

# REPORT



## Investigation into Allegations of Improper Governmental Action by Members of the Las Vegas Metropolitan Police Department

### Introduction

John Aldrich, attorney for the Las Vegas Metropolitan Police Managers and Supervisors Association (“PMSA”), hand delivered a letter, dated March 13, 2014, to this Office in a meeting with Clark County District Attorney Steve Wolfson, Assistant District Attorney Christopher Lalli, and members of the Police Managers and Supervisors Association. This letter was a request, on behalf of then Lieutenant Gawain Guedry, who has since retired, and Sergeant Leonard Lorusso, for the District Attorney’s Office to conduct an investigation into allegations of improper governmental action under NRS 289.110 concerning how employees of the Las Vegas Metropolitan Police Department (“LVMPD”) handled an assessment known as the Safety and Operational Aviation Review (“SOAR”).

### Permitted Scope of an Investigation Under NRS 289.110

Nevada Revised Statute 289.110 is the sole statute that grants the District Attorney’s Office jurisdiction to conduct an investigation into improper governmental action. This statute provides the procedures this Office must follow. It begins with the filing of a report by a peace officer disclosing information regarding improper governmental action with the district attorney. NRS 289.110(1). Then, the district attorney may investigate the report and determine whether improper governmental action did occur. NRS 289.110(2). Upon the completion of the investigation, if the district attorney

determines improper governmental action did occur, he may prosecute the violation. NRS 289.110(2)(a). The district attorney shall notify the peace officer who filed the report of the results of the investigation. NRS 289.110(2)(b). Furthermore, this statute states that there is “nothing in the section [which] authorizes a person to disclose information if the disclosure is otherwise prohibited by law.” NRS 289.110(5). Finally, the statute defines improper governmental action as “any action taken by an officer or employee of a law enforcement agency, while in the performance of the officer’s or employee’s official duties which is in violation of any state law or regulation.” NRS 289.110(6).

In the course of this Office’s investigation into possible improper governmental action, we must be mindful of the statute of limitations for the alleged activity. Pursuant to NRS 171.085, the statute of limitations on the majority of felonies is three years. Under NRS 171.090, the statute of limitations for a gross misdemeanor is two years and for a misdemeanor it is one year.

Nevada Revised Statute 289.110 is directed towards an investigation against an employee, not the agency itself. The statutory purpose of this investigation is not to delve into administrative matters, review policies and procedures of other agencies, or consider ethical or moral issues. This statute addresses only state laws and regulations, not violations of federal laws or regulations or compliance with federal administrative boards. Therefore, in going forward with our investigation and analysis, this Office’s jurisdiction and subsequent inquiry under NRS 289.110 is very narrow and limited to the question of whether viable state criminal charges exist which can be proven beyond a reasonable doubt at a jury trial.

Mr. Aldrich cited in a letter dated April 24, 2014, that NRS 281.611(1), takes on a broader definition of improper governmental action to include “abuse of authority” or a “specific danger to the public health or safety.” However, pursuant to NRS Chapter 281, this broad definition of improper governmental action is solely restricted to use in NRS 281.611 to 281.671. Therefore, it is not applicable in an analysis under NRS 289.110. Likewise, the other statutes cited under NRS 281 are not punitive and are intended to be “directory and preventative.” NRS 281.671. Consequently, none of these statutes apply in an analysis into allegations of improper governmental action under NRS 289.110.

Nevada Revised Statute 289.110 does not allow this Office to sua sponte investigate law enforcement officers for improper governmental action. It allows this Office to investigate a report filed by a peace officer. NRS 289.110(1)(2). Therefore, our analysis turns to the report of improper governmental action filed on behalf of Lt. Guedry and Sgt. Lorusso.

## **Allegations of Improper Governmental Action**

### **A. Report Filed Under NRS 289.110**

The initial letter filed under NRS 289.110 requesting an investigation alleged that “the Department’s” conduct relating to the SOAR assessment constitutes “improper governmental action” as detailed in NRS 289.110(6). It was also alleged that changes were made to the assessment that were significant and “lives are at stake and any softening of the report or minimizing of the report’s findings place officers’ and citizens’ lives in danger.” Attached to the letter were various documents, including the SOAR Team’s report dated July 23, 2013 (“SOAR report”). The SOAR report chronicled the history of LVMPD’s Air Support Unit, including a number of accidents, incidents, or crashes which occurred during that 40 year period, information from their interviews, and their recommendations for change.

This Office received a letter from Liesl Freedman, LVMPD’s general counsel, dated March 18, 2014, stating that the SOAR report and its contents are confidential under the Deliberative Process Privilege. It was requested that upon the conclusion of our investigation that the SOAR report be returned to LVMPD’s general counsel.

The District Attorney’s Office sent Mr. Aldrich a letter dated April 2, 2014, seeking clarification on the alleged improper governmental action, including the identity of those who Lt. Guedry and Sgt. Lorusso were alleging violated the law and what law they believe was violated, and feedback on LVMPD’s assertion that the SOAR report was privileged and confidential. Mr. Aldrich sent a response in a letter dated April 24, 2014, stating that it is not their “duty” to respond to our specific requests and that “the Report” makes clear that there are violations that have occurred, but that he would provide some additional analysis. He went on to claim that the SOAR report is simply not protected under the Deliberative Process Privilege with little analysis to support that assertion.

