

The City of Portland, Oregon

 portlandoregon.gov/ipr/81418

Fesser Investigation

March 3, 2021

The Independent Police Review (IPR) has released its investigative report and recommendation regarding the Portland Police Bureau's involvement in the arrest of Michael Fesser in cooperation with the West Linn Police Department. The investigation examined whether seven Portland Police officers inappropriately assisted the West Linn Police Department in the arrest.

- [2020-B-0008 Investigation Report](#)
- [2020-B-0008 IPR Recommendation](#)

Office of the City Auditor
Independent Police Review
Investigators: Casey Clithero, Eric Berry
Report Date: 6/23/20

Confidential Investigative Report

Incident Date: 2/25/2017
Case #: 2020-B-0008
Complainant: Michael Fesser

Involved Members Interviewed:

Officer	DPSST	Assignment	Allegation Category	Allegation #
Sgt. Kenneth Duilio	34491	Tactical Operations	6	1
Patrick Murphy	44162	Tactical Operations	6	2
Kameron Fender	50793	Tactical Operations	6	3
Jerry Ables	36303	Tactical Operations	6	4
John Billard	44160	North Precinct	6	5
Charles Asheim	46067	Tactical Operations	6	6
Lt. James Dakin	25235	Tactical Operations	6	7

Witness Members Interviewed:

Officer	DPSST
Det. Jeffrey Becker	34352
Det. Brian Sitton	27241
Det. Cheryl Waddell	29997
Sgt. Peter McConnell	28715
Det. Jason Harris	34584

Citizens Interviewed:

Paul Buchanan, Attorney for Michael Fesser
Chaplain Clyde Lewis

Applicable Directives:

Directive 830.00 - Arrest Without Warrant, second revision, effective 04/13/12

Allegations:

1. Sergeant Kenneth Duilio, #34491 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)
2. Officer Patrick Murphy, #44162 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)
3. Officer Kameron Fender, #50793 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Case #2020-B-0008

Independent Police Review Investigative Report

4. Officer John Billard, #44160 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)
5. Officer Jerry Ables, #36303 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)
6. Officer Charles Asheim, #46067 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)
7. Lieutenant James Dakin, #25235 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Incident Overview:

On 2/25/17, Portland resident Michael Fesser was arrested by West Linn Police Department (WLPD) detectives, with the assistance of officers from PPB's Gang Enforcement Team (GET). Mr. Fesser's arrest related to a WLPD investigation which alleged Mr. Fesser stole money from his former employer, A&B Towing. PPB personnel had contact with WLPD Detective Tony Reeves and WLPD Lieutenant Michael Stradley as they arranged and coordinated Mr. Fesser's arrest.

Mr. Fesser later reached financial settlements in a wrongful arrest lawsuit filed against WLPD, as well as an employment discrimination lawsuit against A&B Towing. Subsequent media coverage raised significant public concern regarding the circumstances of how WLPD's investigation of Mr. Fesser was initiated, as well as the actions of WLPD personnel during the investigation.

On 2/24/20, IPR opened this investigation to review how PPB came to assist WLPD in arresting Mr. Fesser, and determine whether the involved PPB officers engaged in misconduct.

Investigator Comments:

All materials quoted, including grammatical and spelling errors, are published as written. Further, due to WLPD Detective Tony Poitras' legal name change to Tony Reeves, the names Poitras and Reeves refer to the same person and are used interchangeably throughout this report.

Investigation Narrative:

Media Coverage

IPR first became aware of the circumstances of Mr. Fesser's arrest following the publication of a 2/12/20 *Oregonian* article entitled "Old-boy-style Racism' by Small-town Cops leads to \$600,000 Payout to Portland Man" (Exhibit 1), authored by Maxine Bernstein. The article discusses the events leading to the settlement of two lawsuits filed by citizen Michael Fesser against West Linn Police Department and A&B Towing, stemming from a wrongful arrest complaint filed by Mr. Fesser in 2018.

According to the article, Mr. Fesser was accused by his employer, Eric Benson of "skimming proceeds from auction sales," and WLPD opened an investigation after Mr. Benson approached WLPD Chief Terry Timeus and asked for assistance. A&B Towing is a business in Southeast Portland, and has "no ties to West Linn." In the article, Mr. Benson and Mr. Timeus are characterized as "fishing buddies." The article indicates that prior to WLPD's investigation, Mr. Fesser had "brought concerns of racial harassment by co-workers" to Mr. Benson, and indicated that "other employees called him racist slurs and one asked him how he liked a Confederate flag that was fastened to a pickup parked in the tow company's lot." On 2/25/17, Mr. Fesser

Case #2020-B-0008

Independent Police Review Investigative Report

was surveilled at his job by Mr. Benson and WLPD Det. Reeves via real-time audio and video. As the surveillance occurred, “racist and crude” text messages were exchanged between Mr. Benson and Det. Reeves. Also in these texts, Mr. Benson expressed concern about a discrimination lawsuit to Det. Reeves, who texted to Mr. Benson: “It’s better that we arrest him before he makes the complaint (of race discrimination). Then it can’t be retaliation.” Other concerning text communication between Mr. Benson and Det. Reeves identified in the article is characterized as follows:

As the surveillance went on, Benson and Reeves exchanged sexually explicit and homophobic banter, referencing themselves and the police chief, and made racist comments about Fesser, their text messages revealed. At one point, Benson told Reeves that he regretted Fesser’s arrest wasn’t going to happen in Clackamas County because he had hoped to “make sure he was with some real racist boys.” Benson added: “Dreams can never come true I guess” and followed up, writing, “Oh did I say that? I’m a bad person. I have some anger issues going on with him right now.”

And:

At another point, Benson sent Reeves a photo of his dog. Reeves messaged, “Hope Fesser doesn’t get her in the law suit.” Benson wrote back, “Hahaha. She is not a fan of that type of folk. She is a wl (West Linn) dog.”

The Oregonian article further indicates that as a result of WLPD’s investigation, Mr. Fesser was arrested on 2/25/17 in Southeast Portland after leaving an auction at A&B Towing. Regarding Mr. Fesser’s arrest, the article indicates:

Although Reeves later admitted that officers hadn’t found any signs of wrongdoing by Fesser during the surveillance, he told another West Linn officer, along with five Portland officers, to stop Fesser as he headed home from work that day about 5 p.m. “My game my rules,” Reeves wrote to the tow company’s owner just before police moved in.

The Oregonian article further indicates that Mr. Fesser was taken to Portland’s East Precinct and questioned by WLPD officers, who confiscated his cellphone. Det. Reeves asked Mr. Fesser for the code to his phone “in case [he] was able to obtain a search warrant,” and Mr. Fesser declined to provide the code. The article further indicates:

Fesser was then taken to the downtown jail in Portland, booked on an aggravated theft allegation and released. That night, Reeves had notified Benson that West Linn police had found a letter in Fesser’s car “about the work place and discrimination” and Benson alerted his fishing buddy, according to text messages obtained by Fesser’s lawyer.

The Oregonian article further indicates that when Mr. Fesser attended his arraignment, he learned that Multnomah County had declined to file charges on the theft charge. In September 2017, Mr. Fesser filed a lawsuit against Mr. Benson for “racial discrimination and retaliation,” which “led Benson to press West Linn police about Fesser’s theft charge, court records show. West Linn police, in turn, asked the Multnomah County District Attorney’s Office to revive the case.” In November 2017, a grand jury indicted

Case #2020-B-0008

Independent Police Review Investigative Report

Mr. Fesser on five counts of aggravated theft based on the testimony of Det. Reeves and Mr. Benson, as well as other witnesses described by WLPD as “shady” and “dirty.” However, those charges were “precipitously dropped” after Mr. Fesser’s lawsuit proceedings produced the text messages between Det. Reeves and Mr. Benson, which Det. Reeves had deleted. Det. Reeves also testified that his text message exchange with Mr. Benson contained “no homophobic or racist remarks sent between them.” Mr. Fesser received a settlement of \$415,000 in his lawsuit against Mr. Benson and A&B Towing.

Of further relevance to PPB, the Oregonian article indicates that WLPD Lt. Michael Stradley, a former PPB Gang Enforcement Team officer, “had told Reeves that Fesser was a gang associate.” Further, “Stradley was the one who helped get Portland gang enforcement officers to assist in Fesser’s arrest.” In a later deposition, Lt. Stradley later “admitted that he hadn’t had any interactions with Fesser for more than two decades,” and “acknowledged that his characterization was based partly on who he remembered Fesser was hanging out with in the late 1980s and 1990s and that he saw Fesser attend gang-related trials.”

PPB Statement

On 2/13/20, PPB published a press release (Exhibit 2) entitled *PPB Provides Further Context for PPB Actions with West Linn PD*. It states:

There has been significant public concern regarding an investigation led by West Linn Police Department officials into Mr. Michael Fesser that resulted in a civil settlement to Mr. Fesser as a result of allegations of misconduct by members of the West Linn Police Department. While the City of Portland was not party to the lawsuit resulting in the settlement, Portland Police Bureau and City resources were used in effecting the arrest of Mr. Fesser. This release is designed to directly describe what is currently known about PPB's involvement and how PPB's interactions with other jurisdictions generally work. Here is some key context based on the information known at this time:

West Linn PD Detective Poitras contacted a PPB Sergeant and requested assistance with an arrest of Mr. Fesser. West Linn Detective Poitras relayed he had probable cause to arrest Mr. Fesser for a felony crime. Mr. Fesser worked in Portland. On February 25, 2017, Portland Police Bureau members assisted with the arrest, then transported Mr. Fesser to East Precinct where he was interviewed by the West Linn Detective. The Officers then transported Mr. Fesser to the Multnomah County Detention Center,

In Oregon, it is legally permissible and common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest. For example, if an officer from another jurisdiction contacts a PPB officer and represents they have probable cause to arrest a subject for domestic violence and they believe the person is in our jurisdiction, the PPB officer will assist and attempt to locate the individual and make an arrest based upon the other officer's representation that there is probable cause for the arrest,

Probable cause means an officer has information to believe a person more likely than not committed a criminal offense,

Case #2020-B-0008

Independent Police Review Investigative Report

Officers in the State of Oregon swear an oath, which includes being truthful and upholding the laws.

Officers rely upon what other officers tell them to be truthful and ethical, such as when probable cause is relayed. There are processes in place internally and externally to discipline, terminate and/or decertify sworn members who are untruthful.

On November 10, 2017, a West Linn Lieutenant contacted a Portland Police Officer regarding an on-going West Linn investigation and represented that there were safety concerns about Mr. Fesser, who had an outstanding felony warrant from Multnomah County related to their investigation. The PPB officer wrote a report to create a vCAD flag for the address identified by West Linn as the victim's address. Flagging an address as a "hazard" in the dispatch system is a common practice across all disciplines who partner with dispatch,

vCAD flags are "hazard flags" in the internal dispatch system. They are used by many law enforcement, fire, and emergency medical services providers and dispatch to share critical information. Examples of critical hazard information could include premise access information, or any officer safety information that will affect the way in which a call is dispatched or any information that will alert the call taker at the Bureau of Emergency Communications to be aware of known issues at an address. Another example could be dangerous and/or known armed subjects at a location.

Relevant Statute

Oregon Revised Statute 133.310(2) (Exhibit 49) addresses the authority of a peace officer to make an arrest without a warrant based on information provided to them by another officer. It states:

A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

Case precedent indicate this authority extends to when an officer is notified there is probable cause to arrest a person.

External Findings Regarding the Conduct of West Linn PD Personnel

On May 29, 2020, the Clackamas County District Attorney's office (CCDA) released its *Brady v. Maryland Report Concerning the West Linn Police Department's Investigation of Michael Fesser*, in which the office determined that WLPD Chief Timeus and Det. Reeves committed Brady violations in the WLPD investigation that led to the indictment in *State of Oregon v. Michael Fesser*. Specifically, the report's conclusion was that that Chief Timeus "was responsible for initiating a criminal investigation outside the City of West Linn based on a personal relationship, which is highly improper," and that the investigation was initiated without evidence that Mr. Fesser was engaging in criminal conduct. The report further

Case #2020-B-0008
Independent Police Review Investigative Report

concluded that Chief Timeus' "failure of leadership created a culture that allowed this to happen" (Page 41).

