



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 26, 2018

CASE NUMBER: 2017OPA-1218

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 (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)

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 Named Employee may have violated policy regarding the use and reporting of force.

ADMINISTRATIVE NOTE:

Since the issuance of this DCM, OPA has further explored the issues surrounding the failure of the Named Employee to report the Complainant’s allegation that his neck was grabbed. In OPA’s opinion, this was an allegation of force and potential serious misconduct that needed to be reported. However, the Named Employee expressed confusion with the policy and stated that he was not aware that he had an obligation to report a claim of neck contact where the conduct did not, in fact, occur. Notably, a similar issue was raised in another OPA case – 2018OPA-0231 – where an officer, a sergeant, and a lieutenant all failed to document and report a similar allegation under analogous circumstances. All three employees claimed, like the Named Employee, that they did not read current policy to require them to do so, particularly where they did not believe from their observations at the scene and investigation that the claimed conduct occurred. Given the confusion by multiple officers over two cases, as well as confusion by the Force Review Board (“The Board is unable to determine if this comment should have been reviewed and screened with FIT”), I believe that a policy revision is warranted. Accordingly, I reverse my previous Inconclusive finding here and, instead, issue a Management Action Recommendation. I also reverse my findings in 2018OPA-0231 and issue the same recommendation in that case.

STATEMENT OF FACTS:

During a review of In-Car Video for another OPA investigation (2017OPA-0805), it appeared as if Named Employee #1 (NE#1) used force on the Complainant on the rear of the patrol vehicle that was not reported. It further appeared possible that the force in question, which included NE#1’s hands in the near vicinity of the Complainant’s neck and an associated complaint of contact to the neck, was outside of policy. OPA accordingly initiated this investigation.



The Complainant was arrested for shoplifting. When officers tried to seat him in the rear of the patrol vehicle, he was uncooperative. Multiple officers were needed to get him into the back of the car. NE#1 sat in the rear right seat next to the Complainant and tried to get him seated.

The rear In-Car Video (ICV) from the patrol vehicle showed the force used by NE#1 in an attempt to secure the Complainant. He first appeared to grab the Complainant's torso from the rear to pull him fully into the patrol vehicle. NE#1 grabbed him underneath his arms and pulled him backwards. The Complainant was seated, but continued to move his head and shoulders towards the open door. His foot was also outside of the open door. NE#1 attempted to place the seatbelt on the Complainant. While this appeared to be initially successful, the Complainant jerked his body towards the open door again and began sitting sideways in the rear seat with his back facing towards NE#1. NE#1 again tried to pull the Complainant into the patrol vehicle, but was unable to get him properly seated and completely inside. At that time, NE#1 cupped his hand underneath the Complainant's chin and moved the Complainant's head towards him. This caused the Complainant to move back into the car and to be seated facing forward. At this time, the Complainant referenced his neck and NE#1 told him that "no one is grabbing your neck." NE#1 pushed the Complainant's head down and then pulled his body forcefully into the car. This enabled the officer at the other side of the patrol vehicle to close the open door. NE#1 then exited the rear of the patrol vehicle and closed the open door on his side.

While the Complainant alleged after the incident that he was "slammed" into the ground by officers, he made no mention of any force being used against him by NE#1 when he was in the rear of the patrol vehicle. He explicitly did not allege that his neck was restrained or that he was choked.

As part of its investigation, OPA attempted to interview the Complainant; however, the Complainant refused to provide a recorded statement. OPA did interview NE#1. He explained that he used the force in question to ensure that the Complainant was secured inside of the car and could be transported from the scene. He denied ever making contact with the Complainant's neck or throat. He further denied ever choking the Complainant. NE#1 contended that the force he used was de minimis and stated that, as such, he did not report it to a supervisor. He further stated that he did not believe that the Complainant's mention of his neck during the force warranted any reporting to a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Once the Complainant was placed under arrest, NE#1 had the lawful authority to secure him in the rear of the patrol vehicle in order to transport him from the scene. When the Complainant continued to resist being secured, NE#1



was permitted to use force in order to get the Complainant seated, seat belted, and to close the doors of the patrol vehicle. NE#1 initially tried to pull the Complainant backwards, but this did not effectuate the desired result. As he explained during his OPA interview, NE#1 decided to cup the Complainant's chin and use that as leverage to move him back into the patrol car. This worked and he was able to get the Complainant seated and secured. From my review of the video, I find no evidence that NE#1 made any contact with the Complainant's neck, let alone that he deliberately did so or that he choked the Complainant.

