



City of Seattle

Seattle Police Department

January 8, 2016

Director Pierce Murphy
Office of Professional Accountability
720 Third Avenue, 18th Floor
Seattle, WA 98104

Re: 2015OPA-0643 Management Action Recommendations

Dear Director Murphy:

Thank you for your December 10, 2015, letter outlining your recommendations for management action to address issues raised during OPA's investigation of complaints concerning the actions of Department personnel during an unpermitted demonstration that took place, as it does in some iteration annually, in the evening hours of May 1, 2015. This letter is to provide you with preliminary responses concerning steps the Department has taken, and is taking, with respect to these recommendations – many of which mirror issues the Force Review Board had previously and separately identified.

Before addressing each of your recommendations individually, I'd like to note that many of the issues that have been brought forward, through both the Force Review Board's independent analysis and your investigation of the complaints filed in 2015OPA-0643, will require further research and discussion before the Department can adopt a position in policy, practice, or through resource investment. Unfortunately, there are no generally accepted "best practices" for policing mass demonstrations of this nature; indeed, in many cities around the country, unpermitted demonstrations such as those that have come to mark May Day in Seattle would be shut down at the start. Because we in Seattle, including the SPD, are so committed to supporting First Amendment rights to assemble and be heard, we find ourselves very much at the forefront of developing an approach that will ensure our ability to facilitate demonstrations of this type, while at the same time protecting persons and property from the violence and destruction that, unfortunately, seems to occur each year. We know that the work we are doing now, in collaboration with our federal partners, the Monitoring Team, and a team of nationally recognized experts, may ultimately serve as a model for other agencies around the country, and we take seriously the importance of developing policies and procedures that are well researched, well informed, and – importantly – workable in practice. Please note, accordingly, that these responses are, in fact, preliminary. The Department will of course maintain a continuing dialogue with OPA as we move forward on this important issue and, as always, welcomes OPA's input along the way.

Recommendation #1 – Use of Rubber Blast Ball Grenades

You recommend that "the Department ensure that its officers' use of [what are commonly referred to as] blast-balls is consistent with the due care [warranted for] explosive devices." Recognizing that the generic term "explosive devices" encompasses a broad range of devices that vary

significantly in their manner of detonation and degree of fragmentation and energy release, the Department agrees that it must ensure that the officers' use of blast-balls is consistent with the due care necessary for explosive devices of this type. The Department also acknowledges your concern as to the manner of use, and notes that these same tactics are ones that the Force Review Board also identified for further study and training as may be appropriate.

The Department has been working closely with a team of nationally recognized experts, including researchers from the Center for Policing Equity at UCLA, to evaluate the Department's response to the May Day 2015 protest – to include evaluation of the appropriateness of blast balls as a crowd management tool and the manner in which they were deployed. We will continue to keep OPA abreast of those discussions as we move forward, but assure you that we are in agreement on the overarching recommendation: that the Department ensure that its officers' use of blast-balls is consistent with the due care required for such devices.

Recommendation #2 – Inventory and Control of Blast-Balls

You recommend, for purposes of safety and accountability, that the Department maintain strict inventory control by serial number over these devices. The Department agrees with this recommendation, which was also offered by the Force Review Board. By way of clarification, the Department maintains (as it has since this tool was first employed by the Department) a strict inventory of blast-balls by serial number, location, and type of munition. The Department's use of blast-balls is subject to routine ATF (Alcohol, Tobacco and Firearms) audits, none of which have identified any violations. All blast-balls are individually serialized, and a record of all use in the field is reported to ATF.

Recommendation #3 – Use of Less-Lethal Projectiles

You recommend that the Department review its policy and training with respect to the use of less-lethal projectiles in crowd management situations. This, too, is a recommendation that was offered by the Force Review Board, and is a recommendation with which the Department agrees. In fact, even before this event reached the Board, Assistant Chief Steve Wilske and Lt. Marc GarthGreen had begun working with APRS on reviewing policies regarding less-lethal tools and exploring alternative options. This work, along with subsequent training, will likely be further informed through our collaboration with the team of external experts.

Recommendation #4 – Role, Training, and Expectations for Officers From Mutual Aid Agencies

You recommend that that the Department either (1) curtail the use of officers from mutual aid agencies to limit them to a support role only (e.g., precinct security, prisoner transport) or (2) ensure that mutual aid officers involved in crowd management be trained by SPD and be required to comply with SPD policies with regard to the use of force and reporting of force. Again, this issue was identified by the FRB, and is one that is currently under discussion.

