

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



September 10, 2014

The Honorable Vincent C. Gray
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Gray:

Enclosed please find a copy of a Management Alert Report (MAR 14-I-001) that the Office of the Inspector General (OIG) issued to the Department of General Services (DGS), the Office of Risk Management (ORM), and the Office of the Deputy Mayor for Public Safety and Justice (ODMPSJ) on May 13, 2014, entitled *Patrol Operations Special Police Officers May Pose a Risk to the District When Providing Law Enforcement Services Outside Their Jurisdiction*.

During a re-inspection of DGS's Protective Services Division (PSD), the OIG's Inspections and Evaluations Division (I&E) identified concerns about PSD patrol operations special police officers (SPOs) engaging in law enforcement activities potentially outside of their jurisdiction. These actions pose a significant risk to SPOs, the public, and the District that may result in litigation, substantial monetary loss, or wasted resources.

The MAR presented DGS with three recommendations, and MAR addressees provided an August 29, 2014, response, which is also enclosed. The OIG is conducting an ongoing re-inspection of PSD, and a report will be completed later this year. Additional information received subsequent to publication of this MAR will be updated on our website and included in the final report of re-inspection as appropriate.

If you have questions, please contact [REDACTED] Deputy Assistant Inspector General for Inspections and Evaluations, at [REDACTED].

Sincerely,

A handwritten signature in blue ink, which appears to read "Blanche L. Bruce", is positioned above the printed name.

Blanche L. Bruce
Interim Inspector General

BLB/bc

Enclosures

cc: See distribution list

DISTRIBUTION:

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DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

**DEPARTMENT OF GENERAL SERVICES
PROTECTIVE SERVICES DIVISION**

**PATROL OPERATIONS SPECIAL POLICE
OFFICERS MAY POSE A RISK TO THE
DISTRICT WHEN PROVIDING LAW
ENFORCEMENT SERVICES OUTSIDE THEIR
JURISDICTION**

MAR 14-I-001
MAY 13, 2014

Inspections and Evaluations Division
Mission Statement

The Inspections and Evaluations (I&E) Division of the Office of the Inspector General is dedicated to providing District of Columbia (D.C.) government decision makers with objective, thorough, and timely evaluations and recommendations that will assist them in achieving efficiency, effectiveness and economy in operations and programs. I&E's goals are to help ensure compliance with applicable laws, regulations, and policies, identify accountability, recognize excellence, and promote continuous improvement in the delivery of services to D.C. residents and others who have a vested interest in the success of the city.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



May 13, 2014

The Honorable Paul A. Quander
Deputy Mayor for Public Safety and Justice
District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 326
Washington, D.C. 20004

Brian Hanlon
Director
Department of General Services
2000 14th Street, N.W., 8th Floor
Washington, D.C. 20009

Phillip A. Lattimore III
Director and Chief Risk Officer
Office of Risk Management
One Judiciary Square
441 4th Street, N.W., Suite 800 South
Washington, D.C. 20001

Dear Messrs. Quander, Hanlon, and Lattimore:

This is a Management Alert Report (MAR 14-I-001) to inform you that during our re-inspection of the Department of General Services' (DGS) Protective Services Division (PSD),¹ the Office of the Inspector General (OIG) determined that PSD special police officers (SPOs) assigned to patrol operations have engaged in law enforcement activity outside their jurisdiction as defined in the D.C. Code and D.C. Municipal Regulations (DCMR). District regulations state that SPOs' authority extends to District-owned and leased property, and they may only arrest alleged offenders while in those authorized locations or when pursuing a suspect leaving an authorized location. However, the OIG learned that PSD patrol operations SPOs also have engaged in law enforcement activity in response to incidents occurring on public property, which may have exposed the District to significant liability. The OIG believes this matter requires the immediate attention of District government officials.

¹ The OIG's initial report of inspection was published in May 2010 when DGS was called the Department of Real Estate Services and PSD was called the Protective Services Police Department.

Background

PSD provides security for District government facilities by stationing SPOs and security officers² at fixed posts and conducting patrol operations. Fixed-post officers³ are commissioned to protect a designated facility, and their primary responsibilities include:

- making rounds on foot or by motor vehicle [and] escorting persons on government-owned and leased property;
- screening persons[,] packages and other items both electronically and physically; and
- helping District employees and other persons inside the Facility, by answering questions and providing directions.^[4]

There are approximately 15 patrol operations SPOs who, unlike fixed-post officers, travel among designated D.C. government facilities to conduct inspections of buildings, security officers at fixed-posts, and conditions within to ensure security and safety at each facility.

