



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 23, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0458

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 3	15.180 Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	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 "repeatedly tried to get [her] to recant" her allegations of rape. The Complainant felt that the officer's response was biased on the basis of her sex and, further, that the Named Employee told the suspect about the Complainant's accusations and the suspect fabricated a story that she was stalking him.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and a Witness Officer (WO) arrived at the incident location pursuant to a disturbance call. The Complainant had been reported by her ex-boyfriend for showing up to his secured access apartment building. The Complainant refused to leave and continuously banged on his door. The Complainant's ex-boyfriend let NE#1 and the WO into the building. The Complainant then approached the officers and ex-boyfriend and appeared to be agitated and emotional.

The Complainant pointed to the ex-boyfriend and said that he had "committed sexual crimes" against her. NE#1 informed the Complainant that he had an audio and video recording device that was on. NE#1 then asked the Complainant to step to the side. The Complainant accused the ex-boyfriend of being a sexual predator. NE#1 warned the Complainant that any allegation she made would be recorded. The Complainant confirmed that she was telling the truth.

The Complainant told NE#1 that she believed she was taken advantage of by the ex-boyfriend. She expressed at times she would get high on marijuana and then suddenly be having sex with the ex-boyfriend. NE#1 asked when this occurred, and the Complainant told him two years ago. The Complainant explained they had been dating on and



off for two years and ended things three months prior. The Complainant told NE#1 she was at the apartment that night to get closure. She then expressed that she was unsure if she should tell the police about the incidents that had occurred between them while they were dating. NE#1 told the Complainant he would make a report about her allegations but suggested that it may not go anywhere because over two years had passed and she was just now bringing it up in the “wake of a breakup.”

NE#1 asked the Complainant about her allegations again. He asked if she objected to the sexual advances at the time, and she said yes. The Complainant could not recall the exact details. She confirmed they had had sexual relations while under the influence of marijuana on many occasions. She said sometimes she was unable to walk or talk and that there was “a lot of pushing boundaries.” NE#1 asked again if she had explicitly told the ex-boyfriend she did not want to have sex. The Complainant said she had a couple times.

NE#1 explained to the Complainant that it sounded like she was making a rape allegation, so he wanted to be sure of the details. The Complainant said she believed there were different “forms,” and that she did not know the difference between sexual coercion and rape. She believed her experience was somewhere in the gray area between the two. The WO tried to explain that the difference involved forcible compulsion. The Complainant said she did not think there was “forcible penetration where [she] was fighting him off.” NE#1 provided the Complainant with his business card and the report number. He told the Complainant he was going to escort her off the premises.

The WO briefly spoke with the ex-boyfriend away from the Complainant and NE#1. The ex-boyfriend confirmed that he had dated the Complainant on and off for a year and a half, and that they broke up about three months prior. He said she had since been harassing him and telling him that he had raped her. The WO asked if there was a history of assault, and the ex-boyfriend said no.

The Complainant later filed an OPA complaint concerning NE#1’s handling of the incident. OPA interviewed the Complainant. She explained that she had described her experiences of what she believed to be a sexual assault or rape. She felt that NE#1 thought she was exaggerating. She believed that NE#1 did not know how to adequately handle the situation. The Complainant explained that she thought NE#1 was trying to get her to recant her allegations by telling her she was being recorded and asking her if she was sure she wanted to make the allegation even though two years had passed.

The Complainant further expressed that she believed NE#1 was sexist based on the way she perceived him handling the situation. She believed NE#1 was influenced by the stereotypes of an emotional woman after being dumped who then makes up a rape story to get back at the ex-boyfriend. By the end of telling her story, the Complainant felt discouraged and did not want to provide any more information to NE#1. She also tried to follow up with NE#1 and left him a message, but never received a response. The Complainant said she later got a phone call from the Domestic Violence Unit, during which she was told that what she had described was considered a rape.

