



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0139

Issued Date: 09/08/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
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	<b>Sustained</b>
Final Discipline	No Discipline Imposed

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued January 1, 2015)

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

**INCIDENT SYNOPSIS**

Named Employee #2 was involved in an incident that had a Type I Use of Force. Named Employee #3 was the Supervising Sergeant, and Named Employee #1 was the Reviewing Lieutenant for that incident.

**COMPLAINT**

The complainant, a supervisor within the Department, alleged that the Named Employee Officer failed to report a Type 1 Use of Force to a supervisor in a timely manner, and that the Named Employee Supervising Sergeant failed to report the misconduct to OPA in a timely manner. During Intake OPA added allegations against the Reviewing Named Employee Lieutenant for failure to report the misconduct to OPA as well as he had thought the matter closed with a Performance Appraisal System (PAS) entry.

**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. Interviews of SPD employees

**ANALYSIS AND CONCLUSION**

Named Employee #1 was notified by Named Employee #3 that Named Employee #2 had failed to complete a timely report concerning his pointing of a firearm. This was a Type I use of force for which a use of force report was required.

Manual Policy 5.002(6) provides that where a Department employee becomes aware of misconduct, they are required to either report that misconduct to a supervisor or directly to OPA. Supervisors have the discretion to investigate and document allegations of minor policy violations. Where the reported violation is the first observed or first reported violation for an employee, the supervisor is required to: (1) review the investigation and determine whether a frontline investigation is appropriate; (2) screen the incident with a lieutenant; (3) counsel the employee; (4) take any remedial steps necessary; (5) document the violation and the steps taken by the supervisor; and (6) for internal misconduct complaints, document the completed

investigation in a Frontline Entry and forward to the supervisor. For the purpose of this policy, minor misconduct includes non-willful force reporting timeline violations.

Here, the misconduct in question was Named Employee #2's failure to complete a timely use of force report. There was no evidence in the record suggesting that this failure was intentional – even though it occurred nearly six days after the force was used. Moreover, it appeared that this was Named Employee #2's first failure to timely report force. As such, consistent with 5.003, Named Employee #3 and, later Named Employee #1, were permitted to conduct a Frontline investigation into this misconduct and address it through counseling and/or remedial steps. Named Employee #3 conducted the initial investigation, instructed Named Employee #2 to complete a Use of Force report, and counseled Named Employee #2 concerning the importance of completing force reporting paperwork in a timely manner. Named Employee #1 reviewed this investigation and returned it for additional information, instructing Named Employee #3 to attach a PAS entry for Named Employee #2. Named Employee #3 did so and resubmitted the investigation, after which it was approved by Named Employee #1. Named Employee #1 then completed his investigation and submitted it to his supervisor. After his review of same, the supervisor returned the investigation to Named Employee #1, directing Named Employee #1 to make a referral to OPA of the failure to report the pointing of the firearm. Named Employee #1 did so. The supervisor then approved the investigation.

In requiring an OPA referral, the supervisor may very well have believed that the failure to report force for nearly six days was a policy violation that “may raise concerns of public trust” and thus “warrant[ed] a referral to OPA.” The OPA Director agreed; however, based on the language of the policy and on the information available to OPA, the OPA Director could not find by a preponderance of the evidence that either Named Employee #1's or Named Employee #3's failure to do so was in violation of policy. The OPA Director concluded that by reviewing and approving the Frontline investigation completed by Named Employee #3, Named Employee #1 acted in accordance with SPD policy.

On the date in question, Named Employee #2 and other officers on-viewed occupants of a vehicle firing weapons at another vehicle. Officers pursued the subject vehicle until it crashed in a field. The occupants fled the vehicle and were chased by officers. Named Employee #2 and his partner followed one subject who jumped over a tall fence into the backyard of a residence. Named Employee #2 and his partner also scaled the fence into the backyard. Named Employee #2 pointed his handgun at the subject while the subject was handcuffed by his partner. When pointing the handgun at the subject, Named Employee #2 indicated that he said something along the lines of “if you do anything, I may shoot you.” After being taken into custody, the subject later complained of pain from the handcuffing and of trouble breathing. Named Employee #3 responded to the scene to screen those complaints.