The D.C. Code and DCMR define the SPOs' jurisdiction and authority. D.C. Code § 23-582(a) grants SPOs law enforcement authority "*within premises to which [their] jurisdiction extends,*" and allows them to make arrests "*outside the premises on fresh pursuit for offenses committed on the premises*" (emphases added).⁵ Title 6A of the DCMR presents a more restrictive definition of PSD's jurisdiction, stating: "[s]pecial police officers . . . shall be strictly confined in their authority to the particular place or property which they are commissioned to protect."⁶ Neither the D.C. Code nor the DCMR grants SPOs law enforcement authority in public space. This jurisdictional limit is reiterated in the PSD SPO position description, which states that SPOs must contact the Metropolitan Police Department (MPD) for law enforcement matters that occur outside of PSD's jurisdiction or authority.

Observation

PSD patrol operations SPOs occasionally engage in law enforcement activity outside their jurisdiction. These actions violate District regulations, may place SPOs, the District, and the public at risk, and could result in litigation or monetary losses.

PSD and DGS officials have provided inconsistent guidance regarding PSD's jurisdiction. Title 18 DCMR § 3002.1 grants PSD's SPOs authority to issue notices of infraction (NOI) for parking violations within PSD's jurisdiction,⁷ but DGS and PSD officials provided contradictory instructions to SPOs regarding when and where they can issue NOIs. DGS

² PSD has approximately 70 full-time employees who are SPOs. DGS contracts with Allied Barton Security Services and Professional 50 States Protection, LLC to provide security officers at D.C. government facilities.

³ Fixed-post officers may be contract security officers or PSD SPOs.

⁴ Department of General Services Contract No. DCAM-12-NC-0031: City-Wide Security Services, Allied Barton Security Services, at 9, April 18, 2012 – April 17, 2013.

⁵ D.C. Code § 23-582(a) (Lexis 2014).

⁶ 6A DCMR § 1100.2

⁷ The SPO position description also states that SPOs can "issue[] traffic tickets for violations when necessary and within jurisdictional responsibility."

reportedly determined that SPOs cannot issue NOIs for parking violations because DGS's jurisdiction only extends from District buildings to the curb and therefore does not include public streets. An interviewee stated that while driving in the District's Eastern Market neighborhood, an SPO was stopped by citizens who reported that cars were illegally parked in the pedestrian crosswalk. Because these cars were parked in the street along the curb and not between the building and the curb, the SPO contacted his supervisor to inquire whether the parking violations were outside of his jurisdiction. After the SPO's supervisor consulted several PSD and DGS officials, the officials authorized the SPO to issue the NOI in this instance.

In a separate instance, when patrol operations SPOs are in transit to District-owned or leased facilities, they occasionally intervene in situations occurring on public property (e.g., District streets, residential neighborhoods, federal parks, etc.), which violates PSD's jurisdiction as prescribed in the D.C. Code and DCMR. A recent incident occurred in March 2014. While travelling in the neighborhood surrounding One Judiciary Square, N.W.,⁸ an SPO observed a stabbing in a pedestrian crosswalk. To prevent the assault from escalating, the SPO intervened by arresting the assailant. Because of inconsistent guidance she/he had received in the past, the SPO was then concerned that she/he may have acted outside her/his jurisdiction. When assaults occur in public, SPOs must ask MPD police officers to respond.

PSD senior officials have drafted written policies and worked with an outside consultant to address jurisdictional limits for patrol operations SPOs, but they have not established a deadline for finalizing and implementing this guidance. As a result, SPOs continually encounter instances in which they question their authority to act because they are unsure whether an incident falls within PSD's jurisdiction.

Conclusion and Recommendations

Patrol operations SPOs acting outside PSD's jurisdiction, particularly in response to circumstances that may prompt them to arrest an individual, issue NOIs, or intervene during crimes, may place the SPO, the District, and the public at risk. The team identified the following potential sources of risk that may result in repercussions, including litigation, substantial monetary loss, or wasted resources:

1. **Unauthorized arrest or use of force:** If SPOs arrest citizens or use force to detain them in areas where PSD lacks jurisdiction, these citizens may take civil action against the SPO and/or the District government.
2. **Failed criminal prosecution:** If an SPO arrests an individual without authority to do so, evidence obtained pursuant to an unauthorized arrest may be ruled inadmissible in court, which could hamper a successful criminal prosecution.
3. **SPO hesitation or a failure to act:** If PSD SPOs are unclear regarding the area of their jurisdiction or what actions would be outside their jurisdiction, the potential that SPOs will not act appropriately when necessary, particularly in emergency situations,

⁸ One Judiciary Square is a District-owned facility.

increases. If SPO hesitation or failure to act results in the occurrence of a crime and/or serious bodily injury, the District may be liable for any resulting harm.

