



CLOSED CASE SUMMARY

ISSUED DATE: MAY 30, 2019

CASE NUMBER: 2018OPA-1134

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 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	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	Allegation Removed

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 Employee engaged in biased policing when he failed to take law enforcement action against "far-right" demonstrators but arrested "antifascist" and "left-wing" demonstrators. This conduct purportedly occurred at several demonstrations in 2018. The Complainant contended that this selective enforcement of the law was based on biases held by the Named Employee. The Complainant further alleged that the Named Employee was dishonest when he said that an unnamed officer had served the Complainant with an anti-harassment order when in fact the Complainant was not served with that order by an officer. Additionally, the Complainant alleged that the Named Employee failed to investigate the crimes against him, which may have been an abuse of the Named Employee's discretion.

Lastly, the Complainant alleged that a large number of Unknown Employees have engaged in a pattern of biased policing during demonstrations by protecting the interests of the right-wing demonstrators over those of the left-wing.

ADMINISTRATIVE NOTE:



OPA, with the Office of Inspector General's review and approval, determined that it could reach and issue recommended findings based on its intake investigation. This type of investigation referred to as an Expedited Investigation, which signifies OPA's belief that a recommended finding could be made on each allegation without interviewing any officers, including the Named Employee. This investigation included a full review of the materials and information offered by the Complainant, as well as of the reports and videos relating to the demonstrations. OPA found that this was sufficient to issue findings on the issues detailed herein.

SUMMARY OF INVESTIGATION

The Complainant sent several emails to OPA in which he alleged that Named Employee #1 (NE#1) and other SPD employees have engaged in biased policing against demonstrators who are associated with left-wing political groups in favor of those demonstrators who are associated with right-wing political groups. The Complainant stated that it appeared to him that SPD regularly arrests left-wing activists who are found to be entirely innocent yet refuses to arrest right-wing activists who engage in violence and disorderly conduct at the same event. Specifically, the Complainant alleged that NE#1 and other SPD employees engaged in this type of bias-based policing during demonstrations that took place in Seattle in August of 2018 and on December 1, 2018.

In terms of the August and December 2018 demonstrations, the Complainant asked OPA to determine if NE#1 was present and among the officers who arrested individuals who were associated with "Antifa," while ignoring individuals who were associated with the "Proud Boys," despite the fact that the Proud Boys started the fight that culminated in arrests. The Complainant claimed that NE#1 refused to investigate or to even report an attempted assault against the Complainant that took place during an August 2018 demonstration, yet SPD arrested at least one innocent African American man during the same event. The Complainant alleged that, during the December 2018 demonstration, NE#1 and other officers threatened to arrest him if he took a photo of an individual who was apparently in attendance at the same event because that individual purportedly had an anti-harassment order filed against the Complainant. The Complainant alleged that the individual manipulated NE#1 and SPD into threatening to arrest the Complainant and attempting to conduct an unlawful search of the Complainant's camera. The Complainant alleged that, at every turn, NE#1 appeared to accept the statements of right-wing demonstrators as facts, while continually rejecting the Complainant's own factual statements.

The Complainant also asked OPA to investigate and determine whether NE#1 or any other SPD employees who work crowd management at demonstrations are members of any far-right groups, including, but not limited to, the Proud Boys, Three Percenters, and/or Oath Keepers. The Complainant believed that evidence of such affiliations would further support his allegations that NE#1 and SPD are biased against individuals who are affiliated with left-wing or antifascist organizations.

The Complainant provided OPA with links in his emails to videos that he took at demonstrations. He maintained that those videos were evidence in support of what he has alleged against NE#1 and other SPD employees.

Besides receiving information from the Complainant by email, OPA also spoke to him by phone as part of its investigation. During the phone conversation, the Complainant reiterated his overall bias allegation against NE#1 and other SPD employees and included his concerns regarding how arrests were made during a 2017 demonstration. The Complainant stated that his desired resolution to his overall complaint was for the OPA Director to issue a Management Action Report to SPD, in which the Director would address overt instances of repeated bias on the part



of NE#1 and other SPD employees regarding any favoritism that they show during demonstrations to the far-right groups.

