



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number 2016OPA-1514

Issued Date: 08/10/2017

| Named Employee #1 | |
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| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Inconclusive) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 15.260 (3) Collision Investigations: Officers May Assist Motorists in Non-Reportable Collisions (Policy that was issued December 1, 2015) |
| OPA Finding | Not Sustained (Training Referral) |
| Allegation #3 | <u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015) |
| OPA Finding | Not Sustained (Training Referral) |
| Allegation #4 | <u>Seattle Police Department Manual</u> 15.260 (4) Collision Investigations: Officers Shall Take Enforcement Action in Reportable Non-Felony Collision Investigations (Policy that was issued December 1, 2015) |
| OPA Finding | Not Sustained (Training Referral) |
| Allegation #5 | <u>Seattle Police Department Manual</u> 15.260 (2) Collision Investigations: Officers Take Collision Reports For All Mandatory Reportable Collisions (Policy that was issued December 1, 2015) |
| OPA Finding | Not Sustained (Training Referral) |

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| Final Discipline | N/A |
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INCIDENT SYNOPSIS

The Named Employee arrived on a collision call involving two vehicles.

COMPLAINT

The complainant alleged the Named Employee refused to write a collision report even though the complainant specifically requested one. The complainant believed the damage was extensive enough to require a report. The complainant further alleged the Named Employee failed to use her discretion appropriately in deciding not to issue a citation to the other driver who, in the complainant's opinion, was clearly at fault. Finally, the complainant alleged the Named Employee's decision not to take a report and not to issue a citation may be a result of "unintended bias" against the residents of that neighborhood.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Videos (ICV)
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

The complainant was the son of one of the involved drivers in a collision. The complainant's father hit a door that had been left open by the other involved driver. After her initial investigation, Named Employee #1 chose, in her discretion, not to cite either driver and to complete an Exchange of Information form, rather than a Collision Report. The complainant alleged that Named Employee #1's decision to not take a Collision Report or issue a citation to the other involved driver was potentially the result of an "unintended bias" against the residents of the complainant's neighborhood who, according to the complainant, were primarily immigrants, refugees and minorities whose primary language was not English.

Manual Policy 5.140(2) requires that "[e]mployees shall not make decisions or take actions that are motivated by bias, prejudice, or discriminatory intent." While Named Employee #1's decisions not to cite and to complete an Exchange of Information form were questioned below, they did not appear to have been based on bias. Named Employee #1 spoke with the complainant, on behalf of his father, and the other driver involved in the collision, inspected the evidence at the scene, and, according to her account at her OPA Interview, could not make a

definitive determination of who was at fault. Named Employee #1 believed, based on her investigation, that the other involved individual had left his door open into traffic, possibly in violation of SMC 11.58.050. Named Employee #1 also believed, however, that the complainant's father bore fault for inattentive driving, as he did not pay sufficient attention to avoid the hazard that the door presented.

The decision to not cite also did not appear to have been motivated by the language barrier between Named Employee #1 and the complainant's father. Named Employee #1 was informed prior to arriving at the scene of the potential language barrier; however, Named Employee #1 appeared to have been able to obtain a full account of what occurred from the complainant. Named Employee #1 did not appear to have spent more time discussing the incident with the other driver and did not appear, from a review of the ICV, to have treated the involved parties disparately. At her OPA interview, Named Employee #1 stated that she handled the call as she would any other and that her ultimate decisions were in no way impacted by a language barrier or bias.

Manual Policy 15.260(3) concerns the provision of reports to motorists involved in a collision. The policy allows officers to provide an Exchange of Information form to facilitate the exchange of information between the involved drivers. The policy also requires officers to provide a General Offense Report or a Collision Report if requested by the drivers. The complainant asserted that he, on behalf of his father, requested that a Collision Report be generated. If this was true, the failure by Named Employee #1 to take such a report would have been in violation of policy. However, from a review of the ICV, there was no indication that such a request was made. Named Employee #1 told the complainant and the other involved driver that: "Seattle doesn't take, doesn't write actual reports for minor damage, but we can assist with the exchange of information." However, Named Employee #1 did not inform the involved parties that were they to request such a report it would be provided. This statement and omission may have served to prevent the parties from seeking a report.

