

Performance Audit No. 18-02

A Limited Performance Audit Of Salt Lake City Police Department

April 16, 2018



OFFICE OF THE STATE AUDITOR

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STATE AUDITOR

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Jackie Biskupski, Mayor
Salt Lake City
451 State Street, #306
Salt Lake City, UT 84111

Dear Mayor Biskupski:

Pursuant to your authority as the chief executive officer of Salt Lake City (SLC),¹ this letter addresses the Office of the State Auditor's (Office) limited performance audit of the Salt Lake City Police Department (SLCPD). This letter details (1) the audit objectives, scope, and methodology and (2) our conclusions based upon the information collected and reviewed.

I. Audit Objectives, Scope, and Methodology

On September 26, 2017, the Office initiated a limited performance audit to review three primary areas:

- A. Internal Affairs (IA) Investigations, Personnel Complaints, and Disciplinary Actions
- B. Off-duty Employment Policies and Practices
- C. Officer Work Assignments and Advancement

Initial survey work included a review of statutes, policies, and procedures applicable to the SLCPD. In addition, we sampled from among jurisdictions in Utah and the six surrounding states to review applicable best practices.² We also requested and reviewed the following data and documentation from SLC and the SLCPD:

1. For the time period of July 26, 2017 through September 25, 2017, all correspondence (e.g., emails, text messages, voicemails, memoranda, other documents, etc.) related to events culminating in the arrest of Alex Wubbels—and the subsequent investigation and administrative review process—which were prepared, written, generated, sent, or received by the following:
 - a. Key SLC government officials

¹ Utah Code § 67-1a-2(1)(c).

² Based on U.S. Census Bureau and Utah Department of Workforce Services population data, our audit sample included law enforcement agencies for the most populous city in each of the six surrounding states (Phoenix, AZ; Denver, CO; Boise, ID; Las Vegas, NV; Albuquerque, NM; and Cheyenne, WY) along with the agencies pertaining to the four most populous cities in Utah after Salt Lake City (West Valley City, Provo, West Jordan, and Orem).

- b. SLC Police Civilian Review Board (CRB)³ administrator
 - c. Top SLCPD management
 - d. SLCPD supervisors in the chain of command between the Police Chief and the officers involved in the arrest of Alex Wubbels
2. A list of all complaints filed with the CRB from July 1, 2012 through September 25, 2017
3. A list of all IA investigations initiated from July 1, 2012 through September 25, 2017
4. Memorandum of Understanding (MOU) between SLC and the Salt Lake Police Association
5. De-escalation (i.e., “Code 909”) policies, procedures, and training protocols
6. CRB and IA reports and materials pertaining to several other sampled cases

In summary, we interviewed⁴ key personnel, reviewed case-related correspondence, examined several specific case files, and cross-checked IA and CRB cases against each other to assess the process by which allegations of officer misconduct are reported, investigated, and handled administratively within the SLCPD.

In addition to reviewing materials related to IA investigations, we also reviewed SLCPD policies and procedures regarding off-duty employment, which includes both secondary employment and outside employment.⁵ This process involved a review of the secondary employment agreement that the SLCPD employs with secondary employers in addition to interviews with key SLCPD management about off-duty employment.

Finally, we evaluated officer work assignments and advancement, which included an assessment of how officers are delegated specific work assignments and the criteria used in determining employee advancement. This process involved reviewing relevant policies and procedures and interviewing key management. We also sampled an IA case specifically related to special work assignments.

³ The Civilian Review Board (also referred to as the Police Civilian Review Board) is a board that provides “civilian oversight of certain complaints and internal police investigations regarding conduct of the police.” The CRB “will audit and review all cases in which it is claimed that a police officer used excessive force and such other cases as the board in its discretion may request.” Salt Lake City Ordinance 2.72.010.

⁴ With regard to the Wubbels case—not only to respect the parameters of a concurrent criminal investigation initiated by the Unified Police Department, but also due to our audit scope—our audit work neither involved interviews with any particular law enforcement personnel alleged to have committed misconduct nor a review of the actual alleged misconduct in question. Rather, our review focused on the post-incident handling of any claims of officer misconduct.

