

OFFICE OF PROFESSIONAL ACCOUNTABILITY (OPA) COMPLAINT REPORT March 2012

OPA Director's Monthly Message

The Office of Professional Accountability's (OPA) monthly report provides information about Seattle Police Department (SPD) misconduct complaints that are investigated by OPA. This report includes summaries as to cases closed during the month of March 2012, along with data on the number and classification of complaints filed, with a comparison to earlier months and 2011. Monthly reports include charts showing the percentage of cases closed with different types of findings, information about the OPA mediation program, and policy review and training recommendations when made.

March and First Quarter 2012 Highlights

- OPA closed 20 cases involving 47 allegations against 26 employees in March, representing 1.44% of all 1,807 SPD employees (1,297 sworn and 510 civilian)
- 18% of allegations closed First Quarter 2012 were Sustained, resulting in discipline
- 20% of allegations closed First Quarter 2012 resulted in a Training Referral, meaning that the named employee received training or counseling related to the complaint
- The remaining cases were closed as Unfounded, Lawful and Proper, or Inconclusive

Most encounters by SPD officers with the public never result in a complaint, and it can be a confusing system for both employees and citizens who are involved with the OPA process. SPD's complaint system is centralized in OPA and, under the recently announced 20/20 Initiatives, steps are being directed at extending accountability expectations beyond the OPA process. As the Department and community discuss ways to improve accountability and transparency at SPD, the current OPA complaint review process is summarized below and notes changes that already have been made in 2012.

OPA accepts complaints however they are raised, including in person, by phone, through the OPA website or email, or by letter or memorandum. Complaints can be made by the person directly involved in a police incident, by a witness or other third party such as an attorney, or anonymously.

Intake is usually handled by an OPA Acting Sergeant who gathers information to better understand the complainant's concerns and the police incident involved. In addition to getting as much detail as possible from the complainant, OPA-IS pulls all available general offense, use of force or other SPD reports, in-car and other video, and additional readily accessible information. Based on what is gathered, a complaint classification recommendation is made by OPA-IS. The recommendation is reviewed by the civilian OPA Director and civilian OPA Auditor and a final classification decision is made on the specific allegations covered and whether the complaint will be investigated or sent to the employee's supervisor to handle.

Complaints classified for Supervisor Action (SA) generally involve matters that don't require further investigation or would not likely result in discipline, such as a complaint of minor rudeness against an officer who does not have a pattern of complaints. SAs are sent to the named employee's supervisor and may require further contact with the complainant, performance counseling or training with the employee, roll-call training, or simply be an information only referral. A deadline to complete the SA is set and there is a feedback loop to OPA. Most SAs also require that the supervisor send correspondence to the complainant outlining what occurred as a result of the complaint. Completed SAs are reviewed by OPA-IS and the OPA Director and Auditor. Clarifying instructions to supervisors handling SAs, shortening the response time, involving the civilian OPA Auditor in SA reviews, and developing other tracking systems



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are some of the ways that this process has been enhanced in 2012 to ensure that all concerns referred to a supervisor are fully and timely addressed.

Allegations of more serious misconduct, such as unnecessary use of force or evidence mishandling, are usually investigated by OPA-IS Sergeants. The OPA Director is involved, as needed, in guiding the investigation with the IS Captain and Lieutenant, and reviews the investigation when it is completed, as does the OPA Auditor. Both the Director and Auditor can require more investigation if deemed necessary. Once the investigation is completed, the OPA-IS Captain or Lieutenant makes a finding recommendation, based on a preponderance of the evidence standard. As previously reported, the finding categories have changed, in an effort to simplify and clarify the investigation disposition system. Findings now include: Sustained, Lawful and Proper (formerly called Exonerated), Unfounded, Inconclusive (formerly called Not Sustained), or Training Referral (formerly called Supervisor Intervention). For more information on the changes, please see: http://www.seattle.gov/council/OPARB/reports/2011opa_classifications_findings.pdf

The finding recommendation from OPA-IS is forwarded to the employee's precinct or unit commander and the OPA Director and Auditor. The OPA Director generally will make a final determination on the investigation finding, unless she or others recommend a Sustained outcome. Where there is a Sustained recommendation, the named employee's line of command, the Legal Advisor and the Director meet to review the investigation in-depth and to discuss discipline. In such cases, there is a check of discipline that has been imposed against other employees for similar policy violations and consideration of the named employee's own OPA-IS complaint history. If the Chief (or his designee) does not accept the OPA-IS recommendation, that decision is final, though if the OPA Director disagrees with the disposition, she is required to report this to the Mayor and City Council.

