
TO: Ryan Call, Interim City Attorney, City of Federal Way

FROM: Kris Cappel, Anna Rendes – Seabold Group

DATE: February 3, 2017

SUBJECT: Standards Investigation #2016-007

I. INTRODUCTION & SCOPE OF INVESTIGATION

The City of Federal Way retained Seabold Group to conduct Standards Investigation 2016-007 to determine the facts and circumstances surrounding alleged violations of the police department Code of Conduct and City Employee Guidelines by Lieutenant Brigit Clary. Lt. Clary has been a member of the Federal Way Police Department (FWPD) since 2002.

On November 18, 2016, Lt. Clary was served personally with a Letter of Standards Investigation Notice and placed on administrative leave with pay. The investigation was originally assigned to Commander Chris Norman. Seabold Group was subsequently hired as outside investigators to conduct the investigation.

On December 13, 2016, Lt. Clary was served personally with a revised Letter of Standards Investigation Notice and Garrity Advisement. Copies of both letters and the Garrity Advisement are attached as Exhibit A. Lt. Clary was informed that an investigation had been opened because “on several instances during the month of October 2016, [she] approved reports and overtime compensation request slips submitted by [her] spouse, Lt. John Clary, for work he performed at [her] request pursuant to the Registered Sex Offender (RSO) Grant.” It was alleged that some of the reports and overtime request slips she approved may have been inaccurate. The notice further stated that “this behavior may be a violation of one or more of the following policies, procedures and/or City guidelines:” Code of Conduct 1.1 – Obedience to Laws, Ordinances, and Rules; Code of Conduct 1.3 – Truthfulness; Code of Conduct 2.3(b) – Reports and Records; and Employee Guidelines 4.2 – Nepotism.

Seabold Group interviewed Lt. Clary in person on December 15, 2016, and January 11, 2017. She was accompanied both times by her legal counsel. Commander Chris Norman was also present during both of Lt. Clary’s interviews and the interviews were recorded. Lt. Clary has been provided with copies of transcripts of her interviews and as of the date of this report, she has not made any corrections or clarifications. Before each interview began, Lt. Clary was advised that failure to fully and truthfully answer questions or to engage in any deliberate attempt to deceive or intentionally minimize her involvement in the matters under investigation could subject her to discipline up to and including termination.

In this investigation Seabold Group interviewed thirteen (13) individuals, including Lt. Clary.

Name	Date of Interview	Type
Lt. Brigit Clary	December 15, 2016 January 11, 2017	In-Person
Lt. John Clary	December 15, 2016 January 11, 2017	In-Person
Staci Alexander	December 19, 2016	In-Person
Cmdr. Steve Arbuthnot	January 17, 2017	Phone
Det. Heather Castro	December 19, 2016	In-Person
Cmdr. Brett Hatfield	January 17, 2017	Phone
Cmdr. Chris Norman	January 19, 2017	In-Person
Lt. Tom Robinson	December 19, 2016	In-Person
Offc. Bill Skinner	December 19, 2016	In-Person
Diane Shines	December 11, 2016	In-Person
Jean Stanley	December 11, 2016	In-Person
Lt. John Stieben	December 19, 2016	In-Person
Det. Jeff VanderVeer	December 19, 2016	In-Person

In addition to witness interviews, Seabold Group also reviewed GPS Rocket information, desktop, laptop, and thumb drive metadata, internet search logs, Spillman systems logs, Failure to Register filings and other RSO program work product, emails, call logs, text messages, overtime slips, training records, scan in records, and performance reviews. (Relevant documents are attached at Exhibit B.)

This report is intended to be a summary report. It is not intended as a comprehensive detail of all of the information that was collected, reviewed, and considered as part of the investigation. The factual findings in this report are based on the entirety of the record considered by Seabold Group and are not limited to the factual information referred to in the body of this report. The findings presented herein are based on a preponderance of the evidence, which means that based on the credible evidence gathered during the investigation, it is “more likely than not” that a particular event occurred or did not occur as alleged.¹

Per FWPD Manual of Standards (MOS) Section 52.2.8, all allegations of misconduct contained in a Standards Investigation shall be concluded with one of the following “findings of fact”:

- A. **Exonerated:** The incident did occur but the conduct or performance of the employee was found to be lawful and proper.

¹ For purposes of this report, unless otherwise noted, “credible” is defined as: “offering reasonable grounds for being believed.” (<https://www.merriam-webster.com/dictionary/credible>).

- B. **Sustained:** The allegation is supported by sufficient evidence to justify a reasonable conclusion that the alleged misconduct occurred.
- C. **Not-sustained:** There is insufficient evidence to either prove or disprove the allegation(s).
- D. **Unfounded:** The investigation revealed that the incident or allegation(s) did not occur.
- E. **Other Misconduct:** Other allegations arose during the course of the investigation that were supported by sufficient evidence to warrant a sustained finding.
- F. **Standard Failure:** Standard followed, but resulted in undesired results.

Seabold Group was retained to make factual findings. Our scope does not include reaching conclusions of whether Lt. Clary's actions or inactions violated the Department's Code of Conduct or the City's Nepotism policies. We defer to the City to determine whether, based on our factual findings, Lt. Clary violated any of the alleged provisions of the Code of Conduct or nepotism policy cited in her investigation notice.

II. BACKGROUND

The following facts are materially undisputed or established by a preponderance of credible evidence unless otherwise noted.

A. Registered Sex Offender Program

The Registered Sex Offender Program ("RSO" or "Program") is funded by the King County Sheriff's Office through annual grants. The program includes two major components: address verification and felony filings for failure to register (FTR). Historically, the verifications and FTR filings are done by current and former detectives on overtime, with minor exceptions.²

The term of the FWPD contract with King County is July 1 through June 30. The 2016-2017 contract allocated \$25,052.27 for reimbursement of expenditures by the City for purposes of the program. The majority of the work is address verifications, in which FWPD detectives, working in pairs, verify, face-to-face, registered sex offenders' addresses at their place of residency.³ FTR filings, to the extent necessary, have been prepared by a handful of CIS detectives in recent years.

Lt. Clary, who is assigned to the Criminal Investigations Section (CIS), supervised the program beginning January 1, 2015, and until she was placed on leave in November 2016. Detective Jeff

² Occasionally, lieutenants assigned to oversee the program have assisted with the verifications.

³ During periods relevant to this investigation, Officer Bill Skinner and Det. VanderVeer worked verifications alone. There may have been others who also worked alone. There are no written rules or standards regarding working alone or in pairs, but the clear indication is that historically detectives go out in pairs to perform verification work.

VanderVeer has served as the “RSO Coordinator” since 2013. CIS Administrative Assistant Staci Alexander has provided administrative support for the program since September 1, 2015.

