



## **MEETING AGENDA**

Tuesday, August 27, 2024  
5:30 PM - 7 PM  
City Council Chambers

### Attendees:

Luc Jasmin III	Bart Logue
Amy McColm	Luvimae Omana
Jenny Rose	Christina Coty
Ladd Smith	Tim Szambelan
Phillip Wetzel	

### **Introduction** - *Commissioner Jasmin*

1. Welcome
2. Agenda and minutes approval
3. Public forum

### **OPO Reports** - *Luvimae Omana*

1. May, June, and July Monthly Reports
2. C23-070 and A23-047 Closing Reports

### **Commission Business** - *Commissioner Jasmin*

1. Approval of recommendations
2. Outside legal counsel and subcommittee
3. Commissioners speak out
4. Executive session - employee performance appraisal review
5. Adjournment

The next OPOC meeting will be held on September 17, 2024

**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 Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [mLOWmaster@spokanecity.org](mailto:mLOWmaster@spokanecity.org). Persons who are deaf or hard of hearing may contact Risk Management 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

**May 21, 2024**

Meeting Minutes:

Meeting called to order at: 5:30pm

## Attendance

- OPOC Commissioners present: Ladd Smith, Luc Jasmin, Amy McColm
- OPO staff members present: Luvimae Omana, Christina Coty
- City Legal – Tim Szambelan

## Briefing Session

- Agenda – **Approved**
- April Minutes – **Approved**

## Items Session

- **Public Forum:**
  - **Anwar Peace** – Anwar has a chapter in the book “A place to exist, Camp Hope”
    - Homeless face more crimes on average 6% times more than someone with an address
    - ACLU came to Spokane to work with the Homeless population
    - Amy would like to get the information Anwar is talking about
    - Anwar donated the book
  - **Debbie Novak** – Information going on locally. She was meeting with the OII (Office of Independent Investigation)
  - HB 1579
  - Jessie Surrey, trial is ongoing in Kent – LEO is being charged with murder. First time in 50 years
  - June 7<sup>th</sup> press conference in front of court house remembrance of David Novak march 12-1pm, want to make sure that the public know that we are ranked #2 in police deaths
- **Guest Speaker: Maggie Yates – Deputy City Administrator**
  - Mayor Brown had an unexpected schedule conflict
  - Update on Police Chief recruitment – Public Sector Search
  - Mayor appointed a selection committee. June 6<sup>th</sup> first round interviews will be selected
  - Public Panel for the final candidates
  - Public Safety Meetings in all neighborhoods and virtual.
  - Survey’s is currently live and has gone out to internal officers with a high success rate
- **Ombudsman April Monthly Report:**
  - Budget, working with the grants department to see what we can apply for SBO



# Office of Police Ombudsman Commission Minutes

- Ordinance Change – RE: our name. Gender neutral is something that the
- Tie the budget .95% to the SPD was the bigger piece
- Annual Reports – Drafts are in the OPOC Agenda Packet
- New Commissioner Training program
- Citizen requested to be volunteer
- Updating our marketing material with a new logo unified look
- Critical incident – OIS April 18<sup>th</sup> Shadle Park
- **OPO Annual Report:**
  - Love the new look of the Annual Report and the logo.
  - **APPROVED**

## Commission Business

- **OPOC Annual Report**
  - **Approved**
- **Summer Events and Schedule**
  - Expo 74' – 50<sup>th</sup> Celebration POW-WOW at the Falls – May 25<sup>th</sup> & 26<sup>th</sup>
  - Spokane Pride & Rainbow Parade – June 8<sup>th</sup>
  - National Night Out – August 1<sup>st</sup>
  - Unity in the Community – August 17<sup>th</sup> (Booth Registration \$100)
  - Divy up the community events
  - June meeting 18<sup>th</sup> meeting scheduled
  - July Cancelled – Approved
  - August 20<sup>th</sup> meeting scheduled
- **Commissioner Speak Out**
  - **Jasmin** – Thank-you all for coming
  - **McColm** – None
  - **Smith** – None

**Motion Passes or Fails: 4**

**Meeting Adjourned at: 6:50pm**

**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/>

2024/05

Public Safety & Community Health Committee

# MONTHLY REPORT



OFFICE OF THE  
POLICE OMBUDS  
INDEPENDENT CIVILIAN OVERSIGHT

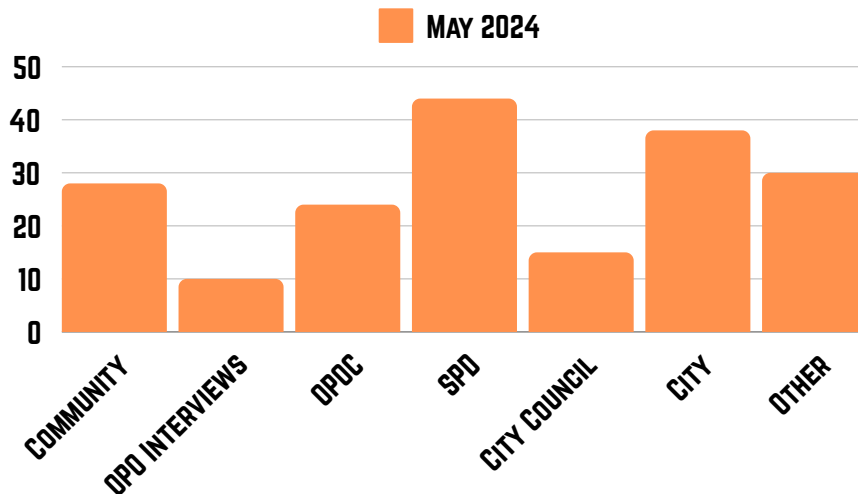
# HIGHLIGHTS OF ACTIVITIES

Current	YTD	Contacts, Complaints, and Referrals
189	<b>913</b>	Community contacts
10	<b>62</b>	OPO interviews
0	<b>1</b>	Letters of officer appreciation / commendation
5	<b>24</b>	OPO generated complaints
4	<b>29</b>	Referrals to other agencies / departments
0	<b>0</b>	Cases offered to SPD for mediation
0	<b>0</b>	Mediation completed

Current	YTD	IA Investigation Oversight
8	<b>30</b>	Cases certified
0	<b>0</b>	Cases returned for further investigation
0	<b>1</b>	Cases declined to certify
0	<b>0</b>	Web cases reviewed
5	<b>38</b>	Oversight of IA interviews

Current	YTD	Other Oversight Activities
31	<b>98</b>	Special cases reviewed
3	<b>9</b>	SPD review boards
49	<b>211</b>	Meetings with SPD
8	<b>40</b>	Oversight meetings
6	<b>38</b>	Community meetings
2	<b>17</b>	Training
0	<b>5</b>	Critical incidents

## CONTACTS



# 189

Total Contacts

### Community meetings

- OPOC meeting
- Leadership Spokane 2025 class selection

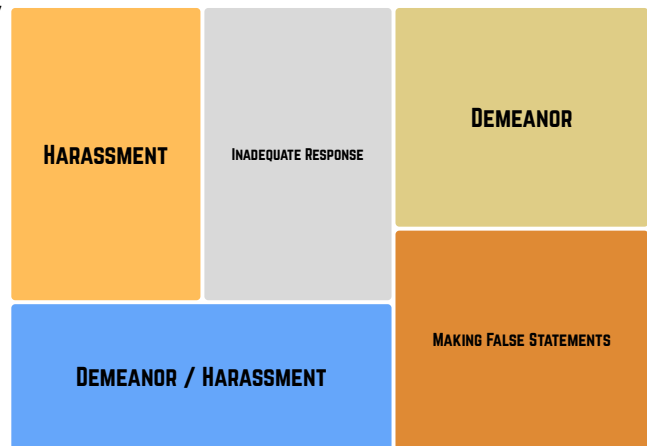
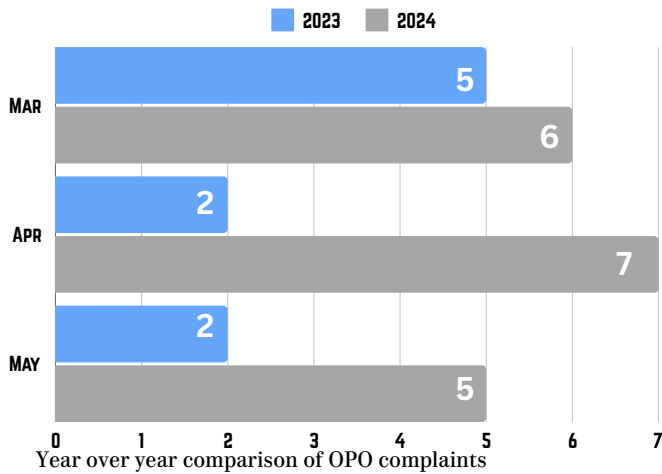
### OPOC community meetings

- Spokane Alliance event
- NAACP meeting
- SPS Equity Forum
- Neighborhood Council
- Community School Panel

### Oversight / Outreach

- NACOLE Executive Board / Committee meeting (3)
- NACOLE Committee meeting (5)
- IA Biweekly meeting

# COMPLAINTS



Type of allegation made

## Summary of complaints

<b>OPO 24-20</b>	A community member alleged that they are being harassed by an officer who tows vehicles from their home property with no legal reason to do so.
<b>OPO 24-21</b>	A community member experiencing a mental health crisis complained about being taken to jail and charged with assault instead of being treated for the mental health crisis they were experiencing.
<b>OPO 24-22</b>	A community member was ticketed for using an alleged fake trip permit on their vehicle. The officer had their vehicle with all their property towed and alleged that the officer made disparaging remarks after.
<b>OPO 24-23</b>	A community member was frustrated about the demeanor of the officer who pulled them over.
<b>OPO 24-24</b>	An investigator for the public defenders office had concerns regarding the affidavit of facts related to an arrest based on their review of the BWC footage.

# REFERRALS

Type of Referral	#
Internal	3
External	1

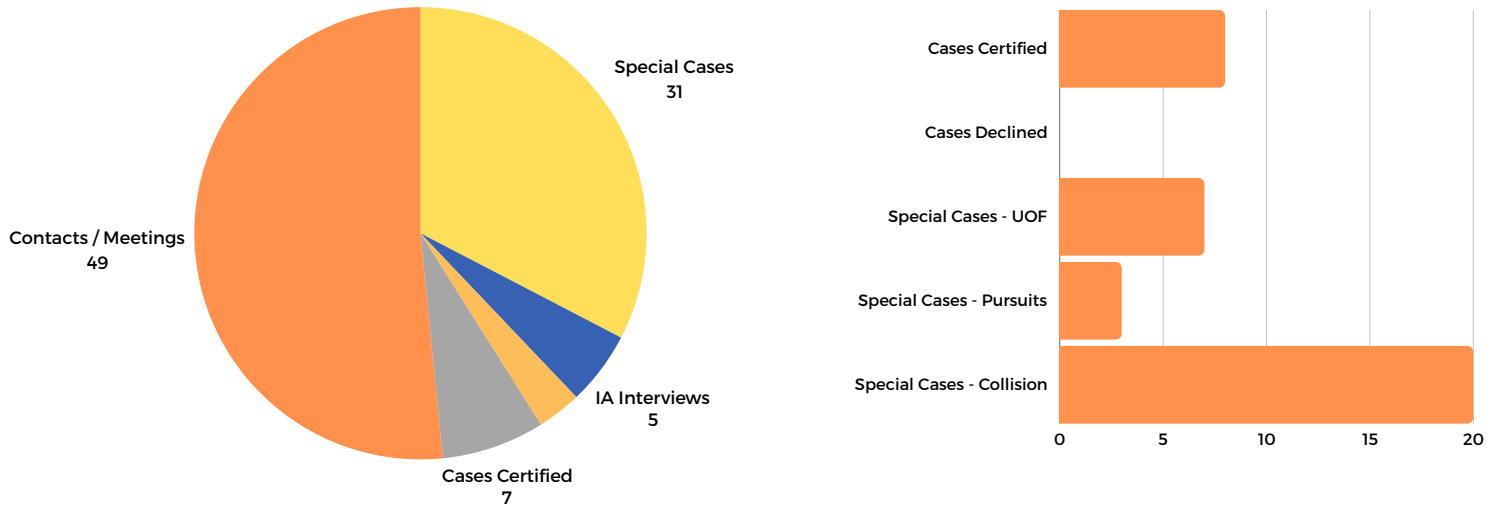


## Summary of referrals

IR 24-26	A community member was concerned with the amount of crime near their business; SPD / IA.
ER 24-27	A community member was concerned with the amount of crime near their business; Code Enforcement
IR 24-28	A community member was frustrated with the neighborhood issues that they have had for the past 3 years; SPD / IA.
IR 24-29	A community members vehicle was stolen and they received a ticket during the time the vehicle was missing. They are hoping to not have to pay that ticket; SPD / IA



