



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0539

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 (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Employees were unprofessional towards her.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers, including the Named Employees, were assigned to enforce the terms of an exclusionary order that had been issued by Mayor Durkan. That order closed an area around the East Precinct and Cal Anderson Park. Included in this area was the immediate vicinity of a number of residential buildings. The order indicated that anyone who failed to comply with its terms was subject to arrest. At the time of this incident, the order was in effect.

The Complainant initiated an OPA complaint in which she alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) "insisted" on "escorting" her to her residence as she was leaving the grocery store. She stated that they were engaged in "casual conversation," so she stopped to speak with them when they arrived at her building. She contended that, at that time, one of the officers raised his voice at her and "yelled" that she was loitering. She said that this officer warned her that, if she did not leave, she would be arrested. She reported that, the night prior, she had gone to a neighborhood meeting and she had no indication that residents of the area would need to be escorted by police to their homes.



OPA initiated this investigation and interpreted the Complainant to be alleging unprofessionalism on the part of the Named Employees.

The Named Employees' interaction with the Complainant was captured on Body Worn Video (BWV). The video indicated that NE#1 rode up to the Complainant on his bicycle. She was crossing the street, walking towards Cal Anderson Park. The Complainant was pulling a sealed basket with wheels. The Complainant asked NE#1 for his name and he gave it to her, as well as his serial number. She confirmed that he was going to escort her to her residence and NE#1 replied: "Yes ma'am." The Complainant began walking and asked if NE#1 was going to follow her or ride behind her. He said that he would do whatever she preferred. She said that she wanted him to ride next to her because she did not trust police officers. He said: "Whatever makes you comfortable." She told NE#1 that having officers in her neighborhood made her uncomfortable. NE#1 replied that this he was "sorry" she felt that way. As they continued to walk, NE#2 rode up on his bicycle.

They continued to ride on the street adjacent to the Complainant, who was proceeding down the sidewalk next to Cal Anderson Park. While walking, the Complainant asked where the officers were from. NE#1 replied that he was from Seattle. She asked them why they wanted to join the police. NE#1 replied that there were a lot of reasons. She pressed him on this, and NE#1 eventually replied that he did not think any answer that he gave her was going to make her happy. The Complainant stopped walking and turned to face the officers. She continued talking to them about their profession while holding her camera to record them. The officers told her that she needed to keep moving. NE#2 told her that it was a "no loitering" zone and that she needed to continue walking to her residence. The officers told her that if she did not do so, she could be arrested. NE#2 did not raise his voice at this time.

The Complainant continued walking across the street. NE#1 confirmed her address. They kept talking. At one point, NE#1 stated, in response to a comment from the Complainant, that they probably had "a lot in common." The Complainant disagreed with this because she felt that she could not think of one reason why she would want to be a police officer. NE#1 told her that the job paid well, had benefits, allowed him to ride a bicycle for a living, and gave him the opportunity to meet interesting people. The Complainant told him that there were a lot of jobs that he could do where he could ride a bicycle, but NE#1 opined that none would pay as well. The Complainant stated that she was a teacher. NE#1 asked her why and she said that she liked helping people. NE#1 told her that this was "noble." The Complainant then arrived at her residence. NE#1 waited until she accessed the door and walked in. He then rode away.

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.*) 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.*)

Based on a review of the BWV, OPA does not believe that the Named Employees were unprofessional for multiple reasons.

First, it was not unprofessional or a violation of policy for the Named Employees to escort the Complainant to her home. They did not have conclusive information establishing her residency and she was walking through an area



that was closed to the public per a validly issued Mayoral order. Accordingly, they were permitted to ensure that she was, in fact, walking home as opposed to planning on entering the park.

Second, there was no evidence from the video that the officers made any statements to the Complainant that were unprofessional. NE#1, who was the primary interactor with her, was polite and respectful to the Complainant, even though she was disdainful towards him for his choice of employment, as was her right.

Third, NE#2 did not, as the Complainant contended, raise his voice at her or yell at her. At one point, when she stopped at the corner of Cal Anderson Park, he told her that it was a “no loitering” zone and that she needed to keep moving. He said so calmly. This was not unprofessional and, based on the terms of the order, was accurate.

Fourth, the BWV disputes that Complainant’s contention that she was trying to have a “casual conversation” with the Named Employees at her building when they were rude and cut her off. The video reflects that the conversation that preceded her being told to continue moving occurred at the corner of Cal Anderson Park, not at her building, and that the conversation was not particularly friendly or casual on the Complainant’s part. While perhaps not her intent, the officers assumed – reasonably, based on the BWV – that she was delaying leaving the vicinity and walking to her apartment. It was not unprofessional to tell her that she needed to keep walking and, if she did not do so, she would be arrested pursuant to the Mayoral order.

While the Complainant certainly has the right to be frustrated and/or annoyed with the officers escorting her to her apartment, this does not yield the Named Employees’ conduct unprofessional or otherwise out of policy. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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