



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 10, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0376

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Inconclusive)
# 2	5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities	Not Sustained (Inconclusive)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Inconclusive)
# 2	5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities	Not Sustained (Inconclusive)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Inconclusive)
# 2	5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities	Not Sustained (Inconclusive)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 unidentified SPD employees instructed individuals to disperse from a rooftop patio, an order which was perceived as an intrusion on civil liberties.

ADMINISTRATIVE NOTE:

As OPA was unable to identify any of the Named Employees, the 180-day deadline set forth in the collective bargaining agreements with the City's police unions are inapplicable. Given this, OPA sets the date of this DCM as the 180-day deadline for administrative purposes.

SUMMARY OF INVESTIGATION:

On June 2, 2020, a large-scale protest was occurring in the area of the intersection of 11th and Pine in the Capitol Hill neighborhood of Seattle. At approximately 6:30 PM, three Seattle Police officers – referred to here as the Named Employees – were allowed to enter the “Seattle Electric” apartment building, located at the southeast corner of 11th and Pine. The Named Employees then made their way to the rooftop patio of the apartment building, where they encountered a group of individuals. Security footage showed that the Named Employees briefly interacted with the individuals on the rooftop, after which point the individuals departed from the patio. The Named Employees’ presence on the rooftop was also depicted in a contemporaneous Twitter post, wherein the poster stated that Named Employees were “kicking people off their own roof in order to stop recording of protest[s].” There were photographs accompanying the post; however, OPA could not identify the officers from those photographs.

OPA commenced this investigation. OPA attempted to speak with the three Complainants. However, OPA was not initially able to do so. OPA spoke to building staff on a number of occasions. OPA first spoke with the building manager. She said that she had multiple conversations with SPD personnel, including supervisors, in which they asked her to clear people from the patio to make sure that items were not thrown on officers. She also received requests from police to enter the apartment building, but she denied those requests. She said that she later learned that officers did enter the building when she saw photographs taken by a resident. She did not personally witness this. She said that she subsequently sent an email to residents saying that they were not required to allow police into the building.

OPA met with the building manager and reviewed security video. OPA was unable to identify the officers who entered the apartment building due to the quality of the video. At that time, the building manager informed OPA that the officers were given access to the apartment building by a maintenance worker, who escorted them to the roof. The building manager was told that the officers “suggested very firmly” that residents leave the roof top and implied that they should do so; however, the building manager confirmed her understanding that the officers asked rather than directed the residents.

OPA met with the building manager a second time and she provided OPA with contact information for the maintenance worker, as well as a copy of the security video. OPA tried to make contact with the maintenance worker, but he did not respond to OPA’s inquiries.

OPA located a recording of a call made by an officer – referred to here as Witness Officer #1 (WO#1) – to the apartment building. WO#1 stated: “My Command Staff is [asking] if we could ask if you could limit roof access because we seem to have some items that are hitting officers and our vehicles at times. If you cannot, I totally respect that and understand it, we just thought that we would ask ya.” The person who answered the phone replied: “Sure, I can go up there right now and ask that people make sure that nothing falls off the roof.” NE#1 continued: “Yeah, thank you



so much. Obviously, we can't make you lock it down or anything like that, so I appreciate it. Oh, and FYI you do have someone in your entry way there claiming that they are the manager and telling us we weren't allowed in the building." They thanked each other and the call ended.

OPA was subsequently able to interview one of the three Complainants – referred to here as "Complainant #1." She said that, on June 2, 2020, she and around 15 other individuals were on the roof deck of the apartment building. She said that this was either the second or third day that demonstrators had been gathering in the vicinity of the East Precinct and that there were several hundred demonstrators there at the time. Complainant #1 described the roof deck as having a fenced edge. She said that several residents leaned over to record what was happening on the ground. Residents had also recorded the previous evening, which was the first time SPD had used tear gas to disperse demonstrators around the precinct. A video recorded by one of the residents had gone viral.