# OVERSIGHT ACTIVITIES



## Other Activities

- Leadership Spokane tour of Avista Stadium

## Training

- SPD Academy mock scenes - 2 days
- NACOLE webinar - Investigating Police Surveillance Technology
- SPD Ride Along

## Upcoming

- WSCJTC Commission meeting
- Chief of Police hiring panel
- Office of the Independent Police Monitor peer review
- OPO / OPOC Annual Report presentation
- ARPA funds follow up

### OPOC Meetings

In person: Every 3rd Tuesday @ 5:30pm in City Hall | Virtual: available

For more information visit: <https://my.spokanecity.org/opoc>

2024/06

Public Safety & Community Health Committee

# MONTHLY REPORT



OFFICE OF THE  
POLICE OMBUDS  
INDEPENDENT CIVILIAN OVERSIGHT

# HIGHLIGHTS OF ACTIVITIES

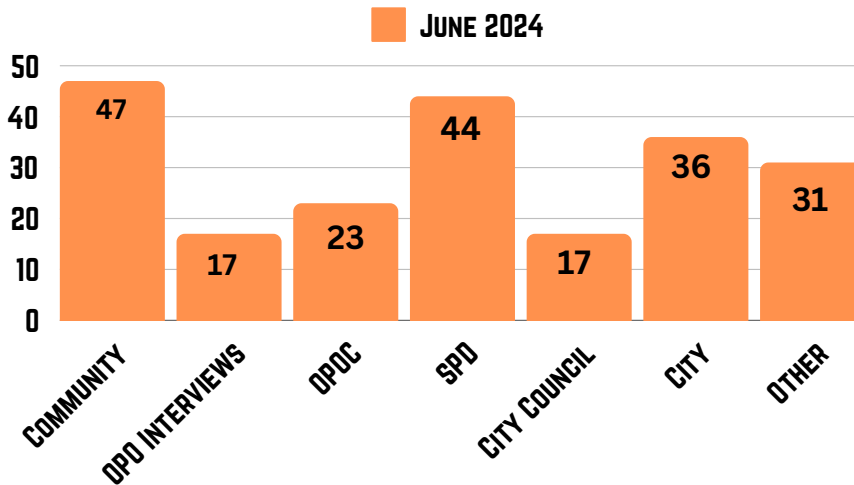
Current	YTD	Contacts, Complaints, and Referrals
240	<b>1153</b>	Community contacts
17	<b>79</b>	OPO interviews
4	<b>5</b>	Letters of officer appreciation / commendation
4	<b>28</b>	OPO generated complaints
5	<b>34</b>	Referrals to other agencies / departments
0	<b>0</b>	Cases offered to SPD for mediation
0	<b>0</b>	Mediation completed

Current	YTD	IA Investigation Oversight
10	<b>40</b>	Cases certified
0	<b>0</b>	Cases returned for further investigation
0	<b>1</b>	Cases declined to certify
0	<b>0</b>	Web cases reviewed
14	<b>52</b>	Oversight of IA interviews

Current	YTD	Other Oversight Activities
10	<b>108</b>	Special cases reviewed*
1	<b>10</b>	SPD review boards
44	<b>255</b>	Meetings with SPD
10	<b>50</b>	Oversight meetings
8	<b>46</b>	Community meetings
9	<b>26</b>	Training
0	<b>5</b>	Critical incidents

\*Use of Force, K9,  
Collisions, and Pursuits

# CONTACTS



## Community meetings

- WA State Human Rights Commission
- Centering Impacted Families
- Leadership Spokane Graduation
- Police Chief Candidate Community Forum
- Post Street Bridge Grand Opening

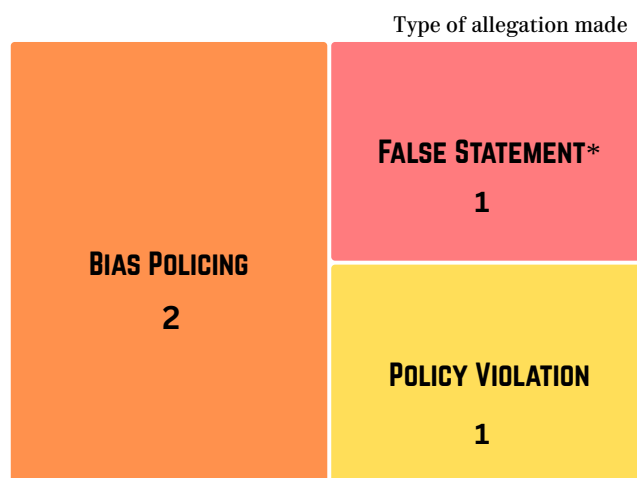
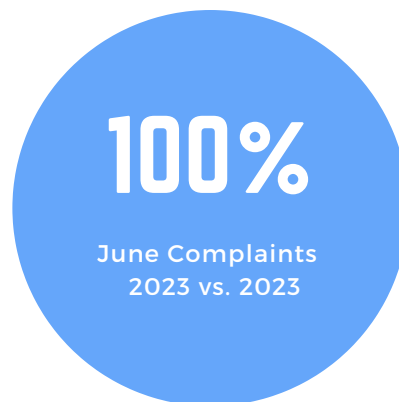
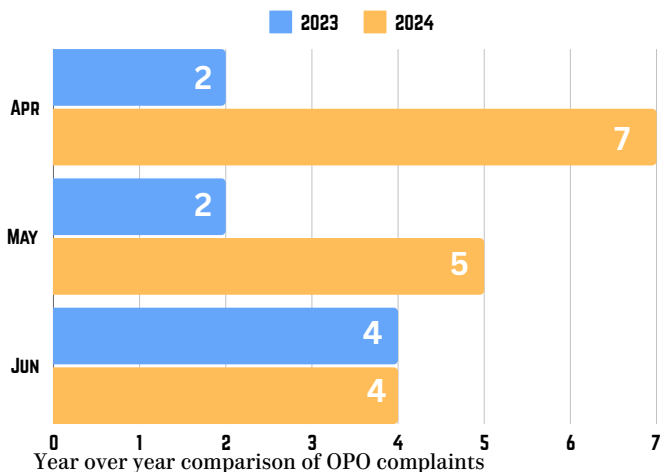
## OPOC community meetings

- Spokane Alliance
- NAACP monthly meeting
- Spokane Public Schools DEI Report
- West Central Neighborhood Days
- Quarterly PAC Committee
- Neighborhood Council

## Oversight / Outreach

- NACOLE Executive Board / Committee meetings (4)
- Police Chief Selection Committee (4)
- WSCJTC Commission quarterly meeting

# COMPLAINTS



\*Secondary allegation: Inadequate Response

\*Secondary allegation:

## Summary of complaints

<b>OPO 24-26</b>	A community member was assaulted during a concert and wanted to press charges. The complainant reviewed the police report and body camera footage and alleged the report had a number of inaccuracies. They also alleged the responding officer made false statements about them.
<b>OPO 24-27</b>	A community member had an interaction with an officer during a public event where they had to ask multiple times for the officers badge number and the officer never provided it.
<b>OPO 24-28</b>	A community member believes that they were pulled over because of their race.
<b>OPO 24-32</b>	A community member was pulled over by an officer for a missing front license plate. The community member believes the stop was due to their race.

# REFERRALS

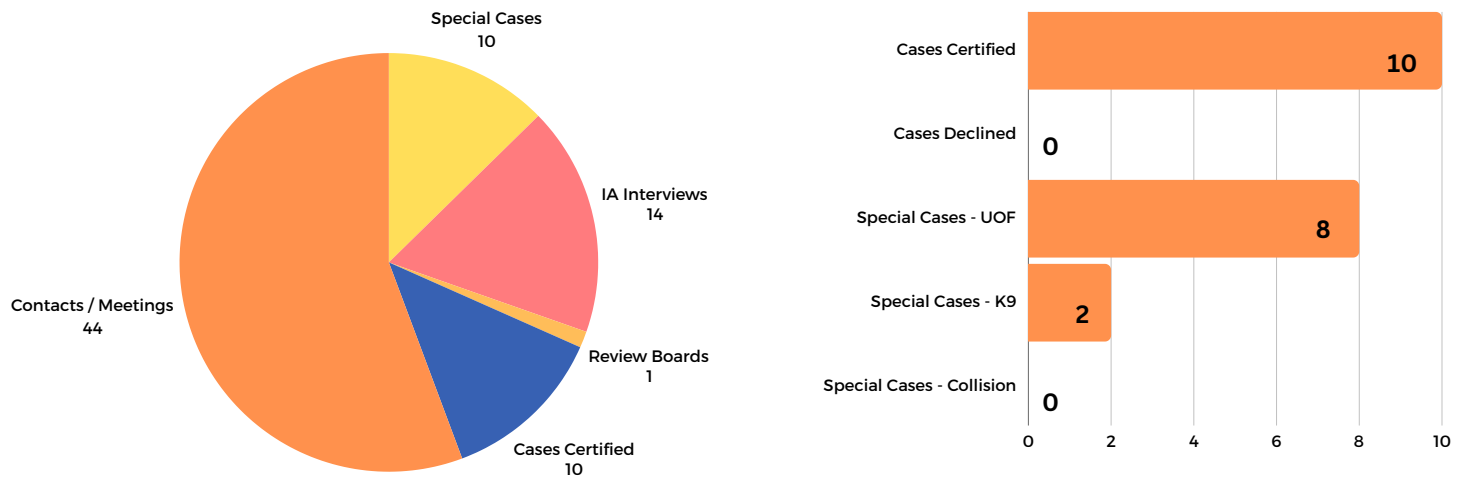
Type of Referral	#
Internal	3
External	2



## Summary of referrals

IR 24-30	A community member was frustrated about receiving bills for false alarms; SPD / IA.
ER 24-31	A community member stated that a deputy told them to stop calling them because it was civil matter; SCSO
IR 24-32	A community member was frustrated that an officer behind them flashed their high beams for 4-5 blocks without using emergency lights; SPD / IA.
ER 24-33	A community member was trying to locate their vehicle after it was impounded; SCSO
IR 24-34	A community member was concerned that SPD had illegally entered their apartment to place audio / video surveillance; SPD/IA

# OVERSIGHT ACTIVITIES



## Other Activities

- Leadership Spokane - Stepping Up Day
  - Service Projects Judge

## Training

- SPD AXON Standards Training
- WSBA webinar - Keeping Legal Minds Intact: Sustaining Well-Being
- SPD Ride Alongs (3)
- Know Be 4 security awareness training

## Upcoming

- Office of the Independent Police Monitor peer review
- OPO / OPOC Annual Report presentation
- OPO Ordinance / Budget / Office Space requests

