

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CITY OF SEATTLE,  
  
Defendant.

No. 2:12-cv-01282-JLR

**UNITED STATES' RESPONSE TO THE  
COURT'S REQUEST FOR  
SUPPLEMENTAL INFORMATION**

The United States submits this brief in response to the Court's request for additional information regarding two topics: (1) the Seattle Police Department's ("SPD") Force Review Board's ("FRB") findings with respect to the tragic officer-involved shooting death of Charleena Lyles; and (2) the recent contract between City of Seattle and the Seattle Police Management Association ("SPMA"). *See* (Dkt. #424).

With respect to each topic, the Court has requested confirmation that its understanding of the facts is accurate, and that the parties address "what, if any, impact these two events should have on the court's consideration of the City's motion." *Id.* Since the City is in the best position to address the two factual inquires, we leave that in large part for the City's brief.

1 We, however, do provide some background information, which we hope will be helpful to the  
2 Court, about how both matters fit into the overall case.

3  
4 We submit that neither the forthcoming final decision by FRB as to the Lyles shooting  
5 nor the new contract impacts whether the City's Motion for Full and Effective Compliance  
6 should be granted. The City's Motion is based on the Monitor's systemic assessments of  
7 SPD's compliance with the Consent Decree, which were completed before both of these events  
8 took place. To the extent that these events are covered by the Consent Decree, the Lyles FRB  
9 and the SPMA contract should be considered at the appropriate time as part of a sustainment  
10 assessment that will examine whether the City has maintained full and effective compliance  
11 as required by the Decree, and consistent with the process the Court has already laid out to  
12 consider amendments to the Accountability Ordinance previously submitted, respectively.

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16 **A. THE FRB FINDINGS WITH RESPECT TO THE LYLES SHOOTING**

17 As was mentioned at the last status conference in July, the United States recognizes the  
18 impact that the tragic officer involved shooting death of Charlene Lyles has had on so many  
19 in the Seattle community. This brief cannot and does not intend to summarize the United  
20 States' views on the shooting or the City's response.<sup>1</sup>

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22 The United States respectfully submits, however, that, as a legal question, the forthcoming  
23 FRB findings with respect to the Lyles shooting should have no impact on whether the City's  
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27 <sup>1</sup> On December 5, 2017, Ms. Lyles's estate filed an "Emergency Motion to Intervene" in this matter, "for the purpose of  
28 providing critical information related to the circumstances leading up to the shooting death" of Ms. Lyles. (Dkt. #427 at  
1). If the Court would like the United States to respond to this motion, the United States will file a response brief  
according to the Court's desired briefing schedule.

1 Motion should be granted. We note, as of the filing of this brief, that the FRB has not yet issued  
2 its final report, nor have the City's other mechanisms for reviewing the Lyles shooting completed  
3 their review. It is therefore premature to assess the impact of the City's handling of the Lyles  
4 shooting on the City's compliance with the decree. But, in any event, as the United States argued  
5 in its Memorandum in Support of the City's Motion, the City's handling of the Lyles shooting,  
6 including the FRB's findings, are most properly considered when assessing whether the City has  
7 sustained compliance with the Consent Decree, rather than now, when the Court is determining  
8 whether the systemic assessments performed by the Monitor and verified by the United States  
9 demonstrated that the City has initially achieved full and effective compliance.

### 13 **1. Factual Background**

14 The United States defers to the City with respect to the accuracy of Court's understanding  
15 of what the FRB concluded during its review of the officer-involved shooting of Charleena Lyles.  
16 The United States again believes that it is important to wait on the final report of the FRB, and,  
17 as set forth in more detail below, also believes that any analysis of the impact of the FRB's  
18 findings should also consider the larger context of all of the City's review mechanisms. FRB's  
19 assessment is just one piece of what the City will do in response to the Lyles shooting incident.

