



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0112

Issued Date: 01/16/2018

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
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> (Training Referral)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<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> (Training Referral)

Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Sustained</b>
Allegation #3	<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>Sustained</b>
Allegation #4	<u>Seattle Police Department Manual</u> 5.100 (l)(4) Operations Bureau Individual Responsibilities: Patrol Officers: Update MDT/CAD log to include: (Policy that was issued July 20, 2010)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	1 Day Suspension

<b>Named Employee #3</b>	
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> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<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> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #4</b>	
Allegation #1	<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> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<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> (Lawful and Proper)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

OPA received two complaints regarding a related incident that occurred while SPD Officers were responding to a protest on the University of Washington campus.

### **COMPLAINT**

The initial complainant alleged that Named Employee #2 took a running start and shouldered a demonstrator during a protest at the University of Washington after the subject had already been restrained. During OPA intake it was discovered that Named Employee #2 was not logged onto the Computer Aided Dispatch (CAD) or Mobile Data Terminal (MDT) Systems.

The second complainant alleged that Named Employee #1, Named Employee #2, Named Employee #3, and Named Employee #4 all escalated a situation and used force on the demonstrator referenced above, and then used force on the secondary complainant when she tried to help the demonstrator up.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaints
2. Review of private video and photos
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

SPD officers were assigned to a demonstration that took place at the University of Washington.

The officers were acting as mutual aid to the University of Washington Police Department (UWPD). The SPD officers formed a line in front of the entrance to the administration building (Gerberding Hall), where the president of the university was situated. UWPD asked SPD to ensure that demonstrators not be permitted to enter the building. Named Employee #1 was the immediate supervisor of the officers staffing the line. Protestors moved up a short flight of stairs and up to the officers' line but, as a general matter, were not attempting to push through.

Named Employee #1 noticed that Named Employee #4 was engaged in conversation with a demonstrator, a male with long dark hair and wearing a dark sweatshirt (the subject), that had gotten behind the officers' line. Named Employee #4 was unsuccessfully trying to reason with the subject and to convince him to move in front of the officers' line; however, the subject was uncooperative. At that point, Named Employee #1 verbally engaged with this individual and explained that, for safety reasons, the subject could not be behind the officers' line and he needed to move in front of the line with the other demonstrators. According to Named Employee #1, the subject was not compliant and refused to move. After multiple attempts to convince the subject to move in front of the line and the subject's repeated refusals, Named Employee #1 put his hand on the subject's back (and may have held the subject's arm) to escort him to the front of the officers' line.

Manual Policy 8.100(1) states that "when safe under the totality of the circumstances and when time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force." Named Employee #1's initial interaction with the subject was not captured by video; thus, the only evidence concerning whether Named Employee #1 complied with policy was his OPA interview. In his interview, Named Employee #1 explained that he attempted to reason with the subject and to convince the subject to walk to the front of the line on his own volition, but that the subject was unwilling to cooperate. At that point, and given the safety concerns articulated by Named Employee #1, no further de-escalation was feasible and the officers were justified in taking action to move the subject to another area.

As indicated above, Named Employee #1 used physical force to move the subject from behind to in front of the officers' line. While not captured by the video, Named Employee #1

represented in his OPA interview that the force used was de minimis. There was no evidence in the record contradicting this account.

Manual Policy 8.400-POL-1(1) instructs that “officers shall report all uses of force except de minimis force.” As the force used by Named Employee #1 was de minimis, he was not required to document it in a use of force report.

While Named Employee #1 properly dealt with his force, as described more fully below, he failed to recognize that Named Employee #2’s force was Type I force, if not arguably Type II force, which resulted in the force not being properly documented.

The OPA Director further noted that Named Employee #1 did not properly review or screen the force used by Named Employee #2 and Named Employee #3, as required by 8.400.

In the video provided by the second complainant, Named Employee #2 was observed running towards Named Employee #3 and the subject. Named Employee #2 then lowered his shoulder and struck the subject with substantial force as the subject was turning to face him. The subject was knocked forward and on to a stone walkway.

