



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 3, 2023

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0216

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

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	14.090 - Crowd Management 3. As Far in Advance of the Incident as Possible, the Incident (eff. 11/01/2018)	Not Sustained - Unfounded
# 2	14.090 - Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates (eff. 11/01/2018)	Not Sustained - Unfounded
# 3	14.090 - Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group... (11/01/2018)	Not Sustained - Unfounded

***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:**

It was alleged Named Employee #1 (NE#1)—an Unknown Employee—failed to 1) properly coordinate with Department resources to plan for a demonstration, 2) fulfill responsibilities for the demonstration, and 3) disperse a crowd when there was a substantial risk of injury.

### **ADMINISTRATIVE NOTE:**

OPA was unable to identify a named employee for these allegations. Pursuant to the Seattle Police Officers' Guild (SPOG) collective bargaining agreement and OPA policy, on September 2, 2022, OPA sent SPOG and the Seattle Police Management Association (SPMA) a classification notification for Unknown Employee(s).

### **SUMMARY OF INVESTIGATION:**

On July 7, 2022, OPA reviewed a civil complaint against the State of Washington, City of Seattle, and Community Member #1 (CM#1).<sup>1</sup> The civil complaint alleged the plaintiff (Complainant) was injured by a car negligently driven by CM#1<sup>2</sup> while the Complainant participated in a demonstration on Interstate 5 (I-5) on July 4, 2020. The Complainant

<sup>1</sup> OPA received the civil complaint pursuant to standard protocol between the Seattle City Attorney's Office and OPA when a complaint alleges police misconduct.

<sup>2</sup> CM#1 was criminally charged for this incident. As of the date of this document, CM#1 has not been convicted and is presumed innocent under the law. However, CM#1's guilt or innocence of the criminal charge is not dispositive of the administrative case at



further alleged the Washington State Patrol (WSP) and Department of Transportation's decision, "in cooperation with the City of Seattle Mayor's Office and Seattle Police Department," to permit the demonstration on the interstate led to her injuries. Specifically, the Complainant alleged the state and city failed to 1) block access ramps, 2) protect the demonstrators, and 3) allow demonstrators to protect themselves.

OPA opened an investigation. During its investigation, OPA reviewed the civil complaint, Computer-Aided Dispatch (CAD) call report, incident report, Seattle Police Operations Center (SPOC) documentation & Incident Action Plans (IAP), local media coverage, Washington State Patrol press releases (June 27, 2020; July 4, 2020), social media, Seattle Municipal Code (SMC) 12A.12.015, SPD Manual 14.040, Body Worn Video (BWV), and external videos & photographs. OPA also interviewed Witness Employee #1 (WE#1), who was one of the first SPD officers to arrive on scene after the Complainant was injured.

*a. Background*

The July 4, 2020, demonstration on I-5 was in response to George Floyd's murder by a Minneapolis police officer. That demonstration was preceded by roughly 40 days of unprecedented civil unrest. During that period, some protesters occupied busy roads and freeways. The July 4, 2020, demonstration occurred around 1:30 A.M. on the 19<sup>th</sup> consecutive night of protests on I-5.

*b. Civil Complaint*

The Complainant alleged the City of Seattle, State of Washington, and CM#1 were responsible for her injuries. The Complainant alleged, that prior to May 2020, WSP policy prohibited protesters from obstructing traffic on I-5. The Complainant alleged WSP and SPD had "joint responsibility" for preventing protester entry onto I-5. Further, the Complainant alleged the policy existed due to the foreseeable dangers related to protesting on an interstate.

The Complainant alleged the state and city disregarded that restriction—and foreseeable risks to protesters—and allowed demonstrations on I-5 "for weeks" after May 30, 2020. The Complainant also claimed WSP and SPD assured protesters' safety and prohibited protesters from protecting themselves with "support vehicles." The Complainant also alleged WSP and SPD allowed vehicles onto I-5 during the July 4, 2020, demonstration.

The Complainant alleged she and others marched from the streets onto I-5 the night of July 3, 2020 into the early hours of July 4, 2020. The Complainant estimated fewer than eighty protesters that night, and neither WSP nor SPD diverted their occupation of I-5. The Complainant alleged WSP and SPD "negligently failed to adequately block off all roads, and exit and entrance ramps by which vehicles could enter the I-5 freeway," which allowed CM#1 to drive onto I-5 at the Stewart Street offramp. The Complainant alleged CM#1 collided with protesters, causing the Complainant severe and permanent injuries.

