



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 17, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0154

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

#### **Named Employee #1**

| Allegation(s): |   | Director's Findings |
|----------------|---|---------------------|
| # 1            | 1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command | Sustained           |
| # 2            | 15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report   | Allegation Removed  |

#### **Imposed Discipline**

|                   |
|-------------------|
| Written Reprimand |
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#### **Named Employee #2**

| Allegation(s): |   | Director's Findings |
|----------------|---|---------------------|
| # 1            | 15.370 - Sexual Assault Investigation 4. Officers Complete a Report and an Officer Statement          | Sustained           |
| # 2            | 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence | Allegation Removed  |
| # 3            | 15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report     | Allegation Removed  |

#### **Imposed Discipline**

|                                |
|--------------------------------|
| Resigned Prior to Proposed DAR |
|--------------------------------|

***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 #2 failed to properly investigate an incident involving him. OPA further alleged that Named Employee #2 did not investigate allegations of sexual assault and indecent exposure against the Complainant and wrote an inadequate report. Lastly, OPA alleged that Named Employee #1 failed to properly carry out his supervisory duties.

### **SUMMARY OF INVESTIGATION:**

The Complainant called 911 to report an altercation he was involved in with security at a nightclub. He stated that he was removed from the nightclub because he criticized the dance floor. He said that he may be injured because he almost fell; however, medics were declined. The Complainant – who reported being disabled – asserted his belief that



he was being discriminated against because of his concerns with the safety of the dance floor. The call was also updated to note that the Complainant may have pushed the nightclub head of security.

Named Employee #2 (NE#2) and another officer – referred to here as Witness Officer #1 (WO#1) – were dispatched to the scene. NE#2 was the primary officer on the call and was ultimately responsible for the investigation and the paperwork documenting the incident.

WO#1 spoke to nightclub security. The head of security said that the Complainant complained of the conditions of the dance floor. He was told that drinks had been spilled and they were doing the best they could to clean it up under the circumstances with people actively dancing in the area. Eventually, the Complainant walked out of the nightclub and the head of security instructed that he not be let back in. The Complainant stepped towards the door and the head of security told the Complainant to back away or he would call the police. The Complainant did not do so and said: “Do it. Fucking touch me. I dare you.” The head of security stated that he brushed by the Complainant but did not push him. At that time, the head of security told WO#1: “this was also the gentleman I had ladies come up and tell me was groping them and exposing himself on the dance floor.” Another nightclub employee opined that the Complainant was “high on something.” Security asked that the Complainant be trespasses from the nightclub.

WO#1 then spoke with the Complainant. He confirmed that he complained about the dancefloor and said that he was disabled. He believed that he was discriminated against by the nightclub. He alleged that the head of security “tweaked” his back. WO#1 did not ask the Complainant about the allegation that he may have engaged in sexual assaults and indecent exposure in the nightclub.

WO#1 relayed what he had learned to NE#2. At that time, WO#1 did not convey any information concerning the allegations of sexual assault and indecent exposure against the Complainant. NE#2 spoke with the Complainant. The Complainant asserted that he was discriminated against when he was kicked out of the nightclub after complaining about the dancefloor. NE#2 asked how the nightclub would have known about his disability and the Complainant said that he informed the nightclub that he had spinal bifida and Parkinson’s disease. The Complainant confirmed that he declined to go to the hospital. The Complainant asked that a report be written for assault. The Complainant said that he felt that he was in “trouble” for reporting an assault. When NE#2 asked why he felt this way, the Complainant replied that it was because of the way NE#2 was talking to him and NE#2 acting as if he did not give a “fuck.” NE#2 denied that this was the case. NE#2 told the Complainant that the incident did not rise to the level of discrimination and gave him a business card with the incident number prior to ending their interaction. NE#2 did not question the Complainant about the allegations of sexual assault and indecent exposure.

NE#2 later documented this incident in a report. In the report, he referenced both the Complainant’s claims of assault and discrimination and nightclub security’s report that the Complainant groped women. NE#2 wrote that the Complainant: “was belligerently intoxicated and was touching female patrons inappropriately. Several female patrons had reported to security that [the Complainant] had ‘groped’ them, but none wanted police contact.” The report did not indicate that any investigation was done to address the claims of groping/sexual assault. The report was later approved by NE#2’s Sergeant, Named Employee #1 (NE#1). NE#1 did not return the report to NE#2 to request further investigation of the groping/sexual assault allegations or identify that this aspect of the report and investigation was deficient. Neither NE#1 nor NE#2 forwarded the report to a follow-up unit for further investigation.



