PORTLAND CITY AUDITOR
Independent Police Review

Memorandum

To: Ross Caldwell
From: Eric Berry
Date: 09/23/21

Subject: Review of PPB's acquisition and record keeping of less lethal munitions

On 07/09/21, community member Jake Dockter submitted an online complaint to IPR, regarding a public records request he made to the City of Portland on 01/31/21. In his public records request, Mr. Dockter indicated PPB received "munitions" from Oregon State Department of Corrections (DOC) during June 2020. Mr. Dockter requested to receive various records and emails regarding the reported transfer of these munitions from DOC to PPB, as well as their inventory and management by PPB's Training Division. Although the City provided a number of records to Mr. Dockter, he indicated they were insufficient and made an appeal to the Multnomah County District Attorney's office (MCDA). Ultimately MCDA closed Mr. Dockter's appeal, noting PPB appeared to have supplied all responsive documents it possessed. Following this closure, Mr. Dockter made a complaint to IPR. In his complaint Mr. Dockter wrote, "As PPB directives and SOP require these documents be kept and maintained, the fact they are not available is a violation of directives and city codes. PPB is violating policy."

After IPR received Mr. Dockter's complaint I consulted with IPR management. We determined Mr. Dockter did not qualify as a complainant regarding the matter of the sufficiency of PPB's record keeping related to the munitions it reportedly received. We also determined it was appropriate to further screen this issue, in order to determine whether IPR should open an independent investigation regarding the sufficiency of PPB's record keeping of the munitions it received.

I have since completed this screening process. I did not identify potential misconduct by any current PPB members, and I do not recommend opening an independent investigation regarding this matter. However, I did identify some areas of concern about PPB's inventory practices and record keeping related to munitions. I believe it is appropriate to refer these concerns to senior PPB command staff as a Precinct Referral. I am preparing this memorandum to describe my screening process and the areas of concern I identified.

During this screening process I corresponded by email with Lieutenant Franz Schoening, a long-serving command staff member of RRT. Lieutenant Schoening advised me he was not directly involved in receiving munitions from DOC, but he heard PPB did receive some munitions from DOC. Lieutenant Schoening

indicated he had not seen any records related to this transfer of munitions. Lieutenant Schoening indicated he believed the munitions were not used operationally, because they were not the sort of munitions PPB typically used, and officers had not been trained on their use. Lieutenant Schoening indicated he believes the munitions were later destroyed.

Regarding whether there are legal record keeping requirements associated with the munitions PPB received from DOC, Lieutenant Schoening indicated some sorts of munitions are regulated by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) because their fuzes contain explosive material. Lieutenant Schoening indicated he was not aware of PPB receiving any ATF-regulated munitions from DOC, but if PPB had received such munitions, they would be required to notify ATF of their final disposition, such as having been deployed during a protest or used during a training exercise. Lieutenant Schoening also indicated the Portland City Council subsequently passed an ordinance requiring PPB to report their inventory of crowd control munitions to City Council, but that was not in effect during the summer of 2020.

Regarding whether there are PPB Directives or SOPs that describe how PPB should keep track of what it receives, Lieutenant Schoening referred to Directive 1020.00 – Weapons Administration, and noted section 10.4 of the Directive indicates the Training Division shall "procure, inventory, track [and issue]" munitions. Lieutenant Schoening indicated he believes this requirement refers to "standard issue" less lethal items and munitions. Lieutenant Schoening indicated he does not believe the Training Division has historically taken on that role for the munitions the Rapid Response Team (RRT) and the Special Emergency Reaction Team (SERT) use. Lieutenant Schoening indicated RRT SOP 7 – Munitions indicates RRT must inventory their munitions on a semi-annual basis, but the SOP does not necessarily require an intake report when RRT receives munitions. Lieutenant Schoening also indicated whatever munitions PPB received from DOC would likely not have been considered part of RRT's munitions inventory because they were set aside for destruction or disposal.

Lieutenant Schoening indicated Lieutenant Dave Michaelson coordinated PPB's emergency procurement of munitions from DOC, and Officer Harley Surla may have helped receive the munitions from DOC. Lieutenant Schoening indicated he believed Officers John Young and Zachary Domka could describe the ultimate disposition of the munitions PPB received from DOC.

