

**The Office of Police Ombudsman  
Monthly Report  
to the  
Public Safety Committee  
December 20, 2010**

**REPORTING PERIOD**

November 15, through December 20, 2010

**CONTACTS**

Between November 15 and December 20, 2010 **32** contacts were received.

Since January 1, 2010 there have been **439** contacts received by the Office of Police Ombudsman.

**COMPLAINTS**

**Complaints Received: 10** complaints were received between November 15 and December 20, 2010.

1. Monday, November 15, 2010: A **Demeanor complaint** was received by the Office of Police Ombudsman. The Complaint was regarding the method a search warrant was served at the Complainants residence and the demeanor of the officers. The complainant reported that their property was damaged and property was missing after the warrant was executed. Medicinal marijuana is an issue in the situation.
2. Friday, November 19, 2010: A **Demeanor complaint** was received by the Office of Police Ombudsman. The Complainant was upset equipment and a rifle was confiscated during the search. An agreement was reached and it was agreed that the rifle would be returned to the Complainant but the rifle was disposed of before it was claimed by the Complainant. Medicinal marijuana is an issue in this situation.
3. Monday, November 22, 2010: A **Public Records Request complaint** was received by the Office of Police Ombudsman. The Complainant wants to know why a neighbor was detained by police. The Complainant has a civil case in progress against the neighbor. The Complainant is angry that the police will not tell them what the neighbor was detained for.
4. Thursday, December 2, 2010: An **Inadequate Response** complaint was received by the Office of Police Ombudsman. The Complainant's spouse was arrested for assault. The Complainant advised that the police investigation was inadequate.

5. Friday, December 3, 2010: An **Inadequate Response** complaint was received by the Office of Police Ombudsman. The Complainant alleges that the police department failed to thoroughly investigate a runaway juvenile situation that involved a foster child. And the investigating officer's demeanor was inappropriate.
6. Friday, December 3, 2010: An **Inadequate Response** complaint was received by the Office of Police Ombudsman. The Complainant advised that an officer failed to enforce a blatant traffic offense that occurred in front of the officer and Complainant.
7. Wednesday, December 8, 2010: A **Harassment** complaint was received by the Office of Police Ombudsman during satellite office hours at the West Central Community Center. The Complainant alleges that he was stopped for no reason and since then has been followed by police for no reason.
8. Friday, December 10, 2010: A **Demeanor** complaint was received by the Office of Police Ombudsman. The Complainant advised that an Officer made rude comments to them when the officer contacted them at their home.
9. Tuesday, December 14, 2010: The Complainant advised that they observed and followed an officer driving while using their **Cell Phone** for several blocks. The Complainant advised that when they contacted the Police Department they were advised that nothing would happen to the officer. The Complainant advised that they felt they were "blown off" by the person who took their call. Research revealed that the license plate for the vehicle the officer was driving was a Sheriff's Office vehicle. The matter was referred to the Sheriff's Office. The person the Complainant spoke with was identified as a volunteer. The volunteer will be counseled.
10. Friday, December 17, 2010: The Complainant contacted the Office of Police Ombudsman through the Mayor's Office regarding the execution of a **Search Warrant** near an Elementary School during school hours. Research revealed that the warrant was executed by the Sheriff's Office. The matter was referred to the Sheriff's Office.

### **Complaints Referred: 2**

1. Tuesday, December 14, 2010: A complaint regarding cell phone use was referred to the Sheriff's Office.
2. Friday, December 17, 2010: A complaint regarding the execution of a search warrant was referred to the Sheriff's Office

### **Commendations: 0**

## **INVESTIGATIONS CERTIFIED**

Between November 15 and December 20, 2010 the following 2 investigations were certified as timely, thorough and objective:

1. Tuesday, November 16, 2010: A **Racial Bias and Demeanor complaint** was received by the Internal Affairs Unit on July 21, 2010. The Complainant became involved in a dispute with a parking garage attendant and refused to pay for parking. When police responded

the Complainant alleged that the responding officers were rude in their handling of the incident and were racially biased against the Complainant because the Complainant is Native American. The Office of Police Ombudsman supports the findings and conclusion in this investigation.

2. Thursday, November 18, 2010: A complaint for **Unlawful Arrest, Improper Search, Excessive Force and Failure to Give Miranda Warning** was received by the Office of Police Ombudsman on June 14, 2010. The Complainant advised that they were arrested while intervening in the arrest of a family member. They advised that they were brutalized during their arrest, improperly searched and not read their Miranda Warning by the arresting officer. The Office of Police Ombudsman supports the findings and conclusions in this investigation.

