



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 30, 2019

CASE NUMBER: 2018OPA-1037

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings	Chief's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Sustained	Not Sustained (Training Referral)
# 2	8.300 - Use of Force Tools 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable	Sustained	Not Sustained (Training Referral)
# 3	8.300 - Use of Force Tools 5. Canine Deployment Announcements	Not Sustained (Training Referral)	Not Sustained (Training Referral)
# 4	8.300 - Use of Force Tools 7. Canine Deployments c. Authorization for Off-Leash Canine Deployment	Not Sustained (Management Action)	Not Sustained (Management Action)
# 5	8.300 - Use of Force Tools 7. Canine Deployments a. Off-Leash Canine Deployments...	Not Sustained (Lawful and Proper)	Not Sustained (Lawful and Proper)
# 6	8.100 - De-Escalation 1. 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	Not Sustained (Lawful and Proper)	Not Sustained (Lawful and Proper)

#### Named Employee #2

Allegation(s):		Director's Findings	
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained	Sustained

#### Imposed Discipline

**Oral Reprimand**

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Management Action)

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Management Action)

# 2	8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action	Not Sustained (Management Action)
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**Named Employee #5**

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Management Action)
# 2	8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action	Not Sustained (Management Action)

**Named Employee #6**

Allegation(s):		Director's Findings
# 1	8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action	Not Sustained (Management Action)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Management Action)

**EXECUTIVE SUMMARY:**

It was alleged that Named Employee #1 may have acted contrary to multiple Department policies when he caused his K-9 to bite the Subject. It was further alleged that Named Employee #2 may have made an unprofessional statement to the Subject. It was also alleged that Named Employee #3 failed to identify that the Subject suffered significant bodily harm and failed to screen this incident with the Department's Force Investigation Team. Lastly, it was alleged that Named Employee #4, Named Employee #5, and Named Employee #6 failed to thoroughly and critically review the use of force and failed to identify, investigate, and refer potential serious misconduct to OPA.

**CHIEF'S DISAGREEMENT:**

As indicated in the chart above, OPA initially recommended that Named Employee #1 - Allegation #1 and #2, be sustained. The Chief of Police found that, under the totality of the circumstances and even though there was a violation of policy, these allegations were more appropriately concluded with a finding of Not Sustained – Training Referral. The Chief wrote a letter detailing her findings and reasoning to the Mayor and Council President as required by the Seattle Municipal Code. That document is contained in OPA's casefile.

**SUMMARY OF INVESTIGATION:**

The Subject was involved in a robbery. He and multiple other males were observed by a SPD officer kicking an older man. The victim later reported that the assault was connected to the theft of his cell phone by the suspects. At the time of the assault, there was no mention or report of any weapons being seen. Two officers – a female officer and Named Employee #2 (NE#2), pursued the officer on foot. A K-9 officer – Named Employee #1 (NE#1) – was also dispatched to assist in taking the suspects into custody. During the foot pursuit, the female officer yelled to the Subject: "The dog is gonna bite you when he catches you. Stop running!" The Subject did not stop and eluded the female officer. The Subject also evaded capture by NE#2.

NE#1 pulled his patrol vehicle into a Seattle Public Library parking lot and observed the Subject running up a grassy hill. NE#1 stopped his patrol vehicle and got out with his K-9. They then proceeded up the hill and after the Subject. Approximately three seconds after getting out of his vehicle, NE#1 released his K-9 in a directed apprehension of the



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Subject. NE#1 stated “here” several times and then “take him” twice. He did not give a K-9 warning prior to doing so. Approximately six seconds after, NE#1 crested the hill and the Subject could be seen on NE#1’s Body Worn Video (BWV). At that time, the Subject was standing and facing NE#1’s direction. He had both of his hands raised in the air with his open palms facing NE#1. As the K-9 neared the Subject, NE#1 again yelled “take him!” The K-9 then engaged with the Subject and he went down to the ground. The K-9 bit the Subject’s arm and the Subject said: “I surrender, sir.” The dog continued to bite the Subject’s arm and shake its head. NE#1 provided an update over the radio during this time. The Subject exclaimed to NE#1: “Sir, please, please!” NE#1 ordered the Subject to roll over onto his stomach and the Subject did so while saying: “I’m sorry.” NE#1 yelled “don’t fuck with my dog” and stated “don’t move” several times. The dog continued to bite the Subject and he continued to yell in pain and said “ow, please.” Approximately 26 seconds after the K-9 first made contact with the Subject, NE#1 grabbed the K-9’s collar and stated: “wait for it.” At that point, a backing officer was in their immediate vicinity. Once the backing officer approached, NE#1 ordered the K-9 to release the bit. All in all, the K-9 continuously bit the Subject for nearly thirty seconds.

