



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2020

CASE NUMBER: 2019OPA-0530

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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 3	15.110 - Investigating Custodial Interference 9. Courts Enforce Civil Custody and Visitation Orders	Not Sustained (Lawful and Proper)

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 Complainants alleged that the Named Employee was dismissive and unprofessional, engaged in biased policing, and failed to enforce a court order.

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 Employee. As such, the Named Employee was not interviewed as part of this case.

SUMMARY OF INVESTIGATION

On June 27, 2019, officers were dispatched to a call concerning a custody dispute. The Complainant and her husband – who is referred to here as the “stepfather” for clarity purposes – reported to SPD that the Complainant's ex-husband picked up their child from a party in violation of a court order. They further informed the officers that there was an active contempt warrant for the ex-husband for failing to appear at prior custody hearings. The stepfather showed the officers texts between himself and the ex-husband. In those texts, the ex-husband stated that he made a complaint to CPS regarding the Complainant's alleged abuse of the child and the Complainant's purported disapproval of the child's gender identity. The Complainant told the officers that she was concerned about the child's safety but did not believe that the Complainant was in imminent danger. The Complainant emailed documentation concerning the no-contact order to one of the responding officers, including a court order dated April 9, 2019. She told the officers that she had more up-to-date paperwork, but that she could not access it until the following morning. The officers provided the Complainant and the stepfather with a business card that included the case number, as well as materials outlining resources for the child.

The officers returned to the West Precinct and discussed this matter with a Sergeant. They collectively screened it with a Lieutenant. Given the active warrant, the decision was made to enforce the custody order the following day

at the ex-husband's residence. However, they agreed that, prior to doing so, they needed the most recent order. One of the responding officers contacted the Complainant and again requested the order, which she said that she would provide.

The next day, West Precinct officers prepared to execute the warrant on the ex-husband. However, they learned that the ex-husband had a CCW permit and that he may have been in possession of a firearm. After screening the circumstances of this case with the Domestic Violence (DV) Unit and a Lieutenant, the decision was made that the officers would not serve the warrant. Reports were completed and the case was routed to the DV Unit.

The case was later assigned to Named Employee #1 (NE#1), a detective in the DV Unit. OPA's investigation revealed that, on July 28, 2019, NE#1 filed for felony criminal charges against the ex-husband. However, the King County Prosecuting Attorney's Office (KCPAO) declined to prosecute, citing a lack of evidence establishing custodial interference and pointing to the ongoing custody issues being litigated by the parties. The KCPAO informed the DV Unit that there was a hearing scheduled for September 25, 2019, during which the ex-husband was seeking protective custody over the child. The basis for that hearing was an allegation of sexual abuse made by the child against the stepfather. The DV Unit confirmed with CPS that there was an open investigation into this allegation. CPS further informed the DV Unit that the child made these allegations directly to a CPS investigator. The DV Unit still referred the case against the ex-husband to the Seattle City Attorney's Office for consideration of charging a misdemeanor offense. The DV Unit Sergeant made the determination that, given the ongoing litigation, the declination of charges by the KCPAO, the sexual abuse allegation made by the child against the stepfather, and the ongoing CPS investigation, there was insufficient legal authority for officers to enforce the custody order against the ex-husband.

NE#1 advised the Complainant and the stepfather by email that the KCPAO declined to file charges based on the belief that it lacked probable cause. NE#1 indicated that if they provided additional evidence that a felony had been committed, the KCPAO might re-examine its charging decision. NE#1 noted that the issue of custody would be adjudicated at the September 25 hearing and he advised the Complainant to be present at the custody hearing. The stepfather replied to this email stating that he and the Complainant were only concerned about the "safety of [the child]." The stepfather asserted that, if NE#1 did not take law enforcement action against the ex-husband, they would go to the media.

The Complainant alleged that she later encountered NE#1 at SPD Headquarters. She recounted that NE#1 told her that the child was "safe" and that he was in contact with the ex-husband. NE#1 was not equipped with a Body Worn Video (BWV) unit, and, as a result, there was no Department video of this interaction. Moreover, the surveillance video from SPD Headquarters does not have audio and, as such, would not have captured the content of any interaction. NE#1 informed his Sergeant that, based on the tenor of his communications with the Complainant and the stepfather, he believed that they would file an OPA complaint against him.

