



SPOKANE POLICE DEPARTMENT

CHIEF OF POLICE

CRAIG N. MEIDL

February 12, 2021

Re: C19-040 Closing Report and Recommendations from OPO

Mr. Logue

Thank you for the opportunity to discuss the closing report related to C19-040 and provide additional clarification to the status of the recommendations.

Recommendation #1:

I believe a template for the IA investigators will ensure consistency and readability. Having a separate category for "disputed facts" will allow clarity and conciseness to the review and recommendation process.

I will have IA staff update the template for approval to guide future reports.

Status: In progress

Recommendation #2:

Similar to recommendation #1, a template of all factors to consider when evaluating a use of force will ensure all levels of response are analyzed for best practices (e.g., use of time, distance, cover, word choice, de-escalation efforts when appropriate, etc.). Additionally we will make it clear that dissenting opinions should be noted and included in the report.

An outline has been developed, however I will ask that IA work with the OPO (which has experience attending UOFRBs) to determine what, if any, enhancements should be instituted.

Status: In progress

Recommendation #3:

This incident was forwarded to the Training staff at the Academy with direction to incorporate high risk vehicle stop training into future in-services. Additionally the deployment of the K9 was analyzed by Sgt. Spiering, who updated the K9 policy to provide clearer guidance for K9 deployments. Since that direction was forwarded to the Academy, this training has occurred.

Status: Completed



Recommendation #4:

SPD provides on-going training, in addition to training received via BLEA as directed by the CJTC, at measuring compliance, de-escalation, procedural justice and proper use of force based on level of resistance. In 2021, SPD has incorporated on-going training into its de-escalation curriculum and has committed to training on these topics into perpetuity.

Progress: On-going

Recommendation #5:

SPD believes strongly in the expectation of its officers to de-escalate when reasonable. Because of our conviction, we created a separate de-escalation policy to ensure the importance of this policy is stressed. Additionally we continue to train at in-services on this topic and will do so into perpetuity.

Progress: Completed / On-going

Recommendation #6:

SPD supervisors are not authorized to proactively audit BWC footage randomly based on labor law. The SPD administration is interested in exploring this with the Guild, and desired to include this in negotiations as a bargaining topic for several years. Based on the dynamics of the current unsettled contract, we were not able to incorporate this into the current open contract. It is our desire to explore this with the Guild upon settlement of the current open contract.

Additionally the SPD chain of command is addressing officer policy violations (of a minor nature, not specifically complained about or related to the Blue Team cause of action) as the incident works its way through the Blue Team review, prior to the conclusion.

Progress: Completed / On-going

Recommendation #7:

Sgt. Spiering updated the K9 deployment policy in 2020. Additionally he has noted that this policy will be a living document that will be frequently reviewed and updated as necessary to stay current with case law and best practices as they relate to K9 programs.

Progress: Completed

Recommendation #8:

The WA State Criminal Justice Training Commission (CJTC) offers a limited number of techniques, and limited number of hours to train on those techniques, under the defensive tactics umbrella. Many officers have taken advanced training outside their employment and obtained, and maintained, a level of proficiency in control tactics otherwise not obtainable with staffing.



budget and training hours offered by SPD. The “exceptional technique” category allows tactics used by an officer, those tactics not being a part of the CJTC training curriculum, to be examined for reasonableness. The same standard of reasonableness in utilizing a tactic is followed whether the tactic used is officially trained by the CJTC or a tactic not trained on by the CJTC. SPD continues to utilize as its foundation the Graham standard, “Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” the test’s “proper application requires careful attention to the facts and circumstances of each particular case.” (Graham v. Connor).

The below quote was taken from Lexipol and has implications for uses of force:

(*Strickland v. Washington*, 466 U.S. 668 (1984) at 687).

“Specific Rules. One proposal that sometimes comes up in the police use of force debate is to judge officer actions using *very specific rules* (emphasis added). Here is what the *Strickland* court said about using specific guidelines to judge the decisions of a criminal defense attorney: More specific guidelines are not appropriate. No particular set of detailed rules ... can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would ... restrict the wide latitude counsel must have in making tactical decisions.” (*Id.* at 688-689)

Though this case specifically relates to adequate representation by defense counsel, the concepts are similar to the variety and unpredictability of use of force encounters, and the dangers in having “very specific rules” that cannot “take account of the variety of circumstances” or the “range of legitimate decisions”.

