



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 31, 2018

CASE NUMBER: 2018OPA-0239

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	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 Named Employee #1 (NE#1) failed to properly investigate his case and that NE#1, Named Employee #2 (NE#2), and Named Employee #3 (NE#3) engaged in biased policing towards him. It was further alleged that NE#1 and NE#3 failed to record Body Worn Video (BWV). Lastly, it was alleged that Named Employee #4 (NE#4) failed to properly classify and cause to be investigated a complaint of pain made by the Complainant.



STATEMENT OF FACTS:

The Complainant called OPA and complained of the conduct of multiple police officers. The Complainant broadly asserted that his complaint was against the Department and stated his belief that there “needs to be a change in culture.” He further contended that all of the officers that had interacted with him were biased towards him. OPA was unable to discern the specific nature of this global bias complaint.

The Complainant specifically identified two incidents in which he had interactions with SPD officers that he felt were inconsistent with policy. In the first incident, he stated that NE#1 failed to take his allegation seriously and did not conduct an appropriate investigation. As discussed above, the Complainant further alleged that NE#1, NE#2, NE#3 were all biased against him. During its intake investigation, OPA could not locate BWV for either NE#1 or NE#3 and added allegations for the purported failure to record against these Named Employees.

In the second incident, the Complainant explained that he was arrested and treated like a suspect. OPA learned that, during this incident, the Complainant complained of pain from handcuffs to two officers. The officers conveyed that complaint to a supervisor, NE#4; however, NE#4 failed to classify the force used and to ensure that it was investigated.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged that, as a general matter, the Named Employees were biased against him during his multiple interactions with the Department. As discussed above, the specific nature of this bias complaint is not clear and the Complainant did not point to exactly in what manner he was treated disparately. During their OPA interviews, NE#1, NE#2, and NE#3 denied engaging in biased policing towards the Complainant. While I find that certain aspects of NE#1’s conduct was inconsistent with policy, I find no evidence that any of these Named Employees engaged in biased policing.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1, NE#2, and NE#3.

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

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded.

During OPA’s intake investigation, it searched for BWV for all of the Named Employees. However, no BWV could be located for NE#1 and NE#3 under the case number for the first incident involving the Complainant – 2018-2256. After conducting further investigation, OPA determined that both NE#1 and NE#3 had, in fact, recorded BWV. NE#1 had inadvertently associated his BWV with case number 2017-2256 (a case number one year off) and NE#3 had



uploaded his recording under case number 18-2256 (not using the full year number). This explained why the video was not initially located by OPA.

As both officers did record video, they acted consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#3.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

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

NE#1 responded to a call concerning a physical altercation at a convenience store. The call was categorized as a disturbance and the remarks to the call were as follows: “2 males pushed RP [reporting party] to the ground. RP is inside store. Holding knife [in] his hand. Says he is blind.”

NE#1’s BWV showed that when he went to the convenience store, he was given a description of the Complainant and was informed that the Complainant was bleeding from his hand. NE#1 left the store and searched for the Complainant. He located him several blocks away. NE#1 identified himself and referenced the Complainant’s injury. The Complainant mentioned two individuals, saying that one was talking to him and one got behind him. He further mentioned “Africans” doing something to him. NE#1 asked the Complainant whether he wanted medical attention and whether he could see his hand. The Complainant refused and stated that he wanted to go home. Towards the end of their interaction, NE#1 stated to the Complainant: “you have to be more careful when you defend yourself” and “I know you accidentally stabbed yourself.” He then asked the Complainant: “you need anything else from us sir.” When the Complainant responded “no,” NE#1 and the other officers left the scene. NE#1 ultimately cleared the call as NY245, which means “no report written” and “assistance rendered,” and described the incident as “disturbance – other.” NE#1 further indicated that the Complainant “declined medical aid and did not want police assistance.”

At his OPA interview, NE#1 stated that he did not recall asking the convenience store owner about the descriptions of the assailants. He explained that he did not do so because it did not seem to NE#1 that the owner knew what had happened. He further referenced that he wanted to leave the store because he was concerned that the Complainant was somewhere bleeding. NE#1 did not look for security video of the assault.

During his interaction with the Complainant, NE#1 did not ask him about what had occurred during the assault. NE#1 explained that the Complainant virtually immediately stated that he wanted to go home. NE#1 told OPA that the Complainant never told him that he had been assaulted and only stated that he had cut himself with his own knife. NE#1 acknowledged that he could have asked follow-up questions but he did not because the Complainant wanted to go home. OPA asked NE#1 about his responsibility to fully investigate the incident as the primary officer and NE#1 responded: “Yeah, I – well, in my experience, I tend not to spend a lot of time investigating things if people don’t want me to investigate them.”

NE#1 explained that he would have written a General Offense Report concerning this matter had the Complainant wanted to pursue that avenue. However, because the Complainant wanted to go home, NE#1 did not intend to impede him from doing so. When asked whether he performed a thorough investigation, NE#1 confirmed: “Well, I



didn't do an investigation." NE#1 stated that because he did not perceive there to be a victim, there was not a crime to investigate. Further, because the Complainant wanted to go home and did not explicitly ask for a report, NE#1 construed that he did not want to be a victim for purposes of the investigation. Lastly, when questioned about the Complainant's injury, NE#1 explained that he did not necessarily believe that it was caused by one of the assailants. He based this on the convenience store owner's statement that the wound might have been self-inflicted and the fact that it appeared to NE#1 to be a slice.

