



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 8, 2019

CASE NUMBER: 2019OPA-0172

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)
# 2	8.300-POL-2 Use of Force – CANINE DEPLOYMENT - 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.300- POL –1 Use of Force – Canine Deployment	Allegation Removed

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee used excessive force when his K-9 bit the Subject. It was further alleged that a deficient K-9 policy, a K-9 Manual inconsistent with policy, and insufficient and incorrect training may have caused the potentially out of policy bite.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Officers responded to a report that there was the sound of potential car racing in a Seattle park. The first officer to respond to that location observed a van that was apparently stuck in the mud. There were several individuals in and around the van at the time, who appeared to be trying to get it out of the mud. The individuals eventually got into a car. When the officer ran the license plate of the van, he determined that it was stolen. The officer then approached the individuals in the car and attempted to detain them to investigate whether they were involved with the stolen van; however, the car drove off. The officer called in the events that had occurred, as well as the direction of travel of the car.

Two other officers located the car shortly thereafter. It had been crashed into the side of the road. A K-9 officer was called to the scene and Named Employee #1 (NE#1) responded. The K-9 officer began to track the individuals from the car. At that time, the K-9 officer was told that there was probable cause to arrest the individuals for possession of a stolen vehicle and possibly probable cause to arrest them for a hit and run. There did not appear to be any differentiation between the three individuals; for example, between the driver of the car and the occupants. There



further did not appear to be any information indicating which of the three individuals actually had knowledge that the van was stolen and/or participated in that criminal activity.

NE#1 began the track. The K-9 entered some wooded areas and tracked for around three minutes before entering some shrubs and making contact with a person, who was later identified as the Subject. When the K-9 entered the shrubs, NE#1 announced "Seattle Police" and began to state: "Seattle Police, if you're..." He was cut off by the K-9 barking and the Subject inside the shrubs yelling. NE#1 directed the Subject: "Come out now." Another officer yelled: "Put your hands out." The K-9 continuously engaged with the Subject for around 50 seconds. NE#1 gave the K-9 two directions to release. These directions were approximately 34 seconds apart. The K-9 did not release after the first order and pulled the Subject out of the shrubs. Other officers responded and took control of the Subject's arms. At that point, NE#1 issued the second release order and, two seconds later, the K-9 released. NE#1 did not use any further force.

The Subject suffered dog bite injuries to his arm and was treated at a hospital. It was later learned that the Subject gave a false name to the officers at the scene, as well as that he had two open felony warrants. One of those warrants was a fugitive warrant from California and the other was a local auto theft warrant. However, the officers did not know the Subject's identity or any of the information concerning his open warrants at the time the force was used.

The force was later reviewed by the Department's Force Investigation Team (FIT). In his review, the FIT Captain noted that: "The canine manual and the Seattle Police Manual do not match nor is there consistent language. The SPD manual states that officers will have the dog release the bite." The FIT Captain provided the following recommendation: "The unit manual should mirror the SPD manual language for bite and use of a canine when pulling a suspect from hiding."

Subsequent to the FIT investigation, the force was also reviewed by the Captain of the Metropolitan Unit. The Captain agreed that the SPD Manual and the K-9 Manual were inconsistent but asserted that the K-9 application was consistent with policy and training. The Captain did not identify any "problematic" issues with the use of force or identify any policy concerns that needed to be addressed.

The force was also reviewed by the Department's Force Review Board (FRB). Similar to FIT, the FRB noted that the K-9 Manual was significantly more expansive than SPD policy. Specifically, the K-9 Manual that was in force at time of this incident provided the following guidance for "intentional-justified bites":

- a. The dog finds the suspect hiding and it is necessary for the dog to pull the suspect from hiding for the safety of others and officers.
- b. The suspect refuses to come out of hiding when told to do so and the dog must go in and, bring him out,
- c. The suspect, before submission, is acting in a furtive manner.
- d. The suspect is running from the handler and/or the dog.
- e. The dog reacts to protect himself/herself and/or his/ her handler.