If the Sustained recommendation from OPA-IS is upheld, the named employee receives notice of the proposed finding and discipline and is entitled to a due process meeting with the Chief of Police (called the *Loudermill*). The OPA Director, Legal Advisor and a Deputy or Assistant Chief attends this meeting, where the named employee and a representative present their views on the investigation and mitigating circumstances, if any. The Chief then makes a final decision, including the discipline to be imposed. Depending on the nature of the discipline, SPD officers can appeal a Sustained finding to the Public Safety Civil Service Commission or to a Discipline Review Board, or can file a grievance.

A summary of the final outcome of an investigation is sent by the OPA Director to both the complainant and the named employee, and policy and training recommendations can be made regardless of the outcome of a specific allegation. Finally, the OPA Review Board can review closed OPA cases. The OPA then publishes information about complaint trends on a monthly and annual basis.



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Complaint Report

March 2012

Cases involving alleged misconduct of SPD employees in the course of their official public duties are summarized below. Identifying information has been removed.

March 2012 Closed Cases

Case Summary	Case Finding
<p>The complainant, whom the named officer issued a notice of infraction for consuming alcohol in a public park and simultaneously issued a park exclusion trespass notice, alleged that named officer used unnecessary force by bumping his bicycle into the back of his calf, used derogatory language and took enforcement action against him because of his race or ethnicity.</p>	<p>Allegations and Findings:</p> <ol style="list-style-type: none"> 1. Use of Derogatory Language – Inconclusive 2. Unnecessary use of Force – Unfounded 3. Biased Policing – Unfounded <p>The evidence showed that the named officer accidentally brushed the front wheel of his bicycle against the back of complainant’s calf one time as they walked which he apologized to the complainant. The contact was inadvertent and does not constitute misconduct or reportable use of force. The evidence showed that the named officer had legitimate justification to take enforcement action against the complainant after observing complainant consuming alcohol in a public park and was not based upon complainant’s race or ethnicity. The evidence was inconclusive as to whether the named officer used derogatory language against the complainant.</p>
<p>Complainant, a supervisor in the Department, alleged that named employee intentionally misrepresented dates between correspondence from the named employee requesting use of an emergency leave day and a police report the named employee filed.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Dishonesty – Unfounded <p>The evidence demonstrated that the named employee did not intend to be deceptive in requesting emergency leave but made a typographical error on her request memo.</p>
<p>Complainant, a supervisor in the Department, alleges that named employee, a 911 Dispatcher, made several policy violations regarding the handling of several 911 calls.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Violation of Rules/Regulations – Sustained <p>The evidence showed that the named employee did not use proper procedures in handling several 911 calls. The named employee also admitted that the calls could have been handled more effectively.</p> <p>Corrective Action: 1 day suspension without pay</p>



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Case Summary	Case Finding
<p>Complainant, a supervisor in the Department, alleges that named officer was arrested for DUI by an outside law enforcement agency.</p>	<p>Allegation and Finding: 1. Violation of Law-Administrative-DUI– Sustained</p> <p>The evidence showed that the named officer was arrested for DUI.</p> <p>Corrective action: 5-days suspension without pay, 2 of those days will be held in abeyance; any additional or similar related driving incidents where a Department Policy is violated will result in the imposition of the 2 days held in abeyance and discipline up to and including termination of employment; mandatory referral to Employee Assistance Program; revocation of take-home Department vehicle for 2 years.</p>
<p>Complainant, who was involved in a vehicle collision, alleges that named officer completed a traffic collision report using information that was obtained from only one of the parties of the accident and that the information was inaccurate. The complainant also alleges that named employee failed to submit the traffic collision report in a timely manner and that it was submitted without proper supervisory approval.</p>	<p>Allegation and Finding: 1. Ops Bureau Individual Responsibility, Employee Conduct – Sustained 2. Primary Investigations, Rules & Regulations—Sustained</p> <p>The evidence demonstrated that the named officer completed a traffic collision report using information that he should have known was insufficient for competently completing the report and reaching the conclusion that he did as to assessing fault for the collision. The evidence also demonstrated that the named officer failed to submit the report in a timely manner and to have it properly reviewed and approved by a supervisor.</p> <p>Corrective action: Written reprimand</p>
<p>Complainant alleges that named employee, a 911 dispatcher, failed to take appropriate action when she called 911 to ask for assistance after her boyfriend called her to say he was being robbed.</p>	<p>Allegation and Finding: 1. Failure to Take Appropriate Action– Sustained</p> <p>The evidence demonstrated that the named employee failed to properly identify the 911 call as a priority and follow procedure as an in-progress incident involving deadly weapon.</p> <p>Corrective action: 1-day suspension without pay; write letter of acknowledgement to caller</p>



