



## **CLOSED CASE SUMMARY**

ISSUED DATE: JUNE 2, 2018

CASE NUMBER: 2017OPA-1250

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

***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 conducted an inadequate investigation into a trespass and assault call, potentially in violation of policy.

#### **STATEMENT OF FACTS:**

This complaint was filed with OPA by a security guard – referred to herein as the Complainant – employed by Westlake Center. The Complainant alleged he and other security guards lodged a call for service concerning a woman who was trespassing, but that officers did not respond until nearly three hours later. The Complainant stated that when officers, including Named Employee #1 (NE#1), did come to the scene, they were very friendly and familiar with the woman and did not take law enforcement action. The Complainant specifically criticized the fact that no law enforcement action was taken even though NE#1 was aware that another security guard had been assaulted by the woman. The Complainant indicated that he was frustrated with what he believed was NE#1’s “uncooperative” and “unhelpful manner.” The Complainant lastly reported that when he asked about filing a “permanent ban” with SPD, NE#1 ignored him and left the scene with his partner.

NE#1 told OPA that he responded to a call for service at Westlake Center. The call concerned a woman who was allegedly trespassing. While NE#1 was on his way to the scene, the call was updated to note that the woman had been “fighting with officers.” NE#1 stated that he interpreted “officers” to refer to Westlake Center’s security guards. NE#1 recalled that when he arrived at the location with another officer, he saw the woman seated on the ground and in handcuffs. He believed the woman, who he described as small in stature, was under control. NE#1 escorted the woman outside of Westlake Center and also asked the security guards to come outside. NE#1 noted that none of the security guards appeared to have any injuries or claimed that they had been physically harmed by the woman. One security guard told NE#1 that the woman had been previously trespassed. NE#1 then looked up the name of the woman in the Department’s Record Management System (RMS) to verify this fact. His review of RMS did not yield any evidence that she had been trespassed from Westlake Center. The security guard gave NE#1 a case number, but this number did not return a prior trespass. Notably, based on a review of the Department video associated with this case, it appeared that the security guard gave NE#1 the wrong case number.



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Given that NE#1 could not locate evidence of a prior trespass, he told the security guards that he could not arrest her at that point. NE#1 advised the security guards to give the woman a trespass warning then and told them that if she later trespassed again, she would be arrested. He completed a General Offense Report, and gave a copy of the report and a business card to the security guards. NE#1 recounted that, at that time, none of the security guards complained to him of an assault perpetrated by the woman. NE#1's Department video indicated that one of the security guards told NE#1 that the woman "tried coming at" him. NE#1 did not recall whether he explored this statement with the security guard.

NE#1 noted that the call was peculiar in that there was a report of a woman fighting with security guards and, when he arrived at the scene, she was handcuffed and under control. He further explained that, given the woman's status as unsheltered, he was cognizant that he should not criminalize her based on her housing status. He pointed out that parts of Westlake Center are public thoroughfare where the woman would be permitted to remain. NE#1 told OPA that he did not see any physical evidence of an assault and no one offered that there was a desire to press charges. He further stated that he viewed his role as mediating a dispute between an unsheltered woman and the security guards who, based on NE#1's recounting, had detained her for multiple hours prior to NE#1's arrival on the scene.

The General Offense Report generated by NE#1 indicated that officers were dispatched to Westlake Center where the woman was being held in handcuffs by security guards. He wrote that, upon the officers' arrival, security guards informed them that the woman had been previously trespassed, but this could not be corroborated. NE#1 stated that both of the case numbers provided by the security guards did not match prior incidents of the woman trespassing in Westlake Center. NE#1 concluded that he told the security guards to "admonish" the woman and that he then documented the incident. The General Offense Report contained no mention of any assault or the security guard's statement that the woman "tried coming at" him.

NE#1 told OPA that he believed that he conducted a complete and thorough investigation into this matter, as well as that he believed that his General Offense Report was complete, thorough, and accurate.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

SPD Policy 15.180-POL-1 requires officers to conduct a thorough and complete search for evidence. The question here is whether NE#1 conducted a thorough and complete search for evidence concerning the alleged trespass and assault by the woman.

NE#1 indicated that he searched for evidence in RMS that indicated that the Complainant had previously been trespassed from Westlake Center. NE#1 stated that this search was met by negative results. While NE#1 attempted to look up the cases provided to him by the security guards, those cases did not show a prior trespass. During its investigation, OPA was able to determine that the security guard provided NE#1 with the incorrect case number. It does not appear that NE#1 realized this at the time. NE#1 was required to balance this lack of a conclusive prior trespass with the fact that portions of Westlake Center were open to the public and the woman, particularly given her status as an unsheltered individual, could not be denied access to those areas. For these reasons, with regard to the trespass allegation, I find that NE#1's investigation was not deficient.



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With regard to the assault allegation, I find that NE#1 could have performed a more robust investigation. Notably, based on OPA's review of the video, he failed to engage in any substantive discussion with the security guards concerning the alleged assault and whether anyone had been struck or injured by the woman, he failed to try to review or obtain any video that could prove or disprove the allegation, canvas for and interview any witnesses that might have seen the purported assault, or to reference the alleged assault at all in his General Offense Report. Even under NE#1's own recounting, it appears that the extent of his investigation was his observation that none of the security guards appeared injured and the fact that none of them explicitly indicated that they wished to file charges concerning the assault allegation. It may very well have been that, even had one or more of the security guards claimed that the woman had "come at" them, this would not have been enough to establish assault. However, NE#1 failed to conduct a sufficient enough investigation into the evidence to determine this.

This being said, and even if contrary to policy, I do not feel that NE#1's conduct merits a Sustained finding. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this incident with him and explain how NE#1's lack of investigation into the alleged assault and failure to thoroughly search for evidence as to this offense fell below the Department's expectations. NE#1's chain of command should counsel him to ensure that this does not occur in the future. This training and counseling should be documented and this documentation should be maintained in an appropriate database.

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

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

##### ***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. The policy states that "[a]ll reports must be complete, thorough and accurate." Lastly, the policy instructs that: "Officers shall document whether victims of non-custody incidents want to pursue charges, as feasible."

NE#1's General Offense Report in this matter was cursory and contained no mention of the fact that the call involved an alleged assault and that one of the security guards indicated that an assault may have actually occurred. Even if NE#1 ultimately decided that no probable cause existed to believe that an assault had occurred, this should have been fully and clearly explained in his documentation. It was not and, as such, the General Offense Report was not thorough or complete. That being said, I find that a Training Referral, rather than a Sustained finding, is the appropriate result here.

- **Training Referral:** NE#1's chain of command should counsel NE#1 on his General Offense Report in this case and the fact that it was not thorough or complete. NE#1's chain of command should ensure that he strives to generate reports going forward that meet the Department's expectations and the requirements of SPD policy. This training and counseling should be documented and this documentation should be maintained in an appropriate database.

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