4. **Officers injured while performing duties outside the scope of their jurisdiction:** An SPO who is injured while performing operations outside of the scope of his/her jurisdiction after being directed to perform them could have the basis for a civil suit against the District.
5. **Officers violating the law:** SPOs are granted “the same powers as law enforcement officers” to arrest without a warrant, within their jurisdiction under D.C. Code § 23-582. If an SPO were to brandish a weapon during an arrest outside that jurisdiction, she/he may be in violation of the law and could be prosecuted accordingly.

The OIG recommends:

1. That the Director of the Department of General Services (D/DGS) request a formal legal opinion from the Office of the Attorney General (OAG) that defines PSD’s jurisdiction and all situations in which patrol operations SPOs are authorized to operate outside of that jurisdiction, if at all. This formal legal opinion should, at a minimum, answer the following questions:
 - a. What are the jurisdictional limits of PSD SPOs, including patrol operations SPOs?
 - b. What are SPOs’ duties, responsibilities, and authority when traveling between District properties?
 - c. May SPOs issue NOIs for parking violations occurring on public streets adjacent to District-owned or leased buildings?
2. That, until the OAG issues its opinion on PSD SPOs’ jurisdiction and authority, the D/DGS should temporarily assign patrol operations SPOs only to fixed posts.
3. That the D/DGS promptly disseminate guidance based on the OAG’s legal opinion to every PSD employee so they have formal, written instruction on PSD’s jurisdiction and SPO duties, responsibilities, and authority outside that jurisdiction, if any.

Please provide your comments to this MAR by May 28, 2014. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreement with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions or desire a conference prior to preparing your response, please contact [REDACTED], Director of Planning and Inspections, at [REDACTED]

Sincerely,


Charles J. Willoughby
Inspector General

CJW/bc

cc: Mr. Irvin B. Nathan, Attorney General, District of Columbia
Mr. Allen Y. Lew, City Administrator, District of Columbia
The Honorable Kenyan McDuffie, Chairperson, Committee on Government Operations
Mr. Ronan Gulstone, Committee Director, Committee on Government Operations
The Honorable Tommy Wells, Chairperson, Committee on the Judiciary and Public
Safety
Ms. Anne Phelps, Committee Director, Committee on the Judiciary and Public Safety



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District of Columbia**

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GOVERNMENT OF THE DISTRICT OF COLUMBIA



August 29, 2014

CONFIDENTIAL

Ms. Blanche L. Bruce
Interim Inspector General
District of Columbia Office of the Inspector General
717 14th Street, N.W.,
Washington, DC, 20005

RE: Management Alert Report MAR 14-I-001 "Patrol Operations Special Police Officers May Pose a Risk to the District When Providing Law Enforcement Services Outside their Jurisdiction"

Dear Ms. Bruce:

The District of Columbia Department of General Services ("DGS"), in consultation with its Protective Services Division ("PSD"), District of Columbia Office of Risk Management ("ORM") and Deputy Mayor for Public Safety and Justice ("DMPSJ") have carefully reviewed the above captioned Office of Inspector General's ("OIG") Management Alert Report ("Report"), issued May 13, 2014, and OIG's observations and recommendations. DGS previously submitted a response to this Report on June 20, 2014 and has elected to rescind and supplement DGS' prior response to clarify DGS' response to the specific recommendations proposed in the Report. This supplemental response was prepared in collaboration with ORM and the DMPSJ. Accordingly, DGS, ORM and DMPSJ submit the following in response to the Report's three (3) recommendations:

OIG Recommendation 1:

"That the Director of the Department of General Services (D/DGS) request a formal legal opinion from the Office of the Attorney General (OAG) that defines the PSD's jurisdiction and all situation in which patrol operations SPOs are authorized to outside of that jurisdiction, if at all. This formal legal opinion should, at a minimum, answer the following questions:

- a. What are the jurisdictional limits of PSD SPO's, including patrol operations SPOS?
- b. What are SPO's duties, responsibilities, and authority when traveling between District properties?

- c. May SPOs issue NOIs for parking violations occurring on public streets adjacent to District owned or leased buildings?"

Response:

DGS agrees with this recommendation and on July 2, 2014 submitted a formal request to the Office of the Attorney General ("OAG") for a legal opinion addressing the OIG recommended questions. DGS is awaiting OAG's legal opinion and upon receipt of the opinion, DGS will notify OIG and ensure that OIG has a copy of the opinion.

