



CONFIDENTIAL INVESTIGATION REPORT

Investigation Report Concerning Complaint Brought by Sarah Lippek against City of Seattle's Office of Police Accountability and Seattle Police Department Officers

By: Lauren Parris Watts and Kira J. Johal, Seyfarth Shaw LLP

Date: October 26, 2023

1. INTRODUCTION AND ALLEGATIONS

Sarah Lippek represented Aubreanna Inda for the purpose of filing a complaint with the Office of Police Accountability (OPA) against the Seattle Police Department for alleged police officer misconduct. OPA led an investigation related to Seattle Police Department (SPD)'s use of force against Ms. Inda. Thereafter, Ms. Lippek lodged a complaint to the Office of Inspector General (OIG) regarding OPA's handling of Ms. Inda's complaint. The allegations at issue for this investigation pertain to a Closed Case Summary (CCS) that former OPA Director, Andrew Myerberg, authored on or about December 28, 2020, as well as related actions by SPD's Force Investigations Team (FIT). Specifically, Ms. Lippek alleges:

- Allegation No. 1: FIT improperly obtained and disclosed Ms. Inda's unredacted medical records.
- Allegation No. 2: OPA and/or Mr. Myerberg improperly obtained and disclosed Ms. Inda's unredacted medical records by including it in a CCS, which was published on the OPA's public website on January 15, 2021.
- Allegation No. 3: Mr. Myerberg opined on the meaning of Ms. Inda's medical records, despite not being medically trained to do so, and despite the medical information not being directly relevant to an assessment of the misconduct at issue.
- Allegation No. 4: Mr. Myerberg's use and disclosure of her medical records was unprofessional, retaliatory, and lacked the objectivity required of his position.

The City of Seattle (the "City") retained Lauren Parris Watts of Seyfarth Shaw LLP ("Seyfarth") on or about September 21, 2021, for the specific and limited purpose of conducting a confidential and impartial fact-finding investigation as an outside investigator. The investigator was asked to provide limited legal services, specifically to conduct an investigation of concerns raised by Ms. Lippek and to reach conclusions as to whether any alleged conduct, if true, violated the City's policies. Seyfarth also understood that it would not represent the City in any appeal, legal action, or proceedings related to Ms. Lippek's allegations.

To facilitate Seyfarth's investigation, the City gave Seyfarth direct access to have private conversations with all employee and former employee witnesses whom Seyfarth asked to speak with and provided documentation upon request. Seyfarth closed the investigation on June 13, 2023.

Delay in this investigation was due to the following factors:

- Seyfarth's Intake Interview. First, Seyfarth initially reached out to Ms. Lippek on October 14, 2021 to schedule an intake interview with Ms. Inda for the following week. Ms. Lippek informed Seyfarth that "Ms. Inda works full time at an office job, and will likely require some advance notice to request time off and oblige [Seyfarth's] request for an interview." Ms. Lippek asked Seyfarth if the investigator was available outside of 9 am – 6 pm business hours, and on October 16, 2021, Seyfarth affirmed it was available after 6 pm during the week discussed. Alternatively, Seyfarth

agreed to make the investigator available the following week during business hours. On October 23, 2021, Ms. Lippek asserted she required information related to the scope and purpose of the investigation prior to making her client available for an interview. The City, Ms. Lippek, and Seyfarth exchanged emails related to the scope and purpose of the investigation in late October 2021. On November 11, 2021, Seyfarth emailed Ms. Lippek requesting an interview of Ms. Inda between November 15 and November 24, 2021, and offering to meet after 6 pm to accommodate Ms. Inda's work schedule. On November 11, 2021, Ms. Lippek requested additional clarity on the scope and purpose of the investigation¹, which was provided by Seyfarth the same day. On November 11, 2021, Ms. Lippek wrote by email "Thank you very much for clarifying! I will forward your scheduling options to Ms. Inda and find out what might be a good time for her." On December 7, 2021, Ms. Lippek contacted Seyfarth and said Ms. Inda would not make herself available for an interview but that Ms. Lippek would make herself available for an interview in lieu of her client. Seyfarth interviewed Ms. Lippek on December 21, 2021. During the interview Ms. Lippek identified herself – not Ms. Inda – as the complainant and she committed to providing documentation in support of her complaint. Ms. Lippek provided the documentation to Seyfarth on January 6, 2022.

- **Interview Notices to SPD Officers.** In early February 2022, Ms. Lippek asked Seyfarth for the first time whether the scope of the investigation included potential misconduct by SPD officers, the answer to which would impact the type of notice sent to the officers (who originally were going to be contacted as witnesses only). Seyfarth consulted with the City about whether the scope of the investigation included potential misconduct by SPD officers, and on February 22, 2022 Seyfarth informed Ms. Lippek that the scope of its inquiry included any officers that obtained medical records and was not limited to Andrew Myerberg. Between February and April 2022, Seyfarth worked with the City to identify the appropriate person at the City to help coordinate notices and scheduling of the interviews of SPD Detective Jason Dewey and SPD Sgt. Wesley Collier.
- **Ms. Inda's Authorizations for Release of Medical Information.** Virginia Mason and its third party records administrator (Ciox) repeatedly refused to accept Ms. Inda's authorization for release of medical information. On June 9, 2022, Seyfarth faxed Virginia Mason an authorization for release of medical records signed by Ms. Inda and dated June 1, 2022. On June 16, 2022, Virginia Mason responded it was unable to comply with the request due to a "signature discrepancy," and requested a copy of Ms. Inda's valid identification or a notarized signature. Seyfarth emailed Ms. Lippek on June

¹ Ms. Lippek represented she sent two emails on November 11, 2021 requesting additional clarity from Seyfarth. However, Seyfarth never received the first email.

29, 2022, July 19, 2022, and July 27, 2022 asking for direction.² On August 9, 2022, Ms. Lippek provided Seyfarth with a copy of Ms. Inda's photo identification and a new authorization. On September 21, 2022, Seyfarth received correspondence from Ciox indicating that the medical authorization did not meet HIPAA requirements because it did not include the statement "The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart." On September 29, 2022, Seyfarth informed Ms. Lippek of the communication from Ciox and she expressed concern with the requested language because of its alleged noncompliance with Washington state privacy laws. Seyfarth and Ms. Lippek together called Ciox on Friday, November 8, 2022, at which time the representative stated that someone would call Seyfarth back same day. However, Ciox did not return the call.

