Seattle
Office of Police
Accountability

CLOSED CASE SUMMARY

ISSUED DATE: APRIL 7, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0168

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order…	Not Sustained (Training Referral)
# 2	16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis	Allegation Removed
# 3	8.300-POL-2 Use of Force – TASER / Conducted Electrical Weapons 4. Officers May Use TASERs in the Following Circumstances:	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order…	Sustained
# 2	16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis	Allegation Removed

Imposed Discipline

Resigned Prior to Proposed DAR - Discipline

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 Force Review Board alleged that the Named Employees may have violated the Department's policies concerning de-escalation and crisis intervention. OPA further alleged that Named Employee #1 may have used excessive force.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to a call concerning the Subject, a 31-year-old male who was reported to be action erratically by his mother. The mother disclosed that the Subject suffered from mental illness and that he was experiencing a "mental health break." There was no report of physical violence, and the Subject was not believed to be armed with a weapon.

When NE#1 arrived at the residence, he spoke to Seattle Fire Department (SFD) personnel who were at the scene. An SFD lieutenant told NE#1 that the Subject, who was standing at his front door, was not letting his mother out of the

house. She commented to NE#1 that he was going to need "more than" him, meaning other backing officers. NE#1 said that another officer – NE#2 – was on the way. NE#2 arrived shortly thereafter. The SFD lieutenant informed the officers that the Subject appeared to be in the midst of a mental health crisis. The SFD lieutenant said that the Subject was supposed to be in the hospital but had been released. She stated that, per the Subject's mother, "this was not a good place for him to be." The SFD lieutenant told the officers that the Subject was threatening to harm himself (with a lighter) and others. The SFD lieutenant subsequently noted that the Subject was threatening his mother "from leaving."

The officers briefly discussed the call and what the SFD lieutenant said. They walked up to the house with NE#2 in the lead. NE#2 told SFD personnel standing in front of the door: "Hello gentlemen, we're going to talk to him." The SFD personnel moved out of the way and NE#2 began saying: "Hello sir…" Less than a second later and without any warning or announcement, NE#2 grabbed the Subject and began trying to pull him away from the door. NE#1 also grabbed the Subject virtually immediately thereafter and both officers began to struggle with him.

The Subject pushed NE#1 back and the Subject and NE#2 squared off in front of the door. NE#1 drew his Taser. NE#2 and the Subject continued to struggle in front of the door. At one point, the Subject, who was significantly larger than NE#2, grabbed NE#2 and spun him around. Shortly thereafter, the Subject moved away from the front door into the yard. NE#2 applied his Taser, causing the Subject to experience neuro-muscular incapacitation and to fall backwards onto the ground. The Subject was then taken into custody without further force being used.

The force, including the officers' de-escalation or lack thereof, was later reviewed by the officers' chain of command. No policy issues or potential misconduct were identified. The case was subsequently reviewed by the Force Review Board (FRB). The FRB reached a contrary conclusion, determining that the Named Employees failed to de-escalate prior to using force and that they did not abide by the Department's policies surrounding individuals in crisis. The FRB referred this matter to OPA, and this investigation ensued. After conducting its intake review, OPA also added an excessive force allegation against NE#1.

OPA's investigation included reviewing case documentation, the force reports and reviews, the FRB's findings, and Body Worn Video (BWV). OPA interviewed the Subject and NE#1. OPA attempted to interview NE#2; however, he informed OPA that he was in the process of resigning from the Department and was unavailable. NE#2 ultimately declined to participate in this investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1
8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order…

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (SPD Policy 8.100-POL-1) Officers are also required, "when time and circumstances permit," to "consider

whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment…drug interaction…[and/or] behavioral crisis." (*Id*.) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id*.)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id*.)

De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

OPA believes that both NE#1 and NE#2 failed to abide by the Department's de-escalation policy. However, OPA does not think that they have the same level of culpability. While NE#1 was the primary officer, the BWV clearly showed that NE#2 advanced towards the house in front of him and made initial contact with the Subject. Though NE#1 may have agreed with this course of action and bears responsibility for the outcome, NE#2's conduct was the driving force.

OPA finds that neither officer engaged in any meaningful planning concerning how they would approach the Subject and communicate with him. This included not setting team roles and responsibilities. The only audible exchange they had was about the situation being "exigent," but, as discussed below, this conclusion was not supported by the evidence.

NE#1 and NE#2 also did not take time to engage in any communication with the Subject, let alone to assess whether his reported mental illness was impacting his ability or willingness to comply. Indeed, they did not even try to see if they could gain the Subject's voluntary compliance before going hands-on. This is directly contrary to the requirements of policy.

