

**Court-Appointed Investigator's Report on the City of Oakland's Response to Allegations of  
Officer Sexual Misconduct**

*Delphine Allen v. City of Oakland*

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## **I. Executive Summary**

In September 2016, 12 officers of the Oakland Police Department (“OPD”) were disciplined and four were criminally prosecuted for sexual and professional misconduct involving a young woman named Jasmine Abuslin. The case made national headlines and was an enormous setback for a police department that had worked hard in recent years to institute reforms and regain public trust.

As we discuss in this report, OPD’s initial investigation of this case – both as a criminal matter and as an internal affairs matter – was seriously deficient. We further conclude that the City failed to take the necessary steps to examine these deficiencies once they came to light. If not for the Court’s intervention, we have no confidence that correct discipline would have ever been imposed, criminal charges filed, or departmental shortcomings examined.

The investigation that eventually led to these disciplinary and criminal actions was probing and exhaustive, including interviews with tens of witnesses and review of thousands of electronic records by OPD and the Alameda County District Attorney’s Office (“DA’s Office”). The problem is that the investigatory work that led to much of the internal discipline and to all of the criminal prosecutions occurred only after the U.S. District Court intervened.

In March 2016, the Monitor became aware of the sexual misconduct allegations, which OPD had begun investigating in September 2015. The Monitor was alarmed that he had not been informed of OPD’s investigation sooner, and had concerns about the investigation’s progress. He shared these concerns with the Court, and, as a result, the Court ordered the Monitor to ensure that the sexual misconduct allegations were properly investigated. At the Monitor’s direction, OPD promptly assigned new staff to the case. Once it became aware of the allegations, the DA’s Office began its own investigation. By September 2016, the IAD investigation resulted in discipline of several OPD officers and the DA’s Office announced criminal charges against several OPD officers.

The issue is why these steps were not taken before the Court got involved. OPD was aware as of September 2015 of the allegations that several of its officers had sex with Ms. Abuslin when she was a minor. Over the course of the next six months, OPD learned of many troubling facts concerning OPD officers’ conduct toward Ms. Abuslin. However, by the time the Court issued its order to ensure proper investigation in March 2016, very little progress had been made in determining the truth behind the allegations. The OPD Criminal Investigation Division had closed its inquiry into the allegations, the DA’s Office had not even been notified there were such allegations, and OPD’s Internal Affairs Division was recommending discipline against only one officer.

This report sets out to answer four questions:

- (1) Did OPD adequately investigate allegations of sexual misconduct by its officers involving Ms. Abuslin prior to the Court’s March 2016 order?
- (2) If the investigation prior to the Court order was inadequate, what were the reasons for that?

- (3) What can be learned from how the initial investigation into these allegations was handled?
- (4) When did the Mayor and City Administrator learn of the investigation, and did they respond adequately?

After having spoken to witnesses both inside and outside OPD and having reviewed records relating to the initial investigation, we find the following:

First, OPD's initial investigation was wholly inadequate. The investigation began with OPD's Criminal Investigation Division ("CID"), but CID closed its investigation after just one week. CID interviewed only one witness: the victim. CID did not follow up on any leads stemming from that interview and did not seek out witnesses or documentary evidence. CID determined there was nothing to investigate criminally and passed the investigation on to Internal Affairs.

For its part, the Internal Affairs Division ("IAD") conducted a defective investigation. IAD assigned only one investigator to the case, who worked with almost no supervision, and who spoke to Ms. Abuslin only by phone, gathered no electronic evidence, ignored important leads and the advice of a Deputy City Attorney, and ultimately concluded the appropriate result was that only one officer should be disciplined.

Not only was the investigation inadequate, but the deficiencies of the investigation were shielded from review, because OPD did not inform anyone outside the Department about the allegations or the investigation. CID did not notify the DA's Office of its investigation, even though (1) an OPD officer had taken his life and identified his contact with Ms. Abuslin as a cause of his suicide; (2) he left a suicide note reporting that Ms. Abuslin claimed to have been "involved with" many other OPD officers while she was a minor; (3) he left his cell phone with its passcode, and the phone contained evidence that other officers may have had illegal or inappropriate sexual contact with Ms. Abuslin; (4) in a CID interview shortly after the officer's suicide, Ms. Abuslin acknowledged having had sex with several OPD officers, and having had sex with Officer O'Brien while she was a minor; and (5) OPD policy required CID to notify the DA's Office when CID had a reasonable suspicion of officer criminal misconduct. In addition, former Chief of Police Sean Whent did not report to the Monitor that this investigation was underway, breaking with well-established practice to inform him of potentially significant investigations. The Monitor remained in the dark from September 2015 until March 2016, when the Monitoring Team learned, almost by accident and not from the Chief, about the investigation.

Second, we find several reasons for OPD's failure to pursue the investigation diligently. One is that OPD's investigatory process was inadequate. There were no checks in place to ensure that CID and IAD investigated the case adequately, or that OPD considered the advice of the City Attorney in a timely manner.

Another, more troubling reason for the failures involves the nature of the victim in this case. As has been widely reported, Ms. Abuslin was not only young when OPD officers had sexual

contact with her, she was involved in prostitution,<sup>1</sup> struggled with mental health issues, and used drugs. In our review of OPD's interviews of Ms. Abuslin and in our own interviews of OPD officers, we found that OPD quickly assessed Ms. Abuslin as not credible and failed to pursue investigation of the allegations vigorously in part because of who Ms. Abuslin was and how she responded to being interviewed by OPD. To be sure, she was a challenging witness in many of the early interviews. But she was a young woman who was alleged to have had repeated sexual contact with law enforcement officers – officers who took advantage of her age and vulnerability. Given the allegation that she had been sexually exploited by OPD officers, OPD owed her at least the same patience, concern, and investigative attention that they afford other victims.

Exacerbating these problems was the tone at the top. Chief Whent sent an unmistakable signal that this case was not a priority. The Chief read the suicide note in which Officer O'Brien wrote that other officers may have been involved with Ms. Abuslin while she was a minor, and Chief Whent's staff informed him that an investigation was underway. But he did not seek reports from his CID or IAD staff about the investigation. He did nothing to ensure the allegations were being investigated appropriately. For their part, senior IAD and CID command staff also failed to recognize the seriousness of the allegations and likewise did not set a tone that this case was a high priority and required thorough investigation.

Turning to the third question of what can be learned, we offer several recommendations at the end of the report to improve OPD's procedures in light of the deficiencies of this investigation. In sum, better controls are required to make sure that when the Department is faced with cases involving criminal misconduct by officers, the necessary parties are kept informed and the proper decision-makers are given the information they need to make the right calls.

Finally, we also find that like the Monitor, the Mayor and City Administrator did not learn of the sexual misconduct allegations or OPD's investigation of those allegations until March 2016. Once they were informed of the allegations of sexual misconduct, City leaders were actively involved in overseeing OPD's investigation and ensuring its thoroughness. But after the investigation concluded, the Mayor and City Administrator did not do enough to determine why the Department had not investigated the case more thoroughly before the Court got involved. Although they took the appropriate step of hiring an outside attorney to investigate this issue, many months passed with no investigative progress, and there is no evidence City leaders pressed to ensure this troubling and important question was being answered.

The fundamental problem is that it took Court intervention to cause OPD to investigate the allegations against its officers thoroughly and properly. Had OPD conducted a rigorous investigation on its own, the Department could have demonstrated its ability to police itself without the Court's supervision. Instead, OPD damaged its reputation by failing to timely report the allegations to the appropriate authorities, by doing such a poor job of investigating the allegations, and by requiring Court intervention to correct course. All of that can be repaired

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<sup>1</sup> As a juvenile, Ms. Abuslin was a sexually exploited child, and not a sex worker or prostitute. We use the term "prostitution" in this report, because that is how both she and OPD referred to this activity throughout the investigation. Ms. Abuslin was 18 by the time OPD's investigation began.

with better guidance from leadership, better procedures for investigation, and a commitment to treat all victims, regardless of status, as worthy of the Department's care and attention.

This report will discuss our investigative scope, followed by detailed factual findings regarding the quality and sufficiency of OPD's investigation. We then offer our conclusions based on those factual findings, as well as several recommendations for improvements to OPD's investigative process.

## **II. Glossary of Terms**

- OPD – Oakland Police Department
- BOI – Bureau of Investigations of the OPD, which contains the Criminal Investigation Division
- CID – Criminal Investigation Division, which conducts criminal investigations and contains the Homicide Unit and the Special Victims Unit
- SVU – Special Victims Unit, which conducts criminal investigations related to sex crimes<sup>2</sup>
- IAD – Internal Affairs Division, which is separate from the BOI and conducts administrative investigations of officer misconduct
- ROI – Report of Investigation, which is a report written by IAD investigators documenting their findings
- NSA – Negotiated Settlement Agreement, which is an agreement OPD and the City of Oakland entered into in 2003 requiring the City and OPD to enact various reforms
- OCA – Office of the City Attorney
- DA – District Attorney
- M-4.1 – Departmental General Order M-4.1, which is OPD's policy outlining under what circumstances CID is required to notify the DA's Office regarding allegations of criminal misconduct by OPD officers

## **III. Chronology of Key Events**

- 9/25/15 – Officer Brendan O'Brien is found dead in his home by apparent suicide. CID's Homicide Unit opens a criminal investigation regarding Officer O'Brien's cause of death and regarding allegations in Officer O'Brien's suicide note that several OPD officers were "involved with" Jasmine Abuslin while she was a minor. Mayor is informed of the officer's suicide but not of the allegations of sexual misconduct.
- 9/26/15 – Homicide investigator circulates Officer O'Brien's suicide note to OPD command staff, including the Chief of Police. Homicide lieutenant provides the note to IAD, because it contained "allegations of sexual criminal misconduct" by "unnamed Oakland Police Officers." Monitoring Team is informed of the officer's suicide but not of the allegations of sexual misconduct.

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<sup>2</sup> This unit is technically called the Special Victims Section. Because the witnesses we spoke to referred to it as the Special Victims Unit, and because that is how the unit is more commonly known in common parlance, we refer to this unit as "SVU" throughout the report.

