



CLOSED CASE SUMMARY

TO: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DATE: SEPTEMBER 23, 2021

FROM: DIRECTOR ANDREW MYERBERG *AM*
OFFICE OF POLICE ACCOUNTABILITY

SUBJECT: DIRECTOR'S CERTIFICATION MEMO 2021OPA-0171

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Allegations of Misconduct and the Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 14. Retaliation is Prohibited	Sustained
# 2	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained (Management Action)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee failed to wear a facemask during a traffic stop, that the Named Employee treated him unprofessionally during the stop, and that the Named Employee issued him a citation for his staying that he wanted to file a complaint.

SUMMARY OF INVESTIGATION:

OPA received a complaint from the Complainant, in which it was alleged that Named Employee #1 (NE#1) violated Department policies during a traffic stop. The Complainant said that NE#1 pulled him over because his tabs were admittedly expired. The Complainant noted that NE#1 was not wearing a facemask during the traffic stop and did not answer his questions concerning the lack of a facemask. The Complainant felt that both were improper.

He told OPA that, on a previous date, his vehicle had been broken into and his registration stolen. The officer who responded to the vehicle theft advised him to seek his new registration and new tabs at the same time. The Complainant said that he provided this information to NE#1 at the time of the stop. NE#1 took the Complainant’s license and walked over to his motorcycle. NE#1 returned to let the Complainant leave. The Complainant then asked NE#1 for his name and badge number. In response to this, NE#1 again took possession of the Complainant’s license and issued him a citation. The Complainant believed that the citation was only issued because he sought information to make a complaint. Accordingly, the Complainant alleged that this constituted retaliation.

Aside from interviewing the Complainant, OPA reviewed the Body Worn Video (BWV) of the traffic stop, examined the citation NE#1 issued, and interviewed NE#1.

The BWV showed the entirety of the stop. At the outset, NE#1 told the Complainant that he was being stopped for expired tabs. The Complainant said that he spoke with another officer and said that he had ordered new tabs. The Complainant asked NE#1 if he had a mask a number of times. NE#1 did not respond and told the Complainant to turn over his identifying information. The Complainant said: “Sir, I’m just asking if you have a mask.” NE#1 replied: “You have one, I don’t need to give you one.” The Complainant then indicated that he would roll up his window for his protection. NE#1 told the Complainant that he could not hear him. The Complainant said that, if NE#1 put on a facemask, he would roll down his window. NE#1 replied: “I’m not going to go buy a mask, that’s not going to make me hear you.” The Complainant asserted that NE#1 spit on his window, and NE#1 denied doing so.

NE#1 took the Complainant’s license and said that he would be back. NE#1 then walked over to his motorcycle where he accessed his MDT system. NE#1 returned to the Complainant, handed him back his license, and said that the tabs



would “be there soon.” The Complainant then asked for NE#1’s name and badge number. NE#1 gave the Complainant this information and then asked the Complainant whether his expiration was expired. The Complainant responded, but what he said could not be discerned on the BWV.

NE#1 told the Complainant that he could not hear what he was saying and asked for his license again. The Complainant said: “I thought you had what you needed?” NE#1 requested his license and “whatever expired registration” the Complainant had. The Complainant said: “But I don’t have registration.” NE#1 took the license and walked back to his motorcycle. He printed out a citation and handed it to the Complainant. The Complainant asked NE#1 whether he would be in court and NE#1 replied: “It’s all on there.” He then walked away from the Complainant without explaining the citation.

OPA reviewed the citation ultimately issued by NE#1. It was for expired tabs, not for the absence of registration. NE#1 wrote the following narrative:

The def was west on Broad st, just east of Denny way, driving with tabs expired 10/2020. The def stated his vehicle registration had been stolen but did not have a reason why the tabs were expired for so long. The def was cited for the tabs and not for no registration.

At his OPA interview, NE#1 said that he pulled the Complainant over for expired tabs. He acknowledged that he was not wearing a facemask. He stated that he did not respond to the Complainant’s questions regarding the facemask because the “questioning had nothing to do with the traffic stop.” He recalled using his MDT system several times during the stops but did not remember exactly why he did so on each occasion. He confirmed that, upon his initial return to the Complainant’s vehicle, he told him that the tabs were on their way. At that point, the Complainant asked NE#1 for his name and badge number, and he provided this information. NE#1 stated that he then issued the Complainant a citation.