Manual Policy 5.001(5) provides that officers "are authorized and encouraged to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment." Notably, the grant of discretion is not permission to violate policy when it appears necessary to an officer, but instead to empower the officer to use experience and judgment to craft solutions to fit what are often unique scenarios. As the policy indicates, the exercise of such discretion is to be encouraged in officers. Were the incident in this case a collision that required mandatory reporting, the decision by Named Employee #1 to not issue any citations would have been in violation of policy. However, given that Named Employee #1 deemed the collision to not require mandatory reporting, she had the discretion to cite either, both, or neither of the involved individuals. While the information now known indicates that a Collision Report should have been completed and that at least one of the drivers should have been cited, the OPA Director could not find that Named Employee #1's exercise of discretion was in violation of policy.

Manual Policy 15.260(4) requires that officers shall issue citations or notices of infraction as appropriate in any reportable non-felony collision. As Named Employee #1 did not believe that the incident was a mandatory reportable collision, she further did not believe that she was compelled to issue citations. At her OPA interview, Named Employee #1 stated that to the extent she had been required to take a Collision Report, she would have cited both drivers. However, as she did not believe she was so required, she decided, in her discretion, not to cite either. There was no evidence indicating that this decision was based on a language barrier between Named Employee #1 and the complainant's father, or on a desire of Named Employee #1 to conduct an abbreviated investigation in order to attend a scheduled meeting with her Sergeant. Even though later learned information indicated that a Collision Report was required, the OPA Director could not say that Named Employee #1's failure to take such a report or to cite either or both drivers was a violation of policy.

Manual Policy 15.260(2) states that officers "must take Collision Reports for all mandatory reportable collisions," which includes incidents where there is "damage to the property of any one person to an apparent extent of \$1,000 or more." Here, Named Employee #1 contended that, based on her experience, she believed the damage to be below \$1,000. Named Employee #1 indicated that this was an estimate and stated, in regard to how she reached that determination: "I don't have any formal training, but it seemed very minor." Named Employee #1 recalled "minor damage...to the right front bumper area" of the complainant's father's vehicle," scuff marks, and that the door to the other vehicle, which had been left ajar, would not close. Other than "paint missing or just scuff marks," Named Employee #1 did not remember any dents or other significant structural damage.

Later information from the complainant's father's insurance company indicated that there was damage to the right front and front pillar of the complainant's father's vehicle. Moreover, the damage to the complainant's father's car totaled over \$3,000, and the damage to the other vehicle totaled over \$4,000. While there was no expectation that Named Employee #1 be able to appraise the value of the damage to a degree of absolute certainty, the discrepancy between her estimate at the scene and the actual value was significant. Given this later learned information, a Collision Report would have been required.

FINDINGS

Named Employee #1

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Collision Investigations: Officers May Assist Motorists in Non-Reportable Collisions*.

Recommended Training: The OPA Director recommends that Named Employee #1 be required to attend training on reporting requirements surrounding collisions and the rights of involved drivers to request and obtain either a General Offense Report or a Collision Report, as set forth in 15.260(3).

Allegation #3

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees May Use Discretion*.

Recommended Training: The OPA Director refers to the recommended training set forth in Allegations #2 and #5.

Allegation #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Collision Investigations: Officers Shall Take Enforcement Action in Reportable Non-Felony Collision Investigations*.

Recommended Training: The OPA Director refers to the recommended training set forth in Allegations #2 and #5.

Allegation #5

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Collision Investigations: Officers Take Collision Reports For All Mandatory Reportable Collisions*.

Recommended Training: The OPA Director recommends that Named Employee #1 be required to attend training on evaluating damage in vehicle collisions and the requirements of Manual Policy 15.260(2).

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.