1. Lieutenant Brigit Clary

Lt. Clary joined the FWPD in November 2002. From 2002 to 2006 she served as an officer. In 2007, Lt. Clary became a detective and held that position until she was promoted to lieutenant in October 2012. In 2015 she was assigned to CIS as the Property Lieutenant, and in 2016, she became the Persons Lieutenant, which is the position she currently holds. She reported to Commander Chris Norman from January 2015 until November 2016 when she was placed on administrative leave. She supervises a staff of eight (8) detectives and since January 2015, has in addition to her regular duties, been responsible for supervising the RSO program.

Lt. Clary said her role in supervising the RSO program is to “make sure the grant is being spent per the direction of Commander Norman,” and to make sure that the department is “keeping up on verifications.” She stated generally however, that Det. VanderVeer “oversees” the program. When asked what the difference is between her role and his, she answered: “He does all the work.” She explained that he works more directly with King County, “fill[s] out a lot of the paperwork,” and keeps track of statistics. She stated, “he does a lot of work that I don’t even know.”

One of Lt. Clary’s primary responsibilities with respect to the program is to sign overtime request slips for members who work RSO overtime. She said she doesn’t undertake efforts to verify that the time was reported correctly, other than occasionally to look to see that the days reported are correct. Lt. Clary trusts her detectives (and lieutenants when applicable) to report their time fairly and accurately, and said she believes her practices for approving overtime are consistent with the practices of other lieutenants and commanders.⁴

2. Detective Jeff VanderVeer

Detective VanderVeer has served as the RSO Coordinator since fall of 2013. His RSO Coordinator duties are in addition to his regularly assigned duties as a detective and he sometimes performs RSO-related work during his regular shift.

When asked to differentiate between his role and Lt. Clary’s role in the program, Det. VanderVeer explained that he is more in the “minutiae” of the program, that he makes sure the verifications are being done, that failure to register cases are filed, and that King County’s, citizens’, and sex offenders’ questions are answered. He said Lt. Clary’s role is just overseeing him and he’s not sure of how much she’s aware of the “behind the scenes” things he does.

⁴ Several witnesses confirmed that it is not uncommon for members to find any available supervisor (lieutenants and commanders) to sign overtime slips, even supervisors who are not familiar with the overtime actually worked. There does not appear to be a formalized system in place requiring supervisors to verify overtime slips.

Det. VanderVeer explained that “when work needs to get done” for the program, he’ll plan time to work overtime on a certain day and time, or will put into motion recruiting other detectives to work overtime at a certain time, and he utilizes Lt. Clary to authorize the work. He explained he does not have authority to assign and approve overtime, so he relies on Lt. Clary to give him and other members who want to work overtime shifts the “okay.”

I would never work overtime without having permission from her (Lt. Clary) or at least another lieutenant and I wouldn’t okay anybody else to work overtime without either sending them to her directly or me going to her directly you know to make sure it’s okay.

Regarding FTR filings, Det. VanderVeer said he has handled most of the filings in the past few years, but now gets help from Detectives Castro and Purcella. He said he trained both of those detectives to prepare FTR filings. He learned after the fact that Officer Skinner (former detective) and Det. Scholl have also done FTR filings, but those efforts were not approved by him and Det. VanderVeer said he didn’t know whether anyone else had done so.

Det. VanderVeer also reported that he learned after the fact that Lt. John Clary worked overtime doing verifications and preparing FTR filings. He was surprised that John did the work because he had no training and because the work is typically done by detectives.⁵ Det. VanderVeer fully expected that John would make mistakes and that was borne out because one of his filings was declined by the prosecutors for what Det. VanderVeer believed was an obvious defect.

Det. VanderVeer said in his experience, John Clary has been the only lieutenant to work verifications and prepare FTR filings, except for Lt. Robinson who assisted with verifications and started on one FTR filing, but he was working in a supervisory capacity at the time. There may have been another lieutenant or lieutenants who helped out with verifications, but to his knowledge, always in a supervisory role.

3. Staci Alexander

Staci Alexander is the Administrative Assistant for the Criminal Investigations Section at FWPD. Ms. Alexander worked in Records for 14 years, and joined CIS as Administrative Assistant in May 2015. She currently reports to Commander Norman. Ms. Alexander has helped with the administrative side of the RSO program since around September of 2015. She stated that she does “all the paperwork,” which includes preparing packets for the address verifications,

⁵ Det. VanderVeer informed the investigator that Guild members complained about John Clary working RSO overtime because it was out of the ordinary for a patrol lieutenant to work RSO overtime. VanderVeer believed this came to his attention after John Clary had already worked the overtime. It does not appear that Lt. Brigit Clary was aware of the complaints until after being placed on administrative leave.

entering new registered sex offenders, and preparing paperwork for failure to register filings. She said she does “pretty much everything” except filing the failure to register cases and physically going out to do address verifications. In terms of the RSO program, she said she works most closely with Det. VanderVeer. She has not had much interaction with Lt. Clary regarding the RSO program, and noted that their interactions are generally only around overtime slips. Ms. Alexander said her RSO overtime is approved by her supervisor, Commander Norman.

B. Lieutenant John Clary – RSO Overtime Approved by Lt. Brigit Clary

Lieutenant John Clary joined FWPD as an officer in 1996. He was promoted to lieutenant in November 2012. At the time of this investigation, he was a patrol lieutenant working Thursday through Sunday from 2:00 p.m. to midnight.

In October 2016, Lt. Brigit Clary approved four overtime requests submitted by John. On one other occasion, she requested that another lieutenant, Tom Robinson, sign two overtime slips for work John did for the RSO program. Below is a table of the overtime shifts Lt. Brigit Clary approved, or passed on for approval by Lt. Robinson:

Date of OT	Hours of OT	Total Hours	Purpose	Approver
10-5-16	1300-1700	4	RSO Verification	B. Clary
10-7-16	1100-1400	3	RSO Verification	B. Clary
10-17-16	0030-0400	3.5	FTR 16-15882	B. Clary
10-25-16	1200-1500	3	FTR 16-15884	B. Clary
10-26-16	0930-1230	3	FTR 16-11016	T. Robinson
10-26-16	1400-1700	3	FTR 16-15885	T. Robinson

Lt. Clary stated that she had no problem approving John’s overtime requests. She knew John did the work, she saw the verification paperwork, she knew he checked into the RSO addresses, and she saw the completed FTR filings. She did not independently verify the time and dates that were reported by John and there was no evidence that Lt. Clary knew of any reporting irregularities.

The department’s overtime slips include a signature line for the individual who worked the overtime and for a “supervisor.” Lt. Brigit Clary signed John Clary’s slips as his “supervisor.” Lt. Clary acknowledged that by signing the slips she was verifying that John performed the work and was approving payment for the hours submitted.

