

**Issued Date:** DECEMBER 19, 2023

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



**Case Number:** 2023OPA-0276

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

### **Named Employee #1**

1. **Allegation:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Not Sustained - Unfounded (Expedited)
2. **Allegation:** 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report
  - a. **Finding:** Not Sustained - Unfounded (Expedited)

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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.**

### **Executive Summary:**

Named Employee #1 (NE#1) and his partner (Witness Officer #1 or WO#1) responded to a 9-1-1 call for a disturbance between the Complainant and her husband (Community Member #1 or CM#1). The Complainant alleged the NE#1 discriminated against her and CM#1 on the basis of their races and genders. The Complainant also alleged NE#1 did not write a complete, thorough, and accurate report, and that NE#1's report demonstrated bias.

### **Administrative Note:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG) review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

On July 31, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

## **Summary of the Investigation:**

OPA received the complaint and opened an intake investigation. During the intake, OPA reviewed the complaint, computer-aided dispatch (CAD) call report, incident report and supplement, and body-worn video (BWV). OPA attempted to interview the Complainant, but the Complainant refused to participate in an interview. Instead, the Complainant communicated with OPA through email only.

### **1. OPA Complaint and Complainant Emails**

OPA reviewed the web-based complaint and follow-up emails sent from the Complainant. Collectively, the Complainant alleged the following.

The Complainant identified as a Japanese female. The Complainant said she and her husband, CM#1—who she identified as a Hispanic male—recently moved to Seattle from Japan. The Complainant said she and CM#1 “had a bad fight two nights ago,” and that CM#1 was arrested for domestic violence (DV), “Even though he didn’t do anything, which I told the police many times.” The Complainant said the police arrested CM#1 due to discrimination based on race and gender. The Complainant stated the police identified her as under five feet tall and eighty pounds, even though she is five feet one inch tall and weighs one hundred ten pounds. The Complainant stated the officers did not ask her height or weight and, instead, discriminated against “Asians as such small people.” The Complainant also alleged the officers stated she and CM#1 “only got married for visa reasons,” even though CM#1 said “we had to leave America because my [the Complainant’s] visa was ending.” The Complainant alleged that, even if the officer was confused by this distinction, it was still discrimination because he, “put ‘asian & visa’ together and made a conclusion about our marriage.” The Complainant also alleged the officers viewed CM#1 as the “aggressor” even though the evidence showed he was “taking defensive actions.” The Complainant wrote that CM#1 had scratches all over his body and a bleeding hand, whereas she had “hand marks” on her wrists from when CM#1 was “holding” her. The Complainant also wrote that it was biased for the officers to reference the relative English proficiency of her and CM#1.

According to the Complainant, she and CM#1 were considering a divorce which caused her to have an anxiety attack and engage in self-harm. The Complainant wrote that CM#1 tried to stop her from engaging in self-harm and that this was “evident” from the hand marks on her wrists and her own explanations to officers of what occurred. The Complainant stated she “only kept crying because [CM#1] was bleeding and the officers kept making me super uncomfortable by surrounding me with multiple people and hovering their hands around me.”

### **2. CAD Call Report and BWV**

OPA reviewed the CAD call report and BWV. These showed the following.

The CAD call report showed NE#1 and WO#1 were dispatched as the primary unit to a disturbance call. The CAD call remarks noted the 911 reporter could hear “male screaming” and a “female crying.” The call remarks also noted the reporter hears “heavy banging like furniture being thrown,” which was ongoing for the past hour.

BWV showed NE#1 and WO#1 arriving outside an apartment door. The officers listened at the door before knocking and announcing themselves. The Complainant answered the door and exited, and went to speak with WO#1. NE#1 spoke with CM#1.

CM#1 had visible blood on his sweatshirt and a scratch on his lower neck. When NE#1 asked CM#1 about the blood on his sweatshirt, CM#1 responded by showing NE#1 his left thumb, which appeared to have some blood around the base of the thumb. CM#1 stated he injured his thumb by something breaking in the kitchen. CM#1 provided limited information in response to NE#1’s questions, initially saying that he did not remember how his neck was scratched, then later stating that he thought his neck was scratched during sex. NE#1 received permission from CM#1 to enter the apartment to look for the broken kitchen items. Inside, NE#1 found the apartment in disarray and observed blood on the bed. NE#1 told CM#1 he did not find any broken items in the apartment to explain his cut. When NE#1 asked CM#1 about this, CM#1 responded multiple times, “I do not recall.” CM#1 also told NE#1 that he and the Complainant had been married for one year but were together a “few months” before that. CM#1 elaborated that he and the Complainant knew each other for almost a year before they began dating. CM#1 said they recently came back from Japan. CM#1 stated he did not speak any other languages, but said the Complainant spoke Japanese. While NE#1 was speaking with CM#1, CM#1 provided the Complainant’s cell phone to another officer from CM#1’s pocket.

