



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 3, 2018

CASE NUMBER: 2017OPA-0953

Allegations of Misconduct and the 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	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Allegation Removed
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Allegation Removed
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

EXECUTIVE SUMMARY:

The Anonymous Complainant alleged that the Named Employees provided untrue information to bystanders regarding the arrest of the subject and attempted to intimidate and scare bystanders into leaving the scene by threatening arrest and implying that “weapons could be used at any time.” The Complainant also alleged that the subject was racially profiled and treated with disrespect by the Named Employees.

ADMINISTRATIVE NOTE:

OPA received this complaint from an Anonymous Complainant. OPA spoke to the Anonymous Complainant on the phone and she indicated that she wanted to stay anonymous. OPA asked that she provide the video she stated that she recorded of the incident, but she did not do so. In response to a request for more investigation from the OPA Auditor, OPA tried to contact the Anonymous Complainant in another attempt to obtain the video. A male answered the phone – the Anonymous Complainant was a woman – and was unhelpful and would not connect the OPA investigator with the Anonymous Complainant. The Anonymous Complainant ultimately never contacted OPA in response to this subsequent inquiry.

In addition, and again based on a request for additional investigation from the Auditor, OPA attempted to contact the subject in order to interview her to determine whether she believed that she was subjected to biased policing. She did not respond to OPA’s inquiry.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees responded to a 911 call concerning an assault. The suspect in the assault was identified as an African-American female in her early 20s, wearing a blue coat with orange stripes and dark pants. The victim stated that the suspect, who was unknown to him, had slapped him. The Named Employees reported that they arrived at the scene and located the subject who matched the description of the suspect. The victim reported to the officers that he had observed the subject looking into his car window and with her hand on the door handle. The victim stated that he confronted the subject and she tried to slap him and missed, but knocked his hat off. The suspect told the officers that she was looking into the victim's car window and admitted knocking his hat off. At that point, the officers asserted that there was sufficient probable cause to place the subject under arrest and he did so.

The subject's arrest was captured by In-Car Video (ICV). During the officers' initial interaction with the subject, she appeared to be calm. However, once she was informed by Named Employee #2 (NE#2) that she was under arrest, the subject began yelling and became very upset. She cried and asked why she was being arrested. The officers spoke to her calmly during this time. Named Employee #1 (NE#1) conducted the search of the subject incident to arrest as both she and the subject were women. During that search, NE#1 recovered a knife that the subject had secreted in her bra.

At this time a crowd of bystanders had gathered. Both NE#1 and NE#2 addressed the bystanders at different points. Those interactions are discussed more fully below in the context of the Anonymous Complainant's allegation of a lack of professionalism on the part of the Named Employees.

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.*)

Based on my review of the ICV, I find no evidence that the officers engaged in any conduct that suggested bias or that they were racially profiling the subject. Moreover, I note that the subject clearly matched the description of the suspect provided by the 911 dispatcher and was identified as the perpetrator by the victim. For these reasons, I find that the subject's alleged conduct, not her race, was the basis for the law enforcement action taken by the Named Employees. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-10 requires that SPD employees be truthful and complete in all communications. Here, the Anonymous Complainant alleged that a sergeant provided untruthful information to bystanders that were at the scene. Specifically, the Anonymous Complainant contended that the sergeant told bystanders that the subject had been "loud, emotional, and disruptive" throughout her interaction with the police. The Anonymous Complainant further alleged that the sergeant also told the bystanders that the subject was arrested for "assault." The Anonymous Complainant stated that this was untrue given that officers had previously told the subject that she was being arrested for "harassment."

As a starting point, the Anonymous Complainant alleged that a sergeant made the allegedly dishonest comments. From my review of the OPA complaint, she clearly knew that the Named Employees were officers, not sergeants.

Moreover, based on my review of the video, the subject was, at least for a period of time when she was arrested, yelling, crying and speaking over the officers. Accordingly, it would not necessarily have been inaccurate had a sergeant stated to bystanders that the subject had been “loud, emotional, and disruptive.” The Anonymous Complainant stated that she did not observe the entirety of the interaction between the subject and officers, as such, it is entirely possible that she was not present when the subject was acting as the sergeant described.

Further, while the Anonymous Complainant alleged that the sergeant was dishonest when he stated that the subject had been arrested for “assault” instead of “harassment,” even if the sergeant made this statement, I do not believe that it would have constituted dishonesty. First, the subject’s admitted conduct did, in fact, constitute an assault. Second, the sergeant may have simply made a mistake when he purportedly inaccurately relayed the information he received from the officers. Either way, there is no evidence suggesting that the sergeant was deliberately and intentionally dishonest.

At the end of the day, this discussion is largely academic as the sergeant is not named in this case. With regard to the Named Employees, there is no complaint that they, specifically, were dishonest. As such, this allegation should not have been alleged against them and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

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

The Anonymous Complainant alleged that the Named Employees were unprofessional in their interactions with the subject, as well as unprofessional in their interaction with bystanders. Specifically, the Anonymous Complainant stated that the Named Employees attempted to intimate bystanders to get them to leave the scene and that NE#2 threatened to place one bystander into handcuffs. She also contended that the officers acted in a manner that implied that “weapons could be used at any time.”

Both of the Named Employees denied acting unprofessionally in this instance. NE#2 stated that he was polite to the subject. He further stated that he tried to avoid interacting with the bystanders because, in his experience, those situations escalated quickly. He indicated that he tried to answer what he believed were reasonable question from the bystanders. He did not think that he acted unprofessionally towards them.

NE#1 also denied treated the subject unprofessionally. She recalled that, at one point, she had to direct bystanders to stand back and stop interjecting themselves in the police investigation. NE#1 stated that she had to tell one particular bystander to stand back multiple times. She indicated that she told that bystander that if she did not cooperate, she would be handcuffed and arrested for obstruction. NE#1 recounted trying to provide information to the bystanders, but stated that they were ultimately unhappy with the conduct of the police. She stated that she informed the bystanders that she would have her sergeant address them and provide additional answers to their questions.

One additional officer who was on the scene was interviewed by OPA. He stated that he did not perceive either of the Named Employees as acting unprofessionally in this case.

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 find that, based on my review of the video, NE#1 was professional towards the subject. With regard to her interactions with the bystanders, however, I can understand the Anonymous Complainant’s concern with NE#1’s threat of arrest and handcuffing; however, NE#1 articulated that she believed that the individual that she said this to was interfering in a police investigation and was, thus, violating the law. It is ultimately unclear from my review of

the video whether the individual was posing such an interference in the investigation that the threat of arrest was warranted. If it was not, it could have constituted unprofessional conduct.

Given the above, I am unable to make a definitive determination on this issue. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #3

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

Based on my review of the ICV, I find no evidence that NE#2's conduct violated the Department's professionalism policy. I find that he was polite to the subject and that he did not threaten or intimidate the bystanders. I further do not see any indication from the ICV that the officers acted in a manner that implied that weapons or violence would be used. As such, I recommend that this allegation be Not Sustained – Unfounded.

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