

Policy & Procedures Report and Recommendations

F20-052

OFFICE OF THE POLICE OMBUDSMAN



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Mission Statement

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

Staff Information

Bart Logue, Police Ombudsman

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, Deputy Police Ombudsman

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is 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. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, OPO Attorney

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern in order 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 in order to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The OPO can also publish policy and procedure reports regarding cases the OPO reviews during a review board process. The OPO's recommendations will not concern discipline in specific cases or officers and shall not be used in disciplinary proceedings of bargaining unit employees. Reports are solely meant to further discussion on aspects of incidents that may be improved upon.

Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this incident in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, training, or any other related matter.

The OPO may 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 must 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 reflect the OPO's opinion on modifications that may assist the department in reducing the likelihood of harm in the future;

they do not reflect an opinion on individual job performance under the current policy, practice, or training;

3. A report shall not comment on discipline of an officer(s). This prohibition includes a prohibition on writing in a report whether the OPO or OPOC agrees with or differs from the Chief's findings, whether the officer acted properly, whether the officer's actions were acceptable, or whether the officer's actions were in compliance with training or policy. Additionally, no report will criticize an officer or witness or include a statement on the OPO or OPOC's opinion on the veracity or credibility of an officer or witness.
4. The OPO's closing report shall not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, or to reconsider any decision(s) previously made concerning discipline.
5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.¹

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

Summary

Procedural History

This case was reviewed by the chain of command and then by the Use of Force Review Board (UOFRB) due to the use of reportable uses of force; a Level 1 Lateral Neck Restraint (LNR) and a TASER application. The OPO's opinions are based upon a careful review of incident reports; the BWC footage; the chain of command reviews; the UOFRB minutes; and first-hand knowledge from the OPO's participation in those review boards. This report provides an analysis of issues identified through the use of force which allow for a policy and procedures report.

OPO Summary of Facts

The incident involved a reported vehicle prowling which occurred on November 30, 2020. The primary officer, Officer A, had two previous contacts with the vehicle occupant leading up to the incident.

On November 24, 2020, Officer A spotted a white Lincoln Navigator parked on Hoerner and Nevada with registration tags that expired in 2017. Officer A also noticed the vehicle was missing a tire. Officer A contacted the occupant who said the vehicle belonged to a friend who gave the occupant permission to stay in it. Additionally, the vehicle was not drivable because there was no spare tire but an order had been placed at Les Schwab and they were waiting for the tire to come into stock the following day. Officer A confirmed the veracity of the occupant's story with Les Schwab. Officer A then advised the occupant that the vehicle needed to be moved off the roadway once the replacement tire had been put on due to the expired registration tags. On November 25, 2020, Officer A saw the same Navigator parked on Dakota between Holland and Jay. Officer A noted the vehicle had all four tires. Officer A knocked on the Navigator but did not receive a response and took no further action.

¹ In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.

On November 30, 2020, Officer A spotted the Navigator again. The vehicle had all four tires but looked like it had not been moved in days. Officer A noticed trash under and next to the vehicle and a bottle of alcohol at the rear of the vehicle. Officer A decided to tow the vehicle after previously deciding to issue the occupant a warning to park the vehicle off a public roadway to avoid being towed for the extremely expired registration tags and began the process of towing the vehicle. Officer A knocked loudly on the vehicle announcing "Spokane Police," received no answer, confirmed the vehicle identification number (VIN), and knocked on the vehicle again without receiving a response. Officer A believed the vehicle was unoccupied and began conducting a vehicle inventory. Officer A opened the rear left door of the vehicle and found the subject hiding inside who Officer A recognized from a previous incident. There was also a second person inside of the vehicle with a small dog.

Officer A had previously developed probable cause to arrest the subject on September 21, 2020. Officer A had witnessed the subject inject drugs into their arm and then disregarded Officer A's orders to stay in the vehicle. Instead, the subject ran off. Officer A tested the syringe the subject left behind and it tested positive for heroin. The subject also had a warrant for their arrest.