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

I find that SPD policy required NE#1 to more fully investigate this matter and to document it on a General Offense Report. Simply because the Complainant stated that he wanted to go home did not mean that an investigation was not appropriate or warranted. NE#1 never explicitly asked the Complainant whether he wanted the incident to be investigated or if he wanted a report to be written, let alone anything regarding what actually occurred, whether he was assaulted, who assaulted him, and how he suffered his injury. These are basic investigatory questions and it should not be beholden on the victim to request that they be asked. He further did not conduct any substantive investigation of this incident, including not asking probing questions of the convenience store owner of what occurred or looking for security video. Moreover, a victim, which is what the Complainant indisputably was based on the witness account and his own 9-11 call, should not be required to have to ask for a report to be written. It is an officer's responsibility to do so.

Here, the available evidence suggested that a blind man had been assaulted by two individuals and, during the course of that assault, had suffered an injury. By not investigating and reporting on this incident, NE#1 violated the Department's policy and its expectation of his conduct. Moreover, given that this complaint was filed, it is evident that the Complainant, himself, wanted a report to be completed. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #3 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #4 - Allegations #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

When evaluating the Complainant's allegations, OPA learned that he was arrested and handcuffed during a second incident. At that time, the Complainant complained of pain from the handcuffs. Two officers, one male and one female, were aware of that complaint of pain. Both officers were interviewed by OPA. The female officer indicated in her report that she informed NE#4 of the Complainant's complaint. She reiterated at her OPA interview that she told NE#4 that the Complainant said that he handcuffs were hurting him and that he was experiencing shoulder pain. She recalled NE#4 asking her whether she thought the shoulder pain was related to the handcuffs and she told OPA that she responded affirmatively. The male officer recalled that the female officer reported the complaint of pain to NE#4. The male officer did not remember ever discussing the complaint of pain with NE#4 or any other supervisor.

NE#4 initially told OPA that he recalled being informed of the complaint of pain by the female officer. He noted that another supervisor completed the screening report for the Complainant's arrest. NE#4 told OPA that he believed that he told this other supervisor about the complaint of pain. He did not know whether this other supervisor classified and investigated the complaint – which constituted a Type I use of force, but he confirmed that he did not do so.

OPA interviewed this other supervisor, who was an Acting Sergeant on the date in question. The Acting Sergeant confirmed that he completed the arrest screening report, but stated that he had no recollection of ever learning that the Complainant made a complaint of pain. He stated that, had this information been conveyed to him, he would have ensured that it was investigated.

OPA re-interviewed NE#4. When provided with the Acting Sergeant's statements to OPA, NE#4 indicated that it was possible that he failed to convey the force allegation to the Acting Sergeant. NE#4 stated that, as he received the initial report of the complaint of pain, if it was not classified and investigated, that failure was ultimately his responsibility.

There was no video evidence of NE#4 relaying the complaint of pain to the Acting Sergeant; however, as NE#4 explained at his OPA interview, even if this occurred, that interaction would likely not have been recorded.

SPD Policy 8.400-POL-3 requires sergeants to review force incidents, to classify the level of force, and to ensure that it is properly investigated. A complaint of pain, such as that made by the Complainant in this case, is considered a



Type I use of force. As such, once that complaint was made, a supervisor was required to classify it and to ensure that it was properly investigated consistent with policy.

Here, it is undisputed that the Complainant's complaint of pain was not classified or investigated. This was a supervisory failure and was inconsistent with policy. The evidence is unclear as to what actually occurred here. NE#4 believed that he relayed this information to the Acting Sergeant, but when confronted by the Acting Sergeant's contrary recollection, NE#4 acknowledged that he was unsure whether he actually did so. NE#4 recognized that, as he received the initial report of the complaint of pain, it was his obligation to ensure that it was classified and investigated. Given that this did not occur, NE#4 acknowledged that he was ultimately responsible for this failure.

While I agree with NE#4 regarding his culpability, I do not feel that a Sustained finding is warranted under the specific circumstances of this case. First, as discussed above, the record is unclear as to what occurred and who knew what. Second, I appreciate NE#4's acceptance of responsibility over this matter. Third, from my review, this is only NE#4's second OPA complaint in nearly 13 years of service, he has never received a Sustained finding, and he has never received any discipline or counseling for failing to properly investigate a use of force. As such, I believe that a Training Referral is the more appropriate result and I am confident that NE#4 will ensure his compliance with this policy in the future.

- **Training Referral:** NE#4 should receive additional training concerning SPD Policy 8.400-POL-3. He should be reminded that, where he learns of a complaint of pain or use of force, it is ultimately his responsibility to ensure that it is properly classified and investigated. When he fails to do so, he acts contrary not only to policy but also to the expectations of both the Department and the community. Based on his OPA interviews, I believe that NE#4 is committed to acting in compliance with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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