As to the specific laws he claimed were violated, he stated that the SOAR report had been “significantly modified,” without providing any further analysis or factual basis to support that claim. Finally, he provided citations to various statutes that he claimed were relevant to an investigation under NRS 289.110 and the specific circumstances of this request: NRS 281.611(1), 281.621, 281.631, 197.130, and 281A.400.

This Office is also in receipt of a letter dated June 5, 2014, sent by Mr. Aldrich requesting that this Office transfer this investigation to the Attorney General’s Office due to an appearance of impropriety for an alleged conflict of interest between this Office and LVMPD. NRS 289.110, the statute that grants this Office jurisdiction over this matter, specifically states that the peace officer disclosing information regarding improper governmental action may file a report with the Attorney General only “if the district

attorney [of the county in which the improper governmental action occurred] is involved in the improper governmental action.” NRS 289.110 (1)(b). This statute does not call for recusal due to a conflict of interest. Furthermore, the factual basis for the claimed conflict of interest was conclusive and would not warrant recusal of this office. Consequently, our Office continued forward. Thom Gover, Chief of Staff of the Office of the Attorney General, has confirmed that his office has received the same request from Mr. Aldrich.

Upon receiving and reviewing the materials provided, this Office conducted an investigation and analysis of the report under NRS 289.110 as requested. As part of this investigation, this Office reached out to LVMPD regarding the SOAR report, its management, and the ultimate termination of the SOAR Team’s assessment. We conducted interviews with Deputy Chief Kirk Primas, Deputy Chief Thomas Roberts, and Lieutenant James LaRochelle relating to the SOAR Team and the management of the SOAR report. Additionally, Lt. Guedry and Sgt. Lorusso were interviewed to clarify and supplement their allegations. On August 26, 2014, the day of his interview, Lt. Guedry provided this Office with a number of additional materials, including documents, emails, audio, and video that we requested in April. Based upon a review of those newly-furnished materials, some items appear to be confidential information. We contacted Patrick Jones, the Air Safety Investigator from the National Transportation Safety Board, who is assigned to investigate the July 2013 accident which led to the death of Search and Rescue Officer David Vanbuskirk. Furthermore, we reached out to the mechanic who Lt. Guedry and Sgt. Lorusso claimed was the victim of a felony coercion. The responses received and information obtained were considered in the conclusions reached in this Office’s investigation.

## B. Specific Allegations of Improper Governmental Action

In the initial letters requesting an investigation, Lt. Guedry and Sgt. Lorusso claimed that the overall handling of the SOAR Team, its assessment and subsequent report rose to the level of improper governmental action. This claim was investigated by this Office and is detailed below. During the course of this Office’s investigation, to best understand the facts and allegations, certain interviews were conducted. In the interview of Lt. Guedry, he stated he had additional claims to make that constituted improper governmental action. While Lt. Guedry could not specifically, concisely, or directly articulate the claimed state law or regulation that was violated, who violated it, and the factual background that would support it, he recited the following claims with varying degrees of particularity. During Sgt. Lorusso’s interview he clarified or expanded upon Lt. Guedry’s claims, but in some instances, gave conflicting statements. Their additional claims are as follows:

1. Lt. Guedry and Sgt. Lorusso allege that members of LVMPD’s Air Support Unit “covered-up” not only the fact that a blade strike occurred on November 19, 2011, but the resulting damage they allege occurred from this blade strike. To

this date, however, neither Lt. Guedry nor Sgt. Lorusso have been able to identify any potentially viable state laws or regulations violated in regards this allegation of a “cover-up.” They further allege, however, from this event that a mechanic was feloniously coerced into putting the damaged helicopter back in service. This claim was investigated by this office as detailed below.

2. Anyone, from Sheriff Douglas Gillespie “on down the chain,” who has commented about this assessment to the media has knowingly made false and misleading statements in violation of NRS 197.130, which states “[e]very public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.” Neither Lt. Guedry nor Sgt. Lorusso were able to articulate what each employee said and how it was false or misleading. Furthermore, neither were able to articulate how a statement in the media qualified as an “official report or statement” under NRS 197.130. This allegation is therefore meritless and cannot rise to the level of improper governmental action.<sup>1</sup>
  
3. After the SOAR report was turned in to LVMPD by Lt. Guedry, there were rumors that the report was leaked to the media, allegedly in violation of LVMPD policy and case law. Lt. Guedry and Sgt. Lorusso claim to know the employees who allegedly leaked the report. It is their belief these employees should have been disciplined but were instead promoted. It is their belief this constitutes bribery in violation of NRS 197.020, on the part of the employee who promoted them, as over the course of their career and through retirement the promotion will result in additional pay. Neither Lt. Guedry nor Sgt. Lorusso stated which employee of LVMPD is the alleged suspect of the bribery allegation. Nevada Revised Statute 197.020 involves any compensation to an officer with the intent to influence the officer with respect to an act or decision in the exercise of the officer’s powers or functions. The stated allegation of promoting someone when they should have faced disciplinary action does not fall within the elements of bribery. This allegation is therefore meritless and cannot rise to the level of improper governmental action.

