



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0218

Issued Date: 09/07/2016

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 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 5.140 (5) Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing (Policy that was issued 08/01/2015)

OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/2015)
OPA Finding	<b>Sustained</b>
Allegation #2	<u>Seattle Police Department Manual</u> 5.140 (5) Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing (Policy that was issued 08/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	Written Reprimand and re-training on responsibilities regarding reporting of complaints

<b>Named Employee #4</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 15.180 (5) Primary Investigations: Officers Shall Document All Primary Investigations on a General Offense Report (Policy that was issued 04/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

## **INCIDENT SYNOPSIS**

Named Employee #1 and #4 used force to take the complainant into custody. Named Employee #2 transported the complainant to the precinct. Named Employee #3 was the screening supervisor of the incident.

## **COMPLAINT**

The Force Review Unit (FRU) alleged that the complainant can be heard on In-Car Video (ICV) telling Named Employee #1 and #4 that they used excessive force against him. The FRU alleged that all the Named Employees should have been aware of the Use of Force allegation and reported it to OPA. The FRU alleged that while Named Employee #2 was transporting the complainant; the complainant can be heard on ICV alleging that he was being harassed because he is Hawaiian. The FRU alleged that neither the transporting officer, Named Employee #2, nor the reviewing sergeant, Named Employee #3, reported the claim of bias. The FRU alleged that during transport, the complainant told Named Employee #2 that he was sexually assaulted (unknown by who), and there was no indication that the sexual assault was addressed other than being mentioned in the General Offense (GO) report.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Video (ICV)
3. Search for and review of all relevant records and other evidence
4. Interview of SPD employees

## **ANALYSIS AND CONCLUSION**

The complainant alleged the arresting officers, Named Employee #1 and #4, used excessive force during his arrest. The preponderance of the evidence from this investigation shows that Type II force was used by Named Employee #1 and Named Employee #4 as they took the complainant to the ground after he attempted to flee on foot. The complainant received a minor injury to his face during the take-down and subsequent scuffle on the ground as the complainant resisted the officers' attempts to control and handcuff him. The officers had reasonable suspicion to detain the complainant for investigation of a car prowl at the time they used this force. Based on the totality of the circumstances known from the preponderance of the evidence in this investigation, the OPA Director found the force used by Named Employee #1 and #4 was reasonable, necessary and proportionate.

The Force Review Unit alleged Named Employee #1 , #2 and #4 may have failed to report to their supervisor (Named Employee #3) the fact that the complainant had alleged Named Employee #1 and Named Employee #4 used "excessive force" on him (the complainant). The

preponderance of the evidence shows that the complainant made these statements within the hearing of Named Employee #1, #2 and #4 and their supervisor, Named Employee #3. Named Employee #1, #2 and #4 did not report or discuss these allegations with Named Employee #3, nor did they report them to OPA. However, because the supervisor for Named Employee #1, #2 and #4 was within earshot at the time these allegations were vocalized by the complainant and Named Employee #1, #2 and #4 assumed their supervisor (Named Employee #3) heard and comprehended the allegations, it was not unreasonable for Named Employee #1, #2 and #4 to believe they had no further obligation to report or document the allegations. Nonetheless, Named Employee #1, #2 and #4 would be well-advised, in the future, to report such allegations to their supervisor and obtain confirmation their supervisor heard the allegations and was assuming reporting obligations associated with them.

The Force Review Unit alleged Named Employee #2 may have failed to notify his supervisor that the complainant had made an allegation he (the complainant) had been the subject of bias-based policing. The preponderance of the evidence from this investigation shows that Named Employee #2's supervisor, Named Employee #3 was within earshot at the time the complainant made his claim of bias-based policing connected with his arrest. Nonetheless, Named Employee #2 would be well-advised, in the future, to report such allegations to his supervisor and obtain confirmation that the supervisor heard the allegations and was assuming reporting obligations associated with them.

The Force Review Unit alleged that Named Employee #3 may have failed to forward the complainant's allegation of excessive force to OPA as required by SPD Policy. The preponderance of the evidence from this investigations shows that Named Employee #3 heard the complainant voice the allegation the officers who arrested him used excessive force. Named Employee #3 conducted an appropriate force investigation as required by SPD Policy and forwarded this investigation to his supervisor. However, Named Employee #3 did not forward to OPA the complainant's allegation of excessive force. SPD Policy §5.002(6) states (in relevant part), "Employees must report both any conduct that a reasonable officer would believe is misconduct and any allegations of misconduct brought to their attention that fall outside those areas listed above to a supervisor or directly to OPA. This reporting requirement also applies to allegations of uses of force that have not yet been reported." The areas "listed above" in the policy do not include allegations of excessive force. Named Employee #3's written narrative accompanying his force investigation mentioned the complainant's claims that excessive force had been used on him. He wrote, "He [the complainant] began shouting about excessive force and false arrest." No other mention is made of this allegation in Named Employee #3's narrative, nor is there any mention of it in the reviews written by his chain of command. Named Employee #3 told OPA he did not recall specifically discussing this allegation with his lieutenant when he discussed the use of force investigation with him. Named Employee #3 also asserted that his use of force investigation which he sent to his lieutenant constituted a "reporting" and, therefore, a separate reporting to OPA of the complainant's allegation of excessive force was not required. The preponderance of the evidence supports the conclusion that, other than a single sentence in his narrative, Named Employee #3 took no steps to report the complainant's allegation of excessive force to either his supervisor or OPA. As a supervisor himself, Named

Employee #3 is tasked with the responsibility of ensuring that the Department's stated policy to, "provide a prompt, just, and open disposition of complaints regarding the conduct of employees (§5.002-POL)," is put into action. Since SPD Policy is clear that OPA has sole jurisdiction to investigate allegations of excessive force, it was Named Employee #3's obligation to ensure that OPA was notified of the complainant's allegation, something Named Employee #3 did not do.