OPOC Meetings - **NO JULY MEETING**

In person: Every 3rd Tuesday @ 5:30pm in City Hall | Virtual: available

For more information visit: <https://my.spokanecity.org/opoc>

2024/07

Public Safety & Community Health Committee

# MONTHLY REPORT



OFFICE OF THE  
POLICE OMBUDS  
INDEPENDENT CIVILIAN OVERSIGHT



# HIGHLIGHTS OF ACTIVITIES

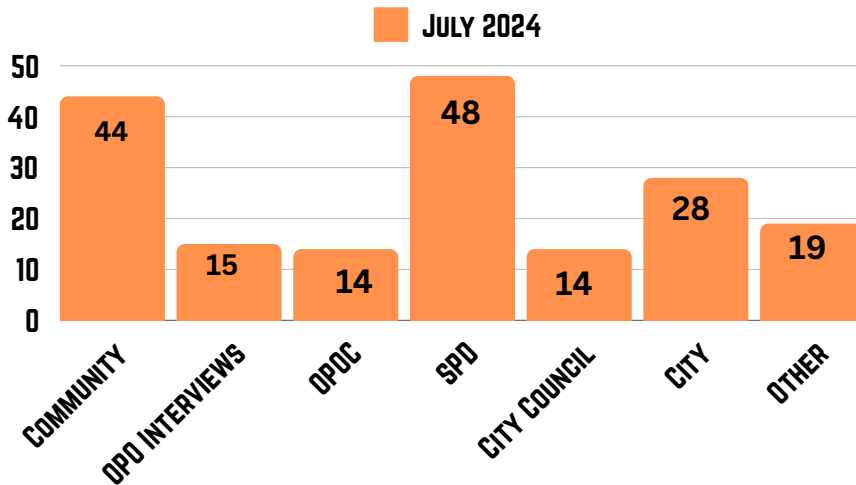
Current	YTD	Contacts, Complaints, and Referrals
174	<b>1327</b>	Community contacts
15	<b>94</b>	OPO interviews
0	<b>5</b>	Letters of officer appreciation / commendation
5	<b>33</b>	OPO generated complaints
5	<b>39</b>	Referrals to other agencies / departments
0	<b>0</b>	Cases offered to SPD for mediation
0	<b>0</b>	Mediation completed

Current	YTD	IA Investigation Oversight
6	<b>46</b>	Cases certified
0	<b>0</b>	Cases returned for further investigation
0	<b>1</b>	Cases declined to certify
0	<b>0</b>	Web cases reviewed
9	<b>61</b>	Oversight of IA interviews

Current	YTD	Other Oversight Activities
22	<b>130</b>	Special cases reviewed*
3	<b>13</b>	SPD review boards
52	<b>307</b>	Meetings with SPD
11	<b>61</b>	Oversight meetings
3	<b>49</b>	Community meetings
5	<b>31</b>	Training
0	<b>5</b>	Critical incidents

\*Use of Force, K9,  
Collisions, and Pursuits

# CONTACTS



## Community meetings

- Retirement gathering for a Leadership Spokane member
- Presentation at a community event

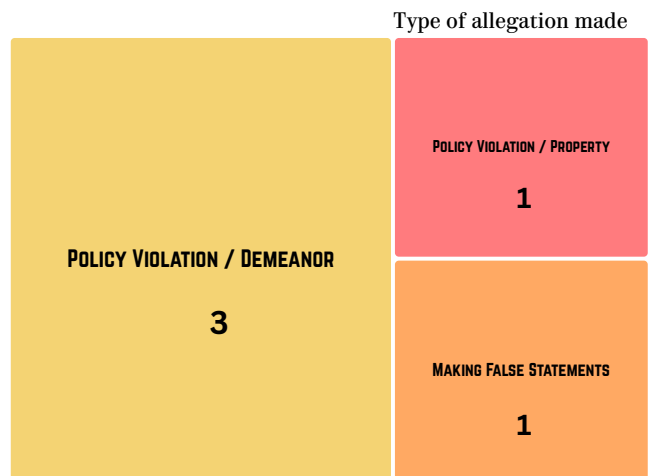
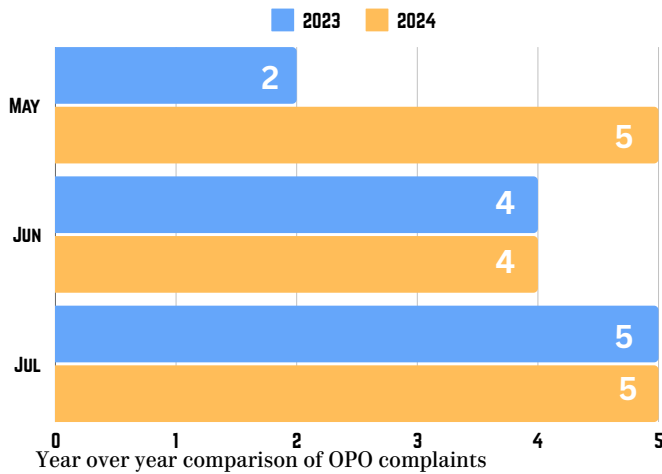
## OPOC community meetings

- Spokane Alliance
- Neighborhood Council
- NAACP monthly meeting

## Oversight / Outreach

- NACOLE Executive Board / Committee meetings (4)
- Police Chief Selection Committee briefing
- WSCJTC Commission special meeting
- Commission pre-hearing for WSCJTC de-certification hearing
- WSCJTC de-certification hearing

# COMPLAINTS



\*Secondary allegation: Inadequate Response

\*Secondary allegation:

## Summary of complaints

<b>OPO 24-33</b>	A community member's vehicle was towed after a traffic stop for expired tags. They were told it was due to drug paraphernalia being in the vehicle.
<b>OPO 24-34</b>	A community member was frustrated that officers allegedly made false statements about a domestic violence situation pertaining to their neighbor.
<b>OPO 24-35</b>	A community member stated that an officer was involved in a vehicle accident with their child. When they received BWC footage, they were disappointed to hear the officer laughing and making comments about the child.
<b>OPO 24-36</b>	A community member was told by an officer that he had no rights as the officer was being transported to jail.
<b>OPO 24-37</b>	A community member was pulled over and removed from their vehicle at gun point by officers while he was driving with his family. The officers were looking for someone else.

# REFERRALS

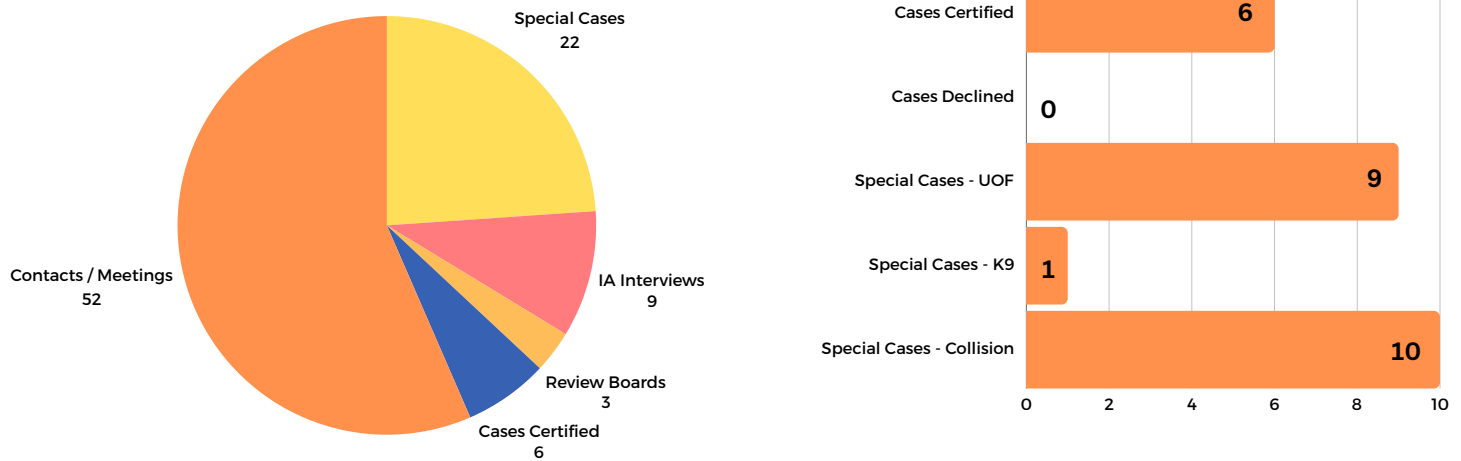
Type of Referral	#
Internal	2
External	3



## Summary of referrals

ER 24-35	A community member described threats of violence and violation of rights, which included no medical care for 24 hours; Detention Services
ER 24-36	A community member was concerned with a slash pile on an empty lot that is posing a risk to the neighbors in the area; Code Enforcement
ER 24-37	A community member was frustrated with the lack of concern involving protecting them from a domestic violence situation; Cheney PD
IR 24-38	A community member wanted to get assistance regarding their child's motorcycle and its ability to run on the street legally; SPD/IA
IR 24-39	A community member is frustrated with the lack of response by SPD in their numerous calls for reckless driving on their street; SPD/IA

# OVERSIGHT ACTIVITIES



## Other Activites

- Public Health and Safety Meeting

## Training

- Know Be 4 security awareness training
- WSCJTC de-certification training
- SPD Ride Along
- New Day, New Tools: Risk Management Considerations When using AI-Enabled Tools in Law Practice - Webinar
- SPD training

## Upcoming

- Office of the Independent Police Monitor peer review
- OPO / OPOC Annual Report presentation
- OPO Ordinance / Budget / Office Space requests

OPOC Meetings - In person: Every 3rd Tuesday @ 5:30pm in City Hall | Virtual: available  
 For more information visit: <https://my.spokanecity.org/opoc>

**A23-047**

# **OMBUDS CLOSING REPORT**

**POLICY AND PROCEDURES REPORT  
AND RECOMMENDATIONS**



**OFFICE OF THE  
POLICE OMBUDS**  
INDEPENDENT CIVILIAN OVERSIGHT

This report was authored by Bart Logue, Police Ombuds, and co-authored by Luvimae Omana, Deputy Police Ombuds. The Office of the Police Ombuds (OPO) presented this report to the Office of the Police Ombuds Commission on August 27, 2024.

## CONTACT US:

**Online:**

[my.spokanecity.org/opo/forms/online](https://my.spokanecity.org/opo/forms/online)

**By phone:**

509-625-6742

**In writing:**

Office of the Police  
Ombuds  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Email:**

[opo@spokanecity.org](mailto:opo@spokanecity.org)

**Fax:**

509-625-6748

**At our office:**

1st Floor, City Hall  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Hours:**

M-F, 8:00 AM – 4:30 PM

**Table of Contents**

**Staff Information** ..... 3

**Mission, Authority, and Purpose** ..... 5

**Required Disclosures** ..... 6

**Summary**..... 7

    Procedural History..... 7

    OPO Summary of Facts ..... 7

**Policy Recommendations** ..... 10

    Recommendations to Policy and/or Training ..... 10

**Summary of Recommendations**..... 21

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## Staff Information

### **Bart Logue**, *Police Ombuds*

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombuds. Bart also serves as a Commissioner on the Washington State Criminal Justice Training Commission. 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 Ombuds*

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 a Certified Practitioner of Oversight through NACOLE. 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 and joined the Office of the Police Ombuds in 2018. Christina is a Certified Practitioner of Oversight through NACOLE. 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 Ombuds 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).

DRAFT

### Mission, Authority, and Purpose

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

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 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 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 Ombuds 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 a report allows us to provide a more thorough review of what occurred in an incident 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 also 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 may 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 follow reflects 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](#).

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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.

## Summary

### Procedural History

This incident occurred on August 3, 2023. The incident was reviewed by SPD due to officers getting into a collision. SPD Employee H was the final reviewer and made the final determination on November 3, 2023. The case was reviewed by the Collision Pursuit Review Board (CPRB) in March 2024.<sup>2</sup> The case also involves an Administrative Review that stemmed from the original incident.

The OPO's summary of facts are based upon a careful review of reports, BWC footage, the chain of command review, and participation in the CPRB. This closing report provides an analysis of issues identified through the chain of command review and review board processes, which allow for a policy and procedures report.

### OPO Summary of Facts

#### Incident

On August 3, 2024, Spokane police officers responded to assist the Spokane County Sheriff's Office at Longhorn Barbeque in Airway Heights. There had been an officer involved shooting and an Airway Heights officer advised shots were fired and the suspect was fleeing in a vehicle east bound on Highway 2 (Hwy 2).

SPD officers were driving west bound to Airway Heights when they were advised over the radio that the suspect was now driving east bound on Interstate 90 (I-90). They were informed that the suspect was driving against oncoming traffic, going east bound on the west bound lanes, on I-90.

Two SPD vehicles were involved in a collision with each other while pursuing the suspect. The lead vehicle was driven by Officer A, a reserve officer, with Officer B, a SPD officer serving as a reserve mentor, in the passenger seat. Officer C was in the second vehicle.

