



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1018

Issued Date: 04/07/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.400 (2) Use of Force Reporting and Investigation: Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.200 (6) Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Allegation #4	<u>Seattle Police Department Manual</u> 8.300-POL-6 (3) Use of Force - Oleoresin Capsicum (OC) Spray: Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)

Allegation #5	<u>Seattle Police Department Manual</u> 8.300-POL-6 (4) Use of Force - Oleoresin Capsicum (OC) Spray: Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #6	<u>Seattle Police Department Manual</u> 8.300-POL-6 (9) Use of Force - Oleoresin Capsicum (OC) Spray: Officers Shall Assist Exposed Subjects with Decontamination and Water- Flushing of Exposed Areas as Soon as Feasible (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400 (2) Use of Force Reporting and Investigation: Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force (Policy that was issued September 1, 2015)
OPA Finding	Allegation Removed
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (6) Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible (Policy that was issued September 1, 2015)
OPA Finding	Allegation Removed
Allegation #3	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued January 1, 2015)
OPA Finding	Allegation Removed
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees responded to a parking lot where several fights had broken out.

COMPLAINT

The complainant called 911. The complainant alleged that he was pepper sprayed without warning and he informed officers at the scene, but they did not do anything for him and rolled their eyes at him.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Videos (ICV)
3. Search for and review of all relevant records and other evidence
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

Based on the active fight taking place in front of Named Employee #1 and the lack of response to his various attempts to get the combatants and the crowd to disperse, combined with the size and tenor of the crowd, the OPA Director found Named Employee #1's use of force was reasonable, necessary and proportional. In addition, while it was clear that some of the pepper spray affected the complainant and possibly others, the preponderance of the evidence showed that Named Employee #1 did what was reasonable to direct the stream of pepper spray at the combatants and did not intentionally deploy the spray as a "fog" or shower over the crowd.

Given the nature of this incident and the time it took to disperse the crowd and restore order, the OPA Director found Named Employee #1's timeliness in reporting his use of pepper spray to a supervisor was reasonable and consistent with the requirements of this policy.

Based on the preponderance of the evidence from this investigation, the OPA Director found that Named Employee #1 had no reason to believe that any person was in need of or had requested medical aid.

The OPA Director was unable to find a preponderance of evidence to either prove or disprove the allegation that Named Employee #1 failed to give an adequate warning he was about to deploy pepper spray.

Based on the preponderance of the evidence from this investigation, the OPA Director found that Named Employee #1 had no reason to believe that any person was in need of or had requested assistance with decontamination following exposure to pepper spray.

The OPA investigation did not reveal the identity of any officer or supervisor who failed to timely notify a supervisor of the use of force by Named Employee #1.

The OPA investigation did not reveal the identity of any officer or supervisor who failed to render or request medical aid when asked.

The OPA investigation did not reveal the identity of any officer or supervisor who knew of or received a complaint of misconduct and failed to report it as required.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1's use of force was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Allegation #2

A preponderance of the evidence showed that Named Employee #1's timeliness in reporting his use of pepper spray to a supervisor was reasonable and consistent with the requirements of this policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force Reporting and Investigation: Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force*.

Allegation #3

A preponderance of the evidence showed that Named Employee #1 had no reason to believe that any person was in need of or had requested medical aid. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible*.

Allegation #4

A preponderance of the evidence showed that Named Employee #1 did what was reasonable to direct the stream of pepper spray at the combatants and did not intentionally deploy the spray as a "fog" or shower over the crowd. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force - Oleoresin Capsicum (OC) Spray: Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable*.

Allegation #5

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force - Oleoresin Capsicum (OC) Spray: Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray*.

Allegation #6

A preponderance of the evidence showed that Named Employee #1 had no reason to believe that any person was in need of or had requested assistance with decontamination following exposure to pepper spray. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use of Force - Oleoresin Capsicum (OC) Spray: Officers Shall Assist Exposed Subjects with Decontamination and Water- Flushing of Exposed Areas as Soon as Feasible.*

Named Employee #2

Allegation #1

This Allegation was removed.

Allegation #2

This Allegation was removed.

Allegation #3

This Allegation was removed.

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.