



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Southwest Washington Independent Investigative Response Team – The Irving Diaz-Rodriguez Case

**Use of Deadly Force Incident on November 26, 2020, by the Vancouver
Police Department**

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Pat McCarthy

February 23, 2023

Duncan Hoss, Commander
Southwest Washington Independent Investigative Response Team

Report on Use of Deadly Force Investigation Audit

Attached is the official report on our audit of the investigation into the use of deadly force on November 26, 2020, that resulted in injury to Irving Diaz-Rodriguez.

The audit assessed the Vancouver Police Department and the Southwest Washington Independent Investigative Response Team's compliance with state laws and rules regarding independent investigations of police use of deadly force as defined in WAC 139-12-030.

Our independent audits provide essential accountability and transparency regarding police use of deadly force investigations. These audits are valuable to the Legislature, law enforcement agencies and the public in assessing police accountability efforts.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Use of Deadly Force Investigations Program Manager Michael Huynh at (564) 999-0831.

Pat McCarthy, State Auditor

Olympia, WA

cc: Monica Alexander, Executive Director, Criminal Justice Training Commission

Steve Strachan, Executive Director, Washington Association of Sheriffs and Police Chiefs

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EXECUTIVE SUMMARY

Results in Brief

Southwest Washington Independent Investigative Response Team (SWIIRT) investigators and officers involved in the incident complied with most requirements to ensure the investigation into the shooting that injured Irving Diaz-Rodriguez was independent, transparent, credible and communicated to the public timely, as state laws and rules require. These actions included, but were not limited to, relinquishing control of the scene to SWIIRT once investigators arrived, maintaining a perimeter around the incident scene, issuing weekly press releases, and audio recording interviews with the involved officer and witnesses.

The audit found some instances where SWIIRT did not follow state rules and where it could improve its documentation to demonstrate compliance with them. Specifically, we found SWIIRT did not:

- Maintain documentation showing it notified Diaz-Rodriguez's family of significant developments in the case and that it sent them advanced notifications of press releases
- Require investigators and community representatives to complete conflict of interest forms within 72 hours of the start of each investigation

Recommendations

We recommend SWIIRT:

- Ensure it notifies family members about significant developments in the case and all press releases before sending them to the media, and maintain documentation that it did so
- Update its policy to require all SWIIRT members to complete conflict of interest forms within 72 hours of the start of each investigation, as state rules require

BACKGROUND

Use of Deadly Force Incident

The following summary of events is based on the investigation's case files:

On November 26, 2020, at around 7:05 p.m., Vancouver Police Department officers responded to a 911 text from the parents of Irving Diaz-Rodriguez, who said that he had become angry and was damaging walls and doors inside their home. Diaz-Rodriguez's father said he had pushed and slapped him, and was afraid he was going to potentially further harm the family, including his grandmother who had locked herself in her bedroom.

When officers arrived, Diaz-Rodriguez's parents met them outside their home to talk to them. Diaz-Rodriguez followed them outside and starting yelling at the officers, who then decided to call a mobile crisis team for assistance and requested an ambulance to park near the home. Members of the crisis team spoke to Diaz-Rodriguez when they arrived, but left when he refused services. Diaz-Rodriguez went back inside his parents' home.

Responding officers said they believed they had probable cause to arrest Diaz-Rodriguez for fourth-degree assault, and they ordered him to exit the home. Officers said Diaz-Rodriguez refused to come outside and had grabbed a bat from the garage, and they heard striking sounds from inside the home. Officers said he was yelling threats at them, and that he had not done anything wrong. The officers then set up containment around the house to prevent Diaz-Rodriguez from leaving.

