



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2019

CASE NUMBER: 2018OPA-0970

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)

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 officers, including the Named Employee, failed to arrest the Subject for assault and that this decision was due to bias against her and her companions based on their housing status.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

It was also alleged that the Named Employee failed to properly handle a bias allegation during this incident. However, that allegation was handled as a Supervisor Action and was not investigated herein.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers responded to a 911 call regarding a possible assault. The caller stated that an individual had been maced and that the suspect was still in the vicinity. When NE#1 arrived, he spoke with the caller. The caller, who is the Complainant in this case, stated that a male had been sprayed with pepper spray by another male, who is referred to here as the Subject.

The Complainant stated that the Subject was filming then and had also done so on a prior occasion. The Complainant asked the Subject why he was filming them. The Subject stated that he was tired of the homelessness and drug activity near his residence. The Complainant asked the Subject where they should go and the Subject told her to go to a shelter. The Complainant stated that, at that point, the Subject maced her.

The Subject was also interviewed by the officers. The Subject stated that he was recording the Complainant and other unsheltered individuals from across the street. He told the officers that one of the individuals began



approaching him. The Subject told the individual to stop doing so and informed him that he had a gun and pepper spray. The individual kept advancing while yelling and with his hands in his pockets. The Complainant said that he then maced the individual. The Complainant asserted that he did so because he was in fear that he would be harmed.

The officers informed the parties that they were going to document the incident. The Complainant told the officers that she believed that she and the other individuals were being targeted by the Subject because of their unsheltered status. The officers called their supervisor, Named Employee #1 (NE#1), to the scene. NE#1 spoke with the Complainant and she again alleged that the Subject targeted her and her companions because they were homeless. She also told NE#1 that she was not the individual targeted by the Subject and that the individual left the scene.

A review of third party video taken of the incident showed an ongoing back and forth between the individual and the Subject, which included threats from both parties. Based on that evidence, and given that both parties alleged that the other was the primary aggressor, the officers documented the incident but did not make any arrests.

The Complainant later alleged that the Subject was not arrested because both she and the Complainant were homeless. NE#1 documented explaining to the Complainant that, based on his review of the video, it appeared that the Subject may have acted in self-defense.

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.*)

Even presupposing that the Complainant was correct and that the evidence supported the arrest of the Subject, there is no support for the assertion that NE#1’s failure to ensure that this occurred was based on bias against the Complainant and her companions based on their housing status. Instead, the totality of the evidence indicates that NE#1 believed that there was insufficient probable cause to arrest the Subject and that it was possible that the Subject had acted in self-defense. While perhaps that decision could be argued, it was not unreasonable. Accordingly, I do not find that NE#1 engaged in biased policing during this incident and I recommend that this allegation be Not Sustained – Unfounded.

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