The SPD policy that was in force at the time was significantly more restrictive and provided the below instruction:

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. In the case of a subject who has been located hiding, handlers will not allow their canine to seize and extract the suspect if a lower level of force could reasonably be expected to control the suspect or allow for the apprehension.

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. If the suspect is not armed, the handler shall order the canine immediately to release the bite. When deciding to call off the dog, particular attention must be given to the perceived threat or actual resistance presented by the suspect. Handlers will continue to factor into their call-off decision that the average person will struggle if being seized or confronted by a canine. This struggling, alone, will not be cause for not calling off the canine.

At his FIT interview, and later at his OPA interview, NE#1 explained his decision-making during this incident. NE#1 said that he did not use his K-9 in a directed apprehension and that, instead, the K-9 bite occurred during a track. NE#1 observed the K-9 bite the Complainant on the right forearm/elbow area and begin the pull the Subject out of the shrubs. NE#1 stated that the K-9 did not actually release the bite until the second order because one of the Subject's arms were still free and he had not actually been searched yet. NE#1 asserted that, had he released the dog prior to the Subject being totally secured, the Subject could flee and potentially a higher level of force would be needed to again take the Subject into custody.

NE#1 stated that his force was reasonable given that it was consistent with his training and because it was, in his opinion, within Department policy. He stated that the force was necessary because the Subject was hiding and did not come out when NE#1 announced himself as SPD. NE#1 contended that the force was proportional because a hiding individual presents a potential threat of harm. Moreover, NE#1 said that he did not know whether the Subject was armed at the time, which presented a further threat of harm. He further indicated that weapons could always be involved in car thefts, which provided him an additional basis to be concerned that the Subject was armed and potentially dangerous. NE#1 lastly stated that it was safer for the dog to go into the shrubs and extract the Subject than it was for an officer to do so.

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.*)



This case highlights two specific problems with the K-9 policy that was in force at the time of the incident, as well as more global issues with the policy, the K-9 Manual, and the training provided by the K-9 unit to its officers. First, it is problematic that the K-9 Manual is more expansive than policy and that the Manual provides guidance that, if followed, could yield results that are outside of policy. For example, under the K-9 Manual, an intentional bite is acceptable whenever a suspect is “acting in a furtive manner” before submission or is “running from the handler and/or the dog.” The former scenario could capture virtually any conduct and is significantly broader than both policy and, potentially, the law. In the latter scenario, the Manual would permit a bite where the fleeing individual was the suspect of a misdemeanor crime or a citable offense. OPA knows of no legal authority that would justify such a bite and, indeed, OPA reads the caselaw as reaching the opposite conclusion. Further, the Manual provides for the use of a bite on a hiding subject if doing so is necessary to pull the subject from hiding for the safety of others. However, SPD policy only allows the use of a K-9 to do so where there is no lower level force that could be used to extract the subject. Again, these sections are inconsistent.

Second, there is a lack of differentiation in either the policy or the Manual between the use of a K-9 for tracking and the use of a K-9 as a force tool during a directed take. Indeed, policy and the Manual are almost virtually silent on these issues. This lack of clarity is problematic.

Notably, in this case, NE#1’s Captain rationalized that, because the K-9 bite occurred on a track rather than during a directed take, the provision of SPD Policy 8.300 that provides that a K-9 extraction may only be effectuated where there is no lower level of force that could be used was inapplicable. OPA believes that this is a misinterpretation of the policy and, if followed, serves to undermine the purpose behind the safeguards preventing improper bites. Indeed, it is OPA’s understanding that, when effectuating a track, K-9s are trained to bite the subject if located. As such, not requiring compliance with SPD Policy 8.300 before effecting the bite would create an exception that would swallow the rules set forth in the policy.

