

**C23-070**

# **OMBUDS CLOSING REPORT**

**POLICY AND PROCEDURES REPORT  
AND RECOMMENDATIONS**



**OFFICE OF THE  
POLICE OMBUDS**  
INDEPENDENT CIVILIAN OVERSIGHT

This report was authored by Bart Logue, Police Ombuds, and co-authored by Luvimae Omana, Deputy Police Ombuds. The Office of the Police Ombuds (OPO) presented this report to the Office of the Police Ombuds Commission on August 27, 2024.

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## Staff Information

### **Bart Logue, Police Ombuds**

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombuds. 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 Ombuds**

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 Ombuds 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 Ombuds 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).

## Mission, Authority, and Purpose

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

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 on 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 Ombuds 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](#).

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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.

## Summary

### Procedural History

This incident was received by Internal Affairs on October 17, 2023. The incident was investigated by IA as a community complaint filed by a non-police city employee. Initially, there was one employee accused of violating the prohibited speech policy. However, as the investigation progressed, additional internal allegations were made against Officer A and four additional employees were accused of improper supervision. The potential policy violations investigated included:

1. SPD Policy 1060.4 – Prohibited speech, expression, and conduct<sup>2</sup>
2. SPD Policy 340.3.5(Z) – False or misleading statements to a supervisor or other person in a position of authority in connection with any investigation or employment-related matter
3. SPD Policy 340.3.9 – Failure of a supervisor to take appropriate action
4. SPD Policy 1020.8.1 – All investigations of personnel complaints shall be considered confidential

The assigned IA investigator interviewed a total of eight individuals. This included the complainant, the accused, witnesses, and others accused who were also witnesses. The physical evidence included: recorded voicemails, photos of Officer A's assigned vehicle, emails confirming vehicle assignments to Officer A, recorded and transcribed interviews, and body worn camera (BWC) footage. The IA investigator wrote a 17-page summary of the incident.

This investigation was certified by the OPO on January 25, 2024. The case was sent to an Administrative Review Panel (ARP) pod on January 29, 2024. The case was then sent to the chain of command for final determination on February 8, 2024. SPD Employee J was the final reviewer and made the final determination on May 8, 2024.<sup>3</sup>

The OPO's summary of facts are based upon a careful review of reports, BWC footage, the IA casefile, the ARP memo, and the chain of command review. This closing report provides an analysis of issues identified through the investigation and review which allow for a policy and procedures report.

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<sup>2</sup> June 1, 2023, is the applicable version of the SPD Policy Manual at the time this investigation occurred.

<sup>3</sup> Under 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

### Complaint

On October 17, 2023, the complainant called Internal Affairs. The complainant identified themselves as a City of Spokane employee and stated they were at the City Fleet facility when they saw a Spokane police vehicle with a “Let’s Go Brandon” sticker on it. The complainant believed this was inappropriate and wanted to make the department aware of it. The complainant described how the sticker was code for “Fuck Joe Biden.” The complainant confronted Officer A about having a political sticker on a department vehicle. Officer A said the sticker was in support of their nephew named Brandon. The complainant was unconvinced by Officer A’s explanation and recalled that the officer seemed proud of the sticker. The complainant provided Internal Affairs with Officer A’s license plate. The allegation generated from the complainant was for prohibited speech.

### Internal Affairs investigation

Internal Affairs identified the vehicle was assigned to Officer A after confirming with the Fleet manager. Internal Affairs contacted the officer’s supervisor, Officer B, to notify them of the investigation into prohibited speech. IA directed Officer B to meet with the officer, take photos of the sticker on the vehicle if it was still present, and immediately remove the sticker after photos were taken. There were several disputed facts that IA investigated:

1. *False or misleading statements*

- a. *Whether the sticker had been on the vehicle for a short or long period of time*

During their interview, Officer A said they had placed the sticker on the back window of their police vehicle and it had been there for a few weeks. The IA investigator reviewed BWC footage to try to determine how long the sticker had been on Officer A’s vehicle. The sticker was first noticeable on August 22, 2023, and Officer B photographed the sticker on October 17, 2023. Officer A did not attempt to remove the sticker in that period.<sup>4</sup> Thus, IA had determined that the sticker had been on their vehicle for a minimum of 56 days. When the IA investigator asked if Officer A thought eight weeks was a “few weeks,” Officer A said it was just a guess since they truly did not know.<sup>5</sup> Officer A went on to say that with the new patrol schedule, they no longer know the day or month, but they were not attempting to minimize the amount of time.<sup>6</sup> The investigator documented that Officer A’s claim that the sticker had been on the vehicle for a “few weeks” did not seem consistent with the condition of the sticker, as the edges were peeled up in the photos Officer B sent IA.<sup>7</sup>

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<sup>4</sup> Interview with Officer A, IA interview #2, transcript at 2, in Spokane, Wash. (January 2, 2024).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> IA investigator, C23-070 IA additional at 3 (October 18, 2023).

