



## **CLOSED CASE SUMMARY**

ISSUED DATE: MAY 21, 2019

CASE NUMBER: 2018OPA-1142

### **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	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.090 - In-Car and Body-Worn Video 6. Employees Will Enter Data for Events Recorded with ICV	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:**

The Complainant alleged that the Named Employee was unprofessional towards him during a traffic stop. The Complainant further alleged that the stop may have been based on bias. Lastly, OPA alleged that the Named Employee may have improperly entered data for events he recorded on Department video.

### **ANALYSIS AND CONCLUSIONS:**

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

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

Named Employee #1 (NE#1) effectuated a traffic stop of the Complainant’s vehicle. NE#1 reported that he observed the Complainant make an illegal left turn and saw the Complainant holding his cell phone in his hand at the time. NE#1 informed the Complainant of the basis for the stop. The Complainant asserted that he was unfamiliar with the area. NE#1 responded that a no-turn sign meant the same thing everywhere. The Complainant then told NE#1 that the no-turn sign was new, but NE#1 responded that it had been in that location for three to five years. The Complainant informed NE#1 that he had only been holding his cell phone to check the weather and NE#1 informed him that it was irrelevant as the phone was required to be hands-free regardless.

NE#1 returned to his patrol vehicle and then came back to the Complainant’s car with a ticket for the illegal turn. The Complainant showed NE#1 a book and told NE#1 that he was a student. NE#1 and the Complainant argued for a period of time concerning how long the Complainant had been driving, what a red light meant, how long the no-turn sign had been in that location, and what it meant when a sign said no-turn. NE#1 then informed the Complainant that he was going to give him a warning for the cell phone usage while driving. The Complainant began to argue with him and NE#1 stated: “I can write you a ticket for your cell phone if you want, stop arguing.” The Complainant, who was an Uber driver, told NE#1 that he was losing business due to the length of the stop. NE#1 responded: “That’s not my problem, you’re the one violating all the traffic laws right now.” The Complainant raised that NE#1’s salary was paid by taxpayers. NE#1 replied by asking the Complainant whether he lived in Seattle. When the Complainant

said that he did, NE#1 asked the Complainant whether he owned his home. When the Complainant looked away, NE#1 stated: "You don't pay my taxes then." NE#1 again informed the Complainant that he was going to give him a warning for the cell phone and the stop ended.

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 OPA's review of the Body Worn Video (BWV), it is unclear what law enforcement purpose supported NE#1's ongoing argument with the Complainant. Certainly, curt and direct questions are permitted on a traffic stop. Moreover, officers may have an interest in asserting control over a situation, particularly with a driver who is argumentative or making numerous excuses. However, here, the argument does not seem to have had any purpose other than for NE#1 to have the last word with the Complainant. For example, while I understand NE#1's frustration with the Complainant raising that NE#1's salary was paid through taxes, the better course of action at that point would likely have been to walk away rather than to further engage with the Complainant and question whether he was a property owner.

While I believe that much of NE#1's exchange with the Complainant was unnecessary and counterproductive, I do not believe that it rose to the level of a violation of SPD's professionalism policy. As such, I recommend that NE#1 receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1's chain of command should watch the video of this incident with him and should discuss his interaction with the Complainant. NE#1's chain of command should raise with him the possibility that he consider approaching similar situations in a different manner in the future. The chain of command and NE#1 should collaborate on some alternate strategies that he could have used during this incident. This retraining 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**

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

The Complainant asserted that his stop was based on bias. Specifically, he alleged that Asian officers, such as NE#1, were biased against Black immigrants. The Complainant made this allegation approximately four months after this incident and nearly immediately after going to court on the citation that had been issued by NE#1.

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 OPA's review of the BWV, there is no evidence that the stop or any of the law enforcement action taken by NE#1 was due to bias. Instead, the stop was effectuated because the Complainant made an illegal turn and was holding a cell phone at the time. Moreover, the argument between the Complainant and NE#1 was based on the Complainant's disputing of the stop, not the Complainant's race.

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

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

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

***16.090 - In-Car and Body-Worn Video 6. Employees Will Enter Data for Events Recorded with ICV***

SPD Policy 16.090-POL-6 directs that employees will enter data for events recorded with In-Car Video (ICV). The policy further provides the following instruction: "Employees will assign the appropriate event type for all ICV recordings and enter any related Report or event number(s) in the proper format." (SPD Policy 16.090-POL-6.)

During its investigation, OPA determined that NE#1 failed to properly tag his ICV in this incident, as well as his ICV in a number of other incidents. Many of these videos were not tagged with a category or ID, and some were tagged with infraction numbers. NE#1 told OPA that he now properly tags his videos. OPA looked into this assertion and saw no evidence to contradict what NE#1 stated. Moreover, the process of tagging videos has since been automated.

However, given that NE#1 admittedly failed to properly tag multiple videos, including in this case, OPA recommends that he receive the below Training Referral.

- **Training Referral:** While NE#1 did not properly tag his video in this case, as well as video in other cases, he stated that he now does so. This appears to be the case based on OPA's further inquiry into this matter. Moreover, the tagging process has now been automated. As such, while NE#1's chain of command should document NE#1's prior failure to tag his videos and ensure that he understands the need to have done so, no further training or counseling is required unless the chain of command deems it necessary.

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