



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 6, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0653

### **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 (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:**

It was alleged that the Named Employee was unprofessional and intimidating during an interaction with the Complainant.

### **SUMMARY OF INVESTIGATION:**

The Complainant alleged to OPA that he had a negative interaction with Named Employee #1 (NE#1). He stated that he informed the staff of a grocery store that a dog was apparently abandoned in the parking lot. The store got the police involved and officers, including NE#1, responded to the scene. NE#1 tried to talk to the Complainant, but the Complainant did not respond as he did not believe that he was required to speak to the police. NE#1 then asked the Complainant if he was deaf even though NE#1 knew that he was not. NE#1 also shined his light into the Complainant's vehicle and asked about a wire, both of which the Complainant felt were intimidating. The Complainant asked if he was being detained and, when NE#1 said no, broke the contact with NE#1. OPA commenced this investigation.

OPA interviewed the Complainant to get more details concerning what occurred. He recounted that he notified store staff about the dog and that he tried to corral the dog with them unsuccessfully. The officers were also not able to do so upon arrival and discussed what to do together. The Complainant called Animal Control, but no one was available. NE#1 tried to talk to him, but the Complainant did not feel the need to speak with the officer. NE#1 asked how the Complainant was associated with the dog and the Complainant did not respond as he was on the phone at the time. NE#1 then shined his light in the Complainant's car and asked about a phone charger even though NE#1 knew what it was. The Complainant still did not respond. The Complainant stated that NE#1 then yelled at him: "Are you deaf!" the Complainant responded: "What did you say?" He asked NE#1 if he was being detained and, when NE#1 said that he was not, he replied: "Then I have nothing to say to you."

OPA reviewed Body Worn Video (BWV) recorded by NE#1 and other officers. The first officer who arrived – referred to here as Witness Officer #1 (WO#1) – spoke with the store employee who was with the dog. The Complainant was standing nearby but then walked away. WO#1 asked if the Complainant was also a store employee, she responded



that he was not and that he had notified them about the dog. WO#1 asked the store employee whether she would be willing to take the dog home. He also raised calling the humane society. At that time, the Complainant walked over and, without acknowledging or facing towards WO#1, said that he would call the humane society. WO#1 then called for a backing officer to come to the scene.

NE#1 then arrived on scene. NE#1 also spoke with the store employee. At that point, the Complainant was standing in the street and appeared to be using his cell phone. WO#1 informed NE#1 that the Complainant had been acting strangely, including not responding to him or giving him any information.

NE#1 called out to the Complainant: "Sir, did you need something?" The Complainant did not respond and appeared to be speaking into his phone. NE#1 approached and then asked: "Did you need something with the dog?" The Complainant did not respond or acknowledge NE#1 and kept his phone by his ear. NE#1 stated: "you're just going to ignore us? Okay" There was still no response from the Complainant. NE#1 asked the Complainant whether the SUV parked nearby belonged to him. When the Complainant did not respond, NE#1 walked over to the SUV and shined his flashlight into the windows to illuminate the inside. After doing so, he walked towards the Complainant and asked, referring to his sweatshirt: "What's the sweater for? Is that a band." When the Complainant still did not respond, NE#1 asked: "are you deaf?" The Complainant responded to this comment, asking: "what?" NE#1 stated: "Can you hear?" The Complainant said: "I don't have to talk with you." NE#1 replied: "I'm just curious as to what you're doing." The Complainant told NE#1: "I'm the one who found the dog." NE#1 then responded: "Okay, then why are you getting an attitude?" The Complainant asked whether he was being detained. When NE#1 said no, the Complainant went back to his phone and walked away.

Ultimately, store employees were able to track down the dog's owner and he came to the scene to pick up the dog. An officer asked the dog owner how he forgot his dog. The dog owner, who seemed frazzled, told the officers that his wife's mother was dying, and he came to the store to pick up food. He said that he brought the dog, which he usually did not do, and he forgot about the dog being there with all that was going on. The Complainant remained standing nearby and moved to face the dog owner. The Complainant said to the dog owner: "I don't know how you forgot a dog, you wouldn't forget a child, why would you forget a dog." The dog owner laughed, and the Complainant said: "It's not funny." NE#1 said: "Thanks." The Complainant responded: "I wasn't talking to you." NE#1 again said "thanks" to the Complainant and told the dog owner: "He's fine." The Complainant told the dog owner that he was not "judging him," to which the dog owner responded: "I don't care, I don't want to talk to you, I don't like you." The Complainant replied: "It doesn't matter if you don't like me, I don't care." NE#1 told the dog owner that it was "fine" and that he should not pay attention to the Complainant. The dog owner, who had grown upset, said: "Yeah, add insult to injury, she's afraid, I'm afraid, I'm upset, I need you judging me now. Fucking asshole."