C. City of Federal Way Nepotism Policy

Section 4.2 of the Federal Way Employee Guidelines contains the City's policy on nepotism. The policy generally prohibits members of the same immediate family from having any reporting, auditing or supervisory relationships with one another. Members of the Federal Way Police Department receive annual emails directing them to confirm that they have read the City's Employee Guidelines (which includes the nepotism policy). Most recently, Lt. Clary confirmed on January 5, 2016, that she had read the guidelines.

When asked about their knowledge of the City's nepotism policy, most witnesses, including Lt. Clary, referred to one high profile issue that arose in the department several years ago. The issue involved a former Chief, Brian Wilson, and his brother, Greg Wilson. Everyone recalled that when Brian Wilson was promoted to Chief, his brother Greg, who was a Commander, left his employment at the City because he could not report to his brother.

Lt. Clary said that prior to this investigation she had read the nepotism policy, but she "really didn't give it that much thought." To her it meant "that you couldn't work for the other person." She provided the hypothetical example that if John bid for lieutenant and she was an officer, she could not bid his squad. Lt. Clary pointed out that she and John had been married and worked at FWPD for many years and they have been operating at "status quo." She and John "have been [. . .] peers and just treated as work equals," including when they were both promoted in 2012.

1. The Clarys have reported to the same commander after they were married.

In November 2004, Lt. Clary and John married. Since that time, they have both progressed through the ranks and have worked as officers and detectives; they were also promoted to lieutenant in the same year (2012). At the time this investigation began, Lt. Clary and John were one of four (4) married couples employed by the Federal Way Police Department.⁶

FWPD administrative records show that Lt. Clary and John have worked on the same squad or otherwise reported to the same supervisor in approximately 7 of the 14 years since they have been married.⁷ John has also served as Lt. Clary's Officer in Charge for various periods when they were both assigned to Patrol.

⁶ Two of these couples have one member in the police force and one in Records; the other couple, one is a patrol officer and the other is a detective. John Clary resigned from the department before this report was prepared, but before his resignation, John and Brigit were the only couple who held the same rank.

⁷ This reference does not indicate that they worked the full year together in every case, rather, it is the number of times they were placed on the same squad and/or reported to the same supervisor. It appears that in at least 2004, 2005, and 2012, the Clarys reported to the same supervisor for the entire calendar year.

2. In 2016 John Clary was selected as the SIU Lieutenant, which would have resulted in both John and Brigit Clary reporting to the same commander.

John Clary applied for two CIS lieutenant positions. CIS is the division Brigit Clary has been assigned to for the past two years. In 2016, John was initially selected to fill the SIU Lieutenant position, which meant John and Brigit would serve under the same commander. Command staff discussed John's requests to be reassigned to CIS and based on the interviews we conducted with some of the members of the command staff who were present for those discussions, the City's nepotism policy never came up.

Lt. Clary said that it wasn't until after this investigation commenced that she was reportedly informed that John had been "de-selected," because the department's interpretation of the nepotism policy had changed.⁸

D. Federal Way Police Department Overtime Policies

1. Overtime must be preapproved by a superior except in emergency circumstances.

Section 5.1 of the City of Federal Way Employee Guidelines specifies: "Any City employee may be required, as a condition of employment, to work overtime when necessary as determined by his or her supervisor. All overtime worked by employees classified as non-exempt must be specifically authorized in advance by department supervisors." In addition, Article 8 of the Lieutenant Association CBA states: "Except in emergency situations, Department approval is required before working overtime"

All witnesses who were asked about overtime policies (other than John and Brigit Clary) agreed that overtime requires preapproval, either verbal or in writing, from someone of a higher rank.⁹ (Commanders commented that the only exception to this rule is under exigent circumstances, such as when someone becomes sick or injured and a member must carry over for shift coverage.)

Commanders Arbuthnot and Norman both stated that it is not appropriate for lieutenants to approve or sign other lieutenants' overtime slips; lieutenant overtime should only be approved

⁸ The Department did not change its interpretation of the nepotism policy; the department was advised by the City Attorney that if the Clarys reported to the same commander, it would violate the City's nepotism policy. Accordingly, the department reversed its decision to assign John to the SIU.

⁹ Seabold Group is unaware of any written policy that states overtime must be approved by a member of a higher rank. However, commanders who were asked about the policy and practice stated that approval of overtime was to be by a member of a rank higher than the person requesting the overtime.

by commanders unless no commanders are available.¹⁰ Even then, Commander Norman believed a lieutenant should consult one of the Deputy Chiefs, or if necessary, the Chief.

It is undisputed that John did not request and Lt. Clary did not require preapproval from a commander or anyone else on the command staff before John worked RSO overtime. It is also undisputed that Lt. Clary signed, and requested Lt. Robinson to sign, John's overtime slips even though there were commanders available to sign those overtime slips.

2. Lt. Clary's RSO Overtime Approval Process

Lt. Clary was asked if members who work the RSO program are required to get approval from her or anyone else before they work overtime. She answered that they will let her know that they are working, but **"it's not really approval."**¹¹ Lt. Clary said that "anybody" can work RSO overtime but historically, it's "pretty much limited to people who have been detectives, especially for the filings . . ." She also stated that even though she would like to be informed before a member works RSO overtime, that doesn't always happen. There have been times, she said, that detectives worked overtime without telling her. She also said it is generally left up to anyone in the department to decide whether, when, and how long he or she works the overtime.

Lt. Clary also said the RSO overtime shifts have never been posted formally on the intranet like other OT shifts are; rather, availability of overtime is generally communicated via word of mouth.¹² She said that when Det. VanderVeer notices that they are behind, he will go around and ask detectives and past detectives if they want to pick up the extra work.

In her first interview, Lt. Clary was asked about a May 26, 2016, email she sent. Lt. Clary emailed a list of recipients, who Lt. Clary described were all in CIS or assigned to CIS at the time. In the email, she wrote:

¹⁰ Lt. Robinson told the investigator that he had signed other lieutenants' slips when there are no commanders around. He explained that signing lieutenants' slips is infrequent, but it did occur when Commander Norman was on an extended leave in 2016. He said that he signed some of Lt. Clary's overtime slips, and she signed some of his and possibly some of Lt. Stieben's as well. Lt. Clary also reported that she and Lt. Robinson signed each other's overtime slips when Commander Norman was on his extended leave.

¹¹ Detectives Castro and VanderVeer said that they *always* get approval from Lt. Clary before working overtime. Officer Bill Skinner also said that he always gets approval, but an email from Lt. Clary to Officer Skinner during the fall of 2016 indicates he worked a RSO overtime shift without informing her. In the email message, Lt. Clary directed Officer Skinner to provide email notice to her before he works RSO overtime.

