



City of Seattle

Seattle Police Department

November 6, 2017

The Honorable Tim Burgess
Mayor
City of Seattle
600 4th Avenue
Seattle, WA 98124-4769

The Honorable Bruce A. Harrell
Council President
City of Seattle
600 4th Avenue
Seattle, WA 98124-4769

RE: OPA Case No. 2017-0153

Dear Mayor Burgess and Council President Harrell:

I am writing to report on the findings in OPA 2017-0153. The underlying incident involves a stop for a suspected DUI. As you know, the Office of Professional Accountability (OPA) independently manages misconduct investigations and submits recommended findings to the Department concerning the alleged policy violations. In this case, OPA recommended sustained findings for violations of three Department Policy Manual Sections. I am in full agreement with OPA regarding its recommended sustained findings for two (Department Policy Manual 8.400(1) – Use of Force Reporting and Investigation, and Department Policy Manual 5.001(9) – Professionalism), and based on these sustained findings, I am imposing a two-day suspension¹. After much consideration, however, for the following reasons, I am not following OPA's recommended sustained finding regarding Department Manual Policy 6.220(6) – Voluntary Contacts, Terry Stops and Detentions. Specifically, OPA recommended a sustained finding with regard to the portion of Department Manual Policy 6.220 that prohibits officers from requiring subjects to identify themselves or answer questions during a *Terry* stop.

OPA's recommendation requires me to first accept that the circumstances of this particular incident were indeed sufficiently within the parameters of *Terry* so as to implicate that analysis; second, a sustained finding would also require me to accept, again under the unique facts of that case, that a reasonable officer on that scene would have known that a request for identification was improper. In this case, the subject was present at the scene of an ongoing DUI investigation. She was repeatedly advised that she was free to leave the scene; she initially did not do so, but rather, continued to interfere in that active investigation. At that point, I believe there was existing probable cause to arrest the subject for obstruction; the fact that they did not do so, but rather continued to encourage her to disengage, does not mitigate or negate probable cause.

¹ SMC 3.28.812 directs that this letter not contain the name of the subject employee or any personal information.

When she did leave the scene, she did so in search of a dog that had apparently escaped. By the time she returned, officers – who were still processing the DUI investigation – had recovered a dog; responsive to her repeated demands for them to give her the dog, she was asked for identification for purposes of ensuring that she was, in fact, the proper owner of the dog. Separate and apart from the arguably existing probable cause based on her earlier obstruction, and even if this second encounter, which she initiated, were to be considered within the parameters of *Terry*, I find that there are facts specific to this second contact from which a reasonable officer would believe the request to be lawful and proper; indeed, had officers turned over the animal to the subject, particularly in her highly intoxicated state, without attempting to verify that she was in fact the rightful owner, I would be questioning that decision.

I appreciate that reasonable minds can differ as to the legal application of *Terry*. I am also mindful, however, that officers on the street are not lawyers, are regularly called upon to manage often highly dynamic circumstances as they present, and that despite a robust body of case law, the lines between a voluntary contact, an investigatory detention, and probable cause remain very much fact-driven analyses. I acknowledge that there are facts from which one could deem the request out of policy, but I also believe there are facts from which one could deem the request fully lawful and proper. Simply put, based upon a thorough review of the record, including the testimony of the subject officer at OPA, the relevant video, the criminal charges against the involved citizen, and statements made to me at the *Loudermill* hearing, I do not believe the record is sufficiently clear to answer that inquiry one way or the other. For that reason, I am changing the recommended sustained finding for violation of Department Manual Policy 6.220(6) – Voluntary Contacts, Terry Stops and Detentions to not sustained – inconclusive.

Please let me know if you have additional questions.

Sincerely,



Kathleen M. O'Toole
Chief of Police

cc: Lorena González, Councilmember
Sally Bagshaw, Councilmember
Kshama Sawant, Councilmember
Lisa Herbold, Councilmember
Kirsten Harris-Talley, Councilmember
Debora Juarez, Councilmember
Rob Johnson, Councilmember
Mike O'Brien, Councilmember
Andrew Myerberg, Interim OPA Director
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