



Office of the Washington State Auditor  
Pat McCarthy

## **Compliance Audit Report**

# **Reviewing Investigations of Police Use of Deadly Force**

## **Central Basin Investigation Team – The Jose Rivera Case**

**Use of Deadly Force Incident on February 28, 2020, by the Moses Lake  
Police Department**

*Published June 26, 2023*

Report No. 1032859



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## Office of the Washington State Auditor

Pat McCarthy

June 26, 2023

Chief Ryan Green  
Central Basin Investigation 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 February 28, 2020, that resulted in the death of Jose Rivera.

The audit assessed the Moses Lake Police Department's and the Central Basin Investigation 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  
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## EXECUTIVE SUMMARY

### Results in Brief

Central Basin Investigation Team (CBIT) investigators and officers involved in the shooting complied with many requirements to ensure the investigation into Jose Rivera's death was independent, transparent, credible, and communicated to the public timely, as state laws and rules require. These actions included, but were not limited to, securing and maintaining a perimeter around the scene of the shooting, relinquishing control of the scene to CBIT once the investigation team arrived, collecting and preserving evidence, and canvassing the scene for witnesses.

We found instances when CBIT did not follow state rules, as well as opportunities where responding officers could improve documentation. Specifically, we found CBIT did not:

- Restrict case file access to only CBIT members participating in the investigation
- Require CBIT members to sign conflict of interest forms that address work conflicts, social conflicts and biases
- Select two community representatives to participate in the investigation. CBIT had only one community representative participate in the investigation
- Include the community representatives at every briefing between CBIT and the involved agency
- Provide required weekly public updates about the investigation's progress
- Provide Rivera's family with advanced notification of all press releases
- Provide the community representatives with advanced notification of all press releases
- Notify Rivera's family of significant developments in the case
- Assign a family liaison within 24 hours of the start of the investigation

We also found that responding supervisors did not maintain documentation indicating they directed involved officers not to speak about the shooting until they provided statements to CBIT.

### Recommendations

We recommend CBIT:

- Restrict the case file as soon as possible to ensure only CBIT members participating in the investigation have access to it
- Ensure two community representatives are included in each investigation
- Ensure community representatives are included in every briefing between CBIT and the involved agency
- Provide the public with weekly updates about the investigation

- Notify community representatives and family members about all press releases before sending them to the media, and maintain documentation to demonstrate that it did so
- Notify family members about significant developments in the case, and maintain documentation to demonstrate that it did so
- Assign a family liaison within 24 hours of the start of the investigation

We also recommend CBIT's member agencies give administrative orders to involved officers to not speak about a use of deadly force incident before providing statements to CBIT and maintain documentation indicating they did so.

As part of our audit, we also reviewed CBIT's compliance with state rules that govern the CBIT member selection process and training requirements. Recommendations for improving compliance with these criteria can be found in the Team Requirements section of this report.

## BACKGROUND

### Use of Deadly Force Incident

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

On February 28, 2020, at around 10 p.m., detectives with the Moses Lake Police Department were attempting to find and arrest Jose Rivera for robbery and kidnapping charges. At about 10:15 p.m., a 911 caller said that Rivera was outside his home in a silver pickup truck. Around 10:43 p.m., Moses Lake detectives found the pickup truck and attempted a traffic stop, but the driver fled. Officers from the Moses Lake Police Department and Grant County Sheriff's Office pursued the vehicle, and they deployed spike strips to try to stop it.

During the pursuit, the vehicle came to an abrupt stop, and the driver got out to run from the officers. At that point, Moses Lake Police Officer Nick Stewart recognized and positively identified Rivera. Stewart released his police dog in Rivera's direction, and he commanded Rivera to stop or else the K-9 would bite him. Rivera continued running, and Stewart yelled the bite command to the K-9. At the same time, Stewart had his flashlight on Rivera, and saw that he was holding a gun. Stewart commanded Rivera to drop his gun three times, but Rivera ignored him. At this point, Stewart was about 10 to 15 yards from Rivera. Stewart said he saw Rivera stop running and turn toward him with the gun in his hand. Stewart said the K-9 was within feet of Rivera when he shot the K-9 in the face. Stewart responded immediately by shooting at Rivera. In total, Stewart shot at Rivera five times, hitting him once on the left side of his head, behind his ear.