¹² On June 20th, Commander Norman emailed Lt. Clary in response to her May 26th email and advised that there were 30 verifications "ready to go" and requested that she post the RSO overtime on the intranet for detectives and patrol to sign up. Commander Norman does not believe Lt. Clary posted the overtime on the intranet after he made that request. He also stated that Lt. Clary objected to making RSO overtime available to patrol officers.

All, The RSO grant expires every June. There is still money in the budget, and we are behind on verifications due to major cases. If you are interested in working this detail: - Find a partner; - **Email me the dates and hours** you want to work from now through June (it can be weekends or after work). I'll make a schedule based on the responses I receive. . . . (emphasis added).

Lt. Clary said this would normally be the way she would communicate RSO opportunities, but the practice "kind of fell off" as they got busy, and rather than responding to her email, people started telling her or texting her with their plans to work.

In her second investigative interview, she was asked about an email she sent to Officer Bill Skinner. On October 2, 2016, she wrote:

I saw an OT slip for RSO checks when I went in yesterday. I didn't see an email on that. The help in keeping up is appreciated. The **standing rule** since I have to answer for that OT, is to send me an email ahead of time. If I get in trouble, it won't be schedule your own stuff anymore. Thanks. (emphasis added).

Lt. Clary then forwarded the email to her husband, John, to which he responded, "Awe, thank you." Lt. Clary told the investigator she could not recall why she forwarded the email to her husband and did not know what he was thanking her for.¹³

Lt. Clary said that at the time she sent the email to Officer Skinner, it was her expectation that people give her notice prior to working RSO shifts. She explained that she did not always expect that the notice be given via email or otherwise in writing, but explained that since Officer Skinner is a patrol officer, she does not often see him. She has more frequent interactions with detectives, so they often verbally relay any plans to do RSO shifts.¹⁴

¹³ When asked what he was thanking Lt. Clary for, John answered: "I guess I was just replying to the email, but I don't know." John said he didn't really know why Lt. Clary forwarded the email to him. The only thing he thought of was that he had told Lt. Clary that it seemed like Officer Skinner, "was doing RSO checks every weekend," because John said he had heard Officer Skinner on the radio "at least several weekends in a row." John said he thought he had mentioned that to Lt. Clary and he reported that she said, "Oh I didn't know he was working this weekend . . . he's supposed to tell me ahead of time." He believed the email might have just been Lt. Clary telling him, "I told Bill to make sure that he talks to me." Officer Skinner was not in John Clary's chain of command. It is unclear why Officer Skinner's work on the RSO program was a topic of conversation between Lt. Clary and John.

¹⁴ Commander Norman pointed out that Officer Skinner worked almost an identical schedule as Lt. Clary, Tuesday to Friday, 0600-1600, and although he works patrol, Commander Norman believed there were many opportunities during the week that their paths would cross. Officer Skinner said he informed Lt. Clary face to face or by email that he wanted to work overtime. "Typically ... I'd walk over and say hey mind if I work a couple of hours this week or whatever day."

She said that there are several reasons she wants notice ahead of time, but the only explanation she provided was that she wanted to ensure that there were files ready for verifications.

Lt. Clary explained that her reference to: "If I get in trouble, it won't be schedule your own stuff anymore," was to indicate she could get in trouble if Officer Skinner came in and did not have files to work on; however, she could not recall a time when there were no files ready to be worked on during the time she has been supervising the program. And although Lt. Clary used this scenario to explain her email to Officer Skinner, she could not recall any time during her tenure as supervisor of the program that a member had come in to do verifications, and there were no files ready for them, but they still submitted overtime for their efforts.

Commander Norman noted that:

Officer Bill Skinner held the RSO detective position in the past years and knows intimately how the program works. Officer Bill Skinner would not come into work verifications unless he knew that there was work to do. If by chance detectives had cleared all the verifications and Officer Bill Skinner came in he would not receive overtime anyway because he was not called in. He came voluntarily.

3. Lt. Clary's RSO Overtime Process with John

John and Lt. Clary had discussed his working overtime RSO shifts, but Lt. Clary said that John did not tell her ahead of time the dates and times he planned to work, and she did not require him to. She also suggested that John didn't need her permission to work RSO overtime. As long as the work was available, it was up to him whether he wanted to do it.

John also echoed Lt. Clary's statement about the issue of permission. When asked if it was his understanding that he needed her permission prior to working RSO overtime he stated, "not at all." He explained he could not have worked the overtime if Lt. Clary had said "no," but it was his understanding that he could work it at any time, and "there was no hey boss can I go do this." John was asked: "Can someone just randomly decide they want to work a weekend RSO shift, go pick up the files, do the verifications, all without saying anything to Brigit?" He answered, "Yes they could."

When Lt. Clary was asked whether she was holding Officer Skinner to a different standard than John and others, she did not believe that to be true. She reiterated that she doesn't see Officer Skinner often, but she sees other staff on a more regular basis and they tell her verbally that they intend to work overtime.

On October 4, 2016, at 10:50 p.m., Lt. Clary sent Staci Alexander an email with the subject "RSO Packets." She wrote:

I meant to check with you today. Are there enough packets ready for more verifications? I was wanting to see how we are keeping up with everyone being so busy.

On October 5, 2016, at 6:28 a.m. Ms. Alexander replied:

October has a TON, so I've been piecemealing them out. I was going to print off more today, so there will be plenty.

Lt. Clary then forwarded Ms. Alexander's response to John at 10:58 a.m. Lt. Clary did not recall forwarding Staci's email to anyone else in the department, though she would have if they had asked about RSO overtime. John Clary ended up working overtime doing verifications on October 5th and 7th, reporting a total of seven hours.

4. Call Backs

Lt. Clary was asked if the overtime work for the RSO program qualified as "callback" under the contract. Article 8, Section 3 of the Lieutenant Association CBA explains the callback policy: "Any employee called back after finishing his/her regular shift, or called to report on his/ day off for any reason . . . shall be guaranteed three (3) hours pay at one and one-half times his/her regular straight time hourly rate of pay"

Lt. Clary answered that she believes, "by the letter of the contract that it does." She explained, "any work that you're called in for is a three-hour call back outside your duty hours." When asked if RSO overtime is something that members are called in to do or whether they volunteer to do it, she said, "It's scheduled." She then went on to say that she does not know if RSO overtime would be considered a three-hour call back duty because "it's normally worked for more than three hours," so she has not dealt with that issue.¹⁵

Commanders Norman and Arbuthnot said that RSO overtime clearly does not qualify as call back because it is overtime for which staff volunteer. They are not being "called back" to perform the work and it is not mandatory.

