



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 1, 2020

CASE NUMBER: 2019OPA-0190

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to Be Professional	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	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, who was the victim of racial harassment on a Link light rail train and who observed an assault of a juvenile, alleged that SPD’s failure to respond to the incident undermined public trust and confidence.

ADMINISTRATIVE NOTE:

The allegation in this case is alleged against SPD as a whole given OPA’s identification of potential gaps in policy. As no individual SPD employee is involved, the 180-day timelines set forth in the collective bargaining agreements with the police unions are inapplicable. Accordingly, OPA administratively set the date of this DCM as the 180-day deadline.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On March 21, 2019, the Complainant was a passenger on a Sound Transit light rail train when another passenger – referred to here as the suspect, used a racial slur against her and told her that he would pepper spray her if she did not move away from him. The Complainant called 911. The suspect then pepper sprayed another passenger, who was a juvenile. Someone on the train pulled the emergency brake and the train stopped. The suspect pried the doors open, got off the train, and walked away. The Complainant, the juvenile who had been pepper sprayed, and one other passenger got off the train at the next stop and waited for police to respond.



The Complainant relayed that, around 20 minutes after they had gotten off of the train, two King County Sheriff's Office (KCSO) deputies arrived. They informed the Complainant that they were only here to stand by until SPD responded to the scene. They stated that this incident was not within KCSO's jurisdiction. The KCSO deputies called for medical treatment for the juvenile. After around 45 minutes, the KCSO deputies told the Complainant that SPD had declined to respond to the scene and said that they would be completing the report. SPD officers later came to the juvenile's school to speak with him regarding this incident.

OPA's investigation included reviewing the reports generated for this incident, as well as the multiple 911 calls and communications between SPD and KCSO. OPA also reviewed the various agreements between the involved agencies. Lastly, OPA interviewed the Complainant and an SPD Dispatch Supervisor.

The Complainant reiterated to OPA what occurred during this incident. She told OPA that she felt it took an inordinate amount of time for officers to respond to the scene and that it was inexcusable to delay providing aid to the pepper sprayed juvenile. The Complainant was upset that no actions were taken to locate and arrest the suspect and she believed that, as a result, he could engage in similar behavior again. Lastly, the Complainant indicated that her hope was that the issues that arose in this case would be fixed and this would never happen again.

OPA determined that the Complainant and multiple other individuals made 14 911 calls concerning this incident and requesting the status of the law enforcement response to the scene. There were seven other calls between KCSO and SPD regarding which agency was going to respond. The calls clearly indicated that there was significant confusion between the KCSO and SPD dispatchers as to what was going on and concerning which law enforcement agency should be handling this matter. In all, more than 40 minutes elapsed between the first call and any law enforcement action.

OPA reviewed a MOU between KCSO and SPD, dated February 24, 2015. The MOU stated that, for incidents that occurred on light rail trains, Sound Transit Police had primary jurisdiction. The MOU further indicated, however, that where a "significant incident" occurred, the local law enforcement agency had primary jurisdiction. It is unclear what the "local law enforcement agency" refers to. Moreover, the examples of a "significant incident" are homicide and armed robbery. As such, it is not clear whether malicious harassment and assault would also qualify. OPA reviewed another MOU between SPD Communications and Sound Transit. The MOU indicated that reports of crime on the light rail could be reported to 911 and that, at this point, SPD would contact KCSO dispatch.

OPA also interviewed the Dispatch Supervisor who supervised the 911 call takers on the date in question. She stated that, though the MOU was very specific regarding collisions involving light rail trains, for other "significant incidents" the language of the MOU was less clear as to which agency was primary. She stated that no CAD Call Report was created by SPD at the time of the incident, and that the call takers instead exercised their discretion to transfer these calls to King County based on the location of the incident (a light rail train). According to the Dispatch Supervisor, had a CAD Call Report been created for this incident, the call takers may have better understood the incoming volume of calls as well as the length of time that community members had to wait for a response. She opined that this would likely have caused the call takers to alert a supervisor or take other action to verify that KCSO or SPD was in the process of actually responding to the call. The Dispatch Supervisor noted that creating a CAD Call



Report was within the discretion of the call taker, who is generally the least experienced employee in the Communications Center at any given time.

The Dispatch Supervisor stated that, in her opinion, a CAD Call Report should have been created for this incident. She also noted, however, that the information available to the call takers at the time was that KCSO had dispatched officers to the scene. Based on this information, she understood why call takers elected to transfer the case to King County. She noted that, on the date in question and currently, the Dispatch Center has many new employees and acting supervisors. Based on this, the complexity and general language of the MOUs, and the fact that this information is not generally available or useful as a reference resource during an incident, she believed this incident could reoccur if SPD did not clarify the underlying policy and MOUs. The Dispatch Supervisor noted that an effective policy would clearly articulate the jurisdiction and responsibility to act as first responder between different law enforcement agencies and would state which supervisory employees were responsible for coordinating across agencies to ensure that an effective response was underway. She cited the SR-99 Bore Tunnel Response policy (SPD Policy 15.265) and its associated Communications Center Policy and Procedures Manual Section (5.201 – SR99 Tunnel Responses) as an example of policy that clearly articulates the responsibilities of the involved entities in a manner understandable for Communications Center personnel and that gave clear direction. 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.)

OPA finds that the response by SPD and KCSO to this incident was inadequate. The lack of a timely response further clearly undermined public trust and confidence as expressed by the Complainant and the multiple other individuals who called 911 and complained about a lack of assistance. Notably, the failure of SPD to timely respond not only prevented any meaningful attempt to locate the suspect, but also caused the juvenile victim to not receive any medical assistance for an extended period of time and evidence loss in the form of witnesses who left the scene.

OPA concludes, based largely on the testimony of the Dispatch Supervisor, that if the policies and MOUs that govern local agency responses to incidents such as this are not clarified, what happened here will occur again. Indeed, having examined the underlying policy documents and MOUs, OPA finds them neither clear nor a useful guide for the employees tasked with effectuating them and ensuring a prompt law enforcement response. As such, OPA issues the below Management Action Recommendation requesting significant improvement in this area.

In making this recommendation, OPA notes that its investigation did not reveal any misconduct on the part of any individual SPD employee. The SPD employees involved in this incident appeared to make reasonable and good faith efforts to carry out their duties, which were consistent with their training and experience. That they fell short was caused by a gap in policy and in the MOUs and a lack of overall clarity, not because of malfeasance.

- **Management Action:** SPD, in consultation with the Communications Center and relevant entities at King County, should develop a policy that clearly articulates which agency has the primary responsibility of responding to incidents on light rail trains. This policy should be documented in the SPD Manual and should supersede the 2015 MOU. OPA recommends that SPD identify supervisory employees responsible for coordinating with the other local agencies to ensure a timely response. OPA further recommends that the



policy clearly state the responsibilities of call takers and sworn personnel. The Department should also consider requiring the creation of a CAD Call Report for serious criminal (i.e. violent and/or felony) incidents on light rail trains. In developing its policy, SPD should look at SPD Policy 15.265 as a model. Lastly, SPD should revisit its MOUs in this area with its regional law enforcement partners and ensure that any new MOUs are consistent with SPD policy and provide needed clarity. Once this policy has been created and the MOUs revisited and revised, relevant personnel should be retrained in order to prevent incidents such as that which occurred in this case from happening again.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

OPA finds that this allegation is ultimately subsumed in the finding for Allegation #1. As such, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**