On December 8, 2022, December 20, 2022, and January 17, 2023³, Seyfarth asked Ms. Lippek if she could propose acceptable, alternative language or, in the alternative, call Ciox again with Seyfarth. On January 17, 2023, Ms. Lippek stated she would have Ms. Inda sign another authorization with the required language as well as language regarding Washington's third-party disclosure protections. Seyfarth emailed Ms. Lippek for the status of the new authorization on January 27, March 10, and March 13, 2023. Ms. Lippek provided a new signed release on March 15, 2023, which Seyfarth faxed to Ciox. On April 18, 2023, Ciox provided incomplete medical documentation. When Seyfarth followed up to request a complete response to its request for authorization, Ciox refused to provide it stating it was not confident the authorization permitted such disclosure and because it needed to run the authorization by the Legal Department. After communications with Ms. Lippek, Seyfarth sent a letter to Virginia Mason on May 18, 2023, clarifying its questions and resending Ms. Inda's signed authorization. Seyfarth followed up on June 12, 2023, and Virginia Mason responded the same day that the request had been reviewed by the "VMC Privacy Team" and that it would send further communication within a few days. Seyfarth received the requested medical information on June 13, 2023.

2. METHODOLOGY

A. Witnesses

Seyfarth interviewed the following witnesses on the dates indicated below, and advised each about retaliation and confidentiality:

² On July 27, 2022, Ms. Lippek informed Seyfarth that the June 29 and July 19 emails "got misfiled."

³ On January 17, 2023, Ms. Lippek indicated she had been out of the office for a family medical issue and that she had an auto-response turned on for her email account. However, Seyfarth did not receive an auto-response to its emails on December 8, December 20, or January 17.

Name of Interviewee	Job Title	Date(s) of Interview	Interviewer
Sarah Lippek	Complainant; Ms. Inda's attorney	December 21, 2021	Lauren Parris Watts
Carolyn Bick (Identified by Ms. Lippek)	South Seattle Emerald Reporter	February 23, 2022	Declined based on her reporting on the investigation.
Danielle Fifis (Identified by Ms. Lippek)	Former City of Seattle Public Safety Audit & Investigations Specialist - OIG	February 24, 2022	No returned response.
Virginia Mason Medical Center	Records Department	April 4, 2022	Kira J. Johal
Jason Dewey	Seattle Police Officer Detective	July 11, 2022	Lauren Parris Watts
Wesley Collier	Seattle Police Sergeant	July 11, 2022	Lauren Parris Watts
Andrew Myerberg	Former Director of OPA	August 9, 2022	Lauren Parris Watts
Danielle Fifis (Identified a second time by Ms. Lippek)	Former City of Seattle Public Safety Audit & Investigations Specialist - OIG	March 30, 2023	Lauren Parris Watts
Virginia Mason Medical Center	Records Department	May 18, 2023	Lauren Parris Watts

B. Documents

Seyfarth reviewed and relied upon the following documents attached to this report⁴:

#	Document
1	Original Web Complaint and OPA Referral
2	Complaint to OIG from Lippek
3	Complaint Email_02242021
4	OPA Closed Case Summary 2020OPA-0344
5	OIG Follow Up Email with Lippek re Medical Records
6	Email Correspondence between Lippek and OPA
7	Ethics Complaint w/ Medical Record Letter from Dani Fifis

⁴ Seyfarth received other documents not attached to this report that were either irrelevant and/or not relied upon in reaching its findings.

#	Document
8	07202020_Email from Lippek to OPA providing medical records
9	2021OIG-0002 180 Day Calculation
10	2021OIG-0002 Investigation Plan
11	Issues for Legal Review
12	Interrogatory responses by Andrew Myerberg-2021OIG-0002
13	03.01.2021 Email from Lynn Erickson to Andrew Meyerberg re: Notice of Receipt of Complaint – 2021OIG-0002
14	03.01.2021 Andrew Myerberg’s Read Receipt Email re: Notice of Receipt of Complaint 2021OIG-0002
15	03.29.2021 Email from Lynn Erickson to Andrew Myerberg re: Notice of Classification - 2021OIG-0002
16	03.01.2021 Andrew Myerberg’s Read Receipt Email re: Notice of Classification - 2021OIG-0002
17	03.29.2021 Email from Lynn Erickson to Sarah Lippek re: Notice of Classification 2021OIG-0002
18	04.07.2021-04.14.2021 Email between Lynn Erickson, Christian Miyamasu, and Danielle Fifis re: CONFIDENTIAL: Request for Review of 2021OIG-0002
19	05.03.2021 Email from Lynn Erickson to Lippek re: Status Update on 2021OIG-0002
20	05.14.2021 Email from Lynn Erickson to Myerberg re: Named Employee Statement for 2021OIG-0002
21	05.19.2021-05.24.2021 Email exchanges between Lynn Erickson and Myerberg re: Interrogatories for 2021OIG-0002
22	06.02.2021 Email from Lynn Erickson to Sarah Lippek re: 60 Day Status Update - 2021OIG-0002
23	Activity Log 2021OIG-0002
24	2020OPA-0344 File
25	2020FIT-0015 File
26	Det. Dewey Emails (June 7, 2020-August 24, 2020)
27	Ms. Inda’s Unredacted Medical Records
28	Virginia Mason June 13, 2023 Response to Seyfarth Records Request ⁵

C. Policies

Seyfarth investigated possible violations of the following policies and state statutes:

#	Policy/Statute
1	Office of Professional Accountability Internal Operations and Training Manual (Effective 04/01/2016)
2	Seattle Police Manual, Section 5.001 – Standard and Duties
3	RCW 70.02.200

⁵ On Exhibit 28, Seyfarth redacted the medical records received from Virginia Mason on June 13, 2023 because the Authorization Seyfarth received was limited to Seyfarth. All other medical records attached as exhibits are documents the City provided to Seyfarth as part of this investigation. Seyfarth can represent the medical records in Exhibit 28 are identical to the medical records included in Exhibit 27.

#	Policy/Statute
4	RCW 70.02.005(1)
5	RCW 70.02.005(4)

D. Evidentiary Standard

To determine whether an individual, OPA, or FIT has violated the foregoing policies, the standard of evidence required is a preponderance of evidence (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred). This standard is often referred to as a “50 percent plus a feather.”

E. Credibility Assessment

In assessing the credibility of the complainant, respondents, and witnesses, these are some of the factors that Seyfarth considered: corroboration or lack thereof, opportunity and capacity to observe, consistent or inconsistent statements, past history, plausibility, bias, motive to lie, reputation for veracity or deceit, demeanor, and manner of responding to questions. Seyfarth made credibility assessments that will be discussed, as needed, in the analysis and findings.

