



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 11, 2018

CASE NUMBER: 2017OPA-1274

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 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 3	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence	Not Sustained (Training Referral)
# 4	15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer’s GO Report and Narrative	Not Sustained (Training Referral)

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)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 3	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence	Not Sustained (Unfounded)
# 4	15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer’s GO Report and Narrative	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 the Named Employees were unprofessional and that they were biased against her and conducted an inadequate investigation based on her status as a Native American woman. During its intake investigation, OPA added allegations concerning the potential failure of the Named Employees to follow policy when conducting their investigation into this domestic violence incident.

STATEMENT OF FACTS:

The Complainant called 911 to request assistance removing property from her ex-boyfriend’s apartment. No officers initially responded. Over two hours later, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to the call.



When the Named Employees arrived, they were informed by the Complainant that she had already recovered her property from her ex-boyfriend's apartment and placed it in a storage unit. The Complainant told the Named Employees that her ex-boyfriend abused drugs and alcohol. She further stated that he had assaulted her the previous month. She claimed that her ex-boyfriend had grabbed her arm and tried to pull her out of his apartment. The Complainant stated that the injury, which she had taken a photograph of, had since started to fade. She further stated that her ex-boyfriend had taken some of her property. The Complainant asked for a report to be written concerning this assault. The Complainant told the officers that she was trying to obtain an order of protection against her ex-boyfriend. The officers provided the Complainant with a domestic violence packet and NE#2 told her that information concerning seeking an order of protection was contained therein. The Named Employees then left the scene and cleared the call.

OPA initiated this investigation based on an emailed complaint by the Complainant. In that emailed complaint, she alleged that the Named Employees were unprofessional and that they were biased against her and conducted an inadequate investigation based on her status as a Native American woman. During its intake investigation, OPA added allegations concerning the potential failure of the Named Employees to follow policy when conducting their intake investigation.

During its investigation, OPA interviewed the Complainant. She indicated that she was upset that no officers responded to her initial call for service to remove items from her ex-boyfriend's apartment. She stated that when the Named Employees finally responded to her second call, they had a "lax" attitude and "lacked concern" for her. She believed that this attitude and alleged lack of concern was based on her status as a Native American woman. She stated that, had she been Caucasian, the officers' response would have been more prompt and they would have been more caring and responsive. Notably, during her interview, the Complainant asserted that she told the Named Employees that she was thrown into a window by her ex-boyfriend. This was inconsistent with the Body Worn Video (BWV), which captured her instead saying that he grabbed her arm.

NE#1 recalled responding to the Complainant's apartment. He was the primary officer on the call and NE#2 was the secondary officer. He did not recall asking NE#2 for assistance during the call or instructing her to perform any tasks. He stated that he accepted full responsibility for all of the decisions made on this call.

NE#1 stated that when he and NE#2 arrived they were informed by the Complainant that she had already retrieved her property from the apartment. He recounted that the Complainant alleged that her arm had been grabbed by her ex-boyfriend a week or so prior. However, given the time that had elapsed and the lack of a clearly visible injury, NE#1 believed that it was permissible to document the allegation in a General Offense Report and submit that report to a prosecutor. As such, NE#1 believed that an arrest in this matter was discretionary rather than mandatory.

When asked by OPA whether this was a domestic violence investigation, he responded that it was. He further agreed that the Complainant's allegations constituted a domestic violence assault. He told OPA that he did not document the allegations that some of the Complainant's property was taken by her ex-boyfriend because, after further questioning, it was not clear that property was actually misappropriated. When asked about why he did not ask the Complainant for the photograph she claimed to have of the bruising to her arm, NE#1 stated that he must have forgotten.



The OPA investigator walked NE#1 through a number of the requirements concerning domestic violence investigations set forth in OPA policy. From NE#1's responses, it was evident that, while some were inapplicable to this case, he failed to complete several others.