The report further concluded that Det. Reeves engaged in the following conduct in matters involving Mr. Fesser:

Failure to Preserve Exculpatory Evidence: Det. Reeves intentionally deleted exculpatory and impeachment evidence in the form of text message conversations between Eric Benson and himself that include, but are not limited to, racial epithets/slurs, a motivation to fabricate the theft allegations, and an appearance of improper collusion between the parties to defeat Michael Fesser's civil claims.

Unlawful Recording: Det. Reeves was complicit in recording statements from Mr. Fesser and other individuals during a February 25, 2017, auction without the parties' consent.

Improper Seizure and Disclosure of Confidential Attorney-Client Information: Det. Reeves seized legal paperwork from Mr. Fesser documenting and discussing his legal intentions and information about the filing of a racial discrimination lawsuit against the alleged victim, Mr. Benson. Det. Reeves then provided Mr. Benson with some of this paperwork. His actions were inappropriate and a violation of Mr. Fesser's attorney-client privilege as this was a document Mr. Fesser was preparing with help from his attorney. Even if the document was in some way not considered to be privileged, it doesn't change the fact that Det. Reeves seized this letter, didn't document it in his report and immediately provided it to Mr. Benson.

Failure to Disclose Exculpatory/Impeachment Evidence: In addition to the text messages, the detective failed to disclose or document additional relevant exculpatory/impeachment evidence that includes, but is not limited to:

- *Bias/impeachment evidence about Mr. Benson's fear that Mr. Fesser was going to file a racial discrimination lawsuit.*
- *Mr. Benson's use of racial slurs and epithets.*
- *Failure to include information about surveillance of the February 25, 2017 auction, during which Mr. Fesser did not commit any criminal act, and destruction of notes relating to that auction.*
- *Failure to include information about Chief Timeus' relationship with Eric Benson in investigative reports.*

The weight of the evidence is that these omissions were not merely negligent, inadvertent or due to a lack of experience. The effect was to mislead, as a reasonable investigator would be aware that this information is relevant and material in a criminal investigation. (CCDA Brady Report, Page 38-40)

As a result of its investigation, the CCDA determined that "Det. Reeves' conduct was "of such a nature and degree that our office will not call him as a witness in any criminal case" (Page 39), and recommended to

Case #2020-B-0008
Independent Police Review Investigative Report

the Oregon DPSST that the certifications of both Det. Reeves and Chief Timeus be revoked. Further, the report concluded:

The totality of the circumstances in this particular case indicate a troubling pattern of deceit by omission. Det. Reeves and Chief Timeus failed to adhere to their Brady obligations in this case. Their conduct was not merely negligent, inadvertent or the result of a momentary lapse of judgment. It continued throughout the course of the investigation. It reflects negatively on their honesty, judgment and sense of fair play that every suspect and victim deserves.

(CCDA Brady Report, Page 39)

Civil Litigation Materials

Materials were provided to IPR by Mr. Fesser's attorney Paul Buchanan as well as the CCDA, and are substantial in volume. Materials used in IPR's investigation include those relevant to PPB's assistance to WLPD in Mr. Fesser's arrest on 2/25/17, and include the following:

Mr. Fesser's legal complaint

Mr. Fesser's Third Amended Complaint (Exhibit 4) against the City of West Linn and others asserts in summary that WLPD engaged in "Violations of the First, Fourth and Fourteenth Amendments of the United States Constitution," and that Mr. Fesser was subject to "false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, defamation, and invasion of privacy, as well as unlawful surveillance activity."

(Fesser Third Amended Complaint, Pages 1-2)

Mr. Fesser's complaint is focused on the conduct of WLPD personnel, but contains the following information relevant to PPB's assistance to WLPD on 2/25/17:

19. Nevertheless, immediately following the auction, on the afternoon of February 25, 2017, Sgt. Reeves and Sgt. Boyd, with the participation of Portland Police officers, arrested Mr. Fesser in Portland, based on Sgt. Reeves' and Lt. Stradley's false representations to the Portland Police that the WLPD Defendants had "probable cause" for an arrest.

35. Immediately after the surveillance effort at the Portland auction where plaintiff was employed, Sgt. Reeves' texted "my game my rules!" Moments later, Sgt. Reeves and Sgt. Boyd with the assistance of the Portland Police secured the arrest of Mr. Fesser in public on a city street in Portland as Mr. Fesser was leaving work for the day.

36. Portland police records show that Portland Police officers some of whom, on information and belief, knew Lt. Stradley from his prior service as a Portland Police Officer with the Gang enforcement Team, accepted without question the West Linn Defendants' assertions that there was probable cause to arrest Mr. Fesser. Upon information and belief, Lt. Stradley instructed Portland Police Officers to have Portland Police's Gang Enforcement Team assist the West Linn Defendants in arresting Mr. Fesser, even though the allegations against him were wholly unrelated to any suspected gang activity.

Case #2020-B-0008

Independent Police Review Investigative Report

37. As he was being handcuffed, one of the Portland Police officers who knows Mr. Fesser from Mr. Fesser's years of doing ministry work in local prisons expressed his discomfort with the situation, stating, "Mike, this is not my call. I don't want to be here. We're just assisting West Linn."

Fesser vs. WLPD Interrogatories:

Civil litigation materials provided to IPR contain interrogatories (Exhibit 5) submitted to WLPD on behalf of Mr. Fesser, and were reviewed for relevance to PPB's assistance in Mr. Fesser's arrest. Relevant content is excerpted below:

INTERROGATORY NO. 9: Identify and describe all facts that support or relate to the assertion in paragraph 75 of your Answer that "Portland Police Bureau was involved in the surveillance, arrest, and detention" of plaintiff including the dates of such involvements, the persons involved, the nature of the involvement and all documents that record or refer to any such document.

RESPONSE: Portland Police Bureau report #2017-57472 – Authored by PPB Officer Patrick M. Murphy (DPSST #44162), describing additional PPB personnel involved as Sergeant Ken Duilio, Officer [John] Billard, and Officer Kameron Fender. The narrative of this report describes Sgt. Duilio as having communications with current WLPD Sgt. Tony Reeves regarding probable cause to arrest Fesser. It further describes Officer Billard and Sgt. Duilio as being involved in the traffic stop of Fesser. It describes Officer Billard, Sgt. Duilio, Officer Fender, and Officer Murphy as being present for the arrest of Fesser. Officers Murphy and Fender then drove Fesser to the PPB East Precinct, detaining him within. Officers Murphy and Fender later drove Fesser to Multnomah County Detention Center and lodged him within. Dates of involvement for all above-listed PPB personnel are limited to February 25, 2017. West Linn Police Report #2017-270 – Authored by Det. Tony Reeves (DPSST #44804). Portions of this narrative describe unspecified PPB personnel "staged in the area with the intent to arrest Michael Fesser...following the auction."

Other portions of the narrative describe "...Fesser was taken into custody by Portland Police officers.", "I met with Fesser at the PPB East Precinct." Further, text messages between Det. Reeves and Eric Benson state that PPB personnel "are here" with Det. Reeves while he was assisting in surveillance and that the PPB "Gang unit is in the area not with me." Beyond the documentary information above, Mike Stradley reached out to PPB on or about February 1, 2017, prior to WLPD undertaking its investigation. Stradley knew Fesser from prior police experience and discussed the case via telephone with Dave Hendrie at PPB. PPB declined to take the case because it was below their investigative threshold and PPB couldn't put resources on it. On information and belief, Stradley reached out to two other individuals at PPB, but was unable to get anyone to take the case. Stradley contacted Travis Fields at PPB, who was interested in the case, but had to decline because he was leaving soon on an international motorcycle trip. With that information, Timeus agreed to have WLPD investigate through Tony Reeves, who then contact Sgt. Teig at PPB regarding the case, Fesser's background, and his investigative role. Following arrest, Stradley and

Case #2020-B-0008

Independent Police Review Investigative Report

Reeves contacted PPB to discuss access to the criminal case file and prosecution, as disclosed in the document evidence produced.

On or about March 15, 2017, Stradley spoke with Jason Harris at PPB regarding assisting Reeves with the case. WLPD 000715. Toni Tracy from WLPD emailed Jason Harris at PPB regarding access to the WLPD police report on or about March 16, 2017. WLPD000717. Tony Reeves emailed Toni Tracy, Stradley, and Jason Harris at PPB on March 16, 2017 regarding Harris accessing WLPD police reports on "regin." WLPD000720. Jason Harris responded on March 24, 2017 that he was out of the office, but would like to discuss the case over the phone. WLPD000827. Tony Reeves responded with his contact information that day. WLPD000829. Tony Reeves spoke with Jason Harris over the phone following this e-mail, but does not recall the details, other than the general fact that there was no further information or progress in the Fesser case. On December 28, 2017, Stradley emailed Peter McConnell and Charles Asheim at PPB regarding issuing the flyer of Fesser's photograph in connection with the warrant issued for his arrest. WLPD000728. On February 1, 2017, Tony Reeves emailed Jeff Becker at PPB confirming his discussion with Teig at PPB about the new Fesser case and describing the background and his intent to handle the case.

INTERROGATORY NO. 13: Describe in detail what information the WLPD provided to the Portland Police Bureau regarding WLPD's representation that it had probable cause to arrest plaintiff, including the specific facts alleged in support of probable cause, the dates the information was provided and the persons giving and receiving such information.

RESPONSE: Defendant WLPD objects to the vague nature of the request, because reasonable minds can differ regarding adequately "detailed" descriptions. This Request also seeks information beyond the knowledge of any named defendant. Former WLPD Lt. Mike Stradley communicated with and coordinated with the Portland Police Bureau regarding the facts and circumstances giving rise to the arrest. Defendants Reeves and Boyd coordinated with PPB just prior to the arrest, but provided no details underlying the arrest.

Civil Deposition of Mr. Fesser

A civil deposition of Mr. Fesser (Exhibit 20) was conducted on 8/20/19, and the subject of the deposition were items relevant to his lawsuit against WLPD. In relevant summary, portions of the transcript related to PPB indicate the following:

Mr. Fesser stated that he recognized Sgt. Duilio, and indicated that when he was pulled over, Sgt. Duilio walked up to his vehicle at the traffic stop and stated "'Michael, I have nothing to do with this. I'm just here assisting West Linn Police'" (Fesser Deposition, Page 50, Lines 10-11). Mr. Fesser indicated that he was arrested by WLPD, and that WLPD officers placed him in handcuffs and into the back of a PPB patrol vehicle. Mr. Fesser was transported by a PPB officer to East Precinct, where he was placed in a holding cell for approximately 15 minutes. Mr. Fesser was then walked to an interview room where WLPD officers identified themselves, and began asking questions about alleged theft, and asked for the code to his phone. Once the interview concluded, Mr. Fesser was again placed in a holding cell for approximately 10-30 minutes, and was then placed in a PPB vehicle and transported to the Justice Center by a PPB officer.

**Case #2020-B-0008
Independent Police Review Investigative Report**Civil Depositions of WLPD Personnel

Depositions of former WLPD Captain Neil Hennelly, former WLPD Lt. Stradley, WLPD Det. Reeves and others were conducted by Mr. Fesser's attorney Paul Buchanan during civil litigation proceedings, and provided to IPR by the CCDA. The depositions were reviewed for relevance to action taken by PPB, and are excerpted and summarized below.

Civil deposition of former WLPD Captain Hennelly (Exhibit 6) was conducted on 8/26/19, and indicates in relevant summary that he testified to the following: The goal was to have PPB run the investigation of Mr. Fesser and have Det. Reeves shadow the Portland Investigator. As a former PPB officer, Lt. Stradley "has everybody in the bureau, just about, I think, on speed dial." (Hennelly Deposition, Page 19, Lines 4-5). When Lt. Stradley conducted outreach to facilitate this request, the PPB member who would normally conduct such an investigation was going on vacation, and Chief Timeus decided that the investigation would be conducted by WLPD Detectives Reeves and Boyd.

