

## Office of Professional Accountability (OPA) Commendations & Complaints Report August 2009

### Commendations:

Commendations Received in August: 3

Commendations Received to Date: 74

Officer Pelich	Community member commended Officer Pelich for finding his stolen bicycle.
Unnamed officers	Community member commended the way patrol officers and detectives responded to and investigated a homicide.
Unnamed officers	Community member commended patrol officers for their conscientious effort in dealing with people congregating in Carkeek Park whose irresponsible behavior was to bother other park users.

### August 2009 Closed Cases:

*Cases involving alleged misconduct of officers and employees in the course of their official public duties are summarized below. Identifying information has been removed.*

*Cases are reported by allegation type. One case may be reported under more than one category.*

### STANDARDS OF CONDUCT: LAWS/POLICY/PROCEDURES

Synopsis	Action Taken
Complainant alleges the named civilian employee, when caring for his father, failed to provide his father with the basic necessities of life in violation of the Revised Code of Washington.	Violation of Law Administrative: SUSTAINED. After a criminal investigation conducted by the jurisdiction in which the alleged criminal conduct occurred, the named employee pleaded guilty to Criminal Mistreatment Third Degree, a gross misdemeanor. The administrative investigation also concluded named employee engaged in the criminal conduct alleged. Employee was terminated from employment for unrelated work performance issues.
Complainant, who had received multiple parking violations citations, alleges named Parking Enforcement Officer singled his car out for selective enforcement because of earlier complaints the complainant had made about parking enforcement in his neighborhood.	Complaint Process – Retaliation – UNFOUNDED. The evidence establishes named Parking Enforcement Officer was acting in response to direction from a supervisor who, in turn, was reacting to many complaints to the City of Seattle’s Internet Quorum service for increased parking enforcement in complainant’s neighborhood and that any citations issued were based upon legitimate enforcement action.

**STANDARDS OF CONDUCT: LAWS/POLICY/PROCEDURES**

<p>Complainant alleges named officer failed to accurately investigate her traffic collision and failed to take appropriate enforcement action against the other driver involved in the collision. Additionally, it is alleged named officer, being properly trained, failed to activate the in-car video system during the event.</p>	<p>Collision Investigations – Reporting: SUPERVISORY INTERVENTION  In-Car Video Policy: SUPERVISORY INTERVENTION  The evidence establishes named officer reasonably, but wrongly, believed the circumstances of the traffic collision did not require him to complete a Traffic Collision Report and that named officer did properly issue the offending driver a traffic citation. The evidence also demonstrates named officer’s in-car video system was not activated because he had not activated his overhead lights, which would have activated the system. Named officer’s supervisor addressed these issues with named officer.</p>
<p>Complainant alleges named officer failed to properly “tag” a turkey that named officer had shot and had in his possession during a hunting trip.</p>	<p>Violation of Law– Administrative: SUSTAINED.  Named officer, while off duty on a turkey hunting trip, shot a turkey but failed to properly validate the applicable game tags, as required by law. Named officer admits to the violation and self-reported his conduct. Named officer paid a fine to the State Department of Fish &amp; Wildlife.</p>
<p>Two cases were combined for investigation because they involved the same complainant, were basically reported at the same time, and could be resolved based upon a similar fact pattern. Patrol officers arrested complainant on an outstanding Department of Corrections felony warrant. Complainant initially accused the two officers arresting and transporting her of sexually assaulting her and slamming her head against the side of the transport vehicle.</p>	<p>Named office #1:  Violation of Law – Administrative: ADMINISTRATIVELY UNFOUNDED  Named officer #2 (unknown officer):  Unnecessary Use of Force: ADMINISTRATIVELY UNFOUNDED  Case initially investigated by SPD Special Assault Unit. Complainant totally recanted her assertions, medical evidence obtained did not support complainant’s assertions and suggested complainant was likely high or intoxicated at the time of her arrest, admittedly affecting her ability to accurately recall much about that time at all. Complainant stated she did not want to pursue a complainant against any officers.</p>
<p>Complainant alleges an unknown person, using a SPD telephone line, phoned her husband, representing herself as an employee of the now defunct Washington Mutual Bank, seeking private financial information about complainant’s mortgage account.</p>	<p>Unknown employee:  Administrative Violation of Law – ADMINISTRATIVELY INACTIVATED  Initially, the case was investigated by the SPD Fraud, Forgery &amp; Financial Exploitation Unit. That investigation determined the phone call at issue originated from a specific SPD telephone line but could not establish who may have been using the phone at the time. Neither the criminal nor the administrative investigations into this matter could establish who may have placed the suspicious phone call. Complainant reported she incurred no loss or harm from the call. This case has been inactivated, pending the discovery of any new evidence warranting re-activation of the investigation.</p>

