

**F23-054**

# **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 December 3, 2024.

## CONTACT US:

**Online:**

[my.spokanecity.org/opo/forms/online](https://my.spokanecity.org/opo/forms/online)

**By phone:**

509-625-6742

**In writing:**

Office of the Police  
Ombuds  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Email:**

[opo@spokanecity.org](mailto:opo@spokanecity.org)

**Fax:**

509-625-6748

**At our office:**

1st Floor, City Hall  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Hours:**

M-F, 8:00 AM – 4:30 PM

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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 joined the Office of the Police Ombuds in 2015 and has served as an Assistant to the Ombuds, Administrative Analyst, and Deputy Police Ombuds. She 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 Office of the Police Ombuds 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 (2023-2026).

## 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 2023-2026 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) 7.07.070 and are considered confidential. 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 occurred on September 21, 2023. The incident was reviewed by SPD as a use of force. Following the use of force, the subject had scrapes on their legs, road rash on their face, complained of right hip/thigh pain, knee pain, lower back pain, and head pain. The subject also required hospitalization for preexisting injuries. Officer F was the final reviewer and made the final determination on December 19, 2023. The case was reviewed by the Use of Force Review Board on March 12, 2024.<sup>2</sup>

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.

### OPO Summary of Facts

#### Incident

At around 7:30pm, Officer A responded to an apartment complex for a possible assault.<sup>3</sup> Dispatch reported that a group of people were beating an individual on crutches. Dispatch provided an update that one of the involved individuals left on a bike with items in their hand. As Officer A was enroute to the call, they observed the subject riding a bike with crutches. Officer A concluded that the subject was an involved party to the call but was unsure if they were the suspect or the victim. The officer turned their patrol vehicle around and attempted a "bike stop" on the subject. This involved turning on emergency lights behind the subject. Officer A reported that the subject looked back at them but did not stop. When the BWC video starts, the emergency lights are seen bouncing off the structures Officer A is driving by. The subject can be seen alongside the police vehicle. At this point in the video, there is still no audio. Officer A reported that they got alongside the subject and cracked their driver's side door open, identified themselves as police, and ordered the subject to stop. Officer A did not lower the window; rather, opened the driver's side door while the vehicle was still moving. The subject replied that they didn't do anything wrong and continued to ride away.

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<sup>2</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.

<sup>3</sup> Note: the initial part of the incident is based only on Officer A's report or what can be visually seen on camera since they activated their BWC part of the way through the incident. The first 30 seconds of the BWC is in buffer mode and there is video but no audio. The audio begins as Officer A was tackling the subject to the ground.



The subject approached a construction area that was taped off, had cones, and large concrete roadblock barricades. Officer A opened their car door as they approached, came to a stop, and then pursued the subject very briefly on foot. The subject stopped and was off the bike's seat when they reached the narrow gap between the barricades. The subject lifted the tape to get under it. At that point, Officer A caught up to the subject and tackled them to the ground.

Officer A said they took the subject to the ground to prevent them from continuing to flee from the officer and from the scene of a possible assault. Officer A described the takedown as, "grabbing ahold of [their] upper body with both arms and used my legs to drive our momentum forward and get [the subject] to the ground."<sup>4</sup>

Since the officer was very close to the subject, the takedown tactic was not clearly observed on BWC. When the officer and the subject separate, the subject is on their right side on the ground with the bike and crutches entangled with their legs and the officer is on top of them. The officer tries to get control of the subject's hands to handcuff the subject but is delayed by the subject's legs being entangled with the bike and with the backpack the subject carrying still on their back.

The BWC audio starts at the 1:00 mark. Officer A was giving the subject directions on where to keep their hands and the subject was complaining they could not breathe. Officer A's left knee can be seen on the subject's right buttock/hip area. The subject cried out in pain several times but the sirens in the background distorted what they said. It sounds like the subject complained about their knee and their shoulder. Officer A placed the subject in handcuffs and detained them for obstructing. Officer A then gave commands to the subject to move their leg to get untangled from the bike but when the subject grimaced in pain, Officer A began to try and untangle the subject. Officer A rolled the subject to their side and tried to identify what specific areas on the subject hurt.

The subject said they ran because they had a "stupid" warrant from a year ago for "sleeping in a house."<sup>5</sup> The subject was still in great pain unable to sit up straight, they groaned and complained of pain in their leg and back. They were compliant when they answered the officers' questions about their warrant and their identity. Officer A ran the subject's name through dispatch and asked for paramedics to evaluate the subject. Officer A read the subject their rights and the subject was willing to answer questions but was more concerned with the placement of their foot. They asked Officer A for assistance and Officer A complied. Officer A asked why the subject did not stop and the subject responded it was because they had a warrant and they were scheduled for an operation and did not want a charge to interfere with their operation.<sup>6</sup> Officer A then says, "Don't you think it would've been a little more peaceful if, uh, you would've just stopped for me? Because then once we got here, you decided to try and go that way underneath and continue that way. I would've ran your ass down and tackled you." The subject responded,

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<sup>4</sup> Officer A Field Case Report, case 2023-20189122 at 2 (September 21, 2023).