Related to the second prong in recommendation #8, “SPD should also consider listing every device that an officer can use in utilizing force”, SPD does list out the various tools they are specifically trained on in the Defensive Tactics manual (184 pages).

Progress: Partially implemented and partially not implemented

Recommendation #9:

Allegations being investigated are typically noted at the beginning of the IA case file, as well as sent to the officer(s) being investigated. This specific notification of policies being investigated is required by law, as departments are not authorized to go on “fishing expeditions” (phrase used by the Courts to describe investigations that are not specifically and narrowly focused based on allegations). Additionally the chain of command or Administrative Review Panel (ARP) may add additional allegations that the investigation reveal may be warranted based on the evidence presented. For the ARP review, the final allegations addressed are always placed at the back of the ARP finding letter to clearly spell out the allegations and findings.

As noted during our recent meeting, clearly breaking down each of the allegations for each



employee, along with findings and recommended sanctions under each employee, makes sense. We will ensure this process is documented in the Internal Affairs SOP manual and each employee assigned to Internal Affairs, as well as the ARP members, are trained to follow this protocol.

Additionally my sense is the OPO has a template or format that they were exposed to at recent training. We would welcome the opportunity to review this material and adjust our documents and documentation accordingly.

Progress: In progress; work with OPO's office on format

Recommendation #10:

The example provided by the OPO during our recent meeting was the difference between, as an example, some supervisors utilizing the Blue Team software to document their recommendations, and others using an IA additional 'Word' document and incorporating that document into Blue Team as an additional report. The OPO recommended following a consistent format for review and submission. Internal Affairs will update the IA SOP to reflect the method that should be used when providing a review through the chain of command.

Progress: In progress

Recommendation #11:

At the time of this incident, uses of force, pursuit and collision reviews were finalized at the Major level. Since this report, all findings related to Blue Team reports and investigations are now determined by the Assistant Chief or Chief. Those resulting in discipline beyond a letter of reprimand are decided by the Chief.

Progress: Implemented

Recommendation #12:

Related to recommendation #11.

Progress: Implemented

Recommendation #13:

SPD's policy manual was updated shortly after this incident to address this issue (see policy 301.14.3).



301.14.3 REFERRAL TO INTERNAL AFFAIRS

The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the appropriate Major.

If upon review of an application of force by an officer(s), the supervisor believes that the application of force could rise to the level of misconduct, or the supervisor sees conduct that could rise to the level of misconduct, the supervisor shall initiate an internal affairs complaint in BlueTeam. If the subject of the use of force makes a complaint about the use of force or demeanor of the officer(s) involved in the incident, an Internal Affairs Complaint will be generated in BlueTeam. The supervisor shall forward the Internal Affairs Complaint and the Use of Force report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.

Status: Completed

Recommendation #14:

SPD updated its policy and disseminated its updated policy related to Blue Team reviews and identification of potential misconduct to the entire agency (see Recommendation #13). Based on conversations with the OPO, "serious violations" discovered during the review (specifically related to uses of force, demeanor, etc.) will have an Internal Affairs investigation initiated. De minimis violations (e.g., not activating BWC immediately upon exiting the vehicle) will be handled through Documentations of Counseling (or Letters of Reprimands if appropriate under the progressive discipline umbrella).

Status: Completed

Recommendation #15:

This recommendation, as it relates to C19-040, revolves around a scenario that had not been experienced prior by staff at SPD (different findings at different levels of the review process, related to a use of force, with the final decision at the time being determined by a Major, who had the final say in determining the appropriateness of the use of force and disagreed with his subordinates). This has been rectified with the elevation of final findings to the Assistant Chief or Chief of Police. If either the Assistant Chief or Chief of Police determines that misconduct arises to the level that a misconduct investigation should be initiated, their decision will be final. Additionally the chain of command will be reprimanded with the appropriate training or discipline for "fail to supervise".

The supervisors within the Bureau are expected to initiate an Internal Affairs investigation if they become aware of misconduct. This duty is an expectation of their leadership position. In this scenario, due to the dynamics not experienced prior, a different finding was determined at multiple levels during the review process. An Internal Affairs Lieutenant cannot be expected to have a clear understanding of potential misconduct under the facts of this specific incident when the chain of command itself was not in agreement of the misconduct.