As part of this investigation, OPA examined SPD reports and data associated with a number of the demonstrations that the Complainant identified in his emails. OPA also viewed and analyzed the videos provided by the Complainant and relevant Body Worn Video (BWV). From that information and with specific attention paid to the arrests made by SPD, OPA identified the following:

2017 June – Anti-Sharia Rally

There were three (3) arrests made during this demonstration. There is no indication that NE#1 was present during this event, and he was not involved in any of the arrests. Additionally, OPA found that the arrests were made for obstruction and there was no indication that the arresting officers used discretion in their decision to arrest by favoring one group over another.

2018 August – Liberty or Death Rally

There were three (3) arrests made during this demonstration. One person was arrested for assaulting an officer, and two others for assaulting other community members. OPA did not locate any information in SPD's reports that indicated the political ideology or affiliation of those arrested.

OPA reviewed NE#1's BWV and the Complainant's video associated with this rally. At the 11:30 mark of NE#1's BWV, NE#1 and the Complainant had what appeared to be a polite conversation about a video of an assault that the Complainant recorded involving a female perpetrator. The Complainant did not allege that he was a victim of the assault, but said that the female should be detained for using a weapon against other people. NE#1 spoke to the female and provided her with an incident number and a business card. NE#1 requested that the Complainant retain the video and provide it to SPD. The Complainant agreed. NE#1 was seen on the BWV giving his business card along with an incident number to the Complainant. NE#1 told another officer that the Complainant allegedly had a video of the female being the primary aggressor and explained that the Complainant would provide the video to SPD. In terms of the arrest of the African American man that the Complainant referenced in his complaint, at the 8:15 mark of the Complainant's video, an acquaintance of the Complainant asked the Complainant why the African American man was being arrested. In response, the Complainant stated: "I've seen him at another thing and he's kinda raising hell, he's an instigator." During a follow-up phone conversation with the Complainant, the Complainant acknowledged to OPA that the African American man had caused problems at previous events.

In terms of the General Offense Report (GOR) associated with the female perpetrator, an officer reported witnessing the encounter and that the male arrestee reached out and grabbed onto the female's visor just prior to her spraying him with pepper spray. The GOR contained information about the Complainant's claim that he witnessed the event and that he had a video of it. It included the fact that the Complainant maintained that the video showed the female as being the primary aggressor and that he offered to provide that information to SPD at a later time.

2018 December – Liberty or Death Rally:

There were no arrests at this demonstration.



In terms of the anti-harassment order, NE#1 was seen on his BWV reading it and speaking with the petitioner. Later in the video, a Sergeant briefed officers about this matter and advised the officers that they would write a report, but not effectuate any arrests. The officers were instructed to convey a warning. NE#1 contacted the Complainant and explained the order in which the Complainant was the respondent. NE#1 advised the Complainant that the order indicated that it had been served. After the Complainant stated that he has not been served, NE#1 ultimately told the Complainant that he would note that point in the report. There were some further discussions between NE#1 and the Complainant about photos the Complainant had taken during the demonstrations and that none of them were of the person that allegedly had an anti-harassment order against the Complainant. NE#1 explained that if the Complainant showed the photos on his camera to NE#1, it might exonerate the Complainant, as it would show that he never took a photo of the petitioner. The Complainant declined to do so. After the Complainant asked NE#1 if the anti-harassment order showed that it had been served by an officer, NE#1 stated that he believed that a Pierce County Officer served the Complainant. NE#1 suggested that the Complainant speak further about the order with a Pierce County judge. NE#1 gave a business card to the Complainant along with the incident number. NE#1 advised the Complainant that he had now been served with the order and cautioned him to refrain from photographing those individuals that the order protected.

In terms of the GOR associated with this matter, NE#1 wrote the incident narrative. OPA found NE#1's GOR narrative to be consistent with what was observed on both the BWV and the Complainant's video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant asserted that NE#1 may have engaged in biased policing by taking law enforcement action against left-wing demonstrators while not treating right-wing demonstrators similarly.

SPD Policy 5.140 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."

In terms of NE#1's interactions with the Complainant, OPA found no evidence establishing that he took law enforcement action based on bias at any of the demonstrations identified by the Complainant. In making this determination, OPA reviewed NE#1's and the Complainant's videos of the incidents identified by the Complainant and found that NE#1 took actions and made decisions that were consistent with law and policy. OPA found nothing to suggest that NE#1 treated the Complainant or anyone else differently because of their membership in any specific groups, including based on their political affiliations.

