

Policy and Procedures Report and Recommendations

F21-004

OFFICE OF THE POLICE OMBUDSMAN



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Table of Contents

Mission Statement	2
Staff Information.....	2
Authority and Purpose.....	4
Required Disclosures.....	4
Summary	5
Procedural History	5
OPO Summary of Facts	5
Investigation and Department Findings Summary	6
Pertinent policies	6
Chain of command review	6
Policy Recommendations.....	7
Applicable Current Policy Practice, Policy, and/or Training.....	7
Recommendations to Policy and/or Training	8
Summary of Recommendations.....	10

Mission Statement

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

Staff Information

Bart Logue, *Police Ombudsman*

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

Luvimae Omana, *Deputy Police Ombudsman*

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

Christina Coty, *Administrative Specialist*

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

Tim Szambelan, *OPO Attorney*

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

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

Authority and Purpose

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

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

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

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

Required Disclosures

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

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

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

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

Summary

This case was selected for a closing report to help illustrate the changes to state law and departmental changes enacted following George Floyd's death in the summer of 2020. This incident occurred in January 2021, several months after the department updated its policies on neck restraints but before the new state law went into effect in July 2021.

Procedural History

This case was first reviewed by the chain of command as a use of force review following the subject complaining of pain in the right shoulder/arm area after two officers used arrest tactics which are reviewable uses of force under SPD Policy Manual 301.13.1(B). Under SPD Policy Manual 302 and following the chain of command review and finding, the Use of Force Review Board (UOFRB) reviewed this case in July 2021. The UOFRB reviews applications of non-deadly force after disciplinary decisions are final in order to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department wide.

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

OPO Summary of Facts

On January 1, 2021 at around 11:00 am, Officers A & B responded to a domestic violence incident. Officer B arrived first and encountered the subject trying to cross a single lane road. Officer B told the subject they were being detained and the subject did not comply. Instead, they said they were going home and proceeded to try and get into a van. Officer B went hands on with the subject at the 0:22 mark of their BWC. Officer B warned the subject, "If you don't let go of the handle, we're gonna take you to the ground (0:33). The subject was still unwilling to let go of the van handle. Officer A can be

¹ 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.

seen on BWC trying to peel of the subject's fingers off of the van door handle. Officer B told dispatch that the subject is fighting with them and requested an additional officer (0:56). When the officers were able to gain control of the subject's arms, Officer B told the subject to get on the ground, then to get on their knees, and finally to get on their stomach. Officer B can be seen in Officer A's BWC with their knee on the subject's head/neck area (2:15). As the officers tried to handcuff the subject, the subject called out to someone and said twice, "I'm gonna die" and then yelps in pain (2:20-2:25). Officer B double locked the subject in handcuffs, at the same time the subject kept repeating they will die three more times (2:33-2:38). Officer B began either speaking to another officer nearby or broadcasted something over radio and then got off the subject's head/neck area at the 2:38 mark. An officer then gave the subject verbal commands to sit up and Officer A can be seen assisting the subject into a seated position (2:46). The subject then said "you just popped my right arm out of place, quit pulling on it" (3:43).

Investigation and Department Findings Summary

Pertinent policies

- 1. Spokane Police Department Policy Manual 301.13.1(B) – Notification to Supervisors.** Supervisory notification shall be made as soon as practicable following the application of force when the subject claims an injury resulted from a use of force, even if no injury is visible (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing).
- 2. SPD Policy Manual 301.14.1 – Supervisor Reporting.** When a supervisor becomes aware of an incident where there has been a reviewable application of force, the supervisor shall complete a Use of Force Report in a timely manner.

The Uses of Force reviewed included arrest tactics, i.e. pain compliance² and a control technique.

Chain of command review

The officer's supervisor recommended a finding of "In Policy" for pain compliance and a control technique. The sergeant noted the following details in their analysis:

- Upon viewing BWC, there was a lack of transition to other control/arrest techniques when a tactic failed to work. Officers must continually assess the effectiveness of their tactics.
- This use of a control technique and pain compliance is within department policy but requested additional training be completed with both officers on transitioning to other techniques when appropriate.

The lieutenant agreed with the supervisor in recommending a finding of "In Policy" for all uses of force. The lieutenant noted the following details in their analysis:

- In agreement with the sergeant that the techniques that triggered the uses of force complies with policy.
- You can see Officer B (in Officer A's BWC) has their knee/shin across what appears to be the back of the involved person's neck or the lower part of their head during prone cuffing. Officer B had their shin in this position for about 24 seconds while prone cuffing. While this is happening, the subject says, "I'm gonna die."

² "Pain compliance" is a catch all phrase used to categorize a variety of pain-inducing techniques available to officers to "persuade" an uncooperative arrestee to comply with their demands. Benjamin I. Whipple, *The Fourth Amendment and the Police Use of Pain Compliance Techniques on Nonviolent Arrestees*, 28 SAN DIEGO L. REV. 177 (1991).

- Once the subject is cuffed, they ask to see their daughter. They make no comment about the “knee to the neck” nor do they mention breathing issues.
- “Placing the knee or shin on the back of an arrestees head or neck during prone cuffing is an exceptional technique, which is not justified or merited in this situation.”
- Officer B’s demeanor during this incident is very controlled and poised during the arrest, even apologizing to the subject’s partner after handing the subject off to other officers.
- It appears Officer B reverted back to their training when they moved to a prone cuffing position.
- The placement of the knee/shin on the neck was taught for years but as of June 5, 2020, is no longer taught or used. While the cuffing technique is clearly out of policy, this is a training issue.
- The lieutenant spoke with Officer B about their knee placement during the incident and the officer did not even realize this had happened.

