



## **CLOSED CASE SUMMARY**

ISSUED DATE:      APRIL 2, 2018

CASE NUMBER:     2017OPA-1060

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Inconclusive)

***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 indicated that she pulled into the parking lot at her work and sat in her car to make a phone call. Once she finished with her call, the Complainant noticed that there was a police vehicle pulled up next to her car. The Named Employee motioned for the Complainant to roll down her window, and he asked her what she was doing and whether she worked at that location. The Complainant replied that her organization had an office there. The Named Employee replied, “oh,” rolled up his window, and drove away without providing any explanation. The Complainant alleged that the Named Employee only contacted her because she was a person of color. There was no In-Car Video for the Named Employee and he did not log himself onto the call.

### **STATEMENT OF FACTS:**

On the date in question, the Complainant, who is an African-American woman, parked her car in a space outside of her place of employment. Her business rented parking spaces from the Church of Christ Scientist, which owned the parking lot. She then made a telephone call while sitting in her parked car. At around the time she concluded her call, the Complainant noticed that a marked SPD SUV had pulled into the parking lot and was pointed towards her car door. The officer inside, who she described as a white male in his thirties with reddish/brown hair and a round face, motioned for her to roll down her window and she did. The Complainant described that the officer asked her: “What are you doing? Do you work here?” She told him that she did, that her organization rented parking spaces there, and that she was making a phone call. She indicated that the officer then drove away with providing any explanation as to why he had made contact with her. The officer did not provide her with his name and she did not see the number of the patrol vehicle. The Complainant told OPA that she felt targeted because she was a woman of color sitting in a parked car. As such, she alleged that this unknown officer had engaged in biased policing towards her.

After receiving the Complainant’s allegation, OPA conducted an investigation to determine who the unknown officer may have been. Based on GPS records, OPA discovered that Named Employee #1 (NE#1) was in the vicinity of the location described by the Complainant and at the time she said the interaction occurred. He further matched the physical description provided by the Complainant. OPA determined that he was not logged to any calls in that location



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and that he had no In-Car Video (ICV) for the date and time in question. As such, his law enforcement activity in this instance was not recorded.

OPA conducted an interview of NE#1 concerning this matter. NE#1 told OPA that he did recall contacting a woman sitting in a parked car in a parking lot. NE#1 explained that he regularly conducted patrols of the parking lot that the Complainant was parked in, and that he generally looked for drug activity or homeless individuals in that area. He stated that he normally checked to see if there was any ongoing criminal activity and, if so, he would take action. NE#1 stated that his purpose in contacting the Complainant was to determine whether she worked for the church and to ask her about the homeless individuals that were often in the parking lot and to learn the church's policies towards such individuals being in that location. He told OPA that he intended to offer her assistance. He stated that he had seen the Complainant's car parked in the lot before, but had not seen her inside of it.

NE#1 told OPA that his interaction with the Complainant was "brief." He recalled her stating that she had an office in the near vicinity but that she did not work at the church. He stated that, when he learned this, he ended their conversation because he did not want to further bother the Complainant. He then drove away.

Lastly, NE#1 denied that he targeted the Complainant based on her race. He stated that he did not recall whether he knew her race before he made contact with her.

As discussed above, there were no audio and/or video recordings of the incident. As such, the only evidence regarding what happened during the Complainant's interaction with NE#1 was their statements.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

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

As discussed above, the Complainant asserted that she felt targeted by NE#1 and that she believed that she had been subjected to biased policing.

NE#1 denied targeting the Complainant because of her race. He stated that he did not know that she was African-American until he began interacting with her. He claimed that he only engaged her in conversation to see whether she worked for the church and to ask her questions. When he found out that she did not, he did not further interact with her and left.

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.*)

Here, in order to sustain this finding, I must be able to prove by a preponderance of the evidence that NE#1 engaged in law enforcement activity directed towards the Complainant based on her race. Here, the Complainant asserted that she felt that she was questioned by NE#1 based on the fact that she was an African-American woman parked in



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a vehicle. NE#1 contended that this was not the case and that he solely approached the Complainant because he believed she was employed by the church and he wanted to provide her with assistance.

I note that I find NE#1's account of the incident to be less than convincing. For example, had he really been seeking to ask the Complainant questions about her employment, I am unsure why he did not explain that fact to her. Indeed, based on the Complainant's statement to OPA, she was upset that she received no reason from NE#1 as to why she had been contacted and questioned. I further find that he failed to consider that this incident, while perhaps commonplace for him, could have been alarming and potentially disturbing to the Complainant.

To the contrary, I find the Complainant's account to be credible. I also recognize the Complainant's frustration regarding this contact and particularly concerning her belief that she was targeted because of her race. That being said, there is insufficient evidence in the record to establish biased policing in this instance. This should not be construed to mean that I do not believe that it occurred, it simply cannot be proved.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

#### **Named Employee #1 - Allegation #2**

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

SPD Policy 16.090-POL-5(b) requires that employees record police activity and sets forth various law enforcement actions that must be recorded. Included among the activity that must be recorded is: traffic and Terry stops; on-view infractions and criminal activity; and questioning victims, suspects, or witnesses.

NE#1 admitted that he did not activate his ICV prior to him contacting the Complainant and, thus, that he did not record his interaction with her. NE#1 explained that he approached the Complainant to ask her questions concerning the church and its policy concerning unsheltered people in its parking lot, not to take law enforcement activity towards her. As such, he asserted that the policy did not require him to record this activity.

As discussed above, whether or not this allegation should be sustained depends on whether NE#1's account of this incident is to be believed. If he solely contacted the Complainant to ask her several questions in order to provide more efficient and targeted law enforcement services, then I do not think policy required the conversation to be recorded. If, instead, he approached and questioned the Complainant because he believed that she was potentially engaged in a violation of law, then his failure to activate ICV would have been in violation of policy.

Given that I cannot conclusively determine the nature of his interaction with the Complainant, I recommend that this allegation, like Allegation #1, be Not Sustained – Inconclusive.

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