



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 7, 2019

CASE NUMBER: 2018OPA-1100

### 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	15.250 - Interpreters/Translators III. Interview and Interrogation of Non-English Speaking Persons	Not Sustained (Inconclusive)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

***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 did not provide for an interpreter for the Complainant during an investigation into a traffic collision that the Complainant was involved in. It was further alleged that the Named Employee’s report concerning the incident was inaccurate and lacked sufficient detail. Lastly, it was alleged that the Named Employee cited the Complainant instead of the other motorist due to bias based on the Complainant’s inability to communicate in English.

#### ADMINISTRATIVE NOTE:

OPA issued this amended DCM to modify incorrect language and terminology that was used by OPA in the initial DCM. The findings have not been changed.

#### ANALYSIS AND CONCLUSIONS:

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

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

The Complainant initiated this complaint with OPA, which concerned a traffic collision that he was involved in. He reported that he received a citation. The Complainant stated that some of the facts in the report regarding the accident were incorrect and that the officer, who was later identified as Named Employee #1 (NE#1), only included the information provided by the other involved driver. The Complainant told OPA that NE#1 did not ask him anything about the facts of the case given the Complainant’s lack of English language ability. The Complainant further reported that NE#1 did not arrange for an interpreter to come to the scene.



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OPA conducted an interview of the Complainant. The Complainant provided details concerning the collision and expressed his belief that he was not at fault. He again stated that he was cited due to bias and that NE#1 did not provide an interpreter and, as a result, he was unable to fully describe what occurred.

OPA further reviewed the documentation related to this incident. The General Offense Report (GOR) did not have a narrative section. It did, however, include a Police Traffic Collision Report (PTCR) that stated the following: "Unit 1 & Unit 2 were WB on the West Seattle Bridge. Unit 1 struck the barrier and then struck unit 2. Driver of unit 1 was cited." The PTCR included a sketch that was consistent with its narrative. From OPA's review, the GOR did not provide any further explanation as to how the conclusion in the PTCR was reached. The Notice of Infraction indicated that the Complainant was cited for Inattention to Driving. It stated that NE#1 did not witness the incident and reported that the Complainant could not explain what had occurred.

NE#1's response to the traffic collision was recorded on his Body Worn Video (BWV). The video established that NE#1 arrived at the scene and spoke with the other involved motorist. NE#1 then spoke with the Complainant, who was being treated by the Seattle Fire Department (SFD) at that time. NE#1 asked whether the Complainant was "okay," and the Complainant said that he was. NE#1 asked the Complainant what happened, and the Complainant spoke in response; however, from OPA's review of the video, it was unclear what the Complainant said and, for that matter, whether the Complainant understood what he was asked. NE#1 asked the Complainant several additional questions – including asking for his phone number, confirming his address, and requesting his identification – and the Complainant appeared to understand and, in fact, responded to each of the requests.

OPA interviewed NE#1. He stated that when he responded to the scene, he first spoke to the other motorist. The motorist stated that the Complainant crashed into the barrier and then hit his vehicle. NE#1 reported that he then walked over to the Complainant, who was with SFD, and asked if the Complainant was okay. NE#1 stated that the Complainant indicated that he was okay. NE#1 told OPA that he asked the Complainant what occurred, and that the Complainant responded that he was driving 40 mph when he crashed into the barrier. NE#1 indicated that he asked the Complainant several other questions regarding the Complainant's identifying information and that the Complainant provided answers to these questions. NE#1 reported that, based on the Complainant's responses to these questions, he did not believe that the Complainant had difficulty speaking or understanding English. NE#1 stated that, given the information he learned and his experience investigating traffic collisions, he determined that the Complainant was at fault. NE#1 explained his belief that SPD policy required him to cite one of the drivers, even where he did not witness the accident. He stated that he cited the Complainant for inattention to driving, "which is the catchall for accidents [officers] didn't witness."

NE#1 denied that he cited the Complainant based on bias. He stated that he did not know what the Complainant's race was at the time of his investigation of the collision. He asserted that his decision-making during this incident and the law enforcement action that he took were influenced by his investigation and the involved parties' statements, not the Complainant's membership in any protected class.