The Subject was transported to a hospital where he received medical treatment for the dog bite. The bite caused puncture wounds for which the Subject was required to get stitches. A supervisor, Named Employee #3 (NE#3), screened the use of force. He did not notify the Department’s Force Investigation Team (FIT) and investigated the incident as a Type II use of force. The force was later reviewed by NE#1’s Sergeant, Lieutenant, and Captain. All of these supervisors approved the force as consistent with policy.

The force was later reviewed by the Department’s Force Review Board (FRB). The FRB approved NE#1’s tactics and decision-making; however, the FRB deemed the force used by NE#1 to be inconsistent with policy. Central to the FRB’s decision was the fact that the Subject had his hands up at the time of the K-9 bite and that the bite was maintained for nearly 30 seconds even though the Subject did not appear to be actively resisting during that time. The FRB referred the force to OPA for investigation. The FRB also identified and referred NE#2’s apparent unprofessional statement to OPA. During intake, OPA added additional allegations concerning NE#1’s chain of command and the on-scene supervisor.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

##### ***8.200 - Using Force 1. Use of Force: When Authorized***

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

When evaluating the below factors, I find that the initial application of the K-9 using a directed apprehension was reasonable.



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- **Severity of the Offense:** At the time of the force, there was probable cause to believe that the Subject had been involved in a robbery and an assault. These were severe and violent offenses.
  - **The Level of Threat or Resistance and the Conduct of the Subject:** Prior to the force being used, the Subject had fled from officers and was evading arrest. However, at the exact moment the force was used, the Subjects had stopped fleeing, was not actively resisting, and had his hands up. That being said, a reasonable officer could have still believed that the Subject represented a threat at that time given his prior conduct. Moreover, I do not believe that it was feasible to call off the K-9 at that point given its proximity to the Subject.
  - **Potential Threat to the Community:** The Subject, along with others, caused harm to a community member by robbing and assaulting him. A reasonable officer could have believed that the Subject would have caused harm to other community members if allowed to escape. Moreover, while no weapons were reported during the underlying incident, a reasonable officer could have believed that the Subject was armed and dangerous given the violent nature of the crimes he committed.
  - **Potential of Injury to Bystanders and Officers:** As explained above, there was a risk of harm to bystanders and to officers from the fleeing Subject. As discussed both above and below, the Subject had committed a crime of violence and a reasonable officer could have believed that he was armed and dangerous.
  - **The Risk or Apparent Attempt by the Subject to Escape:** The Subject fled the scene of the crime along with the other involved suspects. He tried to evade being taken into custody, successfully eluding two officers. Moreover, at the moment that NE#1 released the K-9, the Subject was still actively fleeing.
  - **The Time Available to the Officer to Make a Decision:** NE#1 had just seconds to make the initial decision to release the K-9. Prior to the K-9 making contact with the Subject, NE#1 appeared to have time to call the K-9 off, if only just a second or so. Lastly, NE#1 had approximately 30 seconds between when the K-9 initially engaged to when he called off the bite. As discussed more fully below, I find that this factor weighs against a finding that the force was within policy and plays into OPA's determination on whether the force was necessary and proportional.
  - **The Availability of Other Resources:** At the time of the release of the K-9, NE#1 was alone in chasing the Subject. Two other officers had been involved in the foot pursuit but had lost track of the Subject. In addition, NE#1 knew that other backing units were coming to his location.
  - **The Training and Experience of the Officer:** NE#1 has had substantial training on K-9 handling, the use of his K-9 as a force tool, and concerning the use of force generally.
  - **The Subject's Proximity to or Access to Weapons:** While there was no evidence that the Subject or any of the other suspects were armed, given their commission of a crime of violence, a reasonable officer could have believed that they possessed weapons. Moreover, the Department trains its officers to approach robbery suspects as if they are armed.



