



CLOSED CASE SUMMARY

ISSUED DATE: MAY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0713

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	15.260 – Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations	Sustained
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

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 did not take appropriate action during an investigation into a traffic collision. The Complainant further alleged that the report authored by the Named Employee was deficient. Lastly, the Complainant alleged that the totality of the Named Employee's actions was based on bias towards him as a person of color.

SUMMARY OF INVESTIGATION:

The Complainant was riding his bicycle down the street when a car pulled out of the alley in front of him. The Complainant collided with the vehicle, striking his knee. This caused him to be thrown off of his bicycle. He landed on the hood of the vehicle and then fell to the ground.

Named Employee #1 (NE#1) and another officer were dispatched to the call. At that time, NE#1 received the following radio update: "You'll be looking for a silver Hyundai Elantra and per our caller the pedestrian appears to be alert and conscious with leg pain." He acknowledged this information.

When he got to the scene, NE#1 contacted the driver of the vehicle. NE#1 asked the other officer – referred to here as Witness Officer #1 (WO#1) – to go speak with the Complainant to get his contact information. The driver confirmed to NE#1 she had begun to pull out of the alley when the collision occurred and that she did not see the Complainant. There was minor damage to her vehicle.



At this same time, WO#1 spoke with the Complainant, who was with the Seattle Fire Department (SFD). WO#1 obtained his contact information. He told her that his wife was coming to the scene to pick him up. WO#1 also spoke with a witness. The witness said that he saw what happened. The witness told WO#1: "Yeah, pretty much as they described...she was leaving the alley...he was going down the street." WO#1 obtained the witness's contact information and later relayed that to NE#1.

NE#1 then walked over to where the Complainant and WO#1 were. The Complainant stated that he knew the other driver did not strike him "on purpose." WO#1 told NE#1 that the Complainant's wife was on the way to the scene and was going to take the Complainant to get "checked out." NE#1 asked the Complainant if he needed anything else at that time. The Complainant said no and that he was "good." NE#1 and WO#1 then left the scene.

NE#1 documented this incident in a Police Traffic Collision Report (PTCR). He wrote that the driver was pulling out of the alley when the Complainant collided with her vehicle. He documented that the Complainant: "fell from the bike, wearing a helmet and is only complaining of leg pain." NE#1 did not document that there was another witness to the collision and did not include that witness's contact information in the report. NE#1 did not issue a citation to the driver or note that she was at fault.

The Complainant later initiated this complaint with OPA. He recalled that he was riding his bicycle when the driver pulled out of the alley. He said that he could not stop at that point and collided with her. He stated that the vehicle struck his knee and caused him to come off of his bicycle, hit the vehicle's hood, and fall to the ground. He said that he was pretty out of it when he was on the ground. He said that the driver remained at the scene and that there was a witness to the collision.

He stated that the officers then arrived, and he spoke with WO#1. She documented his information and told him that she was recording on Body Worn Video (BWV). He told OPA that he thought that the officers would document all of the involved parties' information, including the witness's, and put it in a report. He spoke with the EMTs on scene and they told him that nothing was broken, and that "self-care" was the best route.

When he later reviewed the report, he took issue with its contents and the lack of a finding of fault on the driver's part. He noted that it did not include any of the information he relayed to the officers, it made it seem like he collided with the driver rather than the driver pulled into his path causing the collision, and it did not include the witness's contact information or account. He believed that the driver should have been cited for her actions. He also opined that, had the roles been reversed and had he, as a person of color, struck a White woman with his vehicle while she was bicycling, he would have been cited. He thus asserted that the lack of enforcement action taken against the driver was due to their respective races and constituted bias on NE#1's part.

As part of its investigation, OPA reviewed the BWV from both NE#1 and WO#1. OPA also reviewed the PTCR completed by NE#1. In that PTCR, NE#1 documented that the Complainant's "Injury Class" was a seven, as compared to the driver's "Injury Class," which NE#1 listed as a one for no injury. OPA reviewed the medical documentation completed by SFD, which confirmed the Complainant's reporting of a leg injury and the determination that it was minor. OPA further interviewed the Complainant, NE#1, and WO#1. OPA attempted to interview the witness but was ultimately unsuccessful.

