



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 25, 2018

CASE NUMBER: 2017OPA-1289

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Not Sustained (Management Action)
# 2	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Training Referral)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Sustained
Discipline Imposed: Written Reprimand		



Named Employee #5

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Sustained
Discipline Imposed: Oral Reprimand		

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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:

It was alleged that Named Employees #1, #2, and #6 engaged in biased policing and subjected the Complainant to excessive force. It was further alleged that Named Employee #3 failed to listen to and report the Complainant's mother's allegation of biased policing. Lastly, it was alleged that Named Employee #4 failed to investigate, document and refer to OPA complaints of bias and excessive force and that Named Employee #5 failed to investigate and document a complaint of bias.

STATEMENT OF FACTS:

Officers, including the Named Employees, were dispatched to a City park in response to a report of multiple people yelling and drinking alcohol. The officers made contact with four juveniles, including the Complainant. The Complainant and two of the other juveniles appeared to be intoxicated and bottles of alcohol were observed around them. One, a female, was rocking herself in a fetal position on a park bench and was crying. The officers were concerned that she was potentially in crisis. She told the officers that she did not feel well and wanted to go to the hospital. She further stated that she had felt like self-harming for the last few months.

At that point, one of the male juveniles, later identified as the Complainant, stated that the officers did not have the right to detain him and that he was going to leave the scene. He then started to walk away. After telling him repeatedly to sit down, the officers first tried to use compliant handcuffing to take him into custody. When that did not work, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used force on him to bring him to the ground and to prevent him from leaving. The officers described this force as a "soft takedown." The female then began vomiting and the officers called for medical assistance. The female was transported to a hospital.

A supervisor responded to the scene to screen the incident. At this time, the other intoxicated juvenile tried to stand up and did not obey the officers' commands that he sit down. When he was compelled by the officers to sit down, he complained of pain and excessive force. That allegation was investigated in a separate OPA case (2017OPA-1299).



During their investigation into this matter, the officers determined that the alcohol that the juveniles had consumed was stolen from a grocery store. Employees of the store positively identified the Complainant as the suspect who stole the alcohol. The store employees further stated that the Complainant had vandalized the employee's locker area. The Named Employees also reported observing the Complainant trying to hide a bag of narcotics in the rear of the patrol vehicle. Lastly, the Named Employees documented that the Complainant damaged the patrol vehicle's rear In-Car Video (ICV) camera, rendering it inoperable.

The Complainant and the other intoxicated juvenile male were transported to the West Precinct where they were placed in holding cells. Both individuals were documented causing damage to the holding cells. The Complainant told officers that he swallowed narcotics during his transport to the precinct. He was then taken to Harborview Medical Center (HMC) to receive medical attention. Afterwards he was transported to the Youth Service Center (YSC) where he was booked for VUCSA, burglary, and property damage. At the time Named Employee #6 (NE#6) tried to put the Complainant into the patrol vehicle to transport him, the Complainant refused to comply and sit inside. As a result, NE#6 took the Complainant down to the ground. This takedown, and the Complainant kicking at HMC security while on the ground, was captured by HMC's security cameras. After the takedown and while on the ground, the Complainant asserted that he could not breathe. However, based on a review of video, it did not appear that anyone, including NE#6, was placing weight on the Complainant's upper body that could have impaired his breathing.

The day after the incident, the Complainant's mother called the East Precinct and asked to speak with someone concerning her son's case. She spoke with Named Employee #3 (NE#3), who had been assigned by Named Employee #4 (NE#4) to conduct the follow-up investigation into this incident. The Complainant's mother indicated her belief that her son had been subjected to police brutality. She claimed that he had been beaten with a flashlight and poked in the eye. She stated that onlookers had tried to stop the brutality and had recorded it on their cell phones. She also contended that her son's arrest and the alleged police brutality against him was based, at least in part, on his status as a Black male. NE#3 asked the Complainant's mother whether she would like to pursue an OPA complaint and he reported that she said that doing so would "go nowhere" and yelled at him. After determining that the Complainant's mother had no further questions, NE#3 ended the call.

NE#3 then notified NE#4, who was an acting sergeant at that time, of the Complainant's mother's allegations. NE#4 did not contact the Complainant's mother, initiate an OPA complaint, or notify any other supervisor of the allegations. NE#3 also informed another supervisor of the allegation. That supervisor, who is not a named employee in this case, notified his Lieutenant and referred this matter to OPA. This investigation ensued.