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<sup>1</sup> On November 18, 2014, the District Attorney’s Office received a letter dated November 17, 2014, from John Aldrich on behalf of Lt. Guedry and Sgt. Lorusso detailing their belief that Assistant Sheriff Joseph Lombardo violated NRS 197.130 for various statements made during a debate on October 19, 2014. Assistant Sheriff Lombardo participated in this debate as a candidate for Sheriff of Clark County. Statements made by a candidate during their campaign for office can in no way be construed as a statements made in an “official report or statement.” Consequently, any allegation that Assistant Sheriff Lombardo made a false or misleading statement during this debate does not fall within the elements of NRS 197.130. Therefore, these allegations are meritless and do not warrant further investigation into the substance of the statements.

4. Lt. Guedry and Sgt. Lorusso allege that there is a “massive cover-up” that is happening with the investigation into Officer Vanbuskirk’s death and that LVMPD is covering up the “real truth” of what happened on the night of the accident. It is worth noting that the NTSB and LVMPD have not completed with their respective investigations into this accident. Neither Lt. Guedry nor Sgt. Lorusso could articulate what state laws or regulations could have been violated in regards to this claim. This allegation is therefore meritless and cannot rise to the level of improper governmental action. However, these are claims that this Office did not take lightly. As stated, we spoke to Investigator Jones from the NTSB and have confirmed that they are actively investigating this accident. We have no reason to question the validity of this independent federal administrative organization and their ability to conduct a full and accurate review. The NTSB is the sole authority as to aviation accidents. Based on our conversations with the investigator and the information this Office obtained, we have no reason to question that the “truth” of that night is being actively investigated and will be uncovered. Additionally, we have confirmed that the NTSB has received a copy of the SOAR report. Investigator Jones stated he is eager to review the information contained in the SOAR report, and will have no qualms in reaching out to any member of the SOAR Team should he need any further information or assistance in their investigation. We therefore are confident that the NTSB’s investigation will be independent, proper, and thorough.
5. The information uncovered during the SOAR Team’s investigation was “ugly,” and LVMPD did not want to accept it. LVMPD wanted that information “buried,” and subsequently completely “rewrote” the SOAR report to hide the unwanted or unflattering information and to soften or minimize their findings in violation of NRS 197.130. This allegation was investigated and will be discussed as part of this Office’s investigation into the “department’s” handling of the SOAR Team’s assessment and subsequent report, as detailed below.
6. There were claims beyond a violation of state law or regulations (i.e. violations of federal laws and regulations, violations of regulations of federal agencies, or violations under NRS Chapter 281 that, per statute, are not punitive) that cannot, by definition under NRS 289.110 rise to the level of improper governmental action. Therefore, these claims are outside the jurisdiction of this Office’s investigation.

## **Investigation of Report of Improper Governmental Action**

After a review of all of the information provided, only two allegations had the possibility of rising to the level of a violation of any state law or regulation: (1) the handling of the SOAR Team’s assessment and subsequent report and (2) the facts surrounding the

allegations of a “cover-up” of a blade strike on November 19, 2011. Upon completion of this Office’s investigation into these claims, we have determined that there are no viable violations of state laws or regulations and therefore their claims do not rise to the level of improper governmental action.

#### A. November 19, 2011 Blade Strike

During the course of their investigation, the SOAR Team uncovered an incident that occurred in November of 2011 that they call “the cover-up.” It was alleged by the SOAR Team that there was a blade strike that may not have been reported properly to the NTSB, that internal reports also included a “cover-up” of the damage sustained to the blade, and that a mechanic was feloniously coerced, in violation of state law, into putting the helicopter back in service when it should have been deemed unworthy to fly.

It does not appear there is any question that a blade strike did occur on November 19, 2011. Internal LVMPD records regarding the maintenance of the helicopter involved in the blade strike show entries from November and December of 2011 regarding a blade strike, that a blade was damaged, and the subsequent inspection and maintenance performed on it.

This incident and previous issues with this pilot caused tension in the Search and Rescue Unit. An anonymous report of the blade strike to the FAA resulted in an investigator visiting that Unit in 2011; however, nothing came of that visit. At the time of the incident, neither the blade strike nor the damage was reported to the NTSB. When it was reported to Deputy Chief Primas in 2013 that the SOAR Team had concerns that the incident was never reported to the NTSB, Deputy Chief Primas stated in his interview that he directly and immediately reported it to the NTSB. Neither Lt. Guedry nor Sgt. Lorusso could articulate how this alleged “cover-up” of the damage to the blade violated any state law or regulation and this Office’s investigation uncovered that the ultimate damage itself from that night was documented in internal LVMPD maintenance records at the time of the incident or shortly thereafter. Therefore, any claim that there was a “cover-up” of the damage caused to the blade is meritless and does not rise to the level of improper governmental action.

