



## ***CLOSED CASE SUMMARY***

ISSUED DATE: SEPTEMBER 30, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0111

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300 - Use of Force Tools 8.300 POL-2 Use of Force – TASER / Conducted Electrical Weapons 8. As With the Initial TASER Application, Each Subsequent Application [...]	Not Sustained - Inconclusive
# 2	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Allegation Removed

***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 Named Employee #1 (NE#1) failed to report a one second activation of her TASER according to policy.

### **SUMMARY OF INVESTIGATION:**

During a meeting of the Force Review Board, the Board noted that NE#1's TASER report showed an additional one second activation of NE#1's TASER that was not reported anywhere in the investigation. The Board also noted it appeared that the activation occurred while the Subject was in handcuffs. The Board requested that SPD's TASER training expert, Witness Officer #1 (WO#1), review the TASER report. WO#1 noted:

It does appear that the Taser was deployed and then placed onto safe. Approximately 2 minutes later, it was taken off of safe and the ARC switch was depressed for approximately 1 second prior to being placed back onto safe.

OPA commenced an investigation. During its investigation, OPA reviewed the Complaint from the Force Review Board with analysis from WO#1, the Computer Aided Dispatch (CAD) Call Report, the Incident/Offense Report, Use of Force Report, TASER Report, Body Worn Video (BWV), and Force Review Board Report. OPA also interviewed NE#1.

The background facts of this case were documented in Use of Force Statements and captured on BWV. These background facts are not in dispute. NE#1 deployed her TASER while arresting a non-compliant Subject. The



deployment was effective and the Subject was subsequently placed into handcuffs. This TASER deployment was reviewed by the Force Review Board and found to be within policy.

About three minutes after the Subject was tased, the Subject was sitting handcuffed on the ground. The Subject was being held from behind by two officers while a third officer read the Subject his *Miranda* rights. The Subject began to kick and struggle. NE#1 warned the Subject “you will be tased again.” The Subject continued to kick and struggle. NE#1’s BWV showed that NE#1’s TASER was in the “armed” condition at this point because the TASER’s laser pointers were activated. NE#1 then said “hey, watch the wires, watch the wires, sarge.” As officers struggled to control the Subject, one officer who was physically restraining the Subject pointed at NE#1 and said “don’t tase me.” As other officers continued to struggle with the Subject, NE#1 disengaged and began to process the evidence of her TASER deployment with another officer. After the Subject was placed in handcuffs, NE#1 did not give an advisement of a TASER usage, no “sparking” or “arc” display was clearly audible in NE#1’s BWV, and neither the Subject nor officers who were tangled in NE#1’s TASER wires gave any audible or visual indication that NE#1’s TASER was deployed.

NE#1’s TASER Report showed three TASER deployments during this incident. The first two deployments—respectively, a three-second “arc” spark test display and a five-second “trigger” deployment with probes—were documented by NE#1 in her Use of Force Report. The third deployment was a one-second “arc” that occurred three minutes after the second deployment. NE#1 did not document the third TASER deployment.

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

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

##### ***8.300 - Use of Force Tools 8.300 POL-2 Use of Force – TASER / Conducted Electrical Weapons 8. As With the Initial TASER Application, Each Subsequent Application [...]***

It was alleged NE#1 failed to justify the one-second “arc” deployment of her TASER.

SPD Policy 8.300-POL-2(8) requires that all TASER applications after an initial application must be individually justified. The policy elaborates that officers are required to report the use of the TASER regardless of whether the use was an effective application.

OPA cannot conclude by a preponderance of the evidence that NE#1 deployed her TASER a third time or, if she did, was aware of that one-second deployment. NE#1’s TASER Report documented that NE#1’s TASER was deployed for a subsequent one-second “arc” during the time the Subject was in handcuffs and actively struggling with officers. NE#1 also rearmed her TASER and made comments at that time indicating that she would tase the Subject again if he did not stop resisting. However, NE#1 denied intentionally deploying her TASER a third time. Also, NE#1’s BWV corroborated a lack of evidence that NE#1’s TASER was deployed a third time. NE#1 speculated that the TASER Report or TASER itself may have malfunctioned.

However, in her OPA interview, NE#1 stated that she had never seen her TASER Report for this incident until she was preparing for her OPA interview. Although not required by policy, a better practice would include reviewing the TASER Report after any TASER application and before completing the required Use of Force Report.



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Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

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

***8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force***

It was alleged NE#1 failed to report force greater than *de minimis* force.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except *de minimis* force. This policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. *Id.*

Both this allegation and Allegation #1 concern NE#1's failure to document the same TASER deployment. This allegation is duplicative of Allegation #1 but is less on point. Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**