The Complainant's mother was interviewed by OPA. She repeated her allegations of excessive force and biased policing towards her son. She acknowledged that the Complainant was drinking alcohol at Magnolia Park with friends. She further acknowledged that he had emptied his bank account and had pills on his person, which made him look like a drug dealer. While she stated that the Complainant had anger issues and resisted arrest, she claimed that he was treated unjustly by police. She told OPA that the Complainant asked to be taken to HMC to avoid being further assaulted. She believed that the Complainant was tested for drugs and alcohol at HMC and that those tests were negative.

The Complainant's mother further stated that, after he left HMC, the Complainant was put into the mud by officers. She alleged that another African-American individual tried to help her son, but that this person got into trouble with the police. She claimed that the Complainant was beat with flashlights while on the ground and had injuries to his face



and body. She said that, when she picked the Complainant up from the YSC, it appeared that he had been handcuffed so tightly that his wrists were swollen. She further recounted her conversation with NE#3. She acknowledged that she was angry. She said that she told NE#3 that her son had done some things that were wrong but that she was upset as to how he had been treated by police. She stated that NE#3 told her that she could hire an attorney.

OPA also interviewed the Complainant. The Complainant stated that he did not remember much about the incident due to the time that had passed. He claimed, however, that the officers did not treat him “poorly” and that he did not believe that bias played a factor in his arrest. He further stated that, at the time of his arrest when he was taken to the ground, he did not think that he was subjected to excessive force.

He recalled that he was taken to the ground twice more after he left HMC. He denied that he was hit with a flashlight or any other object. He claimed that this force was excessive because four officers put their weight on his body and made it difficult for him to breathe. He stated that he did not believe that his race played a part in this latter force.

OPA further interviewed all of the Named Employees (including NE#4 twice), as well as the supervisor who ultimately made the OPA referral. OPA reviewed the paperwork generated as a result of this incident, including use of force reports. OPA obtained and reviewed Department video – including both ICV and Body Worn Video (BWV) – and HMC security video. OPA also reviewed photographs taken of the Complainant at the precinct. Lastly, OPA reviewed the findings of the Force Review Board (FRB), which evaluated this incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 governs when force is prohibited. Relevant for the purposes of this case, the policy states that force may not be used: “to punish or retaliate”; “against individuals who only verbally confront [officers] unless the vocalization impedes a legitimate law enforcement function”; and “on restrained subjects...except in exceptional circumstances...” (SPD Policy 8.200-POL-2.)

NE#1 and NE#2 used force to take the Complainant down to the ground when he refused their direction that he remain at the scene. The officers described this force as a “soft takedown.” From my review of their Department video, I agree. The video depicted the officers taking the Complainant from a standing escort hold (their hands on his wrists and upper biceps) down to a prone position (the Complainant lying on his chest on the ground). The video indicated that the takedown was slow and controlled and that the Complainant was not, as was alleged, slammed to the ground.

This force was not prohibited under SPD Policy 8.200-POL-2. I do not believe, based on my review of the record, that it was used to punish or retaliate. If this was the case, it follows that the officers would have used a hard takedown or more significant force. I also do not believe that the force was used solely because the Complainant was non-compliant. At the time the force was used, the officers had a lawful basis to direct the Complainant to remain where he was and he failed to obey. As such, the force was justified to ensure compliance. Lastly, the Complainant was not handcuffed at the time the force was used.



For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

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.*)

At the time that he was arrested, the Complainant alleged biased policing. His mother echoed that allegation when she spoke with NE#3. However, when he was interviewed by OPA during this investigation, the Complainant recanted his earlier allegation and contended that he did not believe that the officers’ actions were motivated by bias. Both NE#1 and NE#2 denied engaging in biased policing. This is supported by the objective evidence in this case, including the Department video.

As I find that NE#1 and NE#2 did not engage in biased policing towards the Complainant, I recommend that this allegation be Not Sustained – Unfounded as against both officers.

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

Named Employee #1 - Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As discussed above, NE#1 and NE#2 believed that the Complainant had been drinking alcohol while underage. They detained him to do further investigation. He then tried to leave the scene and continued to walk away even after being directed by the officers to stop. At that time, it was reasonable for the officers to use force to prevent the Complainant from leaving the scene. The force was also necessary under the circumstances for this same reason. I further find that no reasonable alternative to the force was apparent to the officers. Lastly, I find that the force used was proportional. The officers performed a slow takedown of the Complainant to the ground. His body was controlled and he was not slammed down. Notably, no further force was used.