ANALYSIS AND CONCLUSIONS:



Named Employee #1 - Allegation #1

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.*)

As discussed more fully below, OPA concludes that NE#1 should have issued a citation to the driver and that his report was not sufficiently detailed; however, OPA does not find any evidence in the record, including on the BWV, establishing that these omissions were based on bias. While the Complainant certainly believed that this was the case, there must be more, other than those assertions, for OPA to meet its burden of proof. Such additional evidence is not present here.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

15.260 – Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations

SPD Policy 15.260-POL-4 requires officers to take enforcement action in reportable non-felony collisions. This includes issuing a citation to the at fault party. The policy defines a reportable collision as one where there is: “Injury or death of any person.”

At his OPA interview, NE#1 opined that this was a non-reportable collision and that, as such, he did not take enforcement action. When asked about the Complainant’s injury, he said: “No. There was no diagnosed injury reported. He was not injured. He complained of leg pain, but there was no injury diagnosed or seen.” OPA queried whether he had seen the SFD records and if that informed his response, and NE#1 stated that he had not. He said that he did not remember the Complainant appearing to be in pain, being visibly injured, or complaining to him of injury. OPA asked NE#1 how he defined an injury. He responded by saying: “Some type of mark, scar, injury that shows that you are in some type of actual discomfort or pain or you have some type of immobility issue or you have something that you feel is continually wrong with you, as opposed to transient ischemic pain.” He told OPA that he relied on SFD to give him information but that they were not very responsive and communicative with SPD on this call.

OPA finds NE#1’s definition of injury to be too limiting and inconsistent with the law and the plain meaning of injury. An assertion that you have pain in your leg from being struck by a vehicle and falling to the ground constitutes an injury. Moreover, the facts of this case undercut NE#1’s contention at his OPA interview that no injury existed. These facts include: (1) NE#1 was notified by dispatch as he responded to the call that the Complainant had a leg injury; (2) WO#1 relayed to NE#1 that the Complainant was getting picked up by his wife to get “checked out”; and (3) NE#1 documented on the PTCR that the Complainant’s injury level was a seven, with one as the baseline. In addition, and while he was not aware of this, SFD confirmed that the Complainant had an injury, even if minor.



Once an injury was established, NE#1 was required to cite the driver as she was at fault. SMC 11.58.230 provides that any motorist proceeding out of an alley is required to yield the right of way to pedestrians and bicyclists to avoid a collision. The driver did not do so here.

NE#1 also asserted that the language of the policy concerning the issuance of the citation was permissive not mandatory, thus excusing his failure to do so. Again, OPA disagrees. The policy instructs that, in a reportable non-felony collision, "Officers issue a Criminal Citation or Notice of Infraction to the involved party." If this was meant to be discretionary, the language would have said officers "may" issue the citation. Accordingly, OPA finds that the failure to do so under the circumstances of this case was contrary to policy.

Given the above, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 states that: "Officers shall document all primary investigation on a report." The policy further instructs that all reports should be complete, thorough, and accurate.

OPA finds that NE#1's reports was incomplete in a number of respects. First, it did not set forth the statements made by the Complainant and the witness. Second, it did not include the name and contact information for the witness. Third, it characterized the Complainant as colliding with the driver's vehicle as opposed to the driver pulling out into the Complainant's path. Fourth, it failed to identify that the driver was at fault.

In assessing the above, OPA finds that the main deficiency was that NE#1 failed to document that the driver was at fault. Had he done so, the other shortcomings would likely have been less significant to the Complainant. NE#1's failure to reach this determination and to cite the driver is fully subsumed in the Sustained finding above. As such, OPA deems it unnecessary to also sustain this allegation. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be counseled concerning the lack of completeness of his report and his failure to identify that the driver was at fault and to issue her a citation. NE#1 should also be reminded of the definition of injury and his chain of command should make sure that he properly assesses injuries in the context of reportable collisions moving forward. This counseling and any retraining provided should be documented, and this documentation should be maintained in an appropriate database.

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