*b. Whether the sticker was in support of Officer C's son*

The complainant told IA that Officer A told them the sticker was in support of their nephew named Brandon.<sup>8</sup> However, Officer A said the sticker referred to Officer C's son Brandon. Brandon suffered a significant medical event in high school but was able to recover and is now a collegiate athlete. Officer A said they placed the sticker on the vehicle in support of Officer C's son. When asked, Officer A was not sure how the sticker was obtained. In a follow up interview, Officer A amended their previous statement to say that their son obtained the sticker from the North Idaho Fair sometime in the middle of August 2023.<sup>9</sup> Officer A was inconsistent when asked about the political context of the sticker and maintained it was in support of Officer C's son.

The officers interviewed confirmed Officer A's statement. Officers B, E, F, and G all said that Officer A mentioned the sticker was in support of their friend's son Brandon. However, when Officer E was asked about the political context of the sticker, they said it was self-explanatory. The sticker was derogatory toward President Biden.

In Officer A's follow-up IA interview, the IA investigator asked Officer A what other things they had done to support Officer C's son. Officer A said they mostly reached out to Officer C to check in on their son. Officer A was not aware of any fundraising event that Officer C's family may have done for their son. The IA investigator followed up on the timeline between their medical event and present day and asked why did Officer A choose now to put a sticker on their police vehicle. Officer A said they saw on Facebook that Brandon was now in college and this timing lined up with Officer A's son getting the sticker at the fair. The IA investigator asked Officer A why they did not just put the sticker on their personal vehicle. Officer A said, "I have no idea."<sup>10</sup>

*c. Knowledge of the political nature of the sticker*

Officer A was confronted on separate incidents by the complainant and a community member that they encountered on a call for service. The interaction with the community member was captured on BWC. The community member asked why they had a racist and political sticker on their patrol car.<sup>11</sup> Officer A said it was not a political sticker, that the community member should "get a life and find something better to do," and chuckled as he drove away.<sup>12</sup>

Officer A denied being aware of another meaning for the term, "Let's Go Brandon." However, when asked if they had heard the phrase in a political context, Officer A said it was a derogatory phrase towards the president of the United States.

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<sup>8</sup> Interview with Complainant, IA interview, transcript at 1 (October 18, 2023).

<sup>9</sup> See *supra* note 4 at 2.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Officer A's BWC 2023-20168396 at 4:45 (August 24, 2023).

<sup>12</sup> *Id.*

The IA investigator's BWC footage review found four videos where Officer A discussed the sticker on their police vehicle with others.

- On August 22, 2023 – Officer A told Officer D and E, “I had a lady like my sticker today” and “Let’s go Biden,” to which Officer E responded with a smile.<sup>13</sup>
- On August 24, 2023 – As mentioned above, Officer A interacted with a community member who confronted them about the racist and political nature of the sticker.
- On August 25, 2023 – Officer A told Officer D that “Nadine [Woodward] liked my sticker.”<sup>14</sup>
- August 31, 2023 – Officer A asked Officer F, “you like my sticker on my back window?” and Officer E responded, “nice” and laughed.<sup>15</sup> Officer A then told Officer E that “[Nadine] Woodward and Brian Coddington had seen the sticker...[Officer A] also said that [they] would ‘probably get in trouble for it.’”<sup>16</sup> The investigator pointed out that in their review of Officer A’s BWC, they could hear conservative political talk radio clearly audible in the background inside of the police vehicle.<sup>17</sup> While this is not a policy violation, it “appears significant because it aligns with the generally understood political message of the ‘Let’s Go Brandon’ slogan.”<sup>18</sup>

In the four videos noted by the IA investigator, Officer A did not mention Officer C, their son Brandon, or anything related to recovering from a medical condition to any of the officers.<sup>19</sup> Officer A “appears to be bragging and joking about having the sticker on [their] vehicle. The investigator stated that the tone of [their] comments on BWC appear to be inconsistent with the more noble and benevolent purpose [they] stated in [their] interview.”<sup>20</sup>

