



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 11, 2018

CASE NUMBER: 2018OPA-0125

Allegations of Misconduct & 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 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

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)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	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:

The Complainant alleged that the Named Employees subjected him to biased policing. It was further alleged that Named Employee #1 may have made unprofessional statements to the Complainant.

ADMINISTRATIVE NOTE:

This case was timely submitted to the OPA Auditor for review. The Auditor then twice requested more investigation and that additional work was not completed until after the expiration of the 180-day deadline. This was due to circumstances that are described in detail in the Auditor’s certification memo. As such, the Director’s Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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



Officers responded to a call concerning individuals who were attempting to prevent a car from being towed. An update to the call indicated that a male subject acted aggressively towards a Parking Enforcement Officer and described the subject.

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) responded to the call and detained the Complainant. The officers determined that he matched the description and, based on their investigation, developed probable cause to place him under arrest.

While he was being transported to the precinct, the Complainant used pejorative terms towards NE#1 and NE#3. He then began pleading with the officers to not take him to jail. At one point, NE#1 stated to him: "So close your mouth, stop, just stop, we will make our decision...because the more you talk, the more I want to take you to jail." Several minutes later, NE#1 again told the Complainant: "just keep your mouth shut."

The Complainant was placed into a holding cell and his arrest was screened by Named Employee #2 (NE#2). NE#2 recommended that the officers not book the Complainant into jail, but instead charge-by-officer. The officers then released the Complainant from the precinct and informed him that, while he was not being booked into jail, the officers were going to request that charges be filed by a prosecutor.

At that time, NE#1 stated to the Complainant: "Frankly, we have better things to do then deal with you driving with a boot van. If it were 3 a.m. and I had nothing better to do, I would take you to jail 10 times out of 10 because I don't like your attitude." The Complainant apologized and NE#1 responded:

You've already made it very clear that you apologize when you think you can get something out of it, but when you think you're going to jail, you have a big tough guy attitude, and I don't appreciate that. So, if I had nothing better to do today, well, you'd be in jail.

Approximately three hours later, the officers responded to another call involving the Complainant in the same location. The call again indicated that individuals were trying to remove a boot from a vehicle. The officers contacted the Complainant and determined that he had paid to have the boot removed. At that point, the Complainant stated to the Named Employees: "You're all racist ass motherfuckers, fucking bitches." He also referred to the Named Employees as "fucking pigs." No law enforcement action was taken towards the Complainant at that time. Given his complaint of bias, he spoke with a Lieutenant at the scene and requested that she file an OPA complaint on his behalf. The Lieutenant did so and this investigation ensued.

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 OPA's review of the record, there is no evidence establishing that the Named Employees engaged in biased policing. Instead, the evidence indicates that there was probable cause supporting the Complainant's arrest and that his conduct, not his race, was the reason that law enforcement action was taken against him. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #1 - Allegation #2

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

It was alleged that some of NE#1's interactions with the Complainant, which are detailed above, were unprofessional.

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.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

Based on my review of the totality of the record, including the Department video that captured the interactions between the Complainant and the Named Employees, I do not feel that NE#1's statements were unprofessional. He certainly spoke harshly with the Complainant; however, the Complainant was difficult and, at times, very disrespectful towards the officers. I have particular concern with NE#1's repeated statements that, if he had nothing better to do, he would have booked the Complainant into jail and that he would have done so based on the Complainant's attitude. However problematic I find these statements, I do not necessarily believe that they rise of the level of violating Department policy. That being said, I would caution NE#1 to avoid such comments moving forward. Ultimately, I think that NE#1 was correct when he stated that the Complainant was contrite when he wanted something but aggressive and rude otherwise. Indeed, that was the case when they later interacted with the Complainant and he swore at them.

Given the above, and while expressing OPA's concern regarding some of NE#1's statements, I recommend that this allegation be Not Sustained – Unfounded.

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

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 #3 - 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)**