

# Policy and Procedures Report and Recommendations

F23-009

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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.<sup>1</sup>

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

## Summary

## Procedural History

The incident occurred on January 21, 2023. The incident was reviewed by SPD as a Use of Force for arrest tactics and handcuffing because the subject suffered injuries. The injuries to the subject resulted from officers breaking a car window and extracting the subject from the vehicle. SPD Employee G was the final reviewer and made the final determination on this case.<sup>2</sup> The case was reviewed by the Use of Force Review Board in June 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.

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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.

<sup>2</sup> 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

The incident occurred on January 21, 2023, at approximately 2:30pm. SPD Employees A and B were patrolling in one vehicle as SPD Employee A was the Field Training Officer (FTO) for SPD Employee B. They located a stolen vehicle at the Albertson's grocery store parking lot located on 6520 North Nevada Street. The vehicle was a lifted GMC Sierra truck that was parked in a parking spot but occupied by the subject. The subject appeared to be sleeping and was not aware of the officers' presence. Officers tried to open one of the doors of the truck, but the vehicle was locked. SPD Employee A decided to back off from contacting the subject because they did not want to get run over in case the subject tried to escape. SPD Employee A and B repositioned their vehicle and then contacted the registered owner of the stolen vehicle to advise them they have spotted their vehicle. SPD Employee A said that the subject will likely take off when they attempt to contact them. SPD Employee A then presented the registered owner with an option to shatter one of the vehicle's windows and pull out the subject. The registered owner agreed with the plan. SPD Employee A then advised that they would have to run the plan up the chain of command for safety considerations prior to acting.

According to SPD Employee A's report, they called for additional resources and when enough officers arrived, the plan was developed to break the driver's side window and remove the subject from the vehicle.<sup>3</sup> Because the subject appeared to be sleeping, officers determined the best course of action would be to use the element of surprise to take the subject into custody.<sup>4</sup>

The officers came up with the plan to breach the truck window and pull out the subject. SPD Employee C used a tool called a mechanical breaching tool that looks like a T-shaped crowbar called a "Halligan tool" to break the window. SPD Employees A and B used SPD Employee C for cover until they reached the window. After SPD Employee C successfully broke the driver's window, SPD Employees A and B took arm control of the subject and extracted them out of the driver's side window. Officers then placed the subject in the prone position, in handcuffs, and under arrest.

### Incident entered into Blue Team

SPD Employee D entered the incident into BlueTeam. Their incident summary provided their recommended justification for SPD Employee A's tactics:

[SPD Employee A] determined the best course of action would be to use the element of surprise to take [the subject] into custody...Unfortunately after suspects become aware of the police presence[,] they do not follow commands and try to ram their way out of the pin. During the ramming[,] suspects intentionally assault officers with their vehicle and put countless civilian lives in danger with their clear disregard for the safety of others. In order to mitigate this

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<sup>3</sup> See SPD Employee A's Field Case Supplement report, case # 2023-20013569 at 2 (January 21, 2023).

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

danger, officers created a contact team which consisted of lethal cover, vehicle pin team, hands team[,] and less lethal team to include pepper ball and [TASER]. A [lieutenant] also authorized the use of stop sticks behind the vehicle wheels in the case it [became] mobile.

SPD Employee D reported the subject sustained minor scrapes to their forehead and fingers from the glass shards from the window. The injuries were superficial, and the subject was treated by medics. While there was no other reason for the force to be reportable, a use of force review was generated due to the injuries that the subject obtained during the extraction from the vehicle.

#### Chain of command review

SPD Employee D was the supervisor who reviewed this incident and entered it into Blue Team. The Blue Team entry appears to be copied and pasted from their review. Their suggested finding is that SPD Employee A and B's actions were in compliance with policy. They noted the following at arriving at their recommended finding:

- There was no use of force.
- The subject was able to be taken into custody without citizens or officers or property being placed in harm's way.
- The use of surprise can be used to disrupt a subject's OODA Loop<sup>5</sup> or thought process as a de-escalation tactic given certain situations.
- Officers should immediately identify themselves verbally, but officers did give commands of "do not move" and "show me your hands."

