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**Issued Date:** DECEMBER 8, 2023

**From:** Gino Betts, Office of Police Accountability 

**Case Number:** 2023OPA-0188

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

1. **Allegation:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
  - a. **Finding:** Sustained
2. **Allegation:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Allegation Removed
  - **Proposed Discipline:** Written Reprimand to 9 Hours Suspension (1-day)
    - **Imposed Discipline:** Written Reprimand

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**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.**

### **Administrative Note on Proposed Findings:**

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

### **Executive Summary:**

It was alleged Named Employee #1 (NE#1) violated SPD's professionalism and bias-free policing policies when he used an offensive word while speaking over the loudspeaker of his marked Department vehicle.

**Administrative Note:**

On August 11, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective.

A Discipline Meeting was held on October 23, 2023. During the Discipline Meeting, OPA determined that it would amend its original recommendation for the bias-based policing allegation from Sustained to Allegation Removed. The details of this amended recommendation are set forth more fully below at Named Employee #1, Allegation #2.

**Summary of the Investigation:**

The Complainant filed a web-based complaint on April 29, 2023. The Complainant alleged that, around 8:30 PM that same day, they were standing outside a business on Alki Avenue when an SPD vehicle was driving by. The Complainant alleged the officer in the vehicle used his public address system to direct vehicles to move aside and stated, “Jesus you all drive like you’re retarded.”

OPA opened an investigation. During its investigation, OPA reviewed the OPA Complaint, Computer Aided Dispatch (CAD) Call Report, In-Car Video (ICV), and Body-Worn Video (BWV). OPA also interviewed the Complainant and NE#1.

**a. CAD Call Report**

OPA identified a CAD Incident on April 29, 2023, at about 8:30 PM in the vicinity of the Complaint location. NE#1 was responding to a Priority 2 call to check for two vehicles that were parked in the middle of Alki Avenue with teenagers dancing on and around other vehicles. NE#1 cleared the call as “assistance rendered.”

**b. ICV & BWV**

OPA reviewed NE#1’s ICV. The ICV showed NE#1 responding to the call and sitting in heavy, bumper-to-bumper traffic on Alki Avenue SW. Alki Avenue SW in this area is a two-lane road divided by a single broken yellow line with a parking lane on either side of the road. While sitting in traffic, multiple community members made statements to NE#1 concerning the individuals who were blocking traffic. One community member approached to complain about the traffic, and NE#1 responded, “how fast can I go man? I’m stuck in the traffic too dude.” ICV also captured another community member yell at NE#1, “put your fucking lights on and get to work.”

NE#1 activated his emergency lights and sirens and attempted to advance by driving along the broken yellow dividing line separating traffic in either direction.



Still image from NE#1's ICV depicting traffic conditions as NE#1 began driving between the opposing rows of traffic.

As he continued to advance, NE#1 used his public address system (PA System). NE#1 broadcast over his PA System:

If you're sitting in the middle of the street in a car, and you have room in front of you, get out of the way or I'm going to take your car. It's that easy. I've gotten about 10 phone calls about you guys sittin' in the middle of the street. Get back in your car or I'm taking the car.

About thirty seconds later, NE#1 sat, unable to advance because of traffic in front of him. NE#1 broadcast over his PA System:

I have zero patience for people driving like retards today. Okay. Let's go. Get out of the way, my lights are on. That means pull over. Driving 101...driving 101. Get out of the way. Get out of the way. There's a police car with lights on. That means move. Get out of the way. Get back in your car or I take the car. Let's go. Move. Get out of the way. Get out of the way. It's a \$1200 dollar ticket, man.

A still image from NE#1's ICV during the time he made this statement is reproduced below (OPA obscured a license plate and two faces with black dots).



OPA also reviewed NE#1's BWV. BWV recorded substantially the same audio evidence, but video principally displayed the interior of NE#1's vehicle.

### **c. OPA Interview – Complainant**

OPA interviewed the Complainant on May 3, 2023.

The Complainant described being present along Alki Avenue on the date of incident, a Saturday night. The Complainant stated that she could not "imagine how frustrating it is to be a police officer on Alki on a sunny Saturday. It's a mess. There's traffic." The Complainant described seeing a police officer, "obviously on a call . . . a police cruiser was trying to get to something, and they were on the loudspeaker saying please move. . . . You know, totally appropriate." Then, the Complainant described hearing the officer state over the loudspeaker, "Jesus, come on. You all drive like retards.' And I just thought, come on man. That is highly offensive and you are so much better than that. Like, we have to look up to you guys. Don't say something like that." The Complainant opined that the officer was speaking "out of frustration at the dozens and dozens of cars that were not moving," and not at a particular individual.

### **d. OPA Interview – NE#1**

OPA interviewed NE#1 on June 20, 2023. NE#1 stated he has worked for SPD for about seven years.