3. EVIDENCE, ANALYSIS & FINDINGS

A. Allegation No. 1: FIT improperly obtained and disclosed Ms. Inda’s unredacted medical records.

1. Evidence

Ms. Lippek alleges that on or about June 8, 2020, her client Aubreanna Inda was hospitalized for multiple cardiac arrests after a Seattle police officer hit her in the chest with an explosive munition, specifically a “blast ball.” According to Ms. Lippek, Ms. Inda suffered cardiac arrest from the blast and was put in life-threatening danger but survived the attack. Ms. Lippek represented Ms. Inda for the purpose of filing a complaint with the Office of Police Accountability (OPA) against SPD for alleged police officer misconduct. Ms. Lippek accompanied Ms. Inda to an OPA interview pursuant to the misconduct investigation of her case, 2020OPA-0344. At that interview, Ms. Inda was asked to sign a release of her medical information to OPA. According to Ms. Lippek, Ms. Inda declined to sign a release but later provided limited records that were redacted for sensitive information regarding pregnancy, drug screening, etc. No information regarding the cardiac arrest was redacted from the medical records provided by Ms. Inda.

Ms. Lippek claims that despite Ms. Inda’s explicit refusal to provide a medical record release, OPA somehow obtained unredacted copies of her medical records and disclosed them in the CCS. The former OPA Director, Andrew Myerberg, was responsible for and signed the related CCS. Ms. Lippek alleges that Mr. Myerberg told her that FIT obtained the records. Ms. Lippek claims that FIT does not have exemption to release or receive medical information. She further alleges that having the unredacted medical records was misconduct on FIT’s part.

- Response from Mr. Myerberg -

Mr. Myerberg denies Ms. Inda refused to sign a medical release. Mr. Myerberg states during Ms. Inda's OPA interview, the OPA investigator (Sgt. Juan Tovar) asked Ms. Inda whether she would sign a release for her medical records relating to her incident. Before she responded, Ms. Lippek interjected and said: "Uh, we will, we can provide you with copies of the medical records. I guess we would still need to sign the release of me giving the records to you." Ms. Lippek told Mr. Myerberg she would need something signed to show that Ms. Inda gave Ms. Lippek permission to share the records with OPA. According to Mr. Myerberg, Ms. Inda then signed the release (for disclosure to Ms. Lippek) and later provided redacted medical records through her counsel, Ms. Lippek.

Mr. Myerberg states he became aware that SPD received Ms. Inda's unredacted medical records when he reviewed the completed FIT file. Mr. Myerberg states he reviews a FIT file anytime he is notified of the conclusion of the FIT investigation, including when OPA conducts an investigation on a matter previously investigated by FIT. Mr. Myerberg states his review of the FIT file indicated that FIT obtained the medical records via an executed release submitted to the hospital by a detective. According to Mr. Myerberg, SPD was not required to obtain Ms. Inda's or her attorney's consent prior to doing so pursuant to RCW 7.02.200(1)(f).

- Response by SPD FIT Officers -

Det. Jason Dewey states that FIT was informed approximately 10 days after the blast ball incident that a "Jane Doe" was taken to the hospital, and that he had only her name and date of birth at that time.⁶ Det. Dewey filled out SPD's standard "Request to Disclose Without the Patient's Authorization Permitted and Mandatory Disclosures" requesting Ms. Inda's medical records under RCW 70.02.200, and on June 18, 2020 directed the FIT administrator (Rae Gervais) to fax the request to Virginia Mason. Det. Dewey states that this form is part of the FIT form bank and is used to obtain medical records in situations involving use of force or officer-involved shootings where the subject goes to the hospital but is not willing to provide a signed authorization. He asserts the medical records obtained by use of the form allows FIT to list factually what injuries were sustained. At the time of making the request, Det. Dewey asserts he did not have Ms. Inda's contact information to request a release of medical information.

Det. Dewey states that RCW 70.02.200(1)(f) applied because SPD's officers used force which caused injuries to a subject (Ms. Inda). According to Det. Dewey, the statute allows for disclosure when the police brought, or caused to be brought, the subject to a medical facility, and it is "standard practice" for FIT to send a request for medical records. During his interview, Det. Dewey emphasized that the request is just a request, not a demand, and that the medical facility can reject the request.

Det. Dewey states that Virginia Mason initially rejected the request for medical records explaining FIT's request did not have an authorization to release protected health information

⁶ During his interview, Det. Dewey was unsure how FIT became aware of the incident and referred Seyfarth to the FIT file (2020FIT-0015). According to FIT's Force Review Board Findings, which is part of the 2020FIT-0015 file, FIT was notified of the incident on June 17, 2021 after a news story was released highlighting the incident.

signed by the patient. Det. Dewey states that he later obtained a copy of Ms. Inda's redacted medical records explaining to Seyfarth that Ms. Lippek sent them to Sgt. Juan Tovar (OPA), and that Sgt. Tovar sent them to Sgt. Collier, who forwarded them to Det. Dewey on August 11, 2020. Det. Dewey states that on August 24, 2020, he received a fax from Virginia Mason with Ms. Inda's unredacted medical records per his June 18, 2020 request. Det. Dewey states he did not have any additional communications with Virginia Mason between his initial request on June 18, 2020 and August 24, 2020 when Virginia Mason faxed the unredacted medical records. Det. Dewey then sent the unredacted medical records to Sgt. Tovar for purposes of his active OPA investigation. According to Det. Dewey, OPA/Sgt. Tovar has full access to the FIT investigation file.

Sgt. Wesley Collier states he was – and still is – the FIT sergeant when FIT sent the medical request for Ms. Inda's medical records to Virginia Mason. He states that FIT has a checklist it uses when conducting an investigation and that the checklist includes the form Det. Dewey used to request Ms. Inda's medical records. Sgt. Collier states the form was created by the City of Seattle and is housed in a shared drive, "SPD Share Drive". Sgt. Collier does not recall any specific conversations with Det. Dewey about the request for Ms. Inda's medical records but during his interview he emphasized that anything that Det. Dewey did related to the request for Ms. Inda's medical information was under Sgt. Collier's guidance, direction, and orders.

Sgt. Collier states that between March and June 2020, he met with the director in charge of the release of medical records at a local hospital⁷ because FIT's requests were continuously being rejected. According to Sgt. Collier, the Director stated they would release records in accordance with the RCW. This was significant in Sgt. Collier's mind because when this request was rejected, Sgt. Collier assumed the rejection was related to something in the RCW. He states he didn't "dig any further" because he had "already had a conversation with all the leaders."

