



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2014-0731

Issued Date: 09/11/2015

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Use of Force: When Authorized (Policy that was issued 01/01/14)
OPA Finding	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 – POL-6 (4) Use of Force Tools: Oleoresin Capsicum (OC) Spray – Officers Shall Issue a Verbal Warning (Policy that was issued 01/01/14)
OPA Finding	Not Sustained (Inconclusive)
Allegation #3	<u>Seattle Police Department Manual</u> 8.200 – POL-6 (5) Use of Force Tools: Oleoresin Capsicum (OC) Spray – Officers Must Justify Each Separate Application of OC Spray (Policy that was issued 01/01/14)
OPA Finding	Sustained
Final Discipline	3 Day Suspension without pay

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.300 – POL-3 (4) Use of Force Reporting and Investigation: Type II Investigation – Sergeant Will Complete a <i>Sergeant's Force Investigation Report</i> Within 3 Days (Policy that was issued 01/01/14)
OPA Finding	Sustained
Final Discipline	Oral Reprimand

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 8.300 – POL-3 (4.a) Use of Force Reporting and Investigation: Type II Investigation – Review of <i>Sergeant's Force Investigation Report</i> by Higher Level Supervisor (Policy that was issued 01/01/14)
OPA Finding	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 8.400 – POL-1 (10) Reviewing Use of Force: Command Review of Use of Force – The Reviewing Lieutenant Will Make Determinations Regarding the Use of Force (Policy that was issued 01/01/14)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.400 – POL-1 (11) Reviewing Use of Force: Command Review of Use of Force – The Reviewing Lieutenant Complete Review and Forward Reports to the Precinct or Section Captain Within 72 Business Hours (Policy that was issued 01/01/14)
OPA Finding	Sustained
Final Discipline	Written Reprimand

INCIDENT SYNOPSIS

Named employee #1 responded to a call regarding an individual who appeared to be under the influence and walking in traffic. At the time the named employee contacted the subject, he was not known to have committed any crimes other than a potential shoplifting of juice. Another employee joined the named employee in attempting to get the subject to stop walking in traffic and they followed the subject for 12 minutes. The named employee then approached the subject and without communicating to the other officer, initiated contact with the subject and administered at least five applications of Oleoresin Capsicum (OC) Spray. Seattle Fire was called to the scene to administer aid to the subject.

COMPLAINT

The complainant, a supervisor within the department, alleged that named employee #1 was not in compliance concerning the use of Oleoresin Capsicum (OC) Spray and did not comply with the requirement to give a verbal warning. It was also alleged that there was an apparent lack of timeliness by named employee #2 and #3 in reviewing the force used by named employee #1.

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 Videos
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The evidence showed that the use of OC spray by named employee #1 was not reasonable or proportionate given the totality of the circumstances. An officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident of person under control, while protecting the lives of the officer or others. Additional officers were on their way to assist in bringing the subject under control and out of traffic. The evidence showed that the subject posed no immediate threat to the officers or the public. Named employee #1 may or may not have given warning to the subject before using OC spray. The first four applications of OC spray were within 19 seconds. Training in OC spray provides that approximately 30 seconds should be allowed from the time of application to assess its effectiveness.

The evidence showed that named employee #2 did not complete the Sergeant's Force Investigation Report within 3 days of learning of the Use of Force. The Sergeant did not ask for approval from his lieutenant for an extension.

The evidence showed that named employee #3 did not review and forward the Sergeant's Force Investigation Report to his Precinct Captain a timely manner. It was shown that once named employee #3 reviewed the report that he made the appropriate determinations about the Use of Force. However, he did not note the fact that the Sergeant's report contained contradictory information concerning the actions of the subject immediately before the use of OC spray.

FINDINGS

Named Employee #1

Allegation #1

The weight of the evidence showed that the named employee used force that was not authorized. Therefore a **Sustained** finding was issued for *Use of Force: When Authorized*.

Allegation #2

The evidence could not prove or disprove that the named employee issued a verbal warning before using the OC spray. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force Tools: Oleoresin Capsicum (OC) Spray – Officers Shall Issue a Verbal Warning*.

Allegation #3

The weight of the evidence showed that the named employee did not articulate the need for each and every application of OC spray. Therefore a **Sustained** finding was issued for *Use of Force Tools: Oleoresin Capsicum (OC) Spray – Officers Must Justify Each Separate Application of OC Spray*.

Discipline issued: **3 Day Suspension without pay**

Named Employee #2

Allegation #1

The weight of the evidence showed that the named employee did not complete the required Sergeant's Use of Force Investigation Report in a timely manner. Therefore a **Sustained** finding was issued for *Use of Force Reporting and Investigation: Type II Investigation – Sergeant Will Complete a Sergeant's Force Investigation Report Within 3 Days*.

Discipline issued: **Oral Reprimand**

Named Employee #3

Allegation #1

The weight of the evidence showed that the named employee did not adequately review the required Sergeant's Use of Force Investigation Report and failed to address inconsistencies between the officer's statement and the In-Car Video evidence. Therefore a **Sustained** finding was issued for *Use of Force Reporting and Investigation: Type II Investigation – Review of Sergeant's Force Investigation Report by Higher Level Supervisor.*

Allegation #2

The weight of the evidence showed that the named employee did follow the policy and made the appropriate Command Review of the Use of Force. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Reviewing Use of Force: Command Review of Use of Force – The Reviewing Lieutenant Will Make Determinations Regarding the Use of Force.*

Allegation #3

The weight of the evidence showed that the named employee did not review and forward the Use of Force reports timely to the Precinct Captain. Therefore a **Sustained** finding was issued for *Reviewing Use of Force: Command Review of Use of Force – The Reviewing Lieutenant Complete Review and Forward Reports to the Precinct or Section Captain Within 72 Business Hours.*

Discipline issued: **Written Reprimand**

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.