22 Role of the FRB. Under the terms of the Consent Decree, the FRB serves as an inter-  
23 disciplinary body of officers and supervisors outside the involved officer's chain of command  
24 that conducts "timely, comprehensive, and reliable" reviews of some intermediate and all high  
25 level uses of force for policy violations. *See* (Dkt. #107-4 at 3, 6, 8-11); *see also* (Dkt. #234 at  
26 6) (brief on "the various systems that are used for accountability and review"). The FRB conducts  
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1 a detailed analysis of whether the force used was reasonable, necessary, and proportionate to the  
2 threat posed. If the FRB determines it was not, the FRB refers the matter to OPA for further  
3 review and potential officer discipline. Equally importantly, the FRB also conducts these reviews  
4 to identify trends and to improve policy, training, and equipment issues related to use of force.  
5 Through the FRB's robust discussions by representatives of various disciplines and the reports,  
6 referrals, and recommendations that follow those discussions, FRB oversees and improves the  
7 department's response to the uses of force and serves as an internal mechanism of self-correction.  
8 Because FRB has not yet issued its final report, the United States does not know what the FRB  
9 will refer to OPA or whether it will recommend any revisions to policy, training or equipment  
10 stemming from the Lyles officer-involved shooting.  
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13 Other Aspects of Force Review. It is also worth noting that the FRB is not the only  
14 mechanism for review of SPD's use of force. The Force Investigation Team ("FIT") investigates  
15 serious uses of force by SPD officers, and notably may make direct referrals to OPA based upon  
16 potential policy violations that it uncovers during its investigation. *See* (Dkt. #107-3 at 7ff &  
17 107-5 and 6); *see also* (Dkt. #234 at 4-5). If either FIT or the FRB (or any other officer or citizen  
18 for that matter) refer the matter to OPA, OPA may conduct its own independent investigation of  
19 the incident and issue findings and recommendations to the Chief of Police. These  
20 recommendations may include remedial measures, such as officer discipline or termination,  
21 where deemed appropriate. Additionally, the OPA Director may also initiate an OPA  
22 investigation on his or her own accord. By policy, the OPA Director responds to the scene of  
23 serious uses of force and observes both the FIT factual presentation and the FRB deliberations,  
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1 and may decide to “self-refer” the matter to OPA to commence such an investigation at any time  
2 during that process. Furthermore, as with all uses of force, information about the incident is input  
3 into the City’s Early Intervention System so that those supervising the involved officers can spot  
4 any patterns or areas of concern with respect to their conduct, including their uses of force. *See*  
5 (Dkt. # 123) at 2; *see also* (Dkt. #234) at 5-6. All of these City processes will need to be  
6 considered in assessing whether the City has sustained its compliance with the Consent Decree,  
7 but the outcome of those future assessments do not bear on whether the City’s Motion, based on  
8 past systemic assessments, should be granted.  
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## 11 2. Impact on City’s Motion for Full and Effective Compliance

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13 The City’s Motion largely relies on a series of systemic assessments conducted by the  
14 Monitor and the United States to argue that it is in compliance with the every term of the Consent  
15 Decree. *See* (Dkt. #419 at 7-8). These assessments sought to evaluate, through “compliance  
16 reviews and audits,” whether the City had (a) incorporated the Consent Decree’s requirements  
17 into policy and training, and (b) has carried them out in practice. *See* (Dkt. No. 3-1 at ¶¶ 184,  
18 186). Alternatively, to the extent that the systemic assessments provided the information needed  
19 for “outcome assessments,” the assessments sought to evaluate whether any patterns of  
20 unconstitutional policing still existed. *See* (Dkt. #3-1, at ¶¶ 187-190). The Monitor and the  
21 parties developed the assessments using samples of officer activity over a robust and specific  
22 timeframe. As the Monitor stated, “The methodology used by the Monitoring Team ... is  
23 consistent with accepted best practices for evaluating use of force reports and investigations  
24 employed to evaluate use of force reports and investigations in other jurisdictions.” (Dkt. # 231  
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1 at 20).

2 The assessment of the FRB on which the City's Motion is based was conducted before  
3 the Lyles shooting took place. *See* (Dkt. #247 at 4). Accordingly, the FRB's review of the  
4 officer-involved shooting of Charleena Lyles did not occur during the timeframe assessed and  
5 does not affect the basis for that Motion. That said, and as more fully discussed in the United  
6 States' Response to the Monitor's Compliance Status Report, the FRB's review of this shooting  
7 is relevant to the second phase of this litigation – the assessment of whether or not City has  
8 maintained full and effective compliance for a period of two years, and should be considered  
9 during that review. *See* (Dkt. #422 at 10).

13 In short, as of the filing of this brief, the City has not released the findings of the FRB, nor  
14 have the other systems of force review been completed. When they are, those findings and  
15 processes will be appropriately considered in the context of whether or not the City has been able  
16 to hold compliance with the Consent Decree for a period of two years. Those processes should  
17 not by themselves, however, affect the current Motion before the Court, which seeks a  
18 determination of whether the City already has demonstrated full and effective compliance.  
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## 21 **B. THE SPMA CONTRACT**

### 22 **1. Factual Background**

24 The City is in the best position to answer the Court's question, both as to the accuracy  
25 of the reporting and the substance of the contract.