At around 10:50 p.m., officers obtained a warrant and developed a plan to enter the home and arrest Diaz-Rodriguez. One of the officers, Ryne Briley, was responsible for providing lethal cover for the group. The other officers had Tasers and less-lethal ammunition. The officers entered the garage after several attempts and confronted Diaz-Rodriguez, who was standing in the living room. Through a doorway connecting the garage to the living room, officers said they told Diaz-Rodriguez that he was under arrest, but he did not comply, so they fired several rounds of less-lethal ammunition at him. The ammunition did not affect him, and officers said he closed the door between them. Officer Briley said he pushed the door back open and saw Diaz-Rodriguez move toward him and swing the bat. One of the officers deployed a Taser, and Officer Briley shot at Diaz-Rodriguez four times with this gun, hitting him three times: once in his right elbow and twice in his torso. Diaz-Rodriguez collapsed after the officer shot him, and the officers provided first aid. Paramedics transported Diaz-Rodriguez to a hospital where he was treated for non-life-threatening injuries. The shooting partially paralyzed him.

The Southwest Washington Independent Investigative Response Team (SWIIRT), an independent investigation team (IIT) that investigates police use of deadly force incidents in Clark and Skamania counties, responded to the incident. Investigators from the Clark County Sheriff's Office led the investigation with assistance from the Washougal and Battle Ground police departments.

SWIIRT completed the investigation on December 23, 2020, and submitted its case files to the Clark County Prosecuting Attorney's Office. The Clark County prosecutor forwarded the case to the Thurston County Prosecuting Attorney's Office for review on February 17, 2021. A prosecutor announced on March 31, 2021, that she would not file charges against Officer Briley.

Independent Investigation Teams

Voters approved Initiative 940 in 2018. It ensures that one of an IIT's key functions is to investigate police use of deadly force incidents. The initiative requires investigations of police use of deadly force be conducted by an agency completely independent of the one with the involved officer(s). Regional IITs allow law enforcement agencies to respond quickly to use of deadly force incidents while keeping the involved agency out of the investigation. IITs are made up of command staff, detectives and other crime scene investigators from law enforcement agencies in a given region. An IIT also consists of volunteers, called non-law enforcement community representatives, who help give the community perspective during an investigation.

Washington has 17 IITs throughout the state. Many of these teams existed before recent police reform and accountability laws, including Initiative 940, and allowed law enforcement agencies to pool resources for major investigations. Prohibiting the involved agency from participating in these investigations was meant to improve their impartiality and independence by preventing people who are more likely to have a personal relationship with the involved officers from investigating the incident.

The initiative tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. The CJTC adopted Washington Administrative Code (WAC) 139-12-030, which requires independent use of deadly force investigations to meet four key principles:

- Independence – the involved agency cannot have undue influence or the appearance of undue influence on the investigation.
- Transparency – community members are able to assess whether the investigation is conducted in a trustworthy manner and complies with the standards defined in state laws and rules.
- Communication – the IIT must communicate the investigation's progress to the public and family of the person killed or harmed by police use of deadly force.
- Credibility – use of deadly force investigations follow best practices for criminal investigations, and investigators meet necessary training requirements and demonstrate ethical behavior and impartiality.

Audit Objective

State law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm.

To determine whether the Vancouver Police Department and SWIIRT complied with state laws and rules in conducting the investigation of the shooting that injured Irving Diaz-Rodriguez, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members, including community representatives. We assessed the involved agency's and IIT's compliance with each of the requirements under the key principles in WAC 139-12-030. This included whether the IIT followed the CJTC's published best practices for conducting homicide investigations.

This report outlines the steps they took to meet each of these key principles. **Appendix A** contains information about our methodology.

AUDIT RESULTS

Appendix A outlines our Office’s authority and methodology for this audit. In short, state law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm. Our charge is to ensure the investigations complied with relevant rules and laws. The audit only reviewed the investigation. It did not assess the incident itself or whether the use of force was justified.