Civil deposition of former Lt. Stradley (Exhibit 7) was conducted on 6/19/19, and indicates in relevant summary that he testified to the following: Lt. Stradley recalled that he and Mr. Fesser "had lots of interactions over the years" (Stradley Deposition Page 29, Lines 9-10), but could not recall a specific interaction occurring in at least the prior 20 years, and Lt. Stradley could not recall if he ever arrested Mr. Fesser. Lt. Stradley was enlisted as a resource to contact PPB, due to having served as a PPB Gang Enforcement Team officer and his familiarity with PPB personnel. Lt. Stradley informed Det. Reeves that the case involving Mr. Fesser could be better handled by PPB, because "it sounded like a case that should be thoroughly investigated and I knew it would be hard for [Det.] Reeves to investigate this case by himself" (Stradley Deposition, Page 45, Line 24 – Page 46, Line 2). Lt. Stradley further testified that he contacted PPB on two occasions; the first was at the outset of the investigation because he believed the investigation should be handled by PPB. Lt. Stradley concluded that PPB detectives "just weren't interested" (Stradley Deposition, Page 67, Line 21). The second contact was after WLPD had probable cause to arrest Mr. Fesser, when Lt. Stradley connected Det. Reeves with Sgt. Duilio to arrange for GET to make the arrest. Lt. Stradley testified that he contacted PPB Sgt. Duilio because PPB did not generally have the resources to standby and assist on an arrest, but that GET had the capability to do so. Lt. Stradley further testified that he had no involvement in the planning of Mr. Fesser's arrest. When asked if he knew whether Portland Police did its own analysis as to whether there was probable cause to arrest Mr. Fesser, Lt. Stradley stated "I have no idea" (Stradley Deposition, Page 54, Line 1).

Civil deposition of Det. Reeves (Exhibit 8) was conducted on 3/15/19, and indicates in relevant summary that he testified to the following: Det. Reeves reached out to PPB Sgt. Teig about wanting to open an investigation into Mr. Fesser on or before 2/1/17 at the direction of Lt. Stradley. Det. Reeves indicated that he recalled speaking with Sgt. Teig "about the case, Fesser's background, and Portland Police Bureau's unwillingness to take it" (Reeves Deposition Page 79, Lines 8-10), but could not recall what Sgt. Teig stated about Mr. Fesser's background, or why PPB would not take the case. Det. Reeves also emailed PPB Det. Becker (Exhibit 14) because the case involving Mr. Fesser "seemed like a pretty substantial embezzlement case and something [he] had not done before" (Reeves Deposition, Page 77, Line 7). Det. Becker did not provide Det. Reeves with any assistance, and Det. Reeves could not recall if Det. Becker returned his email.

Case #2020-B-0008
Independent Police Review Investigative Report

Det. Reeves further testified that he had probable cause to arrest Mr. Fesser based on witness accounts. Det. Reeves indicated that PPB chose the location where Mr. Fesser would be arrested, and believed it was Lt. Stradley who had communicated with PPB to arrange the arrest. Det. Reeves learned about Mr. Fesser's "criminal past involving gangs" from Lt. Stradley, and also learned that "the gang unit was involved - or aware of him and that's who was choosing to do the arrest" (Reeves Deposition, Page 166, Lines 20-24).

Police Records

PPB Operations Plan: In facilitating WLPD's request for assistance in arresting Mr. Fesser, PPB created an operations plan (Exhibit 9) for the mission to make the arrest. The document lists Mr. Fesser's demographic, vehicle, and descriptive information. Personnel assignments subsection lists Sgt. Duilio, and Officers Billard, Fender, Murphy, and Ables, and WLPD Detective Poitras as participants in the mission. The *Background Information* subsection indicates "Fesser is suspected of defrauding the owner of A&B Towing (Agg Theft 1). Fesser has no arrests since the mid-1990s. S1 is wearing Grey shirt/ grey vest and blue jeans. PC for Agg Theft 1." *Takedown Instructions* subsection indicates: "Traffic stop after leaving auto as directed by UC (undercover) detectives." *Mission* subsection indicates:

Assist West Linn Police detectives by making a traffic stop and arrest of Fesser after he leaves auction. West Linn Detective Poitras will be UC plain clothes and call Sgt Duilio when Fesser leaves the Auction. Sgt Duilio will then relay the info on X9. Uniform GET will then conduct a Traffic Stop and take Fesser into custody.

WLPD police report #2017-270 (Exhibit 10) contains Det. Reeves' initial and supplemental narratives describing his activities in the investigation of Mr. Fesser. Det. Reeves' initial narrative indicates that he was contacted by Mr. Benson, who reported that Mr. Fesser had been embezzling money from his business. Mr. Benson estimated his losses at more than \$200,000 over a period of 3 years. Det. Reeves' narrative further indicates that his resulting investigation revealed that Mr. Fesser had embezzled at least \$10,800 between 10/22/16 and 2/11/17 by selling vehicles for a higher price than he reported to Mr. Benson and keeping the difference. Det. Reeves' narrative further indicates that he "contacted later various auction customers to verify the prices and confirmed the discrepancies."

Det. Reeves' supplemental narrative for the above report indicates the following regarding PPB's assistance in Mr. Fesser's arrest:

On February 26th, 2017 Detective Boyd and I attended the A&B Towing auction located at 5838 SE 111th Ave. Portland, Or. Portland Police Staged in the area with the intent to arrest Michael Fesser for Aggravated Theft 1 following the auction. After the auction Fesser was taken into custody by Portland Police Officers without incident.

Det. Reeves' supplemental narrative further indicates that after Mr. Fesser's arrest, he searched Mr. Fesser's vehicle, which contained the auction list, a title to a vehicle sold at the auction with \$500 attached to it, and several other documents labeled with Mr. Fesser's own dealership. Once at the PPB East Precinct, Mr. Fesser agreed to an interview, and responded to questions about missing money by stating "I don't have anything to say about that." Det. Reeves ended the interview, as "it was clear at this time that Mr. Fesser was not going to participate."

Case #2020-B-0008
Independent Police Review Investigative Report

Det. Reeves' supplemental narrative further indicates that when examining the paperwork seized from Mr. Fesser's vehicle, he found correspondence between Mr. Fesser and a law firm. Det. Reeves "sealed all of the items in a large envelope," and contacted Mr. Fesser and indicated that he could retrieve the items.

Of note, Det. Reeves' narrative does not contain documentation of communication with PPB in advance of the date of Mr. Fesser's arrest, or other information outlining the process for arranging assistance from PPB. Det. Reeves' narrative also does not include information indicating that he was party to audio and video surveillance of Mr. Fesser during the auction, his text communication with Mr. Benson, or the fact that he shared correspondence between Mr. Fesser and a law firm with Mr. Benson. Further, the date of the arrest is incorrectly listed as 2/26/17.

vCAD entry for BOEC call #PP17-57475 (Exhibit 11) indicates that on 2/25/17, Officers Ables, Billard, Fender, Murphy, Asheim, and Sgt. Duilio responded to SE 102nd Ave. and SE Foster Rd. in Portland for a traffic stop. Initial remarks were: "NO PLT BLK RANGE ROVER." The call was cleared by J – Assignment Completed. Dispatcher remarks indicate that Mr. Fesser was transported to PPB's East Precinct at 1814 hours, and later transported to MCDC at 1845 hours.

PPB police report #2017-57475 (Exhibit 12), authored by Ofc. Murphy documents the 2/25/17 arrest of Mr. Fesser, and identifies PPB Officers Fender and Billard, Sgt. Duilio, and WLPD Det. Poitras as involved officers. Narrative information indicates the following:

While working in the area of SE 102nd Ave/SE Foster, we assisted West Linn PD with the arrest of Michael Fesser. Det. Poitras had been in contact with Sgt. Duilio and stated that he had probable cause to arrest Michael Fesser. Ofc. Billard and Sgt. Duilio initiated a traffic stop with Michael Fesser, and Ofc. Fender and I arrived as cover. Michael Fesser was taken into custody, and placed in the back of our patrol car. We then transported Michael Fesser from the stop location to East Precinct, and we placed Michael Fesser into a holding cell upon arrival at East Precinct. Once Det. Poitras had concluded speaking with Michael Fesser, we transported Michael Fesser to MCDC

PPB Report #2017-681577 (Exhibit 13), authored by Ofc. Asheim, indicates in relevant summary:

On 11/10/17 at 1700hrs I was contacted by Lt. Stradley regarding an ongoing large theft investigation where SB Michael Fesser was the main suspect. SB Fesser had just been indicted in Multnomah County for Theft I and at the time of this report a felony warrant exists for his arrest in this case. West Linn Police had investigated this large theft case as it was reported to them by VI Eric Benson, a resident of their city. In the past SB Fesser had made threats to assault VI Benson, his employees, and to damage his business. This business, A&B Towing, is located in Portland at 3455 SE 21st Ave. Lt. Stradley was concerned that when SB Fesser was arrested he may follow through with these mentioned threats. SB Fesser has a [REDACTED]. Based on this information the listed business should be flagged with this information for the next 90 days if possible. Officers who are dispatched to calls at this location should be

Case #2020-B-0008

Independent Police Review Investigative Report

made aware of the specific threats and parties involved for their safety and so they can properly respond.

WLPD Outreach to PPB Detectives

During this investigation, IPR obtained and reviewed email messages acquired by identifying PPB employees and key words relevant to PPB's assistance in the arrest of Mr. Fesser. IPR queried the email accounts of those PPB employees including the involved GET officers and others, using the key words "West Linn," "Fesser," "Timeus," "Poitras," "Reeves," "Stradley," "Krueger," "Benson," and variations of "A&B Towing." The search produced a series of emails documenting outreach by Det. Reeves to PPB Sgt. Teig and Det. Becker regarding WLPD's investigation of Mr. Fesser. In addition to the retrieved emails, Mr. Buchanan provided further emails to IPR that were obtained through civil litigation discovery.

Det. Reeves' 2/1/17 email to PPB Det. Becker (Exhibit 14) indicates:

I just talked to Teig about a case I would like to work on Fesser. He is auctioning cars for A&B Towing and skinning money. The owner is willing to front cash for me to buy cars and get PC for a warrant. This is all new to me and I will definitely need some help and I hear you are the guy for that. Can you contact me at your earliest convenience?

Det. Becker's 2/16/17 email to Det. Sitton (Exhibit 15) indicates that Det. Reeves' inquiry was referred to Det. Sitton. Text from the email contains the following:

*Hey I tried calling your desk but no answer so I figured I'd email instead. West Linn Detective Tony Poitras has an embezzlement case that involves possibly \$100,000 in losses. It involves A&B towing and an employee/contractor that sells cars at auction. He has allegedly been skimming profits for the last three years. They initially came to me since I'm a car dude but it's becoming apparent that this is not in my wheelhouse. There's supposedly two books being kept and other financial records involved. Can you, or another WCC Detective contact the West Linn detective to advise him on how to proceed? I can assist on whatever car information is needed or any other way I can be useful. I just don't want to embarrass myself on the financial end of things.
Thanks for any help. The info is below.*

Det. Waddell's 2/22/17 email to Det. Reeves (Exhibit 16) indicates that the inquiry resulted in Det. Waddell providing a referral to Det. Reeves. Text from the email indicates the following:

Detective Poitras:

I was forwarded your information regarding advice on how to proceed with a \$100,000 embezzlement case involving A&B Towing. I suggest you reach out to the Oregon DOJ on this one and here are some contact names and numbers if you don't have any. [Contacts omitted].

