



# Office of Police Ombudsman Commission

Agenda  
August 17, 2021  
5:30PM – 7:30PM  
Virtual WebEx Meeting

**TIMES GIVEN ARE AN ESTIMATE AND ARE SUBJECT TO CHANGE**

## Commission Briefing Session:

5:30 – 5:35pm	1) Welcome to Public	Commissioner Smith
	2) Agenda Approval	Commissioner Smith
	3) Approve June 15 <sup>th</sup> Minutes	Commissioner Smith

## Items:

5:36 – 6:15pm	1) Public Forum	Citizens Signed Up to Speak
	2) New Legislation Briefing	Asst. Police Chief Lundgren
	3) OPO Closing Reports	Bart Logue / Luvimae Omana

## Commission Business:

6:16 – 7:30pm	1) OPO Recommendations	Commissioner Smith
	2) Training: NACOLE Annual Conference and Ride-Alongs	Commissioner Smith
	3) Commissioner Speak Out	Commissioners
	4) September Meeting Discussion	Commissioner Smith

## Adjournment:

The next Ombudsman Commission meeting will be held on September 21, 2021.

Join by WebEx:

**Meeting link:** <https://spokanecity.webex.com/spokanecity/j.php?MTID=m91a03001b580b723fdb6c978a9a4971b>

**Meeting number:** 146 433 7825

**Password:** XTs9xcVm4m7

Join by phone:

+1-408-418-9388

Access code: 146 433 7825

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs, and services for persons with disabilities. The Council Chambers and the Council Briefing Center in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., are both wheelchair accessible. The Council Briefing Center is equipped with an audio loop system for persons with hearing loss. The Council Chambers currently has an infrared system and headsets may be checked out by contacting the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at (509) 625-6363, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [msteinolfson@spokanecity.org](mailto:msteinolfson@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.



# Office of Police Ombudsman Commission Minutes

June 15th, 2021

Meeting Minutes: 2:24

Meeting called to order at 5:38pm

## Attendance

- OPOC Commissioners present: Ladd Smith, Lili Navarrete, Jenny Rose and Luc Jasmin
- Legal Counsel: Absent
- OPO staff members present: Bart Logue, Luvimae Omana and Christina Coty

## Briefing Session

- Agenda approved
- OPOC Legal Contract –
  - The OPOC creating a committee to discuss the contract changes that will need to happen for the next year. Commissioner Smith and Commissioner Rose will make up the committee.
- May 18<sup>th</sup> minutes approved by majority. Commissioner Rose abstained.

## Items Session

- Public Forum –
  - Anwar Peace – Police Accountability activist
    - A year ago, George Floyd was murdered by the police. Most jurisdictions have moved forward with police reform or after action reports on protests which happened in their cities. In those reports we see that the majority of force being used was by the police. This police department has not put out a report and has filed a grievance on the OPO who was willing to write such a report. The round table discussions that occurred last month did not go well. He would encourage the OPOC to speak to the City Leaders in order to encourage reform.
- OPO Monthly Report
  - 9 Complaints in May which was significantly higher than the rest of the year. Overall, complaints are still down. We were contacted by community members 97 times. 4 Cases were reviewed and certified by the Ombudsman and Deputy Ombudsman as the Deputy is completing training on IA interviews and case certification. The OPO attended 19 IA interviews and 12 community Interviews. The OPO presented 1 recommendation to the Chief of Police for mediation, which will be conducted in June. The OPO is working with City Legal regarding the requirement to write reports on mediations in the CBA.
  - The OPO sent City Legal the closing report drafts for review. However, City Legal was not willing to sign off that the reports met the requirements of the CBA because City Legal wants to maintain separation from the OPO. This presents an issue regarding legal representation for the OPO.
  - Bart will be out of the office for 2 weeks starting next week
- Ellis Case Discussion
  - First Case to have the GA charge officers with murder

- OPO Closing Reports
  - The Deputy Police Ombudsman presented the Closing Report for A20-038/C20-081
  - The Police Ombudsman presented the Closing Report for F20-033/C20-090/OPO 20-59

### **Commissioners' Business**

- Police Guild Contract Discussion
  - Both the Ombudsman and the Deputy went over how they handled some of the specific restrictions that the OPO has to walk through when writing a closing report as part of the CBA.
- OPO Recommendations
  - Commissioner Rose motioned the 7 recommendations in the 2 closing reports
  - Passed 3 votes for, 1 Abstain due to internet connection issues
- Training: NACOLE Annual Conference and Ride-Alongs
  - NACOLE has 2 options for the Annual conference this year; online and in-person.
    - The online conference will have approximately 32 webinar sessions and will be August 16 – October 7, 2021. The in-person conference will be held in Tucson, AZ December 12- 16.
  - Ride-Along requirement
    - With restrictions being relaxed from COVID, any commissioner who is vaccinated and interested in going on a ride along per the ordinance requirement should let Christina know.
    - The Ombudsman will be fulfilling his ride-along requirement in June
- July Meeting Date Change –
  - Unanimous Approval to Cancel the July OPOC Meeting
- Executive Session
  - Start Time – 7:40Pm
  - End Time – 8PM

**Motion Passes or Fails: 4**

**Meeting Adjourned at: 8:02**

**Note: Minutes are summarized by staff. A video recording of the meeting is on file - Spokane Office of Police Ombudsman Commission**

