



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 18, 2018

CASE NUMBER: 2017OPA-0753

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant filed a complaint that the Named Employees and a third unknown employee pointed guns at him and his dog and were "incompetent, reckless and unprofessional." OPA could not find not find a report of force by the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

Under SPD policy, pointing a firearm at an individual constitutes a Type I use of force. As such, for this force to be appropriate, it must be reasonable, necessary and proportional under the circumstances.

In his first statement to OPA, the Complainant asserted that officers pointed their firearms at him. In his second statement to OPA, however, the Complainant indicated that he could not definitively say that any firearm was pointed at him.



At his OPA interview, Named Employee #1 (NE#1) denied pointing his firearm at the Complainant. While he indicated that his weapon was drawn, NE#1 claimed that it was pointed downwards in the low ready position at all times during his interaction with the Complainant.

Applying a preponderance of the evidence standard, and given the Complainant's inability to recall with clarity whether a firearm was pointed at him and NE#1's denial that he did so, I conclude that NE#1 did not point a firearm at the Complainant and thus did not use force in this instance. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD policy sets forth four levels of force – de minimis, Type I, Type II and Type III. (SPD Policy 8.400-POL-1.) De minimis is the lowest level of force and Type III is the highest. (*Id.*) No investigation or reporting is required for de minimis force, but all other levels need to be reported, documented and investigated to varying degrees. (*Id.*) The policy defines Type I force as including a “strike with sufficient force to cause pain or complaint of pain.” (*Id.*) Among the force that rises to the level of Type II, is any force “reasonably expected to cause physical injury.” (*Id.*) Both levels of force must be reported to and screened in-person at the scene by a sergeant. (*Id.*) With regard to Type I force, in-person screening is not required if not practical under the circumstances). (*Id.*)

As indicated above, pointing a firearm at an individual is Type I force. As such, it must be reported and investigated. Accordingly, had NE#1 pointed a firearm at the Complainant, he would have been required to report that force.

Here, however, I conclude that NE#1 did not do so. As such, he was not required to report force that he did not use. For this reason, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant alleged that the Named Employees' conduct and interaction with him on the date in question was unprofessional and in violation of SPD policy.

On that date, NE#1 and Named Employee #2 (NE#2) were tracking individuals suspected of stealing a vehicle. Those suspects ditched the vehicle and ran and hid from the police. The individuals fled in the vicinity of the Complainant's home and were tracked in that location.

The Complainant reported that when he returned to his home, he was informed by a neighbor that the police were searching for suspects who were at large. He reported requesting that an officer perform a walkthrough with him of his property to make sure that it was safe. The Complainant stated that an officer did so and no suspects were located.



Thereafter, the Complainant was in his home when a police officer shined a light through his window. The Complainant was annoyed by this given that a search had already been conducted of his property with negative results and, at that time, he was nude. The Complainant opened his door to speak to the officers. As indicated above, he asserted that a firearm may have been pointed at him. He reported being given multiple orders by the officers, including: “put your hands up”; “restrain your dog”; and “get back inside.” The Complainant, who had his dog with him at that time, reported going back into his house with his dog and slamming his door.

The Complainant alleged that the officers were aggressive, engaged in actions that endangered him, and were unprofessional, reckless, and incompetent. The Complainant further asserted that the officers left several gates open and tracked dog feces through his yard.

NE#2 explained that he was tracking the scent of the at large suspects with his K-9 partner Zeff. NE#1 was working as the cover officer. While a third officer was with them at various times during the tracking, both NE#1 and NE#2 indicated that she was not with them when they interacted with the Complainant. This is inconsistent with the Complainant’s recollection, as he reported that he interacted with three officers.

Both NE#1 and NE#2 stated that they were unaware that an officer had already performed a walkthrough of the Complainant’s property. However, both stated that this fact would have been immaterial as they were following an active scent. The officers explained that, based on legal authority, they had the lawful right to track the scent with Zeff when it led Zeff through the Complainant’s property. The officers asserted that this was the case even if the property had already been examined and even though they had to open closed fences to access the Complainant’s yard. [I note that the case relied upon by the officers is *State of New Hampshire v. Christopher Gay*, a New Hampshire Supreme Court decision. This is not binding authority for either Washington state or federal courts. That being said, I am unaware of any legal authority in Washington that is contrary to the holding set forth in this case and the issue of whether there was a lawful basis for the K-9 search is not at issue in this case.] NE#2 explained that the track that Zeff was following could fade at any time and it was essential to keep the search going to locate the subjects.

Both of the Named Employees recounted that when they walked by his door, the Complainant opened the door and was standing there with his dog. The Complainant appeared angry and annoyed by their presence. The officers, who reported wearing clearly marked SPD uniforms, identified themselves. Given the fact that they were actively tracking subjects and their concern that Zeff could bite the Complainant or the Complainant’s dog, the officers told him to go inside and close his door and to restrain his dog. The Complainant did so and the officers continued with their tracking. The officers stated that it was possible that a flashlight was shined into the Complainant’s window, but that it would have been done inadvertently when they were scanning the area looking for the subject. The officers stated that they did not purposefully shine the flashlight into the window to illuminate the Complainant. The officers denied pointing firearms at the Complainant. Both officers also denied telling the Complainant to put his hands up.

Both of the officers stated that it was possible that they left the gates open. NE#2 indicated that it was not his practice to close the gates. Both officers denied tracking dog feces throughout the Complainant’s yard.



SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

Evaluating the above facts and under the totality of the circumstances, I do not find that the officers engaged in conduct that violated the Department’s professionalism policy. The officers were tracking fleeing subjects and that track led them by the Complainant’s home. While the Complainant was frustrated by the duplicative search, I credit the officers’ account that they were unaware that the previous walkthrough had occurred and that, even had such a prior search occurred, it was largely immaterial. I find that it was reasonable for the officers to tell the Complainant to go back inside and restrain his dog given their concerns.

I find that there is a dispute of fact concerning whether the officers told the Complainant to put up his hands, but even if this occurred, it would not necessarily have been unprofessional or in violation of policy. I also find that there is a dispute of fact concerning whether the Named Employees tracked dog feces through the Complainant’s yard; however, even had they done so, there is no indication that this was anything more than an accident.

Lastly, while the preferred course of action would have been to close the gates that they opened in the Complainant’s yard, I do not find that the Named Employees’ failure to do so constituted unprofessional behavior.

While I understand the Complainant’s frustration with the circumstances that he faced in this instance – particularly his annoyance that the vicinity of his home was searched twice and that he was ordered to go back into his home when standing in his own yard – the officers’ conduct in this case did not violate this section of the policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

NE#2 denied having his firearm in his hand at any point while he was tracking with Zeff. NE#1 did not recall whether NE#2 had his firearm out, but stated that it was unlikely given that NE#1 was actively tracking and was holding Zeff’s leash with one hand.

The Complainant did not necessarily dispute NE#2’s claim that he did not have his firearm out. In his first statement to OPA, the Complainant stated that either a gun or guns were pointed at him. As such, it is possible that, even assuming the Complainant’s account to be accurate, only one gun (allegedly NE#1’s) was pointed at him.

Based on the above and applying a preponderance of the evidence standard, I find that NE#2 did not have his gun drawn on the date in question and thus did not use any reportable force in this case. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #2 - Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

Given that I find by a preponderance of the evidence that NE#2 did not draw his firearm on the date in question, I also find that he was not required to report any force. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**