

Closing Report and Recommendations

A20-038 / C20-081

OFFICE OF THE POLICE OMBUDSMAN



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Mission Statement

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

Staff Information

Bart Logue, Police Ombudsman

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

Luvimae Omana, Deputy Police Ombudsman

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

Christina Coty, Administrative Specialist

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

Tim Szambelan, OPO Attorney

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

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

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 CBA also provides authority for the OPO to 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 this report shall not be used in disciplinary proceedings of bargaining unit employees. This report is solely meant to further discussion on aspects of this incident 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.

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 closing report combines analysis of issues identified through an internally filed complaint, which allows for a closing report, and a collision review process, which allows for a policy and procedures report.

Procedural history

This complaint was received and reviewed from multiple sources. It was first reviewed by the chain of command as a collision review (A20-038) following a traffic collision involving a city-owned vehicle. Officer 1's supervisor also submitted the case to IA as an Internal Complaint (C20-081). Following the chain of command review and finding, the Collision and Pursuit Review Board (CPRB) reviewed this case in February 2021. The CPRB reviews all collisions and pursuits after disciplinary decisions are final in order to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department-wide.

Collision summary

The involved officer was driving an individually assigned vehicle, Vehicle 3,² when an on-coming vehicle, Vehicle 2, slowed to make a left hand turn. Vehicle 1 was following Vehicle 2 and lost control, colliding with a trailer Vehicle 2 was towing, sliding into the path of the officer, and colliding with Vehicle 3. The incident occurred when it was snowing and the road conditions were icy. The officer was on a day off and using the vehicle for personal reasons while preparing to go into an on-call status later that evening. There were family members in Vehicle 3 who were not pre-authorized at the time of the collision. The initial damage estimate to the city-owned vehicle was approximately \$29,000.00.

IA investigation summary

Pertinent Policies:

1. Policy 706.2.2(B) & (D) – Individually Assigned Vehicles³

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 also utilized for the complainant and the involved persons.

² Vehicles were numbered according to the collision report for consistency.

³ The Spokane Police Department Policy Manual referenced in this report is the version last updated on February 19, 2021.

- Personnel may be individually assigned vehicles based upon their assignment and upon approval of the Chief of Police. Generally, these employees have after hours on-call responsibilities and may take the vehicle home during off-duty hours. The following parameters will be considered for take home vehicle assignments.
 - Subsection B - Vehicles may be used for personal use when such use is incidental to official use.
 - Subsection D - Employees that are actively on-call shall have the assigned vehicle readily available for immediate response and will be within 30 driving miles (one direction) of the Public Safety Building. Under these circumstances the employee may use the vehicle for limited personal use.
- 2. Policy 706.2.3 –Authorized Passengers
 - Employees may transport civilian passengers in a city vehicle. However, officers are obligated to respond to certain law enforcement events and a civilian passenger may be stranded during this type of situation. Citizen ride-along participants will fill out hold harmless forms before they ride with patrol officers or detectives during a regular duty assignment.
 - With prior approval from the Chief of Police or designee, civilian passengers may be allowed to accompany employees in a city vehicle to meetings or training locations outside of the Spokane area. It is imperative that the employee receives prior approval, as there may be specific liability attached to the city and the employee, should the vehicle be involved in a collision. Employees attending a school or working out of town may take passengers to meal breaks, hotels and other reasonable locations associated with their assignment.
 - If an employee has a question about a specific use of a city vehicle, he/she should ask his/her supervisor.

Investigation and department findings summary

Collision investigation

The Spokane County Sheriff's Office conducted the investigation and determined the other driver to be at fault and was cited the driver for Speed Too Fast for Conditions.

The officer's supervisor found that based on the dynamics of the collision, the involved officer only had right steering and braking as options and the time and distance available was not sufficient to avoid the collision.

Administrative investigation

Relevant attachments

1. The involved officer's email to supervisors following the collision explaining the circumstances that led them to use a city-issued vehicle while off-duty, to wit:
 - The officer explained they used their work vehicle because they would be in town when the on call period would begin;
 - The officer was previously counseled for driving their personal vehicle on their day off when they got into a collision while responding to a police call for service;
 - The officer mentioned previous discussions, presumably with a supervisor, on the mileage put on their city-owned vehicle. The officer was involved in scanning 40 of the 50 scenes in 2020 and 10 of 13 fatality scenes, with 3 criminal scenes;
 - The officer is on call over ½ of the year; and

- The officer is normally alone in the city-issued vehicle but sometimes has people in the car with them.
2. The State of Washington Police Traffic Collision Report (collision report) authored and investigated by a SCSO Deputy lists the Spokane Police Department as the vehicle owner and provides insurance information but only the policy number.