26 The United States provides the following summary of how the SPMA contract fits into  
27 the Consent Decree implementation process as a whole.  
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1 As the Court has done, the United States has followed the development of the City's  
2 proposed changes to its accountability systems and their potential impact on the terms and  
3 purposes of the Consent Decree closely for years. More recently, in November 2016, the  
4 United States filed comments on the City's draft accountability legislation highlighting  
5 concerns regarding that potential impact. *See* (Dkt. #331). The Court largely agreed with the  
6 United States (Dkt. #357), the City addressed those concerns, and the final accountability  
7 legislation in its current form came before the Court in July 2017, for a determination of  
8 whether it undermines the terms or purposes of the Consent Decree. (Dkt. #396-1)  
9 ("Accountability Ordinance"). The United States reviewed the Accountability Ordinance  
10 passed by the City and advised the Court that the United States did not believe that the  
11 ordinance conflicted with the terms or purpose of the Consent Decree. *See* (Dkt. #401).  
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15 After hearing argument, the Court "decline[d] to rule on the entirety of the Ordinance  
16 as it relates to the SPD accountability system at this time" and stated that the Court's "final  
17 imprimatur" would "await the final version that is ultimately implemented following collective  
18 bargaining." (Dkt. #413 at 3) (emphases added)  
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## 21 **2. Potential Impact on Full and Effective Compliance**

22 We understand the Court's question about impact on the pending motion to focus on  
23 whether those possible changes to the Accountability Ordinance would undermine the terms  
24 and purposes of the Consent Decree.<sup>2</sup> The recent SPMA contract memorializes agreements  
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28 <sup>2</sup> To the extent the Court wants the United States' position on whether any of the provisions of the SPMA contract are inconsistent with the terms and purposes of the Consent Decree, the United States submits to the

1 between the City and the police management union on a number of topics, including some  
2 addressed in the City's police Accountability Ordinance. The United States understands that  
3 the SPMA contract largely embraces the terms of the Accountability Ordinance, but may differ  
4 from it in a few areas. If enacted as is, these areas may require amendment to the  
5 Accountability Ordinance by the City Council. As discussed below, it is premature to consider  
6 these possible amendments now and, in any event, final passage of the Accountability  
7 Ordinance does not prevent a finding of full and effective compliance at this time.  
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10 The initial answer to the Court's question is that the bargaining process is now only  
11 halfway finished, so it is premature to consider its impact on the Accountability Ordinance.  
12 The City must still complete its negotiations with the Seattle Police Officers' Guild  
13 ("SPOG").<sup>3</sup> Once that contract has been completed, we expect the City will reconcile any  
14 differences with the SPMA contract, seek legislative changes, and present "the final version  
15 that is ultimately implemented" to the Court for approval. (Dkt. #413 at 3). At that time, the  
16 United States will review the final version of the Accountability Ordinance as well and advise  
17 the Court of its position on whether it is consistent with the terms and purposes of the Decree.  
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23 Court that the City has not notified the United States of any conflict as required by the Consent Decree. *See*  
24 (Dkt. # 3-1) at 70 (¶¶ 226-227) (providing for "removal to a federal court" and notification to and conference  
25 with the United States, respectively). The United States therefore has no reason to believe that the SPMA  
26 contract conflicts with the requirements of the Consent Decree at this time.

27 <sup>3</sup> As the United States has previously advised, and similar to the previous footnote, should the City reach an  
28 impasse with SPOG and a provision/term of the Consent Decree is either "challenged," or "becomes subject to  
collective bargaining consultation," the Consent Decree provides multiple avenues to resolve such a conflict.  
*See* (Dkt. # 3-1) at 70 (¶¶ 226-227) (providing for "removal to a federal court" and notification to and conference  
with the United States, respectively); *see also* (Dkt. #348) at 3-6 (explaining when a matter becomes "subject  
to collective bargaining consultation" and when federal court intervention would be warranted and ripe). To  
date there has been no such conflict.



1 The Court will then be the final arbiter, of course.

2 Furthermore, the United States agrees with the City that finalizing the Accountability  
 3 Ordinance should not be viewed as an “outstanding element,” preventing entry of full and  
 4 effective compliance. *See* (Dkt. #419 at 2 & 17-18). In its Ordinance, the City has largely  
 5 either codified the reforms made through the Consent Decree or “take[n] [accountability]  
 6 beyond what the Decree requires.” *Id.* at 2; *see also* (Dkt. #331 at 5-6). Therefore, unless  
 7 something is added to or changed in the Accountability Ordinance that touches upon the  
 8 Consent Decree, the United States respectfully agrees that “the Decree does not make the  
 9 Court’s review [of the Ordinance] a condition of ‘full and effective compliance’” and, thus,  
 10 the SPMA contract should have no impact on the City’s Motion, which the United States  
 11 continues to believe should be granted. (Dkt. #419 at 18).

12 Respectfully submitted this 8th day of December, 2017.

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**CERTIFICATE OF SERVICE**

I certify that on the 8th day of December, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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3 DATED this 8th day of December, 2017.

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