



# City of Seattle

Seattle Police Department

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November 29, 2017

Director Andrew Myerberg  
Office of Professional Accountability  
720 Third Avenue, 18<sup>th</sup> Floor  
Seattle, WA 98104

Re: Management Action Recommendation (2017OPA-0172)

Dear Director Myerberg:

I am writing in response to your November 9, 2017, Management Action Recommendation, which follows your predecessor's September 21, 2016, Management Action Recommendation, both of which arose from investigations into complaints that an SPD employee engaged in a pursuit, as governed by RCW 46.61.035 and, more restrictively, SPD Manual Section 13.031, in violation of SPD policy. While the facts involved in each of the underlying OPA investigations differ, both recommendations urge clarification of Section 13.031 to reflect that the policy applies regardless of whether the employee is using emergency equipment. You also recommend, in your November 9<sup>th</sup> letter, that the Department amend its pursuit policy to provide clearer guidance concerning restrictions around pursuits, and that the policy clearly instruct that officers who are engaged in a pursuit in an unmarked vehicle are still required to complete a Blue Team report.

As to the first recommendation, in my response to the September 16, 2016 recommendation, I stated as follows:

Pursuit driving, like emergency operations generally, is regulated by state law. RCW 46.61.035 authorizes officers in pursuit of an actual or suspected violator of the law to disregard certain rules of the road relating to traffic signals, speed, parking, and direction, subject to (1) the use of emergency lights, and siren when necessary, and (2) the overarching duty to drive with due regard for the safety of others. The pursuit policy presupposes in its application both (1) an eluding driver, and (2) that an officer is in fact exercising, or intending to exercise, statutory privileges to proceed outside the rules of normal traffic operations in order to maintain pace with the eluding driver.

Given the inherently dangerous nature of vehicle operations outside the rules of normal traffic operations, the pursuit policy seeks to balance the need for immediate apprehension of an eluding subject with the risk of pursuit driving by providing officers and supervisors with a restrictive framework with respect to initiating, continuing, and terminating pursuits. If an officer is in pursuit – *i.e.*, exercising statutory driving privileges in an effort to keep pace with and apprehend an eluding subject – the law requires that officer to use emergency equipment to alert others on the road as to the emergency nature of the response (and their commensurate duty to yield the right of way (RCW 46.61.210)). The policy restates that statutory obligation as a requirement if in pursuit – not as a defining element of a pursuit. Simply put, just as the

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use of emergency equipment does not, absent an eluding driver and the exercise of emergency driving privileges, somehow bring otherwise normal driving operations into the realm of RCW 46.61.035 or policy § 13.031, neither does the non-use of emergency equipment somehow remove from the statute and policy the exercise of statutory driving privileges in pursuit of an eluding driver.

I also noted at that time, however, given the trained and certified law enforcement audience that the policy is addressed to, I was not convinced that there was confusion amongst the rank and file either as to what driving behavior constitutes a "pursuit" or their obligations under law and policy with respect to the use of emergency equipment if in pursuit. I requested, however, that if OPA observed a pattern of officers or supervisors reasoning that it is the use, or non-use, of emergency equipment that determines whether an officer's driving implicates either RCW 46.61.035 or the pursuit policy, that would be of significant concern to me, and directed my Chief Legal Officer to follow up as appropriate.

In that regard, and with respect to your remaining two recommendations, two important steps are in progress. First, upcoming revisions to Section 13.031 will (1) make clear that a failure to activate emergency equipment, as required under 13.031(2), does not remove the exercise of statutory driving privileges from that policy; and (2) while still recognizing that no policy can cover all conceivable fact patterns, provide additional guidance around circumstances in which pursuits are prohibited. Requirements around Blue Team reporting will also be clarified. I understand that you have been extended an invitation to participate in the discussion to finalize these revisions.

Second, the Education and Training Section is in the process of finalizing the curriculum for updated emergency vehicle operations (EVOC) training, scheduled to begin in early 2018. These three points will be emphasized and expanded on in that training. I also understand that you have been extended an invitation to review, and offer suggestions around, this training as well.

As always, please let me know if you would like to discuss further.

Sincerely,



Kathleen O'Toole  
Chief of Police

Cc: Deputy Chief Carmen Best  
Brian Maxey, Chief Operating Officer  
Assistant Chief Lesley Cordner  
Rebecca Boatright, Chief Legal Officer  
Fe Lopez, Executive Director, Community Police Commission