



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 16, 2018

CASE NUMBER: 2017OPA-0931

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	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 stated that she called 911 after an unknown man entered her home. Officers arrived, located the man, and detained him before allowing him to leave the scene. The Complainant alleged that the Named Employees failed to conduct a thorough and complete investigation. The Complainant also alleged that Named Employee #1 was unprofessional when he was dismissive and uncaring to her as the victim and appeared to believe and side with the man who broke into her home by simply telling her to "lock her doors" and then to "change her locks." Moreover, the Complainant indicated that she tried to call and emailed Named Employee #1 and he did not respond to her request.

ADMINISTRATIVE SUMMARY:

After discussing this matter at the discipline meeting with the Named Employees’ chain of command, this Director Certification Memorandum was amended in order to provide more clarity that the totality of Named Employee #1’s interactions with the Complainant during and after the incident, not just his failure to respond to her e-mail, was the basis for the recommendation that the professionalism allegation against him be Sustained. I agree with the Named



Employees' chain of command that the failure to respond to an email from a victim, without more, would not constitute a lack of professionalism even if it is aspirational that Department employees respond to such emails.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

The Complainant stated that, during the late afternoon, the doorbell of her apartment rang. She answered the door and saw a man that she did not recognize. He walked up the stairwell without saying anything. She half closed the door and asked if he needed anything and the man asked her if someone named Kevin Johnson lived in the unit next to her. She said no and indicated that the tenants next door had lived there for some time. She closed the door and then went to ensure that all of her doors were locked. Around 30 minutes later, the Complainant (who was the only person in the apartment at that time) heard someone trying to open the door. The Complainant came out of her bedroom and saw that the same man was trying to open the sliding glass door by attempting to use keys. The Complainant went into her bedroom and called 911. She heard the sliding door then open. The Complainant tried to open her bedroom door (which was also locked). This went on for five minutes, during which the Complainant was told that officers were on the way. Shortly thereafter, she stopped hearing noise and she walked out of her bedroom. She saw that officers had made contact with the subject in the back alley where the sliding door exited onto from her apartment.

The Complainant then spoke to Named Employee #1 (NE#1). NE#1 told her the subject's story, which was that he had previously been at a boarding house in the same location and thought that the Complainant's apartment was that boarding house and entered by mistake. The Complainant stated that this did not explain why he had keys and was able to access her sliding door. NE#1 went back to talk to the subject and returned to the Complainant and stated that he believed that the subject was genuinely confused. The Complainant asked whether there was any additional investigation that could be done into the keys and NE#1 said no. The Complainant explained to NE#1 that she felt uncomfortable and that she was believed that she was being put in an unsafe situation. She stated that she was worried that the subject would come back and again try to access her apartment. She indicated that NE#1's response was that she should get her locks changed. The Complainant felt that NE#1 was very dismissive. The Complainant told OPA that she did not want the subject to be arrested, but just wanted the keys in his possession confiscated so that the subject could not access the apartment again.

The Complainant called the North Precinct three days after the incident and asked for an update on the investigation. She was told that no one had been arrested but that NE#1 had not yet completed his arrest report related to the case. She was further told that her call would be relayed to NE#1. When she did not hear back from NE#1, she called the North Precinct again and indicated that she was frustrated with her situation and was hoping for some information. She was told by the officer she spoke with that these types of incidents happened all the time and was she was given NE#1's email. The Complainant stated that she then wrote an email to NE#1 and that she received no response. She did, however, later receive a call from a number that she traced back to the Seattle Police Officers' Guild. She called that number back multiple times but was unable to leave a voicemail. The Complainant further told OPA that her building was again broken into around two weeks later and that both she and her landlord suspected that the break in was committed by the subject.



NE#1 recounted that he and Named Employee #2 (NE#2) responded to the Complainant's 911 call. They drove to the scene with their lights and sirens activated. NE#1 recounted that he and NE#2 contacted the subject, who was standing in the alley outside of the Complainant's apartment, and then he went to speak with the Complainant. NE#1 stated that he did not think it was suspicious that the subject left the apartment at or around the time he and NE#2 pulled up in their vehicle, which had its emergency equipment on. This was the case because he believed the subject's account that he simply turned around and left the apartment on his own accord when he realized that his friend did not live there.

The Complainant told the officers that the subject was the individual who had accessed her apartment and that he had used keys to do so and then again to try to enter her bedroom. NE#1 stated that he did not believe that the subject had keys to the subject's apartment or building based on what the subject told him. He admittedly did not search the Complainant's apartment or examine the sliding door to see if there was a lock. He stated that he did not see any damage to the door, but it appeared from his OPA interview that he did not inspect the door particularly closely. Even though the Complainant alleged that the subject had keys, NE#1 did not ask additional questions of the subject to make sure that he was not in possession of burglary tools, a master key or another altered key. This was the case even though this question could have yielded information that would have established probable cause to arrest. Moreover, as discussed below, at the time of the Named Employees' contact with him, the subject was wearing a black backpack. The officers never asked him what was in the backpack or explored in any way whether there was any contraband therein.