Witness officers immediately approached Rivera, who had fallen to the ground, and they handcuffed him and requested paramedics. A deputy checked Rivera's vital signs, but he was not breathing and did not have a pulse. Officers did not apply first aid because they thought Rivera had died immediately from the gunshot wound to his head. Paramedics arrived shortly after and pronounced Rivera dead at the scene.

The Central Basin Investigation Team (CBIT), an independent investigation team (IIT) that investigates police use of deadly force incidents in Grant, Adams, and Kittitas counties, responded to the shooting. Investigators from the Quincy Police Department, Grant County Sheriff's Office, Adams County Sheriff's Office, Ephrata Police Department and Washington State Patrol worked on the investigation.

CBIT presented its investigation to the Grant County Prosecuting Attorney's Office on April 22, 2020. The prosecutor reviewed the case and wrote in a memo on May 6, 2020, that he would not file charges against Stewart.

## 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 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 Moses Lake Police Department and CBIT complied with state laws and rules in the investigation of Jose Rivera's death, 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 agencies' 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 the investigation team 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 assess whether 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, CBIT investigators reported they assumed control of the scene of the shooting upon arrival and excluded investigators from the Moses Lake Police Department. We reviewed investigative reports from CBIT's case files and found that around 10:51 p.m., responding officers at the scene reported shots had been fired and they verified with radio that aid had been requested. Shortly after at around 11 p.m., CBIT command was notified of the shooting. CBIT command activated the IIT and arrived at the scene of the shooting around 11:30 p.m., assuming control of the investigation.

Investigators from the Quincy Police Department, Grant County Sheriff's Office, Adams County Sheriff's Office, Ephrata Police Department and Washington State Patrol investigated the shooting. We did not find any evidence that any employees from the Moses Lake Police Department took part in the investigation.

### Transparency

To help provide transparency in investigations, WAC 139-12-030 requires IITs to include at least two community representatives on investigation teams. Community representatives are volunteers, not law enforcement agency employees, and they provide the community's perspective on key processes in use of deadly force investigations. They are supposed to review potential conflicts of interest between IIT investigators and involved officers, be present at any briefings with the involved agency, have access to the completed investigation file, and be provided a copy of all press releases before they are sent to the media.

At the time of this investigation, CBIT did not establish a pool of community representatives, and the Moses Lake Police Department and CBIT did not have a clear understanding if they needed one or two community representatives to meet the WAC's requirements.

Under the impression only one community representative was needed, the Moses Lake Police Department sought recommendations from its chaplain for a person with ties to the community. The chaplain is a pastor at a local church and recommended a member who lived in Moses Lake.

The chaplain contacted him about the community representative position a few days after the shooting, and he agreed to participate.

CBIT included the community representative in most of the key processes required by the WAC. We interviewed the community representative and verified he signed a confidentiality agreement at the beginning of the investigation, and he had complete access to the case file when the investigation was finished. CBIT also included the community representative in all but the first briefing between CBIT and the involved agency, since the IIT had not yet selected the community representative. However, CBIT did update the community representative on the topics covered at the initial briefing.

## Communication

We reviewed investigative reports and found CBIT complied with some of the communication criteria under WAC 139-12-030.

A day after the shooting, an investigator from the Grant County Coroner's Office and a CBIT investigator from the Quincy Police Department notified Rivera's family that he had died. CBIT command also assigned a family liaison, however, it was 72 hours after the shooting, which was outside the WAC's 24-hour requirement. During an interview, the CBIT commander confirmed Rivera's family was updated on significant developments in the investigation, but the case file did not have any documentation we could review to verify the family liaison provided these updates.

CBIT posted four public updates on the investigation's progress in the first three weeks following the shooting, and another the day after the case was presented to the county prosecutor. However, CBIT did not provide updates in the four weeks between. Further, CBIT did not provide advanced notification of all the press releases to the family and community representative as required. We found the CBIT commander instructed the family liaison to notify the family of pending press releases in two instances, but the case file did not have documentation we could review to verify whether the family liaison acted on those instructions. The case file also included emails to the community representative showing he was notified of three of the five press releases before they were sent to the media.

In interviews with our Office, the community representative said that he thought he received advance notice of all press releases, however, CBIT did not maintain documentation showing all the notifications.

The WAC prohibits IITs and involved agencies from providing to the media criminal background information about the person who was killed or injured by police use of deadly force. We reviewed each press release and the social media profiles of the Moses Lake Police Department, Grant County Sheriff's Office, Quincy Police Department and Washington State Patrol, and did not find any indication that either CBIT or the involved agency provided criminal background information to the media.

