

# OFFICE OF THE POLICE OMBUDSMAN COMMISSION



## OFFICE OF THE POLICE OMBUDSMAN COMMISSION 2020 ANNUAL REPORT



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## OFFICE OF THE POLICE OMBUDSMAN COMMISSION

### Contact Information

City of Spokane  
808 W. Spokane Falls Boulevard, 1st floor  
Spokane, Washington 99201

Voicemail: (509) 625-6755

Fax: (509) 625-6748

[opocommission@spokanecity.org](mailto:opocommission@spokanecity.org)

[my.spokanecity.org/bcc/commissions/ombudsman-commission/](http://my.spokanecity.org/bcc/commissions/ombudsman-commission/)

[www.twitter.com/spd\\_ombudsman](https://www.twitter.com/spd_ombudsman)

Monthly meetings every 3rd Tuesday, unless otherwise indicated.

### Mission

The OPOC exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing, through the Ombudsman, independent review of police actions, thoughtful policy recommendations, and ongoing community outreach. The Commission also assists the OPO in communicating with Spokane's diverse communities and the general public about the complaint filing and investigation process.



# LETTER FROM THE OPOC CHAIR

February 2021

Mayor Woodward  
Council President Breean Beggs  
City Council Members  
Office of Police Ombudsman  
Chief Craig Meidl

The year 2020 turned out to be an interesting year due to COVID-19. We started out the year meeting in person but by our March meeting – it all went virtual and will remain that way indefinitely. However, the commissioners were able to stay in touch and cover many issues over the year.

We also started the year without a legal counsel but by March we were introducing David Bingaman from Northwest Corporate Counsel who has been a great asset to our commission.

With the death of George Floyd and protests across the country and in Spokane – Police Oversight became a big topic. The Police Guild and the City had finally negotiated their collective bargaining agreement in May and the Spokane City Council was about to vote whether to move forward with it when several protest meetings were held in Spokane. Activist groups and citizens demanded that members of City Council not approve it because of too much power that the police union held over our ombudsman. As of December 2020 – the police collective bargaining agreement (CBA) was still under negotiation.

On May 31st, there was a big protest downtown regarding the murder of George Floyd. The protest started off peaceful but later in the late afternoon and evening – it turned violent. A few businesses were looted and many police crowd control tactics were used. Chief Meidl requested the OPO to conduct a report of the police response to the protest. It was immediately blocked by the Spokane Police Guild filing a grievance. To this day, eight months later – no documents have been received regarding May 31st. This is the blocking pattern that the OPO and OPOC have dealt with since the beginning (2014) and this needs to change for “The police ombudsman and any employee of the OPO must, at all times, be totally independent.” (Spokane City Charter)

The OPO published a closing report on C19-040 where we voted to approve 23 recommendations by the OPO to the Chief and SPD. Most of the recommendations were accepted and several have been implemented or are in progress of being fully or partially recommended. When we work together – good things can happen for our community!

In September, we were fully prepared when our police ombudsman had to take an extended absence and our deputy ombudsman stepped right in. The OPOC voted to elevate Luvimae Omana to the position of deputy ombudsman back in 2019. One issue we are still dealing with is the official recognition by City of Spokane HR to fully compensate Ms. Omana fairly for this position. This still has not been resolved.

One of the best news items of 2020 is when the OPOC Administrative Assistant, Christina Coty, was made a full-time employee. This happened in December! We wish to thank the Mayor and members of City Council for helping us make this a reality.

Commissioner Elizabeth Kelley’s position expired in September and she decided to step down to take on other community volunteer efforts. Also, in September, Blaine Holman moved out of the city limits and had to resign from the commission. We wish to thank them both for their hard work with the commission. In November, we welcomed Luc Jasmin as a new commissioner taking Commissioner Holman’s position. As of December 2020 – one position was still open.

We look forward to 2021 with more positive interactions with SPD and the Spokane Police Guild and hopefully getting back out (physically) in our community. Thank you for taking time to read our annual report.

Respectfully submitted,

  
Jenny Rose  
Chair

# COMMISSIONERS

## **Jenny Rose (September 2015 – Present), Chair**

Jenny recently retired from teaching after being in the education field for almost 30 years. She also served eight years as President of the Spokane Education Association. She has a B.A. in elementary education from WSU and a M.A. in Curriculum and Instruction from EWU.

## **Blaine Holman (July 2019 – September 2020)**

Blaine has a B.S. in Sociology from the University of Idaho and a B.S. in Paramedicine from Lewis and Clark State College. Blaine is also a member of the Spokane Association of Realtors.

