



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0172

Issued Date: 11/21/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (18) Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry (Policy that was issued January 1, 2015)
OPA Finding	<b>Sustained</b>
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (11) Vehicle Eluding/Pursuits: Marked Cars Take Priority in Pursuits (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #4	<u>Seattle Police Department Manual</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Allegation #5	<u>Seattle Police Department Manual</u> 13.031 (2) Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment (Policy that was issued January 1, 2015)

OPA Finding	<b>Sustained</b>
Final Discipline	Oral Reprimand

<b>Named Employee #2</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (2) Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment (Policy that was issued January 1, 2015)
OPA Finding	<b>Sustained</b>
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	Oral Reprimand

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (2) Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (16) Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated (Policy that was issued January 1, 2015)

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

<b>Named Employee #4</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (9) Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #5</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (9) Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #6</b>	
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)

Final Discipline	N/A
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### **INCIDENT SYNOPSIS**

The Named Employees were dispatched to a call from the Washington State Patrol (WSP) advising that they were following behind possible suspects from SPD theft cases.

### **COMPLAINT**

It was alleged that SPD units engaged in an out of policy pursuit while supporting WSP's attempt to stop a vehicle reported to have been involved in a series of theft/property crimes.

Named Employee #2 and Named Employee #3 were alleged to have engaged in an out of policy pursuit for a property crime, failed to exercise due care by not having both emergency lights and continuous siren during the pursuit, and continued the pursuit after it was terminated twice by WSP and finally by SPD.

Named Employee #6 was alleged to have engaged in an out of policy pursuit for a property crime.

Named Employee #4 and Named Employee #5 were alleged to have failed to properly supervise the pursuit as required by policy and to determine if it was within policy given the underlying property crime. Additionally, it appeared in a supervisor capacity Named Employee #4 failed to use appropriate discretion when he authorized two units from the East Precinct to assist WSP in an out of policy pursuit for a property crime, and in a supervisor capacity Named Employee #5 failed to use appropriate discretion when he re-authorized an out of policy pursuit that had been terminated.

Named Employee #1 was alleged to have:

- (1) engaged in an out of policy pursuit of a vehicle involved in a property crime;
- (2) driven an unmarked vehicle and failed to yield to marked cars in the pursuit;
- (3) failed to exercise due care by activating emergency lights while driving up a one-way street;
- (4) continued to pursue the vehicle after the pursuit was terminated; and
- (5) failed to complete a Blue Team Vehicle pursuit 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

As described more fully below, as a general matter and with respect to Named Employee #2, Named Employee #3, and Named Employee #6, the pursuit in question was justified and the officers were justified in assisting WSP.

Named Employee #1 was in an unmarked car without emergency equipment. SPD policy implies, but does not expressly state, that an unmarked vehicle without emergency equipment is prohibited from initiating or engaging in a pursuit. For example, the policy describes the pursuit role of an unmarked vehicle with emergency equipment and also requires that SPD vehicles engaged in a pursuit "will use both emergency lights and continuous siren." Common sense dictates, however, that an officer in an unmarked vehicle without emergency equipment should not be permitted to engage in a pursuit, let alone a high-speed chase crossing into the lanes of oncoming traffic.

Given this lack of clarity, the OPA Director accordingly recommended that this allegation be Not Sustained, but issue the following Management Action:

- SPD should evaluate Manual Policy 13.031 generally, and specifically consider amending the policy to explicitly prohibit unmarked vehicles that do not have emergency equipment from engaging or assisting in pursuits. Undercover vehicles and officers should be prohibited from participating in a pursuit except in very limited circumstances.

