



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-0093

Issued Date: 10/19/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-4 (5) Use of Force – FIREARMS: An Officer May Draw or Exhibit a Firearm in the Line of Duty When the Officer has Reasonable Cause to Believe It May Be Necessary for His or Her Own Safety or for the Safety of Others (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.300-POL-3 (4) Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-3 (6) Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the CEW (Policy that was issued September 1, 2015)

OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees responded to a disturbance and assault at a tavern.

COMPLAINT

The complainant alleged the evidence in the Use of Force Investigation was insufficient to support Named Employee #1's use of Type I force (pointing a firearm at a person).

The complainant alleged the evidence in the Use of Force Investigation was insufficient to support Named Employee #2's use of a Taser, and Named Employee #2 may not have provided a verbal warning before applying the Taser.

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

The complainant, a supervisor within the Department, alleged that Named Employee #1 may have used Type I force that was not proportional with the threat presented by the subject, given the totality of the circumstances. The preponderance of the evidence from the OPA investigation was insufficient to either prove or disprove the reasonableness of Named Employee #1's conclusion that the subject's behavior posed an immediate threat of serious bodily injury to Named Employee #1, other officers and the general public.

The complainant alleged that Named Employee #2 may have deployed a Taser on the subject in violation of SPD Policy which requires that one of the following two conditions must be present before an officer uses a Taser:

- When a subject causes an immediate threat of harm to the officer or others; or
- When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used.

The preponderance of evidence showed the subject had just assaulted a member of the public and was acting in a threatening and violent manner. Additionally, the subject's behavior was consistent with a condition sometimes called "excited delirium" and/or those affected by drug intoxication. Finally, at the time the Taser was deployed by Named Employee #2, it was reasonable for Named Employee #2 to perceive the subject to be an immediate threat to officers and the public.

The complainant alleged that Named Employee #2 failed to issue a verbal warning as required by SPD Policy prior to deploying the Taser. SPD Policy includes an exception to this requirement when, "giving the warning would compromise the safety of the officer or others." The preponderance of the evidence from this investigation showed the suddenness of the subject's threatening movement towards an officer combined with his close proximity to that officer reasonably prompted Named Employee #2 to deploy the Taser without first issuing a verbal warning.

FINDINGS

Named Employee #1

Allegation #1

The preponderance of the evidence was insufficient to either prove or disprove the reasonableness of Named Employee #1's conclusion that the subject's behavior posed an immediate threat of serious bodily injury. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized*.

Allegation #2

The preponderance of the evidence was insufficient to either prove or disprove the reasonableness of Named Employee #1's conclusion that the subject's behavior posed an immediate threat of serious bodily injury. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force – FIREARMS: An Officer May Draw or Exhibit a Firearm in the Line of Duty When the Officer has Reasonable Cause to Believe It May Be Necessary for His or Her Own Safety or for the Safety of Others*.

Named Employee #2

Allegation #1

The preponderance of evidence showed the subject had just assaulted a member of the public and was acting in a threatening and violent manner. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable*.

Allegation #2

The preponderance of the evidence showed the suddenness of the subject's threatening movement towards an officer combined with his close proximity to that officer reasonably prompted Named Employee #2 to deploy the Taser without first issuing a verbal warning. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the CEW.*

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.