



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 9, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0452

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

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

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties. 10. Employees Will Strive to be Professional	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Inconclusive
# 3	16.090 – POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity	Not Sustained - Training Referral

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

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties. 10. Employees Will Strive to be Professional	Not Sustained - Lawful and Proper (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 when he called 911 for SPD assistance, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) attended, and were unprofessional in their engagement with him. The Complainant further alleged that NE#1 was biased and referred to the Complainant's "Whiteness." On further review of the complaint by OPA, it was also alleged that NE#1 failed to activate his Body Worn Video (BWV) and In Car Video (ICV) as required by policy.

### **ADMINISTRATIVE NOTE:**

The allegation against NE#2 case was processed 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 employees. As such, OPA did not interview the involved employees in this case.

### **SUMMARY OF INVESTIGATION:**

On October 3, 2021, the Complainant was escorted out of a licensed premise when he refused to leave. The Complainant wanted to remain inside the establishment and stated that he wanted to locate his missing insulin, which



was lost in a melee of dancing. The Complainant made a 911 call alleging assault against the security staff there, after he had been escorted off the premise. NE#2 responded to the call and subsequently contacted his supervisor NE#1 when the complainant expressed dissatisfaction at how NE#2 was investigating the complaint. The Complainant alleged that both NE#1 and NE#2 were unprofessional in their engagement with him.

During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report, In Car Videos (ICV's) and Body Worn Video (BWV). OPA made several attempts to contact and interview the Complainant, to no avail. In 911 calls which he made, the Complainant stated that he had video of his interaction with the Named Employees. OPA was unable to secure this footage. NE#1 was subsequently interviewed by OPA.

BWV depicted NE#2 arriving at the location and speaking with security staff. Security staff explained to NE#2 that the Complainant was in a VIP area in the club, and that individuals were "moshing everywhere." The security staff stated that insulin needles belonging to NE#2 were in a bag, fell on the ground and were danced on. Security staff alleged that the show ended and 20 minutes later the Complainant was still refusing to leave and as a result was escorted off the premises.

NE#2 contacted the Complainant and explained that the staff did not have his insulin and asked if he required medical attention. The Complainant responded, "Absolutely" and SFD was contacted to attend. NE#2 attempted to speak with the Complainant to determine if his medical situation was immediately life threatening. The Complainant was argumentative and requested to press charges. NE#2 attempted to explain the process by explaining, "I'm trying to explain sir, it's not a matter of you pressing charges. It's a matter of the prosecutors deciding to go forward with the case." The Complainant responded, "I don't give a f\*\*\* about the prosecutors. Right now, I need you to press charges." NE#2 responded "Ok. It doesn't work that way. I'm just telling you." SFD arrived and attended to the Complainant. NE#2 subsequently tried to take a recorded statement from the Complainant to no avail as the Complainant requested a written statement. The Complainant took the statement form from NE#2 stating, "I want to rip this up so you can live with this. I want you to know...be like..." The Complainant then accused NE#2 of belittling him.

NE#2 asked the Complainant if he would like to deal with somebody else to which he replied "Absolutely." NE#2 contacted his supervisory sergeant, NE#1, to attend the incident as the Complainant indicated that he was not satisfied with the investigation and NE#2's disposition. NE#1's entire response to, and investigation of, this incident was recorded on his BWV. As such, these underlying facts are not in credible dispute. NE#1 arrived some time later and NE#2 explained that the Complainant was being "very difficult" and explained the interaction thus far. NE#2 explained to NE#1 that, "He's (the complainant) just angry with me. Ah, I don't know what else to do." NE#1 explained "So I'll just give him a case number and tell him this is what you're going to do and then we'll just call it from here." NE#1 went and spoke with the Complainant for approximately 4 minutes and then returned to his vehicle.

BWV captured the conversation between the Complainant and NE#1. At this juncture, NE#1's entire response to, and investigation of, this incident was recorded on his BWV. The Complainant was belligerent with NE#1 as he attempted to explain the investigative process to the Complainant. The Complainant cussed at NE#1 to which he stated, "Don't cuss." The Complainant responded, "Don't fu\*\*\*\*\* tell us what to do. Like my hands are ripped open." NE#1 stated, "We are done. We are done. Here's the case number. We're done." NE#1 appeared to hold out a business card. The Complainant kept his keeps his arms folded. NE#1 appeared to drop the business card on the Complainants folded arms. The Complainant opened his arms, and the card dropped to the ground. NE#1 walked back to his vehicle and deactivated his BWV.



NE#2's ICV captured the Complainants walking in front of NE#1's patrol vehicle as NE#1's vehicle was moving forward. From ICV, it appeared that the Complainant was blocking NE#1 from leaving. The Complainant appeared to give a hand gesture as NE#2's vehicle passed. Someone stated "F\*\*\* you."

The Complainant subsequently contacted 911 to complain about NE#1 and NE#2. A supervisory Lieutenant attended the scene and spoke with the Complainant. This interaction was also captured on BWV. The Complainant alleged that the business card given to him by NE#1 was thrown on the ground, he was told he was racist and to get out of the way. The lieutenant informed the Complainant that the matter would be further referred to OPA.