OPA later received a complaint from the Complainant. The Complainant asserted that NE#2 did not adequately investigate the assault against him and, instead of treating the Complainant as a victim, NE#2 made the Complainant feel that he was the one at fault. This investigation ensued.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command***

SPD Policy 1.020-POL-7 required that command employees take responsibility for every aspect of their command. This includes Sergeants. OPA alleged that NE#1 violated this policy by failing to identify that NE#2 failed to properly investigate allegations of sexual assault and groping, and by approving a deficient report submitted by NE#2 without directing further investigation.

NE#1 said that he learned of the allegations of sexual assault from NE#2 when the incident was screened with him at the East Precinct. He told NE#2 to detail the allegations in the report. He stated that, based on what he recalled, there was no information concerning the identities of the victims and that they did not want police contact. NE#1 asserted that, as such, there was nothing more that could be done. NE#1 acknowledged that he approved the report, and he did not remember directing NE#2 to do any additional investigation. NE#1 felt that NE#2 did a sufficient investigation. NE#1 stated that he ultimately bore responsibility for the deficiencies in NE#2's report and investigation.

As discussed more fully below, OPA finds that NE#2's investigation into the allegation of sexual assault was insufficient. OPA further finds that his report was incomplete and inaccurate. NE#1, as his supervisor, should have recognized this and directed NE#2 to conduct further investigation. NE#1 also should not have approved the report as written and should have directed that it be amplified and clarified. Lastly, NE#1 should have ensured that the report was forwarded to a follow-up unit for further investigation, but also failed to do this. OPA agrees with NE#1 that he was ultimately responsible for these shortcomings and, as such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

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

OPA finds that this allegation is fully subsumed in Allegation #1 and, accordingly, recommends that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #1**

***15.370 - Sexual Assault Investigation 4. Officers Complete a Report and an Officer Statement***

At the outset, OPA notes that NE#2 did not appear to unduly take the nightclub's side over that of the Complainant and did not treat the Complainant unprofessionally. To the contrary, OPA's main issue with NE#2's conduct was his failure to investigate the allegations of sexual assault and indecent exposure against the Complainant.



SPD Policy 15.370 governs officer investigations into sexual assaults and indecent exposures. SPD Policy 15.370-POL-4 requires that, in such investigations, officers complete a report and an officer statement. The policy further requires that the officer statement be “detailed.” (SPD Policy 15.370-POL-4.) In addition, SPD Policy 15.370-POL-5 instructs that, as part of a sexual assault investigation, “officers check indecent exposure arrestees’ criminal history.” Lastly, SPD Policy 15.370-TSK-1 sets forth the steps officers should take in these investigations. These steps include but are not limited to: (1) identifying the victim and asking if the victim needs medical attention; (2) determining whether there are witnesses; (3) processing the scene for evidence or, if needed, summoning assistance to do so; and (5) notifying a sergeant.

NE#2 said that he did not learn of the sexual assault and indecent exposure allegations until he left the scene. While he did not recall how he learned this, he assumed that he was told by WO#1. NE#2 said that, had he known about the allegations while on scene, he would have investigated them. When pressed by OPA, he acknowledged that he could have called the nightclub to see whether the identities of the victims and/or witnesses were known or that he could have driven to the nightclub to try to find evidence. He said that he also could have consulted with his supervisor about this but did not do so.

Even though the BWV supports NE#2’s assertion that he did not know about the sexual assault and indecent exposure allegations until after he left the scene, this did not absolve him from addressing these matters once he learned of them. At the very least, he should have called the nightclub to see whether there were any known victims or witnesses. He did not do so here. Moreover, while his report indicated that the victims did not want contact with law enforcement, there is no evidentiary basis in the record for this assertion. Indeed, as indicated above, NE#2 admittedly conducted no investigation to see whether this was, in fact, the case.

NE#2 did not complete any of the requirements of this policy and, to make matters worse, did not forward the case for follow-up investigation. As such, no one at SPD performed any inquiry into potential serious crimes. This was improper and violated policy. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #2**

***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

OPA finds that this allegation is fully subsumed in Allegation #1 and, accordingly, recommends that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #3**

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

OPA finds that this allegation is fully subsumed in Allegation #1 and, accordingly, recommends that it be removed.

Recommended Finding: **Allegation Removed**