## **James Wilburn Jr. (October 2017 – Present)**

James specializes in administrative leadership with over 15 years of teaching experience. He has served as the Supervisor for Youth Initiative and Community/Parent relations with Spokane Public Schools and Adjunct Professor of Interdisciplinary Studies at Whitworth. He has also served as President for the NAACP Spokane Branch from 2008-2010.

## **Elizabeth Kelley (November 2017 – Present)**

Elizabeth is a criminal defense lawyer with a nationwide practice focused on representing people with mental disabilities. She is co-chair of the National Center for Criminal Justice and Disability. She is the editor of *Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers* published by the American Bar Association (ABA) in 2018. She serves on the Editorial Board of the ABA's Criminal Justice Magazine. She served three terms on the board of the National Association of Criminal Defense Lawyers (NACDL). In 2009 and 2015, she traveled to Liberia as part of a delegation sponsored by the U.N. Commission on Drugs and Crime and NACDL to train that country's criminal defense bar. She is Vice President of the Spokane Symphony and The Arc of Spokane.

## **Ladd Smith (September 2015 – Present), Vice Chair**

Ladd is currently an elementary teacher and has over 30 years in public education. He has a B.A. in Elementary Education and an M.A. in School Administration.

## **Luc Jasmin III (September 2020 – Present)**

Luc is the owner of Parkview Early Learning Center in Spokane County. Luc began his career in the public school system and decided to transition to early childhood education. Growing up a first-generation Haitian- American has really propelled him to understand and focus on equity, racial bias, and cultural differences. He is also invested in protecting small businesses by mitigating the economic strain they face on a regular basis.

## **David Bingaman, Legal Counsel (March 2020 – Present)**

David is General Counsel to the Office of Police Ombudsman Commission. He is the owner of the Northwest Corporate Counsel law firm where he provides city-attorney services to municipalities and general-counsel services to businesses.



# 2020 ANNUAL REPORT

## STATUTORY AUTHORITY

This OPOC Annual Report is a compilation of the work performed by the OPOC in 2020. The annual report is a requirement of §04.32.150 of the Spokane Municipal Code (SMC), and includes a summary of: the OPOC's activities, findings, and recommendations; the OPOC's community engagement; the OPO's recommendations for changes to the police department's policies, procedures and training; and an evaluation of the work of the OPO.

The report is divided into five sections to explain the various functions of the OPOC:

- I. Summary of OPOC Actions and Developments
- II. Community Engagement
- III. Training
- IV. OPO Recommendations
- V. Evaluation of the OPO

## I. SUMMARY OF OPOC ACTIONS AND DEVELOPMENTS

2020 was a year challenged by a global pandemic that shut down our country for most of the year. National demands for police reform after numerous deaths of minorities at the hands of various police departments, most notably, the death of George Floyd at the end of May, saw protests and civil unrest across the nation including here in Spokane. Commissioner Blaine Holman and Commissioner Elizabeth Kelley both left their positions in the OPOC at the end of their terms, creating vacancies in District 1 and District 2. The District 1 position was filled by Commissioner Luc Jasmin in September. In March, the OPOC hired David Bingaman from Northwest Corporate Counsel as their legal counsel for the remainder of the year.

The global pandemic prevented Commissioners from being as active in the City and in the community due to the required social distancing and cancellation of public gatherings. Commissioners held 7 regular meetings and 2 special meetings. Throughout the year, Commissioners held virtual meetings with the Ombudsman, Mayor Woodward, City Council President Beggs, Council Members, City Legal, and Police Chief Meidl.

### UPDATE ON PREVIOUS OPOC ACTIONS

#### UPDATE #1: DEPUTY POLICE OMBUDSMAN POSITION

**Summary:** In October, 2019, the OPOC voted unanimously to promote the Analyst to the Deputy Ombudsman.

**Outcome:** Pending – At this point the City has not made the necessary changes to have the promotion go through the system.

#### UPDATE #2: FULL-TIME ADMINISTRATIVE SPECIALIST POSITION

**Summary:** The Commission sent a letter requesting funds be added to the budget and the position be made full-time.

**Outcome:** Approved. After 3 years of requests the position has been approved for the 2021 budget cycle.

### 2020 OPOC ACTIONS

#### ACTION #1: CLOSING REPORT ON C19-040 AND RECOMMENDATIONS

**Summary:** The Office of the Police Ombudsman wrote a closing report on Internal Affairs case C19-040 from an incident from February 2019 that involved allegations of excessive use of force during a K9 deployment. The OPO analyzed the internal review process, tactics officers employed, and then provided the department with 23 policy and training recommendations to improve policing practices.