- 9/30/15 – CID’s Homicide investigators interview Ms. Abuslin regarding allegations that OPD officers had sex with her while she was a minor. SVU and IAD monitor the interview.
- 10/1/15 – IAD opens an internal affairs investigation regarding the sexual misconduct allegations and assigns an investigator.
- 10/7/15 – IAD lieutenant contacts SVU lieutenant to inquire whether criminal investigation is ongoing. SVU lieutenant tells IAD lieutenant that Ms. Abuslin had denied any inappropriate sex with OPD officers and there would be no further criminal investigation by CID.
- 10/16/15 – OCA assigns an attorney to advise IAD regarding its investigation of sexual misconduct allegations.
- 10/30/15 – IAD investigator conducts phone interview of Ms. Abuslin.
- 11/12/15 – IAD investigator conducts interview of Officer C.
- 11/19/15 – IAD investigator conducts interview of Officer B.
- 11/23/15 – IAD investigator conducts interview of Officer A.
- 11/24/15 – IAD investigator and OCA attorney meet for the first time to discuss the investigation.
- 11/30/15 – Ms. Abuslin calls IAD investigator and asks to meet in person. IAD investigator asks her to call back the next day to schedule a time to meet. The meeting never occurs.
- 2/8/16 – IAD investigator provides a draft ROI to OCA.
- 2/9/16 – OCA provides comments and advice on the ROI.
- 2/10/16 – IAD investigator sends IAD supervisor the draft ROI that does not include or address any of OCA’s comments.
- 3/8/16 – Monitor learns of allegations of sexual misconduct for the first time.
- 3/11/16 – IAD supervisors learn that IAD investigator did not accept the advice of OCA and did not inform supervisors of the advice.
- 3/15/16 – Ms. Abuslin calls IAD to report that an OPD officer was suicidal.
- 3/22/16 – City Administrator and Mayor are informed of the sexual misconduct allegations for the first time.
- 3/23/16 – Court orders Monitor to ensure OPD investigates sexual misconduct allegations thoroughly.

#### **IV. Origin and Scope of the Investigation**

On March 23, 2016, the Court issued an order regarding “irregularities and potential violations” of the Negotiated Settlement Agreement (“NSA”) that occurred during IAD’s investigation of allegations of sexual misconduct by OPD officers against Ms. Abuslin. Following that order, the investigation, which had already been underway for six months, was reassigned to a deputy police chief. That subsequent investigation ultimately resulted in the discipline of 12 current and former officers, including the recommended termination of four. Also, following the Court’s March 23 order, the DA’s Office conducted a parallel investigation that resulted in criminal prosecution of four OPD officers and of several officers from other jurisdictions.

In June 2016, the City hired an independent investigator to assess the integrity of the IAD investigation. As of January 2017, that independent investigation had resulted in no witness

interviews, findings, or report. At the request of the Monitor,<sup>3</sup> we began our investigation on January 25, 2017.

Our assignment was to consider the quality and sufficiency of OPD's investigation of potential officer sexual misconduct, but only as to OPD's investigation that occurred prior to the Court's March 23, 2016 order. Therefore, we have not considered the merits of the findings of OPD's investigation that followed intervention by the Court and Monitor.

During our investigation, we conducted more than 40 witness interviews, including interviews of current and former members of OPD, the Mayor, the City Administrator, the Monitoring Team, the former Chief of Police, members of the Alameda County District Attorney's Office, the victim, and other witnesses who had relevant information. We reviewed approximately 50,000 pages of emails and other documents and 15 hours of video and audio recordings. We received the full cooperation of OPD, the Office of the City Attorney, the City Administrator's Office, the Mayor's Office, and the DA's Office in our requests for witnesses, documents, and other information. We especially appreciate the significant effort of the Office of the City Attorney in providing us with documents and other assistance.

## **V. Factual Findings**

The following findings are based on our interviews and review of documents and other evidence. Where there is a disagreement between witnesses or between witness statements and other evidence, we note the disagreement and explain the basis for our finding.

### **A. Officer O'Brien's Suicide Note Included Allegations of Officer Sexual Misconduct**

On September 25, 2015, OPD officers responded to the home of Officer Brendan O'Brien. They found Officer O'Brien dead by apparent suicide. At the home, officers found a note signed by Officer O'Brien.

The note described the personal and mental difficulties Officer O'Brien had suffered since the suicide of his wife approximately one year prior. But the majority of the note discussed Officer O'Brien's interactions with Jasmine Abuslin, interactions Officer O'Brien described as the catalyst for his suicide. Officer O'Brien explained that he met Ms. Abuslin through Facebook earlier that year and that Ms. Abuslin was the daughter of an OPD police dispatcher. Officer

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<sup>3</sup> OPD has been under federal supervision since January 22, 2003, when it entered into a Negotiated Settlement Agreement resolving claims of police misconduct in *Allen, et al v. City of Oakland, et al*, Case No. 00-cv-04599 TEH (N.D. Cal). The Negotiated Settlement Agreement required selection of an Independent Monitor, who was to review and report on OPD's implementation of the NSA and assist in OPD's compliance. In December 2012, the Court appointed a Compliance Director whose mission was to bring the City into compliance with the NSA. The Compliance Director was granted authority "to direct specific actions by the City or OPD to attain or improve compliance. . . ." Dkt. No. 885 at 6. In February 2014, the Court consolidated the powers of the Monitor and the Compliance Director into one position, making Chief Robert Warshaw both the Monitor and the Compliance Director. For ease of reference, this report will refer to Chief Warshaw as the Monitor throughout, even when referring to his authority in his role as Compliance Director.



O'Brien wrote that he and Ms. Abuslin met in person once, but he denied that he and Ms. Abuslin had any sexual relationship. He wrote that soon after they became Facebook friends, Ms. Abuslin began to threaten to get Officer O'Brien fired. She sent Officer O'Brien screenshots of her conversations with him, which she posted on Instagram.

But in addition to describing Officer O'Brien's interactions with Ms. Abuslin, the note also described Ms. Abuslin's interactions with other OPD officers. Officer O'Brien stated that Ms. Abuslin had told him about her "previous boyfriend," who was a former OPD officer. Officer O'Brien wrote that he received a screenshot from Ms. Abuslin of her conversations with Officer A, in which she told Officer A that she had "been involved" with many OPD officers while she was still a minor. Officer O'Brien also wrote that Ms. Abuslin sent him screenshots of her messages to the wife of Officer B, in which Ms. Abuslin notified Officer B's wife about her husband's relationship with Ms. Abuslin while Ms. Abuslin was a minor.

Officer O'Brien added a warning to OPD Homicide investigators that if they were to interview Ms. Abuslin regarding Officer O'Brien's death, everything she would tell them would be a lie. Officer O'Brien included the passcode to access his phone, which officers found in the home.

### **B. The Monitor and City Leadership Learned of the Suicide, But Not of the Allegations of Sexual Misconduct**

CID's Homicide Unit responded to the scene of the suicide. The Deputy Chief overseeing CID also responded to the scene. The Chief of Police was notified by phone of the suicide shortly after CID arrived on the scene.

The evening that he learned of Officer O'Brien's death, Chief Whent called the Mayor to inform her. The following morning, Chief Whent called a member of the Monitoring Team to inform him of the suicide as well.<sup>4</sup> Chief Whent did not inform the Mayor or Monitoring Team about the allegations of sexual misconduct. Chief Whent told us he did not yet know about the suicide note or its contents at the time he made these calls. The City Administrator likewise received notice of the suicide sometime shortly after OPD discovered Officer O'Brien's death but not of the suicide note or its contents.

Shortly after Chief Whent called the Monitoring Team the morning after learning of Officer O'Brien's suicide, the lead Homicide Unit investigator on Officer O'Brien's case emailed a copy of the suicide note to Chief Whent, the Assistant Chief of Police, the Deputy Chief overseeing the Bureau of Investigations, the CID Commander, and the lieutenant overseeing the Homicide Unit. The Homicide Unit lieutenant responded to the group, indicating that due to the allegations in the note, the lieutenant would be giving a copy of the note to IAD. The lieutenant did so the same day, sending the note and a memo to the IAD Commander. In the memo, the lieutenant

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<sup>4</sup> Chief Whent's usual practice was to report officer-involved shootings and other critical incidents directly to the Monitor, but the Monitor was out of the country at the time that OPD discovered Officer O'Brien's suicide. Chief Whent eventually informed the Monitor of the suicide, but he did not inform the Monitor of the allegations of sexual misconduct at any time.

explained that Officer O'Brien's suicide note "contained allegations of sexual criminal misconduct" by unnamed Oakland police officers.

Chief Whent was outside the office when he received the note, which he read on his phone. After reading Officer O'Brien's note, and the accompanying email saying the lieutenant planned to forward the note to IAD due to the allegations in the note, Chief Whent did not inform the Mayor, the City Administrator, or the Monitor of the allegations of sexual criminal misconduct. In fact, Chief Whent did not inform any of them of the sexual misconduct allegations at any time over the nearly six months of the CID and IAD investigations into those allegations. The failure to do so was a marked departure from regular practice. The Mayor, the City Administrator, and the Monitor had each set clear expectations with the Chief that they were to be informed immediately of any allegations that, if true, would result in termination of an officer or that could damage the reputation of the Department. During his term, Chief Whent had informed all three individuals of allegations of serious officer misconduct, including allegations involving far less serious misconduct than criminal sexual misconduct.

Chief Whent explained to us that his failure to notify the Monitor and the City leadership of the allegations of sexual misconduct by OPD officers was due, at least in part, to his having misread the note. He told us he initially read the note to say that Ms. Abuslin falsely accused Officer O'Brien of having sex with her as a minor, and that other OPD officers named in the note could verify that Ms. Abuslin was a liar. As a result, Chief Whent claimed that he did not read the note as containing an allegation that other OPD officers had illegal or inappropriate sex with Ms. Abuslin. This is not a reasonable reading of the note, and it is not one that any member of the Department shared. It is also not in keeping with Chief Whent's well-regarded attention to detail. This claim is not credible, particularly since the email he received transmitting the note indicated that, because of the allegations in the note, it was necessary to forward the note to IAD.

However, if the Chief had somehow misread the note and the accompanying email, any misunderstanding should have been quickly dispelled when, just days later, he and the Commander of IAD discussed the IAD investigation arising out of the allegations in the note. The IAD Commander and Chief Whent discussed that IAD would investigate whether the officers named in the note engaged in sexual misconduct with Ms. Abuslin, and whether Officer A had failed to report that misconduct. At that point, at the very latest, Chief Whent had the information he needed to inform the Mayor, the City Administrator, and the Monitor that an investigation was underway of allegations that OPD officers had engaged in serious sexual misconduct.