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issue here. For the purposes of evaluating the administrative allegations before it, OPA finds by a preponderance of the evidence that the Complainant was struck by a vehicle while the Complainant was protesting on I-5.



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*c. Computer-Aided Dispatch (CAD) Call Report & Incident Report*

The CAD call report indicated 911 was called at 1:37 A.M. on July 4, 2020, concerning two people struck by a white sedan on I-5. The CAD indicated the white sedan fled, but the driver was later arrested and identified as CM#1. CAD data indicated several SPD units responded to assist with CM#1's arrest and scene security.

WE#1 authored an incident report that indicated he was one of the first SPD officers to arrive. WE#1 assisted one of the two victims until the Seattle Fire Department arrived. WE#1's report states "an unknown size group occupied [I-5] with WSP having the Freeway closed as they have for several weeks. We were notified via radio that a vehicle traveling southbound had struck several people and fled south."

*d. Seattle Police Operations Center (SPOC) Documentation & Incident Action Plans*

SPD controlled the Seattle Police Operations Center (SPOC), which serves "as the primary representative, and contact point of the Department for special events." SPD Policy 14.100-POL-2. When special events, including large demonstrations, occur, SPD generates an Incident Action Plan (IAP) which "formally documents incident objective, operational period objectives, and the response strategy defined by incident command during response planning." SPD Policy 14.100-POL-1. SPOC assists the Incident Commanders in developing IAPs. SPD Policy 14.100-POL-2.

SPD had an Incident Action Plan (IAP) for July 3, 2020, demonstrations. The Incident Commander's stated objectives were consistent with IAP's for prior protests and included plans to protect free speech and mitigate traffic impacts.

The incident log noted protesters' progress as they entered I-5 on July 3, 2020, into July 4, 2020. On July 3, 2020, SPD units were intermittently posted at some I-5 onramps. A note at 8:52 P.M. on July 3, 2020, indicated "WSP has closed I-5 both ways." A note at 1:07 A.M. on July 4, 2020, indicated "WSP has been holding traffic both S/B and N/B for an hour." The log also indicated a white sedan "blew the barrier on the freeway and struck a protester," at 1:36 A.M. on July 4, 2020. At the time of the collision, there were three SPD units posted at the following I-5 onramps: (1) Spring Street Southbound; (2) 6<sup>th</sup> Avenue Southbound; and (3) Olive Way Northbound.

*e. Local Media Coverage*

OPA reviewed local media coverage of I-5 protests during that period. OPA did not locate coverage of SPD officials authorizing I-5 demonstrations. Instead, local media covered WSP's management of I-5 demonstrations.

*f. Washington State Patrol Press Releases (June 27, 2020; July 4, 2020)*

OPA reviewed two WSP press releases. The first from June 27, 2020, which preceded the incident. The second from July 4, 2020, immediately following the incident.

The June 27, 2020, WSP press release acknowledged frustration related to I-5 closures. It noted the requirement for "care and flexibility" as WSP exercised "the safest means possible to avoid injuries or worse to motorists, protesters,



WSDOT personnel and our troopers by closing the roadway as needed and separating protesters from vehicular traffic.” That press release noted there was “no effective way of stopping large crowds from entering [I-5],” and discussed the “unique environment of prolonged and daily protests.”

The July 4, 2020, WSP press release described the incident where the Complainant was injured. It noted the incident happened on the nineteenth consecutive night protesters entered I-5. That press release described protesters occupying I-5’s southbound lanes when a passenger car apparently “entered I-5 from an exit ramp [and] drove through the group striking two protesters at a high rate of speed.”

Neither press release referenced SPD or SPD’s decision-making authority over WSP’s policies concerning I-5.

*g. Social Media*

OPA reviewed social media related to this incident.

OPA reviewed video of the area where the collision occurred (near the Howell Street onramp) seconds before the Complainant was struck. That video appeared to show an officer’s activated emergency lights at the Olive Way onramp.