**Outcome:** The Commissioners unanimously voted to approve the closing report and the 23 recommendations that went along with the report.

#### ACTION #2: RESOLUTION TO ORDINANCE 04.32.070(A)

**Summary:** A resolution of the Office of the Police Ombudsman Commission to Waive the Training Requirement under the Spokane Municipal Code §04.32.070(a) due to a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease. The State of Emergency prohibited all people from leaving their homes except under certain circumstances. The resolution also recommended that the ride-along requirement for the police ombudsman be waived for 2020.

**Outcome:** The Commissioners unanimously voted in favor of Resolution to Spokane Municipal Code §04.32.070(a).

## II. COMMUNITY ENGAGEMENT

Commissioners are consistently looking for ways to become engaged with the community. In 2020, Commissioners were able to attend the Martin Luther King Jr. March and Celebration before the State of Washington shut down due to the Covid-19 pandemic. A few commissioners attended virtual meetings with various community groups.

## III. TRAINING

While training opportunities in Civilian Oversight continue to be an area of focus for the Commissioners, the opportunities during 2020 were very limited. However, the Commission was able to attend the NACOLE (National Association of Civilian Oversight over Law Enforcement) Annual Conference via 32 - 1.5 hours webinars over 3 months.

Commissioners identified priorities and goals moving forward in their previous retreat. They continued to use their platform to stay relevant to the community's needs by inviting a guest speaker from the community or someone with expertise in an issue related to policing or oversight to present at OPOC meetings. The Commission maintained a commitment to speaking out on important issues, discussing community impact cases or issues, and continuing to support the OPO's initiatives.

## IV. RECOMMENDATIONS AND FINDINGS

### 2020 RECOMMENDATIONS

The Ombudsman provided 23 recommendations to SPD related to policy and/or training. The subject matter of the recommendations and the Chief's response are:

**RECOMMENDATION #1: I recommend IA investigators, as a matter of practice, identify disputed facts in an investigation provide the available evidence for both sides of the dispute, and document them clearly so that the designated person can make fully informed determinations on how to view the facts.**

**Chief's response: In progress.** I believe a template for the IA investigators will ensure consistency and readability. Having a separate category for "disputed facts" will allow clarity and conciseness to the review and recommendation process.

I will have IA staff update the template for approval to guide future reports.

**RECOMMENDATION #2: I recommend SPD either update the function of their review boards to critically analyze the officer's tactical conduct and make findings similar to LVMPD and/or enhance the chain of command review function of categorical uses of force similar to LAPD that examine an officer's tactics and uses of force that result in specific findings. (See Appendix A for a sample categorical use of force review and findings)**

**Chief's response: In progress.** Similar to recommendation #1, a template of all factors to consider when evaluating a use of force will ensure all levels of response are analyzed for best practices (e.g., use of time, distance, cover, word choice, de-escalation efforts when appropriate, etc.). Additionally, we will make it clear that dissenting opinions should be noted and included in the report.

An outline has been developed, however I will ask that IA work with the OPO (which has experience attending UOFRBs) to determine what, if any, enhancements should be instituted.

**RECOMMENDATION #3: I recommend that SPD ensure officer safety is at the forefront of every tactical review and ensure that every officer follows established training and procedures, particularly in high risk events. Officers who take unnecessary risks or put other officers or the public in unnecessary danger should be immediately referred for additional training.**

**Chief's response: Completed.** This incident was forwarded to the Training staff at the Academy with direction to incorporate high risk vehicle stop training into future in-services. Additionally, the deployment of the K9 was analyzed by Sgt. Spiering, who updated the K9 policy to provide clearer guidance for K9 deployments. Since that direction was forwarded to the Academy, this training has occurred.

**RECOMMENDATION #4: I recommend reinforcing in training that when officers test compliance of subjects, they give them an opportunity to respond to commands before making the decision to use force, if feasible. This opportunity to respond to commands before making the decision to use force, if feasible. The opportunity for compliance should also be critically looked at as part of a tactical review following any use of force.**

**Chief's response: Ongoing.** SPD provides on-going training, in addition to training received via BLEA as directed by the CJTC, at measuring compliance, de-escalation, procedural justice and proper use of force based on level of resistance. In 2021, SPD has incorporated ongoing training into its de-escalation curriculum and has committed to training on these topics into perpetuity.



**RECOMMENDATION #5: I recommend SPD continue to reinforce its new de-escalation policy through training, encouraging officers to provide many opportunities for compliance before resorting to using force. Officers should fully consider other alternative means before resorting to using force, if feasible.**

**Chief's response: Completed / Ongoing.** SPD believes strongly in the expectation of its officers to de-escalate when reasonable. Because of our conviction, we created a separate de-escalation policy to ensure the importance of this policy is stressed. Additionally, we continue to train at in-services on this topic and will do so into perpetuity.