The history of the Air Support Unit suggests there are some concerns regarding accurately and properly reporting, both internally and externally to the appropriate federal agency, all accidents, incidents, or crashes. This concern was first expressed and articulated by the SOAR Team during their assessment and was included in the SOAR report. Even recently Sheriff Gillespie brought a matter to this Office’s attention that may have went unreported internally or to the appropriate federal agency. However, these are matters within the jurisdiction of the NTSB. The NTSB is the independent Federal Agency charged with investigating every single aviation accident in the United

States. It is commissioned to be the sole and final authority on aviation investigations. They have the final say on whether something was an accident or an incident and whether an investigation into a matter will be conducted. We have discussed these historical concerns regarding LVMPD's potential failures to fully report with Investigator Jones of the NTSB and he confirmed that he has been in recent contact with LVMPD regarding these issues. He further confirmed that he will be looking into these allegations as part of his investigation, and was in agreement that there appears to be no state law or regulation violation. As the final authority on aviation investigations, they are the proper agency to handle these matters and any potential policy or federal violations. This Office's investigation under NRS 289.110 is narrowly tailored by that statute and deals solely in state law or regulation, and there has been no credible evidence presented to or uncovered by this Office to sustain this allegation of improper governmental action at this time.

The SOAR Team's findings on the issue of inadequate reporting led to multiple recommendations, published in the Air Support Recommendations and Process Report, the final public report released by LVMPD regarding the SOAR Team's recommendations. The report detailed the following specific recommendations related to this issue of reporting:

1. regarding accident/incident - improve the process, investigation methodology, and reporting protocols - internally and externally;
2. ensure all reporting requirements/notifications internally and externally are completed and/or made;
3. develop mandatory internal documentation of all accidents or incidents.

The status of these recommendations, according to the last version of the public report released, is completed.

The only remaining state law or regulation alleged to have been violated from this event is felony coercion. Coercion is defined in NRS 207.190:

1. It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to:
  - (a) Use violence or inflict injury upon the other person or any of the other person's family, or upon the other person's property, or threaten such violence or injury;
  - (b) Deprive the person of any tool, implement or clothing, or hinder the person in the use thereof; or
  - (c) Attempt to intimidate the person by threats or force.
2. Where physical force or the immediate threat of physical force is used, for a category B felony.



After the blade strike on November 19, 2011, the helicopter was “red tagged,” meaning it was designated not “air worthy,” and other pilots would know not to fly it. The SOAR Team claims that in an attempt to “cover-up” the damage caused in the blade strike, the pilot feloniously coerced the mechanic to “green tag” the helicopter (i.e. designate it as “air worthy”) by “getting in his face” and yelling at him. It is worth noting that within their own SOAR report and an internal memo regarding this specific incident, the SOAR Team fails to mention the specifics of how this mechanic was feloniously coerced; the report merely asserts that he was “threatened” and “forced” to place the helicopter back in service. The specific information of how he was “threatened” and “forced” only came in Sgt. Lorusso’s interview with this Office. The helicopter was thereafter allegedly “green tagged,” meaning it was noted to other pilots that the helicopter was “air worthy,” and two other pilots flew a rescue mission that next day. After that mission, the helicopter was once again “red tagged” by the mechanic and the blade was ultimately replaced.

In reviewing this allegation, this Office can only review felony violations for viability as we are now beyond the statute of limitations for both gross misdemeanors and misdemeanors. The specific allegation by the SOAR Team is felony coercion on the part of the pilot. Sgt. Lorusso reported in his interview that he spoke with the mechanic who put the helicopter back in service and claimed the mechanic said that the pilot “got in his face” and told him multiple times to “put it back in service.” This was the extent of the reported conversation and there was nothing articulated by Sgt. Lorusso to support an allegation of any immediate threat of physical force as required to charge felony coercion.

This Office contacted the mechanic who was alleged to be the victim of the felony coercion. He stated, and later confirmed in writing, that this entire incident was blown out of proportion by the SOAR Team. He was specifically asked if the pilot forced him to put the helicopter back in service and adamantly denied that he was the victim of a crime. He indicated that he does not work for the pilot, but works for LVMPD, and the pilot has no authority over the maintenance department. He further stated he would never allow a pilot to influence him or his opinions, especially if it would put another crew in jeopardy. He was deeply concerned that he was being accused of being complicit in a “cover-up” of the blade strike. He indicated there was no “cover-up.” The blade was inspected, great efforts were taken to ensure the safety of the aircraft and it was all documented on the aircraft’s maintenance logs.

Consequently, since the alleged victim of the crime denies that he was a victim, confirming that he was not compelled to do an act which he had a right to abstain from doing, this allegation is not viable for prosecution. Furthermore, the facts of the coercion as alleged by Sgt. Lorusso, regarding how the alleged victim mechanic was forced to put the helicopter back in service, fall short of the required elements of felony coercion. There was no disclosure of any criminal wrongdoing at the time of the incident to LVMPD or when the alleged suspect pilot retired from the unit, nor was there any

disclosure at any time of any threats or intimidation by the mechanic to the NTSB or the FAA. The only alleged disclosure came when an investigation into the Air Support Unit was underway and when it was known that someone would be looking into this incident. Therefore, given the credibility issues, the remoteness in time, the insufficiency of the facts to meet the elements of the crime, and the alleged victim's denial that he was a victim, we conclude that we could not prove this charge beyond a reasonable doubt. Therefore, there are no viable charges for criminal prosecution and this allegation does not rise to the level of improper governmental action.

