



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 1ST, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0449

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)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Sustained
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained
# 3	12.070 - Department Publications 1. Manuals Provide Procedural Guidance for the Daily Operation of Department Employees - Communications Manual Section 3.025 Performance	Sustained
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Terminated Prior to Proposed DAR

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)

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 he was subjected to biased policing by two SPD dispatchers – Named Employee #1 and Named Employee #2, as well as by an unknown SPD employee. OPA and a Communications Supervisor further alleged that Named Employee #2 may have failed to report the Complainant’s allegation of bias, may have made unprofessional statements, and may have handed this call improperly.

SUMMARY OF INVESTIGATION:



The Complainant called 911 to report that his vehicle had been broken into. He was transferred to the non-emergency line and was connected with Named Employee #2 (NE#2), a 911 dispatcher. The Complainant, who is African American, expressed that he was upset that his call was not being treated as an emergency. He stated that he had called several times and that there was no law enforcement response. He asserted his belief that the lack of an emergency response suggested that “black lives don’t matter.”

The Complainant said that he should not have to keep calling and that he had been doing so repeatedly since 2012. NE#2 interrupted to ask clarifying questions and said: “let me go ahead speak for a few seconds.” The Complainant interjected and said: “no, let me finish so you can understand that this is an emergency.” The Complainant continued to explain his concerns regarding the lack of a police response.

NE#2 tried to ask questions concerning the incident. He stated that he would call the Mayor and the Chief and NE#2 told him that he had the right to do so. NE#2 and the Complainant spoke over each other for a period the time and NE#2 then began to explain why his call was not an emergency. The Complainant grew upset and said that, if the police would not help him, he would take action into his own hands and someone could get hurt. NE#2 reminded him that the call was recorded and that he was threatening to harm people. He said that he was not threatening anyone and clarified that he was saying that he had a right to defend his property. NE#2 agreed. The Complainant told her: “Don’t put nothing in my mouth, that’s what you tried to do, all because I said I’m Black.” NE#2 responded: “No, no I did not.” She told the Complainant: “Sir, I don’t care if you’re black or not, sir. It makes no difference to me.”

The Complainant asked if there was any way else that she could assist him at that time and the Complainant asked to speak with someone else that would help him and see what the problem was. He told NE#2 that he felt that his building was trying to force Black people out. He said that when the police came out in response to that call, they only went to the manager of the building.

He told the Complainant that his next move was Black Lives Matter because he was already affiliated with them. NE#2 stated: “I just want you to be aware, I want you to look into the group to make sure it’s what you want to be involved with.” He further said: “It shouldn’t have to go that distance for Black lives to matter.” NE#2 replied: “And all I’m saying is that all lives matter.” She told the Complainant that she was White, and her partner was Black, and she repeated that “all lives matter.” The Complainant replied that he was Black, and his partner was White.

NE#2 and the Complainant continued to discuss the police response to his apartment for several more minutes. They continued to discuss and, at times, argue about what constituted an emergency. At one point, the Complainant told NE2: “You’re playing White on me, you’re not playing right on me.” She replied that “White” had nothing to do with it. The Complainant began to respond, and she interjected: “no, you listen to me because now you’re upsetting me. White has nothing to do with it.” They argued for a period of time about this statement.

The Complainant asked to be transferred to NE#2’s supervisor. She said that she could not transfer his call but that she would pass his contact information on. They continued to argue about whether there was an emergency and spoke over each other. NE#2 told him to not put words in her mouth. NE#2 ended the call shortly thereafter, telling the Complainant she could no longer remain on the line.



The Complainant called back and was connected with Named Employee #1 (NE#1), another 911 dispatcher. The Complainant relayed the same concerns to NE#1 regarding the damage to his vehicle and the lack of a police response to that and his prior calls for service at his building. The Complainant was upset during this call and expressed his frustrations to NE#1.

