



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 10, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0531

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.120 - Impounding Vehicles 7. Officers Will Consider Reasonable Alternatives Prior to Impounding Vehicles Operated by Drivers in Certain Situations	Not Sustained - Lawful and Proper
# 2	6.181 - Performing Inventory Searches 4. Officers Will Place Valuable Items into Evidence	Not Sustained - Training Referral
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded
# 5	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.120 - Impounding Vehicles 7. Officers Will Consider Reasonable Alternatives Prior to Impounding Vehicles Operated by Drivers in Certain Situations	Not Sustained - Lawful and Proper
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

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 searched his car without his consent. He further alleged that the Named Employees acted with bias towards him—due to his sexual orientation and a medical condition—when they had his vehicle towed with its doors unlocked and the window down, which led to personal items being stolen and damage to the interior of the vehicle.

OPA alleged that Named Employee #1 (NE#1) may have violated Department policies when he failed to: (1) take the Complainant's personal items (cell phones, tablet, wallet) from the vehicle and into evidence, and (2) roll up the vehicle's window and lock its doors prior to turning over custody to the tow company.

Additionally, OPA alleged that NE#1 and Named Employee #2 (NE#2) may have violated policy by failing to properly document the incident because: (1) NE#1's Inventory Report did not appear to reflect the items that the Complainant claimed were in the vehicle prior to it being impounded, and (2) NE#2 appeared to have inserted portions of an unrelated DUI investigation in the Incident/Offense Report related to this Complaint. Finally, OPA alleged NE#1 and NE#2 may have violated policy by not considering alternatives to impounding the Complainant's vehicle.

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

6.120 - Impounding Vehicles 7. Officers Will Consider Reasonable Alternatives Prior to Impounding Vehicles Operated by Drivers in Certain Situations

At the time of this incident, SPD Policy required officers to consider reasonable alternatives prior to impounding vehicles. In a DUI arrest situation, policy permitted officers to impound "only after their individualized consideration of the circumstances, and if the officer determined that there is no reasonable alternative to impound." SPD Policy 6.120-POL-7.

In his interview with OPA, NE#1 stated that he impounded the Complainant's vehicle because it was in a lane of travel and could not have been legally parked. NE#1 also stated that he was not authorized to drive a private vehicle without the owner's authorization. Here, the BWV corroborated that the Complainant's vehicle was in a lane of travel and that the Complainant was not capable, due to his medical condition, of providing valid authorization to drive his vehicle. OPA finds that, more likely than not, NE#1 appropriately considered reasonable alternatives to impounding the Complainant's vehicle and acted within policy.



Accordingly, this allegation is Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

6.181 - Performing Inventory Searches 4. Officers Will Place Valuable Items into Evidence

When impounding a vehicle, SPD Policy requires officers to place valuable items into evidence. SPD Policy 6.181-POL-4.

The Complainant alleged that NE#1 failed to secure his valuable personal items when impounding his car. Among the items that the Complainant alleged NE#1 did not secure were cell phones, a tablet, a wallet containing a sum of currency, a bag of coins, and a disabled parking permit. BWV and documentation completed by NE#1 demonstrated that NE#1 was aware of the cell phone and tablet. There is no evidence that NE#1 was ever away of the Complainant's wallet, bag of coins, or disabled parking permit. However, a cell phone and tablet are exactly the sort of valuable personal property that policy requires officers secure prior to impound by placing into evidence.

When asked why he did not submit these items into evidence, NE#1 stated that he wanted to avoid further inconvenience for the Complainant. OPA finds this explanation plausible but unsatisfactory. OPA recognizes that the process of retrieving property that is held as evidence for safekeeping could be perceived as an additional inconvenience, but the policy exists to avoid exactly these sorts of situations: where the valuable property of a community member is lost or damaged following a vehicle impound.

OPA finds that NE#1's failure to secure this property was a possible, but not willful violation of policy not amounting to misconduct. OPA finds that a training referral in this instance would sufficiently address NE#1's misstep in this instance and best prevent a similar situation from reoccurring.

