



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2020

CASE NUMBER: 2019OPA-0664

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)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-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 the Named Employees engaged in biased policing during their response to a noise complaint.

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

The Named Employees were dispatched to a call of a disturbance at an apartment building. It was reported that a male subject was banging on the outside door of an apartment and was trying to get in. The 911 callers were upset by the amount of noise that the male was making. The Named Employees arrived at the building and made contact with the male. Based on a review of the Body Worn Video (BWV), the male was extremely intoxicated and had trouble uttering complete and intelligible sentences.

Named Employee #1 (NE#1) asked the male whether he knew the code to the door (the door was locked by a keypad) and whether there was anyone else inside. NE#1 told the male that numerous other residents had called to complain about the noise. NE#1 asked the male if the code to the door was working and offered to try to enter the code if the male provided it to him.



At that time, a woman exited her apartment. She told NE#1 that she did not recognize the male. She said that the male was repeatedly banging on the door and woke her up. Another individual exited the apartment and echoed the woman's statement. Both indicated that the male was calling people "names," was being "vulgar," and was "disturbing the peace." The male told the women to "shut" their "whore mouths" and NE#1 told him that this statement was "not very nice." Shortly thereafter, the male was able to properly enter the code and access his apartment. NE#1 and Named Employee #2 (NE#2), who was behind him, walked to the window of the male's apartment and NE#1 shined his flashlight inside and illuminated the male. In response, the male stated: "get the fuck out." The Named Employees then walked downstairs and left the scene.

The Complainant, who OPA presumes is one of the individuals who exited the apartment and interacted with the Named Employees, later filed this complaint. She alleged that the Named Employees failed to take appropriate law enforcement action during this incident. She believed that the Named Employees "should have taken [the male] to their patrol car to restore the peace." She asserted that the Named Employees did not do so because the male was White and she and her wife, who she identified as the other individual who exited the apartment, were a lesbian couple. The Complainant contended that, by not taking action towards the male, the officers "showed a complete disregard for [their] right to live in Seattle peacefully and safely because of [their] non-conforming appearance."

In her written complaint, the Complainant cited as the legal authority justifying the arrest of the male: the RCW concerning malicious harassment; the WAC concerning assault, intimidation, bullying, and verbal threats; and City noise ordinances.

As part of its investigation, OPA conducted an interview of the Complainant. She reiterated the claims from her written complaint and asserted that she was treated disparately by the Named Employees. She further contended that, had the male been Black instead of White, the officers would have treated him differently and with less deference.

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 totality of the record, OPA finds the Complainant's allegation to be unsupported by the evidence. OPA reaches this conclusion for two main reasons.

First, the officers had no legal basis to arrest the male as the Complainant desired. Notably, at the time the Named Employees were at the apartment, the male did not yell, bang on the door, or engage in any other criminal activity. As such, they did not have a legal basis to enforce the noise ordinance at that time. Even if they did, they would have been entitled to issue a civil infraction, not to effectuate a custodial arrest. Moreover, both of the statutory provisions cited by the Complainant were inapplicable to the facts of this case and did not provide a basis to take the male into custody.

Second, even assuming for the sake of argument that the Named Employees should have arrested the male – which OPA explicitly does not find – there is no basis to conclude that they did not do so because of the male's race or, for that matter, because of the Complainant's sexual orientation. Moreover, there is no evidence indicating that they



had any idea what the Complainant's sexual orientation was, let alone that they discriminating against her because of this. To assert the contrary is simply conjecture without any evidentiary support.

Ultimately, OPA recognizes the Complainant's frustration. OPA also recognizes that the male was acting in a ridiculously inappropriate and disrespectful manner. However, the blame for this does not fall on the Named Employees. They acted consistent with policy, without any discernable bias, and within the expectations of the Department. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegations #1

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

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)**