



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 1, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0004

### **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	Sustained
# 2	5.001 - Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
Imposed Discipline		
Suspension Without Pay – 1 Day		

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

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional	Sustained
# 2	5.001 - Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
Imposed Discipline		
Written 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 Employees were rude to him and that they made a statement to him that suggested potential retaliation.

### **SUMMARY OF INVESTIGATION:**

The Named Employees were dispatched to a call concerning a resident who had not been seen for several weeks and who had packages in front of the door to their residence. It was further reported that a strange smell had been emanating from the unit and that there was an eviction notice on the door that had been posted several days prior.

The Named Employees' response to this incident was fully captured on BWV. The video showed that they arrived at the residence where they were met by Seattle Fire Department (SFD) personnel. The officers spoke with the 911 caller, who also lived in the building. The 911 caller said that he had not recently seen the resident. The Named Employees agreed that the smell warranted making entry to determine whether the resident was inside and deceased. SFD personnel then forcibly opened the door. The Named Employees entered and performed a sweep of the residence. The resident was not located in the residence. When they exited, the officers remarked about the rugs potentially causing the smell.



The Named Employees looked down the hallway and saw the Complainant, who was the building manager, talking to the 911 caller. Named Employee #2 (NE#2) noted to Named Employee #1 (NE#1) that, referring to the Complainant: "Someone wants to get an attitude" because they forced the door to the check the resident's welfare. Body Worn Video (BWV) captured the Complainant speaking to the 911 caller outside of Apartment 3 and telling the 911 caller that the resident was not in town and the 911 caller had his door broken down. The Complainant asked the 911 caller what he was doing. NE#1 told the Complainant that the 911 caller notified the police in order for them to perform a welfare check. The Complainant said that he was the building manager and that, if there had been an issue, he would have called 911. NE#1 noted that the 911 caller was a resident of the building, but both the Complainant and the 911 caller indicated that the 911 caller did not live in the building and was staying with his partner. NE#1 stated: "Since you're the resident manager, the door is broken. Are you able to secure it?" The Complainant said that he could not right then. NE#1 asked the Complainant if he could call someone and the Complainant told NE#1 to shut up and go away.

NE#1 said to the Complainant: "Apartment 3, and you're the resident manager? And you speak to police department like that?" The Complainant told NE#1 that it was 4:00 a.m. and the officers had just broken down the door of one of his apartments before knocking on his door first. NE#1 asked how they were supposed to know who the Complainant was. The Complainant made a comment concerning people not living in the building.

NE#2 remarked: "You've got issues man. We're just trying to help." NE#1 added: "Serious issues." The Complainant asserted that the officers had issues and they both again repeated that he had the issues. NE#1 stated: "Go get some therapy or something." NE#2 also stated: "You need to respect your elders too" The officers walked around 20 feet away and NE#2 said, referring to the Complainant: "Disrespectful asshole." NE#1 replied: "Yep." NE#1 stated to the 911 caller: "We appreciate the phone call. We need more people like you in the world." The officers then remarked, referring to the Complainant: "and less people like that one." The Complainant said: "Chill out." NE#1 replied: "Back at you." NE#1 stated that he would talk to someone above the Complainant. NE#1 stated: "I need to figure out what apartment #3 is." NE#2 remarked: "That's your typical Capitol hill person."

As they walked out of the building, NE#2 remarked: "What a fucking dick." NE#1 subsequently updated the call with the following information: "The grinch aka [the Complainant] who advised he was property management was made aware of the broken door. [The Complainant] upset because SFD broke the door and argued with police. [The Complainant] advised he was not doing anything about the door right now. Officers and SFD left."

The Complainant later filed a complaint with OPA. He alleged that both of the Named Employees were rude to him. He specifically noted that one of the officers called him an asshole. He further alleged that the officers mentioned his apartment number, which he believed was a potential threat to not provide him with police services in the future. He felt that this was retaliatory. OPA commenced this investigation.

