



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0289

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	15.120 – Responding to Bias Crimes and Incidents 3. Officers Will Document All Bias Crimes and Incidents on an Offense Report	Sustained
Imposed Discipline		
Written Reprimand		

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	15.120 – Responding to Bias Crimes and Incidents 2. Communications Will Dispatch a Sergeant to the Scene of a Bias Crime or Incident Along with the Patrol Officers	Sustained
Imposed Discipline		
Resigned Prior to Discipline		

***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:

It is alleged that Named Employee #1 failed to properly handle the investigation bias incident. It was further alleged that Named Employee #2 failed to carry out his supervisory responsibilities.

### ANALYSIS AND CONCLUSIONS:

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

***15.120 – Responding to Bias Crimes and Incidents 3. Officers Will Document All Bias Crimes and Incidents on an Offense Report***

**A. Complainant’s Allegations**

The Complainant initiated this complaint with OPA. He alleged that he was in the parking lot of a Home Depot when an individual began yelling racial slurs at him. Named Employee #1 (NE#1) was dispatched to the scene. The Complainant informed NE#1 of what occurred; however, according to the Complainant, NE#1 did not take any law enforcement action. Instead, NE#1 told the Complainant that “no crime had been committed and no legal action



was necessary.” The Complainant relayed that NE#1 indicated that the suspect had a First Amendment right to use the slurs in question. The Complainant asked NE#1, regardless of the legal response, what SPD’s community response was. NE#1 said that he did not know anything about an SPD directive to engage the community. He said that he was not aware of any SPD protocols in this area. The Complainant said that he did not further push the issue. NE#1 then left the scene.

## **B. OPA’s Investigation**

### **1. Review of Body Worn Video**

OPA’s investigation included reviewing Body Worn Video (BWV) recorded by NE#1. The video indicated that NE#1 responded to the scene and made contact with the Complainant. The Complainant told NE#1 that slurs were used towards him by the suspect. NE#1 asked: “Okay, he said some racial slurs to you. But he didn’t threaten you?” The Complainant responded: “Well, he told me to get out of the car as I was on the phone with the police. He said, why don’t you get out of the car? I said, no, I’ll call the police...” NE#1 asked where the suspect went, and the Complainant provided a direction.

NE#1 then stated to the Complainant:

Based on what you told me so far...unless there’s ...something you left out...it doesn’t sound like a crime occurred. It sounds like he’s being a jerk and can probably come up with some other colorful words for what he was being if he’s using inappropriate terms trying to insult you. But if there’s not a crime committed, we can’t detain and take enforcement action.

The Complainant asked what he should do and how he can report a “hate crime.” NE#1 told him that what occurred was not a “hate crime.” The Complainant then asked how he could report harassment, and NE#1 told him that what occurred was also not legally harassment and explained why. The Complainant asked what he was supposed to do in these types of situations. NE#1 replied:

You can call the police. There’s just nothing we can do about it legally. We live in a country with a Constitution that says you cannot detain and deprive someone of their liberties unless that person...there’s probable cause that they’ve committed a crime...if there’s no crime, I can’t legally detain them.

The Complainant queried what the community approach to such bias incidents should be from SPD. NE#1 replied: “Well...I’m a police officer. I’m not in charge of social organizing...” The Complainant asked: “So, you have nothing to do with your community?” NE#1 clarified: “No, we deal with the community all the time, but in... criminal enforcement.” The Complainant referenced an officer assigned to patrol the International District and said that this officer was giving different advice concerning SPD’s response to bias incidents. NE#1 told the Complainant: “there’s nothing wrong with you coordinating with other people and encouraging better behavior.” He further explained: “I can’t speak for the Command staff organization and what they do with the City...” When pushed on this, NE#1 further explained:



I'm not going to speak for what they're talking about with community leaders...so far as criminal enforcement goes, I cannot deprive someone of their rights based on rude behavior...trust me, I agree with you, they should not be jerks. They should not be speaking to you that way. I don't speak to people that way. I'm sure, it sounds like you don't speak that way to people, but there are people that are rude and even beyond rude, socially unacceptable...but there are no laws preventing them from...[in] the same way [if] I don't like someone's opinion...because of the First Amendment, they can say things that are far more atrocious than that...

