

Policy and Procedures Report and Recommendations

F22-064

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 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 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 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 Ombudsman 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 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 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 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 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.¹

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

Summary

Procedural History

The incident occurred on December 15, 2022. The incident was reviewed by SPD as a use of force incident for the use of a TASER as specified in SPD Policy 301.2(I). The subject had injuries from being struck by a car as a pedestrian and also sustained apparent injuries from the TASER use including a probe puncture and possible abrasions from falling to the ground, which would also trigger a use of force review. SPD Employee F was the final reviewer and made the final determination on this case on July 18, 2023.² The case was reviewed by the Use of Force Review Board in September 2023.

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 Use of Force Review Board. 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.

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.

² Per 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

Incident

On December 15, 2022, at approximately 6:30am, SPD Employee A was one of several units dispatched to a collision involving a vehicle and pedestrians. The pedestrian, the subject of this incident, had been on a bicycle when they were struck by the vehicle. Upon arrival, SPD Employee A was directed to ascertain the identity of the subject. The subject initially identified themselves as "'God' and that [their] eyes could heal the world,"³ but they eventually provided their actual name. In their report, SPD Employee A reported that the subject appeared to be under the influence of a controlled substance. They were fidgeting around, talking about being God, and did not seem to notice their injuries from being struck by the car. Through their investigation, officers learned that the subject had a restraining order from another nearby pedestrian and other outstanding warrants. Officers arrested the subject for violating a Domestic Violence Order of Protection and brought them to Deaconess Hospital's emergency room (ER) for treatment of injuries they had sustained from the collision.

SPD Employee A accompanied the subject while in the hospital. They reported seeing a small laceration on the subject's leg and minor abrasions to the subject's arms, legs, and the top of the head. The medical staff determined that the subject needed a computerized tomography (CT) scan to check for internal injuries; however, the subject was unable to remain still for the CT scan. They kept sitting up and tried to remove the straps holding them in place. They kept making statements about how they were God and that the CT was going to remove atoms from their brain. The medical staff decided to sedate the subject before proceeding with the CT scan and then transporting them back to the ER. SPD Employee A followed behind as the subject was transported through the hospital. The subject was neither handcuffed nor strapped to the hospital bed. Then, without warning, the subject sat up and leapt from the bed and ran out of the ER. The subject still had medical devices attached to them including a blood pressure cuff and parts of an intravenous drip. They were barefoot and only clothed in boxer shorts during their escape.

SPD Employee A pursued the subject on foot. They reported identifying themselves as police and giving commands to stop several times. They saw the subject run towards the Cooper George apartments. It appeared the subject entered the building, and they feared the subject could attempt to harm an innocent person in their escape attempt. SPD Employee A requested additional units to set up a perimeter and requested a police K9. SPD Employee A spotted the subject in the parking area of the apartment complex. They continued to give the subject commands to stop but the subject did not comply. SPD Employee A then unholstered their TASER "in an attempt to spark it giving [the subject] a warning that force could be used if [they] failed to comply..."⁴ SPD Employee A continued pursuit on foot and saw the subject between a dumpster and a chain linked fence. The subject momentarily glanced at SPD Employee A, which SPD Employee A interpreted as the subject was going to take an assaultive position since there

³ See SPD Employee A's Field Case Supplement report, case # 2022-20221942 at 1 (December 15, 2022).

⁴ *Id.* at 4.

was no way out. SPD Employee A deployed their TASER approximately six to eight feet away from the subject. One TASER probe contacted the subject's back. They took a few more steps before falling to the ground.

