



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0375

Issued Date: 12/16/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Timeliness)
Allegation #2	<u>Seattle Police Department Manual</u> 8.400 (2) Use of Force Reporting and Investigation: Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Timeliness)
Allegation #3	<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> (Timeliness)
Allegation #4	<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> (Timeliness)

Allegation #5	<u>Seattle Police Department Manual</u> 6.180 (2)(e) Searches-General: There are Specific Exceptions to the Search Warrant Requirement / Search Incident-to-Arrest / Custodial Search (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Timeliness)
Allegation #6	<u>Seattle Police Department Manual</u> 16.090 (6) In Car Video System: Employees Will Record Police Activity (Policy that was issued February 1, 2015)
OPA Finding	<b>Not Sustained</b> (Timeliness)
Allegation #7	<u>Seattle Police Department Manual</u> 16.090 (5) In Car Video System: Employees Will Log in and Perform a System Check (Policy that was issued February 1, 2015)
OPA Finding	<b>Not Sustained</b> (Timeliness)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employee arrested a subject.

### **COMPLAINT**

The complainant alleged that the Named Employee used excessive force when arresting a man in crisis. Upon review of video, OPA added allegations of failure to record In-Car Video (ICV), failure to report use-of-force, as well a failure to articulate in report need for search of complainant.

### **INVESTIGATION**

The OPA investigation included the following actions:

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

## **ANALYSIS AND CONCLUSION**

The complainant alleged that the Named Employee used excessive force on a handcuffed subject. The complainant observed a male standing in the street yelling and screaming. The complainant said the Named Employee arrived and immediately placed the man in handcuffs. The complainant reported that the Named Employee grabbed the subject by the handcuffs and used the handcuffs to force him down to the ground. The complainant saw the male cry out in pain when this happened. The complainant also said that when the subject turned around to look at the Named Employee, the Named Employee dug her fingers into the subject's shoulder with such force he cried out in pain.

The Named Employee responded to a call of a man in crisis. This was the second time during her shift that she responded to handle a call involving the same subject. During her OPA interview, the Named Employee stated she was close to the call when it was dispatched and was the first officer to arrive on scene. When the Named Employee arrived she observed the subject and felt he was "even more upset" than when she had interacted with him a short time before. The Named Employee told OPA she felt she needed to move in right away without a cover officer because the subject posed a danger to the general public. She said the subject was taking up a lot of space on the sidewalk and "ducking and juking" towards people that made them "shy away from" the subject. OPA obtained private security video from the hotel that showed the sidewalk in front of the hotel. There was no audio to go along with the video. This video showed the subject arriving on foot in front of the hotel and the entire interaction between him and the Named Employee. This security video did not support the officer's statement regarding the threat posed by the subject. The subject could be seen pacing and standing in front of the building for almost 20 minutes before the Named Employee arrived. Several pedestrians walked past him during that time, some coming quite close. The subject did not make any sudden or seemingly threatening moves towards them, nor did they appear to shy away from him. By the time the Named Employee arrived on the scene, no one other than the subject was in view.

After the Named Employee arrived and got out of her police car, she immediately approached the subject and handcuffed him. The Named Employee told OPA she put the subject in handcuffs for her safety based on her past interactions with him and his current threatening behavior. The Named Employee also told OPA that, when she ran the subject's name through the system in her car as she drove to the call, she discovered a hazard alert for the subject based on a previous assault on an officer. The Named Employee stated the subject was not under arrest at that point. SPD policy does permit officers to handcuff persons during a non-custodial detention, however the officer must articulate the specific reasons that made it reasonable to do so.

Once the subject was handcuffed, the Named Employee briefly frisked the outside of his clothing and then searched his pockets. Officers must have individualized articulable facts that support a reasonable belief the subject is armed in order to justify a frisk. If a frisk is justified during an investigatory stop it is limited to the outer clothing and does not allow for a more

intrusive search of the detainee's pockets. An officer is prohibited from removing the contents of a person's pockets during a frisk unless the officer has a reasonable belief there may be a weapon in the pocket. During her OPA interview, the Named Employee said she conducted a frisk of the subject, not a search. However, the video clearly showed the officer reaching into the subject's pockets, removing items from them and putting those items on the hood of the patrol car. This was clearly a search during a non-custodial detention and not incident to arrest. Later, following the Named Employee's investigation, she placed the subject under arrest. During her OPA interview, the Named Employee was unable to articulate specific facts or reasons why, at the time she frisked the subject and searched his pockets, she believed he was armed. The Named Employee was also unable to articulate a reason why, when she took things out of the subject's pockets, she thought they were weapons or reasonably appeared to be so.