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.*)



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As discussed more fully below, from OPA's review of the report, there is little information concerning NE#1's investigation and what facts he relied upon when deciding to cite the Complainant. However, I find no evidence supporting the assertion that NE#1 took law enforcement action against the Complainant based on race or the inability to speak and/or understand English. As NE#1 explained, he believed that he was able to communicate with the Complainant based on the Complainant's responses to his questions. Ultimately, even if the decision to cite the Complainant was misplaced, I do not believe that it was due to bias on NE#1's part. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

***15.250 - Interpreters/Translators III. Interview and Interrogation of Non-English Speaking Persons***

SPD Policy 15.250(III) requires that, where officers interview non-English speaking persons, they ask the individual whether they "understand, read or write English." It further states that officers should determine what the individual's native language is and whether the individual can read, write, and speak in that language. (SPD Policy 15.250(III).) The answers to all of these questions are to be documented in the General Offense Report. (*Id.*)

As discussed above, based on a review of the BWV, it is unclear whether the Complainant understood NE#1's questions concerning what happened during the incident. Moreover, OPA could not understand the response that the Complainant provided. While NE#1 stated that the Complainant explained to him that he hit the barrier while driving 40 mph, OPA could not glean that from the recording. When asked what he meant when he wrote in the Notice of Infraction that the Complainant could not explain what occurred, NE#1 stated he was expressing that the Complainant could not tell him why the accident occurred, not that he could not speak English sufficient to detail what happened.

Based on OPA's review of the video, OPA agrees with NE#1 that the Complainant appeared to respond to multiple questions that NE#1 asked. However, during its investigation, OPA was required to utilize an interpreter to take a statement from the Complainant, which suggests that he may have had difficulty fully expressing to NE#1 what occurred during the traffic collision.

The above being said, I cannot prove by a preponderance of the evidence that NE#1's determination that no interpreter was required was unreasonable. Indeed, given the totality of the record, I find this question to be unresolved. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #3**

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

SPD Policy 15.180-POL-5 states that officers are required to document all primary investigations on a General Offense Report. The policy further requires that all reports be "complete, thorough and accurate." (SPD Policy 15.180-POL-5.)



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NE#1's GOR included no recitation of the facts that he relied upon to determine that the Complainant was at fault during the traffic collision. The GOR contained no narrative at all apart from a sentence written in the PTCR, which was annexed to the GOR. At his OPA interview, NE#1 asserted that, when he asked the Complainant what occurred, the Complainant stated that he was driving 40 mph and hit a barrier. However, this information was not included in either the GOR or the PTCR. Moreover, in the Notice of Infraction, NE#1 wrote that the Complainant could not explain what occurred; however, the infraction was not annexed to the GOR and the information contained therein was also not included in the GOR.

Based on the lack of detail in the GOR, it is unclear what evidence NE#1 relied upon when determining that the Complainant was at fault. As such, OPA believes that NE#1 should receive the below Training Referral to ensure that he writes more thorough and detailed reports in the future.

- **Training Referral:** NE#1 should be provided training regarding his chain of command's expectations for his reports concerning traffic collisions. NE#1 should be counseled to provide sufficient detail to allow the reader to understand what evidence he relied upon to reach his determination. Specifically, NE#1 should include relevant statements provided by the involved parties, especially when those statements may establish the basis for the issuance of a citation. This retraining and associated counselling should be documented and this documentation should be maintained in an appropriate database.

As an aside, this is the second case that OPA has evaluated in which an officer stated that SPD policy requires the issuance of a citation to at least one of the involved parties to a traffic collision. OPA has been further informed by these officers that they were trained to do so by the Department. SPD Policy 15.260-POL-4 instructs that: "officers take enforcement action in reportable non-felony collision investigations." The policy further states the following: "Officers issue a Criminal Citation or Notice of Infraction to the involved party." (SPD Policy 15.260-POL-4.) Based on a reading of the plain language of the policy, OPA can understand why an officer would believe that there was a citation requirement. However, OPA is unaware of any legal or statutory authority that compels such action. Moreover, OPA believes that the current policy, when coupled with training that reinforces its terms, results in officers issuing citations where the evidence of culpability is borderline and taking no action and allowing a civil disposition of the incident would be the better course of conduct. This is an issue that OPA is going to continue to monitor and regarding which OPA may issue a policy recommendation in the future.

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