Sgt. Collier doesn't recall making any additional requests for medical records after June 18, 2020 but said if one was made, it was under his guidance or at his order or direction. However, he said making another request without a signed authorization is not something he would typically ever do.

- Documentary Evidence -

The fax cover sheet from Det. Dewey to Virginia Mason Medical Center, and the related medical records request for Ms. Inda's medical records provide as follow:

Hello,

I am the case detective investigating a Seattle Police incident that occurred on 06/07/2020-06/08/2020 which resulted in an injury to a subject's chest. That subject's name is Inda Aubreanna, but she may have been treated under the name Jane Doe. Aubreanna (Doe) was brought to your hospital in a private vehicle for treatment. I am requesting any medical records related to her treatment. I am under a tight timeline so please process this as an urgent request if possible. Thank you

⁷ During his interview, Sgt. Collier recalled having one meeting but couldn't remember with certainty whether the meeting was with Harborview, the University of Washington, or Virginia Mason.



Seattle Police Department

Request to disclosure without patient's authorization permitted and mandatory disclosures (RCW 70.02.200)

Pursuant to the above listed section, legal authorization has been established for the disclosure of specific patient care information.

The Seattle Police Department requests the disclosure of the following information:

- The name of the patient (if unknown);
- The patient's residence;
- The patient's sex;
- The patient's age;
- The patient's condition;
- The patient's diagnosis, or extent and location of injuries as determined by a health care provider;
- Whether the patient was conscious when admitted;
- The name of the health care provider making the determination
- Whether the patient has been transferred to another facility;
- The patient's discharge time and date

For the following subject:

- **Patient in Question:** Inda, Aubreanna (Possibly under Jane Doe)
- **DOB:** Unknown
- **Medical Care Provider:** Virginia Mason Hospital and Seattle Medical Center
- **Police Report #:** 2020-183044
- **Incident Requiring Treatment:** Chest injury due to flash bang
- **Date(s) of Treatment:** 06/07/2020 – 06/08/2020

To Whom it May Concern:

On 06/07/2020, patient Inda, Aubreanna (Possibly listed under Jane Doe) was brought to your facility via a personal vehicle for treatment after an altercation with Seattle Police Officers. The patient may have been unconscious and unresponsive and treated under the name Jane Doe. I am the case detective investigating this incident. I am requesting any

medical records related to her treatment. Please understand that this is a time sensitive investigation and these records are needed as soon as possible.

Respectfully,

Detective Jason Dewey #7426
Seattle Police Department
Force Investigation Team

Please forward all requested information to:

Seattle Police Department Force Investigations Unit

**610 Fifth Ave, PO Box 34986
Seattle, WA 98124
206-615-1085
Fax: 206-684-9265
E-Mail: jason.dewey@seattle.gov**



Signed



Date

Additionally, Seyfarth reached out to Virginia Mason Medical Center to request all communications in any form made on or after June 1, 2020 to August 1, 2020, between Virginia Mason and the Seattle Police Department related to Aubreanna Inda. In response, Virginia Mason provided the above fax from Det. Dewey (dated June 18, 2020) as the only communication from the Seattle Police Department in that time period.⁸ See also Exhibit 28.

2. Analysis & Findings

The relevant section of the Seattle Police Manual 5.001-Standards and Duties states:

...

2. Employees Must Adhere to Laws, City Policy and Department Policy

Employees adhere to:

⁸ On April 18, 2023, Ciox provided an initial response that did not include any communication between Virginia Mason and the SPD, and therefore was unresponsive to Seyfarth's request. Seyfarth engaged with Ciox and Virginia Mason over the next two months to get a responsive production. See pp. 3-4; Exhibit 28.

- Federal laws
- State laws
- Laws of the City of Seattle
- City of Seattle policies
- The Seattle Police Manual
- Published Directives and Special Orders
- Applicable collective bargaining agreements and relevant labor laws

The relevant statute cited in FIT's medical records request, RCW 70.02.200(1)(f), permits disclosure of medical records without patient's authorization in the following instances relevant to this investigation, to:

(1) ... a health care provider or health care facility may disclose health care information... about a patient without the patient's authorization to:

(f) Fire, police, sheriff, or other public authority, **that brought, or caused to be brought, the patient to the health care facility or health care provider** if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted....

(Emphasis added).

There is no case law interpreting RCW 70.02.200(1)(f), a point Mr. Myerberg made during his interview with Seyfarth⁹, and there are limited secondary sources available. The Washington State Hospital Association published a guide which purports to be a guide "intended to assist hospitals and law enforcement officials in working together, particularly in an area of release of protected health information." Hospital and Law Enforcement Guide to Disclosure of Protected Health Information (Fourth Edition, November 2017), available at <http://www.wsha.org/wp-content/uploads/Law-Enforcement-Guide-2017-11.20.17-FINAL.pdf> at p. 1. The guide provides two examples of situations that would justify the release of medical information under RCW 70.02.200(1)(f): one example in which the police accompany an individual who has been stabbed to a hospital for treatment (i.e., where police brought the patient to the health care facility), and the other example in which the police direct aid units to take a car accident victim to the hospital (i.e., where the police caused the patient to be brought to the health care facility):

Example: Police accompany an individual who has been stabbed to a hospital

⁹ Specifically, Mr. Myerberg stated when he looked at RCW 70.02.200(1)(f), he was unable to find any case law that says how FIT interpreted the statute was an "illogical interpretation of the statute. SPD, the City, and FIT counsel have not flagged this interpretation."

emergency department for treatment. A police officer later contacts the hospital regarding the status of the patient. Is it permissible for the hospital to provide information to the police officer?

If the police officer makes the request for information to a nursing supervisor, administrator or designated privacy official and states the belief that the stab wound was intentionally inflicted, the hospital must provide information to the police officer regarding the patient's condition. The hospital also must disclose: the patient's name; residence; sex; age; diagnosis, and extent and location of injuries; whether the patient was conscious when admitted; the name of the health care provider making the determination with respect to the patient's condition, diagnosis, and extent and location of injuries; whether the patient has been transferred to another facility (unless the other facility is a mental health facility); and the date and time of the patient's discharge.

Example: Police respond to a car accident. Aid units also respond. The police direct the aid units to take injured individuals to the hospital. Police investigating the accident subsequently contact the hospital for information regarding the individuals brought to the hospital by the aid unit. What can the hospital tell police?

