



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0400

Issued Date: 10/26/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.300-POL-3 (2) Use of Force Tools: Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): ETS Will Train and Certify Operators Annually (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-3 (6) Use of Force Tools: Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the CEW (Policy that was issued September 1, 2015)
OPA Finding	<b>Sustained</b>
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> (Lawful and Proper)

Allegation #4	<u>Seattle Police Department Manual</u> 8.300-POL-3 (3) Use of Force Tools: Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Who Have Been Trained and Certified to Carry a CEW and Have Been Issued One Must Carry It During Their Shift (Policy that was issued September 1, 2015)
OPA Finding	<b>Removed</b> (Does Not Apply)
Final Discipline	<b>Oral Reprimand (Under Appeal)</b>

<b>Named Employee #2</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 8.300-POL-3 (6) Use of Force Tools: Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the CEW (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 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

**INCIDENT SYNOPSIS**

The Named Employees responded to a call of a suicidal individual.

**COMPLAINT**

The complainant, the Force Review Board, alleged that the Named Employees violated policy regarding the training and deployment of a Taser during an incident. It was alleged that when the Taser was deployed the subject did not pose an immediate threat of harm and was not offering a high level of resistance likely to cause injury to himself or others. In addition, for one Named Employee, training records indicated that the Named Employee was not current with Taser re-certification.

## **INVESTIGATION**

The OPA investigation included the following actions:

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

## **ANALYSIS AND CONCLUSION**

Named Employee #1 carried a Taser between 2000 and 2011. At the time of this incident, Named Employee #1 was not assigned a Taser and was not carrying one himself. The Taser he used in this incident was obtained from another officer. Named Employee #1 was also an adjunct trainer for SPD until 2010. As part of his assignment he assisted in developing the policies and training curriculum for Tasers. This was before the Settlement Agreement between the City and the Department of Justice. Named Employee #1 was an integral part of developing the new policies regarding Taser use. Named Employee #1 acknowledged he had not been recertified in Taser use since 2011 and had not been certified on the new Taser brand. The manual section requiring that an officer carrying a Taser be certified in its use does not specify how frequently the officer must recertify. For this reason, a finding of Not Sustained (Inconclusive) was issued.

The complainant alleged Named Employee #1 did not give a verbal warning prior to deploying the Taser as required by policy. Named Employee #1 was the supervisor on the scene of a suicidal male who was possibly armed with a handgun. He took another officer's Taser in order to incapacitate the subject for an involuntary commitment. Named Employee #1 informed other officers on the scene that he intended to apply the Taser in order to subdue the subject. The Named Employee approached the subject and deployed the Taser without a verbal warning. Named Employee #1 explained in his interview that he did not give a verbal warning because it would have given the subject an opportunity to plan and defeat the Taser application. He stated that he was aware that information on how to avoid the effects of a Taser were discussed on the streets. Named Employee #1 was concerned that giving a warning would increase the subject's ability to defeat the Taser and increase the danger to the officers on the scene. The policy on providing oral warning to subjects prior to deploying a Taser is based on a couple of factors. One is to give the subject an opportunity to surrender prior to deploying the Taser. The other reason is to give warning to officers on scene that the device is about to be deployed. Providing a verbal warning to other officers on scene allows them to prepare for the sound of the deployment, reducing the risk of an officer mistaking the sound of the Taser for a firearm that could result in a reactionary discharge of an officer's firearm. Named Employee #1's logic for not giving oral warning was not consistent with the clear meaning and intent of the policy as it could potentially apply to every Taser deployment, thus rendering the policy ineffective. The preponderance of the evidence showed Named Employee #1 had the time and means to issue a verbal warning before Taser deployment and failed to do so as required by policy. For this reason, a Sustained finding for this allegation was issued.

The complainant alleged that, at the time Named Employee #1 deployed his Taser, the subject did not pose an immediate threat of harm and was not offering a high level of resistance likely to cause injury to himself or others. ICV of the incident showed the subject repeatedly asking the officers to shoot him, hiding his hands, and refusing to fully comply with officers' directions. Named Employee #1 stated he believed the encounter was a potential lethal force incident that could have escalated at any point. He also believed the subject was approaching other citizens creating a more dangerous situation for officers, the subject and the general public. In looking at the totality of the circumstances known to the officers at the time of the incident, it was reasonable for Named Employee #1 to believe that the subject, who had said he was going to shoot officers or himself, was armed with a handgun. It would have been unreasonable to expect the officers to assume the subject was not armed and was only bluffing. The potential for a lethal force encounter was certainly present. In analyzing the Named Employee #1's decision to deploy the Taser, the actions of the subject leading up to the Taser deployment must be considered. At the time of the Taser deployment, the subject was standing stationary with both hands visible, verbally engaged with an officer. His words and actions appeared to be more reasonable than at the beginning of the encounter 22 minutes earlier. The OPA investigation did not reveal any specific action by the subject or other reason that called for immediate action by Named Employee #1. The ICV shows the subject had stopped walking away from the officers and had begun walking back towards them. When the officers told him to take his hands out of his pockets, the subject complied. He was actively engaged in dialogue with an officer and was not making threatening moves or statements at the time. Negotiators had been summoned to the scene and were only a couple of minutes away, along with other resources. However, Named Employee #1 did not check on the estimated arrival time for the negotiators prior to deploying his Taser. Named Employee #1 told OPA he decided the situation needed to be resolved immediately and took action by deploying the Taser.

