



City of Seattle

Seattle Police Department

April 10, 2018

Director Andrew Myerberg
Office of Police Accountability
720 Third Avenue, 18th Floor
Seattle, WA 98104

Re: Management Action Recommendation (2017OPA-0270)

Dear Director Myerberg:

I am writing in response to your March 9, 2018 Management Action Recommendation, which arises out of your review of an incident in which an SPD officer had turned off his ICV in order to show supervisors of a King County Metro employee the video of an interaction he had just had. You note a concern that the ICV policy does not allow for officers to turn off their ICV until the conclusion of their law enforcement activities, and ask that the Department consider revising policy to allow for articulable exceptions.

As you know from your prior positions, the Seattle Police Department manual differs from that of any other department of which I am aware in that, whereas law enforcement manuals generally are considered a set of guidelines and expectations, the reasonable deviation from which may be acceptable depending on articulable circumstances, SPD's does not. Such a provision, which had been in the preface to SPD's manual for many versions past and which, to my understanding, is reflected in case law as well, is intended to account for the reality that law enforcement activity is inherently unpredictable and dynamic, and that no policy can account for each and every situation that an officer may encounter.

It is my understanding that this provision was expressly ordered removed from SPD's manual by the federal monitor. Because of this, I note that, over the past few years, I am finding myself in the position of writing or reviewing department responses to management actions that call upon SPD to modify individual policies to account for situations where, in the opinion of OPA, an officer acted reasonably, but not in strict accordance with the policy as written.

I agree with you that there are circumstances in which officers may reasonably deviate from policy in the course of prudent law enforcement activity. I also recognize, as you note, that any policy to allow for reasonable deviations from policy could be subject to abuse. I know from my own experience with IACP, Major Cities Chiefs, and the Police Executive Research Forum (PERF) that best practice urges this flexibility in policy, subject to articulable cause and strict scrutiny and oversight. Addressing this point policy by policy, however, becomes simply unworkable. Thus, rather than continuing to address modifications to individual policies throughout the manual as justifiable deviations come up in OPA reviews, it is my hope that with the Department now in full

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and effective compliance with the Consent Decree, with systems for critical review and analysis now cemented in place, given the expanded training and supervision under which officers are operating, and with an additional layer of oversight upcoming with the appointment of an Inspector General, we may be at the point where we have established sufficient institutional trust to consider adding a prefatory clause regarding reasonable deviations back into the manual. We'd welcome the opportunity to discuss this issue further.

In the meantime, I have forwarded this recommendation to the Audit, Policy and Research Section to consider in connection with any upcoming review of the ICV policy.

As always, please let me know if you would like to discuss further.

Sincerely,



Carmen Best
Chief of Police

Cc: Deputy Chief Chris Fowler
Brian Maxey, Chief Operating Officer
Assistant Chief Lesley Cordner
Rebecca Boatright, Chief Legal Officer
Fe Lopez, Executive Director, Community Police Commission