



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 25, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0435

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Governor's and Chief's Orders Concerning Masks)	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Governor's and Chief's Orders Concerning Masks)	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 was alleged that Named Employee #2 may have been unprofessional towards and retaliated against the Complainant. It was also alleged that Named Employee #1 may have failed to report misconduct, and that both Named Employee #1 and Named Employee #2 did not wear facemasks when required. Lastly, it was alleged that Named Employee #3 was unprofessional to the Complainant during two phone calls.

SUMMARY OF INVESTIGATION:

The Complainant reported that she observed Named Employee #1 (NE#1) and Named Employee #2 (NE#2) not wearing facemasks and asked why they were not doing so. She reported that NE#1 and NE#2 responded rudely. She



specifically stated that NE#2 acted aggressively and dismissively towards her. She felt that this was unprofessional. She further asserted that, after their interaction, NE#2 moved the patrol vehicle and parked right in front of her apartment building. At that time, NE#2 continued to engage with her rudely. The Complainant believed that this may have been retaliatory for her contacting the officers earlier. She also contended that NE#1 just stood there and did not take any actions concerning NE#2's conduct. Lastly, the Complainant stated that she later spoke to a supervisor, Named Employee #3 (NE#3), who was unhelpful, defensive, and rude.

As a result of this complaint, OPA initiated an investigation. OPA reviewed the Body Worn Video (BWV) and third-party video that captured the interaction between the Complainant, NE#1, and NE#2. The phone calls between the Complainant and NE#3 were not recorded. OPA also interviewed the Complainant and the Named Employees.

The BWV indicated that NE#1 and NE#2 responded to a call of a stolen motorcycle from a location in Capitol Hill. While the officers were walking with the 911 caller, the Complainant confronted both officers about not wearing masks. NE#1 told her that they were taking a stolen motorcycle report. NE#2 responded that they were outside and able to socially distance. The officers got back into the patrol vehicle.

Third-party video indicated that NE#2 turned the patrol vehicle around and drove down the street, again parking. At that point, the officers sat in the patrol vehicle while NE#1 completed the report. The Complainant again confronted the officers. She asked NE#2 why NE#2 had been waving at her and antagonizing her. NE#2 denied doing so and said that she waved in a friendly manner and that this was how she waved. The Complainant told the officers to leave her neighborhood and they declined to do so. They informed her that they were going to remain there so that NE#1 could finish his report because they did not have a precinct. The Complainant began to yell: "Defund SPD." She also told the officers that they did not have a precinct because they "threw grenades" at their "own people."

During her OPA interview, the Complainant reiterated her belief that the officers were unprofessional. She was especially upset by the officers' decision to park in front her apartment and NE#2 waving at her. She felt that NE#2 was mocking and purposefully escalating her. The Complainant explained that she was fearful of police parking in her neighborhood because her partner was a person of color and the partner's life could be taken by the police. She felt that NE#2, and potentially NE#1, should lose their jobs. The Complainant also believed that NE#3 was unprofessional to her during their telephone conversations. She did not think that NE#3 was compassionate or interested in taking her complaint.

NE#1 said that the Complainant was immediately hostile towards him and NE#2. He did not believe that either of their initial comments to the Complainant were unprofessional. NE#1 said that when they moved the patrol vehicle, they did not do so to purposefully antagonize the Complainant. He acknowledged that NE#2 waving at the Complainant and some of her subsequent discussion with the Complainant were unnecessary and should have been avoided. However, he did not believe that this was serious misconduct that he was required to report to a supervisor and/or OPA.

NE#2 also felt that the Complainant was unduly hostile towards them and believed that the Complainant simply did not like the police. She acknowledged stating, in response to the Complainant's initial directions that she should leave the neighborhood, that the police should not be called to respond there then. NE#2 agreed that this was probably not the best way to start the interaction but cited her frustration with the Complainant's comments. NE#2 said that she moved the patrol vehicle to the location across from the Complainant's building because it gave the officers a clear view down the alley. She denied that it was to antagonize or retaliate against the Complainant. NE#2



admitted waving at the Complainant. She stated that she often waved at people. She said that, “in hindsight,” it was not a good idea, but that it did not seem like a “big deal” at the time. However, she did not believe that this constituted retaliation.

