



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Lower Columbia Major Crimes Team – The Louis Johnson Jr. Case

**Use of Deadly Force Incident on September 2, 2023, by the Longview Police
Department**

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Office of the Washington State Auditor

Pat McCarthy

August 15, 2024

Captain Richard Fletcher
Lower Columbia Major Crimes 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 September 2, 2023, that resulted in the death of Louis Johnson Jr..

The audit assessed the Longview Police Department's and the Lower Columbia Major Crimes 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
Kevin Briggs, Assistant State Auditor

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TABLE OF CONTENTS

Executive Summary	4
Background	5
Audit Results.....	7
Recommendations	11
Independent Investigation Team Response	12
Criminal Justice Training Commission Response	13
Appendix A: Authority, Scope, Objective and Methodology.....	14
Appendix B: WAC 139-12-030 Compliance Summary	16
About the State Auditor's Office.....	19

EXECUTIVE SUMMARY

Results in Brief

Lower Columbia Major Crimes Team (LCMCT) investigators and officers complied with requirements to ensure the investigation into Louis Johnson Jr.'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, assigning two community representatives to the investigation, providing the public with weekly updates about the investigation and canvassing the area for witnesses.

However, LCMCT's conflict of interest form did not "meet or exceed" the Criminal Justice Training Commission's (CJTC) standard form. The IIT commander said he thought LCMCT's form assessed potential conflicts of interest better than the CJTC form. However, the CJTC said the form did not meet WAC requirements.

Recommendations

We recommend the CJTC clarify how an IIT's conflict of interest assessment can meet or exceed the requirements in WAC 139-12-030 when IITs do not use the CJTC's standard conflict of interest assessment.

BACKGROUND

Use of Deadly Force Incident

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

On September 2, 2023, at about 2 p.m., employees at a Longview restaurant called 911 to report an unresponsive man in a car in their parking lot. Paramedics arrived and revived the unconscious man, later identified as Louis Johnson Jr., who had overdosed. Paramedics reported to dispatchers that Johnson quickly drove away after he regained consciousness and almost hit several people. Longview Police officers Bri Cummo, Matt Dennis, Seth Libbey and Sgt. Brian Streissguth responded to dispatch's call and found Johnson speeding through city streets. After chasing him in their patrol cars for several minutes, Dennis hit his car on the right rear side of Johnson's car, forcing the car into a tree. Dennis then used his patrol car to hold the driver's side door of Johnson's car shut, while Cummo and Libbey blocked Johnson's car from reversing. Johnson pulled out a gun and fired five shots through Dennis' windshield. Dennis, Cummo and Libbey then fired 18, three and two shots, respectively. Johnson was hit by a bullet once in the ribs below his left armpit. At about 2:15 p.m., Streissguth notified dispatch of the shooting, and Dennis requested medical aid to the scene.

Cummo, Dennis, Libbey and other responding officers began first aid. Paramedics arrived shortly after and pronounced Johnson dead.

The Lower Columbia Major Crimes Team (LCMCT), an independent investigation team (IIT) that investigates police use of deadly force incidents in Cowlitz and Wahkiakum counties, responded to the shooting. Investigators from the Kelso Police Department led the investigation with assistance from the Castle Rock Police Department and the Cowlitz County Sheriff's Office.

LCMCT completed its investigation on September 21, 2023, and submitted its case file to the Cowlitz County Prosecuting Attorney's Office. The prosecutor announced on October 4, 2023, that they would not file charges against Cummo, Dennis or Libbey.

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 an agency completely independent of the one with the involved officer(s) to conduct investigations of police use of deadly force. 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 provide perspective to the community 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 intended to improve the agency's 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 Longview Police Department and LCMCT complied with state laws and rules in the investigation of the death of Louis Johnson Jr., 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

The Longview Police Department and LCMCT took the necessary steps to ensure an independent investigation. LCMCT's files show that at about 2:15 p.m., Streissguth notified dispatch of the shooting. At about 2:20 p.m., a Longview Police captain notified the LCMCT commander of the shooting, and by 2:40 p.m., LCMCT investigators took control of the scene and the investigation. Cowlitz County Sheriff's Office deputies replaced the Longview police officers surrounding the perimeter.