**STANDARDS OF CONDUCT: LAWS/POLICY/PROCEDURES**

Synopsis	Action Taken
Complainant alleges named officer, working secondary employment directing traffic at a City Light construction site, used discourteous and profane language when yelling to her as she drove past a "road closed" sign into the construction zone.	Professionalism – Courtesy: NOT SUSTAINED. Professionalism - Profanity: NOT SUSTAINED. The evidence establishes complainant drove past an 8' high "Road Closed" sign into an active construction zone thereby endangering herself and others present and that named officer yelled at her to stop and responsively slapped the roof of her car as she drove past. The available evidence, essentially the version of complainant against the version of the officer, does not support a determination one way or the other whether named officer was rude or used profane language.
Complainant alleges named officer was rude and unnecessarily touched her after he stopped the car she was driving for going past a stop sign without stopping.	Professionalism – Courtesy: UNFOUNDED Unnecessary Use of Force: UNFOUNDED The evidence establishes named officer had a lawful basis to stop complainant for a traffic violation. Independent, third-party witnesses corroborate the appropriateness of named officer's conduct and raise serious questions about complainant's motivation for asserting misconduct by named officer.
Complainant alleges named officer stopped a driver of a vehicle for a traffic violation and that named officer should have recognized the driver was under the influence of drugs or alcohol.	Professionalism – Exercise of Discretion: EXONERATED The evidence establishes named officer acted reasonably when he concluded that the driver was not under the influence of drugs or alcohol and that his exercise of discretion in deciding not to process the driver for suspected DUI was reasonable.
Complainant alleges named sergeant, wearing plain clothing and driving an unmarked vehicle, acted unreasonably when he drove in an erratic manner and failed to immediately stop his vehicle when an on-duty, uniformed officer driving a marked patrol car attempted to stop him.	Professionalism – Standards and Duties – SUSTAINED The evidence establishes named sergeant demonstrated egregiously poor judgment when he attempted to bait another officer stopping his vehicle by driving in an erratic manner, failing to promptly comply with directions from the officer stopping his vehicle, and failing to recognize the potential risks of such misconduct. Named sergeant accepted full responsibility for his poor judgment.
Complainant was driving a car when named officer stopped him for reckless driving and subsequently arrested him. Complainant alleges named officer inappropriately touched his wife, a passenger in the car, when frisking her; without justification searched the interior of the car and his wife's purse; and used profane language when talking to complainant and his wife.	Professionalism – Profanity: UNFOUNDED Unnecessary Use of Force: UNFOUNDED Searches – General: SUPERVISORY INTERVENTION The evidence establishes named officer was justified in stopping complainant's car and arresting complainant for reckless driving; that named officer used only minimal, reasonable, and necessary force when touching complainant and complainant's wife; that named officer did not use profane language; but that officer could benefit from training regarding the scope of investigatory frisks of vehicle passengers.

**STANDARDS OF CONDUCT: LAWS/POLICY/PROCEDURES**

Synopsis	Action Taken
<p>Complainant alleges named officer, absent justification, entered the locked trunk of complainant's car in the course of investigating an on-going domestic violence relationship between complainant and complainant's female friend, involving at least 3 incidents and involving complainant reportedly being in possession of a handgun or having one nearby.</p>	<p>Domestic Violence – Firearms: ADMINISTRATIVELY EXONERATED</p> <p>The evidence established named officer acted reasonably and in compliance with Department policy when he searched for a handgun reportedly in the possession of complainant and threatened to be used by complainant. The evidence demonstrated the handgun was a persistent theme in an on-going domestic violence relationship between complainant and a female. Named officer had dealt with complainant and the female on a least 3 occasions involving reported domestic violence and the presence and threatened use of a firearm. The evidence demonstrated named officer acted in a reasonable and necessary manner based upon the information available to him at the time.</p>

**UNNECESSARY FORCE**

Synopsis	Action Taken
<p>Complainant alleges he was crossing the street in a crosswalk when, for no reason, the two named officers pulled their patrol car up to him, which scared him and caused him to run home to tell his mother. Complainant alleges named officers ran after him, caught up with him, kneed him in the back, pulled on his hair, and slammed him into the ground.</p>	<p>Unnecessary Use of Force: EXONERATED.</p> <p>The evidence establishes that when named officers attempted to stop complainant for a pedestrian violation, complainant ran from officers and that officers used minimal and reasonable force to detain and control complainant, who struggled with officers when apprehended. The evidence also establishes complainant suffered no apparent injury and may have fabricated complaints of injury and illness, which were considered and dismissed by medical professionals who evaluated him at the time.</p>
<p>Complainant alleges named officer, one of several officers involved in arresting complainant for automobile theft, used unnecessary force by pushing complainant to the ground when he threatened to spit on named officer, after complainant had previously attempted to spit on other officers.</p>	<p>Unnecessary Use of Force – EXONERATED</p> <p>The evidence establishes complainant had attempted to spit on other officers involved in his arrest for automobile theft, had been warned by officers to cease such conduct, but nevertheless, threatened to spit on named officer and was taken to the ground by named officer at the point complainant appeared to be preparing to spit on named officer. The evidence establishes named officer used reasonable and necessary force to defend himself from complainant.</p>