Officer A drove onto I-90 traveling west bound. Officers A and B switched over to the county radio channel to monitor it for information. The county radio advised that the suspect was traveling at speeds around 100 miles per hour (mph) and going east bound on Hwy 2, driving into oncoming traffic.<sup>3</sup> Officer B heard that Officer D authorized a pursuit if police units got involved.<sup>4</sup> Officers A and B were between Hwy 195 and the Airway Heights exit, when they heard the

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<sup>2</sup> Under the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether 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.

<sup>3</sup> Officer A's BWC at 2:17 (August 3, 2023).

<sup>4</sup> Officer B, Field Case Supplement, case 2023-20153222 (August 3, 2023).

suspect almost hit a patrol vehicle and was now east bound on I-90, still driving into oncoming traffic.<sup>5</sup> Officers A and B saw the suspect approaching them and civilian vehicles swerving out of the way. The suspect got close to them and Officer A feared the suspect might hit them.<sup>6</sup> Officer B directed Officer A to slow down and make a U-turn to continue pursuing the suspect. Officer B wrote, "I told Officer [A] to turn around. My intent was to be able to respond quickly if the suspect had crashed [their] vehicle into a civilian's vehicle close to our location."<sup>7</sup> As Officer A started the U-turn, they collided with Officer C.

Officer C kept their radio on city channels and received second hand delayed information about the pursuit as they were not monitoring county radio traffic.<sup>8</sup> Officer C did not hear that the suspect was driving against oncoming traffic on I-90.<sup>9</sup> Officer C did not know why Officer A slowed down, so Officer C attempted to go around Officer A's vehicle.<sup>10</sup> Officer A's U-turn was unexpected and caused a collision with Officer C's vehicle. Officers A, B, and C did not suffer serious injuries. However, the SPD vehicles sustained approximately \$100,000 in damages.<sup>11</sup> The suspect passed both SPD vehicles and got away.

#### Supervisor review

Officer E noted the following items in arriving at the recommended finding of "preventable" for Officers A and B and "non-preventable" for Officer C:

- Ultimately, the suspect was at fault for the collision due to driving the wrong way on I-90 over 100 mph.
- Attempting to pursue a suspect the wrong way on I-90 is a policy violation.
- While Officer A was the one driving, the violation lies with Officer B since they were acting in a training/supervisory role.
- This policy violation is a training issue due to the intense nature of the incident that the officers had never been involved in.
- Officer B's intentions to apprehend the suspect were correct. However, they got caught up in the moment and did not clearly think through the practical or policy issues with pursuing the suspect going the wrong way on I-90.
- Officer E discussed the merits of switching to the appropriate radio channel to receive live updates.

Officer F noted the following items in concurring with Officer E in their suggested findings:

- Officers A and B were at fault for the collision but the actions of the suspect were a direct cause to the incident.

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<sup>5</sup> See *supra* note 4.

<sup>6</sup> Officer A, Field Case Supplement, case 2023-20153222 (August 3, 2023).

<sup>7</sup> See *supra* note 4.

<sup>8</sup> Officer E, Supervisor Review, case 2023-20153222 (August 3, 2023).

<sup>9</sup> Officer C, Field Case Supplement, case 2023-20153222 (August 3, 2023).

<sup>10</sup> *Id.*

<sup>11</sup> BlueTeam Vehicle Accident Report, case 2023-20153222 (August 3, 2023).

- Officer B did a good job of directing Officer A during the incident but found fault when they directed Officer A to make a U-turn on the freeway. This not only put Officer A in danger but also exposed other vehicles traveling in the same direction to danger as well. Officer A was a new reserve officer and relied heavily on directions from full-time officers.
- “This incident is a perfect example of a low frequency, high stress event. And an event that is virtually impossible to train for.”<sup>12</sup> The officers have likely never been exposed to these exact circumstances and were making decisions under stress and had to react to constant updates.
- This incident has brought up training points that were debriefed by this patrol team.
  - SPD pursuit policy prohibits officers from pursuing fleeing suspects in the wrong direction on the freeway.
  - Radio traffic and what is the appropriate radio channel for multi-agency events.

Officer G noted the following in arriving at the recommended finding that the collision was “preventable:”

- Officer G concurred with Officers E and F on the collision being “preventable” at Officer B’s direction.
- However, Officer G also found Officer A liable for a “preventable” collision. Officer A attended a Reserve Academy with a modified emergency vehicle operations course (EVOC). While Officer A should take directions from Officer B, Officer A needs to be aware of their surroundings and should have known that Officer C was traveling in the same direction.
- If Officer A has not already been trained, they should be afforded the same training on emergency vehicle operation.

Officer H noted the following in arriving at their decision:

- Officer H agreed this is a low frequency event, but officers have received training on pursuit driving and SPD’s pursuit policy.
- The investigation referenced that Officer D approved this pursuit. Officer H questioned if Officer D knew the pursuit was at speeds of 100 mph in the wrong direction on I-90.
- Officer B’s direction to Officer A not only resulted in this collision but if the collision had not occurred, making a U-turn would have created an extremely dangerous situation for the citizens of Spokane and officers.
- Officer H was concerned with and disagreed with Officer E’s assertion that this is a “training issue.”

### CPRB

When the CPRB reviewed this case, there were two points of note. First, several members echoed Officer F’s sentiment that pursuits are “low frequency, high stress” events and that officers do not receive ample training for pursuits since the agency highly restricts pursuits. Members were concerned that SPD sends officers out unprepared for pursuits and just hopes for the best. Second,

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<sup>12</sup> Officer F, BlueTeam Chain of Command History comments, A23-047 (September 16, 2023).

a member of the board noted that Officer C should have had heightened awareness since they were traveling in comparable speeds to pursue the suspect who was going 100 mph.

## Policy Recommendations

### Recommendations to Policy and/or Training

#### Vehicle pursuit training

Applicable policy:

- 1. SPD Policy 314.2.1. Officers shall notify a supervisor immediately upon initiating a pursuit. While officers may initiate a pursuit for the above listed reasons, officers shall at all times consider the following factors individually and collectively in deciding whether to initiate or continue a pursuit:**
  - a. The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.**
  - b. Whether there are alternatives other than a pursuit.**
  - c. Apparent nature of the fleeing suspect(s) (e.g., whether the suspect(s) represent a serious threat to public safety).**
  - d. Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.**
  - e. Pursuing officer(s) familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.**
  - f. Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of immediately apprehending the suspect.**
  - g. Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.**
  - h. Vehicle speeds.**
  - i. Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).**
  - j. Availability of other resources such as helicopter assistance.**
  - k. The police unit is carrying passengers other than police officers. Pursuits shall not be undertaken with a prisoner(s) in the police vehicle. Pursuits shall not be initiated or entered into when a passenger is in the vehicle. Exceptions may be granted by the Office of the Chief or designee.**
  - l. As soon as practicable after initiating a pursuit, officers and the supervisor shall develop a plan to end the pursuit through the use of available pursuit intervention options, such as a pursuit intervention technique (PIT) or deployment of spike/stop sticks in compliance with department policy.**



The CPRB left a strong impression that supervisors feel the training SPD provides to officers on pursuits is not enough. Officer E attributed the alleged policy violation to a training issue. Officer F said vehicle pursuits were virtually impossible to train for since they were “low frequency, high stress events.” Officer H agreed this was a “low frequency, high stress” event but refuted the assertion that it was due to a training failure. Officers G and H relied on the fact that both Officers A and B received some form of EVOG training and guidance from the department’s Vehicle Pursuit Policy.

While every officer has received EVOG training and acknowledged receipt of the Vehicle Pursuit Policy, the CPRB questioned if it was enough. In 2023, the Police Executive Research Forum (PERF), in conjunction with the Department of Justice, Community Oriented Policing Services (COPS), released a guide on vehicular pursuits, “Vehicular Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks” (Guide).<sup>13</sup> The Guide made dozens of recommendations surrounding vehicular pursuits, many of which SPD policy has previously adopted. However, it makes several recommendations that could enhance SPD’s vehicle pursuit training.

#### *Regular and ongoing training*

Based on this case, it appears SPD only provided officers with EVOG training in the academy as well as training updates to the Vehicular Pursuit Policy. The Guide provides that agencies must reinforce their pursuit policy through regular and ongoing training. Emergency and pursuit driving are high-liability areas that should be a regular part of an agency’s training plans. All officers should receive all general training at the academy and agency-specific training and behind-the-wheel refreshers every two years.<sup>14</sup> Officers should receive more frequent training on the agency’s pursuit policy, pursuit tactics, and decision-making skills.<sup>15</sup>

#### *Decision-making model*

SPD’s policy discusses weighing factors but is silent on a decision-making model. One of the most important elements of pursuit training is decision-making. Selecting a decision-making model should be the cornerstone of an agency’s vehicular pursuit policy.<sup>16</sup> A decision-making model will assist officers and supervisors in decisions regarding pursuits, use of force, and problem solving. A decision-making model can be used in post-incident debriefs, formal pursuit reviews, and remedial training.

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<sup>13</sup> Vehicular Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks, POLICE EXECUTIVE RESEARCH FORUM & DEPARTMENT OF JUSTICE, COMMUNITY ORIENTED POLICING SERVICES, <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1134-pub.pdf>. (last visited August 5, 2024).

<sup>14</sup> *Id.* at 103.

<sup>15</sup> *Id.* at Recommendation 5.1.

<sup>16</sup> *Id.* at 97.

For example, the PERF Critical Decision Making Model (CDM) trains officers to continually ask themselves about the nature of the incident, any threats and risks, their powers and authority to take action, and options.<sup>17</sup> After taking action, officers assess whether the action had the desired effect and begin the decision-making process again, if necessary.<sup>18</sup> The CDM is well suited to dynamic and evolving situations such as vehicle pursuits. The model walks officers through critical decision points, such as determining if a pursuit is appropriate, evaluating the reasonableness of continuing the pursuit, and whether to discontinue.<sup>19</sup>

The CDM is a five-step critical thinking process:

1. Collect information
2. Assess the situation, threats, and risks
3. Consider police powers and agency policy
4. Identify options and determine the best course of action
5. Act, review, and re-assess

Ethics are at the core of the CDM with elements of:

1. Sanctity of all human life
2. Police ethics
3. Agency values
4. Concept of proportionality

Agencies should also develop specialized training for other personnel (e.g., supervisors, communications personnel, air support officers, watch commanders) who may play a role in a pursuit or pursuit review.

**Recommendation 24-5: SPD should adopt a critical decision-making model or something similar regarding pursuits. The use of a decision-making model can assist officers and supervisors in deciding whether to initiate a pursuit, gathering and evaluating information during the pursuit, and deciding when to discontinue. SPD should also develop specialized training for other personnel (e.g., supervisors, communications personnel, incident commanders) who may play a role in a pursuit or pursuit review.**

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<sup>17</sup> *Id* at 162.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

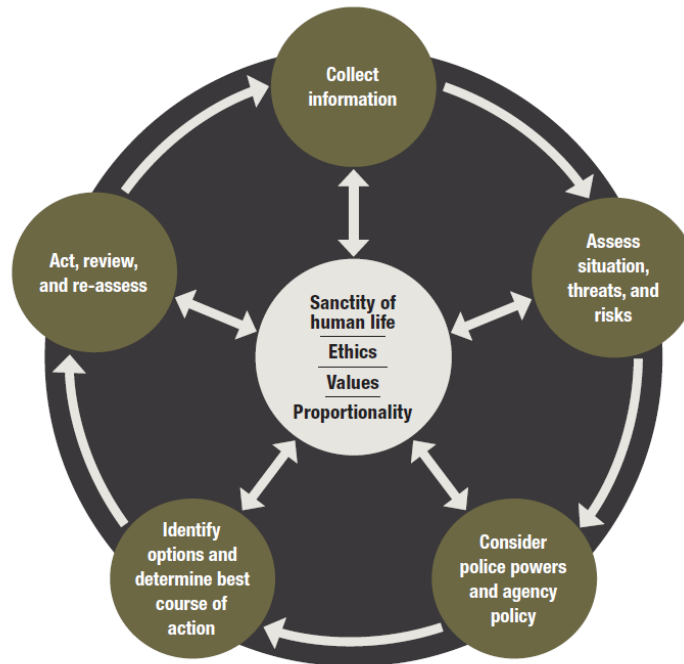


Figure 1: PERF's Critical Decision-Making Model illustrated

### Policy instruction

Agencies must provide regular training on the pursuit policy both online and in the classroom. Often agencies teach officers about policies and policy changes through an e-learning platform or officers are told to read a policy and sign an acknowledgement. This covers the agency but does not provide accountability for an officer's learning to ensure they understand or interpret the policy properly. An online format of e-learning is often designed for policy management rather than dynamic, interactive critical decision-making training. According to PERF, agencies should conduct training whenever it changes its policy and in-service training on pursuits should recur at least annually and include both online and classroom components.<sup>20</sup>

Agencies should consider having officers sign off on policy updates via online platforms, but the sign off should not be considered a substitute for classroom or roll-call training. In-person training allows officers to ask questions. This also conveys to officers that the organization's leadership considers the matter important and is committed to making changes.