The captain agreed with the lieutenant in recommending a finding of “In Policy” for the use of control technique and pain compliance. The captain noted that the lieutenant addressed Officer B’s exceptional technique of using their knee on the subject’s neck as out of policy. The captain recommends proper prone cuffing technique for Officer B.

The major in the chain of command review agreed with the lieutenant and captain in recommending a finding of “In Policy” for the use of control technique and pain compliance. The major’s analysis on the exceptional technique reiterated the captain’s analysis almost verbatim.

The Assistant Chief in the chain of command noted the following details in their analysis:³

- The subject was not compliant with officers’ verbal commands.
- The officers attempted to gain control of a large subject by using arm control but they would not loosen their grip on the van door handle.
- After a short struggle, officers were able to take the subject to the ground and apply handcuffs.
- Officer B removes their shin after the subject is secured (less than 30 seconds).

Policy Recommendations

Applicable Current Policy Practice, Policy, and/or Training

1. **Spokane Police Department Policy Manual 301.15.3 – Referral to Internal Affairs.** If upon review of an application of force by an officer(s), the supervisor believes that the application of force could rise to the level of misconduct, or the supervisor sees conduct that could rise to the level of misconduct, the supervisor shall initiate an internal affairs complaint in BlueTeam. If the subject of the use of force makes a complaint about the use of force or demeanor of the officer(s) involved in the incident, an Internal Affairs Complaint will be generated in BlueTeam. The supervisor shall forward the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.
2. **Exceptional technique** – the arrest tactic can only be used when there are no other reasonable alternatives to take someone into custody and, when there’s an immediate danger presented to officers and others and, only as a temporary restraint applied as a continuum of force.⁴

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

⁴ <https://my.spokanecity.org/news/stories/2020/06/23/police-change-knee-on-neck-policy/> (Accessed October 24, 2021).

On May 30, 2020, the Criminal Justice Training Commission published a post on their website saying, “Effective Immediately, our trainers will explicitly state in training that placing the knee on a subject’s neck and applying pressure is deadly and should never be done unless the situation clearly warrants the use of deadly force.”⁵ Effective June 10, 2020, SPD considered the use of the knee on a subject’s neck is exceptional technique and is only warranted when there are no other reasonable alternatives. Instead, the vast majority of prone cuffing are going to be conducted by placing the knee across the shoulder blade, staying off the neck.⁶ If an officer uses the knee to the neck technique, they have to report the incident and justify the maneuver.⁷

Effective July 25, 2021, the Washington legislature passed police reform legislation that includes prohibiting police officers from using neck restraints. House Bill 1054 defines a neck restraint as any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.⁸

Recommendations to Policy and/or Training

Exceptional technique identified during the chain of command review

The Lieutenant identified an exceptional technique mid-way through the chain of command review that an officer used and recommended it be “Out of Policy.” At that point, the incident should have been referred to Internal Affairs per SPD Policy Manual 301.14.13.

The Captain and Major in the chain of command acknowledged the Lieutenant’s analysis, but neither come to a recommended finding on whether they agree the exceptional technique was “In Policy” or “Out of Policy.” When the Assistant Chief reviewed the case, they similarly acknowledged Officer B placed their shin on the subject’s back but does not go so far as to call it an exceptional technique or make a finding.

Thorough reviews that discuss adding or removing allegations should be encouraged in a review process. Part of the purpose of a review is to allow different chain of command members to provide their insight and perspective resulting in a thorough review of an officer’s conduct and whether it falls within policy or not. The Lieutenant was very clear in saying that the exceptional technique was a potential policy violation. Despite identifying a potential policy violation, the subsequent reviews did not address it, nor was the casefile referred to Internal Affairs. As such, the use of force review does not formally review the exceptional technique. The casefile only reflects the department’s finding on the initial control techniques.

SPD still stands to benefit from a previous OPO recommendation, Recommendation #9 from the C19-040 closing report where, “I recommend[ed] SPD clearly define the allegations of misconduct against an officer at the beginning of a review or investigation and document if the allegations are later modified and the subsequent reasons for doing so.” This case differs from C19-040 in that this case was purely a chain of command review of force while IA was more involved in C19-040 because there was a complaint investigation component to the case. IA typically lists allegations in their investigation before sending the case up the chain of command. However, in both cases, since the chain provides their

⁵ <https://cjtc.wa.gov/to-the-people-we-serve-in-the-state-of-washington> (Accessed on October 24, 2021).

⁶ *Id.*

⁷ *Id.*

⁸ <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1054%20HBR%20PS%2021.pdf?q=20211018070650> (Accessed October 24, 2021).

recommended finding, they have the ability to add allegations or discuss why previously listed allegations are not appropriate. Recommendation #9 still applies because it would have clearly identified an exceptional technique as part of the use of force being evaluated.

RECOMMENDATION R21-16: I RECOMMEND SPD TRAIN ITS SUPERVISORS TO GET IN THE HABIT OF INITIATING AN IA COMPLAINT WHEN THEY IDENTIFY POTENTIAL POLICY VIOLATIONS AND THEN CLEARLY DEFINE THE ALLEGATIONS OF MISCONDUCT BEING REVIEWED AS PREVIOUSLY RECOMMENDED IN THE C19-040 CLOSING REPORT, RECOMMENDATION #9.

Summary of Recommendations

RECOMMENDATION R21-16: I recommend SPD train its supervisors to get in the habit of initiating an IA complaint when they identify potential policy violations and then clearly define the allegations of misconduct being reviewed as previously recommended in the C19-040 Closing Report, Recommendation #9.