The Force Review Unit alleged that Named Employee #3 may have failed to conduct a preliminary inquiry into the complainant's claim the police were "harassing [him] because [he's] Hawaiian." The complainant shouted this as Named Employee #2 was applying the seatbelt on the complainant in the back of a police car. Named Employee #3 was nearby and told OPA he heard this statement. Named Employee #3 told OPA he did not consider this to be a "legitimate complaint" and thought the complainant was not making a claim of bias-based policing. An indication of the legitimacy Named Employee #3 attributed to this bias claim can be heard on Named Employee #3's in-car video shortly after the complainant made his statement about being harassed because he is Hawaiian. After the seatbelt was put on the complainant and the rear door of the police car was closed, Named Employee #3 began walking back to his police car. Two other officers were near Named Employee #3 as he smiled and said, "Hawaii, that's a state." All three officers then smiled and chuckled. There is no record of a completed Bias Review entry in Blue Team related to this incident and Named Employee #3 told OPA he took no steps to conduct an inquiry into the complainant's statement he was being harassed because he was Hawaiian. There may be some reasonable room for debate as to whether or not being Hawaiian constitutes a "discernable characteristic" as described in Policy §5.140-POL. Nonetheless, consistent with the spirit and intent of the Department's Bias-Free Policing Policy and in light of the current Settlement Agreement in force between the US Department of Justice and the City of Seattle, Named Employee #3 would have been well-advised to at the very least ask the complainant what he meant by this statement once they were safely at the Precinct and the complainant was under control.

The Force Review Unit alleged Named Employee #4 may have failed to adequately document all known information concerning the complainant's statement he (the complainant) was the victim of a sexual assault. While Named Employee #4 noted this claim by the complainant in his (Named Employee #4) General Offense Report (GOR), Named Employee #4 failed to document any steps taken by him or others to investigate this claim. Named Employee #4 told OPA the complainant recanted this claim prior to being transported to the hospital and, for this reason, he (Named Employee #4), considered it unnecessary to conduct any further investigation into the claim. However, Named Employee #4 did not mention this recantation in his GOR, something he should have done.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The force used by Named Employee #1 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #2

The evidence showed that Named Employee #1 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*.

**Required Training:** Named Employee #1 should be counseled by his chain of command regarding the importance of reporting all allegations of misconduct to his supervisor or OPA. For his own benefit and for that of his supervisor, Named Employee #1 should not assume his supervisor has heard, recognized or understood any allegations. By checking with his supervisor and verifying the supervisor's acceptance of responsibility to take necessary action with respect to such allegations, Named Employee #1 will assist the Department in its commitment to transparent accountability, as well as help himself and his supervisor comply with the requirements of SPD policy.

### **Named Employee #2**

#### Allegation #1

The evidence showed that Named Employee #2 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*.

#### Allegation #2

The evidence showed that Named Employee #2 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing*.

**Required Training:** Named Employee #2 should be counseled by his chain of command regarding the importance of reporting all allegations of misconduct and/or bias-based policing to his supervisor or OPA. For his own benefit and for that of his supervisor, Named Employee #2 should not assume his supervisor has heard, recognized or understood any allegations. By checking with his supervisor and verifying the supervisor's acceptance of responsibility to take necessary action with respect to such allegations, Named Employee #2 will assist the Department in its commitment to transparent accountability, as well as help himself and his supervisor comply with the requirements of SPD policy.

### **Named Employee #3**

#### Allegation #1

The evidence showed that Named Employee #3 violated the policy. Therefore a **Sustained** finding was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*.

**Discipline imposed:** Written Reprimand and re-training on responsibilities regarding reporting of complaints

#### Allegation #2

There was no evidence to support the allegation against Named Employee #3. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing*.

**Required Training:** Named Employee #3 should be counseled by his chain of command regarding the importance of reporting all allegations of bias-based policing to his supervisor or OPA.

### **Named Employee #4**

#### Allegation #1

The force used by Named Employee #4 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #2

The evidence showed that Named Employee #4 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*.

**Required Training:** Named Employee #4 should be counseled by his chain of command regarding the importance of reporting all allegations of misconduct to his supervisor or OPA. For his own benefit and for that of his supervisor, Named Employee #4 should not assume his supervisor has heard, recognized or understood any allegations. By checking with his supervisor and verifying the supervisor's acceptance of responsibility to take necessary action with respect to such allegations, Named Employee #4 will assist the Department in its commitment to transparent accountability, as well as help himself and his supervisor comply with the requirements of SPD policy.

#### Allegation #3

The evidence showed that Named Employee #4 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Primary Investigations: Officers Shall Document All Primary Investigations on a General Offense Report*.

**Required Training:** In the GOR Named Employee #4 wrote for the car prowling arrest of the complainant, he (Named Employee #4) included the following statement, “[the complainant] was later denied at KCJ because he stated he was raped. [The complainant] was then transported to HMC for an examination without a police hold. We found no evidence to support his statement.” Named Employee #4 should have also included the complainant’s subsequent statement recanting this claim of being sexually assaulted. The GOR, as written, does not meet the standard set by Policy §15.180(5) of being “complete, thorough and accurate.” Named Employee #4 should be reminded by his supervisor that General Offense Reports are the foundation of all subsequent investigations and prosecutions. As such, Named Employee #4 must include all relevant information in future GOR.

*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.*