



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 25, 2020

CASE NUMBER: 2019OPA-0544

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Biased-Based Policing	Not Sustained (Unfounded)

#### **Named Employee #2**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Biased-Based Policing	Not Sustained (Unfounded)

#### **Named Employee #3**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Biased-Based Policing	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 SPD officers were unprofessional towards him and subjected him to biased policing while he was at a demonstration.

### **SUMMARY OF INVESTIGATION:**

The Complainant participated in a demonstration on August 1, 2019. The purpose of the demonstration was to protest against the U.S. Immigration and Customs Enforcement (ICE) and, specifically, the detention centers that ICE was maintaining. The demonstration took place in front of ICE headquarters in downtown Seattle. The Complainant, who identifies as a liberal activist, was among the demonstrators protesting against ICE. There were a number of counter protestors who were associated with the Proud Boys, a far-right organization.

The Complainant later alleged to OPA that, while he was standing in the vicinity of ICE headquarters, some of the Proud Boys were yelling his name. He stated that he then heard officers, who he believed included Named Employee #1 (NE#1) and other unidentified individuals, imitating the Proud Boys by saying the Complainant's name. The Complainant told OPA that he was intimidated by this. He opined that the officers engaged in this conduct: "because

they share the political views of the Proud Boys and don't like liberal or anti-fascist activists." The Complainant reported that he approached NE#1 and asked him what he said. The Complainant recounted that NE#1 responded by telling the Complainant that he was not talking to him. The Complainant told OPA that he walked away because he was "afraid" that NE#1 might arrest him.

The Complainant also alleged that, at one point, he heard NE#1 tell a community member: "feel free to punch them in the face." The Complainant did not see who NE#1 was talking to and did not hear the entire context of the statements. He assumed that NE#1 was talking about punching anti-fascists in the face if they blocked the community member from egress and ingress. The Complainant stated that he was shocked by that statement. He identified that there was at least one witness – a woman – who heard and commented on NE#1's alleged statement. However, the Complainant did not provide this witness's identity to OPA.

The Complainant contended that the behavior of NE#1 and the other unknown SPD officers was unprofessional and that it demonstrated bias against liberal or anti-fascist activists and favoritism towards right-leaning activists, including the Proud Boys. This OPA investigation ensued.

As part of its investigation, OPA attempted to interview the Complainant. He declined to provide a recorded interview and, instead, chose to answer questions over email. The content of his allegations is set forth above.

OPA also interviewed NE#1. NE#1 told OPA that he did recall having a conversation with several college students about the demonstration. He stated that the college students jokingly asked NE#1 if he wanted them to clear the protest and, in response, he told them that they should because his feet were hurting him, and he wanted to go home. NE#1 told OPA that he, like the college students, was joking. He did not believe that the college students were referring to one group of protestors but to the entire demonstration. Similarly, NE#1's joking response was directed towards everyone at the demonstration, not just liberal or anti-fascist protestors. NE#1 acknowledged that he could have said what was attributed to him by the Complainant and he did not remember the exact substance of his exchange with the college students. NE#1 remembered that the Complainant came up behind him and asked him what he just said. NE#1 told the Complainant that he was not talking to him. NE#1 posited that the Complainant only heard the tail end of the conversation when he walked up and that the Complainant assumed, without basis, that NE#1 was being serious and was referring to liberal or anti-fascist protestors when NE#1 was not. NE#1 also acknowledged that another officer – who he believed may have been Named Employee #2 (NE#2) – called out the Complainant's name. However, NE#1 explained that this was done to inform NE#1 that the Complainant was approaching NE#1 from behind. NE#1 stated that the Complainant's name was not called out in order to imitate the Proud Boys or to intimidate the Complainant. NE#1 told OPA that he and other officers were familiar with the Complainant given his frequent attendance of demonstrations over the years and that they knew his name. NE#1 ultimately denied being unprofessional during this incident, as well as denied engaging in biased policing.

Based on what NE#1 indicated, OPA interviewed NE#2. NE#2, like NE#1, said that he was familiar with the Complainant. He explained that the Complainant was frequently at demonstrations. NE#2 recalled seeing the Complainant during the August 1 ICE demonstration. He also recalled hearing Proud Boys repeating the Complainant's name. However, NE#2 told OPA that he did not say the Complainant's name and that he did not hear any other officer do so. When asked about NE#1's statement that an officer – potentially NE#2 – did so, NE#2 said that he did not remember the interaction that NE#1 had with the Complainant and, thus, did not remember the Complainant's name being said. NE#2 denied that he or any other officer at the demonstration engaged in unprofessional behavior or biased policing.

OPA interviewed three other witness officers to try to determine whether any officer said the Complainant's name out loud. None of these witnesses recalled any officers saying the Complainant's name even though two of the witnesses did remember that the Proud Boys did so. The witness officers did not see any SPD employees engage in conduct during the demonstration that constituted unprofessionalism or biased policing.

Notably, while the Complainant filmed various portions of the demonstration, he did not record the statements he attributed to the officers. Moreover, as the officers were not taking law enforcement action at this time, they did not record Body Worn Video, which was consistent with policy.

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegations #1**

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

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.*)

Based on the totality of the evidence, OPA finds that NE#1 did not engage in unprofessional behavior. First, NE#1 provided a plausible explanation for what he said and why. He informed OPA that it was a joke and that he was referring to clearing all protestors out of the area, not just liberal or anti-fascist activists. The Complainant admittedly was not in the vicinity of NE#1 for the entirety of NE#1’s comments. Accordingly, and given the lack of video, he cannot disprove NE#1’s account of what occurred. Second, NE#1 denied that he said the Complainant’s name out loud. He told OPA that, while another officer did so, this was not to agitate or intimidate the Complainant but was, instead, purposed to inform NE#1 that the Complainant was behind him. NE#1 explained that this was done as a safety precaution. Moreover, all of the officers stated that they knew the Complainant given his attendance of numerous demonstrations over the years. Simply stating the Complainant’s name out loud would not have constituted a policy violation. Lastly, there is no evidence that NE#1 was the officer that said the Complainant’s name and no video establishing that this was the case.

For the above reasons, OPA finds that there is insufficient evidence supporting a finding that NE#1 engaged in unprofessional behavior. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

### **Named Employee #1 - Allegation #2**

#### ***5.140 – Bias-Free Policing 2. Officers Will Not Engage in Biased-Based Policing***

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.*)

The Complainant’s allegation of bias against the Named Employees is based solely on conjecture and incomplete information. There is no evidence indicating that the Named Employees or any officer engaged in biased policing towards the Complainant at any point during the demonstration on August 1. The Named Employees provided plausible explanations for the actions they took, and the Complainant failed to offer any compelling evidence to the contrary. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

**Named Employee #2 - Allegations #1**

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

NE#1 told OPA that he believed that NE#2 was the officer who said the Complainant's name. He explained that this was done to alert NE#1 that someone was behind him and was a safety precaution. When interviewed by OPA, NE#2 denied saying the Complainant's name and did not recall any other officers doing so. There is no evidence in the record contradicting this assertion.

As discussed above, even had an officer said the Complainant's name, it would not, by itself, have constituted a policy violation. Moreover, the Complainant has failed to adduce evidence that contradicts NE#1's assertion that the saying of the Complainant's name was done for legitimate law enforcement reasons.

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

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

**Named Employee #2 - Allegation #2**

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegations #1**

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

As discussed above, OPA interviewed multiple witness officers to determine whether any of them were the individual who said the Complainant's name. All of the witness officers denied doing so. Given the absence of evidence in the record to the contrary, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #2**

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

For the same reasons as stated above (see Named Employee #1, Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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