WO#1 spoke with the Complainant, who had extensive visible bruising and marks on both arms. The Complainant also had visible bite marks, including one on her right arm that appeared fresh. The bite mark on the Complainant’s right arm was on her upper triceps, towards the front of her body.



Image of bite mark on Complainant's right arm.

WO#1 and other officers asked the Complainant multiple times about how she sustained her injuries. The Complainant did not respond to many of these inquiries but, on a few occasions, the Complainant stated that she hit and bit herself.

After screening the situation with a supervisor, NE#1 determined that an assault had occurred, and CM#1 was the primary aggressor. CM#1 was arrested for assault in the fourth degree.

### **3. Incident Report**

The incident report and narratives showed NE#1 wrote the report, which was then submitted by WO#1. NE#1 wrote the following.

NE#1 wrote he arrived at the apartment and heard a woman crying and “what sounded like a man huffing” inside the apartment. NE#1 knocked on the door and all the noises inside the apartment stopped. WO#1 then knocked on the door, which was slowly opened. The Complainant, “a woman, approximately 80 pounds and under five feet tall” exited the apartment and was “crying and clearly upset.” NE#1 called out to anyone else inside, causing CM#1 to respond from the bathroom before CM#1 exited.

NE#1 wrote that he spoke with CM#1. CM#1 explained that the Complainant was his wife. NE#1 wrote “they have been married for 1 year, but knew each other for about 3 months before marriage. [CM#1’s] wife is from Japan and her Visa was expiring soon so they got married.”

NE#1 documented observing blood on CM#1's sweatshirt, which CM#1 claimed was from his left hand, which was visibly bloody. CM#1 stated the injury came from a "smashed glass kettle on the counter." NE#1 also documented that CM#1 had scratches on his neck and a mark on his forehead. NE#1 also documented his search of the apartment.

NE#1 also documented speaking with CM#1 about a police response to the apartment earlier in the day for a disturbance. CM#1 stated that, at that time, he and the Complainant were arguing about whether to stay married.

NE#1 documented speaking to WO#1, who described the extent of the Complainant's visible injuries, which "appeared to be bruising that looked like handprints and bite marks." NE#1 wrote that the Complainant was "not forthcoming with information about how she obtained the bruises," but that the Complainant said, "she had run into things and that she had bit herself." NE#1 wrote that, "officers noted that the position of the bite mark was incredibly difficult to reach on oneself." NE#1 documented that the Complainant was "visibly upset" and that there was an "apparent" size difference between CM#1 and the Complainant. NE#1 wrote that CM#1 described himself as five feet seven inches tall and one hundred eighty pounds. NE#1 wrote the Complainant, "is under 5 feet tall and approximately 80 pounds."

NE#1 noted that the Complainant's injuries appeared to be at "different stages of healing," opining that this could indicate a "History of assaults." NE#1 also wrote there, "appear[ed] to be a power dynamic" between the Complainant and CM#1. NE#1 wrote, "Not only is [the Complainant] from Japan, but [CM#1] said they got married because his wife's visa was expiring." NE#1 also noted that CM#1's English was "more fluent" than the Complainant and that, during the contact, CM#1 "was attempting to instruct his wife what to say to the police." NE#1 documented that CM#1 possessed the Complainant's phone, that the Complainant did not know her own phone number and "could not call police during the incident."

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## **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 that NE#1 was biased based on race and gender

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 race and gender 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.

Generally, the Complainant alleged two separate biased actions by NE#1. First, the Complainant alleged that NE#1 determined CM#1 was the primary aggressor and the Complainant was a DV victim based on biased assumptions due to their respective genders and races. Second, the Complainant alleged that NE#1 did not offer her language services.

