



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 24, 2018

CASE NUMBER: 2018OPA-0622

### **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	8.300 - Use of Force Tools 2. Use of Force – CANINE DEPLOYMENT 5. Canine Deployment Announcements	Not Sustained (Lawful and Proper)

***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 Complainant alleged that the Named Employee subjected him to excessive force and failed to utilize a K-9 warning as required by policy.

#### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

The Complainant alleged that Named Employee #1 (NE#1) deployed his canine as a punitive measure, thus subjecting the Complainant to excessive force.

Multiple officers, including those assigned to SWAT, Canine, Hostage Negotiation, and the Arson and Bomb Squad, were involved in a lengthy standoff with the Complainant. The Complainant was believed to be armed and probable cause was developed for his arrest. After several hours, a plan was developed to utilize a K-9 to take the Complainant into custody if the Complainant refused to surrender. Department video clearly showed the officers involved in this situation giving the Complainant numerous opportunities to surrender peacefully with no force being used.

The Complainant was confined to a small bathroom and was barricaded inside the bathtub. Once officers were able to visually see the Complainant, he moved his hands underneath a blanket that he had with him in the bathtub. NE#1 reported that he was fearful that the Complainant was reaching for a weapon and, as a result, he made the



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decision to release his K-9 in an on-leash deployment. The K-9 then engaged with the Complainant. SWAT officers entered the bathroom and were able to secure the Complainant's hands. As soon as this occurred, NE#1 disengaged the K-9 and no further force was used on the Complainant.

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.*)

Based on my evaluation of the evidence, I find that NE#1's use of the K-9 was reasonable, necessary, and proportional. First, at the time the force was used, the officers had probable cause to arrest the Complainant, who had barricaded himself in a bathroom and was believed to have weapons. At the time the K-9 was used, the Complainant had been given multiple directions to surrender, as well as a K-9 warning. When he was viewed by NE#1 reaching under a blanket, NE#1 reasonably believed that he was trying to obtain a weapon. As such, based on NE#1's observations, the force was necessary at that time and there was no reasonable alternative to using that force. Moreover, the force was proportional to the threat posed by the Complainant, particularly given the officers' belief that he was armed. Further, once the Complainant was secured by SWAT officers, NE#1 modulated his force and ensued that the K-9 disengaged.

As I find that this force was consistent with policy, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1.

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

#### **Named Employee #1 - Allegation #2**

##### ***8.300 - Use of Force Tools 2. Use of Force – CANINE DEPLOYMENT 5. Canine Deployment Announcements***

The Complainant alleged that NE#1 used a K-9 against him without first providing a verbal warning.

SPD Policy 8.300-POL-3 requires a K-9 officer to provide a warning, if safe and feasible, prior to using the K-9 as a force tool. Where an officer fails to do so, they violate this policy.

Here, however, the Department video conclusively established that NE#1 did, in fact, provide a K-9 warning to the Complainant. However, the Complainant did not surrender and appeared to be possibly reaching for a weapon. As such, the K-9 was used against him.

For the above reasons, NE#1 fully complied with this policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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