



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 6, 2019

CASE NUMBER: 2018OPA-1196

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	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 may have abused his discretion when he issued the Complainant a ticket.

#### ANALYSIS AND CONCLUSIONS:

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

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

The Complainant alleged that Named Employee #1 (NE#1), who is employed by SPD as a Parking Enforcement Officer (PEO), improperly wrote him a parking ticket. Specifically, the Complainant contended that NE#1 wrote him the ticket at 9:01 a.m., but that he had paid for parking until 10:00 a.m. The Complainant asserted that he properly displayed his parking receipt and that it clearly indicated that his paid parking had not expired at the time of the issuance of the ticket.

OPA reviewed the ticket in question and confirmed that it indicated that the ticket was issued at 9:01 a.m. The ticket also stated that there was no valid proof of payment receipt displayed and that the “paybyphone” database verified that the parking was not paid for.

The Complainant provided OPA with a photograph taken of a car window. The photograph, which was taken from outside of the car, showed a parking receipt on one of the windows of the car. The parking receipt in the photograph indicated that parking had been paid for until 10:00 a.m.

The Complainant additionally informed OPA that the parking ticket had been dismissed with prejudice after he contested it in court.

As part of its investigation, OPA interviewed NE#1. He told OPA that he is mostly assigned to enforcement areas that have pay stations. He stated that, when he is conducting enforcement, the first thing he looks for is a parking receipt that has a printed date and time on it. He looks for the parking receipt on the driver’s side window but, if it is not there, he also examines the rest of the vehicle to determine whether the receipt was improperly placed. This is the case even though the receipt is technically void if not placed in the right area. If he cannot find the parking receipt



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anywhere on the vehicle, his practice is to then look in the “paybyphone” database to determine whether the individual paid for parking in this manner. If he finds negative results in that database, he then issues the ticket. In response to questions from OPA, NE#1 acknowledged that he could have missed the parking receipt to the extent there was one that was actually placed on the car’s window. He told OPA that, had he seen the parking receipt, he would not have issued a ticket.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

At the outset, OPA notes that it cannot independently verify that the photograph provided by the Complainant is, in fact, of his vehicle and of the driver’s side window, where the parking receipt was required to be affixed. That being said, there is insufficient evidence to establish, to the contrary, that the photograph is not an accurate depiction and to establish that the Complainant did not, in fact, pay for parking and properly affix the parking receipt. Accordingly, and when applying a preponderance of the evidence standard, OPA finds that NE#1 may have incorrectly issued the Complainant a ticket. When he did so, he did not properly exercise the discretion afforded to him as a PEO. However, there is no evidence in the record establishing that this was an intentional act or, stated differently, that it was anything other than a mistake. As such, I recommend that NE#1 receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be counseled concerning this incident by his chain of command and should be reminded to fully search for a parking receipt on a vehicle prior to issuing a ticket. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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