



December 18, 2019

Director Andrew Myerberg
Office of Professional Accountability
PO Box 34986
Seattle, WA 98124-4986

Dear Director Myerberg,

Please see the below Management Recommendation response

Case Numbers:

2018OPA-0250/2019COMP-0023

Topic:

Terry Template

Summary of the Management Action:

Employee conducted a Terry stop, but failed to document it using a Terry Template, as required by SPD Policy 6.220(10) – *Voluntary Contacts, Terry Stops & Detention*. Employee claimed that completing a Terry Template was unnecessary because probable cause to arrest existed (although subject was not arrested.)

Original Recommendation(s):

- OPA previously recommended that SPD Policy 6.220(10) be modified to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether officers have probable cause to arrest at the time of the Terry stop.
- SPD declined to accept the entirety of OPA's recommendation, creating the following exemption for the requirement of a Terry Template: "*Detentions based on probable cause do not require a Terry Template, but require the officer to document the stop via a GO report. . .*"
- In its response to OPA's initial Management Action, SPD referenced a "PC" stop", which it asserted did not fall under *Terry v. Ohio*. OPA disagrees with this analysis and sees no distinction between a stop based on reasonable suspicion versus probable cause where a detention is effectuated and not an arrest. OPA is also unaware of any caselaw defining the contours of a "probable cause stop."
- Ultimately, it is within the Department's discretion to choose not to adopt this recommendation; however, OPA would like to set up a meeting to discuss this more fully.

Action Taken:

In *Terry v. Ohio*, 392 US 1 (1968), the Supreme Court held that in circumstances where an officer does not have probable cause to arrest, but has reasonable suspicion to believe that an individual has committed, is committing, or is about to commit a crime, an officer may, under the Fourth Amendment, detain that



individual for a limited period of time to further investigate. During that stop, an officer may develop probable cause to arrest, but an absence of probable cause does not bear on whether the officer had reasonable suspicion to effect the stop in the first place. In other words, implicit in that case is the distinction between a stop that is based on probable cause to arrest and reasonable suspicion to investigate further. Because of the clear potential for abuse of the standard, SPD requires that stops that are based on a *Terry* standard (reasonable suspicion) be clearly documented in a way that allows for review and scrutiny of such stops, individually and in the aggregate; the exception articulated in the revised policy for stops based on probable cause is to ensure (1) that stops based on probable cause are documented but (2) in a form that allows for review under an analysis that does not conflate reasonable suspicion with probable cause (i.e., maintains the distinction implicit in *Terry v. Ohio*). For this reason, SPD again declines to accept OPA's recommendation to expand the use of its *Terry* template beyond the nature of stops it was intended to capture, but, as always, remains available to further discuss this reasoning.

SPD Considers this Management Action:

Declined

Please don't hesitate to contact me if you have additional questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Carmen Best". The signature is fluid and cursive.

Carmen Best
Chief of Police