



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 18, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0224

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Inconclusive

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Inconclusive

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 Named Employee #1 (NE#1) and Named Employee #2 (NE#2) treated him and his daughter differently based on their race.

ADMINISTRATIVE NOTE:

OIG certified this investigation as thorough and objective but untimely. OIG declined to certify this investigation as timely because OPA did not timely serve NE#2 with a notice of complaint, as required under Article 3.6(A) in the Seattle Police Officer Guild Collective Bargaining Agreement (CBA). OPA acknowledges NE#2's notice of complaint was untimely, however, OPA respectfully disagrees that the entire investigation should be rendered untimely. Especially where this investigation was completed within 180-days as required by ordinance and CBA.

Additionally, during its investigation, OPA found minor inconsistencies between NE#1's report and his BWV. OPA determined those minor inaccuracies potentially violated SPD Policy 15.180-POL-5 ("All reports must be complete, thorough, and accurate."). During the certification review process, OIG noted NE#1 and NE#2 fist bumped one party of the motor vehicle collision but not the Complainant or his daughter. OIG alleged this potentially violated SPD Policy 5.001-POL-10 ("[E]mployees may not engage in behavior that undermines public trust in the Department[.]") Respectfully, OPA considered the alleged fist bump relevant to the bias allegations, rather than the Department's primary investigation and professionalism policies. Absent bias, those potential violations of SPD Policies 15.180 and 5.001 would be, at most, minor misconduct. Accordingly, OPA returned the 15.180 and 5.001 allegations to the chain-of-command for Supervisor Action.



SUMMARY OF INVESTIGATION:

On July 22, 2022, the Complainant filed an online OPA complaint. The Complainant alleged that, on July 13, 2022, his daughter (Community Member #1 or CM#1) was in a motor vehicle collision with Community Member #2 (CM#2). The Complainant alleged he and CM#1 were treated differently by the named employees because the Complainant and CM#1 were Black, and CM#2 and his passengers were White. Specifically, the Complainant alleged he and CM#1 were not provided CM#2's name or insurance information on scene and NE#1's report did not reflect the "account that was given to the officer."

OPA opened this investigation. OPA reviewed the complaint, Computer-Aided Dispatch (CAD) data, Police Traffic Collision Report (PTCR), Statewide Electronic Collision & Ticket Online Records (SECTOR) report, Body Worn Video (BWV), and photographs. OPA also interviewed the Complainant, NE#1, and NE#2.

a. CAD, PTCR, and SECTOR Reports

CAD data showed NE#1 responded to a traffic collision. The 911 caller, CM#1, reported the other driver refused to exchange information, cursed her out, and blamed her for the accident. The call taker noted, "2 VEHS, NO INJ, NOT BLOCKING, OTHER DRIVER REFUSING TO EXCHANGE." NE#1 was dispatched to the call at 4:26pm and arrived on scene at 4:43pm. At 5:23pm, the call was marked as handled.

The PTCR and SECTOR reports were substantially identical. NE#1's PTCR stated he arrived and was contacted by CM#1, who drove a Mazda 3 ("Unit 1"). NE#1 noted the other vehicle was a RAM 3500 towing a trailer and driven by CM#2 ("Unit 2"). NE#1 also spoke to a witness (Community Member #3 or CM#3). The PTCR stated:

[CM#1] stated in summary that she was in the far-left lane traveling north bound on 15 AVE NE just south of the intersection at NE 135 ST. [CM#1] needed to stop for a vehicle that was turning west bound on NE 135 ST and started to move forward again when Unit 2 which was in the immediate lane to the east started to change lanes in front of Unit 2 when at the same time Unit 1 was starting to change lanes into the far-right lane and the trailer struck the passenger front side of Unit 1.

I contacted [CM#2] who stated in summary that he was not changing lanes and was in the far-right lane traveling north bound on 15 AVE NE when he passed Unit 1 and then felt a bump and saw that Unit 1 struck his trailer. [CM#2] had two passengers in his vehicle; [Passenger #1] and [Passenger #2] that both agreed with [CM#2] on what had occurred.

I contacted witness / [CM#3] who stated in summary that he witnessed the collision and it appeared that [CM#2] was at fault for starting to move over. Additional information was acquired that [CM#3] was involved in a prior road rage incident with [CM#2] just south of the collision incident.