**RECOMMENDATION #6: I recommend SPD reevaluate its culture of accountability on both direct and indirect levels. Supervisors should randomly audit the BWC videos of their officers to safeguard against problematic behaviors, working to recognize and change problematic behaviors before they become issues through a strong mentoring program. Any reviewing authority, whether in an ARP or in a chain of command review, should critically examine incidents in order to limit liability.**

**Chief's response: Completed / Ongoing.** SPD supervisors are not authorized to proactively audit BWC footage randomly based on labor law. The SPD administration is interested in exploring this with the Guild, and desired to include this in negotiations as a bargaining topic for several years. Based on the dynamics of the current unsettled contract, we were not able to incorporate this into the current open contract. It is our desire to explore this with the Guild upon settlement of the current open contract.

Additionally, the SPD chain of command is addressing officer policy violations (of a minor nature, not specifically complained about or related to the Blue Team cause of action) as the incident works its way through the Blue Team review, prior to the conclusion.

**RECOMMENDATION #7: I recommend SPD research best or effective practices to update its K9 guidelines into a policy. The OPO is ready to collaborate with SPD to research different K9 models (i.e. on leash and off leash) and their implications for liability on the department and the City.**

**Chief's response: Completed.** Sgt. Spiering updated the K9 deployment policy in 2020. Additionally, he has noted that this policy will be a living document that will be frequently reviewed and updated as necessary to stay current with case law and best practices as they relate to K9 programs.

**Ombudsman's response:** This report has yet to be provided to the OPO for review.

**RECOMMENDATION #8: SPD should consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and any other guiding documents and training to reduce department liability. SPD should also consider listing every device that an officer can use in utilizing force. By limiting the force options an officer has, the department is likely to reduce liability. (See Appendix B for Seattle PD's Use of Force Tools Policy that lists every force option allowed by the department)**

**Chief's response: Partially implemented and partially not implemented.** The WA State Criminal Justice Training Commission (CJTC) offers a limited number of techniques, and limited number of hours to train on those techniques, under the defensive tactics umbrella. Many officers have taken advanced training outside their employment and obtained, and maintained, a level of proficiency in control tactics otherwise not obtainable with staffing, budget and training hours offered by SPD. The "exceptional technique" category allows tactics used by an officer, those tactics not being a part of the CJTC training curriculum, to be examined for reasonableness. The same standard of reasonableness in utilizing a tactic is followed whether the tactic used is officially trained by the CJTC or a tactic not trained on by the CJTC. SPD continues to utilize as its foundation the Graham standard, "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," the test's "proper application requires careful attention to the facts and circumstances of each particular case." (Graham v. Connor).

The below quote was taken from Lexipol and has implications for uses of force:

(Strickland v. Washington, 466 U.S. 668 (1984) at 687).

**"Specific Rules.** One proposal that sometimes comes up in the police use of force debate is to judge officer actions using very specific rules (emphasis added). Here is what the Strickland court said about using specific guidelines to judge the decisions of a criminal defense attorney:

More specific guidelines are not appropriate. No particular set of detailed rules ... can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would ... restrict the wide latitude counsel must have in making tactical decisions." (Id. at 688-689)

Though this case specifically relates to adequate representation by defense counsel, the concepts are similar to the variety and unpredictability of use of force encounters, and the dangers in having "very specific rules" that cannot "take account of the variety of circumstances" or the "range of legitimate decisions."

Related to the second prong in recommendation #8, "SPD should also consider listing every device that an officer can use in utilizing force," SPD does list out the various tools they are specifically trained on in the Defensive Tactics manual (184 pages).

**Ombudsman's response:** I disagree that principles of legal representation transfers to our recommendation on the department limiting the use of exceptional techniques to limit liability because the mission of legal counsel in a criminal trial is different from that of a police department evaluating an officer's conduct administratively. In the Strickland v. Washington case, the

defendant alleged a Sixth Amendment violation due to ineffective counsel. Legal counsel did not seek out character witnesses or request a psychiatric evaluation at sentencing. This prevented mitigating evidence from entering the record and therefore the trial court sentenced the defendant to death. The Court addressed whether the defendant received effective counsel. The Court found that in evaluating claims of ineffective counsel, judges should be deferential to counsel because they must have “wide latitude” to make “reasonable tactical decisions,” and detailed guidelines for representation could distract from counsel’s overriding mission is the vigorous advocacy of the defendant’s cause.<sup>1</sup> Here, the police department’s role in evaluating uses of force is vastly different. The department is not an advocate, but the arbiter of whether an officer’s conduct fell in or out of policy to protect the safety of officers and members of the public they interact with.

