



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 24, 2018

CASE NUMBER: 2018OPA-0290

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	15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances	Not Sustained (Training Referral)
# 3	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Lawful and Proper)
# 4	15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Not Sustained (Training Referral)
# 5	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)
# 6	15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative	Not Sustained (Training Referral)
# 7	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)

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)
# 2	15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances	Not Sustained (Training Referral)
# 3	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Lawful and Proper)
# 4	15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Not Sustained (Training Referral)
# 5	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)
# 6	15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative	Not Sustained (Training Referral)
# 7	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing.	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 engaged in biased policing towards him. It was further alleged that the Named Employees failed to notify a supervisor of the allegation of bias and that they did not conduct an appropriate, complete, and thorough domestic violence investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.*)

The Complainant asserted to OPA that the Named Employees engaged in bias policing in two respects. First, he claimed that they showed gender bias against him when they failed to enforce a parenting agreement in his favor. Second, he also alleged that they failed to enforce the agreement based on his race.

Both of the Named Employees denied that they engaged in biased policing. Named Employee (NE#1) was the lead officer at the scene. He was informed by the Complainant that there was parenting plan in place over his son with his son’s mother. He told NE#1 that, on the date in question, he had custody over his son. The son’s grandmother also asserted that she and her daughter had custody over the son. She further refused to relinquish custody until after a court hearing that was scheduled for the following day. NE#1 reviewed the parenting plan but reported that it was ambiguous, confusing, and did not clearly indicate who had custody at that time. Named Employee #2 (NE#2), who was the backing officer, was the main officer interacting with the grandmother. NE#2 also stated that the situation was confusing and that they had difficult determining who actually had custody.

As discussed more fully below, I agree that this was a complex and confusing situation. I find that this, not the Complainant’s race or gender, was the reason that the officers did not remove the child from the grandmother’s custody and turn him over to the Complainant. Ultimately, I find no evidence that either of the Named Employees engaged in biased policing.

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



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances

SPD Policy 15.180-POL-3 sets forth when officers are required to take statements. The policy requires that statements be taken in all domestic violence investigations. (SPD Policy 15.180-POL-3.) The policy further states that where people refuse to give statements, this information is documented in the General Offense Report. (*Id.*)

When the Named Employees were initially dispatched to this case, it was classified as a domestic violence (DV) assault. After conducting their preliminary investigation, however, the Named Employees did not think that this was a DV case. They based this on their belief that there was not a DV relationship between the Complainant and the grandmother, given that the Complainant was not related to her.

During its investigation, OPA determined that this belief was misplaced. Specifically, OPA was informed by an Assistant City Attorney that this case did, in fact, qualify as DV under RCW 10.99.020(3). As such, the officers should have conducted a DV investigation and were required by policy to take or attempt to take statements.

While their failure to do so was contrary to policy, I do not believe that this warrants a Sustained finding. I base this on the fact that both of the Named Employees were newer officers that appeared legitimately confused about this issue. Accordingly, I believe this to be the mistake of inexperienced officers rather than intentional misconduct. For these reasons, I recommend that the Named Employees receive the following Training Referral.

- **Training Referral:** The Named Employees should be retrained on the elements of SPD Policies 15.180-POL-3, 15.410-POL-2, 15.410-POL-3, 15.410-TSK-1, and 15.410-TSK-2. This retraining should include the officers re-reviewing these policies and then discussing them with a supervisor. The Named Employees should also receive counseling regarding this specific incident and the fact that there was a potential DV relationship between the Complainant and his son's grandmother. From their OPA interviews, it appears that the Named Employees now understand this. Their chain of command should ensure that this is the case. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

SPD Policy 15.410-POL-2 requires that officers make arrests in domestic violence investigations when there is probable cause to do so. Notably, this policy makes such arrests mandatory, which is consistent with State law. (SPD Policy 15.410-POL-2.)

The Named Employees gave two main explanations for why they did not believe an arrest in this incident was warranted. First, as discussed above, they stated that there were disputes of fact between the parties and that the incident was confusing. NE#1 further explained that the parenting plan that he reviewed was ambiguous and unclear. As such, they could not determine that there was probable cause to believe that the grandmother was committing a crime in that regard. Second, the Named Employees explained that, while the Complainant stated that



the grandmother intentionally shut his hand in the car door, the grandmother denied doing so and contended that it was inadvertent. The officers did not believe that there was sufficient evidence to arrest the grandmother for this offense.