A 3/17/17 email from Lt. Stradley to WLPD Administrative Assistant Toni Tracy (Exhibit 17) was provided to IPR by Mr. Buchanan. Text from the email indicates the following:

Case #2020-B-0008
Independent Police Review Investigative Report

Toni,

*I talked to Jason Harris today at PPB. He is going to help Tony with his case on Michael Fesser. They guy who was stealing from A and B Towing. Jason told me the Mult. County DA's Office still does not have any reports. I'm guessing where you sent it, they did not get to the correct place. Will you please contact the Mult. County DA's Office and find out where they need the aggravated Theft 1 reports. Will you also send a copy of the report to Det. Jason Harris at: Jason.Harris@portlandoregon.gov. Thank you!
Strad.*

A 12/28/17 email from Lt. Stradley to Ofc. Asheim and Det. McConnell, states: "Pete and Charlie, Get this flier out to whoever you think! Strad." That email contained an attached flyer (Exhibit 19) created by WLPD and entitled "Officer Safety Info." The flier displays a photograph of Mr. Fesser, lists Det. Reeves as the investigating officer, and contains the following narrative information:

Michael Fesser D.O.B. [REDACTED] has a felony warrant as of 12/ 28/ 17 at 1057 hours. Fesser is known to work at MLK Auto 7062 N.E. MLK, Portland, OR 97211 and has access to multiple vehicles. He has been seen at the dealership recently. His actual home address is unknown. Fesser also frequents Highland Christian Center located at 7600 NE Glisan St, Portland, OR 97213. He checks in at this location every Sunday at around 1130 hours. Fesser is 6' 5" tall and weighs approximately 200 LBS. Any help in locating and arresting Fesser on his warrant would be appreciated.

A 12/30/17 email from Ofc. Asheim to Lt. Stradley (Exhibit 18), provided to IPR by Mr. Buchanan, states:

I printed this up and it is in the North Precinct all-box. On the port flier we got that also and were able to ID the guys they were looking at. We will continue to look for Fesser and now all of North Precinct will too. Take care, Asheim.

For further information regarding the above emails and subsequent actions involving PPB Detectives and WLPD, please see the *Interviews Conducted* section below.

INTERVIEWS CONDUCTED

Mr. Fesser declined to be interviewed for this investigation, however, IPR interviewed Mr. Fesser's attorney Paul Buchanan to identify areas of concern regarding Mr. Fesser's 2/25/17 arrest. Further interviews were conducted with PPB members regarding the content areas of WLPD's 2/1/17 outreach to PPB detectives, in addition to the GET operation to assist WLPD in the arrest of Mr. Fesser on 2/25/17.

All interviews were audio recorded and professionally transcribed. Summaries of relevant portions of those interviews follow in this report, and are not intended to memorialize all statements made during the interviews. Further, filler language such as "um," "uh," and the like were omitted for brevity and readability where appropriate. Content expressed in active voice without quotations are paraphrased representations of statements made during interviews. For full context and understanding, transcripts should be read in their entirety and are present in the case file.

Case #2020-B-0008
Independent Police Review Investigative Report

4/16/20 Interview with Paul Buchanan, Attorney for Mr. Fesser

Mr. Buchanan indicated that he is interested in learning if there is any standard for how PPB operates when assisting another agency in making an arrest. Mr. Buchanan believes the documentation suggests that PPB “didn’t perform any of their own analysis of whether there was probable cause for arrest and just participated” (Lines 52-54) in the arrest of Mr. Fesser. Mr. Buchanan expressed concern with Lt. Stradley’s involvement in Mr. Fesser’s arrest, indicating that “Stradley, because of his former role at the Portland Police was the primary conduit between West Linn and the Portland Police for this whole issue” (Lines 145-148). Regarding Mr. Stradley, Mr. Buchanan further stated:

I'm sure this is not anything like the worst case of this but where you have somebody like Stradley who essentially testified in summary that, you know, he remembered Michael from literally 30 years ago or so and based on that memory and nothing really else. Couldn't testify that he remembered Michael ever being arrested, testified that he ever saw Michael doing anything improper but he believed that Michael was associated with gangs, he said, and based on that, 30 years later, he managed to get the Gang Enforcement Task Force involved in an arrest based on, I think, a tremendously flimsy allegation.
(Lines 87-96).

Mr. Buchanan further indicated that Mr. Benson’s only evidence that Mr. Fesser was stealing from him was that “he thought that he should’ve been making more money,” and further stated:

For that to be sufficient for not only the West Linn Police but then the Portland Police, and not only the Portland Police, but the Gang Enforcement Task Force to arrest somebody on a city street, I mean that suggests to me there's something really, really wrong.”
(Lines 104-108)

Mr. Buchanan expressed further concern about the email sent to PPB Det. Becker (Exhibit 14) by Det. Reeves, which he believes may indicate that PPB had more significant involvement in the period leading up to Mr. Fesser’s arrest.

Mr. Buchanan was asked to comment on the alleged statement attributed to a PPB sergeant during Mr. Fesser’s arrest, to the effect of “Michael, this is not my call, I don't want to be here, we're just assisting West Linn.” Mr. Buchanan stated:

I don't know that it was by a sergeant. I'm not sure which officer it was but I guess the significance, I think, it has is it may reflect some insecurity about maybe the propriety of what they were doing, some concern perhaps that maybe there wasn't a legitimate basis for this arrest. I don't know, but I think it could be read that way. I mean if they really thought Michael was stealing hundreds of thousands of dollars from this company, it doesn't seem like they would want to distance themselves from this in that way.
(Lines 221-230)

Case #2020-B-0008
Independent Police Review Investigative Report

Mr. Buchanan believes WLPD did not have valid probable cause to arrest Mr. Fesser, and based this belief on the evidence, depositions of those involved, and the fact that “they didn’t have a very compelling argument on that” during civil litigation. Prompted by the statement in Mr. Fesser’s lawsuit (Exhibit 4) that “Lieutenant Stradley made false representations to the Portland Police that the West Linn PD defendants had probable cause for an arrest,” Mr. Buchanan indicated that he was not “privy” (Line 358) to specific statements made to PPB by WLPD.

When asked if he believed PPB acted in good faith in assisting WLPD in the arrest of Mr. Fesser, Mr. Buchanan stated:

I don't know, that's a good one or a hard one. You know, I don't think – Portland Police was never the focus of our litigation. You know, we didn't take depositions of any of these people so I feel like the information that I personally have about, you know, what the Portland Police were told and what they knew is not enough for me to confidently say one way or the other on that. I have concern that Portland Police simply accepted this and I think that a lot of the good faith/not good faith to me probably depends on stuff that I don't know.

(Lines 369-377)

Mr. Buchanan indicated that he did not know the substance of what WLPD shared with PPB, but they communicated that they had probable cause. Mr. Buchanan further indicated “I don't have enough information to say with confidence that Portland didn't ask what's that based on and I also have the sense that West Linn probably didn't feel compelled to volunteer that” (Lines 429-432).

When asked what he hoped this investigation would accomplish, Mr. Buchanan indicated:

The police actors here, you know, should have to answer for their conduct in this and there's obviously degrees of culpability among the different people involved and probably even among the different police forces involved, although I do think like there's a lot we don't know about Portland Police still. One thing that I hope is that somebody, you guys I guess, you know, get to the bottom of, you know, what was the Portland Police's involvement in this in the early stages. What are those relationships, you know, that STRADLEY continued to maintain?

(Lines 609-617)

Mr. Buchanan further indicated:

I also think, and I say this to employers all the time, investigations are good things in and of themselves. You know, they send messages to people that you're going to be held accountable and bad things could happen to you and you're going to have to answer questions about your conduct and you're going to face some peril if your conduct is bad, and I think all that is a good thing for the Portland Police because they have so much power. So I'm hoping all those kinds of things sort of fall out of your investigation and if there's bad stuff – you know, if there's bad-faith actions that happen by the Portland Police and I think there might be, I hope the people are held accountable for it.

**Case #2020-B-0008
Independent Police Review Investigative Report**

(Lines 676-687)

IPR Interviews with PPB Detectives**5/22/20 IPR Interview, Detective Cheryl Waddell**

Det. Waddell indicated in summary that she did not recall sending the 2/17/17 referral email to Det. Poitras (Exhibit 16), and that her only recollection of her role in the case involving Mr. Fesser was when the email was provided to her prior to the interview. Regarding Det. Reeves' request for assistance, Det. Waddell stated "it just wasn't anything that we were going to do and I just have not kept it in my memory. It was not anything of substance to me" (Lines 64-66). Det. Waddell stated that she likely received the request for assistance because she was the acting sergeant at the time, and that she did not recall who sent it to her. Det. Waddell indicated that she did not recall having any communication with WLPD before or after assisting Det. Reeves with the referral. When asked why PPB Detectives Division would decline to take the case, Det. Waddell indicated that it was due to the size of the case, and that PPB Detectives are "overworked" and that "we have our own cases" (Lines 186-189). Referring to the email from Det. Poitras to Det. Becker (Exhibit 14), Det. Waddell indicated that the manner in which Det. Poitras planned to establish probable cause was "not the way financial people work. Not the way we do it" (Lines 350-351), but that nothing seemed suspicious about the email. Det. Waddell added that detectives working financial crimes rely on paper trails and records rather than undercover work and confidential informants.

5/25/20 Interview, Detective Brian Sitton

Det. Sitton indicated that when he read the news coverage of Michael Fesser's settlement, he "remembered something coming through our office about a tow company and an auction. It rang a bell for me, and that was it." Det. Sitton stated that when he was notified by IPR of the email sent to him by Det. Becker (Exhibit 15), "I was completely surprised to see that email," and "oh, look at that, this did come across my desk definitively" (Lines 81-83). Det. Sitton and Det. Waddell sit back-to-back in the detectives' office, and he did not recall getting the email, or if or in what form he may have shared it with Det. Waddell.

Det. Sitton further did not recall Det. Becker attempting to call him, or if he returned Det. Becker's call. Det. Sitton indicated that when such requests come through the detectives' office, they "try to figure out who's going to be the best to serve it" (Lines 125-126), and that "it's not uncommon for us to refer things to other agencies on the state level if we think that it would be better served there" (Lines 143-147). Det. Sitton could not recall who he talked to about the case but believes he may have talked with Det. Becker or Det. Harris. Det. Sitton stated: "I didn't have anything to do with this case other than receive this email and I didn't have any intention of working this case or know any of the facts of the case" (Lines 327-329). Det. Sitton further indicated that he did not have any communication with Det. Reeves, and does not believe he sent or received any other emails regarding Mr. Fesser.

5/25/20 IPR Interview, Detective Jeff Becker

Det. Becker indicated in summary that he was ordered by Sgt. Teig to contact Det. Reeves because "he [Reeves] had a case that involved A&B Towing, which he knew that through my other duties I had some familiarity with." As a VIN inspector, Det. Becker was required to visit tow lots on a regular basis and inspect vehicles for the purpose of identification. Det. Becker "had no knowledge of theft at AB Towing

Case #2020-B-0008

Independent Police Review Investigative Report

prior to talking to the detective of West Linn” (Lines 103-104). When asked what he recalled about his conversation with Det. Reeves, Det. Becker indicated:

What I recall is what I wrote in the email to Detective Sitton which was that, you know, three years ago I would have to just refer to what I wrote in the email which was that he told me that Michael Fesser was embezzling money from A&B Towing, and he estimated that the total theft was in excess of \$100,000. I don't know how he arrived at that sum, but that's what he told me. And then he told me that he was looking to do a case for the investigation into this theft of that money, and he explained to me basically that involved some ledgers and some books stuff that I have no familiarity with. So, as he explained the case to me, I quickly became aware that it had less to do with actual motor vehicles and more to do with the actual finances. And so, yeah, that's the probable cause he described to me was theft of money via car sale auctions.

(Lines 110-122)

When asked if there was anything of concern shared by Det. Reeves, Det. Becker stated:

The only irregular thing was that he was a West Linn detective with a case at a Portland venue which I assume was the reason he was calling us is so he could get the case to the proper agency which is what I attempted to do by sending it to people who do financial cases.