In explaining why he did so, NE#1 told OPA that the Complainant: “still wasn’t taking the stop seriously. So I decided at that point, that I would write [the Complainant] a citation so that – because [the Complainant] wasn’t taking seriously – the citation he could deal with the citation instead of trying to air things out through a crack in a window.” NE#1 further told OPA that his interaction with the Complainant: “wasn’t going to go anywhere at this point. [The Complainant] just wanted my name and serial number and didn’t want to talk to me about the stop. He seemed like he wasn’t even interested in that part of it, the infraction.”

NE#1 said that, at this time, he still had investigatory steps that he was completing. He further said that he would sometimes return licenses to motorists so that he would not forget to do so later, but that this, by itself, did not mean that he absolutely was not going to engage in further (or any) enforcement activity.

OPA asked NE#1 why he chose to issue the citation at the specific moment after the Complainant requested his name and badge number. NE#1 said that he “still didn’t have the information [he] needed partly because [he] couldn’t hear, and the other [being that the Complainant] wasn’t being clear.” NE#1 noted that the Complainant asserted that his registration had been stolen; however, according to NE#1 this “still didn’t explain tabs getting expired.” NE#1 said that, during the first occasion he returned to his motorcycle, he was looking to “get whatever information [he] was looking for [and to provide the Complainant] time to maybe recollect his thoughts.” He told OPA that it was not uncommon for him to go back and forth from his motorcycle to the motorcycle as he continued to collect information.



Lastly, with regard to his not wearing a facemask, NE#1 renewed the arguments and explanations he made in a previous case – 2021OPA-0125.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

The Complainant alleged that NE#1 retaliated against him by issuing him a citation. The Complainant pointed to the fact that NE#1 handed him his license and only demanded it back and cited him after the Complainant asked for NE#1’s identifying information.

NE#1 said that he cited the Complainant because the Complainant did not seem to be taking the stop seriously. He contended that the stop was still ongoing at the time and simply because he had handed the Complainant his license back did not mean that a citation would not be issued.

From OPA’s review of the BWV, three main conclusions were reached. First, when NE#1 initially handed the license back to the Complainant, the stop was concluded, and no more enforcement action was going to be taken by NE#1 at the time. Supporting this finding is the fact that, when he handed the license back, NE#1 told the Complainant that his tabs were on the way. Had he intended to cite the Complainant for expired tabs at that time, it seems logical that he would have said so. It also makes no sense that the citation would be issued given that NE#1 knew that he had active tabs that were in transit. Second, NE#1 requested the license back virtually immediately after the Complainant asked for his identifying information and after he had previously intimated that the stop was over. This indicates that the request was based on the Complainant’s statement and not because other evidence was discovered supporting the citation. Third, no new information was learned between the time that NE#1 returned to the vehicle and when he asked for the license. This undercuts his contention that he was somehow continuing to investigate the incident when walking between the vehicle and his motorcycle.

Had NE#1 actually cited the Complainant for the lack of registration, this would actually be a harder case to evaluate. However, given that the citation was for tabs and appeared to have been solely issued based on the Complainant’s request for NE#1’s identifying information, OPA finds it retaliatory and improper. Notably, issuing a citation qualifies as adverse action against the Complainant, who had every right to request NE#1’s identifying information and to file a complaint against him.

For these reasons, 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.

OPA previously investigated NE#1's allegation non-compliance with the facemask mandate in 2021OPA-0125 and 2021OPA-0165. In those case, NE#1 asserted that he did not wear a facemask during traffic stops because he could not wear them while operating his motorcycle – as they caused his protective glasses to fog up, because he was not trained to remove his helmet while conducting the stop, and given that taking his helmet off could pose a safety risk. OPA ultimately 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. As this case presents similar facts, OPA reiterates that Management Action Recommendation here.

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

Named Employee #1 - Allegation 3

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 during his interaction with the Complainant. In reaching this finding, OPA notes that this case is virtually identical to 2021OPA-0125 and 2021OPA-0165. In all three cases, NE#1 ignored a motorist's questions surrounding the lack of a facemask and requests that he put on one. Moreover, here, NE#1's interaction with the Complainant, including surrounding his wearing and possession of a mask, was rude and dismissive.

OPA notes that NE#1's conduct in citing the Complainant in a retaliatory fashion was also unprofessional, but that this behavior is better captured above (see Named Employee #1 – Allegation #1) and is not reanalyzed here.

Ultimately, OPA concludes that NE#1 acted unprofessionally during this incident and recommends that this allegation be Sustained.

Recommended Finding: **Sustained**