



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 7, 2018

CASE NUMBER: 2017OPA-1081

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.260 - Collision Investigations 3. Officers May Assist Motorists in Non-Reportable Collisions	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

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 Employee refused to listen to her claim that the other party purposefully ran his car into hers. She further alleged that the Named Employee immediately concluded it was an accident, rather than an assault, and would only facilitate the exchange of insurance information. The Complainant lastly alleged that the Named Employee had a poor attitude during their interaction.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

15.260 - Collision Investigations 3. Officers May Assist Motorists in Non-Reportable Collisions

The Complainant was involved in an automobile accident with another motorist. After the accident, the Complainant called 911 and reported that the other motorist just “ran [her] off the road.” She stated that she had damage to her mirror but no physical injuries. She told the 911 operator that she had to merge into the other motorist’s lane, and he honked at her and would not let her move over. He then pulled forward and damaged her driver’s side mirror. She said that she was not moving when that happened. When she called she was following the other motorist and she provided his license plate number. She then told the 911 operator that the other motorist pulled over and she followed him. She told the 911 operator that the other motorist was stopping in an attempt to get her to “run into him.” The call captured the Complainant interacting with the other motorist and his disputing of her account of the incident.

Named Employee #1 (NE#1) was dispatched to the scene. His law enforcement activity was recorded on his In-Car Video (ICV); however, given that his interaction with the involved parties occurred out of the view of the camera, only the audio was captured. When NE#1 arrived on the scene, the Complainant told him that she was trying to merge due to a lane closure and that there was a gap and she started moving into the other lane. She stated that the



other motorist honked at her, she told him that she had to move over, he honked again and she stopped. She reported that he then hit her mirror and “scraped up” both cars. NE#1 inspected both cars and informed the parties that, based on the damage, it was a non-reportable accident and that he would help them exchange information so that they could report this matter to their respective insurance companies. He asked for the parties’ licenses, registrations, and proofs of insurance.

The Complainant then asked if NE#1 would complete a report, and NE#1 told the Complainant that he would just be facilitating the exchange of information due to the lack of damage. The Complainant then complained that the other driver intentionally drove into her and purposefully damaged her car. NE#1 told her that he understood what she was saying, but that the damage was minimal to the vehicles. The Complainant then stated: “well, I guess I can run into people when I feel like it.” NE#1 responded: “well, I hardly think he was trying to assault you with his vehicle, ma’am.”

NE#1 continued to gather the parties’ information and then returned to his vehicle to complete an Exchange of Traffic Collision Information form. The Complainant walked over to NE#1’s patrol vehicle and again engaged him in conversation. She proposed an analogy of someone who was trying to rob a credit union but only broke a window. The Complainant argued that the person would still be arrested for bank robbery, even if there was only minor damage. She repeated that the other motorist purposefully ran into and intimidated her. NE#1 interjected and stated that, while he understood the Complainant to say that there was a gap that she could merge into, if the gap was not large enough and an accident ensued, she was technically at fault. She told him that it was safe when she moved over. NE#1 again tried to explain where he was coming from and the Complainant interrupted him. He asked her if she was “going to let [him] finish talking” and further tried to explain that he could not definitively know what had occurred because he was not there and that he expected that the other motorist would deny what the Complainant was alleging. NE#1 stated that he was just trying to facilitate the exchange of information because this was an insurance claim based on the damage. The Complainant contended that it was a vehicle assault, and NE#1 responded that it simply was not. Ultimately, NE#1 told the Complainant that she could contact the Department and indicate her belief that NE#1 did not handle the situation properly; however, he asserted that an assault was not a “feasible conclusion to a minor traffic collision.”

He ended their conversation by stating that he would provide the Exchange of Traffic Collision Information form and a business card, and that the Complainant could contact his supervisor or OPA. He provided this information. As he was leaving, the other motorist said to NE#1 “sorry about this,” and started laughing. NE#1 responded, “that’s alright sir, have a nice day,” but did not laugh in return. The Complainant told NE#1 that it was not funny, to which NE#1 responded: “who’s laughing?” When the Complainant stated that the other motorist was laughing, NE#1 said: “I can’t make him not laugh.” The Complainant again stated that the other motorist hit her intentionally and NE#1 responded: “I understand that’s what you think, ma’am.” The Complainant responded by saying something along the lines of “do you say that to a rape victim?” This appeared to irritate NE#1. He told the Complainant that this was a minor traffic accident that was not comparable to a rape. He then got in his car and left the scene. NE#1 had no further interactions with the Complainant.

