



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0086

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Lawful and Proper
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Sustained

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 Named Employee #1 (NE#1) made biased and unprofessional commentary in a police report.

SUMMARY OF INVESTIGATION:

On May 29, 2021, NE#1 responded to an incident under a bridge leading to West Seattle, where he found a civilian and a damaged car. According to NE#1’s Incident/Offense report, he made visual assessments of the civilian and vehicle. (Seattle Police Department Report 2021-132653). NE#1 described the civilian as having a strong odor of alcohol and burnt cannabis, bloodshot and watery eyes, and slurred speech. He also noted the civilian swayed during a conversation with NE. The vehicle was missing its grill and leaking coolant. Based on NE’s knowledge, training, and experience, he concluded the civilian was the impaired driver of the apparently crashed vehicle. The civilian was arrested for *Persons Under the Influence of Intoxicating Liquor, Marijuana, or Any Other Drug*. Seattle Municipal Code 11.56.020. While NE#1’s report addressed his on-scene observations and the circumstances surrounding the civilian’s arrest, it also included NE#1’s DUI investigation experience, shift activities prior to the DUI arrest, what led to NE#1’s involvement in the stop, and commentary the Complainant deemed irrelevant political rhetoric. In response, on March 14, 2022, the Complainant filed an online complaint with OPA. OPA’s investigation included reviewing Body Worn Videos (BWV), In-Car Videos, and documents related to this incident (including, but not limited to, police and Computer Aided Dispatch Call reports). OPA also interviewed the Complainant, NE#1, and Witness Employees (WE#1 and WE#2), who oversaw NE#1’s assigned unit.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.140-POL prohibits biased-based policing. “Bias-based policing is the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” “The intent of this policy is to increase the Department’s effectiveness as a law enforcement agency and to build mutual trust and respect with Seattle’s diverse groups and communities.” To that end, “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” Such “discernible personal characteristics” include but are not limited to “political ideology.”

Here, in an Incident/Offense report for an unrelated DUI stop, NE#1 included commentary about his encounters with political groups earlier that shift and political views about what led to those encounters. Specifically, he noted spending the first half of a 13-hour shift “managing the weekly DSA, Antifa, and various other groups that the city has allowed to grow and flourish by not using the authority of government to keep order and marginalize political violence.” On March 14, 2022, after reading NE#1’s report, the Complainant an administrative investigation with OPA. OPA followed up with a phone interview with the Complainant. During that interview, the Complainant reiterated her belief NE#1 inappropriately espoused political views in a police report. The Complainant acknowledged protests, in response to the anniversary of George Floyd’s murder, occurred the day of the civilian’s arrest but noted those protests had no apparent nexus with the civilian or his DUI arrest. The Complainant further stated NE#1’s remarks falsely identified those protestors as DSA and Antifa affiliated, when it was a heterogeneous group commonly frustrated with police violence.

On August 10, 2022, OPA interviewed NE#1. NE#1 said he identified the protestors as DSA and Antifa based on signs he observed during the demonstration. He conceded the civilian’s DUI arrest was unrelated to the political encounter and opinions offered in his report, but argued his comments were nevertheless justified given NE#1’s experience with defense attorney questioning during probable cause hearings. According to NE#1, defense attorneys routinely required him to outline his entire day leading up to an incident. NE#1 was unable to articulate the rationale or value of that line of questioning, dismissing it as a tactical distraction used by defense attorneys. NE#1 also claimed a superior officer directed him to include language about “the city’s prior failings” in reports. When pressed to identify the superior officer, NE#1 replied “I have no idea. But it was repeated several times to us as we wrote reports and UoF statements. Likely it was at the command level.”

In response, OPA interviewed WE#1, who led SPD’s Community Response Group, NE#1’s unit at the time in question. WE#1 recalled briefing subordinate officers on planned demonstrations that day. He also acknowledged ordering officers to prepare complete reports detailing their professional experience, observations, and other important information. The intent behind the order was to capture accurate and detailed information about officers’ involvement in incidents. WE#1 also instructed NE#1, and others, to provide relevant and significant information necessary to support criminal charges and aid their recollection in preparation for court.

OPA also interviewed WE#2. At the time in question, the Community Response Group was under WE#2’s command. WE#2 denied directing subordinate officers to include in reports unrelated details about events leading up to the subject incident. However, he acknowledged that order possibly came from someone under WE#2’s chain-of-



command. WE#2 found it unnecessary but not unreasonable to include such information in reports, depending on the commander's objective. Specifically, pertaining to NE#1's report, WE#2 did not see the value or context added by NE#1's statements unrelated to the DUI stop. WE#2 described the comments in question as "an unnecessary editorial."

While OPA does not find NE#1's extraneous political commentary added any material value to the DUI investigation or contributed to building mutual trust and respect with Seattle's diverse groups and communities as intended by the bias-free policing policy, there is insufficient evidence to find NE#1's actions amounted to "prejudice or derogatory comments concerning discernible personal characteristics." While discrimination based on political ideology is prohibited by Department policy, NE#1's comments did not necessarily criticize the mentioned political groups. Instead, NE#1 condemned what he deemed a lackluster governmental response to political demonstrations.

Accordingly, OPA recommends this allegation be Not Sustained- Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-10 requires officers to "strive to be professional." Specifically, the policy provides, "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 prohibits on-duty employees from publicly ridiculing the Department or its policies. "This applies where such expression is defamatory, obscene, undermines the effectiveness of the Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth." Police reports are public records. (see Seattle Police Department Manual 12.080 Department Records Access, Inspection & Dissemination).

Here, NE#1 publicly criticized "the city," thereby his Department, for "not using the authority of government to keep order and marginalize political violence." That kind of public rebuke, particularly coming from an officer, undermines public trust in the Department. Specifically, NE#1's conduct could cause a reasonable person to question the Department's effectiveness at managing what he described as "political violence." It may also cause the public, as it did the Complainant, to interpret NE#1's commentary as support for the Department to increase aggression toward political groups exercising constitutional rights. The flagrancy of NE#1's editorializations is heightened by their irrelevance to the investigation at hand. In a DUI report, NE#1 unnecessarily included information about political protest that occurred hours earlier and his views on "the city's failures." None of which had any connection to the DUI investigation or the subject of that arrest.

Rather, than simply reporting observations, relevant, and contextual facts in his report, NE#1 took the opportunity to espouse political commentary. A police report is a device useful for many purposes, such as recording a contemporaneous recollection of what the officers observed and what they understood people to have told them. *Olivas-Motta v. Holder*, 746 F.3d 907, 918–19 (9th Cir. 2013)]. Similarly, NE#1 provided unnecessary social commentary in response to the civilian accusing him of aggressive behavior:



(The civilian) was offended by me standing close to him and accused me of being aggressive. This is not uncommon especially in todays social environment. Many people believe that if they call an Officer (or anyone they are interacting with) aggressive or disrespectful that the Officer will simply back way off in anticipation of the barrage of complaints that makes life very hard for Officers.

Overall, NE#1's rhetorical liberties undermine public trust and confidence in an objective and effective Department.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**