<sup>20</sup> *Id.* at 164.

For example, the Minnesota State Patrol conducts live training where the trainer plays a video and each person had to decide whether to discontinue the pursuit.<sup>21</sup> Each person had a clicker to use at the point that they would discontinue and the results were shared with the group at the end of the exercise. The training staff then debriefed each of the points in the exercise with the group. This is a low-cost, engaging exercise to demonstrate decision making in a realistic scenario.

**Recommendation 24-6: In-service training on the vehicle pursuit policy should occur at least once per year and could include both in-service and roll call components.**

### *Driving simulator training*

SPD already uses VirTra simulators in use of force training. However, simulators can also be used to simulate pursuits. Simulators can fill in a gap for agencies that do not have the facilities to conduct regular training. Simulators replicate stress in a virtual environment and reinforce the decision-making model. Simulators can also incorporate scenario-based training that are more relevant and relatable to officers. Simulators can also include Companies such as FAAC and VirTra make pursuit training and emergency driving simulators. Benefits of driving simulators include:<sup>22</sup>

- Instructors can control the training for custom scenarios.
- Video playback allows debriefs.
- Simulators provide flexibility in the training schedule.
- Minimal space is needed to conduct training.
- Policy training can be incorporated into each scenario.
- Officers' split-second decisions can be evaluated.
- Simulator training can reduce liability and costs.
- Simulator training can improve overall driving skills.

**Recommendation 24-7: SPD should consider purchasing, sharing, or leasing a driver simulator that can incorporate scenario-based and decision-making training to provide practical refresher training.**

### *Other scenario-based training points*

Scenario based training makes emergency and pursuit driving training as realistic as possible. De-briefing specific policy or tactical training points in short, targeted, training sessions is known as microlessons. Microlessons can introduce newly added elements of an existing policy or address

<sup>21</sup> *Id.* at 106.

<sup>22</sup> *Id.* at 105.

an issue identified throughout the agency.<sup>23</sup> Microlessons can also be used for the benefit of the whole department and not just the team of the involved officers.

- a. Heightened awareness of surroundings

In this case, the officers were traveling at high speeds on I-90 and trying to apprehend a suspect who was approaching them head-on, at high speeds, while trying to evade law enforcement. A member of the CPRB raised the issue that Officers A, B, and C should have heightened awareness of their surroundings in this situation.

- b. Radio discipline

Applicable policies:

**SPD Policy 314.3.3 Primary Unit Responsibility.**

**The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle.**

**Notify Dispatch and a Supervisor immediately upon initiating a vehicle pursuit that a vehicle pursuit has been initiated and provide information including, but not limited to:**

- A. Reason for the pursuit.
- B. Location and direction of travel.
- C. Speed of the fleeing vehicle.
- D. Description of the fleeing vehicle and license number, if known.
- E. Number of occupants in the vehicle.
- F. The identity or description of the known occupants.
- G. Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.
- H. Traffic conditions, vehicular and pedestrian.
- I. Weather conditions to include road surface.
- J. Visibility and illumination.

**The officer in the primary unit shall be responsible for broadcasting the progress of the pursuit unless directed otherwise by a supervisor or when practical circumstances indicate. If the primary unit desires they may relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft in order to concentrate on pursuit driving.**

**"Progress" shall mean updating speed, location, direction of travel and traffic conditions.**

**SPD Policy 314.3.4 Secondar Unit(s) Responsibility**

**The second officer in the pursuit is responsible for the following:**

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<sup>23</sup> *Id.* at 103.

- A. The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- B. Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.

#### SPD Policy 314.3.5(D) Pursuit Driving Tactics

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit: officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or requested to do so by the primary unit.

In this case, the chain of command was silent on evaluating the officers' radio communications. Officer C kept their radio on the city's radio channel while Officers A and B were listening to the county radio. It appears that from the moment officers activated their BWC up to the collision, Officers A and B were listening to county radio and Officer B was reiterating information to Officer A. SPD Policy 314.3.3 requires the primary unit, Officers A and B, to communicate various factors to radio such as location and speed. If Officer B communicated their actions in pursuing with radio, it was not audible. Setting aside the issue that Officer C was on a different radio channel, had Officer B communicated their actions, it would have alerted Officer C that they saw the suspect coming head-on and the reason for slowing down. Had they communicated their attempted maneuver, it would have given others listening in on the call, such as the supervisor, an opportunity to terminate the pursuit.

Additionally, officers should be reminded that SPD Policy 314.3.5(D) requires that when officers are in pursuit, they should not attempt to pass other units unless there is some communication to do so.

**Recommendation 24-8:** SPD should use this incident to provide departmentwide scenario-based training in pursuits, specifically reminding officers to maintain hyperawareness of their surroundings and in radio discipline during pursuits.

#### Role of supervisors in pursuits

Applicable policies:

#### **SPD Policy 314.2.3 Prohibited Actions**

**Sworn employees will not pursue violators while they are traveling the wrong way on any freeway, freeway frontage road, divided highway, or one-way street.**

### 314.6.2 Pursuits Extending into This Jurisdiction

#### SPD Policy 314.2.4 Speed Limits

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle. Should high vehicle speeds, for the surrounding environment, be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit.

When speeds are such that the immediate risks to the public and officer(s) exceed the interest in the apprehension of the suspect, the pursuit WILL BE terminated (see 314.2.3 above).

#### SPD Policy 314.2.2 Shift Commander Authorization of Pursuits

When probable cause exists to believe a crime was committed for which initiation of pursuit is authorized by RCW 10.116.060 but is not otherwise authorized under SPD Policy 314.2.1, a shift commander (or higher) may give authorization for pursuit under exceptional circumstances. The shift commander must give great consideration to the factors outlined in SPD Policy 314.2.1 and 314.2.2 in determining whether to authorize a pursuit initiation, and to allow pursuit continuation, under exceptional circumstances. Authorization shall not be given unless the risk to the public created by failing to immediately apprehend the suspect outweighs the risk created by the vehicle pursuit. Shift commander authorization does not alleviate the involved officers of their responsibilities under SPD Policy 314. The authorizing shift commander shall complete a report detailing their justification for authorization of the pursuit.

#### SPD Policy 314.2.3(F) When to Terminate a Pursuit

Pursuits shall be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the safety risks associated with the vehicular pursuit are considered to be greater than the safety risks of failing to apprehend or identify the person. The primary responsibility to continue a pursuit or to terminate lies with the pursuing officer(s).

The factors listed in Policy Manual § 314.2.1 are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to motorists and themselves when electing to continue a pursuit.

Pursuits will be immediately terminated under the following condition(s): hazards to uninvolved bystanders or motorists outweighs the need for apprehension.

**SPD Policy 314.4 Supervisory Control and Responsibility**

- A. It is the policy of this department that there will be supervisory oversight of the pursuit. The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for the following:**
- 1. Advise dispatch that they are monitoring the pursuit.**
  - 2. Consider alternatives to the vehicular pursuit.**
  - 3. Immediately ascertain all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.**
  - 4. Consider relevant factors affecting public safety, such as whether there are minors present in the vehicle.**
  - 5. In only extreme circumstances engage in the pursuit to provide on scene supervision. Supervisors directly involved cannot monitor the pursuit.**
  - 6. Exercise management and control.**
  - 7. Ensure that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.**
  - 8. Direct that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.**
  - 9. Ensure that aircraft are requested if available.**
  - 10. Ensure that the proper radio channel is being used.**
  - 11. Ensure the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.**
  - 12. Comply with agency procedures for coordinating with other pursuing officers and jurisdictions.**
  - 13. Control and manage SPD units when a pursuit enters another jurisdiction.**
  - 14. Complete additional reports as necessary and/or Pursuit Review Report. A Pursuit Review will only be conducted when the officer's intentional actions meet the definition of pursuit as defined in this policy.**

In this case, there were various factors that warranted terminating the pursuit such as speed limits and pursuing a suspect driving the wrong way on I-90. While a shift commander may authorize a pursuit under exceptional circumstances, it was unclear what the supervisor's thought process throughout the pursuit because there was no documentation of their involvement in the case. It was only in Officer B's report that they said they heard on the radio that Officer D authorized the pursuit. Officer H raised follow up questions for Officer D's decision-making process in their review but it is unclear whether any follow up occurred.

Additionally, the vehicle pursuit policy provides an extensive list of supervisor responsibility in pursuits such as exercising management and control, ensuring the proper radio channels are used, and terminating the pursuit. Again, it is unclear what the supervisor's decision-making process was since there was no report attached.



Under SPD Policy 314.2.2, the authorizing shift commander shall complete a report detailing their justification for authorization of the pursuit. In practice, this can be different from the reviewing supervisor, who was a different individual in this case. Officer D authorized the pursuit but Officer E wrote the supervisor review. The OPO conducted a review of SPD's 2023 pursuits to determine whether it is SPD's practice for the authorizing supervisor to write reports detailing their justification. In 2023, SPD had 12 pursuits. In 9 out of 12 cases, the reviewing supervisor was the same person who approved the pursuit. In 2 out of the 12 cases, a different supervisor authorized the pursuit and did not write a report. In 1 out of the 12 cases, pursuit procedures were not followed because the pursuing officer did not believe they were in a pursuit.

**Recommendation 24-9: SPD should ensure all supervisors who authorize pursuits write a report detailing their justification for the pursuit pursuant to SPD Policy 314.2.2.**

#### Duty to intervene

Applicable policies:

#### **SPD Policy 314.2.3 When to Terminate a Pursuit**

**Pursuits shall be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the safety risks associated with the vehicular pursuit are considered to be greater than the safety risks of failing to apprehend or identify the person. The primary responsibility to continue a pursuit or to terminate lies with the pursuing officer(s).**

#### **SPD Policy 301.9 Duty to Intervene and Report**

**When officers witness violations of the law and/or department policies, regardless of their rank, they are required to intervene according to the following guidelines:**

- 1. Any on-duty Spokane Police Officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.**
- 2. Any on-duty Spokane Police Officer who witnesses any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing to the witnessing officer's supervisor or, in the absence of their supervisor, any other available supervisor, and that notification shall follow through the chain of command to the Office of the Chief of Police.**

3. **Officers shall not be disciplined or retaliated in any way for intervening in good faith or for reporting wrongdoing in good faith as required by this section.**
4. **The Spokane Police Department, in compliance with state law, shall send notice to the criminal justice training commission of any disciplinary decision resulting from an officer's failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105. This notification shall occur within 15 days of any disciplinary decision.**
5. **For purposes of this section:**
  - a. **"Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency.**
  - b. **"Peace officer" refers to any general authority Washington peace officer.**
  - c. **"Wrongdoing" means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature.**

The officers' BWC were all approximately five minutes long from when they activated their cameras to when the incident occurred. The OPO acknowledges this was a rapidly evolving, low frequency type of situation and that Officer A is a reserve officer and is junior to and relies on direction from full-time officers. Officer A's report did not give much insight into their state of mind other than they were following directions and feared the suspect may hit them. However, when an officer is provided an instruction that will likely endanger and cause harm to the public and they are the one driving the vehicle, they have a responsibility to intervene and terminate the pursuit.

The Guide provides that vehicle pursuit policies should make it clear that anyone, regardless of rank can decide that the pursuit should be discontinued if, in their assessment, the risks of the pursuit are no longer justified.<sup>24</sup> In addition, the policy should communicate what officers are expected to do once this decision is made. At a minimum, these actions should include:<sup>25</sup>

- turning off emergency lights and siren;
- communicating their location to the dispatcher;
- reducing speed and complying with all traffic laws;
- verbally acknowledging the instruction to terminate the pursuit.

