



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2019

CASE NUMBER: 2018OPA-0691

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	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:

This incident stems from an interaction between the Complainant and the Named Employees that occurred on July 25, 2018. The Complainant alleged that the Named Employees purposely drove their patrol vehicle at a high rate of speed in the direction of the Complainant’s car, stopping abruptly just short of contacting the front of his car. The Complainant alleged that the Named Employees laughed at the Complainant’s reaction and then drove away. The Complainant stated that, as a result of this incident, he feared for his safety. The Complainant alleged that the Named Employees’ behavior during this incident was intimidating, harassing and racially motivated. The Complainant explained that the racially-motivated component of his allegation is based on statements and gestures that one of the Named Employees made to him during the previous year. It was further alleged that the Named Employees did not activate their Department video as required by SPD policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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



As part of its investigation, OPA interviewed the Complainant. The Complainant reiterated his allegation against Named Employee #1 (NE#1) and Named Employee #2 (NE#2) regarding the July 25th incident. The Complainant also acknowledged that he responded to what he alleged NE#1 and NE#2 did by confronting the officers after he followed them and found their vehicle parked on the side of a nearby street. The Complainant stated that he yelled at in the direction of the officers' vehicle and asked whether they thought what they did was "fucking funny." The Complainant stated that by the time he approached their vehicle, only NE#2 was present. The Complainant stated that NE#2 exited the vehicle and responded by asking, "What are you taking about?" The Complaint stated that he then told NE#2, "Fuck you," and continued by telling NE#2 that he would show them. The Complainant told OPA that what he meant by that comment was that he planned on complaining to OPA, which he did approximately 30 minutes after the incident. The Complainant told OPA that he does not know what motivated NE#1 and NE#2's decision to drive at his car, but if it was to get the Complainant to react, they succeeded.

The Complainant also explained to OPA that he first became aware of NE#1 over the course of the past year. The Complainant does not recall ever speaking to NE#1, but that NE#1 would flash "peace signs" and "raise the roof" gestures in the Complainant's direction when the Complainant would see NE#1 while he patrolled the neighborhood. The Complainant explained that African-American men often use those gestures with each other, but since NE#1 is Caucasian and the Complainant is African American, he believed that NE#1's decision to make those gestures was meant to deliver a negative racial message. The Complainant further alleged that NE#1 yelled, "fucking punk" out of his patrol vehicle's window in the Complainant's direction approximately four months earlier. The Complainant did not provide any additional context regarding that matter. The Complainant told OPA that he has no idea why NE#1 has decided to harass and intimidate him. To the Complainant, the randomness of NE#1's actions were "the problem." The Complainant stated that he did not recall having any prior interactions with NE#2.

The Complainant asserted that his girlfriend was a witness to some of NE#1's actions, but he never followed up with her contact information after telling OPA that he would. The Complainant did not provide OPA with the names of any other witnesses.

OPA interviewed NE#1. NE#1 stated that on July 25, he and NE#2 were driving when they encountered a black Hyundai with a Lyft placard in the window. The vehicle was stopped and had its hazard lights on, so the officers waited for the vehicle to move, which it did. NE#1 stated that the officers did not activate their In-Car Video (ICV) system because they were not responding to any calls for service and their encounter with the black Hyundai did not involve any police action. As the black Hyundai passed by the patrol vehicle, NE#1 stated that he recognized the Complainant from previous encounters.