⁵ According to the Salt Lake City Police Department Policies and Procedures Manual (SLCPD Manual), secondary employment is defined as “[o]ff-duty employment requiring the use or potential use of police authority. By definition, only sworn officers can engage in secondary employment as referenced in this policy.” The SLCPD Manual defines “outside employment” as “[o]ff-duty employment by a Department member that does not require the actual or potential use of police authority. This includes self-employment, contracting, sales jobs, etc.” SLCPD Manual, pg. 42.

II. Some SLCPD Management Do Not Appear To Understand The Religious Accommodation Requirements of Title VII of the Civil Rights Act

Title VII of the Civil Rights Act of 1964 provides that “[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”⁶ The misunderstanding of the protections for religious belief is likely due to a lack of understanding of the Civil Rights Act requirements for religious accommodation, along with a rigid, paramilitary management structure – a management approach that lacks the flexibility to deviate from general processes and orders. The lack of understanding of the specific accommodation requirements of the Civil Rights Act places the SLCPD at risk for future possible violations and potentially exposes SLC to liability. We recommend that SLCPD management seek legal advice and better training so that management understands the particular requirements related to the religious accommodation requirements of Title VII of the Civil Rights Act of 1964.

Federal Regulation Enacted Under Title VII Imposes A Duty To Accommodate Religious Belief

Federal regulation states that it is “an unlawful employment practice” under Title VII “for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.”⁷ Thus, after an employee notifies the employer of “his or her need for a religious accommodation, the employer has an obligation to reasonably accommodate the individual’s religious practices.”⁸ The *only* circumstance that justifies a refusal to accommodate is when an employer “can demonstrate that an undue hardship would in fact result from *each* available alternative method of accommodation.”⁹

Furthermore, “[a] mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.”¹⁰

Federal regulation specifically addresses “voluntary substitutions” and “swaps”:

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The [Equal Employment Opportunity Commission] believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and labor organizations should consider are:

⁶ Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e-2(a)

⁷ 29 CFR § 1605.2(b)(1).

⁸ 29 CFR § 1605.2(c).

⁹ 29 CFR § 1605.2(c) (emphasis added).

¹⁰ 29 CFR § 1605.2(c).

to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

Some SLCPD Management Do Not Recognize The Title VII Requirements For Religious Accommodation

When questioned, certain SLCPD management expressed the opinion that a request for excusal from assignment based on a religious need for accommodation was no different from any other request for excusal. The reason for refusing to consider an exception to an assignment based upon a religious practice or belief was attributed to the SLCPD's command structure and the administrative approach of "your assignment is your assignment."

Although we do not question the likely effectiveness associated with a paramilitary mindset for an organization like a police department, or the implementation of the reverse-seniority assignment of duties, it appears that certain SLCPD management do not fully understand the protections of religious accommodation as required by Title VII. Furthermore, a paramilitary organizational structure may cause severe negative effects on an organization when that system does not allow the flexibility to make legally-mandated exceptions to general policy.

However, we have no reason to believe that the SLCPD and its management have knowingly violated Title VII of the Civil Rights Act of 1964. All SLCPD management should understand the importance of considering the burden of allowing a voluntary trade of assignment based upon a need for religious accommodation, and if no undue burden could be shown, then allow a voluntary trade, regardless of whether other employees might seek future excusal from assignment or some other *de minimus* burden may apply.¹¹

We do note that, given the size, complexity, and sophistication of SLC, along with the unique SLC demographic, we are surprised that some within SLCPD's management lacked an understanding of the specific requirements for religious accommodation mandated by Title VII of the Civil Rights Act of 1964.

Consequently, we recommend that SLC human resources and legal personnel train SLCPD management on all employment practices required by Title VII of the Civil Rights Act of 1964—particularly those requirements pertaining to religious accommodation. Furthermore, we recommend that the SLCPD establish specific policies regarding the consideration of religious or any other potential accommodations required by Title VII of the Civil Rights Act of 1964.

¹¹ Additionally, in 2015, Utah passed the Utah Antidiscrimination Act that also provides protections for an employee against discrimination from an employer based upon a religious belief. It is not clear from the plain language of the statute if Utah's law will require the same level of accommodation of religious beliefs as federal law. Utah Code § 34A-5-101.