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<sup>24</sup> *Id.* at Recommendation 2.4.

<sup>25</sup> *Id.*

### Summary of Recommendations

1. **Recommendation 24-5**: SPD should adopt a critical decision-making model or something similar regarding pursuits. The use of a decision-making model can assist officers and supervisors in deciding whether to initiate a pursuit, gathering and evaluating information during the pursuit, and deciding when to discontinue. SPD should also develop specialized training for other personnel (e.g., supervisors, communications personnel, incident commanders) who may play a role in a pursuit or pursuit review.
2. **Recommendation 24-6**: In-service training on the vehicle pursuit policy should occur at least once per year and could include both in-service and roll call components.
3. **Recommendation 24-7**: SPD should consider purchasing, sharing, or leasing a driver simulator that can incorporate scenario-based and decision-making training to provide practical refresher training.
4. **Recommendation 24-8**: SPD should use this incident to provide departmentwide scenario-based training in pursuits, specifically reminding officers to maintain hyperawareness of their surroundings and in radio discipline during pursuits.
5. **Recommendation 24-9**: SPD should ensure all supervisors who authorize pursuits write a report detailing their justification for the pursuit pursuant to SPD Policy 314.2.2.

**C23-070**

# **OMBUDS CLOSING REPORT**

**POLICY AND PROCEDURES REPORT  
AND RECOMMENDATIONS**



**OFFICE OF THE  
POLICE OMBUDS**  
INDEPENDENT CIVILIAN OVERSIGHT

This report was authored by Bart Logue, Police Ombuds, and co-authored by Luvimae Omana, Deputy Police Ombuds. The Office of the Police Ombuds (OPO) presented this report to the Office of the Police Ombuds Commission on August 27, 2024.



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M-F, 8:00 AM – 4:30 PM

**Table of Contents**

**Staff Information** ..... 3

**Mission, Authority, and Purpose** ..... 5

**Required Disclosures** ..... 6

**Summary**..... 7

    Procedural History..... 7

    OPO Summary of Facts ..... 8

**Policy Recommendations** ..... 17

    Recommendations to Policy and/or Training ..... 17

**Summary of Recommendations**..... 23

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## Staff Information

### **Bart Logue, Police Ombuds**

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombuds. Bart also serves as a Commissioner on the Washington State Criminal Justice Training Commission. 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 Ombuds**

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 a Certified Practitioner of Oversight through NACOLE. 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 and joined the Office of the Police Ombuds in 2018. Christina is a Certified Practitioner of Oversight through NACOLE. 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 Ombuds 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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## Mission, Authority, and Purpose

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

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 on cases that are of public concern 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 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 Ombuds 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 a report allows us to provide a more thorough review of what occurred in an incident 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 also 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 may 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 follow reflects 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](#).

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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.

## Summary

### Procedural History

This incident was received by Internal Affairs on October 17, 2023. The incident was investigated by IA as a community complaint filed by a non-police city employee. Initially, there was one employee accused of violating the prohibited speech policy. However, as the investigation progressed, additional internal allegations were made against Officer A and four additional employees were accused of improper supervision. The potential policy violations investigated included:

1. SPD Policy 1060.4 – Prohibited speech, expression, and conduct<sup>2</sup>
2. SPD Policy 340.3.5(Z) – False or misleading statements to a supervisor or other person in a position of authority in connection with any investigation or employment-related matter
3. SPD Policy 340.3.9 – Failure of a supervisor to take appropriate action
4. SPD Policy 1020.8.1 – All investigations of personnel complaints shall be considered confidential

The assigned IA investigator interviewed a total of eight individuals. This included the complainant, the accused, witnesses, and others accused who were also witnesses. The physical evidence included: recorded voicemails, photos of Officer A's assigned vehicle, emails confirming vehicle assignments to Officer A, recorded and transcribed interviews, and body worn camera (BWC) footage. The IA investigator wrote a 17-page summary of the incident.

This investigation was certified by the OPO on January 25, 2024. The case was sent to an Administrative Review Panel (ARP) pod on January 29, 2024. The case was then sent to the chain of command for final determination on February 8, 2024. SPD Employee J was the final reviewer and made the final determination on May 8, 2024.<sup>3</sup>

The OPO's summary of facts are based upon a careful review of reports, BWC footage, the IA casefile, the ARP memo, and the chain of command review. This closing report provides an analysis of issues identified through the investigation and review which allow for a policy and procedures report.

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<sup>2</sup> June 1, 2023, is the applicable version of the SPD Policy Manual at the time this investigation occurred.

<sup>3</sup> Under the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether 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.

## OPO Summary of Facts

### Complaint

On October 17, 2023, the complainant called Internal Affairs. The complainant identified themselves as a City of Spokane employee and stated they were at the City Fleet facility when they saw a Spokane police vehicle with a “Let’s Go Brandon” sticker on it. The complainant believed this was inappropriate and wanted to make the department aware of it. The complainant described how the sticker was code for “Fuck Joe Biden.” The complainant confronted Officer A about having a political sticker on a department vehicle. Officer A said the sticker was in support of their nephew named Brandon. The complainant was unconvinced by Officer A’s explanation and recalled that the officer seemed proud of the sticker. The complainant provided Internal Affairs with Officer A’s license plate. The allegation generated from the complainant was for prohibited speech.

### Internal Affairs investigation

Internal Affairs identified the vehicle was assigned to Officer A after confirming with the Fleet manager. Internal Affairs contacted the officer’s supervisor, Officer B, to notify them of the investigation into prohibited speech. IA directed Officer B to meet with the officer, take photos of the sticker on the vehicle if it was still present, and immediately remove the sticker after photos were taken. There were several disputed facts that IA investigated:

1. *False or misleading statements*

- a. *Whether the sticker had been on the vehicle for a short or long period of time*

During their interview, Officer A said they had placed the sticker on the back window of their police vehicle and it had been there for a few weeks. The IA investigator reviewed BWC footage to try to determine how long the sticker had been on Officer A’s vehicle. The sticker was first noticeable on August 22, 2023, and Officer B photographed the sticker on October 17, 2023. Officer A did not attempt to remove the sticker in that period.<sup>4</sup> Thus, IA had determined that the sticker had been on their vehicle for a minimum of 56 days. When the IA investigator asked if Officer A thought eight weeks was a “few weeks,” Officer A said it was just a guess since they truly did not know.<sup>5</sup> Officer A went on to say that with the new patrol schedule, they no longer know the day or month, but they were not attempting to minimize the amount of time.<sup>6</sup> The investigator documented that Officer A’s claim that the sticker had been on the vehicle for a “few weeks” did not seem consistent with the condition of the sticker, as the edges were peeled up in the photos Officer B sent IA.<sup>7</sup>

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<sup>4</sup> Interview with Officer A, IA interview #2, transcript at 2, in Spokane, Wash. (January 2, 2024).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> IA investigator, C23-070 IA additional at 3 (October 18, 2023).

*b. Whether the sticker was in support of Officer C's son*

The complainant told IA that Officer A told them the sticker was in support of their nephew named Brandon.<sup>8</sup> However, Officer A said the sticker referred to Officer C's son Brandon. Brandon suffered a significant medical event in high school but was able to recover and is now a collegiate athlete. Officer A said they placed the sticker on the vehicle in support of Officer C's son. When asked, Officer A was not sure how the sticker was obtained. In a follow up interview, Officer A amended their previous statement to say that their son obtained the sticker from the North Idaho Fair sometime in the middle of August 2023.<sup>9</sup> Officer A was inconsistent when asked about the political context of the sticker and maintained it was in support of Officer C's son.

The officers interviewed confirmed Officer A's statement. Officers B, E, F, and G all said that Officer A mentioned the sticker was in support of their friend's son Brandon. However, when Officer E was asked about the political context of the sticker, they said it was self-explanatory. The sticker was derogatory toward President Biden.

In Officer A's follow-up IA interview, the IA investigator asked Officer A what other things they had done to support Officer C's son. Officer A said they mostly reached out to Officer C to check in on their son. Officer A was not aware of any fundraising event that Officer C's family may have done for their son. The IA investigator followed up on the timeline between their medical event and present day and asked why did Officer A choose now to put a sticker on their police vehicle. Officer A said they saw on Facebook that Brandon was now in college and this timing lined up with Officer A's son getting the sticker at the fair. The IA investigator asked Officer A why they did not just put the sticker on their personal vehicle. Officer A said, "I have no idea."<sup>10</sup>

*c. Knowledge of the political nature of the sticker*

Officer A was confronted on separate incidents by the complainant and a community member that they encountered on a call for service. The interaction with the community member was captured on BWC. The community member asked why they had a racist and political sticker on their patrol car.<sup>11</sup> Officer A said it was not a political sticker, that the community member should "get a life and find something better to do," and chuckled as he drove away.<sup>12</sup>

Officer A denied being aware of another meaning for the term, "Let's Go Brandon." However, when asked if they had heard the phrase in a political context, Officer A said it was a derogatory phrase towards the president of the United States.

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<sup>8</sup> Interview with Complainant, IA interview, transcript at 1 (October 18, 2023).

<sup>9</sup> See *supra* note 4 at 2.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Officer A's BWC 2023-20168396 at 4:45 (August 24, 2023).

<sup>12</sup> *Id.*

The IA investigator's BWC footage review found four videos where Officer A discussed the sticker on their police vehicle with others.

- On August 22, 2023 – Officer A told Officer D and E, “I had a lady like my sticker today” and “Let’s go Biden,” to which Officer E responded with a smile.<sup>13</sup>
- On August 24, 2023 – As mentioned above, Officer A interacted with a community member who confronted them about the racist and political nature of the sticker.
- On August 25, 2023 – Officer A told Officer D that “Nadine [Woodward] liked my sticker.”<sup>14</sup>
- August 31, 2023 – Officer A asked Officer F, “you like my sticker on my back window?” and Officer E responded, “nice” and laughed.<sup>15</sup> Officer A then told Officer E that “[Nadine] Woodward and Brian Coddington had seen the sticker...[Officer A] also said that [they] would ‘probably get in trouble for it.’”<sup>16</sup> The investigator pointed out that in their review of Officer A’s BWC, they could hear conservative political talk radio clearly audible in the background inside of the police vehicle.<sup>17</sup> While this is not a policy violation, it “appears significant because it aligns with the generally understood political message of the ‘Let’s Go Brandon’ slogan.”<sup>18</sup>

In the four videos noted by the IA investigator, Officer A did not mention Officer C, their son Brandon, or anything related to recovering from a medical condition to any of the officers.<sup>19</sup> Officer A “appears to be bragging and joking about having the sticker on [their] vehicle. The investigator stated that the tone of [their] comments on BWC appear to be inconsistent with the more noble and benevolent purpose [they] stated in [their] interview.”<sup>20</sup>

In Officer A’s follow-up interview with IA, the IA investigator brought up that in the first interview, Officer A said the sticker was in support of Officer C’s son and that Officer A denied knowing another meaning for the phrase “Let’s Go Brandon,” but then later acknowledged the derogatory meaning toward President Biden. However, compared to the videos identified by IA, it appears the phrase “Let’s Go Brandon” was in a political context rather than in support of Officer C’s son.<sup>21</sup> Officer A did not directly respond to the inference, rather redirected more toward IA investigators and said if they asked a certain follow up question, then Officer A would have answered differently.<sup>22</sup>

<sup>13</sup> Officer A’s BWC 2023-20167081 at 2:43 (August 22, 2023).

<sup>14</sup> Officer A’s BWC 2023-20169274 at 2:43 (August 30, 2023).

<sup>15</sup> Officer A’s BWC 2023-20173539 at 24:50 (August 31, 2023).

<sup>16</sup> *Id.* at 25:20.

<sup>17</sup> *See supra* note 7 at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *See* ARP Memorandum, February 7, 2024, pp.5.

