



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 15, 2018

CASE NUMBER: 2018OPA-0547

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID	Not Sustained (Training Referral)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 3	1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Training Referral)

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 that the Named Employees violated Department policy when they used force in an attempt to identify the Complainant using a mobile fingerprint reader.



STATEMENT OF FACTS:

Officers responded to a park to investigate a suspect who had allegedly threatened another individual with a firearm. The officers spoke with the victim who provided a description of the suspect. The officers located an individual who matched that description. This individual, who was positively identified by the victim, was later determined to be the Complainant.

The Complainant was placed under arrest and was handcuffed. The Complainant refused to provide his identification to the officers. The officers then called for a mobile fingerprint reader to be brought to the scene. The officers then attempted to take the Complainant's fingerprints, but he kept his fists clenched and refused to permit them to do so.

A Sergeant arrived and spoke with the Complainant. The Complainant alleged that officers "pulled" and "dislocated" his fingers, which caused him to suffer injuries. Specifically, he alleged that an officer hurt his "ring finger." Lastly, the Complainant stated that an officer put a knee on his back while the officers were pulling his fingers.

The Sergeant did not observe any injuries to the Complainant's fingers or person. Another officer later recognized the Complainant and it was determined that he had an active felony DOC warrant. The Complainant was transported to Harborview Medical Center where it was determined that there were no fractures or dislocations to his hands or fingers. The Complainant was then booked into the King County Jail.

This incident was investigated by the chain of command as a Type II use of force. The chain of command collectively determined that the force was reasonable, necessary, and proportional. In determining that the force was reasonable, the reviewing Lieutenant noted that the officers used force, while de minimis, to attempt to fingerprint the Complainant, even though this was contrary to the plain language of the policy. The Lieutenant recommended: "that the FRB and APRS take a look at policy 15.360.3 and consider if a revision is necessary."

This investigation followed. OPA interviewed all of the Named Employees. OPA also attempted to interview the Complainant, but the Complainant did not respond to OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID

Prior to the attempt to fingerprint the Complainant, Body Worn Video (BWV) captured a conversation between Named Employee #1 (NE#1) and Named Employee #5 (NE#5), who was the on-scene supervisor. NE#1 told NE#5 that the Complainant was refusing to be fingerprinted. NE#5 asked NE#1: "With the fingerprinting, can you force that?" NE#1 responded: "Only if I have probable cause for a crime, and the probable cause I have right now is trespassing in a park." NE#1 and NE#5 agreed that there was at least probable cause for trespass and NE#5 then stated: "I say you are good with the trespass so force it."



NE#1 then walked up to the Complainant and stated: "At this point we have PC for trespass so we are going to force the prints, ok?" The Complainant continued to refuse consent to be fingerprinted. One of the other officers replied: "If we need to identify you, all we have to do is book you in jail tonight." NE#1, Named Employee #2, Named Employee #3, and Named Employee #4 all used de minimis force to hold the Complainant in place and to compel him to open his hands. When the Complainant did not do so, the officers ceased their force.

SPD Policy 15.360 concerns the use of mobile fingerprint identification devices. SPD Policy 15.360-POL-3 specifically states that officers shall not use force to identify a subject using the mobile fingerprint reader.

At their OPA interviews, the Named Employees acknowledged using some force to attempt to compel the Complainant to be fingerprinted. However, they argued that the policy only precluded an officer from using "reportable" force to do so. They contended that because they used de minimis force, which is not reportable, they did not violate the policy. I find that this argument fails for two main reasons. First, the policy states that officers "shall not use force" when using the fingerprint reader – it does not differentiate between de minimis force and reportable force. Second, even if not reportable, de minimis physical force is still force. As such, even if the officers only used de minimis force, they used force to compel fingerprinting, which is prohibited by the policy.