While this policy is being reevaluated, the OPA Director would recommend several other areas for possible revision:

- SPD should also consider amending the policy to more clearly define what constitutes a pursuit to include when officers attempt to stop a vehicle and the driver fails to yield to their authority. This should be the case regardless of what vehicle the officer is driving or the manner in which the officer attempts to follow the vehicle. A pursuit should further include all vehicles other than the primary vehicle that are involved in the act of following the eluding vehicle, whether or not the police vehicle is equipped with emergency equipment, and/or if the emergency equipment is activated.
- SPD should additionally consider more clearly defining at what point an officer is considered involved in the pursuit; for example, when they engage in emergency vehicle operation to catch up with the pursuit or when they are within sight of the pursuit.
- SPD should lastly consider clarifying Model Policy 13.031(3). That portion of the policy indicates that "[o]fficers will not pursue solely for any of the following: Traffic violations/Civil infractions; Misdemeanors; Gross misdemeanors; Property crimes; the act of eluding alone." It is unclear, however, whether officers could pursue a subject who committed a combination of these crimes. If officers would not be permitted to do so, the language should be modified accordingly. SPD could consider the following

modification: "Officers will not pursue solely for any one or a combination of the following".

Manual Policy 13.031(18) requires all officers involved in a pursuit to complete a Vehicle Pursuit entry. Named Employee #1 contended that he was not involved in the pursuit and thus was not required to complete an entry. This contention was clearly belied by the ICV itself, which showed Named Employee #1 driving in pursuit of the subjects behind WSP, often at a high rate of speed, and on multiple occasions driving in the lanes of oncoming traffic. The evidence supported the conclusion that Named Employee #1 was engaged in a pursuit and, as such, his failure to complete a Vehicle Pursuit entry was a violation of policy.

Manual Policy 13.031(11) provides in pertinent part that, while unmarked cars with emergency equipment may initiate pursuits, "marked police cars will assume the primary positions as soon as possible." Named Employee #1 did not initiate the pursuit and at no point did Named Employee #1 appear to take the primary position.

Similar to Allegation #1, the recommendation on this allegation rises and falls on whether Named Employee #1 was permitted to engage in the pursuit in the first place. For this reason, the OPA Director recommended that this allegation be Not Sustained and referred to the Management Action referenced above.

The OPA Director noted, however, that Named Employee #1 appeared to terminate the pursuit when appropriate and pursuant to policy.

Manual Policy 13.031(2) requires that officers involved in a pursuit "shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren."

Setting aside the question of whether Named Employee #1 was, in fact, permitted to engage in the pursuit, he regardless failed to comply with this section of the policy.

First, a review of Named Employee #2's ICV yielded the conclusion that Named Employee #1 drove without "due regard for the safety of all persons." As explained above, Named Employee #1 drove an unmarked vehicle without emergency equipment, which would seem to require Named Employee #1 to drive with more care not, as happened here, with less care than normally required. During the pursuit, Named Employee #1 drove at high rates of speed, both on a freeway and on smaller local thoroughfares. At times, Named Employee #1 veered into the lanes of oncoming traffic and into intersections without stopping or even yielding. Were Named Employee #1 driving a marked police vehicle, or even an unmarked vehicle, with activated emergency equipment, other motorists – both sworn and civilian – and pedestrians would have been provided notice that it was a police vehicle and given the opportunity to safely move out of the way. Here, however, a car not readily identifiable as a law enforcement vehicle confronted pedestrians and oncoming motorists and they were put in the very real danger of accident or worse. These were exactly the potential risks that the policy was purposed to deter.

Second, Named Employee #1 failed to use emergency lights and continuous siren, which was, in and of itself, a violation of policy.

A review of Named Employee #2's ICV indicated that while he activated his emergency lights during the pursuit, he failed to activate a continuous siren.

In addition, Named Employee #2 drove northbound down a southbound street. In explaining why he did so, Named Employee #2 indicated that he was concerned that the police vehicle in front of him, which was the only vehicle in close pursuit of the subjects, may have only been a one-officer car. Named Employee #2 articulated his fear that were a confrontation to occur with the subjects, that solo officer would potentially face that threat alone. Named Employee #2 further indicated that the traffic appeared to be light on that portion of the street and he traveled at a low rate of speed to help minimize the danger to motorists who might have been driving in the opposite direction. Named Employee #2's description of the general lack of vehicle traffic on the street and his low rate of speed were consistent with his ICV of the incident.

