



ISSUED DATE: FEBRUARY 28, 2020

CASE NUMBER: 2019OPA-0677

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

**Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible	Sustained

**Imposed Discipline**

**Oral Reprimand**

***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:**

It was alleged that the Named Employee did not timely notify a supervisor that he used force.

**ANALYSIS AND CONCLUSIONS:**

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

***8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible***

On September 3, 2019, Named Employee #1 (NE#1) was working off-duty flagging traffic at a parking garage. While doing so, he observed a cyclist riding towards the garage. NE#1 relayed that he knew that this cyclist frequently disregarded traffic signals. NE#1 motioned for all traffic to stop, including the cyclist, in order to allow cars to exit the garage. However, the cyclist did not comply with that direction and continued forward. NE#1 reported that he grabbed the cyclist in order to stop him and that, in response, the cyclist pushed NE#1. NE#1 stated that he pushed the cyclist back, which caused the cyclist to fall off his bicycle and onto the ground. NE#1 described that the cyclist got off the ground and positioned himself in a fighting stance. NE#1 said that he did the same as he feared that the cyclist would try to assault him. NE#1 indicated that, at this point, the cyclist made the decision to get back onto his bicycle and ride away.

NE#1 did not immediately notify a supervisor that he had used force. He also did not report the cyclist's assault on an officer and request another unit to come to the scene to investigate. Two days later, NE#1 reported the incident to a supervisor. That supervisor commenced a use of force investigation. However, given the delay in reporting, the supervisor made an OPA referral and this investigation ensued.

SPD Policy 8.400-POL-3(3) requires officers who use force to notify a supervisor of that force as soon as feasible. This is purposed to ensure that supervisors are able to complete timely and comprehensive use of force investigations, including preserving potentially perishable evidence, photographing the scene as it appeared when the force was used, and interviewing witnesses who may be lost if not identified and/or asked to remain at the scene. Properly



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reporting and documenting force is a fundamental part of the Consent Decree and is one of the highest ongoing priorities for the Department.

NE#1 admittedly did not notify a supervisor of the force he used as soon as feasible. Indeed, he did not do so until two days later when he realized that he had made a mistake. Given this failure to report, a supervisor did not immediately respond to the scene and was unable to conduct a force investigation consistent with the requirements set forth in policy.

While OPA recognizes that NE#1 did ultimately report his force, as well as the fact that he has not worked in patrol for a period of time and has not recently used force, these are factors that mitigate the ultimate level of discipline rather than influence the finding that he violated policy. OPA notes that failures to timely report and document force regularly result in Sustained findings for patrol officers. OPA sees no compelling justification to depart from that precedent here. This is especially the case given the importance of all officers, regardless of assignment, complying with this policy, both to maintain public trust and confidence and to ensure continued compliance with the Consent Decree.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**