**<https://my.spokanecity.org/bcc/commissions/ombudsman-commission/>**

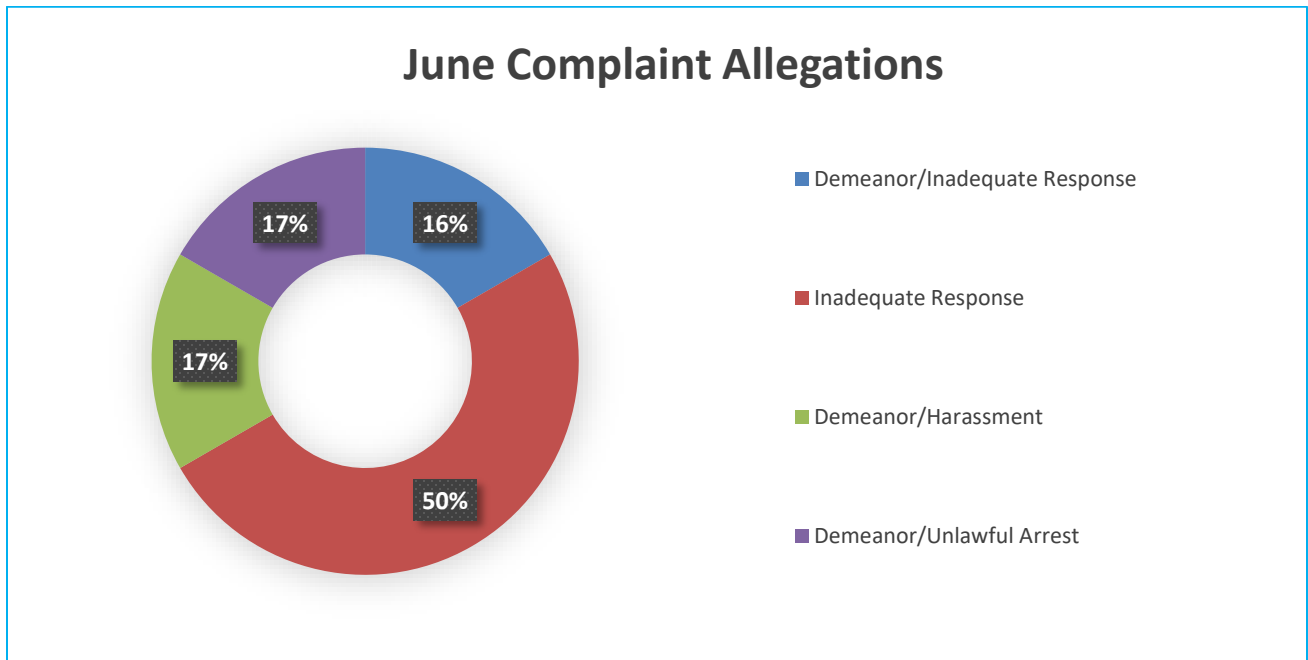


# Office of the Police Ombudsman

## Public Safety & Community Health Committee Report

Reporting Period: June 1-30, 2021

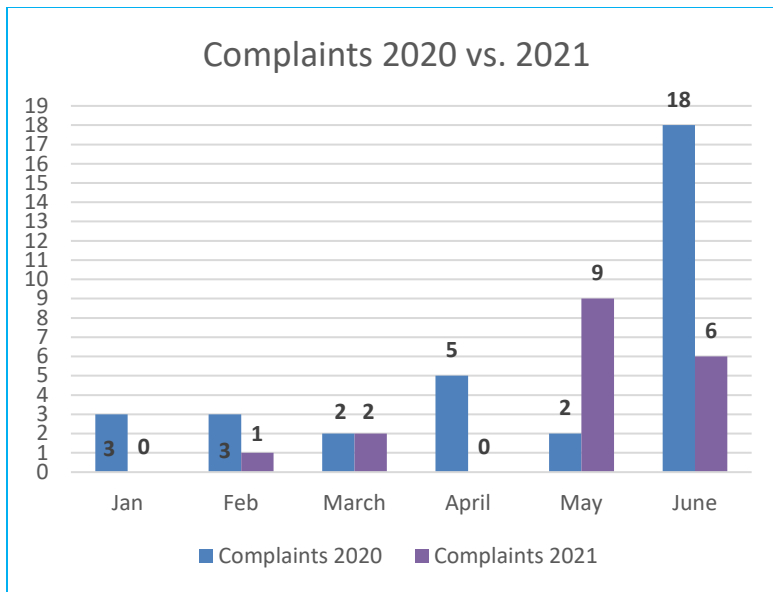
### Complaints/Referrals/Contacts



### Highlights:

In June, the OPO received 6 complaints and made 9 referrals to various agencies including the SPD IA, SCSO, Washington State Patrol, and County Jail. Examples include:

- IR 21-26: A community member has traffic/speeding concerns with people on HYW 2.
- ER 21-30: A community member was concerned with their daughter's interaction with a WA State Patrol Trooper and an alleged illegal search and seizure.
- ER 21-33: A community member filed a complaint with the Jail, but never heard anything.
- OPO 21-19: A community member was served a trespass notice after being kicked out of a business allegedly for racism. The complainant felt that the officer dismissed the claims without evidence.
- OPO 21-20: A limited commission officer harassed a community member for doing chalk art outside of a business that didn't open for approximately 5 hours
- OPO 21-22: Responding officers to a DV situation between a parent and minor allegedly mocked the parent and didn't offer assistance.



**YTD Complaint Comparison**

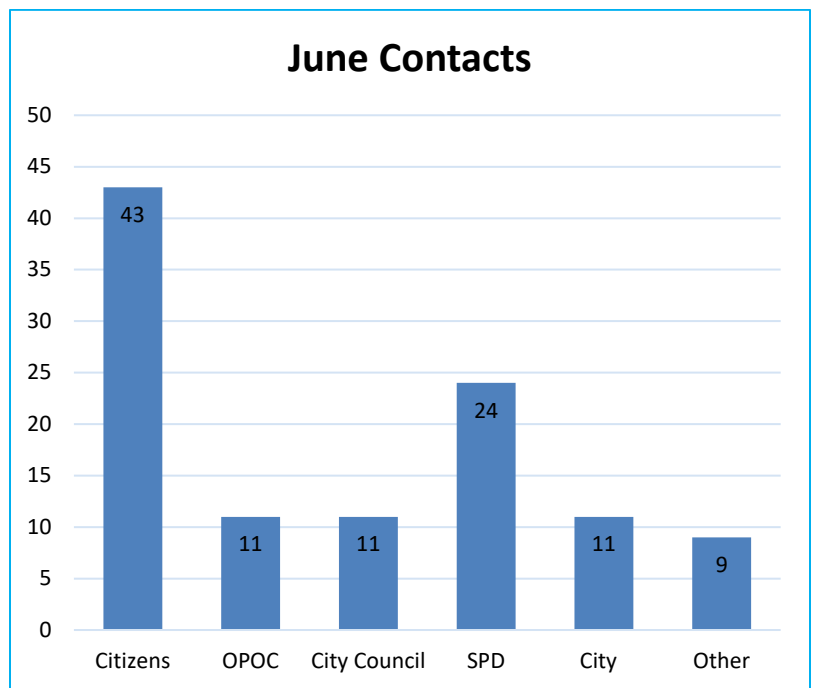
The OPO saw a steady intake of complaints in June 2021 (6) compared to June 2020 (18). Difference was due to civil unrest following the death of George Floyd. Overall complaints are down YTD (18) Compared to 2020 (33).

**Contacts/Oversight:**

- The OPO received a complaint from an SPD officer alleging unsafe practices
- The OPO met with Chief Meidl and Asst Chief Lundgren regarding the Closing Reports
- The OPO met with the Police Guild to review their comments regarding the Closing Reports which were sent to them in accordance with the CBA

**Contacts/Oversight**

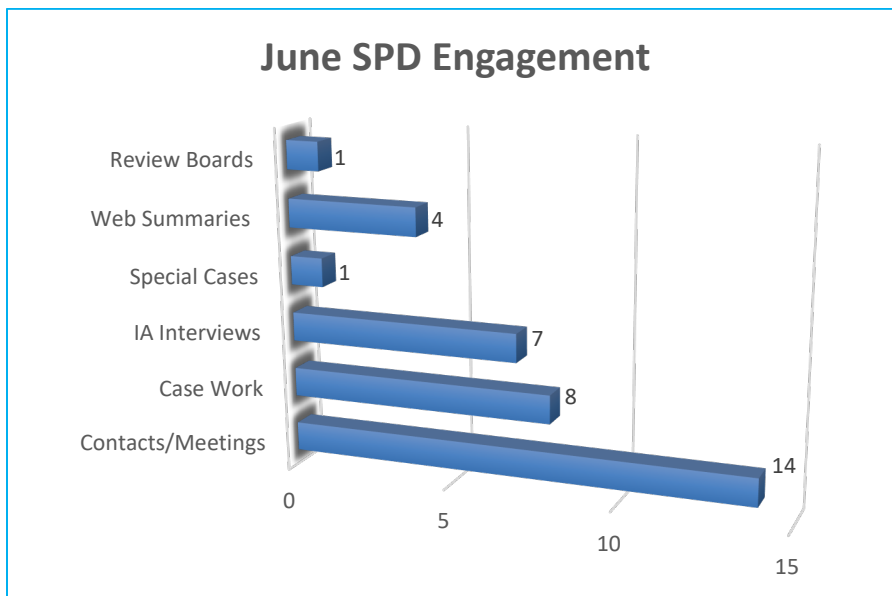
- 109 total contacts
- 13 community member interviews were conducted
- Attended 7 IA Interviews
- 26 total SPD contacts
- 10 IA contacts



## Oversight Activities

### Highlights:

- The OPO finalized and presented the first 2 closing reports under the new CBA
- The OPO attended 1 review board during the month of June – Deadly Force Review Board
- The OPO reviewed 4 Case Summaries for web posting to the SPD website
- The OPO hosted a mediation between a community member and a SPD officer



### Case Work

- 2 cases certified
- 2 cases returned for further investigation
- 1 Mediation completed

### Web Case Summaries

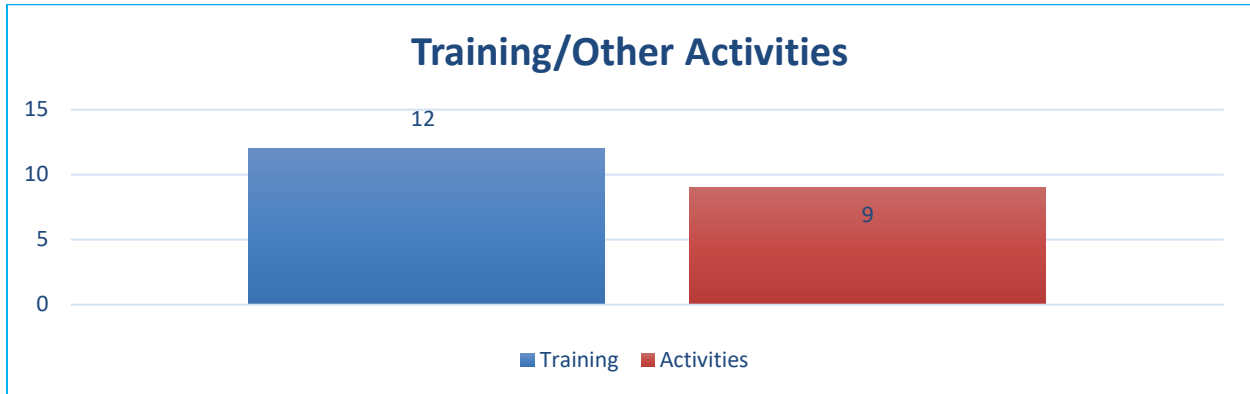
- 4 Cases Reviewed

## Training/Other Activities

### Highlights:

- Training – SPD In-Service, SPD EVOC In-Service, 4 Ride-Alongs, Know Be 4, NACOLE Webinar Series: Role of the first-line supervisor in facilitating change in law enforcement organizations, WSBA CLE, “Representing victims of police misconduct: Legal developments & lessons from the trenches.”
- City Meetings – PSCHC Meeting, Mayors Quarterly Meeting
- Oversight – OPOC monthly meeting, NACOLE Use of Force Working Group, NACOLE Strategic Planning Committee, NACOLE Peer to Peer Subcommittee, Task force 2.0 Policing and Alternatives to Policing subcommittee