I also corresponded with Officer Young via email regarding this issue. Officer Young indicated he was not involved in the transfer of munitions from DOC to PPB, and he does not know what specific items PPB received. Officer Young indicated he does know they did not use any munitions they had not been trained to use. Officer Young indicated Officer Domka was the lead grenadier instructor at the time, and was more knowledgeable about what PPB received from DOC. Officer Young indicated Officer Domka has since left the Bureau. DPSST records indicate Officer Domka resigned from PPB on 07/01/21.

During this screening process, I reviewed Directive 1020.00 – Weapons Administration, as well as RRT SOP 7 – Munitions. I noted both documents are generally consistent with Lieutenant Schoening's description. Section 10.4 of Directive 1020.00 – Weapons Administration outlines the Training Division's responsibilities related to PPB weapons and munitions. Section 10.4.1 states, "The Training Division Manager is responsible for procuring and controlling the Bureau's inventory of all weapons, including

allocations, inspections, and maintenance." Section 10.4.2 states, "The Training Division shall procure, inventory, track and issue CEWs [Conducted Energy Weapons, aka 'Tasers'] and cartridges, and less lethal launchers and munitions to other units." Section 10.3.3.3 notes that the RRT commander is responsible for ensuring any specialty weapons within the unit, such as less lethal launchers, are inspected on an annual basis at a minimum. Section 6.1 of this Directive notes the Chief may authorize units such as SERT to use specialized weapons. This Directive does not address RRT or SERT obtaining or inventorying less lethal munitions or other crowd control devices.

RRT SOP 7 defines an area impact munition as, "A munition designed to simultaneously deliver multiple projectiles to an area. The intended use is to impart kinetic energy to a person or persons in the affected area with the intent of influencing their behavior through pain compliance." The SOP notes area impact munitions include rubber ball distraction devices with projectiles, and 40mm rounds containing multiple projectiles.

RRT SOP 7 describes a diversionary device as, "A device designed to produce a loud noise and/or a flash of light with the intended effect of distracting, disorienting, or startling a person in order to influence their behavior." The SOP notes diversionary devices include rubber ball distraction devices without projectiles, and non-bursting metal body devices containing an explosive charge. The SOP notes diversionary devices are ATF-regulated munitions. The SOP states, "B.A.T.F.E. regulations mandate that all diversionary devices purchases and / or expended will be reported. Any member who expended a diversionary device will ensure that the serial number is recorded on the appropriate Bureau reports." The SOP indicates all ATF-regulated munitions must be stored in a locked, secure area in accordance with ATF regulations. The SOP further indicates all RRT members must "Report all B.A.T.F.E. regulated items to the proper designee upon deployment or discovery of loss of said item(s)."

During this screening process, I obtained and reviewed the records the City provided to Mr. Dockter. Reviewing these records, I noted: They consist of 187 pages of material, the bulk of which are copies of email correspondence from June 2020. The majority of this email correspondence consists of Lieutenant Michaelson and other PPB personnel soliciting multiple other law enforcement agencies, other government entities, and private vendors for less lethal munitions. The agencies Lieutenant Michaelson corresponded with include DOC, Oregon State Police (OSP), Oregon National Guard (ONG), Vancouver Police Department (VPD), and the United States Department of Justice (US DOJ). The Oregon Sheriff's Association also solicited its membership for munitions on behalf of PPB. The vendors Lieutenant Michaelson corresponded with include Curtis Blue Line, Combined Systems, Hurricane Butterfly, and Safariland. Other PPB command staff who took part in this correspondence include former Lieutenant James Dakin, Commander Craig Dobson, Commander Erica Hurley, former Assistant Chief Mike Krantz, former Assistant Chief Ryan Lee, and Lieutenant Craig Morgan.

Reviewing this correspondence, it appears PPB actively tried to purchase additional less lethal munitions from vendors, and also solicited less lethal munitions from other law enforcement agencies. It appears many other law enforcement agencies around the country were also trying to obtain additional less lethal munitions during this same time period, which spans the first weeks of nationwide protests following the murder of George Floyd by a police officer in Minneapolis, Minnesota on 05/25/20.

