



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 13, 2018

CASE NUMBER: 2018OPA-0581

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	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 (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 the Named Employees subjected him to biased policing. He further alleged that an Unknown Employee both subjected him to biased policing and laughed at him for being homeless. Lastly, it was alleged that the Named Employees failed to report the Complainant’s allegations of bias to a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

The Named Employees were dispatched to respond to an individual who wanted to make a complaint that his tent was unfairly taken by the City and that his belongings were improperly disposed of. Named Employee #2 (NE#2), who wrote the General Offense Report relating to this case, documented that the Complainant alleged that an unknown officer took his things and then laughed at him. At that time, the Complainant also made a number of



allegations concerning his treatment by the unknown officer. Included among those allegations were statements suggesting that he had been subjected to biased policing due to both his race and his housing status. There was no direct allegation that NE#2 or Named Employee #1 (NE#1) engaged in biased policing.

Both NE#2 and Named Employee #1 (NE#1) were in the Complainant's immediate vicinity when he made the statements alleging bias and both responded to what he said. Indeed, NE#1 told the Complainant that the actions of the unknown officer was "unprofessional, disrespectful, and no officer should be doing that." NE#1 also told the Complainant that the Department takes all complaints seriously. Moreover, NE#2 documented the complaints of bias in his General Offense Report. Specifically, he wrote: "Given the nature of [the Complainant's] displeasure in the way he felt he was wronged, in addition to his making statements of bias due to his race and current homeless status, I asked if he would like this incident documented." However, neither NE#1 nor NE#2 immediately reported the complaints of bias to a supervisor or called a supervisor to the scene to conduct an investigation.

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

As discussed above, it is undisputed that neither NE#1 nor NE#2 called a supervisor to the scene to investigate the Complainant's allegations of bias. This was the case even though both clearly heard the allegations and NE#2 explicitly documented that the Complainant was making such a complaint. This failure to immediately report technically violated policy; however, I find that a Sustained finding is not warranted for several reasons.

First, the complaint of bias was not concerning the officers, themselves, but was alleged against an unknown and unidentified officer. As such, this was a unique scenario that the officers may not have ever handled before. Second, both officers were relatively new to SPD at the time. Third, NE#2 did, in fact, report the allegations of bias in his General Offense Report. Fourth, from OPA's review of the video, both NE#1 and NE#2 tried to handle this situation as well as they could and the failure to immediately report was a mistake that should be corrected with training and counseling, not discipline. Fifth and last, the officers' chain of command did an excellent job proactively identifying their error and training and counseling them. For these reasons, I recommend the below Training Referral for both NE#1 and NE#2.

- **Training Referral:** NE#1 and NE#2 should be retrained and counselled concerning this incident. From OPA's review, the officers' chain of command already appears to have done a thorough job in this regard. To the extent the chain of command believes that no further retraining or counseling is required, OPA does not require any additional action. Any retraining and counseling that does take place or, in the alternative, the decision to take no further action should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #2

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

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.*)

As discussed above, the Complainant alleged that he was subjected to biased policing; however, this allegation was made against an unknown employee, not against NE#1 and NE#2. Even had the allegation been made against them, the evidence in the record indicates that they did not engage in biased policing. The interaction between the Complainant, NE#1, and NE#2 was captured on Body Worn Video (BWV). The BWV conclusively establishes that NE#1 and NE#2 did not take law enforcement action towards the Complainant based on bias. Indeed, the BWV shows the opposite. Both NE#1 and NE#2 were polite to the Complainant and treated him with respect and dignity. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained and I refer to the above Training Referral. (*See id.*)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #2

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 #2), 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

As referenced above, the Complainant alleged that an unknown officer subjected him to biased policing. OPA was unable to identify this unknown officer during its investigation. As such, OPA cannot prove or disprove that this alleged misconduct occurred. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #3 - Allegation #2

The Complainant further alleged that an unknown officer improperly seized his belongings and, when the Complainant complained about that conduct, the officer laughed at and disparaged him. This conduct, if true, would have constituted unprofessional behavior; however, OPA was unable to identify this unknown officer during its investigation. As such, OPA cannot prove or disprove that this alleged misconduct occurred. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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