Independence

To help ensure the investigation was conducted independently of the involved agency, SWIIRT investigators reported that they assumed control of the scene upon arrival and excluded investigators from the Vancouver Police Department. We reviewed investigative reports from SWIIRT’s case files and found that the shooting occurred around 11:15 p.m. Vancouver Police Department supervisors called the SWIIRT commander around 11:45 p.m. to notify him of the shooting. IIT investigators took control of the investigation around 2:15 a.m. when they were able to relieve all responding Vancouver Police Department officers from the scene.

Investigators from the Clark County Sheriff’s Office and the Washougal and Battle Ground police departments investigated the use of deadly force incident. We did not find evidence that any employees from the Vancouver Police Department took part in the investigation.

Transparency

We found SWIIRT made necessary processes and documents public, and that the IIT’s community representatives were properly involved in the investigation. We verified that SWIIRT posted its protocols and the names of all of its IIT members online. The SWIIRT commander also said the entire case file would be available through public records requests, which people can make online on Clark County’s website.

Community representatives are volunteers, not law enforcement agency employees. The WAC requires IITs to include at least two community representatives who have “credibility with and ties to communities impacted by police use of deadly force.” To fulfill this requirement, SWIIRT member agencies posted applications online. The application included an overview of the position, key responsibilities and qualifications. Applicants were interviewed, and those selected underwent background checks and training. SWIIRT has 21 community representatives on its roster.

The morning after the shooting, the SWIIRT commander contacted community representatives from Vancouver. Two agreed to participate in the investigation, and SWIIRT included them in key processes as required. We interviewed one community representative to independently verify how SWIIRT involved them. He confirmed that he and the other community representative were provided press releases before SWIIRT sent them to the media. The community representatives

received the entire case file on a thumb drive during the final briefing when the investigation was concluded. He also said community representatives were invited to participate in vetting processes for existing IIT members. He said he reviewed investigator qualifications when he was initially selected and was provided another stack of resumes in late 2022. He said he was provided the opportunity to ask questions if he had any concerns about their qualifications.

The second community representative assigned to the investigation responded to our requests for an interview, but because of personal matters that affected his availability, we were unable to schedule an interview with him.

Communication

We reviewed investigative reports and found SWIIRT complied with some of the required steps to update the public and Diaz-Rodriguez's family on the investigation's progress.

The SWIIRT commander assigned a family liaison the night of the incident. The liaison spoke to Diaz-Rodriguez's family that night, as well to inform them of his condition at the hospital. We found documentation that the liaison informed the family when Diaz-Rodriguez was going to be released from the hospital, and he consulted with the family on two press releases before they were sent to the media. We could not find any documentation that he continued to update the family on the investigation's progress after Diaz-Rodriguez left the hospital, or that he gave them copies of the other press releases.

The WAC requires IITs to provide weekly updates to the public on the investigation's progress, but prohibits IITs and involved agencies from providing to the media criminal background information about the decedent or injured person from police use of deadly force. SWIIRT issued at least one press release every week of the investigation. We reviewed each press release and the social media profiles of the Vancouver Police Department and Clark County Sheriff's Office, and did not find any indication that either SWIIRT or the involved agency provided criminal background information to the media.

Credibility

SWIIRT followed many best practices for homicide investigations required under WAC 139-12-030.

Crime Scene Investigation

We reviewed the investigative files and found responding officers had secured the scene immediately after they arrived. Responding supervisors marked the perimeter with crime scene tape and maintained a log taking the names of everyone who entered and left the scene. An officer noted that nobody who was not investigating the incident entered the scene. A supervisor arrived and extended the crime scene tape to search for bullet exit holes to ensure no one else was injured and that surrounding properties were not damaged.

SWIIRT investigators and responding officers took photos of the scene and marked evidence with placards. They also went to the hospital where paramedics took Diaz-Rodriguez to collect his clothing and other pieces of potential evidence.

To corroborate statements from Officer Briley and witness officers, investigators obtained video footage of the incident that Diaz-Rodriguez had recorded.

