



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2018

CASE NUMBER: 2017OPA-0820

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 2	6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Training Referral)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 3	6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Training Referral)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Management Action)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 6. Screening Sergeant Will Approve Report	Sustained

Imposed Discipline

Oral 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 Employees made several untrue statements in the general offense report and failed to provide him with Miranda warnings. The Complainant further alleged that Named Employee #2 was rude and condescending to him. During its intake investigation, OPA determined that the general offense report may not have been thorough, complete or accurate, as required by policy, as well as that there were discrepancies that were not resolved. Additionally, OPA determined that Named Employee #3 may have failed to complete an arrest screening report as required by policy.



STATEMENT OF FACTS:

The Complainant alleged that he was pulled over for driving the wrong way down a one-way street. The Complainant stated that officers wanted him to do a field sobriety test “which [he] complied with.” The officers then requested he take a breathalyzer, which he refused to do. Instead, the Complainant “advised that [he] would take a blood test.” The Complainant explained that, during the stop, the officers asked for his license, “which was in [his] car” but could not be located at that the time of the request. The Complainant stated that he instead gave the officers his “State ID card.” The Complainant further contended that the officers were dishonest in their reporting. Specifically, he alleged: (1) the officers wrote that he failed to sign a Notice of Right to Hearing but this document was never presented to him; and (2) the officers wrote that the Complainant refused a breathalyzer at the Kitsap County Jail when he actually refused the breathalyzer at the scene.

The Complainant was interviewed by OPA during its investigation. The Complainant repeated his allegations and added that the officers did not inform him of his Miranda rights when he was arrested and did not tell him that if he did not provide a breath sample his license would be suspended for a year. He also alleged that the officers were overzealous, referring to NE#2. The Complainant lastly asserted his belief that he was targeted based on the fact that he had a drunk passenger in his car and because the officers were trying to make quotas.

The entirety of this incident was captured by the Named Employees’ In-Car Video (ICV). The ICV showed that the Named Employees stopped the Complainant’s vehicle, had him step outside of the vehicle, and then had him go through a series of sobriety tests. At the time of this incident, Named Employee #1 (NE#1) was a very new student officer and Named Employee #2 (NE#2) was his Field Training Officer (FTO). NE#1 had never conducted a DUI investigation and arrest and, based on NE#2’s OPA interview, NE#2 was also fairly inexperienced in this area.

NE#1 admittedly struggled through portions of the sobriety tests but, with the assistance of NE#2 and other officers, was able to complete them. Based on the results of those tests and on his observations of the Complainant’s condition, the decision was made to place the Complainant under arrest. Additionally, a witness officer, who was also on scene assisting NE#1, reported asking the Complainant whether he would voluntarily take a Preliminary Breath Test (PBT). The witness officer later documented in his general offense report that the Complainant refused to do so.

The Complainant was handcuffed and placed under arrest, but he was not read his Miranda warnings at that time. The Complainant was transported to the precinct where NE#1 further investigated this incident. NE#1 and NE#2 indicated that the Complainant was read his Miranda warnings while at the precinct. While inside of the precinct’s BAC room, NE#1 asked the Complainant whether he would provide a breath sample; however, the Complainant refused. This refusal was documented in the general offense report. NE#1 then sought a warrant to take the Complainant’s blood in order to determine his BAC. NE#1 later obtained the warrant and then transported the Complainant to a hospital where his blood was drawn. It was determined, based on the blood draw, that his BAC was over the legal level.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

The Complainant alleged that the officers were dishonest in their reporting in two respects: first, that the officers noted that he failed to sign a Notice of Hearing when this document was never presented to him; and, second, that the officers stated that he refused to take a breathalyzer at the scene when, in fact, he refused to take the breathalyzer at the precinct.

The form within the general offense report entitled "Washington State DUI Arrest Report" documented the Complainant's refusal to provide a breath sample to NE#1. This form contained a field that was checked by NE#1, indicating that "driver's hearing request information was provided was given to the arrested person." This field further indicated that the Complainant was given notice of his right to a hearing concerning his refusal to provide a breath sample. The form further indicated that the Complainant refused to sign. While the Complainant denied being showed this form and being asked to sign, the existence of the initialed form in the general offense report suggests the opposite. Ultimately, however, I cannot conclusively determine which account is accurate.

In addition, while the Complainant alleged that he was asked to take a breathalyzer at the scene and that this issue was not properly documented by the officers, Officer Hewitt's report indicated that the Complainant was asked to voluntarily take the PBT at the scene.

The bigger concern from OPA's perspective is the fact that the ticket that was printed from the BAC machine indicating the refusal of the Complainant to provide a breath sample was dated 7 ½ hours after the traffic stop and 2 ½ hours after the Complainant's blood was drawn. From NE#1's account, however, he accessed the BAC machine hours earlier. Given the overall inadequacy of NE#1's documentation relating to this case, this timing issue raised the concern that NE#1 had failed to initially properly utilize the BAC machine and then, after this incident was concluded, went back to rectify and cover up his failure. If true, this could constitute dishonesty in violation of policy.

NE#1 denied engaging in such conduct, but could not provide any explanation for the timing discrepancy. NE#2 had no better explanation. Ultimately, while this timing discrepancy certainly raises questions for OPA, I cannot conclusively determine that it establishes dishonesty on NE#1's part. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.150-POL-1 requires that Miranda warnings be given to all individuals taken into custody as soon as is practical.