(Lines 159-163)

When asked why he referred the inquiry on to Det. Sitton, Det. Becker stated:

As I said, I don't have financial forensic accounting investigation skills. I do car, and now I do computer forensics and related things, but I don't do bookkeeping/financial crimes, and he described an embezzlement case which by the instrumentality of the car, that would be what he was doing allegedly was skimming profits and then keeping some kind of record of it, either A&B or him or both. I don't know. But I don't do financial crime investigations, particularly not that at that time. I was a police officer, not a detective.

(Lines 170-178)

Det. Becker indicated that he did not perceive of the WLPD investigation as in any way improper based on his conversation with Det. Reeves. Det. Becker did not speak with anyone else from WLPD, but followed up with Sgt. Teig , and believes he spoke with Det. Harris, who was the detective assigned to East Precinct where A&B Towing is located. Det. Becker “never received any documents or records or reports about what was alleged,” and “didn't have anything to go on and no work to do” (Lines 300-303). The last thing Det. Becker recalled about the case involving Mr. Fesser was his email to Det. Sitton, who did not email him back. Det. Becker was not aware of the GET operation to assist WLPD in arresting Mr. Fesser.

5/28/20 IPR Interview, Detective Peter McConnell

Det. McConnell indicated that he was a detective assigned to DCT at the time of the WLPD investigation of Mr. Fesser. Regarding the investigation, Det. McConnell stated:

Case #2020-B-0008

Independent Police Review Investigative Report

I was not involved in this investigation. I did not participate in any way to my recollection. I was aware that a request had been made to look into allegations involving Mr. Fesser through – I think at the time it was Lieutenant Mike Stradley of the West Linn PD. He was a former police officer, and I know, but to my recollection, I did not participate in this traffic stop. I did not participate in any investigation, and I don't have any further information than that.

(Lines 85-92)

Det. McConnell was asked how he became aware of the investigation, and stated: "I don't specifically remember. I honestly would be guessing, and my best guess is that I received a phone call or email from Lieutenant Mike Stradley" (Lines 103-104). Det. McConnell further stated: "I don't know when the investigation started or the time period of the investigation. I just don't have specifics. I'm not positive that it was Mike Stradley that told me about it, but that's my belief" (Lines 108-111). Det. McConnell was not aware of any of the details of WLPD's investigation, but assumes that if Lt. Stradley called him, "he gave me an overall that there's some kind of theft involved, but I never looked into the allegations or did any investigation myself" (lines 121-123). Det. McConnell had no recollection of any conversation or email communication with Lt. Stradley, but speculated that this was how he became aware of the investigation. Det. McConnell did not recall whether he referred the matter to anyone else.

When asked if he was aware of the GET operation to arrest Mr. Fesser, Det. McConnell indicated that he did not recall if he was aware of the traffic stop before it occurred. Det. McConnell indicated that he would not have any concern for the veracity of information given to him by Lt. Stradley, and described him as a "fine police officer and an honorable individual" (Lines 243-244) based on having worked directly with him at PPB.

6/11/20 IPR Interview, Detective Jason Harris (Exact quotes notated by audio timestamps pending transcription).

In summary, Det. Harris indicated that he did not provide assistance to WLPD in its investigation of Mr. Fesser, and that he did not do any investigative work on the case. Det. Harris further stated "everything I've learned about the investigation, I've learned in the last few months" (6:10). Det. Harris was not aware of the email communication between WLPD and PPB Detectives in February 2017, and was not aware of the GET operation to arrest Mr. Fesser. Det. Harris indicated that at a time he could not specify, he was contacted by Lt. Stradley and asked to contact Det. Reeves to assist with the case. Det. Harris could not recall any other details of his conversation with Lt. Stradley. Det. Harris contacted Det. Reeves at a time he believes was after Mr. Fesser's arrest, and Det. Reeves informed him that he was busy with other cases, and would call Det. Harris back if he needed assistance. Det. Harris was not contacted again by Det. Reeves.

Det. Harris indicated that he did not receive any underlying information regarding the investigation of Mr. Fesser, and further indicated that he did not review any related WLPD reports when he spoke with Lt. Stradley or Det. Reeves. Det. Harris indicated that he worked on the same shift as Lt. Stradley at North Precinct "for a period of time," and indicated that he would not have any concern for the veracity of information provided to him by Lt. Stradley.

IPR Interviews with Involved PPB Members

Case #2020-B-0008

Independent Police Review Investigative Report

5/11/20 IPR Interview, Officer Jerry Ables

Ofc. Ables indicated in summary that he was not a member of GET at the time of the operation to arrest Mr. Fesser, but was working an overtime shift to assist with the operation. Ofc. Ables further indicated that he did not recall if he stopped at the location of the arrest, and would not be able to recall any dialog or other interaction between Mr. Fesser and PPB and WLPD personnel at the scene. Ofc. Ables indicated he had no role in drafting the operations plan for the mission, but such plans are commonly used and usually written or approved by a sergeant. Ofc. Ables further indicated that agencies providing assistance to one another in making arrests outside their jurisdiction are “fairly rare, but it does happen” (Lines 138-139).

Ofc. Ables indicated that the viewing of documentation in addition to the operations plan and the warrant do not occur in all cases, and did not recall if he viewed any of the information underlying the probable cause to arrest Mr. Fesser. When asked if he would have any concern for the veracity of probable cause communicated by another agency, Ofc. Ables stated:

No. Another officer within my agency or another agency, comes to me and says, hey, I have probable cause to arrest this guy. I take his word for it. That way it's a trusting between all of us together. It's the same thing if I went to Gresham PD and said, hey, I've got probable cause to arrest Joe Blow. Will you help me arrest him?
(Lines 202-207)

When asked if he had contact with Det. Reeves, Ofc. Ables stated: “I couldn't even pick him out of a picture. I don't know who he is” (Lines 269-270). Ofc. Ables further indicated that he recalled talking to Lt. Stradley on only one occasion unrelated to the matter involving Mr. Fesser.

When read the allegations, Ofc. Ables indicated that he did not believe the PPB members involved in the arrest of Mr. Fesser provided inappropriate assistance to WLPD. Lt. Dakin was not listed as an involved member at the time of the interview, and therefore Ofc. Ables did not address the allegation against Lt. Dakin.

5/11/20 IPR Interview, Officer Patrick Murphy

Regarding the arrest of Mr. Fesser, Ofc. Murphy recalled that he understood that he and others would be assisting WLPD with taking Mr. Fesser into custody. Ofc. Murphy indicated that the arrest was for an aggravated theft involving cars and a tow yard, and that officers would be assisting WLPD by conducting a traffic stop of Mr. Fesser near A&B Towing. Sgt. Duilio and Ofc. Billard initiated the traffic stop, and Officers Murphy and Fender were present as cover officers. Regarding the traffic stop, Ofc. Murphy stated:

The stop was a normal traffic stop in the sense that it was calm. Mr. Fesser was taken into custody based on the probable cause that the West Linn detectives had. There was no yelling or use of force or any issues, and Officer Fender and I took Mr. Fesser from the stop location, and we provided transport in our patrol vehicle from the stop location to East Precinct. When we got to East Precinct, we put Mr. Fesser into a holding cell until the West Linn detectives arrived shortly thereafter to bring him into an interview room and speak to him. And once the West Linn detectives were done speaking with Mr. Fesser, Officer

Case #2020-B-0008

Independent Police Review Investigative Report

Fender and I transported him to intake at MCDC. And that was the extent of my or our contact with him.

(Lines 86-96)

Ofc. Murphy indicated that the contact at the stop lasted less than thirty minutes, and that he did not recall having any dialog with Mr. Fesser. Further, Mr. Fesser did not seem combative or agitated during the contact, and no force was used during the arrest. Ofc. Murphy did not recall hearing Sgt. Duilio state "I have nothing to do with this. I'm just assisting West Linn PD" (Lines 225-226) to Mr. Fesser. Officers Murphy and Fender walked Mr. Fesser back to their patrol vehicle and transported him from the stop location to East Precinct, and placed him in a holding cell until WLPD detectives arrived and conducted their interview. Once the interview was concluded, officers Murphy and Fender transported Mr. Fesser to MCDC for intake. Ofc. Murphy did not recall having any dialog with Mr. Fesser during either of the transports.

Ofc. Murphy indicated that he did not have any concern for the veracity of the probable cause communicated by WLPD for Mr. Fesser's arrest. When asked whether PPB conducts any evaluation of probable cause communicated by other agencies when providing assistance, Ofc. Murphy indicated that this is typically done by a supervisor. Ofc. Murphy further indicated that officers are under the impression that the other agency has "done their homework," and is not "just putting out probable cause just for the sake of doing so" (Lines 124-125). Ofc. Murphy added:

When we were told, again via my sergeant, or he was told that these West Linn detectives had probable cause for the arrest, we were all under the impression that it was valid and sounded as such.

(Lines 129-131).

Ofc. Murphy indicated that he did not communicate with Lt. Stradley or Det. Reeves prior to the operation to arrest Mr. Fesser, and did not recall having any previous contact with Mr. Fesser in his duties prior to the operation. Ofc. Murphy further indicated that PPB provides assistance to other agencies infrequently, and that other agencies provide similar support to PPB. On these occasions, PPB uses an operations plan to inform officers of pertinent information such as vehicles, locations, associates, violent history, and any red flags.

Responding to the allegations in this investigation, Ofc. Murphy indicated that all of the allegations against the listed members were "not true." As noted above, Lt. Dakin was not listed as an involved member at the time of the interview, and therefore Ofc. Murphy did not address the allegation against Lt. Dakin.

5/13/20 IPR Interview, Officer Charles Asheim

Ofc. Asheim indicated in summary that he was informed by Sgt. Duilio that WLPD was investigating a theft occurring at a towing company. Ofc. Asheim believed that WLPD Lt. Stradley and a detective had communicated this information to Sgt. Duilio, and that WLPD "asked members of our team to do a stop on Mr. Fesser and arrest him" (Lines 92-94). Ofc. Asheim indicated that he arrived at the scene 8 minutes after the stop occurred, and did not have any role in the stop. At the time Ofc. Asheim arrived, Mr. Fesser was already handcuffed and in the back of a patrol car. Ofc. Asheim had PPB Chaplain Clyde Lewis riding with him, and asked officers at the scene if they needed assistance, and they indicated that they did not.

Case #2020-B-0008
Independent Police Review Investigative Report

At this time, Chaplain Lewis entered a sandwich shop adjacent to the scene, and “that’s where we spent most of our time at the stop” (Lines 118-119).

Ofc. Asheim indicated he was not originally assigned to the operation to arrest Mr. Fesser because it did not begin during his shift, and he did not recall being briefed on the operation. When asked if he had any role in creating the operations plan, Ofc. Asheim stated: “Not that I recall. No” (Line 222). Ofc. Asheim indicated that prior to Mr. Fesser’s arrest, he “had some conversations with Mike Stradley. But I do not recall them at all” (Lines 266-267). When asked if he had any contact with Det. Reeves, Ofc. Asheim stated: “The name sounds familiar just knowing about the case now, but I do not recall speaking with him at all, regarding this case” (Lines 281-282). In further addressing his contact with Lt. Stradley, Ofc. Asheim stated:

Yeah. I can recall Stradley reaching out to us and I know Stradley through multiple ways and that’s about it. I don’t remember what he asked of us or what the questions were. I just remember being aware of this case happening prior to the traffic stop.
(Lines 285-289)

When asked if PPB does any due diligence in evaluating a request from another agency to assist in an arrest, Ofc. Asheim stated:

I would say yes. I mean, certainly, if it’s something like this that’s planned out, someone on the agency that’s asking us to help is going to explain to someone in the Police Bureau why we need your help. You know, why it’s in your city. Here’s an outline of what my case is. How I got to probable cause.
(Lines 246-250)

Ofc. Asheim further stated:

That doesn’t mean that we review every police report. That doesn’t mean all of that. It means, you know, we talk to the investigator. We share information with other law enforcement agencies and figure out how we can assist them.
(Lines 257-260)

Ofc. Asheim estimated that he has taken part in over 25, and perhaps 50 operations in which PPB assisted another agency, and that GET officers are called upon commonly to do so.