This correspondence indicates PPB received munitions from two DOC facilities: Oregon State Penitentiary, and Coffee Creek Correctional Facility (CCCF). This correspondence indicates Officer Surla was assigned to drive and pick up less lethal munitions from other agencies. DPSST records indicate PPB hired Officer Surla on 04/23/20, or just over a month before the protests related to George Floyd's murder began.

Reviewing this correspondence, I noted Lieutenant Michaelson exchanged emails with DOC personnel regarding obtaining the serial numbers of the ATF-controlled munitions it received from DOC. In an email to DOC personnel dated 06/05/20, he wrote, "I need serial numbers for all BATFE regulated muntions [sic] you gave us." A DOC sergeant assigned to CCCF replied to Lieutenant Michaelson on 06/05/20, writing, "I can come up with the serial numbers for you. The only ones for us that I have to keep a record of and report to ATF is the Fuzes for my Distraction Devises. But if you need the Serial Numbers for the throwable Munitions it will take me a couple days." Lieutenant Michaelson replied to this email, writing, "I'll take the serial numbers of regulated items that you gave us please….i want to keep all of us out of the grease."

Reviewing this correspondence, I noted Training Division personnel appear to have supported PPB's efforts to obtain and distribute additional munitions. In an email dated 06/05/20, Training Division Armorer Officer Dennis Mako wrote, "On 06-06-20, at the direction of Lt. David Michaelson, I transferred three cases of 40mm less lethal sponge round munitions to Lt. R.L. Wilkerson of the Multnomah County Sheriff's Office. The total number of rounds is 258." In an email dated 07/14/20, Training Division Armorer Officer Kelly VanBlokand wrote, "I received our order of 3,010 Exact Impact munitions today. They will be stored in my magazine at the training division if needed." DPSST records indicate Officer Mako resigned from PPB on 10/29/20 and Officer VanBlokland retired from PPB on 01/29/21.

The material Mr. Dockter receives includes a spreadsheet, which appears to have been attached to an email message Lieutenant Morgan sent to Lieutenant Michaelson on 06/08/20. Reviewing this spreadsheet I noted: It appears to document both the munitions PPB ordered from vendors as well as the munitions it received from other law enforcement agencies. PPB received munitions from multiple vendors, as well as VPD, Clark County Sheriff's Office, Boise Police Department (BPD), Nampa Police Department (NPD), and two DOC facilities: CCCF and Oregon State Penitentiary. CCCF provided multiple different types of less lethal munitions and other crowd control items to PPB, including smoke and gas cannisters, all of which were noted to have been delivered to PPB. The spreadsheet also lists two additional sorts of munitions, "throw stinger RB CS" and "throw stinger RB," as "pending." The spreadsheet notes both these munitions to be "regulated," suggesting they are ATF-controlled munitions. Oregon State Penitentiary is also noted to have delivered multiple types of munitions and other items to PPB. None of these munitions are noted to be regulated. However, some of the munitions have very similar names to the ATF-controlled munitions from CCCF. These names include "stingerballs," "hand tossed stingball," and "stinger rubberball." All these munitions appear to be area impact munitions, as opposed to diversionary devices. As such, they do not appear to be ATF-regulated munitions.

During this screening process, I reviewed the City's response to the public records appeal Mr. Dockter filed with MCDA. Reviewing this response, I noted Deputy City Attorney Mike Porter indicated the City had provided Mr. Dockter with all responsive records. DCA Porter wrote that PPB had been unable to locate, "(1) Inspection records of those munitions including serial number and manufacture date, (2) Dates the munitions were checked out and to whom, record of their return or usage, and (3) If the munitions

were disposed of, the record of their disposal (date, etc.)." DCA Porter noted Mr. Dockter articulated a belief PPB was required to maintain the records he had requested, based on his understanding of applicable Directive. DCA Porter wrote, "Petitioner's [Dockter's] belief PPB was required to create a document does not create an obligation to do so and the District Attorney is without authority to so order."

During this screening process I reviewed email correspondence between Mr. Dockter, City Attorney personnel, and Deputy District Attorney Mike Gibbs, regarding Mr. Dockter's public records appeal. Reviewing this correspondence, I noted: Mr. Dockter articulated a belief PPB was required to maintain the records he had requested. In an email message dated 07/08/21, Mr. Dockter wrote, "The city has not shown why compliance is impractical, especially given that these are required records." In an email dated 07/08/21, DDA Gibbs sought to clarify Mr. Dockter's request, noting the City indicated it had already provided all responsive records. In an email dated 07/15/21, Mr. Dockter wrote, "The directives and SOPs state those records should be maintained and so I think it reasonable to assume they should be available." In an email dated 08/16/21, DDA Gibbs wrote, "I do not believe there are any outstanding matters that I have the authority to address, so I am going to close this matter."