SPD Employee E's recommended finding was that the action was objectively reasonable and within policy. They noted the following at arriving at their recommended finding:

- The officer's decision to be creative and use non-traditional tactics was within policy.
- The application of force was objectively reasonable and within policy.
- The subject suffered very minor scrapes from glass while being extricated, which triggered a use of force review.
- They questioned why this incident even triggered a use of force review saying, "it appears that we are not following the spirit and the meaning behind the policy, and that the first line leadership should have some clear directives about when to initiate a use of force Blue Team."<sup>6</sup>

SPD Employee F's recommended finding was out of policy/training failure for both SPD Employees A and B. They noted the following at arriving at their recommended finding:

- While SPD Employee F agreed this was a creative tactic to get the subject into custody and received prior approval from the registered owner of the vehicle, there are more requirements that must be met when officers use force.

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<sup>5</sup> Observe, Orient, Decide, Act decision making cycle

<sup>6</sup> SPD Employee E, F23-009 IA Additional (March 22, 2023).



- The amount of force was reasonable but recent policy and law changes require using time, distance, cover, and de-escalation tactics be attempted prior to using force.
- Officers did not allow the subject an opportunity to surrender.
- SPD Employee F believes department-wide training should occur on the differences between physical force, reportable force, and reviewable force, and where they intersect around procedure, policy, Blue Team reviews, and law.
- Policy is clear that a review in Blue Team should be done when there is an injury outside of what is consistent with handcuffing or prone handcuffing. Entering a Blue Team and initiating a use of force review was appropriate.<sup>7</sup>

SPD Employee G noted the following:

- There have been numerous incidents over the past few years where suspects have fled the scene putting officers and citizens in danger and damaging property.
- Officers and supervisors in this incident were trying to prevent a reoccurrence of this dangerous behavior by preemptively using a minimal amount of force to get the subject into custody.
- This tactic would be acceptable if officers had developed specific information that the subject presented officer safety concerns and/or a history of fleeing from officers.

## Policy Recommendations

### Recommendations to Policy and/or Training<sup>8</sup> Force

1. **SPD Policy 301.2(J)(3): Reportable Force Defined.** All use of force by an officer outside of handcuffing or wrist locks/joint control techniques shall be thoroughly documented in a report. If the incident does not require a report, the interaction may be documented in CAD.
2. **SPD Policy 301.2(J)(4): Reviewable Force Defined.** A use of force incident that requires a Use of Force Report in BlueTeam (see 301.13.1).
3. **SPD Policy 301.13.1: Notification to Supervisors.** Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:
  - a. The application of force resulted in apparent injury to the subject or unconsciousness (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);
  - b. 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

<sup>7</sup> SPD policy requires initiating a use of force review even when the subject complains of injury.

<sup>8</sup> 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.

- handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing);
- c. All applications of a Lateral Neck Restraint (Level I and Level II) (see Policy 308);
  - d. All applications of a Conducted Energy Weapon (e.g. TASER™) (See Policy 308);
  - e. The intentional discharge of firearms (with the exception of training or recreation) (See Policy 312);
  - f. Intentional Pointing of a Firearm - When the officer is intentionally "pointed in" at a subject with their firearm. Maintaining tactical observation of a subject with magnified optics is a trained tactical advantage and should not be considered a use of force;
  - g. Any deployment of OC by means of spray or by means of physically or mechanically delivered techniques where a person is exposed to the chemical (See Policy 308);
  - h. Any deployment of CS by means of a spray or by means of physically or mechanically delivered techniques where a person is exposed to the substance (see Policy 308);
  - i. Any application of an impact weapon whether personal, issued or improvised, to a subject (See Policy 308);
  - j. Canine deployment per Policy 318; and
  - k. When a subject alleges any of the above has occurred.

Officers are granted a lot of responsibility with the ability to use force. Constitutionally, it can be interpreted as a legally justified intrusion into an individual's Fourth Amendment rights. As such, the public has a strong interest in use of force data, and it relies on police departments to accurately report it.

The most recent force analysis SPD has posted online are for 2019, 2020, and 2021. Across all reports they report that the ratio of use of force incidents compared to citizen contacts is very low at around .07%. In 2019, they reported 119 uses of force compared to 116,168 total incidents.<sup>9</sup> 2020, they reported use of force incidents decreased by 39%. There were only 71 uses of force of the total 100,468 incidents in 2020.<sup>10</sup> In 2021, they reported 66 use of force cases of the total 94,377 incidents officers were involved in.<sup>11</sup> SPD's force reporting does not capture the total picture of the amount of force used due to how it classifies force. As noted above, many forceful actions such as takedowns, joint control, body weight applications, etc. are not counted in use of force statistics unless a complaint of injury is made regardless of the forceful intent.