When asked to discuss information given to him by Lt. Stradley that resulted in the location “flag” that was the subject of PPB Report #2017-681577 (Exhibit 13), Ofc. Asheim stated:

I don’t recall how he contacted me. I don’t recall if it was, like, phone call or email. At some point, though, I would’ve had to, I believe, talk to him on the phone just because of the specific stuff I put in the report. He contacted us, this would’ve been after the arrest on Foster, and said, hey, he’s been indicted by a Multnomah County grand jury and he’s, basically, making threats to go over and, like, do damage at the place and the employer’s worried about it. He’s in Portland. Can you flag the address for BOEC?
(Lines 373-381)

Case #2020-B-0008
Independent Police Review Investigative Report

Ofc. Asheim further indicated that the BOEC system required that he write a report in order to get the flag into the system, and that he has written reports to create flags in the past. When asked what a location flag means for the involved subject, Ofc. Asheim stated:

The flag has a lot more to do with, like, the location. So, you know, that address – there's a 9-1-1 call to that location, dispatch is going to see all the history and they should be telling responding officers, hey, there's a flag in here from last month saying that there's an ex-employee making threats, and then they'll be aware of that, and if they wanted to pull it up and read the whole report they could.

(Lines 404-415)

Ofc. Asheim indicated that he wrote the report within approximately "1-2 days of being contacted" (Lines 452-453) by WLPD. When asked if PPB does any due diligence before taking such action at the request of another agency, Ofc. Asheim stated:

No. Not when it's coming from another police officer. So, I mean, in Oregon, when an officer tells you I have probable cause and here's what I know, there's statutes and policies that say you should help that officer and work with that officer and unless you have a reason not to believe him, you should take it with the way that they're giving it.

(Lines 467-473)

Ofc. Asheim also cited Mr. Fesser's grand jury indictment as a reason not to question the flag request, and stated: "Now it's not just some cop calling me telling me this. I mean, that means a body of citizens have voted on this also" (Lines 475-477).

Regarding Lt. Stradley, Ofc. Asheim was complimentary and indicated that he was "seen as – as a leader and someone to look up to and who always worked hard and set a good example for younger officers." Ofc. Asheim further indicated that he would not question the veracity of information provided to him by Lt. Stradley. Responding to the allegations in this investigation, Ofc. Asheim indicated that all of the allegations against the listed members were "not true." As noted above, Lt. Dakin was not listed as an involved member at the time, therefore Ofc. Asheim did not address the allegation against Lt. Dakin.

5/13/20 IPR Interview, Officer Kameron Fender

Ofc. Fender indicated in summary that he did not recall many specific details of the traffic stop and arrest of Mr. Fesser, and only recalled that "our unit was tasked that day with assisting West Linn detectives arresting Mr. Fesser" (Lines 65-66). Ofc. Fender became aware that he was partnered with Ofc. Murphy on that day after having read Ofc. Murphy's report prior to the interview. Recounting what he could remember of the traffic stop, Ofc. Fender stated:

As I walked up to the stop, they were already talking to Mr. Fesser and maybe even had taken him into custody. I don't know. I didn't have any interaction like up at the car. I just like showed up at the stop and I think I was standing like on the sidewalk, and that's pretty much all I remember.

(Lines 84-88)

Case #2020-B-0008

Independent Police Review Investigative Report

Ofc. Fender did not recall anything specific about Mr. Fesser's demeanor or any specific dialog, and did not recall there being any "contention" (line 110) between Mr. Fesser and the officers. Ofc. Fender also did not have any specific recollection of what occurred during the transport of Mr. Fesser to East Precinct, the process of holding Mr. Fesser at the station, or the subsequent transport to MCDC.

Ofc. Fender further indicated that "agencies requiring or needing our assistance with investigations is extremely common" (Lines 217-218). Ofc. Fender further indicated that he has had no significant working experience with Lt. Stradley, and has "never" (Line 247) had any contact with Det. Reeves. When read the allegations against the involved officers, Ofc. Fender indicated that each allegation was false. As noted above, Lt. Dakin was not listed as an involved member at the time, therefore Ofc. Fender did not address the allegation against Lt. Dakin.

5/15/20 IPR Interview, Sergeant Kenneth Duilio

Sgt. Duilio indicated in summary that he was contacted by Lt. Stradley, who informed him that he needed assistance in taking Mr. Fesser into custody based on Det. Reeves' investigation into a felony theft. Sgt. Duilio recalled that he was required to obtain approval from Lt. Dakin due to overtime considerations for the officers, and once approved, created an operations plan for the mission. Regarding the operations plan, Sgt. Duilio stated:

The op plan consisted of kind of the background, the history, criminal history, and any sort of threat history of the individual we're going to take into custody, and that what kind of the mission is. The personnel is going to be assigned to it, who the sergeant is, which was me; the case officer, which was West Linn Detective Poitras; and then once that is completed, those go through the chain of command. It goes to our lieutenant for kind of the ultimate approval to, you know, run the mission. That occurred.

(Lines 100-109)

Regarding the information he was given about the investigation into Mr. Fesser, Sgt. Duilio stated:

I talked to Lieutenant Stradley and Detective Poitras, and I don't remember who gave what part, but basically, there is a kind of longer-term investigation where Mr. Fesser was working at A&B Towing and running these auction and that he would sell these cars on a routine basis. Like, I don't know if it was once a week or once a month or whatever it was. And then he would sell it for a certain price, and then he would write down a lower price, report that back to the owner, and then he would pocket the money, or that's what they were assuming. And they said the range, my understanding, was well above, like, \$100,000 and that it was a felony-level theft.

(Lines 261-271)

Further describing his conversations with Lt. Stradley and Det. Reeves prior to the operation, Sgt. Duilio indicated that "Lieutenant Stradley was very kind of basic, and Detective Reeves was a little more detailed

Case #2020-B-0008**Independent Police Review Investigative Report**

on the case” (Lines 282-283). When asked if there was anything unusual or irregular about the case, Sgt. Duilio stated “no” (Line 287).

Sgt. Duilio indicated that for the operation, Det. Reeves informed him what vehicle Mr. Fesser would be driving, and that he would notify him once Mr. Fesser left the auction so that GET officers could affect the traffic stop and arrest Mr. Fesser. Sgt. Duilio recalled that the auction went on “longer than Detective Reeves thought, longer than we were suspecting,” and that officers made the stop and arrest after Mr. Fesser left the tow lot. Describing Mr. Fesser’s demeanor during the stop, Sgt. Duilio stated “Very quiet. I don’t know if he said anything. He wasn’t very talkative” (Lines 161-162).

Regarding the comment “I have nothing to do with this. I’m just assisting West Linn PD” attributed to him in the media and civil litigation materials, Sgt. Duilio indicated that he did not recall making the statement. Sgt. Duilio clarified that it is common for officers to make such statements to limit anger toward them and ensure that questions are directed to the proper agency.

Sgt. Duilio further indicated that WLPD detectives came in behind the officers at the stop, and Officers Murphy and Fender transported and booked Mr. Fesser at East Precinct at WLPD’s request. Sgt. Duilio stated that following the arrest and transport, PPB officers “had nothing else to do on this, so then we just continued to work” (Lines 201-202).

When asked if he had any role in WLPD’s investigation of Mr. Fesser, Sgt. Duilio stated: “Zero. And that goes for all of my officers too” (Line 586).

Asked if he knew why WLPD was investigating Mr. Fesser when the business involved was located in Portland, Sgt. Duilio initially stated, “I don’t know if I knew at that time, but definitely from the same Oregon Live Maxine Bernstein articles, I understand why” (Lines 613-614). Asked specifically whether he knew at the time, Sgt. Duilio stated, “Yeah, I don’t recall that” (Line 616).

Following this exchange, Sgt. Duilio further stated:

I just want to be clear about Sergeant KONCZAL’S last questions. I haven’t thought about it. And again, when Lieutenant STRADLEY first calls me, he kind of explains and – you know, it’s really hard to remember back, but kind of like – I bet you that was – because I would have that questions. Why would you – right? And so, at some point I learned that. I definitely learned that when I read this article, but then certainly, I don’t want to say that he didn’t tell me when he first called me why West Linn was investigating a case in the city of Portland, you know, if the owner lived there.

(Lines 626-635)

Sgt. Duilio indicated that Lt. Stradley has “a great reputation” (Line 403) and that he would not question the veracity of information given to him by Lt. Stradley. Sgt. Duilio clarified that he would still verify

Case #2020-B-0008
Independent Police Review Investigative Report

information independently, follow PPB policy and procedure, and look out for the well-being of his officers regardless of Lt. Stradley's reputation.

5/15/20 IPR Interview, Officer John Billard

Ofc. Billard indicated in summary that Sgt. Duilio received information from WLPD, and that they needed assistance in making an arrest. Prior to the mission, Ofc. Billard was informed by Sgt. Duilio that:

I believe it was that [Mr. Fesser] was committing some kind of a fraud. The way I understood it was that he was in charge of selling cars at some kind of an auction. And he would somehow pocket cash from those sales. I believe it was – he would charge a different price than what he wrote on the books and he would pocket the difference.”
(Lines 153-158)

Ofc. Billard assisted in writing the operations plan for the mission based on information he received from Sgt. Duilio, and did not have any communication with WLPD in advance. Ofc. Billard indicated that requests for assistance from other agencies are common, and stated:

As far as arresting somebody for a mission, if it's in our jurisdiction, then yeah. Portland, you know, helps out quite a bit with, you know, SERT warrants and things of that nature. So, it wouldn't have been uncommon for us to help out on something like that.
(Lines 230-234)

Asked whether PPB performs any due diligence prior to providing such assistance, Ofc. Billard stated:

Not typically. I mean, we trust; otherwise, we wouldn't have – we'd have to have a separate department that goes in and vets everything. You know, if it appears legitimate, you know, on the surface, we all went to the same state academies and things like that, so we would trust that they are operating under the same laws and procedures that we would.
(Lines 222—227)

Ofc. Billard indicated that he would not have any concern for the veracity of information provided by Lt. Stradley. When asked if he had worked with Lt. Stradley in the past, he indicated that he had, and that Lt. Stradley was knowledgeable, treated people fairly, and had a great reputation.

Regarding the mission, Ofc. Billard did not recall if it was his or another patrol vehicle that initiated the stop, and described the arrest was “unremarkable” (Line 100). Ofc. Billard further indicated that Mr. Fesser was polite and did not ask any questions. Ofc. Billard did not recall Mr. Fesser engaging in any dialog. Sgt. Billard also did not have any dialog with WLPD personnel at the scene other than indicating that Mr. Fesser was in custody.

When asked if he would had done anything differently in light of recent media coverage, Ofc. Billard stated: “No. At the time I don't think we would have done anything different. And to this day I'm not sure it would change anything” (Lines 338-340).

Case #2020-B-0008

Independent Police Review Investigative Report

When read the allegations against himself and the involved officers, Ofc. Billard indicated that each allegation was false. As noted above, Lt. Dakin was not listed as an involved member at the time of the interview, therefore Ofc. Billard did not address the allegation against Lt. Dakin.