Chain of command review⁴

The officer's supervisor noted the following details used in arriving at a recommended finding:

- When the officer's supervisor asked why they used the city-issued vehicle, the officer responded they felt, because they would be working later, it was not unreasonable to use the vehicle.
- The officer mentioned going to a personal appointment with their family and alluded to planning on going to dinner later, also using the city-issued vehicle.
- When asked how the officer would respond if called out and their family was with them, the officer said they would be able to make arrangements to get their family home and still be able to respond to the call.
- The officer did not find their actions to be unreasonable.
- The basic facts regarding the collision are not contested.

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

- The accident occurred five hours before the officer was meant to report for duty.
- The officer had some family members in the vehicle.
- In an email to their lieutenant, the officer explains he/she normally drives the department vehicle alone but indicated transporting people "sometimes."
- The first estimate to repair the damaged vehicle was \$29,000. Due to the significant damage, the vehicle was removed from service.

Facts determined as a result of the investigation

OPO Summary of Facts

This includes the OPO's perspective of the factual information that was obtained as a result of the IA investigation. Per the instructions agreed upon by the City and the Spokane Police Guild in the current CBA, 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. The OPO's opinions are based upon a careful review of the IA investigation summary and accompanying documents; the chain of command review; the Collision and Pursuit Review Board minutes; and first-hand knowledge from OPO participation during the CPRB.

⁴ 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.

- The officer's assignment at the time of the incident involved responding to call-outs to collisions and thus was issued a take-home vehicle.
- The officer's take-home vehicle was a 2019 Ford F-150 truck.
- The officer used the department vehicle on their day off, five hours prior to being on-call, to attend a personal appointment, while transported family members for personal reasons, and intended to use the vehicle to go to dinner with their family.
- The officer's vehicle suffered \$29,000 in estimated damages and was removed from service due to the extent of the damages.
- The officer was determined not at fault for the collision by the SCSO Deputy who investigated the scene.
- After the collision, the officer emailed superiors to provide clarification on using a city-owned vehicle for personal reasons. In the email, the officer explained being previously counseled for using their personal vehicle to respond to call-outs and also for putting too many miles on their city-issued vehicle.
- The officer stated that they are normally alone in the city-issued vehicle but sometimes has passengers.
- Based on the collision report, it is not clear whose insurance was used to cover the officer.

Policy Recommendations

Applicable Current Policy Practice, Policy, and/or Training

Per the instructions agreed upon by the City Administration and the Spokane Police Guild in the current CBA, 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."

1. **SPD Policy 302.4(M) – UOFRB Review** provides, while reviewing use of force incidents, the UOFRB will consider the totality of the circumstances which may include the chosen and/or considered tactics of the involved officers and the results of the considered and/or chosen tactics.
2. **Policy or practice defining what is preventable or not preventable was requested from the department but not provided at the time this report was written.**
3. **SPD Policy 706.2.3 – Authorized Passengers** provides, "It is imperative that the employee receives prior approval, as there may be specific liability attached to the city and the employee, should the vehicle be involved in a collision."
4. **SPD Policy 706.2.2(D) – Individually Assigned Vehicles** provides employees that are actively on-call shall have the assigned vehicle readily available for immediate response and will be within 30 driving miles (one direction) of the Public Safety Building. Under these circumstances the employee may use the vehicle for limited personal use.

Recommendations to Policy and/or Training

Totality of the circumstances. This case provides an opportunity to evaluate liability in collisions with city-owned vehicles. This collision resulted in estimated damages of \$29,000 to a city-owned vehicle.

Because the fault of the accident was assigned to a driver of another vehicle, that driver's insurance should potentially cover those damages as well as any medical claims should there be any. The important consideration is in future accidents, if the driver of the city-owned vehicle may be considered at fault. The City is self-insured, so any damages to city-owned vehicles are automatically paid for by the City which is reasonable if the driver was performing a function for the city. However, when a city-owned vehicle is being utilized for limited personal reasons and is in an at-fault accident, does the driver's personal insurance come into play?

In making its decision, the chain of command should consider the totality of the circumstances surrounding any collision when determining whether or not the collision is preventable or non-preventable. Similar to tactical considerations the UOFRB uses to evaluate the officer's actions leading to force, good tactics can prevent using force but bad tactics leading up to force may require a determination of officer induced jeopardy.