III. SLCPD's Secondary Employment Practices May Create Public Confusion and Foster Mixed Loyalties

The SLCPD currently allows officers to earn additional income through off-duty employment. In some cases, officers may be hired by a private citizen, business, or entity to provide police-related services for an event, which employment is separate from the SLCPD. As such, there are times when SLCPD officers are in uniform while employed by the SLCPD, and other times when officers are in the SLCPD uniform but employed by an entity other than the SLCPD. There are also times when officers are employed independently, not in uniform, and not performing police-related work. Although there are advantages and disadvantages to the different ways in which an officer may be paid while working off-duty as a police officer for a private event, payment directly from the SLCPD—rather than payment directly from the private entity—may be advantageous to avoid mixed loyalties. The SLCPD should consider the benefits of always charging the private entity directly and then paying its officers for off-duty police work performed for private entities, and the SLCPD should consider the potential detriment of allowing officers to be paid directly by the private entity for police-related work.

Two Types Of Off-Duty Employment

The SLCPD allows officers to work off-duty jobs under certain circumstances. “Off-duty employment” encompasses two different categories: secondary employment and outside employment. As the SLCPD policy manual explains, “secondary employment” is “[o]ff-duty employment requiring the use or potential use of police authority.” In other words, secondary employment involves a private entity hiring police officers employed by the SLCPD to act as police officers and provide police enforcement if necessary for a particular event. For example, entities such as the Utah Jazz or The Church of Jesus Christ of Latter-Day Saints may hire SLCPD officers to work at their events to provide a police presence and to have police on the job to conduct police action if necessary (e.g., deter illegal activity, investigate potential patron misconduct, make arrests for unlawful conduct, control large crowds, etc.). In these cases, the officers wear their SLCPD uniforms, but the officers are paid by the secondary employer.

“Outside employment” is defined as “[o]ff-duty employment by a Department member that does not require the actual or potential use of police authority. This includes self-employment, contracting, sales jobs, etc.” In other words, outside employment is an additional job an SLCPD officer or other employee may have completely separate from police work and completely separate from employment with the SLCPD.

Our audit focused on the SLCPD's policies regarding the administration of secondary employment.

General Standards And Methods Of Administering Secondary Employment

Traditionally, throughout the country, police officers have been allowed to earn additional income beyond their regular salary through “moonlighting” or working off-duty employment jobs. For example, large event venues may want additional police presence beyond what the city could regularly provide in order to maintain the peace, direct traffic, and perform any other police function that may be necessary for events. Secondary employment best practices

include, at a minimum, that officers should not be allowed to organize, plan, and conduct secondary employment on their own. Rather, secondary employment should be organized, planned, and managed by the police department. Additionally, officers should not be allowed to negotiate employment terms and pay rates on their own; instead, these factors should also be controlled by the police department.

Based on information gathered from other police jurisdictions within the state and across the country, it appears that there are at least three different methods by which the secondary employment (specifically the payment to officers) is administered:

1. Officers are always employed and paid by their department: The secondary employer pays the police department the full amount that it costs the department to administer the secondary employment program and the amount that the department will have to pay the officers for time, overtime, and any other costs associated with administering the secondary employment. The department then pays its officers for the secondary employment shifts worked with the money collected from the secondary employer.
2. Officers work as independent contractors: The secondary employer contracts with the police department to provide police officers, and the secondary employer generally pays a small fee to the department for administrative costs. However, the secondary employer directly pays the officers as independent contractors for the work performed.
3. Officers are employees of the secondary employer: The secondary employer places the officers on the entity's payroll and pays the officers directly as employees. The secondary employer still contracts with the police department, ensuring that the officers are still bound by their duties as police officers, and that the secondary employer provides all necessary liability insurance.¹²

There are asserted advantages and disadvantages for each method of administering secondary employment. In the first method, it is clear that the officers are still under the command and control of the police department while they provide police services for secondary employers. However, when the department pays the officers directly, the department may be required to pay officers overtime, which may increase the total cost to the secondary employer for employing officers.

In the second method, costs to the secondary employer are typically lower as the department avoids the risk of overtime pay and other payroll costs. Also, the departments may not have to provide general liability insurance.¹³ In the third method, costs to the secondary employer are

¹² This summary of the different methods of administering secondary employment and the payment to officers for secondary employment comes from a combination of sources including statements from SLCPD management of the different methods of payment, as well as the following articles: "Moonlighting: An Overview of Policies Governing Paid Police Details," a report from the Bureau of Governmental Research, August 2011; "Risk Management of Off-Duty Employment," Produced by Ken Wallentine; and "Moonlighting or Secondary Employment," published by the NC League of Municipalities Risk Management Services, September 2014.