Chief Whent acknowledged that, in hindsight, he should have notified the Mayor, the City Administrator, and the Monitor about the IAD investigation, but he told us that based on the reports he received at the time, he believed the allegations were not supported. As he noted, OPD at times receives patently frivolous allegations of misconduct, even serious misconduct, and those are not reported to the Monitoring Team or the Mayor or City Administrator unless evidence develops to suggest the allegation is credible.

As discussed in greater detail below, it is true that CID and IAD failed to recognize the seriousness of the allegations and underreported to the Chief the evidence supporting them. However, Chief Whent knew at a minimum that one of his officers had taken his life in part because of what that officer feared Ms. Abuslin would expose about him. He knew, or at least he should have known, that the officer left a suicide note in which he said many OPD officers may have been “involved with” Ms. Abuslin while she was a minor. Based on the suicide note, he should have known the officer’s phone contained evidence related to these allegations, and that the officer had left the passcode to his phone. And he knew that, as a result of the allegations in the suicide note, other OPD officers were being investigated for having sex with Ms. Abuslin while she was a minor. Whether the allegations would ultimately result in disciplinary or even criminal sanctions was not known at that point, but the allegations were sufficiently serious and the potential consequences for the Department’s reputation sufficiently grave that the Chief should have notified the Mayor, the City Administrator, and the Monitor immediately. Had they been informed at the outset, each could have helped ensure that the CID and IAD investigations were given the attention and resources needed to investigate the allegations thoroughly.

The DA’s Office could have also played a role in ensuring that the allegations were properly investigated. But as discussed in greater detail below, the DA also was not informed until after the Court issued its order and OPD’s revamped investigation was underway.

The failure to inform the Monitor was a particularly egregious error given Chief Whent’s established practice of informing the Monitor of significant investigations involving officers. Over the years that the Monitor had been supervising the Department, he and his staff had received regular updates from the Chief on matters that were under investigation.<sup>5</sup> These updates included not just the Chief’s conclusions at the end of an investigation, but also information about *pending* investigations that could result in serious adverse consequences for officers or negative publicity for the Department. As such, Chief Whent should have understood that if an investigation into allegations of serious sexual misconduct by multiple officers was underway, it was his duty to tell the Monitor about it. The Chief’s failure to do so – not just at the outset of the investigation in September 2015 but throughout the more than five months that preceded the Monitor’s discovery of the allegations – cannot be explained by his account of having misread the note, or his belief that the allegations lacked sufficient credibility.

### **C. CID’s Investigation Was Inadequate**

Generally speaking, when there are allegations of officer criminal misconduct, the Criminal Investigation Division (“CID”) has the first opportunity to investigate. In part, this is because everything that CID learns in its investigation can be shared with IAD, but due to employment laws, not everything IAD learns in an investigation can be shared with CID. Therefore, CID

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<sup>5</sup> In an order entered January 24, 2012, the Court ordered that “the Chief must regularly consult with the Monitor on all major decisions that may impact compliance with the NSA, including but not limited to . . . disciplinary actions in Class I misconduct cases.”

typically conducts a criminal investigation first, and IAD conducts an administrative investigation when CID's work is done.

CID has several units under its umbrella, including both Homicide and the Special Victims Unit ("SVU"). Different units lead different investigations depending on the type of possible crime. For example, Homicide tends to investigate deaths, whereas SVU tends to investigate crimes of sexual violence. In this case, CID's Homicide Unit led the investigation of the sexual misconduct allegations because the evidence of those allegations was discovered on the scene of a homicide. As discussed below, SVU was consulted on the case, but it never led the investigation until after the Court's intervention.

CID's investigation of the sexual misconduct allegations consisted of interviewing Ms. Abuslin and reviewing evidence on Officer O'Brien's phone. Despite evidence suggesting that other officers had inappropriate sexual contact with Ms. Abuslin, including the serious possibility that the sexual contact occurred when she had been a minor, CID closed its investigation within a week of opening it.

i. Officer O'Brien's Phone Contained Alarming Evidence

Shortly after discovering Officer O'Brien's suicide, CID began downloading and reviewing the contents of his phone and tablet computer. Just as the note described, Ms. Abuslin sent Officer O'Brien screenshots of her conversation with Officer A, in which she told Officer A that she had had sex with several OPD officers while underage, including Officer O'Brien. The names of five OPD officers other than Officer O'Brien had been blurred or blacked out before she sent the screenshot to Officer O'Brien. In the messages, Officer A expressed his disapproval of the officers having sex with Ms. Abuslin while underage but said he would not tell anyone. The phone evidence also confirmed Officer O'Brien's claim in his note that Ms. Abuslin posted their private conversations online and threatened to expose Officer O'Brien for having sex with her while underage.

In addition, the phone records revealed that Ms. Abuslin told Officer O'Brien on her 18th birthday that Officer B was her "boyfriend," which suggested they may have had sexual contact while she was underage. Officer O'Brien asked Ms. Abuslin if Officer B knew what Ms. Abuslin did for work (i.e., prostitution), and Ms. Abuslin confirmed that he did know and that he claimed he was going to "help" her, which she indicated she did not believe. A few weeks later, the phone records showed that Ms. Abuslin sent Officer O'Brien screenshots of her messages to the wife of Officer B, messages in which Ms. Abuslin sent Officer B's wife screenshots of her conversations with Officer B and wrote "I was 17."

ii. Ms. Abuslin's CID Interview Produced Leads

Within days of discovering the suicide, a Homicide investigator contacted Ms. Abuslin to request an interview. The investigator told Ms. Abuslin the purpose of the interview was to discuss her relationship with Officer O'Brien and any other officers in the Department. The investigator assured Ms. Abuslin she was not in trouble. Ms. Abuslin asked if she could answer the questions over the phone, but the investigator insisted that they meet in person. Ms. Abuslin asked the lead

investigator, “Is this because I was little?” The investigator confirmed that OPD needed to investigate the serious accusations Ms. Abuslin made in her messages to Officer O’Brien. Ms. Abuslin asked several more questions that suggested she was concerned she was in trouble. The investigator again assured her that was not the case. Ms. Abuslin asked if the investigator was going to take her phone away from her. The investigator assured her that the investigator would not take her phone. Ms. Abuslin agreed to an in-person interview later the same day.

The lead investigator and a second Homicide investigator conducted a video-recorded interview of Ms. Abuslin. The lieutenants overseeing Homicide and IAD, as well as the supervising sergeant from SVU, watched a live feed of the interview in a separate room. The interview lasted over two hours, including a break.

The interview was challenging. The Homicide investigators asked Ms. Abuslin whether she had sex with Officer O’Brien and other OPD officers, but Ms. Abuslin was reluctant to discuss Officer O’Brien or give the names of officers with whom she had contact. The investigators tried several different tactics in an effort to elicit information and at one point offered to have a female officer or advocate question Ms. Abuslin, which she declined. Ms. Abuslin changed the subject frequently and at times offered a blanket denial that she had sex with any OPD officers.

But in the course of the interview, Ms. Abuslin, who the investigators knew had turned 18 only one month before, named Officer C as someone with whom she had had sex. When asked where their encounter took place, Ms. Abuslin said, “What if it was in public? Could he go to jail? I don’t want him to go to jail. . . . I don’t want him to catch a 314 charge.”<sup>6</sup> She also referred to Officer B as her “boo.”

At one point Ms. Abuslin cried while describing an incident in which she video-called a former OPD officer because she “needed his help.” She said the officer “saw everything that happened to me, and he just watched it, and then he didn’t like me [any] more.” The investigators pushed Ms. Abuslin to describe what the officer saw happen to her, but Ms. Abuslin refused to tell the investigators, because she said she knew the officer was a mandated reporter and did not want to get him in trouble.

In the interview, Ms. Abuslin frequently said she did not want to “tell on anybody” or “snitch” or “send someone to jail,” suggesting there was a need to protect the officers. When the lead investigator insisted on learning Ms. Abuslin’s birthdate, Ms. Abuslin responded, “Why, so you can take me to jail for sleeping with all your . . . ?” When the lead investigator assured her she would not go to jail and again tried to confirm her birthdate, Ms. Abuslin said, “Why so you can take everybody to jail that trusted me?” Ms. Abuslin did eventually confirm her birthdate.

Ms. Abuslin acknowledged that she was involved in prostitution. She told the investigators that she once asked Officer O’Brien to provide her “security” in exchange for money, but Officer O’Brien declined because that would be “pimping.” Eventually Ms. Abuslin said she had sex with Officer O’Brien while she was 17. When the lead investigator told Ms. Abuslin that Officer

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<sup>6</sup> 314 charge refers to California Penal Code § 314, which penalizes indecent exposure in public.

O'Brien wrote in his suicide note that everything Ms. Abuslin said would be a lie, Ms. Abuslin told him that they had the texts, including those in which Ms. Abuslin told Officer O'Brien she was near his house. The investigator also told Ms. Abuslin that her threats to expose Officer O'Brien for having sex with her while she was underage were one of the main catalysts for Officer O'Brien's suicide. The victim later identified both of these tactics as ones that made her disinclined to share information. She felt the investigators implied she would not be believed, and if she were, she would cause additional officers to hurt themselves.

Ms. Abuslin then acknowledged having had sex with several OPD officers but said she had been 18 at the time. When the investigator pointed out that Ms. Abuslin had been 18 for only one month, Ms. Abuslin said she had sex with three OPD officers during the week of the interview.

At a break in the interview, when investigators stepped out but Ms. Abuslin remained in the room, she called a friend on her cell phone. She continued to be recorded while the investigators were out of the room, and she could be viewed on a monitor in another room. On the call, Ms. Abuslin said the investigators were asking her about her "relationships with" OPD officers, but she intended to "deny, deny, deny" to avoid getting officers in trouble. She told her friend she was not going to "snitch," because she feared that nobody from the Department would want to "fuck with" her. Ms. Abuslin said she was scared, not for herself but for the officers. She said she had a boyfriend at OPD who would think poorly of her if "everything comes out."

After the break, Ms. Abuslin told the investigators that she did not want to "snitch" because then OPD officers would not "fuck with" her, and she had a relationship with someone in the Department who thought he was her "only one" and who would think poorly of her if he learned about "all this." Ms. Abuslin asked the investigators, "Can't I just say it's not true and we move on with our life?" When the investigator pointed out that some of her screenshots to Officer O'Brien included conversations with officers before she was 18, Ms. Abuslin was silent.