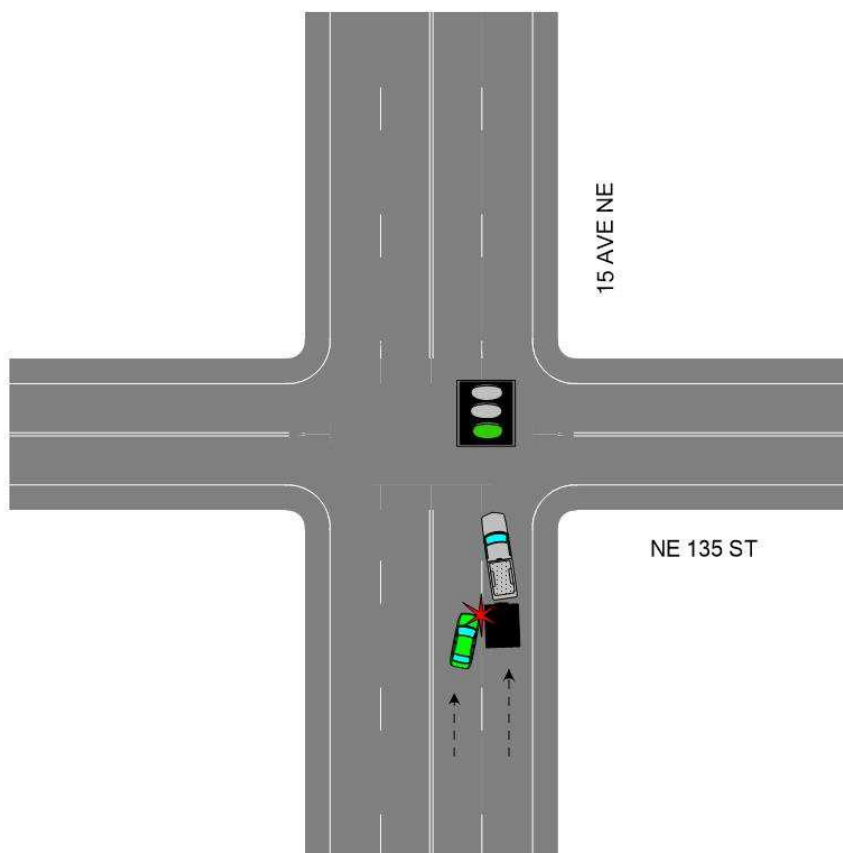


[CM#2] stated that very minor damaged occurred to the fender of the trailer and from the impact, pushed the fender on the trailer into the tire. [CM#2] was able to pull out the fender. Unit 1 had damage to the passenger front fender / bumper area. [CM#2] requested to drive the vehicle to her home, just a few blocks away. [NE#2] photographed both vehicles and uploaded the images to evidence.com.

Due to the conflicting stories of what had occurred, an at fault driver could not be determined at the time of report and no citations were issued.

PTCR diagram

Drawing Not To Scale



b. Body Worn Video (BWV)

BWV showed NE#1 and NE#2 responded to this incident together. NE#1 approached CM#1, asked to see her license, and asked if CM#1 and her passenger were “okay” or suffered injuries. CM#1 and her passenger stated they were uninjured. CM#1 stated she lived “three blocks away.” NE#1 asked CM#1 for insurance. As CM#1 approached her vehicle for proof of insurance, NE#1 asked, “and you don’t have any weapons or anything like that in the car, or



anything, right?" CM#1 appeared to respond in the negative. NE#1 asked CM#1's passenger for her identification and CM#1's passenger responded that she was only fourteen years old. The Complainant then arrived on scene. NE#1 asked CM#1 how the collision happened. CM#1 responded:

I'm in, you know, the light just right up there. What street is that? 15th and the light. Okay. Yeah. Anyways, I'm at that light. I'm in the left lane. I need to get over to the right, cuz I need to turn out the right lane. He is in the lane next to me is up up a little bit. He has that big trailer, but I have my signal on and he wants to get around because the car is turning in front of him. Right. So he wants to get around it. And he goes into the, my lane a little bit when I'm trying to go over it, smacks into the side of my car.

CM#1 advised NE#1 there was a witness who stated CM#2 did a similar thing to him. CM#1 stated she was "near stopped" prior to the collision. NE#1 then confirmed "there's a car in front of him [the other driver]." CM#1 denied entering the right lane and stated she "barely got over." CM#1 also stated CM#2 turned ahead of her causing her to momentarily lose sight of him, but CM#3 knew where CM#2 had pulled over.

Next, NE#1 interviewed CM#3. CM#3 stated CM#2's vehicle hit CM#1's vehicle. CM#3 described CM#2's earlier driving as "swerving, aggressive driving around traffic." CM#3 explained he was in the right lane and CM#1 was in the left lane. CM#3 stated there was a car ahead of CM#1 that was turning and CM#1 was stopped. CM#3 stated CM#2 tried to pass CM#1 but did not have sufficient clearance for his trailer. CM#3 stated his phone captured CM#2 and his passengers being verbally aggressive towards CM#1 and her passenger. NE#1 did not ask to see the recording.

