



Seattle Office of
Inspector General

Seattle
Community
Police Commission



Seattle Office of
Police Accountability

SENT VIA EMAIL

MEMORANDUM

June 5, 2020

To: Chief Carmen Best; Seattle City Council; Mayor Jenny Durkan; City Attorney Pete Holmes

Cc: Merrick Bobb, Court Monitor; Christina Fogg and Tim Mygatt, U.S. Department of Justice

From: Prachi Dave, Rev. Harriett Walden, Rev. Aaron Williams, Community Police Commission Co-Chairs; Bessie Scott, Interim CPC Executive Director; Andrew Myerberg, Director of Office of Police Accountability; Lisa Judge, Inspector General for Public Safety

Re: Joint Statement on Use of CS Gas in SPD's Response to Mass Demonstrations in the Wake of the Killing of George Floyd

During the Public Safety and Human Services Committee on Wednesday, June 3, 2020, the City Council asked the Community Police Commission (CPC), Office of Inspector General (OIG), and Office of Police Accountability (OPA) ("accountability entities") whether the City should ban the use of tear gas (CS gas) at demonstrations or take any other immediate measures to ensure the safety and health of the people of Seattle as they exercise critical constitutional rights. This request was made in response to a wave of community concern about an overly militaristic approach to regulating demonstrations in the wake of the killing of George Floyd. While a number of other concerns have been identified by community, the use of CS gas on largely peaceful demonstrators demands immediate attention. Mayor Durkan and Chief Best have also requested the accountability entities thoroughly review the Seattle Police Department (SPD) protest response. The following is our initial assessment of use of CS gas and recommended next steps.

One recommendation alone will not change the system. It is clear that this is only one action of many we must all take to build public trust. To this end, the CPC, OIG, and OPA ask the Seattle Police Department to cease the use of CS gas in response to First Amendment activity, until such time as any appropriate use can be vetted by oversight entities and incorporated into a written SPD policy. That policy should include sufficient safeguards so that CS gas is only used, if at all, in a manner that keeps faith with the public trust.

A critical gap is the absence of clear, department-wide policy guidance or training on the use of CS gas by SPD personnel. The SPD manual does not reference the use of CS gas nor the conditions under

which it can be used for general crowd control. Specialized training of SWAT officers and guidance provided in the SWAT manual for specialty unit use of tear gas cannot substitute for clear department-wide policies governing the use of tear gas at events involving the exercise of First Amendment rights. OPA's preliminary review of demonstration-related cases indicates that officers not assigned to SWAT are using CS gas.

In addition, as CS gas is not mentioned in the SPD manual, it was not approved by the federal court in the context of the Consent Decree required review of the policies surrounding use of force and demonstration management. This is yet another reason why cessation of CS gas is warranted.

Other considerations supporting cessation of CS gas use are:

- The Seattle and King County Department of Public Health and other public health officials around the country oppose the use of tear gas and other respiratory irritants because of its potential to increase spread and vulnerability to COVID-19.
- The public and City Council have highlighted that use of tear gas is banned in military engagements by the Chemical Weapons Convention.
- The City of Seattle has expressed that use of military equipment is not consistent with how the City envisions policing its communities. Specifically, the City passed Seattle Municipal Code 3.28.140 in 2017 prohibiting City acceptance of federal military surplus donated to civilian law enforcement agencies under the Federal 1033 program.
- The public in recent events have described adverse health effects on residents, including infants, in their homes where tear gas has been deployed. Medical literature about the immediate and long-term risks support the need for a more stringent policy on use of CS gas.

Fundamental shifts in the criminal legal system require more than just adjusting policies. The accountability entities stand in solidarity with the people of Seattle who with their voices, minds, bodies, and actions are decrying the long history of institutional racism in policing that led inexorably to the killing of George Floyd. This racism continues to engulf the daily lives of people of color, particularly black people of color, and their children, in ways that can only be imagined but never experienced by allies. We balance this against the belief and recognition that officers, like all of us, are understandably concerned about the unknown circumstances we are collectively facing, and should be able to do their work safely with proper tools, policies, and training. We look forward to dialogue and hope to forge a cooperative, community-centered approach in responding to this clear call from community.