## 2. Supervisor actions after learning about the sticker and/or investigation

IA conducted an additional seven additional interviews after watching BWC footage or after officers self-reported to IA. There were four witnesses and two witness/accused. The following officers with supervisory roles were interviewed:<sup>23</sup>

### Officer B

- Officer B was interviewed as a witness and accused. Officer B was accused of failure to take appropriate action given that other witnesses said Officer B was present when Officer A discussed the open IA investigation and had knowledge of the sticker.
- Officer B became Officer A's supervisor in early September 2023 due to a markup change that shuffles officers' shift and/or supervisor. Officer B was aware of the sticker within the first week of supervising their new team as Officer B saw the sticker on Officer A's car. Officer A told them that the sticker's purpose was to support Officer C's son Brandon after surviving a serious medical event.
- When asked if Officer B thought the sticker on a police vehicle was a policy violation, they responded, "I didn't know in that moment standing there. Our policy manual is huge, and I don't have them all memorized. I've acknowledged reading them at one point, but I don't by any means have them memorized."<sup>24</sup> Officer B said they needed more time to process Officer A's explanation of the sticker.
- Officer B did not further discuss the sticker with Officer A after learning about it and before IA contacted them about opening an investigation.<sup>25</sup>
- Officer B did not tell Officer A to remove the sticker.<sup>26</sup>
- Officer B did not have any clear recollection of Officer A's discussion of the ongoing IA investigation in roll call but recalled someone asking Officer A about it.<sup>27</sup>
- Officer B said they had a vague understanding of the phrase, "Let's Go Brandon," they did not know the origin, they've never followed it, and they don't get into people's politics.<sup>28</sup>
- At the end of Officer B's IA interview, they wanted to state on the record, "The only thing I would like to put on is, when I left the call after seeing the sticker a funny thing happened and more calls came in and more calls came in from victims with real problems, real injuries, real stuff and I don't remember giving that sticker another thought until I got a call from [IA]."<sup>29</sup>

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<sup>23</sup> There was one other officer interviewed but was not in a supervisory role.

<sup>24</sup> See *supra* note 7 at 8; Interview with Officer B, IA interview, transcript at 3, in Spokane, Wash. (November 14, 2023).

<sup>25</sup> Officer B interview at 3.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 4-5.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 6.

*Officer E*

- Officer E was interviewed as a witness and an accused for failure to take appropriate action after they were seen smiling in response to Officer A discussing the sticker with them.
- Officer E was aware of the meaning of the sticker and that it was on Officer A's police vehicle.<sup>30</sup>
- Officer A never mentioned to Officer E that the sticker was in support of Officer C's son Brandon.<sup>31</sup>
- By August 22, 2023, Officer E already knew Officer A had placed the sticker on their police vehicle but did not take any action. "Like I said, I already knew it was there and when he made that comment I'd been reminded of the sticker and I remember thinking we need to have a conversation. Obviously, you know, and I failed to do that, but it's obviously a political statement. When [they] first told me I had some contemplation about, you know [they are] in a[n] [undercover] vehicle. [They are] still doing [specialized] enforcement and...you know, over thinking it, but I remember at that time reminding myself we need to have a conversation."<sup>32</sup>
- Officer E thought the sticker violated SPD policy.<sup>33</sup>

*Officer F*

- Officer F was interviewed as a witness after they were seen on BWC discussing the sticker with Officer A. Officer A brought up their sticker at least twice to Officer F. Officer A asked Officer F if [they] liked the sticker, Officer F responded, "nice."<sup>34</sup> Officer F said they tried to mostly 'blow off' Officer A when they brought up the sticker and just not focus on it.<sup>35</sup> Officer F said that Officer A had brought up the sticker once or twice before August 31<sup>st</sup>.
- Officer F said these conversations occurred one-on-one, they did not recall anyone else being present.<sup>36</sup>
- Officer F said Officer A mentioned supporting their "friend's son," but didn't know it was Officer C's son until there was an IA investigation.<sup>37</sup> In Officer A's follow-up IA interview, they said they never spoke to Officer F about Officer C's son.<sup>38</sup>
- Officer F did not remember Officer A making political comments.
- Officer F ignored the sticker. They said they've seen several people put stickers on undercover cars in the past to make the cars look more real and "less of a cop car."<sup>39</sup>

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<sup>30</sup> Interview with Officer E, IA interview, transcript at 2-3, in Spokane, Wash. (November 2, 2023).

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.*

<sup>34</sup> *See supra* note 7 at 15.

<sup>35</sup> Interview with Officer F, IA interview, transcript at 3, in Spokane, Wash. (November 7, 2023).

<sup>36</sup> *See supra* note 7 at 7.

<sup>37</sup> *See supra* note 35 at 3-4.

<sup>38</sup> *See supra* note 4 at 5.

<sup>39</sup> *See supra* note 35 at 4.



- Officer F said Officer A mentioned their sticker to supervisors who work downtown. Officer F also stated that Officer G had been aware of the sticker.<sup>40</sup>

#### *Officer G*

- Officer G wrote an IA Additional “to provide context to a current internal investigation reference an allegation against [Officer A] [where their name was brought up as having knowledge of the sticker]. I am currently a sergeant in SPD’s Internal Affairs office and have been for about 1 ½ years.”<sup>41</sup>
- Officer G ran into Officer A at the Spokane City Fleet fuel station. While the officers were re-fueling their vehicles, one of them mentioned the “Let’s Go Brandon” sticker on Officer A’s unmarked vehicle’s rear window.<sup>42</sup>
- Officer A told Officer G that the sticker had to do with Officer C’s son. Officer G did not recall the extent of the conversation or the details other than the generality of what was said.<sup>43</sup>
- When IA received the complaint around October 18, 2023, Officer G mentioned they remembered seeing that sticker back at the fuel station.<sup>44</sup>
- Officer G was aware of the derogatory meaning of “Let’s Go Brandon” toward President Biden but did not give it much thought at the time. The unit that Officer A was assigned to has historically driven less conspicuous vehicles to blend in with traffic. Officer G recalled Officer A previously had a “Cabela’s” sticker on their police vehicle.<sup>45</sup> Officer A confirmed putting other stickers on other city vehicles to make the vehicle less conspicuous.<sup>46</sup>
- Officer G said they should have mentioned to Officer A at the time that such a sticker will likely cause an inflammatory response with some people and that Officer A should remove the sticker. At the very least, Officer G said they should have notified Officer A’s immediate supervisor to address the issue with them.<sup>47</sup>

#### *Officer H*

- Officer H was interviewed as a witness after they contacted IA about this investigation. They “kind of heard rumbling about an investigation involving a sticker on a police car and thought I might have some pertinent information, so all the information came out.”<sup>48</sup>
- Officer H became aware of the sticker when they pulled up and parked behind Officer A’s vehicle and noticed the sticker.<sup>49</sup>

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<sup>40</sup> See *supra* note 35 at 4.

<sup>41</sup> Officer G, C23-070 IA additional at 1 (November 7, 2023).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *supra* note 4 at 11.

<sup>47</sup> *Id.*

<sup>48</sup> Interview with Officer H, IA interview, transcript at 1, in Spokane, Wash. (November 28, 2023).

<sup>49</sup> *Id.* at 2.

- Officer H contacted Officer A's supervisor at the time, Officer I, to report what they had observed and asked Officer I to deal with the issue.<sup>50</sup>
- Officer H did not document their contact with Officer I at the time.<sup>51</sup>
- Officer H did not hear Officer A discuss the active IA investigation.<sup>52</sup>
- Officer H was asked to expand their statement that they heard "rumbling." They explained they saw Officer B at the downtown precinct. Officer B said they were having a rough day because "I got caught up in sticker-gate."<sup>53</sup>
- Officer H asked if "sticker-gate" had anything to do with Officer A and Officer B responded in the affirmative.<sup>54</sup>
- After the incident was discussed, Officer H did not see the vehicle again or what happened with the sticker.<sup>55</sup>

### *Officer I*

- Officer I was interviewed as a witness after they contacted IA about this investigation.
- Officer I was Officer A's direct supervisor for first part of the timeline referenced in this investigation.
- Officer H approached Officer I at the downtown precinct. Officer H asked if Officer I saw the sticker on Officer A's car that might have some political meaning and mentioned that Officer I might want to talk to Officer A about it.<sup>56</sup>
- Officer I took action as Officer A's supervisor and documented it in their log. On August 25, 2023, Officer I and A were on the same call and Officer I had a conversation with Officer A.
- Officer I said Officer A's sticker was brought to their attention and explained that it could be seen as political speech and discussed the consequences of what the sticker could mean.<sup>57</sup> Officer A claimed in their interview that they do not recall being provided reasons why they should take off the sticker.<sup>58</sup>
- Officer A then made a comment that Officer I found "weird." Officer A told Officer I that the mayor thought [the sticker] was funny and that she saw it, which was significant.<sup>59</sup>
- Officer I told Officer A, "People might think you are targeting a particular political party, it's on a city vehicle, and it shouldn't be here."<sup>60</sup> Officer A responded that it was a tribute to Officer C's son.

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<sup>50</sup> *Id.* at 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 4.

<sup>56</sup> Interview with Officer I, IA interview, transcript at 3, in Spokane, Wash. (December 13, 2023).

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *See supra* note 4 at 8.

<sup>59</sup> *See supra* note 56 at 3.

<sup>60</sup> *Id.* at 4.

- At the end of the conversation, Officer A told Officer I, “Well it’s falling off, it’s peeling off anyway and I’ll take care of it.”<sup>61</sup> This left Officer I with the impression that Officer A understood what they meant and they were done with the issue.
- Officer I did not directly order Officer A to remove the sticker.<sup>62</sup> In Officer A’s follow-up IA interview, they said Officer I spoke to them about the sticker but never told them to take it off.<sup>63</sup>
- Officer I did not see if Officer A took off the sticker because Officer A had a different supervisor after markup.
- Officer I believed it would be a policy violation to put any kind of marking or decal to change the vehicle in any way.<sup>64</sup>

In Officer A’s follow-up IA interview, the Guild Representative asked if Officers B, E, or G asked Officer A to remove the sticker from the police vehicle. Officer A said no to each.<sup>65</sup>

### 3. *Discussing ongoing Internal Affairs investigations*

Officer D said Officer A mentioned the sticker in support of Officer C’s son, Brandon, after the IA investigation began. Officer D said Officer A “was explaining to [their] patrol team what happened in [their] [first] IA interview.”<sup>66</sup> Officer D added that Officer A’s tone was that of frustration or anger.<sup>67</sup> Officer A’s supervisor, Officer B, was present for this conversation. As mentioned above, Officer B recalled this conversation but does not recall details.

Officer D also admitted to discussing their upcoming IA interview on this case with Officer A and another officer at In-Service training. Officer D had not read the attachments and did not realize they were not permitted to speak about the IA case. Officer D apologized for discussing the case and explained they had never been to IA before.

Officers H and I did not receive any direct communication about this investigation since they were not initially implicated in this investigation. However, they self-reported to IA after Officer H had heard from Officer B that there was an active investigation.

In Officer A’s follow-up IA interview, Officer A admitted to talking to members of their patrol team about the internal investigation.<sup>68</sup> For the first interview, Officer A told Officer B they had to go to IA for an interview so they would be aware of Officer A’s whereabouts. The next day at roll call, Officer A said Officer B asked ‘how it went’ and Officer A responded that ‘dinner went

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See supra* note 4 at 8.

<sup>64</sup> *See supra* note 56 at 4.

<sup>65</sup> *See supra* note 4 at 10.