SPD Policy 15.260-POL-3 discusses officers’ responsibility to assist motorists in non-reportable collisions. The policy indicates that officers may provide the Exchange of Traffic Collision Information to facilitate the exchange of information between motorists. (SPD Policy 15.260-POL-3.) The policy further requires that, where motorists



request reports in non-reportable collisions, officers must complete either a General Offense Report or a Washington State Motor Vehicle Collision Report. (*Id.*)

When asked whether his decision to not generate a report in this case was consistent with policy, NE#1 admitted that it was not. NE#1 stated that after he received notice of this OPA complaint he went back and looked at the policy and, in doing so, realized that he should have completed a report based on the Complainant's statements.

Based on my review of the record, including the ICV and NE#1's OPA interview, I do not think that he tried to shirk his responsibilities or intended to engage in misconduct when he failed to write a report. I find that, instead, he simply was unaware of the specifics of this policy. I believe that NE#1 has learned from this situation and I do not imagine that he will fail to complete a report when required to do so in the future. For this reason, I believe that a Training Referral, rather than a Sustained finding, is the appropriate disposition.

- **Training Referral:** NE#1 should receive additional training concerning the elements of SPD Policy 15.260-POL-3 and, specifically, under which circumstances he is required to generate a report when responding to and investigating a non-reportable collision. NE#1 should be counseled by his chain of command regarding his failure to complete a report in this case and should be careful to do so when necessary going forward. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 had a poor attitude during their interaction. She further argued that he improperly refused to listen to her account of the incident and, instead, immediately decided that it was an accident as opposed to an intentional vehicular assault.

NE#1, to the contrary, asserted that he was professional towards the Complainant. NE#1 stated that, when he would not immediately take her side, the Complainant became irritated with him. He recalled that, based on his investigation and what he knew about the accident, he simply did not believe that the other motorist had intentionally hit her car in order to harm her. He based this on the fact that the Complainant was merging and was thus technically at fault in the accident with the other motorist who had the right of way. He also based this on his observation that both individuals had "nice" cars and it seemed unlikely that the other motorist would purposefully damage his car in that fashion. He recognized that the Complainant was upset at him, but indicated that he did not feel that a vehicular assault had been committed. NE#1 also recounted that he provided her with a business card and told her that she should feel free to contact his supervisor or OPA if she believed that he had handled the call improperly. NE#1 lastly reported being frustrated by the Complainant analogizing this traffic accident to a rape case.

As discussed above, the entirety of NE#1's interaction with the Complainant was captured by NE#1's ICV. I note that, throughout this incident, NE#1's voice was measured and that he was polite to both parties. While he did not believe that a vehicular assault had occurred, he appeared to try to calmly explain his decision-making to the Complainant. He referred to her as "ma'am" and by her last name throughout their conversation. While he admittedly became frustrated with the Complainant when she analogized this incident to a rape, I do not necessarily



find his response to have been unreasonable under the circumstances. From NE#1's perspective, the information he learned suggested that the Complainant was trying to merge when there was no room to do so and got into an accident. Indeed, he believed that if anyone was at fault, she was. As such, this was a minor incident in his mind and certainly not a serious felony, such as rape.

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.)

I simply do not see sufficient evidence in the record to establish that NE#1 was unprofessional in this instance and that his conduct undermined the public's trust. While I understand that the Complainant was upset and frustrated about this situation, I do not believe that NE#1's behavior and statements violated policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Reports. The policy further requires that such reports be complete, thorough, and accurate. (SPD Policy 15.180-POL-5.)

I do not find NE#1's belief that no vehicular assault had been committed to have been unreasonable and I do not find that the primary investigation he conducted was deficient. However, as explained above, I conclude that NE#1 should have generated a report in this case given the Complainant's statements. By not doing so, he was in technical violation of policy. However, for the same reasons as articulated in Allegation #1, I do not believe that a Sustained finding is warranted. Instead, I refer to the training referral above. (See NE#1, Allegation #1.)

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