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While I have no difficulty in finding that the initial application of the K-9 was reasonable, the fact that the K-9 continuously bit the Subject for almost 30 seconds after he had surrendered and no longer plausibly posed a threat is problematic and, in OPA's opinion, unreasonable. However, this is discussed more fully below in the context of the necessity and proportionality of the force.



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### **Necessary Factor**

With regard to whether the application of the K-9 was necessary, NE#1 explained that, given the Subject's attempts to flee and his eluding two other officers, he believed releasing his K-9 in a directed apprehension was the only reasonably effective means at his disposal to safely take the Subject into custody. When asked whether it was necessary to continue to have his K-9 engage with the Subject when he could see that the Subject had his hands up, NE#1 stated that he did not know what the Subject's intentions were at that time. NE#1 further stated that, even had he wanted to, it would not have been possible to call the K-9 off at that point, given the dog's proximity to the Subject. NE#1 opined that the Subject could have been preparing to catch or harm the K-9.

With regard to whether the length of the bite was necessary, NE#1 asserted that it was. He stated that did not immediately release his dog because he was worried that the Subject still presented a threat. He believed this to be the case even though the Subject stated that he surrendered and was compliant.

I find that the initial K-9 application in the form of a directed apprehension was necessary. This was the case because the Subject was a felony suspect, who was actively fleeing, and who was believed to have engaged in a crime of violence. I reach this finding even though the Subject had his hands up at the time of the deployment. A reasonable officer could have believed that this was a ruse to buy the Subject more time to escape. Moreover, I do not believe that it would have been feasible as a practical matter to call the K-9 off at that point.

However, I find that sustaining the bite for around 30 seconds and after the Subject had orally surrendered and was putting up no physical or verbal resistance was an unnecessary use of force. At that time, NE#1 had other options available to him, including calling off his dog and covering the Subject with his firearm until backing units arrived or using his K-9 as a threat deterrent. Instead, NE#1 allowed the K-9 to continue the bite even though the Subject no longer presented an active threat.

### **Proportionality Factor**

Lastly, with regard to the proportionality of the force, the force ultimately applied was not commensurate with the threat facing NE#1. As discussed above, the initial directed apprehension was proportional to the threat facing NE#1 and other community members from the fleeing Subject. However, once the Subject was on the ground, had surrendered, and was no longer physically resisting, it was not proportional for NE#1 to allow the K-9 to continue biting the Subject for nearly 30 seconds.

As such, while I find that the initial application of the K-9 was reasonable, I conclude that, in totality, the force was outside of policy as the 30-second continuous dog bite was neither necessary nor proportional under the circumstances. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #2**

**8.300 - Use of Force Tools 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable**

SPD Policy 8.300-POL-2(4) directs that a K-9 may only be used as a force tactic when objectively reasonable. With regard to when such force is objectively reasonable, the policy provides the following guidance:

Canine handlers will only allow their canines to physically engage or bite a suspect if there is a reasonable belief or if it is known that the suspect is armed with a weapon or other instrumentality capable of producing death or significant physical injury or otherwise poses an imminent threat of death or serious physical injury to the handler or others or is engaged in active aggression or escaping

(SPD Policy 8.300-POL-2(4).) The policy also provides guidance as to when K-9 bites must be released. In this regard, the policy states the following: "Should a bite occur, the handler will as rapidly as possible determine if the suspect is armed and call off the dog at the first possible moment the canine can be safely released." (*Id.*) The policy further mandates that: "If the suspect is not armed, the handler shall order the canine immediately to release the bite." (*Id.*) Lastly, the policy instructs that: "When deciding to call off the dog, particular attention must be given to the perceived threat or actual resistance presented by the suspect" and that, given that an average person will struggle when being bitten, the struggling alone should not be viewed as "cause for not calling off the canine." (*Id.*)

Based on a review of this policy, I find that the initial K-9 application was justified given that a reasonable officer in NE#1's place could have believed that the Subject, who had committed a crime of violence, was armed and dangerous at the time of the directed apprehension.

However, NE#1 violated this policy when he failed to immediately release the K-9 bite upon the Subject's surrender. Here, there was no evidence that the Subject was actually armed once NE#1 was in his immediate vicinity. Indeed, he was wearing no shirt and had no bulging pockets or any other indicia of a weapon. Moreover, he no longer presented a risk of harm to NE#1 at that time and was not physically resisting. Accordingly, and consistent with this policy, NE#1 should have immediately caused the K-9 to release the bite. He did not do so.

