



OFFICE OF  
POLICE OMBUDSMAN  
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SPDombudsman.org

September 17, 2012

## Public Safety Committee Report

Reporting Period: August 01, 2012 through August 31, 2012

### 2012 OVERVIEW

**Complaints Received:** Since January 1, 2012, 98 complaints have been received by the Office of Police Ombudsman and forwarded to Internal Affairs. The complaints were for:

- 17 Demeanor
- 16 Harassment
- 49 Inadequate Response
- 1 Unlawful Detention/Search
- 1 Due Process
- 5 Excessive Force
- 1 Racial Bias
- 1 False Arrest
- 1 Parking
- 5 Procedural
- 1 Driving

See attachment 1 to view a three-year snapshot graph of OPO complaints received by month.

**Complaints Referred:** Since January 1, 2012, 15 complaints have been referred to the following agencies:

- 4 complaints have been referred to the Spokane County Sheriff's Office.
- 6 complaints involving the Spokane Valley Police were referred to the Spokane County Sheriff's Office.
- 1 complaint involving the Spokane County Jail was referred to the Spokane County Sheriff's Office.
- 1 complaint involving the U.S. Border Patrol was referred to the local U.S. Border Patrol Office.
- 1 complaint involving Crime Check.
- 1 complaint involving the Colville Police Department was referred to the Colville Police Department for follow up.
- 1 anonymous complaint was forwarded to Internal Affairs.

## **CONTACTS**

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Between August 01, 2012 and August 31, 2012 the Office of Police Ombudsman was contacted **94** times.

Since January 1, 2012 there have been **628** contacts received by the Office of Police Ombudsman.

## **COMPLAINTS**

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To assist in identifying where complaints are occurring, the Office of Police Ombudsman has divided the City into four quadrants. The north-south borderline is Sprague Avenue and the east-west borderline is Division Street.

Complaint outcomes are updated regularly and can be viewed at the Office of Police Ombudsman website at [www.spdombudsman.org](http://www.spdombudsman.org) under the headings "Documents and Reports" and "2012 Received Complaints."

Between August 01, 2012 and August 31, 2012, **10** complaints were received.

1. Thursday, August 30, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman through the website. The Complainant advised that an Officer refused to issue a motorcyclist a citation for modified exhaust which is creating a nuisance in the neighborhood the Complainant resides in. (S/W), (OPO # 12-98)
2. Wednesday, August 29, 2012: A **Harassment** complaint was received by the Office of Police Ombudsman. The Complainant advised that their neighbor volunteers in a COPS Shop. The Complainant believes that their neighbor is using the Police Department to harass them by filing false complaints with the COPS Shop. (N/E), (OPO # 12-97)
3. Friday, August 24, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman. The Complainant advised that their adult child who is developmentally disabled was the victim of a sexual assault that was not properly investigated by the Police Department. (N/W), (OPO # 12-96)
4. Friday, August 24, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman through an e-mail. The Complainant advised that they called Crime Check and 9-1-1 to report that an individual was shooting either a BB gun or paint ball gun at children in a local park. The Complainant advised that although they called several times, the Police did not respond. (N/W), (OPO # 12-95)

5. Friday, August 24, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman through the website. The Complainant advised that an Officer took a report that was factually inaccurate. The Complainant attempted to file an addition to amend the report in an attempt to have their side of the incident documented but was denied the opportunity. (N/W), (OPO # 12-94)
6. Tuesday, August 21, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman through a Council Member referral. The Complainant alleged that Detectives refused to arrest the people that had previously assaulted the Complainant. (N/W), (OPO # 12-93)
7. Tuesday, August 14, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman by phone. The Complainant advised they called 9-1-1 to report an argument between a parent and their child and requested that an Officer respond. The Complainant advised that they were told an Officer would be dispatched however an Officer did not respond. (N/E), (OPO # 12-92)
8. Monday, August 06, 2012: The Office of Police Ombudsman received a complaint through the website. The Complainant advised that there was **erroneous information on the SPD website** regarding application requirements for a Concealed Pistol License. The complaint was forwarded to Internal Affairs Unit Sergeant McCabe who forwarded it to the Police Records Division Supervisor. (OPO # 12-91)
9. Monday, August 06, 2012: The Office of Police Ombudsman received a complaint through the website. The complainant advised that Google flagged the **SPD website** as having malware as of July 31, 2012. The complaint was forwarded to Michael Sloon, Director of MIS for follow up. (OPO # 12-90)
10. Thursday, August 02, 2012: An **Inadequate Response** complaint was referred to the Office of Police Ombudsman by the Office of the Mayor. The Complainant advised that they had been wrongfully accused of a crime and were having difficulty contacting the Police Detective to clear their name of any wrongdoing. (OPO # 12-89)

