



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 21, 2020

CASE NUMBER: 2019OPA-0743

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	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	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:

The Complainant alleged that the Named Employee engaged in biased policing and failed to properly report an investigation during his response to a disturbance call.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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 4, 2019, at approximately 6:50 p.m., Named Employee #1 (NE#1) responded as a backing officer to another officer's call of a "fight disturbance" near Occidental Ave South and South King Street. This disturbance, which was between individuals of divergent political beliefs, occurred during the course of a Seattle Sounders fan march towards Century Link Field. Upon arrival at the scene, NE#1 spoke with three witnesses, all of whom reported that a fourth individual had been yelling at them at the time of the incident. According to these witnesses, this individual also assaulted one of their group, causing all three to physically defend themselves. When questioned, the fourth individual stated that he had been surrounded by the witnesses, one of whom threatened and pushed him. The individual stated that, in response, he pushed one of the witnesses, but he was then shoved, slapped, and thrown into the street. While at the scene, NE#1 reviewed a cellphone video of the incident. Despite NE#1's efforts to obtain a copy of that video, he was unable to do so. However, as discussed below, the video was later provided to OPA by the Complainant.



OPA reviewed the Body Worn Video (BWV) associated with this incident. The BWV showed NE#1 viewing the cellphone footage and NE#1 describing the incident to his sergeant. When describing the incident, NE#1 told his sergeant that the individual could be seen throwing the “first punch,” but that the individual was surrounded by others and could have been fearful for his safety at the time. NE#1 determined that the genesis of the altercation was unclear, and that no arrests would be made. NE#1 indicated that he would refer the matter to prosecutors for review due to the complex nature of the incident and the possibility that one or more of the involved parties could have engaged in criminal activity. BWV from another officer on scene was consistent with the above. That other officer also received conflicting accounts from the involved parties. Lastly, BWV recorded a third officer also stating that he viewed the cellphone video and that it was unclear which party started the fight.

Two months after this incident, the Complainant—an uninvolved third party—alleged that NE#1 engaged in biased policing and failed to properly report the investigation he conducted concerning this incident. In support of his allegations, the Complainant provided OPA with a series of videos purportedly recorded at the time of the incident. One of the videos appeared to contain the same footage viewed by NE#1 at the time of the incident. In this footage, one individual shoved another person. They continued to engage in pushing until the individual punched that person. Subsequently, the person who was hit responded by striking the individual and throwing the individual to the ground. Other individuals also engaged in a physical struggle with the individual. The fight then broke up. The other videos provided by the Complainant were reviewed by OPA but did not involve NE#1.

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 as other discernible personal characteristics of an individual.” (SPD Policy 5.140). This includes different treatment based on the race or political ideology. (See *id.*)

The totality of the evidence – including BWV – shows that NE#1 interviewed the involved parties and witnesses, reviewed recorded evidence of the altercation, and discussed the incident and his proposed course of action with supervisors. By NE#1’s own admission at the scene, the case was complicated, as it was unclear how the altercation began and who was responsible for initiating the incident. Based on his investigation, NE#1 determined that the matter should be referred to the prosecutor’s office and the supervisors did not object to that determination.

While this incident involved individuals of different political views, there is no evidence that NE#1 engaged in activities or made decisions that would suggest bias on his part. To the contrary, he appeared to investigate this matter fully and to make the best and most informed determination that he could under the circumstances. NE#1’s decision to not make a custodial arrest was reasonable given the limitations of the video and the disparate accounts being provided by the involved parties and witnesses. Lastly, NE#1 wrote a report and referred the case to the prosecutor for review. This ensured that charges could be filed if the prosecutor deemed there to be sufficient probable cause and is additional evidence undermining the Complainant’s allegation of bias.

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

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



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document primary investigations in a report. That report must be thorough, complete and accurate.

When comparing NE#1's report to the BWV and the other available evidence, OPA finds that it substantially complied with policy. Most notably, OPA concludes that the report largely accurately described the third-party video that captured the assault. It further accurately memorialized the disparate accounts provided by the parties.

The Complainant appears to be complaining more about the result of the report – the fact that no custodial arrest was effectuated – than the content. However, the reasonableness of NE#1's decision to not take anyone into custody is fully addressed in the content of Allegation #1.

Ultimately and as discussed above, OPA concludes that the report was consistent with policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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