



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 31, 2019

CASE NUMBER: 2019OPA-0093

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	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 Employee was unprofessional towards her and her husband during several interactions. The Complainant further alleged that the Named Employee towed one of her vehicles in order to retaliate against her. The Complainant asserted that all of this alleged behavior was due to biased policing on the part of the Named Employee. Lastly, OPA alleged that the Named Employee may have failed to record Department video as required by policy.

### **SUMMARY OF INVESTIGATION:**

This case stems from three interactions between the Complainant, her husband, and Named Employee #1 (NE#1). The first of those interactions occurred on July 10, 2018. The second and third interactions occurred on January 27, 2019 and January 30, 2019, respectively.

### **July 10 Incident**

On July 10, NE#1 observed a detached trailer parked on a City street. The trailer also did not have a rear license plate. The Complainant and her husband, who emerged from a nearby RV, acknowledged that it was their trailer. NE#1 informed them that they were not allowed to park a detached trailer on a City street. NE#1 also explained to them that the trailer was parked in a manner that made the road conditions unsafe. The Complainant stated that she was going to get it towed but the truck they were going to use to do so had broken down. NE#1 asked the Complainant for the license plate and she handed him paperwork. She told NE#1 that the trailer was purchased from someone off of Craigslist. NE#1 told the Complainant that he was going to verify the documentation provided and that she had until 10:00 hours to attach or tow the trailer.



At that point, the husband said to NE#1: "Man, I got to go get a pump, man I really don't need this shit, man." NE#1 responded: "I don't care, what you need bro." The husband then told NE#1: "I got congestive heart failure, this is ridiculous, fuck, every time you guys set me back..." NE#1 walked away and towards his vehicle. The husband made another statement and NE#1 walked back to them and responded: "I can tow it right now, if you like." Both the Complainant and the husband continued to tell NE#1 about the husband's medical condition and the financial issues they were facing. The husband stated that he was being harassed and identified that the harassment was by cops and people trying to rob him. The Complainant asserted that they were being harassed by a City Councilperson. NE#1 asked them what they thought a reasonable time would be to move the vehicle. The Complainant proposed 24 hours. NE#1 then stated the following: "Here's the thing, I come to these things, all the time, I put 72 hour notices on em, I talk to you people, right, I get the same sob stories, I got some kind of illness, I can't do this, it doesn't work." The Complainant responded: "I work." NE#1 then said: "It doesn't work, then guess what, shit still here, still same problem." After further discussion, NE#1 reaffirmed that they had until 10:00 hours to re-attach the vehicle.

NE#1 also informed the Complainant that, as she purchased the vehicle, she was required to get it registered within 45 days and that failing to do so was a crime. She told him that she was planning on registering the vehicle the day before, but that their car broke down preventing them to do so. NE#1 confirmed that she was planning on registering the car that day. NE#1 then stated the following: "98% of the time, I'll see you 45 days from now and it will still say...[another name] on there and it won't say yours. You'll say, I bought it, I'll say, I see that." The Complainant told NE#1 that she worked for the Seahawks. NE#1 replied: "I don't care who you work for, I don't care if you are a City Council member, right...it doesn't matter who you are, the law is the law." The Complainant then alleged that NE#1 was talking to her rudely and treating her like "scum" because she lived in a trailer. NE#1 denied that he was doing so. She further alleged that he was raising his voice at her and NE#1 denied that as well. NE#1 told the Complainant that he was trying to work with her and the husband but that they were getting "upset" at him. The Complainant told NE#1: "I have PTSD from dealing with police, I don't like talking to you guys." NE#1 replied: "You know what, I've been to combat two times, I got PTSD to, I don't want to hear your sob story anymore, I'm trying to work with you, ma'am, just listen to me." The Complainant asserted that NE#1 was trying to "bulldog" her and was coming across as angry. NE#1 denied that this was the case, again told her that they had until 10:00 hours to re-attach the car. NE#1 then returned to his patrol vehicle.

After remaining in his patrol vehicle for a period of time, NE#1 emerged and called for a tow truck to respond to his location to remove the trailer from the area. A backing officer responded to the scene and NE#1 informed that officer that he had made the decision to tow the trailer. He stated that the demeanor of the Complainant and the husband convinced him to tow the trailer and he simply did not want to have to return later that day to reengage with them. NE#1 also screened his decision to tow the trailer with his Sergeant. He provided the same reasoning to the Sergeant that he conveyed to the backing officer. He informed the Sergeant that a complaint may be filed against him and, as such, that he might be required to call the Sergeant to the scene. The Sergeant did not identify any concerns with NE#1's decision to tow the vehicle.

