



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Pierce County Force Investigation Team – The John Ostbye Case

**Use of Deadly Force Incident on January 25, 2021, by the Pierce County
Sheriff's Department**

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Office of the Washington State Auditor

Pat McCarthy

August 29, 2024

Chief Kevin Roberts
Pierce County Force 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 January 25, 2021, that resulted in the death of John Ostbye.

The audit assessed the Pierce County Sheriff's Department's and the Pierce County Force 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

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EXECUTIVE SUMMARY

Results in Brief

Pierce County Force Investigation Team (PCFIT) investigators and officers involved in the use of force incident complied with many requirements to ensure the investigation of the shooting that killed John Ostbye on January 25, 2021, 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 the scene of the shooting, obtaining statements from subjects and witnesses, and restricting the case file to only PCFIT members involved with the investigation.

The audit found instances where PCFIT did not follow state regulations, as well as opportunities to improve its documentation to demonstrate compliance. Specifically, we found PCFIT did not:

- Include questions in its conflict of interest assessments related to bias
- Require community representatives to complete conflict of interest assessments
- Maintain documentation to demonstrate it provided community representatives and the family with advance notice of all press releases

We also did not find documentation in the case file indicating Pierce County Sheriff's Department supervisors directed the involved and witness officers to not speak about the shooting until they provided statements to PCFIT.

Recommendations

We recommend PCFIT:

- Ensure investigators and community representatives complete conflict of interest assessments that include questions related to potential biases and social and work conflicts with the involved officer
- Provide the community representatives and the family with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so

We also recommend PCFIT's member agencies give administrative orders to involved and witness officers to not speak about the case before providing statements to PCFIT, and maintain documentation that they did so.

BACKGROUND

Use of Deadly Force Incident

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

On January 25, 2021, at about 10:50 p.m., a 911 caller reported that he was having a dispute with his son, John Ostbye. The caller said he had hidden a gun that Ostbye had been brandishing outside his home, and was now looking for it. Dispatchers could hear Ostbye shouting at his father while they were on the phone with him. Deputies with the Pierce County Sheriff's Department responded to Ostbye's home.

Deputy Aaron Aguilar and two other deputies arrived at Ostbye's home around 11:15 p.m. The deputies knocked on the door, announced themselves as police, and asked everyone inside to come out. They heard yelling and banging noises coming from inside the home, and through a window, they saw Ostbye pushing his father. The door was locked, so a deputy broke a window to unlock it. The deputies heard someone rush toward the door, so they stepped back. The deputies said Ostbye came out of the home swinging what appeared to be a large knife in both hands. Aguilar commanded Ostbye to stop as he backed up, but Ostbye continued rushing toward him. Aguilar then shot Ostbye eight times in the chest, abdomen and lower back.

Ostbye fell to the ground. Deputies found a carving fork in his hand, and a knife near the front door. Aguilar kicked the carving fork from Ostbye's hand, and the deputies handcuffed him and provided aid until other deputies arrived and relieved them. Paramedics later pronounced Ostbye dead at the scene.

The Pierce County Force Investigation Team (PCFIT), an independent investigation team (IIT) that investigates police use of deadly force incidents in Pierce County, responded to the shooting. Investigators with the Lakewood Police Department led the investigation with assistance from the Puyallup Police Department.

On April 21, 2022, PCFIT submitted its investigation to the Pierce County Prosecuting Attorney's Office. The prosecutor reviewed the case and wrote in a memo on June 15, 2023, that she would not file charges against Aguilar.

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 Pierce County Sheriff’s Department and PCFIT complied with state laws and rules in the investigation of the death of John Ostbye, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members. 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, PCFIT investigators assumed control of the scene of the shooting upon arrival and excluded investigators from the Pierce County Sheriff's Department. We reviewed investigative reports from PCFIT's case files and found that at around 11:20 p.m., deputies reported Aguilar shot Ostbye and requested aid. The Pierce County Sheriff's Department immediately requested PCFIT's response. PCFIT investigators began to arrive at the scene at about 12:30 a.m., and they requested additional Lakewood officers respond to replace Pierce County Sheriff's deputies providing scene security. The lead investigator and other PCFIT investigators arrived by 1:30 a.m., assuming control of the investigation.

We did not find any evidence that any member of PCFIT shared investigative information with the Pierce County Sheriff's Department, or that any member of the sheriff's department took part in the investigation.

Transparency

PCFIT community representatives participated in most of 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, and they provide the community's perspective on key processes in use of deadly force investigations. They are supposed to complete a confidentiality agreement, be present at any briefings with the involved agency, and have access to the completed investigation file.

PCFIT assigned two community representatives to the investigation the day after the shooting. The representatives met with the commander and signed confidentiality agreements two days later.

PCFIT held one briefing with the Pierce County Sheriff's Department during the investigation. PCFIT invited both community representatives to attend, but only one did. The commander said he could not recall why one representative did not attend, but he thought it was either because of a scheduling conflict or the representative never responded to PCFIT's invitation.