- Other Community Meetings – Leadership Spokane Executive Board meeting, Leadership 2021 meeting, Jonah Project Meeting, Leadership Spokane Social Committee meeting, Leadership Round Table, Volunteer work at a Celebrate Recovery event



## Upcoming

- The OPO is continuing to work through the review requirements for the Closing Reports with the Police Guild
- The OPO is working with on a Memorandum of Understanding regarding Closing Reports for Mediations
- Deputy and Police Ombudsman Job Descriptions and Classification review

Office of the Police Ombudsman Commission Meeting:  
Held virtually, the 3rd Tuesday of every month at 5:30pm  
Agendas and meeting recordings can be found at:

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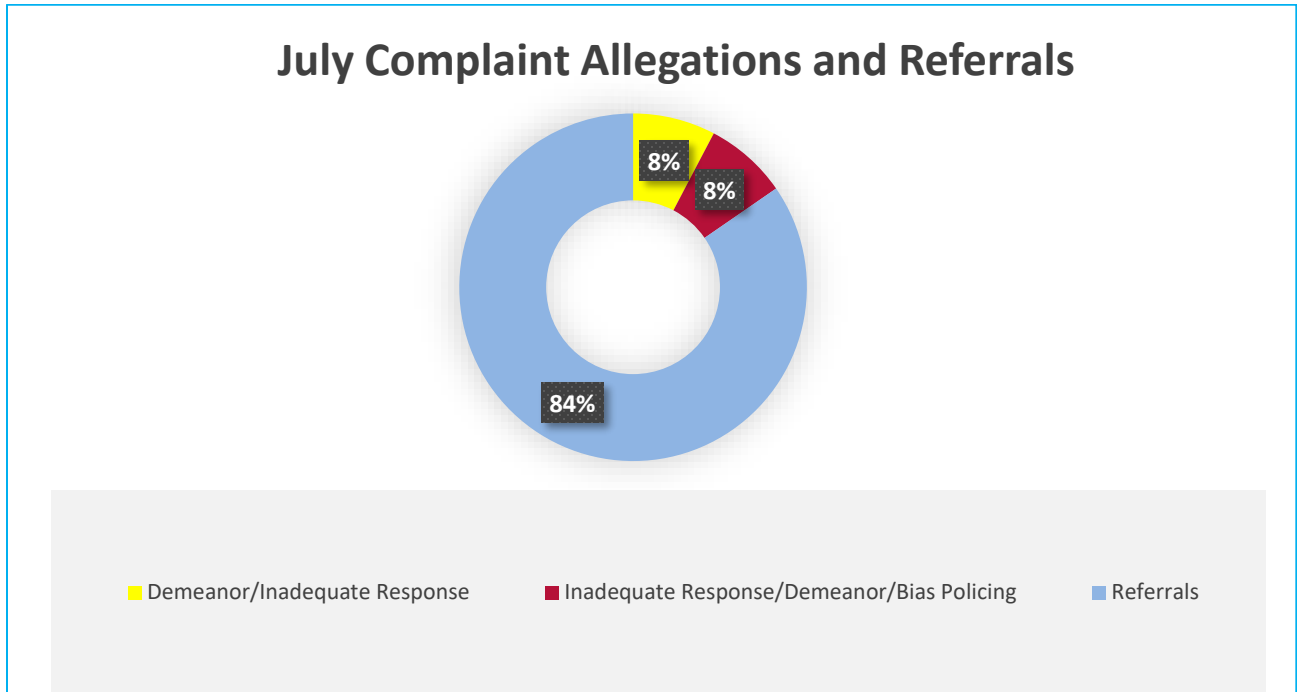


# Office of the Police Ombudsman

## Public Safety & Community Health Committee Report

Reporting Period: July 1-31, 2021

### Complaints/Referrals/Contacts

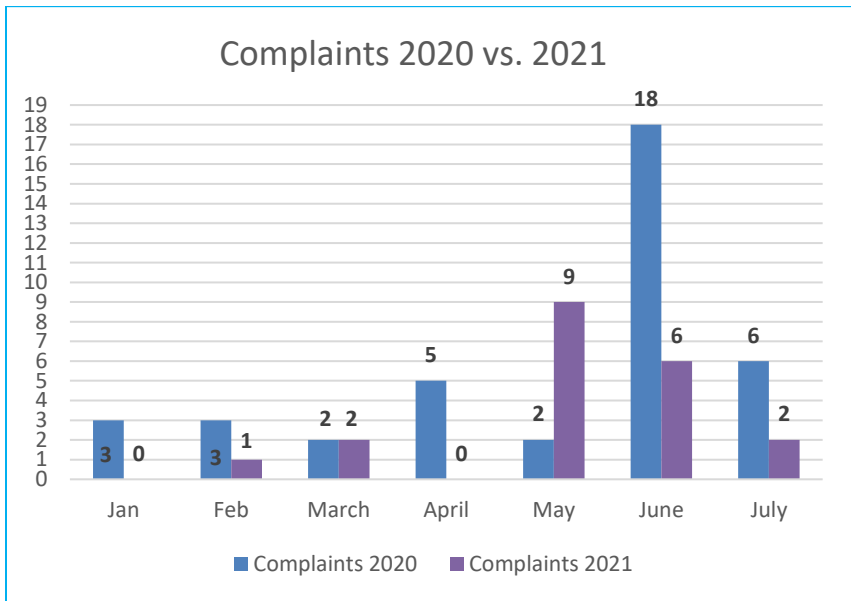


### Highlights:

In July, the OPO received 2 complaints and made 11 referrals to various agencies including the SPD Internal Affairs (IA), Spokane County Sheriff's Office, Washington State Patrol, Spokane County Jail, and Code Enforcement. Examples include:

- IR 21-36: A community member was concerned with a lack of enforcement by SPD regarding noise ordinances.
- ER 21-43: A community member reported multiple abandoned vehicles that have not been dealt with.
- IR 21-42: A community member wanted to discuss why SPD officers are not addressing the homeless individuals who are doing drugs in public and taking over the park. The community member wanted to know why SPD is not enforcing the laws of the city.
- OPO 21-23: A community member felt they were discriminated against while trying to file a stolen vehicle report and alleged they were refused due to their sexual orientation.





**YTD Complaint Comparison**

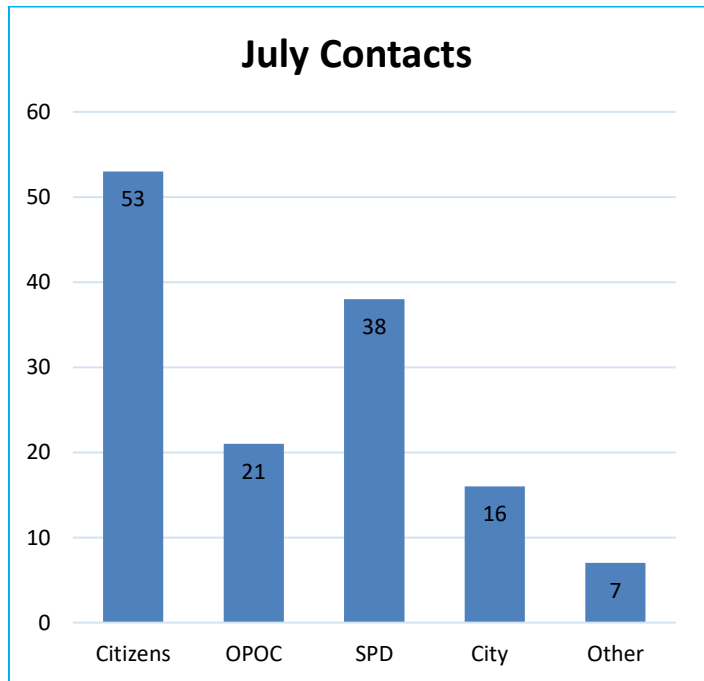
The OPO saw a decrease of complaints in July 2021 (2) compared to July 2020 (6). Overall complaints are down YTD (20) Compared to 2020 (39). Difference is due to civil unrest following the death of George Floyd.

