



CLOSED CASE SUMMARY

ISSUED DATE: JULY 19, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0061

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense [...]	Not Sustained - Training Referral
# 2	13.031 - Vehicle Eluding/Pursuits 13.031-POL 7. Officers Must Notify Communications of Pursuits	Not Sustained - Training Referral
# 3	5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion	Not Sustained - Training Referral

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:

It was alleged that on January 14, 2022, Named Employee #1 (NE#1) entered into a pursuit without sufficient basis under SPD Policy, and that the Named Employee failed to properly notify communications of this pursuit. It was further alleged that NE#1 allowed an individual who may have been in crisis to drive to a hospital on her own, and that the Named Employee permitted the individual to do so while transporting her own one year-old child.

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 completed 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. However, OPA does recommend training referrals on the three allegations in this case.



Named Employee #1 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense [...]

The Complainant alleged that NE#1 engaged in a pursuit that did not meet the criteria of SPD Policy.

SPD Policy 13.031-POL-4 states that “Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or a Sex Offense [with] Probable cause to believe that the person poses a significant imminent threat of death or serious physical injury to others such that, under the circumstances, the public safety risks of failing to apprehend or identify the person are considered to be greater than inherent risk of pursuit driving. (SPD Policy 13.031-POL-4.) The Policy also requires that “[t]he Officer has received authorization to continue the pursuit from a supervisor.” *Id.*

During its investigation into this matter, OPA reviewed In-Car Video (ICV) regarding the pursuit and took NE#1’s statement. From ICV, OPA found that NE#1 did follow the subject in a manner which did not comport with the normal traffic patterns, but that the basis for this pursuit did not comport with the standards of SPD Policy 13.031. In his interview with OPA, NE#1 acknowledged that his actions did not comport with the pursuit policy, but that he did not realize this at the time of the incident.

However, OPA acknowledges that several mitigating factors are at play in this case. Principally, OPA notes that the pursuit policy was changed in February 2021, and that NE#1 expressed uncertainty with these changes. OPA also notes that NE#1 has not been subject to a past OPA investigation relating to pursuits, and that the pursuit in question took place on relatively clear streets at speeds of 15-25 miles per hour.

Considering NE#1’s lack of awareness of the changed policy, the absence of past pursuit issues with NE#1, and the controlled nature of this pursuit, OPA believes NE#1’s conduct constituted a possible, but not willful, violation of policy that did not rise to the level of misconduct. Accordingly, this matter is best handled as a Training Referral so that NE#1 may be better instructed regarding the expectations in a pursuit.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 13.031-POL-4, 13.031-POL-7, and 5.001-POL-6 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 an appropriate database.

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

Named Employee #1 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 13.031-POL 7. Officers Must Notify Communications of Pursuits

The Complainant alleged that NE#1 failed to properly notify Communications of the pursuit.

SPD Policy 13.031-POL-7 requires that officers notify communications of pursuits. This includes providing information concerning: the reason for the pursuit; the location; direction of travel; roadway conditions and weather; speed of the officers’ vehicle; traffic conditions; and speed and operation of the subject’s vehicle.



During its investigation into this matter, OPA reviewed ICV regarding the pursuit and took NE#1's statement. From ICV, OPA found that NE#1 did not provide radio communications regarding his speed, the traffic conditions, or that he was engaged in a pursuit. However, OPA did determine that NE#1 provided updates regarding his location and direction of travel, and also provided suspect information and requested backup units. From his statement to OPA, NE#1 acknowledged that he did not provide the necessary information required under policy, but also reiterated that he did not realize that he was engaged in a pursuit at the time of the incident.

As stated above in Named Employee #1 – Allegation #1, OPA believes NE#1's conduct constituted a possible, but not willful, violation of policy that did not rise to the level of misconduct. Accordingly, this matter is best handled as a Training Referral so that NE#1 may be better instructed regarding the expectations in a pursuit.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 13.031-POL-4, 13.031-POL-7, and 5.001-POL-6 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 an appropriate database.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion

The Complainant alleged that NE #1 permitted the subject to drive herself and her child to the hospital on their own.

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.)

During its investigation into this matter, OPA reviewed Body-Worn Video (BWV) and took NE#1's statement. From BWV, OPA determined that NE#1 permitted the subject to drive away from the scene with her one-year-old child on board, ultimately leading to the pursuit in question. During his statement to OPA, NE#1 stated that he did not believe that he had the legal authority to physically prevent the subject from leaving the scene, a misperception that he stated was caused by recent changes in state law regarding an officer's ability to use force.

Considering NE#1's confusion over recent changes in relevant state law and the absence of past discretion issues with NE#1, OPA believes NE#1's conduct constituted a possible, but not willful, violation of policy that did not amount to misconduct. Accordingly, this matter is best handled as a Training Referral so that NE#1 may be better instructed regarding the expectations under the changed state legislation regarding use of force.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 13.031-POL-4, 13.031-POL-7, and 5.001-POL-6 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 an appropriate database.

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