

Policy and Procedures Report and Recommendations

F23-035

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 July 11, 2023. The incident was reviewed by SPD as a use of force incident for the intentional pointing of a firearm as specified in SPD Policy 301.2(I). SPD Employee E was the final reviewer and made the final determination on this case.² The case was then 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

The incident occurred on January 21, 2023. SPD was assisting the Spokane Valley Police Department (SVPD) in the Spokane Regional Safe Streets Task Force (SRSSTF) for reported vehicle thefts. SRSSTF is a multi-jurisdictional drug and gang task force between the SPD, the Spokane County Sheriff's Office, and the Spokane Valley Police Department. The purpose of this task force is to provide a coordinated and concentrated effort to identify, disrupt, and dismantle existing and emerging gangs and mid to upper-level drug trafficking organizations operating in the Spokane County area.³ SPD and SVPD arrived at the Dick's Sporting Goods' parking lot in the Spokane Valley Mall to try and apprehend three subjects suspected of stealing vehicles.

SPD Employee A observed three subjects walking through the parking lot and reported they appeared to be looking for a car to steal. SPD Employee A was instructed to observe the subjects and be prepared to activate emergency lights in case the subjects needed to be contacted immediately. They witnessed one subject unsuccessfully attempt to open a Subaru car door in the parking lot because the vehicle was locked. The subjects moved out of SPD Employee A's view, but the task force received a report that one of the subjects was seen breaking the window of a Kia Sportage. SRSSTF established probable cause for Attempted Vehicle Theft and Malicious Mischief and decided to attempt to contact and detain the subjects. The subjects were reported to have firearms, so units were advised to proceed with extra precaution at the time of contact. SVPD Employee A directed the task force to contact the subjects once they were north of the TJ Maxx store.

When the subjects passed TJ Maxx, units approached with emergency lights activated on their vehicles. As the units approached the subjects began to run on foot. Two were captured almost immediately. SPD Employee A pursued in their vehicle driving toward Evergreen to an intersection near the I-90 ramps. The remaining subject was seen running over an embankment toward Hobby Lobby and they ended up hiding in a tree. SVPD Employee A made announcements over the public address (PA) system that they could see the subject and directed them to come out. The subject then began to emerge from the tree, near SPD Employee A.

SPD Employee A reported not initially being able to see the subject's hands and they directed their weapon at the subject while commanding them to lay on the ground. When SPD Employee A saw the subject did not have a gun, they moved their firearm to the low ready position and began to negotiate their way down the hill of a steep embankment. They continued to give commands to the subject as they went down the embankment. The subject suddenly moved their hand from their side toward their head area. SPD Employee A reported that they saw this as disregarding their command to keep their hands out to the side. SPD Employee A reported they were not aware if the subject had other weapons and that the subject had disregarded numerous PA commands to surrender. This provided the subject with

³³ See <https://static.spokanecity.org/documents/opendata/interlocal-agreements/opr-2019-0992.pdf>.

ample opportunity to formulate a plan of action. SPD Employee A pointed their firearm at the subject, reportedly fearing the subject may change to a position of advantage and potentially access a weapon. SPD Employee A gave another command and the subject complied, so SPD Employee A holstered their weapon and promptly took control of the subject's left arm. Within seconds, officers arrived to assist and handcuff the subject. The subject was arrested without further incident.

Chain of command review

SPD Employee B was the supervisor who reviewed this incident and entered it into Blue Team. Their suggested finding was that SPD Employee A's actions were in policy. They noted the following at arriving at their recommended finding:

- SPD Employee A started to traverse a steep, rocky, and downward slope while issuing verbal commands to the subject.
- SPD Employee A had no cover or concealment as they approached the subject.
- SPD Employee A appeared to be in the low ready with their weapon drawn as they continued addressing the subject.
- SPD Employee A audibly raised their voice and was more forceful while directing the subject on what to do with their head and hands. While this was happening, SPD Employee A raised their firearm in the direction of the subject until they gained compliance.
- SPD Employee A raised their firearm in conjunction with raising the tone of their voice for seven seconds toward the subject.
- SPD Employee A was at a considerable disadvantage when contacting the subject.
- The subject was laying in tall grass which could have concealed a weapon.