At one point, the investigator again reminded Ms. Abuslin that her threats to expose Officer O'Brien had been a catalyst for his suicide, and the investigator wanted to prevent another officer from hurting himself if Ms. Abuslin were to get mad at them. Ms. Abuslin picked up her phone<sup>7</sup> and told the investigator she would delete all her messages with officers so that she could not blackmail them in the future. Ms. Abuslin then began deleting her messages with officers, covering the names of the individuals but stating they worked for OPD. The lead investigator told Ms. Abuslin not to delete the messages and asked to see them, but Ms. Abuslin continued to delete the messages, counting out the officers one by one as she deleted her messages with each. In total, Ms. Abuslin appeared to have deleted her messages with at least six officers. Finally, the second investigator changed the subject, and Ms. Abuslin turned her focus away from her phone.

Towards the end of the interview, the investigators again asked about Officer B, and Ms. Abuslin said, "He was gentle. [Officer O'Brien] was gentle too."

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<sup>7</sup> Ms. Abuslin had two phones on the table. She showed the investigator which phone she used for police and family, and which phone she used for other purposes.

Eventually the investigators talked to Ms. Abuslin about some of the difficult things she had experienced in her life and suggested ways she could get help. Ms. Abuslin said that she had sex with her first officer at 14. The lead investigator told Ms. Abuslin that was something they had to be concerned with and asked who else Ms. Abuslin had sex with before she was 18. The investigator gave Ms. Abuslin a pen and paper to write the names down, but the only name she wrote down was that of Officer O'Brien.

Later in the interview, Ms. Abuslin showed one of the investigators a picture of her friend and handed the investigator her phone. Eventually she said, "Don't look at my messages" and took back the phone. The investigator asked why Ms. Abuslin did not want them to see her messages, and she said, "Because you'll see who."

Eventually the officers pressed again for information, and Ms. Abuslin said, "I'm not going to tell you names and I'm going to deny everything." The investigators told her she was not being honest about who she had sex with besides Officer O'Brien. Ms. Abuslin said, "I just don't see how it's relevant to [Officer O'Brien]." The lead investigator explained it was relevant because some of the officers might be experiencing the same things Officer O'Brien did. Ms. Abuslin said that just because Officer O'Brien killed himself, it did not mean that all the officers that "fucked with" her were going to kill themselves too. She said that she tried to be an escape for what the officers went through at work.

Ms. Abuslin said she did not want to talk to the investigators again. The second investigator said they would look for evidence from other sources but they would have to come back to her to verify it. Ms. Abuslin said she did not understand why what she did with other officers was relevant to Officer O'Brien. The lead investigator suggested to Ms. Abuslin that the officers might be having sex with other underage girls. Ms. Abuslin said if it was consensual, it was their business. The lead investigator pointed out that it could not be consensual when an officer had sex with someone who was 14. Ms. Abuslin was silent.

The Homicide investigator wrote a report that documented what occurred in the interview. It correctly noted that Ms. Abuslin acknowledged Officer O'Brien had sex with her while she was 17, and that she acknowledged Officer C had sex with her as an adult. But the report did not note that Ms. Abuslin repeatedly indicated she would deny sexual contact with OPD officers in order to protect them from punishment.

### iii. CID Did Not Investigate Further

Following the CID interview of Ms. Abuslin, the sergeant who had observed the interview for SVU reported to the SVU lieutenant that the interview had been difficult and that SVU should consider re-interviewing Ms. Abuslin separately. The Homicide lieutenant reported to the captain of CID that the interview had not established all the elements of a crime against any particular officer. The Homicide lieutenant assumed SVU would pursue the case further after the interview but did not participate in the decision on whether it would do so.

In reality, neither Homicide nor SVU pursued any other investigation of the alleged criminal misconduct prior to the Court's intervention. Neither unit interviewed Ms. Abuslin again, nor

did they interview any other witness, such as Ms. Abuslin's mother or the officers identified on Officer O'Brien's phone or mentioned in Ms. Abuslin's interview. They did not follow up on the leads they had developed in the interview, nor did they do any other investigatory work, such as reviewing social media, seeking the DA's assistance with obtaining subpoenas or search warrants, or even requesting information voluntarily from witnesses. Other than interviewing Ms. Abuslin once and reviewing the suicide note and Officer O'Brien's phone, CID conducted no investigation before the Court's March 2016 order.

Following Ms. Abuslin's CID interview, the Deputy Chief of the Bureau of Investigations (which oversees CID) was briefed on the case by the CID Commander and was told that Ms. Abuslin adamantly denied having sex with any OPD officer, that there was nothing to move forward with, and that SVU concurred. Although the SVU lieutenant did not recall doing so, based on other evidence, we find that SVU concurred in the decision to not investigate further due to the victim's reluctance to cooperate. Ultimately it was the decision of the CID Commander, who oversaw both the Homicide Unit and SVU, for CID to end its investigation of the sexual misconduct allegations. With that, the CID investigation was over.

iv. CID Did Not Inform the DA

Task 28 of the NSA requires OPD to coordinate promptly with the DA's Office regarding possible officer criminal misconduct:

OPD shall develop a policy to report, as soon as possible, evidence of criminal misconduct by a member/employee to the Alameda County District Attorney's Office for their review and collaboration. Said report to the District Attorney shall be made when there is reasonable suspicion to believe the member/employee has been involved in a felony or serious misdemeanor.

To implement Task 28, OPD enacted Departmental General Order M-4.1, "Criminal Investigations Involving Active Law Enforcement, or a Member or Employee of the Department." The version of M-4.1 operative at the time of Officer O'Brien's death required the CID Commander to notify the DA's Office when there was "reasonable suspicion of [officer] criminal misconduct, involving a felony or serious misdemeanor." M-4.1 required this notification to occur within 24 hours of conferring with the Deputy Chief of the Bureau of Investigations about the alleged misconduct.

As defined in M-4.1, a reasonable suspicion exists when, "[f]rom the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct." A "serious misdemeanor" is defined as any misdemeanor for which a conviction "could preclude personnel from successfully fulfilling the responsibilities of their job classification."

The CID Commander at the time of Officer O'Brien's death believed, contrary to the language of M-4.1, that CID was only required to notify the DA if the Department was going to present a case for charging, rather than at the moment of reasonable suspicion of officer criminal



misconduct. In criminal investigations involving non-law enforcement suspects, CID chooses whether to present or not present a case to the DA for charging, based on the evidence available. But in the case of criminal investigation of OPD personnel, M-4.1 required notification to the DA much earlier; CID was required to notify the DA as soon as there was a reasonable suspicion of criminal misconduct by OPD officers, supported by specific facts.

The DA's Office was not formally notified of OPD's investigation until after the Court's March 2016 order, when OPD informed the DA's Office that one of its inspectors, who was also a former OPD captain, was suspected of sexual misconduct related to Ms. Abuslin. DA Nancy O'Malley, a leading prosecutor of sexual exploitation and human trafficking to whom OPD had ready access, learned about OPD's investigation for the first time when it was reported in the newspaper.

Like the failure to inform the Mayor, the City Administrator, and the Monitor, the failure to inform the DA's Office of the CID investigation prevented outside monitoring and support for the investigation. The DA could have ensured the investigation was thorough and unbiased, and it could have provided investigatory resources of its own. The result of OPD's decision not to share this information with the DA's Office is easily measured: When the DA's Office finally learned of Ms. Abuslin's allegations, its inspectors and DA O'Malley immediately immersed themselves in the investigation, conducting a far more thorough and probing examination than the Department had done prior to Court intervention, and uncovering evidence against many more officers.

v. CID Ignored Alarm Bells

Within a few days of CID's interview of Ms. Abuslin on September 30, 2015, the sergeant leading the IAD investigation received the CID file, which contained the recorded interview of Ms. Abuslin and Officer O'Brien's phone data. The IAD investigator thought the screenshots in which Ms. Abuslin claimed that OPD officers had had sex with her as a minor suggested the case was criminal in nature, and that CID rather than IAD should be investigating. The acting IAD lieutenant at the time agreed. The acting lieutenant conferred with the IAD Commander, who concurred and instructed the acting IAD lieutenant to contact the lieutenant overseeing SVU.

The acting IAD lieutenant explained to the SVU lieutenant that the screenshots raised alarms and that IAD wanted to know if CID would be investigating before IAD moved forward. The SVU lieutenant told the acting IAD lieutenant that CID had interviewed Ms. Abuslin, that she was not credible, that Ms. Abuslin had "made it clear" she had not had inappropriate sex with any officers, and that therefore there was nothing for CID to investigate.<sup>8</sup> No one from CID or IAD informed Chief Whent of the dispute regarding which division should lead the investigation.

Soon after, the Office of the City Attorney ("OCA") became involved in the IAD investigation. After reviewing the materials received from CID, attorneys at OCA found it unusual that CID had not taken more investigative steps. An OCA attorney asked the Deputy Chief of the Bureau

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<sup>8</sup> The then-lieutenant of SVU did not recall this conversation, or ever being informed of the suicide note or CID interview. The acting lieutenant of IAD had a very clear memory of the conversation, which was documented in contemporaneous notes. We therefore find it did occur.

of Investigations whether CID was still investigating the case. While the Deputy Chief does not recall doing so, based on other evidence, we find the Deputy Chief informed the attorney that the Deputy Chief had been briefed on the issue, that the victim had retracted the allegations and was not being cooperative, and that the CID investigation was closed.

In November 2015, the City Attorney herself raised concerns with Chief Whent that the alleged officer sexual misconduct regarding Ms. Abuslin might be part of a larger culture of tolerance for sexual misconduct within the Department. Chief Whent disagreed and suggested the larger problem had to do with drinking and rookie recruitment. Despite having this conversation with the City Attorney, Chief Whent still did not inform the Mayor, the City Administrator, or the Monitor of the sexual misconduct allegations.

#### **D. IAD's Investigation Was Inadequate**

Upon receiving the complaint from CID in late September 2015, IAD assigned the case to an investigator. The investigator initially named Officer A as a subject, Officer B as a possible subject, and Ms. Abuslin and her mother as witnesses. After reviewing the screenshots and messages on Officer O'Brien's phone, the investigator named Officer B and Officer C as subjects as well.

##### **i. IAD Missed Opportunities in Witness and Subject Interviews**

The IAD investigator interviewed Ms. Abuslin and the subject officers in October and November 2015. There were deficiencies with each interview.

