equipment, work space, interview space, recording devices, communications devices, transcription services, etc) to conduct timely and effective investigations?

2. **Complaint process (systems analysis)**
   Key questions:

   → Does the department have a definition and shared understanding of what constitutes a "complaint" (as opposed, for example, to a citizen who witnessed an event and merely has questions about police procedures)?

   → Is there a "sorting" mechanism for complaints (i.e., criminal, minor performance concerns, complaints requiring internal investigation)?

- Have appropriate standards been articulated to channel discretion with regards to guide how complaints should be sorted and handled?

- Is it clear who has (and does not have) the authority to make decisions about sorting and routing?

- Is there a procedure for escalating less serious complaints to a higher level if the subject has a history of similar complaints?

→ Is there a mechanism in place for documenting and tracking the status and disposition of all complaints?

→ Is there a clear and appropriate guideline for how complaints alleging criminal misconduct will be routed and handled?

- Are there provisions for referral to external agencies for criminal investigation in appropriate circumstances?

- Are internal affairs and other investigating officers trained to maintain required sequencing and segregation when complaints allege criminal violations?

→ Do appropriate individuals within the agency have authority to immediately place officers on administrative leave (or alternative assignments) if complaints involve conduct that could present an ongoing danger to the public?

→ Are there systemic delays in the transmission of complaints from those receiving them to criminal investigations, internal affairs or civilian review?

3. **Complaint process (community perspective)**
Key questions:

→ What does the complaint process look like and feel like from the perspective of a community member?

- Is there an enforced policy requiring department members to provide information and assistance to individuals wishing to make a complaint?

- Are department members helpful and respectful to complainants in directing them to appropriate individuals and resources?

- Are complaint forms written in plain language (multiple languages)? Do the forms seek an appropriate (as opposed to an overly burdensome) amount of information?

- Are accommodations available for non-English speaking complainants?

4. <u>Investigative processes</u>

Key questions:

→ Is there an appropriate mechanism in place for prioritizing investigations?

→ Are investigators expected to develop a plan for investigations and review the plan with a peer or supervisor before commencing work? Does the plan involve a thoughtful approach to evidence gathering and interview sequences? Is the level of effort to be expended commensurate with the gravity of the alleged offense and other competing priorities?

→ Is collaboration among investigators encouraged and allowed in the planning of investigations, interviewing, and analysis of evidence? Do supervisors take an active role in assuring high quality work?

→ Do investigators establish appropriate rapport with complainants? Do investigators treat complainants with dignity and respect? Do investigators appropriately manage complainant expectations as to timing, range of possible outcomes, and information that will become available?

→ Do investigators interact appropriately with employee witnesses and subjects of the investigation? Do investigators make appropriate use of *Garrity* warnings to secure information? Is team interviewing allowed/encouraged for critical interviews?

→ Do investigators conduct a complete, probing, and thorough interview with investigative subjects, and allow the individual to respond to the substance of *all* allegations against him or her?

→ Do investigators thoroughly analyze statements, facts, and evidence and probe beneath the surface as "best efforts" to determine the truth?

→ Do investigators have access to examples of high-quality investigative reports? Are there performance standards for the preparation of investigative reports? Is peer review allowed? Is supervisory review conducted for quality assurance?

5. **Legal compliance**
Key questions:

→ Are investigators thoroughly familiar with and do they appropriately apply the provisions of the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89)?

→ How does the department respond to requests for union representation when interviewing employee witnesses?

→ Are there provisions of policy or mechanisms in place that allow investigators to invoke the power of the appointing authority for purposes of using *Garrity?*

→ Are investigators able to correctly apply the provisions of the Minnesota Government Data Practices Act relating to confidentiality of witnesses, investigative data, harassment data, private personnel data, and the limited scope of permissible disclosures pertaining to pending investigations? What resources are available to investigators to aid them in achieving compliance?

→ Do investigators have access to knowledgeable advice (legal or human resources) to guide them through complex issues that may arise during the course of investigations?

6. **Integrity of the process**
Key questions:

→ Are investigators removed from fear of repercussions to the maximum extent possible? Do investigators have a line of reporting that removes them from involvement with operational elements of the police department?