After listening to the Complainant, NE#1 said that she was creating a call that she would dispatch officers to. She asked for the Complainant's name and he refused to provide that information. He asserted that his name was "irrelevant," and that NE#1 was trying to "wipe" him "under the rug" because he is Black. NE#1 responded that his race was not pertinent to seeking his name and creating the call.

The Complainant again demanded to speak with NE#1's supervisor. He told NE#1 that he would be making a bias complaint against officers. NE#1, like NE#2, told the Complainant that she could not transfer the call but that she would relay the Complainant's contact information to the supervisor. She again asked for his information and he refused to provide it. The Complainant further refused to provide information concerning whether he had symptoms of COVID-19 or had been around anyone recently who had such symptoms. NE#1 reaffirmed that she would be dispatching officers and concluded the call.

NE#1 later relayed the Complainant's bias complaint to a supervisor – referred to here as Supervisor #1. Supervisor #1 called the Complainant and spoke with him at length. The Complainant reiterated his concerns. He also made bias complaints against NE#1, NE#2, and the unknown SPD officers who had responded to his earlier call concerning actions taken towards him by the management of his building. With respect to NE#2, he felt that her comments concerning being "White" demonstrated bias towards him and Black people.

Supervisor #1 relayed what he learned to another supervisor – referred to here as Supervisor #2 – at the conclusion of his shift. Supervisor #2 made an OPA referral. In that referral, Supervisor #2 referenced the comments made by NE#2 concerning Black Lives Matter and her personal relationship. Supervisor #2 also noted that NE#2's handling of the call may have violated dispatcher protocols and training. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

From OPA's review of the recorded call audio, OPA finds no basis to conclude that NE#1 engaged in biased policing towards the Complainant. During the call, she was respectful and did her best to try to assuage the Complainant's concerns. To this end, she ultimately did generate a call and dispatched officers to the Complainant's residence. She further relayed his request to speak with a supervisor to Supervisor #1.

NE#2 made no statements and took no actions suggesting bias. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against her.

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

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.*) The policy further instructs that: “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” (*Id.*) Lastly, the policy states that: “Employees who engage in, ignore, or condone bias-based policing will be subject to discipline.” (*Id.*)

At the outset, and as with NE#1, OPA did not discern that NE#2 provided less or different police services to the Complainant based on his race. However, in reviewing the Complainant’s allegations and the audio discussions between him and NE#2, OPA identified two statements that may have been contrary to the Department’s bias-free policing policy: (1) NE#2’s advising the Complainant to look into Black Lives Matter and to determine whether he really wanted to be associated with that entity; and (2) NE#2 telling the Complainant twice that “all lives matter.”

In evaluating both statements, OPA notes that the Department’s bias-free policing policy goes further than solely prohibiting law enforcement actions that evince bias; it also bars statements, whether in the context of the provision of police services or not, that show bias on the part of an SPD employee. The statements in question must demonstrate prejudice concerning “discernable characteristics,” which include, but are not limited to: race, ethnicity, or color; and political ideology. This policy is critically important to build and maintain public trust and confidence in SPD, and particularly within communities of color and other historically marginalized groups.

With regard to NE#2’s first comment, OPA concludes that Black Lives Matter is a political ideology. This is supported by the organization’s own self-description (“Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise”), news reporting, and scholarly research. Given this, the question for OPA is whether NE#2’s statement expressed prejudice towards Black Lives Matter as a political ideology. OPA finds that it did and, as such, that it constituted a violation of SPD’s biased policing policy.

In reaching this conclusion, OPA reasons that NE#2 spoke derogatorily of a political organization while engaging in police actions in her official capacity. OPA additionally finds it to be particularly egregious that NE#2 made this statement while on the phone with an obviously frustrated African American male. Advising him to not engage with and to look into Black Lives Matter was not only entirely inappropriate, but it also undermined the Complainant’s belief that this organization was an entity that could support him given his frustrations with SPD. Again, it was not NE#2’s right or responsibility to advocate for or against political organizations while engaged in the course and scope of her duties. In doing so, she acted contrary to the prohibitions of this policy. OPA notes that, in reaching this finding, it should not be interpreted that good faith criticism of a political position or organization will always, in and of itself, yield a finding of bias. The issue here is the manner in which she conveyed that belief and how she spoke about the organization.