NE#1 informed the husband that the trailer was going to be towed. The husband told NE#1 that the trailer was his home and NE#1 responded that they appeared to be living in the RV that was parked nearby. The Complainant asked for a supervisor to come to the scene and NE#1 asked the backing officer to call the Sergeant. NE#1, the Complainant, and the husband continued to go back and forth on the decision to tow the trailer. The backing officer then took over the interaction with the Complainant and the husband and was able to begin building a rapport with them. The backing officer spoke with NE#1 and told him that the situation had calmed down. The backing officer asked NE#1 if he was



---

sure that he wanted to tow the trailer, rather than giving until 10:00 hours to reattach the vehicle as previously discussed. NE#1 said that he did want to tow it. NE#1 further discussed the fact that he believed that an OPA complaint was imminent regardless of what he did. After additional conversation, the backing officer was able to work out a potential compromise where the tow company could help hook up the trailer to a vehicle and move it to another, less dangerous parking space. This was ultimately agreed to by all of the involved parties.

The Sergeant then arrived on scene. He spoke with both the husband and NE#1. The husband alleged that NE#1 said “fuck” during their conversation, which NE#1 denied. NE#1 further discussed the incident with the Sergeant. He explained to the Sergeant his frustration that the Complainant and the husband had four vehicles in the area, some of them illegally parked. The Sergeant responded: ““But, look where this could have gone.” NE#1 told the Sergeant that he just wanted to do his job, to which the Sergeant replied: “But, the reality is, we’re kind of in a jar...” The incident then concluded, and the officers left the scene. Neither the Complainant nor the husband filed an OPA complaint at that time or requested that the Sergeant do so.

### **January 27 and January 30 Incidents**

On January 27, 2019, NE#1 observed a van parked on a City street without license plates. NE#1 contacted the Complainant and her husband, who were the owners of the van, and informed them that they needed to get plates for the vehicle. He told them that, if they did not do so, he would ticket and impound the van when he returned a few days later.

On January 30, 2019, NE#1 returned to where the van was previously parked. He again observed that the van did not have license plates. NE#1 called for a tow truck to come to the scene. NE#1 informed other officers that arrived of his contact with the Complainant and the husband on January 27. NE#1 stated his belief that they would grow angry once they were informed that the van would be towed. NE#1 told the Complainant that she should get medication out of the van because it was about to be towed. The Complainant began getting other property out of the van as well. NE#1 told the Complainant repeatedly to grab her things out of the van, ultimately telling her that if she did not exit the van she would be arrested for obstruction. The Complainant continued to argue with both NE#1 and the tow truck driver.

A Sergeant responded to the scene and NE#1 informed him of what was going on. NE#1 told the Sergeant that the car had no license plate and the VIN was covered up. NE#1 stated that he had previously contacted the Complainant on January 27 and was informed that the license plates and registration would be addressed, but that this was not done. NE#1 informed the Sergeant that the Complainant was upset and wanted to speak with him. The Complainant told the Sergeant that she wanted to file a complaint. She raised the July 10 incident and NE#1 responded that the Complainant got a “free tow” on that day. The Complainant asserted that NE#1 was wrong on that day. The Sergeant filed a complaint with OPA on the Complainant’s behalf. This investigation ensued.

### **OPA’s Investigation**

As part of this investigation, OPA interviewed the Complainant and the husband. They asserted that NE#1 took adverse law enforcement action against them because of their housing status. They also alleged that he towed their van on January 30 as retaliation for the July 10 incident. Lastly, the Complainant and the husband asserted that NE#1 was unprofessional towards them. The husband reiterated his claim that NE#1 used profanity towards him.



---

OPA further interviewed NE#1. NE#1 denied that he towed the van on July 30 in order to retaliate against the Complainant or the husband. He stated that he took this action because he gave them ample opportunity to register the vehicle and they did not do so. NE#1 also denied that his conduct was motivated in any way by bias. Lastly, he contended that he was professional during his interactions with the Complainant and the husband.

OPA also reviewed the documentation generated concerning the three incidents at issue, as well as reviewed relevant Body Worn Video (BWV).

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

The Complainant and the husband contended that NE#1 acted unprofessionally towards them during both the July 10 and the January 30 incidents. NE#1 denied doing so.

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.) 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.*)

In OPA’s opinion, whether NE#1’s statements to the Complainant and the husband violated policy is a close call. OPA views several of those statements as problematic. Most notably, OPA thought the following exchanges were potentially unprofessional: when NE#1 said, in response to the husband’s assertion that he did not “need this shit,” that “I don’t care, what you need bro”; when NE#1 referred to the Complainant and the husband as “you people” (which is discussed more fully in the context of Allegation #2, below) and characterized explanations for illegal parking involving medical issues as “sob stories”; when NE#1 stated, in response to the Complainant’s assertion that she worked for the Seahawks, “I don’t care who you work for, I don’t care if you are a City Council member, right...it doesn’t matter who you are, the law is the law”; and when NE#1 countered the Complainant’s statement that she had PTSD by stating “You know what, I’ve been to combat two times, I got PTSD to, I don’t want to hear your sob story anymore, I’m trying to work with you, ma’am...”