Here, NE#1 responded to a 9-1-1 call for the Complainant's apartment where the caller reported hearing a male screaming, a female crying, and banging as if furniture was being thrown. NE#1 encountered CM#1 and the Complainant, both of whom had visible injuries. Neither party offered much specific information concerning the nature of their argument or the causes of their injuries. The Complainant was crying and appeared extremely upset. NE#1 observed that the apartment was in disarray and there was blood on the bed. NE#1 was also aware that the police had already responded to a disturbance call at the location earlier in the day. Based on the information he had, NE#1 had probable cause to believe a DV assault had occurred within the prior four hours that resulted in bodily injury. NE#1 was mandated, under both SPD policy and Washington State law, to arrest the primary aggressor. See SPD Policy 15.410; RCW 10.31.100(2)(c).

NE#1 reasonably determined that CM#1 was the primary aggressor. In making this determination, NE#1 appropriately considered the apparent size differential between CM#1 and the Complainant, the nature and extent of the parties' injuries, and observations that suggested an unequal power dynamic. That NE#1 had some evidence indicating CM#1 might ultimately be innocent (such as the Complainant's claims of self-harm and CM#1's injuries) and had minor errors, misunderstandings, and/or imprecise estimates in his paperwork does not prove that NE#1 acted out of bias.

The Complainant also alleged that she was not provided language assistance despite the police "forcing" her to speak with them. As a preliminary matter, OPA did not observe the Complainant requesting an interpreter or stating she could not converse with the officers in English. OPA did observe one instance, at the very end of the incident, where the Complainant told the screening sergeant that she would not be comfortable speaking with court representatives in English. The screening sergeant explained that the court would provide her with interpretation services. Although it appeared in the BWV that the Complainant spoke English as a second language, she appeared communicative with NE#1, WO#1, members of the Seattle Fire Department, and a screening sergeant. Notably, NE#1 was able to discuss higher-level, relevant concepts such as her relationship with CM#1, their recent living situations, and the upcoming court schedule for CM#1. Where the Complainant did appear unwilling or unable to speak with the officers, it appeared more related to the Complainant being upset than a language barrier. Finally, OPA did not observe any officer "force" the Complainant to speak with them, nor did OPA observe the Complainant tell NE#1 or WO#1 that she did not want to speak with them.

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

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

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

### **15.180 - Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report**

The Complainant alleged that NE#1 did not write a complete, thorough, and accurate report.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a Report. All reports must be complete, thorough, and accurate. See SPD Policy 15.180-POL-5.

In her complaint and follow up email, the Complainant took issue with a number of statements in NE#1's report. The Complainant also asserted that these statements were further evidence of NE#1's bias.

First, the Complainant objected to NE#1's estimation that she was "approximately 80 pounds and under five feet tall." The Complainant did not provide any proof of her height any weight, but stated she was five feet one inch tall and one hundred ten pounds. NE#1 explicitly wrote he was making an approximation. To the extent NE#1's estimate "under five feet tall" was inaccurate, it was minor—the Complainant is about five feet tall. While the difference between eighty and one hundred ten pounds is not minor, it's inconsequential here. NE#1 was listing heights and weights to discuss the size difference between the Complainant and CM#1. Even if the Complainant weighed one hundred ten pounds, and not eighty pounds, CM#1 still outweighed her by about seventy pounds.

Second, the Complainant objected to NE#1 writing that CM#1 told him he and the Complainant, "married because his wife's visa was expiring." On review of the BWV, this statement may have missed some context in a complicated visa situation, but CM#1 stated to NE#1, "her visa was running out, so we just got married and moved to Japan." One reasonable understanding of this statement would be that the Complainant's visa situation impacted the marriage decision or timing.

Third, the Complainant alleged she "repeatedly" told the officers that she self-harmed, but that this was "nowhere mentioned in the police report." As an initial matter, NE#1 documented the Complainant's statement that she had "run into things" and "bit herself." On review of the BWV, it also appeared the Complainant stated that she "hit" herself as well, but the concept that the Complainant caused her own injuries was captured in the report. Moreover, the Complainant did not appear to raise this issue "repeatedly," instead it appeared she mentioned this about three times in different ways over the course of a nearly hour-and-a-half long interaction.

After reviewing the complaint, email correspondence with the Complainant, incident report, and BWV, OPA finds by a preponderance of the evidence that NE#1 did completely, thoroughly, and accurately document this incident.

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

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