



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

North Central Washington Special Investigations Unit – The Zachary Rutherford Case

Use of Deadly Force Incident on June 4, 2022, by the Wenatchee Police
Department

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Office of the Washington State Auditor

Pat McCarthy

January 23, 2025

Chief Steve Groseclose
North Central Washington Special Investigations Unit

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 June 4, 2022, that resulted in the death of Zachary Rutherford.

The audit assessed the Wenatchee Police Department's and the North Central Washington Special Investigations Unit'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
Hannah Fauchald, Assistant State Auditor

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EXECUTIVE SUMMARY

Results in Brief

North Central Washington Special Investigations Unit (NCWSIU) investigators and officers involved in the use of force incident complied with most of the requirements to ensure the investigation into Zachary Rutherford'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 the scene of the shooting, assessing investigators and community representatives for conflicts of interest with the involved officers, and restricting the case file to only participating NCWSIU investigators.

The audit found one instance where NCWSIU did not follow state regulations. Specifically, we found NCWSIU did not provide weekly public updates on the investigation's progress in five weeks out of the 23-week investigation.

We also found that the Wenatchee Police Department did not separate the involved officers at the scene after the shooting. It also did not maintain documentation indicating a supervisor directed the involved officers to not speak about the shooting until they provided statements to NCWSIU.

Recommendations

We recommend NCWSIU provide weekly public updates during an investigation.

We also recommend NCWSIU's member agencies separate involved officers and direct them to not speak about the shooting until they provide statements to NCWSIU, 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 June 4, 2022, at about 4:10 p.m., a 911 caller reported an unknown man near her home's back door. The caller said the man was looking in her windows and walking back and forth. Wenatchee Police officers Jeff Ward, Andrew Wilson, Stephanie Valencia and Seth Buhler responded to the caller's home.

Ward arrived and saw the man, later identified as Zachary Rutherford, armed with a knife and walking in his direction. Ward parked about 100 feet away from Rutherford. Meanwhile, Buhler, Wilson and Valencia parked and walked toward Ward's car. The officers told Rutherford to drop the knife, but Rutherford did not and continued to walk toward them. In response, Buhler shot Rutherford with three foam bullets, but he continued to walk forward after each one hit him. Buhler also tried using his Taser, but only one prong connected to Rutherford's chest. Rutherford then moved quickly toward the officers. They used their pistols to fire seven shots at Rutherford, hitting him seven times in his torso and back.

Rutherford fell to the ground and kept hold of the knife. Officers told Rutherford to drop it so they could provide first aid. After a few minutes, officers removed the knife from Rutherford's hand, handcuffed him and provided aid until paramedics arrived. Paramedics declared him dead at the scene.

The North Central Washington Special Investigations Unit (NCWSIU), an independent investigation team (IIT) that investigates police use of deadly force incidents in Chelan, Douglas and Okanogan counties, responded to the shooting. Investigators from the Chelan County Sheriff's Office led the investigation with assistance from the Douglas County Sheriff's Office, the East Wenatchee Police Department and the Washington State Patrol.

NCWSIU presented its investigation file to the Chelan County Prosecuting Attorney's Office on November 10, 2022. The prosecutor reviewed the case and wrote in a memo on April 12, 2023, that he would not file charges against Ward, Wilson, Valencia or Buhler.

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 Wenatchee Police Department and NCWSIU complied with state laws and rules in the investigation of the death of Zachary Rutherford, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members, including a community representative. 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, NCWSIU investigators assumed control of the scene upon arrival and excluded investigators from the Wenatchee Police Department. The shooting occurred at 4:15 p.m. We reviewed investigative reports from the case files and found that NCWSIU was requested to respond within 15 minutes of the shooting. The assistant commander and the lead investigator arrived by 5 p.m., and the lead investigator wrote in his report they took control of the scene.

We did not find evidence that any member of NCWSIU shared investigative information with the Wenatchee Police Department, or that any department employee took part in the investigation.

Transparency

NCWSIU assigned two community representatives to the investigation and involved them in 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.