As part of its investigation, OPA reviewed the BWV (discussed above), as well the reports and call updates concerning this incident. OPA also interviewed NE#1, NE#2, the Complainant, and the 911 caller.

The Complainant stated that he lived in apartment 3, right next to where the officers made forced entry. He was sleeping at the time and was woken up with a loud bang. He came out of his apartment to find that the 911 caller had summoned the police to the scene and that entry had been made because of a package that had been outside of the other apartment for a period of time. He believed that the 911 caller may not have been sober at the time the call was placed. He said that he runs a number of buildings and that, as a general matter, officers knock on multiple



doors to try to find a building manager prior to making a forced entry. This was not done here. The Complainant acknowledged that he was frustrated and annoyed. He felt the officers' responses to him were unprofessional. He further noted that one of the officers called him an asshole. Lastly, the Complainant said that, when he told the officers that they were not being helpful and should leave, one of the officers referenced his apartment number. He took this as an implied threat that they would not provide him with police services in the future.

The 911 caller said that he smelled an unusual odor coming from the apartment and that a package had been out in front for several weeks. Accordingly, he was concerned about the occupant therein and called the police. After the police forced entry, the Complainant came out of his apartment and was upset. He told the 911 caller that he should have gone to the Complainant first, but the 911 caller said that he did not know that the Complainant lived in the building. The officers walked over and tried to address the Complainant; however, the Complainant acted aggressively towards them because they had broken down the door. The officers tried to explain that the call for them to come to the scene was helpful, but the Complainant was terse and wanted them out of the building. The Complainant was mad and rude to the officers and, when they left, they were upset and told him that he should get therapy. The 911 caller said that the officers were professional until the Complainant began to get upset. The 911 caller did not hear the officers call the Complainant an asshole. The 911 caller also did not hear the officers make any statements that he perceived to be threatening.

At their OPA interviews, both of the officers acknowledged that some of their statements towards the Complainant were unprofessional. They both said that they were frustrated because they believed that they were called to the residence for a legitimate reason and handled the call appropriately.

With regard to his references to apartment 3, NE#1 said that he speaks while he thinks and that he was making a mental note of where the building manager lived in order to document who he spoke with. He said that this was not intended as a threat. NE#1 said that he has not responded to the building since this incident and, if he did, he would not fail to provide service. NE#2 stated that he did not hear the comment about apartment #3. He said that he had not been back to the apartment since but, like NE#1, stated that he would provide service if called to respond.

#### **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.*)

Based on a review of the BWV, OPA concludes that both NE#1 and NE#2 made multiple statements that were contrary to SPD policy. This included telling the Complainant that he had issues, that he needed mental health treatment, and that he was an asshole. Also unprofessional was the general comment about Capitol Hill residents. Lastly, OPA finds NE#1's update to the call referring to the Complainant as the "grinch" to have been inappropriate.



While the Complainant was clearly frustrated with the Named Employees and also spoke rudely to them, this did not provide the officers with license to speak to him similarly. Indeed, as OPA has routinely held, by function of their employment and the great responsibility and power afforded to them by the community, officers are held to a higher standard. The Named Employees did not meet that standard here.

Ultimately, even though OPA appreciates that the Named Employees both recognized that their statements were unprofessional, the statements were significant enough in scope and content that a finding that they violated policy is warranted. Accordingly, OPA recommends that this allegation be Sustained as against both Named Employees.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties 14. Retaliation is Prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

From a review of the BWV, as well as after considering the interviews provided by NE#1 and the 911 caller, OPA finds that the evidence is insufficient to establish retaliation on NE#1’s part. First, NE#1 provided an explanation for why he repeated the Complainant’s apartment number that did not suggest retaliation. Second, both NE#1 and NE#2 said that they would not have treated the Complainant differently due to this incident and there was no evidence that they did so as neither had responded to the Complainant’s residence since. Third, and last, the 911 caller did not perceive NE#1’s comment to be retaliatory.

Accordingly, when applying the requisite burden of proof, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

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

***5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



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

***5.001 - Standards and Duties 14. Retaliation is Prohibited***

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

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