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Case Summary	Case Finding
<p>Complainant, whom named employee arrested for robbery and assault, alleges that named officer was rude to him, arrested him because of his race and criminal history, and failed to arrest the victim of the robbery and assault for DUI.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Biased Policing – Unfounded 2. Failure to Take Appropriate Action (investigating a possible DUI)—Training Referral 3. Discourtesy/Rudeness—Unfounded <p>The evidence demonstrated that the named officer had legal justification to arrest the complainant for assault/robbery and that the arrest was not based upon the complainant’s race or criminal history. The evidence, including in-car video, demonstrated that the named officer acted professionally when interacting with the complainant, was not rude or discourteous. Though the named officer had discretion about whether to arrest the victim of the assault/robbery for DUI, there was more that could have been done to investigate the DUI and the named officer might not have appreciated the option to arrest under RCW 10.31.100 (Arrest without Warrant). The supervisor will meet with named employee, review the incident and how RCW 10.31.100 could have been applied in this instance and future incidents.</p>
<p>The complainant, a juvenile, alleges that named officer used excessive force by knocking him to the ground causing injury to his head and shoulder.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Unnecessary Use of Force – Training Referral <p>The evidence showed that named officer, while contacting the complainant for underage smoking, placed his hand on complainant’s shoulder and suddenly became entangled with complainant when complainant quickly moved away from named officer, the named officer fell on top of the complainant causing an injury to the complainant. After the fall, the named employee elected to handcuff the complainant. Though it was determined that no unnecessary force was involved, a training referral will allow a supervisor to review the incident and the decision to handcuff the complainant and to remind the named employee of the importance of providing detail for all actions concerning a law enforcement encounter in follow up reports.</p>



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Case Summary	Case Finding
<p>The complainant, involved in a disturbance between him and another person to which named officer were dispatched to investigate, alleges that the named officers mishandled the situation and made fun of him.</p>	<p>Two named officers, same allegations: Allegation and Finding: 1. Professionalism-Discourtesy – Unfounded 2. Biased Policing – Unfounded</p> <p>The evidence, including in-car video, demonstrated that the alleged misconduct did not occur as alleged. The named officers handled and documented the incident appropriately and a patrol supervisor screened the handling of the incident and found nothing of concern.</p>
<p>Complainant alleges that named officer used unnecessary force by slamming her to the ground and kicking her in the side during an investigative stop. OPA-IS added the allegations of Failure to Report Use of Force for named employee #1 and Failure to Use In-Car Video for both named employees.</p>	<p>Allegation and Finding: Named employee #1: 1. Unnecessary Use of Force – Inconclusive 2. Failure to Report Use of Force – Training Referral 3. In-Car Video Policy – Training Referral Named employee #2: Allegation and Finding: 1. In-Car Video Policy – Training Referral</p> <p>The evidence demonstrated that named officer #1 was dispatched to a disturbance involving two people who appeared to be intoxicated. The complainant, who was speaking irrationally and had a seeping, bloody bandaged wound, came in close proximity of named employee. Name employee #1 chose to turn the complainant away from him out of concern for a biohazard. Complainant then lost her balance and fell to the ground. Regarding the named officer kicking the complainant, evidence was insufficient to make a determination of whether the alleged misconduct occurred. On the issue of Failure to Report Use of Force, a Precinct Captain should review with the named employee and the Sergeant the importance of fully explaining in the General Offense Report or Use of Force Report the incident and the reported fall/injury of complainant, and to also discuss with both named employees how this complaint could have been resolved earlier if they properly made use of their in-car video system.</p>