Interviewing Involved Officers and Witnesses

As recommended by best practice, a responding officer removed Officer Briley from the incident scene and took him to a Vancouver Police Department station where he was provided peer support. Vancouver Police Department policy directs peer support counselors to not discuss any facts about the incident with involved officers.

SWIIRT policy recommends interviewing involved officers and witness officers as soon as possible; however, Vancouver Police Department policy suggests officers involved in a use of deadly force incident not participate in criminal interviews until 48 to 72 hours after the incident. Investigators interviewed all seven witness officers in the early morning after the incident. With his attorney present, investigators interviewed Officer Briley on November 30, 2020, which was four days after the incident. All of the interviews with officers were audio recorded.

SWIIRT investigators interviewed Diaz-Rodriguez on November 29, 2020, and December 8, 2020; they also interviewed his parents the day after the shooting.

SWIIRT investigators also canvassed the neighborhood for any witnesses and interviewed members of the mobile crisis team that responded to the scene that evening.

Case File Integrity

SWIIRT established a process to help prevent information about the investigation from being shared with people outside of the IIT, and to keep prohibited information from being shared with IIT investigators. SWIIRT's protocols direct involved agencies to not provide any prohibited content to the IIT. The protocols allow administrative investigations—investigations conducted by involved agencies to determine any policy violations—to be conducted concurrently with the IIT's investigation as long as information is not shared between the two teams. However, in practice, member agencies have agreed to start their administrative investigation after the IIT's investigation is completed, which helps prevent potentially prohibited information from being shared.

SWIIRT's electronic investigation files can be restricted to specific users and groups to prohibit access to involved agency employees. The SWIIRT commander explained that the system's settings restrict use of deadly force investigation cases to IIT members and evidence technicians.

We requested access logs to the case file to verify that the case was restricted, but SWIIRT would not provide them because of the administrative burden on IT staff. The SWIIRT commander said he contacted the IT department and received verbal confirmation that the case files were restricted.

Conflicts of Interest

At the start of the investigation, the SWIIRT commander spoke to each investigator he picked for the team to assess whether they had any conflicts of interest with the involved officer. He determined that there were no conflicts, and also asked investigators and the community representatives to complete a conflict of interest form. SWIIRT's conflict of interest form includes eight questions about whether the members have any social, work, or financial relationships with the involved officer(s), and a general question about anything else that might affect their ability to investigate the incident in an impartial manner. All of the investigators and one of the community representatives returned signed forms indicating they did not have any conflicts of interest. However, a few completed the forms after 72 hours, and one community representative did not return one.

Misconduct

In addition to the conflict of interest form, SWIIRT depends on the chiefs and sheriffs of member agencies to ensure its IIT members are free of misconduct and behavior that would indicate they could not conduct the investigation objectively. Examples of disqualifying conduct could be discriminatory behavior, threats of violence, harassment or falsifying records.

During our interviews, the SWIIRT commander said that when new members join the team, the head of the member agency is responsible for reviewing the prospective member's personnel file and disciplinary records to ensure they do not have any disqualifying behavior or offenses. The chiefs and sheriffs of the member agencies signed letters attesting that each investigator they provided to SWIIRT had histories free of dishonorable behavior and disqualifying misconduct. The rules the CJTC has established do not describe how IITs should verify members' work history.

Ultimately, SWIIRT did not have records we could examine to independently verify that investigators did not have any personal and professional histories of misconduct. In our previous reports on use of deadly force investigations, we recommended the CJTC develop a process to address this.

See **Appendix B** for a complete list of the requirements we reviewed and a summary chart of our audit results.

RECOMMENDATIONS

We recommend SWIIRT:

- Ensure it notifies family members about significant developments in the case and all press releases before sending them to the media, and maintain documentation that it did so
- Update its policy to require all SWIIRT members to complete conflict of interest forms within 72 hours of each investigation, as state rules require

INDEPENDENT INVESTIGATION TEAM RESPONSE

SWIIRT did not provide a response to our report or audit recommendations.