## Credibility

CBIT 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 of shooting immediately after they arrived. Responding officers secured a large area because they did not know how far the scene extended. Officers were directed to the sides of the scene to avoid anyone inadvertently stepping on evidence until evidence markers were on hand. The CBIT commander arrived about 40 minutes after the shooting occurred and observed the large scene was already secure with crime scene tape and personnel. A responding officer kept an entry and exit log to the scene.

CBIT investigators and responding officers photographed the scene, located, marked, and collected evidence throughout it, and backtracked the pursuit route. Investigators photographed involved and witness officers' clothing, as well counted the number of bullets and weapons they had on them and in their vehicles. Investigators collected marked shell casings from the scene, and veterinarian staff provided bullet fragments pulled from the K-9. Investigators obtained video footage taken by a nearby resident, and they reviewed footage from multiple body-worn cameras of the involved officer and witness officers.

After witness officers secured Rivera, Stewart left the scene immediately so he could provide emergency aid to the K-9 while a responding Moses Lake police officer drove them in Stewart's vehicle to a nearby veterinarian clinic. A Grant County Sheriff's deputy arrived to check on Stewart's welfare and offered to clean out the blood from his vehicle. However, Stewart declined the offer, and said he was involved in the shooting and needed to leave his vehicle condition "as is" to be processed.

They then drove to the airport in Stewart's vehicle, and the dog was transported on a flight to an emergency veterinary hospital. Stewart remained behind, and a Washington State Patrol trooper drove him to the Moses Lake Police Department for processing. Once at the department, investigators photographed him, his clothing and weapons, and counted his weapons and bullets. A few hours later, investigators processed Stewart's vehicle located at the airport. They took photos, collected evidence, and counted the number of weapons and bullets in the vehicle.

### Interviewing Involved Officers and Witnesses

CBIT member agency policies state that after a use of force incident, involved officer(s) are transported separately to a suitable location, and that all involved officers are to be given administrative orders not to discuss the incident with each other, or their own department members, until they have given formal statements or participated in interviews. The policy further states that involved officers are not permitted to meet collectively or in groups with attorneys or therapists before being interviewed.

After Stewart returned to the station, he waited in a detective's office for processing. A support officer assigned to wait with him wrote in his report that multiple Moses Lake witness officers approached Stewart and asked about the K-9's welfare. During our interviews, the Moses Lake Police Department captain said that all officers are trained to not talk about an incident and to separate involved and witness officers. However, the captain could not confirm whether Stewart and Moses Lake witness officers were directed not to discuss the shooting. The support officer also left Stewart unattended for about five minutes. Since administrative orders were not documented—and it appeared witness officers could easily meet with Stewart—we could not determine whether the involved and witness officers discussed the shooting with each other.

CBIT policy requires waiting 48 to 72 hours before taking a voluntary statement from an officer involved in a deadly use of force incident. The policy also highlights that involved officers have a constitutional right not to make a statement, which is granted to other people during a criminal investigation. On March 2, 2020, about three days after the shooting, Stewart informed CBIT he would only provide a written statement through his attorney. Stewart's attorney sent CBIT the statement on March 23, 2020.

On March 2, 2020, CBIT interviewed or received written statements from all witness officers. Investigators also interviewed 10 residents in a nearby neighborhood, and one of them provided CBIT with video footage of the shooting.

### **Case File Integrity**

CBIT policy discourages the use of a records management system that can be accessed by multiple police departments to prevent unauthorized viewing. If they do, the policy mandates that the CBIT commander ensure IIT investigation files are accessible only to the IIT if an accessible records management system must be used. CBIT's policy also requires the CBIT commander to prevent contamination of the IIT investigation by information gained from any administrative investigation that may also occur. Administrative investigations are conducted by the involved agency to determine if officers violated any department policies.

We did not find any evidence of the IIT receiving prohibited content throughout the case file. The CBIT commander made a request two weeks after the shooting to restrict the case file, however, a data systems manager failed to do so. We reviewed access logs to the case file and found multiple officers who were not part of the investigation accessed the case file, including officers from the involved agency, the Moses Lake Police Department. During an interview, a Moses Lake Police Department captain said that members of his department could have accessed the case file to confirm times for their personal narrative reports on the shooting. According to the CBIT commander, while the case files held in the IIT's records management system were not restricted, records and documents created by the CBIT investigators were stored on investigators' assigned work computers, preventing unauthorized access. The records management system only contained narrative reports from witness officers and responding officers.