In Officer A’s follow-up interview with IA, the IA investigator brought up that in the first interview, Officer A said the sticker was in support of Officer C’s son and that Officer A denied knowing another meaning for the phrase “Let’s Go Brandon,” but then later acknowledged the derogatory meaning toward President Biden. However, compared to the videos identified by IA, it appears the phrase “Let’s Go Brandon” was in a political context rather than in support of Officer C’s son.<sup>21</sup> Officer A did not directly respond to the inference, rather redirected more toward IA investigators and said if they asked a certain follow up question, then Officer A would have answered differently.<sup>22</sup>

<sup>13</sup> Officer A’s BWC 2023-20167081 at 2:43 (August 22, 2023).

<sup>14</sup> Officer A’s BWC 2023-20169274 at 2:43 (August 30, 2023).

<sup>15</sup> Officer A’s BWC 2023-20173539 at 24:50 (August 31, 2023).

<sup>16</sup> *Id.* at 25:20.

<sup>17</sup> *See supra* note 7 at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *See* ARP Memorandum, February 7, 2024, pp.5.

## 2. Supervisor actions after learning about the sticker and/or investigation

IA conducted an additional seven additional interviews after watching BWC footage or after officers self-reported to IA. There were four witnesses and two witness/accused. The following officers with supervisory roles were interviewed:<sup>23</sup>

### Officer B

- Officer B was interviewed as a witness and accused. Officer B was accused of failure to take appropriate action given that other witnesses said Officer B was present when Officer A discussed the open IA investigation and had knowledge of the sticker.
- Officer B became Officer A's supervisor in early September 2023 due to a markup change that shuffles officers' shift and/or supervisor. Officer B was aware of the sticker within the first week of supervising their new team as Officer B saw the sticker on Officer A's car. Officer A told them that the sticker's purpose was to support Officer C's son Brandon after surviving a serious medical event.
- When asked if Officer B thought the sticker on a police vehicle was a policy violation, they responded, "I didn't know in that moment standing there. Our policy manual is huge, and I don't have them all memorized. I've acknowledged reading them at one point, but I don't by any means have them memorized."<sup>24</sup> Officer B said they needed more time to process Officer A's explanation of the sticker.
- Officer B did not further discuss the sticker with Officer A after learning about it and before IA contacted them about opening an investigation.<sup>25</sup>
- Officer B did not tell Officer A to remove the sticker.<sup>26</sup>
- Officer B did not have any clear recollection of Officer A's discussion of the ongoing IA investigation in roll call but recalled someone asking Officer A about it.<sup>27</sup>
- Officer B said they had a vague understanding of the phrase, "Let's Go Brandon," they did not know the origin, they've never followed it, and they don't get into people's politics.<sup>28</sup>
- At the end of Officer B's IA interview, they wanted to state on the record, "The only thing I would like to put on is, when I left the call after seeing the sticker a funny thing happened and more calls came in and more calls came in from victims with real problems, real injuries, real stuff and I don't remember giving that sticker another thought until I got a call from [IA]."<sup>29</sup>

<sup>23</sup> There was one other officer interviewed but was not in a supervisory role.

<sup>24</sup> See *supra* note 7 at 8; Interview with Officer B, IA interview, transcript at 3, in Spokane, Wash. (November 14, 2023).

<sup>25</sup> Officer B interview at 3.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 4-5.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 6.

*Officer E*

- Officer E was interviewed as a witness and an accused for failure to take appropriate action after they were seen smiling in response to Officer A discussing the sticker with them.
- Officer E was aware of the meaning of the sticker and that it was on Officer A's police vehicle.<sup>30</sup>
- Officer A never mentioned to Officer E that the sticker was in support of Officer C's son Brandon.<sup>31</sup>
- By August 22, 2023, Officer E already knew Officer A had placed the sticker on their police vehicle but did not take any action. "Like I said, I already knew it was there and when he made that comment I'd been reminded of the sticker and I remember thinking we need to have a conversation. Obviously, you know, and I failed to do that, but it's obviously a political statement. When [they] first told me I had some contemplation about, you know [they are] in a[n] [undercover] vehicle. [They are] still doing [specialized] enforcement and...you know, over thinking it, but I remember at that time reminding myself we need to have a conversation."<sup>32</sup>
- Officer E thought the sticker violated SPD policy.<sup>33</sup>