Following her search of the subject's pockets, the Named Employee told the subject to sit down on the curb. The subject did not immediately sit down and the Named Employee walked around behind the subject and took hold of his handcuffs. The Named Employee then pulled back and down on the handcuffs two times. This caused the subject to stumble backwards. His heel struck the curb, he appeared to partially lose his balance and then fell back onto the curb in a seated position. The Named Employee had hold of the handcuffs as the subject moved back and fell/ sat down. This could be seen on the security video. In her OPA interview, the Named Employee said she did not believe she used any reportable force on the handcuffed subject. She described her actions with the handcuffs and the subject's movement backwards and down to a sitting as "escorting." The Named Employee said the subject did not fall to the sidewalk.

The Named Employee told OPA she was concerned about the increasing volatility of the subject and wanted to get him sitting down as quickly as possible in order to decrease his ability to suddenly assault her. This was a legitimate concern and getting the subject into a seated position would have given the Named Employee a tactical safety advantage. However, using force on a handcuffed subject by pulling him backwards by the handcuffs was not a reasonable action to take. This was particularly true in light of the Department's clear prohibition against using force on handcuffed persons in all but exceptional circumstances. The subject made no attempt or threat to assault the Named Employee, or anyone else at that particular time. He did not appear to be attempting to escape and had not tried to damage any property. The Named Employee's use of force by pulling the subject backwards by the handcuffs also placed the subject in danger of being injured. Due to being handcuffed, he was unable to use his hands to protect himself had he fallen backwards with enough force to strike his head or other vulnerable parts of his body.

The complainant reported to OPA that the subject cried out in pain when he hit the sidewalk. The complainant associated this apparent cry of pain with the subject falling to the ground. The Named Employee acknowledged to OPA that the subject expressed pain. However, the Named Employee stated the subject had said his ear hurt and complained of ear pain throughout this and her previous interaction with him. The Named Employee did not associate the subject's expressions of pain with anything she did, including pulling on the handcuffs to bring him down

to the ground into a seated position. She told OPA she assumed they were related to his ear pain. The Named Employee did not ask any questions or try to ascertain why the subject was complaining of pain. Given the temporal connection between pulling the subject to the ground and his expression of pain, the Named Employee had an obligation to determine if he had been injured or experienced pain because of her use of force. Officers cannot assume complaints of pain coincidental with a use of force are related to a previous injury or some cause other than the force. The integrity of SPD's force reporting policy rests on an officer's obligation to notify a supervisor whenever there is a complaint of pain associated with the use of force, including when the association is a temporal one. For these reasons, the Named Employee had an obligation to report her use of force to her supervisor.

The complainant also reported she had seen the Named Employee press her fingers into the subject's shoulder with enough force to cause him to cry out with pain. Shortly after the subject was taken down to a seated position by the Named Employee, a witness could be seen on the security video coming out of the hotel. This person walked over to the Named Employee and began speaking with her. While the Named Employee and the witness were speaking, the subject, still seated facing the street, turned to look at the Named Employee and the witness. The Named Employee took a step or two to the subject, grabbed the subject's shoulder with her hands, placed her knee against his back and pushed him around so he was back facing the street. The security video did not provide enough resolution to see if the Named Employee was "digging" her fingers into the subject's shoulder as reported by the complainant. Due to the absence of audio, it was also not possible to verify the complainant's recollection that the subject cried out in pain when the Named Employee grabbed the subject's shoulder.

The Named Employee was in uniform and driving a marked patrol car equipped with ICV. She did not log into the ICV system, perform a systems check or activate ICV when she took police action. When OPA asked the Named Employee why she did not sign in or perform an ICV systems check, she said she recently transferred from another unit and the vehicle she was driving frequently had computer problems. When asked if she reported these problems to a supervisor, the Named Employee said "no." The Named Employee logged into ICV after the incident. She knew how to log in and it seemed apparent the system was operational at the time.

The Collective Bargaining Agreement between the City and Seattle Police Officers Guild requires that proposed discipline be issued within 180 days of when OPA received a complaint of misconduct. In this particular case, this contractual time limit was not met. As a result, no discipline could be imposed in connection with any misconduct discovered as a result of this complaint investigation. In addition, an arbitrator has ruled that any "sustained" findings in connection with an OPA investigation are to be considered disciplinary in nature. For this reason, although the preponderance of the evidence from this investigation supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, findings of Not Sustained (Timeliness) have been issued for all allegations in this complaint and no discipline will be imposed.

As required under SMC § 3.28.812 (B), the OPA Director has sent a letter to the Mayor and City Council notifying them that “sustained” findings and discipline could not be issued in this case because the 180-day time limit was not met.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

#### **Allegation #2**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Use of Force Reporting and Investigation: Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force*.

#### **Allegation #3**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Using Force: Use of Force: When Authorized*.

#### **Allegation #4**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Using Force: Use of Force: When Prohibited*.

#### **Allegation #5**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Searches-General: There are Specific Exceptions to the Search Warrant Requirement / Search Incident-to-Arrest / Custodial Search*.