Between August 01, 2012 and August 31, 2012 **01** complaint was referred to another jurisdiction:

1. Friday, August 31, 2012: A complaint received by the Office of the Mayor was referred to the Office of Police Ombudsman. The complaint involved a Spokane County Sheriff's Deputy and was referred to the Spokane County Sheriff's Office for follow up.

## **INVESTIGATIONS CERTIFIED**

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Between August 01, 2012 and August 31, 2012, 4 completed investigations were certified as timely, thorough and objective:

1. Tuesday, August 21, 2012: An **Excessive Force** complaint was received by the Internal Affairs Unit on May 21, 2012. The Complainant alleged that an Officer grabbed the Complainant by their arm and threw them onto their couch while the Police Department was executing a search warrant at their residence. The Ombudsman confirms that the complaint was investigated through a timely, thorough and objective process. (SPD IA # 12-033)
2. Monday, August 20, 2012: An **Inadequate Response and Excessive Force** complaint was received by the Office of Police Ombudsman on June 05, 2012. The Complainant advised that they observed several Officers involved in the arrest of an individual. They thought the number of Officers involved was excessive and that the Officer's used excessive force in the arrest process. The Ombudsman confirms that the complaint was investigated through a timely, thorough and objective process. (SPD IA # 12-039), (OPO # 12-57)
3. Monday, August 13, 2012: A **Speeding** complaint was received by the Office of Police Ombudsman on June 06, 2012. The Complainant advised that they observed a police car drive through a red traffic light and they later observed the same police car speeding. The Ombudsman confirms that the complaint was investigated through a timely thorough and objective process. (SPD IA # 12-040), (OPO # 12-60)
4. Monday, August 13, 2012: An **Inadequate Response** complaint was received by the Office of Police Ombudsman on May 04, 2012. The Complainant alleged that an investigator asked inappropriate questions to their child who was the victim of sexual assault. The Ombudsman confirms that the complaint was investigated through a timely, thorough and objective process. (SPD IA # 12-030), (OPO # 12-46)

## **DECLINED CERTIFICATIONS and APPEALS**

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There were no declined or appealed certifications during the reporting period.

## **INTERVIEWS**

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- Internal Affairs, Officer Interviews: 9
- Internal Affairs, Complainant Interviews: 2
- Internal Affairs, Witness Interviews: 1
- Office of Police Ombudsman Complainant Interviews: 5
- Office of Police Ombudsman Witness Interviews: 1
- Closing (Complaint Closure) Interviews: 0

## **OTHER DUTIES**

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**Critical Incident Response:** There were no Critical Incidents responded to during the reporting period.

**Cases Resolved Through Mediation:** No complaints were resolved through the mediation process during the reporting period.

### **Recommendations:**

- Training bulletin regarding control of public sidewalks be provided to Police Department personnel

## **NEXT STEPS**

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- Completion of Student Handbook
- Complete report on Medical Examiner Inquests