Investigators from the Kelso Police Department led the investigation with assistance from the Castle Rock Police Department and the Cowlitz County Sheriff's Office.

Transparency

LCMCT included its community representatives in the required investigative processes. WAC 139-12-030 requires IITs to include at least two community representatives in each investigation. Community representatives are volunteers, not law enforcement agency employees, who provide community perspective on key processes in use of deadly force investigations. They must complete a confidentiality agreement and have access to the completed investigation file.

The day after the shooting, the LCMCT commander met with the community representatives at the Kelso Police Department where the community representatives signed confidentiality agreements. The confidentiality agreements noted that the community representatives would have access to the completed investigation file. Emails also showed that the commander invited the community representatives to two briefings detailing the results of the investigation after it was completed: the LCMCT gave one briefing to the Cowlitz County Prosecutor and the other to Longview Police command staff.

We spoke to both community representatives who said they knew they could review the investigation file.

Communication

LCMCT communicated regularly with the public and Johnson's family. The WAC requires IITs to communicate with the public and family of the person against whom deadly force has been used. The involved agency or IIT is required to notify the family of the use of force incident, and the IIT is required to update the family on all significant developments throughout the investigation. The WAC also requires an IIT to post, at minimum, weekly public updates on the investigation's progress even if there is no new information to report. The IIT must provide the community representatives and the family with advance notice of each press release.

LCMCT sent four press releases to local media outlets during the three-week investigation. LCMCT assigned a family liaison on the day of the shooting, and emails show that the liaison spoke to Johnson's mother that evening. The family liaison also emailed Johnson's family all four press releases before publication, and informed them of the autopsy results, the release of the body camera video and other significant developments.

The investigation file also contains emails from the IIT commander to the community representatives. The commander shared copies of each press release with the community representatives before publication. In our interviews with the community representatives, they confirmed that they received the press releases and said the commander would text them to ensure they reviewed them.

In addition to the communication requirements with the family and public, the WAC prohibits IITs and involved agencies from providing the media with criminal background information about the person against whom deadly force has been used, unless it is specifically requested and the release of such information is required by law. We found no evidence that LCMCT or the involved agency provided criminal background information to the media. We reviewed each press release, several online news articles and the social media pages for the Longview and Kelso police departments and did not find any indication that either the involved agency or the LCMCT lead agency released criminal background information.

Credibility

Crime Scene Investigation

To secure the scene and help preserve evidence, Longview Police officers placed crime scene tape around the scene to create inner and outer perimeters. Narrative reports from the investigation file include descriptions of officers and marked patrol cars blocking vehicle and pedestrian traffic leading to the scene. Longview Police officers also maintained a log of everyone who entered the scene until LCMCT investigators took over.

LCMCT investigators located and collected evidence from the scene including shell casings, tire tracks, and Johnson's gun and car. They used a drone to take arial photos and mapped the scene using photographs and measurements from a 3D scanner. Investigators inspected both Johnson's and Dennis' vehicles and recorded the damage gunshots caused and the location of bullets in both cars.

Investigators photographed Cummo, Dennis and Libbey in their uniforms with their equipment. Investigators inventoried their weapons, counted their remaining ammunition and secured their body cameras to review the footage.

Interviewing Involved Officers and Witnesses

Longview supervisors documented their process to ensure the integrity of the involved officers' statements. Within minutes of the shooting, a supervisor separated Cummo, Dennis and Libbey at the scene and instructed them not to discuss the shooting, and peer support officers separately drove them back to the Longview Police Department. A Longview Police captain noted in his report that, at the police station, the officers were in separate rooms with their attorneys. He directed the officers not to discuss the incident with other Longview personnel until they made their statements to LCMCT investigators.

