



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 3, 2019

CASE NUMBER: 2019OPA-0164

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional	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 used a slur towards him that indicated biased policing on the Named Employee’s part. The Complainant further alleged that the Named Employee subjected him to biased policing. Lastly, the Complainant alleged that the Named Employee’s statements and demeanor during this incident were unprofessional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) conducted a traffic stop of the Complainant’s vehicle. NE#1 effectuated the stop because the Complainant was speeding and driving erratically, as well as because of his belief that the Complainant could be DUI. NE#1 conducted an investigation and determined that the Complainant was, in fact, DUI and placed the Complainant under arrest. The Complainant declined to provide a breath sample at the precinct and a blood warrant was sought and obtained by NE#1. The Complainant was then transported to a hospital for the blood warrant to be carried out. While at the hospital, the Complainant asserted that NE#1 engaged in biased policing towards him. Specifically, the Complainant asserted that NE#1 called him a “fucking faggot.” NE#1 reported this allegation to a supervisor, who responded to the hospital. The Complainant reiterated this allegation to the supervisor. The supervisor interviewed a nurse, who was a potential witness to the statement. She denied hearing NE#1 utter the term alleged by the Complainant. The Complainant asked that his allegation be referred to OPA and the supervisor did so.

OPA interviewed the Complainant as part of its investigation. The Complainant again contended that NE#1 called him a “fucking faggot” while in the hospital. The Complainant said that there were no witnesses to the statement as no one else was in their immediate vicinity at the time.



OPA also interviewed NE#1. NE#1 denied calling the Complainant a “fucking faggot.” He told OPA that the Complainant was being non-compliant while at the hospital and, out of nowhere, claimed that NE#1 used an offensive term towards him. NE#1 reported that, after making the allegation, the Complainant used the same slur to refer to NE#1.

OPA determined that there was no video of the incident, as NE#1 turned off his Department video systems when he entered the hospital. This was consistent with Department policy.

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.*)

When evaluating the totality of the evidence, OPA finds that there is an insufficient basis upon which to conclude that NE#1 engaged in biased policing towards the Complainant. Important to this determination was that the one identified witness to this alleged incident, a nurse at the hospital, denied hearing NE#1 use a slur towards the Complainant. In reaching this finding, OPA notes that, at least during the time that was captured on video, the Complainant was largely compliant, did not appear aggressive during the incident, and was not recorded using any other swear words or pejorative terms. That being said, and although the video does not support or contradict the Complainant’s allegation, OPA finds that there is not enough evidence to meet the burden necessary to prove this allegation. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant also alleged that NE#1 used excessive force on him when NE#1 grabbed his arm hard enough to leave a bruise. The Complainant stated that this occurred when they were in the hospital. NE#1 reported that he did take hold of the Complainant’s arm on several occasions. NE#1 asserted that he did so when the Complainant did not comply with his directions to enter and move within the hospital and when the Complainant began to act disruptively. NE#1 denied, however, that this constituted excessive force.

In evaluating this allegation, OPA determines that, as with Allegation #1, there is insufficient information in the record to determine that excessive force occurred. OPA finds it significant that the Complainant did not claim excessive force on the evening of the incident and did not raise that allegation until his OPA interview. With regard to the sole force that was captured on video – NE#1 grabbing the Complainant’s jacket to lead him into the hospital, OPA finds that it was consistent with policy.

As such, and for the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #3

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

The Complainant alleged that NE#1's statements towards him and NE#1's demeanor during the incident were unprofessional. NE#1 denied engaging in unprofessional behavior during this incident and alleged that the Complainant, instead, behaved in an inappropriate manner.

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.*)

Ultimately, as discussed in the context of Allegation #1, there is insufficient evidence to determine that NE#1 used a slur towards the Complainant. OPA further does not believe that NE#1's conduct towards the Complainant that was recorded on video rose to the level of a lack of professionalism.

The above being said, OPA's review of the contact from the time of the stop to the arrival at the hospital revealed an overall lack of patience and continual frustration on the part of NE#1. For example, it appeared that NE#1 was annoyed with the Complainant from the inception of the incident. It seemed to irritate NE#1 that the Complainant held his hands up for a sustained period of time and then again when the Complainant told NE#1 that he learned that when he was a child and did so to not get shot. In response, NE#1 stated "really?" He then asked the Complainant how old he was and, after the Complainant replied, told the Complainant to act his age. NE#1 again grew frustrated with the Complainant at the precinct. At that time, NE#1 provided paperwork for the Complainant to sign and the Complainant began to read the paperwork. NE#1 told him that he had already read the paperwork and the Complainant said that he did not know that it was the same form. NE#1 then abruptly took the paperwork from the Complainant and led him out of the precinct. In addition, NE#1 acknowledged in his report that, based on the Complainant's conduct at the hospital – which was not captured on video, he called the Complainant an idiot. Lastly, throughout the contact, NE#1 took deep breaths, as if he was annoyed at the Complainant, and repeatedly appeared to grow irritated when the Complainant would walk slowly or stop walking and when he would not quickly comply with NE#1's directions.

Based on the above, OPA believes that NE#1 would benefit from debriefing this incident with his chain of command and as such recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this incident with him and, specifically, debrief NE#1's level of frustration and annoyance with the Complainant from the inception of the stop. NE#1's chain of command should discuss potential alternative approaches or communication styles that NE#1 could have used during this incident. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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