



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0409

Issued Date: 10/16/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 13.080 (11) Use of Department Vehicles: Prohibited Activities During Use of Department Vehicles (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 5.001 (13) Standards and Duties: Retaliation is prohibited (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #4	<u>Seattle Police Department Manual</u> 5.001 (2) Standards and Duties: Employees Must Adhere to Laws, City Policy and Department (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	Written Reprimand

INCIDENT SYNOPSIS

The Named Employee contacted the complainant in a parking lot.

COMPLAINT

The complainant alleged that Named Employee #1 blocked her from getting off on her exit in retaliation for changing lanes in front of him, and then followed and aggressively tailgated her when she did manage to turn off the highway into a parking lot. The complainant further alleged that Named Employee #1's "highly aggressive" driving endangered her ability to drive safely and that he drove for an extended distance in a "Bus Only" lane.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of private video
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

SPD Policy 13.080(11) contains guidance as to what activities are prohibited during the use of Department vehicles. Relevant to this case, the policy prohibits: "Driving in a manner that is discourteous or aggressive, unless necessary to effect a recognized law enforcement purpose." (Id.)

As discussed in the context of Allegation #2, the OPA Director found that the totality of Named Employee #1's behavior was unprofessional. However, there was a dispute of fact as to whether Named Employee #1's driving, itself, was discourteous and aggressive. The complainant certainly believed that it was; however, Named Employee #1 argued to the contrary. There was no video that captured Named Employee #1's driving. As such, the OPA Director could not conclusively determine that his vehicle operation was in violation of this specific section of the policy.

SPD Policy 5.001-POL-9 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-9.)

As explained above, the complainant and Named Employee #1 disagreed as to whether Named Employee #1 was driving in a discourteous and aggressive manner. However, a number of other facts concerning his driving were either agreed or could not reasonably be disputed:

- Named Employee #1 drove parallel to the complainant for a period of time, as had he not been he would have been unable to see that she was looking straight ahead while she was driving.
- The complainant did not exit the highway until after her originally intended exit.
- Named Employee #1 followed her off the highway into a parking lot where he parked and continued to observe her.

It was also undisputed that Named Employee #1 did not ever explain to the complainant why he had been driving parallel to her and why he followed her. Named Employee #1 could have simply told her that he was concerned that she was impaired and was thus worried about a potential threat to the public. This may have de-escalated the entire interaction and prevented the filing of this complaint. Instead, when asked why he was driving in the bus lane and apparently following her, Named Employee #1 intimated to the complainant that he was using the bus lane to monitor peak hour infractions. Even under Named Employee #1's account, this statement was knowingly false and was evidently purposed to be misleading to the complainant.

All of the above was compounded by the fact that following the complainant on the highway and then to a parking lot to determine whether she was intoxicated was well outside of the scope of Named Employee #1's duties and responsibilities.

Notably, when asked at his OPA interview whether he could put himself in the complainant's shoes and understand why his behavior may have intimidated her, he simply stated: "She may have believed I was angry and mad at her, but I wasn't." This demonstrated, in the OPA Director's opinion, either an inability or unwillingness to understand how his conduct, even if he believed it to be reasonable, may have negatively affected the complainant.

The OPA Director found that Named Employee #1's behavior in this instance, when viewed in its totality, was unprofessional and undermined the public's trust in the Department.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) Retaliatory acts are defined under SPD's policy to include "discouragement, intimidation, coercion, or adverse action against any person." (Id.)

While the OPA Director found that Named Employee #1's behavior was unprofessional and outside of the scope of his duties, the evidence was inconclusive as to whether his conduct rose to the level of retaliation as contemplated by the policy.

The complainant alleged that Named Employee #1 continuously drove in the bus lane in an effort to keep pace with her vehicle and prevent her from switching lanes. Named Employee #1 admitted that he remained in the bus lane and that he did not do so in furtherance of his parking enforcement duties. Named Employee #1 stated that he stayed in the bus lane in order to keep an eye on the complainant and to determine whether she was driving while impaired.

Pursuant to the Revised Code of Washington, bus lanes are restricted to buses. While law enforcement vehicles are certainly allowed to drive in bus lanes to conduct law enforcement activity, when they are not doing so, such vehicles must travel in the normal lanes of traffic like any civilian. While Named Employee #1 rationalized that he was trying to determine whether the complainant was impaired, that was not his job. To the extent that Named Employee #1 believed that the complainant was a true danger to the public, he should have notified a police officer or radioed in his observations, even in light of the priority call restriction. He did not do so. As the OPA Director recommend sustaining Allegation #2, above, he did not believe it necessary to also sustain this allegation.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Use of Department Vehicles: Prohibited Activities During Use of Department Vehicles*.

Training Referral: Named Employee #1 should receive additional training as to the requirements of SPD Policy 13.080(11). Named Employee #1 should also receive counseling from his chain of command as the Department's expectations for his driving, as well as to explain to Named Employee #1 the effect his conduct could potentially have on a civilian.

Allegation #2

A preponderance of the evidence showed that Named Employee #1's behavior, when viewed in its totality, was unprofessional and undermined the public's trust in the Department. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Discipline Imposed: Written Reprimand

Allegation #3

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Retaliation is prohibited*.

Allegation #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees Must Adhere to Laws, City Policy and Department*.

Training Referral: Named Employee #1 should receive additional training concerning when it is appropriate for him to drive in a bus-only lane. Named Employee #1's chain of command should also counsel him to limit his official activities to traffic and parking enforcement, rather than investigations into potential criminal conduct.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.