



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 10, 2019

CASE NUMBER: 2018OPA-0864

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	16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias Based Policing	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 was biased towards him and failed to provide him with medical assistance. It was further alleged that Named Employee #2 failed to investigate the Complainant’s allegations of bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 responded to a youth shelter regarding a suicidal individual. NE#1 interacted with the Complainant, who told NE#1 that he was suicidal. The Complainant asked NE#1 to call for an ambulance to take him to the hospital; however, NE#1 refused to do so. At that point, the Complainant began threatening to self-harm. After further discussion, NE#1 determined that the Complainant was having issues with the staff of the youth shelter. He asked the youth shelter for two bus passes for the Complainant – one to allow the Complainant to get to the hospital and the other to allow the Complainant to go from the hospital to whatever shelter he wanted to stay in. The youth center did so.

At the end of their interaction, the Complainant called NE#1 “a jack ass, piece of shit, racist piece of trash.” The Complainant repeated that NE#1 was a racist. He further stated to NE#1: “You’re the average, white ass cop that should be working for LAPD.” Lastly, NE#1 referenced the fact that he never interacted with any African-American



officers from the North Precinct. Named Employee #2 (NE#2), who was NE#1's supervisor during the incident, was also present for the Complainant's statements.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

NE#1 denied that he engaged in biased policing towards the Complainant. He reported that he had numerous past experiences with the Complainant and this informed his approach to him during this incident. He stated that he did not believe that the Complainant was actually suicidal and did not think that transport to the hospital was warranted. NE#1 further indicated that he did what he could to provide the Complainant with a means to get to and from the hospital if he so desired.

As a starting point, it is unclear that the Complainant's statement actually constituted an allegation of biased policing as contemplated by SPD policy. Even if they did, based on OPA's review of the evidence – including the Body Worn Video, which fully captured NE#1's interaction with the Complainant – there is no support for the conclusion that NE#1 was biased in any manner during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons

NE#1 was aware when he came to the call that the Complainant stated to youth shelter staff that he was suicidal. NE#1 explained that he knew the Complainant and had previously interacted with him on several occasions. During this incident, NE#1 did not ask the Complainant for any details concerning the means of how he would commit suicide. He told OPA that he did not believe that the Complainant was actually suicidal and felt, based on his past involvement with the Complainant and his investigation, that the Complainant was simply seeking transport from the shelter and wanted to go to a new location. NE#1 further did not call the Complainant an ambulance or seek any medical treatment for him. NE#1 explained to OPA that he did not think that the Complainant was actually sick or injured and, as such, did not think calling for an ambulance was required.

SPD Policy 16.130-POL-1 states that SPD employees will assist sick and injuries persons. The policy instructs the following: "Employees assisting a sick and/or injured person will attempt to determine the nature and cause of the person's injury or illness, provide first aid, and initiate Emergency Medical Services (EMS) as needed." (SPD Policy 16.130-POL-1.)

Based on OPA's review of the policy, the facts of this case, and NE#1's explanations, I find that NE#1 did not violate policy when he failed to call for an ambulance. It was reasonable for NE#1 to reach the conclusion that the Complainant was not sick or injured – indeed, the Complainant did not ever state that he was either during the incident. Moreover, NE#1 stated that the Complainant did not meet the criteria for involuntary committal. Again, I find that this determination was reasonable under the circumstances.



Given the above, I find that NE#1 acted consistent with policy during this incident and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

5.140 - Bias Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias Based Policing

As discussed above, NE#2 was present for the Complainant's statements to NE#1. He did not, however, either complete a Bias Review or make an OPA referral. NE#2 told OPA that he did not believe that the Complainant was actually making an allegation of bias. NE#2 stated that, instead, he construed the Complainant to be questioning the racial makeup of officers assigned to the North Precinct.

SPD Policy 5.140-POL-6 requires supervisors to conduct a preliminary inquiry into an allegation of biased policing. Where such an allegation is made, the supervisor is instructed to discuss matter with the subject. (SPD Policy 5.140-POL-6.) The supervisor is required to explain to the subject the option of making an OPA complaint. (*Id.*) If the supervisor does so, the subject does not wish for an OPA complaint to be filed on their behalf, and the supervisor deems that no misconduct occurred, a supervisor may complete a Bias Review. (*Id.*) Otherwise, the supervisor must refer the allegation of bias to OPA. (*Id.*)

While NE#2 focused on the Complainant's statements concerning the lack of African-American officers assigned to the North Precinct, he did not address the Complainant's comment regarding NE#1 being a racist. Even if this did not constitute an allegation of bias, NE#2 still should have explored why the Complainant believed NE#1 to be a racist and how, if at all, the Complainant believed that this affected NE#1's law enforcement activity towards the Complainant during this incident. As he did not do so, he did not make a sufficient inquiry in order to determine whether he needed to generate a Bias Review or make an OPA referral. In this respect, he failed to completely carry out his responsibilities under SPD policy. However, given that it was not clear that the Complainant actually made an allegation of bias, I recommend that NE#2 receive the below Training Referral.

- **Training Referral:** NE#2's chain of command should go over this incident with him and remind him to fully explore allegations that could plausibly constitute claims of bias. The failure to do so is inconsistent with the Department's expectations of the conduct of its supervisors. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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