



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0739

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. a & b: Officers May Make Individual Decisions to Deploy OC Spray...Consistent with Title 8 – Use-of-Force	Sustained
# 2	14.090 - Crowd Management 11. Incident Commanders and Officers Must Document Uses of Force	Sustained
Imposed Discipline		
Written Reprimand		

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 alleged that the Named Employee may have deployed OC spray inconsistent with policy.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was assigned to clear individuals from the CHOP/CHAZ area on July 1, 2020. As part of doing so, NE#1 worked to remove individuals from in front of the East Precinct. At that time, she deployed OC spray towards an individual who was struggling with an officer. That individual was later arrested. Approximately three seconds later, NE#1 deployed OC spray at another individual. That individual had their hands up and was partially facing NE#1. NE#1 told the individual to move twice. NE#1 then deployed OC spray at the individual’s head. The individual covered their face and walked away.

NE#1 documented the use of OC spray on the first individual; however, she did not document the second deployment. A Lieutenant later performed the chain of command review of NE#1’s force. He deemed the first OC spray deployment to be consistent with policy. With regard to the second OC spray deployment, he noted that it was not documented. The Lieutenant asked NE#1 to amend her use of force report to provide an explanation for the second deployment. NE#1 amended her report but noted the following: “I have no recollection of deploying my OC on the suspect that was standing by the wall. I didn’t report the 2nd use of force because I had no recollection of deploying my OC on the 2nd suspect.”

After reviewing the amended report, and given NE#1’s lack of any recollection of the force, the Lieutenant wrote the following:



A few moments later, [NE#1] moved forward about 12'-15' past that subject and deployed OC spray against a non-combative subject who was standing near the large "ecology block" concrete barriers erected in front of the precinct. That second person was making no aggressive actions toward [NE#1] or any other officers. Further, the person did not appear to be armed or a threat to officers or others.

The Lieutenant concluded that the force was potentially inconsistent with policy and referred the incident to OPA. This investigation ensued.

As part of its review of this case, OPA watched the Body Worn Video (BWV) that captured the force and reviewed the force reporting and investigation completed by NE#1 and the Lieutenant. OPA lastly interviewed NE#1.

NE#1 told OPA that her review of the BWV partially refreshed her recollection of the incident. She said that the deployment may have occurred "in the moment" while moving the crowd. She acknowledged that the individual did not appear to be committing a crime at the time of the OC spray deployment and was "just standing there." She also acknowledged that the individual did not appear to pose a threat to her or others at the time, that the individual was not committing significant property damage, and that no warning was provided prior to the deployment. Lastly, she recognized that, under these circumstances, her use of OC spray was not reasonable, necessary, and proportional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 - Crowd Management 10. a & b: Officers May Make Individual Decisions to Deploy OC Spray...Consistent with Title 8 – Use-of-Force

SPD Policy 14.090-POL-10 governs the individual decision by officers to deploy OC spray. The policy permits OC spray to be used in a demonstration context to defend oneself or others or to protect against significant property damage. Such deployments must also be reasonable, necessary, and proportional as set forth in SPD Policy 8.200(1).

As indicated above, the Lieutenant who reviewed NE#1's force concluded that it was out of policy. At her OPA interview, NE#1 reached the same conclusion and acknowledged that her use of OC spray was improper. After reviewing the BWV, OPA concurs and finds that the deployment was not reasonable, necessary, or proportional. Fundamental to this determination is the fact that the individual was not actively causing or threatening harm to NE#1 or others at the time and was standing still with his hands up. Moreover, the individual was not engaging in property damage. Accordingly, NE#1 should not have used OC spray on the individual.

For these reasons, OPA recommends that this allegation be Sustained. In reaching this conclusion, OPA recognizes that NE#1 took responsibility for her actions and did not make any excuses for the out-of-policy deployment. This should be considered as a mitigating factor when evaluating discipline.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2



14.090 - Crowd Management 11. Incident Commanders and Officers Must Document Uses of Force

SPD Policy 14.090-POL-11 requires that officers document uses of force used during crowd management. This includes OC spray deployments.

Here, NE#1 reported her first use of OC spray to a supervisor but did not report the second deployment. At her OPA interview, NE#1 denied that the lack of reporting was intentional. She described that this incident, as well as the demonstrations in the preceding months, had been chaotic and she was operating on little sleep. She asserted that it was an oversight.

Reporting force is of fundamental importance. NE#1 did not do so here and, as such, violated policy. As discussed above, while the chaotic nature of the demonstrations and NE#1's overall lack of sleep are relevant factors to consider, they bear on the level of discipline, not the finding. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**