



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER
SANDRA HUTCHENS

July 12, 2016

Honorable Charles Margines
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to Orange County Grand Jury 2015-2016 report, "Office of Independent Review: What's Next?"

Dear Judge Margines:

In accordance with Penal Code sections 933 and 933.05, enclosed please find the response to the FY 2015-2016 Orange County Grand Jury report, "Office of Independent Review: What's Next?" If you have any questions, please contact my office.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Hutchens", written over a horizontal line.

Sandra Hutchens
Sheriff-Coroner

cc: Dr. Carrie Carmody, Grand Jury Foreperson
Members, Board of Supervisors
Frank Kim, County Executive Officer

FINDINGS

F.1

By changing the employment relationship for the revised OIR's Executive Director and professional staff from independent contractor to County employee, the Board of Supervisors appears to have made the 2015 version of the Office of Independent Review less independent of the Board and more vulnerable to the Board exerting politically motivated influence on the five covered agencies and/or their leadership through the OIR.

Response: *Disagrees with finding.*

Whether a county employee or contract employee, the OIR Executive Director and professional staff will ultimately have reporting responsibility to the Board of Supervisors and therefore be accountable to the Board for their work product.

F.4

The OIR could easily cost upwards of \$3 million/year due to expansion to five agencies plus jail monitors.

Response: *Agrees with finding.*

Based on the Grand Jury's staffing assumptions it is conceivable that the expanded OIR could cost approximately \$3 million dollars. It is important to note that the Sheriff's Department does not have a role in determining the budget or staffing for the OIR.

F.5

It will be a challenge to find and retain a permanent staff with the qualifications and sufficient subject matter expertise to identify best practices and to review the broad range of services provided by the five agencies identified in the 2015 ordinance.

Response: *Partially agrees with finding.*

The Sheriff's Department does not have experience with OIR staffing recruitment as the Department was not involved with the recruitment of the former OIR executive director. The Sheriff's Department is not aware of hiring/recruiting challenges, but does agree that position requires a very specific job knowledge and expertise.

F.8

The willingness of the OCSD to work cooperatively with the OIR was crucial to allowing the original 2008 OIR to be effective as an independent reviewer of OSCD's internal investigations.

Response: *Agrees with finding.*

The cooperation between the Sheriff's Department and OIR resulted in a successful partnership between the two departments. The input provided by the OIR Director was beneficial in the creation of Department policy and with regard to internal investigations.

F.9

With the OIR's newly-expanded role to review the policies and practices of the OCSD and recommend reforms consistent with evolving best practices, the OCSD has an opportunity to take advantage of the new OIR to assist the OCSD in recovering from the current jailhouse informant controversy. This would require the continued voluntary cooperation of the OCSD with the new OIR.

Response: *Partially agrees with finding.*

Cooperation with the new OIR is voluntary on the part of the Sheriff's Department. Whether the new OIR offers worthwhile recommendations/best practices will depend on both the structure and the personnel that are hired. With regard to jailhouse informant policy, the Department has already taken significant steps to address concerns that have been raised. The new Constitutional Policing Advisor will play an important role in monitoring those remedies.

F.11

The assurance of confidentiality, through attorney-client privilege between the five relevant County agencies and the OIR, is essential to the effective implementation of the 2015 OIR ordinance. Still, even attorney-client privilege may be insufficient for allowing access to some confidential documents, like juvenile records and personnel files that are very tightly controlled by the courts.

Response: *Agrees with finding.*

Attorney-client privilege contributed to the success of the 2008-2016 OIR. It is unknown if attorney-client privilege would be possible under the 2015 OIR ordinance.

RECOMMENDATIONS

R6.

The Board of Supervisors should direct the OIR Executive Director to work with each of the five agencies to negotiate specific, and possibly narrow, initial scopes for OIR involvement with each agency, all to be completed within three months of the Executive Director being hired.

Response: *The recommendation requires further analysis.*

The Board of Supervisors has sole authority to direct the OIR, therefore the Sheriff's Department cannot opine as to whether or not this recommendation will be implemented. However, the Sheriff's Department does agree that a narrow initial scope would be the best way forward as the Board and five agencies learn how to best utilize the new OIR model in a way that is beneficial to the public safety mission of the County.

R7.

For three years starting with the hiring of the new OIR Executive Director, the OCSD should provide the revised OIR with open access to the Sheriff's internal processes for defining, and insuring adherence to, its policies and procedures on the legal use of jailhouse informants, so that the OIR could help recommend reforms consistent with evolving best practices. This requires a continuation of the existing attorney-client relationship between the OIR and the OCSD.

Response: *The recommendation requires further analysis.*

It is premature to implement this recommendation without a clear understanding of how the new OIR model will work.

As the new model develops, it is the expectation of the Sheriff that the Constitutional Policing Advisor will be the primary interface between the Department and the OIR. The Constitutional Policing Advisor will have responsibility for recommending policies and best practices with regard to jailhouse informants. The Constitutional Policing Advisor will also assist in the review of internal processes and will help insure proper procedures are being followed.