<sup>5</sup> Officer A's BWC at 4:50.

<sup>6</sup> *Id.* at 7:09.

“Oh my god, I know. You did,” and the officer continued, “Well it would’ve been worse because we would’ve slid for probably ten feet.”<sup>7</sup> Officer A then asked about what happened at the apartment complex. The subject said there was another individual who thinks the subject stole from them two years ago and they have an ex-partner in common and they were taking it out on the subject. The subject said they showed up to the apartment and the other individual was all over them and the subject could not get away. Several people tried to intervene and told the individual to leave the subject alone. When they finally did, the subject got on their bike and left the apartment. Officer A told the subject the call they were responding to and the subject confirmed they were the one getting beat up.

When the paramedics showed up, the subject said they were 1.5 years overdue for hip surgery. The subject was seeing a doctor but had missed too many appointments so the doctor released them from their care. A paramedic asked the subject if they wanted to go to the hospital and the subject quickly agreed. At the 10:40 mark, someone in the background can be heard asking the subject if they want to be the victim of an assault. The subject responded they just wanted to get away from the individual that assaulted them. Officer A then told the subject they were detained for their warrant and are under arrest for obstructing.<sup>8</sup> As the paramedics prepared to place the subject on a stretcher, Officer A told the subject they were under arrest for obstructing and “stat one burglary.”<sup>9</sup> The subject complained their head hurt from hitting the concrete, and they were also experiencing right leg pain and hip pain. The paramedics took the subject to the hospital and the officer followed.

Officer A contacted Officer C due to the subject’s injuries and complaint of pain due to the takedown. After an evaluation, a doctor informed Officer A that the subject had a fracture below the femur head but it was still considered a hip fracture. The doctor was not aware of any other injuries. The subject was admitted to the hospital since the fracture would need surgery.

The subject was cited and released for obstructing. Officer A’s BWC was activated late. They said it was because the subject ran from them and they activated the camera as soon as they saw it was not recording.<sup>10</sup>

#### Supervisor review

Officer C noted the following in arriving at their suggested finding of “In Compliance with Policy:”

- Officer A initially failed to activate their BWC. Their camera was in buffer mode when the use of force occurs. You could see what occurs upon contact but there is no audio for the first 60 seconds of the video.

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<sup>7</sup> *Id.* at 7:44.

<sup>8</sup> *Id.* at 11:00.

<sup>9</sup> *Id.* at 13:20.

<sup>10</sup> *See supra* note 3 at 4.

- The footage does not clearly show the use of force when the subject fell on the bicycle. When the footage clears up, the subject is seen on their right side and Officer A is attempting to control hands.
- Officer A activated their camera approximately 34 seconds after they stopped and exited their vehicle.
- Officer A appears to be calm and collected while placing the subject into handcuffs.
- The subject's complaint of pain is audible on the BWC footage.
- Officer A made a lawful investigative stop on an individual they believed was involved in the call for an assault. The subject failed to stop for Officer A. Officer A used a body weight takedown technique to apprehend the actively fleeing subject.

Officer D noted the following in arriving at their suggested finding of "In Compliance with Policy:"

- This use of force comprised of the body weight manual force of taking a fleeing subject to the ground for the purpose of handcuffing them.<sup>11</sup>
- "Absent any claimed injury or other extenuating circumstance, this level of force would not typically be considered a reviewable use of force."<sup>12</sup> The subject reported a preexisting injury that was aggravated with the force technique.
- It is difficult to see exactly how Officer A applied the takedown technique but what is seen on BWC is not inconsistent with Officer A's description of events.
- Officer A's decision to detain the subject was reasonable since it was very likely they were involved in the assault, particularly because they were carrying crutches.
- It could have been surmised that the subject had crutches because they were the victim or they recently stole the crutches from the victim in the assault.
- The amount of force was reasonable under the circumstances.
- "The level of force was minimal, and absent the aggravation of the pre-existing injury, would not have even required a COC review."<sup>13</sup>

Officer E noted the following in arriving at their suggested finding of "In Compliance with Policy:"

- Officer A was still attempting to investigate the assault call but now developed probable cause for arrest for obstructing because the subject refused to comply with Officer A's lawful directives.
- It was discovered that the subject had an outstanding felony warrant for their arrest.
- The subject admitted to not complying with Officer A's commands because they had an outstanding warrant.
- The subject suffered very minor scrapes on their elbow and both knees.
- The subject admitted that they needed hip replacement surgery for several years.
- In a subsequent interview with Officer C, the subject said Officer A "didn't do anything wrong."
- The hip injury was a pre-existing condition.

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<sup>11</sup> Officer D IA Additional, case 2023-20189122 (September 21, 2023).

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

<sup>13</sup> *Id.*

- Officer A attempted numerous times to get the subject to stop and comply but the subject refused. Even after Officer A removed the subject from the bike, they continued to struggle against Officer A's attempts to place them in handcuffs.
- Officer A's actions were appropriate considering the incident being investigated.
- Officer A acted appropriately and spoke to the subject in a professional manner.

Officer F noted the following in arriving at their decision:

- This is a use of force incident because the subject complained of injury.

