



CLOSED CASE SUMMARY

ISSUED DATE: MAY 3, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0633

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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 Employee was unprofessional and engaged in biased policing towards the Complainant based on his status as a demonstrator.

SUMMARY OF INVESTIGATION:

The Complainant, an attorney, was assisting a client to retrieve property from SPD after the client's arrest during a demonstration. She said that she spoke to SPD's Records Unit to try to determine the identity of the case detective. She relayed her understanding that the Evidence Unit would release evidence if the case detective approved it. She felt that her client's evidence should have been released.

The Complainant was told that no case detective was currently assigned to the case but that anyone within the Special Victims Unit could approve the release of evidence. She left four voicemails for the unit, but no one called her back. She eventually spoke to an administrative assistant who gave her the direct phone number for Named Employee #1 (NE#1). The Complainant called and spoke with NE#1. She described him as being immediately resistant and said that he provided her with misleading information. She also said that he accused her of misrepresenting her status as an attorney. She recalled that NE#1 first refused to look up the report and told her that it was an active investigation with a detective assigned to it. When she asked him for the name of the detective, he then told her that no detective had been assigned. She said that NE#1 then began pushing her to provide her Washington State Bar identification number and asked where she worked. He then queried whether she was doing this on her own, which she found to be a strange question and intimidating. NE#1 told her that if an attorney misrepresented themselves or their client, he cannot and will not provide that attorney with information. He then told her that the property would not be released. The Complainant asked NE#1 if he thought he could hold the property until the statute of limitations expired and he said yes. NE#1 then informed her that the case would be assigned to a detective in the Narcotics Unit. The Complainant asked NE#1 how he knew that as she had not



provided him with the case number. He confirmed that her client had been arrested at a protest. She then sought the phone number for the Narcotics Unit from NE#1. He replied: "I have no idea...you found my number, you can find theirs." He then slammed down the phone and disconnected the call.

The Complainant stated that NE#1 was unprofessional during their discussion. She also opined that he acted in that manner because of his bias towards demonstrators and given his belief that her client was arrested during a protest. To this end, she pointed to a purported trend of SPD employees not providing her clients with their property back and posited that this established a systemic bias on their part.

For his part, NE#1 said that he was assigned to prisoner processing for protest arrestees. As part of this, he would complete the form inventorying their property and placing it into evidence. He said that he remembered speaking with the Complainant. He said that he received a number of calls from arrestees, attorneys, and people characterizing themselves as attorneys and he was only permitted to discuss a case and/or property with authorized individuals. Accordingly, he asked the Complainant for her name, Washington State Bar identification number, and where she worked. He said that she quickly became upset and said that she did not have to provide any information to NE#1. He described her as becoming increasingly hostile, including raising her voice and asking him hypothetical questions to try to bait him.

NE#1 said that, at one point, he told the Complainant that it was possible that the evidence would not be released until the statute of limitations expired but that the case detective would have more information. She was further upset when he told her that the case was with the Narcotics Unit, as she did not feel that this was the correct unit to handle this matter. NE#1 said that he tried to de-escalate the conversation and to assist the Complainant. He asked the Complainant to send him a request on her firm's letterhead so that he could enter it in the file if the release of evidence was later challenged. Lastly, near the end of the phone call, she provided him with a Washington State Bar identification number, but when he entered it, it came back to a male attorney. When he told her this, she said that he was lying and hung up on him. NE#1 did not recall having any discussion with the Complainant about him providing her with the phone number for the Narcotics Unit.

NE#1 denied that he was unprofessional towards the Complainant. He further denied that he engaged in biased policing or that any of the actions he took or things he said during their conversation were based on the fact that her client was arrested during a protest.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.) 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.*)

The phone conversation between the Complainant and NE#1 was not recorded and, thus, there is no evidence apart from the parties' statements to corroborate what occurred. If the Complainant's account is to be believed, NE#1's



demeanor during the call and him hanging up the phone on her would have been unprofessional. However, under NE#1's recitation of the facts, the Complainant was the one who was agitated during their conversation, was non-cooperative, and who hung up the phone in anger.

Given the significant disputes of fact outlined above and in the Summary of Investigation, OPA cannot definitively determine what happened and whether NE#1 was unprofessional. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant opined that NE#1 was unprofessional and unhelpful towards her because her client was arrested during a protest. She said that she never informed NE#1 of this information and, as such, she believed that he just assumed it. Lastly, she pointed to a purported systemic failure of SPD employees to be responsive and cooperative to her evidence queries, which, in her mind, was additional evidence of bias.

Even if the Complainant did not expressly inform NE#1 that he client was arrested as part of a protest, it seems logical that he would have been able to intuit it given that he was assigned to prisoner processing expressly for protests. Moreover, even to the extent that NE#1 was uncooperative and unprofessional, the Complainant has proffered insufficient evidence to show that this was a result of NE#1's bias towards protestors, as opposed to a number of other plausible reasons, including NE#1's dislike of how the Complainant approached the conversation. Lastly, aside from referencing a systemic bias towards protestors, the Complainant has provided a dearth of information establishing this. For example, the Complainant has not provided a list of other cases and SPD employees who handled them to allow OPA to address this further.

When applying the requisite burden of proof, OPA finds that the Complainant's claims and the evidence adduced are insufficient to prove bias on the part of NE#1 or any other SPD employee. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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