## **INVESTIGATIONS NOT CERTIFIED**

Between November 15 and December 20, 2010 the following 2 investigations were not certified:

1. Thursday, December 9, 2010: The Office of Police Ombudsman received a complaint on July 8, 2010. The Complainant alleged that on June 27, 2010 they were stopped for a minor traffic offense. The Complainant indicated that at the time of the traffic enforcement stop they were in possession of a loaded and holstered handgun. The Complainant advised that they have a Concealed Pistol License. **The Complainant advised they were removed from their car, handcuffed, relieved of their weapon and placed in the back seat of a police car for several minutes. The Complainant indicated that while they were seated in the police vehicle their car was searched without consent and they were not advised of their rights (Miranda warning). The Complainant advised that prior to being released their hand gun was disassembled before it was returned to them.** In reviewing the Internal Affairs investigation it was timely and thorough but not objective in my professional opinion of the Ombudsman and will not be certified by the Office of Police Ombudsman. (See attachment for detailed explanation of declination)
2. Wednesday, December 15, 2010: Spokane Police Department received an **Excessive Force** complaint on July 30, 2010. After a brief vehicle pursuit occurred the driver of the vehicle was arrested for reckless driving, driving with a suspended license and resisting arrest. 2 officers were alleged to have used excessive force in the arrest of the driver. Twelve witnesses, the driver of the vehicle and the 2 officers were interviewed. The Ombudsman did not participate in the interviewing of 11 of the 12 witness as required by ordinance. Upon review the investigation did not appear to have been completed in a timely manner and the Administrative Review Panel's report failed to include adequate analysis/explanation as to the conclusion reached involving the witnesses' statements. (See attachment for detailed explanation of declination)

## **INTERVIEWS**

- Internal Affairs, Officer Interviews: 15
- Internal Affairs Complainant Interviews: 0
- Internal Affairs, Witness Interviews: 0

- **Office of Police Ombudsman Complainant Interviews: 8**
- **Office of Police Ombudsman Witness Interviews: 3**
- **Closing (Complaint Closure) Interviews: 0**

## **OTHER DUTIES**

- **Critical Incident Responses: 1**

Saturday, December 4, 2010: at 10:04 pm I received notification from Sergeant McCabe that a Critical Incident, Fatal Officer Involved Shooting had occurred at the Special K Bar and Grill located at 3817 N Market Street. I met Sergeant McCabe and we responded to the scene for a preliminary briefing and site inspection.

Sunday, December 5, 2010: at 02:59 am Sergeant McCabe and I returned to the location for a more detailed briefing on the incident.

- **Cases Resolved Through Mediation: 0**
- **Recommendations: 1**  
Spokane Police Administration review with the Spokane Police Department Leadership Team the Spokane Municipal Code that regulates the Office of Police Ombudsman with specific regards to the complaint interviewing process.

## **ACCOMPLISHMENTS**

- Sunday, December 19, 2010: Spokane Police Department Ride Along (10a-5p)
- Tuesday, December 7, 2010: City of Spokane, Performance Assessment Review training
- Wednesday, November 17, 2010: City of Spokane, Sexual Harassment Prevention and Disability Awareness training

## **NEXT STEPS**

- 2010 Office of Police Ombudsman Annual Report

## **COMMUNITY OUTREACH**

- Friday, December 17, 2010: Satellite Office Hours at The NATIVE Project (1p-5p)
- Friday, December 17, 2010: Satellite Office Hours at the House of Charity (9a-1115a)
- Wednesday, December 15, 2010: Hillyard Neighborhood Council meeting (630p-8p)
- Wednesday December 15, 2010: Historic Hillyard Merchants Association meeting (330p-5p)
- Monday, December 13, 2010: Spokane City Council meeting (6p-730p)
- Monday, December 13, 2010: Women's League of Voters Holiday Lunch (1130a-1p)
- Saturday, December 11, 2010: West Central Winter Festival Dinner (530p-8p)
- Saturday, December 11, 2010: East Central Community Center Christmas Toy Distribution (1230p-330p)
- Friday, December 10, 2010: Satellite Office Hours at the STA Main Terminal (10a-1230p)
- Wednesday, December 8, 2010: West Central Neighborhood Council meeting (630p-8p)

