



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2020

CASE NUMBER: 2019OPA-0359

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	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 3 1. Certain Statutory Exceptions Require the Subject to Provide Identification:	Not Sustained (Training Referral)
# 5	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 Employees violated multiple Department policies, including those regarding professionalism, biased policing, and retaliation, during an interaction regarding a parking violation.

ADMINISTRATIVE NOTE:

Due to heavy workloads and other ongoing responsibilities, this case was not completed prior to the expiration of the 180-day deadline and is, thus, untimely. OPA’s notes that none of the findings in this case would have been recommended Sustained even had the 180-day deadline been met.

Consistent with SMC 3.29.135(C), OPA’s completion of this case beyond the 180-day deadline will be documented in a letter transmitted to the Mayor, the City Council, the City Attorney, the Office of Inspector General for Public Safety, and the Community Police Commission. This will also be reflected in the final Closed Case Summary for this matter, which will be provided to the Complainant and shared with the public, which is also consistent with SMC 3.29.135(C).

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was on patrol when he observed a vehicle parked facing the wrong way on the street. NE#1 walked up to the vehicle to conduct further investigation as it was parked in violation of SMC 11.72.470. When NE#1 looked inside he recognized the driver. He identified the driver – who is the Complainant in this case – by name and said: “I want to know why you’re facing the wrong direction, sitting here, you can’t do that, it’s against the law.” NE#1 further asked: “Do you have your driver’s license on you sir?” When the Complainant questioned why he needed to provide his driver’s license, NE#1 responded: “Well, you’re operating a motor vehicle, you have to have a driver’s license and insurance paperwork.” The Complainant ultimately provided his license and insurance information.

NE#1 called for a backing officer and returned to his patrol vehicle to run the Complainant's information through his MDT system. This check did not reveal any open warrants. NE#1 returned to the Complainant's vehicle. NE#1 discussed the basis of the stop with him. The Complainant stated: "who do you all keep fucking with me?" NE#1 told him that he had not "messed" with him in the past. The Complainant brought up another officer that "charged his car" at the Complainant. NE#1 asked him about what occurred.

NE#1 asked the Complainant whether he felt that he was "messing with" him and the Complainant confirmed that he did. NE#1 stated: "Do you want me to write you a ticket to make it official?" After a further back and forth, NE#1 stated that he was not going to cite the Complainant. NE#1 said: "I'm all through. Nice seeing you again." The Complainant retorted: "It ain't nice seeing you." NE#1 replied sarcastically: "Sorry to hear that, would you like a sticker?"

At that point, the Complainant referenced race. He began stating: "I'm going to tell you like I tell most White folks..." NE#1 interrupted him and sardonically stated that he could not wait to hear what the Complainant was going to say. The Complainant continued telling NE#1 that his president (presumably referring to President Trump) was "going to get a race war started" and he said to NE#1: "I hope to see you there." NE#1 told the Complainant that this sounded like a threat and the Complainant denied that it was. NE#1 told the Complainant that it seemed as if the Complainant was "profiling and being biased to him." The Complainant retorted in response that NE#1 was profiling him.

NE#1 then said to the Complainant: "Tell you what, how about if you stop hanging out [at] Cascade Park." The Complainant replied: "I hang out any motherfucker where I want to man." NE#1 said that his job was to protect the community members living in his district and that, when the Complainant broke the law, he was "going to get contacted every time." NE#1 told him to not "come down here" and that, "as a convicted felon," the Complainant would be watched by the police. Their interaction ended shortly thereafter, and the Complainant drove away from the scene.

The Complainant later initiated this complaint with OPA. He alleged that NE#1 subjected him to biased policing and that the enforcement of the parking violation was due to retaliation. The Complainant also asserted that NE#1 was unprofessional during their interaction. After completing its intake investigation, OPA added allegations to address whether NE#1 failed to report an allegation of bias, whether he improperly compelled the Complainant's identification, and whether he did not complete appropriate paperwork regarding the stop.

As part of its investigation, OPA interviewed the Complainant and NE#1. OPA further reviewed the BWV for this incident, as well as the documentation generated concerning the contact.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged to OPA that NE#1's action towards him were based on bias. However, as discussed below, the Complainant alternatively alleged that he was singled out by NE#1 as retaliation for a lawsuit he filed against SPD in 2010.

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 perspective, there is no evidence that NE#1's actions towards the Complainant were based on bias due to the Complainant's race or membership in any protected class. Indeed, from a review of the BWV, it does not appear that NE#1 even knew that it was the Complainant in the vehicle when he decided to enforce the parking violation.

Even assuming that NE#1 did contact the Complainant solely because of his past convictions or his prior history suing the Department, these would not be protected classes as contemplated by SPD policy. As such, this would not constitute biased policing. However, OPA does not find that this occurred here, and, in any event, this is conduct that is better addressed in the context of Allegation #3.

