



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 23, 2019

CASE NUMBER: 2019OPA-0358

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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:**

It was alleged that the Named Employee was unprofessional and potentially violated the law during an incident that occurred in a mall garage.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

At approximately 2:01 a.m. on May 26, 2019, Named Employee #1 (NE#1) was in a garage at a mall in Bellevue. He had consumed several alcoholic beverages earlier that evening and had met a woman. NE#1 and the woman went to the garage and began to engage in sexual activity in the back of his car. During this time, mall security guards approached the car and made contact with NE#1. They informed him that he needed to leave the garage. The security guards described NE#1 as uncooperative and called the Bellevue Police Department (BPD). Several BPD officers arrived at the garage and engaged with NE#1. The officers ultimately handcuffed NE#1 for officer safety purposes. NE#1 was ultimately unhandcuffed, trespassed from the garage, and released from the scene. NE#1 was not arrested as a result of this incident.

This matter was reported to SPD, which, in turn, made an OPA referral. This investigation ensued.

As part of its investigation, OPA reviewed the paperwork generated by BPD. The primary officer wrote that he was called to the mall by security guards. The officer reported that, when he arrived, he spoke with a security guard who informed him that NE#1 had been observed “making out” with a woman in the rear of his car and, when confronted by security, had been “aggressive and appeared angry.” The security guard stated that, when they told NE#1 to leave the garage, he refused to do so. The security guard noted that NE#1 first said that he was a guest at a hotel connected to the garage, but that NE#1 later contradicted himself and said that he was not a guest. The security guard said that he told NE#1 to leave or the police would be called. The security guard recounted that NE#1 was



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about to go into the elevator to the hotel, but instead walked to a freight elevator and went to an area limited to authorized personnel.

The primary officer documented that he located NE#1 in the restricted area. He wrote that, when he contacted NE#1, NE#1 put his hands in his pockets. The primary officer stated that he then asked NE#1 why he was still remaining in the garage when he had been asked to leave. NE#1 said that he had been trying to leave and then, according to the primary officer, took several steps forward with his arms and hands outstretched. The primary officer put his hand up, placed it on NE#1's chest, and told him to move back. NE#1 did so and then placed his hands back into his pockets. The primary officer, fearing for his safety, asked NE#1 to take his hands out of his pockets and NE#1 said that he did not have to. The primary officer then made the decision to handcuff NE#1 for safety reasons. The primary officer reported that he could smell the odor of alcohol on NE#1 and asserted his belief that NE#1 was intoxicated.

The primary officer documented that NE#1 then stated that he was a police officer and was armed. Another officer located and removed the firearm. The officers confirmed that NE#1 was a police officer. NE#1 was then trespassed from the location by mall security. NE#1 was unhandcuffed, his firearm was returned to him, and he was permitted to leave the scene.

OPA also obtained and viewed the garage security video. The video showed security guards approaching NE#1 with what appears to be a trespass admonishment. NE#1 seemed to refuse the admonishment. Multiple other guards arrived and interacted with NE#1. During that time, he was animated and gestured with his hands. A second video showed BPD officers arriving at the restricted area and making contact with NE#1. The video indicated that NE#1 walked towards an officer with his hands up and out in front of him. NE#1 moved back and spoke to the officer. During that time, he gestured with one of his hands, pointing in various directions. While speaking with the officer, NE#1 kept his hand out and continued to gesture. The officer then quickly approached NE#1, turned him around, and placed him into handcuffs. NE#1 remained handcuffed while other officers arrived at the scene. NE#1 was detained for a period of time. He was then issued a citation by mall security, was unhandcuffed, and was permitted to leave the scene.

OPA further interviewed one of the mall security guards, the primary officer, and NE#1. The mall security guard recalled that NE#1 was "argumentative and uncooperative," but stated that NE#1 was "not entirely hostile." The security guard said that BPD was called when NE#1 would not leave. The security guard believed that, at one point, NE#1 balled his fist while speaking with BPD officers.

The primary officer recalled that NE#1 was intoxicated and "aggressive." He stated that he regularly works with drunk individuals at bar closing and that NE#1 was more aggressive than the norm. Specifically, the primary officer said that one out of ten individuals acts like NE#1 did. The primary officer said that he does not hesitate to place people into handcuffs when he is worried about his safety and when they act aggressively. The primary officer said that, during this incident, NE#1 did not ask for special treatment due to his status as a police officer. The primary officer confirmed that NE#1 was never placed under arrest and that he did not have probable cause to arrest NE#1 for any criminal offense.