While I agree that in a deadly force encounter, an officer should utilize any tool available to prevent lethal harm, in the cases where less than lethal force is used, officers should be provided clear guidance on what standards the department will use to evaluate their conduct. A manual is not binding like a policy. Listing the tools an officer is allowed to use in the Defensive Tactics manual has no effect if the Department’s policy does not hold the officer to a standard on what tools the Department allows an officer to use.

**RECOMMENDATION #9: I recommend SPD clearly define the allegations of misconduct against an officer at the beginning of a review or investigation and document if the allegations are later modified and the subsequent reasons for doing so.**

**Chief’s response: In progress; work with OPO’s office on format.** Allegations being investigated are typically noted at the beginning of the IA case file, as well as sent to the officer(s) being investigated. This specific notification of policies being investigated is required by law, as departments are not authorized to go on “fishing expeditions” (phrase used by the Courts to describe investigations that are not specifically and narrowly focused based on allegations). Additionally, the chain of command or Administrative Review Panel (ARP) may add additional allegations that the investigation reveal may be warranted based on the evidence presented. For the ARP review, the final allegations addressed are always placed at the back of the ARP finding letter to clearly spell out the allegations and findings.

As noted during our recent meeting, clearly breaking down each of the allegations for each employee, along with findings and recommended sanctions under each employee, makes sense. We will ensure this process is documented in the Internal Affairs SOP manual and each employee assigned to Internal Affairs, as well as the ARP members, are trained to follow this protocol.

Additionally, my sense is the OPO has a template or format that they were exposed to at recent training. We would welcome the opportunity to review this material and adjust our documents and documentation accordingly.

**RECOMMENDATION #10: I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.**

**Chief’s response: In progress.** The example provided by the OPO during our recent meeting was the difference between, as an example, some supervisors utilizing the Blue Team software to document their recommendations, and others using an IA additional ‘Word’ document and incorporating that document into Blue Team as an additional report. The OPO recommended following a consistent format for review and submission. Internal Affairs will update the IA SOP to reflect the method that should be used when providing a review through the chain of command.

**RECOMMENDATION #11: I recommend SPD safeguard the due process rights for its officers by forbidding all informal and formal interactions by the chain of command with an officer that is currently undergoing an IA investigation and/or a chain of command review regarding the matter with the exception of formally recorded interviews.**

**Chief’s response: Implemented.** At the time of this incident, uses of force, pursuit and collision reviews were finalized at the Major level. Since this report, all findings related to Blue Team reports and investigations are now determined by the Assistant Chief or Chief. Those resulting in discipline beyond a letter of reprimand are decided by the Chief.

**RECOMMENDATION #12: I recommend SPD clearly designate who maintains disciplinary authority to ensure an officer is not disciplined more than once for the same offense. Further, all discipline issued should be immediately documented for the record and any subsequent discipline issued should explain whether it is in addition to the previous discipline or if the previous discipline issued has been rescinded or modified.**

**Chief’s response: Implemented.** Related to recommendation #11.

**RECOMMENDATION #13: I recommend SPD promptly initiate an IA investigation under the requirements of SPD Policy 301.14.3 in all cases. This will ensure an officer’s right to due process, proper notification of the Police Ombudsman, and an impartially conducted investigation by IA.**

**Chief’s response: Completed.** SPD’s policy manual was updated shortly after this incident to address this issue (see policy 301.14.3).



**RECOMMENDATION #14: I recommend the Chief insist upon policy compliance by senior members of his staff. Impartial IA investigations should be initiated for any misconduct that would not be considered minor. SPD already had a policy that required initiating an IA investigation, but it was not enforced. Strong policies set the standards of acceptable conduct, but those policies are only effective if they are clearly defined and enforced.**

**Chief's response: Completed.** SPD updated its policy and disseminated its updated policy related to Blue Team reviews and identification of potential misconduct to the entire agency (see Recommendation #13). Based on conversations with the OPO, "serious violations" discovered during the review (specifically related to uses of force, demeanor, etc.) will have an Internal Affairs investigation initiated. De minimis violations (e.g., not activating BWC immediately upon exiting the vehicle) will be handled through Documentations of Counseling (or Letters of Reprimands if appropriate under the progressive discipline umbrella).