## **Conflicts of Interest**

At the start of the investigation, the CBIT commander spoke with IIT investigators to assess whether they had any conflicts of interest with the involved officer and did the same with the community representative after he was selected. The conflicts of interest assessments were conducted verbally, as the CJTC had not yet created conflict of interest forms. The verbal assessment included questions about work and social relationships with Stewart, Rivera and their families. The commander did not ask any questions about potential biases that could impact the objectivity of the investigation, which is required by the WAC. CBIT has since adopted the CJTC's conflict of interest form.

CBIT created a spreadsheet with investigators' responses to the conflict of interest assessment, and we found two IIT members indicated they were friends with the involved officer. During our interview, the CBIT commander said he was aware of this friendship but did not think it would affect the investigation. The two IIT members did not have major roles in the investigation.

The community representative confirmed during our interview that the CBIT commander reviewed the conflict of interest assessments with him, but he did not remember any conflicts being discussed. The WAC does not state that IIT members with an actual or perceived conflict of interest must be removed from the investigation entirely and leaves those decisions to the discretion of the commander.

## TEAM REQUIREMENTS

### Results in Brief

WAC 139-12-030 requires IITs to adhere to specific team-related requirements to ensure the team is credible and transparent. We found CBIT is compliant with most of the team-related requirements. These requirements include, but are not limited to, ensuring lead investigators have requisite training and experience to conduct a criminal investigation, maintaining a roster of community representatives who have credibility and ties to communities affected by police use of deadly force and training officers to implement firewalls to prevent the sharing of prohibited information.

We found some instances where CBIT is not following state rules related to team requirements. Specifically, we found CBIT does not:

- Follow a selection process for investigators that includes an interview where the same questions are asked of each applicant.
- Have a process in place to assess CBIT members for misconduct and dishonorable behavior.
- Include community representatives in vetting, interviewing, and/or selecting CBIT investigators.

### Investigators

#### Selection Process

The WAC requires a panel, consisting of community representatives and IIT members, to interview applicants for IIT investigator positions. The interview questions are required to be the same for all applicants and pertinent to the investigator role. The IIT commander will consider recommendations by the panel and will decide if an applicant is suited for membership on the IIT.

During our interview, the CBIT commander explained that the IIT does not have a separate selection process to choose CBIT members. Given that CBIT member agencies are relatively small, the CBIT commander explained they rely on each other and all detectives from member agencies are automatically part of the IIT. Officers from most of the member agencies rotate from patrol to detective positions every three to six years. When the officers serve as detectives, they also serve on the IIT when needed.

#### Experience

The WAC requires an IIT investigator to be employed by a member agency, and have previous experience as a detective or investigator, or have special skills or experience necessary for the team. CBIT's policy restates these requirements, and its current roster of members are all

employed by member agencies. Given CBIT investigators are detectives within their respective departments when they join CBIT, each member, by default, meets the WAC's requirements to join an IIT.

### **Honorable Behavior and Misconduct**

In addition to the conflict of interest assessments, CBIT 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 an investigation objectively. Examples of disqualifying conduct could be discriminatory behavior, threats of violence, harassment, or falsifying records. The rules the CJTC has established do not describe how IITs should verify members' work history.

CBIT does not currently have process in place to evaluate incoming or current members for past misconduct or dishonorable behavior. However, the CBIT commander explained that the process for becoming a detective with a member agency would include a review of any misconduct or dishonorable behavior. CBIT is currently working to create a standard form to distribute to member agencies that would allow the chief or sheriff of that agency to certify that respective IIT members are in good standing and meet all the WAC's requirements for CBIT membership. CBIT will require the chief or sheriff of the agency to sign their respective employees' form to attest to their qualifications.

Ultimately, CBIT did not have records we could examine to independently verify that investigators did not have any personal and professional histories of misconduct. However, as of July 25, 2021, law enforcement agencies are required under RCW 43.101.135 to notify the CJTC of any disciplinary decisions they make when officers are accused of serious misconduct, which could offer a verification process.