Manual Policy 13.031 governs pursuits by SPD employees. The policy instructs employees as to when pursuits are not authorized, for example in cases where the sole reason for the pursuit are property crimes or eluding, itself. On the date in question, SPD employees Named Employee #2, Named Employee #3, and Named Employee #6 responded to a fast evolving situation involving multiple ongoing felonies. The subjects in question were believed to be involved in ongoing thefts. In prior incidents, the subjects were believed to have rammed their vehicles into buildings and to have committed at least one assault. In addition to these thefts, the subjects had also previously attempted to evade capture by driving erratically and dangerously, potentially putting the public in substantial risk of harm. Based on the information known to the officers at the time their role in the pursuit began and up to the point that it was terminated by Named Employee #4, SPD employees Named Employee #2, Named Employee #3, and Named Employee #6 reasonably believed that the pursuit, itself, was justified.

Manual policy 13.031(8) further states that "[o]fficers will not join outside agency pursuits without supervisor approval." Here, officers initially assisted WSP in the pursuit after being dispatched to do so. No supervisor verbally contradicted the dispatch at the time the pursuit was initiated. Further, after the initial dispatch, the pursuit was approved by a supervisor, Named Employee #4.

As such, based on both the initial dispatch and later approval by a supervisor, SPD employees Named Employee #2, Named Employee #3, and Named Employee #6 reasonably believed that they were justified in assisting WSP in the pursuit.

After hearing that WSP terminated its pursuit, Named Employee #2 began to distance himself from the subjects while maintaining a visual of the lead pursuit vehicle- driven by Named Employee #3- and the subjects. Shortly thereafter, Named Employee #2 made the decision to stop the pursuit. This decision was made prior to receiving formal notification from Named Employee #5 that the pursuit was officially terminated.

At the time he terminated the pursuit, Named Employee #2 turned off his emergency lights and proceeded on an alternate route off of the street, in compliance with Manual Policy 13.031(16).

While in pursuit of the subjects, Named Employee #3 began driving the wrong way down a southbound street. At this point, WSP had terminated its pursuit, and Named Employee #3 was in the primary position. Named Employee #3 observed that traffic was light at that time in that portion of the street, and made the decision to follow the subjects at a low rate of speed and at a distance of ½ block. Moreover, Named Employee #3 made the purposeful decision to continue the pursuit with his emergency equipment on “so that on-coming traffic could see and hear my emergency equipment and safely get out of the way of the subject vehicle.” This account was consistent with Named Employee #3’s ICV of the incident.

Had there been perfect knowledge of the crimes alleged, given the risk to civilians posed by a pursuit against the flow of traffic, Named Employee #3’s actions would have been contrary to policy. That being said, the OPA Director noted that, as referenced in the Management Action above, it might not have been clear to a reasonable officer that a pursuit could not permissibly continue where two or more of the offenses referenced in Manual Policy 13.031(3) were suspected.

However, based on the fast-evolving circumstances, the lack of clarity as to the crimes at issue, the officer’s low rate of speed and the attention he paid to his surroundings, and the fact that he continuously used his emergency equipment in order to protect members of the public from the subject vehicle, Named Employee #3’s actions were reasonable and that he applied due regard for the safety of others.

As set forth more fully above, Named Employee #3 reasonably believed that the pursuit was justified and reasonably believed that he was justified in assisting WSP in the pursuit.

Named Employee #3 assisted WSP in the pursuit until WSP terminated the pursuit and he at that point became the primary vehicle. Shortly thereafter, Named Employee #3 properly radioed for confirmation of the exact crimes that the subject vehicle was associated with and was informed by dispatch that the crimes were felony burglary and felony eluding. Almost immediately after he learned that information, Named Employee #3 heard a Lieutenant instruct over the radio that no North Precinct units were to engage in the pursuit.