→ Is there a mechanism for investigators to identify and cause investigation of potential misconduct that falls outside the scope of the initial allegations in the complaint?

→ Are investigators segregated from discussions and decisions concerning the appropriateness and severity of contemplated disciplinary action?

→ Do investigators have a "safe harbor" to go to if needing to report interference or non-cooperation with an investigation?

→ Do investigators prepare reports sufficient to support a decision for or against disciplinary action? Do the reports contain findings of fact and a detailed analysis of the evidence?

→ Are requests for additional information or clarification documented through the preparation of supplemental reports?

→ Is there appropriate physical security for, and limitations on access to, investigative and disciplinary data?

7. **Disciplinary process**
Key questions:

→ Just cause.

- What is the process for making disciplinary decisions? Who is involved in making these decisions?
- What factors or reference points are considered in making disciplinary decisions? Are standards and requirements from collective bargaining agreements or other guidance documents considered and followed? How are principles of progressive discipline applied in the decision making process?
- Is disciplinary action meted out in a manner that is consistent and equitable?
- Are there discernable differences between how completed IAU and CRA cases are handled at the disciplinary stage?

→ Due process.

- Are disciplinary orders reviewed by legal counsel or knowledgeable human resources specialists prior to issuance?
- Are officers provided with notice of the charges, a summary of the evidence, and an opportunity to respond before being deprived of a protected "property interest" (e.g., termination, suspension, demotion).

→ Communications.

- Do officers receive timely and appropriate notifications when investigations are completed?

- Do complainants receive timely and appropriate communications when investigations are completed? Are the limitations of the Minnesota Government Data Practices Act considered and followed in communicating with complainants?

→ Record keeping and retention.

- Is the Department in compliance with state law requirements for the maintenance of investigatory data?
- If there is a retention schedule for investigatory and disciplinary files, is the schedule supported by sound business reasons?

METHODOLOGY

Experience teaches that effectiveness and efficiency are not achieved by accident, but through thoughtful planning from the outset. While there must be flexibility to adapt to changing and unforeseen circumstances, I propose the following general methodology for conducting the audit:

1. Planning meeting with identified stakeholders:

   → Identification of outcomes hoped for through audit process.
   → Identification of perceived strengths and weaknesses in current process.
   → Development of ideas for most useful form of final work product.
   → Identification of primary audience for final work product.

2. Document gathering and analysis.

   → All IAU/MPD policies relevant to the internal affairs process.
   → All forms (complaint, rights advisories, form letters, etc.) used in the IA process.
   → Relevant collective bargaining agreements.
   → Disciplinary matrixes.
   → Random sampling of completed investigations (6 "minor," 6 "major" cases)
   → Census of disciplinary letters/orders issued over past 2 years.

3. Background interviews.

   → CRA staff (perceived strengths, weaknesses and differences).
   → Department command staff (perceived strengths and weaknesses of current internal affairs process, information about disciplinary processes).
   → City's representatives in labor arbitrations (perceived strengths and weaknesses, as experienced through prosecution of disciplinary cases).

→ Representatives from city attorney's office who counsel police on disciplinary/employment matters (perceived strengths and weaknesses in complaint and disciplinary processes).
→ Labor representatives.
→ Sampling of complainants and civilian witnesses (ease of access to complaint process, interactions with department staff, communications).

4. On-scene evaluation and interviewing.

→ Work with IAU command and line staff to understand workflow, how cases are presently handled from intake through completion of investigation.
→ Conduct detailed interviews of investigators and supervisors / managers to address questions outlined above, including reviewing completed work product with individual investigators.
→ Conduct detailed interviews of department members involved in making disciplinary decisions to address questions outlined above.

5. Analysis and reporting.

→ Synthesize information from all sources and prepare detailed draft report of findings.
→ Develop recommendations for improvements to investigation and disciplinary process.
→ Review findings and recommendations with key managers and allow for management response to draft report and recommendations.
→ Finalize and submit report.