The Complainant relayed to NE#1 that the subject told her that he was looking for someone named "Kevin Johnson" and the subject told the officers that he was looking for "David Johnson." However, NE#1 never ran the names of these individuals that the subject was purportedly looking for to see if they could be traced to either the Complainant's apartment or another building in the near vicinity. Even if they were common names, NE#1 did not even attempt investigate this information. NE#1 further did not ask the subject about the Complainant's statement that she told the subject that no one with the last name of "Johnson" had ever lived in her building. He stated that he did not do so because there were a number of "boarding houses" in the area that frequently had different occupants; however, this certainly was a question pertinent to the investigation.

NE#1 indicated that the subject told him that he entered the apartment by mistake when he was looking for a friend. However, based on the statements of both NE#1 and NE#2 as well as the ICV, this story was not explored particularly thoroughly. In fact, the decision that the subject was not involved in criminal activity appeared to have been made early in the officers' response to the call.

NE#1 stated that, based on his conversation with the subject, he did not believe that he had been attempting to commit a crime. NE#1 described the subject as wearing jeans and a backpack and described him as "calm." NE#1 further denied that the subject appeared to be impaired by drugs or alcohol. However, at his OPA interview, NE#2 contradicted NE#1, recounting that: the subject "wasn't just your normal sharp individual talking to us and getting questions answered, whether it was drugs, alcohol, or whether there was some kind of mental deficiency of some kind, or a mixture of all of the above."

Notably, a check of the subject's criminal history revealed 36 arrests, including four for burglary (two of those forced residential), one for theft and one for assault. However, NE#1 still asserted that he believed that the subject had not been attempting to commit a crime in this case. NE#1 stated that he did not believe that he had probable cause to



arrest the subject for burglary. NE#1 agreed that he could have arrested the subject for criminal trespass and that he could have then searched the subject incident to arrest. While NE#1 said that he “possibly” considered this, he ultimately did not effectuate the arrest again because he did not believe the subject was attempting to commit a crime.

SPD Policy 15.180-POL-1 requires that, during primary investigations, officers are required to conduct a complete and thorough search for evidence.

Here, for the reasons set forth above, I find that the investigation and search for evidence conducted by NE#1 and NE#2 was cursory at best. NE#1 did not appear to closely examine the Complainant’s door (which she contended was locked at the time the subject entered) to determine whether the lock appeared to have been tampered with. He further failed to follow up on a number of outstanding questions in this case, including, but not limited to: whether the subject had burglary tools or another implement that allowed him to access the Complainant’s apartment; whether the subject’s backpack contained this or other contraband; whether anyone named Kevin or David Johnson was connected to the Complainant’s building or another building in the immediate vicinity; or whether the subject recalled being told by the Complainant that someone named “Johnson” had never lived in her building. Instead, NE#1, in my opinion, quickly and uncritically accepted the subject’s account as more credible than the Complainant’s. At the very least, he did not explore a number of the facts and concerns relayed to him by the Complainant and instead relied on the account of the subject, who he knew had been arrested 36 previous times and four times for burglary.

NE#1 stated that, based on his conversation with the subject, he did not believe that the subject had been engaging in criminal activity. This was the case even though the subject was, according to NE#2, undoubtedly impaired by alcohol, drugs, or mental illness, had twice attempted to access the Complainant’s apartment and had been identified as the individual who had accessed the apartment, and was wearing a backpack on his back. I disagree with NE#1 that the subject’s account of his activity that evening was at all plausible. The totality of these facts, while arguably circumstantial, strongly suggest to me that the subject was involved in criminal activity on that evening and was not simply mistaken as to who lived inside the Complainant’s residence. I believe that there was certainly probable cause to arrest the subject for criminal trespass, if not burglary.

Ultimately, I find that NE#1 did not conduct a complete and thorough search for evidence in this case. I further find that, as a general matter, his investigation was unsatisfactory and fell short what is expected under SPD policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 states that: “Employees 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.” The policy further indicates that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5001-POL-5.)



While I disagree with the decision of NE#1 to not arrest the subject and while I believe that he had sufficient probable cause to do so, I cannot conclusively determine that the decision to not effectuate the arrest was so unreasonable as to constitute an abuse of his discretion. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant's primary allegations concerning NE#1's professionalism were that he was dismissive of her concerns at the scene and that he failed to respond to her email and phone calls requesting information regarding her case. The Complainant explained to OPA that she was upset about NE#1's response and that he seemed to believe the subject over her and not fully investigate her side of the story. She was also upset about how dismissive she believed him to be. She noted that, even had NE#1 not confiscated the keys that she alleged were possessed by the subject, she would have felt significantly better had he simply informed her that they were stepping up patrols or taking some other action to ensure her safety. She was also frustrated by NE#1's response to her that she simply change her locks, which she believed was both unhelpful and insensitive. Lastly, she thought it was unprofessional that NE#1 never responded to the email that she sent asking for an update concerning her case, or responded to her calls that she made to the North Precinct.

