



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 9, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0115

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Unfounded
# 2	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 10. There Are Five Options for Resolving Behavioral Crisis-Related Misdemeanor Crimes	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Unfounded
# 2	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 10. There Are Five Options for Resolving Behavioral Crisis-Related Misdemeanor Crimes	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:

It was alleged Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were unprofessional and failed to respond appropriately to a person experiencing crisis.

SUMMARY OF INVESTIGATION:

OPA received an online complaint alleging NE#1 and NE#2 failed to "remove" an individual (the Subject) from a tiny home village complex (the Village) even though the Subject had "committed assault," was "clearly not mentally capacitated," "harming himself," and "running around in traffic." The complaint alleged the responding officer "did not find this enough to hold the [Subject] and said he didn't want to because he didn't have backup. When backup arrived they just left." OPA opened an investigation.

During its investigation, OPA reviewed the OPA Complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report, Body Worn Video, In-Car Video, and Email Correspondence. OPA interviewed two Village staff members, Community Member #1 (CM#1) and Community Member #2 (CM#2). OPA also interviewed NE#1 and NE#2.



The entirety of NE#1 and NE#2's interactions, engagement with CM#1, CM#2, a third staff member (Community Member #3 or CM#3), and the Subject were recorded on BWV. Accordingly, the underlying facts of this complaint are not in credible dispute.

The CAD Call Report indicated that CM#1 and CM#2 reported that a male—the Subject—at the Village was “in Crisis throwing beer cans and soda at staff, spit on staff member, threatened to stab another resident with a knife, no weapons seen.” The callers also indicated that the male did not take medications that day, was a diagnosed schizophrenic, and experienced paranoid delusions. The callers identified the Subject by first and last name. Nearly two hours after the initial call, the call was downgraded from Priority 2 to a Priority 3. Shortly thereafter, the callers called back and stated that the Subject was “throwing objects and breaking glass” and CM#2 expressed frustration at the delayed response, reporting fear that the Subject would hurt themselves. Over two hours after the initial call, NE#1 and NE#2 responded to the location.

BWV showed NE#2 arrived at the Village and contacted CM#1 first. NE#2 spoke with CM#1, who pointed out the Subject. CM#1 stated that the Subject had spit on CM#3 and threw cans of soda at people. CM#1 also pointed out property damage caused by the Subject. As he entered the Village, NE#2 observed the Subject standing about thirty to forty-five feet away¹ and called out to the Subject by first name. NE#2 told the Subject that he wanted to talk to him. CM#1 indicated that she did not want to press charges against the Subject but did want him trespass from the property.

BWV depicted the Subject approach NE#2 while speaking indecipherably. NE#2 again told the Subject that he wanted to talk to him, but the Subject stated “I don't want to talk to you...no. It looks weird.” The Subject then walked out of the Village towards the street. NE#2 followed the Subject from a distance. At this time, NE#1 had not yet arrived on the scene; NE#2 was the only officer present. As NE#2 continued to engage with the Subject from a distance, the Subject quickly turned around and gestured towards NE#2 three different times. The Subject continued to speak indecipherably. For example, the first time the Subject turned around and gestured at NE#2, the Subject stated, “they're giving my mom a pacemaker by following her, from the backside, they're following me with lasers, they gave my mom a pacemaker, please back up.” NE#2 asked the Subject if he wanted to make a report. The Subject responded, “the last time I made a report...this happened,” while gesturing at a patch of dirt and a traffic cone on the sidewalk. The Subject then walked off, NE#2 disengaged and returned to the Village.

