



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 15, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0341

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 6.180 – 5 Pat-Down / Frisk	Not Sustained - Lawful and Proper (Expedited)
# 2	5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 Complainant alleged that on October 10, 2022, Named Employee #1 (NE#1) and Witness Employee #1 (WE#1) responded to a stolen vehicle. During the Complainant's arrest and subsequent search, NE#1 allegedly sexually assaulted him.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) 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 in this case. OIG also certified this investigation as thorough, timely, and objective.

During its review, OPA noted NE#1's failure to complete a Use of Force Statement in a timely manner. That issue was forwarded to NE#1's chain of command for supervisor action.

SUMMARY OF INVESTIGATION:

OPA reviewed the OPA complaint, incident report, and body-worn video. OPA could not locate the Complainant's contact information to arrange an interview.

A. OPA Complaint

On October 17, 2022, Witness Supervisor #1 (WS#1)—NE#1's supervisor—submitted an OPA complaint via Blue Team. That complaint noted, during a frisk of the Complainant's waistline, the Complainant alleged he was sexually assaulted.



B. Incident Report

Witness Employee #1 (WE#1)—NE#1's partner—authored the related incident report. WE#1 wrote he observed an unusually parked vehicle at a gas station. WE#1 wrote the vehicle was a Cadillac Escalade but had a temporary license tag for a Kia Sorrento. WE#1 noted the driver's window was smashed and the steering column damaged, leading him to believe it was stolen. WE#1 obtained the vehicle identification number (VIN), which he ran and identified as stolen. WE#1 reviewed security camera footage and saw the Complainant operating the vehicle. WE#1 wrote he saw the Complainant speaking with NE#1 near the Escalade. WE#1 showed NE#1 security footage stills, and they arrested the Complainant.

C. Body-Worn Video (BWV)

OPA reviewed NE#1's, and several witness employees' BWV. BWV showed the following:

WE#1 identified the Complainant as the Escalade's driver. NE#1 approached the Complainant and told him he was detained. The Complainant responded, "No, I'm not." The Complainant spoke about "lawful resisting" and said the officers should "not challenge me on an unlawful arrest."

NE#1 told the Complainant he was under arrest. Witness Employee #2 (WE#2) arrived, and the officers grabbed the Complainant. The Complainant said he would sit down but laid on his back. The officers controlled his legs and arms, which the Complainant crossed. NE#1 and WE#2 rolled the Complainant into a facedown prone position, pulled his arms behind his back, and handcuffed him.

NE#1 turned the Complainant onto his right side. NE#1 used his left hand to search the Complainant's waistline above his underwear. The Complainant's pants sagged below his groin and buttocks to expose his underwear. The Complainant recoiled and asked not to be touched. NE#1 said officers had to search him. NE#1 patted down the Complainant's t-shirt. NE#1 then stood the Complainant up and escorted him to the front of a patrol vehicle. NE#1 stepped away while the Complainant was *Mirandized*.

Several minutes later, NE#1 returned and searched the Complainant. NE#1 searched the Complainant's pockets. The Complainant questioned NE#1 why he searched his pants. NE#1 replied it was a search incident to arrest. As NE#1 searched the Complainant's back left pocket, the Complainant said NE#1 was "sexually trespassing" him. The Complainant's jeans appeared tightly fitted, causing NE#1 difficulty searching his pockets. NE#1 used a multi-tool plier to search the Complainant's pockets.

During the search, the Complainant yelled, "Get the fuck out of my crotch!" NE#1 told the Complainant he had to use the back of his hand to search his crotch area. NE#1 apologized and repeated it was only the back of his hand. BWV captured the back of NE#1's hand, sweeping the Complainant's crotch area for about a second.

WS#1 interviewed the Complainant. The Complainant told WS#1 that he was inappropriately touched. The Complainant also said officers "molested" him. WS#1 asked the Complainant if he was injured. The Complainant replied he was "sexually trespassed."



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches-General 6.180 – 5 Pat-Down / Frisk

The Complainant alleged that NE#1 sexually assaulted him during a search.

“The purpose and scope of a frisk is to discover weapons or other items which pose a danger to the officer or those nearby.” SPD 6.180-POL-5. To that end, “Officers may, incident to a lawful arrest, search an arrestee’s person....” SPD Policy 6.180-POL-6. “Officers shall thoroughly search the persons of all arrestees who are taken into custody.” SPD Policy 6.180-POL-7.¹

BWV captured NE#1 searching the Complainant incident to arrest. NE#1’s hand swept the Complainant’s waistband and torso when the Complainant was on the ground and more thoroughly at a patrol vehicle. The Complainant took issue with NE#1 searching the Complainant’s left rear jean pocket and when NE#1 briefly swept his groin with the back of his hand. BWV showed the Complainant’s pants appeared tightly fitted, causing NE#1 difficulty as he turned the pockets inside out. OPA did not observe NE#1 handle the Complainant in an “illicit” or sexual manner. While NE#1 did contact the Complainant’s groin, NE#1 was required to thoroughly search for weapons before transporting the Complainant. NE#1 used the back of his hand to perform the search with his fingers bent away from the Complainant to avoid unnecessary contact with the Complainant’s groin.

Here, NE#1’s search resulted in incidental contact with the Complainant’s groin. However, it was consistent with policy. Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #2

5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy

As discussed at Named Employee #1 - Allegation #1, NE#1’s search resulted in incidental and permissible contact with the Complainant’s groin area. Accordingly, it was noncriminal and within policy. OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

¹ OPA misclassified this allegation under SPD 6.180-POL-5, which pertains to pat downs or frisks made pursuant to reasonable suspicion. The Complainant here was searched incident to a lawful arrest. The search here is assessed under SPD Policies 6.180-POL-6 and 6.180-POL-7. Either way, the allegation is unfounded.