**RECOMMENDATION #15: I recommend SPD explicitly require an IA investigator to initiate a complaint investigation when he or she is made aware of potential allegations of misconduct.**

**Chief's response: Not implemented per se, however the expectation is that the IA supervisor ensure the appropriate Bureau supervisor initiate the IA investigation or bring to the attention of a higher rank.** This recommendation, as it relates to C19-040, revolves around a scenario that had not been experienced prior by staff at SPD (different findings at different levels of the review process, related to a use of force, with the final decision at the time being determined by a Major, who had the final say in determining the appropriateness of the use of force and disagreed with his subordinates). This has been rectified with the elevation of final findings to the Assistant Chief or Chief of Police. If either the Assistant Chief or Chief of Police determines that misconduct arises to the level that a misconduct investigation should be initiated, their decision will be final. Additionally, the chain of command will be reprimanded with the appropriate training or discipline for "fail to supervise".

The supervisors within the Bureau are expected to initiate an Internal Affairs investigation if they become aware of misconduct. This duty is an expectation of their leadership position. In this scenario, due to the dynamics not experienced prior, a different finding was determined at multiple levels during the review process. An Internal Affairs Lieutenant cannot be expected to have a clear understanding of potential misconduct under the facts of this specific incident when the chain of command itself was not in agreement of the misconduct.

Having said that, any supervisor within SPD has an obligation to ensure a misconduct investigation is initiated upon learning of serious policy violations (as an example, if the chain of command at the Captain level determines misconduct occurred that rises to the level of an IA investigation, that Captain will traditionally direct the lower rank to initiate the investigation. This occurs for multiple reasons, one being to develop the supervisor and reinforce expectations—especially with newly promoted supervisors).

**RECOMMENDATION #16: I recommend documenting all investigatory steps taken in a review or investigation for consistency across the board in investigations and reviews conducted.**

**Chief's response: Implemented**

**RECOMMENDATION #17: I recommend SPD update its Administrative Investigation Format Policy to require IA investigators to critically evaluate evidence by conducting credibility assessments, identifying disputed facts, and providing other relevant information to the investigation. (See Appendix C for a Sample IA Investigation template)**

**Chief's response: In progress.** This recommendation appears to parallel recommendation #1. In discussions with the OPO, this recommendation was given more detail as it relates to conflicting statements. The OPO suggested conflicting statements be clearly spelled out (under a separate section of the Internal Affairs summary), with the statements attributed specifically to who stated what (or what the evidence – BWC – clearly reveals). Internal Affairs will update the IA SOP to reflect this recommendation as part of the template for summary reports.

**RECOMMENDATION #18: I recommend SPD require its IA investigator sign a recusal form as part of their investigation.**

**Chief's response: Implemented.** SPD Internal Affairs has developed a form that encompasses concerns brought forward in this recommendation.

**RECOMMENDATION #19: I recommend a strong Graham statement to begin any review of a use of force.**

**Chief's response: In progress.** SPD officers have been directed to include a Graham statement in their use of force reports for the past several years, and these reports are part of the chain of command review. The example provided from the LAPD Board of Commissioners contains essentially the same information already provided in SPD's use of force reports and reviews, though in a different format. I am always supportive of examining what other agencies are doing, while weighing the resources SPD has available as compared to other agencies. The 8-page report provided as an example, for each use of force, will take considerable supervisory time, removing supervisors from the field for even longer periods of time and diminishing the much needed field supervision we try to achieve. Having said that, developing a consistent template may help meet the genesis of much of this recommendation. I will direct IA to collaborate with the OPO on what that template should look like.

**RECOMMENDATION #20: If SPD uses a subject's history as part of its determination, it should limit the information to what involved officers knew at the time of the incident, and also include the officers' applicable history in its consideration.**

**Chief's response:** Implemented. SPD agrees with this recommendation, and case law requires that only those factors known to the officer using force at the time force was used, may be considered in determining the reasonableness of the application of force. As it relates to this incident, the officers were working with the US Marshall's Office violent offender task force. The subject in this incident told the officer two times that he had a gun, the officers had information about his prior arrest for being a felon in possession of a gun, and that he had been seen purchasing ammunition several months prior by a DOC officer. Additionally, at least one officer had information that the subject told a cooperative individual prior to this incident that he would not go back to jail. This was documented in the officers' reports.

In terms of considering the officer's applicable history in each incident where force was utilized, SPD follows a progressive discipline matrix. Where no misconduct has occurred in the officer's past, those incidents do not bear on whether the current incident's use of force is justified or not justified. Each incident stands on its own merits. Where misconduct has occurred, the sanctions will always take into account the IA history of the employee.