SPD Employee C's recommended finding was that SPD Employee A's actions were in policy but a training failure. They noted the following at arriving at their recommended finding:

- SPD Employee A has had hundreds of firearms training prior to the "on target, on trigger" philosophy.⁴
- SPD Employee A has established a motor program in response to trained stimuli. Their existing motor program will take an even greater amount of training to be overwritten.
- SPD Employee C disagrees that pointing in with a firearm is in compliance with policy. However, this should not a policy violation but a training failure.

SPD Employee D's recommended finding was that SPD Employee A's actions were out of policy/training failure. They noted the following at arriving at their recommended finding:

- Intentional pointing of a firearm of this nature has been documented as a training failure in the past.

⁴ "On target, on trigger" teaches resting a finger on the trigger as soon as one takes aim.

Policy Recommendations

Recommendations to Policy and/or Training⁵

1. **“On Target, on Trigger,” is the Spokane Police firearms training philosophy.** Relevant excerpts include:⁶
 - a. “We point the firearm when we have the intention of shooting, although it doesn’t mean that I have to shoot.”
 - b. This is the accepted practice with the Washington State Criminal Justice Training Commission.
 - c. We can now say that an officer pointing the firearm at a subject without the intent to shoot serves no purpose other than placing the officer at risk if they were to have an unintentional discharge. It does not make the officer faster to engage and tends to limit their vision below the muzzle. Officers pointing in with their firearms tend not to de-escalate a situation and the firearm is not a shield, or an exclamation mark.
2. **SPD Policy 301.2(I): Reportable Force Defined.** When the officer is intentionally “pointed in” at a subject with their firearm.
3. **1020.7 Disposition of Personnel Complaints.** Each allegation shall be classified with one of the following dispositions:
 - a. **Unfounded** - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel.
 - b. **Exonerated** - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.
 - c. **Not Sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.
 - d. **Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
 - e. **Training Failure** - Deficiency in training was the cause of the alleged act.
 - f. **Closed Due to Mediation** - Is an alternative to the investigation, adjudication and disciplinary process.
4. **SPD Policy 1020.1.1 Personnel Complaints Defined, Closed.** Investigations may be classified as Closed if they meet one or more of the following reasons:
 - a. An allegation of misconduct that is disproven upon initial review (i.e. BWC footage or other evidence clearly disproves an allegation); or
 - b. The Internal Affairs Lieutenant and Police Ombudsman, upon review of a complaint, may agree to the finding of ‘Closed’ for instances where both agree an allegation is Unfounded, Exonerated, Not Sustained, or Training Failure concurrent to the Ombudsman’s certification of timely, thorough, and objective.

⁵ The applicable version of the SPD policy for when this incident occurred in January 2023 was the policy version updated December 2022.

⁶ For the full training document, see F23-035 casefile.

Dispositions

The use of the “Training Failure” disposition is not clearly defined in policy and SPD is inconsistent in its use. This case illustrates the inconsistency in its application. First, when SPD Employee D cited SPD’s previous practice of consistently documenting an intentional pointing of a firearm as a training failure in the past. There is no policy underpinning the rationale for the “Training Failure.” Then, when comparing this case to F22-064, there was similar use of the training failure disposition but with different suggested outcomes. In this case, a member of the chain of command recommended an in policy use of force with a training failure. However, in F22-064, a member of the chain of command recommended an out of policy use of force with a training failure.

SPD needs to clearly define what constitutes a training failure. It is unclear at what point an officer’s conduct should become a policy violation and when it is the department’s failure to train. The SPD policy manual only mentions “Training Failure” twice, both are under Internal Affairs investigations of personnel complaints. It is defined and then is listed as a reason a case may receive the “Closed” disposition. Based on SPD Policy, a suggested finding of “Training Failure” is only appropriate when the chain of command reviews IA investigations and not in use of force reviews. However, it has been SPD’s practice to attach IA investigation dispositions to Use of Force reviews without initiating the IA investigation process.

SPD should only allow officers back on the street who are trained and act consistently with the current firearms philosophy. If an officer was trained under a different firearms philosophy and overwriting the existing motor program will require extensive training, then SPD should be willing to invest that time to ensure officer actions are within policy. If SPD’s training is deficient, then it must take steps to ensure their training is effective. Alternatively, SPD should also be assessing individual officers’ performance if they are still unable to override their motor program after retraining to determine what additional steps need to occur to help the officer.