OPA interviewed NE#1's chain of command about this incident and, specifically, concerning NE#1's failure to have his K-9 release the bite. When asked whether NE#1 acted consistent with his training, the Sergeant stated that he did. However, the Sergeant recognized that NE#1 could have released the K-9 bite and used the K-9 as a threat deterrent while waiting for backing officers to arrive. The Lieutenant did not directly answer the question of whether the 30 second bite was appropriate; however, he stated that he believed that NE#1 was going through a "logical progression" in his mind at the time. The Captain stated that he had no concern with the 30-second bite. He asserted that, in doing so, NE#1 acted consistent with the training provided to him by the Sergeant.

While NE#1's chain of command all believed NE#1's actions in not releasing the bite to be appropriate, the FRB disagreed. The FRB found that his force, and particularly the sustained bite, were not reasonable, necessary, and proportional. In reaching this decision, the FRB relied on the length of the bite, the fact that the Subject had surrendered and was no longer a threat, and the proximity of backing officers at the time.



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I agree with the FRB and I find that NE#1 violated this policy when he did not immediately release the K-9 bite when the Subject had surrendered and was no longer a threat of harm. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***8.300 - Use of Force Tools 5. Canine Deployment Announcements***

SPD Policy 8.300-POL-2(5) requires that, where feasible, a K-9 handler give a warning prior to releasing a K-9. Here, NE#1 did not give such a warning.

At his OPA interview, NE#1 stated that he did not believe that the warning was feasible. He told OPA that, had he done so, it would have negated the effectiveness of the K-9 deployment as it would have taken two to three seconds to issue the warning and, during that time, the Subject could have escaped.

Based on OPA's review of the evidence, it does not seem unreasonable for NE#1 to have provided a warning prior to releasing his K-9. Had he done so, it may have been the case that he would have had more time to see the Subject surrender by putting his hands up. At that point, he may have determined that it was unnecessary to release the K-9 altogether.

That being said, I cannot conclude that it was a violation of policy for NE#1 to have failed to do so. I note that this situation evolved very quickly and, based on OPA's analysis, there were only three seconds between when NE#1 exited his patrol vehicle to when he deployed the K-9. During that time, NE#1 was not only handling his dog, but was also taking in all of the stimuli around him and evaluating the threat posed by the Complainant.

Given the above, I recommend that NE#1 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1's chain of command should critically debrief this incident with him, including his failure to provide a K-9 warning. This debrief should include a review of the BWV and an analysis of best practices for providing warnings. NE#1 and his chain of command should consider the fact that, had he issued the warning, he may not have been actually required to use the K-9. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegations #4**

***8.300 - Use of Force Tools 7. Canine Deployments c. Authorization for Off-Leash Canine Deployment***

SPD Policy 8.300-POL-2(7)(c) requires that an officer have approval from a K-9 Unit supervisor prior to deploying a K-9 off-leash. The policy states that: "If the handler is unable to contact a canine unit supervisor, approval must be sought from a supervisor in charge at the scene before the canine can be deployed." (SPD Policy 8.300-POL-2(7)(c).)





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In a prior case, 2018OPA-0783, OPA evaluated an off-leash deployment without supervisor approval. The officer in that case stated that he could not get such approval given the exigency of the situation and due to the fact that there was no supervisor present at the scene. The officer further stated that K-9 officers were given pre-authorization to engage in direct apprehensions without needing supervisory approval in the moment. However, based on OPA's review of the policy, there is no exigency exception from the warning requirement. Moreover, there is nothing in the policy that suggests that supervisor pre-authorization is appropriate. As such, OPA initially recommended that this allegation be Sustained. However, after the discipline meeting and after speaking with the officer's chain of command, OPA changed its finding and, instead, issued a Management Action Recommendation requesting that the Department amend this policy to make it consistent with current Department practice and training, as well as with the practicalities surrounding directed apprehensions.