NE#1 recalled the incident and described receiving a 9-1-1 call about a group of vehicles blocking traffic along Alki Avenue. NE#1 described traffic as "at a standstill," because it, "was the first nice day of Alki weather." NE#1 said that because no cars could get through the intersection, "calls kept coming in" concerning the blocked traffic. NE#1 said he was responding to those calls.

OPA then played a portion of video that recorded the language NE#1 used. When asked to respond, NE#1 stated:

So honestly, I don't have an excuse as to why I said that language. It was a – trying to get to the call, to clear that intersection. I hadn't been able to really get anywhere for quite some time and

was able to see a break in, kind of, where the cars were parked. So I turned on my lights to get to where it was because all of the other back streets were all full as well.

And I got on the PA and it was, for lack of a better term, it was almost like an excited utterance. It came out of my mouth. My brain was moving faster than my mouth was and it came out. There was absolutely nothing, like — I knew when I said it that, you know, I made a mistake. I regretted it immediately and it wasn't directed at anybody, in particular, on the beach in front of me, around me. It was — it was just that.

When asked his response concerning the professionalism allegation, NE#1 responded, "I take full responsibility for it." NE#1 noted he agreed "100 percent," with the Complainant that his language was offensive and did not live up to Department standards.

When asked whether he believed his language was offensive, NE#1 responded, "it could be construed as offensive, yes." When asked to elaborate whether he, himself, believed his language was offensive, NE#1 responded, "Personally or professional? It — that's — personally, in my own personal opinion, my personal life, no. Professionally, yeah."

NE#1 denied that his language was a derogatory comment. He explained, "I didn't mean anything, nothing. It was a frustration. It happened. I said it. That's really all I can say. There was no meaning behind it, at all, towards anybody or anything." NE#1 explained he did not believe he violated the Department's bias-free policing policy as he was not "directing it at anybody," and his language did not influence a law enforcement decision. NE#1 described it merely as, "an utterance that was said, that was wrong."

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## **Analysis and Conclusions:**

### **Named Employee #1 - Allegation #1**

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

The Complainant alleged that NE#1 made rude and unprofessional comments over his PA system.

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.*

In his OPA interview, NE#1 acknowledged his language was unprofessional and could undermine public trust. OPA agrees. While on duty in a marked SPD vehicle, NE#1 used his PA system on a crowded public street to loudly use a word that—at a minimum—is disrespectful towards people with certain intellectual disabilities. This clearly violated policy.

OPA appreciates that NE#1 was in a frustrating situation, readily accepted responsibility for the professionalism aspect of his misconduct, and acknowledged the impact of his language on public trust in himself, the Department, and other officers.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

### **Named Employee #1 - Allegation #2**

#### **5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing**

It was alleged that NE#1 expressed derogatory comments concerning discernible personal characteristics over his PA System.

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. This includes different treatment based on the disability status or other discernible personal characteristics of the subject. See *id.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140-POL-2.

NE#1 stated, “I have zero patience for people driving like retards today.” On its face, the word “retards” is a pejorative term referring to people who have certain intellectual disabilities, the former clinical term for which was “mental retardation.”

See generally, G. Siperstein, S. Pociask, M. Collins, *Sticks, Stones, and Stigma: A study of Students’ Use of the Derogatory Term “Retard”* (April 2010), available at <https://www.researchgate.net/publication/45088953> and <https://pubmed.ncbi.nlm.nih.gov/20597746/> (hereinafter referred to as “Sticks, Stones, and Stigma”). See also *Why the R-Word Is the R-Slur, Special Olympics*, available at <https://www.specialolympics.org/stories/impact/why-the-r-word-is-the-r-slur>.

Moreover, whether intended or not, an obvious inference a listener could make would be that NE#1 assessed people with intellectual disabilities to be a clear example of bad drivers. These comments were derogatory towards people with the personal characteristic of an intellectual disability.

OPA credits NE#1’s explanation that he did not mean anything by the statement and that it slipped out in frustration. Regardless of NE#1’s intent or personal interpretation of the word, his language in this context was derogatory concerning intellectual disabilities.

For the above reasons, OPA originally recommended that this allegation be Sustained. On October 23, 2023, a Discipline Meeting was held with NE#1’s chain of command. The participants

in the Discipline Meeting had a robust conversation concerning the bias-based policing allegation. During the conversation, OPA amended its original position to recognize that—under the totality of these specific facts—NE#1 was not referencing the personal characteristics of any specific individual or expressing a prejudice towards a specific group of people. Instead, NE#1's statement was most fairly classified as a highly unprofessional outburst. OPA amends its findings to incorporate the conduct and analysis originally classified under SPD Policy 5.140-POL-2 within Allegation #1. Allegation #2 is removed.

Accordingly, OPA is now removing this allegation.

Recommended Finding: **Allegation Removed**