Upon being contacted by Officer A, the subject put their shoes on and attempted to exit the vehicle. Officer A directed the subject to sit back down. The subject can be heard on BWC say "why are you pushing me?" Officer A documents in their report that while the subject was standing in the vehicle's doorway, they were using the vehicle to brace themselves and push past Officer A. In the incident report, Officer A says they advised the subject they were under arrest as they exited the vehicle. The subject managed to break free from Officer A's grip and grabbed a hold of Officer A's left arm. They began to struggle and spun in circles with each trying to gain control of the other. Officer A repeatedly advised the subject they had a warrant and was under arrest. Officer A asked dispatch for backup but did not know how far away backup was. Officer A and the subject continued to struggle and Officer A attempted an Level 1 LNR² but it was ineffective. Officer A transitioned into deploying the TASER in dart mode and made contact with the subject's left side. The TASER application was ineffective due to the thickness of the subject's coat and the subject did turn and continue to move away from the officer, momentarily falling to the ground.

The subject got away from Officer A after the TASER had completed its cycle and ran towards the Wal-Mart across the street. Officer A yelled commands at the subject who did not cooperate. At that point, Officer A got in their vehicle and drove towards Wal-Mart after the subject who was fleeing on foot, while providing descriptions and direction of the subject's travel to other responding officers. Officer A saw the subject enter Wal-Mart, exited their vehicle and pursued on foot. The subject led Officer A down several aisles before exiting the store and encountered Officer B. Officer A and B were able to take the subject to the ground. The subject can be heard on BWC complaining they couldn't breathe on multiple occasions while the officers were trying to control the subject and again after the subject had already been cuffed. At no point during this period was the subject laying prone on the ground, rather the subject remained on their knees while being handcuffed and in a sitting position once handcuffs were applied.

² This is no longer a technique SPD uses as of July 25, 2021. However, for discussion purposes, there are two types of LNRs distinguished by officer intent. Level 1 LNR means the officer does not intend to render the subject unconscious. While a Level 2 LNR means the officer intends to render the subject unconscious. See Spokane Police Department Defensive Tactics Manual, p. 148 (Version updated November 2019).

Officers C and D arrived on scene to assist. They tested a syringe and a clear crystal substance they found in a zip top bag in the subject's jacket during a search. The substances tested positive for methamphetamine. The subject was charged with controlled substances possession, obstructing a law enforcement officer, and resisting arrest. It should be noted that the records do not indicate the police called for a tow and the vehicle was never towed. Officer A insisted on calling medics due to policy despite the subject's statement that they did not need medics.

Pertinent Policies

1. SPD Policy 301.12 – Use of Force Reporting

- a. Unless otherwise provided in policy, all force used by an officer shall be promptly, completely, and accurately documented in an incident report. The officer shall articulate the factors which made the use of force objectively reasonable, based on the Use of Force Policy.

2. Policy 308.3.2 Lateral Neck Restraint

- a. The proper application of a Level I or a Level II LNR hold may be effective in restraining an individual. The neck restraint may only be used as outlined in the Defensive Tactics Manual.

3. Policy 308.8.7 – Multiple Applications of the TASER device

- a. Officers should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Total exposure to the TASER device should not exceed 15 seconds. If exposure exceeds 15 seconds, the subject shall be transported to a medical facility for examination prior to booking.

4. Policy 510.5 Vehicle Inventory

- a. All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage form. A locked vehicle trunk shall not be opened, even if it may be opened without a key from an accessible area of the passenger compartment. Locked or closed containers located within the passenger compartment should be inventoried as a sealed unit, absent exigent circumstances. Should an item of evidentiary value be found, stop inventory and obtain a search warrant.

The Uses of Force reviewed included:

- LNR Level 1
- TASER Probe Application

Investigation and Department Findings Summary

Chain of Command Review³

The supervisor in the chain of command noted the following details in recommending a finding of In Policy:

- Officer A believed the vehicle was unoccupied.

³ Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether or not 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.

- Officer A discovered the subject hiding in the back who the officer previously encountered and had developed probable cause (for arrest) for heroin.
- The subject assaulted Officer A as the officer tried to physically control the subject.
- The subject stumbled to the ground and Officer A was able to get behind the subject and attempt a LNR I but it was ineffective.
- Officer A accessed their TASER, gave a verbal warning, and deployed the probes. The probes made contact with the subject but due to the close proximity of the shot and the large puffy coat, the TASER was fairly ineffective.
- The subject was able to get back on their feet and flee. The subject was later located and taken into custody.

The lieutenant in the chain of command stated that because the uses of force were based on the subject's assaultive behavior, the uses of force were within policy, met federal and state laws, and met department expectations in recommending a finding of In Policy.