For the same reasons as set forth in 2018OPA-0783, OPA reiterates that Management Action Recommendation here.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #1 - Allegation #5**

***8.300 - Use of Force Tools 7. Canine Deployments a. Off-Leash Canine Deployments,...***

SPD Policy 8.300-POL-2(7) concerns off-leash K-9 deployments and provides the following guidance:

Off-leash canine deployments, searches, and other instances presenting a significant risk of a canine bite to a suspect or others shall be limited to searches for armed felony or armed misdemeanor suspects, wanted for a serious crime, particularly one of violence, where there is a clear danger of death or serious physical injury to the officer or others. In all other instances, searches must be on-leash.

When NE#1 initially released the K-9 in a directed apprehension, he was aware that the Subject was suspected of committing a serious violent felony. Moreover, as discussed above, a reasonable officer in NE#1's place could have believed, as NE#1 did, that the Subject was potentially armed and dangerous. As such, I find that NE#1 acted in compliance with this policy when he made the decision to use his K-9 off-leash.

While it does not impact this finding, I note that neither this policy nor any other policy specifically addresses directed apprehensions. While SPD Policy 8.300-POL-2(7) discusses off-leash deployments, it appears to be concerned with such deployment in the context of searches, not directed apprehensions. In a Management Action Recommendation issued in 2018OPA-0783, OPA has requested that the Department amend the K-9 policies to provide explicit guidance as to when an off-leash directed apprehension is appropriate.

Regarding the off-leash deployment decision here, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #1 - Allegation #6**

***8.100 - De-Escalation 1. 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***

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Based on OPA’s review of the evidence – most notably, the Department video, OPA concludes that when NE#1 made the decision to release the K-9 de-escalation was no longer feasible.

NE#1 was pursuing a suspect in a crime of violence, it was possible that the Subject was armed, and the Subject had already eluded two other officers and appeared committed to further escaping. As such, and given the information available to NE#1, de-escalation at that point would not have been practical. In reaching this decision, I concur with the FRB, which also found that NE#1 acted consistent with this policy during this incident.



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For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegations #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

It was alleged that NE#2 made statements to the Subject that were unprofessional. Specifically, NE#2 stated to the Subject, concerning the K-9 bite: “You know what would’ve prevented that?” The Subject replied: “Not doing it in the first place?” NE#2 then responded: “Stopping when I told you to stop. You got what you deserved – I’m glad to see it.”

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

At the time NE#2 made his statements to the Subject, the Subject was handcuffed on the ground, no longer presented a threat, and had suffered a significant injury. Moreover, he was not acting belligerently or in any way unreasonably towards the officers.

During his OPA interview, NE#2 recognized that what he said was inappropriate and unprofessional. While I commend NE#2 for acknowledging that his statements were impermissible, I find that what he said was sufficiently egregious, unnecessary, and contrary to the expectations of the Department and the community to still warrant a Sustained finding. However, NE#2’s acceptance of responsibility should be taken into consideration when evaluating the level of discipline to be imposed.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #3 - Allegations #1**

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***

The Complainant was admitted to the hospital after suffering multiple puncture wounds from the K-9 bite. NE#3, who was the on-scene supervisor during the incident, told OPA that he asked medical personnel whether the Subject was going to suffer from any long-term injuries or disfigurement from the bite. NE#3 stated that he was informed that the Subject would require stitches but would then be released from the hospital. Based on this



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information, NE#3 did not screen this incident with FIT as he did not believe that the Subject's injuries rose to the level of great or substantial bodily harm.

SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type. The policy explains that force should be classified as Type III (the highest level) where it "results in, or could reasonably be expected to result in, great bodily harm...or substantial bodily harm..., to include broken bones and an admission to the hospital for treatment." (SPD Policy 8.400-POL-1(3).) In such cases, the Sergeant is required to screen the force with FIT in order to allow that unit to decide whether to respond to the scene and take over the investigation. (*Id.*)

Based on my review of the evidence – which includes: NE#3's statement; the photographs taken of the Subject's injuries; and the plain language of the Revised Code of Washington, from which SPD Policy 8.400-POL-1(3) pulls its definition – I disagree with NE#3's evaluation of the Subject's injuries and find that they rose to the level of substantial bodily harm and should have been screened with FIT.