The Complainant told NE#1 that he "agreed," and NE#1 reiterated: "it's offensive, it's an affront to social decency...I totally agree with you..." The Complainant confirmed: "...I understand...I get it..." NE#1 further told the Complainant: "...I would say from a social perspective and I can't speak for everybody, probably the best thing we can do, decide for ourselves that we're going to act decently with people and try to be the best example, raise our kids to be decent people..." The Complainant said: "Well, thank you for your time, I appreciate it..." NE#1 concluded his contact with the Complainant by stating:

I'm really sorry this happened to you. Obviously if someone ever takes steps to deprive you of your safety or your liberty, I'll be just as quick to jump on that...if they break the law, 100%...the best thing you can do in a situation like that is...don't get out of the car...if they...take it a step further, by all means...and if you feel unsafe, call us. And we can always show up and even if it's not criminal, we can tell them to go away.

The Complainant said that he understood and thanked NE#1 again. NE#1 then departed from the scene. As he left, NE#1 went over the radio and stated that there was "no crime."

NE#1 later completed a report concerning this incident and, as part of completing that documentation, spoke with the Complainant. The report was initially approved by NE#1's Sergeant, Named Employee #2 (NE#2), on May 12. However, it was rejected by another member of the chain of command and NE#1 was asked to add and modify information by the Bias Crimes Coordinator. NE#1 ultimately did so and the report was again approved by NE#1 on May 20, 2020. The report was deemed fully approved on May 24, 2020.

## **2. OPA Interviews**

OPA conducted interviews of both the Complainant and NE#1. OPA attempted to interview NE#2; however, he resigned from the Department and declined to participate.

### **i. Complainant**

The Complainant reiterated that he was subjected to racial slurs by the suspect. When NE#1 came to the scene, he asked the Complainant whether there was a threat of harm and the Complainant said no. He recalled that NE#1 stated that, while the suspect's comments were wrong, the suspect was entitled to exercise his First Amendment rights. The Complainant said that he asked NE#1 what SPD's protocol was to respond to these incidents, even independent of legal considerations, NE#1 appeared to be confused and then stated that there was no protocol that he was aware of and that there was no law enforcement action that could be taken. NE#1 did not provide an



incident number to the Complainant. The Complainant stated that NE#1 called him back several hours later to take a report over the phone.

The Complainant told OPA that he did not feel that NE#1 was empathic. He described NE#1 as having a “smirk” on his face when talking about the application of the First Amendment to the suspect’s speech. The Complainant also expressed concern with the lack of supervision provided by NE#2.

The Complainant spoke to multiple SPD employees, including a Detective – referred to here as the Bias Crime Coordinator – and the then-Deputy Chief of Police (now the Chief). The Bias Crime Coordinator confirmed that NE#1 should have completed a report and was trained to do so. He said that the then-Deputy Chief also indicated that this incident was not handled correctly.

## **ii. Named Employee #1**

NE#1 told OPA that he was initially unclear whether he needed to complete a report and that he did not determine that this was the case until he later spoke with NE#2. He told OPA that, after he submitted his report, it was returned to him by the Bias Crime Coordinator due to issues with the report. He made corrections that he felt were supported by the evidence and that would “match his integrity.” He wanted to be careful not to make incorrect additions/changes simply because someone else requested them.

NE#1 confirmed that he attended training on how to handle bias incidents in the months prior to his response to this case; however, he did not have a specific recollection of the content of the training at the time of his OPA interview. He felt that he had a pretty thorough understanding of the policy and that he re-reviewed it after something was “nagging” at him after he spoke with the Complainant at the scene.