The Complainant and the stepfather did ultimately contact OPA. The Complainant asserted that, during the interaction with NE#1 that she alleged occurred at SPD Headquarters, NE#1 was dismissive of her and spoke down to her. She further alleged that NE#1, who is a White male, was biased towards her because she was an Asian female. Similarly, she stated that because the ex-husband was a White male, NE#1 appeared to be "siding with" him. Finally, she alleged that NE#1 was derelict in his duty by not enforcing the contempt warrant. This OPA investigation ensued.

As part of its investigation, OPA attempted to obtain all relevant court documents from the Complainants. The Complainants provided OPA with a parenting plan, as well as an order from a King County Superior Court magistrate to continue a contempt hearing until June 3, 2019. The parenting plan, which contained numerous cross-outs and handwritten notes, stated in relevant part that the: "child [is] to reside with mother; Father 1st, 2nd, and 4th weekends each month; Friday after school to Monday return to school." The order for continuance stated that the ex-husband's "residential time is suspended pending the review hearing scheduled for June 3rd, 2019" and ordered that "if [the ex-spouse] does not appear" on June 3rd, "[j]ail time will be imposed." No order resulting from the June 3 hearing was provided to OPA for review. OPA conducted a records check for the ex-husband, and was unable to

identify any active arrest warrants. However, OPA did verify that there was an open bench warrant in the ex-husband's name on June 27 and June 28.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant claimed that the totality of NE#1's alleged behavior towards her was based on bias. Specifically, she asserted that he was biased towards her because she is Asian and both NE#1 and the ex-husband are White.

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 record, there is an absence of evidence suggesting bias on NE#1's part. This finding would remain the case even if OPA believed that all of the Complainant's allegations were true. When making such a claim, the Complainant must adduce substantial evidence in support, particularly given the burden of proof necessary to prove this allegation. However, the Complainant failed to do so here and set forth no evidence aside from her opinions and assertions. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1's statement to her that her child was safe and within Washington State was "offensive." She further stated that NE#1 was dismissive and rude to her during their interaction at SPD headquarters.

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.*)

With regard to the statement attributed to NE#1, even if true, this would not constitute a violation of SPD's professionalism policy. With regard to NE#1's other statements and demeanor, there was no audio recording of this interaction and, as such, OPA cannot determine what was said or what how NE#1 acted towards the Complainant. As such, OPA cannot make a determinative finding on this question and recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

15.110 - Investigating Custodial Interference 9. Courts Enforce Civil Custody and Visitation Orders

SPD Policy 15.110-POL-9 states that: "[o]fficers do not have authority to remove a child based solely on a parenting plan, custody, or visitation order." The policy further states that SPD employees should recommend that parents

wishing to resolve disputes related to custodial interference follow the dispute resolution process contained in the parenting plan. (SPD Policy 15.110-POL-9).

Based on OPA's review of the evidence and when applying SPD policy, OPA finds that NE#1's actions were consistent with the Department's expectations of his conduct. The parenting plan provided by the Complainants is not a "no contact" order as the Complainants claimed. Moreover, while the "Contempt Hearing Order" suspended visitation privileges, it did not order that the ex-husband be arrested or that the child be immediately returned to the Complainant. While there was an outstanding warrant for the ex-husband, this would not necessarily have provided a legal authorization for SPD employees to return the child to the Complainant and the stepfather if the child did not wish to be returned to their care. This was particularly the case given the existence of an ongoing CPS investigation at the time and an allegation of abuse made by the child against the Complainant and stepfather. Lastly, the DV Unit Sergeant made the ultimate decision that the order would not be enforced given the multitude of complicating circumstances in this case. NE#1 was entitled to rely on this.

Ultimately, given the facts above, it was not unreasonable for NE#1 and, for that matter, other officers to not have removed the child from the ex-husband's custody. In reaching this decision, OPA recognizes how difficult this situation must be for the Complainant; however, OPA cannot find that NE#1 violated policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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