Ultimately, the officers gave the dog owner a business card with the incident number and he left the scene. The Complainant and the officers also left the scene.

OPA interviewed NE#1 to get his perspective concerning what occurred. NE#1 said that he thought that the Complainant's behavior, demeanor, and lack of responsiveness was strange. NE#1's awareness was also heightened as he was called by WO#1 to come to the scene because of WO#1's concerns with the Complainant. NE#1 described that he was wary of the fact that, even though the Complainant was not responsive to them, he was standing nearby the officers while their backs were turned to him. NE#1 said that he first wanted to determine whether the Complainant was a threat and second wanted to determine whether he needed any assistance.



NE#1 saw that the Complainant was standing near a vehicle. NE#1 made the decision to walk over to the vehicle and look into the windows both to determine whether it was safe and also whether there was anything relating to the dog inside. NE#1 asked the Complainant another question to try to engage with him. When the Complainant still did not respond, NE#1 asked him if he was deaf. NE#1 asserted that he felt that it was possible that the Complainant had impaired hearing because of his repeated refusal to engage when spoken to. NE#1 also did not hear him actually speaking into the phone, although the Complainant kept it up by his ear. However, the Complainant then responded, and it became clear to NE#1 that the Complainant was not hearing impaired but simply did not want to engage with officers. The Complainant took offense to this question and asked whether he was being detained. NE#1 told him that he was not.

NE#1 recalled that the owner then came to pick up his dog. The Complainant began questioning the owner in an accusatory manner. NE#1 told the dog owner to ignore the Complainant as he did not want the situation to escalate.

### **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.*) 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.*)

The Complainant made two general allegations against NE#1: first, that NE#1 acted in a manner purposed to intimidate him; and second, that NE#1 interacted with him rudely.

With regard to the first allegation, OPA does not find sufficient evidence to establish that NE#1 acted in an intimidating fashion. While NE#1 tried to make contact with the Complainant multiple times without success, he initially did so in a calm and polite manner. Moreover, at the time he looked into the vehicle, he did not conclusively know that it belonged to the Complainant and did not appear to do so as a means to threaten or intimidate him. In addition, NE#1 had the legal right to look into the vehicle. Further, from OPA’s review of the video, NE#1 asked the Complainant about his sweater in an attempt to build rapport and did not query him about items within the vehicle as the Complainant interpreted. Lastly, from the Complainant’s demeanor, he did not appear to actually be intimidated. He asserted his right not to speak with the officers, he stayed at the scene in close proximity to them, and he felt comfortable enough to lecture the dog owner and, when NE#1 tried to stop this, to tell NE#1 that he was not talking to him.

With regard to the second allegation, OPA feels that NE#1 could have better handled portions of his interaction with the Complainant. First, OPA perceived that NE#1 asked the Complainant whether he was “deaf” in an unnecessarily aggressive manner. OPA also felt that this was more of an expression of NE#1’s frustration with the Complainant’s lack of responsiveness than an actual legitimate question being poised by NE#1. Indeed, it seems a little counterproductive to verbally ask a deaf person if they are deaf. Second, OPA believes that NE#1 should have



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avoided referring to the Complainant as “getting an attitude.” NE#1 should have considered the fact that the Complainant could legitimately have grown upset with NE#1 asking him whether he was deaf when, in the Complainant’s opinion, he obviously was not.

Even given these criticisms, OPA does not believe, when evaluating the totality circumstances, that NE#1’s interaction with the Complainant violated the Department’s professionalism policy. Instead, OPA issues NE#1 the below Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss his interaction with the Complainant and specifically the ways in which it may have fallen short of the Department’s expectations of NE#1’s professionalism. The chain of command should focus on the issues outlined in this DCM and should provide retraining and counseling to NE#1 to avoid similar situations in the future. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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