**UNNECESSARY FORCE**

Synopsis	Action Taken
<p>Complainant alleges two named officers used unnecessary force when defending themselves against a physical assault from complainant and companion of complainant and when subsequently arresting complainant and complainant's companion.</p>	<p>Named officer #1 and #2: Unnecessary Use of Force – EXONERATED</p> <p>The Chief of Police originally sustained a finding against named officer #2 but upon further review, including an enhanced video, the initial finding (reported in July 2008) was revised to reflect the weight of the evidence. The evidence demonstrated named officer #2, due to aggressive physical resistance from complainant, was having difficulty gaining control of complainant's hands and complainant appeared to be either attempting to conceal or access a possible weapon on his person, thereby creating a reasonable fear in the mind of the officer that complainant might be in the process of obtaining a weapon of some type to use against the officer. The evidence demonstrates named officer #2 used reasonable and necessary force to protect himself and others and to take control of complainant.</p>
<p>Complainant, who with her adult son, was inside a parked car in the parking lot of a closed business late at night, reportedly waiting until morning when they intended to apply for work as casual workers at a longshoremen's hall, alleges the two named officers exercised poor discretion and acted unreasonably when they conducted a Terry Stop on her and her son, which escalated into named officers using physical force, arresting complainant and her son, and impounding their car.</p>	<p>Named officer #1: Unnecessary Use of Force – EXONERATED Violation of Rules (Terry Stop) – SUPERVISORY INTERVENTION Professionalism/Exercise of Discretion – SUSTAINED</p> <p>Named officer #2: Unnecessary Use of Force – EXONERATED Violation of Rules (Terry Stop) – EXONERATED</p> <p>Initially, this case resulted in findings of Sustained against both named officers for the unreasonable Terry Stop and Unnecessary Use of Force (reported in February 2009). Upon further consideration of the matter, the Chief of Police with concurrence from the OPA Director revised the findings, as noted above, including adding the third allegation (professionalism/discretion) against named officer #1.</p> <p>This review determined that both officers reasonably believed they were encountering suspicious circumstances in an area where there had been recent burglaries when they located complainant and her son. The evidence demonstrated named officer #1, the primary officer on this event, would benefit from a review of the law and Department policies related to the temporary detention of individuals acting suspiciously. The evidence further demonstrated both officers used reasonable and necessary force to restrain and control complainant's son, who refused to cooperate with questions and directions from named officers, thereby creating a reasonable fear in the officers that he posed a danger to them.</p>

**UNNECESSARY FORCE**

Synopsis	Action Taken
<p>Complainant asserts named officer used unnecessary force when he tased her brother and pointed his duty weapon at other family members at the family residence where the officer had been dispatched to a 911 hang-up call regarding several family members involved in a domestic violence assault.</p>	<p>Unnecessary Use of Force – ADMINISTRATIVELY EXONERATED</p> <p>The evidence established named officer acted reasonably and out of necessity when he tased complainant's 6'-5", 280 lb. brother and pointed his duty weapon at other family members among the 8 to 10 violent and agitated individuals involved in the domestic violence assault to which named officer had been dispatched. Complainant's brother, a suspect in the domestic violence assault, was combative with officers and others present and presented a serious, and possibly life-threatening danger by their large number, menacing behavior, and irrational, irresponsible, and threatening conduct toward officers.</p>
<p>Complainant alleges named officer #1, who was seated in her parked patrol car, for no reason, exited her patrol car, grabbed complainant, accused her of spitting on her patrol car, and began assaulting her when she attempted to back away, and also misplaced minor items of property complainant asserts she possessed at the time. Complainant alleges named officer #2 failed to identify himself and unnecessarily pushed away a friend of hers who had simply walked up to the scene to observe what was occurring.</p>	<p>Named officer #1: Unnecessary Use of Force – EXONERATED Mishandling Evidence/Property – UNFOUNDED</p> <p>Named officer #2: Unnecessary Use of Force – UNFOUNDED Professionalism – Duty to Identify – UNFOUNDED</p> <p>The evidence establishes complainant spit on named officer #1's patrol car and when asked by named officer #1 why she did, complainant immediately burst into a rage, began fighting with named officer #1, and threatened to kill named officer #1. The evidence establishes named officer #2 responded to assist named officer #1 and simply pulled a companion of complainant away from named officer #1. The evidence further establishes complainant could not demonstrate that she possessed any of the property items she alleged named officer #1; that named officer #2 clearly identified himself to complainant; and that the force used by both officers was reasonable and necessary.</p>

**Mediation:**

One case resolved through mediation in August.