## **Community Representatives**

### **Selection Process**

CBIT relies on member agencies to create a transparent process for soliciting names and creating a roster of people willing to serve as community representatives on use of deadly force investigations. The CBIT commander said member agencies have their own recruitment practices, but they all look for people to serve in this capacity who are well respected and have credibility with their communities. People with ties to schools, churches, and/or civic groups are a heavy focus for member agencies when recruiting for community representative positions. However, some member agencies also seek recommendations from city or county council members, or other elected officials, on people they know who are involved in different aspects of the community. Aside from recruitment practices, some member agencies will release a letter of interest to the public to solicit people who are interested in the position for consideration. Currently, CBIT's roster includes 39 people in cities across Grant, Adams and Kittitas counties who are willing to serve as a community representative for a CBIT investigation.

## **Participation in Investigator Selection**

The WAC requires community representatives not only be involved in specific processes during an active investigation, such as reviewing investigators' conflicts of interest forms, but also be directly involved in vetting, interviewing, or selecting investigators to serve on an IIT.

CBIT does not currently have a selection process for its investigators, therefore, the community representatives do not participate in vetting, interviewing, or selecting IIT investigators. However, the CBIT commander explained that once the CJTC makes available planned training for community representatives, CBIT will require its community representatives to complete it. After finishing the training, community representatives will then review IIT members' resumes on a regular basis for vetting purposes.

## **Training**

### **Lead Investigator**

The WAC requires investigators to have specific training and/or experience to be in a lead investigator role. The lead investigator role requires the completion of basic training or having two or more years of relevant, full-time criminal investigation experience to substitute for basic training, and at least eight hours of ongoing annual advanced training related to criminal investigations. The CJTC developed a lead investigator certificate for members of IITs who meet the requirements of the lead investigator role. The application for the lead investigator certificate was made available in September of 2020.

Since the Rivera investigation occurred before the certificate was available, we reviewed the training records of both lead investigators. At the time of the investigation, one lead had more than six years of experience in criminal investigations, while the other lead had more than 11 years. Both lead investigators had taken multiple hours of basic and advanced training in criminal investigations throughout their careers in law enforcement, meeting the WAC's requirements of the lead investigator role.

CBIT currently lists seven detectives on its roster who have the lead investigator certificate and an additional five detectives who have submitted their applications for it. CBIT's protocol requires all its members obtain the lead investigator certificate within two years of joining the IIT. The CBIT commander said that only IIT members with the certificate are assigned as the lead investigator on current investigations.

### **Team Training**

As a unit, an IIT is required to train annually. Annual team training is included in CBIT's policy as protocol, and we received documentation showing the IIT conducted annual team training in 2020, 2021 and 2022.



## **Firewalls**

To help uphold an investigation's credibility, IIT commanders must create and enforce firewalls – a process to prevent the sharing of prohibited information, such as compelled statements or investigative information stemming from compelled statements, to the IIT by the involved agency. CBIT and member agencies address prohibited content in their policies, specifically prohibiting the involved agency from sharing any information with CBIT that was compelled, unless the officer who provided the compelled statement agrees to it. CBIT members are also to be proactive in discovering if information they receive from the involved agency is prohibited.

## **Public Information**

### **Policies, Operating Procedures & IIT Members' Names**

To help provide transparency in investigations, WAC 139-12-030 requires IITs to make its policies, operating procedures, and the names of IIT members, including supervisors, commanders, and community representatives, available to the public. CBIT's policies and operating procedures are currently available to the public by request, but CBIT plans to work with its executive board to publish them in an online format soon. The CJTC's website lists the current CBIT roster.

## **Recommendations**

We recommend CBIT:

- Establish a process to assess its members for misconduct and dishonorable behavior
- Ensure it includes community representatives in vetting, interviewing, or selecting CBIT investigators

## RECOMMENDATIONS

We recommend CBIT:

- Restrict the case file as soon as possible to ensure only CBIT members participating in the investigation have access to it
- Ensure two community representatives are included in each investigation
- Ensure community representatives are included in every briefing between CBIT and the involved agency
- Provide the public with weekly updates about the investigation
- Notify community representatives and family members about all press releases before sending them to the media, and maintain documentation to demonstrate that it did so
- Notify family members about significant developments in the case, and maintain documentation to demonstrate that it did so
- Assign a family liaison within 24 hours of the start of the investigation

We also recommend CBIT's member agencies give administrative orders to involved officers to not speak about a use of deadly force incident before providing statements to CBIT and maintain documentation indicating they did so.