PCFIT's policy states community representatives will have access to the complete investigation file. The commander said the community representatives are also invited to attend the final briefing where PCFIT presents the investigation to the prosecutor.

We requested an interview with both community representatives but were unable to speak with either.

Communication

PCFIT followed most of the communication requirements in the WAC. The WAC requires IITs to communicate with the family of the person who was killed or injured by police use of deadly force and provide the family with updates on all significant developments throughout the investigation. PCFIT assigned a family liaison at the start of the investigation, and he interviewed Ostbye's brother on the night of the shooting. The lead investigator also spoke with Ostbye's ex-wife early in the investigation, and the commander updated the family in week 11 of the investigation's progress.

PCFIT issued 65 public updates throughout the investigation, but issued one update a week late. The WAC requires an IIT to post, at minimum, weekly public updates on the investigation's progress even if there is no new information to report. We found that PCFIT had prepared an update for week 59 of the investigation and provided a copy to the family the day before it was supposed to be released. However, the update was not issued until the following week. The commander said he set up an automatic forwarding schedule for the press release while he was out of the office, but it did not work as intended.

PCFIT notified the family of most of the public updates during the investigation. The IIT is supposed to provide the family with advance notice of each public update. Email records showed PCFIT provided advance copies of at least 54 of the press releases it issued. During one week of the investigation, the commander told the family they would not receive a copy because he would be out of town that week. The commander said he was confident the family received advance copies for the remaining 10 weeks, but he was unable to provide documentation of it because the family liaison is retired, and he could not access his old emails.

We were unable to determine whether PCFIT provided the community representatives with an advance copy of all public updates. The case file included documentation showing one community representative received an advance copy of three public updates, while the other representative received a copy of two. The commander said the community representatives received advance copies of all the public updates like the family, but his agency's records department probably only searched for his emails that were linked to the family when it provided us documentation for this audit.

The Pierce County Sheriff's Department and PCFIT did not provide criminal background information about Ostbye to the media. 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, online news articles, and the social media profiles of the Pierce County Sheriff's Department and the Lakewood Police Department, and did not find any indication that either the involved agency or PCFIT provided criminal background information to the media.

Credibility

Crime Scene Investigation

Responding officers secured the scene of the shooting. Officers put up crime scene tape, guarded the scene's perimeter, maintained an entry and exit log to the scene, and stood with Ostbye's father to ensure evidence was not disturbed. Around 12:30 a.m., a PCFIT investigator arrived on scene and requested additional Lakewood Police officers respond and replace Pierce County Sheriff's deputies.

Investigators located and preserved evidence from the shooting. PCFIT investigators took photos and video footage of the scene, and used a scanner to map it. Investigators canvassed the scene for witnesses and collected evidence, including the carving fork, the knife and shell casings. Investigators photographed the involved and witness deputies at the Pierce County Sheriff's Department and counted the remaining rounds of ammunition in their firearms. Investigators later collected DNA from the carving fork and knife.

Interviewing Involved Officers and Witnesses

After the shooting, Aguilar and the witness deputies were removed from the scene, but we were unable to determine whether any of the deputies discussed the case before providing statements to PCFIT investigators. The CJTC's best practices require involved officers be separated and removed from the scene, and they prohibit involved and witness officers from discussing the case with any other witnesses until statements are taken. We found the Pierce County Sheriff's Department's policy aligns with the best practices. The policy states that reasonable efforts shall be made to keep officers and other witnesses separated before they have made any statements about the incident.

After the shooting, a responding Pierce County Sheriff's deputy instructed the involved and witness deputies to go to their vehicles. Two of the deputies arrived in the same vehicle, so they may have stayed together during this time. The case file did not include documentation on whether the deputies were transported separately to the station and if they were kept separate at the station to limit the opportunity for discussion. We also did not find evidence of the deputies being given administrative orders to not to discuss the shooting.

PCFIT received the deputies' written statements on January 27, two days after the shooting. On February 3, the lead investigator sent the deputies follow-up questions and received their responses the same day.

On the night of the shooting, investigators interviewed Ostbye's family and two neighbors. The interviews with Ostbye's family were audio recorded.

Case File Integrity

The Ostbye case file was restricted during the investigation. During an active investigation, the WAC requires an IIT's case file to be restricted from everyone but IIT members involved with the investigation. PCFIT policy requires member agencies to file their reports, statements, and other documents to the same electronic filing system, and restrict case files to personnel assigned to the investigation. We reviewed access logs for the Ostbye investigation and did not find any unauthorized access. On the day PCFIT presented the completed investigation to the prosecutor, the commander emailed the lead investigator and asked him to lift the restrictions on the case file because it was now open to public records requests.

We did not find any evidence that any PCFIT 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.

Conflicts of Interest

PCFIT did not comply with some requirements to assess potential conflicts of interest between involved officers and IIT members. The WAC requires all IIT investigators and community representatives involved in an investigation to complete a conflict of interest assessment within 72 hours of the investigation starting. This assessment is supposed to include questions on work and social relationships with the involved officer, as well as any potential biases that could affect their objectivity.