As I find that the force used by NE#1 and NE#2 was reasonable, necessary, and proportional, I, thus, find that it was consistent with policy. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.



Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

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

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #1

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

SPD Policy 5.140-POL-5 requires that Department employees call a supervisor in response to allegations of biased policing.

Here, the Complainant's mother alleged to NE#3 that her son was subjected to biased policing. NE#3 offered the option of filing an OPA complaint to her and, when they got off the phone, reported the allegation of bias to NE#4, who was his supervisor at that time. This was confirmed by NE#4 at his second OPA interview.

Given that NE#3 reported the allegation of bias as required by policy, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #4 - Allegation #1

5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

SPD Policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing.

NE#4 admittedly did not conduct a preliminary inquiry into this matter, nor did he document the allegation of bias in a Bias Review. This was the case even though he was clearly informed by NE#3 that the allegation of bias had been made.

At his OPA interview, NE#4 stated that he did not know how to do a Bias Review as he was not familiar with the policy and had not done one in the past. This was the case even though he stated that he served as an acting sergeant in his unit for approximately 20 to 25 days per year. NE#4 further told OPA that he had not attended SPD's First Line Supervisor Training and that he had never attended any type of supervisor training during his more than 25 years with the Department.

NE#4's failure to conduct a preliminary inquiry into the bias allegation and to generate a Bias Review clearly violated policy. It is concerning that, as an acting sergeant, NE#4 had no familiarity with this policy, had never done a Bias Review before, and had received no supervisory training from the Department at any time during his career.

While the facts of this case warrant a sustained finding against NE#4, it is unclear what that would solve. The larger issue seems to be that NE#4 was placed in a position where he was expected to supervise his fellow employees without any training on how to do so. That makes no sense to OPA. As such, instead of a Sustained finding, I issue a Management Action Recommendation.

- **Management Action Recommendation:** The Department should ensure that officers who are temporarily or permanently assigned as acting sergeants receive supervisor training and have a familiarity with Department policies relevant to supervision, including but not limited to: the investigation and reporting of potential misconduct; the screening, classification, and investigation of force; and the review and documentation of bias complaints. Any officer who had not received this training should be precluded from serving as an acting sergeant, except where an unforeseen staffing deficiency requires an immediate short-term assignment in that role.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #4 - Allegation #2

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-3 requires a sergeant to review a force incident and to properly classify it as Type I, Type II, or Type III force.

Even though NE#4 learned of an allegation of excessive force, he did not conduct a preliminary review of the force and determine which officers were involved, he did not classify the level of force, and he did not ensure that an investigation was conducted. Moreover, even though he knew that the Complainant's mother alleged that her son



had been “beaten with flashlights” and subjected to “police brutality,” he did not recognize that this was potential Type III force and possible criminal conduct that was required to be screened with the Department’s Force Investigation Team. NE#4 told OPA that he had limited knowledge concerning the policies surrounding the investigation of force and how to apply those policies.

NE#4 told OPA that he took no action on these allegations because he thought the “force stuff” was handled by a patrol sergeant. However, these were allegations that were not made to NE#5 or any of the patrol personnel involved in this matter. Notably, had it not been for NE#3 repeating these allegations to another Department supervisor, the Complainant’s mother’s complaints would never have been reviewed or investigated due to NE#4’s inaction.

As with reviewing complaints of bias, investigating and classifying force is an essential role of a Department supervisor. It is concerning to know that there are supervisors in the Department who, even if they are not permanent acting sergeants, do not know their responsibilities in this regard. However, as with Allegation #1, I find that the appropriate remedy here is a Management Action Recommendation rather than a Sustained finding. Accordingly, I refer to the Management Action Recommendation above and issue the following Training Referral.

