



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 29, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0540

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 2	5.001 – Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 2	5.001 – Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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 tried to demand he produce identification when inconsistent with policy, that they retaliated against him because of the videos he had posted online documenting police conduct, and that they treated him unprofessionally.

ANALYSIS AND CONCLUSIONS:

On July 3, 2020, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were assigned to enforce the Mayor's Executive Order to ensure that the Cal Anderson Park area was closed to public access, except for those who lived in a residence within the area. Anyone who refused orders to leave the area was subject to arrest. See Executive Order 2020-08.

On that date, the Complainant was walking to his residence within the area secured by SPD when he was contacted by NE#1 and NE#2. The Complainant filmed the encounter. NE#2 asked if he lived in the area, and the Complainant



responded yes. He was asked where, and he told NE#2 his address. Body Worn Video (BWV) of the incident shows that NE#2 followed the Complainant. The Complainant asked NE#2 if there was a reason for following him, and NE#2 responded that he was not following him, he was walking with him. The Complainant then stated that he would walk in a different direction, at which point NE#2 told him to stop. The Complainant asked if the stop was illegal, and NE#2 said it was not.

NE#2 asked the Complainant for identification to show that he lived at the address given. The Complainant told NE#2 that on July 1, 2020, at 7:00pm, the Mayor's Office directed SPD to cease asking for IDs from residents. NE#1 stated that SPD had been re-ordered again that morning, which was two days later. NE#2 then told the Complainant that they can either have a "diatribe" outside the bounds of the secured area, or the Complainant could be walked to the residence listed on his ID, or he could be arrested for being inside the area illegally. The Complainant told NE#1 and NE#2 that he did not have an ID. NE#2 asked if he had a key to his apartment. The Complainant responded that he did. NE#2 then told the Complainant that he would walk him to the apartment. The Complainant said he would prefer to not be escorted by armed men. NE#2 reiterated that the Complainant could either leave, be arrested, or be walked to his residence.

The Complainant asked NE#2 and NE#1 for their names and badge numbers, which they gave. The Complainant told NE#2 that he was scared of him and did not want to be escorted. NE#2 told the Complainant that he did not appear to be scared when he walked up to them and started this conversation. The Complainant responded that he had no choice as they were standing at the entrance to his street.

The Complainant walked away while stating that the police were requiring IDs, which he asserted was illegal in Washington State. The officers followed the Complainant as he walked away, and NE#2 stated that what the Complainant said was incorrect. The Complainant then left the incident location and walked around to the other end of the street, he contacted two other officers. One of the officers asked where he lived, and the Complainant told him his address. The Complainant asked the officers if they are required to ask for ID. The officer said, "Not anymore." The Complainant said they should tell the officers at the other end of the street that because they would not let him in without ID. The other officer said that they do not have to request ID, but that they can, and persons who refuse could be denied entry. The Complainant asked what happened on July 1 when the Mayor's office said that officers were no longer supposed to ask for IDs from residents. The second officer said they never were told that.

Named Employee #1 - Allegation #1

6.220-POL-2 – Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

SPD Policy 6.220-POL-2(5) governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-1). SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, in engaging or is about to engage in criminal conduct." (*Id.*) During a Terry stop, officers typically cannot require subjects to identify themselves, but may request identification. (SPD Policy 6.220-POL-2(5))



At the outset, the circumstances of the incident at issue are unique because SPD was acting under the Mayor's emergency powers and Executive Order 2020-08, which barred anyone, except for residents, from being within the secured area. If an individual entered the area but was not a resident, the Mayor's order required they be removed or arrested. Therefore, NE#1 and NE#2 had to know whether the Complainant was a resident of the area, which could be determined with ID or by walking with the Complainant to his residence.

Accordingly, OPA finds that the officers were permitted to detain the Complainant, to ask where he lived, and then to verify his residence, including by following him to watch him enter. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 14. Retaliation is Prohibited

SPD Policy 5.001-POL-14 prohibits retaliation by Department employees. (SPD Policy 5.001-POL-14) The Complainant alleged that he was retaliated against by various officers (not just specifically NE#1 and NE#2) due to the videos he posted on Twitter.

There is simply no evidence that the Named Employees had any idea who the Complainant was, let alone that they knew that he made posts critical of SPD on Twitter. They never made any statement expressing or intimating such knowledge and it is unclear why the Complainant believes that this occurred.

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

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

Named Employee #1 - Allegation #3

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

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)

While OPA finds that the officers were permitted to stop the Complainant to ask him his address and, if needed, to follow him to ensure that this was the location he was traveling to and could ask him for his ID (as they could ask anyone on a Terry stop), they were not permitted to require his identification. However, the evidence indicates that they likely did so because of confusion within SPD concerning whether they were permitted to do this at the time. Indeed, all four officers that the Complainant interacted with were unaware that the Mayor's Office had indicated that identification was not to be sought for residents. That this occurred may be more of a fault of the Department, rather than the Named Employees; however, they still had an independent obligation to ensure that they were acting in compliance with City policy and, when the Complainant raised questions with their actions, it may have been prudent to seek guidance from supervisors. OPA also believes that the Named Employees could have more proficiently handled their interaction with the Complainant, perhaps by more fully explaining their need to verify the Complainant's address and trying to seek other ways to ensure his voluntary compliance.



For these reasons, OPA issues the Named Employees the below Training Referral.

- **Training Referral:** The Named Employees' chain of command should review with them BWV of the incident and discuss strategies for obtaining voluntary compliance with requests for information as well as alternative strategies for engaging with potentially non-cooperative individuals. Their chain of command should remind them to seek guidance from a supervisor if they are unclear as to the current status of orders and enforceability. This training should be documented, and that documentation retained in an appropriate database.

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

Named Employee #2 - Allegation #1

6.220-POL-2 – Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

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

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

Named Employee #2 - Allegation #2

5.001 – Standards and Duties 14. Retaliation is Prohibited

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

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

For the same reasons as above (see Named Employee #1 – Allegation #3), OPA recommends a Training Referral.

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