



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1090

Issued Date: 03/30/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 16.090 (6) In-Car Video System: Employees Will Record Police Activity (Policy that was issued March 1, 2016)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 16.090 (5) In-Car Video System: Employees Will Log in and Perform a System (Policy that was issued March 1, 2016)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #3	<u>Seattle Police Department</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #4	<u>Seattle Police Department</u> 16.030 (VI) Citizen Rider Program: Assigned Officer's Responsibility C. (Policy that was issued November 15, 2007)
OPA Finding	Not Sustained (Training Referral)
Allegation #5	<u>Seattle Police Department</u> 13.031 (10) Vehicle Eluding/Pursuits: Units with Civilian Riders or Passengers Shall Not Participate in a Pursuit in Any Capacity (Policy that was issued January 1, 2015)
OPA Finding	Allegation Removed

Allegation #6	<u>Seattle Police Department</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

Named Employee #3	
Allegation #1	<u>Seattle Police Department</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

Named Employee #4	
Allegation #1	<u>Seattle Police Department</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees were involved in a brief vehicle pursuit.

COMPLAINT

The complainant, a supervisor within the Department, alleged the Named Employee #1 failed to properly record an incident on In-Car Video (ICV), failed to conduct an ICV system check, and failed to leave a citizen rider in a public place before engaging in a vehicle pursuit. Additional review of the incident revealed that all the Named Employees failed to disengage from the pursuit when the order to terminate was given and the original Named Employee #1 may have violated SPD Use of Force policy because he released a K-9 Unit after the individual had dropped his weapon.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
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

Named Employee #1 did not synch his portable microphone via the ICV log-in process before the high priority shooting call came out. Named Employee #1 elected to respond to the call rather than take the time then to synch his microphone. Given the totality of the circumstances, Named Employee #1's decision was reasonable.

Named Employee #1 arrived at work driving a take home police canine unit vehicle. Within a short period of time, the high priority shooting call came out and Named Employee #1 decided to respond to the call. He decided to do this because he was the only on-duty canine unit and he believed the canine might be helpful should any suspects need to be located on foot or apprehended. Given the totality of the circumstances, Named Employee #1's decision was reasonable.

Named Employee #1 commanded his canine partner to take the suspect. The dog bit the suspect's leg and held on until the release command was given. Named Employee #1 saw what he believed to be a gun in the hand of the suspect and perceived that the gun was being pointed in his (Named Employee #1's) direction. The use of a canine and a bite in this circumstance was reasonable, necessary and proportional to prevent the suspect from shooting Named Employee #1 or anyone else. The dog was not released from the bite until the suspect was completely under the control of other officers. This extended period of time, according to Named Employee #1, was necessary due to the possibility the suspect, who had not been searched or handcuffed, was still armed with a gun. Named Employee #1 also told OPA that his canine partner was not biting the suspect's leg the whole time but only had the suspect's pant leg in his mouth. This was supported by the relatively minor nature of the bite wound. Had the dog been biting on the suspect's leg the entire time, it is likely the wound(s) would have

been far more severe. Given the totality of the circumstances, the OPA Director found Named Employee #1's use of the police canine to bite the suspect was reasonable, necessary and proportional.

Named Employee #1 had a citizen rider with him during this incident. At some point during the incident, Named Employee #1 chose to become involved in pursuing the shooting suspect vehicle. SPD policy regarding citizen riders says that officers should drop a rider off in a public place before engaging in a pursuit or emergency driving. Named Employee #1 chose to keep the rider in his police car while he engaged in the pursuit. Named Employee #1 told OPA he considered the area where he would have had to drop the rider to be unsafe at that time of day. While the OPA Director understood Named Employee #1's concern for the safety of his rider, he should have found a safe place to drop off his rider while he was waiting in the area. If that was not feasible, he should not have engaged in the pursuit. Other police cars were pursuing the suspect vehicle and Named Employee #1 could have monitored the pursuit by radio, remained in the area and still have been available to use his canine partner if needed. Named Employee #1 would benefit from clear direction and counsel from his supervisor regarding his obligation to choose between becoming involved in a pursuit and keeping a citizen rider in his police car.

Allegation #5 was duplicative with the allegation above for violation of 16.030.VI(c) and has been removed.

There was not a preponderance of evidence from this investigation to prove that Named Employee #1, #2, #3, or #4 heard the supervisor's clear order to terminate the pursuit. In addition, the sergeant's other order to terminate if the suspect was driving on the sidewalk provided enough ambiguity that it was not possible for the OPA Director to conclude that the Named Employees failed to disengage from a pursuit after receiving an order to terminate.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that given the totality of the circumstances, Named Employee #1's decision was reasonable. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *In-Car Video System: Employees Will Record Police Activity*.

Allegation #2

A preponderance of the evidence showed that given the totality of the circumstances, Named Employee #1's decision was reasonable. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *In-Car Video System: Employees Will Log in and Perform a System*.

Allegation #3

A preponderance of the evidence showed that Named Employee #1's use of the police canine to bite the suspect 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 #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Citizen Rider Program: Assigned Officer's Responsibility C*.

Required Training: Named Employee #1 should receive clear direction and counsel from his supervisor regarding his obligation to choose between becoming involved in a pursuit and keeping a citizen rider in his police car. He should be reminded of his duty to safeguard the wellbeing of his rider and protect the City from potential liability should a rider become injured as a result of a pursuit or other activity in which a rider should not have been involved. The supervisor can help Named Employee #1 plan alternatives for what to do in similar situations in the future.

Allegation #5

Allegation #5 was duplicative of Allegation #4 and has been removed.

Allegation #6

There was not a preponderance of evidence to prove that Named Employee #1 heard the supervisor's clear order to terminate the pursuit. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated*.

Named Employees #2, #3, and #4

Allegation #1

There was not a preponderance of evidence from this investigation to prove that Named Employees #2, #3, or #4 heard the supervisor's clear order to terminate the pursuit. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Vehicle Eluding/Pursuits: Officers will Disengage When Pursuit is Terminated*.

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.