The officers also did not apply time, distance, and shielding. Instead, they did the opposite by advancing directly up to the Subject and making physical contact with him. There was no justification for the officers immediately going hands-on rather than employing de-escalation tactics and, at that time, it was certainly safe and feasible to do so. As discussed above, the officers contended that the situation was exigent, requiring their immediate action. However, there is no evidentiary basis for their assertion. First, the Subject was not holding any weapons at the time. While he did have a lighter, he was using it on himself and was not threatening others with it. Second, while the SFD lieutenant said that the Subject was threatening others, she later clarified that he was threatening his mother from leaving. She did not allege that he was threatening to physically harm anyone. Third, when the officers made contact with the Subject, he was not yelling, posturing, or threatening anyone. Instead, he was standing by the door interacting calmly with SFD personnel. Moreover, his mother was also not calling out for help or yelling and did not appear in any immediate danger.

As noted above, OPA finds that both officers bear responsibility for these failures; however, OPA believes that NE#1's culpability is less. Most notably, he did not engage in the acts that immediately precipitated the force and was walking behind NE#2 at the time. Moreover, going hands-on did not appear to be a joint decision on the officers' part as NE#1 and NE#2 did not engage in any tactical planning.

Given this, OPA recommends that NE#1 receive a Training Referral rather than a Sustained finding. OPA feels that this conclusion is warranted under the facts. OPA notes that NE#1 has not been disciplined or counseled for a failure to de-escalate previously and that he is a fairly new officer. OPA expects that he will not repeat this conduct in the future.

- **Training Referral:** NE#1 should receive de-escalation retraining from the Training Unit. NE#1 should be reminded of the requirement that he engage in communication and pre-planning, as well as the mandate that that he employ time, distance, and shielding. During this retraining, the Training Unit should watch the BWV of this incident with NE#1. The Training Unit should also consider using this incident in its de-escalation training. This retraining and counseling should be documented in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 – Allegation #2
16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis

SPD Policy 16.110-POL-5(1) governs how officers are expected to interact with individuals in behavioral crisis. In summary, the policy mandates that officers assess an individual's mental health status and incorporate that assessment into their tactical planning. In this respect, it mirrors the de-escalation policies requirement that officers consider an individuals' mental health when determining whether force is appropriate.

As OPA deems this policy duplicative of Allegation #1, OPA recommends that it be removed as against both NE#1 and NE#2.

Recommended Finding: **Allegation Removed**

Named Employee #1 – Allegation #3
8.300-POL-2 Use of Force – TASER / Conducted Electrical Weapons 4. Officers May Use TASERs in the Following Circumstances:

As discussed herein, OPA finds that the officers failed to properly de-escalate prior to using force but that the responsibility for this failure rests primarily with NE#2 because of his actions. The BWV showed that, after NE#2 went hands-on, a physical altercation ensued, placing both NE#2 and the Subject in danger. At that time, NE#1 deployed his taser.

At the moment he did so, the deployment was consistent with policy. Under SPD Policy 8.300-POL-2(4), a Taser may be used where an individual presents a risk of harm 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: (1) likely to cause injury to the officer or subject; and (2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of TASER. OPA concludes that the deployment met both of these prongs.

While the officers never should have been in that situation to begin with and likely would not have been had they applied appropriate tactics, OPA again notes that this was primarily NE#2's fault. Because of NE#2's conduct, NE#1 was placed in a difficult situation and one in which he was required to use force. OPA cannot conclude that this violated policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 – Allegation #1
8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order…

As referenced above, OPA finds that NE#2, like NE#1, failed to comply with the Department's de-escalation policy in virtually all respects. This included: (1) not engaging in any pre-planning; (2) not using any communication with the Subject prior to going hands-on; and (3) not employing time, distance, and shielding.

However, unlike NE#1, OPA believes that NE#2 bore primary responsibility for these failures. Specifically, he made the initial decision to go hands-on, resulting in a physical confrontation ensuing and the ultimate tasing of the Subject. There was simply no need to have done so at the time, and particularly not when no de-escalation was even attempted. OPA categorically rejects the argument that de-escalation was not safe or feasible at the time.

NE#2 had the opportunity to present his side of the story and an explanation for his actions at his OPA interview. He chose not to do so. Accordingly, OPA is left with the non-testimonial evidence in this case, which, in OPA's opinion, clearly indicates that he acted contrary to SPD policy. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 – Allegation #2
16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis

For the same reasons as stated above (*see* Named Employee #1 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**