



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 8, 2020

CASE NUMBER: 2019OPA-0849

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate	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 did not accurately record his concerns about in the probable cause affidavit and failed to engage in de-escalation techniques during an incident that took place on November 13, 2019 at The Collective.

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.

SUMMARY OF INVESTIGATION

Officers, including Named Employee #1 (NE#1), responded to a report of an assault at the Collective, a private club. The officers determined that the Complainant had been present at an open event at the club meant to recruit new members. The Complainant stayed for several hours after the event ended and he was approached by an employee who began to discuss membership options with him. The employee reported that the Complainant began to act erratically and punched the employee multiple times in the face. The officers detained the Complainant and read him Miranda warnings. From a review of the Body Worn Video (BWV), it was clear that the Complainant was suffering from a mental health crisis. The officers interviewed the employee, who was visibly injured. The employee confirmed that the Complainant had assaulted him. The officers placed the Complainant under arrest and seated him in the rear of NE#1's patrol vehicle. During their response to the club and while taking the Complainant into custody, all of the officers, including NE#1, treated him calmly, respectfully, and complied with the Department's de-escalation policy.

While the Complainant was in the rear seat, NE#1 began to write the general offense report for this incident. The Complainant leaned forward and began to read what NE#1 was typing. The Complainant asked NE#1 why he was not



writing everything that the Complainant had said. NE#1 responded: "It's very difficult to wrote everything verbatim, it takes too much time, so I have to summarize it to the best of my abilities." The Complainant asked he if could speak with a supervisor. NE#1 stated to him: "You are going to talk to a supervisor...I need you to stop talking, stop interrupting otherwise it's going to take longer, sit back and relax." NE#1 continued to write the report and the Complainant continued to watch him. The Complainant then told NE#1 to tell his supervisor that the Complainant wanted to make a complaint for NE#1 "not writing a full accurate statement." NE#1 said: "I'm not going to tell him anything, you're going to talk to him okay. Stop talking." The Complainant started screaming and cursing at NE#1 and told him to write a "full statement." NE#1 responded: "I'm not going to write a it, it's a misdemeanor, stop yelling." When the Complainant continued to curse, NE#1 said: "Okay you talk to my supervisor when we see him okay? I thought we were cool, you're just like everyone else...just rude." After a short period of time, NE#1 further explained: "Listen, this is just the Probable Cause Statement, it doesn't have all the pertinent details. I don't have time to sit here and write everything. I have to get you to the jail as quickly as possible." NE#1 ultimately told the Complainant: "I'm going to put it in there that you believe you were discriminated against based off of your disability...I'll put that in there..." The Complainant thanked NE#1 and said that this made him feel better. The remainder of their interaction was without incident.

The Complainant later spoke to a supervisor and asked that his complaints be referred to OPA. The supervisor made the referral and this investigation ensued. As part of this investigation, OPA considered the following allegations made by the Complainant: (1) NE#1 did not include his complaints about the club and its employees in his report; and (2) NE#1 did not de-escalate properly during this incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)



The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Based on OPA’s review of the BWV, OPA finds no evidence to support a finding that NE#1 failed to de-escalate. First, for virtually all of his interaction with the Complainant, NE#1 was calm and treated him respectfully. Second, while NE#1 did make several statements that ultimately triggered the Complainant, these statements were not of the kind to be considered escalating or inconsistent with policy. They simply constituted information that the Complainant did not want to hear at the time. Third, even if NE#1’s statement to the Complainant that he was just like everybody else and rude was unnecessary, OPA does not find that it was de-escalating.

For these reasons, OPA concludes that NE#1 did not act contrary to the Department’s de-escalation policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate

SPD Policy 15.180-POL-5 requires that all reports be complete, thorough, and accurate. As discussed above, the Complainant alleged that NE#1’s report was inadequate and, specifically, that NE#1 failed to include information about his complaints concerning the club employees.

When comparing the report generated by NE#1 to the BWV video of the incident, OPA finds that the report was consistent with policy. While the Complainant may have wanted certain information to be in the report or for the report to have had more content, this was not up to him and was within the discretion of NE#1. Indeed, there is no requirement that a report include every piece of information learned by the officer and the report is meant to capture the facts necessary to establish whether or not a crime was committed.



Lastly, NE#1 did, in fact, include information concerning the Complainant's belief that he was mistreated by the club employees and that they discriminated against him based on his disability. This appears to have satisfied the predominant issue identified by the Complainant.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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