The captain's review in the chain of command consisted of saying uses of force were justified and appropriate in recommending a finding of In Policy.

The major's review in the chain of command consisted of saying Officer A documented the subject's assaultive behavior and their perceptions of it to arrive at a recommended finding of In Policy.

After the chain of command review was completed, the Use of Force Review Board reviewed this case in March 2021. During a tactical review, the review board noted the following tactical points of emphasis regarding officer and suspect safety:

- It is ideal to get backup officers on scene prior to going hands-on with a vehicle's occupants to reduce a threat of harm to an officer
- The review board also discussed tactical approaches to utilize when a suspect says they can't breathe

Policy Recommendations

Applicable Current Policy Practice, Policy, and/or Training

1. **Spokane Police Department Policy Manual 301.15.2(I)-(J) – Chain of Command Review of Use of Force: Investigation, Documentation, and Notification**
 - a. Provide a brief summary of the incident in BlueTeam and attach a Use of Force Additional form with all other information.
 - b. Provide a brief comment stating whether the use of force was within policy and any possible training issues, unless the involved officer is of an equal or superior rank. If more detailed information is needed, include it in the Use of Force Additional report.
2. **"I Can't Breathe" Understanding Signs and Symptoms of Abnormal Breathing Training**
 - a. Dangerous Misunderstandings
 - i. It is wrong to believe that a small amount of air movement or an occasional breath is enough for adequate respiration.
 - ii. One breath does not necessarily equal adequate breathing.
 - b. Signs and Symptoms of Abnormal Breathing
 - i. Officers must recognize these signs within the context of the incident:

1. Rapid breathing
2. Slow breathing
3. Shallow or irregular breathing
4. Noisy breathing
5. Flaring nostrils
6. Skin color changes and sweating
7. Anxious or fearful facial expressions
8. Restlessness, agitation, and confusion

Recommendations to Policy and/or Training

Supervisor review. The most thorough review in the chain of command was done by completing an IA Additional. It provided a synopsis of Officer A's incident report before recommending the uses of force, an attempted LNR I and TASER application, be found In-Policy. We recommend that the IA Additional include the officer's justification for force, any complaint by the subject (not being able to breathe in this situation) and how officers responded to that complaint. There was very little written analysis provided by the lieutenant, captain, and major in Officer A's chain of command is a brief comment that does not provide much if any analysis. The comment only affirms the uses of force are in policy.

RECOMMENDATION R21-13: AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040 RECOMMENDATION #10, I RECOMMEND SPD CREATE A STANDARD FORMAT AND PROCEDURES FOR SUPERVISORS TO UTILIZE WHEN CONDUCTING CHAIN OF COMMAND REVIEWS.

When a subject complains they can't breathe. This incident occurred after the death of George Floyd in the summer of 2020 which prompted changes to how law enforcement responds when subjects complain they can't breathe. In September 2020, SPD disseminated training to officers on how to understand signs and symptoms of abnormal breathing. The training provides officers with a list of signs to help them identify abnormal breathing. Here, in Officer A's BWC the subject can be heard complaining that they can't breathe (2:22). Officer B responds, "You can breathe just fine," without checking on the subject's ability to breathe. Officer B then tells the subject to get on the ground (2:37). Before being cuffed, the subject is seen with their torso pushed down while in a seated position. The subject complains for a second time that they can't breathe (2:43). After the subject was cuffed (3:08), the subject complains for a third time they couldn't breathe prior to being moved into a seated position by officers (3:20).

RECOMMENDATION R21-14: A REQUIREMENT THAT OFFICER'S CAREFULLY MONITOR THE SUBJECT FOR ABNORMAL BREATHING WHEN A SUBJECT STATES THEY CANNOT BREATHE DURING A PHYSICAL ENCOUNTER WITH THE POLICE AND DOCUMENT ANY ACTIONS TAKEN BY AN OFFICER TO ASSESS THE SUBJECT'S MEDICAL CONDITION IN A POLICE REPORT.

Summary of Recommendations

Recommendation R21-13: As previously recommended in Closing Report C19-040 recommendation #10, I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.

RECOMMENDATION R21-14: A requirement that officer's carefully monitor the subject for abnormal breathing when a subject states they cannot breathe during a physical encounter with the police and document any actions taken by an officer to assess the subject's medical condition in a police report.