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

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



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

OPA reviewed the GORs in which NE#1 was the primary or contributing officer and found that they were sufficiently thorough and complete. In those situations where the Complainant either provided information to or was approached by NE#1, OPA found that NE#1 documented those instances consistent with what took place as depicted by the BWV and the video provided by the Complainant. As OPA determined that the reports were, as a general matter, complete, thorough, and accurate, OPA concludes that NE#1 acted consistent with this policy.

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

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

The Complainant contended that NE#1 abused the law enforcement action afforded to him.

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

OPA found no evidence in support of the allegation that NE#1 improperly exercised his discretion by not investigating a potential crime that was identified by the Complainant. When the Complainant raised the issue that the involved female in the August 2018 Liberty and Death Rally was the primary aggressor, NE#1 included that information in his GOR statement. NE#1 further noted that the Complainant would provide his video of the incident to SPD at a future time. According to the GOR, this case was referred to a Seattle City Attorney's Office (SCAO) by a follow up unit. Given this referral, NE#1 would not have had a role in determining how the Complainant's video factored into the outcome of that incident/arrest. Ultimately, the decision concerning whether to charge the female with a crime was within the purview of the SCAO, not NE#1.

For these reasons, I find that NE#1 properly exercised his discretion during this incident and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegations #4

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

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.”

The Complainant asserted that NE#1 was unprofessional towards him during their interactions. The interactions in question were, to the best of OPA’s belief, completely captured by video. In its review of that video, OPA found no evidence that NE#1 made unprofessional or otherwise inappropriate statements to the Complainant. From OPA’s review of the videos, it appeared that NE#1 listened to what the Complainant told him and communicated with the Complainant in a manner that showed respect and a willingness to take further investigatory action if appropriate. For example, at one point, NE#1 offered to review the photographs on the Complainant’s camera in order to, according to NE#1, assist in proving that the Complainant did not violate the order of protection.

While I do not discount that, at the time or when later recollecting this incident the Complainant may have believed that NE#1 was unprofessional, this is simply not supported by the evidence. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

The Complainant alleged that NE#1 may have been dishonest when he told the Complainant that another officer served him with an anti-harassment order.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

OPA reviewed the information that NE#1 relied upon when spoke with the Complainant concerning the service of the order or protection. The order, itself, specifically indicated that it was issued and served by the Pierce County Sheriff’s Office.

Given the above, OPA finds it to be reasonable that NE#1 believed at the time that the order was served by an officer. Moreover, OPA finds that, when he conveyed this information to the Complainant, NE#1 believed it to be accurate. Even if this was ultimately not the case, there is insufficient evidence to establish that NE#1 was dishonest, rather than that he simply had incomplete information at the time that he relayed to the Complainant.

For the above reasons, I conclude that NE#1 did not engage in intentional and material dishonesty in his communications with the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegations #1

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

As discussed above, the Complainant raised concerns that unidentified SPD officers may be engaging in an overall pattern of biased policing during demonstrations by protecting the interests of the right-wing demonstrators over those on the other side of the political spectrum.

During its investigation into this case and its evaluation of the three demonstrations discussed above, OPA found insufficient evidence to determine that this was the case. However, OPA does not reach findings concerning SPD's approach to the numerous other protests generally referenced by the Complainant.

OPA's jurisdiction is over individual allegations of misconduct based on specific, identifiable incidents. While OPA can issue policy recommendations based on an investigation, OPA is not tasked with looking at the systemic practices of the Department. Moreover, OPA simply does not have the resources or personnel to do so effectively. Such an analysis is more appropriately within the purview of the Office of Inspector General for Public Safety (OIG).

Ultimately, even though OPA did not find evidence of bias by SPD officers in any of the demonstrations it evaluated, OPA takes seriously the Complainant's allegations. As such, OPA will be referring this matter to the OIG with the recommendation that the OIG consider conducting a review of whether SPD is engaging in a pattern and practice of viewpoint discrimination and disparate treatment during the policing of demonstrations. As OPA will be making this referral, no finding will be issued for this allegation and it is accordingly removed.

Recommended Finding: **Allegation Removed**