OPA also concludes that NE#1’s approach to this incident and the manner in which he interacted with the Complainant and the husband was unproductive, if not escalating. To this end, OPA finds it significant that, during the incident, the backing officer took a more respectful and calm approach than that utilized by NE#1 and was able to negotiate a solution to the conflict.

While OPA recognizes NE#1’s stated frustrations with individuals who repeatedly park their vehicles illegally, NE#1 is required to attempt to engage such subjects respectfully. This is the case even if they are disrespectful and rude to him in return. Indeed, SPD officers are held to a higher standard than those that they interact with. Here, while NE#1



---

did not yell at the Complainant and the husband, did not use derogatory languages towards them, and did not curse at them, I conclude that some of the statements he made could be construed as disrespectful and contemptuous.

The above being said, I do not believe that this conduct rises to the level of warranting a Sustained. OPA feels that training and guidance from a supervisor, rather than discipline, have the greater potential of effectuating a better result in the future. As such, OPA issues NE#1 the below Training Referral. OPA notes, however, that future conduct deemed unprofessional will result in a Sustained finding.

- **Training Referral:** NE#1's chain of command should discuss this incident with him and watch the BWV together. This discussion should focus on NE#1's professionalism and should be purposed to give NE#1 tools and guidance to avoid similar situations in the future. This counseling and any associated training should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #2**

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

The Complainant and the husband alleged that they were treated disparately by NE#1 due to their housing status. Both believed that he was harsher on them because they resided in vehicles as opposed to in homes. NE#1 denied engaging in biased policing and stated that housing status did not influence his decisions and the law enforcement actions that he took during this incident.

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.*)

Ultimately, I find that the evidence in this case does not rise to the level necessary to establish bias on NE#1's part. I reach this conclusion even though, as discussed above, I am troubled by some of the language that NE#1 used during the July 10 incident. Most significantly, I found the use of his term "you people" to be concerning. While I believe that NE#1 was trying to explain that he frequently received excuses from those that were potentially subject to enforcement, he could have been plausibly interpreted to be referring to all homeless individuals or all individuals who resided in vehicles. If he made generalities concerning all people who fell within a protected class and then acted according to those generalities, this would constitute biased policing under SPD policy.

Based on the totality of the evidence, however, I do not believe that NE#1 engaged in biased policing. Given the context of what he said and his later statements, it appears that NE#1 was voicing his legitimate frustration concerning ongoing violations by RVs and other illegally parked and unregistered vehicles and the continuous excuses of their owners. That being said, NE#1 should be cognizant of the language he uses and the reality that, even if not intended, it could suggest that he is motivated by bias. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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



---

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

As discussed above, the Complainant and the husband alleged that NE#1 towed their van on January 30 in order to retaliate against them. NE#1 denied that he did so. He stated that he towed the van based on the fact that it still had not been registered three days after he had given the Complainant and the husband a warning and they told him that they were going to resolve that issue.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

When applying a preponderance of the evidence standard, I find that there is insufficient information in the record to conclude that NE#1 engaged in retaliation. First, there was a lawful basis to tow the van on January 30. Notably, the van could even have been lawfully towed on January 27. To the extent NE#1 towed the van as a form of retaliation, it follows that he would have done so on the earlier date and would not have given the Complainant and the husband a warning and an opportunity to register the van and avoid the tow. Second, while NE#1 clearly remembered the Complainant and the husband, there is no indication from the video of this incident that this played any part in his decision-making.

For the above reasons, I find that retaliation on NE#1’s part cannot be established. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegations #4**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

OPA’s investigation revealed that NE#1 did not record his interaction with the Complainant and the husband on January 27. NE#1 stated that he did not record on that date because he did not take any law enforcement action. He explained that he merely examined a vehicle that he thought was suspicious – specifically, because it had no license plates and the VIN number was covered – and because he only told the Complainant to get the car registered and did not cite her.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: traffic and Terry stops; on-view infractions and criminal activity; and questioning victims, suspects, or witnesses.

Even presupposing that NE#1 was correct that he was not required to record his initial observations and investigation of the vehicle, he should have activated his BWV when he began interacting with the Complainant and started discussing the fact that her van was unregistered in violation of law.



However, given that this is NE#1's first failure to record video when required, I recommend that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be retrained as to the requirements for when he is to record video. His chain of command should counsel him concerning his failure to do so here. NE#1 should be reminded to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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