After hearing that radio transmission, Named Employee #3 made the decision to terminate his pursuit by immediately pulling over and deactivating his emergency equipment consistent with Manual Policies 13.031(3) and 13.031(16). Around that same time, Named Employee #3 heard Named Employee #5’s broadcast conclusively terminating the pursuit. Named Employee #3 then pulled off of the street on to another street, where he could no longer see the subject vehicle and was once again in the proper flow of traffic.

Manual Policy 13.031(9) states that a supervisor’s responsibility extends only to the question of whether the pursuit, itself, is within policy. Further, to make the decision of whether the pursuit



is in policy, Manual Policy 13.031(9) requires the supervisor to establish radio contact with the primary unit and to gather the information referenced in 13.031(6) as soon as practicable.

Prior to the pursuit occurring, Named Employee #4 was aware of information concerning the severity of the crimes committed by the subjects. This information included that the subjects had previously committed armed robbery, assault, and had acted in an aggressive and dangerous manner. At the time the pursuit began, the WSP vehicles were primary. Named Employee #4 indicated that, at the time, he was unaware as to whether WSP knew of other crimes committed by the suspects that informed that agency's decision to pursue. Named Employee #4 appeared to have assumed, albeit reasonably, that WSP was engaging in the pursuit for appropriate reasons. At that time, Named Employee #4 indicated over radio that he was monitoring the pursuit and functionally asserted control over the incident.

Named Employee #4 learned that WSP terminated the pursuit and he (Named Employee #4) re-initiated the pursuit. At around that time, Named Employee #4 authorized East Precinct units to assist WSP in the pursuit but ordered that participation be limited to only two vehicles. Named Employee #4 also requested that participating officers provide updates as to speeds and conditions and asked for a possible confirmation of the identification of the eluding vehicle as the subject vehicle. Named Employee #4 learned from Named Employee #3 that WSP had again terminated the pursuit and that Named Employee #3 was now the primary vehicle. Two minutes later, Named Employee #4 learned that Named Employee #3, and subsequently Named Employee #2, had followed the subjects the wrong way down a one-way street. Less than one minute later, Named Employee #4 announced: "Unless Named Employee #5 has any objection, all units will now terminate this pursuit." This decision was made on the basis that Named Employee #4 believed that the need for the pursuit was outweighed by the potential risk of harm to the public. Named Employee #5 agreed and affirmatively terminated the pursuit over radio.

While Named Employee #4 might have more quickly discerned from WSP the exact nature of the crimes the subjects were alleged to have committed and engaged in a more robust and ongoing dialogue with his officers, his actions were substantially in compliance with policy.

Named Employee #4 exercised reasonable discretion in initially approving and temporarily allowing the pursuit to proceed. Given the fast-evolving circumstances and the confusion inherent in joining a pursuit initiated by another law enforcement agency, Named Employee #4's actions were substantially in compliance with policy.

In his OPA interview, Named Employee #5 indicated his belief that Named Employee #4 was the "controlling supervisor" during the initiation and duration of the pursuit. Named Employee #5 asserted that he monitored the pursuit, but deferred to Named Employee #4. This was consistent with Named Employee #4's account of the incident.

Named Employee #5 exercised reasonable discretion in deferring to Named Employee #4's control of the situation and by affirmatively acting, when necessary, to terminate the pursuit.

As set forth more fully above, Named Employee #6 reasonably believed that the pursuit was justified and reasonably believed that he was justified in assisting WSP in the pursuit.

However, there were two areas in which the OPA Director found that a training referral would be appropriate:

During his OPA interview Named Employee #6 stated that he believed that since he was dispatched to the pursuit it was within policy and that the dispatchers would not send officers if it was outside of policy. He also stated in his interview that he did not update his sergeant when officers were driving the wrong way on the street because WSP was primary and he was just assisting. While, based on its facts, the pursuit was justified, Named Employee #6 did not seem to understand that he was personally responsible to ensure that any pursuit he was involved in was within department policy. He was also unaware of his responsibility to keep his supervisor updated as required by policy, regardless of whether he was assisting another agency.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

Given the lack of clarity regarding policy, the OPA Director accordingly recommend that this allegation be Not Sustained, but issued a Management Action. Therefore a finding of **Not Sustained** (Management Action) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification*.

