



CLOSED CASE SUMMARY

ISSUED DATE: MAY 31, 2020

CASE NUMBER: 2019OPA-0889

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Inconclusive)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

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:

The Complainant alleged that the Named Employee treated him unprofessionally and unfairly targeted him for law enforcement action on multiple occasions. Lastly, the Named Employee subjected his wife to biased policing.

SUMMARY OF INVESTIGATION:

The Complainant initiated this complaint in which he alleged that Named Employee #1 (NE#1) was unprofessional towards him during an interaction that occurred on November 21, 2020. The Complainant further asserted that he had been contacted a number of other times by NE#1 and that NE#1's repeated law enforcement action towards him constituted harassment and retaliation. Lastly, the Complainant asserted that during one of those contacts, NE#1 referred to his wife as "woman" with a specific look on his face, which the Complainant believed suggested bias towards her.

As part of its investigation, OPA looked for Body-Worn Video (BWV) and In-Car Video for the various interactions between NE#1 and the Complainant. None was located. In addition, OPA only able to locate one report. This report documented a domestic violence (DV) assault between the Complainant and his wife in which the Complainant was listed as the Subject. This report was written by NE#1 and occurred prior to the conduct alleged in this case.

OPA interviewed NE#1. He stated that he remembered that the Complainant was the Subject in the DV incident. He recalled that, a few weeks after that incident, he was on patrol, and ran a license plate that returned to the Complainant. He stated that he spoke with the Complainant and told him that he might get subpoenas relating to the DV incident.

He contacted the Complainant a second time after observing an RV without a front license plate. He observed the Complainant removing items from the RV and placing them into a car. He indicated that he warned the Complainant about the missing plate and the Complainant replied that he had just sold the RV.



NE#1 interacted with the Complainant for a third time on November 21. During that interaction, NE#1 observed the Complainant sitting in the driver's seat of a running car. NE#1 knew that the Complainant did not have a valid driver's license and informed him that he was not permitted to drive and that, if he was seen driving, he could be arrested. NE#1 told the Complainant that he knew the Complainant was at that location to buy drugs. NE#1 also referenced the past DV incident between the Complainant and his wife. He recalled stating to the Complainant: "The woman sitting next to you, your wife, you know, told me you strangled her." He asked the Complainant what was going on and told OPA that the Complainant responded that he "almost" had a driver's license. NE#1 replied: "If you think that you can drive with almost a driver's license, I think you're an idiot." He stated that he then observed traffic behind him and drove off.

NE#1 acknowledged that calling the Complainant an "idiot" was not in line with the Department's expectations of his professionalism. NE#1 denied, however, that his multiple interactions with the Complainant constituted retaliation or targeting of him. Lastly, NE#1 denied that he subjected the Complainant's wife to biased policing.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

As NE#1 acknowledged, calling the Complainant an "idiot" during their interaction was unprofessional. There was no legitimate law enforcement purpose in making such a statement and it constituted contemptuous and disrespectful language directed towards the Complainant. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant alleged that NE#1 has harassing himself and his wife on an ongoing basis. The Complainant contended that this constituted retaliation.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person." (*Id.*)



NE#1 confirmed at his interview that he had contacted the Complainant on a number of occasions. He stated that he did so in the morning because that was his shift. NE#1 explained that his intent was to be proactive not to harass the Complainant. He stated that, when he spoke with the Complainant, he informed him that the police were aware that he did not have a license and of that he was not allowed to drive a vehicle. NE#1 denied that he contacted the Complainant solely on the basis of him being a suspect in a prior DV incident. NE#1 further noted that all of these contacts occurred prior to the Complainant filing this OPA complaint against him.

OPA's evaluation of this allegation was significantly complicated by the fact that NE#1 did not record BWV. While he explained that he did not do so because he solely engaged in social contacts, OPA disagrees and believes that he should have turned on his BWV when speaking to the Complainant about potential criminal activity. Notably, NE#1's chain of command came to a similar conclusion and counseled him regarding his lack of BWV. Given the lack of BWV, OPA cannot definitively determine whether or not these contacts were simply educational in nature, as NE#1 described, or whether NE#1 conduct crossed the line into harassing and/or retaliatory behavior, as alleged by the Complainant.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

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.*)

The Complainant stated that NE#1's reference to his wife as “woman” suggested bias on NE#1's part. The Complainant asserted his belief that NE#1's statements were biased was based on a “feeling.” NE#1 explained the context in which he used the term “woman” when referring to the Complainant's wife and denied that he did so in a biased manner.

When applying the requisite burden of proof, the evidence does not support a finding that NE#1 engaged in biased policing. NE#1 provided an alternative explanation of what his words meant, and the Complainant did not provide evidence to counter that assertion. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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