Next, NE#1 spoke with NE#2, who interviewed CM#2 and his passengers prior. NE#1 expressed his belief that CM#2 was at-fault based on CM#1 and CM#3's statements. NE#2 told NE#1 that CM#2 and his passengers claimed CM#3 was bias based on a road rage incident between them and CM#3 before the collision. NE#1 reiterated his belief CM#2 was at-fault. NE#2 told NE#1 he did not have to issue a citation where there were conflicting accounts, explaining the situation was "real gray." NE#2 stated there would have been more damage if the accident occurred as CM#1 described.

NE#1 then interviewed CM#2. CM#2 stated he was in the right lane driving straight (northbound). CM#2 stated CM#1 was trying to make a right turn. CM#2 speculated that CM#1 saw his truck pass her and CM#1 attempted to change lanes without seeing CM#2's trailer.

NE#1 told CM#2 both accounts were plausible, and his report would not determine fault. CM#2 gave NE#1 a business card, which NE#1 accepted. NE#1 started to leave to speak with CM#1 and the Complainant. As NE#1 started to leave, CM#2 raised his fist towards NE#1. NE#1 did not appear to see CM#2's fist at first, but NE#2 returned CM#2's apparent fist bump offer. NE#1 turned around and did the same.



NE#1 then spoke with CM#1 and the Complainant. NE#1 advised CM#1 and the Complainant he would not issue citations but would write a report noting that both accounts were plausible. NE#1 advised CM#1 and the Complainant that CM#2's insurance information would be on the report. He also gave CM#1 a business card listing the report number. NE#1 asked CM#1 or the Complainant whether they had questions. They only asked when the accident report would be available.

During NE#1's investigation, NE#2 principally engaged with CM#2 and his passengers. At that time, NE#2 gathered their information and accounts, which was consistent with how it was later described to NE#1. NE#2 also had CM#2 draw a diagram of the accident and, at NE#1's request, photographed both parties' vehicle damage. As NE#1 left to speak to CM#1 and the Complainant, NE#2 offered CM#2 "man-to-man" advice about working with his insurance company. Generally, NE#2 advised him not to immediately report the incident—which the insurance company may interpret as a claim or report as a collision—but instead ask the company for advice about what to do following an accident. As NE#2 departed, CM#2 and his two passengers appear to initiate fist bumps with NE#2, which NE#2 returned.

c. Photographs

NE#2 took five photographs of the damage to both vehicles.

CM#1's vehicle appears to have damage to the passenger side front bumper, wheel well, and front passenger side door. CM#2's trailer did not show obvious damage. However, one of CM#2's passengers claimed it was bent by the accident and he was able to bend it back into shape.

d. OPA Interview – Complainant

The Complainant stated he was on the train when CM#1 called him after the accident. The Complainant said CM#1 said she was hit by a truck/trailer and the truck drove off. The Complainant described learning CM#3 found CM#2 and led CM#1 to his truck. The Complainant stated heard over the phone that CM#2 and his passengers were hostile and cursing at CM#1. The Complainant said he instructed his daughter to call 911.

The Complainant stated he went to the scene and arrived after NE#1 and NE#2. The Complainant stated the scene was about three blocks from his home. The Complainant stated CM#1 gave her full account of what occurred, which NE#1 repeated back and appeared to write down. The Complainant described NE#1 as "very polite." The Complainant said that NE#1 and NE#2 then discussed the incident in a "neutral area" before returning to inform them that he was not issuing citations.

The Complainant stated CM#2 had CM#1's insurance information, but there was a week-long wait for him and CM#1 to access NE#1's report. The Complainant stated there were several inaccuracies in NE#1's report and the diagram suggested CM#1 hit CM#2. Specifically, the Complainant stated the report said a car was turning in front of CM#1, when in fact, CM#1 said a car was turning in front of CM#2, who swerved into her lane causing the accident. The



Complainant also said both officers were “laughing it up” with CM#2 and his passengers but were more “businesslike” with him and CM#1. The Complainant also said it was “uncomfortable” that NE#2 did not engage them. The Complainant said the officers interacted with CM#2 and his passengers like they “knew each other” or were “protecting” them. Finally, the Complainant noted the report inaccurately stated CM#2 lived a few blocks from the scene when, in fact, it was CM#1 who lived close to the scene. The Complainant concluded he “did not feel like we were given equal treatment.”

e. OPA Interview – NE#1

NE#1 stated he worked at the Department about one-and-a-half years. NE#1’s recollection of the incident was consistent with BWV.

NE#1 recalled originally believing CM#2 was at-fault, but that information provided by CM#2 changed his mind. Specifically, CM#2 stated he drove straight, and CM#1 attempted to turn because she lived in the neighborhood. NE#1 described it as a plausible competing story. NE#1 stated, due to the two plausible stories, he decided to write a report without issuing a citation. NE#1 stated he discounted CM#3’s account because his prior road rage incident with CM#2 made CM#3’s account not “100% trustworthy.”