The more compelling argument, which NE#1 best articulated, is that the act of holding and placing an individual's fingers on the fingerprint reader is, in and of itself, a use of de minimis force and, thus, if this were the interpretation of the policy "in essence...it would be impossible to read the mobile fingerprint reader." However, NE#1 reads the policy too narrowly. When using the fingerprint reader some physical force will be of course be used to move the individual's fingers. The relevant question is what the purpose of that force is. Where it is used to facilitate the taking of fingerprints from an otherwise cooperative and compliant subject, it is acceptable. Where, as here, an officer uses any level of force to purposefully compel the fingerprinting of a person that does not wish to be fingerprinted, including attempting to pry the individual's fingers from a closed fist, that force is impermissible under this policy.

Lastly, the BWV conclusively establishes that the intent of NE#1 and NE#4 was to physically force the Complainant to identify himself via the fingerprint reader. The BWV also indicates that NE#1, even as a trained user of the fingerprint reader, incorrectly believed that he was permitted to force the Complainant to use the fingerprint reader because he had probable cause to arrest. There is no support for this proposition in SPD policy and, in fact, it is explicitly inconsistent with the language of SPD Policy 15.360-POL-3.

As such, when the officers used force to compel the Complainant to use the fingerprint reader, they acted contrary to policy. That being said, I genuinely believe that none of the Named Employees thought that they were violating policy at the time and that they felt that their actions were appropriate. Moreover, while I ultimately disagree with their interpretations of this policy, I do not find that those interpretations necessarily lack some merit. As such, instead of Sustained findings, I recommend that the Named Employees receive Training Referrals.

- **Training Referrals:** The Named Employees should receive retraining from their chain of command concerning SPD Policy 15.360-POL-3. They should be reminded that they are prohibited from using force, de minimis or otherwise, to compel an individual to use a mobile fingerprinting reader. They should be counselled to refrain from doing so again in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #4 – Allegation #1

15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #5 – Allegation #1

15.360 - Use of Mobile Fingerprint Identification Devices (Mobile IDs) 3. Officers Shall Not Use Force to Identify a Subject Via Mobile ID

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #5 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

It was alleged that NE#5 may have abused his discretion when he instructed the other Named Employees to use force to compel the Complainant to use the mobile fingerprint reader. As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of



the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

In response to questioning from OPA, NE#5 stated that it was his intention to charge the Complainant by officer instead of booking him into jail. This was purposed to ensure that officers did not have to be taken off the street to transport the Complainant. However, in order to do so, NE#5 stated that he needed the Complainant’s identification. This appears to have been the basis for the decision to compel the Complainant’s fingerprints when he refused to provide them voluntarily.

While NE#5’s desire to preserve resources was understandable, that did not provide a justification to act contrary to policy by compelling fingerprints by force. Moreover, there was no requirement that the officers identify the Complainant at the scene and, ultimately, the Complainant would have been identified at the time of booking. In this respect, the actions that NE#5 ordered and violation of policy that resulted from those actions constituted an abuse of his discretion. That being said, I do not feel that a Sustained finding is warranted for two main reasons. First, as discussed above, I do not believe that NE#5 (or, for that matter, any of the other Named Employees) intended to violate policy. Second, NE#5 explained that, at the time of the incident, he had not been trained on the fingerprint reader, which suggests that he may have been unfamiliar with SPD Policy 15.360-POL-3. As such, I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #5 - Allegation #3

1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command

SPD Policy 1.020-POL-6 states that command employees are required to take responsibility for every aspect of their command. The policy further instructs that: “All sergeants and above are fully responsible and accountable for the acts or omissions of their subordinates.” (SPD Policy 1.020-POL-6.) Lastly, the policy makes clear that: “Any failure by a subordinate may be assumed to be a failure in supervision or command.” (*Id.*)

The BWV indicates that NE#5 gave the order to NE#1 to force the Complainant to use the mobile fingerprint reader. When he did so, he was responsible for the acts that followed, which constituted violations of policy. However, as discussed above, I find that this conduct, even if contrary to policy, does not warrant a Sustained finding. I believe that retraining and counseling is the more appropriate result and that NE#5 will learn from this matter and avoid this mistake in the future. As such, I recommend that this allegation be Not Sustained and I reference the above Training Referral. (See Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**