ORM concurs with the decision by DGS to seek an opinion from OAG.

OIG Recommendation 2:

"That until the OAG issues its opinion on PSD SPOs' jurisdiction and authority, the D/DGS should temporarily assign patrol operations only to fixed posts."

Response:

DGS agrees that the authority of DGS PSD officers extends only to District-owned and leased property. Although DGS concurs with OIG regarding the jurisdictional limitations of DGS PSD officers, the DCMR explicitly provides the legal authority of SPOs to travel between properties in the performance of their duties. The officers can carry their badge and weapon while they are traveling from one District property to the other, provided that they are on-duty and do not deviate from their work-related travel destination. *See 6A DCMR § 1103.4*. Therefore, DGS finds that restriction of DGS PSD officers to fixed posts only is neither legally required nor consistent with the security requirements of the District's real estate portfolio. DGS cannot implement this recommendation without profound risks to public safety and the security of District properties. Assignment of patrol operations to fixed posts only would severely compromise the security mission of DGS PSD because:

1. DGS PSD does not currently have the staffing or financial resources to provide fixed post SPO's to all of the buildings and properties within its portfolio;
2. Fixed post officers would not meet the security requirements of most District properties. For example, this approach does not address environments such as the DC General Campus, St. Elizabeth's Campus, Eastern Market, or those locations involving recreational activities such as community pools and parks. These and similar environments comprise multiple structures and extensive grounds. Access and movement within and throughout these properties cannot be controlled by fixed posts alone; and
3. This recommendation does not recognize the scale, geographic reach and dynamic nature of the real estate portfolio secured by DGS PSD. DGS jurisdiction extends to 582 buildings or properties consisting of more than 25 million square feet, including, but not limited to, recreation centers, municipal centers, vacant land and vacant schools. Assignment of an officer to a fixed post at each of these locations is not practical.

Notwithstanding the need for DGS PSD officers to travel between properties and DGS' determination that fixed posts are not suitable to satisfy the security needs of the District's portfolio, DGS remains committed to ensuring that DGS PSD officers only exercise authority within their jurisdictional boundaries (District properties) in accordance with applicable legal requirements. Upon receipt of further guidance from the OAG, DGS will distribute further direction to DGS PSD officers to clarify their jurisdictional limitations. In the interim, while we await the opinion from OAG, DGS will provide DGS PSD officers with interim instructions related to their jurisdictional limitations.

In summary, a sudden shift to fixed posts only, without a backup plan to address the security needs of the facilities patrolled by PSD officers, is untenable and DGS does not agree with this recommendation.

ORM concurs with DGS' response to OIG's recommendation regarding the jurisdictional limitations of DGS PSD officers and that the regulations provide PSD officers with the authority to travel between government properties. 6A DCMR § 1103.4. After OAG issues its legal opinion on the jurisdictional authority of DGS PSD officers, ORM will conduct a risk assessment of the practices of PSD police officers and address the risk issues set forth in OIG's report.

OIG Recommendation 3:

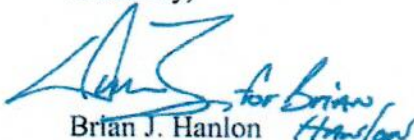
"That the D/DGS promptly disseminate guidance based on the OAG's legal opinion to every PSD employee so they have formal, written instructions on PSD's jurisdiction and SPO duties, responsibilities, and authority outside that jurisdiction, if any."


Response:

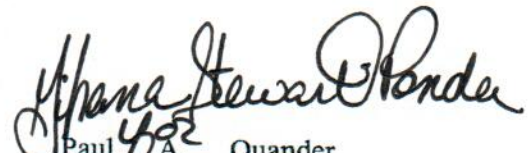
Upon DGS' receipt and review of OAG's legal opinion, DGS will disseminate appropriate guidance to its PSD employees. ORM concurs.

In the interim, we trust that the foregoing responses satisfy your concerns regarding the patrol operations of DGS' PSD officers. We appreciate the concerns raised by the Report. Hopefully, a formal opinion from the Office of the Attorney General will assist in providing clarity or at least lay the groundwork for future rulemaking or legislation to address any inconsistencies or confusion regarding the authority of DGS' PSD officers.

Sincerely,


Brian J. Hanlon
Director
Department of
General Services


Phillip A. Lattimore III, Esq
Chief Risk Officer and Director
District of Columbia Government
Office of Risk Management


Paul A. Quander
Deputy Mayor for
Public Safety and
Justice