E. Historically lieutenants have not worked RSO overtime.

Lt. Clary explained that sometime in September 2016 she asked Lieutenant Mike Bertucci in passing if he'd be interested in working any of the RSO overtime. She explained that the

¹⁵ Overtime records provided by Myung-Hee Muller evidence that the majority of the time, officers and detectives who work RSO shifts work 3 or more hours; however, in 2016, there were at least three instances of detectives or officers working less than 3 hours, and in 2015 there were at least eight instances less than 3 hours. The Administrative Assistant frequently works shifts less than 3 hours; however, Lt. Clary does not approve her overtime so may not reasonably know that.

detectives had been extremely busy and they were getting behind, and since Lt. Bertucci had been a detective, he was qualified to do the work. Lt. Clary said that Lt. Bertucci later said to her that he had asked John if he wanted to do some of the work with him. According to both Clarys, Lt. Bertucci and John had arranged to do verifications together, but Lt. Bertucci canceled, and John later decided to go out on his own.

Lt. Clary said she mentioned the overtime to Lt. Bertucci because he had mentioned to her previously that he possibly wanted to do some of the RSO work, so she was just following up with him to let him know that they had some work available. Lt. Clary was asked whether she extended an offer to work RSO overtime to any other lieutenants besides Lt. Bertucci and John. She did not give a direct answer to the questions. (See B. Clary Statement Transcription, pps. 20-21, December 15, 2016).

Since January 2015, when Lt. Clary started supervising the RSO program, there is only one other instance of a lieutenant working RSO overtime: Lieutenant Ed Fadler worked one 4-hour shift on November 19, 2015. Lt. Fadler was the RSO Supervisor prior to Lt. Clary taking on the role. Outside of the one instance Lt. Fadler worked, the overtime was assigned to detectives, and a select few patrol officers and two corporals. Since January 2015, there is no record of any other lieutenants except Lt. Fadler and John Clary working RSO overtime shifts.

Lt. Clary told the investigator that she had never been told that John could not work RSO overtime. She also conceded, however, that she never asked anyone if John could work the RSO overtime.

Lt. Clary was asked whether there was any urgency to getting verifications and FTR filings completed in October 2016 such that it prompted her to offer overtime to Lt. Bertucci and her husband. Lt. Clary told the investigator that the urgency in October of 2016 was due to the fact that the other detectives were so overwhelmed, and she didn't want to fall behind on RSO work. She also said that it was getting later in the year and she needed to spend the grant money. Lt. Clary was reminded that the RSO contract runs from July to June so that in October 2016, they were only in the first quarter of the contract year.

Q. [S]o in October . . . , you're in the first quarter of the contract. Is that your understanding?

A. To be perfectly honest, I'm not exactly sure. I know that it's June, but sometimes it's months until we get the grant, so some, there's sometimes a delay of a couple of months until when it actually funds.¹⁶

¹⁶ Lt. Clary's attorney wrote in a January 27, 2017 letter to Mr. Call, that the reason Brigit allowed John to work RSO overtime was the Department's need to "get Sex Offender Reviews taken care of before the end of calendar

Det. VanderVeer and Ms. Alexander both said they were not aware of any urgency to get the work done or spend the grant money in October 2016. There was work available but no particular urgency, unlike the end of the contract period when there is a concentrated effort to expend the funds.

Commander Norman said that he encouraged Lt. Clary to open up RSO overtime to police officers to help with the verifications but she rejected his recommendation. A June 20, 2016 email confirms his recommendation to Lt. Clary. Commander Norman believes he made that recommendation even earlier than June 2016 because he knew there was significant grant money available and the department was nearing the end of the contract period. Commander Norman reported that Lt. Clary assured him that her detectives could complete the work and said she did not want to extend RSO verification overtime to police officers.

He also said that had he been asked by Lt. Clary, he likely would not have approved lieutenants to work RSO overtime in October because they still had a number of months left in the contract period. If it got closer to the end of the contract period and the detectives needed help, Commander Norman said he would have been more likely to approve lieutenants doing the work.

F. Commander Norman believes Lt. Clary concealed John's overtime from him and other commanders.

1. Lt. Clary did not inform or seek approval from her commanders.

Lt. Clary said she didn't have any concerns whatsoever about allowing John to work RSO overtime or about signing her husband's overtime request forms. Lt. Clary was asked whether she considered consulting a commander about this issue and she replied:

A. I didn't have a commander at that time, um Commander Norman was gone for what was it, three months.

Q. And there was no one in his place?

A. No, there was no commander that was appointed back there.

Q. What would you have done if you needed a commander (in Norman's absence)?

year 2016 in order to allow the City to continue to obtaining grant money from the County in 2017." The contract runs July 1, 2016, through June 30, 2017. Per the RSO contract, the City's first quarterly progress report was due to the County on October 5, 2016. John worked RSO overtime only on or after that date. There is no reference within the contract to obligations that coincide with year-end. In addition, Brigit did not share with the investigator that there was a need to meet any year-end deadline.

A. I'd have to go to the Chief or go find a different commander or it was never really formally discussed with us other than the fact that there wasn't gonna be an acting commander. It was that we could go to the on-call commander . . . or just go into the Chief's office.

Lt. Clary repeated that there was no commander available to her while Commander Norman was gone when she was asked why she had Lt. Robinson sign John's overtime slips.

Q. [D]id it occur to you or did you think about maybe having [Commander Norman] sign John's overtime slips?

A. I don't remember when the commander came back.

Q. [Y]ou said you're not sure when Commander Norman returned to the office, but at this point when you asked Tom to sign the slips, did you give any thought to maybe having a commander sign the slips?

A. I didn't. I mean and I guess the fact that when Commander Norman was gone and Tom and I were basically back there by ourselves, we signed each other's slips the entire, the entire time that the commander was gone, . . . It's a common practice *if there's no commander available* to go to another lieutenant to get your slips signed. (emphasis added).

During her investigative interviews, Lt. Clary admitted that she consulted commanders on numerous occasions while Commander Norman was gone, and she eventually conceded that there were commanders available if it had occurred to her to consult one about John working RSO overtime. The undisputed facts show, however, that neither Lt. Clary nor John informed a commander about or sought approval of John's RSO overtime.

2. Commander Norman informed Lt. Clary who to report to in his absence.

Commander Norman was on an extended educational leave from August 2016 until October 24, 2016. Before he left, Commander Norman said he met with all of his lieutenants together: Clary, Robinson, and Stieben. Commander Norman stated (and Lts. Robinson and Stieben confirmed) that he made sure that they all knew that Deputy Chief Neal would be the CIS commander in his absence.¹⁷ And if DC Neal was not available, they were to consult any other commander or the command duty officer. If none of those individuals were available, the lieutenants were directed to go to the Chief.

¹⁷ DC Neal was the interim supervisor because none of the lieutenants agreed to assume that role while Commander Norman was away for three months.

