



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2020

CASE NUMBER: 2019OPA-0598

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	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity a. Notification of Recording	Not Sustained (Lawful and Proper)
# 4	15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances	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:

An anonymous Complainant contacted OPA and alleged that the Named Employee did not read the Subject his Miranda rights and failed to take witness statements during an incident. The Complainant also alleged that the Named Employee did not notify several community members that they were being audio and video recorded. Lastly, the Complainant felt that the Named Employee was unfair and biased during the incident.

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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On August 1, 2019, officers were dispatched to a local art exhibit. A group of demonstrators had forced their way inside of a gallery. A woman later stated that one of the demonstrators – referred to here as the Subject – pushed her with his sign. She said that this caused her pain and also caused her to feel fear given that she had recently broken her hip and she felt that she was going to fall down and reinjure herself. The officers documented that the victim was very shaken by what occurred, and this was documented on the officers' Body Worn Video (BWV). The video also reflected that multiple other individuals observed the Subject's assaultive conduct and relayed that information to the officers. In addition, pictures of the Subject were provided to the officers by witnesses.

The officers subsequently located a group of demonstrators nearby and identified the Subject as being among them. The officers approved the Subject and quickly took him into custody for misdemeanor assault. The group of demonstrators protested the arrest. Most notably, a female demonstrator, who identified herself as a law student, asserted that the officers were biased because they took the word of White “upper class” witnesses over the demonstrators, who she characterized as predominantly people of color. She further raised concerns that neither she nor the other demonstrators were being interviewed, as well as asserted her belief that the officers were not following proper police procedures. Named Employee #1 (NE#1) was the supervisor on scene and the primary officer interacting with the demonstrators.

An anonymous Complainant later initiated this case. The Complainant alleged multiple policy violations on NE#1’s part, including biased policing. This investigation ensued.

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.)

There is no evidence supporting the Complainant’s allegation that NE#1 engaged in biased policing. Indeed, the evidence conclusively established that the victim and multiple witnesses attested that the Subject committed an assault. They further provided photographs of the Subject. This evidence established abundant probable cause to arrest the Subject. Moreover, the Complainant has adduced no evidence, other than conjecture, that any ill motive played a part in NE#1’s decision-making. While the Complainant may have been unhappy with NE#1’s determination not to interview the other demonstrators, as discussed more fully below, he was not required to do so. Indeed, he was entitled to base his decision on the reliable evidence uncovered during the investigation and the credible witness accounts the officers obtained.

As such and given the dearth of evidence presented by the Complainant, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.010-POL-3 requires that arrestees be read their Miranda warnings “as soon as practical” after being taken into custody.

The BWV established that officers began reading Miranda warnings to the Subject approximately 50 seconds after making contact with him and that the Subject acknowledged that he understood his rights. Given the loud and immediate reaction from others in the group of demonstrators when the Subject was taken into custody, it was reasonable for the officers to wait momentarily before beginning to advise him of his Miranda warnings to ensure that the Subject could hear what was being said. Moreover, the policy does not require Miranda warnings to be read immediately.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity a. Notification of Recording

SPD Policy 16.090-POL-5 requires that SPD employees record police activity and notify people “as soon as practical” that they are being recorded.

NE#1 informed the large group that all officers were audio and video recording less than a minute after making contact. At this time, members of the group made statements indicating that they understood. They also responded that they were also recording the officers, which NE#1 acknowledged.

Given that NE#1 substantially complied with this policy, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances

SPD Policy 15.180-POL-3 governs when officers are expected to take statements. Statements must be taken in some investigations, including those that concern domestic violence or felonies. However, relevant to this case, witness statements are not required to be taken in misdemeanor investigations and are within the officers’ discretion.

Here, the Subject was arrested for misdemeanor assault. As such, NE#1 had no obligation to take witness statements from anyone, including the demonstrators. In addition, NE#1 informed them that they could provide statements at a later time and gave the female demonstrator his card with the incident number.

Based on the above, OPA finds that NE#1 acted consistent with this policy during this incident and did not unreasonably exercise his discretion. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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