¹³ In the case of the SLCPD, although the second method is generally used through the secondary employer's contract with the SLCPD, the secondary employer is contractually obligated to provide general liability insurance for the officers.

typically lower as the officers are not paid overtime, and the secondary employer should provide general liability insurance for the officers while on the job.

The SLCPD Should Consider The Advantages Of Paying Officers Directly For Secondary Employment Work

The SLCPD generally administers their secondary employment as described in the second method.¹⁴ Still, officers are required to follow SLCPD's policy manual at all times while working a secondary employment job. Additionally, the secondary employer signs a contract with SLCPD acknowledging their understanding that the officers are still employees of SLCPD and must follow SLCPD policy.

We acknowledge the general benefits of secondary employment for the community and the officers who are able to earn additional pay. However, we are concerned that the current method by which the SLCPD pays its officers for secondary employment may create confusion for the public and mixed loyalties for the involved officers. Direct payment from the secondary employer poses the potential for officers to be inappropriately influenced by the desires or demands of the secondary employer, rather than the policies and requirements of the SLCPD.¹⁵ Additionally, members of the community may be confused as to the officers' actual employer and loyalties. To avoid this potential confusion, the SLCPD should consider allowing payment only through the SLCPD to officers for secondary employment.

As a comparison, the Utah Highway Patrol (UHP) allows its employees to work secondary employment similar to the SLCPD; however, when any work is performed in uniform by UHP troopers, UHP troopers are employed and paid directly by the UHP, rather than being directly employed and paid by the secondary employer.

Police Officers From Outside Jurisdictions Working Secondary Employment Jobs In Salt Lake City Boundaries May Undermine SLC's Incentive To Change Its Secondary Employment Policy

All police officers in the State of Utah, regardless of their jurisdiction of employment, hold policing authority throughout the state. In other words, a police officer employed by West Valley City still holds police authority to arrest while in Salt Lake City. Therefore, secondary employers within Salt Lake City can technically employ police officers from jurisdictions other than the SLCPD. This creates a competition for secondary employment jobs.

Because SLCPD officers must compete with officers from outside jurisdictions for secondary employment jobs within Salt Lake City, the SLCPD is incentivized to keep costs to the secondary employer low in order to compete with other jurisdictions. If the SLCPD were to adopt the

¹⁴ We say "generally," because SLCPD told us that all three methods are used. At times, secondary employers reimburse the department for all the costs, and the department pays the officers from the money charged to the secondary employer. Other secondary employers may pay officers on the secondary employer's payroll. But, according to conversations with SLCPD management, the most common method of payment is through the secondary employer paying officers as 1099 independent contractors.

¹⁵ In fact, it was acknowledged by at least one SLCPD management official that, although this manager could not think of a specific incident of mixed loyalties that caused an officer to act inappropriately or be unduly influenced by the hiring entity, the potential for inappropriate influence resulting in confused loyalty for an officer likely exists.

secondary employment practice of paying officers directly for secondary employment and passing total employment costs on to the secondary employer, the SLCPD would likely have to charge the secondary employer higher costs. This could cause secondary employers to favor officers from outside jurisdictions if their secondary employment practices resulted in lower costs. As such, officers from the SLCPD would not only likely miss out on secondary employment opportunities, but then the SLCPD would not have direct oversight of officers from other jurisdictions working secondary employment within Salt Lake City. For example, once an arrest is made by an officer from another jurisdiction working secondary employment in Salt Lake City, the SLCPD would still have to handle the case after arrest. This potentially creates an inconvenience for a number of reasons, including the fact that the arresting officer who is a potential witness to a case is from a jurisdiction that is not accountable to the SLCPD.

Given these factors on secondary employment created by competition with outside agencies, it may be difficult for the SLCPD to employ the first method of administering secondary employment (payment directly from the SLCPD to the officer, likely including overtime pay). Consequently, in order for the SLCPD to reasonably adopt the suggested method of secondary employment administration, this may require a change to state statute that provides uniform regulation across all police jurisdictions to (1) eliminate possible confusion, (2) avoid the risk of mixed loyalties, and (3) avoid differing practices from outside agencies which could undermine the secondary employment program of differing jurisdictions.

