



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 10, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0186

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 3	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 4	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 3	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 4	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 3	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 4	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)



# 3	5.001 – Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
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EXECUTIVE SUMMARY:

The Complainants alleged that the Named Employees violated a number of SPD policies when they responded to an encampment at which the Complainants volunteered.

SUMMARY OF INVESTIGATION:

Two community members – referred to here as the Complainants – filed a complaint with OPA concerning the response of officers to an encampment where they volunteered. They alleged that the officers were unprofessional during their interaction – including exaggerating the number of complaints that had been received concerning the encampment. The Complainants also contended that the officers acted with bias against individuals experiencing homelessness within the encampment. Lastly, the Complainants alleged that the officers’ statements that if those in the encampment did not leave they would come back with a “different mentality” represented retaliatory conduct.

OPA’s investigation included reviewing documentation and news reports concerning the encampment in question. OPA determined that, in late March 2021 through April 2021, there were a number of articles published by KOMO News, King 5 News, and one editorial by the Seattle Times concerning the encampment. The articles referenced concerns from neighbors – some quoted – about the encampment being next to the school. The articles cited worries of neighbors surrounding the increases in crime and drug abuse in the area and the impact this had on children. One article noted a neighbor’s recalling of a woman who had fatally overdosed and that her body was left lying in the encampment. Later articles referenced that the encampment was growing and that the Seattle School Board – the owner of the property on which the encampment was situated – was declining to take action to remove the encampment. Instead, the Seattle School Board sought to rehouse the campers somewhere else. However, community members interviewed remained frustrated with that approach, citing the lack of a plan and the impact on the neighborhood and children coming back to school.

In February of 2021, one of the neighbors cited in the article reached out to an SPD Sergeant and relayed his concerns of drug use and ongoing criminal activity in the encampment. The Sergeant referred the complaint to the then-Lieutenant overseeing SPD’s Community Response Group (CRG). The Lieutenant deployed a CRG Sergeant – Named Employee #1 (NE#1) – and three officers – Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4). The Lieutenant directed the Named Employees (and other SPD personnel) to conduct a site visit to the encampment to evaluate the possibility of drug transactions and prostitution therein. The emails contained little specific information of the criminal conduct at issue. The emails also did not contain a direction to the officers to clear the encampment or to take any specific law enforcement action.

The Named Employees responded to the encampment and, while there, interacted with people therein, including the Complainants. These interactions were captured on the officers’ Body Worn Video (BWV).

OPA reviewed the policies and code governing unauthorized activities on school grounds. OPA verified that the School Board had discretion to issue a trespass or exclusion order, but that the decision to do so was its to make and was not governed by the City. OPA also verified the protocols used by the Department of Finance and Administrative Services (FAS) for when encampments could permissibly be removed, what notice was required to do so, and how that notice was to be provided to people within the encampments.



Lastly, OPA interviewed the Named Employees and a second CRG Sergeant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 14. Retaliation is prohibited

The Complainants alleged that the statements made by the Named Employees that the campers needed to leave the encampment, or the officers would come back and approach the situation differently were retaliatory.

In response to these allegations, the Named Employees stated at their interviews that they believed that the people in the encampment were there illegally. They noted that there were posted “no camping signs” and that there had been significant concern from the community regarding ongoing criminal activity within the encampment. The Named Employees stated that their primary focus was to investigate and address criminal activity, not to cause the encampment to be vacated. The Named Employees also stated that they did not actually force anyone out of the encampment and that they did not actually engage in any retaliatory behavior because they did not come back to take law enforcement action. Lastly, the Named Employees said that their inspection of the camp was warranted as they were directed to do so by their chain of command and because they observed needles and a machete, among other items, in the encampment. This raised their concerns given how close the encampment was to the school and the close vicinity of children.

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.*)

As discussed more fully below in the context of Allegation #2, OPA notes that, as a matter of law, the Named Employees would not have been permitted to clear the encampment. As such, the statements they made to those within the encampment to the contrary were inaccurate and unactionable. However, when evaluating a claim of retaliation, simply stating that they would do something is not sufficient. The officers would have needed to take an actual retaliatory act, such as coming back to the encampment to remove the campers or taking some sort of law enforcement action against them. This did not happen here.

