



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 14, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0315

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

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 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	Allegation Removed
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

#### **Named Employee #2**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 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 - Unfounded
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

***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 Employees engaged in bias-based policing by arresting her based on her gender and race. The Complainant also alleges that the Named Employees violated the law or policy and used force against her that violated policy.

### **ADMINISTRATIVE NOTE:**

OPA first sent this case to the OIG to review on August 5, 2021. OIG returned the case to OPA for additional investigation on August 10, 2021. OPA sent the case back to OIG on October 22, 2021. OIG returned the case to OPA for further investigation on October 26, 2021. OPA sent the case back to OIG on January 25, 2022.

OIG returned the case to OPA on February 2, 2022 as partially certified. OIG certified the investigation as both timely and objective but declined to certify the investigation as thorough. Specifically, in its Report of Investigation, OPA noted that it had sent an email to the Complainant attempting to secure an interview. However, OPA was unable to locate and attach a copy of this email to its investigative file. OIG identified the absence of this single email as a "gap in the investigative record which OPA cannot correct."



OPA acknowledges the inadvertent loss of this email but respectfully disagrees with OIG's conclusion that this renders the investigation not thorough. First, the only purpose of this email was to contact the Complainant to determine if the Complainant would be willing to provide a statement to OPA regarding the incident. But this email was not the only method of contact OPA attempted for the Complainant. OPA also noted that it sent a physical contact letter—a copy of which was included in OPA's investigative file—to the Complainant on two separate dates. Second, the OPA investigator noted that this email was sent in the report of investigation but explained that his practice was to wait until he received a response to save a copy of the email correspondence to the investigative file. The OPA investigator explained that, because he never received a response, this did not occur. The OPA investigator requested an agency-wide email search, which was unsuccessful as the email would only have been available for 90 days unless saved or placed in a retention file. Finally, even though the Complainant was not interviewed in this case, OPA believes that there is sufficient objective evidence on which to make a decision on these allegations. Specifically, the Named Employee's BWV and ICV, as well as nearby security video captured almost the entirety of the relevant interaction between the Complainant and the Named Employees.

#### **SUMMARY OF INVESTIGATION:**

The Named Employees' supervisor forwarded the Complainant's allegations to OPA via Blue Team. In the Blue Team complaint, the supervisor noted the Complainant's allegation that she was only arrested for being a "black trans woman," that the Named Employees "hurt" her during the arrest process, and that Named Employee #2 (NE#2) grabbed the Complainant's breasts. OPA initiated this investigation.

As part of its investigation, OPA reviewed the Blue Team Complaint, Incident Report, Use of Force Report, Body Worn Video (BWV), In-Car Video (ICV), and nearby Security Video. OPA also conducted interviews of both Named Employees.

The relevant facts of this incident are captured by the Named Employees' BWV, ICV, and nearby Security Video. These videos capture different portions of the incident from different angles. Sound cannot be heard during the first minute of both Named Employees' BWVs due to the buffering period and the Security Video has no sound. However, taken together, there is sufficient evidence to recommend findings for all allegations on the preponderance of the evidence standard required here. Except where specifically noted, the facts below are depicted on video.

On July 2, 2021, at about 8:07 P.M., Named Employee #1 (NE#1) and NE#2 arrived outside of a restaurant in uniform. The restaurant had a window to the outside where food could be ordered and picked up. Both NE#1 and NE#2 stated that they went to this restaurant for their meal. As the Named Employees ordered their food, the Complainant approached the Named Employees with her cell phone in hand. The Complainant stepped between the Named Employees and the restaurant window, pointing her cell phone towards the Named Employees as if filming them. The Named Employees then walked around the Complainant and towards the restaurant window. Then Complainant turned around and continued pointing her cell phone towards the Named Employees while standing about two feet away. The Complainant then turned her attention to NE#1, pointing her phone at the right side of NE#1's face. NE#1 responded by turning away from the Complainant and towards NE#2. Several seconds later, the Complainant stepped towards the Named Employees and held her cell phone mere inches from NE#2's face. NE#2 responded by holding his hand up, palm out, towards the Complainant's phone while leaning away from the Complainant. The Complainant continued to point her cell phone in NE#2's face. NE#2 again responded by holding his hand up, palm out, towards the Complainant's phone.



The Complainant then turned her attention to NE#1, who was standing at the restaurant window ordering his food. The Complainant pointed her cell phone in NE#1's face. The Complainant then stepped closer to NE#1 and angled her cell phone between NE#1 and the restaurant window. At this point, the Complainant's phone was only inches away from NE#1. NE#1 responded by sweeping his left hand, palm open, making contact with the Complainant's hand and moving the phone away from him. As the Complainant continued to stand next to NE#1 and point her phone at him, NE#1 extended his arm several more times to move the Complainant back. NE#1 then turned his attention back to the restaurant window.