As a starting point, it was clear from the video that this strike was intentional, not inadvertent. Named Employee #2 did not trip and stumble into the subject, but purposefully struck him to knock him down to the ground. Named Employee #2 confirmed this in his OPA interview. (See NE#2 OPA Interview, at p. 9.) Moreover, it was also clear from the video that this force was not de minimis. It was at least Type I force, and the OPA Director found that it was very possibly Type II force, as it could have easily caused significant physical injury to the subject. Accordingly, the force should have been documented in a use of force report.

However, for reasons predominantly outside of Named Employee #2’s control, the force was not properly documented. Named Employee #2 reported the force to Named Employee #1, who did not personally witness the force. (NE#1 OPA Interview, at p. 9.) Based on what was conveyed to him by Named Employee #2 (he collided with the subject) and the fact that the subject got right off the ground and did not appear to have any injuries, Named Employee #1 was unsure whether the force was Type I or de minimis. (Id. at p. 14.)

Named Employee #1 then reported the force to a Lieutenant, the incident commander. (Id. at 14-16.) At his OPA interview, Named Employee #1 stated that he conveyed to the Lieutenant what Named Employee #2 had described to him. (Id.) Named Employee #2 further stated that the force that appeared on the video was what Named Employee #2 had reported using to him. The Lieutenant, however, had a different recollection of what was described. At his OPA interview, the Lieutenant stated that Named Employee #1 described the force as inadvertent and said that Named Employee #2 “slipped and collided with” the subject. (Grossman OPA Interview, at pp. 6-7.) After watching the video of the force, the Lieutenant maintained that the force appeared to be inadvertent, but ultimately opined that it was difficult to tell (the OPA Director noted that to the Lieutenant’s credit, this was the first time he had seen the video). (Id.

at pp. 8-10.) He also maintained that the force viewed on the video was consistent with what had been described to him by Named Employee #1. (Id. at 10-11.) As the Lieutenant did not believe the force used rose to the level of Type I force, he did not order a use of force report to be completed and instead directed Named Employee #1 to document the force in the General Offense Report.

Based on Named Employee #2's account of his force to Named Employee #1 and Named Employee #1's version of what he conveyed to the Lieutenant, it was an error not to complete a use of force report. This error was confirmed by the nature of the force as it appeared on the video. To the extent the Lieutenant's version of the conversation with Named Employee #1 was accurate and due to the fact that he did not have an opportunity to watch the video at the scene, it would have been reasonable to not require use of force reports and to instead document the force in the General Offense Report. However, based on the inconsistencies between Named Employee #1's and the Lieutenant's versions of events, the OPA Director could not reach a conclusive determination of what was known and discussed by each at that time.

Regardless, Named Employee #2 screened the force with his Sergeant, his Sergeant conferred with the incident commander, and Named Employee #2 was instructed that it was not necessary to generate a use of force report. While based on the force he, himself, used, he should have known that a use of force report was required, the OPA Director could not find that Named Employee #2 violated policy.

As explained below, Named Employee #2 claimed that he used force in order to ensure that the situation facing the officers did not further escalate. However, his force ultimately served as the catalyst for a substantial escalation of the incident. Instead of diffusing the situation he made it more volatile. Instead of slowing down and stabilizing the situation, he sped it up and made it more unstable. And instead of applying de-escalation tactics to reduce the need for force, he began a chain reaction of events that caused his fellow SPD and UWPD officers go hands on with civilians, which would have otherwise been unnecessary.

Manual Policy 8.200 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." The policy lists a number of factors that should be weighed when evaluating reasonableness. 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." Lastly, the force used must be proportional to the threat posed to the officer.

For the reasons stated below, the OPA Director found that the force used by Named Employee #2 fell outside of policy.