## Recommendations

### Recommendations to Policy and/or Training

#### Audio recorded in buffer mode on

Officer A initially failed to activate their BWC. Their camera was in buffer mode when the use of force occurs. You could see what occurs upon contact but there is no audio for the first 60 seconds of the video. Axon has confirmed it is a setting feature to turn audio during audio during buffer mode that already exists in SPD's systems.

**Recommendation 24-13: SPD should turn on audio during buffer mode of body worn camera recordings.**

#### Asking victims if they want to be a victim

The Use of Force Review Board previously discussed a training point that officers should not be asking victims if they want to be victims since the law does not provide discretion on whether officers should charge an aggressor with assault.<sup>14</sup> Here, someone in the background of Officer A's BWC video, presumably Officer B, asked the subject if they wanted to be a victim and the subject declined. This issue was not discussed any further on video and it is not discussed in Officer A's report.

**Recommendation 24-14: SPD should train officers to determine whether to charge an individual purely based on whether the elements of the law are met. The victim's wishes should not be a determining factor.**

<sup>14</sup> See generally [Wash. Rev. Code §9A.36](#).

### Eggshell skull rule

Washington State follows the eggshell skull rule. The eggshell skull rule is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional tort.<sup>15</sup> In *Forbes v. ABM Industries, Inc.*, "the court observed that '{i}n a statutory tort case as in a common law case, the 'eggshell skull' rule prevails, so it is not a defense to an award of full damages that the plaintiff's injury was amplified by a preexisting condition for which the defendant was not responsible." 127 Wash.App. 1003 at 7 (2005)(quoting *Avita v. Metropolitan Club of Chicago Incorporated*, 49 F.3d 1219, 1228 (7<sup>th</sup> Cir.1995)). A common example of this doctrine is that a person's skull was very thin due to the person's own health condition, if the person gets into an accident, the other person who caused the accident will be liable for actual damages, although the average person would not suffer the same serious injuries in the same accident as the person with the thin skull.<sup>16</sup>

Since Washington requires you to take someone as they are, SPD may be found liable for additional injuries caused in applying a use of force technique. There was an emphasis both on scene and in the review of this case that the subject already had a preexisting injury with some reviewers making the point that this would not even be a use of force unless the subject complained of injury. Had they not complained of injury, this would have not been captured as a use of force when the subject needed major surgery, potentially in part, due to the physical force used by the officer.

**Recommendation 24-15: SPD should include aggravation of pre-existing injuries as a type of reviewable force to have as much documentation of the incident in the event the subject decides to pursue litigation.**

### Hypothetical danger

At the review board, a question was asked if there were any other steps the officer could have taken prior to using force. One member stated that we could have used lethal force citing personal experiences. Several members of the board also justified the action citing examples they experienced where the situation was worse than this case and cited hypothetical dangerous scenarios. One member even stated, up to lethal force can be de-escalation.

In the Department of Justice's investigation on the City of Phoenix and Phoenix Police Department (Phoenix), they had reasonable cause to believe that Phoenix PD engaged in excessive force, including deadly force. Officers used unreasonable force to dominate encounters within the first

<sup>15</sup> [https://www.law.cornell.edu/wex/eggshell\\_skull\\_rule#:~:text=Primary%20tabs,wex%20definitions](https://www.law.cornell.edu/wex/eggshell_skull_rule#:~:text=Primary%20tabs,wex%20definitions)

<sup>16</sup> *Id.*

few seconds and failed to employ strategies that avoid force.<sup>17</sup> They found that Phoenix's training has encouraged officers to use force when it is not lawful to do so, and to use serious force to respond to hypothetical, not actual danger.<sup>18</sup> This puts officers and others at risk and result in constitutional violations.

Here, the Use of Force Review Board relied on hypothetical scenarios when discussing whether the officer could have conducted some investigation. An officer's training and experience is critical in decision making; however, relying on hypothetical situations is a slippery slope in force analysis.

**Recommendation 24-16: Review board members should receive specific guidance on force analysis and review board expectations. Greater emphasis should be placed on alternatives to force and de-escalation. The review boards should also provide an analysis of the supervisory review; and provide recommendations when supervisory reviews fall short.**

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<sup>17</sup> U.S. Dep't. of Justice, Civil Rights Division, Investigation of the City of Phoenix and the Phoenix Police Department (2024) available at <https://www.justice.gov/crt/media/1355866/dl?inline>.

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

## Summary of Recommendations

1. **Recommendation 24-13**: SPD should turn on audio during buffer mode of body worn camera recordings.
2. **Recommendation 24-14**: SPD should train officers to determine whether to charge an individual purely based on whether the elements of the law are met. The victim's wishes should not be a determining factor.
3. **Recommendation 24-15**: SPD should include aggravation of pre-existing injuries as a type of reviewable force to have as much documentation of the incident in the event the subject decides to pursue litigation.
4. **Recommendation 24-16**: Review board members should receive specific guidance on force analysis and review board expectations. Greater emphasis should be placed on alternatives to force and de-escalation. The review boards should also provide an analysis of the supervisory review; and provide recommendations when supervisory reviews fall short.