- **Training Referral:** NE#4 should receive formal training as to the requirements of Department employees when allegations of potential misconduct are made. He should also receive training concerning his requirements when, as an acting sergeant, he learns of an allegation of bias or excessive force. He should be instructed on how to classify and investigate force, as well as on how to investigate a bias complaint and complete a Bias Review. Until NE#4 has completed this training and any other outstanding supervisory training he has yet to take, he should be precluded from working in the role of an acting sergeant. This retraining and any associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

Named Employee #4 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 sets forth the responsibilities of Department employees where they learn of alleged policy violations. It instructs that Department supervisors will investigate or refer allegations of policy violations depending on the severity of the violation. (SPD Policy 5.002-POL-5.) Where the allegation is one of serious misconduct – such as excessive force or bias – it must be referred to OPA. (*Id.*)

Here, NE#4 was informed by NE#3 of the allegations of excessive force and bias that were made by the Complainant’s mother. Both constituted allegations of serious misconduct that NE#4 was required to report to OPA. At his OPA interview, NE#4 acknowledged being told about the allegations of misconduct and taking no action. He explained that he believed that a patrol supervisor had already addressed them. However, there is no evidence that he took any steps to verify that this was the case.



NE#4 further stated that he was unfamiliar with this policy and had limited knowledge on how to apply it. That is simply not a viable excuse. This is not an esoteric policy that only a few officers would know how to apply – the responsibility of officers, and particularly supervisors, to investigate and refer misconduct is an obligation that is, or at least should be, universally understood and complied with. Certainly, all officers, including detectives and supervisors, are required to be familiar with the contents of the SPD Manual and have received Department training concerning the requirements of this policy. Moreover, even were he confused with his requirements under this policy, which I find concerning, NE#4 took no steps to screen these allegations with a supervisor and to clarify what action he should take.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #5 – Allegation #1

5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing

While I believe that NE#5's failure to complete a Bias Review in this case violated policy, given that I recommend that Allegation #2 be Sustained, I find it unnecessary to make the same finding here. Instead, I recommend that NE#5 receive a Training Referral.

- **Training Referral:** NE#5 should be retrained as SPD Policy 5.140 generally and, specifically, the requirements that he investigate and document allegations of biased policing. NE#5 should be counseled that his failure to do so here was contrary to policy and that he should endeavor to closely comply with his supervisor responsibilities going forward. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

Named Employee #5 – Allegation #2

5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

NE#2's BWC revealed that he told NE#4 that the Complainant had made "bias type allegations." NE#4 then asked NE#1 whether the Complainant had stated that law enforcement action was taken based on the Complainant's race (this is a summary of NE#4's question, which was somewhat more convoluted). NE#1 ultimately responded: "So, I interpreted that as him feeling he received some sort of different treatment because of whatever, he didn't say because of A, B, or C, but it is on me to bring it to your attention." NE#4 did not ask any follow up questions of NE#1.

Once the Complainant was transported to the precinct, NE#4 interviewed him concerning the use of force and his allegations at the scene that it was excessive. NE#4 asked no questions about the claims of bias that were relayed by NE#1. Moreover, he completed no other investigation into the bias allegation, including not canvassing for other witnesses and documenting the allegation in a Bias Review.

SPD Policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. As discussed above, after having a preliminary conversation with NE#1 during which he was informed of allegations of



bias, NE#5 took no investigatory steps and did not explore this issue at all with the Complainant. This was contrary to policy.

NE#5 stated at his OPA interview that he did not believe that the Complainant's statements were necessarily suggesting bias based on a protected class. However, from my review of the video and the express statements of both NE#1 and the Complainant, I disagree. Further, even if there was a question as to this issue, the expectation of the Department is that NE#5 document the allegation as a precautionary matter, not that he do nothing.

In addition, even though the Complainant later recanted his allegation to OPA and even though the video is clear that no bias actually occurred, NE#5 did not know this at the time. This also did not excuse NE#5 from following the policy.

Moreover, while certainly a mitigating factor for the purpose of discipline, that NE#5 was a relatively inexperienced sergeant during the incident also does not excuse his failure to investigate and document the Complainant's allegation of bias. Indeed, every sergeant, including NE#5, has been trained on how to handle, investigate, and document these allegations. The Department's expectations have been made abundantly clear to NE#5 and he failed to meet them.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #6 – Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

This allegation was classified against NE#6 for two reasons. First, if true, the Complainant's mother's allegation that her son was struck with flashlights after he left HMC would have violated SPD Policy 8.200-POL-2. Second, at the time NE#6 took the Complainant down to the ground, the Complainant was handcuffed.

When NE#6 attempted to transport the Complainant from HMC to the YSC, the Complainant was non-compliant and initially refused to get into the patrol vehicle. NE#6 reported using two controlled takedowns in order to get the Complainant under control. Ultimately, NE#6 was required to transport the Complainant to the YSC secured on a gurney in an ambulance.