SPD Employee A provided the following justification of force in their report:

- The subject posed a threat to citizens in the area. The subject was running towards an apartment complex and high school. Lewis and Clark High School was placed on lockdown due to this incident.
- The subject was not dressed for the weather.
- The subject made statements that they did not want to go to jail today.
- SPD Employee A thought the subject may create an improvised weapon.
- The subject continued to willfully ignore commands.
- Taking the subject into custody in the apartment complex parking lot would have placed the subject in a position of advantage. SPD Employee A would have had to traverse going down some stairs or lose sight of the subject to approach from the driveway.
- SPD Employee A believed the subject to be assaultive when they looked back at them.
- The subject appeared to be in good physical shape. In combination with their erratic movements, this would have made going hands on nearly impossible without additional officers.
- The subject had blood on their hands and feet and going hands on would have exposed SPD Employee A to these potential harmful bodily fluids.

Chain of command review

SPD Employee B was the supervisor who reviewed this incident and entered it into Blue Team. Their suggested finding is that the use of a TASER was in policy. They noted the following at arriving at their recommended finding:

- SPD Employee B focused their analysis on a freeze frame of the subject glancing back at SPD Employee A when the subject was between a dumpster and a chain link fence.
- SPD Employee B said based on the action/reactionary gap, special time and place, and perceived threat of an impending assault, the deployment appeared objectively reasonable.

SPD Employee C's recommended finding was that the use of force was in policy. They noted the following at arriving at their recommended finding:

- SPD Employee A was alone in a foot pursuit and closing distance.
- There were uninvolved citizens including Lewis and Clark High School students and family nearby.
- When SPD Employee A made the decision to deploy the TASER, the subject had paused and looked back, giving the appearance that they may assault SPD Employee A.

SPD Employee D's recommended finding was that the use of force was out of policy as a training failure. They noted the following at arriving at their recommended finding:

- There was no indication that the subject physically demonstrates an intent to assault SPD Employee A.
- SPD Employee A's report does not describe any verbal challenges or additional physical posturing as a precursor to an assault aside from the turn to glance back.
- SPD Employee A deployed the TASER at the first opportunity that the subject was in clear range/clear opportunity to use the device.
- SPD Employee A did not reach the threshold necessary to employ the device per SPD policy.
- SPD Employee A conducted themselves professionally and in line with the values of the department during the contact. There is no indication that this application was done with malice or mal-intent.
- SPD Employee D goes on to say, "I am aware of similar instances across the department where a TASER has been deployed for fleeing subjects. This may indicate not only an individual need for additional training, but a broader need to refresh or hone the skills regarding this device department wide."

SPD Employee E's recommended finding was that the use of force was out of policy with a recommended training on justification for proper use of a conducted energy weapon/TASER. They noted the following at arriving at their recommended finding:

- SPD Employee A reported that they knew the subject was unarmed in the hospital but could have armed themselves while out of SPD Employee's sight during the foot pursuit.
- SPD Employee A had the opportunity to view the subject's whole person for over 30 seconds prior to deploying the TASER.
- SPD Employee E agreed with SPD Employee D's assessment that SPD Employee A does not challenge the subject about weapons during the pursuit.
- SPD Employee A says twice in their report that they believed the subject was "going to / likely to" take an assaultive position. They do not articulate whether the subject made any threatening statements or demonstrated any actual assaultive behavior prior to deploying the TASER.
- SPD Employee E viewed the BWC footage on the moment the subject turned their head and shoulders to look at SPD Employee A. They did not believe the subject's behavior would cause a reasonable officer to believe the subject reached the threshold of assaultive behavior justifying the TASER deployment.
- SPD Employee E included an excerpt of the TASER application policy, "The TASER device may be used when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person who is demonstrating non-compliance perceived as assault."⁵ Active resistance or mere flight from a pursuing officer, without other known circumstances or factors is not good cause for the use of the TASER device to apprehend an individual.

⁵ See SPD Policy Manual 308.8.4, Application of the TASER Device.