5/15/20 IPR Interview, Lieutenant James Dakin

Lt. Dakin commanded GET at the time of Mr. Fesser's arrest. When asked what he recalled about the operation to assist WLPD in the arrest of Mr. Fesser, Lt. Dakin stated:

*Sergeant Duilio called me – either called me or emailed me but I'm fairly certain he called me and said that West Linn had requested assistance with a custody mission and I think he said that it was Stradley that called him directly, I think, and essentially he was asking for permission from me to come in early on that day because their shift started at 4:00 p.m. and they wanted to come in at 2:00 p.m. to start this mission and that would incur overtime. And my direction at the time was any deviation from their regular shift had to go through me and I approved the mission. It was a standard custody mission for another agency.
(Lines 80-90).*

When asked what information he was given in advance of the operation, Lt. Dakin stated:

*As best I remember it, Sergeant Duilio told me that Stradley had called him and that they had a suspect that worked at A&B Towing, I think it is, that was a suspect in a felony rob case, something like that or theft and the family was asking for assistance taking him into custody because it was in Portland – or the suspect lives in Portland. That's where they planned the arrest to be; otherwise, they wouldn't have asked for help and we wouldn't have helped them if it was somewhere else. And West Linn is a very small police department so to effect a mission like this, they'd be sending – they'd leave their city uncovered, is what it would amount to so – and this – if I remember right, this person was known to the Gang Enforcement Team at the time for one reason or another. Duilio indicated that he knew who the suspect was, and we are asked to do custody missions for other agencies all the time and it's very standard practice, and so I approved it.
(Lines 135-149).*

Lt. Dakin indicated that approval of the operations plan would typically be the duty of the sergeant, but his approval was required due to the need for officers to work overtime hours for the operation. Lt. Dakin was asked if had any concern for the veracity of WLPD's probable cause to arrest Mr. Fesser, and stated:

No. You know, we – like I said, we do custody missions for other agencies all the time. It's common practice and it's based on a tried-and-true court, you know, an ORS-approved basically standard of good faith. They provide us probable cause and we will move forward with that if a person's in our jurisdiction. You know, we do it with our own agency where flyers and bulletins establishing probable cause for suspects are sent out in emails

Case #2020-B-0008

Independent Police Review Investigative Report

for everybody in the entire Police Bureau to see so that somebody can be picked up when they're seen. There was nothing about this instance that was a red flag to me.

(Lines 178-187).

Lt. Dakin indicated that he did not speak with anyone from WLPD in advance of the operation. When asked to characterize how often PPB provides assistance to other agencies in making arrests, Lt. Dakin indicated that they occur commonly, and that the relationship is reciprocal. When asked if he would do anything differently in light of the resulting media coverage, Lt. Dakin indicated "I would not have done anything differently" (Line 342), and further stated:

Based on what my responsibilities are as the commanding officer of that team and the way we operate and delegate authority, especially on the weekends, I would say no. I think that it was handled perfectly. Sergeant Duilio did what he was required to do which was notify me.

(Lines 332-336)

When asked if he would have any concern for the veracity of information provided by Lt. Stradley, and stated:

No. It's been my experience over the decades, and a lot of this is just watching from afar, is that Mike Stradley had an absolute stellar reputation inside the Police Bureau and outside the Police Bureau with the community, highly respected officer and no, I would not have any issues or any concerns about his veracity.

(Lines 362-367).

When asked if it would be practical for PPB to recreate probable cause for an arrest provided by another agency, Lt. Dakin stated: "No. The criminal justice system would grind to a halt if that was the standard," and added that it "would not be worthwhile" (Lines 386-389). Lt. Dakin further indicated that if he felt any of the information was questionable or untruthful, he would not have authorized GET officers to perform the mission, and stated that he has denied missions in the past. When read the allegation that he inappropriately assisted WLPD in arresting Mr. Fesser, Lt. Dakin stated: "That's false" (Line 419). When asked if Sgt. Duilio and Officers Murphy, Fender, Billard, Ables, and Asheim inappropriately assisted WLPD in arresting Mr. Fesser, Lt. Dakin stated "No, they did not" (Line 427).

5/26/20 IPR Interview, Chaplain Lewis

Chaplain Lewis was contacted and interviewed by IPR because he was riding in Ofc. Asheim's patrol vehicle in his capacity as Chaplain on 2/25/17. However, Chaplain Lewis did not have meaningful recollection of the relevant events of Mr. Fesser's arrest. The audio and transcript for Chaplain Lewis' IPR interview are in the case file for review.

6/16/20 Follow-up Interview, Sergeant Duilio

Case #2020-B-0008

Independent Police Review Investigative Report

Sgt. Duilio was asked if he was aware of any conflict of interest in WLPD's investigation based on Chief Timeus' personal relationship with Mr. Benson, and stated: "Not at all" (Line 51). When asked if it was communicated to him in any way that WLPD's investigation was opened based on that personal relationship, Sgt. Duilio stated: "No" (Line 56). Sgt. Duilio indicated that he was not aware that Det. Reeves was in real time text communication with Mr. Benson during the operation, and was not aware that WLPD Detectives were in contact with A&B Towing employees during the operation. When asked if Lt. Stradley had discussed Mr. Fesser's alleged prior gang activity with him, Sgt. Duilio stated:

No, I think he made a statement of you know he knows Fesser from way back when, or do you know Fesser, and I'd known the name Fesser and that was pretty much it. And just talked about well, we have a case involving him. I have a detective assigned to it. (Lines 102-106).

When asked if Det. Reeves had discussed Mr. Fesser's alleged prior gang activity with him, Sgt. Duilio stated "No, none of that with Reeves" (Line 113). Sgt. Duilio further indicated that neither Det. Reeves or Stradley disclosed to him that Mr. Benson was concerned about a discrimination lawsuit being filed by Mr. Fesser. When asked if there was any indication on his part that WLPD's investigation was inappropriate, Sgt. Duilio stated: "Not at all" (Line 122). When asked if he would do anything differently in light of the resulting media coverage, Sgt. Duilio indicated that PPB would likely have not been involved, and the decision would have been higher on the chain of command.

Sgt. Duilio was asked if he still believed the allegations against the GET officers who assisted in the arrest of Mr. Fesser were "not true" as he previously indicated, and stated: "Correct, not true" (Line 182). When read the allegation that Lt. Dakin inappropriately assisted WLPD in the arrest of Mr. Fesser, Sgt. Duilio stated: "Not true" (Line 187).

Investigator Comments

The investigation into PPB's assistance to WLPD in the arrest of Mr. Fesser elicited further information regarding two additional areas of investigative interest:

- (1) WLPD's initial outreach to PPB Detectives regarding the investigation of Mr. Fesser at A&B Towing; and
- (2) WLPD's communications to PPB in November and December 2017 following the indictment and issuance of an arrest warrant, respectively, for Mr. Fesser.

Regarding WLPD's outreach to PPB detectives, an examination of emails and other communications as well as interviews of the concerned detectives did not reveal information indicating that investigative or supportive action was taken by PPB Detectives Division. Further, the content of emails, depositions, and interviews indicates that PPB detectives were not interested in opening the case, and their involvement culminated in Det. Waddell's referral of Det. Reeves to the DOJ for assistance. For these reasons, I did not write additional allegations related to the involvement of PPB detectives.

Case #2020-B-0008
Independent Police Review Investigative Report

As a result of Lt. Stradley's communication with Ofc. Asheim in November and December of 2017, PPB created a hazard flag for A&B Towing's address based on concerns communicated by Lt. Stradley. Further, Ofc. Asheim circulated a flyer (Exhibit 19) provided by Lt. Stradley that included a photograph, physical description, common locations, and other information regarding Mr. Fesser. Regarding the use of BOEC flags, PPB's 2/13/20 statement (Exhibit 2) indicates the following:

Flagging an address as a "hazard" in the dispatch system is a common practice across all disciplines who partner with dispatch. vCAD flags are "hazard flags" in the internal dispatch system. They are used by many law enforcement, fire, and emergency medical services providers and dispatch to share critical information. Examples of critical hazard information could include premise access information, or any officer safety information that will affect the way in which a call is dispatched or any information that will alert the call taker at the Bureau of Emergency Communications to be aware of known issues at an address.

When interviewed, Ofc. Asheim indicated that there is no established process for due diligence in evaluating flag requests from other agencies. Ofc. Asheim further indicated that such requests are common, and cited Mr. Fesser's grand jury indictment as supportive of the appropriateness of the flag. The flyer depicting Mr. Fesser was sent on the basis of an active arrest warrant, and PPB employees interviewed during this investigation identified flyers and other materials as commonplace. For these reasons, I did not write additional allegations related to the hazard flags or the flyer sent to PPB by Lt. Stradley.

Recommended Findings:

Directive 830.00 directs, in relevant part:

A sworn member may make a custody arrest of a person, without a warrant, if the officer has probable cause to believe that the person has committed any of the following:

- a. Felony.*
- b. Misdemeanor.*

Of further relevance, Oregon Revised Statute 133.310(2) states:

A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

Caselaw indicates that this authority extends to instances in which an officer is notified there is probable cause to arrest a person.

Allegation #1: Sergeant Kenneth Duilio, #34491 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Not Sustained

**Case #2020-B-0008
Independent Police Review Investigative Report**

When interviewed, Sgt. Duilio indicated that his assistance to WLPD was requested by Lt. Stradley and was based on the investigation of Mr. Fesser conducted by Det. Reeves. Sgt. Duilio said he discussed the case with Det. Reeves, and indicated that he did not detect anything unusual or irregular about the case. Sgt. Duilio indicated he prepared the operations plan with the assistance of Ofc. Billard, based on information provided by Det. Reeves and Lt. Stradley. When asked, Sgt. Duilio was not able to state if he knew, at the time of Mr. Fesser's arrest, why WLPD was investigating a crime said to have occurred in Portland.

In a follow-up interview, Sgt. Duilio again indicated that there was no concern on his part that WLPD's investigation was inappropriate, and that he was not aware of any conflict of interest involving Chief Timeus and Mr. Benson. Sgt. Duilio also indicated that during the operation to arrest Mr. Fesser he was not aware that Mr. Fesser was being video and audio surveilled at the auction, and he did not know that Det. Reeves and Mr. Benson were in real-time text communication. Sgt. Duilio further indicated he was not informed by Det. Reeves or Lt. Stradley that Mr. Benson was concerned about a discrimination lawsuit from Mr. Fesser, or that Det. Reeves had communicated with Mr. Benson about that concern. Sgt. Duilio indicated that had the concerning factors later published in the news media been known, PPB would likely not have been involved.

Many of these issues are identified in the CCDA's Brady investigation as information that Det. Reeves failed to disclose in his police reports, or to the grand jury that indicted Mr. Fesser. Given these documented instances when Det. Reeves failed to disclose this information, it is reasonable to conclude Det. Reeves likewise did not disclose any of this information to Sgt. Duilio.

This investigation reviewed media reports, civil litigation materials, email correspondence, and police records from multiple law enforcement agencies. Our review found no explicit indication Sgt. Duilio was given information that suggested WLPD's assertion it had probable cause to arrest Mr. Fesser was improper.

This investigation found that when WLPD officers contacted PPB officers regarding Mr. Fesser, they said there was probable cause to arrest him. Many of the involved officers interviewed for this investigation indicated an understanding that requests for assistance by other agencies are common, and typically based on the word of the requesting officer or agency, with no established process for due diligence to verify the information. All involved officers interviewed for this investigation, including Sgt. Duilio, indicated they commonly rely on information provided to them by other police officers to be truthful and accurate.

This shared understanding is reflected in PPB's press release regarding the arrest of Mr. Fesser, which states in part: "In Oregon, it is legally permissible and common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest." This release goes on to note that doing so means officers rely on each other to be "truthful and ethical."

Case #2020-B-0008**Independent Police Review Investigative Report**

The applicable statute, ORS 133.310, states an officer from one agency may arrest a person without a warrant when they are notified by an officer from another agency that there is a valid arrest warrant for that person. Multiple case precedents suggest this authority extends to when an officer is notified there is probable cause to arrest a person.

Sgt. Duilio's supervisor Lt. Dakin noted although he himself had to approve the overtime costs associated with the operation to assist WLPD in arresting Mr. Fesser, Sgt. Duilio had the authority to approve and carry out the operation. Lt. Dakin further indicated it was appropriate to rely on another law enforcement agency's assertion that there was probable cause to arrest a person. Lt. Dakin described this as "common practice" and noted it happens "all the time" (Line 179).

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. Applicable ORS and case precedents indicate an officer from one agency may rely on the probable cause provided by an officer from another agency to make an arrest.

Sgt. Duilio indicated WLPD officers told him they had probable cause to arrest Mr. Fesser, and he had no reason to doubt the information. This investigation found no indication Sgt. Duilio received any information which suggested WLPD's assertion it had probable cause was improper. Further, Sgt. Duilio's assistance based on the word of WLPD personnel was consistent with PPB practices regarding assisting other agencies, and was consistent with the applicable statute, ORS 133.310.

