

**Office of the Independent Monitor
City & County of Denver**



Monitor's Response
to DPD Sergeant Mike Mosco's
"Reply to the OIM Annual Report"
published by the "PPA News,"
May/June 2008 Edition

This response is for the benefit of DPD officers, so that you may be exposed to both sides of the issue and arrive at your own conclusion.

From: Rosenthal, Richard - OIM
Sent: Monday, March 24, 2008 2:07 PM
To: Mosco, Mike - DPD
Subject: RE: Annual OIM Report

Mike: I am very sorry to see your strong negative reaction to a small section of my annual report.

You should be aware, that contrary to your apparent understanding, a lot of effort went into ensuring that the report would conform to local ordinance, state law and the needs and expectations of the City. In particular, the entire report was vetted through the Police and Sheriff Command staff, the Manager of Safety's Office and the City Attorney's Office as well.

You should also be aware that prior to your email, the only notice I received that anyone had any concerns about anything related to my public reporting function was an October 4, 2007 email from attorney Marc Colin. I understand that you believe I ignored Mr. Colin's concerns and never responded to him. That belief is incorrect. Mr. Colin's concerns were directed toward the anticipated publication of a "special report" relating to a specific in-custody death. I took into account his comments and concerns and created quarterly critical incident reports that were shared with him and with which, I have been told, he expressed no issues or concerns.

I have to point out that the portion of the report that you are objecting about is not new. There were similar sections in the 2005 and 2006 annual reports. I have shared these reports with the PPA and was told that PPA counsel have read every page of these reports. Prior to this email, I have not heard any criticism or concerns regarding the prior reports. Had I been informed of any criticisms or concerns, I would have taken them into account when I wrote this report; and I will take into account your concerns when I prepare the 2008 annual report. Please note that although you mention you have brought your concerns to the attention of "certain members of City Council" and the "Office of the Manager of Safety," those concerns have not been shared with me. As you are aware, although I was confirmed by the City Council, I do not report directly to that body, nor do I report to the Manager of Safety's Office.

I have re-reviewed that portion of the report of which you have taken umbrage. There were 17 DPD investigations referenced within four pages of the report. Of those cases, eight were still pending investigation or disciplinary action at the time of the writing of the report. Contrary to your assertions, there was nothing in the text of any of the open cases which either inferred or implied an intent to "embarrass, criticize or force the department to take [any] disciplinary action" in any of the cases. The OIM was actively engaged in monitoring each of these cases and this section was clearly intended to provide a picture of the types of cases that have been chosen for such monitoring. I am quite surprised that any of the involved officers would be "devastated" to read about these investigations in this report. The synopses include only a short description of the allegations, the extent of the OIM's involvement in the investigation and the status of the case. Only persons personally familiar with the individual cases would be able to identify the involved officers.

Given the content of this portion of the report, I do not see any need to print a "retraction indicating that the cases illustrated were not intended to influence any one in the decision making process," as that fact should be abundantly clear.

Finally, I need to point out that your conclusion that I am trying to force the department to take more serious action against these officers than the department intends is disproven by the contents of this report. In fact, more often than not, I have either recommended or agreed to impose discipline less than that originally proposed by the Division Chiefs. I am committed to fair and objective findings and discipline. To assert that I am biased against the involved officers is not only personally insulting, but clearly false.

I would still be happy to sit down and talk to you about your concerns. I am surprised at the tone of your email given our prior conversations and relationship and still hope to remain collegial in the future. I am committed to being respectful to you at those times that we do disagree and hope that you are willing to commit to the same promise.

Sincerely yours,

Richard Rosenthal
Independent Monitor

From: Mosco, Mike - DPD
Sent: Thursday, March 20, 2008 2:17 PM
To: Rosenthal, Richard - OIM
Subject: Annual OIM Report

Sir,

Thank you for providing copies of your annual report to the entire PPA board. After reading through the report, I would be remiss in my responsibilities as a representative of Denver Police Officers if I did not call to your attention what are serious breaches of trust and potential ethical violations. What I am referring to are the synopsis's you provide in section three concerning active, unresolved cases. Two of the affected officers work for me and I will tell you they were devastated when they read your report. They understood they had done certain things to bring them under the scrutiny of the department and your office. What they did not realize is that you would use their unresolved cases to further your cause. While you did not use officer's names, it was easy to determine what officers and cases you were referring too.

Your efforts to further embarrass, criticize and force the department to take disciplinary action that you deem appropriate are thinly veiled. Additionally, you have potentially tainted the panel(s) that will review their case and may have adversely affected their ability to have a successful appeal to the Civil Service Commission. In addition to an abundance of legal authority and precedent that holds it to be a violation of an individual's privacy interests to disclose information regarding incomplete or pending disciplinary investigations and determinations, the leading case on this issue (*Martinelli v Dist Ct*) prohibits dissemination of information or documents regarding pending investigations or disciplinary actions. Further, disclosure of information of this kind is specifically prohibited by BOTH the Colorado Open Records and Criminal Justice Records Act, both of which I believe you to have violated in your Annual Report.

Counsel for the PPA has previously brought to your attention and to the attention of certain members of the City Counsel and the Office of The Manager of Safety, concerns regarding your failure to maintain the confidentiality of personnel information, your inappropriate disclosure of attorney client communications and information, which would otherwise be protected by the deliberative process privilege. Also raised in that same correspondence and in subsequent letters were concerns regarding your failure to adhere to the ordinance requirements limiting the scope of your authority. While you promised to respond to our attorneys, regarding all of these issues you never did and it is evident from your most recent Annual Report that you have disregarded these concerns as well as your obligations under both state law and the Denver Municipal Ordinances completely. In fact, this most recent report gives rise to even greater concerns in all of these areas.

I suggest your office print a retraction clearly indicating that the cases illustrated were not intended to influence any one in the decision making process. Additionally, I would hope that you would exercise restraint in the publication of your annual report and limit your comments to cases that have been resolved through the Manager of Safety. Thank you for your time.

Mike Mosco