In his rationale for why he used the force at issue, Named Employee #2 stated that he observed a demonstrator pushing another officer and trying to break through the line. He believed that

the situation could escalate into one where multiple demonstrators began to attack officers. From a review of the video, Named Employee #3 was seen pushing the subject back once, the subject reengaged, and Named Employee #3 pushed him back again. The situation appeared to be calming down when Named Employee #2 ran into the scene and forcibly knocked the subject to the ground. At that point, the situation escalated exponentially. Other demonstrators in the crowd began yelling, gesturing, and pushing towards the officers. Other skirmishes between officers and civilians broke out, and, as an overall matter, the scene was less secure after the force than before. Practically, the force used by Named Employee #2 created the exact situation he wanted to avoid. While Named Employee #2 may have believed the force was reasonable, that belief was misplaced.

Even if the force was arguably reasonable, based on Named Employee #2's subjective belief, it was neither necessary nor proportional, which rendered it outside of policy.

First, with regard to whether the force was necessary, the OPA Director found that at the time the force was used, the situation had just begun to calm down; that there were a number of SPD and UYPD officers in the immediate vicinity that were exercising control over the situation and who outnumbered the subject and any other immediate threats; and the Director concluded that there were a number of alternative possibilities that existed to Named Employee #2 other than the force he used.

Second, with regard to the proportionality of the force, the OPA Director found that the threat to Named Employee #3 was minimal at the time the force was used. At most, he was being verbally accosted by the subject. Even though Named Employee #3 pushed him three times, from a review of the video, the subject never struck or attempted to strike Named Employee #3. Based on this, Named Employee #2's near-full speed body check of the subject was not proportional to the threat the subject posed.

Manual Policy 5.100 mandates patrol officers to update the MDT/CAD log to include, among other activities, "times in and out of service." On the date in question, Named Employee #2, a patrol officer, failed to log into CAD at any point.

All named officers indicated that the normal protocol is to fax/send a long sheet to Radio for logging purposes, but none of them were aware if that occurred that day. Named Employee #2 indicated that he that he had a delayed start at work and drove his car to the protest along with his bicycle attached. He was under the assumption that a log sheet was used.

Named Employee #3 used force on the subject three times that were caught on video. The first occurred when Named Employee #3 pushed the subject back from the line with two hands. This was the most significant of his uses of force; as a result, the subject stumbled backwards but did not fall down to the ground. The subject then reengaged with Named Employee #3 and Named Employee #3 pushed him in the upper chest area with one hand. When the subject again moved towards him, Named Employee #3 pushed him back a third time, also in the upper chest area.

At the outset, the officers were justified in attempting to move the subject from behind to in front of their line. When the subject refused to cooperate, the officers were further justified in using physical force to compel him to do so. When the subject then tried to push his way back behind the line and through officers, the officers were permitted to physically push him away.

For these reasons, the OPA Director found that the force used by Named Employee #3 was reasonable, necessary and proportional.

Named Employee #3 began interacting with the subject after attempts at de-escalation by Named Employee #1 and Named Employee #4 had failed. At that point, the primary goal of the officers was to remove the subject from behind their line. As the subject was purposefully not cooperating, no further de-escalation was required at that point.

While the force used by Named Employee #3 certainly angered the subject and while it would have been optimal to use no force at all, it did not appear to overly escalate the situation. In fact, prior to Named Employee #2 striking the subject and knocking him to the ground, the conflict between the officers and the subject appeared to be dissipating.

Based on the video and on Named Employee #1's and Named Employee #4's OPA interviews, the OPA Director found that further de-escalation by Named Employee #3 would not have been feasible. Accordingly, he found Named Employee #3's actions in this regard to have been consistent with policy.

After using force against the subject, Named Employee #3 properly screened that force with Named Employee #1. Notably, Named Employee #3 was careful to flag for Named Employee #1 the fact that, during one of the latter pushes, Named Employee #3's hand contacted the subject's collarbone area. Together, with Named Employee #1, he further correctly identified his force as de minimis. Accordingly, Named Employee #3 was not required to document this force in a use of force report.

