



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 10, 2019

CASE NUMBER: 2018OPA-0646

### 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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

**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)

**Named Employee #5**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 7. Employees Will Document All Allegations of Bias-Based Policing	Not Sustained (Training Referral)

**Named Employee #6**

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 #7**

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 #8**

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 #9**

Allegation(s):		Director's Findings



# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
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***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 all of the Named Employees engaged in biased policing towards him. The Complainant further alleged that Named Employee #1 was unprofessional towards him and retaliated against him. Lastly, it was alleged that Named Employee #5 may have failed to document an allegation of biased policing that was made by the Complainant.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

The Complainant made multiple allegations of misconduct on the part of SPD employees and predominantly against Named Employee #1 (NE#1). In summary, he alleged the following: he was falsely arrested; that the officers served an “erroneous” warrant on his residence; that the officers unlawfully seized property from his home and caused damage therein; that NE#1 acted unprofessionally and subjected him to ongoing harassment; and that all of the Named Employees engaged in biased policing.

With regard to the bias allegation against NE#1, the Complainant asserted that he was discriminated against based on his race and socioeconomic status.

OPA’s investigation revealed an ongoing course of conduct by the Complainant that suggested escalating aggressive behavior. The Complainant was often armed with a firearm and, on multiple occasions, brandished or otherwise intimidated that he would use his weapon during verbal disputes. NE#1 sought and obtained an Extreme Risk Protection Order (ERPO) based on this ongoing behavior. Due to what he believed to be the Complainant’s incomplete statements at the ERPO hearing regarding how many weapons he owned, NE#1 sought and obtained a warrant to search the Complainant’s residence. That search resulted in the recovery of additional firearms and ammunition. NE#1 later arrested the Complainant based on probable cause to believe that he engaged in perjury and that he violated the ERPO. During the search incident to arrest, another firearm was recovered from the Complainant. This was the case even though he had previously denied under oath that he had additional weapons.

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 both above and below, NE#1’s actions towards the Complainant were based on his concerning behavior, not on his race and socioeconomic status. There is no evidence that NE#1 engaged in bias or acted based



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on any other impermissible motive. Indeed, to the contrary, I find that NE#1 behaved properly during this incident and appropriately addressed the threat presented by the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

The Complainant alleged that NE#1 was unprofessional when he allegedly spoke with the Complainant's cousin and told him that the Complainant was no longer allowed to sell hot dogs in Pioneer Square and that if NE#1 saw him there, he would arrest him. The Complainant further contended that NE#1 was unprofessional because he called him and then hung up on him.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

NE#1 told OPA that he called a friend of the Complainant and asked to speak with the Complainant's cousin, who owned the hot dog stand at which the Complainant was employed. NE#1 stated that he informed the cousin that, due to the ongoing issues with the Complainant, it was possible that his vending license could be revoked. He denied that this was unprofessional or that he made this call based on some improper motive.

NE#1 acknowledged that he called the Complainant. He stated that he did so because a judge requested that NE#1 inform the Complainant of a rescheduled court hearing. NE#1 denied that doing so was unprofessional.

I agree with NE#1 that his conduct in calling the Complainant's cousin and calling the Complainant was not unprofessional. As discussed more fully below, there is insufficient evidence to determine that the call to the Complainant's cousin was retaliatory or in any way inappropriate. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person." (*Id.*)



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The Complainant contended that NE#1's actions towards him were retaliatory. The Complainant alleged that the call from NE#1 to his cousin was meant to retaliate against and harass him. The Complainant asserted that this was based on the Complainant speaking out about NE#1 alleged inaction in 2016, which, according to the Complainant, resulted in a homicide.

As discussed above, NE#1 denied that his call to the Complainant's cousin was retaliatory or purposed to harass the Complainant. He further denied that his actions had anything to do with the Complainant speaking out against him. When applying a preponderance of the evidence standard, the evidence in the record is insufficient to prove that NE#1's conduct violated this policy. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #2 - Allegations #1**

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

The Complainant generally alleged that all of the Named Employees who were involved in executing a warrant on his home and seizing his firearms engaged in biased policing.

Named Employees #2, #3, #4, #6, #7, #8, and #9 were all part of the team that executed the ERPO on the Complainant's residence. This order was properly obtained from a judge and was legally valid. The basis for the warrant were documented incidents in which the Complainant inappropriately brandished or wielded his firearm, as well as escalating aggressive statements and comments made by the Complainant.

Based on my review of the record, I find no evidence supporting the Complainant's allegation that these Named Employees engaged in biased policing. To the contrary, I find that they acted appropriately and consistent with policy during this incident and that, at no time, was their conduct discriminatory or based on some improper motive. As such, I recommend that this allegation be Not Sustained – Unfounded as against Named Employees #2, #3, #4, #6, #7, #8, and #9.

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

**Named Employee #3 - Allegations #1**

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

For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegations #1**

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

For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.



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

**Named Employee #5 – Allegation #1**

***5.140 - Bias-Free Policing 7. Employees Will Document All Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-7 requires Department supervisors to document all allegations of biased policing. The policy instructs that, where an allegation of biased policing is made, the supervisor must either make an OPA referral or investigate the allegation and document it in a Bias Review Template.

NE#5 told OPA that he did not believe that the Complainant actually made an allegation of biased policing. NE#5 believed that he was in crisis and was generally complaining about the ERPO, not the acts of the Named Employees. NE#5 acknowledged that he did not report that statement to OPA or document it in a Bias Review. NE#5 further noted that when he tried to clarify with the Complainant at the end of their interaction whether he was alleging biased policing, the Complainant stated no. Specifically, the Body Worn Video reflected that NE#5 asked, in an attempt to clarify the allegation, whether the Complainant was stating that “you [are] a black guy and that’s why you’re getting this.” The Complainant responded: “No, man, I never said that. That’s not what I’m saying.”

While I agree with NE#5 that the exact nature of the Complainant’s allegation was unclear, I find that he should have documented it. Moreover, even if NE#5 felt that a Bias Review was unnecessary, which I do not believe was the case under the circumstances, he should then have documented the statement in an Arrest Screening Report or another appropriate document. That being said, I do not find that the failure to do so merits a Sustained finding. Instead, I recommend that NE#5 receive a Training Referral.

- **Training Referral:** NE#5 should be counseled by his chain of command concerning his failure to document the statements by the Complainant in which he referenced that action had been taken against him based on his race. He should be instructed that, even if a Bias Review was inappropriate, the statement should have been memorialized somewhere. NE#5 should be counseled to do so in the future. This counseling and any associated retraining should be documented and this documentation should be memorialized in an appropriate database.

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

**Named Employee #6 – Allegation #1**

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

For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #7 – Allegation #1**

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



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For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #8 – Allegation #1**

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

For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #9 – Allegation #1**

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

For the same reasons as set forth above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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