At his OPA interview, Named Employee #2 asserted that he screened the pointing of the firearm with Named Employee #3 at that time. This appeared to be inconsistent with Named Employee #3's recollection. Named Employee #3 stated that Named Employee #2 did not remember pointing the gun that evening and Named Employee #3 responded affirmatively to his union

representative's contention that the fact that gun was pointed was never conveyed to Named Employee #3 until Named Employee #2 reported it "[a]s soon as his memory came back after an appropriate rest period." There was no indication from Named Employee #3's OPA interview that Named Employee #2 ever screened the pointing of the gun with him prior to when Named Employee #2 provided notification of the failure to report. However, Named Employee #1's OPA interview supported Named Employee #2's recounting of events. Named Employee #1 indicated that Named Employee #3 told him that Named Employee #2 reported the force to Named Employee #3 that night and immediately after Named Employee #3 arrived on the scene. The ICV of the incident did not conclusively resolve this discrepancy. On the ICV, Named Employee #2 could be heard conveying to Named Employee #3 that he told the subject not to reach for anything and further told the subject that he did not want to shoot him. Named Employee #2 could not be heard explicitly telling Named Employee #3 that he pointed his firearm at the subject, even though it could have possibly been inferred by Named Employee #3.

Even if Named Employee #2 had properly screened the pointing of the firearm with Named Employee #3 on the date of the incident, Named Employee #2 failed to complete a Use of Force report relating to the pointing of the firearm. Nearly six days after the incident, while going over the incident with Gangs Unit detectives, Named Employee #2 realized that he had failed to report the force and reported the failure to Named Employee #3. He was then directed by Named Employee #3 to complete and submit a Type I report, and he did so. Named Employee #2 was later counseled by Named Employee #3 concerning his failure to report, and received a PAS entry to that effect.

The failure to report this Use of Force was a violation of Manual Policy 8.400-POL-1. Moreover, the length of time of the failure to report was also significant. Given the chaotic nature of the incident, were the failure to report a day long, a training referral would seem appropriate. This conclusion would be further supported by the lack of evidence in the record that the failure to report was willful and that, based on the information available to OPA, it was Named Employee #2's first time submitting an untimely report. Here, however, the failure to report lasted nearly six days. Timely reporting is essential to carrying out the purposes of SPD's use of force policy; specifically, the goals of transparency and accountability set forth in 8.400. The failure to do so can serve to undermine public trust and confidence in the Department.

Named Employee #3 stated that he was not aware that Named Employee #2 pointed a firearm during the incident, and indicated that he did not learn of this and the failure to report until nearly six days after the incident. When Named Employee #3 learned this information, he instructed Named Employee #2 to complete a Use of Force report immediately, and counseled Named Employee #2 on the importance of timely force reporting. Named Employee #3 informed his direct supervisor, Named Employee #1 of the failure to report. Named Employee #3 referred his completed investigation to Named Employee #1 for approval. After reviewing the investigation, Named Employee #1 ordered Named Employee #3 to attach a completed PAS entry to the investigation and then to resubmit it. Named Employee #3 did so, and Named Employee #1 approved his investigation.

As explained above, while the OPA Director believed that an immediate referral of the misconduct to OPA would have been warranted based on the duration of the failure to report, the OPA Director found that Named Employee #3 acted in accordance with SPD policy by investigating the misconduct, requiring a Use of Force report be written, counseling Named Employee #2, and then providing his completed investigation to Named Employee #1 for review and approval.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The weight of the evidence showed that by reviewing and approving the Frontline investigation completed by Named Employee #3, Named Employee #1 acted in accordance with SPD policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*

### **Named Employee #2**

#### Allegation #1

A preponderance of the evidence showed that Named Employee #2's failure to report the Use of Force was a violation of Manual Policy 8.400-POL-1. Therefore a **Sustained** finding was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

**Discipline Imposed:** No Discipline Imposed

### **Named Employee #3**

#### Allegation #1

The weight of the evidence showed that Named Employee #3 acted in accordance with SPD policy by investigating the misconduct, requiring a Use of Force report be written, counseling Named Employee #2, and then providing his completed investigation to Named Employee #1 for review and approval. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*

*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.*