



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 4, 2020

CASE NUMBER: 2019OPA-0684

### **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 6. Employees May Use Discretion	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 Named Employee #1, a dispatcher, failed to properly handle his 911 call, which the Complainant contended constituted an abuse of her discretion. The Complainant also alleged that this was due to Named Employee #1's bias towards him. The Complainant also asserted that Named Employee #2 conducted an inadequate investigation into this case and that this was based on bias.

### **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.

During its intake investigation, OPA identified that Named Employee #2 did not appear to have canvassed for third-party video, to have interviewed witnesses, or to have obtained the contact information for witnesses from the Complainant in order to interview them at a later time. While this did not, in OPA's opinion, cause named Employee #2's investigation to be deficient, OPA returned this matter to the chain of command to handle via a Supervisor Action. The chain of command thoughtfully and comprehensively addressed this matter with Named Employee #2.

### **SUMMARY OF INVESTIGATION:**

The Complainant called 911 to report that he was a victim of an assault and that the perpetrator – who is referred to here as the "Subject" – yelled racial slurs at him. He indicated that the Subject damaged his car by kicking it. The Complainant stated that the 911 operator – Named Employee #1 (NE#1) – did not dispatch officers to the scene and, instead, told him that he needed to stand by if he wanted officers to respond. The Complainant believed that NE#1's



direction to him was unsafe. He felt that this and the failure to immediately send officers to his location constituted an abuse of NE#1's discretion. The Complainant also alleged that NE#1's handling of this call was based on her bias towards him. This OPA investigation ensued.

As part of its investigation, OPA interviewed the Complainant. He reiterated his allegations against NE#1. The Complainant also contended that the officer who eventually responded to this incident – Named Employee #2 (NE#2) – failed to take appropriate investigatory action. Specifically, the Complainant asserted that NE#2 refused to interview witnesses or to take photographs of his vehicle. The Complainant recounted that NE#2 asked him repeatedly whether he had video of the incident, which the Complainant found frustrating given that there were witnesses to the incident. The Complainant relayed that NE#2 said that he would see what he could do, but that NE#2 had done nothing thus far. Lastly, the Complainant alleged that NE#2's lack of investigation and inaction was based on potential bias against the Complainant given that the Complainant was from India.

OPA reviewed the audio recording of the 911 call. The recording indicated that the Complainant reported the assault, the racial slurs directed towards him, and damage to his car in the amount of \$3,000. He also asserted that the Subject damaged his cell phone by throwing it and breaking the screen. NE#1 obtained pertinent information from the Complainant, including the location of the incident and a description and direction of travel of the Subject. The Complainant further disclosed to NE#1 that he had video of the incident. He did not state during the call that there were any witnesses to the incident. NE#1 told the Complainant that police would come to the scene and asked whether he could wait for them to arrive. The Complainant said that he could only wait for five minutes. NE#1 told the Complainant that, in order for a report to be written, the police needed to speak with him. She explained that, if the Complainant had to leave, he could call the police back and set up a time for them to meet with him and to obtain the video recording. The Complainant said that he understood and that he would call back. NE#1 confirmed with the Complainant that he was not able to wait at the scene and told him to call back. The call was then mutually disconnected.

Approximately 19 minutes later, the Complainant again called 911 concerning this incident. He told the second 911 operator that he had previously called. He told the second operator that, when he spoke to NE#1 earlier, he was told to call back when he was at a location where he could be contacted by police. The second operator obtained the Complainant's address and dispatched officers.

OPA further watched NE#2's Body Worn Video (BWV), which captured his response to the Complainant's location. NE#2 made contact with the Complainant and confirmed that he was there to take a report. The Complainant described what occurred to NE#2. The Complainant reiterated that he was assaulted. The Complainant also again alleged damage to his car and his cell phone. However, the Complainant told NE#2 that only the case of the phone was broken, which was inconsistent with his earlier statement to NE#1 regarding the broken screen. The Complainant also asserted that the Subject took his credit cards. NE#2 asked whether he had any pictures from the incident and the Complainant stated that he had a video recording. NE#2 watched the video recording and portions of it were captured by NE#2's BWV. The video did not actually depict any assault, property damage, or racial slurs directed towards the Complainant. The Complainant told NE#2 that he had a witness who could confirm that the Subject was a "crazy guy"; however, it was unclear that this witness actually saw the alleged assault and property damage. NE#2 responded by telling the Complainant that a witness who could simply verify that the Subject was "crazy," was not necessarily going to be helpful. NE#2 told the Complainant that he would go to the Subject's business and speak with him regarding what occurred. NE#2 noted that, due to the lack of video evidence, the likelihood that the Subject would provide an alternate account, and the time that had elapsed from the time of the



incident, it would be difficult to take police action. However, NE#2 confirmed that he would document the investigation in a report.

NE#2's BWV indicated that he then went to the Subject's place of business to speak with him about what occurred. The Subject denied that he assaulted the Complainant, that he used racial slurs, that he broke the Complainant's cell phone, or that he ever possessed the Complainant's credit cards. The Subject acknowledged that he did kick the Complainant's car, but explained that, when he did so, the Complainant had backed his vehicle up and "spun his wheels" at the Subject. The Subject asserted that the Complainant made numerous threats of harm to him. NE#2 told the Subject that he would be documenting this incident. The Subject informed NE#2 that he had already made an online report.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-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.*)

Based on OPA's review of the evidence – most notably, the recording of the 911 call, there is no support for the Complainant's assertion that NE#1 subjected him to biased policing. In OPA's opinion, NE#1 properly explored the Complainant's allegation of criminal activity on the Subject's part. NE#1 asked the Complainant whether he could remain at the scene and correctly informed him that, if he did not do so, police could not respond, and a report could not be taken. She provided the Complainant the option of calling again and, indeed, he later did so. Lastly, NE#1 confirmed with the Complainant that he did not want to remain at the scene and that he would call back. She never refused to send officers or even expressed reluctance to do so.

Ultimately, NE#1's response to the Complainant's 911 call was completely consistent with Department policy and there is no evidence that anything she did was based on bias of any kind. 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 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)



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As discussed more fully above, NE#1 handled the Complainant's 911 call appropriately and consistent with policy. The Complainant's allegation that she abused her discretion is unsupported by the evidence. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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 multiple reasons, the Complainant's allegation of bias against NE#2 is completely unsubstantiated by the record.

First, NE#2 respectfully and patiently listened to the Complainant's account and accurately documented that account in a report. There is no evidence that he minimized or disregarded the Complainant's assertions due to the Complainant's race or ethnicity. Second, NE#2 interviewed the Subject as he indicated he would and thoroughly explored whether the Subject had engaged in criminal activity. Third, there was insufficient evidence to establish that the Subject committed a criminal act. Indeed, the Subject provided facts and photographs that supported his account of the incident. Accordingly, NE#2's decision to document this matter in a report rather than effectuating an arrest was reasonable and appropriate. Fourth and last, even if NE#2's investigation violated policy – which OPA does not find – the Complainant still has not offered any evidence other than conjecture to support his claim of bias.

For the above reasons, OPA finds that the Complainant's allegation of bias is without merit and recommends that this allegation be Not Sustained – Unfounded.

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