



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 13, 2018

CASE NUMBER: 2017OPA-0972

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 (Lawful and Proper)
# 2	8.400-TSK-1 Use of Force – INVOLVED OFFICERS’ RESPONSIBILITIES DURING A TYPE I INVESTIGATION	Sustained

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)

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:

The Complainant alleged to a Department supervisor that Named Employee #1 used excessive force against him. The Department supervisor further alleged that Named Employee #1 failed to report or timely document the use of force. The Department supervisor further alleged that the other Named Employees failed to report the use of force or the complaint of excessive force by the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 subjected him to excessive force when he poked him twice in his chest with NE#1's fingers causing him injury. He was also captured complaining of pain on In-Car Video (ICV).

In his Type I use of force report, NE#1 reported placing his hand on the Complainant's chest when the decision was made to detain him and telling the Complainant that he was not free to leave. NE#1 specifically reported the following: "I placed my open left palm on [the Complainant's] chest with no force behind it and held it there to stop him from leaving the scene. I held it there for maybe five seconds while I told him that he was not free to leave the scene." NE#1's statements at his OPA interview were consistent with that account.

While the force was not directly captured by ICV, audio of a conversation between the Complainant and NE#1 at the time of the force was recorded. This conversation was consistent with NE#1's recounting of the incident and the force used.

All of the other Named Employees in this case supported NE#1's account and stated at their OPA interviews that minimal, if non-existent force was used by NE#1.

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.*)

Based on my review of the evidence, I find that the force used by NE#1 was what he described. This was, at most, de minimis force. Moreover, I find it was reasonable, necessary and proportional under the circumstances of this case. That the Complainant alleged injury, which I note was unsubstantiated, does not change this determination. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #2

8.400-TSK-1 Use of Force - INVOLVED OFFICERS' RESPONSIBILITIES DURING A TYPE I INVESTIGATION

SPD Policy 8.400-TSK-1 sets forth the obligations of officers involved in a Type I use of force during the investigation of that force. The policy requires that the involved officer: (1) notifies a supervisor; (2) uploads and flags video; (3) documents the incident; and (4) completes a Type I report by the conclusion of the officer's shift, unless an extension is approved by a supervisor. These tasks should be read in tandem with SPD Policy 8.400-POL-1, which requires, among other elements, that a Type I use of force investigations include an in-person screening by a supervisor unless impractical. This policy should also be read in tandem with SPD Policy 8.400-TSK-2, which sets forth the duties and responsibilities of a sergeant during a Type I force investigation. This policy also sets forth the requirement that the involved officer engage in an in-person screening concerning the use of force with the sergeant.

Here, NE#1 did not orally report to a supervisor the force that he used. Instead, the primary officer, who is not a Named Employee in this case, did so. A supervisor was notified by this officer and responded to the scene. After the supervisor was notified, the Complainant was informed that he was free to go and was told that a supervisor was coming to the scene. However, the Complainant walked away and NE#1 and all of the witness officers cleared the call and left the scene before the supervisor arrived. As such, NE#1 was not at the scene to screen the incident with the supervisor in person and did not do so at the precinct. In addition, NE#1 did not complete a use of force report concerning the Complainant's allegation of pain before the end of his shift. NE#1 told OPA that he made the decision to go home at that time. NE#1 stated that he asked the primary officer to let him know if he was needed to complete a report. He stated that he did not receive any notification that evening from NE#1 or a supervisor that he needed to do so. I note, however, that his supervisor attempted to reach NE#1 multiple times regarding his emergency contact number in order to instruct him to complete a report, but was unable to reach him despite best efforts. NE#1 stated that he was not told to complete a report by a supervisor until the next day and he did so.

Given the above, I find that NE#1 violated this policy in a number of respects. First, he did not individually report the force to a supervisor. While the primary officer did so and NE#1 was aware of this fact, I read policy to be clear that he also should have done so as the officer who actually used force in this instance. Second, NE#1 did not screen the use of force and/or the complaint of pain in person with a supervisor either at the scene or at the precinct. This prevented the supervisor from being able to meet the requirements set forth by policy for a Type I investigation. Third, NE#1 did not complete his required use of force report prior to the end of his shift. While NE#1 stated that he asked the primary officer to tell him if a report was needed, the policy is abundantly clear that this is a mandatory requirement. As such, NE#1 should have done this prior to the end of his shift regardless of his request to be notified by the primary officer. Moreover, NE#1 did not receive any permission to not do so from a supervisor. Indeed, his supervisor tried to reach him multiple times via his emergency contact number to instruct him to complete a report, but was unable to do so.

For these reasons, I find that NE#1 acted contrary to this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

SPD Policy 8.400-POL-1(2) requires that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force.

Here, all of the Named Employees stated at their OPA interviews that the primary officer, who was not named in this case, stated to them that he would report the force to a supervisor and did so. As such, they were aware that the force had been reported and that a supervisor was on the way to the scene.

While the policy requires that all officers, including witness officers, notify a supervisor of reportable force, I do not find it unreasonable that these officers did not do in this instance because they were aware that a supervisor had, in fact, been immediately notified.

For this reason, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, and NE#5.

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

Named Employee #3 - Allegation #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-0972

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