



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0470

Issued Date: 05/23/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
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> (Unfounded)
Final Discipline	N/A

#### **INCIDENT SYNOPSIS**

Numerous SPD officers were deployed to the area of a public protest.

#### **COMPLAINT**

The complaints alleged that during May Day marches 2016, SPD employees deployed blast balls into the crowd, which resulted in injury to at least two persons present at the scene. It was alleged that this was an inappropriate Use of Force under SPD's Use of Force Policy.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaints
2. Review of Use of Force documents
3. Review of independent video captures
4. Search for and review of all relevant records and other evidence
5. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

Four different individuals filed complaints with OPA regarding the use of so-called “blast balls” by unknown SPD officers on May 1, 2016. An additional member of the community was contacted by OPA regarding an injury he reportedly received as a result of an officer’s use of a blast ball that same day. However, this person chose not to become a complainant in this matter.

The events of the late afternoon and early evening on May 1, 2016, followed a somewhat familiar pattern. A public demonstration began in Westgate Park near the intersection of Fourth Avenue and Pike Street in downtown Seattle. Several hundred demonstrators gathered and engaged in a variety of “free speech” activities protected by the First Amendment to the United States Constitution. Numerous SPD officers were deployed in the area. Some officers were on bicycles, others on foot and still others in a variety of vehicles both stationary and mobile in the area. The actions of the officers were being supervised and directed by sworn SPD supervisory personnel. An Assistant Police Chief had overall command of the incident. Some of the SPD officers were equipped with blast balls, in addition to the usual use-of-force tools available to SPD officers.

Blast balls are small, round rubberized devices that fit in an officer’s hand and are designed to be either rolled or tossed at a target. The device operates somewhat like a hand grenade. It has a metal “handle” at the top of the device that includes a lever or “spoon” that, when moved from one position to another, activates a detonator. The detonator is designed to explode several seconds after the spoon is moved. When the detonator explodes, the metal handle separates from the round rubber body of the blast ball and flies several feet away from the blast ball. The detonator also ignites a fuse inside the blast ball that then causes an explosive charge within the blast ball to detonate. This detonation forces the two halves of the rubber blast ball to come apart and a loud explosive bang and flash of bright light is emitted. Some blast balls are also loaded with pepper powder which is dispersed by the force of the explosion and causes painful but temporary irritation of the eyes, nose, mouth and mucous membranes of those who come in contact with it. According to SPD training materials, blast balls are designed to cause a sense of “anxiety and fear” in those nearby to where they detonate, thus prompting them to disperse or move away from the point of detonation.

OPA's investigation into the complaints regarding blast ball use during this incident showed that a total of 28 blast balls were deployed by SPD officers at that time. It should also be noted that officers from neighboring agencies were also present in the area during this event under mutual aid agreements between SPD and those agencies. The evidence from the OPA investigation ruled out any blast ball use by officers from the mutual aid agencies.

SPD policy requires every officer who deploys (detonates) a blast ball to report that use to a supervisor and complete a use-of-force statement. The statement must explain the circumstances that the officer's use of the blast ball and the officer's reasons for using any force in that situation and, in particular, that particular force device. In most situations, officers who use reportable force complete their report and turn it into their direct supervisor who reviews it for completeness and then passes it to the next highest level of supervision for review and approval. The entire reporting, review and approval process normally takes two to four weeks. In the case of large-scale operations, such as the events on May 1, 2016, where multiple officers used reportable force, SPD assigns a lieutenant and one or more sergeants to receive all use of force reports from officers and then to review the reports and send them up the chain of command for approval. In this event, the volume of force reports was such and the sheer volume of available audio, video, photographic and physical evidence was such that the force reporting, review and approval process took over four months to complete.

Due to limited resources and an already full case load of complaint investigations, OPA decided to suspend its investigation into the complaints about the use of blast balls on May 1, 2016, until SPD had completed its own internal review process. This decision enabled OPA investigators and supervisors to rapidly and efficiently review the full scope of evidence, reports and management reviews collected by SPD. Timeliness is crucial in OPA investigations because the collective bargaining agreements between the City and the unions representing sworn employees restrict the Department's ability to impose discipline if the named employee is not notified of planned discipline within 180 days of the filing of a complaint. In this particular investigation with only about 60 days remaining in the 180-day deadline, OPA assigned an investigator full-time to work on the case once SPD had completed its force investigation and review process. The OPA investigation was completed, reviewed by OPA management (including the OPA Director), and submitted to the OPA Auditor before the expiration of the 180-day time limit. By that time, the OPA Director had determined there was insufficient evidence to recommend any sustained findings arising from this investigation.

The complaints filed with OPA regarding the use of blast balls on May 1, 2016, alleged that some deployments of the devices were made without necessity or reasonableness, were improperly and unreasonably thrown or rolled too close to people, and/or were excessive in that they caused injuries to those who were near where the devices detonated or exploded.

OPA reviewed all use of force statements submitted by officers who reported deploying one or more blast balls, along with the investigative reports and reviews completed by the sergeants, lieutenant and Captain assigned to investigate and review these force deployments. OPA also reviewed all digital (including video) and other evidence collected by SPD as part of its own

investigation into the use of force by SPD officers. In addition, OPA reviewed all evidence, including videos, submitted by complainants or otherwise independently discovered by OPA as part of its own investigation. Finally, OPA interviewed those SPD officers who reported deploying one or more blast balls in the vicinity and at the time indicated by the complainants.

The preponderance of the evidence available to OPA as part of this investigation did not reveal the identity of any specific officer who deployed the blast balls reported by the complainants to have been used in an unreasonable, unnecessary and/or disproportionate manner. Each of the six officers interviewed provided OPA with sufficient rationale to make their individual deployment(s) of blast balls compliant with the requirements of SPD Policy 8.400(1). Unfortunately, the realities of a dynamic and chaotic event involving hundreds of demonstrators and scores of police officers, combined with the remote detonation of blast balls 50 to 75 feet away from the officer who rolled or tossed it, made it nearly impossible for OPA to determine with a sufficient degree of confidence the identity of the officer(s) who actually deployed the blast balls that caused concern for the complainants. For this reason, a finding of Not Sustained (Inconclusive) was deemed the only appropriate finding for the allegations of excessive force.

OPA also investigated an allegation that one or more officers failed to report their use of blast balls during the May 1<sup>st</sup> incident. OPA painstakingly reviewed all the blast ball inventory sheets for the event and matched those numbers with the blast ball use of force reports filed by officers. OPA's comparison of these records determined that every blast ball assigned to officers for the May 1<sup>st</sup> event and not returned to inventory afterwards was accounted for through the completed use of force reports. For this reason, a finding of Not Sustained (Unfounded) was issued for this allegation.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

A preponderance of the evidence did not reveal the identity of any specific officer who deployed the blast balls reported by the complainants to have been used in an unreasonable, unnecessary and/or disproportionate manner. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #2

A preponderance of the evidence showed that every blast ball assigned to officers for the May 1<sup>st</sup> event and not returned to inventory afterwards was accounted for through the completed use of force reports. Therefore a finding of **Not Sustained** (Unfounded) 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*.

*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.*