



CLOSED CASE SUMMARY

ISSUED DATE: MAY 7, 2018

CASE NUMBER: 2017OPA-1222

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

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)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #4

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 Named Employee #2, Named Employee #3, and Named Employee #4 subjected him to harassment in violation of the bias free policing policy. The Complainant further alleged that Named Employee #1 performed a traffic stop without probable cause to believe that a traffic infraction had occurred.

STATEMENT OF FACTS:

On the date in question, Named Employee #1 (NE#1) effectuated a traffic stop of a motorist. NE#1 reported that he made the stop because he observed the motorist backing eastbound while in a westbound lane. This conduct by the driver was recorded on NE#1’s In-Car Video (ICV) system. NE#1 effectuated the stop and approached the vehicle with the other Named Employees. NE#1 told the driver that he was being stopped because he had been reversing down the street. The driver, who was accompanied by a female passenger, stated that he was driving in that manner because he “lived” in the immediate location.

NE#1 spoke with the driver and attempted to determine his identity. The driver did not have a driver’s license on him. In response to NE#1’s questions, the driver provided his name and date of birth. The driver told NE#1 that he



could not remember his social security number. NE#1 returned to his vehicle to run the name through his MDT. When that yielded negative results, NE#1 returned to the vehicle and asked the driver to step out. He patted the driver down and found no weapons. NE#1 informed the driver that he was trying to determine his actual name.

During this interaction, another individual – later identified as the Complainant – was standing in the street and talking to the driver. At one point, NE#1 told the Complainant not to stand in the street. NE#1 also told the driver to focus on the officers instead of on the Complainant.

The officers led the driver away from the vehicle – the passenger remained inside. The Complainant then approached the driver's side of the vehicle. Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) approached the Complainant and told him to move away from the vehicle. The Complainant did not initially do so, but ultimately returned to his RV, which was parked on the other side of the street. NE#2 told him: "If you come back over, you're going to be arrested for obstruction." At this time, the Complainant was engaged in a verbal back and forth with all of the officers. NE#3 stated at one point that he was going to run the Complainant's name through the system.

For his part, NE#4 tried to explain to the Complainant why he was needed to move away from the vehicle. The Complainant told NE#4 that he believed that he was being harassed. NE#4 asked the Complainant whether he wanted a Department supervisor to come to the scene and the Complainant stated that he did. NE#4 indicated that he would summon a supervisor.

A sergeant eventually came to the scene and spoke with the Complainant. The Complainant told the sergeant that he believed that the vehicle stop was illegal. He further told the sergeant that he had been harassed by the officers and that one of the officers had threatened to run his name in order to "find something." Pursuant to policy, the sergeant referred the Complainant's allegations to OPA and this investigation was initiated.

During its investigation, OPA reviewed the documentation relating to the stop and the ICV. OPA further interviewed the Named Employees and the Complainant. The Complainant repeated to OPA much of what he was recorded telling the sergeant. The Complainant asserted his belief that the vehicle was illegally stopped and that he based that belief on the fact that he did not personally observe the moving violation. The Complainant again stated that he was harassed and specifically referred to NE#3's statements concerning running his name through the system.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy, and Department policy. Here, this allegation was classified for investigation based on the Complainant's allegation that the vehicle stop was illegal.

Based on my review of the ICV, it is clear that the vehicle was reversing down a City road at the time it was approached by NE#1. As such, the vehicle was indisputably committing a traffic infraction at that time and the stop of the vehicle was legally justified. I further find no evidence suggesting that the stop was pre-textual.



Moreover, when the driver provided false identification to the officers, they were warranted in taking him out of the vehicle and detaining him prior to determining his identity. Moreover, when they did so and discovered that he had an open DOC warrant, the officers had probable cause to place the driver under arrest and to take him into custody.

For these reasons, I find no evidence that NE#1 violated any laws, City policy, or Department policy in this case. To the contrary, I find that the stop of the vehicle and the arrest of the driver were legally permissible. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - 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.*) SPD employees are required to “call a supervisor in response to allegations of bias-based policing.” (SPD Policy 5.140-POL-5.) The supervisor must be called to the scene. (*Id.*) This section of the policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic...” (*Id.*)

Based on the objective evidence, there is no indication that NE#2 engaged in biased policing. While, at one point, NE#2 told the Complainant that if he did not move away from the stopped vehicle he could be arrested for obstruction, that statement did not constitute bias. Moreover, even if the Complainant was harassed by the officers, the harassment does not appear to have been based on his race and, to the extent such harassment even occurred, it was based instead on his conduct. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

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

As with NE#2, I find no evidence that NE#3 engaged in biased policing. His statement to the Complainant that he was going to run the Complainant’s name through the system does not, in my opinion, suggest biased policing. At most, it implicated a possible lack of professionalism on NE#3’s part; however, that allegation was not classified for investigation in this case and I do not reach a finding in this regard.

Ultimately, as discussed above, even if had the Named Employees engaged in harassing behavior – which I am not finding occurred here – it would not rise to the level of biased policing as defined under SPD policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #4 - Allegation #1

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

For the same reasons as stated above in the context of NE#2 and NE#3, I also find that NE#4 did not engage in biased policing. Indeed, to the contrary, NE#4 was largely polite to the Complainant and offered to call a supervisor to the scene to address his concerns. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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