*Officer F*

- Officer F was interviewed as a witness after they were seen on BWC discussing the sticker with Officer A. Officer A brought up their sticker at least twice to Officer F. Officer A asked Officer F if [they] liked the sticker, Officer F responded, "nice."<sup>34</sup> Officer F said they tried to mostly 'blow off' Officer A when they brought up the sticker and just not focus on it.<sup>35</sup> Officer F said that Officer A had brought up the sticker once or twice before August 31<sup>st</sup>.
- Officer F said these conversations occurred one-on-one, they did not recall anyone else being present.<sup>36</sup>
- Officer F said Officer A mentioned supporting their "friend's son," but didn't know it was Officer C's son until there was an IA investigation.<sup>37</sup> In Officer A's follow-up IA interview, they said they never spoke to Officer F about Officer C's son.<sup>38</sup>
- Officer F did not remember Officer A making political comments.
- Officer F ignored the sticker. They said they've seen several people put stickers on undercover cars in the past to make the cars look more real and "less of a cop car."<sup>39</sup>

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<sup>30</sup> Interview with Officer E, IA interview, transcript at 2-3, in Spokane, Wash. (November 2, 2023).

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.*

<sup>34</sup> *See supra* note 7 at 15.

<sup>35</sup> Interview with Officer F, IA interview, transcript at 3, in Spokane, Wash. (November 7, 2023).

<sup>36</sup> *See supra* note 7 at 7.

<sup>37</sup> *See supra* note 35 at 3-4.

<sup>38</sup> *See supra* note 4 at 5.

<sup>39</sup> *See supra* note 35 at 4.

- Officer F said Officer A mentioned their sticker to supervisors who work downtown. Officer F also stated that Officer G had been aware of the sticker.<sup>40</sup>

#### *Officer G*

- Officer G wrote an IA Additional “to provide context to a current internal investigation reference an allegation against [Officer A] [where their name was brought up as having knowledge of the sticker]. I am currently a sergeant in SPD’s Internal Affairs office and have been for about 1 ½ years.”<sup>41</sup>
- Officer G ran into Officer A at the Spokane City Fleet fuel station. While the officers were re-fueling their vehicles, one of them mentioned the “Let’s Go Brandon” sticker on Officer A’s unmarked vehicle’s rear window.<sup>42</sup>
- Officer A told Officer G that the sticker had to do with Officer C’s son. Officer G did not recall the extent of the conversation or the details other than the generality of what was said.<sup>43</sup>
- When IA received the complaint around October 18, 2023, Officer G mentioned they remembered seeing that sticker back at the fuel station.<sup>44</sup>
- Officer G was aware of the derogatory meaning of “Let’s Go Brandon” toward President Biden but did not give it much thought at the time. The unit that Officer A was assigned to has historically driven less conspicuous vehicles to blend in with traffic. Officer G recalled Officer A previously had a “Cabela’s” sticker on their police vehicle.<sup>45</sup> Officer A confirmed putting other stickers on other city vehicles to make the vehicle less conspicuous.<sup>46</sup>
- Officer G said they should have mentioned to Officer A at the time that such a sticker will likely cause an inflammatory response with some people and that Officer A should remove the sticker. At the very least, Officer G said they should have notified Officer A’s immediate supervisor to address the issue with them.<sup>47</sup>

#### *Officer H*

- Officer H was interviewed as a witness after they contacted IA about this investigation. They “kind of heard rumbling about an investigation involving a sticker on a police car and thought I might have some pertinent information, so all the information came out.”<sup>48</sup>
- Officer H became aware of the sticker when they pulled up and parked behind Officer A’s vehicle and noticed the sticker.<sup>49</sup>

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<sup>40</sup> See *supra* note 35 at 4.

<sup>41</sup> Officer G, C23-070 IA additional at 1 (November 7, 2023).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *supra* note 4 at 11.

<sup>47</sup> *Id.*

<sup>48</sup> Interview with Officer H, IA interview, transcript at 1, in Spokane, Wash. (November 28, 2023).

<sup>49</sup> *Id.* at 2.