All PCFIT investigators completed a conflict of interest assessment within 72 hours of the start of the investigation. PCFIT's assessment included questions about prior interactions or relationships with officers being investigated, but it did not ask IIT members about biases that could potentially affect their objectivity. We asked a PCFIT commander about this in a prior audit. He explained that IITs across the state had concerns about some of the questions on the CJTC's standard form that was released in late 2020. Some of the IITs had created a form earlier that year to comply with the WAC, and PCFIT chose to continue to use that form because of the concerns.

The community representatives did not complete conflict of interest assessments, but they did review the investigators' completed conflict of interest forms within 72 hours of the start of the investigation. Three days after the shooting, the commander and the community representatives met in person and reviewed the forms together. None of the investigators reported having any conflicts of interest with Aguilar on their forms.

RECOMMENDATIONS

We recommend PCFIT:

- Ensure investigators and community representatives complete conflict of interest assessments that include questions related to potential biases and social and work conflicts with the involved officer
- Provide the community representatives and the family with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so

We also recommend PCFIT's member agencies give administrative orders to involved and witness officers to not speak about the case before providing statements to PCFIT, and maintain documentation that they did so.

INDEPENDENT INVESTIGATION TEAM RESPONSE



Response to audit findings

Pierce County PCFIT – August 26, 2024

After participating in the audit reference PCFIT case # 21-026-00031 with the Washington State Auditor's Office we received the findings in that audit that referenced three areas that were needed for improvement. We wanted to address those areas mentioned and create a solution for the last suggestion that is more in line with the involved agency and not PCFIT.

The first finding stated that PCFIT should include questions in its conflict of interest assessments related to bias.

Response: The current forms do have questions that directly address potential biases and those were carefully created to ensure that the interests of both the recipient of the use of force and the community are represented, protected and free from an investigation that could potentially produce any bias. The forms that were in place at the time of this incident did not have the exact language that the WACJTC had pushed out and was still in the works amongst the PCFIT administrative level to assure that the standard could be met. The original wording pushed out included the wording that required investigators to assure that they had never posted anything on any of their social media accounts that could offend anyone. That is a standard that is not obtainable by any measure as anyone can be offended by anything. The wording that is in place now addresses this issue and allows for the standard to be met that there are no social media postings by an investigator that have resulted in complaints and could be viewed as biased against other communities of sexual orientation, race, religion, LGTBQ+ amongst other communities.

The second finding was to require community representatives to complete conflict of interest assessments.

Response: While we agree that any conflict of interest needs to be discovered, the forms that we use for investigators are not appropriate or geared towards the civilian community representatives. The community reps are in place to be a part of the review process and not the investigative process. They are in place to make sure that PCFIT is conducting a fair, impartial and complete investigation and allow for community transparency in that process. The community reps are always asked if they know, have a friendship with or are related to the subjects in the investigation and would be replaced by another community rep if they were to answer in the

affirmative to any of those situations. If there is an insistence from the WACJTC or Attorney General's office that this needs to be accomplished, then we need to create a conflict of interest form that is specific to the community rep role and not the investigator's role.

The final finding was to maintain documentation to demonstrate it provided community reps and the family with advance notice of all press releases.

Response: PCFIT completely agrees with this. PCFIT has made and is making every attempt to make sure that we keep that documentation for the record. In this case, there were 1 or 2 emails that were noted to have either been sent late or were not sent. Both emails were about no changes in the status of the investigation. While this is minor, we understand the obligation and due diligence that we must maintain to keep key people informed and we are working to make sure that is the case moving forward.

Finally, it was suggested that PCFIT should document that witnesses and involved officers/deputies were kept separate from each other and did not communicate about the event until after providing statements to PCFIT. During our discussions with the Auditor's Office, it was noted that PCFIT members typically arrive after the event, and the officers/deputies are removed from the scene well before PCFIT's arrival. In response, PCFIT is currently developing a form for the involved agency or agencies to complete and provide to PCFIT, ensuring that this standard is being applied and adhered to.

We sincerely appreciate the time, effort, and cooperation of the Auditor's Office, along with their professional guidance during this and other audits. This professional and collaborative environment is essential for our team's improvement and will provide the insight, clarity, and transparency necessary for the community to fully understand the situation.

Captain Andy Gldehaus
Commander - PCFIT

Cc: Chief Roberts – PCFIT Administrator

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 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 Pierce County Sheriff's Department and the Pierce County Force Investigation Team (PCFIT) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of John Ostbye. 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 Pierce County Sheriff's Department and PCFIT complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Pierce County Sheriff's Department and PCFIT 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. 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
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?
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"> Be present at the briefings with the chief or sheriff of the involved agency(ies) 	No
<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 	Unable to determine
<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.	No
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.	Not applicable
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.	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. 	Unable to determine
<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 that assesses work and social conflicts and biases.	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.	Not applicable

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