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Case Summary	Case Finding
<p>Complainant alleges that named officers would not believe his side of the story when he called 911 about a disturbance he had been involved in. Complainant also alleges that named officer #2 manipulated his thumb in such a fashion that he injured it during handcuffing, and that named officer #2 did not report the use of force.</p>	<p>Allegation and Finding: Named employee #1: 1. Professionalism-Discourtesy – Unfounded Named employee #2: 1. Professionalism-Discourtesy – Unfounded 2. Unnecessary Use of Force – Unfounded 3. Failure to Report Use of Force – Unfounded</p> <p>The evidence demonstrated that the misconduct by the two named employees simply did not occur as alleged.</p>
<p>The complainant alleges that the named officer lacked justification to stop and frisk him. The complainant also alleges that named officer, after removing a “crack” pipe from the complainant’s pant pocket, broke it by throwing it on the ground. OPA-IS added an allegation regarding the failure to use in-car video system during this encounter.</p>	<p>Allegation and Finding: 1. Improper Search – Training Referral 2. Mishandling Evidence/Property – Unfounded 3. Failure to Use In-Car Video – Training Referral 4. Social Contacts/Terry Stops – Training Referral</p> <p>The evidence demonstrated that the named officer and a DOC Officer who were working together, acted in good faith when they decided to initiate a social contact with the complainant whom they recognized from previous encounters. Named officer patted complainant’s pant pocket which complainant removed a crack pipe from and quickly threw the pipe to the ground, breaking it. With regard to the allegations of Improper Search and Social Contacts/Terry Stops, the named employee would benefit from reviewing with his supervisor the requirements to justify a Terry Stop and frisk and review the Department policy and the law related to temporary investigative detentions, especially in the context of working in conjunction with DOC officers. The named officer will also benefit in reviewing the Department policy on use of in-car video system policy.</p>



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Case Summary	Case Finding
<p>The complainants allege that named officers, who were dispatched to their residence on a disturbance call by neighbors, used unnecessary force, failed to report use of force and improperly entered their residence.</p>	<p>Allegation and Finding: Two named officers, same allegations</p> <ol style="list-style-type: none"> 1. Unnecessary Use of Force – Unfounded 2. Improper Search – Unfounded 3. Failure to Report Use of Force – Unfounded <p>The evidence showed that the complainants were the cause of several DV/disturbance incidents in their apartment unit that caused neighbors to call the police. The evidence establishes that the named officers conducted themselves reasonably and professionally, and that the asserted misconduct simply did not occur as alleged.</p>
<p>The complainant, who was intimately involved with named employee, alleged when she broke off the relationship with named employee, the named employee sent her a text message that she considered threatening.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Violation of Law-Administrative – (DV Threats/Harassment) – Unfounded <p>The evidence, including copies of the text messages between the complainant and the named employee, demonstrated that the complainant and the named employee exchanged text messages regarding their apparently deteriorating relationship. The complainant changed her original complaint as being fearful of the named employee to not wanting to pursue the matter because she decided that she was really not fearful of the named employee.</p>
<p>The complainant, while participating with a protest group at Westlake Park, alleges that the named employee lacked justification for repeatedly nudging her as the named employee and other officers were attempting to move an arrestee through the crowd.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Unnecessary Use of Force – Lawful & Proper <p>The evidence demonstrated that the named employee used reasonable, necessary and minimal force to nudge the complainant out of the way as several officers were attempting to remove an arrestee from the area.</p>
<p>Complainant, a supervisor in the Department, alleges, that an SPD officer who is in the process of dissolving her marriage to another SPD officer, reported that her estranged spouse assaulted her.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Violation of Law-Administrative-DV Assault – Unfounded <p>The evidence, including the criminal investigation conducted by a neighboring jurisdiction, suggests that the alleged misconduct simply did not occur as alleged.</p>



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Case Summary	Case Finding
<p>The complainant, whom named officer arrested for pepper spraying a passerby on the street, alleges that named officer failed to properly safeguard property that the complainant had in a plastic bucket at the time of his arrest.</p>	<p>Allegation and Finding: 1. Mishandling Evidence/Property – Unfounded</p> <p>The evidence demonstrated that the alleged misconduct simply did not occur as reported.</p>
<p>The complainant, mother of subject, whom named officer arrested for conduct occurring in the course of a demonstration involving a crowd of people unlawfully occupying a city park, alleges that named officer #1 used unjustifiable force to control him during his arrest and handcuffing. The complainant also alleges that an unknown officer used a knife to cut through a tent being dismantled as part of the cleaning of the park and that he was missing ten dollars out of thirty dollars he said he had in his possession at the time of his arrest.</p>	<p>Allegation and Finding: Two named officers: Named Officer #1 1. Unnecessary Use of Force – Lawful & Proper</p> <p>Unknown Officer #2 1. Professionalism-Exercise of Discretion – Inconclusive 2. Mishandling Evidence/Property – Inconclusive</p> <p>The evidence demonstrated that the complainant’s son was arrested for his conduct in connection with a group demonstration. In the process of the complainant’s son being arrested, he squirmed and thrashed about, spit on officers, refused to walk and had to be carried by officers away from the scene. The evidence demonstrated, which included an evaluation by the Seattle Fire Dept. Medic Unit, there was no injury, that the name officer acted reasonably, and that minimal force he used to overcome the complainant’s resistance to being handcuffed was reasonable and necessary. Regarding the complainant’s son’s allegations against an unknown officer(s) for using a knife to cut down tents, other than the complainant’s son’s assertion of misconduct, there is no further evidence to support this allegation or means to identify an officer. Regarding the allegation by the complainant’s son that he was “pretty sure” that he possessed \$30 and not the “\$20 or something,” returned to him at the jail upon his release, there was no conclusive evidence to support or refute the allegation.</p>