APPENDIX A: AUTHORITY, SCOPE OBJECTIVE AND METHODOLOGY

Authority

In 2018, Washington voters passed Initiative 940, which, in part, required investigations of police use of deadly force be conducted by an agency completely independent of one with the involved officer(s). It tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. In 2019, the CJTC created a workgroup, including stakeholders from community groups and law enforcement agencies, to adopt rules for independent investigations. The rules were outlined in Washington Administrative Code (WAC) 139-12-030 and took effect in January 2020.

The rules were designed to help ensure investigations are independent, transparent, credible and communicated timely to the public and affected individuals. The rules define the elements of an independent investigation, and explain the duties of the involved agency and independent investigation team (IIT) after police use deadly force that results in death, substantial bodily harm or great bodily harm. In 2020, the Legislature amended state law (RCW 43.101.460) to require our Office audit investigations into police use of deadly force to ensure compliance with the new rules.

Scope

This audit assessed whether the Vancouver Police Department and the Southwest Washington Independent Investigative Response Team (SWIIRT) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in Irving Diaz-Rodriguez's injury. It reviewed whether the law enforcement agencies met the criteria for independent investigations as outlined in WAC 139-12-030.

By law, the audit only reviews the investigation. It did not review the use of deadly force incident, nor assess whether the use of force was justified.

Objective

This audit examined whether the Vancouver Police Department and SWIIRT complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Vancouver Police Department and SWIIRT complied with state laws and rules regarding independent investigations of police use of deadly force, we reviewed investigative files related to the case and interviewed IIT members. We interviewed IIT members

to understand their investigative process and how they documented their procedures and findings. We also spoke to the IIT's community representatives to confirm whether they were involved in required processes of the investigation. In the case files, we searched for evidence demonstrating the IIT followed the legal requirements. We also reviewed training records from the CJTC and member police agencies.

To help conduct these audits, our Office contracted with Public Sector Performance Associates (PSPA). PSPA is a woman and minority-owned business founded in Tampa, Florida, in 2015. Since its founding, PSPA has worked with multiple government entities to conduct performance and compliance audits.

PSPA's business model is centered on the assembly of subcontracted associates with unique and specialized skills. The collective knowledge and expertise of the pooled associates allows them to provide subject matter expertise.

The team assembled for this engagement offers a combination of compliance auditing experience and expertise in use of deadly force investigations. All team members have worked in or for various sectors of government, and have extensive experience in law enforcement and/or compliance auditing in the public sector.

APPENDIX B: WAC 139-12-030 COMPLIANCE SUMMARY

Independence

Requirement	Compliant?
The involved agency and/or other first responders will provide first aid at the scene.	Yes
The involved agency will relinquish control of the scene.	Yes
The involved agency will not participate in the investigation.	Yes
Any specialized equipment belonging to the involved agency will be approved by the community representatives and the independent investigation team (IIT) commander before it is used in the investigation.	Not applicable
Information shared by the IIT to the involved agency will be limited to briefings about the progress of the investigation.	Yes
The IIT commander will honor requests from the involved agency to release body cam video or other investigation information of urgent public interest.	Not applicable

Transparency

Requirement	Compliant?
The policies and operating procedures of the IIT will be available to the public.	Yes
The names of IIT members will be available to the public.	Yes
A minimum of two non-law enforcement community representatives will be assigned to the IIT.	Yes
The community representatives will:	
<ul style="list-style-type: none"> Participate directly in the vetting, interviewing, and/or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the community representatives for review.) 	Yes
<ul style="list-style-type: none"> Be present at the briefings with the chief or sheriff of the involved agency(ies) 	Yes
<ul style="list-style-type: none"> Have access to the investigation file when it is completed 	Yes
<ul style="list-style-type: none"> Be provided a copy of all press releases and communication sent to the media prior to release 	Yes
<ul style="list-style-type: none"> Review notification of equipment use of the involved agency 	Not applicable