Accordingly, OPA recommends 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 6.181-POL-4 with NE#1, and provide any further retraining and counseling that it deems appropriate. 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 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[d]iscretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

The allegation was added to address NE#1's failure to lock the Complainant's vehicle and roll up the vehicle windows prior to impounding the vehicle, allegedly resulting in lost or damaged property. BWV corroborates that NE#1



conducted an inventory search of the Complainant's vehicle and then transferred custody of the vehicle to the impound company without closing the window or securing the vehicle. During his OPA interview, NE#1 stated that he chose to leave the window open as he found it and that he believed the tow company was responsible for securing the vehicle. NE#1 elaborated that his practice is not to interfere with a community member's property unless it is necessary. Finally, NE#1 stated his opinion that he transferred the property to the tow company, which is tasked and trained on how to secure vehicles.

As with Named Employee #1, Allegation #2 above, NE#1's explanation plausibly explains his behavior but is incomplete. Policy requires that officers ensure that "items of significant value" are secured inside a vehicle or, if impossible, placed into evidence. OPA finds that NE#1's failure to do so here was a possible, but not willful violation of policy not amounting to misconduct. However, this allegation and any appropriate retraining for this topic would be duplicative of Allegation #2 above. Moreover, the possible misconduct is better addressed under the specific policy concerning securing valuable property found in a vehicle for impound. Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

This allegation was premised on the fact that NE#1 did not document the Complainant's bag of coins, wallet, or disabled parking permit on the Impound and Inventory Form that he filled out. During his OPA interview, NE#1 denied seeing those items. Moreover, there is insufficient evidence to prove that NE#1 was aware of those items and intentionally omitted them.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #5

5.140 - Bias-Free Policing 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 the Named Employees all engaged in bias-based policing based on his sexual orientation and medical condition. The Complainant stated that he was not awake to see if any officers acted with bias, but he presumed that the officers made assumptions about his sexual orientation after observing certain items in boxes his vehicle and about his medical status due to his disabled parking permit and documentation contained in his wallet.



BWV did not show any evidence that the Named Employee considered the Complainant's sexual orientation at any point during the encounter. Moreover, BWV showed the officers paying only minimal interest to the boxes that were in the Complainant's vehicle, and what attention the officer gave the boxes was for the purpose of learning his name. BWV also showed that the Named Employees never recovered the Complainant's wallet. To the extent the Named Employees saw relevance in the Complainant's medical condition, BWV showed it was for the purpose of determining what medications the Complainant may have been under the effect of. All of the Named Employees denied that they engaged in bias-based policing.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

6.120 - Impounding Vehicles 7. Officers Will Consider Reasonable Alternatives Prior to Impounding Vehicles Operated by Drivers in Certain Situations

For the same reasons set forth above at Named Employee #1, Allegation #, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

This allegation was premised on the fact that a portion of the Narrative Section of NE#1's Incident Report referenced a prior arrestee's name and not the Complainant's. NE#2 explained that this is an introductory portion of a statement that he writes out for his DUI arrests and that he copied and pasted this statement from a previous warrant and failed to fully correct for the appropriate name. Moreover, NE#1 stated—and OPA finds—that this statement is only a preamble concerning his training and experience related to DUI investigations and that he appropriately referred to the Complainant by the correct name throughout the remainder of the document.

OPA finds NE#2's explanation to be both credible and sufficient. While NE#2 is advised to be more diligent in reviewing his work for typographical errors in the future, inadvertent mistakes or scrivener's errors do not rise to the level of a policy violation.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #3

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

For the reasons set forth above at Named Employee #1, Allegation #5, OPA recommends that this allegation be Not Sustained – Unfounded.



Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

SPD Policy permits officers to make a searches only pursuant to a search warrant, unless a specific exception applies. SPD Policy 6.180-POL-1.

NE#3 admitted and BWV showed that NE#3 searched the Complainant's vehicle without a warrant. NE#3 explained he did so pursuant to the community caretaking exception, specifically because the evidence suggested that the Complainant was under the effect of narcotics or a medical condition, which the officers believed could have been a diabetic episode. NE#3 stated, and BWV corroborates, that he was looking for documentation or a medical bracelet that would provide insight into any of the Complainant's conditions for the purpose of rendering medical aid. SPD Policy allows for such a search, see SPD Policy 6.180-POL-1. Moreover, BWV showed that there was overwhelming, readily observable evidence to believe that the Complainant was under the influence of either a narcotic or medical condition, and the Named Employees were principally focused on addressing that issue. That, later, NE#2 determined that there was probable cause to seek a blood sample search warrant—which he obtained—did not render the officers initial efforts to learn more about any medical conditions of the Complainant improper.

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

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

Named Employee #3 - Allegation #2

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

For the reasons set forth above at Named Employee #1, Allegation #5, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**