



## ***CLOSED CASE SUMMARY***

ISSUED DATE: AUGUST 5, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0336

### **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	Not Sustained (Inconclusive)

***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 was unprofessional towards him.

### **ANALYSIS AND CONCLUSIONS:**

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

#### ***5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional***

The Complainant initiated this complaint with OPA in which he alleged that Named Employee #1 (NE#1) treated him unprofessionally. The Complainant reported that he was driving on 4<sup>th</sup> Avenue in Seattle and that construction had shut down all lanes but one. He recalled that a patrol vehicle, which he later learned was driven by NE#1, sped up and changed into his lane. He said that other vehicles that were behind him tried to do the same thing and he moved over to preserve his position in the lane. He said that, at this point, the other motorists behind him began honking at him and he felt that it was turning into a potential road rage incident. He told OPA that NE#1 stopped driving, got out of his patrol vehicle, and approached the Complainant. Instead of telling the other motorists to stop honking at the Complainant, NE#1 began lecturing him for not putting his turn signal on when he moved into the lane. The Complainant said that he did use his blinker but, after the incident, determined that the front light was out. He has since replaced the light. When NE#1 approached him, the Complainant indicated that he might want to talk to the other drivers who were honking. The Complainant said that, at this point, NE#1 put his hand on his duty belt and said, several times, "oh, you want to play." The Complainant felt that this was rude and purposed to antagonize him.

As part of its investigation, OPA verified that NE#1 was present at the location identified by the Complainant and at the date and time of the incident. OPA determined that there was no Department or third-party video of the incident. OPA was further unable to locate any witnesses to this incident other than the Complainant and NE#1.

OPA interviewed both the Complainant and NE#1. The substance of the Complainant's interview is described above.



NE#1 recalled the incident in question. He said that he was at a light with the Complainant. NE#1 described the Complainant's car as straddling two lanes. When the light turned green, he drove forward to merge in front of the Complainant's car. NE#1 stated that he did so because the other lanes ahead were closed due to construction. He said that he heard honking behind him and, when he looked back, he saw that the Complainant had started to slow mid-block and did not have turn signals on or any other indication as to why he was driving his car in that manner. NE#1 also saw that the Complainant's car was still straddling two lanes. NE#1 parked and exited his patrol vehicle. NE#1 explained that he believed that there was a potential road rage situation occurring and he wanted to prevent that. NE#1 observed that the Complainant was yelling at the cars that were honking at him. NE#1 walked up to the Complainant and told him to not be angry at the car behind him honking due to the fact that the Complainant had cut that car off and was straddling two lanes. After telling the Complainant this, NE#1 began walking back to his car. He recounted that the Complainant responded by accusing NE#1 of cutting him off first. NE#1 turned around and said something along the lines of: "Do you really want to play games like that?" He then continued to his patrol vehicle and left the scene. NE#1 denied saying what the Complainant attributed to him and denied that he was trying to antagonize the Complainant. He further denied that he placed his hand on his belt or near his firearm to intimidate the Complainant.

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 states that: "Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*) The policy lastly prohibits officers from using "profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

As discussed more fully above, the Complainant and NE#1 agreed on many of the facts surrounding this incident but disagreed as to what NE#1 said to the Complainant at the conclusion of the interaction. If the Complainant is to be believed, NE#1 said "oh, you want to play," while positioning his hand near his firearm, may have been unprofessional under the circumstances. However, if NE#1, instead, made the statement he recounted and did not place his hand at or near his firearm with the intent to intimidate or antagonize the Complainant, OPA would find no violation of policy. Ultimately, the lack of video evidence or other witnesses that could corroborate one account over the other prevents OPA from reaching a conclusive finding on this allegation. OPA cannot determine what recitation of the events occurred or whether what actually happened is a combination of the two or a matter of interpretation, which is possible. This type of case depends greatly on perception and the parsing through of language. Without having that information here, OPA recommends that this allegation be Not Sustained – Inconclusive.

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