Additionally, SPD utilizes an EIS (Early Intervention System) that "flags" employees who have met a pre-determined threshold for uses of force, pursuits, collisions and complaints. This flag occurs even when the incidents were determined to be in policy. Internal Affairs coordinates a review of these officers with the officer's chain of command in an effort to be proactive in determining, as an example, officers who may use force within policy, but means other than force may have been a viable option.

**RECOMMENDATION #21: I recommend the ARP, or IA in its investigation, note any discrepancy in facts and disputed evidence and make a determination of each matter. The ARP should arrive at a finding for every allegation in a case. The ARP should also critically evaluate any other additional policies and training guidelines that may apply.**

**Chief's response:** *In progress.* SPD agrees with this recommendation, specifically having a separate category where disputed facts are noted, as well as individually listing out each officer involved and what the allegations / findings are for each officer. This recommendation will be part of the updated template used by IA.

**RECOMMENDATION #22: I recommend SPD consider shortening the timeframe for release of BWC and records related to both critical incidents and community impact cases to be in line with industry standards of 45 days or less, subject to applicable exemptions.**

**Chief's response:** *Not implemented.* SPD has spoken extensively with City Legal regarding the release of BWC footage more quickly. At times the release may be delayed due to investigative processes that must be followed to protect the integrity of the investigation or at the request of the Prosecutor's office. Additionally, each minute of BWC footage takes approximately 10 minutes to review for redaction to avoid the release of prohibited information per RCW. Records staffing has not grown in proportion to the utilization of BWCs and one person has been assigned to this task full time, while the demands placed on Records staff have also grown (records requests, CPLs, gun transfers, etc.). In conversations with the OPO, there has also been a lack of alignment with the OPO's research versus direction provided by City Legal. SPD is in agreement that the sooner the video can be released, the more productive and healthier it is for the community and SPD.

**RECOMMENDATION #23: I recommend SPD update its Policy 703.11, Release of Body Camera Videos to maintain compliance with case law on public records requests that involve internal investigation records.**

**Chief's response:** *In progress.* This recommendation parallels the logistics of recommendation #22, and the response is the same. SPD relies heavily on City Legal to ensure we are complying with all laws and will request clear guidelines to ensure we are following case law.



## V. EVALUATION OF THE OFFICE OF POLICE OMBUDSMAN

The OPOC continues to be impressed with the work and professionalism of the OPO. COVID – 19 completely changed the working environment of the OPO while the pace of work continued to increase. As the push for police reform increases, the OPO has been inundated with complaints, peer requests, and projects to work on; yet the quantity AND quality of work is to the highest standards. Bart, Luvimae, and Christina put together a remarkable closing report which has been widely reported on in the local media. The report was expansive, totaling 50 pages of well-researched information regarding a questionable use of force incident in Spokane from 2019. This closing report has helped push the OPO towards greater compliance with the Spokane City Charter and has fueled the efforts towards police reforms in Spokane. The quality was of such significance, Chief Meidl pointed to this closing report as the reason he wanted the OPO to review the Spokane Police response to the protests of 2020.

In December 2019, Mr. Logue met with Chief Meidl, the first meeting in a long time, and the topic of collaboration was reenergized as open dialogue and collaboration must be the path to move forward. The Chief agreed and communication between the OPO and the police department has steadily improved.

After the death of George Floyd, protests and riots erupted around the country, and Spokane was not immune from this. The Chief formally asked the OPO in writing to review and publish an independent report of their response to the protests. The OPO is still waiting to write this report as SPD has sent no information to OPO due to a grievance from the Spokane Police Guild.

The OPO has been closed to the public since early 2020, resulting in the entire office working from home. To facilitate the team atmosphere of the office, the OPO instituted an office call three times a week on WebEx to check in, maintain visibility on projects, and discuss upcoming items of interest. Commissioners were also welcomed to check in anytime with these WebEx meetings which greatly helped our supervision of the office.

Our Ombudsman, Bart Logue, is fully engaged on tasks, doing deep research as well as interacting with peers around the country on issues, particularly with police use of force. The City Council recognized the Ombudsman's expertise and asked him to attend a study session and express his viewpoints on items for police reform. Bart has received inquiries from as far away as the City Attorney's Office in New York City regarding his work. The Ombudsman has also maintained his position on the Strategic Planning Committee for NACOLE, taking responsibility for the future planning and organization of civilian oversight of law enforcement nationally and was also asked to serve on the NACOLE Member Support and Development Committee and the NACOLE Use of Force Working Group. He was also certified as an Advanced Force Science Specialist (a 6 month endeavor) during 2020.