The LCMCT investigators met with the officers and their attorneys on the day of the shooting. All three officers declined to be interviewed by LCMCT investigators. The officers submitted written statements six days after the shooting on September 8, 2023. Two witness officers also submitted written statements the day after the shooting. Investigators interviewed witness officer Streissguth the evening of the shooting.

Investigators canvassed the neighborhood surrounding the scene and interviewed or took written statements from 12 witnesses.

Case File Integrity

LCMCT restricted the case file to members of the IIT as required by the WAC. The IIT commander wrote in his narrative report that he restricted the file on the day of the shooting. We reviewed the electronic case file access log and confirmed that only investigators and records staff assigned to the case accessed the files before the investigation was concluded.

We did not find any evidence that any LCMCT members received prohibited information during the investigation. The WAC prohibits IIT members from remaining on an investigation if they receive compelled information that could contaminate the investigation.

Conflict of Interest

All participating LCMCT investigators and community representatives completed conflict of interest forms within 72 hours of the start of the investigation to determine if they had any connections with the involved officers that would prevent them from completing an objective investigation. However, the form did not meet all the WAC requirements. The WAC requires investigators and community representatives to complete a "conflict of interest" assessment about

any connection they have to the officer(s) under investigation. The assessment should include questions about prior interactions or relationships with the officer(s), as well as address social conflicts, work conflicts and biases. The WAC also requires that IITs use the CJTC's standard conflict of interest form or create a form that meets or exceeds its standards. Community representatives and the IIT commander are required to review investigators' conflict of interest assessments to determine if any investigators should be removed from the case.

LCMCT's conflict of interest form did not meet or exceed the CJTC's standards. The CJTC's standard form includes 17 questions that further define each of the required topics: prior interactions or relationships, potential social conflicts, work conflicts and bias. LCMCT's form included questions about all these topics, but it condensed the form to 11 questions and changed the specific wording from the CJTC's original questions.

The IIT commander said he thought LCMCT's form assessed potential conflicts of interest better than the CJTC's form. However, we shared a copy of LCMCT's form with CJTC representatives, who said the form did not meet the WAC's expectations.

Because the CJTC allows IITs to develop their own forms, it should issue guidance on how forms can meet or exceed the standard template form.

RECOMMENDATIONS

We recommend the Criminal Justice Training Commission clarify how an IIT's conflict of interest assessment can meet or exceed the requirements in WAC 139-12-030 when IITs do not use the CJTC's standard conflict of interest assessment.

INDEPENDENT INVESTIGATION TEAM RESPONSE



Police Department

360.423.1270 (P)

360.423.0577 (F)

MEMORANDUM

TO: Kevin Briggs, Assistant State Auditor

FROM: Rich Fletcher, Captain

DATE: August 5, 2024

RE: 2024 Audit Findings – Louis Johnson - Official Response

This is my formal response to the State Auditor's Office finding that the Lower Columbia Major Crimes Team during this investigation "Did not "meet or exceed" the Criminal Justice Training Commission's (CJTC) standard form".

Lower Columbia Major Crimes Team Official Response

The standard conflict-of-interest form created by CJTC fails to take several circumstances into consideration, which is why LCMCT was compelled to create our own form that is suitable, reasonable and consistent with the spirit and intent of the law rather than incorporating questions of a politically-charged nature that have no legitimate purpose in fact-finding investigations.

LCMCT and its command staff believe our conflict-of-interest form captures the spirit and intent of the law without compromising its purpose and eliminates questions that are impossible to objectively answer. The CJTC standard form includes two questions that require clairvoyance on the part of an investigator which may lead to accusations of improperly/falsefully answering questions on the form if another individual(s) at any point in time expresses any illusion of or feelings of being offended. This is unacceptable.

