



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 27, 2022

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0299

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

Named Employee #1

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 10. Employees Will Strive to be Professional	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Unfounded)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	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 engaged in biased policing because of the Complainant's sexual orientation, was unprofessional, failed to conduct a thorough search for evidence, and failed to document his allegations.

### **INVESTIGATION AND FACTUAL SUMMARY:**

The Complainant's allegations stem from his interaction with the Named Employee, who was investigating a motor vehicle accident involving the Complainant's vehicle.

The Complainant submitted a web complaint to OPA alleging that the Named Employee responded to a traffic collision involving the Complainant's vehicle. The Complainant alleged that the Named Employee was unprofessional in how he spoke to the Complainant and his husband (Community Member #1). The Complainant said that the Named Employee incorrectly said that Community Member #1 did not have a driver's license. The Complainant said that after Community Member #1 provided the Named Employee with his driver's license, the Named Employee responded, "Oh well, it is too late not I already submitted the report." The Complainant also said that he was attacked by the driver of the other involved vehicle (Community Member #2). The Complainant said this attack was a hate crime. The Complainant said he reported the attack to the Named Employee who responded, in sum and substance, that he was not interested in pursuing Community Member #2 and that if the Complainant "had an issue" he could call 911.



OPA commenced this investigation. OPA attempted to contact the Complainant on three different days by telephone, text message, and email. The Complainant did not respond. OPA reviewed the Complaint, CAD, the Police Traffic Collision Report, a follow-up Incident/Offense Report concerning the Complainant's allegations of assault and menacing, 911 call audio, BWV, and ICV. The facts underlying the Complainant's allegations are not credibly in dispute.

On June 26, 2021, the Named Employee was dispatched to a traffic collision. Both the Complainant and Community Member #1 reported the collision to 911. After arriving at the scene of the collision, the Named Employee spoke with the Complainant, Community Member #1, and Community Member #2 to gather their version of events. The Named Employee also checked on the welfare of all parties.

The parties all told a similar version of events: Community Member #2 was driving down the main road while Community Member #1 (who was driving the Complainant's car) was turning right out of a parking lot onto the main road when the vehicles collided. No one was seriously injured (Community Member #1 had some abrasions to his arm from an airbag). The only variation was a perceptual difference: Community Member #1 and the Complainant alleged that Community Member #2 was stopped on the main road, as if letting Community Member #1 merge, and then allegedly sped up "on purpose" to hit Community Member #1. Community Member #2 denied hitting Community Member #1 on purpose, stating that she was travelling down the road when Community Member #1 pulled out and hit her vehicle. Based on these versions of events – as well as a non-party witness corroborating Community Member #2's version of events – the Named Employee determined that Community Member #1 was at fault.

A short time later after the collision investigation had concluded, the Complainant approached the Named Employee and alleged that Community Member #2 threatened him by "swinging on" him and that Community Member #2 "pulled something out of her pocket." The Complainant said he thought the item was a knife. The Named Employee observed that Community Member #2 had already left the area and that the Complainant had no injuries. The Named Employee told the Complainant that his new allegation would be reported, but that he could not pursue her and had to respond to a reported drowning that occurred nearby.

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

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

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that the Named Employee engaged in biased policing by treating him and Community Member #1 differently because they are gay.

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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant did not identify what, specifically, made him believe that the Named Employee was treating him and Community Member #1 differently based on their sexual orientation. The Complainant made a vague allegation about the Named Employee being "very unprofessional in how he was talking to [the Complainant] and [Community Member #1]" and that they believed that the Named Employee knew they were gay. But neither the complaint nor a review of the records available – including BWV that depicted almost the entire interaction between the Named



Employee, the Complainant, and Community Member #1 – revealed anything other than the Named Employee conducting a professional investigation of a routine motor vehicle collision.

The Complainant seems to imply that the Named Employee ignored the Complainant's report of a "hate crime." Dispositively, the Named Employee did not ignore the Complainant's allegations. In fact, the Named Employee generated a follow-up report documenting the Complainant's allegations against Community Member #2. Furthermore, BWV captured the entirety of the Complainant's report of the alleged assault and menacing and at no point did the Complainant claim to the Named Employee that the attack was a hate crime. Moreover, based on the report the Complainant did give the Named Employee – as well as the Named Employee's observations of the Complainant verbally abusing Community Member #2 with language derogatory to her gender – it would have been far more reasonable to deduce that any assault and menace would have been motivated by the car accident or the Complainant's verbal abuse.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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

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

##### ***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***

The Complainant alleged that the Named Employee was unprofessional "in how he was talking to" the Complainant and Community Member #1.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (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.*)

The Complainant did not specify what language, specifically, he alleges the Named Employee used that was unprofessional. A review of BWV that audio and video recorded almost the entire interaction between the Named Employee, the Complainant, and Community Member #1, did not show the Named Employee using any profanity or language that is derogatory, contemptuous, or disrespectful toward any person. More likely than not, the Complainant felt that the Named Employee disrespected him because the Named Employee did not agree with the Complaint's or Community Member #1's analysis of which party was at fault. That is not a violation of SPD policy.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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



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

***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged that the Named Employee failed to conduct a thorough and complete search for evidence by assuming that Community Member #1 did not have a driver's license, then ignoring it when the driver's license was presented to him, stating "Oh well it's too late now I already submitted the report."

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

To the extent this allegation is premised on the Named Employee allegedly ignoring Community Member #1's driver's license, it is entirely unfounded. The Named Employee's BWV clearly shows him accepting Community Member #1's driver's license. Moreover, the Named Employee recorded Community Member #1's license information on the Police Traffic Collision Report and did not cite him for not having a valid operator's license (even though Community Member #2 was cited for this exact offense). Finally, there is no record of the Named Employee ever stating "Oh well, it is too late now I already submitted the report."

Instead, this allegation appears to stem from a good faith misunderstanding. When the Named Employee first asked Community Member #1 for his license, Community Member #1 did not want to get it because it was under his seat. Instead, the Named Employee took down Community Member #1's pedigree information and discovered that he did not have a record of a valid driver's license on record with the Washington State Department of Licensing. This, of course, made perfect sense as Community Member #1 was licensed in the State of Florida. However, when the Named Employee appropriately confronted Community Member #1 with this information, Community Member #1 corrected the Named Employee and provided his license. To the extent the Named Employee made an erroneous assumption, it was corrected moments later by Community Member #1.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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

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

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report***

The Complainant alleged that the Named Employee failed to document an investigation into his allegation that Community Member #2 assaulted and menaced him.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

Dispositively, and as discussed above in the analysis for allegation #1, the Named Employee did, in fact, generate an Incident/Offense report concerning the Complainant's allegations of assault and menacing against Community Member #2. Furthermore, the Complainant had no visible injuries and Community Member #2 had already voluntarily



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left the scene. More specifically, according to the Named Employee's Incident/Offense Report, Community Member #2 had just driven by the Named Employee and told him that she "was leaving as [the Complainant] was now accusing her of pulling a knife on him." Community Member #2 then drove off. Even taking the Complainant's allegations at face value, at this point, there was no "significant imminent threat" to justify pursuing Community Member #2. See SPD Policy 13.031-POL-4. Moreover, the Complaint's allegations, along with Community Member #2's name, address, date of birth, and contact numbers were all recorded in the report.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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