



Seattle
Office of Police
Accountability

CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 31, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0125

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 (Management Action)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
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 failed to wear a facemask during a traffic stop and stood within six feet of him during that time. The Complainant further alleged that the Named Employee was unprofessional.

SUMMARY OF INVESTIGATION:

On March 4, 2021, Named Employee #1 (NE#1), a Traffic officer, pulled over the Complainant's vehicle. NE#1 was assigned to a motorcycle at the time. The Complainant later alleged to OPA that NE#1 was not wearing a facemask during the stop and that, when he questioned NE#1 about the failure to wear a facemask and the requirement that officers do so, NE#1 did not respond to him and just walked away. As a result, OPA commenced this investigation.

The traffic stop was recorded both on Body Worn Video (BWV) and by video recorded by the Complainant on his cell phone. The BWV showed NE#1 approach the driver's side window. The Complainant put on a facemask and motioned to NE#1 to do the same. The Complainant rolled down his window and asked NE#1 where his facemask was. NE#1 did not respond to this question and informed the Complainant that he had expired tabs. He asked the Complainant for his license and registration. The Complainant provided his license but said that he did not have registration documents on him. NE#1 walked over to his motorcycle and used his computer system. NE#1 returned to the Complainant's vehicle and the Complainant again asked why NE#1 why he was not wearing a facemask, as well as inquired as to whether officers were required to do so. NE#1 handed the Complainant his license and walked away without answering either question.

The video recorded by the Complainant confirmed that NE#1 was not wearing a facemask when he approached the vehicle. It was otherwise consistent with the BWV.



OPA verified that, at the time of this incident, the facemask mandate issued by both the Governor and the Chief of Police were still in effect. As such, SPD officers were expected comply with its terms and requirements. The mandate included several exemptions, including instances where “wearing a face covering would be impractical or unsafe.”

As part of its investigation, OPA reached out to the Complainant to obtain his interview. The Complainant responded via email and affirmed that his concerns surrounded NE#1 failing to wear a facemask and then standing closer than six feet from him during the stop.

OPA also interviewed NE#1. He confirmed that he did not wear a facemask during this incident. NE#1 told OPA that he does not wear a facemask when riding his motorcycle and that he did not have time to put on a facemask prior to contacting the Complainant. However, he stated that he does carry one with him. NE#1’s Guild representative added that motorcycle officers wear eye protection and that the simultaneous use of a facemask is dangerous as it can cause the protective glasses to fog and reduce visibility. The Guild representative also noted that, in order to put on a facemask, the helmet needed to be removed. The Guild representative stated that motorcycle officers were not instructed or trained to remove their helmets during stops, as well as opined that removing the helmet during the stop could present a safety concern.

With regard to not responding to the Complainant’s questions, NE#1 said that he likely was unable to hear some of what the Complainant was saying. This was due to traffic noise and his wearing of the helmet. However, he stated that, as a general matter, he did not get involved in conversations regarding matters not related to the traffic stop. He said that, in his experience, doing so could cause the conversation to veer off course. NE#1 told OPA that he did not believe that the professionalism policy required him to answer questions during traffic stops. He did not feel that he was required to respond to questions regarding his personal life and that answering such questions or questions unrelated to the violation could cause him to remain at the stop for long periods of time. He lastly stated that, often, people asking questions unrelated to the stop were trying to escalate the incident and he would de-escalate by walking away and declining to engage.

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. This policy was alleged based on the potential that NE#1 violated the mandates on facemasks issued by both the Governor and the Chief of Police.

In assessing this allegation, OPA construes NE#1 (and his Guild representative) to be arguing that it is unsafe for NE#1, as a motorcycle officer, to wear a facemask while driving, as well as that it is impractical and also potentially unsafe for NE#1 to remove his helmet while conducting traffic stops. In defense of this position, it was articulated that motorcycle officers were not trained or instructed to remove their helmets during stops, including to put on facemasks.

Whether motorcycle officers should wear facemasks or whether doing so presents a safety concern exempting these officers from the overall facemask mandate is an issue of first impression for OPA. However, OPA has considered these issues in the context of bicycle officers and has concluded that, once they get off their bicycles and contact a subject, they should put on their facemasks absent some exigent circumstances preventing this. Admittedly, motorcycle



officers are somewhat different because, unlike bicycle officers, they are equipped with and are required to wear protective helmets that cover their ears.

Ultimately, OPA does not have a sufficient basis to evaluate the assertion that it would be impractical or unsafe for motorcycle officers to remove their helmets after effectuating a stop and before contacting a motorist in order to put on a facemask. From a lay perspective, OPA does not believe that doing so would be unreasonable and, if the final decision-maker on this issue, would require this of all officers. However, if the Traffic Section believes otherwise based on its extensive experience in this area, it should formally seek an exemption in writing from the chain of command. What is not tenable is to allow officers to make these decisions on an ad hoc basis and without appropriate oversight and guidance from supervisors. OPA asks that both the written request for an exemption and the Department's response to this be provided to OPA. If granted, all Traffic officers should be trained on the specifics of the exemption and the Department should make the terms of the exemption public (potentially on the blotter) to make sure the community is aware of it and has the chance to understand the Department's rationale.

If an exemption is not granted, the Traffic Section should train all of its employees, including motorcycle officers, to put on facemasks prior to contacting members of the public. Any officers who fail to do so will be investigated for non-compliance with the mandate, as well as potentially for insubordination for disregarding a direct order.

Lastly, if the above steps are not taken, OPA will hold the Traffic Section chain of command responsible for future violations of the facemask mandate by Traffic officers.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

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.*)

As discussed above, OPA finds it problematic that NE#1 was not wearing a facemask. While NE#1 was outside, he was within six feet of another person while conducting his law enforcement activities and, thus, was required to wear a facemask under the existing mandate. While OPA finds that a lack of clarity and direction from his chain of command may have contributed to NE#1's failure to wear a facemask, there is no similar excuse for ignoring the Complainant's questions and his walking away without providing any response.

Even if OPA credits NE#1's assertion that, in his experience, engaging in conversations outside of the basis for the citation were generally unproductive and to be avoided, this did not warrant his non-response to the Complainant's legitimate question concerning his lack of a facemask and whether NE#1 was required to wear a facemask pursuant to policy. NE#1 easily could have informed him of the safety issues he perceived or the concerns with removing his helmet. Indeed, as NE#1 was putting the Complainant at a potential risk of harm given the lack of a facemask, it could be argued that the Complainant was entitled to an explanation. In OPA's opinion, the lack of any information or



engagement at all was rude and unprofessional. It further created an interaction that reflected poorly on the Department and was simply poor engagement with the community.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**