Policy Recommendations

Recommendations to Policy and/or Training⁶

1. SPD Policy 301.14 Chain of Command Review of Use of Force

- a. **301.14.1 Supervisor Reporting.** When a supervisor becomes aware of an incident in which there has been a reviewable application of force, the supervisor shall complete a Use of Force Report in a timely manner. In the event a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still required to complete a Use of Force Report. Use of Force reports are required under the circumstances described in Section 301.13 Notification to Supervisors.
- b. **301.14.2 Investigation, Documentation, and Navigation.** When completing a Use of Force Report the supervisor shall take the necessary steps to conduct a thorough investigation. The supervisor shall:
 - i. Respond to the scene, when possible.
 - ii. Review all documentation of the incident and make every reasonable effort to contact all involved officers.
 - iii. Ensure identification of witnesses and other involved parties. When possible conduct civilian interviews of those subjects, including the subject to whom the force was applied, on body worn camera when possible.
 - iv. Ensure the collection of any appropriate evidence when applicable.
 - v. Ensure photographs are taken of all injuries and relevant items such as dirt stains on uniforms, tears in clothing, damage to equipment, etc. Photos shall also be taken when appropriate to document the lack of injury.
 - vi. In the event that the supervisor believes that the incident may give rise to potential civil litigation, the supervisor shall notify the DSO or appropriate command staff member during normal business hours.
 - vii. Attach all incident reports, the CAD incident history, Conducted Energy Weapon downloads, and a link to all officer-worn videos in Evidence.com.
 - viii. Enter force options used by any officer who used reviewable force. List other officers present as witness officers.
 - ix. Provide a brief summary of the incident in BlueTeam and attach a Use of Force Additional form with all other information.
 - x. Provide a brief comment stating whether the use of force was within policy and any possible training issues, unless the involved officer is of an equal or superior rank. If more detailed analysis is needed, include it in the Use of Force Additional report.
 - xi. Forward the Use of Force Report to 'Internal Affairs Group' in BlueTeam.

⁶ The applicable version of the SPD policy for when this incident occurred in January 2021 was the policy version updated September 2020. There are portions of this policy that are no longer in effect in 2023, such as the lateral neck restraint.

2. **SPD Policy 301.14.3 Referral to Internal Affairs.**

- a. The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the appropriate Major.
- b. 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.
- c. 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.
- d. The supervisor shall forward the Internal Affairs Complaint and the Use of Force report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.
- e. Upon initiating an Internal Affairs Complaint for the reasons above, the DSO will be promptly notified through the Chain of Command.

3. **SPD Policy 302.2 Use of Force Review Board Purpose and Scope.** Use of force incidents are investigated and reviewed by the involved officer's chain of command. The Assistant Chief, or his or her designee, makes the final determination if the officer's actions were within policy. After the final determination, the incident is evaluated and debriefed by the UOFRB to evaluate training, equipment needs, and policy and standard operating procedures (SOPs) in place or practiced department-wide. The UOFRB will not be utilized to recommend discipline or conduct investigations in unresolved use of force incidents.

Training recommendation after a chain of command review

In SPD Employee D's review, they raised the issue that departmentwide training on the use of TASERs on fleeing subjects may be needed. However, upon reviewing the casefile and UOFRB minutes, there does not appear to be any further action taken on SPD Employee D's suggestion and the OPO can find no documentation tracking this training suggestion.

RECOMMENDATION R23-09: *THE OPO RECOMMENDS SPD IMPLEMENT A FORMAL TRACKING SYSTEM THAT ALERTS THE UOFRB, TRAINING ACADEMY, OR APPROPRIATE PERSONS WHEN A RECOMMENDATION FOR TRAINING IS MADE DURING A CHAIN OF COMMAND REVIEW. THIS WILL ENSURE THAT WHEN A NEED FOR A TRAINING OPPORTUNITY IS IDENTIFIED, THE RECOMMENDATION CAN BE TRACKED THROUGH IMPLEMENTATION.*

Use of force review versus an IA investigation

The SPD policy on chain of command review on use of force are vague on procedures after the first-level supervisor. The Supervisor Reporting Policy, SPD Policy 301.14.1-2, provides a step-by-step list of the first-level supervisor's responsibilities from reporting on scene to entering the incident into BlueTeam. SPD Policy 301.14.2(J), says that the first-level supervisor, "provide a brief comment stating whether the use of force was within policy."⁷ The UOFRB Purpose and Scope Policy, SPD Policy 302.2, provides additional clarification on the chain of command review process, "The Assistant Chief, or his or her designee, makes the final determination if the officer's actions were within policy."