For the above reasons, I find the force used by NE#1 to have been reasonable. I further find that it was necessary under the circumstances in order to get the Complainant secured the patrol vehicle. I believe that NE#1 did not believe that there were any reasonable alternatives to that force at the time. Lastly, I find that the force was proportional to the Complainant's conduct. The Complainant repeatedly physically resisted officers' attempts to secure him in the patrol vehicle. Force was required to ensure compliance and only the least amount of force necessary was used to effectuate NE#1's lawful goals.

Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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 8.400-POL-1 requires that officers report all uses of force except de minimis force. Here, NE#1 admittedly did not report the force he used in the rear of the patrol car. His explanation for why he did not do so was because he believed it to have been de minimis. I agree. As such, I find that he was not required to report this force.

However, NE#1 also did not report the Complainant's comment concerning the grabbing of his neck to a supervisor. NE#1 did not do so because he claimed that he did not actually touch or grab the Complainant's neck and because he did not believe that he was required to report something that did not occur.

In the first version of this DCM, I recommended that this allegation be Not Sustained – Inconclusive. I based that on the following analysis:

From my review of the policy, it is unclear whether the Complainant's allegation and associated contact was required to be reported. A neck or carotid hold must be reported and documented as Type III force; however, there is no evidence that such force was used here. While NE#1 may not have been required to document what occurred, he should of, at the very least, notified a supervisor of what was said. Notably, this was not a matter of NE#1 not hearing the allegation made. He clearly did so and responded to it. This did not occur here and this specific application of force and the allegation concerning the Complainant's neck was not reviewed until OPA evaluated it during this investigation. Again, while I cannot definitively say that NE#1 violated policy, it certainly would have been best practice for him to have reported what occurred to a supervisor. I counsel him to do so in the future.



After the conclusion of this case and after he received the closed case summary, NE#1 contacted OPA and expressed his confusion concerning this finding. He stated that he believed that the Inconclusive determination was unfair. He noted that he did not know that he was required to report this type of claim and, had he known this, he would have done so.

As discussed above, NE#1's argument that the policy and training in this area is unclear is legitimate. As the policy is currently written, an officer could plausibly assert, as NE#1 did, that reporting is not required. The Department should revise the policy to provide clarity on this matter and to ensure that such complaints will be critically reviewed in all cases moving forward. For these reasons, I recommend that this allegation be Not Sustained – Management Action Recommendation.

- **Management Action Recommendation:** In SPD Policy 8.400, OPA suggests adding “complaint of contact with a subject’s neck” as a trigger for Type I Use of Force reporting and investigation. In the alternative, the Department should consider creating a separate reporting event for such an occurrence, similar to the Handcuff Discomfort report set forth in SPD Policy 8.400-POL-2, to document and critically review such complaints.

Recommended Finding: Not Sustained (Management Action)



Seattle Office of Police Accountability

November 15, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION

Dear Chief Best:

Please see the below Management Action Recommendation.

Case Number(s)

- 2017OPA-1218

Topic

- Use of Force Reporting

Summary

- The Named Employee failed to report a complainant's allegation that his neck was grabbed.

Analysis

- SPD Policy *8.400-POL-1* requires that officers report all uses of force except de minimis force.
- The Named Employee expressed confusion with the policy and stated he was not aware of an obligation to report a claim of neck contact where the conduct did not, in fact, occur.
- As the policy is currently written, an officer could plausibly assert that such reporting is not required.

Recommendation(s)

- Add "complaint of contact with a subject's neck" as a trigger for Type I Use of Force reporting and investigation to ensure that such complaints will be critically reviewed in all cases moving forward.
- Alternatively, consider creating a separate reporting event for such an occurrence, similar to the Handcuff Discomfort report set forth in newly revised SPD Policy *8.400-POL-2*, to document and critically review such complaints.

Thank you for your consideration of this matter. I look forward to your response.

Sincerely,

AM

Andrew Myerberg
Director, Office of Police Accountability