- Officer H contacted Officer A’s supervisor at the time, Officer I, to report what they had observed and asked Officer I to deal with the issue.<sup>50</sup>
- Officer H did not document their contact with Officer I at the time.<sup>51</sup>
- Officer H did not hear Officer A discuss the active IA investigation.<sup>52</sup>
- Officer H was asked to expand their statement that they heard “rumbling.” They explained they saw Officer B at the downtown precinct. Officer B said they were having a rough day because “I got caught up in sticker-gate.”<sup>53</sup>
- Officer H asked if “sticker-gate” had anything to do with Officer A and Officer B responded in the affirmative.<sup>54</sup>
- After the incident was discussed, Officer H did not see the vehicle again or what happened with the sticker.<sup>55</sup>

### *Officer I*

- Officer I was interviewed as a witness after they contacted IA about this investigation.
- Officer I was Officer A’s direct supervisor for first part of the timeline referenced in this investigation.
- Officer H approached Officer I at the downtown precinct. Officer H asked if Officer I saw the sticker on Officer A’s car that might have some political meaning and mentioned that Officer I might want to talk to Officer A about it.<sup>56</sup>
- Officer I took action as Officer A’s supervisor and documented it in their log. On August 25, 2023, Officer I and A were on the same call and Officer I had a conversation with Officer A.
- Officer I said Officer A’s sticker was brought to their attention and explained that it could be seen as political speech and discussed the consequences of what the sticker could mean.<sup>57</sup> Officer A claimed in their interview that they do not recall being provided reasons why they should take off the sticker.<sup>58</sup>
- Officer A then made a comment that Officer I found “weird.” Officer A told Officer I that the mayor thought [the sticker] was funny and that she saw it, which was significant.<sup>59</sup>
- Officer I told Officer A, “People might think you are targeting a particular political party, it’s on a city vehicle, and it shouldn’t be here.”<sup>60</sup> Officer A responded that it was a tribute to Officer C’s son.

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<sup>50</sup> *Id.* at 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 4.

<sup>56</sup> Interview with Officer I, IA interview, transcript at 3, in Spokane, Wash. (December 13, 2023).

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *See supra* note 4 at 8.

<sup>59</sup> *See supra* note 56 at 3.

<sup>60</sup> *Id.* at 4.

- At the end of the conversation, Officer A told Officer I, “Well it’s falling off, it’s peeling off anyway and I’ll take care of it.”<sup>61</sup> This left Officer I with the impression that Officer A understood what they meant and they were done with the issue.
- Officer I did not directly order Officer A to remove the sticker.<sup>62</sup> In Officer A’s follow-up IA interview, they said Officer I spoke to them about the sticker but never told them to take it off.<sup>63</sup>
- Officer I did not see if Officer A took off the sticker because Officer A had a different supervisor after markup.
- Officer I believed it would be a policy violation to put any kind of marking or decal to change the vehicle in any way.<sup>64</sup>

In Officer A’s follow-up IA interview, the Guild Representative asked if Officers B, E, or G asked Officer A to remove the sticker from the police vehicle. Officer A said no to each.<sup>65</sup>

### 3. *Discussing ongoing Internal Affairs investigations*

Officer D said Officer A mentioned the sticker in support of Officer C’s son, Brandon, after the IA investigation began. Officer D said Officer A “was explaining to [their] patrol team what happened in [their] [first] IA interview.”<sup>66</sup> Officer D added that Officer A’s tone was that of frustration or anger.<sup>67</sup> Officer A’s supervisor, Officer B, was present for this conversation. As mentioned above, Officer B recalled this conversation but does not recall details.

Officer D also admitted to discussing their upcoming IA interview on this case with Officer A and another officer at In-Service training. Officer D had not read the attachments and did not realize they were not permitted to speak about the IA case. Officer D apologized for discussing the case and explained they had never been to IA before.

Officers H and I did not receive any direct communication about this investigation since they were not initially implicated in this investigation. However, they self-reported to IA after Officer H had heard from Officer B that there was an active investigation.

In Officer A’s follow-up IA interview, Officer A admitted to talking to members of their patrol team about the internal investigation.<sup>68</sup> For the first interview, Officer A told Officer B they had to go to IA for an interview so they would be aware of Officer A’s whereabouts. The next day at roll call, Officer A said Officer B asked ‘how it went’ and Officer A responded that ‘dinner went

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See supra* note 4 at 8.

<sup>64</sup> *See supra* note 56 at 4.

<sup>65</sup> *See supra* note 4 at 10.