## B. LVMPD's Handling of SOAR Team Assessment and Report

In investigating how employees of LVMPD handed the SOAR Team's assessment and subsequent report, it is important to first look at the SOAR Team's creation. In the fall of 2012, Executive Staff at LVMPD requested that there be an internal assessment of the Air Support Unit after the Unit had two aviation incidents within a relatively short period of time. Ultimately, LVMPD wanted to know where the Air Support Unit was currently, where it came from, and where it should go in the future.

The assessment began as a fact finding mission without the need to blame, finger-point, ridicule, or opine. The end goal was to establish a strategic plan for the Air Support Unit with objectives that were specific, clear, measurable and achievable. This would be accomplished through various recommendations made by the SOAR Team. Most importantly, the ultimate goal was to provide the Sheriff with a report giving recommendations for changes to the Air Unit which would foster a new culture, increase safety and training, and improve protocols and procedures. It was intended that the SOAR Team go on a historical fact finding mission, look at crash data, look at cultural issues past and present, review current practices and figure out how the Unit got there, and interview employees both past and present who could provide insight.

The assessment was assigned to the Critical Incident Review Team ("CIRT") under the Office of Internal Oversight ("OIO"). Two officers with increased knowledge of the Air Unit were temporarily assigned to assist: Lt. Guedry and Sgt. Lorusso. The members tasked with this review came to be known as the SOAR Team, and included Lt. Guedry, Sgt. Lorusso, members and staff from CIRT and various support staff. During the initial discussion of the scope, procedure, timeframe, and direction of the project, many CIRT personnel were involved, including Deputy Chief Primas, who was then Captain in OIO, Lt. LaRochelle, then Lieutenant in CIRT, Sgt. Black, Lt. Guedry, Sgt. Lorusso, support staff, and various other employees.

Given that this assessment was being conducted under CIRT, all CIRT protocols were to be followed. Specifically, this included confidentiality and internal review. CIRT reviews are considered highly confidential due to the sensitive nature of the materials being accessed, including confidential internal personnel files, confidential internal reports,

employee evaluations, opinions from current and former employees, and medical information. Additionally, when an assessment is being conducted to uncover information needed to make improvements and changes, it is imperative that those conducting the assessment are able to elicit complete, open, honest, and accurate information from whatever source necessary. An employee who knows his or her response will be made public may withhold important information for fear of retaliation or prosecution. If the goal of an assessment is to ferret out the good and the bad such that recommendations can be made for the betterment of the Unit being assessed, all information must be considered without fear of those providing insight. Therefore, all members of the SOAR Team were required to and did sign confidentiality agreements which stated that they were expected to keep confidential documents secure and were prohibited from discussing any confidential information outside of CIRT without prior approval. This is consistent with LVMPD's policy that all records under CIRT, as well as verbal topics discussed, are confidential and are not to be discussed or shared with any unauthorized persons without prior approval. Finally, once the assessment was completed, any report drafted by the SOAR Team was to follow CIRT's extensive internal review process.

Lt. Guedry confirmed during his interview that the SOAR Team's report was intended to be internal and confidential. He stated that it was a report written for the "eyes of the Executive Staff" only, that it would never be a public report, and was of the opinion that the Air Support Unit would not even have an opportunity to review the final document beyond receiving their recommendations, thus making the recommendations the most important piece of the forthcoming report. He confirmed that the assessment was to focus on safety and he agreed they were not trying to hold people accountable. At an early SOAR Team meeting in November of 2012, it was determined that the recommendations for change were to be based upon fact and detailed in an objective report. Lt. Guedry agreed he did not want a subjective report. He further stated in his interview that when he told the Air Support Unit that this assessment was not about accountability, he told them that "they had an ear" and to "trust him."

The deadline for the completion of the review was never specifically addressed, other than the understanding that it was essential that recommendations were made and implemented in a timely manner. Simultaneous with the SOAR Team's assessment, personnel changes were already happening in the Air Support Unit and they were making their own changes to policy and procedure. Additionally, the SOAR Team would provide various status updates to CIRT and the Air Support Unit that included recommendations to be promptly implemented given that "time is of the essence" when dealing with safety concerns.

The SOAR Team continued with their investigation until roughly May of 2013 when Deputy Chief Roberts came on board as a Captain in OIO. He met with Deputy Chief Primas, who was the outgoing Captain, to discuss the SOAR Team's progress. Deputy Chief Roberts was brought up to speed on the SOAR Team's background and their

progress. He stated during his interview that he felt little progress was made in the five months of the investigation and wanted to know where the investigation stood. It was discovered at this meeting that the SOAR Team wished to conduct interviews with current employees under NRS 289 with “subject notices” instead of “witness notices.” Subject notices involve a written notice to a peace officer “who is the subject of an investigation” into alleged misconduct and results in a very limited and narrowly tailored interview of that peace officer regarding the alleged misconduct. Witness notices are more general and require the peace officer to attend and participate. Under both notices, the statements made by the peace officer are internal and generally cannot be used against them in any subsequent criminal proceeding pursuant to Nevada case law. Knowing that blame or accountability was not the direction a CIRT review should be taking, Deputy Chief Roberts asked the SOAR Team to hold off until he could consult then Undersheriff James Dixon, who has since retired. While Lt. Guedry and Sgt. Lorusso confirmed that at the start of their assessment it was not about accountability, they felt they had no choice but to go forward with the subject notices. Although Lt. Guedry claims that it was Deputy Chief Primas’ idea to use them, Sgt. Lorusso stated in his interview that it was his own idea to do so. Deputy Chief Primas and Deputy Chief Roberts both stated in their interviews that it was the SOAR Team who wanted to go forward with subject interviews and expressed that they each disagreed.