There is a third question on the CJTC form that asks about an investigator's disciplinary records. That question is unnecessary. If an investigator answered yes to that question, they wouldn't have even been on the investigative team to begin with. It is redundant. Our member agency department heads are required to routinely review members of our team, disqualify any investigator who does not meet criteria and annually attest that our investigators assigned to our team are free from disqualifying conduct.

There are then two additional questions; one about testifying in court and another about knowledge of confidential information regarding the involved officer, both of which we do not find any purpose for.

We removed the five unnecessary questions explained above then consolidated the remaining 12 questions from CJTC's two-page form into nine questions on a one-page form we feel captures the spirit and intent of the law and properly identifies potential conflicts that may create a conflict-of-interest or the appearance of partiality or bias.

I will assert it is improper for CJTC and its non-law enforcement committee to expand a questionnaire to include politically-charged questions that are impossible to objectively answer. We removed those questions and retained all reasonable and unambiguous questions we feel are pertinent and objective to achieve their intended purpose.

Rich Fletcher
LCMCT Commander

CRIMINAL JUSTICE TRAINING COMMISSION RESPONSE



WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION

Monica Alexander, Executive Director

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August 8, 2024

The Honorable Pat McCarthy
State Auditor
Office of the Washington State Auditor
PO Box 40021
Olympia, WA 98504-0021

Dear Auditor McCarthy:

The Washington State Criminal Justice Training Commission (WSCJTC) appreciates the opportunity to review and respond to the recommendation in the State Auditor's Office (SAO) compliance audit report "Lower Columbia Major Crimes Team – The Louis Johnson Jr. Case". The recommendation in the report is to have WSCJTC clarify how an Independent Investigation Team's (IIT) Conflict of Interest Assessment form can meet or exceed the requirements in Washington Administrative Code (WAC) 139-12-030, when IITs do not use the WSCJTC's standard conflict of interest assessment.

The purpose of the Conflict of Interest Assessment form is to help identify actual and potential conflicts of interest between any IIT member and those involved in an officer involved use of force incident.

The questions on the WSCJTC Conflict of Interest Assessment form vary in purpose and nature of conflict. If an IIT chooses to use their own Conflict of Interest Assessment form, their questions must, at a minimum, ask questions that address the same conflicts as the WSCJTC assessment form. If questions from the WSCJTC form are modified in any way on an IIT's form, the answers must solicit responses that are identical in nature of the conflict(s) being disclosed. All assigned IIT members, including the non-law enforcement representative(s), complete a Conflict of Interest Assessment form within 72-hours of the start of an investigation.

The WSCJTC appreciates the work of the SAO in auditing the compliance of IITs across the state. These principles are solidified and the WSCJTC continues to improve the Law Enforcement Training and Community Safety Act (LETCSA) IIT program for all impacted stakeholders and Washington residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Alexander", is written over a light blue horizontal line.

Monica A. Alexander
Executive Director

cc: Alex Buijs, LETSCA Program Manager
Bart Hayes, Advanced Training Division Manager
Jerrrell Wills, Deputy Director

TRAINING THE GUARDIANS OF DEMOCRACY

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 officers. 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 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 2021, 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 Longview Police Department and the Lower Columbia Major Crimes Team (LCMCT) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Louis Johnson Jr. 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 reviewed 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 Longview Police Department and LCMCT complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Longview Police Department and LCMCT 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.

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 if necessary.	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
No information about the investigation will be shared with any member of the involved agency.	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?
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"> Review conflict of interest statements submitted within 72 hours of the commencement of each investigation 	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.	Yes
The family liaison will give the family advanced notice of all scheduled press releases.	Yes
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. 	Not applicable
<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. 	Yes
<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. 	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.	Not applicable
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.	Yes
The conflict of interest form should assesses work and social conflicts and biases. If an IIT uses its own conflict of interest form, the standards must meet or exceed the CJTC’s standard form.	No
The IIT commander will review the conflict of interest assessment within 72 hours of the start of the investigation.	Yes
The community representatives and the IIT commander will discuss the conflict of interest assessments.	Yes

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