Interpreting the policies together, it can be ascertained that SPD policy on use of force reviews only require the chain of command to determine if a use of force was within policy or not. If a member of the chain of command believes any use of force could rise to the level of misconduct, SPD Policy 301.14.3 requires they send the incident to IA for investigation.

A senior SPD official said that policy violations were not necessarily misconduct. The SPD policy manual is unclear on the difference between misconduct and a policy violation. SPD's policy manual provides numerous examples of misconduct in certain policies. For instance, attendance, conduct, and discrimination among others. However, it does not define misconduct. Meanwhile, policies are bright line rules and it is clear whether an officer's conduct is a violation or not. Another senior SPD official said sending every violation of policy to IA for investigation would hurt morale, adding even more ambiguity to SPD's internal system of accountability. Vague and inconsistently applied policies can also be harmful to morale, the department, and the community. As such, I recommend that the language in the policy change "misconduct" to "policy violation."

RECOMMENDATION R23-10: *THE OPO RECOMMENDS SPD UPDATE ITS USE OF FORCE POLICY, 301.14.3, LANGUAGE FROM "MISCONDUCT" TO "POLICY VIOLATION" WHEN MAKING REFERRALS 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 A POLICY VIOLATION, OR THE SUPERVISOR SEES CONDUCT THAT COULD RISE TO THE LEVEL OF A POLICY VIOLATION, THE SUPERVISOR SHALL INITIATE AN INTERNAL AFFAIRS COMPLAINT IN BLUETEAM."*

While the chain of command reviewers are the same in both a use of force review and IA investigation, the procedures in policy are different. One important difference is that under the investigation process, there are procedures in place that notify the officer being investigated of allegations of misconduct. This triggers other due process rights. However, in the current practice of use of force reviews, officers may only receive notice of discipline after the review is complete. Thus, to preserve an officer's due process rights and in accordance with policy, I

⁷ This policy is listed above as 301.14.2(x) due to the automatic list formatting in Microsoft Word.

recommend SPD limit its chain of command findings to “in policy” or “out of policy.” If any supervisor believes an officer’s conduct could potentially be out of policy, they should send it to IA for investigation as SPD policy only includes dispositions on IA investigations.

RECOMMENDATION R23-11: *THE OPO RECOMMENDS SPD UPDATE ITS POLICY MANUAL TO ENSURE PROPER DETERMINATIONS IN REVIEWS. THE CHAIN OF COMMAND REVIEWS SHOULD BE LIMITED TO DETERMINATIONS OF “IN POLICY” OR “OUT OF POLICY.” IF ANY SUPERVISOR DURING A REVIEW BELIEVES AN OFFICER’S CONDUCT IS POTENTIALLY OUT OF POLICY, THEN THEY MUST SEND THE CASE TO INTERNAL AFFAIRS FOR INVESTIGATION.*

Summary of Recommendations

Recommendation R23-09: The OPO recommends SPD implement a formal tracking system that alerts the UOFRB, training academy, or appropriate persons when a recommendation for training is made during A Chain of command review. This will ensure that when a need for a training opportunity is identified, the recommendation can be tracked through implementation.

Recommendation R23-10: The OPO recommends SPD update its use of force policy, 301.14.3, language from “misconduct” to “policy violation” when making referrals 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 a policy violation, or the supervisor sees conduct that could rise to the level of a policy violation, the supervisor shall initiate an Internal Affairs complaint in BlueTeam.”

Recommendation R23-11: The OPO recommends SPD update its policy manual to ensure proper determinations in reviews. The chain of command reviews should be limited to determinations of “in policy” or “out of policy.” If any supervisor during a review believes an officer’s conduct is potentially out of policy, then they must send the case to Internal Affairs for investigation.