<sup>66</sup> *See supra* note 7 at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *See supra* note 4 at 6.



great' in an attempt to deflect but felt obligated to provide a response.<sup>69</sup> Officer A proceeded to discuss the IA interview in front of the whole team.<sup>70</sup> Officer A said they were caught so off guard that Officer B would ask the question that their response came out before they could determine if it was an appropriate time or place to discuss the matter.<sup>71</sup>

### ARP

The ARP's recommended findings include:

1. Officer A: Prohibited speech – sustained
2. Officer A: False or misleading statements – sustained
3. Officer A: All investigations of personnel complaints shall be considered confidential – not sustained
4. Officer B: Failure of a supervisor to take appropriate action – sustained
5. Officer E: Failure of a supervisor to take appropriate action – sustained
6. Officer G: Failure of a supervisor to take appropriate action – sustained
7. Officer I: Failure of a supervisor to take appropriate action – sustained

The ARP analysis relied on the following:

1. There are SPD policies (a) prohibiting speech on official duty that tends to compromise or damage the mission, reputation, or professionalism of SPD or its employees and (b) prohibiting employees from endorsements and advertisements with the exceptions of acting as a private citizen or representative for a recognized bargaining unit. Clearly established policy provides that political statements, such as placing a political sticker on a police vehicle, are a violation of policy.<sup>72</sup>
2. The "Let's Go Brandon" phrase is widely publicized and commonly known in our society. "Let's Go Brandon" is code for "Fuck Joe Biden." Regardless of the statements provided by Officer A in support of Officer C's son, the statement is a well-known political statement. It goes further than being a well-known statement. It is derogatory toward the president of the United States and is obviously offensive to a significant percentage of the population. The sticker is clearly a political sticker that damages the reputation of SPD. The ARP added, "regardless of policy, it is common sense that there is no justification for placing such a sticker or phrase on a city owned vehicle."<sup>73</sup>
3. The sticker was obviously inappropriate and should have been recognized by any supervisor as a violation of department policy. At a minimum, any supervisor should have recognized that a sticker with that kind of political messaging would be harmful to SPD's reputation. "Not all of the supervisory failures were equal in nature, but they were failures nonetheless."<sup>74</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See *supra* note 22 at 6.

<sup>73</sup> *Id.*

<sup>74</sup> See *supra* note 22 at 6.

- a. The ARP determined that only Officer H took appropriate action upon discovering Officer A's sticker. Officer H notified the immediate supervisor and said the situation had to be addressed.
  - b. The ARP did not accept Officer B's reasons for not knowing the sticker was a policy violation. Ignorance of policy is not justification for the failures in this case. "Common sense dictates there is no justification for the sticker being displayed on the vehicle."<sup>75</sup> Officer B's failure to address the situation was significant.
  - c. Officer E's failure to act is more significant since they are a senior supervisor in Officer A's chain of command.
  - d. Officer G should have notified their supervisor in IA or Officer A's chain of command. Officer G did neither and took no specific action.
  - e. While Officer I did have a conversation with Officer A, they stopped short of ordering the sticker be removed and did not follow up.
4. The ARP could not determine with certainty whether Officer A placed the sticker on their vehicle as a political statement or in support of Officer C's son. However, the conversations captured on BWC clearly established that the political meaning of the phrase was known, understood, and associated with placing the sticker on the police vehicle. When Officer A was asked about this in the follow-up interview, Officer A blamed IA for their line of questioning in the first interview.
    - a. The ARP does not agree with Officer A's assertion that it was IA's questions that caused the false or misleading statements. The ARP determined that Officer A's response to other political meanings, "Not to me, it doesn't" is a false statement.<sup>76</sup>
    - b. However, the ARP found that, Officer A's response that the sticker had been on their vehicle for a "few weeks" was not a false or misleading statement since Officer A said this was a guess. The ARP said there was not enough evidence to establish Officer A's statements as false.
  5. The ARP relied on the language in the notice provided to officers prior to an IA interview, "you shall not discuss the allegations or investigation with anyone except your union representative(s), attorney, or supervisor." The ARP found that the IA investigation did not determine exactly what was discussed between Officers A, B, and their team. The ARP felt that the facts did not meet the clear and convincing standard.

## Policy Recommendations

### Recommendations to Policy and/or Training

#### Duty to intervene

Applicable policies:

#### **SPD Policy 301.9 Duty to Intervene and Report**

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<sup>75</sup> *Id.* at 7.

