



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0154

Issued Date: 09/19/2017

Named Employee #1	
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	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 8.400 (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	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 8.400-POL-2 (1) Use of Force - Type I Investigations: Sergeants Must Screen Uses of Reportable Force In-Person With the Involved Officer and the Subject, [...] (Policy that was issued September 1, 2015)
OPA Finding	Sustained
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee was present during a subject's arrest.

COMPLAINT

The complainant, a supervisor within the Department, alleged that while reviewing In-Car Video (ICV) of a Use of Force, that the Named Employee was present at the scene of the Use of Force and failed to report, classify and properly screen a complaint of pain and a soft-take-down of the suspect as Type I Force.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

On the date in question, the subject was subjected to force by officers and made two complaints of pain.

The first complaint was made when officers were trying to place the subject into handcuffs. At that time, the subject stated, referring to an officer's attempts to open the subject's grip: "Don't break my fingers! Tell him to stop hurting me." Based on the evidence, it appeared that the statement, which was captured on ICV, was heard by that officer, another officer, and Named Employee #1. Moreover, the subject stated, apparently directed towards Named Employee #1: "Tell him to stop. Tell him to stop hurting me. Tell him to stop hurting me. If you are in charge, please tell him to stop."

The second complaint was made after the subject was handcuffed and while he was being walked by officers to a police vehicle. At that time, the subject appeared to indicate discomfort to his wrist from the handcuffs. This second complaint did not appear from the ICV to have been made in Named Employee #1's presence.

Manual Policy 8.400-POL-1(1) instructs that "officers shall report all uses of force except de minimis force." The policy further states that "[o]fficers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application." Complaints of pain are construed as Type I uses of force for the purpose of reporting requirements.

While, as discussed below, Named Employee #1 did not properly review and screen either complaint of pain, he was not obligated to complete a Use of Force report. That responsibility fell to the two officers.

The OPA Director noted, however, that Named Employee #1 asserted at his OPA interview that he did not think that the force used by the officers, including a soft takedown, needed to be reported as he believed it was de minimis. This was incorrect and directly contrary to policy.

Manual Policy 8.400-POL-1(3) requires that upon verbal notification by an officer of a reportable use of force, a sergeant “will review the incident” and do one of the following: (1) classify the investigation as a Type I use of force; (2) classify the investigation as a Type II use of force; or (3) call the Force Investigation Team (FIT) captain and screen a Type III response by FIT.

The elements of the sergeant’s review of an incident are set forth in Manual Policy 8.400-TSK-2, and include, among other requirements in the context of a Type I investigation: screening the incident in person, which involves an immediate response to the scene unless it would be impractical and photographing of the alleged injury or area of pain.

As indicated above, the subject made two complaints of pain. However, Named Employee #1 did not properly review either as required by policy.

With regard to the first complaint, even though he was present when it was made, Named Employee #1 did not screen it as a Use of Force or photograph the area of injury.

With regard to the second complaint of pain, while Named Employee #1 claimed that he did not become aware of the complaint until after the subject was already booked into the jail, he did not take any steps to go to the jail to personally screen the force and photograph the area of injury.

Manual Policy 8.400-POL-2 requires, among other conduct, that “sergeants must screen uses of reportable force in-person with the involved officer and the subject, unless impracticable, prior to the subject being booked or released.”

As referenced above, Named Employee #1 was aware of the first complaint of pain, but failed to properly screen the force and to photograph the area of injury. This was in violation of policy.

By the time Named Employee #1 learned of the second complaint of pain, the subject had already been booked into the jail. Named Employee #1 admitted that he did not go to the jail to screen the force and photograph the area of injury. Named Employee #1 believed that screening the force was impractical, based on the following: the subject was suffering from mental illness; Named Employee #1 “wasn’t going to get anything from talking to him” given the subject’s other statements at the scene; and on the assumption that the subject was not injured given his admittance into the jail. As both the Acting Lieutenant and Named Employee #1 later recognized, Named Employee #1 should have gone to the jail to screen the force. The OPA Director found that, based on the evidence, it was not impractical for Named Employee #1 to screen the force, and the failure to do so violated policy.

FINDINGS

Named Employee #1

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 #1 receive additional training on SPD's Use of Force policy and, specifically, on the distinction between Type I and de minimis force, reporting requirements for force, and when sergeants are required to review force and screen that force in person.

Allegation #2

A preponderance of the evidence showed that the subject made two complaints of pain, but the Named Employee #1 did not properly review either as required by policy. Therefore a **Sustained** finding was issued for *Use of Force Reporting and Investigation: The Sergeant Will Review the Incident and Do One of the Following:*

Allegation #3

A preponderance of the evidence showed that it was not impractical for Named Employee #1 to screen the force, and the failure to do so violated policy. Therefore a **Sustained** finding was issued for *Use of Force - Type I Investigations: Sergeants Must Screen Uses of Reportable Force In-Person With the Involved Officer and the Subject, [...]*.

Discipline Imposed: Written Reprimand

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.