



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0387

Issued Date: 12/08/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400-POL-1 (3) Use of Force – REPORTING AND INVESTIGATION: The Sergeant Will Review the Incident and Do One of the Following: (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Final Discipline	N/A

#### INCIDENT SYNOPSIS

The Named Employee was notified that a subject complained of handcuffing pain.

#### COMPLAINT

The complainant, a supervisor within the Department, alleged that while responding to the scene of a Type II Use of Force investigation involving an officer taking a suspect to the ground, two suspects were arrested. Suspect #1 was the focus of the Type II Investigation. Suspect #2 was handcuffed and arrested and placed in the backseat of a patrol car. Suspect #2 complained that his handcuffs hurt as he sat in the patrol car. Officers took the suspect out and readjusted the handcuffs and completed a transport to the precinct. Upon arrival at the precinct, Suspect #2 again stated that the handcuffs hurt. Officers notified the Named Employee of the complaint of pain, but the Named Employee did not have the officers complete a Type I Use of Force 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. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

Here, the subject complained to officers that his handcuffs were causing him pain. The complaint of pain was unrelated to the application of the handcuffs and did not arise until the subject was being placed into a patrol vehicle. The complaint of pain was reported to Named Employee #1 by the officers and Named Employee #1 instructed them that the complaint did not constitute a reportable use of force and that no Type I documentation needed to be generated. In its review, Named Employee #1's chain of command identified that a Type I use of force report should have been generated. Two days later, consistent with that direction, Named Employee #1 instructed the officers to complete a Type I report.

At their OPA interviews, the officers and Named Employee #1 all stated that they believed the policy to be unclear on whether a Type I report was required in this case. Specifically, they contended that it was unclear whether the policy only contemplated reporting when the complaint of pain was related to the application of the handcuffing, rather than when the complaint of pain stemmed from the wearing of the handcuffs at some point after the application. In this latter scenario, the officers and Named Employee #1 stated that they did not believe it rose to the level of a Type I use of force and, accordingly, no documentation was required.

The OPA Director read the policy to require a Type I report where a subject complained of pain. This was regardless of whether the complaint occurred when the handcuffs were applied or at some point thereafter. This was consistent with the practical application of this policy by the vast majority of SPD officers who regularly document complaints of pain from handcuffs, even after the initial application. This was also consistent with the identification of Named Employee #1's conduct as out of policy by his chain of command.

Even though the OPA Director believed that Named Employee #1 should have known that a report was required and his failure to ensure that documentation was generated violated policy, the OPA Director found that Named Employee #1's confusion was not borne out of bad faith. Notably, after this incident, the then Acting Captain sent a precinct-wide email explicitly instructing that reporting was required in this type of scenario. This email was sent due to apparent confusion in the precinct on this issue. Further, in conducting an evaluation of this case, the larger issue of whether officers are being trained accurately and appropriately in this area was raised. At his OPA interview, one of the officers stated: "At the time of this incident I

was under guidance from supervisors and from training that wearing of handcuffs was not a reportable Use of Force, the complaint of pain at that time was not a reportable Use of Force.” If it was accurate that SPD’s Training Unit was or currently is instructing officers that reporting is not required in the situation that arose in this case, that is very concerning.

As such, given the apparent confusion and the unique circumstances of this case, the OPA Director did not believe that a Sustained finding was warranted. Instead, he made Training Referral and Management Action Recommendations.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

A preponderance of the evidence showed that although Named Employee #1 should have known that a report was required and his failure to ensure that documentation was generated violated policy, Named Employee #1’s confusion was not borne out of bad faith. Therefore a finding of **Not Sustained** (Management Action) was issued for *Use of Force – REPORTING AND INVESTIGATION: The Sergeant Will Review the Incident and Do One of the Following:*

**Training Referral:** The OPA Director recommends that Named Employee #1 receive additional training as to when Type I reporting is required, specifically in the context of complaints of pain relating to handcuffs.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

*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.*



# City of Seattle

## Office of Police Accountability

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December 5, 2017

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0387)

Dear Chief O'Toole:

OPA investigated an allegation that a sergeant failed to ensure that a complaint of pain from handcuffs was properly documented and investigated. The subject was handcuffed by officers after his arrest and was placed into a patrol vehicle to be transported to the North Precinct. At that time, and after the handcuffing had already been effectuated, the subject complained of pain from the handcuffs. Two officers heard the complaint of pain and reported it to the Named Employee, who was their sergeant. The Named Employee instructed the officers that a complaint of pain unrelated to the actual act of handcuffing the subject was not a reportable use of force and no documentation needed to be completed. However, the Named Employee's chain of command identified that a Type 1 report should have been generated and directed the Named Employee to ensure that this was done.

OPA interviewed the officers who heard and reported the complaint of pain, as well as the Named Employee. All three of these individuals asserted that SPD policy was unclear as to whether a Type 1 report was required under these circumstances. Specifically, they contended that it was unclear whether the policy only contemplated reporting when the complaint of pain was related to the application of the handcuffing, rather than when the complaint of pain stemmed from the wearing of the handcuffs at some point thereafter.

Most concerning in my opinion, the Named Employee told OPA at his interview that: "At the time of this incident I was under guidance from supervisors and from training that wearing of handcuffs was not a reportable Use of Force, the complaint of pain at that time was not a reportable Use of Force."

I read the policy as requiring that a complaint of pain be reported and documented regardless of when it occurs. My understanding is that this is what is being trained and this is certainly the expectation of the Named Employee's supervisors, as exemplified by a North Precinct-wide email sent by then Acting Captain Kevin Grossman after this incident instructing that reporting should be completed.

I ask that the Department verify with the Training Unit what training is being provided to officers on this issue. If the Training Unit is, in fact, training SPD employees to not report or document complaints of pain from handcuffs are made at some point after the handcuffing, it should cease doing so. Moreover, if this is the case, the Training Unit should provide a Department-wide

corrective training update. Even if, as I suspect, the Training Unit is not providing incorrect training in this regard, the Department should still consider sending a Department-wide reminder that the reporting and documenting of these complaints is expected, and should emphasize this issue at the next scheduled training on this topic.

Thank you very much for your prompt attention to this matter. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,



Andrew Myerberg  
Director, Office of Police Accountability

cc: Deputy Chief Carmen Best, Seattle Police Department  
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department  
Rebecca Boatright, Senior Police Counsel, Seattle Police Department  
Fe Lopez, Executive Director, Community Police Commission  
Tito Rodriquez, OPA Auditor  
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office  
Tonia Winchester, Deputy Director, Office of Police Accountability