



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2015-1626

Issued Date: 03/25/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: When Authorized (Policy that was issued 01/01/2014)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200-POL-8 Specialty Unit Weaponry (Policy that was issued 01/01/2014)
OPA Finding	Not Sustained (Management Action)
Final Discipline	N/A

INCIDENT SYNOPSIS

The named employee was working during the May Day demonstration and was deployed with a Department issued less-lethal Pepper Ball launcher to protect and assist bicycle officers with arrests of criminal suspects. The named employee deployed his Pepper Ball launcher at two different suspects and two different times.

COMPLAINT

The complainant, the Force Review Board, alleged that the named employee used excessive force on two separate occasions during the same event when he deployed pepper-balls at two different fleeing subjects for the purpose of "marking" them for later arrest.

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. Interview of SPD employees

ANALYSIS AND CONCLUSION

The OPA investigation reviewed the referred incident investigation and materials related to the event. The preponderance of evidence supports the conclusion that the named employee's use of the Pepper Ball launcher was not inconsistent with the scope and intent of the policy in place at the time. SPD policy does not directly address or provide specific guidance regarding the use of Pepper Ball launchers or other less-lethal projectiles.

FINDINGS

Named Employee #1

Allegation #1

The evidence supports that the named employee used force that was consistent with the policy in place at the time. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: When Authorized*.

Allegation #2

The evidence showed that the named employee followed the scope and intent of the policy in place at the time. Therefore a finding of **Not Sustained** (Management Action) was issued for *Specialty Unit Weaponry*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

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.



City of Seattle

Office of Professional Accountability

March 18, 2016

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2015OPA-1626)

Dear Chief O'Toole:

The Force Review Board (FRB) of the Seattle Police Department (SPD) referred a use-of-force case involving the use of a pepper ball launcher to the Office of Professional Accountability (OPA). The FRB's concern was that it appeared the justification for at least some of the pepper balls fired at one or more persons during a demonstration event may not be consistent with the requirements of various SPD use-of-force policies. In particular, the written force report submitted by the officer who deployed the pepper balls appeared to indicate some of the pepper balls were launched for the sole purpose of marking a fleeing suspect for later identification and arrest. The FRB was concerned that this justification might be insufficient for the use of a chemical irritant and/or a less-lethal projectile. In addition, current SPD policy does not directly address or provide specific guidance regarding the use of pepper ball launchers. The projectiles from such launchers used by SPD serve three functions: they cause some form of blunt force trauma, they deliver a form of irritant similar to that contained in pepper spray and they contain a colored dye that can mark the clothing or skin of a person to assist in identification by law enforcement. The absence of clear policy guidance regarding the use of pepper ball launchers and projectiles created concern on the FRB, additional work for OPA and inconvenience for the officer who was subjected to an OPA investigation.

Recommendation: It is my recommendation that SPD develop a clear policy governing the use of each less-lethal projectile and its corresponding launcher including, but not limited to pepper balls.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pierce Murphy".

Pierce Murphy
Director, Office of Professional Accountability