Upon closer inspection, this dissonance is explained by the difference between actual force used, what SPD classifies as "reportable force," and "reviewable force." Actual force is any force used, which is what the public likely expects to be reported. The uses of force that are

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<sup>9</sup> <https://static.spokanecity.org/documents/police/accountability/2019-spd-annual-use-of-force-comprehensive-analysis.pdf>

<sup>10</sup> <https://static.spokanecity.org/documents/police/accountability/2020-annual-use-of-force-analysis.pdf>

<sup>11</sup> <https://static.spokanecity.org/documents/police/accountability/2021-annual-use-of-force-analysis.pdf>

scrutinized by the police department and get reported out to the public only include cases that rise to the level of a reviewable force. This means a use of force must specifically fit under SPD Policy 301.13.1 to be reported to the public. Other types of forceful techniques or actions require officers to document any force used outside of handcuffing or wrist locks/joint control techniques in their police reports or in the CAD (Computer Aided Dispatch) system at a minimum. This means officers are capturing force they may have used in their report narratives, but it is not reviewed, evaluated, or tracked for reporting purposes. Further complicating the matter, SPD terms reviewable force as reportable, and other lower-level force that is required to be reported on police reports as non-reportable.

When the OPO instituted the Police Force Analysis System, use of force dashboards, the contractor brought to our attention that SPD counts force differently from many of the contractor's other departments. To make SPD's data comparable, the OPO previously recommended SPD create a check box in the police report form to capture when force occurred as "reportable" but not "reviewable." The contractor was willing to go through each report with a checked box and capture the force used that is below SPD's reviewable standard that other departments would count as force. This has not yet been instituted by the police department.

In OPO Recommendation 19-03, we recommended an update to the tracking system so that SPD can track all uses of force. Police Strategies LLC provided its assessment and recommendations in its Use of Force Summary Report from 2013 to 2018.<sup>12</sup> In reviewing how data is tracked from use of force incidents, it became clear that pursuant to the Use of Force Policy, §300.5 Documenting Force, officers have been tracking uses of force in police reports, including lower levels of force. However, as these lower-level uses of force were not considered a "reportable use of force," they are not being properly counted as uses of force by SPD. Currently, only the cases which fall under the categories of §300.5.1 Notification to Supervisors trigger a use of force review and are counted as a use of force for reporting purposes.

One of the report's recommendations that we wish to endorse to SPD is to count use of physical force the same as the other agencies in the Police Strategies LLC network, and other policing agencies around the country. The report says that SPD's policy on physical uses of force is more limited than other agencies. SPD's current policy only requires officers report physical uses of force when the subject is injured or complains of an injury. Most other agencies require an officer(s) to report on any physical force that was used to overcome any level of resistance. This would include pulling a resistant subject's arms back for handcuffing, the use of joint manipulation and pain compliance techniques, physical strikes, pushes, and takedowns using body weight to hold a subject to the ground and wrestling with a subject.

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<sup>12</sup> See <https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf> (last accessed on October 14, 2019).

Updating the tracking of these uses of force would make for a more accurate comparison of force across agencies. More importantly, SPD would be more accurately reporting back to the community the actual uses of force which are occurring. Thus, I recommend SPD update its use of force reporting methodology to include reporting on any physical force that was used to overcome any level of resistance.

As a result, SPD only counts and reports on a small percentage of force used. In a Use of Force Summit that the OPO attended, attorney Eric Daigle recommended that all force outside of compliant handcuffing be tracked and statistically reported on by police agencies. In SPD, it is currently impossible to track the number of incidents officers use some form of force in the conduct of their police duties. This potentially large number does not mean force did not occur, it only means the force used did not rise to the level that SPD's policy deems is reportable. The current tracking system for force should be updated to include statistics regarding any force beyond compliant handcuffing. Officers are already documenting this in their reports, but SPD lacks the ability to adequately track this. Any intrusion into an individual's Fourth Amendment rights carries implications for that individual, the officer, and the department and should be adequately reported on. All force is reportable, and SPD should consider a terminology change to reviewable force for Blue Team use of force reviews. Officers should be reminded every time they enter the Fourth Amendment box that their actions are subject to scrutiny.