Even disregarding the issues outlined above, OPA questions whether the bite in this case was reasonable, necessary, and proportional. NE#1 was using his K-9 to track the possible perpetrators of a property crime, namely the suspected theft of a vehicle. There were multiple individuals who were in the vehicle that fled the scene and it was very possible that not all of those individuals were involved in the theft of the vehicle. Moreover, while it is certainly true that some suspects who steal cars are armed, it does not follow that all are. As such and given the lack of other information concerning the occupants, OPA has difficulty determining how NE#1 had a reasonable belief to believe that any of them were armed, let alone that the individual he was tracking was. When the K-9 began the track, NE#1 did not know which of the suspects the K-9 was locating. It could have been a passenger of the car who had not committed any crimes. However, given that the K-9 was trained to bite and extract any individual that it located during the track, it was possible that a bite could occur regardless. In addition, it is unclear how a largely continuous 53 second bite was proportional to the threat facing NE#1 or the other officers. Again, there was little evidence that the Subject was armed, he was not physically resisting and/or fighting with the officers, and he was not a suspect in a crime of violence. However, NE#1 still used a high level of force that could have caused severe injury.

The above being said, and even though OPA does not think that the K-9 bite in this case was consistent with policy or *Graham v. Connor*, it is clear that NE#1’s actions were directly in line with the training he received from his unit and that he did not act in bad faith during this incident. Indeed, the force he used was clearly supported and approved by his chain of command. This is, in OPA’s perspective, worrisome. Moreover, this is something OPA has seen over and over in recent K-9 cases. In 2018OPA-1037, OPA wrote the following:



[T]his 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.

Ultimately, given the circumstances of this case and because NE#1 acted consistent with his training, it would not be procedurally just to recommend a Sustained finding, even though OPA believes the force to have likely been excessive. Instead, and due to the significant issues with the K-9 policy, the K-9 Manual, and the training provided to K-9 officers, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** As also requested in 2018OPA-1037, OPA recommends that the Department completely rework its K-9 policy to make sure that it is consistent with law. For example, the Department should consider, among other fixes: prohibiting officers from using a K-9 for pain compliance; specifically calling out and differentiating between directed takes and tracking; developing a separate policy for tracking outside of the use of force policy; clarifying that a K-9 cannot be used against all escaping subjects, including, for example, those who have committed non-violent misdemeanors or citable offenses; directing that a K-9 should not be used to bite individuals who are suspected of only committing property crimes; and instructing that the restrictions on K-9 bites are equally applicable to bites that occur during and are the foreseeable result of a track. In addition, the Department should edit the K-9 Manual to ensure that it is consistent with policy. Lastly, the Department should audit the training provided both internally and externally to K-9 officers to confirm that this training accurately represents and communicates the requirements of the policy. These audits should be ongoing until the Department is confident that the unit is compliant with the revised policy.

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



Named Employee #1 - Allegation #2

8.300-POL-2 Use of Force – CANINE DEPLOYMENT - 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable

As discussed above and in several other cases, SPD's K-9 policy is fundamentally flawed. Moreover, it is concerning that the unit has a Manual that is inconsistent with significant aspects of the policy and is providing training that, if followed, would lead to consistent violations of policy. It is further concerning that the Department has taken no steps to correct this until recently and, prior to that time, appeared to have no idea that there were any issues. The above being said, the Department has twice reworked this policy in recent months and has rectified a number of the issues identified above. The current iteration of the policy has been provided to OPA for review and OPA will be evaluating it determine whether it is consistent with the various recommendations that OPA has made in this area.

As discussed above, OPA further recommends that the Department completely rework the K-9 Manual to make sure that it is consistent with policy, as well as that the Department audit the training provided to K-9 officers to confirm that this training accurately represents and communicates the requirements of the policy. These audits should be ongoing until the Department is confident that the unit is compliant with the revised policy.

As such, and for the same reasons as stated above (*see* Named Employee #1, Allegation #1), OPA recommends that this case be Not Sustained and issues a Management Action Recommendation.

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

Named Employee #2 - Allegations #1

8.300- POL –1 Use of Force – Canine Deployment

Given that OPA recommends Management Actions for the allegations above, this allegation against SPD is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**