



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0554

Issued Date: 02/16/2018

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
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	Not Sustained (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015)
OPA Finding	Not Sustained (Unfounded)

Final Discipline	N/A
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INCIDENT SYNOPSIS

The complainant encountered the Named Employee at her home, which was a crime scene.

COMPLAINT

The complainant alleged that during an incident in 2016, she was subjected to excessive force and was treated rudely by Named Employee #1. The complainant also alleged that Named Employee #1, as well as unknown officers, engaged in biased policing.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the Complaint
2. Search for and review of all relevant records and other evidence
3. Review of Use of Force Investigation documents
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

SPD Policy 5.001-POL-9 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-9.)

The complainant alleged that an officer rudely told her that she needed to go sit in her vehicle until the investigation into the shooting was concluded. The complainant confirmed that she was trying to access her home. Given that her home was a crime scene, the officers were permitted to prevent her from doing so in order to maintain the integrity of the scene and the potential evidence contained therein. As such, to the extent Named Employee #1 told the complainant to not access the scene, he would have been justified in doing so.

The complainant further indicated that she told the officers that she was the owner of the home and that she had been asked to come to the scene. She stated that, in response, the officers were abrupt and rude.

There was no ICV of the interaction between the complainant and Named Employee #1, so the OPA Director could not determine the exact substance of their conversation and whether or not the tone or manner in which he interacted with her was unprofessional.

Named Employee #1 reported that the complainant pushed him to get past him and struck him multiple times while flailing her arms. Named Employee #1 stated that, based on her physical conduct and to keep her out of the crime scene, he pushed her away from him. As a result, the complainant tripped, falling to the ground and hitting her head. The complainant indicated that she was pushed to the ground, but she did not admit to pushing or striking Named Employee #1. A witness sergeant and witness detective claimed that they observed the incident and their descriptions of the force were consistent with Named Employee #1's account. None of the witnesses identified by the complainant and who made themselves available for OPA interviews observed the force.

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.*)

The weight of the evidence in this case suggested that the force occurred as described by Named Employee #1. The complainant argued that she was the homeowner of the residence in which the shooting had occurred and she thus should not have been prevented from entering the taped-off scene. However, once the scene was secured, the complainant had no right to entry without permission from law enforcement.

With regard to reasonableness, Named Employee #1 was legally justified in preventing the complainant from entering the scene. When she refused to comply with orders to stop doing so, he was permitted to step in front of her with his body. When she tried to push by him and struck him while flailing her arms, he was permitted to push her back to prevent her from continuing to do so. As articulated by Named Employee #1, he believed that the force was necessary to prevent the subject from entering the scene and to prevent a further physical assault. Based on the evidence, the OPA Director could not find this belief to have been unreasonable. Lastly, a push backwards was proportional to the push and strikes by the complainant. Even though the complainant fell down, it did not appear that the push was particularly forceful. Named Employee #1 did not otherwise strike the complainant or use anything other than minor force.

The OPA Director wondered, however, whether there might have been better ways to deal with this incident. The complainant was a 70-year-old woman who owned the home in which a shooting had occurred and wanted to get inside to make sure that no one was harmed. Even if she was not obeying officers' commands and pushed and hit Named Employee #1 with her flailing arms, perhaps there might have been other options rather than pushing an elderly woman causing her to fall to the ground. However, SPD policy instructs that "force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (SPD Policy 8.200(1).) Even if the OPA Director believed that there might

have been options available to Named Employee #1 other than pushing the complainant, second guessing his decision in this manner was inconsistent with the dictates of the policy.

For the above reasons, the OPA Director found that the force used was reasonable, necessary, and proportional, and was thus consistent with policy.

While the OPA Director found the force used to have been within policy, he had concerns with the decision by Named Employee #1's chain of command to classify the incident as a de minimis or Type 1 use of force, as well as with aspects of the investigation of the force.

First, it seemed clear from Named Employee #1's statement that he pushed the complainant which caused her to stumble backwards over uneven pavement and to fall down. She then hit her head on a light pole and complained of injuries to her head. Given these circumstances, and particularly given the potential of a head injury to a 70-year-old woman, the OPA Director believed that this incident should have been investigated as a Type 2 use of force. Even if the exact mechanism of the fall was not conclusively determined, Named Employee #1's supervisors should have investigated the use of force as a Type 2 as a precautionary matter. Second, due to the fact that there was a potential head injury, the OPA Director believed that this incident should have been at least screened with the Department's Force Investigation Team. However, the officers failed to do so. Third and last, a witness sergeant performed the sergeant's screening of the force even though he was also a witness to the force or at least the immediate aftermath of the force and the complainant's fall. A sergeant that was not a potential witness to the force, rather than the witness sergeant, should have been tasked with the review. Moreover, this potential conflict should have been but was not identified and called out by the chain of command.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (See id.)

Based on the OPA Director's review of the record, he did not find any evidence that Named Employee #1 engaged in biased policing. According to Named Employee #1, he took law enforcement action against the subject because she was trying to access a crime scene, she did not listen to officers' orders to stop doing so, and she pushed and struck Named Employee #1. Named Employee #1 explicitly stated that he did not treat her differently based on her race.

While the complainant alleged that she was treated unfairly by the officers because of her race, there was simply no evidence in the record supporting such a conclusion. The OPA Director noted that none of the witnesses to the incident identified by the complainant indicated to OPA that biased policing occurred. (See Richelle Gregory OPA Interview; see also Peggy Steck OPA Interview.) Moreover, one of those witnesses told OPA that while she did not believe that the complainant had acted maliciously on the date in question, she did not think that the officers did anything wrong. (See Peggy Steck OPA Interview.)

While the complainant alleged that she believed that she was treated differently because of her race, the subject of her allegations appeared to be Named Employee #1. The OPA Director did not interpret her complaint as alleging that another unknown officer engaged in biased policing. Even if she did explicitly make such a complaint, the OPA Director found no evidence in the record suggesting that an unknown officer engaged in biased policing.

FINDINGS

Named Employee #1

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Allegation #2

A preponderance of the evidence showed that the force used was reasonable, necessary, and proportional, and was thus consistent with policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Allegation #3

There was no evidence that Named Employee #1 engaged in biased policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Named Employee #2

Allegation 1

There was no evidence in the record suggesting that an unknown officer engaged in biased policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

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.