



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 8, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0507

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
# 2	5.001 Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Training Referral
# 3	5.001 Standards and Duties 14. Retaliation is prohibited	Allegation Removed

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) repeatedly patronized their place of business but refused to wear a mask as required under state law. The Complainant further alleged that when NE#1 was asked to wear a mask, he gave the individual who made the request a "death glare" before refusing.

ADMINISTRATIVE NOTE:

Due to present OPA staff limitations, this is an abbreviated Director's Certification Memorandum. At the Director's discretion, an expanded Director's Certification Memorandum may be released at a later time.

ANALYSIS AND CONCLUSIONS:

Following an investigation that the Office of Inspector General certified as thorough, timely, and objective, OPA's analysis is that the preponderance of the evidence does not establish that any policy violations occurred or rose to the level of misconduct.

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.)

The Complainant alleged that NE#1 was unprofessional because NE#1 allegedly gave the Complainant a “death glare” when the employee asked NE#1 to wear a mask. NE#1 denied behaving unprofessionally and stated he was “very intentional in how [his] response was, so that [he] would sound polite.” NE#1 elaborated that he had a good relationship with the regional manager of the business and did not want to ruin that relationship.

In the absence of any objective evidence concerning NE#1’s actions in the establishment, OPA cannot reach a conclusion by a preponderance of the evidence regarding this allegation.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

5.001 Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

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

NE#1 admitted that he did not have a mask on while inside the establishment but characterized this as an unintentional omission that he only realized when the Complainant pointed it out to him. BWV from another incident that NE#1 responded to on the same day and shortly thereafter also depicted NE#1 inside a building without wearing a mask.

In OPA’s view, the evidence suggests that NE#1 was more cavalier with the face masking requirement than policy required. However, NE#1 offered a plausible explanation for his behavior and candidly admitted that he was not wearing a mask when he was inside this establishment picking up a food order. OPA finds that NE#1’s failure to wear a mask in this context was a possible, but not willful, violation of policy not amounting to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-2 with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1’s chain of command should emphasize the continued importance of following public health directives and the impact of this omission on public trust. The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.

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

Named Employee #1 - Allegation #3

5.001 Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who



otherwise engages in lawful behavior.” (Id.) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (Id.)

The Complainant did not allege any plausible allegation of retaliation by NE#1. Neither the Complainant nor NE#1 recalled any instance of NE#1 returning to this establishment after the alleged incident.

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**