**Contacts/Oversight:**

- The Police Ombudsman and Deputy Police Ombudsman attended 2 (1 each) training sessions at the Spokane Police Academy regarding legislative updates affecting policing in Washington.
- The Police Ombudsman and IA Lieutenant hosted a community member for an informal review of body worn camera footage regarding behavior seen during a complaint review.

**Contacts/Oversight**

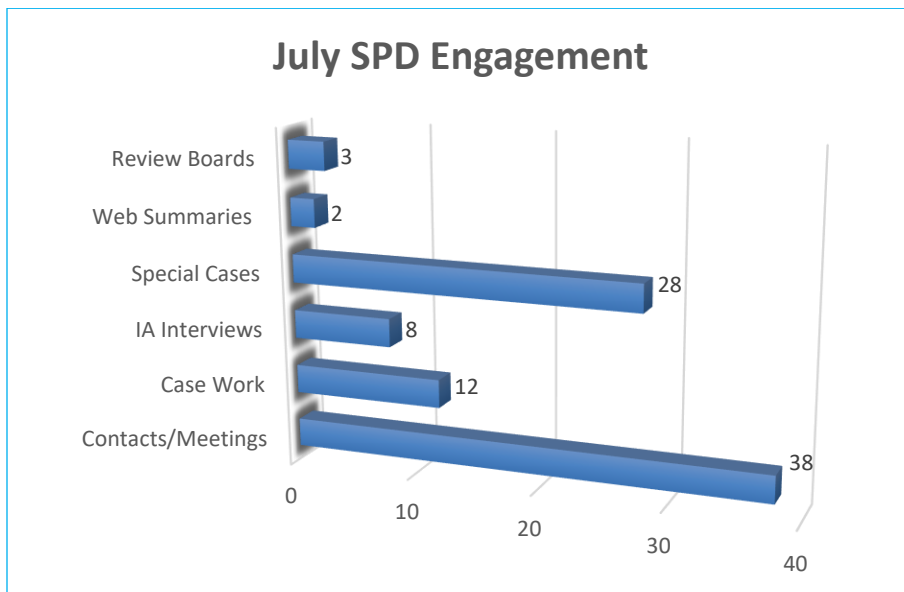
- 135 total contacts
- 8 community member interviews were conducted
- Attended 8 Internal Affairs Interviews
- 38 total SPD contacts
- 28 IA contacts



## Oversight Activities

### Highlights:

- The OPO drafted 3 closing reports
- The OPO attended 2 review boards (Use of Force Review Board and Collision/Pursuit Review Board) and 1 Deadly Force Administrative Review Panel (D-ARP) during the month of July
- The OPO reviewed 2 Case Summaries for web posting to the SPD website
- The Police Ombudsman provided the IA Lieutenant an in-depth review of SPD's draft May 31<sup>st</sup> protest response report



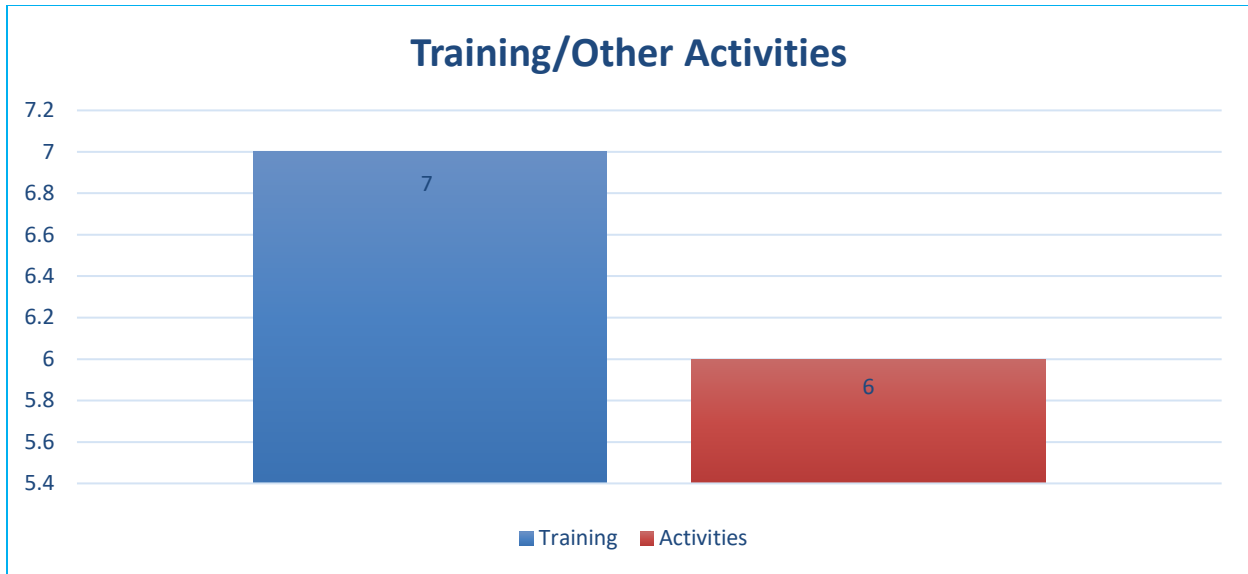
### Case Work

- 12 cases certified
- **28 special cases**
  - 12 uses of force
  - 3 K9 deployments
  - 11 collisions
  - 2 pursuits
- **Web Cases Reviewed**
  - 2 Cases

## Training/Other Activities

### Highlights:

- Training – Policing Legislation Training, Know Be 4 Security Awareness Training, Adult Leadership Programs Virtual Conference, United States Ombudsman Association (USOA) Training on Diversity, Equity and Inclusion, USOA Breaking the Bias Habit, Attorney General's Office Training on Employment Records, Personnel Information and the Public Records Act
- City Meetings – PSCHC Meeting
- Oversight – NACOLE meeting for Member Development and Support Committee, NACOLE Strategic Planning Committee, NACOLE Use of Force Working Group, and IA Biweekly Meeting
- Other Community Meetings – Leadership Spokane Social Event, Volunteer work at a Celebrate Recovery event



## Upcoming

- NACOLE Virtual Conference – August 13<sup>th</sup> – October 6<sup>th</sup>
- Unity in the Community – August 21st
- IACP Conference – September 10th

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# Mediation Report

C21-017 / C21-030 / OPO 21-09

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OFFICE OF THE POLICE OMBUDSMAN



BART LOGUE | POLICE OMBUDSMAN, *AUTHOR*  
LUVIMAE OMANA | DEPUTY POLICE OMBUDSMAN, *CO-AUTHOR*

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## Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

## Staff Information

### **Bart Logue, Police Ombudsman**

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

### **Luvimae Omana, Deputy Police Ombudsman**

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is also a certified Advanced Force Science Specialist.

### **Christina Coty, Administrative Specialist**

Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

### **Tim Szambelan, OPO Attorney**

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

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## Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern in order to increase accountability and transparency into the matter as well as closing reports that may lead to recommendations for improving police policies or practices. By insisting on transparency, our goal is to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again. It is also our intent to highlight effective police practices in order to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The OPO can also publish policy and procedure reports regarding cases the OPO reviews during a review board process. The OPO's recommendations will not concern discipline in specific cases or officers and shall not be used in disciplinary proceedings of bargaining unit employees. Reports are solely meant to further discussion on aspects of incidents that may be improved upon.

Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this incident in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

The OPO may recommend mediation to the Chief of Police at any time prior to certifying a case. Should all parties agree and the officer(s) participate in good faith, the OPO must publish a report following a mediation including any agreements reached between parties<sup>1</sup>. Mediations are governed by the Revised Code of Washington (RCW) 7.07. The content of the mediation may not be used by the City or any other party in any criminal or disciplinary process.

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<sup>1</sup> This is the only type of report which is mandated by the Collective Bargaining Agreement. However, the information in this report is limited due to the confidentially agreements signed in the mediation. The OPO has asked the Police Guild for a Memorandum of Understanding regarding mediation reports which has yet to be finalized.



## Required Disclosures

Under Article 27 of the current CBA between the City of Spokane and the Spokane Police Guild, this report must provide the following disclosures:

1. Any closing report from an IA investigation shall clearly state the information expressed within the report is the perspective of the OPO, that the OPO does not speak for the City on the matter, and the report is not an official determination of what occurred;
2. The report will include the current policy practice, policy, and/or training as applicable and shall expressly state the policy recommendations that follows reflect the OPO's opinion on modifications that may assist the department in reducing the likelihood of harm in the future; they do not reflect an opinion on individual job performance under the current policy, practice, or training;
3. A report shall not comment on discipline of an officer(s). This prohibition includes a prohibition on writing in a report whether the OPO or OPOC agrees with or differs from the Chief's findings, whether the officer acted properly, whether the officer's actions were acceptable, or whether the officer's actions were in compliance with training or policy. Additionally, no report will criticize an officer or witness or include a statement on the OPO or OPOC's opinion on the veracity or credibility of an officer or witness.
4. The OPO's closing report shall not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, or to reconsider any decision(s) previously made concerning discipline.
5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.<sup>2</sup>

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

## Summary

### Procedural History

This was an internally initiated complaint with the allegation of Abuse of Authority. Policy 340.3.5(E) provides, "the wrongful or unlawful exercise of authority is considered misconduct." A subsequent third party community complaint was later received on the same incident. The Ombudsman recommended the case for mediation to the Chief after reviewing the facts of the case. The OPO based its decision to recommend mediation based on a review of BWC footage and police reports. Prior to the mediation, the community member, Ombudsman, and Police Chief participated in a lunch meeting in which the circumstances of this case were discussed. The involved community member and involved officer agreed to participate in the mediation and the mediation was conducted at City Hall on June 10, 2021. An outside mediator and the Ombudsman were also present. Following the mediation, the Ombudsman sent

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<sup>2</sup> In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.

correspondence to the Chief saying the officer participated in good faith and recommended the case be closed as mediated.

There were no formal agreements between the officer and the community member resulting from this mediation.

### OPO Summary of Facts

On April 23, 2021, around 12:00am an officer encountered a community member crossing the street without using a crosswalk. The community member approached the officer and made comments about George Floyd's death. The officer determined the community member did not need police services, wished them a good night, and walked away to avoid unnecessary confrontation. However, another officer arrived on scene and the community member began to engage with the second officer. The first officer reengaged when the community member who appeared to be arguing with the second officer. The verbal exchange quickly escalated and the first officer arrested the community member for pedestrian interference.

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# Policy and Procedures Report and Recommendations

F20-028

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OFFICE OF THE POLICE OMBUDSMAN



BART LOGUE | POLICE OMBUDSMAN, *AUTHOR*  
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Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this incident in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

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they do not reflect an opinion on individual job performance under the current policy, practice, or training;

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5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.<sup>1</sup>

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

## Summary

### Procedural History

This case was first reviewed by the chain of command as a use of force review as F20-028 following Level 1 and Level 2 Lateral Neck Restraints (LNR) and multiple TASER applications, which are reviewable uses of force under SPD Policy Manual 301.14.1. Under SPD Policy Manual 302 and following the chain of command review and finding, the Use of Force Review Board (UOFRB) reviewed this case in December 2020. The UOFRB reviews applications of non-deadly force after disciplinary decisions are final in order to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department-wide.

The OPO's opinions are based upon a careful review of the IA investigation summary and accompanying interviews, reports, and BWC footage; the chain of command review; Spokane Police Training Unit's Training Documentation; the Use of Force Review Board minutes; and first-hand knowledge from OPO participation during the UOFRB. This closing report provides an analysis of issues identified through a use of force review process, which allows for a policy and procedures report.

### OPO Summary of Facts

On July 5, 2020, an officer was dispatched to a storage facility after being dispatched to a call requesting a police response for a suspicious person. An employee from a business advised there was a red van in the parking lot that had appeared overnight and that it also appeared people were living inside the van with the curtains drawn over the window. The officer arrived as a single unit and contacted two individuals inside of the van and asked for their names to enter them as trespassers. The officer notes in the incident report that they have responded to similar calls in the area and the business has wanted

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<sup>1</sup> In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.



people trespassed in the past. One of the individuals, the suspect, did not provide their correct name despite multiple attempts by the officer to clarify their identity. After multiple requests about the name, date of birth, and ID, the suspect took off running and the officer pursued on foot.

The officer yelled if the suspect did not stop they would be “tased”. The officer caught up to the suspect attempting to climb over a fence and pushed them against the fence using body weight. The officer continued to struggle with the suspect. The officer applied a Level 1<sup>2</sup> Lateral Neck Restraint (LNR)<sup>3</sup> and unsuccessfully tried to apply a Level 2 LNR. In the officer’s analysis for whether the LNR 1 was reasonable, the officer says the suspect’s resistance was “running from the police and lying about [their] identity during an investigation.”

According to the officer report, the subject continued to struggle and hit the officer in the mouth with an elbow. The officer was able to momentarily gain control and attempted another Level 1 LNR. Before it could be successfully applied, the suspect bit the officer in the forearm. No reaction to these assaults can be heard on BWC as the officer continued to calmly give commands. The suspect also called to their partner requesting help as they approached the struggle. According to the officer’s report, the officer saw the suspect’s partner approaching and heard the suspect asking the partner for help. As such, the officer anticipated a two-on-one fight. The suspect then broke free and jumped over the fence. During this struggle, the officer requested the suspect to stop and warned multiple times that a TASER would be applied.

When the suspect jumped the fence, the officer immediately deployed their TASER in dart mode. The probes made contact with the suspect’s lower right back causing the suspect to fall forward onto the ground. During the BWC, the TASER is heard activating multiple times as the officer approached the suspect. However, the suspect was able to get up and attempted to run again. The officer activated the TASER again but it was ineffective. The suspect continued to run as the officer was getting within reach.

While in foot pursuit, the officer attempted a drive stun.<sup>4</sup> The TASER made contact with the suspect’s back and was effective at getting the suspect on the ground. The officer kept one hand on the suspect to keep pushing them onto the ground while giving commands. The suspect was no longer actively physically resisting the officer but showed no attempt to comply with multiple commands. The officer applied three more drive stuns in the middle of the back and left thigh before the suspect finally complied and placed their hands behind their back. The officer then radioed for a supervisor to come to the scene before handcuffing the suspect.

The total time that elapsed from the moment the suspect ran until handcuffs were applied was 3 minutes and 17 seconds. The supervisor was called for at 2 minutes 45 seconds after the pursuit began. The officer was able to advise dispatch that the suspect was running as the pursuit began. The suspect

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<sup>2</sup> There are two types of LNRs distinguished by officer intent. Level 1 LNR means the officer does not intend to render the subject unconscious. While a Level 2 LNR means the officer intends to render the subject unconscious. See Spokane Police Department Defensive Tactics Manual, p. 148 (Version updated November 2019).

<sup>3</sup> As of June 18, 2021, SPD has prohibited the use of any lateral neck restraint techniques following the passage of HB 1054.

<sup>4</sup> A Drive Stun is when a TASER is applied without darts and requires the TASER’s electrodes to be in direct contact with the subject or pushed against the suspect’s clothing. Drive Stun mode is not designed to cause incapacitation and primarily becomes a pain compliance option. <https://my.axon.com/s/article/Drive-Stun-Backup> (Accessed 7/27/2021).

was transported to a medical facility for evaluation per policy after TASER applications greater than 15 seconds. According to the officer's report, the TASER was attempted or deployed a total of 7 times in either dart or stun mode.

