



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 9, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0143

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 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Lawful and Proper)
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 was unprofessional towards him, failed to identify himself when requested, and did not properly wear a facemask.

SUMMARY OF INVESTIGATION:

The Complainant initiated a complaint with OPA in which he alleged that Named Employee #1 (NE#1) was unprofessional, did not identify himself, and failed to wear his facemask.

As part, of its investigation, OPA reviewed Body Worn Video (BWV) that captured the interaction between the Complainant and NE#1, as well as SPD reports documenting the incident.

OPA determined that officers, including NE#1, responded to multiple 911 calls concerning a resident who broke a window at Plymouth Housing, causing glass to fall onto the street. NE#1 was assigned to scene security, which included setting up police tape. Among his responsibilities was to keep vehicles and pedestrians out of the area.

Shortly after arriving on scene, NE#1 observed a vehicle parked underneath the broken window and where glass was falling down. The vehicle ultimately pulled out. When it did so, NE#1 said out loud and referring to the driver: "You're an idiot."



Some time thereafter, the Complainant began walking down an alley towards where NE#1 was situated. He stopped at the police tape and began interacting with NE#1. NE#1 and the other officer with him at the time made the decision to move the police tape further down the alley and, as a result, to move the Complainant back. NE#1 noted that the Complainant was making him feel uneasy. The Complainant picked up on this and asked NE#1 why this was the case and said: "You don't like your non-mask complaint pointed out?" The BWV indicated that, while NE#1 was wearing a facemask, it was covering his mouth but not his nose. The Complainant continued to engage with NE#1. During this exchange, NE#1 stated: "Don't you wish you could earn that type of money?" He contended that the Complainant did not have a job. NE#1 pointed to his watch and then at the Complainant, stating: "Go to your job right now." NE#1 turned around and started walking away while the Complainant began to yell at him. NE#1 told him to "have a good day." NE#1 walked towards his partner (a DOC officer), who asked him what the Complainant yelled. NE#1 told the partner that the Complainant asked for his name and badge and then said: "fuck you." From a review of the BWV, NE#1 did not provide his identifying information to the Complainant.

OPA interviewed both the Complainant and NE#1. The Complainant said that he was at the scene to check on a friend. He walked up to the building using the alley but saw that the street was closed. He stood back from the tape and observed. He noticed that NE#1 was not properly wearing his facemask and told him that. He then moved in to photograph NE#1's name tag. NE#1 and another officer moved down the alley and began shifting the tape back, saying that the Complainant made them feel uncomfortable. He told them that this was funny as he was unarmed and they had guns, as well as because they felt that they were above the law while he was complying with the law and standing on a public street. He then laughed and said that it was pretty funny that they were being so highly paid to move tape down the alley to intimidate members of the public. At that point, NE#1 told him: "I bet you wish you could make this much money." The Complainant responded: "I work at real jobs, so I've never made anywhere near that money." NE#1 then pointed at his wrist and said: "You don't have a job." NE#1 then walked away. The Complainant confirmed that he was pretty annoyed with NE#1. The Complainant did not recall requesting NE#1's identifying information and said that he captured it on his phone. The Complainant told OPA that he believed in abolishing the police and felt that SPD's budget should be spent elsewhere.

NE#1 told OPA that, while not captured on video, the driver who he first interacted with used profanity towards him before driving away. That was why NE#1 called him an "idiot." NE#1 recognized that this was not appropriate but stated that he did so because he had a human reaction to what he was facing. Similarly, NE#1 said that his response to the Complainant was based on the statements that the Complainant made, which NE#1 found insulting. He noted that, over the past year, he had been repeatedly criticized by community members, often obscenely. NE#1 told OPA the following: "I'm a 57-year-old black man, I've had so many little white kids tell me about my job I've kind of gotten tired of the little white kids telling me what to do about my job..." NE#1 again said that he was human. Ultimately, NE#1 admitted that his actions were contrary to SPD's professionalism policy, and he said that he would handle the situation differently in the future.

NE#1 acknowledged not providing his identifying information to NE#1 when requested. He provided the following explanation to OPA: "I know I was supposed to that, but I didn't want to give him the power and I didn't do it. I just turned away. And so that was my FU to him..."

Lastly, with regard to his wearing of a facemask, NE#1 said that placing it over his nose would cause his glasses to fog up. He told OPA that, while outside, he would keep it over his mouth and, if he came into close proximity with someone else, he would put it over his nose.



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.*)

From OPA’s review of the evidence – most notably, the BWV, several facts are clear. First, NE#1 called the driver an “idiot.” Second, the Complainant appeared to engage negatively with NE#1 from the outset of his time on scene and this was likely motivated by his overall distaste of police. Third, NE#1 reacted poorly to the Complainant’s comments and made statements towards him that were unprofessional. Fourth, NE#1 continued to engage with the Complainant when he should have walked away. Fifth, NE#1 failed to provide his identifying information and did so as an “FU” to the Complainant. These facts, when viewed together, weigh towards a finding that NE#1 was unprofessional.

NE#1 acknowledges that he was unprofessional and OPA agrees. OPA also recognizes that NE#1 and other officers, particularly within the East and West Precincts, have been faced with near constant criticism and that this wears on officers. OPA agrees with NE#1 that he and other officers are human beings; however, as an SPD employee, NE#1 is held to a higher standard than those he interacts with. NE#1 is further expected to not engage in negative interactions with community members, even where he is goaded by or triggered by what they are saying to him. In the vast majority of incidents, NE#1 and other officers act in compliance with these expectations; however, NE#1 admittedly did not do so here.

Had this been the first occasion of NE#1 engaging in such an interaction, OPA likely would have recommended a Training Referral based on the circumstances of this case. However, NE#1 has previously been counseled for a similar interaction (see 2018OPA-0732). This informs OPA’s decision that a Sustained finding is warranted here.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #2

5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

While OPA finds that NE#1 did not provide his identifying information when requested, OPA notes that the Complainant did not recall asking for this information and said that he ultimately obtained it. OPA further feels that this allegation is better addressed in the context of Allegation #1, above. As such, OPA recommends that this be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1’s chain of command should counsel him on his failure to provide his identifying information when requested. NE#1 should be reminded that this is a mandate and should be retrained on the



policy. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 – Allegation #3

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy, and Department policy. This includes the facemask mandates issued by Governor Inslee and the Chief of Police.

From OPA's review of the BWV, NE#1 was wearing his facemask over his mouth, but it was not covering his nose. Moreover, the BWV showed that NE#1 was outside at the time and, for the most part, not within six feet of others. NE#1 explained that, if needed, he would place his facemask over his nose; however, it fogged up his glasses otherwise. He said that this could, at times, pose a safety risk.

Ultimately, from OPA's reading of the mandate at the time, NE#1 was not required to wear a facemask outside if not within six feet of others. While it would have been optimal for him to place his facemask over his nose, OPA does not conclude that the way he wore his facemask during this incident constituted a violation of the mandate.

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

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