In his OPA interview, Named Employee #1 spoke about his concern regarding the effect the length of the standoff might be having on one or more of the involved officers. Named Employee #1 noted they had their guns drawn and, for a lengthy period of time, had been vigilant regarding any move by the subject that might signal he was drawing a firearm from his pocket to shoot the officers. It was clear Named Employee #1 was motivated to use the Taser by concerns regarding an imminent threat to the subject's safety as well as officers. Given the totality of the circumstances, the preponderance of the evidence supports a finding of Not Sustained (Lawful and Proper).

The complainant alleged that Named Employee #2 deployed her Taser without first giving a verbal warning as required by policy. Named Employee #2 was assigned by Named Employee #1 to deploy her Taser simultaneous with his deployment. Named Employee #1 then approached the subject and deployed his Taser without providing any warning. Named Employee #2 was not aware Named Employee #1 was going to deploy the Taser at that moment and only deployed her Taser when she realized Named Employee #1's deployment had been unsuccessful. Named Employee #2 observed that, as Named Employee #1 deployed his Taser, officers had advanced to within a couple of arm lengths of the subject. Named Employee #2 considered the situation to be very dangerous for those officers and decided she

did not have time to issue a verbal warning. Given the totality of the circumstances, the preponderance of the evidence supports a finding of Not Sustained (Lawful and Proper).

The complainant alleged that, at the time Named Employee #2 deployed her Taser, the subject did not pose an immediate threat of harm and was not offering a high level of resistance likely to cause injury, per SPD policy. The ICV of the incident showed that the subject repeatedly asked the officers to shoot him, hid his hands, and refused to fully comply with officers' directions. Named Employee #2 deployed her Taser after observing that the deployment by Named Employee #1 had been unsuccessful. Named Employee #2 was aware that Named Employee #1 and his cover officer were "a couple of arm's length away from the subject." This put them dangerously close to a presumably armed subject. Named Employee #2 was concerned for their safety. At the time she deployed the Taser, Named Employee #2 reasonably believed the subject posed an imminent threat of harm to the officers closest to him. Named Employee #2 used her Taser to end this threat. The OPA Director found this deployment to have been in compliance with SPD policy. Named Employee #2 had planned to deploy her Taser simultaneously with that of Named Employee #1, as directed by him. This did not happen because Named Employee #1 failed to give a verbal warning and Named Employee #2 was not aware of the timing of his deployment. Nonetheless, the OPA investigation revealed that Named Employee #2 was not aware SPD policy prohibits simultaneous Taser use. For this reason, Named Employee #2 would benefit from additional training regarding Taser policy.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The manual section requiring that an officer carrying a Taser be certified in its use does not specify how frequently the officer must recertify. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force – BEANBAG SHOTGUN: FTS Will Train and Certify Operators Annually.*

#### Allegation #2

The preponderance of the evidence showed Named Employee #1 had the time and means to issue a verbal warning before Taser deployment and failed to do so as required by policy. Therefore a finding of **Sustained** was issued for *Using Force: Use of Force – BEANBAG SHOTGUN: Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the Beanbag Shotgun.*

**Discipline imposed: Oral Reprimand (Under Appeal)**

#### Allegation #3

The preponderance of the evidence showed that Named Employee #1 was motivated to use the Taser by concerns regarding an imminent threat to the subject's safety as well as officers. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #4

The preponderance of the evidence showed that Named Employee #1 had been trained and certified to carry a Taser, but there was no indication he had been issued one since leaving SWAT in 2011. Therefore the allegation was **Removed** for *Use of Force Tools: Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Who Have Been Trained and Certified to Carry a CEW and Have Been Issued One Must Carry It During Their Shift*.

### **Named Employee #2**

#### Allegation #1

The preponderance of the evidence showed Named Employee #2 reached a reasonable conclusion that was consistent with the exception provided in policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force – TASER/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the TASER*.

#### Allegation #2

Named Employee #2 would benefit from additional training regarding Taser policy. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Using Force: Use of Force: When Authorized*.

**Required Training:** Named Employee #2 should be reminded by her supervisor of the specific guidelines and restrictions placed on the use of a Taser by SPD policy.

*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.*