NE#1 denied being unprofessional during her interaction with the Complainant. NE#1 stated that the Complainant told him that she believed the subject had keys to her apartment and to the whole building. NE#1 recalled telling her "well, if you think someone has keys to your whole building you should change your locks." Even given the fact that the Complainant was clearly "shaken" by this incident, as recalled by NE#1, he said that this was advice he normally gave to victims and did not believe it to lack professionalism.

With regard to the email sent to him by the Complainant, NE#1 told OPA that she stated therein "explain your circumstances on that day" and that he had never received a similar email from someone during his career. He told OPA that he believed that he had already explained himself at the scene and that he did not think that further explanation to the Complainant was necessary or required.

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.)

I believe that NE#1's comments could have been construed as insensitive in this instance, particularly given how shaken the Complainant was by this incident coupled with the fact that NE#1 did not and had no intention of searching the subject for keys. Indeed, she reported being concerned with how dismissive NE#1 was of her recounting of the incident and believed that his response that she change her locks lacked empathy.

I am even more concerned, however, with NE#1's refusal to respond to the Complainant's email and phone calls. Even presupposing that the fact that the Complainant tried to reach him twice over the phone at the precinct was not relayed to NE#1 by his co-workers, he admittedly received her email. NE#1 described this email as the



Complainant stating to him: “explain your circumstances on this day” and “explain yourself to me.” As such, his OPA interview suggested that the email was demanding or rude.

From my review of the email (which OPA obtained during its investigation) this was simply not the case. Instead, the Complainant’s email was polite and asked for an update concerning her case and more information to understand why NE#1 did not arrest the subject or search him for keys. In the email, the Complainant told NE#1 that she had contacted the North Precinct by phone and was informed that no arrest had been made and that the officer she spoke with could not “read” the report (presumably because it had not yet been completed). She wrote: “I was told that I would be hearing from you shortly, but never received a phone call. Therefore, I am hoping you can shed some light on what happened after we spoke at my apartment.” She further wrote: “I must admit that I was pretty frazzled by the situation and understand that you were probably extremely busy after 5 pm on a Friday evening. However, I want to see what the rationale was behind not making an arrest or at least not further investigating my belief of the suspect having keys to my apartment.” Lastly, the subject wrote: “I apologize if this is coming out the wrong way, but I trust that you understand that as a victim in this break-in, I want to be reassured that I was not put at a disservice in any way shape or form.” She concluded her email by politely requesting a response. However, there was no response by NE#1. Indeed, the only response that the Complainant received was a phone call that she traced to the Guild and no responses or the ability to leave a voicemail when she called the number back. It seems to be common courtesy for an officer (or anyone, for that matter) to respond to such an email. It would have taken minutes if not seconds to do so.

Moreover, I find NE#1’s explanation that, because he gave a brief explanation to a shaken victim during a stressful incident no further explanation was warranted or required, troubling. Indeed, it seems to be the same attitude he applied to the investigation in this case. A civilian and, specifically, a victim of crime is entirely justified in requesting an explanation concerning why law enforcement activity was or was not conducted in a certain incident. This is particularly the case when it was done as politely as the Complainant’s email. Even if NE#1 was uncomfortable responding to her based on some legitimate reason, he should have referred her to a supervisor who could have more fully addressed her concerns. Here, NE#1 did not articulate such concerns and, instead, explained that he felt that he had already explained himself and, more significantly, was not obligated to respond to the Complainant’s request.

I believe that NE#1’s failure to exercise even basic courtesy by responding to or having a supervisor respond to the Complainant’s polite and deferential email was contrary to the Department’s expectations of his conduct. This, coupled with his dismissiveness of her account and his unhelpful and unthoughtful statement to a shaken victim that she just change her locks to prevent a further burglary, was inconsistent with SPD policy and constituted a lack of professionalism. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

As indicated above, I do not find that the Named Employees conducted a thorough and complete search for evidence in this case and that the investigation they did conduct was generally cursory and unsatisfactory. However, NE#1 was the primary officer on this call and, according to both him and NE#2, was ultimately responsible for the



investigation that was conducted. Accordingly, I recommend that NE#2 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#2 should receive re-training concerning SPD Policy 15.180-POL-1 and the requirement that he conduct a thorough and complete search for evidence in all primary investigations. NE#2 should be counseled concerning his and NE#1's failure to do so in this case and the overall unsatisfactory nature of their investigation. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

While, during his OPA interview, NE#2 opined that he may have been partially responsible for actions taken in this case (which resulted in him being added to this investigation as a Named Employee), both he and NE#1 agreed that NE#1, as the primary officer, was ultimately responsible for the decisions made, including the decision to not arrest the subject. As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

From my review of the Complainant's allegations, it appears that her concerns about officer unprofessionalism implicated NE#1 not NE#2. Moreover, from my review of the ICV, I find no evidence to suggest that NE#2 engaged in conduct in violation of the Department's professionalism policy.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#2.

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