



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 22, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0274

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded (Expedited)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded (Expedited)

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 Complaint alleged the named employees drove past his vehicle daily over a year, constituting harassment. The Complainant also alleged the named employees failed to properly investigate his assault complaint.



ADMINISTRATIVE NOTE:

This case was designated an expedited investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation, without interviewing the involved employees. As such, OPA did not interview the involved employees. Additionally, although OIG approved this case for expedited investigation, it declined to certify it as timely because the named employees were not provided notice within five days of OPA receiving the complaint, as required by the relevant collective bargaining agreement.

Further, during OIG's review of OPA's intake investigation, it noted the Complainant called Named Employee #3 (NE#3) a "racist ass coward," but NE#3 did not appear to report the allegation. OIG requested OPA "take additional investigative steps and provide any additional documentation or explanation in the record that addresses and clarifies the issue." Thereafter, OPA reviewed the evidence and found nothing to substantiate the Complainant's general allegation of prejudice. OPA classified an allegation under 5.140-POL-5 ("Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing") against NE#3 and returned it to his chain of command for supervisor action.

SUMMARY OF INVESTIGATION:

During an OPA interview for another case, the Complainant alleged the named employees harassed him by driving past his vehicle several times a day.

OPA opened an intake investigation. During its intake, OPA reviewed Body Worn Video (BWV), Computer-Aided Dispatch (CAD) data, an incident report, and the Complainant's YouTube channel. OPA also interviewed the Complainant and reviewed a related OPA case: 2022OPA-0257.

OPA interviewed the Complainant for an unrelated complaint (2022OPA-0257.) That case concerned the Complainant's August 10, 2022, arrest. During that interview, the Complainant alleged several SPD officers drove past his vehicle multiple times a day. The Complainant reportedly lived in his vehicle. The Complainant's vehicle was parked near a busy intersection (on a road connecting Beacon Avenue South and Martin Luther King Boulevard South). The Complainant said officers drove past slowly at night with their spotlights activated. The Complainant alleged a particular vehicle number drove by more often than others. The Complainant also alleged, an officer who previously failed to aid him during another response, drove past his vehicle the most. The Complainant identified that officer by vehicle number.

OPA located an August 5, 2022, incident involving the Complainant. OPA reviewed BWV and SPD paperwork related to that incident. BWV recorded the named employees' interactions with the Complainant. In summary, OPA found:

On August 5, 2022, the named employees responded to a 9-1-1 call where the Complainant reported a man armed with a spray can and lighter tried to burn his face. When the named employees contacted the Complainant, the Complainant stayed in his vehicle and spoke to them through a cracked window. Named Employee #3 (NE#3) repeatedly told the Complainant it was difficult to hear him through the cracked window. Nevertheless, NE#3 took the Complainant's report about the man with the spray can and lighter. The Complainant also said the man threatened to kill him and previously swung an axe at him. The Complainant described him as a slim, White man in his seventies, about 5'11" with beard, moustache, and light-colored clothes (hereinafter referred to as Community Member #1 or CM#1). The Complainant also provided CM#1's typical whereabouts.



NE#4 told the Complainant they would try to locate CM#1. Before the named employees departed, the Complainant asked NE#3 whether he had been to that area before. NE#3 responded affirmatively and noted it was his assigned area. The Complainant asked whether NE#3 knew him. NE#3 acknowledged prior contacts with the Complainant. The Complainant asked NE#3 whether he drove down the road they were on. NE#3 stated several officers drove on that road. The Complainant accused NE#3 of having a “temper tantrum.”

The named employees left and located CM#1. Officers spoke with CM#1 and his wife (Community Member #2 or CM#2). CM#1 and CM#2 reported several issues with the Complainant since they moved to that area. CM#2 stated the Complainant paced around their camp with a machete and cut down the ropes holding their tent. CM#1 and CM#2 claimed the Complainant stole from them and threatened them with a baseball bat and his vehicle.

The named employees relocated to the Complainant. NE#4 and Named Employee #1 (NE#1) spoke with the Complainant through a cracked car door. NE#4 told the Complainant there were conflicting stories and the incident would be documented. The Complainant was upset and repeatedly claimed to have video evidence. NE#1 repeatedly asked for that evidence, but the Complainant refused. NE#1 also explained there was no physical proof to corroborate his account—like burn marks on the Complainant or his clothes. The Complainant also expressed irritation toward NE#3, calling him a “racist ass coward” and a “fucking weirdo” who “[drove] over here by me for over a damn year.”

The named employees ended their contact with the Complainant. As the named employees walked away, the Complainant stated he would show them video evidence. NE#4’s incident report noted, “based on our interactions with [the Complainant], I felt he was just trying to get us to engage in an argument some more with him.”

Last, OPA reviewed the Complainant’s YouTube channel, which contained videos he claimed captured his alleged harassment. Those videos showed SPD vehicles drive past the Complainant’s vehicle without stopping. They also showed delivery service and other city vehicles driving past the Complainant’s vehicle, which he stated constituted harassment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged the named employees retaliated against him by incessantly driving past his vehicle.

SPD policy precludes its employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “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 are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. *Id.*”

Here, although the Complainant did not offer a motive for the named employees’ alleged retaliation, OPA broadly interpreted his allegation to suggest officers harassed him for “engag[ing] in lawful behavior.”

However, OPA found no evidence to support the Complainant’s claim. The Complainant’s specific claim was that officers drove by his vehicle with their spotlights activated. The Complainant lived in a vehicle parked near a busy



intersection. While officers are free to patrol any city street, it is unsurprising they frequently patrolled the bustling area in question. The Complainant's YouTube videos captured unremarkable police activity. Notably, the Complainant also believed the presence of non-police vehicles on that road constituted harassment against him.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged the named employees failed to investigate his assault allegation.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. SPD Policy 15.180-POL-1. Such evidence should be photographed. *Id.*

Here, the evidence suggests the named employees conducted a full primary investigation into the Complainant's alleged assault. However, the Complainant's account conflicted with CM#1 and CM#2's account. Officers identified all parties, separately interviewed them, noted their observations and the lack of physical evidence, and repeatedly requested the Complainant's video evidence. NE#1 and NE#4 further documented their efforts in an incident report and addendum, respectively. Ultimately, there was insufficient evidence to arrest either party.

Although, as officers walked away, the Complainant relented and offered to show them video proof of the assault, the officers had reasonable grounds to question the Complainant's credibility at that point. Particularly where the Complainant repeatedly refused to provide that evidence, until it was clear the officers would no longer engage.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #1

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

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #2

15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

For the reasons set forth above of Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.



Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 - Allegation #1

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

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 - Allegation #2

15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

For the reasons set forth above of Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #4 - Allegation #1

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

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #4 - Allegation #2

15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

For the reasons set forth above of Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded (Expedited)**