Deputy Chief Roberts discussed this information with Undersheriff Dixon to confirm that subject interviews were not the direction to take when the purpose and scope of the assessment was to fact find, gain as much truthful information as possible, and promote an environment to gain cooperation. In approximately May of 2013, the SOAR Team presented their findings to Undersheriff Dixon, as well as Deputy Chief Roberts. Questions began to arise as to the direction the SOAR Team was taking with the employee interviews and their new focus on blame and accountability. The assessment was ultimately terminated and the SOAR Team was directed to draft their report. In both of their interviews, Lt. Guedry and Sgt. Lorusso acknowledged that they did have enough information to put a report together and list recommendations, but felt there was still more to be done in the assessment. Sgt. Lorusso stated that they did not have enough time to write the report. However, Lt. Guedry was the one who gave the SOAR Team the deadline of July 23, 2013, to get the report written because he wanted it done before he left for a three week vacation. Deputy Chief Roberts was of the opinion that a number of items contained in the narrative of the SOAR report were not even related or connected to the final recommendations, and that a large number of the final recommendations were standard and taken from national standards that, in reality, the SOAR Team knew about on day one.

According to CIRT policy, before the document became a final administrative document, it was to go through CIRT’s internal peer review process. However, by the end of the assessment, it was Lt. Guedry’s belief that they were no longer answerable to CIRT. He claims that the SOAR Team was on its own, that he was in charge, that this was an investigation, people would be held accountable, and he was not participating in any

review process. He stated he believed that his investigation was “too serious” to require following LVMPD policies about internal CIRT review or to follow OIO procedures and protocols. However, he did not articulate anything to suggest that Sheriff Gillespie or any Captain in CIRT agreed with this belief and we have not received any confirmation from LVMPD that they acquiesced to this massive shift in policy and procedure that would have allowed SOAR to be its own unit, free from oversight or review.

Once the report was completed, Lt. Guedry emailed it directly to Undersheriff Dixon. The report did not go through even one level of internal review in CIRT. While Sgt. Lorusso confirmed that the report was not vetted, Lt. Guedry claims that the SOAR Team vetted it themselves. The unthinkable happened hours after the report was turned in: Officer Vanbuskirk of Search and Rescue lost his life during a rescue operation.

Lt. Guedry claims part of the alleged improper governmental action is how LVMPD proceeded after the SOAR report was provided to then Undersheriff Dixon. According to Lt. Guedry, months went by before he heard from anyone about his report and that was “wrong.” However, Deputy Chief Roberts stated that LVMPD was dealing with the loss of Officer Vanbuskirk and the corresponding investigation into that accident.

Lt. Guedry further claims that he told Undersheriff Dixon that his report was a final report, and that he would not be rewriting anything. This is clearly contrary to LVMPD policy. Even if we accept as true that Undersheriff Dixon approved the SOAR Team’s bypassing of the internal review process, and agreed with Lt. Guedry that there would be no rewrite of the SOAR report, Sheriff Gillespie, for whom the report was intended, stated he was disappointed in the SOAR report. Sheriff Gillespie stated in affidavit response to inquiry by this Office that the SOAR report contained “unsubstantiated or sole source opinions asserted as fact in almost every paragraph on every page of the entire report.” He believed “it contain[ed] confidential personal information and assertions of opinion stated as fact that [he] believed could potentially be slanderous.” Therefore, it was not the report he wanted or asked for, it was not the report that was intended to be the final product of his SOAR Team, and he demanded it be revised as a professional, useable document.

Lt. LaRochelle stated that while the SOAR report was something that was “clearly outside a product that [they] would create at CIRT,” there were aspects that were interesting and of value to the assessment. He stated that the recommendations as they were presented were “useful” in relation to the intent of the assessment in establishing a roadmap on how to improve the Air Support Unit. He stated that as he got further through the SOAR report, he came to “a very poor realization that [it] was more fault-finding and hindsight looking as opposed to forward thinking and positively addressing issues.” He felt as if there was a lot of subjective negativity in it that would not be present in a professional CIRT report. He indicated under CIRT, they deal with facts, not one person’s unsubstantiated opinion. He stated that he “did not like how they

categorized people in that report, and felt like that was dangerous, that it was unprofessional, and that it came across attacking and we weren't being fair to those employees in the review process." The report, to him, expressed a lot of emotion and was not a well-rounded, balanced report. While he admits he did not finish the narrative of the report, giving up after 40 or 50 pages due to frustration, he did look at the historical information and charts. Finally, he indicated that even though the delivery of the information was inappropriate and unprofessional, the objective, neutral, and fact-finding content was still useful, relevant information.