The Deputy Ombudsman – Ms. Luvimae Omana continues to be responsible for the timeliness and accuracy of every report that the OPO published. Luvimae also established herself as a permanent fixture in the Spokane Police Department's Use of Force Review Board and the Collision and Pursuit Review Boards. Additionally, Luvimae has maintained some administrative duties such as managing the OPO's budget, including continuing to be responsible for processing all travel for the OPO and OPOC. She provides all coordination with the outside mediator we engage with when an opportunity for mediation arises. Luvimae has provided testimony for the American Bar Association's Women in Criminal Justice Task Force listening session for women in criminal justice. Luvimae was also responsible for shepherding the Use of Force Dashboards.

The Administrative Specialist – Ms. Christina Coty continues to provide exceptional customer service to citizens, assisting in 1,232 community member contacts. What makes this truly exceptional is that City Hall was closed for the majority of 2020. As such, Christina was required to reach out remotely to every community member that contacted the OPO. In addition to her work on Public Records Requests, complaint intake interviews, and complaint coordination with Internal Affairs, Christina's willingness to take on more and more aspects of the complaint intake process is commendable. While the office did see a slight decline in contacts and complaints in some months last year, the months of May, June, and July greatly impacted the office with community concerns regarding the police response to the May 31st protests/riot in Spokane. Christina was asked to work a substantial number of hours above her established schedule to document these concerns and interview complainants. In a selfless display of commitment to the community and the OPO mission, Christina provided this additional service without complaint, ensuring OPO compliance with SMC §04.32 on complaint intake.

Our Ombudsman, Bart Logue, is steadfast in fulfilling the requirements of complaint case review; and he has managed to elevate the cooperation with the Spokane Police Department while simultaneously standing firm on the independence of his office and publishing a critical report. Chief Meidl implemented or partially implemented 21 of 23 OPO Recommendations this year. All this in a year full of unexpected impacts. The entire OPO team has exceeded our expectations with their performance in 2020.



# FAQ Office of Police Ombudsman

## Frequently Asked Questions

### 1. What do I do if I'm stopped by the police?

The ACLU of Washington State has created a publication with tips on how to handle a police encounter. The handy wallet-sized "What to do if You're Stopped by the Police" card can be printed and carried with you or you can view the information in a larger format. This can be found on our website or at our office.

### 2. How do I file a complaint?

You can file a complaint in writing, via fax, online or by visiting our office in person.

### 3. Is there a time limit?

The Office of Police Ombudsman has adopted a one-year statute of limitations and must receive complaints within twelve months of the alleged misconduct.

### 4. Is there a cost involved?

There is no charge for using the services of the Office of Police Ombudsman.

### 5. Can I compliment an officer?

Yes, you can file a commendation in writing, via fax, online or by visiting our office in person.

### 6. How is the investigation handled?

When you contact our office, details of your complaint will be received by the Ombudsman and forwarded within 3 days to the Internal Affairs Unit of Spokane Police Department for investigation. After a timely, thorough and objective investigation by the police department, the investigation will be returned to the Ombudsman to certify within 5 days of receipt that the report is thorough and objective. Once certified, the report is returned to the Office of the Chief of Police for disposition.

This process is outlined in the Office of Police Ombudsman Complaint Flow Chart, which can be found online.

### 7. Will I know the results?

Yes. You will be contacted in writing by the Ombudsman or the Chief of Police once the investigation is completed.

### 8. What problems does the Ombudsman deal with?

If you feel an employee of the Spokane Police Department did not treat you properly or violated a policy, you may contact our office with your concerns.

### 9. Are there matters that cannot be investigated?

The Ombudsman has jurisdiction regarding the City of Spokane Police Department and cannot investigate complaints outside this jurisdiction.

### 10. Can the Ombudsman get my charges dropped?

The Ombudsman's office cannot give legal advice or assist with a person's criminal defense.

### 11. What if I have a concern or want to ask a question?

The OPO is ready to answer any question a person might have about Spokane Police Department activities.

### 12. What if I have already filed a complaint with the Spokane Police Department?

If you filed a complaint with the Spokane Police Department before contacting the Office of Police Ombudsman, we ask that you wait until the Police Department has completed their investigation into your complaint. Once you receive notice that the Police Department has closed your case and if you are not satisfied with the outcome of their investigation, you may contact the Office of Police Ombudsman to discuss your concerns.



#### City of Spokane Office of Police Ombudsman

808 W. Spokane Falls Blvd.  
Spokane, Washington 99201  
Phone: (509) 625-6742  
Fax: (509) 625-6748

E-mail: [spdombudsman@spokanecity.org](mailto:spdombudsman@spokanecity.org)  
Twitter: @SPD\_Ombudsman



[www.SPDOmbudsman.org](http://www.SPDOmbudsman.org)