Based on a review of the video, the force used by Named Employee #4, which included positioning herself and using her hands to block demonstrators from reaching other officers and from pulling the subject away, was de minimis.

As the OPA Director found that Named Employee #4 used only de minimis force, consistent with 8.400, she was not required to document that force in a use of force report.

Prior to any force being used, Named Employee #4 interacted with the subject to get him to move from behind the officers' line. Despite her best efforts and despite speaking calmly and politely, Named Employee #4 was unable to convince the subject to move in front of the officers' line. Accordingly, even though Named Employee #4 tried to de-escalate the situation through verbal engagement in an attempt to eliminate the need for force, the subject was uncooperative and she was ultimately unsuccessful.



While Named Employee #4's initial interaction with the subject and her attempts to de-escalate the situation were not captured on video, there was no evidence in the record contradicting her account.

Manual Policy 8.200 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." The policy lists a number of factors that should be weighed when evaluating reasonableness. 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." Lastly, the force used must be proportional to the threat posed to the officer.

Here, based in part on the conduct of another officer, Named Employee #4 was in a situation where a number of angry demonstrators were converging on her. At that point, she and other officers were potentially at risk at harm. Moreover, one demonstrator (the second complainant) was attempting to pull the subject away from the police. As such, it was reasonable for Named Employee #4 to position her body and use her hands to push the demonstrators back. It was also necessary as there was no other reasonable alternative to using force at that time. Lastly, the force was proportional: Named Employee #4 pushed and blocked individuals; she did not hit, kick, or otherwise strike any demonstrator.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

A preponderance of the evidence showed that no further de-escalation was feasible and the officers were justified in taking action to move the subject to another area. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force*.

#### Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

**Recommended Training:** The OPA Director recommends that Named Employee #2 receive training on SPD's use of force policy generally, and, specifically, on the classifications of force and when force must be documented in a use of force report. The Director further recommends that Named Employee #1 receive additional training concerning the requirement to review, screen in-person, and photograph Type I and Type II uses of force.

## **Named Employee #2**

### **Allegation #1**

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

**Recommended Training:** The OPA Director recommends that Named Employee #2 receive training on SPD's use of force policy generally, and, specifically, on the classifications of force and when force must be documented in a use of force report.

### **Allegation #2**

A preponderance of the evidence showed that Named Employee #2's actions were inconsistent with policy. Therefore a **Sustained** finding was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force*.

### **Allegation #3**

A preponderance of the evidence showed that the force used by Named Employee #2 fell outside of policy. Therefore a **Sustained** finding was issued for *Using Force: Use of Force: When Authorized*.

### **Allegation #4**

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Operations Bureau Individual Responsibilities: Patrol Officers: Update MDT/CAD log to include:*

**Recommended Training:** The OPA Director recommends that Named Employee #2 receive training on the policy requirement for officers to take responsibility to ensure they are appropriate logged on to MDT/CAD, and if there is a special protocol for an event, to check in with a supervisor to ensure proper compliance with policy.

**Discipline Imposed:** 1 Day Suspension

## **Named Employee #3**

### **Allegation #1**

A preponderance of the evidence showed that the force used by Named Employee #3 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

### **Allegation #2**

A preponderance of the evidence showed that further de-escalation by Named Employee #3 would not have been feasible. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and*

*Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.*

Allegation #3

A preponderance of the evidence showed that Named Employee #3 was not required to document this force in a use of force report. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force.*

**Named Employee #4**

Allegation #1

A preponderance of the evidence showed that Named Employee #4 was not required to document this force in a use of force report. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force.*

Allegation #2

A preponderance of the evidence showed that even though Named Employee #4 tried to de-escalate the situation, the subject was uncooperative and she was ultimately unsuccessful. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.*

Allegation #3

A preponderance of the evidence showed that the force used by Named Employee #4 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized.*

*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.*