- Monday, December 06, 2010: Spokane City Council meeting, OPO Presentation (6p-8p)
- Friday, December 3, 2010: Community Assembly meeting (4p-445p)
- Friday, November 19, 2010: Satellite Office Hours at the NATIVE Project (1p-4p)
- Friday, November 19, 2010: Satellite Office Hours at the House of Charity (9a-1130a)
- Thursday, November 18, 2010: Chief Garry Park Neighborhood Council meeting (715p-8p)
- Thursday, November 18, 2010: Food for Thought Dinner (5p-7p)
- Wednesday, November 17, 2010: Hillyard Neighborhood Council meeting (715p-830p)
- Wednesday, November 17, 2010: Spokane Alliance of Bars and Restaurants meeting (6p-730p)
- Tuesday, November 16, 2010: East Central Neighborhood Council meeting (630p-8p)
- Monday, November 15, 2010: Spokane City Council Meeting, OPO Presentation (6p-8p)

## **OTHER**

None

## **2010 OVERVIEW**

**Complaints Received:** Since January 18, 2010, **70** complaints have been received by the Office of Police Ombudsman and forwarded to Internal Affairs. The complaints involve:

- 30 Inadequate Response
- 10 Harassment
- 17 Demeanor
- 2 Policy/Procedure
- 6 Excessive Force
- 1 Ethics
- 1 Ethics, Unlawful Arrest and Improper Search
- 2 Racial/Bias Policing
- 1 Driving

## **Referrals Made: 2**

Since January 18, 2010, **27** complaints have been referred to the following agencies:

- 16 Complaints were referred to the Spokane County Sheriff's Office
- 3 Complaints involving the Spokane Valley Police Department were referred to the Spokane County Sheriff's Office
- 2 Complaint was referred to the Spokane Fire Department
- 2 Complaints were referred to the Liberty Lake Police Department
- 1 complaint was referred to the Airway Heights Police Department
- 1 complaint was referred to the Spokane Airport Police Department
- 1 Complaint was referred to The Department of Corrections
- 1 Complaint was referred to the Spokane Transit Authority





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Thursday, December 09, 2010

Anne Kirkpatrick, Chief of Police  
Spokane Police Department  
1100 West Mallon  
Spokane, Washington 99260

**RE: Declined Certification of SPD IA 10-053**

On Thursday, October 28, 2010 the Office of Police Ombudsman received Spokane Police Department Internal Affairs investigation 10-053 for certification.

As required, the Office of Police Ombudsman will determine whether an Internal Affairs investigation was thorough and objective (SMC 4.32.030 H).

Internal Affairs investigation 10-053 involved a complaint that was received by the Office of Police Ombudsman on July 8, 2010. The Complainant alleged that on June 27, 2010 the Complainant was stopped for a minor traffic offense. The Complainant indicated that at the time of the traffic enforcement stop they were in possession of a loaded and holstered handgun. The Complainant advised that when they were initially contacted by the Officer they advised the Officer that they had a loaded hand gun and a Concealed Pistol License.

The Complainant advised that when additional officers arrived they were removed from their car, handcuffed, relieved of their weapon and placed in the back seat of a police car for several minutes. The Complainant indicated that while they were seated in the police vehicle their car was searched without consent and they were not advised of their rights (Miranda warning). The Complainant advised that prior to being released their hand gun was disassembled before it was returned to them.

Once the Internal Affairs investigation was completed it was reviewed by the Spokane Police Department's Administrative Review Panel prior to being forwarded to the Office of Police Ombudsman for certification.

The investigation and review focused on 4 primary issues:

- Unlawful Detention
- Unlawful Search
- Failure to Mirandize
- Inadequate Response

With the exception of the Inadequate Response violation related to training in the disassembly of the hand gun the Administrative Review Panel's findings was proper conduct on behalf of the involved officers.

Having reviewed the investigation I agree that the investigation was thorough but do not agree that the expressed findings of the Administrative Review Panel were completely objective.

The Free Dictionary (The Free Dictionary.com) defines objective as: emphasizing or expressing things as perceived without distortion of personal feelings, insertion of fictional matter or interpretation and/or undistorted by emotion or personal bias, based on observable phenomena.

Webster's Dictionary (Merriam-webster.com) defines objective as: expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations.

In reviewing the Administrative Review Panels report certain information referenced raised my concern regarding the objectiveness of the review. Comments causing concern were:

- The location where the complainant was stopped is known for extensive criminal activity.
- The Officer did not read the Complainant their rights (Miranda Warning) because the Officer was not conducting a criminal investigation.
- When Officers conduct a vehicle frisk they do not need permission from the Complainant. Two court cases the officers operate under are:
  1. State v Glossbrener- safety concerns dictate that officers take officer-safety steps as soon as reasonably possible after they observe furtive gestures, or they gather other facts which give them an objectively reasonable basis for frisking or ordering occupants out of or back into a vehicles- Time of day remains a factor in officer safety analysis.
  2. Michigan v Long- A person released to his car may still pose a risk.
- RCW 9A1.050 (2) requires that a person to have a valid CPL on their possession before they can carry or place a loaded firearm in their vehicle.

