



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0406

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 (Expedited)

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 Named Employee #1 (NE#1) was unprofessional and engaged in bias-based policing based on her gender and/or race.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified commentary made by NE#1 which could be regarded as contemptuous, and disrespectful to those involved individuals. OPA does not believe that these comments rise to the level which would require an investigation, and as such, are proposed to be returned to the chain of command to be handled via a Supervisor Action.

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employee. As such, OPA did not interview the involved employee in this case.

SUMMARY OF INVESTIGATION:

The Complainant alleged that NE#1 was biased against the Complainant and her friend, Community Member #1 (CM#1), based on their gender or race during the course of NE#1 investigating a motor vehicle collision between the Complainant and another driver, Community Member #2 (CM#2). NE#1 contacted his supervisor, Witness Supervisor #1 (WS#1), who conducted a bias review. The Complainant later told WS#1 that she wanted the incident to be investigated by OPA. WS#1 generated a Blue Team report and referred the matter to OPA. OPA commenced this investigation.

During the course of this investigation, OPA reviewed the Blue Team complaint, Computer Aided Dispatch (CAD) records, the Incident/Offense Report (Incident Report), In-Car Video (ICV), and Body Worn Video (BWV). OPA observed



that NE#1's BWV was separated into four separate videos that did not capture the entire incident. Due to this, OPA reviewed the audit trail for NE#1's BWV, which showed that the recording stopped three times due to a device error. Email correspondence with a representative of SPD's BWV Program indicated that this was an equipment error and not caused by NE#1. OPA also interviewed the Complainant and CM#1.

i. Incident Report

NE#1 completed the Incident Report, which was titled as a Disturbance. NE#1 wrote that he arrived at the location of the accident and called the Complainant, who provided an updated location. NE#1 wrote that CM#2 was waiting for contact at the accident site, which was on the way to the Complainant's updated location, so NE#1 responded to the accident site first.

NE#1 wrote that he contacted CM#2 who showed him tiny bits of yellow paint transfer, but no other apparent damage from the accident. NE#1 wrote that CM#2 tried to exchange information, but the Complainant refused and told CM#2 to speak to the Complainant's boss. NE#1 wrote that a cell phone video showed several minutes of the exchange between the Complainant and CM#2, which was calm before CM#2 decided to leave.

NE#1 wrote that he then contacted the Complainant who admitted to rear-ending another vehicle. NE#1 wrote that there was no visible damage to the Complainant's car. NE#1 wrote that the Complainant stated that CM#2 refused to speak with the Complainant's boss and only wanted to exchange information with her. NE#1 wrote that the Complainant told CM#2 to call the police if he would not speak with the Complainant's boss, but that CM#2 did not want to call the police. NE#1 wrote that, after five minutes, the Complainant decided her conversation with CM#2 was unproductive, so the Complainant decided to leave. NE#1 wrote that as the Complainant was preparing to leave, CM#2 reached through her open window and grabbed her wrist in order to stop the Complainant from leaving. NE#1 wrote that this scared the Complainant, who called the police to report the assault.

NE#1 wrote that he informed the Complainant that CM#2's alleged actions did not constitute an assault. NE#1 wrote that the Complainant became upset with NE#1, so NE#1 elected to have the Complainant continue the conversation with another officer. NE#1 wrote that the Complainant and CM#1 alleged that NE#1 was biased, and WS#1 was called to the scene.

NE#1 wrote that both the Complainant and CM#2 were given information for the collision information exchange.

ii. Complainant Interview

OPA interviewed the Complainant. She stated that she was involved in a motor vehicle collision in which she rear-ended another vehicle. The Complainant stated that the occupants of the other vehicle—three men—exited, ran up, yelled at her and were being aggressive. The Complainant stated that the men told her to give them her insurance. The Complainant said that she refused to give her insurance and, instead, told them to talk to her boss. The Complainant said the men did not want to talk to her boss, so she told them to call the police.

The Complainant alleged that the driver of the other car continued to ask for her insurance, then leaned on her vehicle. The Complainant stated that, when she told him he needed to move away from her car, the other driver said he was not going anywhere until she gave her insurance information. The Complainant said that the other driver then grabbed her wrist causing her to scream, take a picture, and leave the scene to call 911.



The Complainant said that officers responded to her location after speaking to the men in the other car. The Complainant stated that the men showed the officers a video that only showed one aspect of the incident, but that this caused NE#1 to arrive with his mind already made up. Specifically, the Complainant stated that NE#1 told her—before asking her any questions—that she was in a hit and run and had tried to cover it up and that the allegation that the other driver grabbed her wrist was a made up story. The Complainant said that NE#1 was taking the other driver's side, did not listen to her, and painted her as a liar. The Complainant said it could be that NE#1 acted this way due to her race or gender.

iii. CM#1 Interview

OPA interviewed CM#1. CM#1 stated that she is the Complainant's cousin. CM#1 admitted that she was not at the scene of the original collision but was present when officers responded.

CM#1 stated her belief that NE#1 was a racist because, she alleged, he was being very aggressive with the Complainant, was "a little weird," and due to his tone, facial expression, and energy CM#1 alleged that NE#1 told the Complainant that the incident was a hit and run and the Complainant did not want to deal with it, so the Complainant left and tried to cover it up.

iv. BWV and ICV

NE#1's BWV experienced a device malfunction during this incident, which caused the video to be incomplete and broken into four segments. However, two other SPD officers and WS#1 responded to the scene with BWV activated. Considered together, the available BWV is sufficiently complete to be relied on for purposes of this administrative investigation.