NCWSIU assigned two community representatives to the investigation, and they met with the commander, assistant commander, lead investigator and assistant lead investigator the day after the shooting. The representatives signed confidentiality agreements and were briefed on the investigation.

The community representatives had access to the completed case file. NCWSIU invited the representatives to attend its presentation of the completed investigation to the prosecutor, and they both did. On the day of the presentation, NCWSIU asked the community representatives to sign a document that asked them if they wanted to access the completed case file. Both representatives signed the document declining to see it.

Communication

NCWSIU followed most of the communication requirements in the WAC. The WAC requires the involved agency or IIT notify the family of the person who was killed or injured by the use of force and provide updates on significant developments. The IIT must also post weekly public updates on the investigation's progress, even if there is no new information to report. Community representatives and the family must receive advance notice of these public updates.

NCWSIU investigators could not identify any of Rutherford's relatives until two days after the shooting. The family lived in a different state, so investigators asked the family's local sheriff's office to inform the family in person about Rutherford's death. The sheriff's office told the family the next day.

NCWSIU's family liaison called the family soon after, and began making travel arrangements to meet and interview the family in person. Two days later, the family asked not to be interviewed. The liaison wrote in his narrative report that the family continued to receive emails with investigation updates. The liaison helped coordinate the family collecting Rutherford's personal belongings and after the investigation concluded, he notified the family in advance that the prosecutor was going to release the charging decision on the case.

NCWSIU issued a press release in 18 weeks out of the 23-week investigation, missing five weeks. We reviewed emails showing NCWSIU provided the community representatives and Rutherford's family with an advance copy of each press release. We interviewed one of the community representatives and they explained the same process. The other community representative did not respond to our request for an interview.

The Wenatchee Police Department and NCWSIU did not provide the media with criminal background information about Rutherford. 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 Wenatchee Police Department and the Chelan County Sheriff's Office, and did not find any indication that either the involved agency or NCWSIU provided criminal background information to the media.

Credibility

Crime Scene Investigation

Responding officers secured the scene of the shooting. The officers put up crime scene tape, guarded the scene's perimeter, and maintained an entry and exit log.

Investigators also located and preserved evidence. Investigators photographed and mapped the scene with a scanner. They collected evidence, including seven bullet casings, three foam bullets, and Rutherford's knife. Investigators also collected footage of the shooting from each involved officer's vehicle dash camera and body camera.

Investigators photographed the involved officers at the Wenatchee Police Department and counted the remaining rounds in their firearms. Investigators later collected seven bullets that the medical examiner found in Rutherford's body.

Interviewing Involved Officers and Witnesses

The involved officers were removed from the scene of the shooting, but they were not separated from each other while they waited to be transported from the scene. We were unable to determine if any of the involved officers discussed the case with each other before they gave statements to NCWSIU 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 they provide statements to NCWSIU.

After the shooting, one of the involved officers waited in a patrol vehicle. The other three involved officers were not separated until they were transported to the station, about 30 minutes later.

We reviewed the involved officers' body camera footage and found that none of them discussed the shooting with each other while they were at the scene. The officers were separately transported to the station and kept separate while they waited to be contacted by NCWSIU investigators. However, the case file did not include documentation showing Wenatchee Police supervisors gave administrative orders to the involved officers to not discuss the case until they provided statements to NCWSIU. The involved officers' attorney did not provide investigators with written statements until one month after the shooting. In an interview with our office, a Wenatchee supervisor said he gave the orders to the officers when they were at the station after the shooting, and he had emailed NCWSIU afterward to inform them he did so. We requested documentation of this email for support, but the supervisor could not find it.

On the day of the shooting, investigators canvassed the area for witnesses. None of the neighbors saw the shooting, but some heard gunshots. A few days later, investigators interviewed four people who called saying they witnessed the shooting. The interviews were audio recorded.

Case File Integrity

The case file was limited to only NCWSIU investigators during the investigation. During an active investigation, the WAC requires an IIT's case file to be restricted from everyone except IIT members involved with the investigation. NCWSIU investigators kept their reports on their own computers. When they finished their reports, they gave them to a designated NCWSIU team member on a thumb drive or as a printed copy. We found no evidence that unauthorized personnel accessed any part of the case file.

