



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 13, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0560

### **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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	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 she was subjected to biased policing by the Named Employees. OPA further alleged that the Named Employees may have failed to timely notify a supervisor of the bias allegation.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

On June 25, 2020, at approximately 12:45 PM, an individual called 911 to report a two-vehicle collision at Front Street and 4<sup>th</sup> Avenue. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to the scene, where they spoke with the 911 caller. According to the 911 caller, another driver – the Complainant in this case – had been operating her vehicle in an erratic manner. The 911 caller reported that the Complainant struck the rear end of her vehicle. The 911 caller then watched as the Complainant exited her vehicle and walked away from the scene, carrying with her a bag and a drink. This information was also relayed to the 911 dispatcher.



The Named Employees arrived at the scene and spoke with the Complainant. She acknowledged hitting the 911 caller's vehicle but stated that the damage was minimal. As the Complainant spoke with the Named Employees, she could be seen wobbling and swaying on her feet.

The Named Employees obtained the Complainant's name and ran a search of her driving record. This indicated that the Complainant had a suspended driving status and was required to have an ignition interlock safety device in her vehicle. Upon inspection of the Complainant's vehicle, the Named Employees discovered that no such device was present. When confronted with this information, the Complainant indicated that she had recently procured the vehicle and had not yet installed the device. The Named Employees performed field sobriety tests on the Complainant, which the Complainant was deemed to have failed. The Named Employees decided to arrest the Complainant for driving under the influence. As the Named Employees placed the Complainant in a police vehicle, the Complainant stated the officers "don't like black folks." She further expressed her belief that she had done well on the sobriety tests. The Named Employees did not appear to follow up on this allegation or notify a supervisor.

After the arrest, the Named Employees conducted a further investigation, which revealed that the Complainant had purchased the vehicle three weeks prior to the incident. The Named Employees also discovered a bottle of methadone in the trunk of the Complainant's vehicle.

The Named Employees then transported the Complainant to the precinct, where a Sergeant screened the Complainant's bias-based policing allegation against the Named Employees. The Complainant advised the Sergeant that she made the bias allegation because the officers "let the white girl [the 911 caller] go on about her business," but arrested the Complainant. Additionally, the Complainant asserted that the Named Employees were "way more nice" to the 911 caller than to the Complainant, which the Complainant felt was premised on their respective races.

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.*)

Based on OPA's evaluation of the evidence in this case – most notably, the BWV, OPA finds no basis to conclude that the Named Employees engaged in biased policing. To the contrary, the evidence that the Complainant was DUI was overwhelming. She had admitted to have been involved in a collision, she had the characteristics of impairment, she failed field sobriety tests, and her vehicle did not have an ignition safety lock installed as required. Accordingly, OPA finds that the Complainant's conduct, not her race, was the reason for the law enforcement action taken towards her.

For the above 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 #1 - Allegation #2**

#### **5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing**



SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.) If the complainant declines to speak with a supervisor, the employee will attempt to obtain the complainant's contact information and provide contact information for a supervisor and OPA. (*Id.*)

As stated above, the Complainant made an allegation of bias-based policing in the Named Employees' presence. While their supervisor was ultimately made aware of the allegation, the Named Employees did not immediately notify the supervisor as required by policy. This prevented the supervisor from doing an on-scene investigation, again a requirement of policy.

Even though the Named Employees were in non-compliance with this policy, OPA recommends that they receive retraining rather than discipline. In reaching this finding, OPA finds it compelling that the bias allegation was ultimately investigated, as well as that neither officer has previously failed to timely report a bias allegation.

For these reasons, OPA recommends that the Named Employees receive the below Training Referral.

- **Training Referral:** The Named Employees should be counseled concerning their failure to timely report the Complainant's bias allegation. The Named Employees should also receive retraining as to the relevant policy. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegation #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

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)**

**Named Employee #2 - Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

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

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