Here, it is undisputed that Miranda warnings were not provided to the Complainant until after he had already been arrested, handcuffed and transported to the precinct. Neither NE#1 or NE#2 was able to provide OPA with any justification as to why the Miranda warning were given at the precinct, instead of at the time of arrest. As such, there is no evidence that it was impractical to give the Miranda warnings immediately.

While the officers technically violated policy in this instance, I recognize that they did provide Miranda warnings, even if belatedly. As such, and under the specific circumstances of this case, I find that a training referral, rather than a sustained finding, is the appropriate recommendation.

- **Training Referral:** NE#1 should receive re-training concerning the requirement that Miranda warnings must be provided as soon as practical after arrest. NE#1 should be reminded that he is required to affirmatively justify those instances in which Miranda warnings are not provided in a timely fashion. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

As explained more fully below, I find that the report completed by NE#1, while under NE#2's supervision, was not complete, thorough and accurate as required by policy. However, given NE#1's status as a student officer and given how little time he had been with the Department at the time of the incident, I find that a training referral is the more appropriate disposition.

- **Training Referral:** NE#1 should receive additional training concerning the requirement that his reports be complete, thorough and accurate. NE#1 should receive specific training concerning the Department's expectations of his reporting on DUI arrests. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

Based on my review of the record, there is no evidence indicating that NE#2 engaged in any dishonesty relating to this case. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.) The policy further states that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*) Lastly, the policy states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

The Complainant alleged that NE#2 was rude and condescending during their interaction; however, based on my review of the ICV, I find no evidence suggesting that NE#2’s behavior in this regard violated policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights

For the same reasons as stated above (see NE#1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive re-training concerning the requirement that Miranda warnings must be provided as soon as practical after arrest. NE#2 should be reminded that he is required to affirmatively justify those instances in which Miranda warnings are not provided in a timely fashion. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 governs officers’ documenting of primary investigations on general offense reports. The policy requires that such reports be thorough, complete and accurate.

As a starting point, I note that I have no objection with the general offense report, itself, aside from the potential inaccuracy concerning the BAC machine. Otherwise, I found the general offense report detailed, well-written and appropriately organized.

My main concern is the DUI packet that was completed by NE#1 and approved by NE#2 as his FTO. This packet was not thorough or complete and, as discussed above, was potentially inaccurate. Notably, only portions of the DUI packet were submitted, apparently based on the officers’ error. These issues were recognized by both NE#1 and NE#2 at their OPA interviews. While NE#1 was the drafter of these documents, NE#2, given the function of his role, was responsible for NE#1’s failures to generate a thorough, complete and accurate DUI packet and to submit the appropriate documents.



At his OPA interview, NE#2 explained that he was largely inexperienced with DUI's and unfamiliar with what was in the DUI packet. However, as an FTO, NE#2 is expected to know this information and, if he does not, to ask another officer or supervisor prior to approving incomplete documents.

That being said, and based on information learned from NE#2's chain of command, I recognize that DUI arrests, sobriety tests, and the associated paperwork are very technical and complicated and are outside of the expertise and experience of most patrol officers. For that reason, it would be unfair to punish NE#2 for the errors with the DUI packet in this case, even if those errors were sloppy and avoidable. Instead, I recommend that NE#2 receive a training referral and issue the following Management Action Recommendation.

- **Training Referral:** NE#2 should receive additional training concerning the requirement that his reports be complete, thorough and accurate. NE#2 should receive specific training concerning the Department's expectations of his reporting on DUI arrests. This training and associated counseling should be memorialized in a PAS entry.
- **Management Action Recommendation:** Based on OPA's investigation into this case and on OPA's discussions with the Named Employees' chain of command, it appears that the vast majority of patrol officers lack experience and sufficient training in conducting DUI stops and arrests and the resulting paperwork that must be generated. The Department should consider retraining all patrol officers concerning: DUI arrests, generally; how to conduct sobriety tests; the usage of PBTs; the usage of BAC machines and the printing of BAC tickets; and the requirements for the contents and submittal of DUI packets.

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

Named Employee #3 - Allegation #1

6.010 - Arrests 6. Screening Sergeant Will Approve Report

During its investigation, OPA determined that a screening report was not completed for the Complainant's arrest and that it was Named Employee #3's (NE#3) obligation, as NE#1's supervisor, to do so.

At his OPA interview, NE#3 stated that he had no recollection of the Complainant's arrest or of NE#1 or NE#2 screening that arrest with him. NE#3 indicated that, as NE#1 was a student officer and he was the FTO supervisor, he likely would have screened the arrest. He simply did not recall. NE#3 noted that the date of the incident was extremely busy at his precinct, as it was the same night as Pride.

In two places in the general offense report, however, NE#1 wrote that he screened the arrest with NE#3. NE#3 gave several opinions as to what could have prevented an arrest screening report from appearing in the file, including that there was a computer malfunction. However, NE#3 ultimately could not remember whether or not he actually completed the screening report.

Applying a preponderance of the evidence standard, I find that NE#1 screened the Complainant's arrest with NE#3, but that NE#3 failed to complete an arrest screening report as required by policy. As such, I recommend that this allegation be Sustained.



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

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Recommended Finding: **Sustained**