



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 16, 2018

CASE NUMBER: 2017OPA-0943

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

***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 Complainants alleged that Named Employee #1 made insensitive comments during a rally on August 10, 2017, and utilized language that was aligned with the alt-right white supremacist news sites, which purportedly indicated bias in his policing.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

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

OPA received various complaints from individuals concerning statements made by Named Employee #1 (NE#1). Complainant #1 sent an email to OPA wherein she alleged that NE#1 engaged in a conversation with her in which he was “repeating talking points from a ‘alt -right’ white supremacist news site during a recent demonstration that he was policing.” Complainant #2 made a similar allegation. I note that significant portions of Complainants #1 and #2’s complaints are word-for-word identical.

Two other anonymous complaints also alleged that NE#1 made inappropriate comments. One of the anonymous protestors claimed that NE#1 told her “that the counter-protestors [protesting the right-leaning “Patriot Prayer” rally] were dangerous and were the same people behind the attack in Charlottesville.” The anonymous complainant reported that when she told NE#1 that this was not the case, he told her that she “needed to get [her] facts straight.”

OPA was unable to determine the identities of the anonymous complainants and was, thus, unable to interview them concerning this matter. One of the anonymous complainants listed an individual as a witness but did not provide any contact information for this person. OPA was unable to locate and interview this individual. OPA attempted to contact Complainant #1 on multiple occasions in order to interview her concerning her complaint. However, Complainant #1 did not respond to OPA and, thus, OPA did not interview her.



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OPA did obtain an audio-recorded statement from Complainant #2. She stated that she did not actually hear or witness NE#1's alleged statements, but that they were relayed to her by a friend. Complainant #2 stated that her friend wished to remain anonymous. Complainant #2 recalled that she was informed that NE#1 was "ranting" and made two allegedly unprofessional assertions: first, that the counter-demonstrators wanted to get past the police line to "start trouble" and "pick a fight" with the Patriot Prayer group; and, second, that anti-fascists were responsible for the death of a demonstrator in Charlottesville. Complainant #2 argued that these were "alt-right" talking points that were circulated on white supremacist websites. She claimed to know this because she monitored such websites. Complainant #2 agreed to try to obtain video or photographs of the incident, which she said had been previously circulated on Facebook but that may have since been taken down. From my review of the case file, no such videos or photographs were ever provided to OPA.

During his OPA interview, NE#1 recounted that he did have a conversation with a female counter-demonstrator. He recalled that she asked him why he and other officers were preventing counter-demonstrators from getting to Westlake. He told her that the police were trying to prevent a violent confrontation from those marching at Westlake and counter-demonstrators. She asked why that was the case given that the Proud Boys were the violent individuals. NE#1 told her that, in this present situation, the counter-demonstrators, not the Patriot Prayer rally participants were acting in a violent manner. NE#1 explained to OPA that he based this response on information he was hearing over the radio concerning counter-demonstrators who had been throwing smoke bombs and rocks at the police. NE#1 told the woman that this was why they weren't letting the counter-demonstrators go to Westlake at this time. NE#1 told OPA that he did not opine that counter-demonstrators or anti-fascists were responsible for the violence or death that occurred in Charlottesville. NE#1 asserted his belief that he did not act in either an unprofessional or biased manner during his interaction with this individual or anyone else during the demonstration.

The parties appear to agree that NE#1 stated that counter-demonstrators were engaging in violent behavior on the date in question. While that may not have applied to all counter-demonstrators and not to the Complainants in this case, it is a fact that some counter-demonstrators were engaging in disorder and unsafe behavior. Thus, that NE#1 made this statement is not, in and of itself, unprofessional or even untrue. NE#1 denied saying the offensive statement attributed to him concerning the death that occurred at Charlottesville and I agree with the Complainants that the notion that anti-fascists caused that tragic occurrence is factually incorrect. If he did make this statement, I agree with the Complainants that it could have constituted unprofessional behavior. That being said, there is no first-hand evidence that NE#1 actually did so. Complainant #2's account, even if compelling, is entirely hearsay and she did not divulge to OPA who relayed that information to her so that OPA could explore that individual's memory.

For these reasons, and applying a preponderance of the evidence standard, I do not find that NE#1 engaged in any unprofessional behavior during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #1 - Allegation #2**

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

The allegation of bias appeared to be premised both on NE#1's alleged statements and on the fact that the Complainants believed that SPD was protecting the Patriot Prayer group and their viewpoints over those of the counter-demonstrators.

With regard to the first allegation, as indicated above, I find that there is insufficient evidence to establish that NE#1 made the allegedly inappropriate comments attributed to him. Moreover, even if it was proven that he did do so, this would indicate a lack of factual understanding not necessarily bias in violation of SPD's policy.

With regard to the second allegation, SPD officers were assigned to provide security for a demonstration and counter-demonstration at which violent acts and disorder was feared. This was particularly the case given what had occurred in Charlottesville and the criticism of how local law enforcement responded or failed to respond. While not at nearly the magnitude as what occurred in Charlottesville, such acts did, in fact, occur during the Seattle demonstration. SPD officers are regularly assigned to serve in a role that facilitates individuals' expression of their First Amendment rights in a safe manner. This is the case regardless of what those individuals' viewpoints are. That some the demonstrators were white supremacists advocating viewpoints that I and I imagine all of SPD finds abhorrent does not relieve these officers of their obligation to objectively carry out their duties in accordance with the law. Moreover, it certainly does not establish that they engaged in biased policing. This view is consistent with established United States Supreme Court precedent that protects the rights of individuals to express themselves, even where that expression is offensive. *See, e.g., Nationalist Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977); *Terminiello v. City of Chicago*, 337 U.S. 1 (1949).

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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