The Complainant continued to stand only about one or two feet away from the Named Employees while continuing to point her cell phone towards them. Moments later, the Complainant again held her cell phone within inches of NE#2's face. Again, NE#2 used an open palm in a slow, sweeping motion to move the Complainant's phone away from his face. As NE#2 held his hand up towards the Complainant, the Complainant slapped at NE#2's hand one or two times. NE#2 stated in his OPA interview that he warned the Complainant that, if she slapped his hand again, she would be arrested. The Complainant slapped NE#2 an additional time. The Named Employees then each grabbed one of the Complainant's arms and put her in handcuffs.

The Named Employees escorted the Complainant over to their SPD vehicle. As NE#2 stood behind the Complainant, holding her left arm which was handcuffed behind her, the Complainant stated "don't touch my breast." NE#2 was not touching the Complainant's breasts. The Complainant also accused the Named Employees of hurting her, publicly outing her as a transgender woman when the NE#1 conducted a lawful search of her bag, and stated "I'm black transwoman, this guy hit me. He's African just like I am."

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

The Complainant alleged that the Named Employees engaged in bias-based policing in two respects: first, by allegedly arresting her based on her identity as a black, transgender woman, and second, by publicly outing her. The evidence does not support either of these allegations.

The Security Video shows that the Complainant approached the Named Employees, who did not seem to notice her until she repeatedly engaged them by pointing her cell phone within inches of their faces. Moreover, both Named Employees attempted to deescalate the situation by ignoring the Complainant's provocations and, later, using *de minimis* force to create physical space between themselves and the Complainant. Additionally, neither officer appeared to make any reference to the Complainant's race or gender. To the contrary, the Complainant repeatedly made statements about NE#1 such as "He's African just like I am" and "I don't understand what you're saying Mr. Nigeria."



Additionally, the evidence shows that the Named Employees acted lawfully, both in arresting the Complainant—who slapped NE#2 at least twice—and then conducting a search incident to lawful arrest. The only way this could have feasibly outed the Complainant was that, in searching the Complainant’s bag, NE#1 removed two prescription bottles from the Complainant’s bag. The Complainant’s appears to allege that, if a member of the public were somehow able to read the prescription on the bottles, they could identify her as a transgender woman. However, at the same time, the Complainant was herself loudly announcing that she was a transgender woman. Under these facts, it cannot be said that NE#1 publicly outed the Complainant or had any intent to do so. Moreover, as discussed below at Named Employee #3, Allegation #3, the *de minimis* and Type I uses of force employed by the officers were reasonable, necessary, and proportional in response to the Complainant’s actions.

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 2. Employees Must Adhere to Laws, City Policy and Department Policy***

It was alleged that NE#1 violated the law by touching the Complainant’s breasts.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

OPA classified this allegation against both Named Employees. However, a review of the video evidence shows that this allegation was made against NE#2 only.

Accordingly, this allegation is removed against NE#1.

Recommended Finding: **Allegation Removed**

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

***8.200 - Using Force 1. Use of Force: When Authorized***

The Complainant alleged that NE#1 used excessive force in violation of policy.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 only used *de minimis* force against the Complainant in two contexts. First, NE#1 used *de minimis* force to move the Complainant’s cell phone away from his face and then to back the Complainant physically away from him. Second,



NE#1 used *de minimis* force to hold the Complainant's arm and place her into handcuffs after she was under arrest. Neither of these applications of force was excessive.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

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

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

The Complainant alleged that NE#2 engaged in bias-based policing.

For the same reasons set forth above at 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***

The Complainant alleged that NE#2 violated the law by touching her breasts.

After the Complainant was placed under arrest, she was escorted to the SPD vehicle by NE#2. BWV depicted NE#2 holding the Complainant's arm during this time as the Complainant made multiple attempts to pull away from NE#2. BWV does not show NE#2 touching the Complainant's breasts and NE#2 denied doing so. Considering the absence of any indication that NE#2 touched the Complainant's breasts on the objective BWV, NE#2's denial, and the Complainant's other demonstrably false accusations—specifically that NE#1 “hit” her—OPA finds that the preponderance of the evidence establishes that this allegation was false.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 1. Use of Force: When Authorized***

The Complainant alleged that NE#2 used excessive force in violation of policy.

Like NE#1, NE#2 used appropriate *de minimis* force to move the Complainant and her phone away from him, take the Complainant into custody, and hold the Complainant's arm after she was arrested. These actions could not reasonably be expected to cause anyone pain and were reasonable, necessary, and proportional in response to the Complainant's actions

Only one of NE#2's actions requires any further analysis. At one point, BWV shows NE#2 switching his hold on the Complainant from an “escort hold” to a “secure hold.” In doing so, NE#2 put the Complainant in an off-balance



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position, bending the Complainant at the waist and elevating her arms behind her back. This hold—a “tabletop hold”—is a trained tactic not designed to cause any pain. Because the Complainant repeatedly attempted to pull away from NE#2, it was reasonable, necessary, and proportional for NE#2 to employ an underhook to the Complainant’s arm to establish a trained “tabletop hold” to establish better control of the resisting Complainant.

Accordingly, OPA recommends that this Allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**