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Case Summary	Case Finding
<p>This complaint came to OPA via the SPD Media Unit when they received a YouTube video that shows named officers responding to a car vs pedestrian accident. The audio captured in this video is a private conversation between two named officers, not in front of the injured pedestrian or driver. One named officer talked with an accent, presumably imitating the driver, and the other officer made derogatory remarks against the pedestrian.</p>	<p>Allegation and Finding: Two named officers same allegations:</p> <ol style="list-style-type: none"> 1. Professionalism-Discourtesy – Training Referral 2. Professionalism-Use of Derogatory Language – Training Referral <p>The evidence demonstrated that the named officer used the language attributed to them, that they used this language within the confines of their patrol car with no other person within hearing distance, and that the comments would not have been heard but for the audio recording by the in-car video system and the complainant’s subsequent posting of those comments on the YouTube internet site. Both named officers will benefit from discussing with their supervisor the potentially corrosive effect on the image of the police, the erosion of public confidence in the police, and the damage to the public trust that occurs when even a flippant or imprudent comment is made in passing or in jest and then is publicized.</p> <p>It should be noted that the Chief of Police contacted the complainant shortly after learning of this incident and apologized, and that the complainant was satisfied with this response and not wanting to pursue a complaint.</p>
<p>The complainant, a supervisor in the Department, alleged that named civilian employee, during the course of a background investigation being conducted by the Department’s Human Resource Unit as part of the named employee’s testing for the position of police officer within the Department, revealed that he engaged in activity that would constitute the crime of Computer Trespass.</p>	<p>Allegation and Finding:</p> <ol style="list-style-type: none"> 1. Violation of Law-Administrative – Computer Trespass – Sustained <p>The evidence, including the admissions to representatives of the Department’s Human Resources Section, showed that named employee did engage in the crime of Computer Trespass. The Department’s Fraud, Forgery and Financial Exploitation Unit conducted a criminal investigation of alleged criminal conducting and concluded the named employee had not used any Department computer systems for this conduct and there was insufficient evidence to seek criminal charge. A neighboring jurisdiction was given this information and they declined to conduct a criminal investigation.</p> <p>Corrective action: 15-day suspension without pay; terms of Last Chance Agreement</p>



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Definition of Findings:

Inconclusive (formerly Not Sustained) means the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence.

Lawful and Proper (formerly Exonerated) means a preponderance of evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper.

Sustained means the allegation of misconduct is supported by a preponderance of the evidence.

Training Referral (formerly Supervisory Intervention) means while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee's chain of command is to provide appropriate training, counseling and/or to review for deficient policies or inadequate training.

Unfounded means a preponderance of evidence indicates the alleged act did not occur as reported or classified, or is false.

Mediation Program

The OPA Director and OPA Auditor selected 4 cases to be resolved through the Mediation Program during March 2012.

Of the 4 cases that were selected for resolution through the mediation program, 1 complainant has agreed to mediate complaint and OPA is waiting to hear from named employee. In 3 cases, OPA is waiting to hear back from complainants. 2 previously reported mediations were successfully mediated during this month.



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Cases Opened -2011/2012 by Month Comparison

	PIR/SR	Supervisor Action	LI/IS	Investigation	TOTAL	
Date	2011	2012	2011	2012	2011	2012
1/1-1/31	17	33	20	16	37	49
2/1-2/29	24	27	18	14	42	41
3/1-3/31	19	26	13	10	32	36
4/1-4/30	31		23		54	0
5/1-5/31	37		19		56	0
6/1-6/30	29		15		44	0
7/1-7/31	26		9		35	0
8/1-8/31	39		16		55	0
9/1-9/30	22		13		35	0
10/1-10/31	27		15		42	0
11/1-11/30	21		27		48	0
12/1-12/31	26		14		40	0
Totals	318	86	202	40	520	126