Based on the legal concerns I have with this matter I referred the investigation to Mr. Szambelan, the Office of Police Ombudsman Attorney for review and comment.

In Mr. Szambelan's review of the investigation he felt the stop location was not a legal issue. He felt the time of the detention was reasonable based on the complications encountered in confirming that the Complainant had a valid Concealed Pistol License (CPL).

Mr. Szambelan agreed that it was not necessary to give the Complainant their Miranda Warning because no criminal charges arose out of the incident however officers should tell individuals why they are being detained in back of a police car. Mr. Szambelan felt the more prudent thing to do would be to read individuals their Miranda rights. If the officers had found illegal contraband that led to criminal charges there would be a suppression issue surrounding the evidence found.

With regards to the vehicle frisk Mr. Szambelan felt that the frisk this was a “grey area” subject to interpretation. The issue of opening the glove box and looking inside may be viewed as stepping over the line (locked v. unlocked).

In conclusion Mr. Szambelan felt that the disassembling of the weapon was a training issue that needs to be addressed through the development of a policy and training.

Having reviewed the completed Internal Affairs investigation, the Administrative Review Panel’s findings and Mr. Szambelan’s review of the incident, as Police Ombudsman I have the following concerns regarding this incident:

- While the investigation revealed that the car stop occurred in a “high crime area,” the Officer chose the location of the stop, not the Complainant. The Complainant was simply complying as required.
- While the detention of the Complainant was lawful, was it necessary to handcuff and secure the Complainant in the back seat of the police car recognizing that the Complainant was cooperative and advised the Officer upon approach that they had a loaded firearm and was in possession of a Concealed Pistol License? I also take into consideration the fact that there were 5 police officers present during this incident.
- RCW 9.41.050 (2)(a) states: A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. **Based on the “letter of the law” the Complainant was in compliance with the law.** While common sense would dictate that the permit would have to be valid as the Administrative Review Panel’s conclusions on page 5 paragraph 3 would suggest, nowhere in the “letter of the law” does the word “valid” appear.
- The investigation revealed that it took several attempts to confirm that the Complainant had a valid Concealed Pistol License. This was apparently caused by the Police Dispatcher when the dispatcher either placed a space or failed to place a space between the alphas of the Complainant’s last name. This was beyond the Officer’s or Complainant’s control and was ultimately resolved by the Officer; however the error caused the Complainant to be delayed longer than necessary.
- Regarding the vehicle frisk, as a lay person I do not believe that this situation warranted a vehicle frisk based on the facts presented, the applicable case law provided, and the legal review conducted by the Police Ombudsman’s Attorney.
- When the Officer checked the serial number of the hand gun, did the focus of the Complainant’s detention shift from a traffic offense to a criminal investigation (regarding the lawful possession and or ownership of the weapon)?



- With regards to the disassembling of the Complainant's gun a similar but different situation occurred in 2009. As a result of that incident the Police Department was requested to establish a policy for rendering a "firearm safe". The Chief agreed and it was my understanding that a policy would be created and training provided. Training was scheduled, cancelled, and not rescheduled. In a subsequent conversation with Assistant Chief Nick's I was assured that this issue has been resolved.
- The Second Amendment of the United States Constitution protects the rights of the people to keep and bear arms. In this instance, because the weapon the Complainant was carrying was loaded and was in a vehicle the Complainant was required to have a Concealed Pistol License. The Complainant did have a Concealed Pistol License and was in compliance.

Because of the potential danger that firearms may pose I can empathize with law enforcement in these types of situations, however I can also sympathize with the Complainant in this specific incident. There does not appear to be anything else that the Complainant could have done to have avoided this situation.

In addition to the training failure that relates to the disassembling of the firearm it is clear that additional training is required regarding Concealed Pistol Licenses and computer word data entry.

With regards to the people's right to bear arms versus-law enforcement's safety concern the potential for disagreement in these types of situations may continue to occur.

Although this appears to be a systemic issue, because of the complexity these types of situations, future situations may have to be resolved on a case-by-case basis.

Having reviewed the Internal Affairs investigation it was timely and thorough but not objective in my professional opinion and will not be certified by the Office of Police Ombudsman.

