



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0232

Issued Date: 10/19/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.300-POL-3 (4) Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #4	<u>Seattle Police Department Manual</u> 8.300-POL-3 (8) Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): As With the Initial CEW Application, Each Subsequent Application of a CEW Must Be Individually Justified (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #5	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)

OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employee was dispatched to a disturbance at the subject’s residence.

### **COMPLAINT**

The complainant, a supervisor within the Department, alleged that the Named Employee applied three Taser cycles to the subject after the Named Employee fired his Taser in the dart mode during an incident, which may have violated policy.

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Interview of the subject
3. Review of In-Car Videos (ICV)
4. Search for and review of all relevant records and other evidence
5. Interviews of SPD employees

### **ANALYSIS AND CONCLUSION**

The complainant alleged that the Named Employee may have used force, a Taser, on a subject that was not reasonable, necessary and/or proportional. The preponderance of the evidence from this investigation showed the Named Employee deployed a Taser on the subject and then re-activated the Taser two more times. This means the subject received three cycles of energy from the Taser. The subject was in his apartment on an upper floor of an apartment building, throwing furniture and other large items out the window to the alley below. The evidence suggested the subject was experiencing a crisis of some sort and exhibited behavior consistent with a condition sometimes called “excited delirium.” The first use of the Taser by the Named Employee was shortly after he and two other officers made entry to the subject’s small apartment for his safety and to prevent him from falling or jumping out the window. The subject started to charge at the Named Employee and was about four feet away when the Named Employee deployed the Taser darts and the subject experienced the first energy cycle. The subject fell to the ground and the officers were able to get a handcuff on one of the subject’s wrists. The officers struggled with the subject as he actively resisted and tried to roll over and get up. Observing the strength and determination of the subject, the Named Employee was concerned for his safety and that of the other two officers. This was when the Named Employee issued a verbal warning and then activated the Taser whose wires and probes were still attached to the subject. This second cycle of energy allowed the officers to get the second handcuff on the subject’s wrist. The subject then stopped struggling to get up and physically

resisting the officers. One of the officers left the apartment to retrieve some equipment from his police car, leaving the Named Employee and another officer with the subject. After a short time, the subject began to struggle again and kicked his leg so as to strike the Named Employee. After a warning to stop, the Named Employee activated the Taser for a third cycle. The subject stopped struggling and thereafter was safely transported from the scene. The OPA Director found each use of the Taser to be reasonable, necessary and proportional, given the totality of the circumstances.

The complainant alleged that the third activation of the Taser by the Named Employee may have violated the SPD Policy prohibiting the use of force on a restrained prisoner absent exceptional circumstances to prevent injury, escape or destruction of property. Only the third cycle of the Taser was done while the subject was fully handcuffed. The OPA Director found the preponderance of the evidence showed the use of force was necessary to prevent injury to the officers and the subject. The subject was agitated and physically resistant. He was also large and strong; so much so that the Named Employee and officer with him were having difficulty controlling him. The Named Employee was concerned he would be struck by the subject's foot as he started kicking. The Named Employee was also concerned the subject might be able to get up and either attack the officers or jump out the window. Given the circumstances, these were reasonable concerns.

The complainant alleged that Named Employee's use of the Taser did not comply with the restrictions placed on that device by policy. SPD Policy §8.300-POL-3(4) states, in part:

*Officers may use CEWs in the following circumstances:*

- *When a subject causes an immediate threat of harm to the officer or others; or*
- *When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used.*

The preponderance of the evidence showed that, for each of the three uses of the Taser by the Named Employee, the subject posed an immediate threat of harm to the officers and/or himself.

The complainant alleged that the Named Employee failed to attempt to use de-escalation tactics before using the Taser the first time. The preponderance of the evidence showed that, when the Named Employee and the other two officers entered the subject's apartment, they tried to speak with the subject and coaxed him to get away from an open, nearly floor to ceiling window. The subject's response was to turn and charge at the officers. At that point, further de-escalation tactics were not feasible and the Named Employee used his Taser to stop the subject's charge. The OPA Director found that the Named Employee and other officers initially attempted de-escalation, but found it not effective as evidenced by the subject's behavior.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The preponderance of the evidence showed each use of the Taser to be reasonable, necessary and proportional, given the totality of the circumstances. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #2

The preponderance of the evidence showed the use of force was necessary to prevent injury to the officers and the subject. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited*.

#### Allegation #3

The preponderance of the evidence showed that, for each of the three uses of the Taser by the Named Employee, the subject posed an immediate threat of harm to the officers and/or himself. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable*.

#### Allegation #4

The preponderance of the evidence showed that, for each of the three uses of the Taser by the Named Employee, the subject posed an immediate threat of harm to the officers and/or himself. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): As With the Initial CEW Application, Each Subsequent Application of a CEW Must Be Individually Justified*.

#### Allegation #5

The preponderance of the evidence showed that the Named Employee and other officers initially attempted de-escalation, but found it not effective as evidenced by the subject's behavior. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force*.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*