Because the police officers at the scene initiated the transport of patients to the hospital, the hospital may disclose the name, address, age, gender and type of injury of the patients. In order for the hospital to confirm that the police were involved in initiating the care provided, law enforcement officials should be able to describe the accident involving the patients to the health care provider. If the patients' injuries involve blunt force trauma, and the police officer directs the request to a nursing supervisor, administrator or designated privacy official, and states that the car accident is reasonably believed to have resulted from a criminal act, the hospital must provide for each patient: the name; residence; sex; age; condition, diagnosis and extent and location of injuries; whether the patient was conscious when admitted; the name of the health care provider making the determination with respect to the patient's condition, diagnosis, and extent and location of injuries, whether the patient has been transferred to another facility (unless the other facility is a mental health facility); and the date and time of the patient's discharge. The hospital may provide additional information only if another exception applies.

Id. at 15. Notably, the guide also provides that RCW 70.02.200(1)(f) must be read together with the HIPAA regulation at 45 CFR 164.512(f) and as a result, a hospital should limit its disclosure to name, address, age, gender, and type of injury in the absence of another exception.

One such exception is RCW 70.02.200(2)(b), which requires disclosure when the patient is being treated for injuries likely suffered as a result of criminal conduct. Pursuant to RCW 70.02.200(2)(b), disclosure of the following is mandatory when the patient has been treated for a

bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which the police reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that police believe resulted from a criminal act:

- Name of the patient
- The patient's residence
- The patient's sex
- The patient's age
- The patient's condition
- The patient's diagnosis, or extent and location of injuries as determined by a health care provider
- Whether the patient was unconscious when admitted
- The name of the health care provider making the determination
- Whether the patient has been transferred to another facility
- The patient's discharge time and date

Here, the fax cover sheet requesting Ms. Inda's medical records states that the request is under RCW 70.02.200 without identifying what subsection applies. Det. Dewey and Mr. Myerberg state FIT's request was under RCW 70.02.200(1)(f). However, the evidence is that Ms. Inda arrived at Virginia Mason in a private vehicle and was not accompanied by the SPD, nor is there any evidence that SPD directed the private vehicle to take Ms. Inda to the hospital or otherwise initiated her transport to the hospital (like example 2 of the Hospital and Law Enforcement Guide above). Additionally, FIT's request was not limited to those items permissible under RCW 70.02.200(1)(f)¹⁰, nor was it limited to the information permitted under RCW 70.02.200(1)(f) and 45 CFR 164.512(f) when read together.

Notably, the medical information that FIT requested is listed under RCW 70.02.200(2)(b). Yet when making this request, FIT did not represent that it reasonably believed Ms. Inda's injuries to have been intentionally inflicted by the officer who threw the blast ball or that Ms. Inda suffered a blunt force injury that FIT reasonably believed resulted from a criminal act. Additionally, there is no evidence in the 2020FIT-0015 file that suggests Det. Dewey, Sgt. Collier, or other FIT officers reasonably believed Ms. Inda's injuries to have been intentionally inflicted by the officer who

¹⁰ RCW 70.02.200(1)(f) limits disclosure to name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted. It does not permit disclosure of the name of the health care provider making the determination and whether the patient was transferred to another facility, which were both requested in FIT's fax to Virginia Mason.

threw the blast ball¹¹ or that Ms. Inda suffered a blunt force injury that FIT reasonably believed resulted from a criminal act.

Seyfarth understands that it is FIT's normal operating procedure to request this medical information in situations involving use of force or officer-involved shootings. However, Seyfarth is unable to find an exception under RCW 70.02.200 or elsewhere that permitted FIT's request for the medical information sought related to SPD's use of force against Ms. Inda on June 8, 2020. As result, Seyfarth finds FIT improperly obtained Ms. Inda's unredacted medical records.

With respect to disclosure, Seyfarth understands that FIT forwarded the request to OPA/Sgt. Tovar because he had an active investigation at the time, and because OPA has visibility into the FIT file as a function of its oversight responsibilities. However, because FIT improperly obtained Ms. Inda's unredacted medical record, it follows that it improperly disclosed the same medical information when it provided it to OPA.

B. Allegation No. 2: OPA and/or Mr. Myerberg improperly obtained and disclosed Ms. Inda's unredacted medical records.

1. Evidence

Ms. Lippek claims that OPA and/or Mr. Myerberg improperly obtained Ms. Inda's unredacted medical information when conducting 2020OPA-0344. Ms. Lippek also claims Mr. Myerberg unnecessarily included explicit medical information in his determination memorandum on the case (CCS 2020OPA-0344), a document that is readily available to the public. She alleges that Mr. Myerberg could have summarized what he found with phrases like "other medical factors" or "additional diagnosis" instead of publishing Ms. Inda's private medical information.

- Response by Mr. Myerberg -

In addition to Mr. Myerberg's statement above (*see* p. 8), Mr. Myerberg states he included specific information from Ms. Inda's medical records rather than summarizing the information because OPA's role includes explaining to the public why it reached the conclusions it did in as transparent a manner as possible. He states Ms. Inda's high levels of ethanol in her blood was relevant both to her publicly stated claim that a blast ball thrown by a police officer caused her medical condition, as well as to her ability to recall with clarity the events that occurred during the incident, and that this information provided an alternative cause of Ms. Inda's heart stopping and raised questions as to whether this injury was caused by the blast ball deployment.

As to Ms. Inda's conditions being posted on OPA's website, Mr. Myerberg considered that CCS was anonymized and that Ms. Inda's name was not included. Mr. Myerberg also considered that this was a matter of public concern, and that Ms. Inda and Ms. Lippek made numerous public statements concerning Ms. Inda's medical history, treatment, and condition after this incident. Mr. Myerberg also considered that the allegation made by Ms. Inda and Ms. Lippek - that an SPD officer's actions nearly killed her - were extremely serious and needed to be fully assessed.

¹¹ The 2020FIT-0015 file states that the officer who deployed the blast ball was unaware that he struck Ms. Inda.

Further, Mr. Myerberg states that the 2016 OPA Manual did not contain any processes for handling medical information. However, he states that the expectation was that once medical records were in OPA's J drive, they would not be accessed by OPA staff unless for official case-related reasons.

- Documentary Evidence -

In CCS 2020OPA-0344, Mr. Myerberg states that FIT obtained two sets of medical records from Ms. Inda: the first set provided by her counsel (Ms. Lippek) and "redacted in various parts" and the second an unredacted set from the hospital. Further, he states:

[t]he full set of records indicated that, upon admission, the Subject was diagnosed with acute respiratory failure – where oxygen levels are dangerously low in the blood. The records indicated that this was possibly secondary to acute alcohol intoxication. The records stated that the Subject's ethanol level was 308 (for context, an ethanol level of 400 can be fatal). The records further noted that the Subject suffered from aspiration and potentially had a seizure history given a medication she was prescribed that could be used to treat seizure disorders. There is no indication in the records of bruising in the Subject's body, including her head, brain, and chest.

