



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 11, 2019

CASE NUMBER: 2018OPA-0649

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

Imposed Discipline

Resigned Prior to Proposed DAR

Named Employee #2

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 (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 Named Employee #1 engaged in biased policing towards her. It was further alleged that both Named Employees failed to call a supervisor to the scene to investigate the allegation of bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees responded to a call of an individual making threats at a business. This individual – who was later identified as the Complainant – was contacted by Named Employee #1 (NE#1). The Complainant appeared upset by how NE#1 addressed the situation. During the interaction between her and NE#1, the Complainant asserted to NE#1: “You have a problem because I’m Black.” NE#1 called for Named Employee #2 (NE#2) to come to her location and ended her discussion with the Complainant.

At that time, NE#1 told NE#2 the following concerning her contact with the Complainant: “She’s calling me a racist.” NE#1 further stated that the Complainant told her: “You’re doing this because I’m Black.” In characterizing the Complainant’s intentions, NE#1 said to NE#2: “She’s trying to make this a race thing.” NE#1 further recounted to NE#2 that the Complainant: “Started to throw out you’re doing this because I’m Black.”



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.*)

From OPA’s review of this incident, including the Body Worn Video that fully captured NE#1’s law enforcement activity, there is no evidence supporting the Complainant’s allegation of biased policing. To the contrary, NE#1 attempted to properly investigate this case and appeared to treat the Complainant appropriately and without bias. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

As discussed above, the BWV captured the Complainant’s allegation that she was being treated disparately because of her race. The BWV further recorded NE#1 discussing this allegation with NE#2 multiple times. However, the Named Employees did not call a supervisor to the scene to investigate the allegation of bias. Moreover, neither Named Employee reported the allegation to a supervisor or OPA at any time.

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 recognized that the Complainant made an allegation of biased policing and acknowledged that she failed to call a supervisor to come to the scene. She stated that she did not call a supervisor because it was an “off the wall comment that [the Complainant] said out of nowhere.” She said that she then “forgot” about the statement. She stated that she did not notify anyone except for her partner of the statement. As such, she did not properly report the allegation to either OPA or a supervisor.

Had NE#1 failed to immediately report the allegation but later notified a supervisor, I would have recommended that she receive a Training Referral. However, here, she never reported the bias claim at all, which was an allegation of serious misconduct. This constituted a violation of policy and, as a result, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #1

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

NE#2, like NE#1, failed to either call a supervisor to the scene to investigate the bias allegation or to later notify a supervisor. At his OPA interview, NE#2 explained that he did not hear the bias allegation and, thus, that he did not have firsthand knowledge of what was said. He stated that he did not know whether the statement was ever reported to a supervisor.



Whether or not NE#2 actually was present when the bias allegation was made, he later became aware of it. Indeed, NE#1 told him what the Complainant said multiple times. As such, NE#2 knew of an allegation of serious misconduct and failed to report it to a supervisor or OPA. While this constitutes a violation of policy, I recommend that NE#2 receive a Training Referral rather than a Sustained finding. I base this primarily on the fact that he was not present when the statement was made and that it was predominantly NE#1's responsibility to self-report.

- **Training Referral:** NE#2 should receive retraining as to the elements of SPD Policy 5.140-POL-5 and the requirement that he call a supervisor in response to allegations of biased policing. NE#2 should be counseled concerning this incident. His chain of command should discuss that when NE#1, the primary officer, advised him that she had been accused of biased policing outside of his presence, it would have benefitted both officers had NE#2 clarified whether NE#1 had or was intending to notify a supervisor before leaving the scene. NE#2 should be reminded that, in the future, he should clarify roles and offer to call a supervisor for his partner. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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