##### **a. Ms. Abuslin's Interview**

Within a few weeks of receiving the case in October 2015, the IAD investigator called Ms. Abuslin to request that she come in to IAD for an interview. Ms. Abuslin initially agreed, and the investigator scheduled a time to pick her up and drive her to the interview in a police car. But when Ms. Abuslin wavered and expressed concern that she did not want to go to jail, the investigator offered to conduct the interview by phone. Ms. Abuslin agreed. IAD and Ms. Abuslin never met in person during its investigation prior to Court intervention, and IAD did not ask to meet in person with Ms. Abuslin after the initial request.

Throughout the interview, the investigator's tone alternated between frustrated, angry, and patronizing. The investigator's first line of questioning was to establish that Ms. Abuslin was a prostitute. The next line of questioning was to discuss Ms. Abuslin's mother, her position in the Department, and what she knew about Ms. Abuslin's involvement with officers. Both lines of questioning caused Ms. Abuslin to become upset and concerned that she or her mother were in trouble.

On several occasions, the investigator did not ask follow-up questions that could have led to additional information. For example, when the investigator asked whether the allegations in Ms. Abuslin's message to Officer A were true, Ms. Abuslin said she had "real sex" with two officers, and oral sex with one. The investigator did not ask with whom, where, or when the sex took place.

At one point Ms. Abuslin noted she was “able to get [her] hands on some cases.” She said she knew the Homicide detectives who had previously interviewed her had lied to her about some things, because she was “seeing” an officer, and he had shown her police reports and pictures. Ms. Abuslin said the report she had been shown did not line up with what the Homicide detectives had told her, implying that an officer had shown Ms. Abuslin the report on Officer O’Brien’s suicide. The IAD investigator did not probe to attempt to find out which officer had allegedly shown Ms. Abuslin the CID report and photos.

Although Ms. Abuslin at times denied that Officer C had sex with her, at other times she acknowledged that he had done so. For example, at one point the investigator discussed the allegations that Ms. Abuslin had made in messages to Officer O’Brien and in the CID interview. The investigator asked Ms. Abuslin, “What about you telling the investigators you had sex with him in public or on top of a car or something like that?” Ms. Abuslin said, “Oh I did admit to it? Oh god, yeah I did.” The investigator did not clarify that Ms. Abuslin was confirming that she had had sex with Officer C in public. Nor did the investigator attempt to gather other details, such as when and where the incident had occurred. Ms. Abuslin later confirmed Officer C had sex with her when she was an adult. The investigator asked if Officer C knew Ms. Abuslin was a prostitute, and Ms. Abuslin said she thought everyone knew.

Similarly, Ms. Abuslin at times denied having any contact with Officer B but eventually acknowledged having met Officer B in person in Oakland, when Officer B was at work. Ms. Abuslin then confirmed she became Facebook friends with Officer B and at some point, Officer B texted Ms. Abuslin and their conversations became sexual.

Finally, the IAD investigator missed several opportunities to meet with Ms. Abuslin in person. Towards the end of their telephone call, the investigator expressed a desire to help Ms. Abuslin stop “selling herself” and to help her stop using drugs. Ms. Abuslin asked if the officers would still be in trouble if she got hit by a car or if she died. The investigator asked if Ms. Abuslin planned to hurt herself and if she needed help. Ms. Abuslin denied that she did. The investigator told Ms. Abuslin she could call if she needed someone to talk to, but the investigator did not request that Ms. Abuslin meet with IAD in person.

About a month later in late November 2015, Ms. Abuslin called the IAD investigator, asking if she could meet the investigator and if the investigator could help her. The investigator asked when they could meet, and Ms. Abuslin said, “You tell me.” The investigator then asked to clarify if Ms. Abuslin wanted to talk about the case or her life. Ms. Abuslin said she wanted to talk about her life but also talk about Officer O’Brien. The investigator told Ms. Abuslin that the investigator was about to get off work but asked her to call on Monday and they would find a time to meet. Ms. Abuslin did not call back, and the investigator did not follow up to schedule the meeting.

On March 15, 2017, Ms. Abuslin again called IAD, this time to report that an officer was threatening to kill himself. OPD took the appropriate steps to ensure the officer’s safety. But IAD did not attempt to interview Ms. Abuslin about her relationship with the officer and did not immediately name the officer as a subject or witness of the investigation.

Apart from the investigator's initial phone call with Ms. Abuslin in October 2015, no one from IAD ever attempted to contact Ms. Abuslin until after the Court intervened in the investigation in March 2016.

#### b. Officer Interviews

In contrast with the interview of Ms. Abuslin, the IAD investigator's tone with the subject officers was friendly and non-confrontational. The investigator informed Officer B and Officer C that as a result of the sexual misconduct allegations, they were being investigated for possible violations of two OPD rules – one, for obedience to laws, and, two, for conduct bringing disrepute to the Department. The IAD investigator notified Officer A that he was being investigated for failing to report the allegations he received that OPD officers were having sex with Ms. Abuslin while she was underage.

In their interviews, Officer B and Officer C both admitted to exchanging messages of a sexual nature with Ms. Abuslin, and Officer B admitted that he sent Ms. Abuslin a picture of his penis.<sup>9</sup> Both officers denied ever having met Ms. Abuslin in person. Both officers named other OPD officers who had had contact with Ms. Abuslin through Facebook.

The investigator failed to ask follow-up questions during several key moments of Officer B's interview. For example, Officer B admitted to knowing that Ms. Abuslin rented a hotel room to have scheduled sex with eight men. Officer B said he knew Ms. Abuslin was an "escort," that "escorting" was still how Ms. Abuslin made her money, and that Ms. Abuslin had "started through Craigslist." Eventually a second IAD investigator who was participating in the interview asked Officer B whether Ms. Abuslin solicited him to have sex with her for money, saying, "You know she's a whore. . . ." Officer B denied being solicited to have sex for money but did not deny knowing Ms. Abuslin was, as the IAD investigator put it, "a whore." Officer B told the investigator that he was trying to "help" Ms. Abuslin to "give up that life" and to encourage her to get a "real" job. When Officer B later admitted to sending Ms. Abuslin a picture of his penis, the investigator did not clarify whether he sent the picture before or after learning Ms. Abuslin was involved in "escorting" and did not press Officer B as to why he would send a picture of his penis to someone he claimed to be "mentoring."

#### ii. The Draft Report Did Not Accurately Reflect Interviews

By February 2016, the IAD investigator drafted a Report of Investigation ("ROI") to submit to the IAD lieutenant. The draft ROI did not summarize Ms. Abuslin's interview with CID, nor did it summarize the messages with Ms. Abuslin found on Officer O'Brien's phone. The draft ROI did not state that Ms. Abuslin said she had had sex with Officer C in a public place. It did not state that Ms. Abuslin claimed to have received OPD reports and evidence from a current OPD officer who Ms. Abuslin said she was "seeing." It did not note that Officer B named two other officers who had contact with Ms. Abuslin through Facebook. The draft ROI did note that

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<sup>9</sup> Ms. Abuslin was 17 when Officer B sent her a photograph of his penis. However, Officer B claimed Ms. Abuslin told him that she was 24 years old.

Officer B knew Ms. Abuslin worked as a prostitute, and that Officer B sent Ms. Abuslin a picture of his penis.

In the draft ROI, the investigator downgraded Officer B and Officer C from subjects of the investigation to witnesses. Given Ms. Abuslin's acknowledgement that Officer C had sex with her in public and given Officer B's admission of sending Ms. Abuslin, whom he eventually knew to be an escort, a picture of his penis, moving these officers from subject to witness was inappropriate.

IAD's decision to inaccurately categorize the officers as witnesses rather than subjects permitted it to bypass a key question – whether Officer B or Officer C violated OPD's general conduct rule, which states:

Members and employees shall conduct themselves at all times in such a manner as to reflect favorably upon themselves, the City, the Department and the police service. Whether on or off-duty, members and employees shall avoid any conduct that brings disrepute to the Department or impairs its efficient and effective operation.

In a later draft of the ROI, the lieutenant overseeing the IAD investigator noted that perhaps IAD should make Officer B and Officer C subjects and make findings as to the allegations against them, but that the lieutenant was still “thinking about how that would affect the department.” It is unclear whether this comment referred to the effect that being named a subject would have on the individual officers, or the effect that multiple officers being investigated for sexual misconduct would have on morale of the Department, or something else entirely.

### iii. IAD Did Not Properly Involve OCA and Ignored its Advice

The Office of the City Attorney (“OCA”) provides legal advice to OPD, including by providing advice to IAD as it investigates officer misconduct. In recent years, OCA and OPD worked to improve the police discipline process, in part by involving OCA earlier and more consistently in its discipline investigations.<sup>10</sup> OCA's Labor and Employment Unit hired a Deputy City Attorney whose primary role is to counsel IAD in its investigation of officer misconduct allegations, as well as to represent OPD in arbitration of contested discipline. When it appears an IAD investigation will require substantial time or pose unique challenges, OCA sometimes assigns a different Deputy City Attorney to advise the IAD investigator leading the investigation.

That is what happened in this case, when OCA contacted the IAD investigator in mid-October to offer the help of a Deputy City Attorney to the IAD investigator. The investigator told the assigned OCA attorney that the investigator would be in touch soon to discuss the case. A few

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<sup>10</sup> These changes were due in part to the recommendations we made in two prior reports following our investigation into OPD's police discipline process. *See* Report of the Court-Appointed Investigator, *Allen, et al v. City of Oakland, et al*, Case No. 00-cv-04599 TEH, Dkt. No. 1054 (N.D. Cal Apr. 16, 2015); Second Report of the Court-Appointed Investigator, *Allen, et al v. City of Oakland, et al*, Case No. 00-cv-04599 TEH, Dkt. No. 1088 (N.D. Cal Mar. 21, 2016).

weeks later, the assigned OCA attorney reached out to the investigator again to offer assistance on the case. The investigator again said that the investigator would be in touch.

Instead, the investigator conducted the interviews discussed above of the victim and the three subject officers without consulting with the assigned OCA attorney. The investigator drafted interview questions for all four interviews but did not ask the OCA attorney to review the questions. By the time that the assigned OCA attorney and the investigator first discussed the case in late November, the key interviews in the initial investigation were complete. The assigned OCA attorney emailed the investigator in December, January, and February to discuss the progress of the case, but those invitations were not accepted.

In mid-February, the investigator sent the assigned OCA attorney a draft ROI. The next day, the OCA attorney responded with edits and comments to the draft. The comments included substantive questions and suggested that Officer B be re-interviewed to address several issues and unanswered questions.