#### **Allegation #2**

A preponderance of the evidence showed that Named Employee #1's failure to complete a Vehicle Pursuit entry was a violation of policy. Therefore a **Sustained** finding was issued for *Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry*.

#### **Allegation #3**

A preponderance of the evidence showed that Named Employee #1 did not initiate the pursuit and at no point did Named Employee #1 appear to take the primary position. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Marked Cars Take Priority in Pursuits*.

#### **Allegation #4**

Given the lack of clarity regarding policy, the OPA Director accordingly recommend that this allegation be Not Sustained, but issued a Management Action. Therefore a finding of **Not Sustained** (Management Action) was issued for *Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated*

**Allegation #5**

A preponderance of the evidence showed that Named Employee #1 drove an unmarked vehicle without emergency equipment. Therefore a **Sustained** finding was issued for *Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment.*

**Discipline Imposed:** Oral Reprimand

**Named Employee #2**

**Allegation #1**

A preponderance of the evidence showed that Named Employee #2 failed to activate a continuous siren during the pursuit. Therefore a **Sustained** finding was issued for *Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment.*

**Allegation #2**

A preponderance of the evidence showed that based on both the initial dispatch and later approval by a supervisor, Named Employee #2 reasonably believed that he was justified in assisting WSP in the pursuit. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification.*

**Allegation #3**

A preponderance of the evidence showed that at the time he terminated the pursuit, Named Employee #2 turned off his emergency lights and proceeded on an alternate route, in compliance with policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated.*

**Discipline Imposed:** Oral Reprimand

**Named Employee #3**

**Allegation #1**

A preponderance of the evidence showed that Named Employee #3's actions were reasonable, and that he applied due regard for the safety of others. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment.*

**Allegation #2**

A preponderance of the evidence showed that Named Employee #3 reasonably believed that the pursuit was justified and reasonably believed that he was justified in assisting WSP in the pursuit. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification.*

**Allegation #3**

A preponderance of the evidence showed that after hearing radio transmission instructing units not to engage in the pursuit, Named Employee #3 made the decision to terminate his pursuit by immediately pulling over and deactivating his emergency equipment consistent with policy.

Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Officers Will Disengage When Pursuit is Terminated*.

#### **Named Employee #4**

##### **Allegation #1**

A preponderance of the evidence showed that Named Employee #4's actions were substantially in compliance with policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit*.

##### **Allegation #2**

A preponderance of the evidence showed that Named Employee #4's actions were substantially in compliance with policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Standards and Duties: Employees May Use Discretion*.

#### **Named Employee #5**

##### **Allegation #1**

A preponderance of the evidence showed that Named Employee #5 monitored the pursuit, but deferred to Named Employee #4. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit*.

##### **Allegation #2**

A preponderance of the evidence showed that Named Employee #5 exercised reasonable discretion in deferring to Named Employee #4's control of the situation and by affirmatively acting, when necessary, to terminate the pursuit. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Standards and Duties: Employees May Use Discretion*.

#### **Named Employee #6**

##### **Allegation #1**

A preponderance of the evidence showed that Named Employee #6 reasonably believed that the pursuit was justified and reasonably believed that he was justified in assisting WSP in the pursuit. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

*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.*



November 9, 2017

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0172)

Dear Chief O'Toole:

OPA investigated an allegation that several SPD employees may have engaged in an out of policy pursuit. During the course of this investigation, several issues concerning the Department's pursuit policy were raised and, in OPA's opinion, suggested a need to further revise and clarify this policy. These issues are discussed in turn below.

**A. Prior Management Action Recommendations Regarding SPD's Pursuit Policy**

The Management Action Recommendation (MAR) made herein echoes, in part, a prior recommendation made by OPA on September 21, 2016. Specifically, in the context of case number 2016OPA-0214, OPA raised concerns regarding the practical application of SPD's pursuit policy. OPA recommended that SPD modify the policy to make it clear that all pursuits, including those in which an officer fails to activate emergency lights and siren as required, are subject to the same prudent restrictions and regulations.