We also did not find evidence that any NCWSIU 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

NCWSIU met the requirements to assess potential conflicts of interest between involved officers and IIT members. The WAC requires all involved IIT investigators and community representatives to complete a conflict of interest assessment within 72 hours of starting an investigation. This assessment is supposed to include questions on work and social relationships with the involved officer, as well as potential biases that could affect their objectivity.

All NCWSIU investigators completed a conflict of interest assessment within 24 hours of the shooting. NCWSIU used the CJTC's conflict of interest assessment that asks investigators questions about work and social relationships with the involved officers, as well as potential biases that could affect their objectivity.

The community representatives met with the commander, assistant commander, lead investigator and assistant lead investigator the day after the shooting. The representatives completed conflict of interest assessments, and they reviewed all the investigators' assessments. Some of the investigators indicated conflicts of interest on their assessment, but the group determined none of the conflicts noted would affect the investigators' objectivity.

RECOMMENDATIONS

We recommend NCWSIU provide weekly public updates during an investigation.

We also recommend NCWSIU's member agencies separate involved officers and direct them to not speak about the shooting until they provide statements to NCWSIU, and maintain documentation that they did so.

INDEPENDENT INVESTIGATION TEAM RESPONSE

North Central Washington Special Investigation Unit



To: Kevin Briggs Office of Washington State Auditor
From: Steve Groseclose NCWSIU Commander
Reference: Compliance/Audit Report response for NCWSIU Zachary Rutherford investigation.

This document is the formal response to the Washington State Auditor's Office, 2024 audit, of the NCWSIU investigation into the use of deadly force on June 4th 2022, that resulted in the death of Zachary Rutherford. The Washington State Auditor's Office investigation showed NCWSIU Investigators followed "most" of the requirements to ensure the investigation into Zachary Rutherford's death was independent, transparent, credible, and communicated to the public, in a timely manner, as state laws and rules require.

There were three findings during the audit review.

1. Specifically, the Wenatchee Police Department did not separate two of the involved Officers at the scene of the shooting
2. There was no documentation indicating a supervisor directed the involved Offices not to speak about the shooting, until they provided statements to the NCWSIU.
3. During 5 weeks of the 23-week investigation no weekly public updates were provided.

Our response to the finds is as follows:

The best practice standard of separation of officers, after a use of deadly force incident is a process to ensure no communication occurs between officers in the aftermath of a deadly force incident. The NCWSIU understands the importance of this process. While the process is important, the goal of this process and the intent of the law, is to ensure involved Officers do not share information.

Before during and after the use of deadly force resulting in the death of Zachary Rutherford, the involved Wenatchee Police Officer body-worn cameras were recording. The Auditor's Office review of this body-worn camera footage showed none of the Officers discussed the shooting with each other. The Officers of the Wenatchee Police Department met the intent of the law. The Officers were separately transported to the Wenatchee Police Department, where they were kept separate. We disagree with this finding due to the body-worn camera videos of the involved Officers showing the intent of the law was followed.

A supervisor for the Wenatchee Police Department advised the Auditor's Office, that he ordered the Officers at the Police Department not to discuss the shooting. He was unable to provide the original documentation this occurred.

We agree with the Auditors Office's recommendation that member agencies be reminded to separate Officers after the use of deadly force, order them not to speak about the shooting until they provide statements to investigators and maintain documentation of the orders. We would also recommend all body-worn cameras be left running to document no communication between involved Officers.

During the weeks when investigation updates did not occur, the Public Information Officer for the NCWSIU was delegated to assist with a large wildfire, which resulted in missed public updates. The NCW SIU will assign a backup PIO to ensure no updates are missed during future investigations.

_____ Steve Groseclose NCWSIU Commander 01/15/24

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 Wenatchee Police Department and the North Central Washington Special Investigations Unit (NCWSIU) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Zachary Rutherford. 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 Wenatchee Police Department and NCWSIU complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Wenatchee Police Department and NCWSIU 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 ongoing independent investigation of police use of deadly force 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.	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.	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"> The on-scene venue agency will ensure that 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. 	No
<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 starting the 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.	Yes
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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