BWV showed CM#2 ask NE#2 if there was a way to the Subject and “involuntary.” CM#1 told NE#2 that the Subject spit on CM#3 and threw soda on CM#3. CM#2 also told NE#2 that the Subject was harming himself by punching walls. CM#1 told NE#2 that the Subject had broken a window as well. NE#2 stated that police needed an “imminent threat to others” in order to force the Subject to go to the hospital. As NE#2 spoke with CM#1 and CM#2, CM#2 suggested that the Subject could be reentering the Village from a rear entrance. NE#2 directed CM#2 not to try to follow the Subject and that NE#2 wanted to “focus on paper for now.” NE#2 elaborated that he was the only officer on scene, that he did not know where his backup was, and he wanted to avoid a use of force.

BWV showed that NE#1 arrived on scene a short time later. NE#2 spoke with NE#1 in the Village parking lot. NE#1 asked NE#2 if they had probable cause to arrest the Subject, which NE#2 denied, elaborating that no one wanted to “press charges.” NE#1 and NE#2 then discussed a different call for service that they had holding across the street.

¹ Distances are estimated from BWV.



BWV depicted NE#2 return to the Village office. NE#2 asked CM#3 if she wanted to press charges for the assault, to which she responded affirmatively. NE#2 indicated that he would write a report concerning the Subject for assault and his behavior and “the court will decide what to do with him.” CM#2 asked NE#2 if Crisis Prevention was responding. NE#2 replied that he had requested Crisis Prevention but there were no units available. CM#3 told NE#2 that he did not understand the resolution because the Subject was “clearly not mentally capacitated.” NE#2 replied, “I totally understand, we’ve been dealing with him a lot, so, [the Subject is] a famous guy in the U District.” NE#2 continued to discuss different options for proceeding, noting that he would write a Crisis Report, documenting the spitting and throwing a soda can. A short time later, NE#2 left to address the nearby holding call.

According to the CAD Call Report, about half an hour after NE#2 departed the Village, the Subject returned, and CM#1 requested that NE#2 come back. BWV showed that NE#2 returned to the Village and spoke with CM#1. The Subject was no longer present at that time. CM#1 reported that the Subject had returned, torn signs, and was seen walking in traffic. CM#1 articulated that she had trespassed the Subject, and NE#2 noted that he had also found a warrant in the system for the Subject. NE#2 told CM#1 that he would add the information about the Subject being formally trespassed into his report. CM#1 told NE#2 to expect more calls. CM#1, NE#2, and Witness Officer #1 (WO#1) discussed the legal requirements of the Involuntary Treatment Act. NE#2 informed CM#1 that he had probable cause to arrest the Subject for Assault in the Fourth Degree and that he was going to drive around and try to find the Subject. NE#2 and WO#1 then drove around the area for approximately seven minutes and contacted one person that they—mistakenly—though was the Subject before deciding to clear from the call.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 was unprofessional.

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 NE#1 and NE#2 spoke to Village staff in a condescending tone. The BWV showed that NE#1 only engaged briefly with CM#1. In summary, CM#1 asked NE#1 whether he recognized her. NE#1 responded that he did not. CM#1 explained to OPA that she recognized NE#1 from an unrelated, previous incident to which NE#1 had responded. However, OPA did not find any evidence that NE#1 behaved in an unprofessional manner during this incident.

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

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #1 - Allegation #2

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 10. There Are Five Options for Resolving Behavioral Crisis-Related Misdemeanor Crimes

The Complainant alleged NE#1 failed to investigate the incident involving an individual in crisis.

SPD Policy 16.110-POL-5(10) provides five options for resolving a behavioral crisis-related misdemeanor crime: (1) investigate and release with routing to CRU for follow-up; (2) referral to the Crisis Solutions Center; (3) investigate and release with a request for charges through Seattle Municipal Mental Health Court; (4) Jail booking with Mental Health Court flag; or (5) investigate and detain for behavioral health evaluation, with a request for charges through the Seattle Municipal Mental Health Court.