## **COMMUNITY OUTREACH**

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- Friday, August 31, 2012: Riverpark Square Mall (Intern, 11a-2p)
- Tuesday, August 28, 2012: TV talk show with Victor Noder and Bob Apple (645p-815p)
- Monday, August 27, 2012: Spokane City Council meeting, OPO Presentation (OPO Assistant, 6p-7p)
- Saturday, August 25, 2012: Spokane Falls Northwest Indian Encampment and Pow Wow (1p-3p)
- Friday, August 24, 2012: Riverpark Square Mall (Intern, 11a-2p)
- Saturday August 18, 2012: Unity in the Community (OPO Assistant, 10a-4p)
- Friday, August 17, 2012: Riverpark Square Mall (Intern 11a-2p)
- Monday, August 13, 2012: Spokane City Council meeting (6p-7p)
- Saturday, August 11, 2012: Garland Street Fair (2p-330p)
- Friday, August 10, 2012: STA Main Terminal (Intern, 10a-1p)
- Wednesday, August 08, 2012: West Central Neighborhood Council meeting (630p-8p)
- Wednesday August 08, 2012: Spokane Police Advisory Committee meeting (7a-8a)
- Tuesday, August 07, 2012: West Central Neighborhood Council, Night Out Against Crime, Cannon Park (6p-8p)
- Friday, August 03, 2012: Community Assembly meeting (4p-530p)
- Friday, August 03, 2012: STA Main terminal (Intern 1p-4p)
- Wednesday, August 01, 2012: Browne's Addition Neighborhood Council meeting (630p-8p)

## **OTHER**

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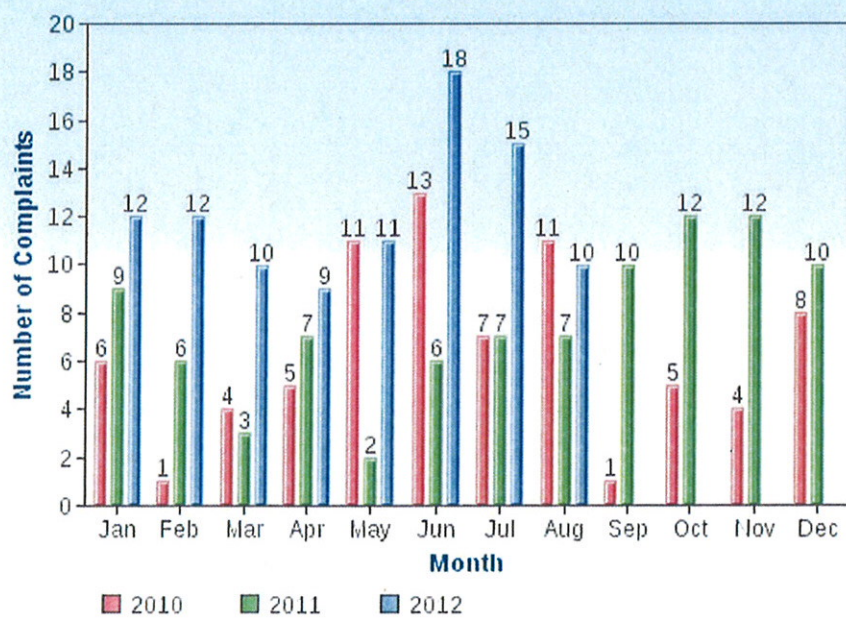
- Monday, August 21, 2012: Public Safety Committee meeting (OPO Assistant, 130p-3p)
- Saturday, August 04, 2012: Spokane Police Department Ride Along (10a-5p)

## **ATTACHMENTS**

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- 3 year snapshot graph of OPO complaints received by month
- 2012 Mid-Year Report
- 2010 and 2011 Taser Analysis
- OPO Assistant, Melissa Nystrom's experience at the Youth Leadership Forum
- City Attorney Memorandum regarding control of public sidewalks to be provided to Police Department personnel

**Office of Police Ombudsman Complaints**  
by month







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## Office of Police Ombudsman 2012 Mid-Year Report

*Reporting Period: January 1 – June 30, 2012*

The Office of Police Ombudsman's mid-year report provides information about Spokane Police Department misconduct complaints. The report presents data on the number and classification of complaints filed with a comparison to the previous year.

### PERSPECTIVE

In the first six months of 2012, Officers from the Spokane Police Department made a minimum of **64,103 contacts** with individuals in the community. These contacts resulted in:

- 2,106 Arrests;
- 1,229 Warrants Being Served;
- 6,371 Citations Being Issued.

These numbers are intended to provide a perspective on the number of public contacts made by members of the Spokane Police Department during the reporting period. These numbers **are not intended** to minimize the significance of complaints made against Officers and received by the Office of Police Ombudsman or the Spokane Police Department's Internal Affairs Unit.

### OMBUDSMAN FINDINGS

In the first six months of 2012, pursuant to Spokane Municipal Code Section 04.32.030, the Office of Police Ombudsman certified 29 Internal Affairs Unit investigations as timely, thorough and objective.