IV. SLCPD's Internal Affairs Investigation Of The Wubbels Complaint Followed SLCPD Policies

Finally, we assessed the SLCPD's process for handling personnel complaints, internal investigations, and disciplinary actions. This review included an examination of SLCPD policies and practices regarding the reporting and investigation of alleged officer/staff misconduct. While we specifically examined the SLCPD's internal investigation and overall handling of the Alex Wubbels complaint, we also assessed the role of the CRB and the IA Unit in conducting independent investigations and reviews of other sampled IA cases.

The reporting and investigation of misconduct for the cases we sampled, including the Wubbels complaint, did not appear to depart from the policies, procedures, and practices applicable and in effect at the time of each investigation. We recognize the SLCPD's efforts to emphasize the importance of the internal reporting of misconduct, when necessary, regardless of whether a citizen's complaint is received or not.

SLCPD's Investigation And Discipline Process Of The Wubbels Complaint Was Consistent With Policy

We specifically reviewed the reporting and investigation of the Wubbels complaint from the time of the incident to the time of the SLCPD's final determination of discipline. We noted no significant departures from established policies, procedures, and practices in how this case was reported, investigated, and resolved by the SLCPD. Additionally, the policies regarding time limitations for investigating and executing discipline appear to be consistent with sampled jurisdictions, as well as in line with the MOU with the police association. However, we looked

only at the investigation process. We did not look at general conditions to theorize as to how the incident could occur in the first place, nor did we review or second guess the final decision for discipline of the involved officers.

Much of the public's apparent discontent with the Wubbels complaint seemed to center on the public's belief that the SLCPD failed to act on the case, failed to act quickly enough, or actually attempted to cover up the event from the public. However, the immediate and successive actions taken by the SLCPD, as outlined below, suggest that the SLCPD followed established policies regarding these matters. Given the civil service¹⁶ designation for SLCPD officers and other employment protections contained in the MOU, in addition to IA practices apparent in other sampled jurisdictions, our limited review led us to conclude that the SLCPD appears to have followed its established policies in handling the Wubbels complaint.

As civil service employees, and pursuant to the MOU between the city and the police association, SLCPD officers are granted certain employment protections and may be dismissed from employment only "for cause." In other words, officers may not be fired without proof of just cause. This designation can require an investigation and termination process that *appears* to result in an undue delay and does not allow for immediate termination of a police officer.¹⁷ Specifically related to police officers, these general employment protections appear to be common in the industry.¹⁸

Not only is an officer allowed a full investigation and opportunity to respond before adverse action is taken against an officer, but the time limitations for such disciplinary process for the SLCPD appear in line with other sampled jurisdictions. According to the MOU, the SLCPD must notify a police officer "in writing, of the final disposition of any investigation" within 75 days from "the date the complaint was initiated" against the police officer. Our audit sample of other jurisdictions for internal affairs investigations revealed an average of approximately 73 days allowed for just the investigation portion of the disciplinary process. The SLCPD's time frame of 75 days includes the investigation process, pre-determination hearing, and final determination of discipline. Significantly, the internal affairs investigation portion of the disciplinary process in the Wubbels complaint took 35 days.¹⁹ The sampled jurisdictions' limits for the internal affairs investigation portion of the discipline process are presented in Figure 1.1 below:

¹⁶ The civil service designation generally includes certain employment protections. See "Salt Lake City Civil Service Commission Rules and Regulations."

¹⁷ The procedural rights include, among other things, the right to a fair investigation, the right to representation, the right to a pre-determination hearing if necessary, and the right to post-disciplinary appeal. Also, an audit was previously conducted regarding the career service designation of certain employees in the state of Utah which includes an assessment of the advantages and disadvantages of such protections. As such, our audit did not reassess the reasonableness or effectiveness of the civil service designation and its appropriateness as applied to police officers in this case. See Report to the Utah Legislature Number 2010-08, "A Limited Review of the State's Career Service System."

¹⁸ We surveyed 9 similarly situated police departments, both in-state and out-of-state, which all provide similar employment protections, including internal investigations.

¹⁹ Additionally, in the report "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice," a report project awarded by the Office of Community Oriented Policing Services, U.S. Department of Justice, recommends limiting an internal affairs investigation to 180 days.

Figure 1.1 Days Allowed For Internal Affairs To Investigate Misconduct

Jurisdiction	Days
Albuquerque	90
Boise	30
Cheyenne	60
Denver	30
Las Vegas	90
Phoenix	180
Provo	10-30
Ogden	No Deadline
Orem	No Deadline

Source: Survey of Internal Affairs units in other police jurisdictions.

