



CLOSED CASE SUMMARY

ISSUED DATE: MAY 25, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0487

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 - Inconclusive |

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 anonymous Complainant alleged that Named Employee #1 (NE#1) was unprofessional by gesturing at them with the middle finger.

SUMMARY OF INVESTIGATION:

An anonymous Complainant filed a complaint online with OPA alleging that NE#1 "flipped a pedestrian off" while exiting the East Precinct. The Complainant did not provide any contact information but identified NE#1 by badge number. OPA opened this investigation.

During its investigation, OPA reviewed the OPA Complaint, CAD Call Report, In-Car Video (ICV), East Precinct Video, Named Employee's Worklog. OPA also interviewed NE#1.

NE#1's ICV depicted NE#1 exiting the East Precinct garage on the date and at the time indicated in the Complainant's allegation. As NE#1 pulled out of the garage, a pedestrian walked in front of NE#1's vehicle.¹ As the pedestrian crossed in front of NE#1's vehicle, it appeared that NE#1's vehicle did not come to an immediate stop. The pedestrian continued walking eastbound in front of NE#1's vehicle and then the pedestrian gestured with their middle finger at NE#1. The pedestrian walked back a few seconds later, walked back in front of the vehicle, and apparently approached NE#1 at the driver's side window. The pedestrian appeared to break contact with NE#1 several seconds later and pulled out their cell phone while walking away. NE#1's ICV did not depict NE#1's body in any way from which OPA could confirm whether NE#1 gestured at the pedestrian.

¹ The East Precinct garage exits onto East Pine Street such that vehicles exiting from the garage need to cross over a sidewalk in an area with high pedestrian traffic. This layout has caused a number of safety concerns, efforts to remediate those safety concerns, and related community complaints. See forthcoming Closed Case Summary and Management Action Recommendation in 2021OPA-0529.



OPA also reviewed surveillance video from the East Precinct. Although five different angles of surveillance video showed the pedestrian's actions, no angles displayed NE#1 in a way from which OPA could confirm whether NE#1 gestured at the pedestrian.

At his interview, NE#1 stated that as he was exiting the garage, he used his horn and audible warnings to alert any pedestrian's that he was exiting. NE#1 recalled that as he was exiting, the pedestrian walked in front of his vehicle and gestured at him with their middle finger. NE#1 stated that the pedestrian then came back and asked for his badge number which he provided. NE#1 denied gesturing at the pedestrian in any way. NE#1 stated he activated his ICV after the pedestrian asked for his badge number, which is why the ICV contained no audio.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 behaved unprofessionally in that he "flipped a pedestrian off."

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.)

OPA cannot say by a preponderance of the evidence whether this allegation is true. On one side, the complaint was made anonymously, the Complainant made no mention of the pedestrian gesturing with their middle finger at NE#1, and neither ICV nor security video corroborates the Complainant's allegation. On the other side, the angles of the video do not rule out the possibility that NE#1 could have gestured in some way and video corroborates that NE#1 had an interaction of some sort with a pedestrian at the alleged date and time. While OPA finds it odd that the Complainant did not mention any of the other notable details—specifically the narrowly avoided collision and the fact that the pedestrian gestured with their middle finger—this situation lends itself poorly to credibility determinations. The Complainant filed this complaint anonymously and, from OPA's review, both NE#1 and the pedestrian had plausible reason to be angry at the other: NE#1 because the pedestrian walked in front of his vehicle, the pedestrian because NE#1 did not immediately come to a complete stop, and either party may have responded in kind to any gestures of the other.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**