



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0589

Issued Date: 01/12/2017

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 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Allegation #3	<u>Seattle Police Department Manual</u> 6.220 (6) Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop (Policy that was issued August 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 6.220 (10) Voluntary Contacts, Terry Stops & Detentions: Officers Must Document All Terry Stops (Policy that was issued August 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)

Allegation #5	<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	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

<b>Named Employee #2</b>	
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	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employees had an interaction with the complainant in a load zone area.

### **COMPLAINT**

The complainant alleged Named Employee #1 physically grabbed him, was verbally aggressive towards him and failed to explain why he was detaining the complainant and demanding his driver's license. The complainant was eventually allowed to leave without being provided an explanation as to why he was stopped. The complainant alleged Named Employee #2 arrived after the incident and told him that he was "stupid" and walking behind a police car "was idiotic."

### **INVESTIGATION**

The OPA investigation included the following actions:

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

## **ANALYSIS AND CONCLUSION**

The complainant alleged that Named Employee #1 nearly hit him with his patrol car then grabbed him and demanded his identification without legal justification. He further alleged that Named Employee #1 was overly aggressive and unprofessional. The complainant was walking in an area designated for loading and unloading. Named Employee #1 was backing his patrol car when he heard a loud sound that he thought sounded like someone had hit his car. He stopped his car and got out to talk to the complainant. According to the complainant, Named Employee #1 grabbed him by the wrist and put him against the patrol car. Named Employee #1 told OPA that the complainant was wearing headphones so he touched his backpack to get the complainant's attention. Named Employee #1 said there was no other physical contact between him and the complainant. The interaction was captured on audio but no video was available as the interaction did not take place in range of the ICV camera. The complainant is heard on the ICV telling Named Employee #1 to stop assaulting him and to keep his hands off of him. It is not clear whether the complainant was reacting to physical contact other than the contact Named Employee #1 recalled, or if the complainant was referring to the initial touch on his backpack by Named Employee #1.

Named Employee #1 was initially uncertain regarding what happened to cause the sound he heard that seemed to him to be something or someone striking the police car. Having observed the complainant near the police car in the area from which the sound was made, Named Employee #1 decided to investigate further. As will be discussed below, a brief detention to determine what happened was not unreasonable. However, the justification for asking the complainant for his identification was less clear. Named Employee #1 told OPA he needed to get the complainant's identification in case there was property damage to the police car. If there had been property damage and/ or a need to write either a General Offense Report (GOR) or a Traffic Collision Report (TCR), Named Employee #1 would have had a legitimate reason for wanting to identify the complainant. As it was, it would have been advisable for Named Employee #1 to first determine whether or not there was a need for a report and then ask the complainant to identify himself if it was necessary.

As stated above, the preponderance of the evidence supported the conclusion that Named Employee #1 had sufficient basis to briefly detain the complainant while he (Named Employee #1) determined what caused the loud sound, and if there had been a crime or traffic collision. At the conclusion of the contact between Named Employee #1 and the complainant, Named Employee #1 determined there was no reason to write either a GOR or a TCR. At that point, given the brief detention of the complainant, Named Employee #1 should have completed a Terry Stop Template as required by policy. Named Employee #1 expressed to OPA confusion regarding whether or not his contact with the complainant constituted a detention or Terry Stop. He said he was just trying to figure out what happened and what, if anything, he needed to do about the situation. Named Employee #1 also pointed out that the complainant's response to Named Employee #1's initial contact unnecessarily complicated and extended the duration of the contact. While there is some merit to the argument that the complainant's response made the situation somewhat more difficult to sort out, nonetheless, it would be reasonable for a

person to conclude they were being detained given the circumstances. Named Employee #1 should have completed a Terry Stop Template.

The complainant repeatedly demanded an explanation from Named Employee #1 for being stopped, but did not allow Named Employee #1 to answer the question and repeatedly interrupted Named Employee #1. Named Employee #1 called for a backup unit because the complainant was being uncooperative. The complainant alleged Named Employee #1 was rude and aggressive toward him. The preponderance of the evidence from this investigation showed that, during his interaction with the complainant, Named Employee #1 said nothing to the complainant that was unprofessional or aggressive.

The complainant alleged that Named Employee #2 was unprofessional, claiming Named Employee #2 said he (the complainant) was idiotic for walking behind a patrol car and then called him (the complainant) stupid. Named Employee #1 called for a backup unit because he believed the complainant was being uncooperative. Named Employee #2 arrived towards the end of the incident. Shortly after Named Employee #2's arrival, Named Employee #1 returned the complainant's identification and told him he could leave. As the complainant began walking away, Named Employee #2 called out to him, "Don't say anything dumb while you're walking away." Named Employee #2 explained to OPA that the complainant was shouting about what had happened and he (Named Employee #2) made a statement in order to disrupt the complainant's self-escalation. However, this re-initiated the confrontation with the complainant. The complainant then made some statements to Named Employee #2 regarding his perception that the officers were attempting to entrap him so they could arrest him and impound his (the complainant's) dog. This resulted in Named Employee #2 saying to the complainant, "You're ignorant; you're ignorant." At the time Named Employee #2 called out to the complainant, he (the complainant) was walking. It would have been a much better course of action had Named Employee #2 ignored the comments the complainant was making as he was leaving. While Named Employee #2 did not sound antagonistic and it could be argued he was not directly calling the complainant stupid or ignorant, Named Employee #2's comments were ill-advised and unnecessary. More importantly, they could have escalated the interaction with nothing to be gained and with no real law enforcement purpose.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1 and #2

Because of the lack of video or other evidence to resolve this discrepancy and determine the actual extent of physical contact of the complainant by Named Employee #1, a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized and Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

### Allegation #3

The preponderance of the evidence showed that Named Employee #1 would benefit from additional training on SPD's Terry Stop and Detention Policy. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop*.

**Required Training:** The Named Employee should be given very clear instruction regarding SPD Policy on Terry Stops and Detentions. He needs to more clearly understand what constitutes a detention as opposed to other contacts or arrests, the restrictions placed on detentions, and the requirement he complete a Terry Stop Template.

### Allegation #4

Given Named Employee #1's apparent confusion and lack of clarity regarding what constitutes a detention and when he is obligated to complete a Terry Template, a finding of **Not Sustained** (Training Referral) was issued for *Voluntary Contacts, Terry Stops & Detentions: Officers Must Document All Terry Stops*.

**Required Training:** The Named Employee should be given very clear instruction regarding SPD Policy on Terry Stops and Detentions. He needs to more clearly understand what constitutes a detention as opposed to other contacts or arrests, the restrictions placed on detentions, and the requirement he complete a Terry Stop Template.

### Allegation #5

The preponderance of the evidence showed that Named Employee #1 said nothing to the complainant that was unprofessional or aggressive. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

## Named Employee #2

### Allegation #1

The preponderance of the evidence showed that Named Employee #2 would benefit from some very clear and pointed training regarding the use of appropriate words, silence and restraint to de-escalate rather than escalate interactions with angry persons. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

**Required Training:** Named Employee #2 should be reminded of his obligation to de-escalate, rather than escalate contacts with subjects. His supervisor should assess whether or not Named Employee #2 would benefit from additional training in how to de-escalate. Any such beneficial training should be provided as soon as possible.

*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.*