During this screening process, I reviewed Portland City Council resolution 37520. I noted: The City Council unanimously approved this resolution on 12/09/20. The resolution directs PPB to provide the Council with an inventory of its less lethal munitions by 01/27/21. The resolution directs that this inventory include details such as the quantity of each munition, along with its manufacture, ingredients, and expiration date. The resolution direct that PPB continue to provide the Council with an inventory of its less lethal munitions on a quarterly basis thereafter, and on a daily basis for any period when PPB uses less lethal munitions during three or more days of a seven day period. The resolution directs that the Police Commissioner must approve any purchases of less lethal munitions outside of an established quarterly cycle. The resolution also imposes additional restrictions and reporting requirements related to PPB purchasing "military style equipment" for use by SERT.

During this screening process I reviewed the first such inventory provided to the City Council on 01/14/21. Reviewing it, I noted: The inventory lists many different types of less lethal munitions and other items such as smoke and gas cannisters, and includes links to Material Safety Data Sheets for many different less lethal munitions. However, the inventory does not specify when or how PPB acquired these items.

In summary, this screening process found: During the first month of the protests of the summer of 2020, PPB actively attempted to obtain additional less lethal munitions and other crowd control devices. PPB purchased many munitions, and also received many munitions from other law enforcement agencies. Available documentation indicates none of the munitions PPB received from DOC were subject to ATF control. As such, PPB would not be required to notify ATF of their reception or disposition. Although PPB does not appear to have received ATF-regulated munitions from DOC, available documentation also indicates Lieutenant Michaelson made an effort to ensure PPB would receive appropriate information about any ATF-controlled munitions it received from DOC. The relevant RRT SOP outlines additional requirements for the storage and documentation of the use of ATF-controlled munitions. Again however, PPB does not appear to have received such munitions from DOC, or any other law enforcement agency for that matter. Unfortunately Officer Domka, the person who reportedly took the lead in processing the

items PPB received from DOC and presumably has the most knowledge about this issue, is no longer employed by PPB.

While I did not identify any concerns related to PPB failing to document receiving or using ATF-controlled munitions during this screening process, I did identify some concerns related to discrepancies between PPB's practices, as described by Lieutenant Schoening, and PPB's expectations of its members, as described in Directive 1020.00 – Weapons Administration. This Directive notes the Training Division Manager is responsible for procuring and controlling the inventory of "all weapons" the Bureau possesses. This Directive further notes the Training Division is responsible for procuring and issuing less lethal launchers, munitions, and CEWs to other units within PPB. This Directive notes the Chief may authorize SERT to use specialized weapons, but does not otherwise describe a separate procurement or inventory process for the munitions SERT and RRT use. However, Lieutenant Schoening indicated historically both RRT and SERT have obtained and used their own munitions.

This is an unfortunate discrepancy. There is a tremendous and ongoing public interest in PPB's uses of force, and particularly in its use of less lethal munitions during protests. This interest was greatly amplified by PPB's heavy use of less lethal munitions during the protests of the summer of 2020. The apparent discrepancy between what is described in Directive 1020.00 and what is actually practiced by RRT could further erode the public's trust and confidence in the Bureau's representations regarding its use of less lethal munitions during protests. Simply put, the Bureau appears to be preaching one thing, and practicing another.

While resolution 37520 will provide community members with more information regarding the types and amounts of munitions the Bureau possesses, it does not address the discrepancy between the procurement and use of less lethal munitions by specialized units like RRT and SERT and by the rest of PPB.

To attempt to address and resolve this discrepancy, I recommend IPR refer this matter to senior Police Bureau command staff as a Precinct Referral. Specifically, IPR should recommend PPB revise Directive 1020.00 to better describe the actual procurement and use of less lethal munitions by specialized units, as well as the storage, documentation, and disposition requirements of munitions specifically noted to be ATF-controlled.