NE#1 denied that he was dismissive of the Complainant at the scene. He further stated that he did not intentionally provide inaccurate information to the Complainant about SPD’s policies and protocols.

## **3. Analysis**

SPD Policy 15.120 governs the investigation of bias crimes and incidents. SPD Policy 15.120-POL-3 specifically instructs that officers will document all bias crimes and bias incidents on an offense report. Relevant to this case, the policy defines a “bias incident” as: “Offensive derogatory comments directed at a person’s sexual orientation, race, or other protected status which cause fear and/or concern in the targeted community during a non-criminal incident.” (SPD Policy 15.120-POL-3.)

In evaluating this allegation, OPA makes the following factual findings that are confirmed by the BWV, the report written by NE#1, or both: (1) NE#1 incorrectly told the Complainant that there was no law enforcement action he could take with regard to this incident; (2) NE#1 acted inconsistent with policy when he initially told the Complainant that he would not be writing a report; (3) NE#1’s initial report had a number of errors and misclassifications that yielded it inconsistent with the requirements in policy; and (4) NE#1’s report was not fully approved until May 24, approximately 12 days after the incident.

NE#1’s explanation appears to be twofold. First, he contends that he did not fully comprehend during his initial conversation with NE#1 that a report was required by policy. OPA dismisses this out of hand given that NE#1



indisputably attended a training in this area just months prior to this incident and confirmed that he understood the substance of that training.

Second, NE#1 stated that, after speaking with NE#2, he properly completed a report. However, OPA sees several problems with this. As a starting point, NE#1 should not have needed to confirm with his supervisor that a report was required. This is unambiguously stated in policy. In addition, by failing to generate a report at the outset and to convey that to the Complainant, the damage was already done. By his inaction and failure to correctly characterize the requirements of a policy, he significantly diminished the Complainant's confidence in the outcome in this investigation and in his actions, and it further gave the perception that this incident was being minimized. This is especially problematic given that the investigation of bias crimes and incidents significant area of priority for the Department. Moreover, even when the decision was made to complete the report, NE#1 did not do it correctly. His report had a number of shortcomings that went directly to requirements in the policy, including: mischaracterizing the incident – initially calling it a dispute and only later classifying it as a bias incident; failing to list the Complainant as victim, when this was clearly the case; and failing to list the suspect as the suspect. While perhaps not his intent, this provided further evidence of his mishandling of this incident and gave support to the Complainant's assertion that NE#1 minimized what he experienced.

Ultimately, OPA believes that, even though he did eventually write and complete a report that was approved, his non-compliance with the requirements of this policy in the 12 days prior were sufficiently egregious to warrant a Sustained finding.

Recommended Finding: **Sustained**

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

***15.120 – Responding to Bias Crimes and Incidents 2. Communications Will Dispatch a Sergeant to the Scene of a Bias Crime or Incident Along with the Patrol Officers***

SPD Policy 15.120-POL-2 states that the Communications Unit will dispatch a Sergeant to the scene of a bias crime or bias incident. Inherent in this policy, is the requirement that the Sergeant actually respond to the scene when notified by dispatch.

OPA's investigation indicated that NE#2 was notified of this bias incident by dispatch. However, he did not log to the call and, further, there was no evidence that he ever responded to the scene.

To explore this issue, OPA tried to interview NE#2; however, at the time of this investigation, he had resigned from the Department and he declined to participate.

OPA believes it to be problematic that NE#2 did not go to the scene even though he was notified to do so. Had he gone to the scene, it is possible that he would have helped avoid NE#1's initial incorrect description of the investigatory and reporting steps that he was required to take. Moreover, going to the scene is mandatory, not permissible. This is the case given the high priority placed on bias crime and incident investigations by SPD.

It is certainly possible that NE#2 had a good explanation for why he did not go to the scene; however, as he declined to participate in an interview, OPA does not have this information. Accordingly, OPA's decision must be based on the record before it and the available evidence indicates that NE#2 violated his policy.



For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**