OPA also reviewed a videotaped statement from organizers of the July 3-4, 2020 I-5 demonstration.<sup>3</sup> In that statement, Organizer #1 stated WSP blocked interstate entry but left one offramp open: “State Patrol shut down the freeway, as they always do. They always shut down the freeway.” Organizer #2 stated, that prior to the demonstration, the group discussed a safety plan and placed a barricade that CM#1 drove around. Organizer #3 stated “when the freeway is shut down for a protest, all the off-ramps are left open so that any traffic can safely exit.” Organizer #1 alleged law enforcement improperly prepared for the demonstration. Finally, Organizer #3 stated, for prior I-5 demonstrations, SPD vehicles secured onramps, but on the night of the incident the group used their own people and vehicles to block onramps.

OPA observed a photograph from 12:54 P.M. on July 3, 2020, showing protesters near where the collision occurred (the Howell Street onramp) roadblocking I-5 with a dumpster, bicycles, yellow caution tape, and their bodies.

**ANALYSIS AND CONCLUSIONS:**

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

***14.090 - Crowd Management 3. As Far in Advance of the Incident as Possible, the Incident (eff. 11/01/2018)***

It was alleged NE#1 failed to properly coordinate Department resources to plan for a demonstration.

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<sup>3</sup> That video was 34 minutes and 10 seconds. It featured eight organizers.



SPD Police 14.090-POL-3 requires, “[a]s far in advance of the incident as possible the Incident Commander will coordinate with the appropriate Department resources to obtain information to assist with operational planning and staffing.” SPD Policy 14.090-POL-3.

Although SPD shares jurisdictional authority with WSP on interstate highways, WSP has primary responsibility for traffic safety on I-5. See RCW 47.52.200 (WSP “shall bear primary responsibility for the enforcement of law of this state relating to motor vehicles” on limited access highways, even if municipal police have independent and concurrent jurisdiction to enforce state laws thereon). See also Precinct and Patrol Boundaries, Seattle Police Department, available at <https://www.seattle.gov/police/about-us/about-policing/precinct-and-patrol-boundaries>.

Here, given WSP’s primary responsibility for traffic safety on I-5, SPD’s planning and staffing duties are unclear. Nevertheless, SPD did support WSP’s primary role. OPA reviewed SPOC documentation including an IAP outlining known protests and planned events for July 3, 2020. The SPOC IAP also provided contingency plans for unanticipated events. The July 3, 2020, IAP listed a WSP agency representative assigned to SPD, and an incident log showed SPOC monitored protester movement onto the interstate. At various times, SPD units blocked onramps or responded to emergencies on I-5, but the incident log noted WSP’s responsibility for closing or “holding [I-5] traffic.”

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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

***14.090 - Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates (eff. 11/01/2018)***

It was alleged NE#1 did not fulfill their responsibility concerning the I-5 demonstration.

Under SPD Policy 14.090-POL-8, the “Incident Commander retains ultimate responsibility for the decisions of subordinates.” SPD Policy 14.090-POL-8. “In order to fulfill this obligation, the Incident Commander will be available for on-scene consultation.” *Id.*

As discussed above, there were IAPs for July 3-4, 2022, identifying SPD’s incident commanders. However, this incident fell within WSP’s primary jurisdiction. Following CM#1’s arrest, CM#1 was immediately transferred to WSP’s custody. Moreover, WSP never relinquished control of this incident to SPD, which acted as an assisting agency. There is no evidence an SPD incident commander was required to be on scene or was authorized to command this incident.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #3**

***14.090 - Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group... (11/01/2018)***

It was alleged NE#1 failed to disperse a crowd when there was a substantial risk of injury.



SPD Policy 14.090-POL-9(a) permits the Incident Commander to order a crowd be dispersed, “[u]pon determining that there are acts or conduct within a group of four or more persons that create a substantial risk of causing injury to any person or substantial harm to property.” SPD Policy 14.090-POL-9(a).

Here, the IAPs for July 3-4, 2020, provided instructions and set priorities for addressing crowds gathered within the city’s jurisdiction. The IAPs did not instruct officers to take primary responsibility for I-5 responses. Given WSP’s primary responsibility for traffic safety on I-5, OPA found SPD was unauthorized to veto WSP’s management of a protest within its jurisdiction.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**