The next day, the investigator forwarded the email from the OCA attorney to the IAD lieutenant, noting that OCA had weighed in on the draft. But rather than attaching the draft that included the attorney's comments, the investigator sent the investigator's own version of the draft to the lieutenant, which did not incorporate or even reflect any of the edits or address any of the concerns raised by the OCA attorney.

The OCA attorney sent additional edits, including revisions by a supervising attorney, later in the month. The investigator sent a second draft of the ROI to the supervising lieutenant in late February. This time, the draft incorporated some of OCA's edits but still did not address the substantive concerns the attorneys raised. The attorneys' comments in the margins of the draft were again not included in the draft given to the IAD lieutenant.

Finally, at the end of February, the assigned OCA attorney sent the IAD investigator a list of proposed questions for the investigator to pose in suggested re-interviews of both Officer B and Officer C. A few days later, the IAD investigator responded, saying the investigator did not think it was necessary to have follow-up interviews with either officer, because Ms. Abuslin's "modus operandi" was clear – she sent Facebook requests, then attempted to lure officers to have sex with her. Furthermore, rather than re-interviewing the officers and asking them the questions that OCA had suggested, the investigator wrote in hypothetical answers to the questions, based on what the officers had said in the first interviews. For those questions where apparently the interviews did not provide a sufficient response, the investigator left no answer.

About a week later on March 11, 2016, an OCA attorney informed the IAD Commander that the investigator had repeatedly rejected the advice and ignored the concerns of the assigned OCA attorney. Within a few days, the IAD Commander, IAD lieutenant, and the assigned OCA attorney met to discuss the case. The OCA attorney showed the IAD supervisors the email correspondence exchanged with the IAD investigator. The IAD Commander and lieutenant agreed that additional investigative steps were needed, based on the advice of OCA.

iv. IAD Did Not Properly Supervise its Investigator

IAD is structured such that an investigator reports to the lieutenant overseeing IAD investigations, who in turn reports to a captain who serves as the IAD Commander. The IAD Commander reports directly to the Chief of Police.

IAD has a large volume of investigations, and for cases involving straightforward facts or less serious potential discipline, investigators are expected to pursue their cases with minimal supervisory input, to seek help or advice from supervisors or OCA when needed, and to present draft ROIs to their supervisor when the investigation is complete. But in cases in which an officer faces presumed termination for a first offense, or when the facts of the case are likely to draw media attention, lieutenants are typically involved in approving an investigative plan and sometimes providing input concerning how specific interviews will be conducted.

In this case, the IAD lieutenant did not review any interview questions prior to the IAD interviews of Ms. Abuslin, Officer A, Officer B, and Officer C. The lieutenant did not review recordings of the interviews before receiving a draft ROI. This is because the lieutenant supervising the IAD investigator did not identify the sexual misconduct investigation as a case worthy of close supervision, nor was the lieutenant getting any signal or instruction from the IAD Commander or Chief Whent that the case was highly important.

The IAD Commander received periodic updates on the case, including when the IAD investigator learned that Officer B sent Ms. Abuslin a picture of his penis while Ms. Abuslin was a minor. But the IAD Commander did not set a tone that the sexual misconduct investigation was a high priority to the Department, or that the investigators should pursue it aggressively. Instead, when the Commander was presented with a draft of the ROI, the Commander suggested edits clarifying that the behavior of the officers was off-duty and had been conducted through personal cell phones. In tracked changes to the ROI, the Commander attempted to add language that would make clear that Officer B and Officer C were off-duty and not using work devices when they sent sexually explicit messages to Ms. Abuslin. We find the purpose of these comments was to justify the lack of sustained findings against Officer B and Officer C, and to limit the scope of the investigation to only on-duty conduct.

The IAD Commander updated Chief Whent very little about the investigation, likely because the Commander was not keeping close tabs on the investigation as it proceeded. The IAD Commander did notify Chief Whent when IAD learned that Officer B sent Ms. Abuslin a picture of his penis while Ms. Abuslin was a minor.

The lack of updates to the Chief may have also been due to Chief Whent showing no interest in the sexual misconduct investigation. He did not ask about it in weekly IAD meetings, which was unusual given his practice of staying well-informed on investigations of serious allegations. By comparison, when several officers were investigated for allegedly harassing and assaulting a couple while the officers were off-duty and intoxicated, Chief Whent reportedly asked about the case every week, demanding updates on the investigation's progress.<sup>11</sup> By all accounts, Chief

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<sup>11</sup> Chief Whent also notified the Monitor, Mayor, and City Administrator early on about this investigation.

Whent never sought information about the sexual misconduct investigation in any setting. Indeed, one witness recalled Chief Whent describing the case as “bullshit,” although Chief Whent denies saying that. Regardless, several OPD witnesses concurred that Chief Whent’s lack of interest in the investigation gave the impression that this investigation was neither a priority nor important to pursue.

Chief Whent did appear interested in having the investigation come to an end, however. Email correspondence reveals that by early March 2016, Chief Whent was pressuring the IAD Commander to complete the sexual misconduct investigation. In an email on March 7, 2016, regarding the workload of various IAD investigators, the IAD Commander informed the IAD lieutenant that the “[C]hief wants the O’Brien caper finished.”

The Chief, the IAD lieutenant, and the IAD Commander did consider whether Officer B’s sending the picture of his penis to Ms. Abuslin while she was a minor amounted to a crime, but there is no evidence that they discussed whether Officer B or Officer C’s sexual messaging or contact with Ms. Abuslin – someone Officer B admittedly knew to be an “escort” and Officer C possibly knew to be involved in prostitution – was legal but nonetheless inappropriate for an OPD officer. Instead, the IAD Commander’s draft comments revealed that the Commander did not view the off-duty conduct as worthy of discipline by IAD.

v. The Monitor and City Leaders Discover the Sexual Misconduct Allegations

In early 2016, the Monitor began to hear rumors that the suicide of Officer O’Brien was connected to his wife’s suicide a year prior. The Monitoring Team contacted Chief Whent and requested to be briefed on the issue. Chief Whent told the Monitoring Team that he would ask the IAD Commander to contact the Monitoring Team. The IAD Commander did so, and informed the Monitoring Team not only of the criminal investigations of Officer O’Brien’s suicide and his wife’s suicide, but also of Officer O’Brien’s suicide note and the investigation of allegations of sexual misconduct sparked by the note. This was the first time the Monitoring Team learned of these allegations. The Monitoring Team then questioned IAD and discovered there had been an investigation underway for over five months about which it had known nothing. Through its questioning, the Monitoring Team developed concerns about how that investigation had been conducted and shared those concerns with the Court.

When the Monitoring Team uncovered the sexual misconduct investigation, the IAD Commander excused the lack of sustained findings or probing investigation by telling the Monitoring Team and other members of OPD that the City Attorney’s Office had advised IAD that the behavior was off-duty conduct and therefore could not be pursued in the investigation. According to two witnesses, Chief Whent also blamed OCA for advising OPD that off-duty conduct was off-limits for investigation. We find that OCA never gave that advice to the IAD Commander, Chief Whent, or anyone in IAD, at least as it related to this case. Instead, OCA’s advice, documented in emails and suggested edits, was to probe deeper with Officer B and other officers before determining whether the conduct merited discipline.



The City Administrator learned of the sexual misconduct investigation on March 22, 2016, when she had a scheduled meeting with the IAD Commander and the Chief of Police to discuss IAD investigations and discipline proceedings. The City Administrator saw Chief Whent less than an hour before the meeting was to occur, and Chief Whent confirmed he would be attending. However, he did not attend and later told the City Administrator he received a notification that the meeting had been cancelled. Without the Chief present, the IAD Commander reviewed a list of noteworthy pending IAD investigations with the City Administrator, and in that context the City Administrator heard for the first time of the investigation of the sexual misconduct allegations. The City Administrator immediately informed the Mayor.

vi. OPD's Investigation Ramped Up Post-Court Order

The Monitor informed the Court of the sexual misconduct allegations and the Monitoring Team's concerns regarding the sufficiency of the investigation to date. As a result, on March 23, 2016, the Court issued an order regarding "irregularities and potential violations" of the NSA that occurred during IAD's investigation of the sexual misconduct allegations. The Court directed the Monitor to use his authority to ensure the investigation was conducted thoroughly and to take any necessary follow-up action.

Following the Court's order and at the instruction of the Monitor, the IAD lieutenant took over as the lead IAD investigator on the case, with support from the IAD Commander, and overseen by the Deputy Chief of the Bureau of Investigations. In addition, OPD assigned two additional officers to assist with the investigation. Within two weeks of the Court's order, IAD created a new investigative plan that included re-interviewing officers, re-interviewing Ms. Abuslin, and interviewing all other officers who had been mentioned up to that point in the investigation. IAD also began using social media to research what connections others in the Department had with Ms. Abuslin. By mid-April, IAD began interviewing OPD officers who were Facebook friends with Ms. Abuslin.

About a month after the Court order, the IAD lieutenant now leading the investigation contacted Ms. Abuslin to re-interview her. The lieutenant used more appropriate and effective investigative techniques than the original IAD investigator, treating Ms. Abuslin as a victim and expressing no judgment of her work as a prostitute or her use of drugs. The investigator fairly quickly developed a rapport with the witness. The interview led to additional information and to Ms. Abuslin giving IAD access to her cell phone.

Within two months of Court intervention, the Deputy Chief overseeing the investigation placed Officer B and Officer C on administrative leave. By the end of the completed IAD investigation, 12 then-current and former officers were disciplined as a result of their misconduct related to Ms. Abuslin. The DA's Office conducted a parallel investigation that resulted in the criminal prosecution of four OPD officers.

**E. City Leadership's Response Was Partially Inadequate**

Following the Court's March 23, 2016 order, the media began reporting on the story for the first time. In May 2016, the Mayor announced that the City was retaining a private attorney to

investigate both the integrity of IAD's investigation and the source of leaks of confidential information related to the investigation.

The City retained a private attorney investigator in June of 2016. Because IAD's investigation was ongoing and final discipline had not yet been imposed in June 2016, the Monitor instructed the investigator to hold off on interviewing members of IAD until the investigation was complete. In the interim, the City's investigator collected policies related to IAD's discipline process and interviewed one senior member of the Department knowledgeable about IAD's policies and best practices.