This total includes 10 investigations that were initiated in 2011 and closed in 2012.

**There was one declined certification issued in the first six months of 2012.**

**There was one appeal for additional investigation or reclassification in the first six months of 2012.**

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, the Office of Police Ombudsman had certified 23 Internal Affairs Unit investigations as timely, thorough and objective.*

### INTERNAL AFFAIRS INVESTIGATIONS

In the first six months of 2012, the Spokane Police Department Internal Affairs Unit received 104 complaints. Pursuant to Spokane Municipal Code Section 4.32.030 (E), 58 of those complaints were classified by Police Chief Stephens as Investigative Inquiries. The remaining 46 were classified as formal complaints and were investigated, mediated or are in the process of being investigated.



*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, 62 complaints had been received by the Spokane Police Department Internal Affairs Unit. Of these complaints, 27 were classified as Investigative Inquiries and the remaining 35 were classified as formal complaints and were investigated or mediated.*

#### INTERNAL COMPLAINTS

In the first six months of 2012, three of the 46 complaints assigned for formal investigation were internally generated.

**One internally generated complaint included two allegations; one allegation was determined to be Unfounded and the other allegation was Sustained.**

**Two internally generated complaint investigations remained open as of June 30, 2012.**

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, six of the 35 complaints assigned for formal investigation were internally generated.*

#### CITIZEN COMPLAINTS (including OMBUDSMAN RECEIVED COMPLAINTS)

Forty-three of the 46 complaints assigned for formal investigation in the first six months of 2012 were generated by citizens. Twenty of the 43 citizen generated complaints (46.5%) originated through the Office of Police Ombudsman.

The 43 citizen complaint investigations initiated during the first six months of 2012 involved 60 employees of various ranks. These ranks are: 37 Officers, 10 Sergeants, five Detectives, three Civilians, one Captain, one Corporal, one Lieutenant and two employees that could not be identified by the complainant. Eleven Officers were the subject of two citizen complaint investigations during the first six months of 2012.

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, 29 investigations were initiated in response to citizen complaints. Sixteen of those complaints, approximately 55%, originated through the Office of Police Ombudsman. The 29 citizen complaint investigations involved 31 employees of various ranks.*

#### Citizen Complaint Resolution

In the first six months of 2012, the 43 citizen complaints assigned for formal investigations resulted in the following findings:

- 3 complaints were Administratively Suspended
- 14 complaints were Exonerated
- 3 complaints were resolved through Mediation
- 1 complaint was Not Sustained
- 5 complaints were Unfounded
- 1 complaint (containing multiple allegations) was determined to have one allegation that was Exonerated and one allegation that was Unfounded.

Sixteen citizen complaint investigations remained open as of June 30, 2012.

### **Ombudsman-Received Complaints**

During the first six months of 2012, the Office of Police Ombudsman was contacted 459 times for a variety of reasons. In addition to the 459 contacts, 73 complaints were forwarded to the Internal Affairs Unit for classification and assignment. 53 of those complaints were classified as Investigative Inquiries and 20 complaints were sent forward for formal investigation.

*PRIOR YEAR COMPARSION: From January 1, 2011 to June 30, 2011, the Office of Police Ombudsman was contacted 226 times. In addition to the 226 contacts, 34 complaints were forwarded to the Internal Affairs Unit for classification and assignment.*

The 20 Ombudsman-received complaints assigned for formal investigation resulted in the following 29 misconduct allegations:

- Inadequate Response (9)
- Demeanor (5)
- Unlawful Detention (3)
- Excessive Force (3)
- Harassment (2)
- Biased Based Policing (2)
- Unlawful Search (2)
- Unlawful Arrest (1)
- Speeding (1)
- Failure to Identify (1)

*PRIOR YEAR COMPARSION: From January 1, 2011 to June 30, 2011, the Office of Police Ombudsman received 13 complaints assigned for formal investigation resulting in 24 misconduct allegations.*

### **CRITICAL INCIDENTS**

In the first six months of 2012, Spokane Police Officers were involved in one critical incident requiring the use of Deadly Force. No complaints were received as a result of this incident.