OPA also interviewed NE#1. He recalled the facts of the incident as described above. NE#1 confirmed that in his disturbance report he did not think there was sufficient facts to label the incident from two years prior as a rape. NE#1 further explained he believed that the Complainant’s actions may have been retaliatory because she never called the police and instead had to be removed from the premises of her ex-boyfriend’s home. He believed she may have been emotional and upset because she was not able to continue the relationship with the ex-boyfriend in the way that she wanted to.



NE#1 said he had to make a determination based on the totality of the circumstances, which indicated to him that there was a reasonable likelihood that her allegations were retaliatory. NE#1 said he asked follow-up questions to ensure that the Complainant was aware of the allegations she was making. He said that he did not receive any communication from the Complainant after the incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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-POL.) This includes different treatment based on the race of the subject. (*See id.*) Under local, state, and federal laws, sex is a protected class for purposes of unlawful discriminatory treatment. As such, had NE#1 treated the Complainant differently because of her sex or employed stereotypes as part of his investigation, it would likely violate this policy.

OPA found insufficient evidence to establish that NE#1 treated the Complainant differently or worse on the basis of her sex. Rather, OPA finds that NE#1’s questioning was intended to determine, first, whether the Complainant was making a rape allegation and, second, whether she was seeking police action on that basis. Additionally, while the manner in which NE#1 tried to ascertain this information might have had some flaws, this does not mean that it was purposed to dissuade the Complainant from reporting her assault or that NE#1 would not have asked similar types of questions had she been of another sex.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 was unprofessional in two main respects. First, she contended that he was dismissive towards her and did not meaningfully investigate her claims. Second, she asserted that he later provided confidential information to her ex-boyfriend that he used against her.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

In evaluating this incident, OPA notes that NE#1 did not use profanity, or intentionally demean the Complainant in any way. NE#1 engaged with the Complainant by asking follow-up questions, explaining to her the potential



consequences of her accusations, and providing her with the proper information at the end of their interaction. Moreover, OPA found no evidence suggesting that NE#1 ever contacted or provided information to the ex-boyfriend.

Nevertheless, OPA does find that some parts of the interaction could have been handled better by NE#1. The Complainant made allegations of rape and sexual assault. These kinds of crimes are difficult to allege and are often highly emotional in nature. The Complainant was certain enough about her allegations that she was prepared to discuss them with him in the open forum of the apartment building. OPA finds that these facts are important when evaluating whether or not NE#1's conduct potentially had a negative impact on the public's ability to trust the Department's handling of sexual assault cases. While OPA does not necessarily find that NE#1's conduct did so, some of NE#1's comments could reasonably have been interpreted as dismissive or doubtful of the Complainant's allegations, ultimately leading to this complaint. In OPA's view, that result could potentially have been forestalled.

However, OPA is also cognizant of the fact that sexual assault crimes present unique challenges to officers and finds that NE#1 had valid reasons for asking the questions he did. Therefore, a sustained finding is not appropriate here. Instead, OPA recommends that NE#1 receive additional training in this area in the event that he is faced with an individual making similar allegations in the future.

As such OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should review the BWV of the incident with him and discuss strategies for interviewing potential victims of rape or sexual assault, particularly with respect to asking neutral questions to ensure the individual is not dissuaded in making their statement. This training and any counseling conducted should be documented, and that documentation retained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

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

The Complainant asserted that NE#1 did not do an adequate investigation and that the report he completed contained inaccuracies.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*) A related policy for sexual assault investigations states that officers should complete a brief report that includes whether sexual penetration occurred, the identification of the suspect if known, and whether there was forcible compulsion. (SPD Policy 15.370-POL-4)

From a review of the BWV and his report, OPA finds that NE#1's acted in compliance with this policy by creating a detailed report and by asking follow-up questions regarding the elements detailed in the relevant policy. As to the collection of relevant evidence, it is not clear to OPA what other evidence NE#1 could have collected at the time of the incident given that the allegations were of conduct from two years prior. OPA finds that his documentation of the Complainant's statements fulfilled his obligation under this policy.



In addition, when evaluating the report and comparing it to the BWV, OPA saw no evidence of fabrications, as the Complainant alleged. Instead, the report seemed to OPA to be largely reflective of what was discussed at the time.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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