<sup>76</sup> *Id.*

When officers witness violations of the law and/or department policies, regardless of their rank, they are required to intervene according to the following guidelines:

1. Any on-duty Spokane Police Officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.
2. Any on-duty Spokane Police Officer who witnesses any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing to the witnessing officer's supervisor or, in the absence of their supervisor, any other available supervisor, and that notification shall follow through the chain of command to the Office of the Chief of Police.
3. Officers shall not be disciplined or retaliated in any way for intervening in good faith or for reporting wrongdoing in good faith as required by this section.
4. The Spokane Police Department, in compliance with state law, shall send notice to the criminal justice training commission of any disciplinary decision resulting from an officer's failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105. This notification shall occur within 15 days of any disciplinary decision.
5. For purposes of this section:
  - a. "Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency.
  - b. "Peace officer" refers to any general authority Washington peace officer.
  - c. "Wrongdoing" means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature.

#### **SPD Policy 340.3.9 Supervision Responsibility**

The following actions are misconduct:

- A. Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws.

- B. Failure of a supervisor to appropriately report known misconduct of an employee to his/her immediate supervisor or to document such misconduct as required by policy.
- C. The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose.

The investigation addressed the actions of the officers in supervisory positions who knew of Officer A's sticker with SPD Policy 340.3.9 Supervision Responsibility and not SPD Policy 301.9 Duty to Intervene and Report. While these may seem similar or interchangeable, they are not. The supervisor responsibility policy addresses supervisory issues only. Contrasted with the duty to intervene policy, the latter requires officers who witness policy violations, regardless of rank, to intervene. If an officer has a good faith reasonable belief that another officer committed wrongdoing, they shall report such wrongdoing to the witnessing officer's supervisor or any supervisor. Under state law, the duty to intervene policy also has a reporting requirement to the Washington State Criminal Justice Training Commission that the supervisory policy does not.

While it is important that supervisors are able to have hard conversations with their officers, that responsibility is not solely placed on supervisors. SPD's policy mirrors RCW 10.93.190, the peace officers duty to intervene statute, which requires all peace officers intervene and report policy violations.

Duty to intervene is a topic that the OPO has previously written about several times in Policy and Procedures Report and Recommendations.<sup>77</sup> First, in R21-01, the OPO recommended SPD implement a duty to intervene policy before the legislature required it. Then, in P22-011, the OPO commended a supervisor's identification of a duty to intervene and how important it is to prevent policy violations.

Additionally, as this case highlights, a duty to intervene is always applicable. In AR22-04, the duty to intervene was implicated in relation to a pursuit. However, SPD houses the duty to intervene inside the Use of Force Policy. This can mislead others into thinking the duty to intervene only arises in use of force cases.

**Recommendation 24-1: SPD should move the duty to intervene out of the use of force policy to remove confusion on its application and make it a standalone policy.**

### Conflict of interest

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<sup>77</sup> See <https://my.spokanecity.org/opo/recommendations/2021/>; <https://static.spokanecity.org/documents/opo/documents-reports/closing-reports/2023/p22-011-closing-report-final.pdf>. (last visited on August 5, 2024).

Applicable standard:

**Standard 4.8: Members of the Spokane Police Department shall not engage in any activity which would create a conflict of interest or would be in violation of any law.**

Officer D named supervisors that had knowledge of the sticker including Officer G, who was also an IA investigator who participated in interviews of this case. Officer F also named Officer G as a supervisor who had knowledge of the sticker.<sup>78</sup>

Officer G was not the assigned IA investigator of this case but participated in officer interviews. Officer D was interviewed on November 7, 2023 and Officer G wrote their statement on the same date. It can be inferred that Officer G wrote the statement after Officer D's interview since they reference Officer F's interview. It was only when Officer D named Officer G as a supervisor with knowledge of the sticker that Officer F disclosed their knowledge of the sticker and conversation with Officer A surrounding it.

IA did not interview Officer G as an accused. Officer G's statement that they "mentioned" they knew about the sticker was not interrogated. It is unclear whether the statement was made in a timely fashion, to who, whether it was heard, or what the response was following the statement, if any.