By early September 2016, OPD imposed final discipline, and the IAD investigation of the sexual misconduct allegations was officially concluded. The Monitoring Team received updates on the status of the private attorney's investigation over the next several months. By November 2015, the investigator compiled a list of witnesses to interview, but by mid-January, the investigator had not scheduled a single witness interview or requested email relevant to the investigation in preparation for those interviews. Despite the fact that the investigation stalled, the City Administrator and the Mayor did not press the investigator to find out whether OPD's investigation was conducted appropriately, nor did they inquire as to the status of the attorney's investigation. The Court again intervened in January 2017, requesting that we conduct the current inquiry into OPD's initial investigation.

## **VI. Conclusions**

Our first conclusion is that OPD's investigation into these allegations was wholly inadequate.

The investigation went off track as soon as it started. CID closed its investigation almost immediately, and it should not have. CID had substantial evidence and important leads in its possession when it closed its case.

Officer O'Brien's suicide note, coupled with the screenshots on his phone, raised serious questions about whether other OPD officers had had illegal sexual contact with Ms. Abuslin. CID witnesses we interviewed acknowledged that was true, but they said Ms. Abuslin's lack of cooperation and denials that OPD officers had sex with her left CID with nothing to investigate. That was simply not the case.

First, Ms. Abuslin's disavowals of sexual contact with OPD officers were not believable. While Ms. Abuslin attempted to deny having had sex with any officers, she also reluctantly acknowledged sexual encounters with specific officers, and she admitted she would deny everything in order to shield the officers from punishment. During the break in the middle of the interview, Ms. Abuslin made this clear when she told her friend on the phone that she would "deny, deny, deny" everything in order to protect officers and protect her ability to continue to engage with officers. She then explicitly told the CID investigators that she would deny everything to keep the officers out of trouble.

Second, as OPD well knows, victims of sexual exploitation and statutory rape are frequently reluctant to cooperate with law enforcement against their exploiters and rapists.<sup>12</sup> Current members of OPD's SVU spoke thoughtfully about this common scenario and the ways investigators are trained to obtain information from sources other than the victim. SVU investigators are also trained in different methods of interviewing victims and trained to understand that victims of sex crimes often require several interviews in order to build the trust required to share their experience with law enforcement or to remember details. The sergeant supervising the interview for SVU recognized the challenge that Ms. Abuslin's unwillingness to cooperate presented, but suggested additional investigative steps such as re-interviewing Ms. Abuslin with different investigators. However, CID did not take up these suggestions and instead ended its investigation after Ms. Abuslin's interview, as if the victim were the only possible source of relevant information. Even if that were true, CID could have re-interviewed Ms. Abuslin with SVU investigators. But Ms. Abuslin never met with SVU investigators, who are trained to work with victims of sexual exploitation, at any point in the investigation that occurred prior to the Court's intervention.

Even without Ms. Abuslin's cooperation, CID had leads that it did not pursue. Although it is debatable whether the investigators could have<sup>13</sup> or should have<sup>14</sup> seized Ms. Abuslin's phone in order to prevent her from deleting potential evidence of officer criminal misconduct, CID could have pursued a preservation request from Facebook and ultimately a search warrant,<sup>15</sup> which are both steps SVU took in its investigation that followed the Court's intervention. CID could have researched Ms. Abuslin's connections with OPD officers through social media, or attempted to interview officers discussed by Ms. Abuslin and identified in Officer O'Brien's phone.

CID failed to pursue these available leads or investigate thoroughly. A department with a large caseload often must prioritize investigations and may be more willing to pursue investigations with cooperative victims. But as many members of the Department attested, serious allegations

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<sup>12</sup> See OFFICE FOR VICTIMS OF CRIMES, U.S. DEP'T OF JUSTICE AND AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, VICTIM-ORIENTED MULTIDISCIPLINARY RESPONSES TO STATUTORY RAPE TRAINING GUIDE, at 17 (2000) (noting these types of victims are often reluctant to view themselves as victims or to aid in the prosecution of their exploiters) *available at* <https://www.ovc.gov/publications/infores/statutoryrape/trainiguide/victimoriented.pdf>

<sup>13</sup> Law enforcement officers may seize property without a warrant when they have probable cause to seize the item and they "reasonably believe from the totality of circumstances that evidence or contraband will imminently be destroyed." *United States v. Kunkler*, 679 F.2d 187, 191 (9th Cir. 1982); see *United States v. David*, 756 F. Supp. 1385, 1392 (D. Nev. 1991) (agent was justified in seizing laptop computer where witness deleted a file in view of the agent, which the agent believed to be evidence of a drug crime); *People v. Thompson*, 38 Cal.4th 811, 818 (2006) (warrantless seizure may be justified by risk of "imminent destruction of evidence").

<sup>14</sup> Witnesses with whom we spoke fairly pointed out that Ms. Abuslin was a victim, rather than a suspect, and to take her phone could have upset her and damaged her trust in the investigators.

<sup>15</sup> Facebook will "preserve account records in connection with official criminal investigations for 90 days pending [] receipt of formal legal process." Facebook, Inc., Information for Law Enforcement Authorities, <https://www.facebook.com/safety/groups/law/guidelines/> (last visited June 20, 2017).

of officer sexual misconduct such as these should have warranted a level of attention this case did not receive, regardless of the victim's willingness to cooperate.

CID's decision not to inform the DA's Office of the allegations shielded its inadequate investigation from external review. CID's decision was contrary to then-existing OPD policy, as well as common sense. At a minimum, CID should have had a reasonable suspicion of officer criminal misconduct based on Officer A's failure to report Ms. Abuslin's claim that she had sex with officers while underage, which was documented in screenshots and confirmed by Ms. Abuslin's interview.

CID also should have reported to the DA's Office a reasonable suspicion that other OPD officers had engaged in sexual criminal misconduct with Ms. Abuslin, based on the evidence in Officer O'Brien's phone, coupled with Ms. Abuslin's interview. As noted above, Departmental General Order M-4.1 dictated that a reasonable suspicion required only "specific facts beyond the mere allegation of criminal misconduct." Here, CID had Officer O'Brien's phone, which contained evidence that Ms. Abuslin alleged Officer B was her boyfriend on her 18th birthday, plus her allegations to Officer A that she had sex with several OPD officers while underage. She strongly suggested in her CID interview that she had sex with Officer C in public and suggested she may have had sexual contact with Officer B as well. This information should have been shared with the DA's Office.

Some in CID excused the minimal investigation because they knew IAD would be investigating the case, and any evidence of criminal wrongdoing could be handed back to CID. First, this is not accurate. By law, IAD cannot share with CID information that it learns through administrative interviews of officers.<sup>16</sup> Second, CID has tools at its disposal, including the ability to seek evidence through subpoenas and search warrants, that IAD does not.

In addition, CID's insufficient investigation, its finding that Ms. Abuslin was not credible, and its rejection of IAD's suggestion that CID continue its investigation, sent the message to IAD that Department leadership did not take this case seriously. The IAD investigator acknowledged that based on the way the case came to IAD, it seemed the message sent from above was that nothing short of a confession by subject officers could result in a sustained finding against them.

Once the case was handed off to IAD, the investigation continued to flounder. IAD supervisors did nothing to emphasize the importance of this investigation. The tone was set at the top by Chief Whent, but the IAD Commander and lieutenant should have independently recognized the seriousness of the case and closely monitored the investigation's progress and thoroughness.

The IAD investigator should have done a more competent and thorough investigation regardless of the signal received from above. Like CID, IAD did not pursue available leads. No one in IAD considered re-interviewing Ms. Abuslin, despite her willingness to meet with the investigator. IAD made no efforts to use social media to investigate which other officers may

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<sup>16</sup> See *Lybarger v. City of L.A.*, 40 Cal. 3d 822 (1985) (if an officer is compelled to testify under the threat of administrative discipline, that testimony cannot be subsequently used against the officer in criminal proceedings).

have had sexual contact with Ms. Abuslin. IAD never attempted to interview the other officers whom Officer B identified as having a Facebook relationship with Ms. Abuslin.

And while Ms. Abuslin made clear that then-current OPD officers were still having sexual contact with Ms. Abuslin, IAD made no attempt to find out who those officers were through social media or other means. Although Ms. Abuslin had turned 18 by the time IAD investigated the allegations, several other conditions should have alerted IAD that any ongoing contact OPD officers were having with Ms. Abuslin was very likely inappropriate: Ms. Abuslin said she thought everyone knew she worked as a prostitute, which indicated the OPD officers having sexual contact with Ms. Abuslin may have done so despite this knowledge. Ms. Abuslin said she had asked Officer O'Brien to provide her with "security" for her work as a prostitute, indicating then-current OPD officers may have received a similar request. Ms. Abuslin also said an officer she was "seeing" had shown her OPD reports and evidence, which was a clear violation of OPD policy.

We find that CID and IAD did not investigate more thoroughly in part because of an implicit but evident bias against the victim, based on the type of victim she was: one who initiated contact with the officers in question, who was involved in prostitution, and who used drugs and dealt with mental health issues. CID quickly labeled Ms. Abuslin as not credible and made assumptions that the DA's Office would never charge a case with a witness like Ms. Abuslin, even though that was not CID's determination to make, and it was a conclusion that was ultimately incorrect. In our interviews, officers involved in CID's investigation continued to mischaracterize the content of Ms. Abuslin's CID interview, describing her as having unequivocally denied any sexual relations with OPD officers, though that was not the case. They focused on Ms. Abuslin's sometimes erratic behavior rather than on the realistic possibility that she had been exploited by OPD officers and that that exploitation was a cause of her erratic behavior. IAD officers incorrectly asserted that Ms. Abuslin was not willing to talk with them further, despite Ms. Abuslin's request to meet with the IAD investigator. Put simply, CID and IAD wrote off this victim. This is perhaps not an isolated occurrence, since witnesses from within and outside the Department described a hierarchy of victimhood that led some in OPD to prioritize cases involving "good" victims over victims with more complex histories.<sup>17</sup>

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<sup>17</sup> We note that bias against victims with a history of prostitution, mental illness, and drug use is not limited to OPD or to law enforcement generally. See CIVIL RIGHTS DIVISION, U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT, at 46 (2011) (noting New Orleans investigators often used a victim's "history of prostitution" and mental illness as justification for not thoroughly investigating sex crimes committed against those victims); HON. WALLY T. OPPAL, FORSAKEN, THE REPORT OF THE MISSING WOMEN COMMISSION OF INQUIRY, VOLUME II, at 93 - 96 (finding failure of Canadian law enforcement to thoroughly investigate the disappearance and murder of women in the sex trade was partially due to law enforcement and societal biases and stereotypes of those women); KIMBERLY J. MITCHELL, ET AL., CONCEPTUALIZING JUVENILE PROSTITUTION AS CHILD MALTREATMENT: FINDINGS FROM THE NATIONAL JUVENILE PROSTITUTION STUDY, at 30 - 31 (2010) (in national survey of law enforcement agency, study suggested "cases of juveniles involved in prostitution are not a high priority for most law enforcement agencies." Juveniles were more likely to be treated as victims if they fit stereotypical characteristics of trafficked youth – being under 15, afraid, dirty, runaways – and less likely to be treated as a victim if they were older juveniles who operated independent of a pimp).