## Investigation and Department Findings Summary

### Pertinent policies

1. Policy 308.3.2 Lateral Neck Restraint
  - The proper application of a Level I or a Level II LNR hold may be effective in restraining an individual. The neck restraint may only be used as outlined in the Defensive Tactics Manual.
2. Policy 308.8.7 – Multiple Applications of the TASER device
  - Officers should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Total exposure to the TASER device should not exceed 15 seconds. If exposure exceeds 15 seconds, the subject shall be transported to a medical facility for examination prior to booking.

The Uses of Force reviewed included:

- LNR I
- LNR II
- TASER dart deployment
- TASER dart deployment
- TASER drive-stun
- TASER drive-stun
- TASER drive-stun
- TASER drive-stun

### Chain of command review<sup>5</sup>

The officer's supervisor noted the following details when recommending a finding of In Policy for all uses of force:

- The officer caught the suspect as the suspect was attempting to climb a fence and applied a level 1 LNR. The suspect was able to break the officer's grip and spin to face the officer. When they were face to face, the suspect hit the officer in the mouth with an elbow strike. The officer was again able to gain control and attempted another level 1 LNR. Before it could be applied the suspect dropped his chin and bit the officer's right forearm.
- The suspect was then able to break free and get over the fence. The officer was able to access his TASER and deploy a cartridge. The probes made contact in the suspect's lower right back causing the suspect to fall forward. As the officer was attempting to get over the fence and close the distance, the suspect got back up and attempted to run again. The officer then deployed a second set of probes that struck the suspect in the right hip area. The second deployment was also effective in disabling the suspect and the officer was able to get over the

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<sup>5</sup> Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether or not the officer(s) acted properly, whether the officer's actions were acceptable, or whether or not the officer's actions were in compliance with training or policy. As such, the final determination by the chain of command cannot be mentioned.

fence. As the officer was closing distance the suspect again tried to get to his feet and run. The officer activated their taser again but the wires to the probes had broken while climbing the fence so it was ineffective.

- The suspect again jumped up and began running as the officer was getting within reach of him. The officer attempted a drive stun while in foot pursuit and made contact with the suspect's lower back at the end of the 5 second cycle. This was effective in getting the suspect back on the ground. The officer then used 1 hand to keep pushing the suspect back to the ground as the suspect continued to struggle to stand. During this stage the officer was giving multiple commands in a clear and calm voice considering the physical exhaustion. The officer gave the suspect 3 more drive stuns to the middle of the back and left thigh until the suspect finally complied and could be handcuffed.

The lieutenant did not note any details when recommending a finding of In Policy for all uses of force. However, the lieutenant noted the following topics for training considerations:

- Advising suspects they are under arrest,
- Over-reliance on the TASER,
- Transitioning to alternative techniques, and
- Ensuring the suspect is in custody prior to requesting a supervisor over the radio.

The captain noted the following details when recommending a finding of In Policy for all uses of force:

- The officer initiated contact with the individuals as a without a cover unit.
- The officer requested backup after realizing the suspect was non-compliant. However the decision to engage alone led to a one-on-one confrontation with a combative suspect.
- In such situations the danger to the officer is significantly greater and such situations often require a greater use of force by the officer to gain control than when multiple officers are attempting to restrain a suspect.
- Both attempted uses of the LNR 1 and LNR2 were reasonable and in compliance with policy. The suspect actively resisted, but when the officer attempted to gain control by LNR, the suspect assaulted the officer.
- The use of the TASER probe use was also in compliance since the suspect assaulted the officer. The suspect demonstrated they would assault the officer if the officer attempted to go hands on with any control technique.
- The use of the TASER stun gun is reasonable despite it is generally not recommended and is not as effective as probe mode. The officer was alone, fatigued, and at a size disadvantage. The officer was also not able to reload the TASER to use probe mode.
- It is not ideal for an officer to use the TASER multiple times as was done in this case, but the situation was extremely dangerous to the officer.
- The suspect was actively resisting and still posed a threat to assault the officer at any moment.

The major in the chain of command review noted the following details when recommending a finding of In Policy for all uses of force:

- The officer decided to approach unknown occupants in a parked vehicle for a trespassing complaint without backup. This decision led the officer to face alone the dangerous task of

apprehending a fleeing subject who became assaultive. The situation became more dangerous as the officer was assaulted and became fatigued.

- Despite SPD Policy 308.8.7 that discourages TASER cumulative exposure over 15 seconds, the officer considered other options such as OC but could not access it at the time. The officer was limited in the ability to use hands on tactics by the time they resorted to multiple drive stuns because the officer was fatigued and disadvantaged in body mass compared to the subject.
- Based on the totality of the circumstances, the major found the officer's actions reasonable and within policy.

## Policy Recommendations

### Applicable Current Policy Practice, Policy, and/or Training

1. **SPD Policy 301.8 – Assessing Level of Force** provides, “Officers shall continually assess situations to determine if de-escalation is feasible and if force is necessary. Officers will continually reassess their force in relation to the amount of continued resistance offered by the subject and adjust their level of force appropriately.”
2. **Practice – considerations added in review board minutes.** After the OPO recommended tactical review to SPD in 2020, Director MacConnell implemented changes to the review board minutes by adding considerations including tactics, training, equipment, and policy/SOP.

### Recommendations to Policy and/or Training

#### Citations for administrative detentions

The call was for a suspicious person that the officer was investigating for a possible trespass based on their experiences for similar calls in the area. The call moved from a *Terry* stop and reasonable suspicion to probable cause for arrest because of obstruction<sup>6</sup> – the suspect lied to the officer when asked for their name. Obstruction is a charge that relies on officer discretion. In weighing the governmental interest versus the person's right to privacy, the department can avoid unnecessary harm to officers for administrative issues.

SPD has recently changed its practice in regards to trespassing an individual. On June 22, 2021, officers have been directed not to issue trespass or exclusionary notices but only enforce the law when a copy of that order issued by the business or private party has been previously presented. Officers no longer issue trespass paperwork for a business as that is considered a civil matter between the business and the involved person. Officers will now only respond to individuals that have previously been trespassed by the business and are now in violation of that trespass order.

Further, after the passage of police accountability laws in the Washington State legislature that took effect on July 25, 2021 officers will be required to alter their response to incidents similar to this case. For example, HB 1310 impacts *Terry* stops and use of force. Under the new laws, officers must consider

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<sup>6</sup> See RCW 9A.76.020, Obstructing a law enforcement officer. A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. Obstructing a law enforcement officer is a gross misdemeanor.

the governmental intrusion on citizens and may not use force if they do not have probable cause for a crime. According to the SPD training director in a recently conducted training on 2021 Legislative Changes:<sup>7</sup>

- If the subject does not pose an imminent threat but is uncooperative, officers must walk away.
- When using force, officers must exhaust all available and appropriate de-escalation tactics available prior to using force.
- Officers may use physical force when necessary when officers have probable cause. Officers must use the least amount of physical force necessary to overcome resistance.

Given these directives, absent probable cause or businesses presenting trespass notices previously issued to individuals, officers face additional challenges if they respond to incidents similar to this case after July 25, 2021. In this case, officers would only be left with probable cause for obstruction, since the suspect provided a false name, to justify using force. However, officers will have to consider whether the governmental interest for that obstruction outweighs the intrusion which was the result of a suspicious person in a car. The OPO recognizes the vast change in policies and practices SPD is undertaking to meet the requirements under the new police accountability laws. Prior to making any formal recommendations, the OPO will continue monitoring the policy and procedure changes SPD is making and will reevaluate potential recommendations in the future. The OPO informally recommends that SPD use this case as a training tool, studying it in depth, to assist officers with new responses under the current laws.

#### Tactical considerations leading to force

The department should look beyond the exact moment force was used and “go upstream” to see whether officers are missing opportunities to de-escalate incidents in order to prevent them from ever reaching the point where force is ever required or justified.<sup>8</sup> In this case, the officer’s actions were evaluated by supervisors at the moment force was used. The chain of command review and the Use of Force Review Board did not offer alternative considerations that could have prevented the encounter in the first place, like whether pursuing a suspect for providing a false name on an administrative detention was worth the governmental intrusion. In the end, the suspect was never trespassed. The department has implemented a previous OPO recommendation to start using tactical analysis as part of a use of force review board. Headers have been added to the review board’s minutes. However, they are rarely if ever used. Policies are only effective if the department takes steps to integrate them into practice and culture.

