



CLOSED CASE SUMMARY

ISSUED DATE: JULY 20, 2018

CASE NUMBER: 2018OPA-0106

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.



EXECUTIVE SUMMARY:

The Complainant alleged that his arrest was based on bias on the part of the Named Employees. It was further alleged that Named Employee #1 and Named Employee #4 failed to properly document the lack of In-Car Video as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing

Officers, including the Named Employees, responded to a call concerning a possible violation of a domestic violence (DV) order of protection and property damage. They were informed that the perpetrator, who they later identified as the Complainant, was driving a Blue Ford Mustang. When the officers arrived at the location, they observed the Complainant's vehicle driving away at what they reported as a high rate of speed. The vehicle was stopped. Meanwhile, officers spoke with the victim who confirmed that the Complainant had violated the terms of the DV order of protection and also that he caused damage to her front door. Based on this information and on the remainder of their preliminary investigation, the officers developed probable cause to arrest the Complainant.

After he was arrested, the Complainant was transported to the precinct. While at the precinct, he told a Department supervisor that he believed that his arrest was based on his race and claimed that the Named Employees engaged in biased policing. As a result of this complaint, this matter was referred to OPA and this investigation ensued.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on my review of the evidence, there was abundant probable cause to arrest the Complainant. This was due to the statement of the victim and the investigation the officers conducted at the house. As such, I find that the Complainant's behavior, not any bias on the part of the Named Employees, was the basis for his arrest. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

Named Employee #1 (NE#1) and Named Employee #4 (NE#4) were partners on the date in question and were assigned to the same patrol vehicle. This patrol vehicle was, as all such vehicles are, equipped with In-Car Video (ICV).



When they responded to the incident, NE#1 and NE#4 attempted to activate their ICV. They believed that they had done so successfully until, when they returned to their car after the incident, they noticed a malfunction with their system. NE#1 reported that he was unable to fix the problem at that time and he “notified dispatch and noted the failure on the call.”

Four days after the incident, on January 30, 2018, OPA received the initial referral of the Complainant’s bias complaint from a Department Lieutenant. In that referral, the Lieutenant noted that NE#1 and NE#4 appeared to have not recorded ICV and indicated that she asked an Acting Sergeant to determine why that was the case. One day after the referral, but prior to NE#1 and NE#4 receiving the notice of complaint from OPA (five-day notice), NE#1 wrote a supplemental report detailing the error with his and NE#4’s ICV. This supplemental report was approved that same day by a supervisor. The next day, February 1, 2018, the five-day notice was sent by OPA.

SPD Policy 16.090-POL-7 requires that, where video is not recorded or there is a delay in recording, officers must document the failure to record in a call update and explain the reasons for the failure in an appropriate report. The policy does not state when the reporting must occur, but, based on general requirements for arrest-related paperwork, it should be done in a timely fashion.

Here, it is undisputed that the Named Employees documented the failure to record. NE#1 also explained the reasons for the failure to record, on behalf of himself and NE#4, in a supplemental report submitted and approved five days after the incident. While this report was arguably untimely given that it was completed five days after the incident and while it was only generated after this matter was referred to OPA, I find that they complied with the letter of the policy. Further influencing my decision is that the fact that the report was submitted and approved prior to the officers receiving notice of this OPA complaint. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#4.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #1

5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #4 - Allegation #1

5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #4 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 – Allegation #1

5.140 - Bias-Free Policing - 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**