**RECOMMENDATION R23-06:** *IN ADDITION TO ESTABLISHING A TRACKING SYSTEM WHICH ACCOUNTS FOR ALL USES OF FORCE AS PREVIOUSLY RECOMMENDED IN OPO RECOMMENDATION 19-03, I RECOMMEND THAT THE SPOKANE POLICE DEPARTMENT CHANGE ITS CURRENT TERMINOLOGY OF NON-REPORTABLE FORCE TO NON-REVIEWABLE FORCE WHICH WOULD REINFORCE THAT ALL FORCE, REGARDLESS OF SEVERITY, IS REQUIRED TO BE REPORTED ON WHILE ONLY A SUBSECTION OF THAT FORCE RECEIVES AUTOMATIC CHAIN OF COMMAND AND SUBSEQUENT REVIEWS.*

#### Regulate the type of force used

The creative tactics mentioned several times in this case are just a synonym for exceptional techniques. Because recovering stolen vehicles has been a rampant issue SPD has been facing over the last few years, the department should develop procedures and tactics to help officers safely recover stolen vehicles without resorting to creative tactics. Any debate about whether using a Halligan tool is appropriate would quickly become a non-issue if SPD removed exceptional techniques and prescribed the tools officers can use. It would be a benefit to officers if the parameters surrounding the use of approved police techniques and equipment

are clearly placed into policy and articulated to how the equipment and technique being used follows Washington State laws governing force, compliance, and de-escalation.

**RECOMMENDATION R23-07:** *I RECOMMEND THAT THE SPOKANE POLICE DEPARTMENT ENSURES THAT PARAMETERS REGARDING THE USE OF APPROVED POLICE TECHNIQUES AND EQUIPMENT BE CLEARLY PLACED INTO POLICY OR STANDARD OPERATING PROCEDURES TO ENSURE THAT THE USES FOLLOW WASHINGTON STATE LAWS GOVERNING FORCE, COMPLIANCE, AND DE-ESCALATION.*

#### Consistent supervision standards

SPD Employee D used SPD Employee A's justification as their analysis for why the use of force was in policy. They did not conduct a separate critical review of the incident. SPD Employees D and E has similar views in which they both recommended there was no policy violation. SPD Employee E went further and questioned why this case was even entered for a use of force review. This conflicts with SPD Employee F's view in their recommendation of a policy violation. The IAPRO file does not appear to address the supervisors with differing opinions from the final determination. Although, SPD Employee F's suggestion for departmentwide training would provide general training, this is a missed opportunity for the department to train their supervisors on its expectations on how policies should be analyzed if it is not addressed.

When there are significant interpretation differences, there needs to be a feedback mechanism from final reviewers to ensure that training recommendations are implemented or there is clear articulation as to why the final reviewer does not believe that to be necessary. This will help ensure that all supervisors are given guidance and training to the standards that the Chief wants for the department so there is no confusion. Further, the Use of Force Review Board could serve as a mechanism to ensure that formal feedback is provided back to every supervisor or through a training bulletin on what the standard is. The Chief makes a final determination on any discrepancy and formalizes it through the UOFRB. The UOFRB then sends out a training bulletin on departmental recommendations.

**RECOMMENDATION R23-08:** *I RECOMMEND THAT THE USE OF FORCE REVIEW BOARD PROVIDE FORMAL FEEDBACK TO SUPERVISORS ON DEPARTMENTAL GUIDANCE WHEN SIGNIFICANT DIFFERENCES IN CRITICAL EVALUATIONS OCCUR.*

## Summary of Recommendations

**Recommendation R23-06:** In addition to establishing a tracking system which accounts for all uses of force as previously recommended in OPO Recommendation 19-03, I recommend that the Spokane Police Department change its current terminology of non-reportable force to non-reviewable force which would reinforce that all force, regardless of severity, is required to be reported on while only a subsection of that force receives automatic chain of command and subsequent reviews.

**Recommendation R23-07:** I recommend that the Spokane Police Department ensures that parameters regarding the use of approved police techniques and equipment be clearly placed into policy or standard operating procedures to ensure that the uses follow Washington state laws governing force, compliance, and de-escalation.

**Recommendation R23-08:** I recommend that the use of force review board provide formal feedback to supervisors on departmental guidance when significant differences in critical evaluations occur.