

Statement from City Manager Regarding Internal Investigation

As City Manager, I am responding to the petition to hold Captain Rollins accountable for his role in the failed investigation of former Sgt. Tony Reeves and his involvement in the arrest of Michael Fesser. This incident has been extensively documented, both before and after I arrived in West Linn and became City Manager in September, 2020. The documentation is available on the City's website.

After reviewing the report that was issued by the Clackamas County District Attorney's office on May 29, 2020 and the OIR Group report that was released in December, 2020, I too had serious concerns about Captain Rollins' actions as reported in those narratives. However, I was left with several questions about the nature and specifics of Captain Rollins' actions that did not appear to have been fully explained. I was also informed that the investigation by OIR Group was intended to be a process review that did not include the same investigatory procedures and evidentiary standards that would have been appropriate in a disciplinary investigation.

For those reasons, I felt that clarification was needed, and I requested that a series of follow-up questions be directed to OIR Group in December 2020. The responses by OIR Group are attached to this statement, in hopes that releasing this information will provide additional insight and perspective for those who understandably want answers to their concerns.

I believe that additional follow-up is still needed for a full understanding of Captain Rollins' actions and decision-making in the investigation of former Sgt. Reeves. Those events occurred more than two years ago when Captain Rollins was a Sergeant, thrust into the role of acting Lieutenant. I think it is important to assess and consider whether his actions at that time have been mitigated by attributes and leadership he may bring to the Police Department today, and also whether that assessment should be made by a newly appointed Police Chief. These are not easy issues to address, and they affect the stability and morale of the entire Police Department.

To date, Captain Rollins has not had an opportunity to respond to the statements in the OIR Group report, as clarified in the supplemental responses discussed above. I intend to give him that opportunity before any decision is made regarding his future role with the West Linn Police Department. The petition itself acknowledges the difference between a seriously flawed investigation and a cover-up, and I have been advised by Mr. Gennaco, the lead investigator from OIR Group, that there was no evidence of collusion or intentional wrongdoing by Captain Rollins. This is borne out by the attached responses.

I whole-heartedly agree that accountability is crucial to restoring the public's trust in our Police Department, but accountability should be based on a fair process and a fully informed record. In my role as City Manager, I am committed to taking the right actions for the right reasons, and I intend to follow that approach with Captain Rollins as well. I look forward to updating the citizens of West Linn on a timely basis regarding a resolution to this important matter.

Jerry Gabrielatos
West Linn City Manager

**OUTLINE OF ISSUES AND QUESTIONS
FOR OIR GROUP REGARDING ROLLINS**

1. Decision to conduct an internal investigation

Page 12 – “The decision by the Police Department to retain the internal investigation had serious consequences for accountability and deleteriously delayed the City’s actual knowledge about the gravamen and credibility of the allegations.”

QUESTION:

IS THERE ANY EVIDENCE THAT ACTING LT. ROLLINS PARTICIPATED IN THE DECISION TO CONDUCT THE INVESTIGATION INTERNALLY RATHER THAN RETAIN AN OUTSIDE INVESTIGATOR?

OIR Group learned of no evidence that acting Lieutenant Rollins participated in the decision to conduct the investigation internally rather than retain an outside investigator. As indicated in our report, a contemporaneous email authored by then City Manager Eileen Stein indicated that Chief Kruger and Captain Hennelly were having Acting Lieutenant Rollins conduct a “cursory look” into the matter to determine if an internal investigation is warranted.

As further indicated in our report, a day later Chief Kruger wrote an email to Dee Rubanoff stating that Acting Lieutenant Rollins had been assigned to conduct an initial review of the available information, in order to determine if criminal implications are apparent.

As noted in our report, on June 14, 2018, Captain Hennelly wrote an email to several parties indicating that the Police Department had opened an investigation to look at potential policy violations, that if it found criminal conduct, the Department would stop and request an outside agency to conduct a criminal investigation and that Hennelly would be conducting it. And as our report details, at some point Captain Hennelly handed off the responsibility to investigate the matter to Acting Lieutenant Rollins.

Finally, on July 12, 2018, Captain Hennelly wrote an email to Rubanoff reporting that the question came up again about referring the entire investigation out. Captain Hennelly then determined that the Police Department would retain the investigation.

The best evidence collected by OIR Group is that the initial decision to keep the

investigation of the tort claim notice allegations internal was initially made by Chief Kruger. After Kruger recused himself, the decision to keep the investigation within the Police Department was maintained by Captain Hennelly. OIR Group found no evidence that Acting Lieutenant Rollins participated in the decision to retain the investigation within the Police Department.

2. Scope of the investigation.

Page 12 – “As a result, Acting Lieutenant Rollins was left to conduct the investigation into the myriad of allegations raised in the tort claim notice but eventually chose to investigate only a small subset of them.”

