



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 17, 2019

CASE NUMBER: 2019OPA-0439

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional & 3.005 - Employee Conduct of the Communication Section Policy and Procedures	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy	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 Complainant alleged that the Named Employee, a Dispatcher, was unprofessional and biased during a 911 call made by the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional & 3.005 - Employee Conduct of the Communication Section Policy and Procedures

The Complainant called 911 to report that a man was drinking alcohol in public and was harassing people who were inside of businesses, including banging on door and screaming. Named Employee #1 (NE#1), a dispatcher, took the 911 call. During the call, NE#1 asked the Complainant questions regarding what the suspect was doing, including asking follow-up questions regarding what direction the suspect was moving in. NE#1 asked those questions in a calm but direct manner. In response, the Complainant stated: "Ma'am, I don't understand how many times you want me to answer the same question. He's walking back...up and down the street." NE#1 responded: "ok, walking back and forth." The Complainant stated in reply: "Yeah, that's what I said the first three times."

NE#1 then asked what race the suspect was. The Complainant said that she did not know. NE#1 followed up by stating: "I need you to tell me if he looks White, Black, Hispanic, Asian, Indian." The Complainant again said: "I don't know what race he is." NE#1 stated: "I just need you to tell me what color he is." The Complainant replied: "Ma'am, I don't see, I don't tell, I don't call people by their color. I don't know what race he is." NE#1 then told the Complainant: "We need to know for the police so that they will recognize him." The Complainant said: "Unfortunately, I don't racially profile people." NE#1 said: "I'm not racially profiling anyone; I need to know what he looks like." The Complainant stated: "Okay Ma'am, I don't know what his race is." NE#1 responded: "Okay, I asked you what color he is then." The Complainant then retorted: "What the fuck does that even mean? What color do you say White people are? They're not white. You know what color white is? Are you White? Is your skin color



white? Are White people white?” NE#1, who seemed from the recording to be exasperated, said: “You’re something else.” NE#1 then asked about the suspect’s age. The Complainant responded by asking several times to speak with NE#1’s supervisor. NE#1 said that she would have the supervisor call the Complainant back but needed to get the call in first. After the Complainant continued to ask for a supervisor, NE#1 asked her if she wanted to get the call in. The Complainant, in response, said: “Have your supervisor call me back you racist bitch.” The Complainant then hung up the phone.

NE#1’s supervisor called the Complainant back and spoke with her. The Complainant told the supervisor that NE#1 was not helpful, asked the same questions over and over again, and told her that without the race or color of the suspect NE#1 could not help her. The Complainant stated that she related to NE#1 that, as a Black woman, she would “never” identify someone as being of a certain race where she did not know that to be the case. She said that this was based on her fear that the person she identified could be subjected to police violence. She reasserted that NE#1’s communications were based on bias. She stated that she wanted to proceed with a complaint against NE#1.

The supervisor subsequently referred this matter to OPA. The supervisor also debriefed the call with NE#1 and discussed ways in which she could have better handled the situation and provided NE#1 with information to consider when dealing with similar situations in the future. OPA then initiated its investigation, which included interviewing the Complainant and NE#1.

SPD Policy 5.001-POL-10 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-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA’s review of the audio recording of the 911 call indicated that, at all times, NE#1 was calm, used an even tone, and did not raise her voice. While NE#1 asked repeated and direct questions of the Complainant, NE#1 did not do so rudely or curtly.

As discussed above, NE#1 did, at one point, say to the Complainant: “you’re something else.” While this statement did not include profanity and was not derogatory or contemptuous, it could have been perceived as disrespectful towards the Complainant. That being said, OPA believes it important to evaluate the statement in context. At the time it was said, the Complainant had repeatedly refused to provide information concerning the individual’s possible race or skin color, had essentially alleged that NE#1’s questions – which were consistent with her training and which were purposed to quickly identify the suspect – constituted racial profiling, had used profanity towards NE#1, and had lectured her with a raised voice on the lack of significance of the term “white” when identifying race. At that point, NE#1 was clearly frustrated even though, to her credit, she did not grow angry or noticeably change the tenor of her voice.

Given the totality of the circumstances, OPA finds NE#1’s frustration to have been understandable. However, dispatchers, like all SPD employees, work for the public. In this respect, dispatchers are expected to refrain from disparaging statements, even when it is difficult to do so and where a community member may be difficult, rude, or



profane. As such, OPA finds that re-training and counseling rather than discipline is the appropriate result and recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded by her chain of command that, even when frustrated or when dealing with a difficult community member, she should refrain from making statements that could be perceived as disparaging. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy

The Complainant asserted that NE#1's communications with her, including her questions regarding the suspect's race and color, were based on NE#1's purported bias.

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.*)

Based on OPA's review of the evidence, there is no indication that NE#1 engaged in biased policing towards the Complainant. As discussed above, the questions asked by NE#1 were meant to quickly identify the suspect. This was purposed to allow officers to recognize the suspect when they responded to the scene in order to take him into custody. Race and skin color are common identifying characteristics, just like body shape, hair color, clothing, or tattoos. It did not constitute biased policing to ask these questions, even if the Complainant did not believe them to be appropriate.

Moreover, the audio recording of the 911 call provides no support for a finding that NE#1's demeanor or communication style were based on bias.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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