NE#1 and his partner were dispatched to the motor vehicle collision and called the Complainant while en route. After arriving at the scene, NE#1 spoke to CM#2 and determined this collision should be an information exchange based on the minimal level of damage. NE#1 and his partner then viewed cell phone footage that depicted some of the interaction between the Complainant and CM#2, but this cell phone footage could not be fully visualized on BWV. However, NE#1 remarked that he did not know why the Complainant was calling in an assault, as the Complainant was calm getting back into her car and no one else was near her. While en route to the Complainant's location, NE#1 opined that this was a collision call "with some extra stupidity." NE#1 added that the Complainant claimed she was assaulted, but that it looked like CM#2 was trying to restrain her or keep her from fleeing the scene because she did not want to exchange information or call the police.

NE#1 then contacted the Complainant and asked her what happened. The Complainant described the incident and states that she was at the accident scene for five minutes and CM#2 refused to speak to her boss, so she left the scene. The Complainant told NE#1 that she did not call the police at the scene but wanted the other driver to do so. The Complainant said she called 911 after she left because she was scared. NE#1 said that the facts were that the Complainant refused to exchange information, left the scene of the collision, and called 911 to "cover for" leaving the scene. NE#1 summarized "Ma'am, you were in the process of fleeing the scene of a collision and he tried to prevent you from doing so." The Complainant was told that the hit and run would not be documented, but they would facilitate an information exchange. The Complainant was then given a piece of paper with CM#2's information written on it. The Complainant stated that the other party to the collision had three people and she was by herself, so "You are supposed to take my side." NE#1 responded "Ma'am all we take is the side of whatever evidence we have." NE#1 told



the Complainant that he understood that she believed her side was right, but that he would not continue to argue with her.

WS#1 was called to the scene after CM#1 alleged that the officers were saying that, as a woman, the men had a right to put their hands on the Complainant. CM#1 also stated "If [the Complainant] was Caucasian, ya'll would act different." After WS#1 arrived, he screened the incident with NE#1. NE#1 described the Complainant's allegations concerning the wrist grab, and WS#1 agreed this was not an assault. NE#1 also told WS#1 that video showed that the conversation between the Complainant and CM#2 was calm and that the video stopped right before the Complainant left the scene.

CM#1 stated that the officers were being very insensitive about the Complainant being grabbed by a man. WS#1 clarified that the officers were not saying the grabbing did not occur, but they were saying there was not probable cause for an assault because there was no intent to cause injury or reasonable likelihood of injury.

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 NE#1 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.*)

As an initial matter, OPA did not note NE#1 doing or saying anything overtly biased based on the Complainant's or CM#1's race or gender. Instead, the bias-based policing allegations made by the Complainant and CM#1 were premised on (1) NE#1's comment that the Complainant called 911 to "cover" for leaving the scene, (2) their interpretation that NE#1 was dismissive of the allegation that CM#2 grabbed the Complainant, and (3) their perception of NE#1's tone, facial expression, and "energy."

The preponderance of the evidence in this case suggests that NE#1 did not engage in bias-based policing based on the Complainant's or CM#1's race or gender. Instead, the breakdown in the interaction between NE#1 and the Complainant and CM#1 appeared to have been caused by an asymmetry of information and NE#1's choice of words.

After their meeting with CM#2 and the other occupants of his vehicle, NE#1 and his fellow officers had a significant amount of information regarding the incident. NE#1 was already aware of the Complainant's allegations that she was assaulted. NE#1 and his partner also questioned CM#2 and the other vehicle occupants about this issue and viewed video evidence related to those allegations. Immediately prior to arriving to the Complainant's location, NE#1 articulated to other officers that his plan was to facilitate an exchange of information, but that he needed to speak the Complainant who:

claims that she was being assaulted, it looks more like she was being, uh, they were trying to restrain her, or, ah, keep her from fleeing the scene of a collision because she didn't



want to exchange information and wait for us. So...And then she called in and claimed assault, so I'm gonna go tell her, like, listen unless she has a video that or evidence to show me otherwise, if I'm gonna write something here, it's gonna be, it's gonna be citing you for a crime. Or you can exchange information.

This approach emphasized practicality—that an exchange of information was the preferred manner of resolving an accident this minor—but kept an open mind to the possibility that the Complainant could have additional information that could be relevant to her allegation of assault. To this end, NE#1 began his conversation with the Complainant by asking her an open-ended question (“So, what happened tonight?”). However, NE#1’s approach also prioritized confronting the Complainant about her decision not to provide her insurance information or call the police herself from the scene, and then to drive away from the scene to another location and call the police to report an assault. While a fair topic to raise about a suspicious circumstance, in OPA’s opinion, the way it was raised made the Complainant defensive and made her feel as though her allegation that she was grabbed was being ignored. The better approach here would have been that employed by WS#1—who explained that the allegation of grabbing would be documented, but that ultimately, there was no probable cause for an assault arrest under the circumstances.

OPA would also caution NE#1 about his word choice in two respects. First, while speaking with the Complainant, he repeatedly used the phrase “flee the scene” to describe the Complainant’s act of driving to a different location after the accident. While perhaps not inaccurate, this phrasing was accusatory and visibly upsetting to the Complainant. It was also unnecessary. NE#1 could have used more neutral language that would have had the dual benefit of not upsetting the Complainant and, perhaps, getting her to volunteer more information regarding the odd circumstances that led her to go to a different location. Second, NE#1 stated to the Complainant that she called 911 to “cover” for the fact that she drove from the scene of the accident to a new location. This language, similarly, was accusatory, unproductive, and suggested to the Complainant that NE#1 was more interested in accusing her of wrongdoing than documenting her allegation of being grabbed.

Ultimately, NE#1’s approach and choice of words may have been imperfect, but they were guided by objective evidence and were not based on bias. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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