According to Deputy Chief Roberts, the SOAR report was not a professional document of which he would be proud. He stated that the narrative of the report improperly contained medical information, uncorroborated sole-source information, and "opinions stated as fact." The tone of the report was angry and negative and that this theme or tone was unnecessarily repeated over and over again. He indicated that the matrix of recommendations were fine, even though some were slanted and contained information that generally would not be placed into a report like this. He indicated this was supposed to be an objective, neutral report, but it was not. He also stated even though some of the information was uncorroborated, biased, sole-source opinion, or negative, it would still be information that they would consider in effectuating change, confirming he as well did not take issue with the content of the report, but rather with the delivery of the information.

Deputy Chief Primas stated his first reaction to reading the SOAR report was wondering who reviewed it and indicated he was disappointed in the final product. He was well aware that the SOAR report was supposed to undergo the internal CIRT review process to "ensure that it's an objective report based on facts and measured against standard[s]." In his opinion, the SOAR report "reeked of subjective statements" and included conclusions based upon sole-source information. He further confirmed that the historical piece, overlooking the subjective language, contains incredibly useful information, confirming he as well did not take issue with the content of the report, but rather with the delivery of the information.

Therefore, based upon these interviews it is clear that LVMPD wanted a professional, objective, neutral report. They wanted the angry tone, negativity, subjectivity, and fantastically-reached conclusions appropriately vetted and changed into a professional report. They did not request the content, historical piece, or recommendations to be changed or softened, as that information was highly relevant to effectuating change and satisfying the stated purpose of their assessment.

Sheriff Gillespie and Undersheriff Dixon therefore disagreed with Lt. Guedry's allegation that this document was the final report. Even Lt. Guedry admitted in his interview that he was told the report needed to be more professional. He never claimed that he was asked to soften it in anyway, minimize it, or remove "ugly" information. There is nothing to suggest that LVMPD wanted to bury any information, soften, or minimize any

information collected by the SOAR Team. It appears that is a conclusion Lt. Guedry reached on his own accord and which has been shown to be without merit.

The SOAR Team was contacted through Lt. Guedry and directed to participate in the internal review process, and Lt. Guedry admittedly refused. It appears he was insubordinate going forward as both Lt. Guedry and Deputy Chief Roberts stated that Lt. Guedry was directed by supervising officers to participate in the internal review process and refused. It was clear that no one was satisfied with the quality of the report. It appears Lt. Guedry's refusal to participate contributed greatly to the reason LVMPD decided the report, as written, could not be released in any format to the public. This Office finds there is no violation of state law or regulation when a Sheriff disagrees with one of his employees; especially when it was an employee who sought to circumvent known policies and procedures because of his own belief that his review was "too serious" to follow established protocol.

When Sheriff Gillespie discovered that the report did not go through the normal internal CIRT review process and found that the author refused to participate in the normal review process, he directed that the report be reviewed "for the purpose of extrapolating any useful recommendations regarding changes to policy, personnel and resource allocation to complete the original task," which would be documented in a public report. The content of the SOAR report itself was never at issue, rather it was the delivery of that information and subjective conclusions drawn by the SOAR team. Without the SOAR team's participation, LVMPD was not in the position to complete the internal review process. Therefore, LVMPD had no choice but to scrap any hope of creating a professional document out of the SOAR Team's report, and went forward with the public report only. Consequently, LVMPD took all 70 recommendations made by the SOAR Team in the SOAR report and made those public along with a brief statement of the purpose of the assessment.

Consequently, this is not a situation of a report being changed, minimized or softened. There is no evidence to support a finding that the SOAR Team uncovered information that was vital to the health, safety, and welfare of the Air Support Unit that was suppressed or buried from LVMPD staff or members of the Air Unit in charge of institutionalizing change. All that information exists in its entirety today. Had the SOAR Team participated in the rewrite and internal review process, the SOAR report would still be a confidential, internal administrative report. Once that internal administrative report was completed, the public report and subsequent updates that were released detailing the recommendations for change still would have been completed as per CIRT policy.

This is in line with what Lt. Guedry reported in his interview. The internal administrative document that was to be initially created by the SOAR Team was never intended to be a public report. It is therefore conflicting to claim that LVMPD is involved in criminal activity for failing to release a report he states was to be a private, internal report all

along. He confirmed that the report was written for members of the Executive Staff only. He knew that since the assessment was housed in CIRT, LVMPD would ultimately make a public report regarding the assessment and the recommendations for change.

Even though the report had not been vetted and internally reviewed, and knowing it contained relevant information, the SOAR report was still disseminated to the Air Unit for their use in effectuating change and implementing the final recommendations. The information contained therein was referred to in discussions on implementing changes in the Air Unit. The SOAR report still exists, as originally drafted, and is maintained in LVMPD CIRT as an internal document. If there is change within Air Support and a new Captain wanted to review the report, it is available and reviewable within CIRT.

The public report released by LVMPD only lists two aviation accidents, September of 2012 and May of 2012. It did not contain information regarding the November 2011 blade strike uncovered by the SOAR Team. Lt. Guedry and Sgt. Lorusso claim this omission qualifies as a false or misleading statement in violation of NRS 197.130. It is not disputed that someone in LVMPD ordered the assessment to be conducted because of the May 2012 and September 2012 blade strikes. The November 2011 blade strike was not known to key members of LVMPD at that time. Therefore, to say that the SOAR assessment was started because of a blade strike that was unknown at that time would have been false. The November 2011 blade strike was uncovered during the assessment, along with the numerous other incidents the SOAR Team looked into, and was part of the information gathered during and results of the assessment. It therefore is properly a part of the historical overview, timeline of aviation accidents and incidents, and factual background to consider in making change to the Air Support Unit. This claim is meritless.