Accordingly, OPA finds that there was no retaliatory conduct proved and recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

Based on its review of the applicable policies, procedures, and code, OPA concludes that the Named Employees did not have the legal authority to remove the encampment or to cause those staying there to leave. Given this, the statements made by the officers that the campers had to leave the encampment were incorrect. Again, while the



campers were in violation of the law, as the officers correctly determined, the discretion to remove them was held by the School Board, not by the City. Moreover, even had such a removal been contemplated, the notice requirements set forth in the FAS protocols would govern.

However, as discussed above in the context of Allegation #1, the officers did not actually remove the campers or cause them to be removed. While their statements inaccurately stated the law, there was no indication from the BWV or from the officers' OPA interviews, that these misstatements were intentional or malicious. Accordingly, OPA does not believe that there was any actual violation of law. That being said, OPA recommends that the Named Employees be retrained concerning the law in this area so that they more accurately articulate it moving forward.

- **Training Referral:** The Named Employees' chain of command should discuss this incident with them, including the fact that SPD and the City had no legal authority to remove the campers and that FAS protocols required notice prior to any removal. This counseling and any necessary retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing

The Complainants alleged that the Named Employees engaged in biased policing when they responded to the encampment. In support of this allegation, they pointed to comments purportedly made by the officers that demonstrated negative views of those experiencing homelessness. They specifically cited to a comment made by NE#1 concerning people coming to Seattle with the intent of being homeless.

As a general matter, OPA's review of the BWV did not yield any evidence of bias on the Named Employees' part. The video showed a number of interactions between the Named Employees, the Complainants, and others in which they generally discussed the encampment and the various options – or the lack thereof – available to the campers. At times the Named Employees expressly recognized the absence of other shelter options, while also telling the campers that they could not remain near the school because of community concerns.

With regard to NE#1's statement concerning people moving to Seattle to be homeless. He explained that he reached this belief from numerous interactions with people from out of state and his professional experience. OPA has no way to assess whether this was accurate or not. However, regardless, this opinion, would not constitute biased policing. NE#1 did not say that he thought such individuals were bad or that they were deserving of law enforcement action or the absence of police services.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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



Named Employee #1 - Allegation #4

5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication

The Complainants alleged NE#1, NE#2, and NE#3 made statements that exaggerated crime levels within the encampment and the number of complaints that had been received from the community about the encampment.

With regard to the statements made concerning crime levels, OPA cannot say that these were so inaccurate to have been dishonest. Notably, there were a number of articles about the encampment, several of which cited to increasing crime rates. Moreover, the officers were informed by their chain of command that there were issues with drugs and prostitution within the encampment. They were entitled to rely on this information. Given this, OPA does not believe that these statements violated policy.

With regard to the complaint numbers, the officers acknowledged that they did not know the exact number of complaints that had been filed. They said that, while there were many, they did not actually have proof that there were over 100 as they stated. They recognized that this was an exaggeration; however, they said that they were trying to generally make the point that multiple community members in the vicinity had made complaints.

Ultimately, OPA does not believe that an exaggeration – and specifically the one in this case – should give rise to a finding of dishonesty, which is a career ending offense. OPA notes that the officers should have been more accurate during their conversations with the Complainants and that not doing so here was problematic. However, OPA declines to recommend that this allegation be Sustained and, based on the above, instead recommends that it be Not Sustained – Unfounded as against NE#1, NE#2, and NE#3.

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

Named Employee #2 - Allegation #1

5.001 – Standards and Duties 14. Retaliation is prohibited

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

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

Named Employee #2 - Allegation #2

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

Named Employee #2 - Allegation #3

5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing



For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #4

5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

5.001 – Standards and Duties 14. Retaliation is prohibited

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

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

Named Employee #3 - Allegation #2

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

Named Employee #3 - Allegation #3

5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #4

5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #4 - Allegation #1

5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #2

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

Named Employee #4 - Allegation #3

5.001 – Standards and Duties 14. Retaliation is prohibited

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

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