However, Sgt. Duilio's statement that he could not recall whether he knew why WLPD was investigating a crime said to have occurred in Portland may suggest his decision to assist WLPD in arresting Mr. Fesser was not as carefully considered as it could have been. Additionally, although Sgt. Duilio indicated Det. Reeves did not disclose any concerning information to him, because IPR lacks the jurisdiction to interview Det. Reeves it was not possible to fully evaluate Sgt. Duilio's description of his contact with Det. Reeves.

Because the evidence was insufficient to prove a violation of applicable Directive, our recommended finding for Allegation #1 is NOT SUSTAINED.

Allegation #2: Officer Patrick Murphy, #44162 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

When interviewed, Ofc. Murphy indicated that he did not have concern regarding the veracity of WLPD's probable cause to arrest Mr. Fesser, and that such evaluation is typically done by a supervisor. Ofc. Murphy indicated he did not have communication with WLPD personnel ahead of the mission. Ofc. Murphy further stated officers are under the impression that the other agency has "done their homework," and are not "just putting out probable cause just for the sake of doing so" (Lines 124-125).

Case #2020-B-0008

Independent Police Review Investigative Report

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest.” Ofc. Murphy indicated he was told WLPD had probable cause to arrest Mr. Fesser. Ofc. Murphy’s reliance on WLPD’s assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB’s practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #2 is EXONERATED.

Allegation #3: Officer Kameron Fender, #50793 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

When interviewed, Ofc. Fender indicated that his memory of the operation was limited, but he recalled being tasked to assist WLPD detectives to arrest Mr. Fesser, and that he was informed that the charge was Aggravated Theft I. Ofc. Fender further indicated that he has had no significant working experience with Lt. Stradley, and has never had contact with Det. Reeves.

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest.” When interviewed, Ofc. Fender reflected an understanding of that practice by stating: “Agencies requiring or needing our assistance with investigations is extremely common” (Lines 214-215).

Ofc. Fender’s reliance on WLPD’s assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB’s practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #3 is EXONERATED.

Allegation #4: Officer John Billard, #44160 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

When interviewed, Ofc. Billard indicated he assisted in writing the operations plan for assistance to WLPD based on information he received from Sgt. Duilio, and he did not have communication with WLPD personnel prior to writing the operations plan.

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect

Case #2020-B-0008

Independent Police Review Investigative Report

based on a request from and representation by an officer from another agency that there is probable cause for arrest.” Ofc. Billard indicated PPB personnel often help other law enforcement agencies make arrests. Ofc. Billard indicated officers rely on other officers to be truthful, stating, “we would trust that they are operating under the same laws and procedures that we would” (Lines 224-225).

Ofc. Billard’s reliance on WLPD’s assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB’s practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #4 is EXONERATED.

Allegation #5: Officer Jerry Ables, #36303 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

Ofc. Ables indicated he had no role in writing the operations plan for the mission to arrest Mr. Fesser, and could not recall if he reviewed police reports prior to the mission. Ofc. Ables further indicated that he did not have contact with Lt. Stradley or Det. Reeves in advance of the mission.

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest.” When interviewed, Ofc. Ables reflected an understanding of that practice by stating: “[When] Another officer within my agency or another agency, comes to me and says, hey, I have probable cause to arrest this guy. I take his word for it” (Lines 202-203).

Ofc. Ables’ reliance on WLPD’s assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB’s practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #5 is EXONERATED.

Allegation #6: Officer Charles Asheim, #46067 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

Ofc. Asheim was not listed on the operations plan for the mission to arrest Mr. Fesser, and indicated when interviewed that he was not assigned to the mission. Ofc. Asheim indicated that he did not have a role in the stop of Mr. Fesser, and self-dispatched once he was already in custody, to ask the officers present if they require assistance.

Ofc. Asheim indicated that he recalled speaking with Lt. Stradley about the investigation ahead of the mission, but could not recall specifics of the conversation. There is no indication in the investigative

Case #2020-B-0008
Independent Police Review Investigative Report

materials that any information provided to Ofc. Asheim by Lt. Stradley was inappropriate, or that it was different than information Lt. Stradley provided Sgt. Duilio. Ofc. Asheim stated that he did not recall speaking with Det. Reeves in advance of the mission, and the available investigative materials provide no indication that he did so.

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest.” Ofc. Asheim reflected an understanding of that practice, stating:

I mean, certainly, if it's something like this that's planned out, someone on the agency that's asking us to help is going to explain to someone in the Police Bureau why we need your help. You know, why it's in your city. Here's an outline of what my case is. How I got to probable cause.

(Lines 246-250)

And:

That doesn't mean that we review every police report. That doesn't mean all of that. It means, you know, we talk to the investigator. We share information with other law enforcement agencies and figure out how we can assist them.

(Lines 257-260)

Ofc. Asheim's reliance on WLPD's assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB's practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #6 is EXONERATED.

Allegation #7: Lieutenant James Dakin, #25235 inappropriately assisted West Linn Police Department in the arrest of Michael Fesser. (PROCEDURE) (Directive 830.00 - Arrest Without Warrant)

Recommended Finding: Exonerated

Lt. Dakin indicated he approved the operation to arrest Mr. Fesser based on the information provided by Sgt. Duilio, who had been briefed by Lt. Stradley. Lt. Dakin noted he only had to approve the operation because of overtime costs, and under normal circumstances, Sgt. Duilio would have authority to approve the operation himself. Lt. Dakin indicated that if he felt any of the information was questionable or untruthful, he would not have authorized GET officers to perform the operation, and noted he has denied approving other operations.

Directive 830.00 – Arrest Without Warrant indicates PPB officers may arrest a person when they have probable cause to believe that person has committed a misdemeanor or felony offense. As previously

Case #2020-B-0008
Independent Police Review Investigative Report

noted, PPB publicly stated it is “common practice for officers from one agency to arrest a criminal suspect based on a request from and representation by an officer from another agency that there is probable cause for arrest.” Lt. Dakin demonstrated an understanding of this practice, stating, “We do custody missions for other agencies all the time” (Line 178).

Lt. Dakin further indicated that it would be impractical for PPB to recreate probable cause for an arrest provided by another agency, stating: “The criminal justice system would grind to a halt if that was the standard,” and “that would not be worthwhile” (Lines 386-389).

Lt. Dakin’s reliance on WLPD’s assertion it had probable cause to arrest Mr. Fesser appears to comply with applicable Directive, and appears to be consistent with PPB’s practices regarding assisting other agencies. For these reasons, our recommended finding for Allegation #7 is EXONERATED.

Exhibits:

- 1 – *Oregonian* Article: “Old-boy-style Racism’ by Small-town Cops leads to \$600,000 payout to Portland Man”
- 2 – 2.13.20 PPB Press Release
- 3 – CCDA Brady Report
- 4 – Michael Fesser’s Third Amended Complaint
- 5 – Fesser vs. WLPD Interrogatories
- 6 – Deposition transcript, WLPD Capt. Hennelly
- 7 – Deposition Transcript, WLPD Lt. Stradley
- 8 – Deposition Transcript, WLPD Det. Reeves
- 9 – PPB Operations Plan
- 10 – WLPD Police Report #2017-270
- 11 – vCAD Entry for BOEC Call #PP17-57475
- 12 – PPB Police Report #2017-57475
- 13 – PPB Police Report #2017-681577
- 14 – Poitress.Becker Email
- 15 – Becker.Sitton Email
- 16 – Waddell.Poitras Email
- 17 – Stradley.Tracy Email
- 18 – Stradley.Asheim Email
- 19 – Arrest Flyer
- 20 – Deposition Transcript, Michael Fesser
- 21 – Audio recording of 4/16/20 IPR interview of Paul Buchanan
- 22 – Transcript of 4/16/20 IPR interview of Paul Buchanan
- 23 – Audio recording of 5/11/20 IPR interview of Ofc. Jerry Ables
- 24 – Transcript of 5/11/20 IPR interview of Ofc. Jerry Ables
- 25 – Audio recording of 5/11/20 IPR interview of Ofc. Patrick Murphy
- 26 – Transcript of 5/11/20 IPR interview of Ofc. Patrick Murphy
- 27 – Audio recording of 5/13/20 IPR interview of Ofc. Charles Asheim
- 28 – Transcript of 5/13/20 IPR interview of Ofc. Charles Asheim

Case #2020-B-0008

Independent Police Review Investigative Report

- 29 – Audio recording of 5/13/20 IPR interview of Ofc. Kameron Fender
- 30 – Transcript of 5/13/20 IPR interview of Ofc. Kameron Fender
- 31 – Audio recording of 5/13/20 IPR interview of Sgt. Kenneth Duilio
- 32 – Transcript of 5/13/20 IPR interview of Sgt. Kenneth Duilio
- 33 – Audio recording of 5/15/20 IPR interview of Ofc. John Billard
- 34 – Transcript of 5.13.20 IPR interview of Ofc. John Billard
- 35 – Audio recording of 5/21/20 IPR interview of Det. Cheryl Waddell
- 36 – Transcript of 5/21/20 IPR interview of Det. Cheryl Waddell
- 37 – Audio recording of 5/26/20 IPR interview of Det. Brian Sitton
- 38 – Transcript of 5/26/20 IPR interview of Det. Brian Sitton
- 39 – Audio recording of 5/26/20 IPR interview of Det. Jeff Becker
- 40 – Transcript of 5/26/20 IPR interview of Det. Jeff Becker
- 41 – Audio recording of 5/28/20 IPR interview of Lt. James Dakin
- 42 – Transcript of 5/28/20 IPR interview of Lt. James Dakin
- 43 – Audio recording of 5/28/20 IPR interview with Sgt. Peter McConnell
- 44 – Transcript of 5/28/20 PR interview with Sgt. Peter McConnell
- 45 – Audio recording of 6/11/20 IPR interview of Det. Jason Harris
- 46 – Transcript of 6/11/20 IPR interview with Det. Jason Harris
- 47 – Audio recording of 6/16/20 IPR interview with Sgt. Kenneth Duilio
- 48 – Transcript of 6/16/20 IPR interview with Sgt. Kenneth Duilio
- 49 – Oregon Revised Statute #133.310



Recommendation

This investigation examined whether the PPB officers involved in assisting WLPD in arresting Mr. Fesser engaged in misconduct by violating applicable Directive. This investigation found that the involved officers did not engage in misconduct.

Even as PPB officers complied with applicable Directive and followed normal procedures, they unwittingly helped arrest a man based on a deeply flawed criminal investigation, launched under murky circumstances and carried out by a WLPD detective who appears to have engaged in multiple and serious acts of misconduct. The public's interest in and concern about the arrest of Mr. Fesser, and PPB's role in that arrest, is understandable and appropriate.

It is difficult to conceive of a policy that would allow PPB to steer clear of assisting other law enforcement agencies that may be violating civil rights. PPB regularly gives and receives assistance to and from other agencies based on communications that must, at times, be brief and limited due to dangerous situations and the sheer volume of collaboration between agencies in the greater Portland area. PPB cannot be required to reestablish PC for every arrest on which they provide assistance. At the same time, PPB is the only agency in the area under a DOJ settlement agreement and the only agency with civilian oversight. PPB has, for example, significantly reduced their rate of use of force incidents in the last several years. In the interest of building public confidence, PPB may find it useful to consider policies and procedures sufficient to provide some measure of due diligence for evaluating requests for assistance from other law enforcement agencies. This may only apply to a subset of requests where PPB believes that they may be operationally distinct from other agencies or where there is increased risk.

I appreciate that this is a difficult request but this incident is a powerful example of how the criminal justice system can be turned against an individual by a very small number of bad actors operating inappropriately. The remedy in that situation is incredibly difficult to achieve and for every person in Mr. Fesser's situation that has prevailed in court and been identified publicly it is very possible that many more exist that are unknown and could not attain that remedy.