SPD responded to this MAR on October 21, 2016, and indicated their agreement that the policy's definition of "pursuit" could be subject to misinterpretation. SPD committed to taking various steps, including having the Audit, Policy, and Professional Standards Section revisit the policy and its definitions to determine what clarifications may be appropriate given both the concern OPA raised and the statute on which the policy is based. Based on OPA's understanding, SPD still actively evaluating and considering modifications to this policy.

**B. Unmarked Vehicles Without Emergency Equipment Engaging In Pursuits**

SPD Policy 13.031-POL-1 defines a pursuit as "when an officer, operating a police vehicle with emergency lights and siren activated, proceeds in an effort to keep pace with and/or immediately apprehend an eluding driver." SPD Policy 13.031-POL-2 further requires that "officers engaged in a pursuit shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren."

One of the named employees in this case was a plainclothes detective who, on the date in question, was driving an unmarked vehicle that did not have emergency lights and siren. The named employee, as well as other uniformed officers, engaged in a pursuit. However, during OPA's

investigation, this employee contended that as he was in an unmarked vehicle without emergency equipment, he could not have been in a pursuit as it was defined under the policy. The argument appears to have been that since the policy defines a pursuit as involving an officer operating a police vehicle with emergency lights and siren activated, an officer driving an unmarked car with no emergency equipment could not engage in a pursuit. This was the case even though, based on OPA's analysis, the detective's actions were in all other respects consistent with engaging in a pursuit.

Such an interpretation of the policy is, in OPA's opinion, contrary to its intent and purpose. Vehicles involved in a pursuit are required to use emergency equipment based on the potential danger to the community, as well as to the officers themselves. Given this rationale, it should be clear that vehicles that are not equipped with emergency equipment should never engage in pursuits due to the safety risks inherent in such conduct. I read the policy to cover all Department vehicles engaged in pursuits – there should be no exception for an unmarked car simply because it has no emergency equipment.

Accordingly, OPA suggests that the Department clarify its pursuit policy to explicitly prohibit unmarked vehicles that do not have emergency equipment from engaging in pursuits or from engaging in vehicle operations consistent with engaging in a pursuit. Moreover, even for unmarked vehicles that do have emergency equipment, the Department should consider adding guidance concerning when it is appropriate for such vehicles to engage in a pursuit. Lastly, OPA requests that the policy be clarified to instruct that officers who engage in a pursuit while driving an unmarked vehicle are also required to complete Blue Team Vehicle Pursuit entries.

### **C. Crimes For Which Officers May Pursue**

SPD Policy 13.031-POL-3 explains when a pursuit is justified. The policy further states that "[o]fficers will not pursue solely for any of the following: Traffic violations/Civil infractions; Misdemeanors; Gross misdemeanors; Property crimes; the act of eluding alone."

During OPA's investigation, officers expressed confusion regarding this portion of the policy. While officers understood that they could not pursue if the only suspected crime was within the list identified above, they were less clear on whether they could pursue if two or more of these crimes were suspected.

From a reading of the plain language of the policy, I understand the officers' confusion. I agree that the policy is unclear as to whether officers could pursue a subject who committed a combination of the listed crimes, rather than just one, and believe that the policy could be clarified in this regard.

If it is the Department's intention to preclude officers from engaging in a pursuit even if two or more of the crimes identified in the policy are suspected, the language of the policy should be modified accordingly. SPD could consider the following modification: "Officers will not pursue solely for any one *or a combination* of the following..." (new language in italics).

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,



Andrew Myerberg  
Interim Director, Office of Police Accountability

cc: Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department  
Rebecca Boatright, Senior Police Counsel, Seattle Police Department  
Fe Lopez, Executive Director, Community Police Commission  
Tito Rodriguez, OPA Auditor  
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office  
Tonia Winchester, Deputy Director, Office of Police Accountability