



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 5, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0165

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 | Sustained |
| # 2 | 5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy | Not Sustained (Management Action) |
| Imposed Discipline | | |
| Written Reprimand | | |

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 failed to wear a facemask during multiple traffic stops and while in close proximity to others. OPA further alleged that the Named Employee was unprofessional during three of those traffic stops.

ADMINISTRATIVE NOTE:

As discussed more fully below, after the discipline meeting in this matter, OPA changed its finding on Allegation #2 from Sustained to Not Sustained – Management Action Recommendation. The Sustained finding issued for Allegation #1 remains unchanged.

SUMMARY OF INVESTIGATION:

OPA received a complaint from the Complainant, in which it was alleged that Named Employee #1 (NE#1) and another unidentified SPD officer were pulling over vehicles without their facemasks on. As part of its investigation, OPA contacted the Complainant. The Complainant stated that he observed NE#1 conduct multiple traffic stops in the location of the incident over the course of a week. He said that, during all of those incidents, NE#1 did not wear a facemask.

Given the information provided by the Complainant, OPA reviewed Body Worn Video (BWV) capturing NE#1's activities on March 31, 2021 – the date identified by the Complainant, as well as BWV from March 29, 2021 and March 30, 2021. OPA's review indicated that NE#1 did not wear a facemask during any of the traffic stops he conducted in



the location of the incident, as well as that he may have engaged in unprofessional interactions during three of the stops (Stop #1, Stop #3, and Stop #4). The incidents relevant to OPA's assessment are described below.

- **Stop #1:** On March 29, NE#1 pulled a motorist over. He was not wearing his facemask. NE#1 told the motorist that she had been stopped for expired tabs and asked for her license, registration, and proof of insurance. The motorist, who appeared to be elderly, asked NE#1 what he said, and he repeated that he needed her license and registration. She clarified that she did not hear the "previous part" of what NE#1 said. NE#1 repeated that he needed her license and registration. The motorist said: "Would you tell me what I've done wrong, please?" NE#1 responded: "I'm not you, I don't know. What did you do wrong?" When the motorist again asked what she did wrong, NE#1 repeated his request for her registration. After she gave him the documents, NE#1 told her that she had been stopped for expired tabs.
- **Stop #2:** On March 29, NE#1 responded to a vehicle collision in Ballard. He did not wear a facemask during his time on scene, including when interacting with others.
- **Stop #3:** On March 31, effectuated a traffic stop and was repeatedly asked by the motorist to put on a facemask. NE#1 ignored this request and did not respond to the motorist.
- **Stop #4:** On March 31, NE#1 stopped a motorist and informed her that she was being pulled over for using an electronic device. The motorist asked when she had used the device and NE#1 responded: "driver's license." The motorist said: "No, I can ask you a question because I'm a citizen, I pay your salary. When was I using an electronic device?" NE#1 replied: "you're not paying my salary." He again asked the motorist for her information. She provided it and said: "Oh, I'm not? Okay." The motorist remarked to NE#1: "I don't understand why you can't answer my question; I guess that's the issue with law enforcement. You just ignore everybody's questions, and you just do whatever you want." NE#1 told her: "okay, you're not in control." The motorist responded: "oh, I'm not? Okay that's weird, because I thought that..." NE#1 interjected: "you thought you were? Okay, you were misguided then." The motorist asked NE#1 if he was in control because he was a police officer and NE#1 replied: "Who's stopping who right now?" NE#1 continued: "I'm telling you, I stopped you for using an electronic device." The motorist said that she was not using an electronic device and NE#1 repeatedly asked her what she was doing. She asked him when he was referring to. NE#1 retorted: "What, yesterday? What do you think?" The motorist struggled to find her proof of insurance and NE#1 remarked that she seemed a "little frazzled." He told the motorist that he was going to write her a warning but that he wanted her to acknowledge the infraction and to cooperate. He noted that she might be having a "bad day." He issued the motorist the warning and she apologized.
- **Stop #5:** NE#1 responded to another vehicle collision on March 31. Again, as with the other incidents, he did not wear a facemask even though he interacted with community members while at the scene.

As part of its investigation, OPA interviewed NE#1. He confirmed that he did not wear a facemask during any of these incidents and raised the same justifications that he asserted in 2021OPA-0125. With regard to his compliance with SPD's professionalism policy, he said that he does not like to get involved when people ask him questions and that, by not doing so, he de-escalated situations. He said that, during some stops, his goal was to educate the driver and to get them to accept responsibility for their actions. He stated that this is what he was doing with the motorist who was stopped for using an electronic device. He further explained that, by not engaging with motorists and answering



questions, he was controlling the stop. He stated that his practice was to ignore questions, repeatedly ask for the motorist's information, and, when the information was provided, then restate the basis for the stop. NE#1 denied that he acted unprofessionally during any of the incidents identified in this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.) 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 finds that NE#1 violated the Department's professionalism policy in three of his interactions with motorists detailed above.

In the first – Stop #1, OPA finds that NE#1 acted contrary to SPD's policy when he ignored her initial requests concerning why she was stopped and when he responded to her queries by saying: "I'm not you, I don't know. What did you do wrong?" This statement was unnecessary, disrespectful, and counter to the expectations of SPD officers' conduct.

In the second – Stop #3, OPA finds that NE#1 violated SPD policy's when he ignored the motorist's requests that he put on a facemask and provided no response whatsoever. This was similar to what occurred in 2021OPA-0125, which also resulted in a recommended Sustained finding.

In the third – Stop #4, OPA concludes that NE#1 acted contrary to policy when he ignored the motorist's questions and then spoke to her rudely and dismissively throughout the stop. This included when he told her that she was not in control and that she was misguided if she thought she was, as well as when he dismissively responded to her question of when she was using an electronic device.

In reaching these findings, OPA notes that NE#1's unprofessionalism in this case is virtually identical to his behavior in 2021OPA-0125. In both cases, he ignored questions posed by motorists, was rude to them, and treated them dismissively. In OPA's perspective, this is simply an unacceptable pattern of behavior that needs to cease.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy



SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This policy was alleged based on the potential that NE#1 violated the mandates on facemasks issued by both the Governor and the Chief of Police.

In 2021OPA-0125, OPA evaluated NE#1's failure to wear his facemask during a traffic stop. In that case, OPA found that whether or not Traffic officers – and, specifically, motorcycle officers – should do so was a systemic question that needed to be resolved by the Traffic Section's chain of command. Accordingly, OPA issued a Management Action Recommendation in which it requested that the Traffic Section ensure that, if motorcycle officers were not expected to wear facemasks, an official exemption be sought. OPA further informed the chain of command that, if this was not done, OPA would hold it accountable, as well as the officers who did not wear facemasks.

The present case, however, was different in that it involved both traffic stops and prolonged investigations into collisions. OPA opined that the reasoning that applied to traffic stops did not also apply to collision investigations, where OPA believed that the timing and safety concerns were less compelling. As such, OPA recommended a Sustained finding for the failure to wear a facemask during the collision investigations.

At the discipline meeting in this matter, the chain of command recognized the distinction called out by OPA but contended that this was still a systemic issue that needed to be resolved by unit supervisors. They further committed to addressing this matter promptly and notifying OPA as to the result. Given this, OPA agreed to change its finding from Sustained to Not Sustained – Management Action Recommendation.

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