Upon discharge, the Subject was diagnosed with cardiac arrest with several possible causes, including: commotio cordis – a disruption of the heart rhythm that can be caused by a blow to the area around the heart; a seizure; and alcohol intoxication. She was further diagnosed with acute alcohol intoxication and possible aspiration. The records stated that, while she was reported to have been resuscitated three times prior to hospitalization, she was not defibrillated so the hospital could not verify whether the Subject was pulseless.

Exhibit 4 at pp. 2-3.

OPA's website provides that one of its "core functions" is to promote public awareness of, full access to, and trust in the complaint investigation process. *See* OPA website available at <https://www.seattle.gov/opa/about-us/what-we-do>. Additionally, as part of its independence, OPA has complete and immediate access to all SPD-controlled data, evidence, and personnel necessary for thorough and timely complaint handling. *Id.*

2. Analysis & Findings

Although OPA is physically housed outside any SPD facility and operationally independent of SPD in all respects, it is organizationally in SPD. Seattle Municipal Code, Chapter 3.29.100. As result, Mr. Myerberg (and others at OPA) must comply with the Seattle Police Manual 5.001-Standards and Duties, requiring employees to adhere to federal, state, and local laws, as well as City and SPD policies.

RCW 70.02.005 provides:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

Id.

Additionally, Section II(B)(2) of the OPA Internal Operations and Training Manual effective date 04/01/2016 (2016 OPA Manual) provides:

Personnel assigned to OPA must maintain the highest degree of confidentiality concerning matters related to OPA complaints and investigations. OPA employees, other than the OPA Director are prohibited from disclosing or confirming to anyone outside of OPA whether a complaint has been made or an investigation is being conducted, including the identity of complainants and named and witness employees, unless required by OPA protocols, or public disclosure laws.

Section II(C) of the 2016 OPA Manual provides “[i]f there was a possibility of injury, the complainant will be asked... whether he or she will sign a release to allow for medical records to be gathered detailing the injury if medical treatment was sought.”

Here, Mr. Myerberg has to comply with Seattle Police Manual 5.001-Standards and Duties, which requires compliance with federal, state, and local laws. There are no laws or SPD or City policies that prohibit Mr. Myerberg, as OPA Director, from accessing a subject’s medical records that are part of a related FIT file. By design, OPA has complete and immediate access to all SPD-controlled data, evidence, and personnel necessary for a thorough and timely complaint handling. Moreover, there is no evidence that Mr. Myerberg, or anyone else at OPA, accessed the medical records in OPA’s J drive for any purpose but for official case-related reasons. Lastly, when seeking to obtain the records itself, OPA complied with the 2016 OPA Manual by requesting a medical release from Ms. Inda (although she did not provide a release to OPA).

However, RCW 70.02.005 states that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.” RCW 70.02.005(1). Moreover, it states a patient has an interest in proper use and disclosure of their medical records even when the information is held by persons other than health care providers. RCW 70.02.005(4). The statute does not define disclosure so Seyfarth construes it in accord with its ordinary or natural meaning. Merriam-Webster defines disclose as to make known or public. See <https://www.merriam-webster.com/dictionary/disclose>.

OPA's publication of Ms. Inda's unredacted medical information is inconsistent with the expectations articulated in RCW 70.02.005(4). Per RCW 70.02.005(4), Ms. Inda had an interest in proper use and disclosure of her medical information by those in possession of it. While there is no evidence that Mr. Myerberg had knowledge of the fact that FIT improperly obtained Ms. Inda's unredacted medical record, because the unredacted medical information was improperly obtained by FIT, it simply cannot be proper for OPA to make that same improperly obtained medical information public by publishing it in the CCS. In reaching its finding, Seyfarth considered and relied on the fact that the medical information was not known to the public prior to Mr. Myerberg including it in the CCS Summary, which was later published.

C. Allegation No. 3: Mr. Myerberg opined on the meaning of the medical records despite not being medically trained to do so, and despite the medical information not being directly relevant to an assessment of the misconduct at issue. However, such conduct does not arise to a violation of any City policies.

1. Evidence

Ms. Lippek alleges that Mr. Myerberg opined on the meaning of the records despite his lack of medical training and his failure to consult with a medical doctor to interpret the information. Ms. Lippek states when she asked Mr. Myerberg whether he had consulted with a doctor, he told Ms. Lippek that he had checked "the Mayo Clinic website." Ms. Lippek further states that in the medical records, there is another symptom listed as "potential secondary" to alcohol intoxication but the cardiac arrest caused by the impact of the SPD blast ball was not identified as that secondary symptom. According to Ms. Lippek, the "potential secondary to alcohol intoxication" reference does not refer to Ms. Inda's cardiac arrest, which elsewhere in the record is attributed to chest trauma from a flash bang.

Ms. Lippek also claims that cardiac arrest is not a symptom of alcohol intoxication and Mr. Myerberg could have found this information on the Mayo Clinic website had he wished to do so. Ms. Lippek believes that Mr. Myerberg could have consulted with a medical professional to interpret medical records but chose not to. She also believes Mr. Myerberg could have interviewed the treating physician who made the notes to clarify the diagnosis.

- Response by Mr. Myerberg -

Mr. Myerberg stated the statistics from his report regarding Ms. Inda's ethanol level in her blood were pulled from publicly available information, including content posted by the Mayo Clinic. According to Mr. Myerberg, his conclusions did not require medical expertise and were a summary of the plain language of the medical records.

Mr. Myerberg denies that he opined on the meaning of Ms. Inda's medical records or issued a medical opinion. He states he summarized and cited to the opinions reached by the attending physicians. Mr. Myerberg claims that he did not consult with a medical professional regarding the information he included in the CCS or otherwise seek to confirm his interpretation of the medical information because he did not believe that it was necessary since the conclusions he reached did not require medical expertise and were a summary of the plain language of the medical records.

Mr. Myerberg claims the medical records were directly relevant to the harm that Ms. Inda alleges was caused by a police officer's actions. He further states that whether the officer's actions caused Ms. Inda to go into cardiac arrest, as she alleges, could impact the potential discipline for the officer, as well as the negative effect on the Department's reputation. Mr. Myerberg states that part of OPA's role is transparently explaining to the community its findings regarding officers' actions.