NE#3 did not believe that she was unprofessional during her calls with the Complainant. She said that, during both of the calls, the Complainant was difficult to communicate with and went off on “tangents.” NE#3 stated that she tried to stay neutral and to steer the Complainant back to the issue at hand. At one point, the Complainant accused NE#3 of being “uninterested.” NE#3 said that she then tried to be friendlier, but that the Complainant also took umbrage with this. NE#3 recalled telling the Complainant to “have a nice day” at the end of their first call. While NE#3 was being genuine, she recalled the Complainant being angry about this. NE#3 acknowledged that, at one point during the second call, she laughed out loud. She said that she did so, not as an affront at the Complainant, but at her confusion with the conversation. NE#3 asserted that she tried to be helpful to the Complainant, but she was unsuccessful. She felt that the Complainant was “struggling” with something, perhaps anxiety. NE#3 denied that she took the officers side or that she accused the Complainant of being “anti-cop.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (*Id.*)

NE#1 asserted that he did not violate this policy because NE#2 did not, in his perspective, engage in serious misconduct, and, as a result, he was not required to report it. OPA disagrees. This policy requires that minor misconduct, as well as serious misconduct, be reported by officers. While OPA concurs that NE#2 did not engage in serious misconduct, she did engage in minor unprofessionalism that should have been reported by NE#1.

In addition, NE#1 also had a duty to try to prevent a violation of public trust – here NE#2’s unprofessional conduct. He could have done so by telling NE#2 to stop interacting with the Complainant or by encouraging her to leave.

OPA believes that NE#1’s failure to report and failure to mitigate are more deserving of retraining than discipline. Fundamental to this determination is the recognition that the misconduct at issue was not serious and that he has not violated this policy before.

- **Training Referral:** NE#1 should be reminded of the requirements set forth in this policy to both report minor misconduct and to mitigate ongoing policy violations when needed. He should be counseled to more closely comply with this policy moving forward. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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



Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Governor's and Chief's Orders Concerning Masks)

The BWV clearly indicated that both NE#1 and NE#2 were not wearing facemasks during this incident. Even though they were, at times, more than six feet away from each other and outside, they still should have worn facemasks. Moreover, the officers were on notice of the requirement to do so, as a Department-wide email setting this expectation was sent on June 25, 2020, several days before this incident.

However, given that this is both officers' first documented incidence of the failure to wear a facemask when required, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 and NE#2 should be reminded of the requirement to wear facemasks when needed. Further non-compliance with this requirement will result in the potential imposition of discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

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.)

Based on OPA's review of the totality of the evidence, OPA concludes that NE#2's statements and demeanor towards the Complainant were unprofessional. Specifically, her comment that those in the neighborhood should not call the police and her waving at the Complainant were unnecessary and escalating. This was the case even though the Complainant was, herself, unnecessarily aggressive towards the officers at times. Simply stated, NE#2, by function of her employment as an SPD officer, is held to a higher standard and did not meet that standard here.

However, OPA notes that NE#2 acknowledged that what she said and did served no legitimate law enforcement purpose. OPA also recognizes that NE#2 has no prior history of unprofessionalism, or even any prior allegations of unprofessional behavior. This informs OPA's decision that, while she acted contrary to policy here, the better remedy is retraining and instruction that future similar conduct will not be tolerated.

- **Training Referral:** NE#2 should be provided with retraining on the professionalism policy and on the Department's expectations of her conduct and demeanor when interacting with community members. She should be counseled concerning her conduct here and encouraged to avoid similar occurrences in the future. Lastly, NE#2 should be informed that any subsequent unprofessionalism will likely result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.



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

Named Employee #2 - Allegation #2

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.*)

There is insufficient evidence in the record to support a finding that NE#2 engaged in retaliation. As a starting point, NE#2 provided an explanation for why she moved her patrol vehicle to the location across from the Complainant’s building. There is no evidence that OPA is aware of contradicting this. In addition, even had NE#2 moved her patrol vehicle there in order to position herself across from the Complainant, this would almost certainly still not rise to the level of retaliation. This is due to the fact that there was no discernable action taken towards the Complainant except for the wave and waving one’s hand would not be sufficient to establish retaliation when applying precedent cases.

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

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Governor's and Chief's Orders Concerning Masks)

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

Named Employee #3 - Allegation #1

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

There are irreconcilable disputes of fact between the accounts provided by the Complainant and NE#3. Given the lack of an audio recording of their phone conversations and without any independent witnesses, OPA cannot conclusively determine what was said by NE#3 and whether NE#3’s statements or demeanor were unprofessional. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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