Lt. Stieben told the investigator that he, and Lts. Clary and Robinson met with Commander Norman before he went on leave. Lt. Stieben understood that the purpose of the meeting was to make sure they understood what the chain of command looked like in Norman's absence and "where we could go if we needed assistance or to make notifications."

A. He told us to, our immediate supervisor would be Deputy Chief Steve Neal and then if Deputy Chief Neal for some reason wasn't around, we could go to any other commander and if that didn't work, then we could call the command duty officer and if that didn't work we can go the police chief.

Q. And was that clear to you that you had all those options available to you?

A. Yes.

Q. Do you believe it was clear to Lt. Robinson and Clary?

A. I believe it was. I mean there didn't seem to be any confusion after the meeting.

Lt. Robinson also recalled the meeting and said among other things they discussed the chain of command while Commander Norman was away. They were told to go to the Deputy Chief and any available commander. With respect to the Deputy Chief, "we were basically required to go report to him once a day. . . . [O]r as much as he wanted us to.

Lt. Robinson further stated:

So, it was just understood that it would be me or Brigit going to Deputy Chief Neal. Um, and you know, and that's what in effect happened all through the time that Commander Norman was gone. One of us, or the other of [sic] most days would brief the deputy chief.

Regarding the meeting with Commander Norman, Lt. Clary stated:

Q. And who did that direction come from that you could go to the on-call or the Chief's office?

A. Commander Norman

Q. So is that a conversation he had with you before he went on his training?

A. There was a brief discussion, I mean he didn't even tell me that he was going to the training until right before, so it was you know he may have talked to Tom about it more, a lot of information I get from Tom that comes from Commander Norman.

3. Lt. Clary asked Lt. Robinson to sign John's overtime slips even though Commander Norman was available.

Lt. Clary signed a total of four overtime slips for John – her husband and fellow lieutenant. She approved overtime for October 5, 7, 17, and 25. In addition, Lt. Clary requested Lt. Robinson to sign two more of John's slips for RSO overtime he worked on October 26, 2016. It appears that John submitted his overtime for October 25 and 26 on October 28 by leaving the slips in Lt. Clary's box. The earliest date that Lt. Clary and Lt. Robinson worked together was Tuesday, November 1, 2016, and it is believed that is the date Lt. Clary asked Lt. Robinson to sign John's October 26 overtime slips.

Lt. Clary explained the reason she asked Lt. Robinson to sign the overtime slips was that once Lt. Robinson returned from vacation, she thought it was "preferable" for somebody else to sign them, but not that she was required to have anyone else sign them, or because she had done anything wrong.¹⁸

Commander Norman returned to work on Monday, October 24. He stated that during his first week back, he personally approached Lt. Clary to get updates from her. Commander Norman reported that Lt. Clary did not mention that John had worked and was planning to work additional RSO overtime even though that was a very unusual situation. She also did not inform Commander Norman that she was signing John's overtime slips.

In addition to the face-to-face conversations, there were email communications between Lt. Clary and Commander Norman after he returned to the office on October 24 demonstrating that Lt. Clary was fully aware that Commander Norman was back in the office and available when she asked Lt. Robinson to sign John's overtime slips.

4. Lt. Brigit Clary was aware that there were complaints about John's overtime.

Lt. Clary acknowledged that she was generally aware that a Guild member had complained that John was working "extra duty" overtime, which is normally worked by guild members. She couldn't recall when she learned about that complaint. On October 15, 2016, Lt. Clary also learned that a guild member had complained to a commander about John getting paid overtime for attending firearms training. She believed she may have learned about the "extra duty" complaint about that same time.

¹⁸ John said he and Lt. Clary "really didn't have a lot of conversation about it," but his understanding of the circumstances around Lt. Clary having Lt. Robinson sign the request was: "She just felt like for appearances it's more appropriate." John did not recall saying anything in response to that and explained, it "didn't matter to me who signed the slip."

G. Expectations Around RSO Overtime Shift Start and End Times for Verifications

All members who were asked about the start and end time for RSO verification overtime shifts provided the same answer: the shift starts when the officer arrives at the station and ends when the work is done. Officer Skinner said that when he comes in to work overtime RSO verifications shifts, his shift starts when he arrives at the station. Lt. Robinson also said that RSO verification overtime shifts start when the officer arrives at the station, and the shift should end, “when their work’s done.” Commander Norman also said that overtime verification shifts begin when the officer gets to the station, and the shift would conclude when the officer is done with the work and the work is turned in.

When Lt. Clary was asked the same question, she answered, “Well I guess it depends.” She went on to tell the investigator the process when she was a detective and explained how she believed it had changed since Staci Alexander had started helping. She stated, “I mean police work is hard and that it’s not you know where you come in and punch a clock and sit at your desk for eight hours and punch out for lunch”

The investigator then asked, “Do you pay officers who do this overtime work for their travel time, meaning they start their shift when they leave their house and include the drive time to work into the time they report for overtime?”

Lt. Clary answered, “I’m not sure what you mean.” She went on to provide a hypothetical of a detective telling her he would work six hours on Sunday, she commented, “we don’t have a discussion necessarily about when their overtime starts.” The investigator then asked: “If it took the officer an hour to get to the station from their house, would it be appropriate for them to record that as overtime?” Lt. Clary answered, “No.”

H. Working from Home

Lt. Clary was aware that John worked on FTRs outside the station. She believed John called her from home with questions about FTRs, but she did not know for sure that he was at home. She just recalled that she was busy and John had questions she could not answer so she referred him to Staci Alexander.

Lt. Clary said that she and John did not discuss the subject of John working on FTRs at home, but it did occur to her that he was “probably” at home.¹⁹ She added that detectives work on summaries at home, and noted that those are “not something that requires you to be at work.”

Lt. Clary said that she is not aware of any other members who have done FTRs at home, and could not recall anyone ever asking her for permission to work on them from home. However,

¹⁹ John told the investigator that he believed Brigit was aware that he was working on filings from home.

she noted that there have been officers or detectives who have done FTRs that she did not realize had worked on them, so she did not know if they worked on them from home.

Lt. Clary was asked if it was her understanding that members need permission from someone in their chain of command prior to working from home. She answered, "I don't think there is any written rule on that." When asked if there was a past practice of requesting permission from someone in the chain of command prior to working from home, she said, "I think it depends totally on the work that you're doing and your position." Lt. Clary said that she has worked on cases at home, but when she did, she let her boss know. Lt. Clary was not aware of whether John had permission from anyone in his chain of command to work on FTR filings from home.

Other witnesses we spoke with said working on FTRs at home is not regular practice and is not something they personally have done in the past. One detective mentioned she would "never" do FTRs from home because the information contained in them is sensitive. In addition, because the work is grant-funded overtime, she would only do that type of work at the station. Det. VanderVeer also said he has never worked on FTRs at home and believed the practice was that anyone who wanted to work from home needed to get department permission before doing so. None of the detectives we spoke with about FTRs knew of anyone working on FTRs from home. Det. VanderVeer noted that he did not believe there would be an issue working on them from home, as long as the member received department permission prior to taking that work home.