Having said that, any supervisor within SPD has an obligation to ensure a misconduct investigation is initiated upon learning of serious policy violations (as an example, if the chain of command at the Captain level determines misconduct occurred that rises to the level of an IA investigation, that Captain will traditionally direct the lower rank to initiate the investigation. This occurs for multiple reasons, one being to develop the supervisor and reinforce expectations – especially with newly promoted supervisors).

Progress: Not implemented per se, however the expectation is that the IA supervisor ensure the appropriate Bureau supervisor initiate the IA investigation or bring to the attention of a higher rank.

Recommendation #16:

Status: Implemented

Recommendation #17:

This recommendation appears to parallel recommendation #1. In discussions with the OPO, this recommendation was given more detail as it relates to conflicting statements. The OPO suggested conflicting statements be clearly spelled out (under a separate section of the Internal Affairs summary), with the statements attributed specifically to who stated what (or what the evidence – BWC – clearly reveals). Internal Affairs will update the IA SOP to reflect this recommendation as part of the template for summary reports.

Progress: In progress

Recommendation #18:

SPD Internal Affairs has developed a form that encompasses concerns brought forward in this recommendation.

Progress: Implemented

Recommendation #19:

SPD officers have been directed to include a Graham statement in their use of force reports for the past several years, and these reports are part of the chain of command review. The example provided from the LAPD Board of Commissioners contains essentially the same information already provided in SPD's use of force reports and reviews, though in a different format. I am always supportive of examining what other agencies are doing, while weighing the resources SPD has available as compared to other agencies. The 8 page report provided as an example, for each use of force, will take considerable supervisory time, removing supervisors from the field for even longer periods of time and diminishing the much need field supervision we try to achieve. Having said that, developing a consistent template may help meet the genesis of much of this recommendation. I will direct IA to collaborate with the OPO on what that template should look like.



Progress: In progress

Recommendation #20:

SPD agrees with this recommendation, and case law requires that only those factors known to the officer using force at the time force was used, may be considered in determining the reasonableness of the application of force. As it relates to this incident, the officers were working with the US Marshall's Office violent offender task force. The subject in this incident told the officer two times that he had a gun, the officers had information about his prior arrest for being a felon in possession of a gun, and that he had been seen purchasing ammunition several months prior by a DOC officer. Additionally at least one officer had information that the subject told a cooperative individual prior to this incident that he would not go back to jail. This was documented in the officers' reports.

In terms of considering the officer's applicable history in each incident where force was utilized, SPD follows a progressive discipline matrix. Where no misconduct has occurred in the officer's past, those incidents do not bear on whether the current incident's use of force is justified or not justified. Each incident stands on its own merits. Where misconduct has occurred, the sanctions will always take into account the IA history of the employee.

Additionally SPD utilizes an EIS (Early Intervention System) that "flags" employees who have met a pre-determined threshold for uses of force, pursuits, collisions and complaints. This flag occurs even when the incidents were determined to be in policy. Internal Affairs coordinates a review of these officers with the officer's chain of command in an effort to be proactive in determining, as an example, officers who may use force within policy, but means other than force may have been a viable option.

Status: Implemented

Recommendation #21:

SPD agrees with this recommendation, specifically having a separate category where disputed facts are noted, as well as individually listing out each officer involved and what the allegations / findings are for each officer. This recommendation will be part of the updated template used by IA.

Status: In progress

Recommendation #22:

SPD has spoken extensively with City Legal regarding the release of BWC footage more quickly. At times the release may be delayed due to investigative processes that must be followed to protect the integrity of the investigation or at the request of the Prosecutor's office. Additionally each minute of BWC footage takes approximately 10 minutes to review for redaction to avoid the release of prohibited information per RCW. Records staffing has not grown in proportion to the



utilization of BWCs and one person has been assigned to this task full time, while the demands placed on Records staff have also grown (records requests, CPLs, gun transfers, etc.). In conversations with the OPO, there has also been a lack of alignment with the OPO's research versus direction provided by City Legal. SPD is in agreement that the sooner the video can be released, the more productive and healthy it is for the community and SPD.

Status: Not implemented

Recommendation #23:

This recommendation parallels the logistics of recommendation #22, and the response is the same. SPD relies heavily on City Legal to ensure we are complying with all laws and will request clear guidelines to ensure we are following case law.

Status: In progress

City of Mill