Based on my review of the video, and based on the statements of both the Complainant and NE#6, I find no evidence that any officer ever hit the Complainant with a flashlight or any other object. Moreover, reviewing that same evidence, I do not believe that the force used by NE#6 was prohibited by SPD policy. This was the case even though the Complainant was handcuffed at the time.

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

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



Named Employee #6 – Allegation #2

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

NE#6, like NE#1 and NE#2, denied engaging in biased policing. Moreover, the Complainant, himself, stated that he did not believe that NE#6's actions were motivated by bias. From my review of the record, I find no evidence that NE#6 acted towards the Complainant based on bias or some other impermissible motive. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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



City of Seattle

Office of Police Accountability

July 2, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – SECOND QUARTER 2018

Dear Chief Best:

I write to inform you of the Management Action Recommendations (MAR) that have been recently issued by OPA. The MARs contained herein are for the following cases: 2017OPA-0511, 2017OPA-0980, 2017OPA-1008, 2017OPA-1091, 2017OPA-1132, 2017OPA-1196, 2017OPA-1301, 2017OPA-1289, 2018OPA-0553, and 2018OPA-0101.

Case Number

- 2017OPA-0511

Summary

- The Named Employee allegedly violated SPD policy when he posted a message on his personal Facebook account that concerned an open investigation, included confidential criminal information, and identified a minor.

Analysis

- Policy *1.110 - Public Information* addresses the release of information to the media and specifically prohibits the release of much of what was contained in the Named Employee's Facebook post.
- Although the Named Employee had Facebook friends that he knew were active members of the media and who had access to his page, it is unclear whether his posting of sensitive and confidential material constituted a "release" to the media as contemplated by the policy.

Recommendation

- Modify policy *1.110 - Public Information – POL-1 General Policy (2)* to define "release" as it pertains to SPD employees disseminating information to the media via social media. The definition should clarify that a "release" includes posting law enforcement information on social media.
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Case Number

- 2017OPA-1301
- 2018OPA-0101

Summary

- In both cases, the Named Employee allegedly failed to properly activate/log-in to both his In-Car Video (ICV) and Body Worn Video (BWV) systems when responding to incidents.
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Analysis

- The Named Employee felt he met the requirements of the BWV policy because he interpreted it as requiring an officer to record on ICV or BWV, but not necessarily on both.
- OPA interprets the policy as requiring that, when equipped with both ICV and BWV, both systems must be activated for each call response. The Named Employee's understanding of this policy is inconsistent with the reasoning behind equipping officers with BWV in addition to ICV, which is to have a second mechanism to more fully record law enforcement activity, not to have discretion to choose which camera to utilize.

Recommended Action

- Modify 16.090 - *In-Car and Body-Worn Video 5. Employees Recording Police Activity* to clarify that if officers are equipped with both ICV and BWV, they shall record on both systems. The new policy subsection could read: "Officers equipped with both ICV and BWV shall utilize both systems simultaneously when recording is required under 16.090-POL-1(5)(b). The failure to activate one or both systems constitutes a violation of policy and must be documented and reported consistent with 16.090-POL-1(4) and 16.090-POL-1(7)."
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Case Number

- 2017OPA-1132
- 2018OPA-0053

Summary

- In the first case, prior to searching a residence for a suspect, the Named Employees failed to provide the subject with--and have her execute--a Consent to Search form. They also did not provide Ferrier warnings.
- In the second case, the Named Employees may have violated the Complainant's constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence.

Analysis

- Officers receive little training in search and seizure law and consent to search after the post-Basic Law Enforcement Academy phase of their employment. The failure to understand how to obtain consent and what constitutes consent can result in violations of the constitutional rights of individuals and the sanctity of their homes. OPA believes the officers' errors in these cases constitute ignorance of the law and mistakes rather than misconduct.

Recommended Action

- Provide Department-wide training on search and seizure law and policy 6.180 - *Searches-General*. The training should specifically discuss the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.
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Case Number

- 2017OPA-1091

Summary

- The Named Employees conducted a Terry stop, but failed to document it using a Terry Template, as is required by SPD policy.
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Analysis

- The Named Employees said a Terry Template was unnecessary because they had probable cause to arrest based on open warrants.
- Law, policy, and the Consent Decree state that officers must document each time they stop and detain someone, regardless of whether they believe they have probable cause to make an arrest.