Continuing to categorize an intentional pointing of a firearm as a training failure could signal that SPD’s training is broken and raises liability concerns. SPD has been following the “on target, on trigger,” firearms philosophy for at least 10 years.⁷ Further, there is an annual firearms certification. This could be perceived as an admission that SPD has knowledge about a deficiency in performance but did not do enough to eradicate the deficiency. Worse, it could signal that the department lacks due care in properly training its officers. SPD should be cautious and suggest this disposition sparingly. If an officer is continuing to show a lack of training comprehension, especially after multiple sessions of training, SPD should consider alternative methods to ensure training comprehension and policy compliance.

⁷ See 2013 Training Bulletin #4: Direct Pointing of a Firearm at an Individual – Now Considered a Use of Force (May 23, 2013).

RECOMMENDATION R23-12: *THE OPO RECOMMENDS SPD CLEARLY DEFINE THE LIMITS OF A TRAINING FAILURE. WHEN SPD IDENTIFIES A SERIES OF TRAINING FAILURES, THEN IT MUST TAKE THE APPROPRIATE STEPS TO ENSURE IT IS INVESTING THE TIME TO PROPERLY TRAIN ITS OFFICERS. ALTERNATIVELY, IF IT IS THE INDIVIDUAL OFFICER STRUGGLING, SPD MUST IDENTIFY WHAT STEPS ARE REQUIRED TO HELP AN OFFICER UNDERSTAND IMPLEMENT THE TRAINING.*

Supervisor feedback

The OPO has written on a series of cases that involves supervisor feedback, including F22-064 and F23-009. This case involves at least one supervisor with a differing suggested finding based on their review of the facts. SPD Employee B's review focused more on the facts of the case. For instance, Employee A's lack of cover and intentionally pointing their firearm when the subject did not comply with their commands. However, other members in the chain focused on SPD's philosophy of "on target, on trigger." The IAPro file does not appear to address the supervisors with differing opinions from the final determination.

In the OPO's closing report for F23-009, we recommended, "that the use of force review board provide formal feedback to supervisors on departmental guidance when significant differences in critical evaluations occur." Since issuing that report, the OPO has learned of the informal practices SPD uses in sending feedback to supervisors. In the September 2023 UOFRB, the issue of how supervisors receive feedback after chain of command reviews was discussed. The consensus is that IA sends the chain of command the completed file. However, whether first level supervisors are sent the files and whether any training or coaching occurs, was personality driven. It is the department's duty to create the structure and procedures to ensure consistent supervision. A formal feedback system will ensure all supervisors are current on how the department expects supervisors and by extension officers handle future incidents that implicate similar issues.

The core purpose of an accountability system is to find, address, and prevent officer misconduct. A supervisor who either does not understand policy or is unwilling to critically evaluate conduct can be detrimental to a department's long term success. In 2023, the DOJ's findings report on their investigation into the Minneapolis Police Department MPD, found "persistent deficiencies in MPD's accountability systems, training, supervision, and officer wellness programs, which contribute to the violations of the Constitution and federal law."⁸ Accountability needs to be attached to findings as a metric that is tracked. As such, I recommend that SPD emphasize the importance placed upon supervisory determinations.

⁸ https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf

RECOMMENDATION R23-13: *I RECOMMEND THAT SPD CREATE METRICS TO ENSURE THAT SUPERVISORY AND REVIEW BOARD EVALUATIONS AND DETERMINATIONS ARE TRACKED AND EVALUATED PER REVIEWER TO ENSURE SUPERVISORS AND REVIEWERS ARE UPHOLDING POLICY AND HIGH STANDARDS IN THEIR REVIEW OF POLICE CONDUCT.*

Summary of Recommendations

Recommendation R23-12: The OPO recommends SPD clearly define the limits of a training failure. When SPD identifies a series of training failures, then it must take the appropriate steps to ensure it is investing the time to properly train its officers. Alternatively, if it is the individual officer struggling, SPD must identify what steps are required to help an officer understand and implement the training.

Recommendation R23-13: I recommend that SPD create metrics to ensure that supervisory and review board evaluations and determinations are tracked and evaluated per reviewer to ensure supervisors and reviewers are upholding policy and high standards in their review of police conduct.