The community representatives will sign a confidentiality agreement at the beginning of the investigation.	Yes
The IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.	Yes
When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state law.	Yes

Communication

Requirement	Compliant?
A family member of the person against whom deadly force has been used will be notified of the incident as soon as possible.	Yes
The IIT will assign a family liaison within the first 24 hours of the investigation.	Yes
The family liaison will keep the family informed about all significant developments in the investigation.	No
The family liaison will give the family and the involved agency advanced notice of all scheduled press releases.	No
Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.	Yes
The involved agency will notify the Governor's Office of Indian Affairs (GOIA) in accordance with RCW 10.114.021 if the person against whom deadly force is used is a member of a federally recognized tribe.	Not applicable
A member of the IIT will be assigned as a tribal liaison within the first 24 hours and keep the tribe (or a representative of the tribe's choice) informed about all significant developments of the investigation.	Not applicable

Credibility

Requirement	Compliant?
The involved agency and other first responders will secure the incident scene and maintain its integrity until the IIT arrives.	Yes
The involved agency and other first responders will locate and preserve evanescent evidence.	Yes
The IIT will follow these accepted best practices for homicide investigations published and annually updated by the Washington State Criminal Justice Training Center (CJTC):	

<ul style="list-style-type: none"> • Until all statements have been taken, involved and witness officers shall not discuss the case with any other witnesses. 	Yes
<ul style="list-style-type: none"> • The involved agency or first responders will separate involved officer(s) and remove them from the immediate scene. 	Yes
<ul style="list-style-type: none"> • The IIT will obtain statements from subjects and witnesses. Audio and/or video recording is preferred and should be attempted. 	Yes
<ul style="list-style-type: none"> • Interviews of involved officers should follow the policies of their individual agency, collective bargaining agreement and case law. 	Yes
<ul style="list-style-type: none"> • Interviews with emergency medical personnel, fire department personnel, and first responding officers should address conditions at the incident scene. 	Yes
<ul style="list-style-type: none"> • The IIT will canvass the immediate area for potential witnesses who have not come forward and obtain information or statements as available. 	Yes
<ul style="list-style-type: none"> • In the event of death, consult with the coroner or medical examiner at the scene and at, or subsequent to, the autopsy. A member of the IIT must attend the autopsy and take all appropriate investigative steps, consistent with other criminal investigations. 	Not applicable
<ul style="list-style-type: none"> • Until the case file is delivered to the prosecutor, access to the IIT case file should be restricted to the IIT members involved. 	Unable to determine
The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no IIT member receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements	Yes
The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish “prohibited content” to the IIT.	Yes
If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation.	Yes
At least two community representatives should be assigned to each IIT investigation. The community representatives must have credibility with and ties to communities affected by police use of deadly force.	Yes
The chiefs, sheriffs and community members of each regional team shall create a transparent process for soliciting names and creating a roster of people willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s), sheriff(s) and community members.	Yes

All IIT leadership shall be commissioned peace officer(s) with previous experience in criminal investigations.	Yes
Investigators must be employed by a member agency of the IIT.	Yes
Investigators shall be commissioned peace officers in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.	Yes
The chief or sheriff of a member agency and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.	Yes
Lead investigators will be trained in basic homicide investigation, interviewing and interrogation, Law Enforcement Training and Community Safety Act (LETCSA) violence de-escalation and mental health training.	Yes
The IIT shall train as a unit at least annually.	Yes
Investigators assigned to an IIT are expected to have a work history free of serious misconduct and/or a pattern of sustained complaints, as well as a personal history free of demonstrable bias or prejudice against community members that may be affected by the police use of deadly force.	Unable to determine
Within 72 hours of the start of each investigation, investigators and community representatives must complete a “conflict of interest” assessment tool regarding any connection to the officers being investigated.	No
The conflict assessment will be reviewed and discussed by the community representatives and the IIT commander.	Not applicable

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