When this assessment first began, everyone was on board that it was about forward thinking and fact finding and to interview employees to gain information and evidence and to come up with recommendations for change. Even Lt. Guedry admitted that he told current employees of the Air Support Unit that the assessment was not geared toward holding people accountable, that they had an ear, and to trust him. Sgt. Lorusso appears to be the only one who refused to acknowledge this. Rather, he stated that LVMPD left it open as to whether people would be held accountable down the road. However, in both of their interviews they acknowledge they wanted to give everyone immunity and were not concerned with accountability.

To take a project whose mission was to find facts, identify concerns, and make recommendations without regard to personal blame and to arbitrarily change it to a mission that encourages that those providing the information and facts be internally, criminally, or federally prosecuted would damage all future projects whose aim is to look forward to better communication and identification of concerns so that they can be addressed or remedied. It will suppress future growth and change, and that is the real danger to the safety of all Units within LVMPD.



Consequently, it is the opinion of the District Attorney's Office that "the Department's" handling of the SOAR report and its conduct relating to the assessment as alleged in the request does not constitute improper governmental action. The allegations that the recommendations contained within the original SOAR report were minimized, softened, or that they underwent substantial or significant changes are belied by the fact that the SOAR report still exists, in its entirety, to this day. Furthermore, "the Department's" decision to keep this report confidential and not release it to the public not only fails to rise to the level of improper governmental action, but it appears to be consistent with case law and LVMPD policy.

## **Confidentiality**

Confidentiality is relevant to an investigation by this Office under NRS 289.110(4), which states that this statute does not authorize a peace officer to disclose information if the disclosure is otherwise prohibited by law. This Office cannot ignore LVMPD's claims that the SOAR report appears to be confidential. It is difficult for this Office to come to any other conclusion. The report was generated by the CIRT team, a highly confidential unit within the LVMPD organization. Lt. Guedry and Sgt. Lorusso signed agreements as to the confidential nature of the investigation. The report itself, as authored by Lt. Guedry, Sgt. Lorusso and Det. Goltart, includes a bright red disclaimer on the front of the document: Confidential Internal Assessment, Not for Public Release. That disclaimer is repeated on every page. Furthermore, within CIRT's guidelines, all information discussed and communicated is to be confidential.

However, the issue of privilege is of minimal concern in this Office's investigation under NRS 289.110. Even though pursuant to NRS 289.110(4), it appears we should not have been given certain information by Mr. Aldrich, Lt. Guedry, or Sgt. Lorusso, the reality is we have it, LVMPD knows we have it, and we have reviewed it and all materials provided as part of our investigation into the alleged claim of improper governmental action.

At the direction of LVMPD and at the conclusion of our investigation, the SOAR report will be turned in to LVMPD's general counsel as requested. Furthermore, since we were provided with information from the Officer Vanbuskirk investigation that appears to be confidential as well, it will likewise be returned.

## **Conclusion**

The July 23, 2013, report created by the SOAR Team was not changed, modified, minimized, or softened. That report exists as written by the SOAR Team as an administrative internal report, even though it contains opinions, uncorroborated claims, and claims geared towards accountability, misconduct, and assigning blame for past

incidents. It is available to key members of LVMPD staff who need it to implement change or make new policy within the Air Unit. It appears, therefore, that it is a pre-decisional document that was used and reviewed by Executive Staff prior to making policy and operational decisions.

Contrary to the allegation that “higher-ups” in LVMPD did not like the information uncovered because it was too “ugly,” almost everyone involved at LVMPD praised the work done by the SOAR Team. Consequently, the information uncovered by the SOAR Team was not considered unwanted or bad information that was subsequently buried. The historical information uncovered by the SOAR Team will continue to be a valuable resource to the Air Support Unit going forward, and also to the NTSB in their investigation. It is clear that Executive Staff and Sheriff Gillespie were disappointed in the work product of the SOAR Team and the final report they produced.

The most important aspect of the SOAR Team was creating recommendations for change within the Air Unit. All recommendations made by the SOAR Team were included in the public reports, and in making decisions about those recommendations, staff of LVMPD used the information obtained during the SOAR Team’s investigation. In the SOAR report, the SOAR Team documented what it wanted to do but did not get a chance to, like visit other law enforcement agencies with air units. Some of these items have been done, and since July 23, 2013, the Captain and Chief of LVMPD’s Air Unit made those visits. LVMPD has made additional changes that were not suggested in the SOAR report as well. As of the latest version of the public report, dated June 30, 2014, it is apparent they are still using the information collected during the SOAR Team’s review to make the difficult decisions regarding changes to the Air Unit.

Consequently, “the Department’s” handling of the SOAR Team, the assessment and subsequent report does not rise to the level of improper governmental action as alleged in the initial letter requesting an investigation, and therefore these claims are without merit.

Submitted November 19, 2014

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By

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