Not only does the 35-day Wubbels investigation fall in line with the sampled jurisdictions as illustrated above, but the SLCPD IA Unit is smaller than the average, making up only 0.7%²⁰ of the total number of SLCPD sworn officers during our audit period.²¹ The table below indicates jurisdictions and the percentage of internal affairs units' number of employees to total number of sworn officers in each jurisdiction.

Figure 1.2 Number of Internal Affairs Investigators To Total Number of Sworn Officers

Jurisdiction	Percentage of Internal Affairs Investigators to Sworn Officers	Total Internal Affairs Investigators to Sworn Officers
Albuquerque	0.8%	5/855
Boise	1.3%	2/302
Cheyenne	0.9%	1/106
Denver	1.1%	16-18/ 1,450
Las Vegas	1.4%	42/3,000
Phoenix	1.3%	37/2,923
Provo	0.9%	1/107
Ogden	0.7%	1/144
Orem	2.3%	2/86 ²²
Salt Lake City	0.7%	3/450

Source: IA Survey.

²⁰ The SLCPD IA Unit has two sergeants who generally conduct the investigations, one lieutenant who directly supervises the IA Unit and the investigators, and one captain who is over the SLCPD's "professional standards." For the purpose of this comparison of internal affairs units, we counted the SLCPD IA Unit as having three employees. Other jurisdictions sampled were counted similarly, including only full-time employees in internal affairs, except when noted otherwise.

²¹ The SLCPD has approximately 450 sworn officers and 3 full-time employees in its IA Unit, a ratio of about 0.7%.

²² The Orem IA Unit has two lieutenants who handle internal investigations but also have additional duties beyond internal affairs.

Given the average number of employees dedicated to internal affairs investigations in jurisdictions throughout Utah and in bordering states, the SLCPD's general standard for time allowed for internal affairs investigations appears reasonable.

Timeliness Of The Wubbels Complaint Investigation And Discipline Process

Our review of the Wubbels investigation revealed the major initial actions and investigatory steps taken by the SLCPD. The very day of the incident, July 26, 2017, the actions taken by the involved officers were reported all the way up the chain of command to the Acting Chief²³ of the SLCPD. The next day, the Acting Chief took several steps to address the incident, including reviewing the body camera footage and incident reports, directing the internal affairs captain to initiate an investigation, and meeting in person with key city and University of Utah Hospital management personnel. The SLCPD then remained in contact with involved individuals throughout the investigation. On August 31, 2017, the internal affairs investigation was completed and submitted to the captain for review. On September 13, 2017, a Pre-Determination Hearing was scheduled for September 25, 2017. Finally, on October 10, 2017, the Chief of Police issued the final disciplinary determination.

The SLCPD general timeline for the disciplinary process and the timeline specifically in the Wubbels complaint appear to be reasonable considering other jurisdictions' standards for internal affairs investigations and discipline.

Similar to the public's concerns regarding the timeliness of the investigation, much of the public expressed the concern that the Wubbels matter was purposefully hidden or covered up by the SLCPD. However, the public did not know about the Wubbels investigation until the body camera footage was released by a private party because the investigation was on-going at that point in time. The SLCPD policy manual requires that sensitive information, including disciplinary information, generally remain confidential.

SLCPD Should Consider Investigation Policy Changes To Address Public Concerns

Although the public was unaware of the initial actions taken by the SLCPD to address the Wubbels complaint, and despite the investigative timeline's consistency with other jurisdictions, the fact remains that, for such a shocking incident, the public appeared displeased with the length of time taken to investigate and discipline the officers involved. Given the specific facts of the Wubbels complaint and the immediately available evidence, along with the potential for great public concern and the greater cost to the taxpayer, the SLCPD should reassess the current tradeoffs between employment protections and addressing public concerns in a timelier manner. The SLCPD's two-month investigative process contrasts particularly starkly against the prompt disciplinary action taken by a private-sector employer. We acknowledge that the current restraints of the MOU, the civil service commission established by city ordinance, and state and federal law require these employment protections. However, these employment protections, especially those provided in the MOU, appear to

²³ At the time of the Wubbels incident, the SLCPD Chief of Police was out of town and had designated the SLCPD Assistant Chief to be the "Acting Chief" until the Chief returned to work. Thus, the actions taken by the SLCPD immediately following the incident were directed by the Acting Chief, although the Acting Chief was in contact with the Chief beginning from the day immediately following the incident.

heavily favor the officer to the disadvantage of the public and SLC taxpayers. Thus, SLC should consider changes to the degree of employment protections afforded officers within future MOUs so they provide a better balance of taxpayer protections and the public's right to know.