Lastly, OPA interviewed NE#1. NE#1 affirmed that he was with a woman in the rear of his car when he was contacted by mall security. He acknowledged that this was embarrassing, and that mall security had a legitimate



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basis to ask him to leave the premises. He stated that, while the security guards told him that he needed to leave, he was too intoxicated to drive. NE#1 was then told that, if he left his car, it would be impounded. He felt that this was unreasonable. He engaged with mall security for a period of time until a supervisor arrived. NE#1 spoke with the supervisor and agreed to leave. He stated that the mall garage was confusing, and he ended up taking the wrong elevator.

NE#1 recalled that, at that point, he was contacted by BPD officers. He said that he had his hands in his pockets and he took them out and walked towards the BPD officers. He recalled that an officer told him to walk towards the officer with his hands up. He did so and, at that time, he was turned around and placed into handcuffs. NE#1 remembered that he began laughing because he thought situation was so ridiculous and because he was trying to comply with what the officers directed him to do.

NE#1 said that he began to question why the officers had handcuffed him and what their basis was for believing that he was a safety risk. NE#1 said that officers also began going through his pockets and he told them that they could not do that. He said to them that he felt the detention was turning into an arrest and the officers told NE#1 that he was not under arrest. NE#1 disclosed that he was a police officer and that he was carrying a firearm. The firearm was located and taken from him. After a period of time, he was cited, released, and he left the garage.

NE#1 told OPA that he believed that the BPD report was inaccurate. He did not feel that he presented a safety risk at any time to BPD officers. NE#1 also felt that the incident was handled inappropriately by BPD and that, since he was clearly trying to leave the mall garage, they should have just let him continue doing so rather than detain him.

NE#1 denied that his behavior was unprofessional. He stated that he was simply trying to defend his property (his car). He said that he tried to have reasonable conversations with the security guards and the BPD officers but that, when he called out things they were doing incorrectly, they did not like that. NE#1 further denied that he acted contrary to law and said that the trespass was a civil issue.

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.*) 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.*)

Based on a review of the totality of the evidence, OPA believes the question of NE#1’s professionalism to be a close call. Ultimately, however, OPA concludes that NE#1’s conduct did not violate policy. OPA reaches this determination for four main reasons. First, NE#1 was off duty at the time and his conduct was attenuated from his professional responsibilities. NE#1 did not hold himself out to be a police officer during the incident and did not identify himself as such until after he was already detained. Second, while he was handcuffed, NE#1 was not actually arrested. Moreover, while the handcuffing was based on officer safety concerns held by the primary officer, whether such concerns were actually warranted is unclear from the video. While the video shows NE#1 gesturing with his hands and holding his hands up, it does not provide a full view of the incident and does not conclusively establish that NE#1 acted in a threatening manner. Third, NE#1 did not actually make physical contact with any of the security



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guards or the BPD officers, even though he argued with them. Had he done so, OPA would have reached a different determination. Fourth, NE#1 was trying to leave the mall garage at the time he was detained, even though he had initially been resistant to doing so given the implications for his car.

OPA's finding should not be construed as approval or condoning of NE#1's actions. He was clearly intoxicated and made some very poor decisions during this incident, including engaging in sexual activity in the back of his car in a public garage and refusing to leave the garage when directed to do so. Simply stated, and even if NE#1 was off duty, this incident was embarrassing for him and had the potential to embarrass the Department as a whole. Moreover, OPA finds it concerning that NE#1 did not appear to recognize the impact his conduct and decisions could have had for the Department or see why they might be viewed as inappropriate. While OPA issues NE#1 a Training Referral here, OPA puts NE#1 on notice that similar conduct will result in a recommended Sustained finding and likely discipline in the future.

- **Training Referral:** NE#1's chain of command should discuss this incident with him. He should be counseled on how his conduct fell below the expectations of the Department. To the extent NE#1 needs resources or services that the Department can provide, his chain of command should work with him to facilitate that. NE#1 should further be instructed that similar conduct in the future will result in a recommended Sustained finding and likely discipline. This 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 #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

Had NE#1 committed a crime during this incident, he would have acted contrary to SPD Policy 5.001-POL-2. The evidence is clear, however, that NE#1 did not do so and his being trespassed from the mall garage was a civil matter. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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