That being said, I find no evidence suggesting that NE#3 acted in bad faith when he failed to consult FIT. Indeed, I find that his failure to do so is borne more out of confusion concerning when an injury constitutes substantial bodily harm. In OPA's opinion, there appears to be insufficient guidance for supervisors as to what force must be screened. This can and does result in both under and over-screening of incidents. Accordingly, OPA suggests that the Department provide increased information, whether in policy or in training, concerning what force must be screened with FIT. One mechanism in which this could be accomplished is through a force-screening matrix that could be developed by FIT and disseminated to supervisors.

- **Management Action Recommendation:** The Department should provide additional guidance to supervisors, whether in policy and/or in training, concerning what types of injuries rise to the level of great and substantial bodily harm. The Department may want to consider tasking FIT with developing a force-screening matrix to be shared with supervisors. This would ensure that force is appropriately screened or, when appropriate, not screened, thus preserving FIT's resources and providing certainty for supervisors.

Recommended Finding: **Not Sustained (Management Action)**

#### **Named Employee #4 - Allegations #1**

##### ***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

NE#1's force application was reviewed by the entirety of his chain of command. All found the force to have been reasonable, necessary, and proportional, and, thus, consistent with policy. Moreover, none identified that NE#1 had engaged in any misconduct or referred any of NE#1's conduct to OPA. This was the case even though both the FRB and OPA later deemed the force to have been out of policy.



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It is of course possible for different evaluators of force to come to different conclusions concerning the appropriateness of that force. However, it is concerning when the FRB, which speaks for the Department, and OPA both agree that force is out of policy, while entirety of a chain of command reaches the exact opposite finding.

Moreover, this is the second use of force that OPA has recommended be Sustained stemming from the K-9 unit. In the other use of force, the chain of command for that unit similarly found it within policy. That prior case was agreed to be Sustained by the Deputy Chief after the discipline meeting and is currently pending before the Chief of Police for a final decision on findings and the imposition of discipline.

Based on these two cases, OPA is concerned that the K-9 unit's chain of command may, at times, be an outlier and may be approving, without undergoing a critical review and analysis, their officers' uses of force. This is particularly concerning given the high level of force involved in a K-9 application. Indeed, this force has been deemed a "severe" use of force by the Ninth Circuit.

Moreover, it appears to OPA that the K-9 unit's chain of command consistently falls back on the defense that their officers' actions were consistent with the training provided to the unit. However, if the unit is providing training that is inconsistent with law or that is resulting in out of policy uses of force, this is a significant problem. Moreover, such training, if deficient, cannot later be used as a defense for acts that are contrary with policy as it creates a self-perpetuating cycle of excessive force.

Given these concerns, OPA strongly advises the Department to engage in a robust analysis of the caselaw surrounding K-9 applications, the Department's policies on the use of K-9s as a force tool, the training being provided to K-9 officers in this regard, and whether that training is consistent with law and the Department's expectations of its officers' conduct. OPA further intends to conduct its own research in this area in concert with the Seattle City Attorney's Office to inform its later analysis of whatever changes, if any, are made to the Department's policies and training in this area. Lastly, OPA intends to highlight this issue for the Office of Inspector General for Public Safety so as to allow that office to conduct a systemic review and audit of the K-9 unit and its functioning.

- **Management Action Recommendation:** OPA requests that the Department engage in a robust analysis of the caselaw surrounding K-9 applications, the Department's policies on the use of K-9s as a force tool, the training being provided to K-9 officers in this regard, and whether that training is consistent with law and the Department's expectations of its officers' conduct.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #4 - Allegation #2**

***8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action***

SPD Policy 8.500-POL-5 requires that reviewers of force immediately address concerns that arise during force investigations and recommendation that action be taken.



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As discussed above, OPA is concerned that the K-9 unit's chain of command is not critically and thoroughly evaluating the uses of force by its officers and is not identifying issues that arise from that force. For these reasons, OPA refers to the above Management Action Recommendation (see Named Employee #4, Allegation #1), which is purposed to address these concerns.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #5 – Allegation #1**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

For the same reasons as stated above (see Named Employee #4, Allegations #1 and #2), I recommend that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #5 – Allegation #2**

***8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action***

For the same reasons as stated above (see Named Employee #4, Allegations #1 and #2), I recommend that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #6 – Allegation #1**

***8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action***

For the same reasons as stated above (see Named Employee #4, Allegations #1 and #2), I recommend that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #6 – Allegation #2**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

For the same reasons as stated above (see Named Employee #4, Allegations #1 and #2), I recommend that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**