Recommended Action

- Modify policy 6.220 - *Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops* to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether the officers had probable cause to arrest at the time of the Terry stop.
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Case Number

- 2017OPA-1196

Summary

- In reviewing a failure of an officer to carry a Taser during an incident, OPA evaluated whether the officer's supervisor failed to ensure the officer was carrying a Taser and/or that the Taser was in working condition.

Analysis

- SPD policy 5.100(III) sets forth the general responsibilities of patrol sergeants, including: "Check the personal appearance of assigned officers and ensure officers' equipment is in good condition." OPA's investigation of this case found that such inspections are rarely carried out, and sergeants are not held accountable for not doing so.

Recommended Action

- Modify policy 5.100 - *Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision* to clarify the frequency with which a patrol sergeant shall perform inspections to ensure that their officers are carrying the appropriate equipment and determine that the equipment is functioning properly.
 - Train patrol sergeants on their responsibility to perform inspections, including how to conduct an inspection and the frequency with which to conduct them.
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Case Number

- 2017OPA-1008
- 2017OPA-0980

Summary

- The Named Employees failed to properly enter a firearm into evidence as required by Department policy and the unit manual.
- Another Named Employee failed to properly supervise the previously mentioned Named Employee.

Analysis

- SPD policy 7.010-POL-1 requires that employees secure collected evidence and place it into the Evidence Unit or an authorized evidence storage area before they end their shift. During their OPA

interview, one of the Named Employees contended that SPD policy did not define what an “authorized evidence storage area” was.

- Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. Although it instructs officers to comply with the SPD Manual, published directives/special orders, and Department training, it does not state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy.
- The FIT Manual lacks clarity regarding the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence.
- FIT previously did not take custody of rifles or shotguns; rather, such weapons were processed by CSI. OPA suggested that FIT institute this same process for handguns, as it may result in more consistent treatment of and processing standards for all firearms. FIT has since made this change.

Recommended Action

- Modify policy 7.010 - *Submitting Evidence* to define what an authorized evidence storage location is and clarify that personal offices are not such authorized locations.
 - Modify the *FIT Manual* to:
 - Clarify that officers will, as soon as feasible, take case evidence to the Evidence Unit.
 - Indicate what, if any, other authorized evidence storage locations exist in the FIT unit, noting that evidence should never be stored in personal offices.
 - Provide more detail on expectations for evidence handling.
 - More clearly define the expectations for the FIT Sergeant (such as memorializing the requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms)
 - Train FIT Detectives and supervisors in evidence handling.
 - Modify policy 5.001 - *Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy* to include unit manuals as one of the types of regulations to which officers are responsible for adhering.
 - Reevaluate the current FIT practice of taking possession and maintaining custody of handguns. (OPA recognizes that this has been implemented since initial conversations about this case occurred, but is noting it here nonetheless.)
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Case Number

- 2017OPA-1289

Summary

- The Named Employee failed to conduct a preliminary inquiry into a bias allegation and to generate a Bias Review.

Analysis

- SPD policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. The Named Employee told OPA he did not know how to do a Bias Review and was not familiar with the Bias policy, even though he had served as an acting sergeant for about 20 to 25 days per year over several years. He further told OPA that he was not familiar with the policies concerning the investigation and reporting of force, as well as the policy concerning the reporting of misconduct. Lastly, the Named Employee told OPA that he had not attended SPD’s First Line Supervisor Training nor any other type of supervisor training during his over 25 years with the Department.
- The Named Employee was placed in a position where he was expected to supervise his fellow employees without any training on how to do so, per policy 4.020, which states that “Captains will

send officers to Department sergeant training for acting sergeant assignments over 60 consecutive days.” Since the Named Employee’s assignment as acting sergeant was for less than 60 consecutive days, training was not mandated.

Recommended Action

- Modify policy 4.020 – *Reporting and Recording Overtime/Out of Classification Pay 17. Officers Assigned as Acting Sergeants Receive Training* to require that Captains send officers to sergeant training prior to any acting sergeant assignment.

Thank you very much for your prompt attention to these matters. I look forward to receiving your written responses to these recommendations and, should you decide to act as a result, the progress of these actions. Alternatively, to the extent that the above recommendations are not feasible, or a different policy modification may be more fitting, OPA would appreciate the opportunity to help you find a workable solution through an in-person discussion.

Please feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

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