While passing the officers' patrol vehicle, NE#1 claimed that the Complainant made "vulgar gestures," and was "flipping [NE#1] off" and "yelling" something at NE#1. NE#1 stated that he ignored what the Complainant was doing because there was no reason to engage with him. After the Complainant's vehicle passed, the officers drove to a nearby restaurant so that NE#1 could use the restroom. After NE#1 exited the restaurant, NE#1's noticed that the green light on his ICV was illuminated, meaning that the ICV was activated. Believing that NE#2 must have activated it for a reason, NE#1 returned to their patrol vehicle. NE#2 told NE#1 that he activated the ICV because the Complainant drove back around, stopped, and started yelling in the direction of their patrol vehicle. NE#2 exited the patrol vehicle to see what the Complainant was yelling about. NE#2 told NE#1 that the Complainant yelled that he was "coming for" NE#1," and then stated that he (the Complainant) was going to "show [NE#1] what real power is." NE#1 told OPA that he perceived what the Complainant said as a "vague threat" from the Complainant to NE#1.



In response, NE#1 documented what transpired in a police report. In that report, NE#1 recounted his history with and knowledge of the Complainant. NE#1 explained to OPA that he first encountered the Complainant when NE#1 saw him at Cascade Park while on patrol, and then saw him there on a regular basis. NE#1 stated that Cascade Park is known as a location where illegal narcotics are sold. NE#1 stated that he has never directly interacted with the Complainant, but NE#1 believes that the Complainant does not like it when NE#1 patrols the park. NE#1 told OPA that he is suspicious of the Complainant's reasons for being at the park, but acknowledged that he has never witnessed the Complainant violating any park rules or laws, and thus has never had any contact with the Complainant in a law enforcement capacity. NE#1 claimed that the Complainant has given NE#1 "the middle finger" and yelled things like, "fucking pig" in NE#1's direction as NE#1 patrolled the park. NE#1 denied ever saying things or engaging in actions to intimidate or harass the Complainant. NE#1 did not recall ever making any statements or gestures to the Complainant, but denied that he did anything that was designed to deliver a negative or racially-biased message to the Complainant. NE#1 believes that the Complainant may have complained about him to OPA because he hopes to stop NE#1 from patrolling Cascade Park.

OPA interviewed NE#2. NE#2 provided OPA with answers that conveyed a similar account to that provided by NE#1; however, NE#2's version contained more details about the two encounters with the Complainant on July 25. NE#2 told OPA that he wrote a detailed police report of what took place that day because of the seriousness of the Complainant's statements. NE#2 also stated that he has no recollection of ever interacting with the Complainant other than on July 25.

OPA reviewed the police reports generated by NE#1 and NE#2 regarding the July 25 incident. The officers wrote and submitted those reports on the same day as the incident. Their reports contained detailed narratives of what they alleged took place that day and was consistent with what they conveyed during their OPA interviews. NE#1's report included additional information pertaining to his previous knowledge of the Complainant, as well as intelligence he received in the past about the Complainant from named and unnamed sources.

OPA searched for ICV and Body Worn Video (BWV) associated with the July 25 incident. The only video was from the ICV that was activated by NE#2 after the Complainant confronted the officers. That video did not capture any of the alleged actions.

OPA also searched for Global Positioning Satellite (GPS) mapping data associated with the officers' patrol vehicle on July 25. The GPS data did not provide any useful information and may have been malfunctioning.

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-9.) 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.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*) If, as the Complainant alleged, NE#1 and NE#2 engaged in harassing and inappropriate behavior then it would be a violation of this policy.



In reaching its decision in this case, OPA notes that there was limited video evidence and no accounts from independent witnesses. This was the case even though the Complainant told OPA that he would provide contact information for his girlfriend, who was purportedly a direct witness to the incident. He did not do so and OPA was unable to interview her. Ultimately, in order to prove that the alleged conduct occurred, OPA must be able to meet a preponderance of the evidence standard. As discussed above, OPA simply cannot do so in this case. Instead, the weight of the evidence indicates that no policy violation occurred in this incident. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

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.*)

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

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

Named Employee #1 - Allegation #3

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses

Based on the information obtained during this investigation, I find that there was no policy violation regarding the absence of ICV or BWV. According to NE#1 and NE#2, the interactions they had with the Complainant did not involve any of police activity that would require the activation of video. As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegations #1

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

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 #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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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