**Allegation #6**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *In Car Video System: Employees Will Record Police Activity*.

**Allegation #7**

Although the preponderance of the evidence supported the conclusion the Named Employee did not comply with the requirements of the SPD Policies specified in the allegations, the contractual time limit to propose discipline was not met. Therefore a finding of **Not Sustained** (Timeliness) was issued for *In Car Video System: Employees Will Log in and Perform a System Check*.

*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.*



# City of Seattle

Office of Professional Accountability

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December 14, 2016

Mayor Ed Murray  
Seattle City Hall  
600 4<sup>th</sup> Avenue  
Seattle, WA 98124-4769

RE: Missed 180-day Deadline in OPA Case No. 2016-0375

Dear Mayor Murray:

As required under SMC § 3.28.812(B), this is to inform you that no discipline will result from an OPA Complaint because the investigative time limit specified in the City's collective bargaining agreement (CBA) with the Seattle Police Officer's Guild (SPOG) was exceeded.

The complaint was made to a Seattle Police Department (SPD) supervisor in 2016 by a member of the public who had witnessed an interaction between an officer and a person being detained by that officer. The supervisor contacted the Officer of Professional Accountability (OPA) the same day and forwarded the complaint. The complaint was properly reviewed during the intake process and classified by OPA for Investigation within the 30-day time limit for classification specified in the CBA. Once classified, the complaint was forwarded to the SPD lieutenant supervising the SPD sergeants who conduct OPA investigations. The next month, after the OPA Investigations Unit lieutenant developed an appropriate investigation plan for this case, he assigned it to an OPA sergeant for investigation.

The complainant alleged that the officer had been too rough with the detainee when the officer pulled the subject to a seated position on a curb and later grabbed the subject by the shoulder. OPA's investigation of the incident found that, while the officer used a low level of force to pull the handcuffed subject down to a seated position on the curb, this force was neither necessary nor proportional given the totality of the circumstances. In the course of reviewing this complaint for classification, OPA also noted that the officer may have violated SPD policy by failing to properly use her in-car video system to record her police activity, not reporting her use of force to her supervisor and searching the subject's pockets before the officer had a lawful reason to do so. Given the evidence, I believe that sustained findings were warranted, although the timeliness of the investigation prevented sustained findings from being the ultimate outcome.

Delays at the investigation stage of the process resulted in the untimely completion of OPA's work. The assigned OPA sergeant, who had more than 20 other assigned investigations to work on, waited over 100 days before beginning his investigation of this complaint. Once started, the investigation took only a few weeks. The OPA sergeant forwarded his completed investigation to the OPA Investigations Unit lieutenant 181 days after the SPD supervisor had forwarded the Complaint to

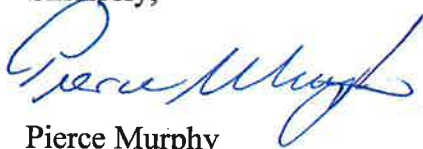


OPA. According to paragraph 3.6(B) of the City's CBA with SPOG, "no discipline may result from the investigation [of a complaint] if the investigation of the complaint if the investigation of the complaint is not completed within one-hundred eighty (180) days after receipt of the complaint by the OPA or by a Department sworn supervisor." Additionally, the investigator's role was not the end of the investigation process. A series of additional review and certification steps still needed to be completed before SPD could issue any proposed discipline, the event that must take place before the expiration of 180 days after a complaint is received. By the time I received the case file for review, certification and recommendation of findings, 204 days had elapsed since the complaint was filed.

While the officer cannot be disciplined for this misconduct because of the missed deadline, her chain of command has reviewed OPA's investigation of this incident so they can provide the officer with appropriate training and supervisory assistance to improve her performance and prevent similar problems in the future.

For my part, I have looked into why the investigation was not completed in a timely manner. While it appears there was no larger systemic issue that caused this missed deadline, there were still opportunities for improvement of OPA processes to prevent a similar occurrence in the future. We have already implemented some identified improvements. The OPA Investigations Unit lieutenant has increased his involvement in and monitoring of cases assigned to his unit for investigation. For example, the lieutenant runs a weekly report from the IAPro case management system and reviews the status of each investigation relative to the 180-day deadline, working with those sergeants whose cases appear to be lagging behind. I have already seen an improvement in the speed and timeliness of investigations. Please feel free to contact me if you need further information or would like to review any of the closing documents from the case.

Sincerely,



Pierce Murphy  
Director, Office of Professional Accountability

cc: Bruce Harrell, Council President  
Lorena Gonzalez, Councilmember  
Kathleen O'Toole, Chief of Police  
Tito Rodriguez, Interim OPA Auditor