



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 12, 2018

CASE NUMBER: 2017OPA-0906

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 5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained
# 3 15.260 - Collision Investigations 3. Officers May Assist Motorists in Non-Reportable Collisions	Sustained
# 4 5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 5 5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)
# 6 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Sustained

Imposed Discipline

2 Day Suspension

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 was dishonest with his supervisor when he told her that the complainant in a bias allegation "took off" when in fact ICV revealed the complainant was still present on the scene at the time the incident was being screened and would have been available for supervisor contact. It was also alleged that the Named Employee failed to complete a General Offense Report for the collision investigation that he was dispatched to despite being asked by both parties of the collision to complete a report. The Named Employee also terminated his In-Car Video before the end of the call while he was still screening the call with his supervisor and obtaining information (vehicle license plate number) of the subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.*)



Named Employee #1 (NE#1) responded to a car accident involving the subject and a female motorist. When he arrived at the scene, NE#1 spoke with both the female motorist and the subject. The female motorist stated that she was rear-ended by the subject. The subject stated that the female motorist purposefully put the brakes on, which resulted in the accident. NE#1 told the subject that whenever an accident involves rear-ending, the rear driver is at fault. NE#1 asserted to the subject that he was driving too closely behind the female motorist. The subject repeatedly contended that the accident was not his fault and was, instead, the female motorist's fault. This did not change NE#1's mind and he continued to state that the subject was at fault, even based on the subject's own account of the accident.

OPA interviewed both the subject, who self-identified as Latino, and his passenger, who self-identified as African-American. Both opined that they were treated differently because of their respective races. The subject noted, for example, that NE#1 would not shake his hand. His passenger opined that NE#1 looked down on them in a "racial kind of way." NE#1 denied engaging in biased policing and said that he did not treat them differently because of their races, occupations or vehicle type. (See NE#1 OPA Interview, at pp. 7-10.) NE#1 stated that he did not remember not shaking the subject's hand, but admitted that he prefers to "fist-bump" rather than shake hands due to concerns of germs. (*Id.* at pp. 7-8.) He stated that this decision, if it occurred, had nothing to do with the subject's race. (*Id.* at p. 8.)

As described more fully herein, NE#1 did not accurately and completely report aspects of the complaint of bias to his supervisor, did not complete a General Offense Report as he was required to do, and prematurely turned off his In-Car Video (ICV), all in violation of policy. He also made a determination, very early on in his investigation, that the subject was at fault as a function of him being the rear driver and due to the subject's own account of the accident. However, I find no evidence in the record, including through my review of the ICV, that NE#1 acted based on bias.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

At some point during his interaction with NE#1, the subject alleged that NE#1 was treating him differently based on his race. While the exact substance of this statement could not be heard on the ICV, it was clear that such a complaint was made based on the statements of all involved and the fact that NE#1 reported it to his Sergeant.

SPD Policy 5.140-POL-5 requires that "[i]f a person alleges bias-based policing, the employee shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action. The policy further states that: "For the purposes of this policy, an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernable personal characteristics..." (SPD Policy 5.140-POL-5.)

Here, NE#1 notified the Sergeant that the subject had made a complaint of bias. He told her, however, that it was unnecessary to come to the scene because the subject had stated that he did not want a supervisor to respond and



because the drivers involved in the accident “took off.” As discussed more fully below, the latter statement was inaccurate. In fact, NE#1’s ICV captured the fact that the subject was very much still at the scene of the accident at the time NE#1 informed his sergeant otherwise.

During her OPA interview, the Sergeant indicated that she was frustrated with NE#1’s failure to inform her that the subject was still in the vicinity of the scene when he called her to screen the bias complaint. She told OPA that, based on what she was told by NE#1, she had no reason to believe that the subject was there and, accordingly, she further had no reason to go to the scene to screen the incident in person as the policy requires. The Sergeant additionally noted that had NE#1 told her that the subject was still by his car and in the vicinity of the scene (as was captured by the ICV), she would have gone there to try to speak with the subject about the bias complaint – even if the subject had affirmatively stated that he did not want to interact with a supervisor.

In addition, it is the Department’s expectation that notification to a supervisor of a bias complaint will occur immediately after the complaint is made. At his OPA interview, NE#1 agreed understanding this to be the expectation (NE#1 OPA Interview, at pp. 9-11), and stated that he should have radioed the Sergeant immediately after the complaint was made. However, instead, he waited approximately ten minutes to do so. This was also inconsistent with both policy and training.

NE#1’s failure to accurately and completely report that the subject was still the vicinity of the scene in the aftermath of the bias allegation prevented the Sergeant from properly screening the complaint as compelled by policy. As such, I find that NE#1’s actions and communications violated this section of the policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

15.260 - Collision Investigations 3. Officers May Assist Motorists in Non-Reportable Collisions

When NE#1 responded to the accident between the subject and the female motorist, both individuals asked for him to generate a report. Initially, NE#1 tried to convince the parties to exchange information as opposed to obtaining a report. He rationalized that this was the better course of action based on the limited damage to the vehicles and the lack of physical injuries. The subject again asked for a report and NE#1 told him that he could write a report but that, if he did so, he would also have to write the subject a ticket. The ICV then captured the subject telling NE#1 to write him a ticket and NE#1 saying that he was not going to do so and asking the subject why he was “tripping.” NE#1 also indicated to the subject that the lack of a report might make it easier for him to “beat” the insurance companies, particularly if he did not have a ticket. NE#1 later gave both motorists his business card, told them that he was not going to write a report so that he did not have to give anyone a ticket, and informed them that he would add some remarks to the call.