NE#1 admitted not obtaining the account of CM#1’s passenger, but stated she was only fourteen years old and did not have a license, so he did not take her information.

NE#1 denied treating either party differently.

f. OPA Interview – NE#2

NE#2 stated he worked at the Department since April 2019. NE#2 stated he was the backing officer and NE#1 was the primary officer. NE#2 described the backing officer as assisting the primary officer as opposed to speaking with all parties to the incident.

NE#2 stated he interviewed CM#2 while NE#1 interviewed CM#1. NE#2 stated he was unable to determine which party caused the collision. NE#2 also explained he discredited CM#3’s account due to the reported prior road rage incident, which NE#2 stated in his “experience, makes their credibility as a non-biased witness harder.” NE#2 also explained he swayed NE#1’s initial opinion of the accident because NE#1 asked his opinion, and it seemed like NE#1 “only had one side of the story.”

NE#2 also recalled giving CM#2 advice on dealing with insurance. NE#2 stated he provides that advice “every time” he responds to a traffic collision. NE#2 stated he did not advise CM#1 or the Complainant because NE#1—the primary officer—had tasked him with speaking to CM#2 and his passengers. NE#2 also stated he used the phrase “man-to-man” when advising CM#1 to express that his advice was not official but “person-to-person.”



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 engaged 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. That includes different treatment based on the race of the subject. *See id.*

Here, OPA finds there is insufficient evidence to either prove or disprove the Complainant’s allegation of bias-based policing.

This is not to say there was no evidence to support the Complainant’s perspective. First, NE#1’s report included two inaccuracies the Complainant believed were material: 1) writing that CM#1 stated a vehicle was turning in front of her (as opposed to CM#2) and 2) noting that CM#2 lived in the area. Although the materiality of those errors for determining who was at-fault is debatable, NE#1 did not exercise care to accurately record the information. Second, CM#2 and his passengers engaged both officers in a generally friendly, relaxed, and informal way which—observed from a distance, as the Complainant and CM#1 did—conceivably conveyed familiarity and bias. However, OPA’s review of NE#1’s BWV showed NE#1 did not materially alter his demeanor or approach with either party. Instead, CM#2 and his passengers initiated informalities with NE#1—by offering fist bumps and a business card—that NE#1 did not refuse. While NE#1’s exchanges with CM#2 and his passengers may have been innocent rapport building, apparently the Complainant and CM#1 did not view it that way under the circumstances.

Conversely, there was evidence that NE#1 engaged fairly and objectively with both parties. NE#1 did not issue citations to either driver where he did not think there was objective evidence to determine who was at-fault. Moreover, OPA’s review of NE#1’s BWV showed a generally even demeanor with all parties and roughly equal time spent considering all perspectives. NE#1 was on scene about 30-minutes and spoke with CM#1 and the Complainant for about nine and half minutes, CM#2 for about eight minutes, CM#3 for about six minutes, and NE#2 for about seven minutes. NE#1 also originally concluded CM#2 was at-fault—despite presumably knowing the races of the parties—before NE#2 provided competing evidence for NE#1 to consider. Also, the mistakes NE#1 made on his report were minor and unlikely to be fault-determinative. Finally, with respect to fist bumping CM#2 and accepting a business card from CM#2, NE#1 did not initiate either exchange. Instead, both actions were initiated by CM#2 as NE#1 continued to do his job.

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

Recommended Finding: **Not Sustained - Inconclusive**



Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 engaged in bias-based policing.

As with NE#1, the evidence is insufficient to either prove or disprove the Complainant's allegation of bias-based policing.

As the backing officer, NE#2 engaged significantly less with CM#1 and the Complainant than NE#1. In fact, NE#2 engaged almost exclusively with CM#2 and his passengers. However, during this time, NE#2 was principally focused on gathering information relevant to NE#1's investigation. Moreover, with NE#1 serving as the primary, it would have been unproductive for NE#2 to gather duplicative information.

While OPA recognizes the informal interactions between NE#2 and CM#2 could have been interpreted by the Complainant as familiarity, there is insufficient evidence to determine he was biased. Coupled with his lack of interaction with CM#1 or the Complainant, OPA recognizes the Complainant may have understandably perceived the distinction between NE#2's interactions with the parties. Relatedly, while it was not inappropriate for NE#2 to offer general advice concerning insurance, this was, likewise, not extended to CM#1 or the Complainant, even if there were understandable reasons NE#2 did not do so. Finally, the Complainant mentioned seeing NE#1 and NE#2 discussing the matter in a "neutral area." It would be perfectly reasonable for the Complainant to perceive NE#2 as having an equal hand in determining the outcome of this investigation. Ultimately, NE#2 did play a significant role in forming NE#1's opinion that he could not determine fault.

For these reasons, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**