- On Sunday, June 17, 2012, at approximately 4:34a.m., the Ombudsman was contacted by Sergeant McCabe of the Internal Affairs Unit and advised that an individual had been shot by an Officer. The Officer had responded to a man with a gun call on Mission Street in Spokane, WA. The Ombudsman responded to the location for a briefing of the incident and viewing of the scene.

### **OTHER STATISTICS OF INTEREST**

#### **EXCESSIVE FORCE COMPLAINTS**

In the first six months 2012, 10 complaints involving allegations of Excessive Force were received involving 12 different Officers. Five Excessive Force investigations remained open as of June 30, 2012.

**None of the Excessive Force investigations completed in the first six months of 2012 were Sustained.**

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, seven complaints involving allegations of Excessive Force were received involving 11 different Officers. None of the Excessive Force investigations completed in the first six months of 2011 were Sustained.*

## DISCIPLINE

The 28 internal and citizen complaint investigations closed between January 1, 2012 and June 30, 2012 (18 investigations remained open as of June 30, 2012) resulted in one member of the Spokane Police Department receiving some level of discipline. The sanction imposed by the Chief of Police was a Letter of Reprimand delivered in response to an allegation of Racial Bias.

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, 25 formal complaint investigations were closed and resulted in four members of the Spokane Police Department receiving some level of discipline.*

## TASER USE

In the first six months of 2012, Spokane Police Officers used the taser 25 times in 21 incidents in the performance of their duties. In each instance, the use of the taser was determined to be necessary, appropriate and used within the scope of Department policies, procedures and training.

**The Office of Police Ombudsman and the Spokane Police Department's Internal Affairs Unit did not receive any complaints regarding the use of the taser in the first six months of 2012.**

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, Spokane Police Officers used the taser 13 times in 10 incidents in the performance of their duties.*

## SPECIAL WEAPONS AND TACTICS (SWAT) CALL OUTS

In the first six months of 2012, there were 21 call outs of the Special Weapons and Tactics (SWAT) Team. No complaints were received by the Office of Police Ombudsman or the Spokane Police Department Internal Affairs Unit related to SWAT deployments.

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, there were 22 call outs of the SWAT Team.*

## DOMESTIC VIOLENCE

In the first six months of 2012, Spokane Police Officers responded to 3,273 Domestic Violence calls.

**No data is available regarding complaints received in response to Domestic Violence calls.**

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, Spokane Police Officers responded to 3,151 Domestic Violence calls.*

## VEHICLE PURSUITS

In the first six months of 2012, members of Spokane Police Department were involved in 27 vehicle pursuits. The results/consequences of the pursuits were:

- 13 suspects were apprehended
- 12 pursuits were terminated
- 2 suspects escaped

*PRIOR YEAR COMPARISON: From January 1, 2011 to June 30, 2011, members of the Spokane Police Department were involved in 21 vehicle pursuits.*

## VEHICLE ACCIDENTS

In the first six months of 2012, 26 members of the Spokane Police Department were involved in 29 collisions. Investigation of the collisions revealed that:

- 8 collisions were determined to have been Preventable
- 11 collisions were Not Preventable
- 9 collisions were through Legal Intervention
- 1 collision involved Property Damage

As a result of preventable vehicle accidents, three employees received an oral reprimand or counseling, two employees received shift level counseling, two employees received a written reprimand and one employee was suspended.

**No complaints were received by the Office of Police Ombudsman in response to a Non-Preventable vehicle collision.**

*PRIOR YEAR COMPARSION: From January 1, 2011 to June 30, 2011, 26 members of the Spokane Police Department were involved in 29 collisions.*

## MENTAL HEALTH RESPONSE

In the 2009 Annual Report presented to the Spokane City Council on April 12, 2010, the Office of Police Ombudsman recommended to the Office of the Chief of Police that the Spokane Police Department document the number of Police encounters with individuals who displayed symptoms of “excited delirium” and report the number to the Public Safety Committee on an annual basis. The purpose of this recommendation was to quantify the actual number of encounters and review how the situations were resolved to assess future training needs.