1. Commander Steve Arbuthnot

Commander Arbuthnot said that he served as Commander over CIS from 2011 to the end of 2014, and the RSO assignment fell under his command. He was not aware of any practice of detectives working on FTR filings from home, and no one ever requested his permission to do so.

In general, he did not believe that there was a specific policy in writing regarding working from home, but he believes it probably has occurred from time to time but with permission. "Anytime it's overtime, especially if you're doing it from home it should be approved, preapproved." He also noted, "In general we don't do our work from home, everything we do is pretty much in the office."

Commander Arbuthnot stated he was not aware that John had worked overtime from home prior to this investigation. He recalled only one time (roughly 2011) that John may have either told him he was going to work from home or asked for permission to, and that would have been when John was the training coordinator for Valley SWAT, because there were a lot of things he had to do outside of the office, and the position required that he work with people from other agencies on a regular basis, he had to go scout training locations, and do other

planning. He said outside of that somewhat unusual assignment, he did not know of any other occasion when John might have worked from home.

2. Commander Chris Norman

Commander Norman was not aware of any written policy on working overtime at home, but he said in his 20 years of experiences it would be an outlier, and it would “certainly have to be preapproved.” He could not think of any examples when members had worked overtime at home, but knew of a few when members had worked straight time at home, for specific tasks or reasons.

It was Commander Norman’s opinion that John would have needed “at least” a commander’s permission to do overtime work from home. He noted that all the work on FTR filings should be done on overtime.

3. Commander Brett Hatfield

Commander Hatfield commented that, to his knowledge, they have “never allowed work from home.” He noted that he has answered emails from home, but did not count that as part of his work day. He said there is no “work from home” option for patrol officers, corporals, lieutenants, or animal services that he was aware of. He commented, “I think we’d have a lot of people signing up for it if it existed.” Commander Hatfield was not aware that John had worked overtime from home, and he said John had never requested permission from him to work from home.

I. Working on Overtime Projects During Regular Work Hours

It is undisputed that John worked on FTR filings during his regular duty. For example, on October 28, 2016, he uploaded three different filings and forwarded them to Lt. Clary for her approval. The workflow records demonstrate that Lt. Clary approved and forwarded one of the three filings on the same date, October 28, 2016.²⁰ Lt. Clary said that she was aware that John uploaded the filings during his regular shift, but she was not aware that he was actually working on them at that time. Lt. Clary further stated that even if John was working on FTRs during straight time, there would be nothing inappropriate about that.

Referring to detectives, she explained: “It’s a felony filing, it’s a felony case just like any other felony case.”

²⁰ John submitted one FTR at 15:59:16, and Lt. Clary approved it at 16:08:02. The timestamps on the other two FTRs John submitted on October 28 were after 5:00 p.m., and Lt. Clary approved those on November 1.

When witnesses were asked the question of whether it is appropriate to work on RSO overtime during a regular shift, most answered generally that it was not appropriate unless it was Det. VanderVeer doing the work, because he is the RSO Coordinator.

Lt. Clary, however, said that although she was not aware of anyone other than Det. VanderVeer doing RSO work during his regular shift, it would be okay for someone to work on FTR filings on “straight” time. She said if she learned that someone was doing FTR filings during a regular shift, she would be okay with that. She explained that when she was a detective, they did RSO verifications on straight time – she pointed out that there is nothing that says they cannot do RSO work on straight time.

Currently, Det. VanderVeer is the only member permitted to work on FTRs during his regularly scheduled shift, because the RSO program is his assigned responsibility. Det. VanderVeer said it is not common practice for anyone other than him, in his capacity as RSO Coordinator, to work on RSO program work during a regularly scheduled shift. He said the last two FTRs he filed were completed on his regular shift.

Det. Heather Castro also stated that she has never worked on FTRs during her regular shift and is not aware of anyone else who has done so. She pointed out that the work is grant-funded overtime.

Lt. Robinson said work should be done on overtime, but he couldn’t say that there haven’t been FTRs done on regular time especially if time was a factor and “we need to get it out there.” He explained, however, the guiding principle is that the RSO work be done on overtime.

Commander Norman stated: “If it’s overtime, it’s done during the hours that . . . you’re not on regular time.” He explained that being paid for being at work and then conducting work that’s being paid as overtime while you’re already on your regular straight time, would be “double dipping.” He commented, “You’re taking pay from the City and you’re also taking pay from the . . . RSO grant.”

Commander Norman explained, “When I think of a normal detective doing a felony filing, they would come into the office, complete the work, all of the work to the extent they could and submitting their overtime slip based on the hours that they were at the station, which would include all of the miscellaneous collecting of paperwork, signatures uploading to the system and that’s not necessarily an insignificant amount of time especially when you’re talking about multiple filings to get that additional work done even if, even if it was assessed that at least some of the work was done at home, there is still a significant amount of work that would have to be done at the station to have access to the all the things you need to do there to prepare that work.”

He further pointed out that John Clary is not a detective and felony filings are not in his regular scope of work as a Patrol Lieutenant. Commander Norman said that there is a difference between a detective doing an FTR on straight time and a patrol lieutenant doing one on straight time.

III. CONCLUSIONS & FINDINGS

The amended investigation notice served on Lt. Clary cites several potential violations of the Department's Code of Conduct and the City's nepotism policy. Our **factual findings** relevant to each of the policies cited in the notice are addressed below.

A. Code of Conduct 2.3 (b) Reports and Records

Members of the Police Department shall prepare, maintain, and complete all reports or records necessary for the performance of their assigned duties. This standard pertains to all oral, written, and electronic media reports or records.

b) No member shall knowingly or through neglect prepare or maintain a report or record that contains any inaccurate, false, improper or incomplete information.

The allegation that Lt. Clary may have knowingly or through neglect prepared or maintained a report or record that contained any inaccurate, false, improper or incomplete information, namely John Clary's RSO overtime slips and FTR filings referenced in the body of this report, is **unfounded**. There was no evidence that Lt. Clary knew about any reporting irregularities.

B. Federal Way Employee Guidelines 4.2 Nepotism

The City's nepotism policy provides:

As determined by the Mayor or his/her designee, members of the immediate family of City employees will not be hired or remain employed if: One member would have the power to supervise, hire, remove, or discipline the other; One member would be responsible for financially auditing the work of another; One member would handle confidential material which creates the appearance of improper or inappropriate access to that material by the other.