- *Witness Statements* –

Danielle Fifis was assigned as an investigator on behalf of the Office of the Inspector General to make a certification based on OPA's investigation related to Ms. Inda (2020OPA-0344). She states OPA did not include Ms. Inda's unredacted medical record in its files or in its initial Report of Investigation (ROI). Instead, the ROI stated Ms. Inda's medical records were not included due to privacy. She does not know how OPA obtained a copy of Ms. Inda's unredacted medical records but she knows that OPA goes into FIT's files. She is unaware of a policy prohibiting Mr. Myerberg's access to the FIT file but believes he is supposed to restrict his access to materials relevant to the investigation.

- *Documentary Evidence* –

Ms. Inda's unredacted medical records provide there was an unclear etiology related to her diagnosis of acute hypoxic respiratory failure, and that the acute hypoxic respiratory failure was possibly secondary to acute alcohol intoxication. Exhibit 27 at p. 11. Further, her records provide she was diagnosed with cardiac arrest with several possible causes, including commotio cordis; a seizure; and alcohol intoxication. *Id.* at p. 16.

In the CCS, Mr. Myerberg provides the following analysis:

However, the hospital records also indicated that, at the time of the incident, the Subject suffered from acute alcohol intoxication. The ethanol level in her blood was 308, which is extremely high. To put this into perspective, a level of 400 could cause death as it may reduce the ability to respire normally. This is likely why the hospital initially diagnosed the Subject with acute hypoxic respiratory failure, which it deemed possibly secondary to acute alcohol intoxication.

Exhibit 4 at p. 5.

2. Analysis & Findings

Seyfarth finds the medical information was relevant to the harm that Ms. Inda alleges was caused by the police officer's actions, as well as the potential discipline for the officer. The medical records lists intoxication due to alcohol as a potential cause for cardiac arrest. Mr. Myerberg states that the office discipline would have been more severe had the medical records concluded that Ms. Inda's cardiac arrest was caused by the blast ball.

However, Seyfarth finds that by describing an ethanol level of 308 as "extremely high" and

opining that her elevated ethanol level as “likely why the hospital initially diagnosed the Subject with acute hypoxic respiratory failure,” Mr. Myerberg did not simply cite the opinions reached by the attending physicians, but instead opined on the meaning of the medical records. It is undisputed that Mr. Myerberg did not contact a medical professional, including Ms. Inda’s treating provider, prior to reaching his conclusions. It is also undisputed that Mr. Myerberg was not medically trained to opine on the meaning of medical documents.

With respect to the investigatory charge to determine whether alleged conduct (if true) violated any City policies, Seyfarth finds that Mr. Myerberg did not violate any City policies by opining on Ms. Inda’s medical records.

D. Allegation No. 4: OPA and/or Mr. Myerberg’s use and disclosure of Ms. Inda’s unredacted medical information was retaliatory, unprofessional, and lacked the objectivity required of his position.

1. Evidence

Ms. Lippek alleges that Mr. Myerberg violated SPD’s policy prohibiting retaliation when he included Ms. Inda’s unredacted medical information in the CCS at issue. Ms. Lippek alleges that Mr. Myerberg used the private medical information in an attempt to smear Ms. Inda, a complainant, and cast aspersions on her medical harm in the public voice of the City through his determination letter. Ms. Lippek states that in doing so Mr. Myerberg left the ambit of the neutral investigator and operated as an advocate for the officer, attempting to undermine the complainant. She provides Mr. Myerberg attempted to ameliorate the actions of the SPD officer who threw the blast ball by including information in the CCS pertaining to her client’s alleged alcohol intoxication.

Ms. Lippek also feels that the disclosure was to make a dig at Ms. Lippek, given her work experience with Mr. Myerberg. Ms. Lippek stated that she and Mr. Myerberg have prior experience from before OPA and OIG. Mr. Myerberg was the special prosecutor brought in to suppress evidence when she was about to uncover evidence of alleged police brutality. Ms. Lippek states she had multiple cases dismissed.

- Response by Mr. Myerberg -

Mr. Myerberg denies that he violated SPD’s policy prohibiting retaliation, or that he attempted to undermine, discourage, intimidate, or cast aspersions at Ms. Lippek or her client. Mr. Myerberg claims he was exploring the facts of a case and it is OPA’s obligation to evaluate specific claims made by a complainant and/or their representative. Mr. Myerberg alleges that OPA has the same obligation to fully address and evaluate claims made by an SPD employee and that OPA is held to that obligation by OIG.

Mr. Myerberg further denies that he used the public voice of the City to retaliate against Ms. Lippek or her client. Mr. Myerberg states that he included information in the CCS that “OPA also finds it troubling that, in the medical records initially provided to FIT by the Subject’s attorney, the information concerning this diagnosis and her ethanol level was redacted “throughout” because it was accurate. He states it appeared that Ms. Lippek had engaged in

purposeful attempts to conceal possible alternative causes for the injuries suffered by Ms. Inda while making numerous public statements and offering testimony at Ms. Inda's OPA interview that these injuries were solely contributed to a blast ball deployment.

Mr. Myerberg denies Ms. Lippek's allegation that he attempted to ameliorate the actions of the SPD officer who threw the blast ball by including information in the CCS pertaining to her client's alleged alcohol intoxication. According to Mr. Myerberg, OPA recommended that there be a finding that the deployment violated policy and that the officer be disciplined for this. Second, Mr. Myerberg's goal was to ensure that all of the facts of the case were fully addressed. According to Mr. Myerberg, had the medical records indicated that the blast ball deployment actually caused Ms. Inda to stop breathing multiple times, he would have included that information and it would have likely greatly increased the discipline ultimately imposed.

Lastly, Mr. Myerberg states he worked with Ms. Lippek around 2015 or 2016 on a case in which she represented a criminal defendant at the Seattle Municipal Court and Mr. Myerberg was an Assistant City Attorney. Mr. Myerberg later worked with Ms. Lippek when she was employed by the OIG (and Mr. Myerberg was at OPA) where she received classifications and investigations. Ms. Lippek was counsel of record for a number of civil cases against the City, SPD, and SPD employees. Mr. Myerberg also claims Ms. Lippek is now a complainant in several OPA complaints. He denies using the public voice of the City to retaliate against Ms. Lippek or Ms. Inda.

- Documentary Evidence -

In the CCS, Mr. Myerberg provides the following analysis:

In reaching its finding, OPA does not reach an opinion of the extent of the injury suffered by the Subject and whether the blast ball represented the cause of her most severe complications. While, based on the witness declarations, it appears the Subject did need to be resuscitated, the hospital could not verify that she was ever pulseless... OPA also finds it troubling that, in the medical records initially provided to FIT by the Subject's attorney, the information concerning this diagnosis and her ethanol level was redacted throughout.