***RECOMMENDATION R21-9: AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040, RECOMMENDATION #2, I RECOMMEND SPD EITHER UPDATE THE FUNCTION OF THEIR REVIEW BOARDS TO CRITICALLY ANALYZE OFFICER’S TACTICAL CONDUCT AND MAKE FINDINGS OR ENHANCE THE CHAIN OF COMMAND REVIEW FUNCTION OF CATEGORICAL USES OF FORCE THAT EXAMINE AN OFFICER’S TACTICS AND USES OF FORCE THAT RESULT IN SPECIFIC FINDINGS.***

<sup>7</sup> Steve Wohl, 2021 Legislative Changes (2021).

<sup>8</sup> <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> (accessed July 28, 2021).

### Use of force analysis

SPD policy requires officers to constantly assess the levels of force used. It follows that supervisors will include an analysis of whether the force was reasonable in each stage of the incident in his or her assessment of force an officer used. In this case, the supervisor included the uses of force in the incident synopsis. The lieutenant did not provide a written analysis on the uses of force that could be reviewed by the OPO. Instead, the review focused on training and the photo logs of the suspect's injuries. The captain conducted a thorough written review of the uses of force. However, the analysis was grouped according to the type of force used, e.g. TASER probe mode and TASER drive-stun mode instead of each instance in which force was applied. Probe mode was used twice and drive-stun mode was used five times, depending on the reviewer. A standardized review format would ensure proper scrutiny for each application of force which was applied.

***RECOMMENDATION R21-10:*** AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040 RECOMMENDATION #10, I RECOMMEND SPD CREATE A STANDARD FORMAT AND PROCEDURES FOR SUPERVISORS TO UTILIZE WHEN CONDUCTING CHAIN OF COMMAND REVIEWS.

## Summary of Recommendations

**Recommendation R21-9:** As previously recommended in Closing Report C19-040, recommendation #2, I recommend SPD either update the function of their review boards to critically analyze officer's tactical conduct and make findings or enhance the chain of command review function of categorical uses of force that examine an officer's tactics and uses of force that result in specific findings.

**Recommendation R21-10:** As previously recommended in Closing Report C19-040 recommendation #10, I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.

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# Policy & Procedures Report and Recommendations

F20-049/A20-042/P20-014

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OFFICE OF THE POLICE OMBUDSMAN



BART LOGUE | POLICE OMBUDSMAN, *AUTHOR*  
LUVIMAE OMANA | DEPUTY POLICE OMBUDSMAN, *CO-AUTHOR*



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## Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

## Staff Information

### **Bart Logue, Police Ombudsman**

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

### **Luvimae Omana, Deputy Police Ombudsman**

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is also a certified Advanced Force Science Specialist.

### **Christina Coty, Administrative Specialist**

Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

### **Tim Szambelan, OPO Attorney**

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

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## Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern in order to increase accountability and transparency into the matter as well as closing reports that may lead to recommendations for improving police policies or practices. By insisting on transparency, our goal is to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again. It is also our intent to highlight effective police practices in order to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The OPO can also publish policy and procedure reports regarding cases the OPO reviews during a review board process. The OPO's recommendations will not concern discipline in specific cases or officers and shall not be used in disciplinary proceedings of bargaining unit employees. Reports are solely meant to further discussion on aspects of incidents that may be improved upon.

Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this incident in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

The OPO may recommend mediation to the Chief of Police at any time prior to certifying a case. Should all parties agree and the officer(s) participate in good faith, the OPO must publish a report following a mediation including any agreements reached between parties. Mediations are governed by the Revised Code of Washington (RCW) 7.07. The content of the mediation may not be used by the City or any other party in any criminal or disciplinary process.

## Required Disclosures

Under Article 27 of the current CBA between the City of Spokane and the Spokane Police Guild, this report must provide the following disclosures:

1. Any closing report from an IA investigation shall clearly state the information expressed within the report is the perspective of the OPO, that the OPO does not speak for the City on the matter, and the report is not an official determination of what occurred;
2. The report will include the current policy practice, policy, and/or training as applicable and shall expressly state the policy recommendations that follows reflect the OPO's opinion on modifications that may assist the department in reducing the likelihood of harm in the future;

they do not reflect an opinion on individual job performance under the current policy, practice, or training;

3. A report shall not comment on discipline of an officer(s). This prohibition includes a prohibition on writing in a report whether the OPO or OPOC agrees with or differs from the Chief's findings, whether the officer acted properly, whether the officer's actions were acceptable, or whether the officer's actions were in compliance with training or policy. Additionally, no report will criticize an officer or witness or include a statement on the OPO or OPOC's opinion on the veracity or credibility of an officer or witness.
4. The OPO's closing report shall not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, or to reconsider any decision(s) previously made concerning discipline.
5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.<sup>1</sup>

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

## Summary

### Procedural History

This case was reviewed by the chain of command and then by the CPRB and UOFRB due to a reportable vehicle pursuit (P20-014), forcible stop and intervention (A20-042), and use of force (F20-049). The OPO's opinions are based upon a careful review of incident reports; the BWC footage; the chain of command reviews; the Use of Force Review Board (UOFRB) and Collision and Pursuit Review Board (CPRB) minutes; and first-hand knowledge from the OPO's participation in those review boards. This closing report provides an analysis of issues identified through the use of force, collision, and pursuit review processes, which allow for a policy and procedures report.

### OPO Summary of Facts

On October 31, 2020, patrol units responded to a report of an argument. It should be noted this incident occurred on Halloween and there were families out on foot trick or treating. Units determined the argument was a domestic violence incident involving a couple and had probable cause to determine a crime had occurred. The suspect fled the scene on foot. A short foot pursuit ensued but the suspect was able to double back to where the pursuit began. The suspect stole an unlocked police vehicle that was running and contained an AR-15 patrol rifle and fled in the vehicle. Responding units spotted the suspect in the vehicle and maneuvered to arrest them. A responding unit chased the suspect down an alley for a short distance and rammed the stolen patrol vehicle with his vehicle in an attempt to disable it. The officer's vehicle made contact with the front of the suspect's vehicle. The suspect then backed up rapidly and collided with a wooden fence, steel gate post, and numerous trash cans in the alley while trying to evade capture. The officer continued to follow the suspect down the alley at speeds estimated below 20 miles per hour. The suspect appeared to be trying to turn in the alley but was momentarily

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<sup>1</sup> In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.

stationary. The officer used this opportunity to pin the suspect's vehicle with the front of the officer's patrol vehicle. Because of this, the officer was face to face with the suspect when the officer exited the vehicle. The officer then intentionally pointed their firearm in at the suspect while providing verbal directives. The suspect was taken into custody without further incident. A 2017 police SUV incurred substantial damage to the rear, front, and sides and a 2020 police SUV incurred substantial damage to the front and sides.

## Pertinent Policies

1. **SPD Policy 314.2.1 – When to Initiate a Pursuit** states, It is the policy of the Spokane Police Department that pursuits are permissible only when the necessity for immediate apprehension outweighs the danger created by the pursuit itself. Officers may only initiate pursuits for the following reasons:
  - Homicide
  - Drive by Shooting
  - Assault 1st and 2nd Degree
  - Burglary 1st Degree
  - Arson 1st and 2nd Degree
  - Rape 1st and 2nd Degree
  - Robbery 1st and 2nd Degree
  - Kidnapping 1st and 2nd Degree
  - or warrant (non DOC) for the above crimes
2. **SPD Policy 314.7 – Pursuit Intervention/Forcible Stops** provides, Forcible stops are an attempt to terminate the ability of a suspect to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures.
3. **SPD Policy 314.7.2 – Ramming definition** provides, the deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop. This technique may be considered a use of deadly force.
4. **Spokane Police Department Defensive Tactics Manual<sup>2</sup> - exceptional technique**  
Any use of force techniques and fundamentals that are applied or deployed by an officer of the Spokane Police Department which is not described in this manual will be deemed as exceptional techniques. The reasonableness of exceptional techniques will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

All exceptional techniques must be documented in great detail due to the fact that they cannot be referred to in this manual.