NE#1 denied that he treated the Complainant differently because of her race. He also denied engaging in unprofessional behavior and did not believe that his investigation was "lax."

At her OPA interview, NE#2 confirmed that she was the secondary officer on this call. She explained that this meant that her role was to provide cover, to assist when required, and to point out any investigatory steps missed by the primary officer. NE#2 recalled her response to this incident and that the Complainant wanted to report a prior domestic violence incident. NE#2 stated that she was not entirely focused on the discussion between NE#1 and the Complainant and was instead focused primarily on ensuring her and NE#1's safety. She did not recall being asked to assist by NE#1, being instructed to do anything, or feeling the need to override any of NE#1's actions.

NE#2 denied engaging in biased policing in this instance and treating the Complainant differently because of her race. She stated that she acted professionally. She further indicated her belief that NE#1 was also professional and that he also did not engage in bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

Based on my review of the evidentiary record, which included the officers' BWV, the reports generated, and the parties' statements, I find no indication that the Named Employees engaged in bias. While the Complainant may have rightfully been frustrated concerning the lack of a police response to her initial call for service, that was not the Named Employees' fault. Moreover, I do not find that that lack of a response was due to the Complainant's status as a Native American woman. Ultimately, I find no support for the allegation that the Named Employees violated this policy. As such, I recommend that this allegation be Not Sustained – Unfounded as against both of them.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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.)



While the Complainant alleged that the Named Employees were unprofessional in this instance, I disagree. First, from a review of the BWV, there is no evidence that the Named Employees treated the Complainant dismissively, disrespectfully, or uncaringly. Second, while NE#1's investigation fell short of the standards set forth in SPD policy, I do not think this rose to the level of a lack of professionalism.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #3

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence

SPD Policy 15.410-TSK-1 sets forth the requirements of officers performing primary investigations into domestic violence incidents. Specifically, the policy indicates the sixteen tasks that officers shall perform when investigating such cases.

While some of the tasks set forth in this policy were inapplicable to this case, NE#1 admitted that there were a number of others that he did not perform. For example, NE#1 did not: take a victim statement from the Complainant; complete a Domestic Violence Risk Assessment; include the relationship history between the Complainant and her ex-boyfriend in the General Offense Report; note the ex-boyfriend's criminal history in the General Offense Report; document in the General Offense Report that the assault caused a bruise to the Complainant's arm or that her ex-boyfriend took some of her property; and did not ask for a copy of the photograph of her injuries.

The failure to perform these tasks constituted a technical violation of policy. That being said, I feel that this is more a case of a newer officer failing to comply with the numerous and sometimes complicated elements of this policy rather than intentional misconduct. As such, I believe that the better and more impactful result would be to retrain and counsel NE#1 so that he learns from this case and does not repeat these mistakes in the future. As such, I recommend that NE#1 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive additional training concerning the Department's expectations for investigations into domestic violence incidents. He should be retrained as to elements of SPD Policy 15.140 and, specifically, as to the requirements of SPD Policies 15.410-TSK-1 and 15.410-TSK-2. NE#1 should receive counseling from his chain of command concerning the importance to the Department of appropriately handling domestic violence incidents and the fact that this is a priority for the Department. This re-training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #1 - Allegation #4

15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative

Similar to SPD Policy 15.410-TSK-1, SPD Policy 15.410-TSK-2 sets forth the requirements for domestic violence investigations and, specifically, for the General Offense Reports generated as part of those investigations.

NE#1's General Offense Report contained many of the same deficiencies as were evident in his investigation. While this constituted a technical violation of policy, I believe, as indicated above, that the better result is a Training Referral. I accordingly refer to the Training Referral set forth in Allegation #1.

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

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 #2 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

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 #2 - Allegation #3

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence

As indicated by both Named Employees in their OPA interviews, NE#1 was the primary officer in this case. He, not NE#2, was responsible for the investigation conducted, the report generated, and any shortcomings thereof. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #4

15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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