Regarding team-related requirements found in WAC, we recommend CBIT:

- Establish a process to assess its members for misconduct and dishonorable behavior
- Ensure it includes community representatives in vetting, interviewing, or selecting CBIT investigators

## INDEPENDENT INVESTIGATION TEAM RESPONSE

# Central Basin Investigation Team

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Representing law enforcement agencies throughout Grant, Adams, and Kittitas Counties

June 21, 2023

Honorable Pat McCarthy  
Washington State Auditor's Office  
PO Box 40021  
Olympia, WA 98504

CBIT response to the Use of Deadly Force Investigation Audit, "The Jose Rivera Case."

Thank you for the opportunity to reply to this audit process involving the Jose Rivera investigation into the use of deadly force that occurred February 28, 2020. CBIT agreed to participate in the audit process and welcomed any feedback to ensure we are following best practices and in compliance with state law.

Central Basin Investigation Team (CBIT) is dedicated to conducting a thorough, independent, consistent, and timely investigations into officer involved deadly force, significant uses of force where serious bodily injury occurs, officer involved accidents that result in substantial bodily injury or death, in custody deaths, and homicides. The use of a multi-agency team is also meant to ensure public trust and transparency in an officer involved incident.

We agree and support the mission of the audit team and recognize the importance of their work to help make our processes better. The audit pointed out some deficiencies that we have already been working on or already fixed. We also continue to develop processes that help us make sure we are meeting the necessary requirements to maintain an independent, transparent, and credible investigation.

Thank you all for your efforts to ensure the audit was thorough and complete.

Sincerely,



Chief Ryan Green  
Quincy Police Department  
(Former - CBIT Commander)

## 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. 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 people. The rules define the elements of an independent investigation, and they 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 Moses Lake Police Department and the Central Basin Investigation Team (CBIT) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Jose Rivera. 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 Moses Lake Police Department and CBIT complied with state laws and rules regarding independent investigations of police use of deadly force.

### Methodology

To determine whether the Moses Lake Police Department and CBIT 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.

One major requirement in the credibility section of WAC 139-12-030 is for IITs to follow the CJTC's published best practices for homicide investigations. The CJTC did not publish best practices until September 2020, leaving the IITs without guidance and our Office with no defined criteria for the first eight months of 2020. While this investigation started before September 2020, we decided to apply the requirements from the CJTC's best practices document, as it is a key piece of the WAC and based on generally accepted practices for criminal investigations that all detectives should know and follow. The CJTC has not updated its best practices since originally publishing them.

Our Office also believes it is in the public's interest to not limit the scope of our audits of investigations that occurred before September 2020.

## APPENDIX B: WAC 139-12-030 COMPLIANCE SUMMARY

### Independence

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

### Transparency

Requirement	Compliant?
A minimum of two community representatives will be assigned to the IIT.	<b>No</b>
The community representatives will:	
<ul style="list-style-type: none"> <li>Review conflict of interest statements submitted within 72 hours of the commencement of each investigation</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>Be present at the briefings with the chief or sheriff of the involved agency(ies)</li> </ul>	<b>No</b>
<ul style="list-style-type: none"> <li>Have access to the investigation file when it is completed</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>Be provided a copy of all press releases and communication sent to the media prior to release</li> </ul>	<b>No</b>
<ul style="list-style-type: none"> <li>Review notification of equipment use of the involved agency</li> </ul>	<b>Not applicable</b>
The community representatives will sign a confidentiality agreement at the beginning of the investigation.	<b>Yes</b>
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.	<b>No</b>
When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state law.	<b>Yes</b>

## 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.	<b>Yes</b>
The IIT will assign a family liaison within the first 24 hours of the investigation.	<b>No</b>
The family liaison will keep the family informed about all significant developments in the investigation.	<b>No</b>
The family liaison will give the family and the involved agency advanced notice of all scheduled press releases.	<b>No</b>
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.	<b>Yes</b>
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.	<b>Not applicable</b>
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.	<b>Not applicable</b>

## Credibility

Requirement	Compliant?
The involved agency and other first responders will secure the incident scene and maintain its integrity until the IIT arrives.	<b>Yes</b>
The involved agency and other first responders will locate and preserve evanescent evidence.	<b>Yes</b>
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"> <li>Until all statements have been taken, involved and witness officers shall not discuss the case with any other witnesses.</li> </ul>	<b>Unable to determine</b>
<ul style="list-style-type: none"> <li>The involved agency or first responders will separate involved officer(s) and remove them from the immediate scene.</li> </ul>	<b>Not applicable</b>
<ul style="list-style-type: none"> <li>The IIT will obtain statements from subjects and witnesses. Audio and/or video recording is preferred and should be attempted.</li> </ul>	<b>Yes</b>