If two employees in such positions become so related to one another, one must be transferred to another department or position where the reporting, auditing, or supervisory relationship does not exist or where the employees are not reporting directly to the same supervisor. If a transfer cannot be accomplished due to the unavailability of an open position, one of the employees must resign. The decision as to which employee will transfer or resign will be made by the employees involved. If the employees do not

decide which employee will transfer or resign within thirty (30) days after becoming related to one another, the employee with the least seniority will transfer or resign.

We conclude that the following facts relevant to the nepotism policy are **sustained** (established by a preponderance of credible evidence):

- John and Brigit Clary were a married couple at all times relevant to this investigation;
- Lt. Clary, at all relevant times, was charged with supervisory responsibility over the RSO program. As such, she had the authority to allow or disallow FWP members to work overtime for the purposes of carrying out the program;
- Lt. Clary encouraged and/or permitted her husband to work RSO overtime while she was supervising the program;
- Lt. Clary authorized her husband's overtime by signing his slips as "supervisor."
- During the period that John Clary worked RSO overtime, Lt. Brigit Clary was his de facto supervisor;
- Lt. Clary knew or should have known that the City's nepotism policy prohibited one spouse from supervising another spouse;
- Lt. Clary knew or should have known that the City's nepotism policy (as well as Department practices discussed below) prohibited her from approving her husband's overtime slips; and
- Lt. Clary's act of requesting Lt. Robinson to sign two of John Clary's overtime slips after she had previously signed four overtime slips is evidence that she knew it was inappropriate for her to sign her husband's overtime requests.
- Lt. Clary's act of requesting Lt. Robinson to sign two of John Clary's overtime slips even though Commander Norman was available to sign John's slips is further evidence that she knew it was inappropriate for her to sign her husband's overtime requests.

The City's guidelines do not define "nepotism" but at its core nepotism is the act of favoring or giving preferential treatment to a family member. *See, e.g., Webster's New World Dictionary 954 (2nd ed. 1980).* We find that Lt. Clary showed favoritism and/or gave preferential treatment to her husband by: 1) recruiting, promoting, and/or permitting Lt. John Clary to work RSO overtime without extending the same or equal opportunity to all of the other lieutenants and police officers in the department; 2) foregoing the requirement that John obtain approval from a commander before working RSO overtime; 3) foregoing the requirement that John notify her in advance of the dates and times he planned to work overtime, and 4) by permitting John Clary to perform RSO overtime from home.

C. Code of Conduct 1.3 Truthfulness

Code of Conduct 1.3 provides that:

Members of the Police Department shall be forthright and truthful at all times on all matters which pertain to their duties, conduct, observations or any other area pertaining to the official business of the Federal Way Police Department.

The allegation that Lt. Clary was not forthright and truthful at all times on all matters is **sustained** (established by a preponderance of credible evidence) regarding the following:

1. Lt. Clary's statements during her investigative interviews that there was no commander available to her while Commander Norman was on extended educational leave were not truthful.

Commander Norman and Lts. Robinson and Stieben all stated that before he left on his extended leave, Commander Norman held a meeting that was attended by all of his lieutenants (Clary, Robinson, and Stieben) to inform them that Deputy Chief Neal would serve as the CIS commander in Commander Norman's absence. These witnesses also stated that Commander Norman directed the lieutenants to consult any other available commander or the duty commander if DC Neal was not available if they needed assistance or to make notifications. Accordingly, Lt. Clary was contradicted by Commander Norman and two additional witnesses all of whom clearly remembered Commander Norman's directives.

Lt. Clary also contradicted herself by admitting that she consulted other commanders a number of times while Commander Norman was on leave.

Q. During the time that Commander Norman was out, did you have a need to consult a commander for any reason?

A. Yeah, I mean sure.

Q. Do you remember who and the context?

A. No, I mean in detectives there's things all the time that . . . we have to advise a commander and so sometimes I would just grab whatever commander was around or go to the Chief's office.

Lt. Clary eventually admitted that there were commanders available to her if she had decided to consult a commander about her decision to allow John to work RSO overtime, but according to Lt. Clary, it never crossed her mind.

There were also email communications between Lt. Clary and Commander Norman during his absence and in at least one instance, Lt. Clary sought permission from Commander Norman to purchase a portable crime scene light. These emails establish that Lt. Clary knew that Commander Norman was available to her even though he was on leave.

2. Lt. Clary's statements during her investigative interviews that she asked Lt. Robinson to sign two of John's overtime slips because Commander Norman was not available also were not truthful. At the time she requested Lt. Robinson to sign the slips, the evidence is clear that Commander Norman had been back in the office for over a week, and that Lt. Clary knew that he had returned from his leave.

3. Lt. Clary's equivocation in her investigative interviews on the issues of 1) whether RSO overtime constitutes a "callback"; 2) when RSO overtime begins and ends; 3) who was authorized to work RSO overtime (anybody in the department); 4) whether members are required to get preapproval before working RSO overtime; 5) whether members are required to get permission before working from home; and 6) whether she offered RSO overtime to any other lieutenants besides Lt. Bertucci and John Clary support a finding that Lt. Clary was not forthright in her investigative interviews.

D. Code of Conduct 1.1 - Obedience to Laws, Ordinances, and Rules

Code of Conduct 1.1 provides in relevant part:

Members of the Police Department will operate at all times in accordance with . . . [a]ll City of Federal Way Employee Guidelines; All Federal Way Police Department directives and/or standards; All other orders lawfully promulgated, either written or oral. This broad provision encompasses the City's Code of Ethics, Section 3.1, and the City and Department's overtime policies.

1. Federal Way Code of Ethics Section 3.1

Section 3.1 states:

An Elected Official or Employee shall not knowingly use his or her office or position for personal or family gain.

The allegation that Lt. Clary personally benefited and that her family benefited by knowingly allowing John to work RSO overtime is **sustained** (established by a preponderance of credible evidence). The compensation John received for working RSO overtime, which amounted to more than \$1500, resulted in a financial benefit to John Clary, her husband, and likely Lt. Clary as well.

2. City and Department Overtime Policies

Federal Way Police MOS Chapter 22 references "The City of Federal Way Employee Guidelines regarding overtime pay for all employees."

Employee Guideline 5.1 - Hours of Work

This guideline provides in relevant part that all overtime worked by employees classified as non-exempt must be specifically authorized in advance by department supervisors.

CBA Article 8, Section 1: Overtime

Any time worked in excess of the assigned shift shall be paid at the overtime pay rate. Except in emergency situations, Department approval is required before working overtime

We conclude that the following facts relevant to the overtime policies are **sustained** (established by a preponderance of credible evidence):

- Lt. Clary did not require John Clary to get approval from a commander before he worked RSO overtime;
- There were no emergency circumstances at the time she allowed John Clary to work overtime without getting permission from a commander; and
- Lt. Clary authorized overtime slips of John Clary, also a lieutenant, even though there were commanders available to approve the overtime.