



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 21, 2018

CASE NUMBER: 2017OPA-1052

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Sustained
# 2	8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 1. Sergeants Must Screen Uses of Reportable Force In-Person With the Involved Officer and [...]	Sustained
Imposed Discipline		
Oral Reprimand		

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.



EXECUTIVE SUMMARY:

The Complainant, the former Captain of the Department's Force Investigation Team, alleged that the Named Employees may have failed to report and document a use of force, as well as that Named Employee #1 may have failed to screen the force and to ensure that it was investigated.

STATEMENT OF FACTS:

The facts of this case are fairly straightforward. While in the holding cell at the West Precinct, the subject was involved in a physical altercation with the Named Employees when they tried to reapply handcuffs to him. During that struggle, the Body Worn Video (BWV) of all of the Named Employees indicated that the subject stated, at the time of the physical contact between him and the officers: "That fucking hurts. That really fucking hurts." None of the Named Employees reported that a complaint of pain was made or documented this complaint, which constituted a Type I use of force under SPD policy.

The subject was later booked at the King County Jail and while there committed suicide. The Department's Force Investigation Team (FIT) investigated this in-custody death and, in doing so, learned from Jail staff that the subject had reported being subjected to force while in SPD custody. FIT reviewed BWV and holding cell video and determined that force had been used while the subject was in the holding cell and that the subject had made complaints of pain in the presence of all of the Named Employees. FIT determined that none of the Named Employees had reported and documented these complaints of pain and, accordingly, referred this matter to OPA. This investigation was commenced.

During its investigation, OPA interviewed all of the Named Employees (twice interviewing Named Employee #1), as well as reviewed all of the BWV and the other documentation relating to this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-1(3) requires that the sergeant review the incident and classify the force used. Here, the subject twice stated that he was in pain. As such, these complaints would have constituted a Type I use of force. However, NE#1, who was the sergeant on scene, did not classify it as such. Indeed, he failed to classify the force at all.

NE#1 did not deny that he heard the complaints of pain, but claimed that he thought that the subject's complaints were "sarcastic" at the time. After reviewing the video prior to his OPA interview, he told OPA that he had changed his opinion and now believed that they were actual complaints of pain. I agree with NE#1 in this regard and find that these were complaints of pain that should have been classified and investigated as a Type I use of force. I believe this to be abundantly clear from the BWV. NE#1's failure to do so violated policy and, as such, I recommend that this allegation be Sustained.



Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 1. Sergeants Must Screen Uses of Reportable Force In-Person With the Involved Officer and [...]

SPD Policy requires that a sergeant investigating a reportable use of force must screen that force in-person with the involved officer and sets forth the requirements of the sergeant's investigation.

As indicated above, NE#1 did not classify the use of force, investigate it, require that it be documented, or screen it in-person with any of the involved officers. As such, no use of force reports were completed concerning this incident and it was not documented whatsoever. Accordingly, he failed to comply with this policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1(1) requires that officers report all uses of force except for de minimis force. Here, the complaints of pain made by the subject constituted a Type I use of force that was required to be reported to a supervisor.

Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) all were in the immediate vicinity of the subject when he made the complaints of pain. All three were interviewed by OPA and asked about why they did not report the complaints. NE#2 told OPA that he did not hear the complaints because he was focusing on how to get the situation under control and because of all the other statements the subject had been making. NE#3 also denied hearing the subject's complaints of pain because his focus was on controlling the subject, preventing him from assaulting officers, and on the multiple other statements the subject had made. NE#3 was asked at his OPA interview about the fact that he directly responded to the subject's complaints of pain when he stated: "just relax and we'll stand you up." NE#3 explained that this statement was made in an attempt to de-escalate the situation. Lastly, NE#4 stated that it was possible that he heard the complaints of pain but that he did not recall.

Based on my review of the BWV, the subject's complaints of pain were clear and a reasonable officer standing in his immediate vicinity would have heard his complaints and understood that these complaints needed to be reported. As discussed above, NE#1 and at least one other officer responded directly to the complaints. While the subject was incredibly difficult throughout the entirety of his interaction with the Named Employees and while the Named Employees were extremely calm and performed admirably throughout this interaction, it was in violation of policy for them not to report the complaints of pain.

That being said, this case is somewhat unique as the complaints of pain were made both in the immediate presence of the officers *and* their direct supervisor. While the officers had the responsibility to report all complaints of pain to a supervisor, their supervisor was there at the time of the complaints and would have already been aware of them.



Under these specific circumstances, it appears to me to be illogical to require the Named Employees to report in this instance and to penalize them for not doing so. I note that had their supervisor not been present at the time of the complaints, I would have recommended that this allegation be Sustained as against them. Given that he was, however, and even though the Named Employees' failure to report the complaints of pain to NE#1 technically violated policy, I do not feel that a Sustained finding is warranted here. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2, NE#3, and NE#4 should be re-trained concerning the elements of SPD Policy 8.400 and the requirement that they report complaints of pain to a supervisor. These Named Employees should receive counseling from their chain of command concerning their failures to do so in this case and the fact that this conduct was outside of the expectations of the Department. These Named Employees should be reminded by their chain of command that reporting complaints of pain and force is a crucial part of the Department's requirements under the Consent Decree and maintaining full and effective compliance. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #2

8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force

SPD Policy 8.400-POL-2 requires that in a Type I use of force investigation officers document all uses of reportable force, including complaints of pain.

During their OPA interviews, NE#2, NE#3 and NE#4 all asserted that they received no direction from NE#1 to generate any use of force documentation concerning the subject's complaints of pain or any indication that NE#1 was intending to complete a Type I force investigation. At his second OPA interview, NE#1 stated that, after the subject was under control, he asked the other Named Employees whether any of them had used reportable force and they all stated no. NE#1 told OPA that none of the other Named Employees asked him whether they should complete use of force reports.

Given that I find that the Named Employees, or at the very least a reasonable officer in their place, heard or should have heard the complaints of pain, I also find that they had an obligation to both report and document these complaints. I further find that NE#2, NE#3, and NE#4 should have been aware of this obligation even when they did not receive explicit direction to do so from a supervisor. However, under the specific circumstances of this case, I do not believe that a Sustained finding is warranted. Instead, I recommend that these Named Employees receive a Training Referral.

- **Training Referral:** NE#2, NE#3, and NE#4 should be re-trained concerning the elements of SPD Policy 8.400-POL-2 and, specifically, the requirement that they document complaints of pain in a use of force report. These Named Employees should be reminded that this obligation exists even where a supervisor does not explicitly direct them to create a use of force report. The Named Employees should be counseled concerning the importance of documenting complaints of pain and force and how their failure to do so in this case fell outside of the Department's expectations. This re-training and associated counseling should be memorialized in a PAS entry.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #2

8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #4 - Allegation #2

8.400-POL-2 Use of Force - TYPE I INVESTIGATIONS 2. Officers Shall Document All Uses of Reportable Force

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**