



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 4, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0291

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.080 - Follow up Unit Notification & Follow up Investigation POL-2 Follow-Up Unit Investigation (1) Follow-Up Investigations Shall Include Certain Minimum Components	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 the Named Employee failed to properly investigate an assault.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.080 - Follow up Unit Notification & Follow up Investigation POL-2 Follow-Up Unit Investigation (1) Follow-Up Investigations Shall Include Certain Minimum Components

On July 5, 2019, the Complainant was at the "Q" nightclub in Capitol Hill when he called 911 to report an assault. Although the Complainant advised responding officers that he was assaulted, he was only able to recount that a "Black male" may have been the aggressor. Officers attempted to identify relevant security camera footage, but available footage did not depict the alleged incident.

On August 13, 2019, Named Employee #1 (NE#1) was assigned the case for investigation. As part of that investigation, NE#1 took the Complainant's statement. The Complainant informed NE#1 that a nightclub employee punched him in the face. The Complainant also provided NE#1 with written statements from six of the Complainant's friends, who were present on the night of the incident. Of the six individuals, three described the Complainant as having been punched in the face by an African American nightclub employee, with a fourth individual describing the incident but not the assailant. A fifth individual reported seeing the Complainant escorted from the nightclub by 5-6 men but was unable to describe them. The sixth individual did not witness the incident.

Of the three individuals who offered a description of the assailant, only one responded to NE#1's request for additional information. This individual was shown still photos from a video of the incident that NE#1 obtained. The photos showed an employee holding a drink tray; the witness indicated to NE#1 that he did not believe that



individual to be the assailant. When the Complainant was shown the photos by NE#1, he stated that he was unsure if they depicted the assailant.

Lacking further information or leads, on February 7, 2020, NE#1 determined that he could not identify the suspect. On May 14, 2020, the Complainant's attorney filed this complaint with OPA on her client's behalf.

SPD Policy 15.080-POL-2(1) states that follow-up investigations shall include certain minimum components, falling into three general categories. The first category, "analysis and review," necessitates that "all previous and related reports should be reviewed and assessed for relevance or intelligence value. (SPD Policy 15.080-POL-2(1)(a)). The second category, "investigative operations," requires detectives to contact suspects, witnesses, and victims, as well as contact other useful SPD entities. (*Id.* at (b).) Lastly, the third category of "case preparation" requires the detective to work with prosecutors on case refinement. (*Id.* at (c).)

NE#1 addressed the first component of 15.080-POL-2(1) by reviewing the police report and the pertinent BWV. Upon conclusion of this component, NE#1 addressed the second component by working with the involved parties to further the case. Importantly, NE#1 reached out to the Complainant, known witnesses, and nightclub staff in order to secure statements regarding the incident, but was unable to develop sufficient evidence to positively identify the assailant. Without further cooperation from witnesses or other evidence, it is not clear to OPA what other actions NE#1 would have been able to take regarding this case. Indeed, due to the lack of a suspect, it would not have been possible for NE#1 to move on to the third component of 15.080-POL-2(1), "case preparation." While the Complainant and his attorney are understandably frustrated this case did not proceed to the third component, frustration alone does not establish a failure on NE#1's part to properly investigate the case. In OPA's opinion, NE#1 meticulously recorded his efforts on this investigation, showing that he worked to meet the components of 15.080-POL-2(1). Ultimately, OPA cannot expect NE#1 to come up with evidence that does not exist, and it would be inconsistent with policy to punish him for this.

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

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