For the above reasons, OPA recommends 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

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 told OPA that he did not believe that the Complainant made an allegation of biased policing against him. While NE#1 acknowledged hearing the Complainant stated that NE#1 was "profiling" him, he believed that this allegation was vague, and he did not construe this to allege bias. He told OPA that, had the Complainant specifically alleged that NE#1 was profiling him due to his race or prior convictions, he would have immediately notified a supervisor.

While a close call, OPA agrees that the Complainant did not explicitly allege that NE#1 profiled him based on his race or his membership in any protected class. However, as a best practice, once the Complainant referenced "profiling" and given the overall negative interaction with the Complainant, NE#1 should have at least screened this statement with a supervisor. That being said, his failure to do so does not, in OPA's opinion, rise to the level of a policy violation and is better addressed by training.

As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be retraining on the requirements for reporting bias. NE#1 should be counseled concerning his failure to notify his supervisor of the Complainant statement that NE#1 was "profiling" him. NE#1 should be informed that future non-compliance with this policy will likely result in a recommended Sustained finding and potential discipline. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 14. Retaliation is prohibited

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.*)

As discussed above, the Complainant contended that NE#1's action towards him were retaliatory. OPA finds that this allegation fails for two main reasons.

First, the BWV established that, prior to making contract with the vehicle to enforce the parking violation, NE#1 did not know that the Complainant was inside. As such, it cannot be established that NE#1's enforcement was retaliatory, even though NE#1 clearly recognized the Complainant and continued to engage with him for a period of time. Second, NE#1 did not, in fact, take any law enforcement action against the Complainant as no citation was issued. Accordingly, the Complainant cannot establish that there was a retaliatory act, which is necessary to establish a violation of this policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 3 1. Certain Statutory Exceptions Require the Subject to Provide Identification:

OPA determined that, pursuant to law, NE#1 was not lawfully entitled to compel the Complainant's driver's license when enforcing a parking violation. At his OPA interview, NE#1 stated that, while the contact began as an investigation into a parking violation, it evolved into a Terry stop. NE#1 explained his belief that, once he recognized the Complainant and given his knowledge of past narcotics activity engaged in by the Complainant, he developed reasonable suspicion to investigate potential criminal conduct. He specifically pointed to the fact that the Complainant was parked the wrong way in an area where he had been contacted before for selling drugs. OPA explored this assertion further and asked whether NE#1 was aware that he was not permitted to compel identification during a Terry stop. NE#1 said that he was but that the Complainant provided his driver's license voluntarily. NE#1 told OPA that, had the Complainant declined to do so, NE#1 would have honored that refusal.

Even presupposing that NE#1 did have reasonable suspicion warranting a Terry stop, OPA finds that his request for identification, while formed as a query, was a functional demand. This is supported by NE#1's response to the Complainant's questions regarding why he had to provide identification. Moreover, OPA notes that, to the extent he was effectuating a Terry stop, NE#1 was required to document this in a Terry Template. He did not do so here.

The above being said, based on OPA's analysis, NE#1 has not failed to comply with these policies before. Moreover, OPA recognizes that NE#1 did not technically demand the license and that he took ownership over the lack of a Terry Template. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should review the BWV of this incident with him and discuss NE#1's request to the Complainant to provide his identification. NE#1 should be retrained as to the law and policies concerning when identification may be compelled and, specifically, whether that is appropriate when enforcing a parking violation or effectuating a Terry stop. NE#1 should further be reminded that, even if couched as a question, a request for identification during a Terry stop may, in some circumstances, be unduly coercive. In addition, NE#1 should be instructed that he is required to document Terry stops appropriately. Lastly, NE#1 should be informed that future similar conduct will likely result in a recommended Sustained finding and potential discipline. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #5

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." (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.*)

OPA had two main concerns with how NE#1 handled his interaction with the Complainant. First, OPA believes that a substantial amount of his back and forth with the Complainant was unnecessary and could have been avoided. Second, OPA finds that his sarcasm towards the Complainant – for example, asking the Complainant if he wanted a sticker – was inappropriate and potentially escalating.

NE#1, to his credit, expressed his regret about being sarcastic and agreed with OPA that it was unnecessary. To this end, he recognized that much of his interaction with the Complainant served no legitimate law enforcement purpose.

In determining whether NE#1 violated policy, OPA notes that he did not use profanity or other derogatory language towards the Complainant. He also did not raise his voice towards the Complainant. OPA ultimately concludes that NE#1’s sarcasm, while inappropriate, does not warrant a Sustained finding. Instead, OPA believes that NE#1 would benefit from re-training and counseling.

As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA requests that NE#1’s chain of command review this incident with him, including watching the BWV. The chain of command should discuss NE#1’s sarcasm and address whether this is consistent with policy and the expectations of the Department. NE#1 should be informed that future similar conduct will likely result in a recommended Sustained finding and potential discipline. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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