QUESTION:

WHAT IS THE EVIDENCE THAT ACTING LT. ROLLINS “CHOSE” WHICH ALLEGATIONS IN THE TORT NOTICE TO INVESTIGATE?

OIR is aware of no additional evidence regarding how Acting Lieutenant Rollins chose which allegations to investigate and which ones not. What is known is that, as outlined in the investigative report, only a small subset of them were investigated by Rollins.

Although we are aware of no additional contemporaneous documentation relating to this question, while Rollins, as the assigned investigator, chose what to ask Detective Reeves about, his decisions must be considered in the larger context of his virtually impossible assignment.

Assigning an Acting Lieutenant to investigate wide-ranging allegations of misconduct against a peer and his former Chief, without providing clear direction on its scope, was setting the investigator up to fail. And when Captain Hennelly asked advisors about how to deal with former Chief Timeus, he was not sufficiently advised on the critical importance of attempting to obtain an interview with the former Chief, advice that should have been forthcoming. While any investigator ultimately “owns” the investigation he conducts, placing full responsibility on the investigator ignores the milieu and circumstances under which he was directed to function; the initial course and breadth of the investigation was clearly set by Chief Kruger and Captain Hennelly. And most significantly, for the reasons set out more fully in our initial report, no individual then working at the West Linn Police Department could have conducted an effective investigation into the multitude of serious allegations raised in the tort claim notice.

Furthermore, it is axiomatic that an investigation of significant policy violations – in effect – requires close supervision and scrutiny of the final report. OIR found no indication of such supervision of the Acting Lieutenant by Captain Hennelly. In fact, according to Captain Hennelly’s deposition testimony, his last day at the West Linn Police Department was within one week of Reeve’s submission of the internal affairs investigation.

On page 16, the report states:

“Rollins wrote in his report that his inquiry into the matter was restricted to the “limited scope” of WLPD policy violations, and not civil complaints raised within the body of the tort claim. It is unclear what is meant by this limiting language or why the inquiry was so ‘restricted.’

QUESTIONS:

IS THERE ANY DOCUMENTARY EVIDENCE THAT SHOWS THE INSTRUCTIONS, IF ANY, THAT WERE GIVEN TO ACTING LT. ROLLINS?

WERE ACTING LT. ROLLINS AND/OR FORMER CAPTAIN HENNELLY INTERVIEWED ABOUT THIS, OR WAS IT REFERENCED IN THE DEPOSITION OF CAPTAIN HENNELLY IN THE FESSER INVESTIGATION?

We are not aware of any documentary evidence that shows the instructions, if any, that were given to Acting Lieutenant Rollins or who decided to “restrict” the inquiry to such a limited scope. We spoke with both Rollins and Hennelly and they were not able to provide any additional insight into this question of possible instructions given over two years ago. Captain Hennelly’s civil deposition testimony does not address this issue.

3. Interviewing of Reeves before reviewing the text messages.

Page 16 – “As noted above, Rollins had not reviewed the text messages between Reeves and Benson when he conducted his interview of Reeves. Given the crucial nature of this evidence in Fesser’s claims against the City, it is baffling that the interview of the subject officer – in an administrative investigation prompted by those claims – would have occurred prior to the investigator reviewing the texted exchanges.”

However:

- In the June 14 email that is referenced at page 11 of the OIR report, Hennelly stated: “There are seven emails to Reeves from Benson, with 4 replies by Reeves, I have not read these, however Acting Lt. Rollins told me they are not of concern, I will review them next week.”
- In his investigation report, Rollins stated: “On 07/18/18, I was directed to meet with CIS Senior Claims Consultant Jon Stouffer to retrieve a file that contained a large number of text message communications between Benson and Sgt. Reeves. Stouffer provided me with a thumb drive that contained these text messages. In total, I discovered there were 80 pages of text messages between Benson and Sgt. Reeves contained on the thumb drive.

QUESTION:

IS THERE ANY EVIDENCE THAT ACTING LT. ROLLINS KNEW THAT THERE WERE ADDITIONAL TEXT MESSAGES HE HAD NOT REVIEWED AT THE TIME OF HIS INTERVIEW WITH REEVES? IF SO, HOW DID HE KNOW THAT?

This question apparently conflates emails with text messages. The emails referenced by Captain Hennelly in his June 14, 2018 email did not contain any concerning communications; it was the text messages that were problematic. It is clear that Acting Lieutenant Rollins knew there were text messages between Reeves and Benson since they are referenced in the Tort Claim Notice. It is also clear that Rollins had not reviewed the text messages at the time he interviewed Reeves since they had yet to be provided to him, although they had already been provided to CIS by Mr. Fesser’s lawyer.

Page 15 – “Rollins reported that two days after his interview of Reeves, he received multiple pages of text messages between Benson and Reeves. Rollins wrote that he observed multiple text messages from Reeves to Benson that could easily be considered lewd, obscene, inappropriate, and unprofessional given that Reeves was on duty and acting as a West Linn detective at the time the text messages were written and sent. While Rollins cited examples of the profane, lewd, and sexual nature of the text messages sent by Reeves, he chose not to re-interview Reeves in order to ask about them.”

