



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2018

CASE NUMBER: 2017OPA-0636

ALLEGATIONS OF MISCONDUCT & DIRECTOR’S FINDINGS:

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Inconclusive)
# 2	15.120 - Malicious Harassment 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report	Not Sustained (Inconclusive)
Discipline Imposed: N/A		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Inconclusive)
# 2	15.120 - Malicious Harassment 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report	Not Sustained (Inconclusive)
Discipline Imposed: N/A		

Named Employee #3

Allegation(s):		Director’s Findings
# 1	15.120 - Malicious Harassment 2. A Sergeant will be Dispatched to the Scene Along with the Patrol Officers	Not Sustained (Unfounded)
# 2	15.120-TSK-1 Responsibilities of the Patrol Sergeant	Not Sustained (Unfounded)
Discipline Imposed: N/A		

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 Named Employee #1 and Named Employee #2 would not investigate his complaint and would not take a report, and that he had to call 911 again to get a report taken. During intake, OPA discovered that Named Employee #1 and Named Employee #2, as well as the responding Acting Sergeant, Named Employee #3, may have failed to follow SPD policy regarding the investigation and processing of allegations of malicious harassment.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

The Complainant alleged that he recounted criminal activity to Named Employee #1 and Named Employee #2 that should have been memorialized in a general offense report. The Complainant asserted that he told Named Employee #1 and Named Employee #2 that he had been harassed by demonstrators because of the sign he was holding, which promoted Jesus and Christianity. Named Employee #1 and Named Employee #2, to the contrary, reported no such conversation and stated that the Complainant never specifically reported any actual crime to them.

Named Employee #1 recalled interacting with the Complainant while at a demonstration, but indicated that Named Employee #2 was the primary officer talking with him as she was focused on the surrounding crowds. Named Employee #1 stated that, in her opinion, the Complainant seemed confused about what he was complaining about. She remembered asking him whether he had been assaulted or threatened and he said no. Named Employee #1 said that it appeared that the Complainant had an issue with someone else who was in the crowd. Named Employee #2 told the Complainant that if he had a problem with a specific individual he could seek a protective order. Named Employee #1 stated that she did not hear the Complainant request a police report, and that her feeling was that he did not want to do so. Named Employee #1 stated to OPA that the Complainant did not report a crime or bias incident to her. After their interaction, the Complainant then walked away.

Named Employee #2 reported that the Complainant alleged that people within the demonstration were not letting him march. The Complainant claimed that people stepped in front of him to prevent him from moving forward. Named Employee #2 tried to get more information from the Complainant to determine whether a crime had been committed, but was unable to do so. At one point, Named Employee #2 stated that if that if the Complainant was having an issue with a specific person he should identify that person, but the Complainant could not. Named Employee #1 then told him that he could see an order of protection if he so desired. After further discussion, the Complainant walked away.

Later that day, the Complainant did make another complaint concerning events at the demonstration. As a result of that subsequent complaint, a general offense report was completed by two other officers. The crime reported was malicious harassment, a felony.

I note that the Named Employees were assigned as bicycle officers on that day. Accordingly, there is no In-Car Video of the incident.

SPD Policy 15.180-POL-5 requires that "officers shall document all primary investigations on a general offense report." The policy further states that "a primary investigation begins when police action is initiated, and is critical to the success of any subsequent investigative efforts." (SPD Policy 15.180-POL-5.)

Aside from the statements of the involved parties, there is no evidence conclusively establishing what the Complainant reported to Named Employee #1 and Named Employee #2. Thus, I am unable to determine whether a general offense report was required. As such, I recommend that this allegation be Not Sustained – Inconclusive.



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

Named Employee #1 - Allegation #2

15.120 - Malicious Harassment 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report

SPD Policy 15.120-POL-3 requires that “cases of malicious harassment and bias incidents shall be documented on a general offense report.” Under Washington State law, malicious harassment occurs when someone threatens someone, injures a person, or damages property and “maliciously and intentionally commits” such an act “because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap.” (RCW 9A.36.080.)

According to Named Employee #1’s and Named Employee #2’s account, the Complainant did not report malicious harassment or bias. The Complainant disagrees and two other officers later completed a general offense report based on a complaint from the Complainant and listed the potential crime as malicious harassment.

Again, as I cannot conclusively determine what the Complainant reported to Named Employee #1 and Named Employee #2, I am unable to conclude that the officers knew or should have known that his allegations rose to the level of malicious harassment and, thus, that they should have completed a general offense report. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

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

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

Named Employee #2 - Allegation #2

15.120 - Malicious Harassment 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report

Applying the same reasoning as above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

15.120 - Malicious Harassment 2. A Sergeant will be Dispatched to the Scene Along with the Patrol Officers

SPD Policy 15.120-POL-2 requires that a sergeant be dispatched to the scene of a malicious harassment investigation along with patrol officers. Here, however, when Named Employee #1 and Named Employee #2 were initially



dispatched, it was unclear what the Complainant was alleging. The only information available to Named Employee #3, who was the Acting Sergeant, was that there had been a disturbance. Certainly, at that time, it was unknown that there was a complaint of malicious harassment. Accordingly, Named Employee #3 was not dispatched to the scene along with Named Employee #1 and Named Employee #2.

At his OPA interview, Named Employee #3 stated that he was later told that the incident was under control and was never informed that the Complainant had reported malicious harassment or, for that matter, bias. Named Employee #3 indicated that, had he known this information, he would have taken appropriate action.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

15.120-TSK-1 Responsibilities of the Patrol Sergeant

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

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