NE#1 was acting as a secondary officer during this incident. NE#2 was the primary officer and had the responsibility to investigate this incident. Moreover, after NE#1 arrived at the scene, NE#1 was briefed by NE#2 on the investigation. NE#2 told NE#1 that there was no probable cause for arrest and the Subject had already left the scene. NE#2 then asked NE#1 to back him on a disturbance call nearby. Based on the information available to NE#1—which he received from NE#2, the primary officer—NE#2 was not required to take any further action.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

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

The Complainant alleged NE#2 was unprofessional because NE#2's tone was generally condescending and, more specifically, as NE#2 stated the Subject was "famous" in the area.

OPA did not observe NE#2 use "any language that is derogatory, contemptuous, or disrespectful toward any person" on the BWV. Recognizing that tone can be a subjectively perceived issue, NE#2 explained in his interview that he speaks English as a second language with a "thick accent." NE#2 speculated that "sometimes my tone is kind of like downwards because of my native language.... But I was – I did not meant – mean to be any disrespect to anyone." Notably, a week after this incident, NE#2's supervisor sent NE#2 an email noting "[CM#1], the Operations Manager for [the Village], sends thank for how thoughtfully you engaged with her during this trespass incident, your willingness to listen, and your overall professionalism. Keep up the great work!"

NE#2 made the comment that the Subject was a "famous guy in the U District" as a response to CM#2 explaining that the Subject's behavior was an ongoing issue. At his OPA interview, NE#2 explained that he intended to convey that the Subject is "well-known by the police because he's previously involved." While the word "famous" may have been a somewhat inartful or overly colloquial way for NE#2 to describe his familiarity with the Subject, OPA cannot conclude that this rose to the level of derogation, contempt, or disrespect for the Subject in this context.

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



Recommended Finding: **Not Sustained - Unfounded**



Named Employee #2 - Allegation #2

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 10. There Are Five Options for Resolving Behavioral Crisis-Related Misdemeanor Crimes

The Complainant alleged NE#2 failed to properly investigate this incident involving an individual in crisis, despite witness reports that the Subject engaged in dangerous behavior in the Village.

As an initial matter, the Complainant's principal complaint appears premised on the fact that NE#2 did not "hold" the Subject and "said he didn't want to because he didn't have backup." However, the Subject only remained on scene for a brief amount of time after NE#2 arrived and, during this time, NE#2 was the only officer on scene. The Subject appeared extremely agitated and crisis during this time. As NE#2 followed the Subject out of the Village and continued to engage with him, the Subject turned quickly towards NE#2 on three occasions. Both on scene and in his OPA interview, NE#2 explained, "at that moment, I was – I was alone and he was acting agitated. And I know my – I have the backing officer, like, within a block, and – but he was not there at that moment. So I kept distance. He walked away, and I figured maybe we can just do area check later, so I can just get more information from the victim." Considering the information known to NE#2 at the time, OPA finds that waiting for backup was safe, feasible, and encouraged by policy. See SPD Policy 8.100(1)(b) (encouraging team approaches to de-escalation). Moreover, although the Subject was able to walk away from the scene at that time, OPA does not find that NE#2 waiting for backup compromised a law enforcement priority. NE#2 was responding to a Subject who appeared in crisis for a misdemeanor assault allegation. The Subject was known to NE#2 and could be apprehended later when the availability of more resources might have decreased the likelihood of a use of force.

Secondarily, the Complainant also alleged NE#2 failed to take appropriate investigative action. Contrary to the allegation, NE#2 completed a report documenting the alleged assault and formal trespass. NE#2 also listed the Subject, Victim, and Witness information, completed a Crisis Template, and canvassed unsuccessfully for the Subject with another officer. When asked in his OPA interview which of the five options for resolving behavioral crisis related misdemeanor crimes he pursued, NE#2 indicated that he investigated and released the Subject with a routing to CRU for follow up. Ultimately, Mark 43 records indicate that the case was not forwarded to CRU but, rather, to the Homicide Unit. However, OPA did not uncover any evidence that NE#2 was responsible for this incorrect forwarding.

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

Recommended Finding: **Not Sustained - Unfounded**