QUESTION:

WOULD ACTING LT. ROLLINS HAVE LEARNED ANYTHING RELEVANT TO THE SCOPE OF THE INVESTIGATION BY RE-INTERVIEWING REEVES AFTER

REVIEWING THE TEXT MESSAGES, OR WAS THE CONTENT OF THE TEXT MESSAGES SELF-EVIDENT?

Acting Lieutenant Rollins would have learned a great deal of relevant information by re-interviewing Reeves after reviewing the text messages, even considering the limited scope of the investigation. The content of the text messages was by no means “self-evident”, it would have been imperative to ask Reeves about each of them; particularly since his limited initial interview only touched on some of them referenced in the tort claim notice. For instance, the Acting Lieutenant asked questions about whether the Reeves/Benson communications contained racial, sexual, or homophobic slurs, but not whether they revealed improper motivations for Benson’s allegations.

4. Failure to interview other witnesses

Critical witnesses were also not interviewed by Rollins. Most fundamentally, there was no effort to interview Michael Fesser, the complaining witness and victim of the alleged misconduct. * * * Moreover, Rollins did not endeavor to interview former Chief Timeus about the allegations surrounding his involvement in initiating and pursuing the criminal investigation against Fesser. * * * Rollins also failed to interview former West Linn Lieutenant Mike Stradley about the Fesser investigation and arrest.

QUESTION: WHAT INFORMATION WOULD HAVE BEEN OBTAINED FROM AN INTERVIEW WITH FESSER, TIMEUS OR STRADLEY THAT WAS MATERIAL TO THE LIMITED SCOPE OF ROLLINS’ INVESTIGATION?

The question presumes that the scope of the investigation was appropriate. It was not. The whole point of the OIR Group report is just that; the scope of what to investigate and who to talk to was inappropriately narrow. Since the narrow scope did extend to witnesses, it likely did influence who Rollins interviewed.

5. Findings regarding policy violations

Rollins determined that Reeves did not violate the following West Linn Police Department policy:

340.5.1- DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

QUESTIONS:

WAS THAT FINDING CLEARLY ERRONEOUS BASED ON THE CONTENT OF THE TEXT MESSAGES?

WAS THAT FINDING CLEARLY ERRONEOUS BASED ON OTHER EVIDENCE THAT ROLLINS HAD REVIEWED WITHIN THE SCOPE OF THE INVESTIGATION?

The content of the text messages should not have been considered in a vacuum. Reeves should have been interviewed about each text message that Benson sent him, how he interpreted it, and why he allowed the racist, homophobic, and inappropriate banter to continue. The text messages should have been considered in that context to determine whether the above referenced discrimination policy was violated by Reeves.

It is important to note our understanding that at the West Linn Police Department, the investigator makes findings regarding violations of policy but the ultimate decision-maker is the individual who actually ratifies the findings and imposes discipline, in this case Captain Hennelly. And in fact, Captain Hennelly did make minor modifications to Acting Lieutenant Rollins initial findings in this case.

Acting Lt. Rollins did find that Reeves had violated three different Department policies, as follows:

“After reading through all the material in this case, including the tort claim, I determined there were four specific West Linn Police Department policies that may have been violated during the investigation of this case. Those policies are:

340.5.7- CONDUCT

(f) Discourteous, disrespectful, or discriminatory treatment of any member of the public or any member of this department or the City.

(g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.

800.3.1- PROPERTY BOOKING PROCEDURE

(a) Complete the property in custody form describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.

800.6.4- RELEASE OF PROPERTY

Property may be released to a verified owner at the discretion of the property and evidence technician without further authorization. A property and evidence technician shall release the property upon proper identification being presented by the owner for which an authorized release has been received. A signature of the person receiving the property shall be recorded on the property release form. After release of all property entered on the property release form, the form shall be forwarded to the Records Division for filing with the case.

QUESTION:

WERE THERE OTHER APPLICABLE POLICY VIOLATIONS THAT ACTING LT. ROLLINS FAILED TO IDENTIFY OR CONSIDER WITHIN THE LIMITED SCOPE OF THE INVESTIGATION THAT WAS ASSIGNED TO HIM?

The question again presupposes that the scope was appropriate for this investigation. It was not. As our report discusses in great detail, there would have been numerous founded additional policy violations (or violations of law) committed by Reeves and Timeus had the investigation been appropriately scoped.

6. Additional issues

QUESTION:

WAS THERE EVIDENCE THAT ACTING LT. ROLLINS ENGAGED IN IMPROPER CONDUCT APART FROM THE CONCERNS ABOUT HIS HANDLING OF THE INVESTIGATION OF SGT. REEVES?

No.