



City of Seattle

Office of Police Accountability

January 25, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0571)

Dear Chief Best:

This case arose out of May Day 2016. The primary allegation was that the Named Employees, both assigned to SWAT at that time, used less lethal force tools on demonstrators – specifically, a pepperball launcher and a FN 303 device – in violation of policy. The Complainant contended that the four applications of force engaged in by the Named Employees using these tools were not reasonable, necessary or proportional.

In evaluating the usage of these less lethal force tools on the date in question, I found that it was inconclusive whether Named Employee #1's use of the pepperball launcher violated policy. I found, however, that Named Employee #2's use of the FN 303 device was lawful and proper and, thus, consistent with policy.

An allegation under SPD Policy 8.300-POL-8 was also classified for investigation against both of the Named Employees. This policy requires that "Specialty units that utilize unique weaponry will maintain unit manuals and training records which contain an inventory and specific guidance for each weapon." The policy further mandates that: "Officers in specialty units shall use their weaponry in a manner that is objectively reasonable per the given circumstances." OPA found it clear that a pepperball launcher and a FN 303 device were included among the specialty unit weaponry to which this policy applied.

During its investigation, OPA sought to verify that there existed within the SWAT unit "manuals and training records which contain an inventory and specific guidance for each weapon." While requested from SWAT, these material were not provided to OPA. Based on this, it is unclear whether these materials exist. If they do not, SWAT is not in compliance with this section of the policy.

For transparency and accountability purposes, as well as to ensure compliance with SPD policy, it is essential that these materials exist within the custody of SWAT and are regularly updated. These force tools, if not used appropriately, can cause serious injury if not death. As such, it is crucial that the Department ensure that specific guidance for the use of these weapons exists in writing and is provided to and understood by SWAT personnel. If these materials do not exist, the Department should ensure that SWAT, and any other specialty unit that has such weaponry, create and upkeep the manuals and training records required by SPD Policy 8.300-POL-8.

Thank you very much for your prompt attention to this matter. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Operations, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Tito Rodriquez, OPA Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office
Tonia Winchester, Deputy Director, Office of Police Accountability