<ul style="list-style-type: none"> <li>Interviews of involved officers should follow the policies of their individual agency, collective bargaining agreement and case law.</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>Interviews with emergency medical personnel, fire department personnel, and first responding officers should address conditions at the incident scene.</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>The IIT will canvass the immediate area for potential witnesses who have not come forward and obtain information or statements as available.</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>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.</li> </ul>	<b>Yes</b>
<ul style="list-style-type: none"> <li>Until the case file is delivered to the prosecutor, access to the IIT case file should be restricted to the IIT members involved.</li> </ul>	<b>No</b>
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.	<b>Not applicable</b>
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 that assess work and social conflicts and biases.	<b>No</b>
The conflict assessment will be reviewed and discussed by the community representatives and the IIT commander.	<b>Yes</b>



## Team-Related Requirements

Requirement	Compliant?
All IIT leadership shall be commissioned peace officer(s) with previous experience in criminal investigations.	<b>Yes</b>
The chiefs and sheriffs shall appoint the IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.	<b>Yes</b>
The IIT supervisors shall be recommended by their agency to the IIT commander.	<b>Yes</b>
IIT 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.	<b>Yes</b>
Investigators must be employed by a member agency of the IIT.	<b>Yes</b>
All applicants for the investigator position on an IIT are interviewed by a panel consisting of community representatives and other members of the IIT selected by the IIT commander.	<b>No</b>
All applicants shall be interviewed using criteria pertinent for the position of IIT investigator. The same questions should be asked of each applicant.	<b>No</b>
At the conclusion of the panel, the IIT commander shall consider its recommendations and select those best suited for the needs of the IIT.	<b>No</b>
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, or have at least two years of full-time criminal investigation experience to substitute. Leads must also have an annual minimum of eight hours in advanced training.	<b>Yes</b>
IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.	<b>Yes</b>
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.	<b>Unable to determine</b>
Civilian IIT members (crime scene investigators, evidence technicians, etc.) are not required to obtain the qualified lead investigator certificate, but the IIT leadership shall establish reasonable noncommissioned training requirements through their IIT protocol.	<b>Not applicable</b>
The IIT has at least two community representatives on its roster who have credibility with and ties to communities affected by police use of deadly force.	<b>Yes</b>

The chiefs and sheriffs of each regional team shall create a transparent process for soliciting names and creating a roster of people willing to serve as a community representative.	<b>Yes</b>
The IIT community representatives must be chosen from this list by the chief(s) or sheriff(s) of member agencies.	<b>Yes</b>
A minimum of two community representatives will be assigned to each IIT to participate directly in vetting, interviewing, and/or selecting IIT investigators.	<b>No</b>
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.	<b>Not applicable</b>
The IIT shall train as a unit at least annually.	<b>Yes</b>
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. The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish “prohibited content” to the IIT.	<b>Yes</b>
The policies and operating procedures of the IIT will be available to the public.	<b>Yes</b>
The names of IIT members will be available to the public.	<b>Yes</b>

## ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the Washington State Constitution and is part of the executive branch of state government. The State Auditor is elected by the people of Washington and serves four-year terms.

We work with state agencies, local governments and the public to achieve our vision of increasing trust in government by helping governments work better and deliver higher value.

In fulfilling our mission to provide citizens with independent and transparent examinations of how state and local governments use public funds, we hold ourselves to those same standards by continually improving our audit quality and operational efficiency, and by developing highly engaged and committed employees.

As an agency, the State Auditor's Office has the independence necessary to objectively perform audits, attestation engagements and investigations. Our work is designed to comply with professional standards as well as to satisfy the requirements of federal, state and local laws. The Office also has an extensive quality control program and undergoes regular external peer review to ensure our work meets the highest possible standards of accuracy, objectivity and clarity.

Our audits look at financial information and compliance with federal, state and local laws for all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits and cybersecurity audits of state agencies and local governments, as well as state whistleblower, fraud and citizen hotline investigations.

The results of our work are available to everyone through the more than 2,000 reports we publish each year on our website, [www.sao.wa.gov](http://www.sao.wa.gov). Additionally, we share regular news and other information via an email subscription service and social media channels.

We take our role as partners in accountability seriously. The Office provides training and technical assistance to governments both directly and through partnerships with other governmental support organizations.

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