Ultimately, regardless of the level and cause of injury suffered, OPA concludes that the fourth blast ball deployment that struck the Subject violated SPD policy and training. Accordingly, OPA recommends that this allegation be Sustained.

Exhibit 4 at pp. 5-7.

2. Analysis & Findings

Section II(B)(5) of the 2016 OPA Manual provides:

Retaliation in any form for the filing of a complaint or for participation in the complaint or investigative process will not be tolerated....

Actions which may be considered retaliatory can take many forms, including, but not limited to, the malicious filing of a criminal or civil action, threats or harassment in any form, contacting third parties to take adverse action, or decisions affecting an employee's hiring, promotion or assignment....

OPA personnel must not take any action or fail to take any necessary action in retaliation for a person having provided information pursuant to an OPA complaint or otherwise participated in the complaint process.

2016 OPA Manual at pp. 13-14.

Section 5.001 ("Standards and Duties") of the Seattle Police Manual provides:

14. Retaliation is prohibited

No employee will retaliate against any person who:

- Exercises a constitutional right
- Records an incident
- Publicly criticizes an SPD employee or the Department
- Initiates litigation
- Opposed any practice reasonably believed to be unlawful or in violation of Department policy
- Files a complaint or provides testimony or information related to a complaint of misconduct
- Provides testimony or information for any other administrative criminal or civil proceeding involving the Department or an officer
- Communicates intent to engage in the above-described activities
- Otherwise engages in lawful behavior

Retaliation includes discouragement, intimidation, coercion, or adverse action against any person. This prohibition will include any interference with the conduct of an administrative, civil, or criminal investigation.

Section 5.001 ("Standards and Duties") Seattle Police Manual at p. 6.

Here, Seyfarth finds that Mr. Myerberg had non-retaliatory reasons for including the information in the CCS. Specifically, Mr. Myerberg was addressing and evaluating specific claims made by Ms. Inda and/or Ms. Lippek, which were relevant to the harm that Ms. Inda alleges was caused by the police officer's actions, as well as the potential discipline for the officer (*see* page 19 above). Additionally, in light of the relevance of Ms. Inda's intoxication, Seyfarth does not sustain

the allegation that Mr. Myerberg's statement "OPA also find it troubling that, in the medical records initially provided to FIT by the Subject's attorney, the information concerning this diagnosis and her ethanol level was redacted throughout" was retaliatory or lacking of professionalism or objectivity. OPA's duties include evaluating claims and related evidence, and it is not improper or against law or City or SPD policy for OPA to note any concerns related to the evidence in support of those claims. Likewise, for the same reasons, Seyfarth does not sustain the allegation that Mr. Myerberg attempted to ameliorate the actions of the SPD officer who threw the blast ball by including information alleged alcohol intoxication. As Mr. Myerberg pointed out, OPA recommended that there be a finding that the deployment violated policy and that the officer be disciplined for this.

4. SUMMARY OF FINDINGS

Based on the totality of the circumstances and the information obtained pursuant to the investigation, and based on a preponderance of the evidence standard, Seyfarth concludes:

Allegation No. 1: Seyfarth sustains the allegation that FIT improperly obtained and disclosed unredacted copies of Ms. Inda's unredacted medical record. Such conduct does not comply with (or is inconsistent with the expectations articulated in) Seattle Police Manual 5.001-Standards and Duties, RCW 70.02.200(1)(f), 45 CFR 164.512(f), and RCW 70.02.200(2)(b). The evidence is that Ms. Inda was not accompanied by the SPD, nor is there any evidence that SPD directed the private vehicle to take Ms. Inda to the hospital. Additionally, FIT's request was not limited to those items permissible under RCW 70.02.200(1)(f), nor was it limited to the information permitted under RCW 70.02.200(1)(f) and 45 CFR 164.512(f) when read together. Additionally, FIT did not represent that it reasonably believed Ms. Inda's injuries to have been intentionally inflicted by the officer who threw the blast ball or that Ms. Inda suffered a blunt force injury that FIT reasonably believed resulted from a criminal act. Because FIT improperly obtained Ms. Inda's unredacted medical record, it follows that it improperly disclosed the same medical information when it provided it to OPA.

Allegation No. 2: Seyfarth does not sustain the allegation that OPA and/or Mr. Myerberg improperly obtained Ms. Inda's unredacted medical records, but because the unredacted medical records were improperly obtained by FIT, Seyfarth does sustain the allegation that OPA and/or Mr. Myerberg improperly disclosed that same medical information by including it a CCS. There is no evidence that Mr. Myerberg, or anyone else at OPA, accessed the unredacted medical records in OPA's J drive for any purpose but for official case-related reasons, and by design, OPA has complete and immediate access to all SPD-controlled data, evidence, and personnel necessary for a thorough and timely complaint handling. However, while Mr. Myerberg had no knowledge of the fact that FIT improperly obtained Ms. Inda's unredacted medical record, it still was improper for Mr. Myerberg to disclose that same medical information in the CCS.

Allegation No. 3: Seyfarth does not sustain the allegation that Ms. Inda's unredacted medical record was irrelevant to Mr. Myerberg's assessment of the misconduct at issue. Seyfarth sustains the allegation that Mr. Myerberg improperly opined on the

meaning of the medical records despite not being medically trained to do so, but finds that such conduct does not violate any City policies. By describing Ms. Inda's ethanol level of 308 as "extremely high" and opining that her elevated ethanol level as "likely why the hospital initially diagnosed the Subject with acute hypoxic respiratory failure," Mr. Myerberg opined on the meaning of the medical records. It is undisputed that Mr. Myerberg was not medically trained and did not contact a medical professional prior to reaching his conclusions. Such conduct, however, does not arise to a policy violation.

Allegation No. 4: Seyfarth does not sustain the allegation that Mr. Myerberg's use and disclosure of Ms. Inda's medical records was unprofessional, retaliatory, or lacking the objectivity required of his position. Mr. Myerberg had non-retaliatory reasons for including the information in the CCS. Moreover, his duties include evaluating claims and related evidence and it is not improper for him to note related concerns in the CCS.

5. CONCLUSION

This investigation has addressed issues raised in the initial investigatory complaint and does not purport to address any allegations outside this report.

Sincerely,

SEYFARTH SHAW LLP

Lauren Parris Watts

Lauren Parris Watts
Kira J. Johal

LPW:kjj
Enclosures