



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 7, 2023

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0214

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained - Unfounded
# 2	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded
# 3	16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 2. Employees Who Have Been...	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:

An anonymous Complainant alleged Named Employee #1 (NE#1) was unprofessional, engaged in retaliation, and inappropriately focused his Body Worn Video (BWV) on the Complainant.

SUMMARY OF INVESTIGATION:

An anonymous Complainant filed a web-based complaint. That complaint stated NE#1 drove past the Complainant, who was walking. The Complainant alleged NE#1 "must have recognized [the Complainant]" because NE#1 "flipped a U-turn," stopped, "pulled his body cam off of his vest and stuck it out the window at [the Complainant]." The Complainant alleged NE#1 intended it as "an act of intimidation and retaliation" because there "was zero reason" for NE#1 to point his camera at the Complainant.

The Complainant also provided an eighteen-second video without audio. It shows, at night, a patrol vehicle's driver side enter the camera's frame, stop, slowly pull forward, and stop again. A small red-light flashed near the driver side window. The patrol vehicle then appears to drive off.

OPA opened this investigation. During the investigation, OPA reviewed the OPA complaint, Complainant's video, and NE#1's Computer-Aided Dispatch (CAD) data and BWV. OPA also interviewed NE#1. OPA was unable to contact the anonymous Complainant for an interview.

OPA's review of NE#1's relevant CAD data showed NE#1 cleared a call shortly before encountering the Complainant. The CAD had no remarks about NE#1's interaction with the Complainant.



OPA also reviewed NE#1's BWV. NE#1's BWV equipment was initially mounted to his chest. The initial view is of NE#1's hands manipulating the steering wheel as he drove. The patrol car stopped for a few seconds then NE#1 appeared to veer it left and removed the BWV equipment from his chest. NE#1 appeared aim his BWV camera out the driver side window toward a subject standing on a sidewalk. The BWV's audio started. The subject's right hand was raised toward NE#1 like the subject held something. From the patrol car's driver seat, NE#1 asked the subject, "Do you need assistance with anything?" The subject responded, "Yeah, I need you to quit your job." NE#1 replied, "That's not going to happen." The subject asked, "Why not?" NE#1 responded, "Because I like my job." The subject replied, "You like harming people?" NE#1 asked, "Can I help you with anything tonight?" The subject did not respond. NE#1 stated, "Alright. Have a good night." The subject responded, but the words were indiscernible on the BWV. NE#1 appeared to place his BWV equipment on his lap and drive away. NE#1's BWV briefly showed his face before NE#1 appeared to return the camera to his chest.

OPA interviewed NE#1. NE#1 recalled the incident. NE#1 stated he recognized the Complainant from prior encounters. NE#1 admitted to possibly making a U-turn prior to the encounter but denied making the U-turn to engage the Complainant. NE#1 stated he saw the Complainant "pointing her camera at [NE#1]," so he "stopped, pointed [his] camera at her, attempted [to] engage, or engage her in conversation." NE#1 stated he decided to record the conversation because the Complainant "made previous frivolous complaints, including false allegations against [him]," and NE#1 "wanted a video record" of the interaction.

NE#1 claimed the Complainant routinely wrote disparaging comments about officers on the sidewalk outside the East Precinct. NE#1 stated the Complainant also occasionally "attempt[ed] to engage in conflict" with officers. NE#1 explained the Complainant engaged in conflict by asking officers "do you support murder?" and calling them "Nazis, rapists, racists, white supremacists." NE#1 also recounted occasionally civil conversations with the Complainant, which he characterized as "challenging conversations, but we have talked." NE#1 stated prior experience with the Complainant led him to believe, no matter what occurred, she would file a complaint against him. NE#1 said he only aimed to engage her in conversation. Last, NE#1 admitted not advising the Complainant their encounter was audio and video recorded, stating it "skipped [his] mind."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 was unprofessional.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. *Id.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.*

Here, NE#1's behavior towards the Complainant was not unprofessional. After observing the Complainant on a sidewalk apparently recording him, NE#1 aimed his BWV camera towards the Complainant to capture a social contact¹

¹ A social contact is "[a] voluntary and consensual encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; social contacts are not seizures." SPD Policy 6.220 - POL - 1.



with a familiar subject. Given the Complainant's lawful but unusual activity of standing alone outside around 9:57 P.M. video recording NE#1, his question ("Do you need assistance with anything?") was not unreasonable. Similarly, OPA did not find NE#1's questions intimidating or threatening, where NE#1 maintained a professional tone and did not say anything profane, derogatory, contemptuous, or disrespectful. Overall, OPA did not observe NE#1 engage in behavior that would reasonably undermine public trust in him, other officers, or the Department.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited

The Complainant alleged NE#1 engaged in retaliation.

SPD policy precludes employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are specifically prohibited from retaliating against a person for "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 include "discouragement, intimidation, coercion, or adverse action against any person." *Id.*

Here, since the Complainant did not avail herself for an OPA interview, it is unclear what activity motivated NE#1's alleged retaliation. Assuming the Complainant's history of filing OPA complaints was the alleged motive, nothing NE#1 did or said appeared to constitute "discouragement, intimidation, coercion, or adverse action" against the Complainant. NE#1 engaged the Complainant on a public street in a brief social contact. NE#1 also chose to record their short interaction in case it resulted in misconduct allegations. Overall, OPA found no evidence NE#1 acted in retaliation.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 2. Employees Who Have Been Trained and Have Been Issued ICV and BWV Equipment Must Carry It During Their Shift

The Complainant alleged NE#1 improperly used his BWV.

SPD Policy 16.090-POL-1(2) sets forth requirements for employees trained on and issued Body Worn Video (BWV) and In-Car Video (ICV). SPD Policy 16.090-POL-1(2) requires employees to "wear the BWV camera on the upper torso." *Id.*

Here, NE#1 indisputably removed his BWV from his upper torso to record his interaction with the Complainant. While SPD Policy 16.090-POL-1(2) directs employees to wear BWV on their upper torso, it also tacitly approves repositioning BWV "to obtain useful recordings." Both the Complainant and NE#1 found recording their encounter useful. Had NE#1's BWV remained on his upper torso, it would have likely only recorded his patrol car's steering wheel and dashboard rather than the more useful recording of the subject he engaged.



Pursuant to SPD Policy 16.090-POL-1(5)(a), NE#1 was required to notify the Complainant their encounter was recorded. Admittedly, he failed to do that. Given the encounter's brevity and spontaneity, OPA finds NE#1's explanation (it "skipped [his] mind") believable but inexcusable. However, OPA did not find NE#1's violation constituted willful misconduct.

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 Policies 16.090-POL-1(2) & 16.090-POL-1(5)(a) with NE#1 and provide any retraining and counseling deemed appropriate. Any retraining and counseling should be documented and maintained in Blue Team.

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