Finally, while the SLCPD's policy and MOU agreement to keep IA investigations confidential appear reasonable, certain cases that have the strong potential to invoke great public concern justifiably demand more immediate public address and comment from SLC. In certain circumstances, such as an officer-involved shooting, SLC properly takes steps to inform the public of the investigative process. Therefore, SLC should consider revising the general policy and MOU agreement of keeping all investigations completely confidential in order to allow critical information to be more quickly communicated to the public for cases of potential great public concern.

Police Civilian Review Board Notification and Investigation

One concern at the outset of this audit was the fact that the final Civilian Review Board (CRB) report noted that it "was not notified about [the Wubbels matter] until . . . *after* the public release of the videotapes, due to an oversight within Internal Affairs." Consequently, the CRB report added that "new procedures have been put in place to prevent such occurrences in the future."

Salt Lake City municipal code requires that "the police department shall notify the board through the administrator when cases are initiated by the internal affairs unit."²⁴ However, our audit work revealed no effort to withhold this case—or any other—from the CRB. To the contrary, the IA investigator assigned to the case simply forgot to send, or did not realize the need to send, the case to the CRB administrator's IAPro²⁵ inbox for review. Yet, despite this oversight, the CRB administrator received calendar invites for various interviews with involved parties as the investigation progressed, as required by code.²⁶ In other words, the CRB administrator actually did receive on-going communication regarding the case prior to August 31, 2017, but simply had not received the customary inbox notification. Additionally, throughout the IA investigative period, the CRB administrator actually had unlimited, independent access to all IA cases at any time.²⁷

In conclusion, based upon our cross-check of IA and CRB cases for a multi-year period, it appears that the CRB administrator has "unfettered access to the internal affairs unit investigation process" and "access, via computer database network, to all police department

²⁴ Salt Lake City Code 2.72.010

²⁵ IAPro is software designed to manage the caseload of an internal affairs unit. It allows files of any type (e.g., MS Word, audio, body camera video, photographs, etc.) to be linked to specific case files.

²⁶ Salt Lake City Code 2.72.150 F.1

²⁷ Even though the administrator has complete, independent access to all IA cases, the department has taken action to ensure that all future cases will be specifically routed to the CRB administrator's inbox. Currently, each IA investigator's checklist of investigation tasks includes a specific step that requires separate delivery of the case file to the CRB Administrator's inbox. Although this measure may address the issue of the CRB not receiving notification of a new case for review, we note again that the CRB administrator has full IAPro system access to independently review all new cases in IAPro regardless of what cases are sent to the administrator's inbox.

files on its network,” as required under SLC municipal code.²⁸ In addition, our CRB and IA interactions and review of sampled cases indicate no threats to the competence, effectiveness, or independence of CRB operations.

V. Conclusion and Recommendations

Based upon our observations, we recommend that SLC human resources and legal personnel train SLCPD management on all employment practices required by Title VII of the Civil Rights Act of 1964—particularly those requirements pertaining to religious accommodation. Furthermore, we recommend that the SLCPD establish specific policies regarding the consideration of religious or any other potential accommodations required by Title VII of the Civil Rights Act of 1964.

Additionally, the SLCPD should reconsider the current method of administering their secondary employment program. Specifically, the SLCPD should consider the advantages of paying their employees directly for secondary employment work, rather than allowing the employees to be directly employed and paid by the secondary employer. Still, we recognize the hurdles in implementing this method of secondary employment administration, and acknowledge the potential need for State regulation across all jurisdictions to make this more reasonable.

Finally, the SLCPD should reevaluate the length of time allowed for IA investigations for cases of great public concern and consider MOU negotiations that would better allow for shorter investigations with less employment protections in certain cases. Additionally, the SLCPD should consider making exceptions to the general policy of confidentiality for internal affairs investigations in order to allow SLC to more quickly and openly address issues that will likely create great public concern.

Overall, we observed city and law enforcement officials demonstrate concern for the integrity of the investigative and disciplinary process. We appreciate and acknowledge the cooperation and efforts of city officials and members of the SLCPD during the course of our audit work.

