



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2015-1833

Issued Date: 06/30/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (2) Employees Must Adhere to Laws, City Policy and Department Policy (Policy that was issued 04/01/2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee was the City-wide Commander at the time of the incident.

COMPLAINT

The complainant alleged that the Named Employee illegally closed access to a public street on the incident date.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint email
2. Interview of the complainant
3. Search for and review of all relevant records and other evidence
4. Review of other video
5. Review of 911 calls for service
6. Interview of witness
7. Interview of SPD employees

ANALYSIS AND CONCLUSION

The Named Employee was City-wide Commander at the time of the incident giving rise to this complaint. Both in an email to his supervisor, the Deputy Chief, and in his OPA interview, the Named Employee took full responsibility for deciding to order SPD officers to block the westward progress of an unpermitted protest march on Pine Street at 6th Avenue. There is no factual dispute that some portion of a large group of persons engaged in expressing their views on a variety of topics was stopped by SPD officers and not permitted to go past 6th Avenue on westbound Pine Street. This police action to block the westward movement of the protest march lasted between five and fifteen minutes and applied to any and all persons east of the police line on Pine Street at 6th Avenue. At the same time their westward movement on Pine Street was restricted, there was no restriction placed on their movement east to 7th Avenue and beyond. There is also no dispute this march did not have a parade or event permit. The SPD assisted them in safely marching through the streets of downtown Seattle for approximately three hours prior to being stopped. Finally, as part of the factual background to this incident, large numbers of persons shouting slogans and some holding protest signs had attempted to gain entrance to two downtown indoor malls resulting in attempts to damage property, physical violence, use of force by the police, injuries and arrests. These two events took place earlier in the same afternoon that the police temporarily blocked the westward movement of the group of protesters. It is not clear whether any of the persons stopped at 6th Avenue and Pine Street had been involved in the previous incidents at the malls, nor does the record contain any claims by the Named Employee or other SPD sources to have had specific evidence linking any specific person in the stopped group with the previous incidents at the entrances to the malls.

The complainant alleged the police action to stop her and others from proceeding west on Pine Street to the area of Westlake Park prevented them from exercising their right to free expression guaranteed by the First Amendment to the United States Constitution. The complainant and a witness who also took part in the protest told OPA there was no objectively reasonable basis for the police to stop the marchers two blocks short of their intended audience. The complainant and the witness described the protesters at that time as loud and peaceful. The Named Employee, however, described the group at that time as “no longer a peaceful protest.” He said, “It was a mob.” The Named Employee expressed concern that, based on what had taken place earlier in the afternoon at the two malls, a sort of “contagion effect” might cause the crowd of demonstrators to “step outside themselves and become criminals.” Specifically, the Named Employee told OPA he was concerned about the safety of the approximately 10,000 people (including children) assembled for the tree lighting ceremony at Westlake Park should the crowd of protesters reach Westlake while still in an excited and potentially violent state. According to the Named Employee, the protesters were halted temporarily while the police brought additional resources to the area of the tree lighting ceremony and time allowed some of the “contagion effect” to “dissipate.” Then, after a short period of time, Pine Street was opened again and the protesters were allowed to continue westbound and reach their intended audience at Westlake Park. The complainant also told OPA that she and the protesters were able to reach Westlake and deliver their message at the tree lighting ceremony after the police reopened Pine Street.

The preponderance of the evidence supports the conclusion that the brief (less than 15 minutes) restriction on the protesters' westward movement on Pine Street met the criteria found in case law regarding the placement of reasonable time, manner and place restrictions on protests and demonstrations. The restriction was "content neutral" in that all pedestrians were prohibited from heading west on Pine Street at 6th Avenue, and the restriction was based on conduct, not speech, in that unpermitted entry onto private property and attempts to inflict property damage and physical altercations led to an "excited" atmosphere creating a risk of further similar conduct. The restriction was narrowly tailored to promote a compelling interest in preventing further altercations and potential violence in light of the presence of a large number of people in the area and the previous conduct of some of the marchers. The actions of the Named Employee also allowed for ample alternative channels of communication. The restriction did not prevent the protesters from having access to their intended audience at Westlake Park during the tree lighting ceremony, it merely delayed it. The protesters were able to get to the park while their audience was still there and the event was still underway, either by using a different route or by waiting until the police unblocked their path.

FINDINGS

Named Employee #1

Allegation #1

The preponderance of the evidence supports the conclusion that the brief restriction of movement was "content neutral" and was a reasonable action taken by the Named Employee based on totality of the circumstances. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Employees Must Adhere to Laws, City Policy and Department Policy*.

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.