In the first six months of 2012, Spokane Police Officers responded to 644 incidents involving citizens with mental illness or disability. Of those incidents:

- 395 contacts required no enforcement action,
- 207 contacts resulted in the citizen being transported to a medical or mental health facility,
- 38 contacts resulted in the citizen being arrested and incarcerated in a Spokane County jail facility and
- 4 individuals contacted exhibited symptoms of “Excited Delirium.”

*PRIOR YEAR COMPARSION: From January 1, 2011 to June 30, 2011, Spokane Police Officers responded to 289 incidents involving citizens with mental illness or disability. The increase in mental health contacts in the first six months of 2012 can be attributed to a Mental Health Training that all Officers completed in March and April 2012.*

## CITIZEN RIDE ALONGS

In the first six months of 2012, the Spokane Police Department hosted 173 ride alongs; 91 of these were citizen riders, 54 co-op college student riders and 28 explorer teenage riders.

**2010 Taser Information****Month**

January: 00  
February: 02  
March: 01  
April: 03  
May: 02  
June: 02  
July: 01  
August: 06  
September: 01  
October: 03  
November: 00  
December: 05

Total: 26

**Gender**

Female: 01  
Male: 25

**Race**

White: 20  
Black: 02  
American Indian: 02  
Hispanic: 01  
Asian or Pacific Islander: 01

**Age Range**

17, 18(2), 21, 22(2), 23(3), 24, 25, 26(2),  
27, 29, 31, 32(2), 34, 35, 36, 37, 39, 42, 43(2)

**Additional Factors**

Intoxicated: 13  
Under the Influence of Drugs: 04  
Armed: 04  
Suicidal: 04  
Grabbed Officer's Gun: 01  
Excited Delirium: 01

**Location (divided North/South at Sprague Ave. and East/West at Division St.)**

Northeast: 10  
Northwest: 08  
Southeast: 03  
Southwest: 05

**2011 Taser Information****Month**

January: 01  
February: 01  
March: 03  
April: 03  
May: 01  
June: 01  
July: 03  
August: 01  
September: 00  
October: 04  
November: 00  
December: 03

Total: 21

**Gender**

Female: 01  
Male: 20

White: 13

Black: 04

American Indian: 04

Hispanic: 00

Asian or Pacific Islander: 00

**Age Range**

15, 21, 23, 26(3), 27, 28, 29, 31(3),  
34, 37, 43, 46(2), 27, 50, 51, 52

**Additional Factors**

Intoxicated: 11  
Under the Influence of Drugs: 01  
Armed: 05  
Suicidal: 03  
Grabbed Officer's Gun: 00  
Excited Delirium: 01

Northeast: 10  
Northwest: 07  
Southeast: 03  
Southwest: 01

Youth Leadership Forum: July 29 – August 3, 2012  
Office of Police Ombudsman Assistant, Melissa Nystrom

Every summer the Washington State Governor's Committee on Disability Issues and Employment puts on a "Youth Leadership Forum" (YLF); a week-long leadership camp for high school students with disabilities. The objective of this event is to teach young people leadership and advocacy skills while encouraging them to be proud of their disability community. Additionally, YLF is held at a state university where the student delegates sleep in dorm rooms, eat in dining halls and get a snapshot of what college life might be like.

This summer I was given the chance to be a counselor at YLF; an opportunity I learned about through the City of Spokane's Human Rights Commission. We all arrived at Western Washington University as strangers but after a frenzy of ice-breaker games, I learned that nearly half of the delegates came from the Spokane area. Also, a handful of counselors had travelled from eastern Washington, including Spokane Human Rights Commissioner, Greg Terhaar; an energetic and dedicated advocate for disability rights in Spokane, WA.

As a counselor I facilitated a small group of five students. The students shared about their own experiences and discussed their plans for the future. The group was kept very busy; we participated in scavenger hunts, took trips to the swimming pool and rode adaptive bikes around campus. We spent most of our days, however, listening to a variety of different speakers. Some inspired us with their own stories and some spoke about community resources, advocacy techniques and the leading technology in assistive devices.

The keynote speaker, Richard Pimentel, was a highlight for everyone. Richard is a disabled veteran and has been recognized by the EEOC as a significant contributor to educating employers on disability employment issues nationally. In 2007, Richard's life was made into a

Hollywood film called "Music Within." The movie and the discussion that followed were inspirational and I strongly encourage anyone to rent the DVD to learn more about Richard's moving life story.

