



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2019

CASE NUMBER: 2019OPA-0456

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	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Employees made slanderous statements and were dismissive of her and her boyfriend during the course of their investigation of a criminal case in which the boyfriend was the Subject.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

At approximately 7:15 p.m. on April 26, 2019, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a call at an apartment building. The 911 caller reported that an individual threatened to kill him and tried to punch or shove him. When NE#1 and NE#2 arrived at the building, they spoke with staff member for the apartment building, who is referred to here as Witness #1. The Named Employees' Body Worn Video (BWV) captured their conversations with residents and staff. Witness #1 said that she saw the altercation. She reported witnessing an individual – who is referred to below as the Subject – pushing or hitting the 911 caller outside the building as the 911 caller tried to come inside. Witness #1 said that she recognized the Subject as the boyfriend of a female resident, who is the Complainant in this case. She also said that the Subject was known to use foul language and make aggressive statements, although Witness #1 said that she was not aware of the Subject making direct threats against staff or residents.



NE#1 and NE#2 spoke to the 911 caller in his apartment unit. The 911 caller told the Named Employees that, when he walked up to the apartment entrance, he encountered the Subject and that the Subject threatened to slit his throat and to kill him. The 911 caller stated that he did not know the Subject, but had previous conflicts with the Complainant, who was the Subject's girlfriend and a resident of the building. The 911 caller said that the Complainant had tried to get a court order against him, but that the court declined to issue the order. He said that another friend of the Complainant (who was also listed as a complainant in this OPA investigation but who is referred to here as "the Complainant's Friend" for clarity purposes) had gotten an order against him in the past. The 911 caller said he did not know why the Subject would want to threaten him apart from this. NE#1 asked the 911 caller what his preferred resolution would be, and, after discussing the matter with NE#1 and NE#2, the 911 caller said he would like the incident documented but did not necessarily want to press charges.

NE#1 and NE#2 went to speak to the Subject and the Complainant. The Complainant answered the door. When NE#1 and NE#2 explained the 911 caller's allegations, the Complainant denied that the Subject had ever threatened the 911 caller or physically shoved or hit him. The Complainant appeared somewhat escalated and upset at that time. She stated that building security video would support her account of events. NE#2 said that he and NE#1 would watch the video but that they first wanted to get the Subject's version of the story. The Subject, who was also present, explained that the 911 caller had bumped into him and physically invaded his personal space in the past. The Subject said that the 911 caller did so again on this occasion. The Subject also appeared to be upset and angry. He said that he told the 911 caller not to approach or bump him and told the 911 caller that if he did so again there would be problems. He denied hitting the 911 caller or threatening to stab or otherwise kill the 911 caller. The Subject stated that he was a former member of the U.S. Marine Corps and that he would not require a knife to defend himself. He said that the 911 caller had been disrespectful. NE#2 told the Subject that while he had the right to defend himself, he should avoid escalating the situation.

The Complainant stated that the 911 caller was known to people in the building to file false police reports. When NE#1 said that building staff had corroborated the 911 caller's account, the Complainant said that building staff were trying to retaliate against her. She also said that "another resident" had been the subject of "false" 911 calls from the 911 caller and had to "go to the Office of Professional [sic] Accountability" to resolve it. At this point, the Complainant's Friend approached and said that he also had dealings with the 911 caller. He said that the 911 caller had filed multiple "false reports" against him.

NE#1 and NE#2 spoke to staff again about the security video. Witness #1, as well as another staff member, said that the Complainant's Friend and the 911 caller had a history of disagreements and that the Complainant and the Complainant's Friend were close. NE#1 continued to talk to staff. During this conversation, he mentioned that the Complainant and the Subject appeared upset. He also stated that the Complainant had sought and been denied a no-contact order. NE#2 went to speak to the 911 caller, who was seated nearby in a chair in the waiting area. While NE#2 and the 911 caller were speaking, the Complainant's Friend passed by and asked if NE#2 needed information. NE#2 told the Complainant's Friend: "Not right now." NE#2 returned to speak with staff. A staff member took officers back to watch the security video. The video, which lacked sound, appeared to show the Subject being signed into the building by the Complainant. It also showed the 911 caller standing outside smoking a cigarette. On the video, the 911 caller walked inside the building and passed the Subject in the entryway. Camera angles on the security video did not show the entire interaction, but no shoving or confrontation were shown on the portion of the video captured. OPA notes that in conversation with all the parties, NE#1 and NE#2 remained calm and did not use derogatory language. Neither NE#1 or NE#2 ridiculed or criticized any involved party.



The Complainant and the Complainant's Friend filed this complaint with OPA. The Complainant alleged that NE#1 and NE#2 "slandered" her in their conversations with the building staff. The Complainant's Friend alleged that NE#1 and NE#2 dismissed him and "ridiculed" him when he attempted to provide information about the 911 caller's alleged wrongdoing. The Complainant's Friend further requested that the police report be amended. This OPA investigation ensued.

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.)

OPA finds insufficient evidence in the record to suggest that either NE#1 or NE#2 behaved unprofessionally during their response to this incident. BWV showed that NE#1 and NE#2 did not use derogatory or contemptuous language. The BWV further indicated that they did not make comments which could plausibly be construed as slander, thus conclusively disproving the allegations in the complaint. As a legal matter, truth is an absolute bar to a slander claim, meaning that good faith questions and discussions had during the officer's legitimate investigation into this incident were not impermissible. Further, while NE#2 at one point told the Complainant's Friend "not right now," he did so because he was at that time talking to the 911 caller. Given the ongoing personal conflict between these two individuals, it would have been inadvisable for NE#2 to have engaged them at the same time and he made the correct decision when he did not do so. Ultimately, the evidence fails to show that NE#1 or NE#2 behaved in an unprofessional manner when interacting with either Complainant. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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