  
Tim Burns  
Police Ombudsman

CC: Mary Verner, Mayor  
Ted Danek, City Administrator  
Jim Nicks, Assistant Chief of Police  
Craig Meidl, Police Lieutenant  
Dave McCabe, Police Sergeant  
Isamu Yamada, Police Sergeant



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December 16, 2010

Anne Kirkpatrick, Chief of Police  
Spokane Police Department  
1100 West Mallon  
Spokane, Washington 99260

**RE: Declined Certification of SPD IA 10-065**

Dear Chief Kirkpatrick:

On Tuesday, November 30, 2010, the Office of Police Ombudsman received Spokane Police Department Internal Affairs investigation 10-065 for certification. Based on the Internal Affairs investigation submitted to me, I am declining to certify IA10-065 for three specific reasons that will be discussed below.

This Internal Affairs investigation involves a complaint of excessive force against two Spokane Police officers resulting from a brief vehicle pursuit that occurred on Friday, July 30, 2010. The involved officers were alleged to have used excessive force in the arrest of the driver of the vehicle. As a result of the incident, the driver was charged with reckless driving, driving with a suspended driver's license and resisting arrest.

During the course of the Internal Affairs investigation 12 witnesses, 2 Police Officers and the driver of the vehicle were interviewed, either in person or by telephone.

As required by Spokane Municipal Code Section 4.32.030 F; Internal Affairs *shall* notify the Office of Police Ombudsman in a timely manner of all interviews regarding all complaints of a serious matter (complaints that could lead to suspension, demotion, or discharge) and all complaints originating at the Office of Police Ombudsman. The Office of Police Ombudsman *shall* attend and observe interviews and *shall* be given the opportunity to ask questions after the completion of questioning by the department.

The Police Ombudsman participated in the interviews of the two officers accused of excessive force, the driver of the vehicle and one witness. The Ombudsman was not made aware of or invited to participate in the interviewing of 11 of the 12 witnesses.

With regard to the four interviews conducted by the Patrol Sergeant at the time of the incident, there appears to be a lack of understanding by the Sergeant of what the Ombudsman's role is in the current process.

In addition, pursuant to Spokane Municipal Code Section 4.32.010 A (1); the Office of Police Ombudsman was established in order to help ensure that the investigation of complaints against police officers are accomplished in a timely, fair, and thorough manner.

The incident that triggered the excessive force complaint occurred on July 30, 2010. The completed investigation was forwarded from Internal Affairs to the Office of Police Ombudsman for certification on November 30, 2010. The investigation required 123 days to complete. In reviewing the chronology of the investigation of the event there were five instances where the investigation appeared to have unnecessary delays:

- July 30-August 10, 2010: There was an 11 day delay before the Patrol Lieutenant received the investigation after the Patrol Sergeant completed the initial interviews.
- August 20-29, 2010: There was a 9 day delay where no further progress was reported in the investigation.
- August 31-September 22, 2010: There was a 23 day delay where no further progress was reported in the investigation.
- October 28- November 17, 2010: There was a 21 day delay where no further progress was reported in the investigation.
- November 17- 30, 2010: There was a 12 day delay before the investigation was forwarded to the Office of Police Ombudsman for certification.

As emphasized above, because of the significant lapses of time in the investigation (approximately 76 days), and without any explanation set forth in the Administrative Review Panel's report for such significant delay, it appears that the investigation was not completed in a timely manner.


With regard to the completed investigation, pursuant to Spokane Municipal Code Section 4.32.030 (H), the Office of Police Ombudsman will determine whether the investigation was thorough and objective.

Having reviewed the completed Administrative Review Panel's report, there appears to be a lack of nexus between the witnesses' statements and the findings and conclusions of the Administrative Review Panel. From the Ombudsman's perspective, it appears as though the witnesses' statements were not given serious consideration in the review of this investigation. The Administrative Review Panel's report must include an additional explanation setting forth the author's analysis of the witness statements in reaching their conclusion.

Based on the information cited, this completed investigation will not be certified by the Office of Police Ombudsman based on the following factors: (1) the Ombudsman was not contacted and allowed to participate in the interviews of witnesses; (2) the investigation was not completed in a timely manner; and, (3) the Administrative Review Panel's report failed to include adequate analysis or explanation as to the conclusion reached involving the witnesses' statements.

I also recommend that this specific incident be reviewed with leadership to ensure that the procedural errors made in this investigation are not repeated in the future.

Sincerely,



Tim Burns  
Police Ombudsman

cc: Mary Verner, Mayor  
Ted Danek, City Administrator  
Jim Nicks, Assistant Chief  
Craig Meidl, Police Lieutenant  
Dave McCabe, Police Sergeant  
Tim Szambelan, Police Ombudsman Attorney