<sup>66</sup> *See supra* note 7 at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *See supra* note 4 at 6.

great' in an attempt to deflect but felt obligated to provide a response.<sup>69</sup> Officer A proceeded to discuss the IA interview in front of the whole team.<sup>70</sup> Officer A said they were caught so off guard that Officer B would ask the question that their response came out before they could determine if it was an appropriate time or place to discuss the matter.<sup>71</sup>

### ARP

The ARP's recommended findings include:

1. Officer A: Prohibited speech – sustained
2. Officer A: False or misleading statements – sustained
3. Officer A: All investigations of personnel complaints shall be considered confidential – not sustained
4. Officer B: Failure of a supervisor to take appropriate action – sustained
5. Officer E: Failure of a supervisor to take appropriate action – sustained
6. Officer G: Failure of a supervisor to take appropriate action – sustained
7. Officer I: Failure of a supervisor to take appropriate action – sustained

The ARP analysis relied on the following:

1. There are SPD policies (a) prohibiting speech on official duty that tends to compromise or damage the mission, reputation, or professionalism of SPD or its employees and (b) prohibiting employees from endorsements and advertisements with the exceptions of acting as a private citizen or representative for a recognized bargaining unit. Clearly established policy provides that political statements, such as placing a political sticker on a police vehicle, are a violation of policy.<sup>72</sup>
2. The "Let's Go Brandon" phrase is widely publicized and commonly known in our society. "Let's Go Brandon" is code for "Fuck Joe Biden." Regardless of the statements provided by Officer A in support of Officer C's son, the statement is a well-known political statement. It goes further than being a well-known statement. It is derogatory toward the president of the United States and is obviously offensive to a significant percentage of the population. The sticker is clearly a political sticker that damages the reputation of SPD. The ARP added, "regardless of policy, it is common sense that there is no justification for placing such a sticker or phrase on a city owned vehicle."<sup>73</sup>
3. The sticker was obviously inappropriate and should have been recognized by any supervisor as a violation of department policy. At a minimum, any supervisor should have recognized that a sticker with that kind of political messaging would be harmful to SPD's reputation. "Not all of the supervisory failures were equal in nature, but they were failures nonetheless."<sup>74</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See supra* note 22 at 6.

<sup>73</sup> *Id.*

<sup>74</sup> *See supra* note 22 at 6.

- a. The ARP determined that only Officer H took appropriate action upon discovering Officer A's sticker. Officer H notified the immediate supervisor and said the situation had to be addressed.
  - b. The ARP did not accept Officer B's reasons for not knowing the sticker was a policy violation. Ignorance of policy is not justification for the failures in this case. "Common sense dictates there is no justification for the sticker being displayed on the vehicle."<sup>75</sup> Officer B's failure to address the situation was significant.
  - c. Officer E's failure to act is more significant since they are a senior supervisor in Officer A's chain of command.
  - d. Officer G should have notified their supervisor in IA or Officer A's chain of command. Officer G did neither and took no specific action.
  - e. While Officer I did have a conversation with Officer A, they stopped short of ordering the sticker be removed and did not follow up.
4. The ARP could not determine with certainty whether Officer A placed the sticker on their vehicle as a political statement or in support of Officer C's son. However, the conversations captured on BWC clearly established that the political meaning of the phrase was known, understood, and associated with placing the sticker on the police vehicle. When Officer A was asked about this in the follow-up interview, Officer A blamed IA for their line of questioning in the first interview.
    - a. The ARP does not agree with Officer A's assertion that it was IA's questions that caused the false or misleading statements. The ARP determined that Officer A's response to other political meanings, "Not to me, it doesn't" is a false statement.<sup>76</sup>
    - b. However, the ARP found that, Officer A's response that the sticker had been on their vehicle for a "few weeks" was not a false or misleading statement since Officer A said this was a guess. The ARP said there was not enough evidence to establish Officer A's statements as false.
  5. The ARP relied on the language in the notice provided to officers prior to an IA interview, "you shall not discuss the allegations or investigation with anyone except your union representative(s), attorney, or supervisor." The ARP found that the IA investigation did not determine exactly what was discussed between Officers A, B, and their team. The ARP felt that the facts did not meet the clear and convincing standard.

## Policy Recommendations

### Recommendations to Policy and/or Training

#### Duty to intervene

Applicable policies:

#### **SPD Policy 301.9 Duty to Intervene and Report**

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<sup>75</sup> *Id.* at 7.

<sup>76</sup> *Id.*

When officers witness violations of the law and/or department policies, regardless of their rank, they are required to intervene according to the following guidelines:

1. Any on-duty Spokane Police Officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.
2. Any on-duty Spokane Police Officer who witnesses any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing to the witnessing officer's supervisor or, in the absence of their supervisor, any other available supervisor, and that notification shall follow through the chain of command to the Office of the Chief of Police.
3. Officers shall not be disciplined or retaliated in any way for intervening in good faith or for reporting wrongdoing in good faith as required by this section.
4. The Spokane Police Department, in compliance with state law, shall send notice to the criminal justice training commission of any disciplinary decision resulting from an officer's failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105. This notification shall occur within 15 days of any disciplinary decision.
5. For purposes of this section:
  - a. "Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency.
  - b. "Peace officer" refers to any general authority Washington peace officer.
  - c. "Wrongdoing" means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature.

#### **SPD Policy 340.3.9 Supervision Responsibility**

The following actions are misconduct:

- A. Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws.

- B. Failure of a supervisor to appropriately report known misconduct of an employee to his/her immediate supervisor or to document such misconduct as required by policy.
- C. The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose.

The investigation addressed the actions of the officers in supervisory positions who knew of Officer A's sticker with SPD Policy 340.3.9 Supervision Responsibility and not SPD Policy 301.9 Duty to Intervene and Report. While these may seem similar or interchangeable, they are not. The supervisor responsibility policy addresses supervisory issues only. Contrasted with the duty to intervene policy, the latter requires officers who witness policy violations, regardless of rank, to intervene. If an officer has a good faith reasonable belief that another officer committed wrongdoing, they shall report such wrongdoing to the witnessing officer's supervisor or any supervisor. Under state law, the duty to intervene policy also has a reporting requirement to the Washington State Criminal Justice Training Commission that the supervisory policy does not.

While it is important that supervisors are able to have hard conversations with their officers, that responsibility is not solely placed on supervisors. SPD's policy mirrors RCW 10.93.190, the peace officers duty to intervene statute, which requires all peace officers intervene and report policy violations.

Duty to intervene is a topic that the OPO has previously written about several times in Policy and Procedures Report and Recommendations.<sup>77</sup> First, in R21-01, the OPO recommended SPD implement a duty to intervene policy before the legislature required it. Then, in P22-011, the OPO commended a supervisor's identification of a duty to intervene and how important it is to prevent policy violations.

Additionally, as this case highlights, a duty to intervene is always applicable. In AR22-04, the duty to intervene was implicated in relation to a pursuit. However, SPD houses the duty to intervene inside the Use of Force Policy. This can mislead others into thinking the duty to intervene only arises in use of force cases.

**Recommendation 24-1:** SPD should move the duty to intervene out of the use of force policy to remove confusion on its application and make it a standalone policy.

### Conflict of interest

<sup>77</sup> See <https://my.spokanecity.org/opo/recommendations/2021/>; <https://static.spokanecity.org/documents/opo/documents-reports/closing-reports/2023/p22-011-closing-report-final.pdf>. (last visited on August 5, 2024).

Applicable standard:

**Standard 4.8: Members of the Spokane Police Department shall not engage in any activity which would create a conflict of interest or would be in violation of any law.**

Officer D named supervisors that had knowledge of the sticker including Officer G, who was also an IA investigator who participated in interviews of this case. Officer F also named Officer G as a supervisor who had knowledge of the sticker.<sup>78</sup>

Officer G was not the assigned IA investigator of this case but participated in officer interviews. Officer D was interviewed on November 7, 2023 and Officer G wrote their statement on the same date. It can be inferred that Officer G wrote the statement after Officer D's interview since they reference Officer F's interview. It was only when Officer D named Officer G as a supervisor with knowledge of the sticker that Officer F disclosed their knowledge of the sticker and conversation with Officer A surrounding it.

IA did not interview Officer G as an accused. Officer G's statement that they "mentioned" they knew about the sticker was not interrogated. It is unclear whether the statement was made in a timely fashion, to who, whether it was heard, or what the response was following the statement, if any.

IA screens out conflict of interests on cases through an investigative sergeant intake checklist called an "IA Intake Form." These forms are attached to some of their case files. This form provides the investigator with cursory items to "check off" before investigating. One of the items asks the investigator to confirm they have no conflicting relationships involved with the officer or the complainant. The form has more specific boxes to check:

- I have no familial relationships with involved or officer
- I have no legal obligations to involved or officer
- I have no financial obligation to involved or officer
- If yes to any of the above, refer to the IA Lieutenant for reassignment

Here, there was no IA Intake Form attached to the case. The IA Standard Operating Procedures is silent on the IA Intake Form.<sup>79</sup> Setting aside the officer's duty to report a conflict, if the assigned investigator filled out an IA Intake Form, the conflict still would not have been caught for two reasons. First, the checklist only inquires about familial relationships, legal, or financial obligations. The checklist does not inquire if the investigator has knowledge of material information that would cause a conflict of interest. Second, since members of IA who are not the assigned investigator participate in interviews, they should also be required to fill out a conflict-of-interest statement or form. It is critical that IA investigations are credible. Having an

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<sup>78</sup> See *supra* note 7 at 8.

<sup>79</sup> Version updated October 2023.



investigator actively participating in interviews with a conflict of interest can cast doubt on the investigation.

**Recommendation 24-2:** The OPO recommends IA investigators include the IA Checklist in every case and require other members of IA to fill out a conflict-of-interest form if they participate in any interviews.

**Recommendation 24-3:** The OPO recommends IA update its Standard Operating Procedures and Conflict of Interest Form to include whether an assigned investigator has knowledge or material information that would cause a conflict of interest.

### Confidentiality of personnel files

Applicable policies:

#### **SPD Policy 1020.8.1 Confidentiality of Personnel Files**

All investigations of personnel complaints shall be considered confidential peace officer personnel files (Policy Manual § 1026). The contents of such files shall not be revealed other than as required by law, to the involved employee or authorized personnel, or pursuant to lawful process (RCW 42.56 et seq.; RCW 70.02).

The ARP's suggested finding on the allegation related to keeping all investigations of personnel files confidential relied on "Spokane Police Department – Internal Investigation: Rights/Responsibilities for Administrative Interviews" form (R&R form) that IA provides to all interviewees. Item #8 in the R&R form says:<sup>80</sup>

***This investigation and interview is confidential pursuant to the Spokane Police Department Complaint Procedure Policy 1020. In order to ensure that the integrity of the investigation is preserved and that all department rules and regulations are understood and followed, you shall not discuss the allegations or investigation with anyone except your union representative(s), attorney, or supervisor. You may not allow anyone else to gain access to that information without the expressed authorization of the Chief or his/her designee. Additionally, if you are the accused employee, you may only disclose to others that you are the subject of an investigation*** (emphasis added).

<sup>80</sup> Officer A's R&R form for IA interview 1 (October 25, 2023).

The ARP reasoned that the investigation “was unable to determine exactly what was discussed and if it can be definitively determined to be a policy violation.”<sup>81</sup> The ARP focused its analysis on how vague the details were of what was discussed. However, item #8 is clear that the accused can only disclose that they are the subject of an investigation. Additionally, SPD policy does not distinguish between what is and is not shared. SPD policy is broad and unambiguous, “all investigations of personnel complaints shall be considered confidential” (emphasis added).

**Recommendation 24-4:** There appears to be a discrepancy between the ARP’s interpretation of what it means to keep personnel investigations confidential due to what item 8 in the R&R form says. IA should update the form to remove the conflicting statements so that the form complies with SPD Policy 1020.8.1’s confidentiality requirements.

SPD has highlighted supervisory responsibilities as part of supervisor training in July 2024, in which the OPO had the opportunity to attend. The OPO commends the SPD for its timely, frank, and pertinent training using this case as a point of reference. Analyzing and learning from any noted discrepancies is helpful for both the individual officers and the agency.

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<sup>81</sup> See *supra* note 22 at 7.

## Summary of Recommendations

1. **Recommendation 24-1:** SPD should move the duty to intervene out of the use of force policy to remove confusion on its application and make it a standalone policy.
2. **Recommendation 24-2:** It is critical that IA investigations are credible. Having an investigator actively participating in interviews with a conflict of interest can cast doubt on the investigation. Therefore, I recommend IA investigators include the IA Checklist in every case and require other members of IA to fill out a conflict-of-interest form if they participate in any interviews.
3. **Recommendation 24-3:** The OPO recommends IA update its Standard Operating Procedures and Conflict of Interest Form to include whether an assigned investigator has knowledge or material information that would cause a conflict of interest.
4. **Recommendation 24-4:** There appears to be a discrepancy between the ARP's interpretation of what it means to keep personnel investigations confidential due to what item 8 in the R&R form says. IA should update the form to remove the conflicting statements so that the form complies with SPD Policy 1020.8.1's confidentiality requirements.