In OPA perspective, whether NE#2’s second comment violated the bias-free policing policy is a more complicated question. On one hand, “all lives matter” has been publicly asserted by politicians, both federal and local, without a finding that it constitutes racism. In addition, in a national public safety survey conducted by Reality Check Insights from September 23, 2020 to October 7, 2020 where respondents were asked if they agreed more with “Black lives matter” or “all lives matter,” 87% of Republicans, 61% of Independents, and 31% of Democrats cited “all lives matter.” This, in OPA’s opinion, undercuts a finding that this statement rises to the level of biased policing.



On the other hand, however, it is offensive to say the least to make this comment to an obviously upset African American male who references that Black lives matter out of frustration. Moreover, most of the examinations of this term and the way it is generally utilized – particularly when articulated by a White person to a person of color – reach the conclusion that, if not racist, it certainly represents ignorance on the part of the speaker.

Ultimately, in weighing both sides of this question, OPA finds that that totality of the evidence does not support a finding that the term “all lives matter” as used by NE#2 violated the bias-free policing. It may very well be the case that, in time, the more universal understanding of this phrase will be that it is racially insensitive. If so, a different finding on this particular question may be reached in the future.

Regardless, given that OPA concludes that NE#2’s comment regarding Black Lives Matter violated policy as it conveyed prejudice towards a political ideology, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

Here, the evidence indicates that, even though the Complainant made an allegation of bias, NE#2 did not report that claim to a supervisor. Moreover, she did not, as dispatchers are trained, complete a complaint form and provide that documentation to her supervisor. Indeed, had NE#1 not done so, it is likely that a supervisor never would have been notified of the Complainant’s assertions.

These failures were contrary to policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

12.070 - Department Publications 1. Manuals Provide Procedural Guidance for the Daily Operation of Department Employees - Communications Manual Section 3.025 Performance

SPD Policy 12.070-POL-1 generally instructs that unit manuals have the weight of policy and, as such, violations of their terms may result in discipline. Relevant to this case, Communications Manual Section 3.025 governs dispatcher performance. It states that: “Call takers will gather information using appropriate interview techniques to determine and implement the most appropriate action for each situation. If no police action is necessary, an appropriate referral should be provided whenever possible.” This section of the manual also provides guidance on how dispatchers are to interact with callers and the expectation of professionalism and indicates that dispatchers should not be argumentative or personalize calls.



OPA finds that NE#2 violated this policy in multiple respects. As Supervisor #2 indicated, NE#2 did not follow protocols when questioning the Complainant about his vehicle and she did not initiate a call based on his complaint. Notably and in comparison, NE#1 properly did so. To the contrary, NE#2 argued and spoke over the Complainant, personalized the call, and made unprofessional and improper statements. This is not how dispatchers are trained or expected to conduct themselves and, accordingly, represented a violation of policy.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

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

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.)

NE#2’s improper statement concerning Black Lives Matter and the general unprofessional manner in which she interacted with the Complainant during the call are largely captured in the allegations above. However, outstanding is OPA’s evaluation of NE#2’s statements to the Complainant that “all lives matter.”

While OPA did not find that the “all lives matter” statement rose to the level of biased policing, OPA concludes that these statements – particularly in the context in which they were used here – were clearly unprofessional. Again, as discussed in the context of Allegation #1, making such statements falls well outside of the Department’s and the community’s expectations of SPD employee conduct and was unacceptable.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

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

Based on OPA’s review of the totality of the evidence, OPA found no indication that an unknown SPD employee engaged in biased policing towards the Complainant. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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