Another very memorable speaker was Damon Wandake, an MBA student with Cerebral Palsy at Western Washington University. Damon shared his personal successes and hardships and candidly answered all of the delegate's questions about life as a college student with a disability. We heard about how Damon successfully lobbied WWU to open a Disability Resource Center but also about how a graduate-level professor recently prohibited him from being a group leader because, as he was told, "leaders must communicate efficiently." It was a lesson for all of us in how far the disability community has come but how much farther it still must go.

When our week at YLF came to an end, nearly everyone had trouble saying good-bye. The delegates shared their e-mail addresses and I believe they each left better prepared to advocate for themselves and their classmates as the new school year begins. Personally, I left YLF with a much better understanding of the disability rights movement and Washington State's commitment to disability issues. Most importantly, however, I took from YLF a revitalized belief that diversity is the foundation of any successful community and a new enthusiasm for celebrating differences and eliminating barriers.



**CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION**

# **MEMORANDUM**

November 5, 2009

TO: Howard F. Delaney, City Attorney  
Stephen Hallstrom, City Prosecutor  
Officer Max Hewitt, Spokane Police Department

FROM: Michael J. Piccolo, Assistant City Attorney

SUBJECT: Control of City Sidewalks

c: Rocky Treppiedi, Assistant City Attorney

I am following up on our discussion regarding use of public sidewalks and the impression that some downtown security officers are telling people that the adjacent property owner controls, or has some authority to control, a portion of the sidewalk.

In regard to any claim of ownership of the sidewalk around Rite Aid, I can find nothing that would support the argument that any part of the sidewalk is under the control of the adjacent property owner. It is my understanding that this sidewalk is part of the public right-of-way and is owned by the City. Control of this sidewalk would be affected if the property owner legally obtained a sidewalk obstruction permit. Several businesses in the downtown core do have sidewalk obstruction permits for the establishment of sidewalk cafes.

My legal research has also concluded that even if the adjacent property owner has some authority, either through ownership or other legal means, a sidewalk adjacent to and indistinguishable from the public sidewalk would most likely be treated by the Court as a public sidewalk. This is especially true when, through private development, the City and the adjacent property owner have arranged to have the public sidewalk eliminated and replaced with a walkway on private property. This replacement sidewalk is going to be treated by the Court as equivalent to a public sidewalk. *Venetian Casino Resort, LLC v. Local Joint Executive Board of Las Vegas*, 257 F. 3d 937, 945-46 (9<sup>th</sup> Cir. 2001),

I also examined the claim that the portion of the sidewalk under an awning, skywalk or other structural elements in the airspace, would fall under the control of the adjacent property owner because of the overhanging structure. I cannot find any validity to this argument. I examined several of

the skywalk easement agreements, including the Parkade Easement Agreement from 1965, and can find no language granting the adjacent property owner any authority over the sidewalk.

It is important to recognize that my analysis pertains to a public sidewalk on the public right-of-way. Other areas on private or public property not used as a sidewalk that have been developed to accommodate the public are still under the control of the adjacent property owner unless a situation similar to that in the *Venetian Casino Resort* case has developed. For example, there are several areas in the downtown core that have been developed to accommodate the public and to improve the property including the fountain and/or plaza areas next to the Parkade, Wells Fargo and Bank of America buildings, the fountain and walkway around the Federal Courthouse, the grassy area between the Spokane County Superior Court building and the County Public Works building, the area around the Arena and the breeze-way between the PFD's structures.

It is also important to recognize that each situation is different depending on the circumstances and that one answer will not resolve every scenario.

In addressing the current question regarding control of the public sidewalk on the public right-of-way, it is my conclusion that the adjacent property owner does not have control over the sidewalk and cannot dictate which activities to allow simply because the owner may have extended an over-hanging structure over the airspace above the sidewalk. Unless there is some authority directing otherwise, I would recommend that the Police Department meet with the Downtown Spokane Partnership to coordinate instructions to the Police Officers and the DSP Security Ambassadors patrolling the downtown core regarding control of public sidewalks in the public right-of-way.

Please let me know if you have any questions.

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Michael J. Piccolo