Recommendation #5 – Documentation and Investigation of Force Used During Protests, Marches, Etc.

You recommend that SPD study how it documents and investigates the use of force by officers during crowd management, and you specifically recommend that the Department “consider the use

of video and other technology to increase its in-progress documentation of officers' use of force" separate and apart from the use of body-cameras. We appreciate that OPA acknowledges, with respect to this issue, that the Department has made significant improvements over the past 18 months with respect to the documenting and reporting of force, and this will continue to be an area of emphasis for the Department. The suggestion that SPD find alternative ways, other than body cameras, to record officers' actions is, however, potentially problematic. Seattle's Intelligence Ordinances (SMC Chapter 14.12) and Manual Section 6.060 govern the manner, and parameters, of collecting information, including video recording. The Department submits that it would be difficult, given the inherent co-mingling of officers with demonstrators, to find a mechanism for recording officer actions that would not potentially run afoul of SMC 14.12.010-020. Moreover, the Department believes that there is no dearth of footage in the public domain that depicts officers' actions on May Day. A quick YouTube search, for example, using the key words "Seattle Police May Day 2015" recovered over 7,500 separate results. That said, as we continue to move forward with new policies, we welcome any suggestions OPA, or any entity, may have.

As part of this section, you additionally recommend that, given the number of protests, marches and other demonstrations that occur in Seattle every year, SPD consider establishing a special team of detective and supervisors who are specifically trained in investigating and analyzing the use of force in these situations. OPA is correct that every year SPD officers staff and escort hundreds of protests, marches and demonstrations – but it is also important to note that of these, the overwhelming majority are peaceful exercises of expression that require little more than traffic control by officers to facilitate the safety of those crowds. Nonetheless, I would note that directives concerning the reporting and review of use of force during crowd management activities specifically has, since this event, been added to Manual Section 8.500 (POL 6) (effective September 1, 2015). Again, this policy is likely to be revisited as we move forward with revisions to Manual Section 14.090 (crowd management).

Recommendation #6 - More Visible Names and/or Serial Numbers for Officers

You recommend that the Department find an appropriate means to affix to outerworn garments and helmets an officer's name and/or serial number. This, too, is a recommendation that was offered by the Force Review Board. The Department agrees, and is in the process of obtaining cost estimates and developing an implementation plan for adding names/serial numbers to hard suits, bikes, and/or helmets.

Recommendation #7 – Policing Operations in Protests, Marches, Demonstrations, and Other Crowd Control Situations

You recommend that the Department "rethink its approach to planning and providing policing services in relation to protests and demonstrations." This is exactly what the Department is doing, in collaboration with the DOJ, the Monitoring Team, and the team of experts that has been assembled. We anticipate that the Community Police Commission, as well, will be an active partner in discussions moving forward on this topic. Again, there are no "best practices" yet developed for policing demonstrations such as those that recur on May Day in Seattle. We hope to be at the forefront of developing such a model, but it is a significant undertaking. As a matter of practice, the Department regularly reaches out to demonstration organizers, and again, the vast majority of demonstrations and marches proceed peacefully and with open lines of communication

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between organizers and the Department. Unfortunately, however, it is not always the case that event organizers are interested in maintaining dialogue or are responsive to Department outreach.

As always, we encourage creative thinking and a collaborative approach to ensuring that all of Seattle's residents and visitors have a safe, open forum for assembly and expression. We remain open and welcoming of input from all of Seattle's diverse communities as to how the Department can work with them to facilitate the same. When events turn violent, however, as happened this past May, we will not shirk from our responsibility to protect peaceful demonstrators, police officers, and bystanders.

Again, thank you for your thoughtful recommendations. This is an issue of paramount importance, as evidenced by the significant efforts that are going on across the Department to make sure we get this right. As always, I look forward to maintaining an open dialogue with you as we progress.

Sincerely,



Kathleen M. O'Toole
Chief of Police

cc: Judge Anne Levinson (Ret.)
Deputy Chief Carmen Best
Brian Maxey, Chief Operating Officer
Assistant Chief Lesley Cordner
Rebecca Boatright, Senior Police Counsel