RECOMMENDATION R21-06: THE OPO RECOMMENDS SPD INCLUDE AS PART OF ITS EVALUATION OF WHETHER COLLISIONS ARE PREVENTABLE OR NON-PREVENTABLE, THE TOTALITY OF THE CIRCUMSTANCES TO INCLUDE TACTICAL CONSIDERATIONS, SIMILAR TO FORCE APPLICATIONS, WHICH INCLUDE THE OFFICER'S ACTIONS LEADING UP TO A COLLISION RATHER THAN JUST THE OFFICER'S ACTIONS AT THE MOMENT THE COLLISION OCCURS.

Liability. Both the department's findings and the body of persuasive case law does not hold municipalities vicariously liable when an off-duty officer gets into an accident in their official vehicle, yet, the casefile indicates the department may have shouldered all the liability on this case. SPD Policy 706.2.3 on Authorized Passengers mentions the importance of pre-authorization when transporting passengers because of specific liability that attaches to the city and the officer. This raises the question, if there was a situation in which a passenger, who was not pre-authorized, was injured in a collision, whose insurance should cover those injuries? To take it one step further, who would then be liable in that instance should an officer be considered off-duty; the city or the officer?

Vicarious liability is liability a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.⁵ In *Russell v. City of Memphis*, 106 S.W.3d 655 (Tenn. Ct. App. 2002), the officer was off duty but on-call and engaged in personal errands while driving a city vehicle. The officer struck and killed a man doing yard work. The court reasoned the officer's actions were in no way for the benefit of the city. In *Smith v. Rice*, 613 So.2d 741 (La App. 1993), an officer got into a collision in a department vehicle with another motorist. The officer's shift had ended and he was using the police car to go to a football game. In those cases, the cities were not held liable for damages.

⁵ https://www.law.cornell.edu/wex/vicarious_liability

I would encourage the department to work with risk management to ensure clear directives are included in the policy on individually assigned vehicles and whether or not an officer can, in any circumstance, be liable for potential damages to city-owned vehicles, other vehicles, property damage, or medical claims in the event of a collision.

RECOMMENDATION R21-07: *THE OPO RECOMMENDS THE DEPARTMENT WORK WITH RISK MANAGEMENT TO EVALUATE LIABILITY IN COLLISIONS AND ENSURE IT IS CLEARLY SPELLED OUT IN POLICY 706.2.2(D).*

Expectations and acknowledgment. The department should clearly communicate expectations of officers who are issued city-owned vehicles, especially those who are in an on-call status and must respond to call-outs. In the officer's email to superiors they explain they had previous conversations about using their personal vehicle to respond to a call-out and the number of miles placed on the city-issued vehicle. Based on this information, the officer had previously received conflicting direction on the use of personal or a city-issued vehicle to respond to calls while in an on-call status. Furthermore, the policy on Individually Assigned Vehicles, SPD Policy 706.2.2(D), provides officers shall be within 30 miles (one direction) of the Public Safety Building and those on-call "shall have the assigned vehicle readily available for immediate response." It also allows the employee limited personal use of the city-owned vehicle which is not defined. It is unclear how the department defines "to be readily available" and "limited personal use." Training personnel confirmed officers sign an acknowledgement of their responsibilities in regards to a take home vehicle when they are assigned. They are not currently required to re-acknowledge those responsibilities at any point outside of a general acknowledgement of policy updates. As there was confusion in regards to using the city-owned vehicle and responding to calls in a personal vehicle to ensure timeliness, the department should consider an annual acknowledgement of expectations from those officers given this unique privilege.

RECOMMENDATION R21-08: *THE OPO RECOMMENDS THE DEPARTMENT CLEARLY DEFINE THE EXPECTATIONS OF "READILY AVAILABLE" AND "LIMITED PERSONAL USE" IN POLICY TO ENSURE OFFICERS KNOW EXACTLY WHAT IS ALLOWED WHEN TAKING HOME A CITY-OWNED VEHICLE. THE OFFICERS ASSIGNED A TAKE HOME VEHICLE SHOULD ALSO ACKNOWLEDGE THEIR RESPONSIBILITIES FOR THIS UNIQUE PRIVILEGE ANNUALLY.*

Summary of Recommendations

Recommendation R21-06: The OPO recommends SPD include as part of its evaluation of whether collisions are preventable or non-preventable, the totality of the circumstances to include tactical considerations, similar to force applications, which include the officer's actions leading up to a collision rather than just the officer's actions at the moment the collision occurs.

Recommendation R21-07: The OPO recommends the department work with risk management to evaluate liability in collisions and ensure it is clearly spelled out in policy 706.2.2(D).

Recommendation R21-08: The OPO recommends the department clearly define the expectations of "Readily Available" and "Limited Personal Use" in policy to ensure officers know exactly what is allowed when taking home a city-owned vehicle. The officers assigned a take home vehicle should also acknowledge their responsibilities for this unique privilege annually.