



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 8, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0012

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Lawful and Proper)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 4	5.001 – Standards and Duties 14. Retaliation is Prohibited	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 improperly issued him a citation and that the Named Employee's doing so was retaliatory. The Complainant further alleged that the Named Employee used a racial slur towards him and treated him unprofessionally.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint in which the Complainant alleged that Named Employee #1 (NE#1), a Parking Enforcement Officer (PEO), improperly cited him and that the citation was retaliatory. The Complainant further alleged that NE#1 treated him unprofessionally and used a racial slur towards him. OPA subsequently initiated this investigation.

OPA interviewed the Complainant. He said that NE#1 issued him a citation on December 17, 2020. He noted that, approximately two weeks earlier, NE#1 had issued him another citation to the same vehicle; however, he did not interact with NE#1 on that date. When he observed NE#1 in the process of citing his vehicle on December 17, the Complainant approached him and showed him a news article indicating that Mayor Durkan had issued a moratorium on citations during COVID. The Complainant read OPA the news article, which was taken from mynorthwest.com. the article specifically mentioned moratoriums on "pay to park" zones and 72-hour zones. The Complainant more broadly interpreted the article as referring to all parking citations. The Complainant stated that NE#1 immediately became aggressive and defensive. He stated that NE#1 told him: "You think I'm targeting you, you ignorant Spic?" The Complainant told NE#1 that he was Black not Hispanic. The Complainant said that NE#1 retorted: "I'll show you my power, you ignorant Spic."



The Complainant told OPA that NE#1 issued him a citation. He flew to Chicago the next day and was informed by a friend that NE#1 had towed his vehicle when he was gone. The Complainant felt that this constituted “maliciousness” and “discrimination” on NE#1’s part. The Complainant stated that he spoke to a person who lived in a van nearby about NE#1. That individual told the Complainant that, during an earlier conversation, he and NE#1 had discussed NE#1 targeting the Complainant’s vehicle.

The Complainant told OPA that there were no witnesses to his interaction with NE#1. OPA further determined that there was no third-party video recording what occurred. PEOs are not equipped with either In-Car Video or Body Worn Video.

OPA located the individual identified by the Complainant as living in a van nearby. The individual consented to be interviewed. He said that he was friendly with both NE#1 and the Complainant. He recalled speaking with NE#1 about the Complainant’s vehicle and said that NE#1 told him that the vehicle was parked illegally and was going to be cited and impounded. The individual denied that the Complainant said that he was out to get the Complainant or the Complainant’s vehicle. He further stated that he did not relay this information to the Complainant.

OPA lastly interviewed NE#1. He said that he cited the Complainant’s vehicle on December 1. He noted that the vehicle had been parked illegally for several months at that point, as well as that the license plate was expired since August of 2019. He again came back to the location on December 16, 2021 when the Complainant approached him and told him about the moratorium. NE#1 did not know what he was talking about but decided to issue the Complainant a warning instead of a citation to discuss the potential moratorium with his supervisor. NE#1 characterized the Complainant as being aggressive during this interaction and he said that he remained calm. He denied ever using a slur towards the Complainant. NE#1 said that he believed that the Complainant was Black, but that he was not sure.

NE#1 discussed the alleged moratorium with his supervisor and the supervisor said that it did not exist. NE#1 returned to the location the next day, December 17, and cited and impounded the vehicle. He said that he did so because of community complaints from that location, the fact that the vehicle had been illegally parked for some time, and the prior citations issued to the Complainant for the same conduct. NE#1 further noted that a prior citation issued to the Complainant indicated that his vehicle could be impounded if it remained parked illegally. He recalled speaking with the individual who lived in the van on that date but denied telling the individual that he was out to get the Complainant’s vehicle. Ultimately, NE#1 denied citing the vehicle for any improper reason, including as retaliation against the Complainant.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed above, the Complainant alleged that the citation was unsupported by law as it was issued during a purported moratorium on enforcement due to COVID.



OPA's research indicated that there was no blanket moratorium in place preventing all parking citations from being issued. Notably, the article cited by the Complainant did not describe such a moratorium. Moreover, SDOT issued the following guidance concerning parking laws that were still being actively enforced during COVID: "License Plates and Tabs: Do not park on-street with missing front or rear license plates, or with expired tabs." This was the exact conduct engaged in by the Complainant here.

This evidence conclusively establishes that there was no moratorium in place on December 1, December 16, or December 17. As such, OPA finds that the citations issued by NE#1 during this timeframe were permissible under the law. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**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 alleged that NE#1 twice used racial slurs towards him, which established that NE#1 treated him in a discriminatory manner. NE#1 denied doing so and said that, to the contrary, the Complainant acted aggressively towards him during their interaction. There were no witnesses to this incident and no video capturing what occurred.

When assessing the Complainant's claim of bias and evaluating the accounts of the incident provided by both NE#1 and the Complainant, OPA finds it unlikely that NE#1 made the statements alleged. However, given the lack of definitive evidence and the disputes of fact between the parties, OPA cannot conclusively determine that this is the case or identify what occurred during this incident.

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

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

**Named Employee #1 - Allegation #3**

***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 Complainant alleged that NE#1 was unprofessional when he acted aggressively towards the Complainant and used racial slurs.



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As discussed above (see Named Employee #1 – Allegation #2), even though OPA deems NE#1’s account to be the more likely, OPA cannot definitively establish this. Indeed, OPA cannot conclusively determine what was said between the parties. Accordingly, as with Allegation #2, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #4**

***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.*)

The Complainant asserted that NE#1 cited his vehicle due to retaliation against him. In support of this claim, the Complainant cited to a conversation he had with the individual who lived in the van, in which the individual told him of NE#1’s statements that established a retaliatory intent. NE#1, for his part, denied that he retaliated against the Complainant. Most importantly, OPA’s interview with the individual established that the conversation relayed by the Complainant did not actually take place.

Given this, OPA finds that there is insufficient evidence supporting the conclusion that NE#1’s actions were purposed to retaliate against the Complainant. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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