SPD Policy 15.260-POL-3 requires that officers will complete either a General Offense Report or a State of Washington Motor Vehicle Collision Report if either party in a non-reportable collision so requests. Here, NE#1 did not do so even though both motorists requested a report. NE#1 asserted that he did not do so because the motorists agreed to exchange information; however, they agreed to do so because NE#1 took significant steps,



including the threat of tickets and the specter of better luck with fighting insurance companies, to convince them not to seek a report. Ultimately, NE#1 should have just generated a report upon request.

At his OPA interview, NE#1 said that he did not understand this policy at the time, but that he understands now its requirement of a report. (NE#1 OPA interview at p. 5.) However, ignorance of the policy is ultimately not a defense. NE#1 did not act in accordance with the policy in this case and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires that employees shall be truthful and complete in all communications. In this matter it is alleged that NE#1's assertion to his supervisor while screening the bias complaint that the subject had left the scene was purposefully dishonest.

As a starting point, it is undisputed that, at the time he stated that the subject "took off," the subject was still in the near vicinity of the accident. Moreover, it is further undisputed that when NE#1 was on the phone with his sergeant attempting to verify the license plate number of the subject's vehicle, the subject was standing right next to the vehicle and was, in fact, captured by NE#1's ICV.

At his OPA interview, NE#1 explained that while he saw the subject's car parked across the street, he did not see the subject and thought the subject had left the scene. (NE#1 OPA Interview, at pp. 12-13.) NE#1 stated that his assumption was that the subject had parked his car but then taken off and was no longer available. (*Id.* at pp. 15-16.) The OPA investigator asked NE#1 if he did not see the subject (who was wearing a distinct orange tee-shirt) standing right next to his car. (*Id.* at p. 16.) NE#1 responded: "Yes. I don't know how I didn't, but I did not see him." (*Id.*) NE#1 stated that he did not think he told the Sergeant that he was facing the subject's car when he was on the phone with her. (*Id.*) NE#1 admitted that it looked "terrible" that he turned off his ICV while facing the subject and the subject's vehicle and simultaneously telling the Sergeant that the subject had left the scene. (*Id.* at pp. 17-18.)

I agree. It does not look good. This is particularly the case given that NE#1 did not tell the Sergeant that the subject's car was still at the scene and that he was looking right at it or that he later interacted with the passenger of the vehicle. I find the lack of accuracy and completeness in NE#1's statements to be concerning to say the least. It prevented a supervisor from properly screening a bias complaint and, to be frank, gave the appearance that NE#1 was being deliberately dishonest. NE#1 denied that and said that he simply made a bad mistake and error of judgment.

When asked at her OPA interview whether she thought NE#1 lied to her, the Sergeant stated: "I honestly don't know. I would hope not." Ultimately, in this case, I, like the Sergeant, give NE#1 the benefit of the doubt. NE#1 should be aware, however, that this was a close decision and that his conduct in this matter was inappropriate.

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



Named Employee #1 - Allegation #5

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 provides that “[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-5.)

In my opinion, it is unclear what conduct this allegation was purposed to capture when classified in this case. Here, it is inarguable that NE#1 made some troublesome decisions in this case. For example, he made an inaccurate and incomplete statement bordering on dishonesty when he screened the bias complaint with his supervisor. Moreover, he clearly acted contrary to policy when failed to complete a report when requested by both motorists involved in the accident and then actively tried to convince them that they did not want or need a report. However, I do not disagree with his decision that the subject was at fault in the accident, not the female motorist, as well as his decision to not cite the subject.

While I think that NE#1 made a number of errors and poor decisions in this case, those are captured by other allegations that are sustained. As such, I do not find it necessary to also sustain this allegation based on conduct addressed elsewhere. Moreover, as I ultimately do not know definitively what conduct this allegation relates to, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #6

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

It was alleged that NE#1 may have turned off his ICV in potential violation of policy.

SPD Policy 16.090(8) requires that “once recording has begun, employees shall not stop recording until the event has concluded.” The policy provides that, as a general matter, an event has concluded if the following elements are met: (1) the employee has completed his part of the investigation; (2) there is little possibility that the employee will have further interactions with the subject; and (3) the employee is leaving the area of the event. (*Id.*)

At the time NE#1 turned off his ICV, he was speaking with his Sergeant. Presumably, based on NE#1’s audible response, the Sergeant asked NE#1 whether he had the subject’s license plate number. NE#1 responded: “Yeah I got his plate number...aw let’s see.” At that time, he drove his patrol vehicle across the street and stopped behind the subject’s car. When he parked his vehicle, it was clear from NE#1’s front ICV that the subject was standing next to his car; however, NE#1 still turned off his ICV.

Here, none of the elements necessary to turn off ICV were satisfied. First, NE#1 had not completed his investigation. He was gathering information concerning the license plate of the subject’s vehicle and was still in the process of screening this incident with his supervisor. Second, the subject was still in the immediate vicinity of NE#1 and it could not be said with certainty that NE#1 would not have had further interaction with him. Indeed, NE#1 did later interact with the passenger of the subject’s vehicle. Third, and last, NE#1 had not left the scene of the incident.



As such, NE#1 violated policy when he prematurely turned off his ICV and, accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**