Sincerely,

A handwritten signature in cursive script that reads "Office of the State Auditor".

Office of the State Auditor

²⁸ Salt Lake City Code 2.72.150 D, E



April 13, 2018

Utah State Auditor John Dougall
Utah State Capitol Complex
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VIA ELECTRONIC MAIL AND US MAIL

Re: Salt Lake City Police Department Response to Limited Performance Audit

Dear Auditor Dougall,

The Salt Lake City Police Department welcomed the opportunity to have the Office of the State Auditor conduct a limited performance audit of the Department. An outside perspective can be a valuable tool to assess the strengths and weaknesses of an organization's operations. The Department appreciates the findings of the Office of the State Auditor, and will take steps to address any immediate concerns that were raised in the audit, as well as study any recommendations that were made. This letter is the Department's official response to the Auditor's findings.

Title VII

The Department concurs with the audit's recognition of the requirement to reasonably accommodate the religious practices of an employee or prospective employee. To the extent any members of Department management were previously unaware of this requirement, the Department appreciates the Office of the State Auditor highlighting this important issue so that additional training can be provided on this aspect of federal law.

Secondary Employment

The Department allows uniformed secondary employment because it facilitates the deployment of additional police officers in the City who could be ready to respond to emergencies or normal calls for service as needed. The officers working these additional jobs, being paid by a secondary employer, are often taking calls for service at the location of employment, which reduces call load on regular field response. This force multiplier of visible police in the community is invaluable and is a cost savings for the taxpayers of Salt Lake City.

As noted in the audit, there are generally three different methods by which secondary employment is administered. The Department has evaluated each of those methods, weighing each of their advantages and disadvantages and decided that the Department's current policy is the best method to ensure that SLCPD officers are working secondary employment jobs in Salt Lake City. As recognized in the audit, to have the Department administer all secondary employment, and thereby pass along the elevated costs associated with that arrangement, would be cost prohibitive to the

secondary employers and would have negative consequences for Salt Lake City. These elevated expenses would lead to Salt Lake City employers seeking secondary employment to hire less expensive officers from outside agencies who would not be under the command of the Salt Lake City Police Department. This would negate the positive effects of the force multiplier of having additional SLCPD officers working in Salt Lake City.

Additionally, the Department recognizes the audit's concern that secondary employment might lead to confusion from the public and/or mixed loyalties for the involved officers. The Department believes that the best way to address this concern is to adhere to a strong policy of requiring all secondary employment officers to enforce only laws and ordinances, and not private employer rules—a policy which the Department has had in place for many years.

Internal Affairs Investigation of Nurse Wubbels Complaint

The Department concurs with the finding that it followed its own policies in its internal investigation into the Wubbels matter. As the audit found, the Department promptly initiated its investigation and concluded that investigation in a timely fashion.

As discussed in the audit, public entities in Utah, like the Salt Lake City Police Department, are required to approach and handle employee discipline differently than private sector employers. Because state and federal law provide that public employees have a property interest in their jobs, the majority of public employees (including nearly all Department employees) are entitled to due process before a disciplinary decision can be issued. In contrast, the employees of most private sector employers in Utah are "at-will" and have no entitlement to due process protections. Regardless of this distinction, the Department endeavors to act quickly in all of its investigations into alleged employee misconduct. As noted in the audit, the Department's timeline for resolving complaints against its personnel falls well within the norms of its peer law enforcement agencies.

With respect to the recommendation that the Department should consider changes to the degree of employment protections afforded to its employees via labor agreements, the Department always endeavors to balance the safeguarding of taxpayer funds and the public's right to know with the requirement of due process and other legal rights mandated by state and federal law in the context of public sector employee disciplinary proceedings. However, the Department will take the audit's recommendations under advisement when the current labor agreement expires and the Department again engages in labor negotiations with its police officers.

Conclusion

The Department would like to acknowledge the collegial working relationship it developed with the team from the Office of the State Auditor. The Audit team were respectful of the time and schedule of Department employees and took pains to not unduly intrude on their duties. These efforts to be mindful of Department operations were appreciated. The Department thanks the Office of the State Auditor for its findings and recommendations, will address any immediate concerns raised in the audit, and will study the additional recommendations that were made.

Sincerely,



Mike Brown
Chief of Police