### **ANALYSIS AND CONCLUSIONS:**

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

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

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.*)

On arrival at the location, NE#1 was briefed by NE#2 that the Complainant was being "very difficult." Based on this information and from BWV, NE#1 had decided how he would engage the Complainant before meeting him. In interview, NE#1 stated that he attempted to explain the process of the investigation to the Complainant but that the Complainant was continually arguing with him. BWV aligns with this version.

NE#1 explained to OPA that he adopted this course of interaction because there was "no point of just repeating everything over and over again, as you can tell, he kept saying the same thing over and over again, we keep explaining to him the same thing that he kept repeating." NE#1 stated that "we can stay there until six in the morning, for him to keep repeating everything over and over again. Or I just have to move on with another conversation."

NE#1 stated that after the Complainant began cursing at him, he decided to leave. NE#1 stated that he attempted to give him a business card with the case number, but he crossed his arms, "so he wouldn't take it." NE#1 stated that he tucked it in front of him by his chest and the Complainant flung his hand open and business card fell off. NE#1 stated that he then just walked away, as he saw, "no point of escalating him." OPA asked whether this action, of stuffing the card in his arm, could in fact have the opposite effect of escalating the situation. NE#1 denied that it did and denied using any derogatory language during the incident.

BWV clearly depicts that the Complainant was agitated, argumentative and appeared to be intoxicated. The Complainant refused to accept the explanation offered by both NE#2 and NE#1 with respect to the fact that he cannot "file charges." Based on OPAs review there is insufficient evidence to sustain a finding of unprofessional behavior.



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

Recommended Finding: **Not Sustained - Unfounded**

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

***5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage 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 NE#1 referred to him and his friend as “white hippies.” In interview, NE#1 stated that as he was leaving, the Complainant moved and was up against his car at the push bar yelling. Although the Complainant was seen moving toward NE#1’s vehicle, none of this specific behavior was captured by BWV or ICV. NE#1 stated that the Complainant stated that SPD did everything “for the bums and the Homeless.” NE#1 stated that the Complainant called the homeless people bums and, and, and the crackhead and stuff like that.” NE#1 stated that he told the Complainant that, “hey, first of all, I’m Asian and minority. Second, I, I assume everybody the same and, and, and you’re right, we provide service to everybody, I say you’re right.” NE#1 stated that he was not sure if the Complainant interpreted this statement in some other way. OPA notes that in a previous conversation with NE#2, and captured on BWV, that the Complainant used a derogatory term, i.e., “retarded” in referring to another individual. However, the lack of BWV or ICV does not provide any additional evidence to determine if derogatory comments were made by NE#1 as alleged by the Complainant.

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

Recommended Finding: **Not Sustained - Inconclusive**

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

***16.090 – POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity***

SPD Policy 16.090-POL-5 requires that SPD employees record police activity in certain delineated circumstances using both (or either, in some cases) their ICV and Body Worn Video (BWV) systems. Inherent in this requirement is that there be both video and audio on the recording. Where a recording has no audio or video, the employee has potentially not complied with the policy. This is clear based on a review of SPD Policy 16.090-TSK-1, which instructs officers to, when deploying with BWV or with a vehicle equipped with ICV, to verify “that all indicators show that the ICV microphone and BWV camera are fully charged.” Notably, this policy, which was recently updated, no longer requires that officers conduct a system check. (See SPD Policy 16.090; see also SPD Policy 16.090-TSK-1.) Moreover, while it instructs officers to verify that their wireless microphone and BWV camera are fully charged, it does not explain or describe how officers are expected to do so. (See SPD Policy 16.090-TSK-1.)

OPA questioned NE#1 as to why he deactivated his BWV when he returned to his vehicle. NE#1 stated that he assumed that he was finished in his contact with the Complainant and as a result turned it off. NE#1 stated that he did not expect the Complainant to run in front of his vehicle and he was caught off guard as a result and “Totally forgot about turning it on.”



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When questioned why he had no ICV activated, NE#1 stated that “I didn't even know about anything until afterwards. So and then I didn't know but normally when, when we roll up and we turn on our camera, everything supposed to turn on but for some reason, my, my guy, I went and looked before the interview, and I didn't see any in car video at all. So, I'm not sure what happened.” In this instance, OPA investigation found that the manual activation of the BWV did not trip the automatic activation of the ICV. The Axon ICV system needs to either be activated manually or be triggered by certain events in the vehicle (such as going over 70 MPH, light bar beyond position 2, collision detection, etc.).

The purpose of the BWV recording requirement extends beyond the gathering of evidence for prosecution. It also has probative value with respect to establishing that no officer misconduct occurred. In this situation, OPA finds that NE#1's BWV recording would have had significant probative value in establishing his own lack of misconduct. However, OPA does not believe that this was a willful violation of policy and that it was somewhat of a premature deactivation and believes that this allegation would be best addressed through a training referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1. The Training Referral should incorporate counseling and training on relevant sections of 16.090-POL-1(5). This training should include activation requirements of both ICV and BWV. Details of this should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**