On the evening of June 2, building residents received an email from building management. In the email, building management said that officers did not want residents on the roof that night but noted that it was a private space and residents were allowed to use it and there was not anything SPD could do about it. Building management relayed that the officers would feel safer if no one was on the roof and that there may have been "bad people getting on the roof." She said that, later that night, officers came up onto the roof deck and spoke with residents. She stated that the officers told them that they "needed to clear the roof" and that they "couldn't go up anymore that night." Complainant #1 told OPA that the officers explained that they wanted to clear the roof in case tear gas was used and they suggested that residents watch the demonstration from their apartments. She recalled that the officers were nice and friendly and that they were only on the roof for a couple of minutes. However, the Complainant, who had attended law school, felt uncomfortable being asked to leave her private space by officers and she felt that she needed to say something.

Lastly, OPA reviewed various radio transmissions and other documents from June 2 but found no references to projectiles being thrown on officers from apartment buildings, including the Complainants' residence.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-2(1) governs *Terry* stops and stands for the proposition that *Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. Under this policy, a "seizure" is defined as "any time an officer, by means of physical force or show of authority, restricts the liberty of a person." (SPD Policy 6.220-POL-1 Definitions). SPD Policy 6.220-POL-2(2) requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a *Terry* stop into an arrest." (SPD Policy 6.220-POL-2(2).)

As a threshold matter, the evidence indicates that officers were given access to the apartment building and roof deck by a building employee. Accordingly, the officers did not violate policy simply by being present on the roof.

OPA further finds at the outset that directing individuals to leave their private property would constitute a seizure. As such, it would need to be reasonable under the circumstances. This being said, there are two open questions that prevent OPA from reaching definitive finding on the allegations in this case.



First, there is insufficient evidence to conclusively determine the reason officers gave to the residents for why they should leave the roof. The building manager appeared to believe that residents were asked to leave the roof because of the officers' concerns of projectiles being thrown down on them. This appears to be consistent with the telephone conversation between WO#1 and a building employee. However, Complainant #1 – the only actual witness to this incident – said that the reason officers gave to residents to clear the roof was potential exposure to tear gas. The Twitter poster, who OPA was unable to identify, indicated that residents were cleared from the roof to prevent them from recording police activity. However, it is unclear whether this is what an officer said or, instead, the Twitter poster's perception of the officers' purpose.

If there was evidence that projectiles were, in fact, being thrown from the roof of the apartment building, the officers may have had a legal basis to direct residents to leave the roof deck. However, OPA found no indication that this was the case. In addition, while it would have been appropriate to advise the residents of possible exposure to tear gas, it was within their purview to choose to leave or stay. They could not be lawfully compelled to vacate the roof deck for this reason. Further, there would have been absolutely no basis under law or policy for the officers to direct residents to leave the roof deck solely to prevent them from recording video.

Second, it is unclear whether the officers asked or directed the residents to leave the roof deck. Both Complainant #1 and the Twitter poster indicated that the officers directed them to leave, rather than asked them to do so. To the contrary, the building manager indicated that she was informed that the officers asked the residents to leave, rather than ordered them. This makes a significant difference as it would not have been improper to ask the residents to leave but the officers would not have had a legal basis to direct them to do so.

All of the above is complicated by the fact that OPA was unable to identify the officers who came onto the roof deck and, thus, could not interview them and uncover their accounts of what occurred.

Without clear answers to these questions, OPA cannot reach an informed decision as to whether the Named Employees violated policy. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive as against all of the Named Employees.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities

SPD Policy allows for the recording of officer activities, so long as the recorder does not interfere with the activity or create unsafe conditions. (SPD Policy 5.160-POL-2).

As stated above, had the Named Employees cleared the roof deck solely to prevent residents from recording, this would have violated policy and law. However, there is insufficient evidence to determine whether this occurred and, accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive as against all of the Named Employees.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #3



5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated in the allegations above, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #2

5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #3

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #3 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions – POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #3 - Allegation #2

5.160 – Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities



For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #3 - Allegation #3

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**