## Definitions of Findings:

**“Sustained”** means the allegation of misconduct is supported by a preponderance of the evidence.

**“Not Sustained”** means the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence.

**“Unfounded”** means a preponderance of evidence indicates the alleged act did not occur as reported or classified, or is false.

**“Exonerated”** means a preponderance of evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper.

**“Supervisory Intervention”** means while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee’s chain of command is to provide appropriate training, counseling and/or to review for deficient policies or inadequate training.

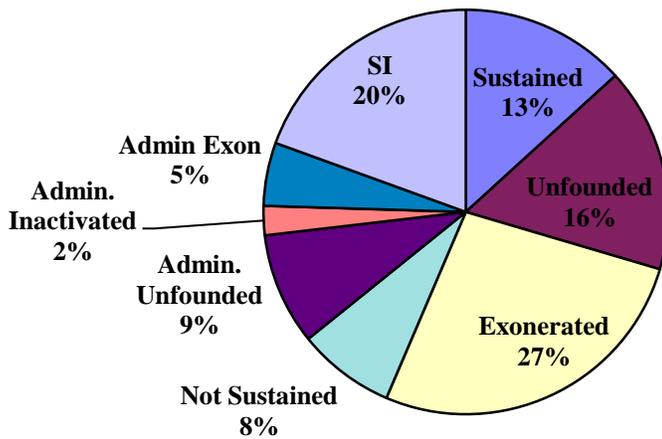
**“Administratively Unfounded/Exonerated”** is a discretionary finding which may be made prior to the completion that the complaint was determined to be significantly flawed procedurally or legally; or without merit, i.e., complaint is false or subject recants allegations, preliminary investigation reveals mistaken/wrongful employee identification, etc, or the employee’s actions were found to be justified, lawful and proper and according to training.

**“Administratively Inactivated”** means that the investigation cannot proceed forward, usually due to insufficient information or the pendency of other investigations. The investigation may be reactivated upon the discovery of new, substantive information or evidence. Inactivated cases will be included in statistics but may not be summarized in this report if publication may jeopardize a subsequent investigation.

Cases Opened (2008/2009 by Month Comparison)

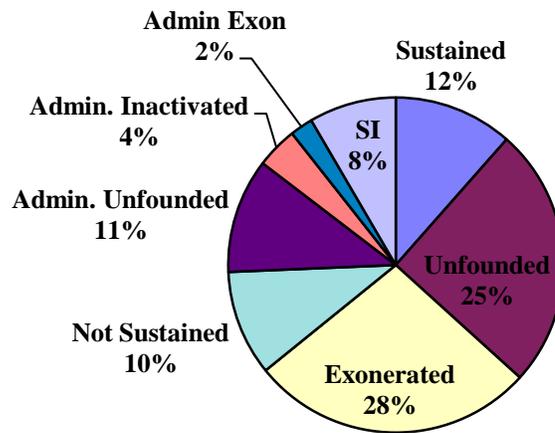
Date	PIR		SR		LI		IS		TOTAL	
	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009
1/1-2/15	38	18	9	3	1	1	16	15	64	37
2/16-3/15	24	14	8	6	2	2	12	8	46	30
3/16-4/15	30	16	4	3	0	6	9	15	43	40
4/16-5/15	26	15	4	6	2	5	15	12	47	38
5/16-6/15	23	20	2	10	1	3	12	9	38	42
6/16-7/15	17	14	2	9	3	3	14	8	36	34
7/16-8/15	27	16	9	11	3	0	25	17	64	44
8/16-9/15	19		7		2		16		44	
9/16-10/15	23		11		2		14		50	
10/16-11/15	20		6		1		11		38	
11/16-12/15	23		6		2		9		40	
12/16-12/31	8		3		0		5		16	
Totals	278	113	71	48	20	20	158	84	527	265

**Disposition of Completed Investigations**  
**Open as of 1 Jan, 2008 or after and Closed as of December 31, 2008**  
**N=144 Closed Cases/257 Allegations**



One case may comprise more than one allegation of misconduct.

**Disposition of Completed Investigations**  
**Open as of 1 Jan 2009 and closed as of 15 August 2009**  
**N=124 Closed Cases/226 Allegations**



One case may comprise more than one allegation of misconduct.