IA screens out conflict of interests on cases through an investigative sergeant intake checklist called an "IA Intake Form." These forms are attached to some of their case files. This form provides the investigator with cursory items to "check off" before investigating. One of the items asks the investigator to confirm they have no conflicting relationships involved with the officer or the complainant. The form has more specific boxes to check:

- I have no familial relationships with involved or officer
- I have no legal obligations to involved or officer
- I have no financial obligation to involved or officer
- If yes to any of the above, refer to the IA Lieutenant for reassignment

Here, there was no IA Intake Form attached to the case. The IA Standard Operating Procedures is silent on the IA Intake Form.<sup>79</sup> Setting aside the officer's duty to report a conflict, if the assigned investigator filled out an IA Intake Form, the conflict still would not have been caught for two reasons. First, the checklist only inquires about familial relationships, legal, or financial obligations. The checklist does not inquire if the investigator has knowledge of material information that would cause a conflict of interest. Second, since members of IA who are not the assigned investigator participate in interviews, they should also be required to fill out a conflict-of-interest statement or form. It is critical that IA investigations are credible. Having an

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<sup>78</sup> See *supra* note 7 at 8.

<sup>79</sup> Version updated October 2023.

investigator actively participating in interviews with a conflict of interest can cast doubt on the investigation.

**Recommendation 24-2:** The OPO recommends IA investigators include the IA Checklist in every case and require other members of IA to fill out a conflict-of-interest form if they participate in any interviews.

**Recommendation 24-3:** The OPO recommends IA update its Standard Operating Procedures and Conflict of Interest Form to include whether an assigned investigator has knowledge or material information that would cause a conflict of interest.

### Confidentiality of personnel files

Applicable policies:

#### **SPD Policy 1020.8.1 Confidentiality of Personnel Files**

All investigations of personnel complaints shall be considered confidential peace officer personnel files (Policy Manual § 1026). The contents of such files shall not be revealed other than as required by law, to the involved employee or authorized personnel, or pursuant to lawful process (RCW 42.56 et seq.; RCW 70.02).

The ARP's suggested finding on the allegation related to keeping all investigations of personnel files confidential relied on "Spokane Police Department – Internal Investigation: Rights/Responsibilities for Administrative Interviews" form (R&R form) that IA provides to all interviewees. Item #8 in the R&R form says:<sup>80</sup>

***This investigation and interview is confidential pursuant to the Spokane Police Department Complaint Procedure Policy 1020. In order to ensure that the integrity of the investigation is preserved and that all department rules and regulations are understood and followed, you shall not discuss the allegations or investigation with anyone except your union representative(s), attorney, or supervisor. You may not allow anyone else to gain access to that information without the expressed authorization of the Chief or his/her designee. Additionally, if you are the accused employee, you may only disclose to others that you are the subject of an investigation*** (emphasis added).

<sup>80</sup> Officer A's R&R form for IA interview 1 (October 25, 2023).

The ARP reasoned that the investigation “was unable to determine exactly what was discussed and if it can be definitively determined to be a policy violation.”<sup>81</sup> The ARP focused its analysis on how vague the details were of what was discussed. However, item #8 is clear that the accused can only disclose that they are the subject of an investigation. Additionally, SPD policy does not distinguish between what is and is not shared. SPD policy is broad and unambiguous, “all investigations of personnel complaints shall be considered confidential” (emphasis added).

**Recommendation 24-4: There appears to be a discrepancy between the ARP’s interpretation of what it means to keep personnel investigations confidential due to what item 8 in the R&R form says. IA should update the form to remove the conflicting statements so that the form complies with SPD Policy 1020.8.1’s confidentiality requirements.**

SPD has highlighted supervisory responsibilities as part of supervisor training in July 2024, in which the OPO had the opportunity to attend. The OPO commends the SPD for its timely, frank, and pertinent training using this case as a point of reference. Analyzing and learning from any noted discrepancies is helpful for both the individual officers and the agency.

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<sup>81</sup> See *supra* note 22 at 7.

## Summary of Recommendations

1. **Recommendation 24-1:** SPD should move the duty to intervene out of the use of force policy to remove confusion on its application and make it a standalone policy.
2. **Recommendation 24-2:** The OPO recommends IA investigators include the IA Checklist in every case and require other members of IA to fill out a conflict-of-interest form if they participate in any interviews.
3. **Recommendation 24-3:** The OPO recommends IA update its Standard Operating Procedures and Conflict of Interest Form to include whether an assigned investigator has knowledge or material information that would cause a conflict of interest.
4. **Recommendation 24-4:** There appears to be a discrepancy between the ARP's interpretation of what it means to keep personnel investigations confidential due to what item 8 in the R&R form says. IA should update the form to remove the conflicting statements so that the form complies with SPD Policy 1020.8.1's confidentiality requirements.