## Investigation and Department Findings Summary

The chain of command reviews included the following cases:

- Vehicle Pursuit (P20-014)
- Forcible Vehicle Stop-Ramming (A20-042)

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<sup>2</sup> Version last updated November 2019

- Intentionally Pointing a Firearm (F20-049)

### Chain of Command Review<sup>3</sup>

The supervisor in the chain of command noted the following details in recommending a finding of In Policy:

- The suspect had demonstrated their willingness to be violent, as demonstrated by their assault of their partner. At no point did their actions demonstrate a willingness to de-escalate and become compliant. Rather their erratic and escalating behavior demonstrated a resolve to go to any measure to avoid apprehension.
- Pursuit
  - The officer was technically in a vehicle pursuit, albeit extremely short in duration.
  - “While the pursuit was not within the strict interpretation of SPD policy, when judged with the totality of the circumstance and contrasted with the priorities of life, I believe the pursuit was justified.”
- Collision
  - The officer took the only clear and lawfully appropriate actions given the circumstance.
  - Many young families in the area were out trick-or-treating for Halloween.
  - Failure to apprehend the suspect would only lead to increased risk to innocent civilians and officers.
  - While the officer used a “ramming” technique, the speed was low enough that the impact would not equate with “deadly force.”
- Use of Force
  - Once the patrol vehicle was immobilized, the officer and other responding officers began issuing verbal directives to the suspect to gain compliance.
  - The officer drew a service sidearm and intentionally pointed in on the suspect who was in the stolen police vehicle with full access to the police rifle.
  - The suspect’s hands were not completely visible and compliance with directions waivered, increasing the chance of officers having to use deadly force.

The captain in the chain of command review noted the following details in recommending a finding of In Policy:

- Pursuit
  - The officer made an immediate decision to attempt legal intervention to prevent the suspect from fleeing with the stolen patrol vehicle and patrol rifle. SPD policy does not permit officers to engage in vehicle pursuits for property crimes.
  - “I view [the officer’s] actions of ‘pursuing’ the stolen patrol vehicle in order to attempt legal intervention as an exceptional technique.”
  - The pursuit is justified under the totality of the circumstances and considering the stolen rifle in the male’s possession, and the male’s violent and resistive behavior.

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<sup>3</sup> Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether or not the officer(s) acted properly, whether the officer’s actions were acceptable, or whether or not the officer’s actions were in compliance with training or policy. As such, the final determination by the chain of command cannot be mentioned.

- Collision
  - The officer used a very low impact speed “ramming” technique to immobilize the fleeing suspect that would not equate “deadly force.”
- Use of Force
  - Intentional pointing of a firearm was reasonable in that situation and based on the totality of the circumstances.
  - The officer remained pointed in with a firearm, even with the obvious threat, was not consistent with SPD’s current training of the depressed muzzle theory.<sup>4</sup>
  - The captain assigned training the officer in depressed muzzle theory but still recommended a finding of in compliance with policy.
  - The captain further noted that this use of force was not in strict compliance with policy but was reasonable and justifiable under the circumstances.

The major in the chain of command review noted the following details used in arriving at a recommended finding of In Policy:

- Pursuit
  - The pursuit was for a short distance down an alley at a maximum speed of 15MPH.
  - The officer’s actions were reasonable and appropriate when weighing the risk associated with the pursuit against the threat to the community if the suspect were to escape.
- Collision
  - The ramming technique was applied with a speed of approximately 20MPH at an opportune time resulting in its immobilization.
  - The male was clearly trying to get away, but his low speeds of travel and very short duration would qualify as a vehicle follow until the time the officer employed a ramming technique to immobilize the fleeing vehicle.
  - The stolen patrol vehicle had an AR-15 rifle under the male’s control which presented a substantial risk to the community.
- Use of Force
  - The officer perceived a lethal threat. Intentionally pointing a firearm is consistent with training as the officer was prepared to deliver deadly force.

## Policy Recommendations

### Applicable Current Policy Practice, Policy, and/or Training

#### **Spokane Police Department Defensive Tactics Manual - exceptional technique**

Any use of force techniques and fundamentals that are applied or deployed by an officer of the Spokane Police Department which is not described in this manual will be deemed as exceptional techniques. The reasonableness of exceptional techniques will be judged from the perspective of a reasonable officer on

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<sup>4</sup> Depressed muzzle theory is when a firearm is pointed down with the index finger off the trigger to help reduce sympathetic reflexive reactions that may unintentionally discharge a firearm. See <https://www.police1.com/police-products/firearms/articles/rifle-sling-positions-low-ready-retention-and-high-ready-dVDiQJleutqXVf8J/> (accessed on 7/28/21); Bill Lewinski, *Can You Really Prevent Unintentional Discharges? Force Science News Readers Get Pre-Publication Look at New Findings*. Force Science News Transmission #3 (2004); Roger M. Enoka, *Involuntary Muscle Contractions and the Unintentional Discharge of a Firearm* (2003).



the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

All exceptional techniques must be documented in great detail due to the fact that they cannot be referred to in this manual.

## Recommendations to Policy and/or Training

In the chain of command review of this incident, there were several mentions of how the pursuit and the use of force not in strict compliance with policy. As mentioned above, the maximum speed in this pursuit was less than 20 miles per hour and the officer intentionally pointed their firearm in at the suspect. SPD trains officers to keep their firearms pointed in the low-ready or depressed muzzle position. The chain of command considered the totality of the circumstances including various circumstances such as a rapidly evolving incident, young families out on the nearby streets trick or treating for Halloween, the suspect having potential ready access to an AR15, and the priorities of life in making their recommended findings that the pursuit and subsequent use of force were exceptional techniques<sup>5</sup>.

First, by definition an exceptional technique is virtually anything that is not clearly covered in policy. In SPD's policy, exceptional techniques apply to force techniques and principles. The policy manual and defensive tactics manual are silent on whether this can be applied as justification for pursuits. Rather, SPD Policy 314.2.1 is very specific in regards to when a pursuit may be initiated as it states pursuits may only be initiated in response to a limited number of crimes. When a pursuit is initiated outside of those very specific circumstances, approving that as an exceptional technique creates ambiguity for officers for when a pursuit is permissible.

**RECOMMENDATION R21-11:** *I RECOMMEND THAT SPD REEVALUATE THE CIRCUMSTANCES IN WHICH A PURSUIT MAY BE AUTHORIZED TO ELIMINATE AMBIGUITY FOR OFFICERS AND ENSURE STRICT COMPLIANCE WITH THE PROVISIONS OF HB 1054. SPD SHOULD ALSO ENSURE AN EVALUATION OF THE FACTORS LEADING UP TO THE PURSUIT TO DETERMINE IF A PURSUIT MAY HAVE BEEN AVOIDABLE SIMILAR TO A USE OF FORCE.*

Second, the OPO previously cautioned SPD on the OPO's perception regarding the permissive use of exceptional techniques in the closing report on C19-040. In that report, the OPO's Recommendation #8 was that SPD consider reducing or removing exceptional techniques and follow a similar trajectory as the Seattle Police Department in listing the allowable tools for force and that anything outside of the listed tools are out of policy except in truly exceptional situations. This is a safeguard for liability the

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<sup>5</sup> The tactic of remaining pointed in, even with the obvious threat, was not consistent with (SPD's) current training regarding the depressed muzzle theory.

department may face. The Chief responded to this recommendation by saying it was partially implemented and partially not implemented.<sup>6</sup>

**RECOMMENDATION R21-12:** *AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040 RECOMMENDATION #8, I RECOMMEND SPD CONSIDER REDUCING OR REMOVING EXCEPTIONAL TECHNIQUES FROM ITS POLICIES, MANUALS, GUIDELINES, AND OTHER GUIDING DOCUMENTS AND TRAINING TO REDUCE DEPARTMENT LIABILITY. SPD SHOULD ALSO CONSIDER LISTING EVERY TACTIC OR DEVICE THAT AN OFFICER CAN USE IN UTILIZING FORCE THAT THE DEPARTMENT EXPLICITLY APPROVES.*

DRAFT

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<sup>6</sup> Letter from Craig Meidl to Bart Logue (February 12, 2021).

## Summary of Recommendations

**Recommendation R21-11:** I recommend that SPD reevaluate the circumstances in which a pursuit may be authorized to eliminate ambiguity for officers and ensure strict compliance with the provisions of HB 1054. SPD should also ensure an evaluation of the factors leading up to the pursuit to determine if a pursuit may have been avoidable similar to a use of force.

**Recommendation R21-12:** As previously recommended in Closing Report C19-040, recommendation #8, I recommend SPD consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and other guiding documents and training to reduce department liability. SPD should also consider listing every tactic or device that an officer can use in utilizing force that the Department explicitly approves.

DRAFT