I do not find the Named Employees' explanations to be unreasonable. I conclude, based on my review of the record, that the evidence was insufficient to establish probable cause for the grandmother's arrest. While not dispositive, further supporting this finding is the fact that the City Attorney's Office declined prosecution on the assault charge against the grandmother. In that decline notice, the City Attorney's Office wrote the following: "There is insufficient proof to establish the element of intent beyond a reasonable doubt. While there was an injury that occurred to the victim, there is no evidence that the defendant 'intended' to harm him or intended to close the door on his hand."

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

SPD Policy 15.410-POL-3 requires officers to make a reasonable effort to protect the victim of a DV crime and to arrest the subject. This policy includes multiple steps that officers are required to take in order to do so. (SPD Policy 15.410-POL-3.)

As discussed above, the officers believed that this was not a DV incident given the nature of the relationship between the Complainant and the grandmother. While this was ultimately incorrect, I find that this was a mistake by two newer officers rather than intentional misconduct. Accordingly, instead of recommending Sustained findings, I refer to the above Training Referrals. (See Named Employee #1, Allegation #2.)

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

Named Employee #1 - Allegation #5

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

SPD Policy 15.410-TSK-1 concerns the responsibilities of a patrol officer when investigating a DV incident. The policy details sixteen investigatory steps that a patrol officer must take. (SPD Policy 15.410-TSK-1.)

For the same reasons as indicated above (see Named Employee #1, Allegations #2 and #4), I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I further refer to the above Training Referrals. (See Named Employee #1, Allegation #2.)

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



Named Employee #1 - Allegation #6

15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative

SPD Policy 15.410-TSK-2 concerns the requirements for the contents of an officer's General Offense Report and Narrative for a DV investigation. The policy sets forth seventeen items that, where applicable, must be set forth therein. (SPD Policy 15.410-TSK-2.)

For the same reasons as indicated above (see Named Employee #1, Allegations #2, #4, and #5), I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I further refer to the above Training Referrals. (See Named Employee #1, Allegation #2.)

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

Named Employee #1 - Allegations #7

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

It was alleged that the Named Employees failed to call a supervisor to the scene to investigate a complaint of bias as required by Department policy. Here, the Complainant stated the following to the officers: "It's always the Black father, who is trying to do the right thing, I was here before her, I got court papers saying I'm supposed to have my child." Both of the Named Employees heard the statement, but did not believe that it rose to the level of an allegation of biased policing against them.

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

NE#1 stated that he did not view this as an allegation of biased policing and, instead, interpreted the Complainant to be addressing his overall frustration with the system. However, he stated that, in hindsight, he should have notified a supervisor. NE#2 made the same assertions. He also did not believe that it was an allegation of biased policing but recognized that best practice would have been to notify a supervisor.

I agree with the Named Employees that it would have been best practice for them to notify a supervisor of the Complainant's statement. Even if it was not an explicit allegation of biased policing against them, it was close enough to warrant informing their Sergeant. However, as discussed above, both officers were relatively new at the time of the incident. In addition, they both clearly learned from this incident and indicated to OPA that, were they to be faced with this situation again, they would have immediately reported the statements to their supervisor. For these reasons, I recommend that they receive the following Training Referral.

- **Training Referral:** The Named Employees should receive additional training concerning the elements of SPD Policy 5.140-POL-5. Their chain of command should discuss this incident with them and, specifically, convey to them that, when in doubt, they should notify a supervisor of a potential claim of bias. Even where the subject's assertion is questionable, it is still best practice to call a supervisor. This ensures both that the situation is critically reviewed and that the Named Employees avoid similar future OPA investigations. This



retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #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 #2 - Allegation #2

15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

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

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

Named Employee #2 - Allegation #3

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

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 #2 - Allegations #4

15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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



Named Employee #2 - Allegation #5

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #2 - Allegation #6

15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer's GO Report and Narrative

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #2 - Allegations #7

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

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the above Training Referral. (See Named Employee #1, Allegation #7.)

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