



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 5, 2018

CASE NUMBER: 2018OPA-0223

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--------------------------------------------------------------------------------------------------|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Inconclusive) |
| # 2 | 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy | Not Sustained (Training Referral) |
| # 3 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement | Not Sustained (Training Referral) |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|--------------------------------------------------------------------------------------------------|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Inconclusive) |
| # 2 | 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy | Not Sustained (Training Referral) |
| # 3 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement | 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:

The Complainant alleged that the Named Employees entered her residence in violation of law and SPD policy. The Complainant further alleged that the Named Employees were unprofessional when they did so.

STATEMENT OF FACTS:

The Named Employees were tasked with serving an individual with paperwork relating to an order of protection. The Named Employees indicated via their MDT system that they were serving the paperwork at a certain address.

The Complainant, who resided at that address, reported that she was walking on the stairs in her home when her front door was opened by two officers. She stated that she was in a towel at that time as she was about to take a shower. She recounted that the officers partially entered her home and asked her whether there were “door numbers.” The Complainant construed this to mean that the officers believed that her residence was an apartment building. She responded no. They also asked if someone named “Maria” lived there and she again responded no. They



remained in the apartment and asked her if someone named “Maria” had ever lived there. She said no. She reported that one of the officers then laughed and they both left her residence. In articulating her complaint, the Complainant asserted the following: “As a 21-year-old female college student who was essentially naked at the time of the incident, the fact that these two officers opened my door and partially entered my home without knocking and without my permission makes me extremely uncomfortable. This was completely uncalled for and illegal entering.”

OPA interviewed both of the Named Employees. Named Employee #1 (NE#1) stated that he and Named Employee #2 (NE#2) were tasked with serving legal paperwork on an individual. He stated that the address provided to them on the Law Enforcement Information (LEI) form was the Complainant’s address and, specifically, Unit 435. NE#1 stated that, when he walked up to the address, he believed that it was the correct location and that it could be a boarding house with multiple apartments.

NE#1 recounted that he knocked on the door. He stated that it opened by either him pushing it or when he was knocking. He recalled that he announced himself and said that he was with SPD. NE#1 stated that he was surprised when he saw the Complainant come downstairs in her towel. He said that he exclaimed “oh yikes,” and then began to leave the apartment. When he did so, he turned around and asked if the individual they were looking for resided there. When the Complainant stated that she did not, NE#1 told OPA that he said “sorry” and then left the residence.

NE#1 stated that he did not have exigent circumstances to enter the residence and did not have a search warrant. He asserted that he believed, in good faith, that the residence was a boarding house and that he could permissibly enter. He noted that he self-reported this issue to his supervisor.

NE#2 did not recall whether he and NE#1 announced that they were with SPD. He stated that he did not enter the residence. NE#2 confirmed that NE#1 asked the Complainant whether the individual they were looking for lived there and they were told that she did not. NE#2 stated that he and NE#1 apologized to the Complainant but did not recall what they said. NE#2 stated that neither he nor NE#1 laughed at the Complainant. NE#2 told OPA that, after they left the residence, they looked up the individual they were attempting to serve in the Department’s Records Management System (RMS) and determined that she lived at an address very close to the Complainant’s address. NE#2, like NE#1, stated that they did not have a search warrant or exigent circumstances justifying entry into the Complainant’s apartment. NE#2 also told OPA that he self-reported this matter to a supervisor.

OPA obtained the LEI form referenced by the Named Employees. Under the address section, the text is crossed out and the proper service address is written. It is possible that the address that was crossed out was the Complainant’s address, but OPA could not conclusively determine this fact during its investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

As discussed above, the Complainant asserted that when the Named Employees left her home, one of them laughed. She viewed this as demeaning and insulting, given that they had made an improper entry into her residence and she was a young woman standing in only a towel.



The Named Employees denied laughing at the Complainant. NE#1 stated that he exclaimed “oh yikes” when he saw the Complainant, but stated that this was borne from his shock of seeing someone in a towel in what he believed was a boarding house.

SPD Policy 5.001-POL-10 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-10.)

If the Named Employees laughed at the Complainant, I believe that it could very well have constituted unprofessional conduct under the circumstances of this case. I have sympathy for the Complainant, who must have been both shocked and embarrassed when the Named Employees – two men – entered her home without her permission and saw her in her towel. However, both of the Named Employees denied laughing at the Complainant and denied engaging in unprofessional behavior. There is no Department video of this incident and, as such, I cannot conclusively resolve this dispute of fact. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive as against both Named Employees.

While I reach an inconclusive finding here, I wish that the officers (or, for that matter, their supervisor) would have made additional efforts to reach out to the Complainant after the fact and to apologize to her. I believe that this would have gone a long way and very well could have prevented this complaint from being filed.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

When the Named Employees made entry into the Complainant’s residence and did so without a search warrant and without exigent circumstances, they technically violated both Department policy and the Fourth Amendment. This was the case even though I do not believe that they intended to do so and, instead, acted in error. The officers relied on the LEI form, which they asserted contained the wrong address. OPA could not confirm this fact. It was clear, however, that they did not verify the address in the Department’s RMS until after they made entry.

This being said, the Named Employees’ conduct does not warrant a Sustained finding. This was a mistake not misconduct. Indeed, I can see no discernable motive for why the officers would have intentionally made an unlawful entry into the residence. Moreover, both officers self-reported this matter to their supervisor, accepting responsibility for their error. Given this, I recommend that the Named Employees receive Training Referrals rather than Sustained findings.

- **Training Referral:** The Named Employees should be counseled concerning their entry in this case and how it was inconsistent with both law and Department policy. The Named Employees appeared to recognize their error in this case and I do not believe that they will engage in similar behavior again. The Named Employees should be instructed that, as a matter of best practices, they should verify service addresses via RMS prior to making entry. Lastly, the Named Employees’ supervisor should either call or write the Complainant and explain to her what occurred in this case, express the Department’s regret that she was surprised and embarrassed by this incident, and indicate what steps were taken to address this matter and to ensure that



it does not happen again. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

6.180 – Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. As discussed above, the entry into the Complainant's apartment was not justified by a warrant or by any exception to the warrant requirements. As such, that search violated SPD policy.

While this is the case, given that the Named Employees acted in apparent good faith and engaged in a mistake rather than intentional misconduct, I recommend that they receive Training Referrals rather than Sustained findings. I further refer to the above training referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral and further refer to the above Training Referral.

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

Named Employee #2 - Allegation #3

6.180 – Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

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

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