QUALIFICATIONS AND EXPERIENCE

Legal education

- J.D., William Mitchell College of Law
- Magna cum laude
- Class rank 2/108

Peace officer investigative experience

- Albert Lea, Minnesota (patrol officer, 5 years)
- Annandale, Minnesota (sergeant, part-time, 9 years)
- DNR Enforcement (captain/major, 5 years)

Relevant legal experience

- Defended political subdivisions against employment lawsuits and administrative charges.
- Represented cities in discharge proceedings and discipline arbitrations.

- Litigated labor / PELRA issues through appeal.
- In conjunction with the William Mitchell College of Law, developed and taught a two-week course on conducting police internal affairs investigations.
- Conducted courses for Minnesota Department of Employee Relations on investigative use of *Garrity* warnings.
- Developed and conducted several other ad hoc training programs for police personnel on internal affairs investigation.

Other relevant experience

Attorney/Partner, Greene Espel, P.L.L.P. Investigations:

- Allegation of "selective enforcement" by state senators against state law enforcement officers.
- Allegation that state law enforcement officer – with recent history of employment litigation – was drunk on duty and damaged state vehicle.
- Allegation by country entertainment "television personality" that state law enforcement officer planted evidence to support charge.
- Allegation that senior commanding officer engaged in extramarital affair while on duty.
- Allegation that senior commanding officer impersonated an on-duty officer during the commission of a crime in another jurisdiction.
- Allegation that canine officers mishandled evidence.
- Allegation that police officer sexually assaulted and harassed reserve officer.
- Allegation that officer engaged in criminal sexual conduct with a minor.

Section Manager, Minnesota DNR, Enforcement Division

- Assigned by Commissioner to establish "Office of Professional Standards" within the DNR to conduct impartial investigations of employee misconduct allegations.
- Established systems, procedures and protocols for investigations, case tracking, data storage, data practices compliance, evidence handling, and reporting.
- Selected and trained staff to perform investigations.
- Prioritized, assigned, and supervised investigations, testified at disciplinary hearings.

Practitioner, Everett Law, LLC

- Developed internal affairs investigation manual.
- Conducted training for Minnesota Public Employers Labor Relations Association on internal investigations.
- Trained officers from local and county jurisdictions to conduct internal affairs investigations.
- Developed and delivered training courses for Minnesota Department of Corrections on conducting internal investigations and dealing with post-disciplinary return-to-employment issues.
- Presently completing major case audit of investigation for State of Minnesota, Department of Employee Relations.

COMMENCEMENT AND COMPLETION OF WORK

Work would begin on this project in June or July depending on the needs of the City and its ability to move forward with the audit. Completion of the audit is projected, but not guaranteed, to occur within 90 days.

COST AND TERMS

Costs for this audit will be billed on an hourly basis at a rate of $165 per hour. While I will maintain primary responsibility for the audit and be involved on a day-to-day basis, other staff may be used to assist with the completion of discrete tasks under my direct supervision and control. This will result in reduced billing rates for completion of those tasks. Time will be recorded in 1/10th hour increments to avoid rounding up. Invoices will be submitted on a monthly basis for work completed, with payment expected within 30 days. The cost for this audit is guaranteed not to exceed $42,000. While it is expected that the cost of the audit will not reach the price cap amount, the cap amount is adjusted upward to accommodate for presently unforeseen circumstances that may arise.

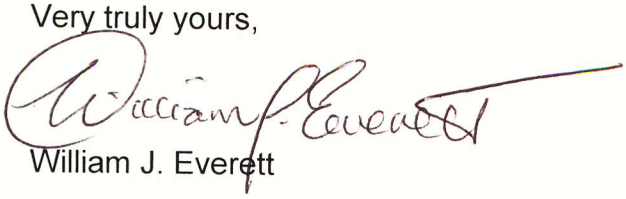
Actual, customary, and reasonable out-of-pocket expenses will be included in billings. All expenses (except for mileage) will be documented by receipts. There will be no charge for photocopies, mailing, secretarial, or other customary overhead expenses.

DATA PRACTICES ISSUES

Completion of the work contemplated under this proposal would require the City of Minneapolis and the Minneapolis Police Department to grant access to data that may be classified as private or confidential under the Minnesota Government Data Practices Act ("Act"). Everett Law, LLC agrees to be bound by the

requirements of the Act in its storage, use, dissemination, and security with regard to such data.

Very truly yours,



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