While there are many in CID and IAD who share responsibility for the failures of the investigation that occurred prior to the Court's intervention, the ultimate responsibility lies with Chief Whent. It was his responsibility to set the expectation that both IAD and CID were to investigate the allegations thoroughly, regardless of the victim's background or reluctance to cooperate. That he did not do. It may be true that Chief Whent was not given a complete description of the evidence CID had when they closed the investigation.<sup>18</sup> But Chief Whent failed to press his staff for that information, and he did nothing to encourage CID or IAD investigators to pursue this case vigorously. The Chief of Police of a major metropolitan city has innumerable responsibilities and should not be expected to know the details of every investigation, or even every serious investigation. But this was not just any investigation. If the allegations proved to be true, they posed a significant reputational harm to the Department. Given that fact, many in the Department noted that, in hindsight, the Chief's lack of interest in or inquiry into this case was unusual, and they felt it set a tone that permeated the investigation.

We have been unable to conclusively determine why the Chief took such a different approach to this case than he had to others that appeared much less serious, although there was evidence pointing to possible reasons. Regardless of his motives, Chief Whent set a tone that this investigation was not a priority. Others in CID and IAD leadership did nothing to correct this message for their subordinates, and this resulted in wholly inadequate investigations conducted by both CID and IAD.

The inadequacy of the investigations prior to the Court's intervention raises issues concerning OPD's compliance with the NSA. It calls into question the Department's ability to comply with the NSA's requirements that officer misconduct be adequately disciplined and that allegations of misconduct be timely reported to the DA's Office. The fact that Court intervention was required to ensure OPD conducted a thorough investigation and to alert the DA to the allegations also casts doubt on whether OPD's reforms are sustainable in the absence of court supervision.

Similar questions arise about the City's leaders. There is no doubt that, once the Court intervened to ensure the investigation was conducted in a thorough manner, City leaders took the matter seriously and were actively engaged in ensuring OPD investigated thoroughly. They also took the appropriate step of hiring an outside attorney to uncover what had occurred before the Court's intervention. But when that attorney's investigation failed to move forward, City leaders did not demand progress or answers. Just as OPD required Court intervention to conduct a thorough investigation, the City required Court intervention to investigate the Department, and that too raises questions of sustainable progress in the absence of Court supervision.

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<sup>18</sup> It is unclear if Chief Whent was briefed after the CID interview of Ms. Abuslin. If he was not briefed, he also did not ask to be briefed, despite knowing the interview was occurring. Had he been briefed, he presumably would have received the same incorrect information the Deputy Chief received from the CID Commander, which was that Ms. Abuslin had denied everything in her interview.

## **VII. Recommendations**

### **1) Members of CID Should Be Trained on Departmental General Order M-4.1**

CID failed to report a reasonable suspicion of police officer misconduct to the Alameda County District Attorney's Office. This investigation revealed that current and former members of CID did not understand the requirements of the reporting policy at the time of the sexual misconduct investigation<sup>19</sup> and continue to struggle to clearly articulate when OPD is required to report potential officer misconduct to the DA's office. OPD should provide training to members of CID on when General Order M-4.1 requires reporting potential officer criminal misconduct to the DA's Office. Members of the Department who transfer to CID should be required to complete similar training.

### **2) CID Should Document Whether it is Notifying the DA's Office of Suspected Officer Criminal Misconduct**

In this case, notification to the DA's Office could have served as a check on the inadequacy of the CID and IAD investigations, as well as on the message being sent by the Chief that this investigation was not a priority. In order to ensure that the CID Commander or other senior command staff have considered whether notification to the DA's Office is warranted, we recommend that any time a CID Investigative Action Report includes allegations of criminal misconduct against OPD personnel, the Investigative Action Report should discuss whether those allegations rise to the level of a reasonable suspicion under M-4.1, thus requiring notification of the DA's Office.<sup>20</sup>

### **3) SVU Should Lead Investigations of Officer Sexual Criminal Misconduct and Should Lead Interviews of Victims in Those Cases**

CID's Homicide Unit, rather than Special Victims Unit, led the investigation of the allegations of sexual criminal misconduct in this case. An SVU sergeant observed the victim's CID interview,

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<sup>19</sup> On May 13, 2016, the Mayor issued an executive order directing OPD to modify its policies to require "automatic notification to the appropriate District Attorney's office whenever any member or employee has a reasonable suspicion that any personnel is involved in criminal misconduct rising to the level of a felony or serious misdemeanor." The Mayor's order echoed what was already required under M-4.1 but sought to expand the policy to require reporting of any misconduct by law enforcement personnel to the relevant District Attorney, whether in Alameda County or elsewhere. Although several members of OPD cited the Mayor's order as imposing a more stringent reporting requirement, in fact the executive order did not change the requirement already in place under M-4.1 that OPD report to the Alameda DA's Office as soon as it had reasonable suspicion of criminal misconduct by one of its officers.

<sup>20</sup> In March 2016, OPD's Office of Inspector General ("OIG") performed an audit of OPD's compliance with its requirement to notify the DA's Office when it has a reasonable suspicion of officer misconduct. The audit found OPD to be in compliance with the requirement but found OPD should better document its notification to the DA's Office. The audit was limited to review of cases in which OPD personnel were arrested, so it did not capture cases such as this one where no arrest was made. We agree with OIG's recommendation that CID should document its notification to the DA's Office in Investigative Action Reports when that notification occurs. We go one step further in recommending that any time a CID Investigative Action Report involves allegations of criminal misconduct against an officer, the report should outline whether CID notified the DA's Office of the allegations and the reasoning for that decision.

but the interview was conducted by Homicide investigators rather than SVU investigators. SVU investigators, who are trained in how to interview and handle victims of sex crimes, as well as how to investigate these types of crimes beyond victim interviews, should lead investigations of officer sexual criminal misconduct and lead victim interviews in those investigations. If CID determines special circumstances require that a different unit should lead the investigation of sexual criminal misconduct by officers, CID should note the reason for that determination in its Investigative Action Report.

- 4) Handoff of Criminal Investigations of Officer Misconduct to IAD, or the Conclusion of CID Investigations of Officer Criminal Misconduct, Should Require Briefing and Sign-Off from the Chief or Assistant Chief

CID's decision to cease its investigation and hand the case off to IAD, and the reasoning for that decision, were not presented to the Assistant Chief or Chief of Police. In cases in which CID investigates potential criminal officer misconduct but determines the investigation should be conducted by IAD instead of CID, or otherwise concludes that the alleged misconduct is not criminal, the Assistant Chief or Chief of Police should be briefed on the reasoning supporting that decision and should be given an overview of the evidence developed up to that point. This process should be documented in CID's Investigative Action Report.

- 5) IAD Should Involve OCA Before Subject and Witness Interviews in Investigations of Serious Allegations

IAD failed to provide OCA an opportunity to offer advice prior to the most important investigative steps in the investigation. For investigations of the most serious allegations of officer misconduct, IAD investigators should be required to consult with OCA and provide OCA attorneys an opportunity to review investigative plans and interview questions. If a serious allegation is discovered after interviews have already been conducted, IAD should be required to confer with OCA before scheduling additional interviews. Serious allegations should include:

- a. Allegations for which the minimum presumed discipline for a first offense is a 30-day suspension, demotion and/or termination;
- b. Allegations that require some form of immediate personnel action, such as emergency suspension, administrative leave, or temporary reassignment;
- c. An allegation that an OPD employee or member committed a felony or misdemeanor;
- d. An allegation involving retaliation, discrimination, or harassment;
- e. An allegation that an OPD employee or member used his or her position for personal gain;
- f. An allegation involving misconduct likely to generate unusual public interest; or



- g. Any other allegation that, in the discretion of the IAD Commander or IAD lieutenant overseeing investigations, warrants consultation with OCA prior to investigative interviews.

6) Only the IAD Commander Should Be Permitted to Reject Advice From OCA

The IAD investigator failed to inform the IAD lieutenant overseeing investigations or the IAD Commander that OCA had given advice that the investigator declined to take. IAD investigators should be trained to discuss any disagreement with OCA with their IAD supervisors. While IAD is free to reject the advice of OCA, it should be the IAD Commander and not the investigator who makes that determination.

7) IAD Investigators Should be Trained Regarding When it is Appropriate to Downgrade a Subject Officer to a Witness

Despite having uncovered evidence that officers engaged in inappropriate conduct, the IAD investigator downgraded Officer B and Officer C from subjects of the investigation to witnesses. Doing so led IAD to not consider whether those officers committed a general conduct violation, even if their conduct was not a violation of law. IAD should train its investigators to understand when it is appropriate to move an officer from a subject to a witness.

8) IAD Lieutenants Overseeing Investigations Should Review Investigative Plans, Interview Questions, and Interviews in Serious Cases

The lieutenant supervising the IAD investigator did not review the investigator's interview questions ahead of key interviews and did not review the interviews for quality or thoroughness prior to reviewing a draft ROI. For investigations of serious allegations, as defined in our fifth recommendation, IAD lieutenants overseeing investigations should be required to sign off on investigative plans and interview questions. IAD lieutenants should also spot-check recorded interviews in those investigations prior to reviewing a draft ROI to ensure their quality.

9) IAD Should Continue to Brief the City Administrator Monthly on Major Investigations; the Chief of Police Should Meet with the Mayor Regularly to Discuss IAD Matters

At the time this investigation began, IAD had not yet instituted the practice of meeting monthly with the City Administrator to update her on police discipline. This practice began in March 2016, one day before the Court issued its order. IAD should continue to meet with the City Administrator monthly to update her on pending discipline and on developments in open investigations of serious allegations.

While the Mayor and the Chief of Police spoke daily during this time, there were no formal and regular meetings between the Chief and the Mayor with the specific purpose of discussing IAD matters. The Mayor and Chief of Police should meet regularly to discuss serious IAD investigations, whether pending or completed, so that the Chief is formally required to brief the Mayor on any major pending investigations or completed cases.